

# Ministry Standards Ordinance 2017 Amendment Ordinance 2022

## Reportable Allegations and Convictions Ordinance 2022

### Explanatory Report

#### Purpose

1. The purpose of this report is to explain the effect of the bills for the *Ministry Standards Ordinance 2017 Amendment Ordinance 2022* and the *Reportable Allegations and Convictions Ordinance 2022*.

#### Recommendations

2. Synod receive this report.
3. Synod pass the bills for the *Ministry Standards Ordinance 2017 Amendment Ordinance 2022* and the *Reportable Allegations and Convictions Ordinance 2022*.

#### Background

##### Terms of Reference

4. The primary terms of reference for review of the *Ministry Standards Ordinance 2017* (the “**MSO**”) are set out in the Synod Resolutions extracted in **Appendix 1** to this report. In summary, Synod requested that Standing Committee –
  - (a) review the MSO, particularly as it pertains to accusations of bullying, to ensure that rector development or other measures are recommended prior to more serious action,
  - (b) review generally the effectiveness of the MSO drawing on submissions from Synod members and bring appropriate recommendations to the next session of Synod,
  - (c) make amendments to the MSO to facilitate compliance with changes in child protection laws, and
  - (d) consider including an encouragement for parties to consider resolving a grievance, complaint or dispute under the *Diocesan policy for dealing with allegations of unacceptable behaviour*.

##### Appointment of Committee

5. The Standing Committee appointed a subcommittee comprising the following persons (the **MSO Review Committee**) to review the *Ministry Standards Ordinance 2017* in response to the resolutions of the Synod and report back with recommendations: Mr Garth Blake SC, Mr Lachlan Bryant, the Rev Mark Charleston, Mr Michael Easton (Chair), the Rev Tom Hargraves, The Rev Mamie Long, Mr Douglas Marr, the Most Rev Kanishka Raffel and the Rev Craig Schafer. Mr Marr resigned from the MSO Review Committee upon his retirement as Diocesan Registrar. Ms Vikki Napier was appointed to the MSO Review Committee on 27 April 2020.
6. The MSO Review Committee was assisted by Ms Elenne Ford (PSU Consultant) and Mr Steve Lucas (SDS Senior Legal Counsel).

##### Consultation

7. Synod Resolution 25/19 called for feedback from Synod Members. The request for feedback was included in the Synod Circular sent out by the Diocesan Secretary following the 2019 session of the Synod. Two submissions were received in response to this request.
8. The MSO Review Committee considered that further consultation was required. The following questions were emailed to licensed clergy, lay ministers and Synod members inviting further

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feedback by 13 May 2020. This request elicited a further 22 submissions. The recommendations in the submissions are summarised in the table in **Appendix 2**.

9. Exposure draft bills were presented to the First Session of the 52<sup>nd</sup> Synod this year. Synod members were invited to provide comments on the Bill up until 30 June 2021. Two submissions were received. The recommendations in the submissions are summarised in the table in **Appendix 3**.
10. On two occasions, members of the MSO Review Committee met with representatives of the organisation known as the Gospel Workers Advocacy Group (GWAG). The first meeting, held on 8 September 2021, was with a subcommittee of lawyers on the MSO Review Committee to discuss the legal framework of the MSO. The second meeting, held on 21 October 2021, was with the full committee to discuss the pastoral context for GWAG's concerns and recommendations more broadly.

### Explanation

#### Ministry Standards Ordinance 2017 Amendment Ordinance 2021

11. The *Ministry Standards Ordinance 2017 Amendment Ordinance 2021* (the **MSO Bill**) is set out in **Appendix 4**.
12. The amendments are explained below in the order in which they appear in the MSO Bill. Except where otherwise indicated, clause references are to the clause numbering the MSO Bill.

#### *Features of the Complaints Process*

13. Clause 2(a) and the Schedule will insert a new information page towards the beginning of the Bill to explain the key features of the MSO and the *Diocesan policy for dealing with allegations of unacceptable behaviour* (the **Policy**).
14. Many complainants will have a choice between making a complaint for investigation under the MSO and attempting to resolve their complaint through the conciliation processes of the Policy. The amendment in clause 2(f) will also require a person to consider whether it would be preferable to first attempt resolution via the Policy.
15. The table in the Features of the Complaints Process is intended to assist prospective complainants to make informed choices about these options by enabling an easy comparison of the key features.
16. The table is merely explanatory and does not form part of the MSO. This is confirmed by the amendment in clause 4(e). The Diocesan Secretary will have authority to update the table in the same manner as the diagram presently.

#### *Overriding Purpose*

17. Clause 2(b) will clarify that the purpose of the MSO “to protect the community” includes complainants, respondents and Church bodies. The concept of ‘the community’ is somewhat vague without an indication of what it includes.
18. Clause 2(c) substitutes “timely” for “expedient”. A number of submissions expressed concern about the timeliness of the process. Expediency concerns practicality and will not necessarily require something to be in a certain period of time. The Committee considers that “timely” should replace “expedient” to make the period of time an express relevant consideration for those persons performing functions under the MSO.

#### *General Definitions*

19. Clause 2(d) inserts a new definition for “Standing Committee”. This is consequential to other amendments and for the purpose of clarification.

*Victimisation as a type of misconduct*

20. Clause 2(f) will insert 'victimisation' in the inclusive list of behaviour constituting misconduct under the MSO. There is an existing description of a form of victimisation in clause 6(2)(i) of the MSO, however it requires the victimiser to be threatening, taking or attempting "action". The Committee heard examples of church workers isolating and causing harm to complainants and witnesses in ways that do not involve "action".
21. The proposed definition of 'victimisation' is modelled on the protections against retribution in section 64 of the *Children's Guardian Act 2019 (NSW)* and will cover a wider range of conduct that can cause harm to a person. The definition requires the person making or involved in the complaint to be acting in good faith. A person who is not acting in good faith is not protected from discipline.

*Requirement for complainants to consider the use of the Policy*

22. Clause 2(g) inserts a new requirement for prospective complainants to consider whether it would be preferable to attempt to resolve any matters in dispute with the church worker through the Policy before making a complaint under the MSO.
23. There is no expectation that the Policy will be the appropriate process for all subject-matter giving rise to a complaint; in fact there will be some conduct for which the Policy is inappropriate and should not, and in some cases cannot, be used (e.g., abuse, criminal conduct). There may be other subject-matter that arises from a lack of competence on the part of the church worker or a breakdown of relationship that is best resolved through conciliation. In general, and humanly-speaking, there is a much higher likelihood of repentance, forgiveness and reconciliation under the Policy than under the MSO.
24. The Diagrammatic Summary of the Complaints Process in the MSO will be amended by including a new box immediately after the first box in the diagram stating as follows: "Prospective complainant to consider use of the Diocesan Policy for dealing with allegations of unacceptable behaviour instead of making a complaint (Clause 9(2))." The diagram is not part of the Ordinance and can be amended by the Diocesan Secretary when reprinting the ordinance (clause 4(3) of the MSO).

*Clarifying the obligation to report certain matters to the Director*

25. Clause 2(h) will reorder the existing clause 12 of the MSO as clause 10 as this is a more logical location. More fundamentally, it will add an exception to the obligation for church workers to report child related matters if the church worker has actual knowledge that the conduct has already been reported to the Director.

