

Safe Ministry Board Ordinance 2001 Amendment Ordinance 2022

Explanatory Report

Purpose

1. The purpose of this report is to explain the effect of the bill for the *Safe Ministry Board Ordinance 2001 Amendment Ordinance 2022*.

Recommendations

2. Synod receive this report.
3. Synod pass the bill for the *Safe Ministry Board Ordinance 2001 Amendment Ordinance 2022*.

Background

Review of Safe Ministry Board Ordinance 2001

4. The Safe Ministry Board (**SMB**) was constituted by the *Safe Ministry Board Ordinance 2001 (SMBO)*, with a wide array of functions with respect to safe ministry in the Diocese, and a focus on policies, procedures and systems, the provision of advice and training, and monitoring the effectiveness of safe ministry measures and controls.
5. Since the SMBO was last reviewed in 2004, the legislative environment in relation to child protection and vulnerable persons in NSW has changed significantly with the Royal Commission into Institutional Responses to Child Sexual Abuse, and continues to evolve.
6. In the first half of 2018, the law firm Prolegis conducted an independent review of the position of the Diocese with respect to the recommendations of the final report of the Royal Commission into Institutional Responses to Child Sexual Abuse (**Prolegis Review**).
7. The Prolegis Review has informed various recommendations made by the Standing Committee in its meeting of 26 August 2019 for action within the Diocese, including by the SMB.
8. At its meeting on 15 February 2021, the Standing Committee appointed a committee (the **SMBO Review Committee**) comprising Bishop Peter Lin, Lachlan Bryant, the Rev Dr Keith Condie, Archdeacon Anthony Douglas, the Rev Brett Hall, Dr Ruth Shatford AM, Tony Willis and Elizabeth Moll to review the *Safe Ministry Board Ordinance 2001* in light of recommendations of the Royal Commission and the Prolegis Review, among other things.

Professional Standards Unit Oversight Committee

9. The Professional Standards Unit Oversight Committee (**PSUOC**) is a sub-committee of the Standing Committee, established by resolution of the Standing Committee on 16 November 2015, to oversee the work of the Professional Standards Unit (**PSU**) under its Director (**DPS**). The PSUOC's terms of reference are set out at **Appendix 1**.

Proposal for amalgamated Safe Ministry Board

10. The PSUOC and the SMBO Review Committee consider the amalgamation of the PSUOC and SMB to form a new Safe Ministry Board would clarify lines of responsibility, streamline accountability and enhance existing governance practice.

11. Currently, the relationship between the SMB and PSUOC involves PSUOC oversight of the work of the DPS under the *Ministry Standards Ordinance 2017 (MSO)* and financial oversight, whilst the SMB is an advisory body concerned with the prevention of abuse and safe ministry policy with support from the DPS as its “chief executive officer”.
12. As the SMB’s scope of responsibility has broadened over time, there has also been a gradual and inexorable push towards widening the jurisdiction of the PSU and role of the DPS. The tendency has been for matters to be referred to the PSU and/or the SMB that were not able to be dealt with via other means.
13. Oversight of the PSU has become increasingly convoluted. In addition to the SMB and PSUOC, the following various individuals and bodies are involved in governing the PSU:
 - (a) **the Archbishop** who currently appoints the DPS under the MSO and who, among other things, exchanges information with the DPS about conduct which may be the subject of a complaint under the MSO,
 - (b) **the Standing Committee** which funds the PSU on behalf of the Synod, receives annual reports from the DPS, and which exercises other functions under the MSO, including in relation to costs and indemnities,
 - (c) **the Registrar** who exercises a number of functions under the MSO and who, until recently, also provided informal management oversight of the DPS and PSU more generally,
14. The relationship of the DPS to each of these individuals and bodies is depicted in **Appendix 2a**. The diagram shows an unnecessarily complicated and confusing system of governance which is prone to conflicts between its constituent parts. Complex governance models also create the potential for inefficiencies, duplication, fragmentation, overlap and blurred lines of accountability.
15. Streamlining the governance structure for the DPS by the establishment of the new Safe Ministry Board and clarifying the role of the Archbishop and Registrar, would go a long way to addressing these governance issues.
16. The new consolidated structure would also properly reflect the existing relationship between the SMB and DPS in the fulfilment of safe ministry responsibilities in the Diocese pursuant to the SMBO.
17. The proposed structure for the new Safe Ministry Board is set out in **Appendix 2b**.
18. The PSUOC and SMBO Review Committee have consulted with the Safe Ministry Board and the MSO Review Committee and their comments have been incorporated into this report.