*Early resolution process*

26. Clause 2(i) will insert an early resolution process as a new clause 12 of the MSO. If the process is required by the Director of Professional Standards, it will be mandatory for prospective complainants in the sense that the complaint will not be able to proceed unless the complainant has taken reasonable steps to participate in the pre-complaint process (see the amendment in clause 2(j)).
27. The main features of the early resolution process are as follows –
  - (a) It applies if the Director of Professional Standards directs a prospective complainant and prospective respondent to undertake the process. In deciding whether to make a direction, the Director is required to have regard to a list of factors.
  - (b) The nature of the process is to be set out in the direction. Early resolution processes might include, but are not limited to, accessing the Policy, another form of conciliation, a facilitated discussion or individual counselling.
  - (c) The Director cannot make a direction if the subject-matter of the complaint includes serious child related conduct or sexual abuse, or if the direction could otherwise give rise to a material risk to the safety of one or more persons.
  - (d) The process can only be required prior to the Director taking a course of action under clause 14 of the MSO. Any conciliation thereafter would need to be in the form of a recommendation under clause 18A.

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- (e) The Director will have the power to revoke or amend a direction after it has been given.
- (f) The costs of the process are to be met from funds under the control of the Synod if the Director so determines and the Director approves the costs before they are incurred. The primary costs are likely to be the appointment of a mediator and/or a counsellor.
- (g) Allegations of misconduct that are subject to an early resolution process can still be dealt with under the MSO, provided the prospective complainant participated or attempted to participate in the process by taking reasonable steps in response to the direction.
- (h) The complaint will remain on foot unless or until the complainant withdraws it or the complainant fails to take reasonable steps to participate in the process.
- (i) If a complaint not made or is made but then withdrawn as a result of an early resolution process, this will prevent the complainant from making another complaint about the same subject-matter at a later point in time (see the amendment in clause 2(k)).

##### *Consultation with the Regional Bishop*

- 28. Clause 2(k) will require the Director to consult with the relevant Regional Bishop before taking any of the following actions under clause 14 of the MSO –
  - (a) Referring the complaint to the PSC with a recommendation that the respondent undertake training or that the parties undertake conciliation (cl 14(a)).
  - (b) Referring the complaint to the PSC with a recommendation that the complaint be declined or deferred (cl 14(d)).
  - (c) Referring the complaint to an adjudicator (in the case of an unpaid church worker) (cl 14(h)).
  - (d) Investigating or appointing a person to investigate a complaint (cl 14(i)).
- 29. This amendment was recommended by the Episcopal Team. They thought it was generally helpful for the Regional Bishop to have some advanced warning before significant events happen in a parish in their Region. The Regional Bishop may also have some insights or suggestions about how particular actions might be implemented or decisions announced that could assist the Director. The Bishop's role is one of consultation. The Director will not in any way be bound by the views or suggestions of the Regional Bishop.

##### *Suspension Orders*

- 30. Clause 2(o) will insert two new factors that the Director must consider when deciding whether to recommend a suspension order.
- 31. The first new factor is the likely effect on the complainant and any other person. Presently, the MSO only requires the likely effect on the respondent to be considered. The decision to or not to recommend a suspension order can also significantly affect complainants, particularly if they are members of the same church as the church worker. The extension to 'any other person' is intended to capture person on behalf of whom a complainant is acting, family members of the complainant and the like.
- 32. The second new factor is the conduct of the respondent subsequent to the making of the complaint. For example, if the respondent is belligerent or appears to be using their platform as a church worker to marginalise the complainant and their supporters or to control the narrative. The factor will hopefully discourage victimisation in this regard. On the other hand, if the respondent is cooperative and reasonable towards those making or involved in the complaint, that conduct should be taken into account as factors against the need for a suspension order.

##### *Release of material and announcements*

- 33. Clause 2(p) will insert a new form of recommendation that can be made by the PSC, which is that the respondent consent to the release of material or the making of an announcement in a form or manner specified by the PSC to explain the outcome of the complaint.
- 34. An announcement or the release of information to the church or churches or other stakeholders affected by the complaint will often be authorised under clause 104 or 106 of the MSO once a complaint has been finally dealt with. The capacity to make an announcement in or at the end of a church service or to organise a separate meeting of parishioners is largely at the behest of the Rector

since he has authority for the conduct of the service and also has control of the contact details of parishioners. The Committee heard examples of Rectors refusing to allow announcements or undermining announcements by, for example, ensuring they are made at the conclusion of the service when few people are present.

35. One way to ensure accountability in the making of announcements and the release of material is to include the requirement in the recommendations of the PSC. That way the respondent must accept and comply with the requirements of the PSC concerning the announcement or the release of material in order for the complaint to come to an end.
36. The PSC may decide not to make a recommendation concerning announcements or the release of information for a variety of reasons. The amendment in clause 2(q) will clarify that whether or not the PSC makes such a recommendation does not in any way limit the discretions to release information under clauses 104(2) and 106.
37. Clause 2(v) will insert a new clause in the MSO to require that a respondent cooperate with and facilitate any instructions from the PSC, the Archbishop or the relevant Church authority concerning the release of any material under clause 104(2) or 106. This is intended to ensure accountability by respondents in circumstances where the announcement or release of information does not form part of the recommendations by the PSC.

*Keeping complainants and respondents informed about progress*

38. Clause 2(r) will insert a new function for the Director to keep complainants and respondents informed about the progress of the complaint.
39. Timeliness and lack of transparency in the process were reoccurring concerns in the submissions received by the Committee. The new function is intended to address that concern.
40. The clause is a function rather than a prescriptive requirement. It will be up to the Director to determine the best methods for keeping the stakeholders informed.

*Notifying complainants of the outcome*

41. Clause 2(s) will clarify that the power in clause 106 of the MSO for the Archbishop or relevant Church authority to release material with respect to any information, complaint or finding includes notifying the complainant of the outcome of the complaint and making a public announcement in the relevant church.
42. Clause 2(u) will insert a list of factors to which the Archbishop or the relevant Church authority must have regard when making a decision to release material under clause 106 of the MSO.
43. Clause 42 of the MSO already provides for complainants to be notified of the PSC's recommendations. In most cases this will be sufficient. However, more information may be required in some instances. If additional information is required it is best addressed through the terms of the duty of confidentiality under the MSO.
44. Clause 104 of the MSO imposes a duty of confidentiality on persons who undertake functions under the MSO, subject to a list of exceptions. The duty is also subject to express powers in the MSO for the Professional Standards Committee (cl 104(2)) and the Archbishop of relevant Church authority (cl 106) to authorise the release of information. These powers are discretionary.
45. The powers are often used to authorise public announcements about the outcome of complaints or the imposition of suspension orders in the parish to which the church worker is licensed or in churches that have an interest in the complaint for other reasons. The amendment in clause 2(u) will help shape expectations about the purposes for which the power may be used.
46. Some submissions (particularly those from GWAG) expressed concern about a lack of transparency and accountability in the MSO process and suggested that the outcome of all complaints be published.
47. The Committee supports public accountability, but does not support mandating publicising the outcome of complaints. The publication of outcomes has considerable implications for respondents,

complainants and the church community and there is the potential for publicised material to be misused. It is something that needs to be handled with care having regard to the circumstances of each case. The Committee considers that the PSC and the Archbishop/relevant Church authority should retain discretion about whether and what should be published, but should exercise that discretion having regard to certain factors.

48. The proposed factors are –
- (a) the impact of the release of the information on any person,
  - (b) the benefit of the release of the information for any person, and
  - (c) whether there is a legitimate need for the release of the information, such as to ensure or increase public safety, quell rumour, ensure transparency and accountability or explain the recommendations made under the Ordinance.

### *Facilitating compliance with the Children's Guardian Act 2019*

49. Clause 3 contains amendments to facilitate compliance with the *Children's Guardian Act 2019 (NSW)* (the **CG Act**) - in particular, the reportable conduct scheme. This is covered in more detail below in relation to the *Reportable Allegations and Convictions Ordinance 2021*. The amendments in clause 3 address those areas of the MSO that interface with the CA Act.
50. In substance the amendments in clause 3 address two matters –
- (a) Ensuring that the category of complaint referred to as “serious child-related conduct” aligns with the conduct that is reportable under the CA Act. Complaints that constitute serious child-related conduct –
    - (i) cannot be withdrawn under clause 13; they must be concluded one way or the other,
    - (ii) cannot be declined or deferred by the Director under clause 16(1),
    - (iii) can be dealt with under the MSO for the purpose of making findings even if another complaint that is not materially different has previous been dealt with under the MSO or an equivalent ordinance (clause 16(2)),
    - (iv) cannot be subject to conciliation (clause 18A) or addressed by training (clause 18B),
    - (v) must result in a suspension order if there is a risk the respondent may come into contact with children in the course of their functions as a church worker (cl 19(c)), and
    - (vi) must result in findings as to whether or not the conduct was engaged in by the respondent (or referred to the Professional Standards Board if the PSC does not consider it can make a finding) (clause 31, 39, 43, 46 and 47).
  - (b) Allowing the Director to make a complaint based on information that is provided anonymously if the allegations concern serious child-related conduct. The MSO does not currently permit anonymous complaints because of the difficulty of ensuring a procedurally fair process for the respondent. However, the CA Act does not exempt anonymous allegations from the reportable conduct scheme. The Diocese has a duty to investigate and make findings on serious child-related conduct and provide a report to the children's guardian. The amendment will permit the Director to run such complaints under the MSO.

### Reportable Allegations and Convictions Ordinance 2021

51. The *Reportable Allegations and Convictions Ordinance 2021* (the **RAC Bill**) is set out in **Appendix 5**. The Bill will facilitate compliance with the reportable conduct scheme in the CA Act.

### *32/19 Compliance with the Children's Guardian Bill 2019 (NSW)*

52. The **CG Act** was amended with effect from 1 March 2020 to include a reportable conduct scheme for monitoring how certain organisations (including religious bodies) investigate and report on certain allegations and convictions made against their employees, volunteers and certain contractors who provide services to children.
53. The scheme requires those persons who are required to hold a Working with Children Check by the organisation to notify the Head of the organisation. The Head then has an obligation to report to the Children's Guardian, undertake a risk assessment, conduct an investigation and report the findings

to the Children's Guardian. Certain standards and timeframes are required to be met in relation to the investigation and report.

54. Broadly speaking, the current processes under the MSO and the category of "serious child-related conduct" (defined in section 7 of the MSO) are consistent with the requirements in the CG Act. However, some refinements are needed to better align the meaning of some terms and to clarify the obligations and functions of certain officeholders.
55. The RAC Bill provides that the Archbishop is the Head of the Anglican Church Diocese of Sydney for the purposes of the CG Act and that he may delegate his functions to any person or body and may revoke those delegations at any time. It is intended, and expected, the Archbishop will delegate his functions to the Director of Professional Standards and to bodies or persons exercising responsibilities under the MSO.
56. Under the RAC Bill, "the Diocese" will not include schools or organisations unless they are declared to form part of the Diocese by the Standing Committee. Schools and organisations will be required to manage their own compliance with the CG Act unless special arrangements are made. Schools have been subject to the reportable conduct scheme for some time and will have their own processes in place already.
57. The RAC Bill clarifies that a person is an "employee" of the Diocese for the purposes of the CG Act if they are required to hold an unconditional Working with Children Check in the *Safe Ministry to Children Ordinance 2020*. It should be noted that the meaning of "employee" in this context is wider than its ordinary meaning and includes volunteers who are required to hold a WWCC clearance.
58. The RAC Bill also sets out when and in what circumstances an employee will have an obligation to report certain matters to the Archbishop (or his delegate). It will also set out the actions that the Archbishop (or his delegate) must take in respect to those reports. These obligations parallel to the obligations under the CG Act.

## 25/19 Resourcing the Professional Standards Unit

59. Synod resolution 25/19 requests the Standing Committee to consider "whether the Professional Standards Unit is sufficiently resourced for its role in the operation of the ordinance".
60. The Committee consulted with the Director of Professional Standards, who informed the Committee that no additional resources were required.
61. The Committee is mindful that the request to consider whether additional resources are required may have arisen from concerns about the timeliness of the complaints process under the MSO. The Director was asked about this and was informed that when there are lengthy delays they usually arise in one of two ways –
  - (a) the conduct of the investigation by the external investigator, and
  - (b) interlocutory applications from respondents to challenge aspects of the process before the complaint progresses to the PSC.
62. Additional resources would not address either source of delay.
63. There was one area of potential additional resourcing identified by the Committee, which is the provision of a person different from but equivalent to the PSU Chaplain who can offer pastoral care to respondents. The Director already has as a function, "to provide or arrange care for or treatment of the complainant and respondent" (clause 83(g) of the MSO). There is no need to amend the MSO in relation to this matter. It is a question of resourcing and implementation.

For and on behalf of the Standing Committee.

DANIEL GLYNN  
**Diocesan Secretary**

16 December 2021

## Terms of Reference

### *4/19 Staff management training*

'Synod –

- (a) notes that while many rectors have participated in staff management training, the majority have not;
- (b) encourages rectors who have not already done so, to participate in staff management training as a matter of urgency;
- (c) requests the Safe Ministry Board, regularly include items relating to staff management in the content for the mandated triennial Faithfulness in Ministry training, noting that the 2020 Faithfulness in Ministry training will focus on staff management, and bullying in particular;
- (d) requests Ministry Training and Development to include appropriate training on the Ordinances relevant to Assistant Ministers as part of the post-ordination Ministry Development program for deacons;
- (e) recommends to the Archbishop that licences for Assistant Ministers, issued at the request of a rector, have an option for a specified term, with the minimum term being two years; and
- (f) requests the Ministry Standards Ordinance Review Committee to further review the *Ministry Standards Ordinance 2017*, particularly as it pertains to accusations of bullying, to ensure that rector development or other measures, are recommended prior to more serious action.'

### *25/19 Review of Ministry Standards Ordinance 2017*

'Synod, noting recommendation (f) of the report, "Assistant Ministers Ordinance 2017 Amendment Ordinance 2019", together with the Ministry Standards Ordinance 2017 Amendment Ordinance 2019, requests the Standing Committee to additionally undertake a further review of the Ministry Standards Ordinance 2017 and its operation, drawing on submissions to be invited from members of Synod, to determine –

- (a) the degree to which the ordinance has been successful in overcoming the perceived weaknesses in the *Discipline Ordinance 2006*, as outlined in the report *Ministry Standards Ordinance 2017* presented to Synod during its 2017 session,
- (b) whether any further weaknesses remain in the ordinance (in its amended form), and
- (c) whether the Professional Standards Unit is sufficiently resourced for its role in the operation of the ordinance,

and to bring any appropriate recommendations to the next session of Synod.'

### *32/19 Compliance with the Children's Guardian Bill 2019 (NSW)*

'Synod requests the Standing Committee to make amendments to the *Ministry Standards Ordinance 2017* to facilitate compliance with the *Children's Guardian Bill 2019*, if it is passed by the NSW Parliament.'

### *51/19 Further review of the Ministry Standards Ordinance 2017*

'Synod, noting the Biblical imperative in 1 Timothy 5 and Matthew 18 outlining how to resolve disputes, grievances and complaints between brothers and sisters in Christ, requests Standing Committee consider –

- (a) a further review of the *Ministry Standards Ordinance 2017* to consider including an encouragement for parties to consider resolving a grievance, complaint or dispute under the Diocesan policy for dealing with allegations of unacceptable behaviour, and
- (b) a further review of the intersection of the *Ministry Standards Ordinance 2017* and the Diocesan policy for dealing with allegations of unacceptable behaviour to consider if a further mechanism would be preferable to support the resolution of grievances, complaints and disputes.'