Explanation

19. The proposed *Safe Ministry Board Ordinance 2001 Amendment Ordinance 2022* (the **Bill**) accompanies this report.
20. Relevant provisions of the Bill are explained below. Except where otherwise indicated, clause references are to the clause numbering the Bill.
21. Given the PSUOC was not constituted by way of ordinance, the existing SMBO has been used as the starting point to prepare the constituting ordinance for the new Safe Ministry Board.

Definitions

22. Clause 2 sets out the new titles of ‘Director of Safe Ministry’ and ‘Office of the Director of Safe Ministry’ in place of the current titles of ‘Director of Professional Standards’ and ‘Professional Standards Unit’. While the term ‘professional standards’ is embedded in the current structure, it is more appropriate to characterise the objective of the Director as being ‘safe ministry’ for the following reasons –
 - (a) the definition of ‘church worker’ in the MSO (of which a member of the clergy is one type) extends far beyond clergy and includes many persons in volunteer positions in parishes. In the majority of cases such persons are not able to be described as being part of a ‘profession’ by virtue of their church worker role, but still fall within the jurisdiction of the MSO,

- (b) the objective of the MSO is to inquire into fitness for office – it is not a disciplinary process, even though there are protective elements involved. Although ‘standards’ are considered, they are ‘ministry standards’ rather than ‘professional standards’, and
 - (c) the remit of the Director and their Office is broader than just ministry standards and also encompasses the Child Safe Standards and safe ministry more broadly.
23. Clause 2 updates definitions set out in the SMBO for changes in applicable child abuse and child protection legislation and ordinances, including the *Ministry Standards Ordinance 2017 (MSO)*.
24. A new definition of ‘vulnerable person’ has been inserted in recognition of the SMB’s current responsibility for the protection of vulnerable groups of people such as the elderly and disabled which will be adopted by the new Safe Ministry Board.

Purpose

25. Clause 5 sets out the purpose of the new Safe Ministry Board which will guide the exercise of its functions and powers.

Functions of the Board

26. Clause 6 sets out the general functions of the new Safe Ministry Board, with reference to relevant legislation and ordinances.
27. The drafting of clause 6 has accepted the recommendation of the Prolegis Review to revise and simplify the functions of the SMB, which the existing SMB has considered convoluted and in part beyond its proper scope of responsibility.
28. Clause 6(a) states that the new Safe Ministry Board is the designated authority in the Diocese for safe ministry (and in particular child safety under the *Safe Ministry to Children Ordinance 2020*) and proper management of disciplinary matters by way of oversight of the Office of the Director of Safe Ministry and Director.
29. Clause 6(b) recognises the expansion of the SMB’s functions beyond the establishment of policies and procedures to address child sexual abuse to a broad mandate for safe ministry in relation to children and vulnerable persons. This function is limited to ‘Church bodies’, which is defined in clause 2 as including parishes but not including other bodies unless they are declared by the Standing Committee for the purposes of the definition. The new Safe Ministry Board will not be adequately resourced to oversee safe ministry in bodies like diocesan schools or Anglicare.
30. Clause 6(c) responds to Royal Commission recommendation 16.33 for a consistent approach to the implementation of Child Safe Standards (**CSSs**) by assigning responsibility for driving the implementation work to the new Safe Ministry Board. This function is limited to ‘Church bodies’ for the same reason set out in the prior paragraph.
31. Clause 6(d) responds to Royal Commission recommendation 16.35 that religious institutions in highly regulated sectors, such as schools and out of home care services, should report their compliance with the Child Safe Standards, as monitored by the relevant sector regulator, to the religious organisation with which they are affiliated. A parallel amendment is proposed to the *Accounts, Audits and Annual Reports Ordinance 1995* to require ‘Organisations’ that report to regulators in relation to compliance with the Child Safe Standards to provide a copy of that report to the new Safe Ministry Board.
32. Clauses 6(f) to 6(h) provide the oversight of finances previously exercised by the PSUOC, enable recommendations to be made to Standing Committee on payments relating to ministry standards matters (for example, the investigation of complaints), and also enable expenses in relation to the Board (for example, relevant training of Board members) to be provided for in the budget and paid from the assets of the ODSM.
33. Clauses 6(i) and 6(j) also incorporate functions previously exercised by the PSUOC in relation to the ongoing professional development and pastoral care of the DSM, and complaints made against the ODSM and DSM.

34. Without limiting the generality of clause 6, clause 7 provides particular direction for the fulfilment by the new Safe Ministry Board of its functions.
35. Clauses 7(a) and 7(d) has been inserted in response to Royal Commission recommendation 16.37 to specifically reference the new Safe Ministry Board being both the mechanism by which the Diocese receives advice on child sexual abuse and child safety and also a body authorised to request, receive, consider and act on external advice in relation to those matters.
36. Clause 7(d) also contemplates engagement by the new Safe Ministry Board of cultural and disability support as required and external expertise for case reviews in order to fulfil its functions (Recommendation 4.2.5 and 9.2.2, Prolegis Review).

Powers of the Board

37. Clauses 8(2)(e) and (f) have been specifically included to empower the new Safe Ministry Board to devolve matters to appropriate persons and subcommittees with appropriate membership.
38. The new Safe Ministry Board will be able to utilise the powers in clauses 8(2)(e) and (f) to address matters requiring specialised knowledge and expertise (such as elder abuse) or to deal with a particular subset of vulnerable persons.
39. The ability to delegate powers to experts and appoint subcommittees will enhance the new Safe Ministry Board's capacity and flexibility, as persons with diverse and specialised skills and experience may be engaged outside of board membership and the new Safe Ministry Board will benefit from informed reporting for the purposes of its decision-making processes, including in relation to the development of institutional strategies to address all the CSSs (Recommendation 4.1.5, Prolegis Review).

Appointment of Director

40. Clause 9 replaces clauses 82 and 82A of the MSO dealing with the appointment of the Director of Safe Ministry (**Director**) and the management of conflicts of interest relating to the Director's exercise of powers and performance of the Director's functions
41. Given the procedural nature of the MSO, it is more appropriate for provisions relating to the appointment of the Director to be contained in the constituting ordinance for the new Safe Ministry Board, which has responsibility for oversight of the Director.
42. Clause 9(2) provides for the appointment of the Director by the new Safe Ministry Board with the concurrence of the Archbishop. It is appropriate for the new Safe Ministry Board, given its responsibility for ministry standards and safe ministry in the Diocese, to make the appointment. Noting that the Archbishop has an important interest in this appointment, any proposed appointment will be made with his concurrence.
43. Clause 9(4) limits the new Safe Ministry Board's authority to delegate powers to the Director to the fulfilment of functions and purposes set out in the Safe Ministry Board Ordinance and MSO.

Membership of the Board

44. The amalgamation of the SMB and PSUOC requires a careful transition of membership to ensure retention of corporate knowledge and skills-sets necessary to enable the new Safe Ministry Board to fulfil its functions and further its purpose. The transitional arrangements are considered in paragraphs 53 to 60 below.
45. Further, the new Safe Ministry Board needs to be optimally constituted and resourced to implement the recommendations of the Royal Commission that have been referred to it for action by the Standing Committee.
46. With these objectives in mind, Clause 10(2) sets out the minimum requirements for the composition of the new Safe Ministry Board.