### General Submissions (2020)

	Summary of submissions and recommendations
1.	<p>1. A review of church governance with a view to reducing adversarial and secretive behaviours, and instituting greater transparency and accountability at all levels,</p> <p>2. A review of the selection and training of people for ordination that will lead to the appointment of suitably trained and integrated people to lead the church,</p> <p>3. A review of the teaching programmes at Moore College with a view to making changes to the curriculum that will align the College better with the needs of the church and its mission, and</p> <p>4. Develop an approach to resolving complaints of bullying that can be enacted before the situation becomes calamitous.</p>
2.	<p>Case study based online training run every 3 years as a component of compulsory training for clergy.</p> <p>Resources on the Safe Ministry website on what to do if experiencing or accused of bullying.</p>
3.	<p>Training covering – identifying and preventing bullying, standards of behaviour expected, reporting and managing bullying, where to get information and advice, communication, managing situations and giving feedback.</p> <p>Training for new clergy prior to employment in a parish. Also train wardens, youth leaders etc so there is a common understanding.</p> <p>A bullying policy – commitment to a standard of behaviour.</p> <p>Ideally instances of bullying should be resolved within a parish and done in a parish, but serious cases could be provided to independent training experts.</p> <p>Mentors for clergy.</p>
4.	<p>Replace unlimited tenure for rectors with fixed term appointments subject to a substantial congregational vote necessary to renew the term.</p> <p>Strengthen bishops' ability to intercede on behalf of congregants</p>
5.	<p>Create structured prevention and response for dealing with complaints.</p> <p>Avoid misuse of term 'bullying' by defining it clearly in the MSO.</p>
6.	<p>Release something for our congregations to take notice of, similar to the Domestic Violence resources released last year.</p>
7.	<p>Accountability for PSU, PSC and PSB.</p> <p>Pastoral care for respondents and their families.</p> <p>Opportunities for reconciliation between the parties.</p> <p>Shorten the time it takes to resolve complaints.</p> <p>Allow respondents to nominate supporters who they would like interviewed.</p> <p>Improve the manner of the PSU and PSC's engagement with respondents and witnesses.</p>
8.	<p>Training –</p> <ul style="list-style-type: none"> <li>• Mandatory formal conflict resolution training,</li> <li>• self-awareness training,</li> <li>• training on giving and receiving feedback,</li> <li>• training to enable ministry teams to set role and performance expectations (coupled with submitting these to the bishop to confirm their reasonableness),</li> </ul>

	<ul style="list-style-type: none"> <li>• more expensive training on what is and isn't reasonable behaviour (with examples) (not online training),</li> <li>• training for parishioners on identifying bullying and the resources available.</li> </ul> <p>Obstacles to reporting –</p> <ul style="list-style-type: none"> <li>• encourage speaking to someone else to assess if something is bullying or produce a guide to aid people's thinking.</li> </ul> <p>Support –</p> <ul style="list-style-type: none"> <li>• Pastoral support by an independent person</li> <li>• Counselling</li> <li>• Financial support where relevant.</li> </ul>
9.	Training for clergy on claiming expenses (to reduce conflict with Treasurers etc).
10.	The MSO's should more clearly identify which roles within a diocesan school are subject to its provisions.
11.	A clear stand against bullying that enables victims of bullying to feel protected as they come forward. PSU too blunt an instrument – too complainant focussed, process too long, complaints should be resolved as speedily as possible.
12.	Clarify expectations of behaviour in a church community (e.g. Gen Syn – 'Being Together'). Encourage a person to first seek to earnestly resolve the matter with the individual concerned. Do this by providing access to resources and training around conflict resolution supported by professional mediation if required. Require complainants to evidence their efforts to resolve the dispute/bullying claim in line with Jesus' teaching in Matt 18:15-17 before a complaint can proceed.
13.	The legal process of the MSO does not encourage reconciliation or the development of rectors. A more nuanced approach is needed. Separate the procedures around bullying accusations from the current Ministry Standards Ordinance. Deal with matters earlier and more quickly. Assemble a group of professional from various contexts and attempt to harmonise and adapt their practices having regard to the following theological imperatives: <ul style="list-style-type: none"> <li>• reconciliation,</li> <li>• repentance and forgiveness,</li> <li>• healing,</li> <li>• provide care and protection for the vulnerable (both complainant and respondent),</li> <li>• a process to enable progress and development,</li> <li>• facilitate what is helpful and healthy for the church community.</li> </ul> <p>Staff development – also to address expectations mismatch between generations.</p>
14.	Better communicate the standard of conduct expected of clergy. Rigorous training involving workbooks, videos and role play. A support team for both the complainant and the respondent. Making Christian counsellors available to both. Confidentiality needs to be followed more rigorously by the PSU to protect all parties. Witnesses should sign the record of conversation with the investigator to confirm its accuracy. Reconciliation as part of the process – use of mediators.

15.	Apply the NSW Dept of Health approach to bullying (links provided in submission).
16.	Address the power imbalance – being one of the main obstacles to reporting (especially in an episcopal denomination).
17.	<p>The process should encourage reconciliation.</p> <p>Respondents should be more informed about complaints and the outcome if it does not proceed.</p>
18.	Professional supervision - having a Senior clergy member listen and reflect, guide and encourage me and my ministry has been invaluable.
19.	Awareness training for assistant ministers on the ordinances and options available to them.
20.	<p><i>Submission lists a range of complications in relationships related to the Anglican system. Summary comment – “The challenge with understanding bullying is our context is that sometimes it is a result of moral failure (will) and sometimes it is a result of a lack of capability (skill). The above unique elements of our system exacerbate and complicate how we investigate and address bullying leaving little room for nuance.”</i></p> <p>Training –</p> <ul style="list-style-type: none"> <li>• Understanding what constitutes bullying (especially in the context of performance management and feedback).</li> <li>• How to give feedback, coach, set clear expectations and manage underperformance. (To overcome over spiritualising the treatment of underperformance – prayer and bible study to resolve it can give the impression it’s a sin rather than a skills issue).</li> </ul> <p>Resolve ambiguities in the accountability structure to avoid use of the MSO as the ‘nuclear option’. Bishops can’t coach and mentor as they have no formal authority.</p> <p>The PSU is designed to deal with moral failings. There is a need for mechanisms to deal with skill and self-awareness failures.</p> <p>The most significant issue is the lack of accountability for Rectors – structural change needed. If this cannot be achieved informal practices are required (e.g., Rectors develop own accountability structures to get feedback and nominators only nominate Rectors that have a record of setting rigorous accountability for themselves; parish councils and wardens to conduct annual feedback meeting with the Rector and Bishop).</p> <p>Resources for clergy:</p> <ul style="list-style-type: none"> <li>• 360 and self-assessment tools (I can give specific recommendations if you are interested)</li> <li>• Psychometric testing</li> <li>• Training in management 101 for rectors</li> <li>• Executive coaching</li> <li>• Clergy Assistance Program (extended to all church workers)</li> <li>• DeGroat, C., (2020) “When Narcissism comes to the Church”, IVP.</li> </ul> <p>Support for those involved in bullying:</p> <ul style="list-style-type: none"> <li>• Counselling</li> <li>• Mediation</li> <li>• Clergy Assistance Program for all church workers.</li> </ul>
21.	Recommends the Safe Work Australia Guide for Preventing and Responding to Workplace Bullying.

22.	<p><i>Submission was made orally.</i></p> <p>Cover bullying in more detail in Safe Ministry Training.</p> <p>A MTC course for clergy on what constitutes bullying, how to avoid it etc.</p> <p>A capacity for anonymous reports to be made (to overcome the obstacle of people being fearful of being a whistleblower in their own church).</p> <p>Resources – Beyond Blue, Dr Valery Ling (Centre for Effective Living)</p>
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## Submissions – Exposure Draft Bill (2021)

	Summary of submissions and recommendations	Committee Response
1.	Recast the pre-complaints process in the proposed new clause 12 to refer to the Diocesan Grievance Policy rather than creating a new type of conciliation.	<p>The Grievance Policy should be referenced in the clause as one possible pre-compliant process but should not be the only option available to the Director.</p> <p>Insert a list of factors for the Director to consider when deciding to give a direction under clause 12.</p> <p>Insert an information page at the start of the MSO to help people better understand the 2 processes.</p>
2A.	Delete proposed clause 12. The existing power to recommend conciliation (cl 18A) or dismiss complaints (cl 15, 16, 35 and 36) are sufficient to deal with less serious complaints.	A pre-complaints process is needed to refer appropriate complaints to conciliation (or similar) early in the process.
2B.	<p><u>Transparency</u></p> <ul style="list-style-type: none"> <li>• Mandate disclosure of outcomes (cl. 106): <ul style="list-style-type: none"> <li>○ If a complaint is made but dismissed or not proven, the wardens should be informed of the nature of the complaint, and the outcome.</li> <li>○ If a complaint is upheld, the whole church should be informed of the nature of the complaint, the outcome of it, and what actions (if any) are being taken by the respondent.</li> <li>○ The only exception to full transparency should be if there is a significant risk of harm occurring to the victim.</li> <li>○ The Regional Bishop should approve the announcement and make the announcement.</li> </ul> </li> <li>• Decisions and reasons to be published (cl. 79A).</li> <li>• Diocesan register of complaints and outcomes, made available to: <ul style="list-style-type: none"> <li>○ To nomination committees when considering a candidate.</li> <li>○ To senior ministers and wardens when considering employing someone.</li> <li>○ To the regional bishop for the clergy in their area.</li> <li>○ To the PSU when considering a complaint (either by a complainant, or against a respondent).</li> </ul> </li> </ul>	Disclosure should be discretionary and not mandated. However, the MSO should include factors to be taken into account in deciding if material should be published.
2C.	<p><u>The process takes too long</u></p> <ul style="list-style-type: none"> <li>• Director should have power to dismiss a complaint without PSC involvement if: <ul style="list-style-type: none"> <li>○ does not fall under MSO,</li> <li>○ false/vexatious/misconceived/trivial, and</li> <li>○ insufficient evidence.</li> </ul> </li> </ul>	The process is a compromise between efficiency and fairness. Delay is often a result of respondents taking legalistic approaches to defence of the claim and also the duration of the investigation.

	<ul style="list-style-type: none"> <li>Complainant should have a right to appeal the Director's decision to the PSC.</li> <li>Impose time limits on when the Director must provide responses.</li> <li>Examine if another form of complaints process is needed given the wide range of potential matters that can come under the MSO. Should there be a simpler and quicker process for certain types of complaints (i.e. non-abusive misconduct)?</li> </ul>	<p>The suggestions will not speed up the process and may do the opposite.</p> <p>Better communication may assist the parties to understand the timeframes.</p>
2D.	<p><u>Imbalance of Power</u></p> <ul style="list-style-type: none"> <li>Legal expenses – either both respondent and complaint get reimbursement or neither.</li> <li>Review or appeal rights for complainants.</li> </ul>	<p>The complainant is not a party to the process and has no need to incur any legal costs. For the same reason there should be no entitlement for a complainant to appeal an outcome.</p>
2E.	<p><u>Complaints process and functions</u></p> <ul style="list-style-type: none"> <li>Director to oversee investigation of complaints and not have deliberative powers (e.g. omit clause 25 and 26).</li> <li>Abolish the Professional Standards Committee (incl deleting Part 4A and replacing with regulations for Director to make references to the PSB and deleting Part 5B).</li> <li>All complaints to go to the Professional Standards Board (a tribunal with legal expertise and independent membership).</li> </ul>	<p>The PSC has the same level of independence as the PSB. Transparency of outcome is the same under both bodies.</p> <p>Running all complaints through the PSC would involve formal hearings for every complaint. Timeframes would blow out and the process would be much more expensive to run.</p>
2F.	<p><u>Exempt conduct</u></p> <ul style="list-style-type: none"> <li>Remove the power for the Archbishop to exempt conduct (Part 2B) - it is not transparent or accountable.</li> </ul>	<p>Exempt conduct should be retained. It encourages full disclosure prior to ordination and enables an assessment of whether the ordination should proceed. If disclosures are not made claims will come out later once a person is already in ministry.</p> <p>The PSC must give approval; there is accountability.</p>
2G.	<p><u>Declining or deferring complaints</u> (cl 15)</p> <ul style="list-style-type: none"> <li>Director should decide without PSC.</li> <li>No requirement for verification by stat dec.</li> <li>Omit ground for 'misconceived' complaints.</li> <li>Omit where complaint can be dealt with by other means – decision to use alternative dispute resolution must be up to the complainant.</li> <li>Omit the 'no utility' ground.</li> <li>Repeat complaints should be permitted – inappropriate for the Director to decide if a complaint is materially different. It should be a matter for the respondent's submissions.</li> </ul>	<p>Each of the grounds listed are included in the MSO for good reasons and help to prevent complaints proceeding where there is no reasonable prospect of findings and recommendations against a respondent.</p>

2H.	<p><u>Other</u></p> <ul style="list-style-type: none"> <li>• Define 'fitness for office'.</li> <li>• Investigate anonymous complaints (cl 10(5))</li> <li>• Interim prohibition orders to be authorised by the President of the PSB, not the Archbishop.</li> <li>• Requirement for Director to automatically refer allegations of reportable conduct to the PSB.</li> <li>• The PSB should have power to impose sanctions, not merely make recommendations (cl 46 and 49).</li> <li>• No power for the PSB to defer sanctions (cl. 51).</li> <li>• Appeal/review - All church workers (including paid/unpaid) to have power to appeal questions of law to the Tribunal (cl 33 and Part 4C). Omit applications for review to the Chancellor via the Registrar.</li> </ul>	<p>Defining fitness for office will add complexity and encourage complaints about godliness issues rather than misconduct. A definition won't bring clarity.</p> <p>Procedural fairness is very difficult with anonymous complaints. However they should be permitted where investigations and findings are required under the Children's Guardian Act.</p> <p>The PSB's recommendations are binding on the Archbishop and the relevant Church authority. See Part 4E of the MSO.</p> <p>Many of the suggestions will slow the process down further and make it more expensive to administer.</p>
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## Ministry Standards Ordinance 2017 Amendment Ordinance 2022

No. \_\_\_\_\_, 2022

### Long Title

An Ordinance to amend the *Ministry Standards Ordinance 2017*.

The Synod of the Diocese of Sydney Ordains as follows.

### 1. Name

This Ordinance is the Ministry Standards Ordinance 2017 Amendment Ordinance 2022.