47. Clause 10(3) sets out highly desirable traits for the selection of members, which are not mandated to avoid incapacitating the new Safe Ministry Board.
48. One member ought to be responsible for advocating the interests of children in order to address Royal Commission recommendation 16.37 for a 'Children's Champion' and respond to the Royal Commission's concern regarding the self-protective nature of institutions (Recommendation 1.2.9, Prolegis Review). This will be achieved through the Board appointing one of its members to advocate for the interests of children in relation to the business coming before the Board (clause 16). This will not mean that other members cannot do so or that the Children's Advocate cannot also express other perspectives. However, it will ensure that the Board is considering a children's perspective in its decision-making.
49. The minimal regulation of membership provides scope for the new Safe Ministry Board, once constituted, to develop a skills matrix to identify skills and qualities required for its composition rather than specifying requirements in the Safe Ministry Board Ordinance.

Governance Policy

50. The Diocesan Governance Policy has been adopted where practicable to facilitate good governance, including provisions relating to membership of the Board, including circumstances of ineligibility and disqualification, duration of office, casual vacancies and duties, as well as the conduct of board meetings (see Parts 3 and 4).
51. Given the new Safe Ministry Board has oversight over the Office of the Director of Safe Ministry, it is appropriate to include a restriction on membership by a person subject to an adverse finding in relation to a complaint under the MSO (see clause 10(4)(i)).
52. Although the new Safe Ministry Board does not deal with specific cases of abuse, standard provisions relating to conflicts of interest have been inserted to ensure prudent governance practices.

Savings and transitional provisions

53. Since the Bill makes comprehensive amendments to the Safe Ministry Board Ordinance, it includes a savings provision to make clear that the amendments do not invalidate anything done under Safe Ministry Board Ordinance prior to the amendments being made.
54. The Bill also deems acts of the SMB and the PSUOC undertaken prior to its commencement, to have been undertaken under the Safe Ministry Board Ordinance (as amended by the Bill) where those acts correspond to functions and powers in the Ordinance. For example, this will mean that if a person has made a complaint to PSUOC in relation to the Director, that PSUOC's handling of that complaint will be taken to have already been dealt with by the SMB for the purposes of its functions under clause 6(j).
55. Clause 4(1) provides for the inaugural membership of the new Safe Ministry Board, drawing from the membership of the SMB and the PSUOC prior to the Bill's commencement. The deemed dates of first and last election/appointment are set out in a table to ensure an orderly transition and suitable term expiry dates. One of the positions on the Board is vacant, to allow the new Safe Ministry Board to appoint a suitable person so that the requirements under clause 10(2) are fulfilled.
56. Clause 4(2) will ensure that the person currently holding the office of Director of Professional Standards is taken to have been appointed as the Director of Safe Ministry for the purposes of the Ordinance as amended.

For and on behalf of the Standing Committee.

DANIEL GLYNN
Diocesan Secretary

25 July 2022

Professional Standards Unit Oversight Committee

Terms of Reference

1. To ensure the Professional Standards Unit (PSU) is fulfilling its obligations under the *Ministry Standards Ordinance 2017* and the *Safe Ministry Board Ordinance 2001*.
2. To receive reports each meeting from –
 - (a) The Archbishop
 - (b) Chair of Safe Ministry Board
 - (c) Chair of Professional Standards Committee
 - (d) President of the Panel for the Professional Standards Board
3. The reports shall state whether, in the opinion of the person making the report, the Director of Professional Standards (DPS) and PSU have performed satisfactorily since the last report and shall make any other comments as considered appropriate.
4. To receive and handle as necessary any complaints about the DPS or PSU.
5. To oversee the budget and finances of the PSU.
6. To make recommendations to Standing Committee on the functioning of the PSU and any other matters considered relevant by the PSUOC.
7. To prepare recommendations for the Standing Committee, in accordance with Standing Committee policies, on payment of expenses associated with professional standards matters from the Synod Fund Risk Reserve.
8. To ensure the DPS receives appropriate training, regular professional supervision and suitable pastoral care.
9. To liaise with the Archbishop about the appointment of DPS when the role of DPS is vacant.