### 2. Amendments to provide options for resolving issues in respect to certain complaints

The *Ministry Standards Ordinance 2017* is amended as follows –

- (a) insert the material in the Schedule on a separate page after the Diagrammatic Summary of the Complaints Process,
- (b) insert the words “including complainants, respondents and Church bodies” at the end of subclause 2(b),
- (c) substitute the word “timely” for the word “expedient” in subclause 2(1)(d),
- (d) insert the following new definition in clause 4(1) –
 

“Standing Committee” means the Standing Committee constituted under the *Standing Committee Ordinance of 1897*;
- (e) insert the following words in clause 4(3) before each instance of the word “diagram” –
 

“Features of the complaint processes, the”,
- (f) substitute the text in subclause 6(2)(i) with the following –
 

**“victimisation** which means action causing, comprising or involving the following in respect of a person because they, acting in good faith, propose to make, have made or have been involved in, a complaint under this Ordinance –

  - (i) injury, damage or loss,
  - (ii) intimidation or harassment,
  - (iii) discrimination, disadvantage or adverse treatment in relation to employment or appointment to a position,
  - (iv) dismissal from, or prejudice in, employment or appointment to a position,
  - (v) prejudice in the provision of a service,
  - (vi) disciplinary proceedings;”
- (g) insert following new subclause (2) in clause 9 (and number the existing text in that clause as subclause (1)) –
 

“(2) A person who proposes to make a complaint under this Ordinance should consider whether, having regard to the nature of the proposed complaint, it would be preferable to first attempt to resolve any matters in dispute with the church worker through the *Diocesan Policy for dealing with allegations of unacceptable behaviour*.”
- (h) renumber the existing clause 12 as clause 10 (and consequentially renumber the existing clauses 10 and 11 as clauses 11 and 12 respectively) and insert the following words at the end of the renumbered clause 10 before the full-stop –
 

“, unless the church worker knows that the conduct has already been reported to the Director”,
- (i) substitute the renumbered clause 12 with the following –
 

**“12. Early resolution process**

  - (1) Prior to taking a course of action under clause 14, the Director may direct a prospective complainant and a prospective respondent, to take reasonable steps to resolve the issues that are, or may be, in dispute between them in such



manner as is specified by the Director, which may include but is not limited to accessing the *Diocesan policy for dealing with allegations of unacceptable behaviour*, conciliation, a facilitated discussion or individual counselling.

(2) In deciding whether to give a direction under subclause (2), the Director is to have regard to the following factors –

- (a) the subject-matter of the complaint,
- (b) the likelihood that any matters in conflict could be resolved through that process,
- (c) any imbalance of balance of power between the parties,
- (d) the attitude of the parties to the proposed direction, and
- (e) whether having a support person would assist in the process.

(3) The Director must not give a direction under subclause (2) if –

- (a) the subject matter of the complaint may include serious child related conduct or sexual abuse, or
- (b) if the direction could otherwise give rise to a material risk to the safety of one or more persons.

(4) The Director may revoke or amend a direction given under subclause 12(2) by notice in writing to the prospective complainant and prospective respondent.

(5) The costs of any processes undertaken under this clause are to be met from funds under the control of the Synod if so determined by the Director and subject to the Director approving any such costs before they are incurred.”

- (j) number the existing text in clause 14 as subclause (2) and insert the following as a new subclause (1) –

“(1) The Director must use reasonable endeavours to explain the processes set out in this Ordinance to a complainant”,

- (k) insert a new subclause 14(3) as follows -

“(3) The Director must consult the relevant Regional Bishop before taking the course of action in either subclause (2)(b), (d), (h) or (i)”.

- (l) insert the following at the end of clause 15 before the full-stop –

“or if the complainant has not, in the opinion of the Director, taken reasonable steps in response to a direction made under clause 12(1).”

- (m) insert a new subclause 16(2)(h) as follows (and consequentially reletter the existing subclauses 16(2)(h) and (i)) –

“(h) the complaint was not made, or was made but then withdrawn, as a result of a process undertaken under clause 12; or”,

- (n) delete the word “and” following the semicolon in subclause 19(b)(iii),

- (o) insert the following new paragraphs at the end of subclause 19(b)(iv) before the full-stop –

“(v) the likely effect on the complainant or any other person; and

(vi) the conduct of the respondent subsequent to the making of the complaint”

- (p) insert a new subclause 41(k) as follows –

“(k) that the respondent consent to the release of material or the making of an announcement in any form and manner specified by the PSC to explain the outcome of the complaint;”,

- (q) reletter the text in clause 41 as subclause (1) and insert a new subclause (2) as follows –

“(2) Any decision of the PSC to make or not to make the recommendation in subclause (1)(k) does not in any way limit the discretion of the PSC, the Archbishop or the relevant Church authority (as the case may be) to release material under clauses 104(2) or 106.”

- (r) insert a new subclause 83(1)(h) as follows (and consequentially reletter the existing subclauses 83(1)(h) to (m)) -

“(h) to keep complainants and respondents informed about the progress of the complaint under the Ordinance,”

- (s) insert the following at the end of clause 106 before the full-stop –

“including notifying the complainant of the outcome of the complaint and making a public announcement in the relevant church.”, and

(t) number the text in clause 106 as subclause (1),

(u) insert a new subclause 106(2) as follows –

“(2) In deciding whether to release material under subclause (1), the Archbishop or the relevant Church authority is to have regard to the following factors –

(a) the impact of the release of the information on any person,

(b) the benefit of the release of the information for any person, and

(c) whether there is a legitimate need for the release of the information, such as to ensure or increase public safety, quell rumour, ensure transparency and accountability or explain the processes and outcomes under the Ordinance”,

(v) insert a new clause 107 as follows (and consequentially renumber the existing clause 106 and remaining clauses) –

**“107. Duty of respondents in the release of information**

A respondent must cooperate with and facilitate any instructions from the PSC, the Archbishop or the relevant Church authority concerning the release of any material under clauses 104(2) and 106 to the extent that it is within the respondent’s power and authority to do so.”.

**3. Amendments to facilitate compliance with the Children’s Guardian Act 2019**

The *Ministry Standards Ordinance 2017* is further amended as follows –

(a) in clause 6(2)(h) substitute the matter “*Child Protection (Working with Children) Act 2012 (NSW)*” with the matter “*Children’s Guardian Act 2019 (NSW)*”, and

(b) substitute the text in clause 7 with the following –

“Serious child-related conduct means –

(a) conduct that is sexual misconduct committed against, with or in the presence of a child, including grooming of a child, or any serious physical assault of a child by a person:

(i) when engaged in child-related work in the Diocese; or

(ii) who –

(A) is in child-related work in the Diocese at the time a complaint concerning their conduct is made, or

(B) has performed child-related work in the Diocese at any time in the two years prior to the date that a complaint concerning their conduct is made, and

(b) conduct or convictions that are reportable under the *Children’s Guardian Act 2019*.”, and

(c) insert the following words at the end of the renumbered clause 11 before the full stop –

“, except in the case of allegations of conduct which, if established, would constitute serious child related conduct”.

## Schedule

## Features of the Complaints Process

5 Complainants will often have a choice between making a complaint under the *Ministry Standards Ordinance 2017* (“MSO”) and attempting to resolve their complaint through the *Diocesan policy for dealing with allegations of unacceptable behaviour* (“Policy”). The table below provides a summary of the key features of each process. The table is not exhaustive and is merely explanatory in nature. The detail in the MSO and the Policy should always be relied on in preference to the table.

10

<b>Key Feature</b>	<b>Ministry Standards Ordinance 2017</b>	<b>Diocesan policy for dealing with allegations of unacceptable behaviour</b>
<i>What is the aim of the process?</i>	To: <ul style="list-style-type: none"> <li>• uphold the standards of conduct expected of church workers in the Diocese,</li> <li>• protect the community,</li> <li>• provide a mechanism for resolving complaints that church workers are not fit to hold office under undertake ministry, and</li> <li>• to facilitate the just, expedient and efficient resolution of complaints.</li> </ul>	To resolve allegations of unacceptable behaviour in a way that encourages reconciliation and leads to agreed outcomes that are fair and effective.
<i>Who can complaints be made about?</i>	Church workers (as defined in clause 5).	Church workers (as defined in clause 5).
<i>Who can make a complaint or allegation?</i>	Any person.	Any person.
<i>How does a person make a complaint/initiate the process?</i>	By contacting the Professional Standards Unit. ( <a href="https://safeministry.org.au/contact/">https://safeministry.org.au/contact/</a> )	If the church worker is the Rector, by contacting the Regional Bishop. ( <a href="https://sydneyanglicans.net/seniorclergy">https://sydneyanglicans.net/seniorclergy</a> )  In all other cases, by contacting the Rector of the church worker.
<i>Are church workers who are the subject of an allegation required to participate in the process?</i>	Yes. A church worker must cooperate with an investigation unless they have a reasonable excuse. If a church worker refuses to participate, the process will continue without them.	No. The process cannot be initiated unless the church worker agrees to participate.
<i>Role of complainant</i>	The complainant is not a party. Complainants cannot determine how the complaint progresses. They have limited access to information about the conduct of the process.	The complainant is a party and is actively involved in determining how the matter progresses, subject to the terms of the Policy.