Members

- (a) An Assistant Bishop (appointed by the Archbishop as Chair of PSUOC) (currently Bishop Peter Lin)
- (b) The Registrar (currently Acting Registrar, Mr Daniel Glynn)
- (c) An experienced lawyer who is a member of Standing Committee (appointed by the Chancellor) (currently Dr Robert Tong AM)
- (d) The Chair of the Finance Committee (currently Ms Nicola Warwick-Mayo)
- (e) The CEO of SDS (currently Mr Robert Wicks)

All members must be Standing Committee members.

Meetings and Quorum

10. The PSUOC shall hold at least 3 ordinary meetings each year with additional special meetings as required.
11. The quorum shall be 3 members.
12. The DPS shall attend meetings of the PSUOC by invitation.

Reporting

13. The Committee shall report to Standing Committee when it considers it to be appropriate and in response to any request by Standing Committee.

Administrative Arrangements

14. The Registrar sees to the secretarial work and any costs are met by the PSU.

Retirement

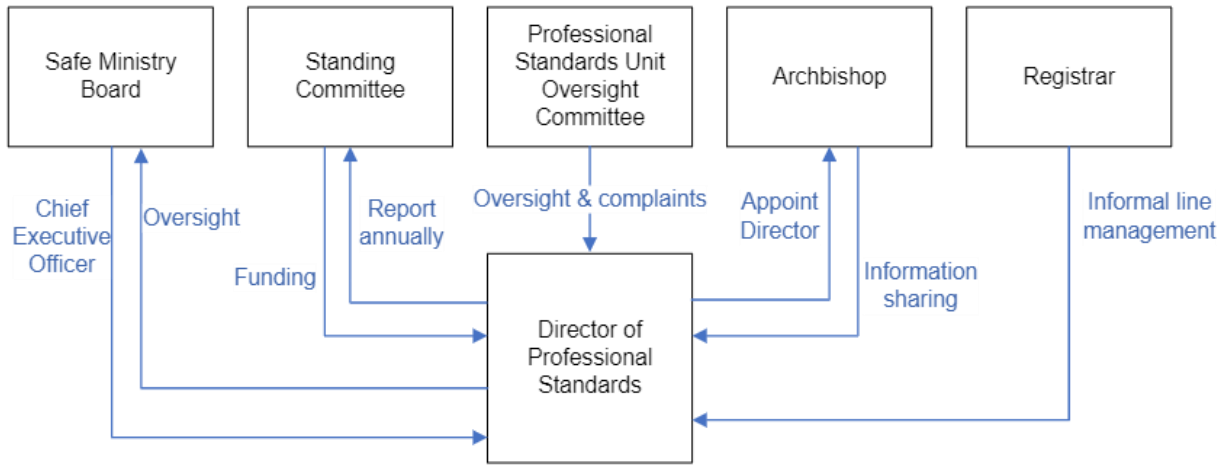
15. Ex-officio members are members while they hold the relevant office. Appointed members hold office at the pleasure of the person who appointed them.

Notes

16. An experienced lawyer is a person who has been admitted as a legal practitioner for not less than 10 years.
17. The reports in paragraph 2 shall be send direct to the Secretary who, after consulting with the Chair of PSUOC, shall determine whether they should be shared with the DPS before or after the meeting of the PSUOC or not shared at all with the DPS.

Current as at 9 March 2022

Current



Proposed