<b>Key Feature</b>	<b>Ministry Standards Ordinance 2017</b>	<b>Diocesan policy for dealing with allegations of unacceptable behaviour</b>
<i>What types of complaints can be made?</i>	Complaints about conduct which, if established, would call into question the church worker's fitness for ministry. See the definition of 'Misconduct' in clause 6 for more detail.	Any conduct which falls short of the standard of behaviour expected of clergy and church workers. This standard is understood by reference to the definition of 'misconduct' in the MSO and the Faithfulness in Service code of conduct.
<i>Is there any subject matter that cannot be dealt with under the process?</i>	<p>Subject matter that does not call a church worker's fitness into question.</p> <p>Allegations of a breach of faith, ritual or ceremonial.</p> <p>Certain exclusions from the definition of 'misconduct'. (See clause 6(1)).</p> <p>Exempt conduct. (See Part 2B).</p> <p>Conduct that has previously been dealt with under a diocesan complaints process.</p> <p>Conduct that is under investigation by the police, a regulatory body or is the subject to legal proceedings will usually not be considered until those other processes or proceedings have been completed.</p>	<p>The Policy cannot be used for allegations concerning sexual misconduct, misconduct involving children, criminal conduct or professional misconduct.</p> <p>The Regional Bishop may also decide that allegations raise questions of fitness that are more appropriately dealt with under the MSO.</p>
<i>What form of investigation will be undertaken?</i>	If the complaint progress it will usually, but not always, be the subject of a formal investigation by an external investigator.	The Regional Bishop appoints a person to undertake an 'information gathering exercise'. This will usually be the Parish HR Partner or a Regional Archdeacon.
<i>How long does the process take from start to finish?</i>	The process aims to be expedient and efficient, but can be lengthy in practice. This is largely due to the need for a formal investigation and procedural fairness in the process. Some complaints can take in excess of 12 months to reach a final outcome	The process has few formal steps and is intended to be quick. Ultimately the parties will determine the timeliness of the process. The process will usually be terminated if there is no resolution within 3 months.
<i>What are the outcomes from the process?</i>	<p>An assessment is made as to whether the church worker should remain in their office or position or whether they should be subject to conditions or restrictions.</p> <p>In most cases this is determined by either the:</p> <p>(a) Professional Standards Committee if its recommendations are accepted and complied with by the church worker, or</p>	<p>Mutually agreed by the parties with the assistance of the Regional Bishop.</p> <p>If agreed outcomes cannot be reached, the complainant will still have the option of making a complaint under the MSO if the subject-matter can be dealt with under the MSO.</p>

<b>Key Feature</b>	<b>Ministry Standards Ordinance 2017</b>	<b>Diocesan policy for dealing with allegations of unacceptable behaviour</b>
	<p>(b) if not, by the Professional Standards Board or Diocesan Tribunal.</p> <p>If the church worker is an unpaid lay person, an Adjudicator will be appointed to make a determination instead. The Adjudicator is usually a barrister or senior lawyer.</p> <p>The outcomes are implemented by the Archbishop or other Church Authority.</p>	
<i>Are the outcomes confidential?</i>	<p>Generally, yes. However the Archbishop and the PSC have power to release information.</p> <p>Parishioners are generally informed about the outcome of a complaint concerning a person on the staff of the parish.</p> <p>In some situations the outcomes will be published more broadly across the Diocese, such as where the person is subject to a prohibition order or another form of restriction on engaging in ministry.</p> <p>Certain allegations and findings may need to be referred to the police or to a government authority.</p>	<p>Generally, yes.</p> <p>Parishioners would only be told if this was agreed as an outcomes of the process.</p> <p>The PSU will be told when an allegation is made about a church worker but no other detail.</p> <p>Certain allegations may need to be referred to the police or to a government authority.</p>

I Certify that the Ordinance as printed is in accordance with the Ordinance as reported.

Chair of Committee

I Certify that this Ordinance was passed by the Synod of the Diocese of Sydney on 2022.

Secretary

I Assent to this Ordinance.

Archbishop of Sydney

/ /2022

## Reportable Allegations and Convictions Ordinance 2022

No. \_\_\_\_\_, 2022

### Long Title

An Ordinance to facilitate compliance with the *Children's Guardian Act 2019* in relation to reportable allegations and reportable convictions in respect to certain persons within the Diocese.

The Synod of the Diocese of Sydney Ordains as follows.

### 1. Name

This Ordinance is the Reportable Allegations and Convictions Ordinance 2022.

### 2. Interpretation

(1) In this Ordinance –

**CG Act** means the *Children's Guardian Act 2019*, as amended from time to time.

**Children's Guardian** means the period holding office as the Children's Guardian under the CG Act.

**Diocese** means the Anglican Church Diocese of Sydney.

**WWCC Employee** means an individual who holds, or is required by the religious body to hold, a working with children check clearance for the purpose of undertaking ministry in the Diocese.

(2) A reference in this Ordinance has the same meaning as it has in the *Children's Guardian Act 2019* as amended from time to time.

**Note:** The *Children's Guardian Act 2019* includes the following definitions –

**Assault** means—

- (a) the intentional or reckless application of physical force without lawful justification or excuse, or
- (b) any act which intentionally or recklessly causes another to apprehend immediate and unlawful violence.

Examples of assault—

- 1 hitting, striking, kicking, punching or dragging a child
- 2 threatening to physically harm a child

**Employee**, for a religious body, means an individual who holds, or is required by the religious body to hold, a working with children check clearance for the purpose of engagement with the religious body.

**Ill-treatment**, of a child, means conduct towards a child that is unreasonable and seriously inappropriate, improper, inhumane or cruel.

Examples of ill-treatment—

- 1 making excessive or degrading demands of a child
- 2 a pattern of hostile or degrading comments or behaviour towards a child
- 3 using inappropriate forms of behaviour management towards a child

**Neglect**, of a child, means a significant failure to provide adequate and proper food, supervision, nursing, clothing, medical aid or lodging for the child, that causes or is likely to cause harm to a child, by—

- (a) a person with parental responsibility for the child, or
- (b) an authorised carer of the child, or
- (c) an employee, if the child is in the employee's care.

Examples of neglect—

- 1 failing to protect a child from abuse
- 2 exposing a child to a harmful environment, for example, an environment where there is illicit drug use or illicit drug manufacturing

**Reportable allegation** means an allegation that the Employee has engaged in conduct that may be reportable conduct, whether or not the conduct is alleged to have occurred in the course of the Employee's employment with the religious body and whether or not the allegation relates to conduct occurring before the commencement of the Act.

**Reportable conduct** means the following conduct, whether or not a criminal proceeding in relation to the conduct has been commenced or concluded—

- (a) a sexual offence,
- (b) sexual misconduct,
- (c) ill-treatment of a child,

- (d) neglect of a child,
- (e) an assault against a child,
- (f) an offence under section 43B or 316A of the *Crimes Act 1900*,
- (g) behaviour that causes significant emotional or psychological harm to a child.

5 Examples of indicators of significant emotional or psychological harm for paragraph (g)—

- 1 displaying behaviour patterns that are out of character
- 2 regressive behaviour
- 3 anxiety or self-harm

Reportable conduct does not include—

- 10 (a) conduct that is reasonable for the purposes of discipline, management or care of a child, having regard to—
  - (i) the age, maturity, health or other characteristics of the child, and
  - (ii) any relevant code of conduct or professional standard, or
- (b) the use of physical force if—
  - 15 (i) in all the circumstances, the physical force is trivial or negligible, and
  - (ii) the circumstances in which it was used have been investigated and the result of the investigation has been recorded in accordance with appropriate procedures, or
- (c) conduct of a class or kind exempted from being reportable conduct by the Children’s Guardian under section 30.

Example of conduct for paragraph (a)— a school teacher raising his or her voice in order to attract attention or restore order in a classroom

20 Examples of conduct for paragraph (b)—

- 1 touching a child in order to attract the child’s attention
- 2 momentarily restraining a child to prevent the child hurting themselves or others
- 3 touching a child to guide or comfort the child

25 **Reportable conviction** means a conviction, including a finding of guilt without the court proceeding to a conviction, in this State or elsewhere, of an offence involving reportable conduct—

- (a) in relation to an employee of a Schedule 1 entity—whether or not the conduct occurred in the course of the employee’s employment with the Schedule 1 entity, or
- (b) in relation to an employee of a public authority—
  - 30 (i) if the employee holds, or is required to hold, a working with children check clearance for the purpose of employment with the public authority—whether or not the conduct occurred in the course of the employee’s employment, or
  - (ii) if the employee is not required to hold a working with children check clearance for the purpose of employment with the public authority—unless the conviction relates to conduct that occurred outside the course of the employee’s employment with the public authority.

35 (And includes convictions in respect of conduct occurring before the commencement of the CG Act.)

**Sexual misconduct** means conduct with, towards or in the presence of a child that—

- (a) is sexual in nature, but
- (b) is not a sexual offence.

Examples of sexual misconduct—

- 40 1 descriptions of sexual acts without a legitimate reason to provide the descriptions
- 2 sexual comments, conversations or communications
- 3 comments to a child that express a desire to act in a sexual manner towards the child or another child.

**Sexual offence** means an offence of a sexual nature under a law of the State, another State, a Territory, or the Commonwealth, committed against, with or in the presence of a child.

45 Examples of sexual offences—

- 1 sexual touching of a child
- 2 a child grooming offence
- 3 production, dissemination or possession of child abuse material

50 (3) The notes in this Ordinance are for explanatory purposes only and do not form part of the Ordinance.

(4) The Diocesan Secretary is authorised to update the notes in this Ordinance to maintain their currency.

**3. Delegation**

55 (1) The Archbishop may delegate any of the functions of the Head under Part 4 of the CG Act to any person or body and may revoke such delegations at any time by notice in writing to the person or body.

(2) If the Archbishop makes a delegation under subclause (1), references to the Archbishop in this Ordinance are taken to be references to the person or body in respect to the delegated functions.

**Note:** Section 65 of the CG Act permits the Head to delegate any functions under Part 4 of the CG Act to any Employees of the Diocese. It is expected that the Archbishop will delegate his functions to the persons, and bodies comprised of persons, that perform requisite functions under the *Ministry Standards Ordinance 2017*.

**4. Determinations for the purposes of the CG Act**

- 5 (1) For the purposes of the CG Act –
- (a) the Diocese is a religious body,
  - (b) the Diocese does not include schools or organisations that are constituted by or pursuant to ordinance, unless declared to form part of the Diocese by the Standing Committee by resolution for the purposes of this subclause, and
  - 10 (c) the Archbishop is the Head of the Diocese.
- (2) For the purposes of the CG Act and the definition of ‘Employee’ in the CG Act, a person is required to hold a Working with Children Check clearance by the Diocese for the purpose of engagement in the Diocese if the person is required to hold a unconditional Working with Children Check under the *Safe Ministry to Children Ordinance 2020*.

15 **5. Reports to the Archbishop**

- (1) A WWCC Employee who becomes aware, knows or has reason to believe that another WWCC Employee has a reportable conviction or has engaged in or is alleged to have engaged in reportable conduct, must as soon as possible report to the Archbishop –
- (a) the name or a description of the reportable person,
  - 20 (b) details of the alleged reportable conviction or reportable conduct,
  - (c) the date of birth and working with children number (if any) of the WWCC Employee the subject of the report,
  - (d) the grounds for knowing or believing that the reportable person has a reportable conviction or has engaged in in the conduct,
  - 25 (e) whether the conduct has already been reported to any authority, and
  - (f) whether a risk assessment has been undertaken, the outcome of that assessment and any risk management action that has been taken.
- (2) A person making a report under subclause (1) must provide such additional information and reasonable assistance to the Archbishop as he may request to enable the conduct to be investigated and reported to the police, the Children’s Guardian or other authority in accordance with the law.
- 30 (3) Any other person may also make a report to the Archbishop in respect to a WWCC Employee setting out the matters listed in subclause 5(1).

**6. Action to be taken by the Archbishop**

- If the Archbishop receives a report under clause 5 or otherwise becomes aware, in relation to a WWCC Employee, of a reportable allegation or a conviction that is considered to be a reportable conviction, the Archbishop must–
- (a) ensure that a report is made or reports are made to the Children’s Guardian in accordance with the CG Act,
  - 40 (b) ensure that an initial risk assessment is made based on all known relevant information to ensure that any risk posed by the WWCC Employee the subject of the allegation is managed and revisit that assessment as new information becomes known, including at the end of the investigation,
  - (c) ensure that arrangements are made for any reportable allegation to be investigated as soon as practicable (subject to any requirement under the CG Act to defer or suspend the investigation),
  - 45 (d) determine whether any conviction considered to be a reportable conviction is a reportable conviction,
  - (e) make a finding of reportable conduct if he is satisfied that the case against the WWCC Employee the subject of the reportable allegation has been proved against the WWCC Employee on the balance of probabilities after taking into account any mandatory considerations required under the CG Act, and
  - 50 (f) otherwise deal with the allegation or conviction in manner that complies with the CG Act and any directions made by the Children’s Guardian thereunder.



**Note:** By section 36 of the CG Act, after an investigation or determination is completed the Archbishop must provide a report (an "Entity Report") to the Children's Guardian, subject to certain exceptions. The Entity Report is to be provided within 30 days after becoming aware of the allegation of reportable conduct or reportable conviction, unless the Archbishop gives –

- 5           (a)     an interim report to the Children's Guardian within that period that contains the content required by section 38 of the CG Act,
- (b)     the reason for not providing the Entity Report, and
- (c)     an estimated time period for the Entity Report.

The Entity Report must include the contents required by section 37 of the CG Act.

10   **7.     Investigations and determinations by the Children's Guardian**

If the Children's Guardian investigates a reportable allegation or makes a determination about a conviction considered to be a reportable conviction, and provides a copy of its report to the Archbishop, the Archbishop must consider the report and may, or on the request of the Children's Guardian must, notify the Children's Guardian of any action taken or proposed as a result of the recommendations.

15   **8.     Disclosure of information**

The Archbishop must disclose the following information relating to a reportable allegation or conviction considered to be a reportable conviction if required by the CG Act –

- (a)     information about the progress of the investigation,
- (b)     information about the findings of the investigation,
- 20         (c)     information about action taken in response to the findings,

and must not disclose the information in any other circumstance unless disclosure is permitted by the CG Act or required by law.

I Certify that the Ordinance as printed is in accordance with the Ordinance as reported.

Chair of Committee

I Certify that this Ordinance was passed by the Synod of the Diocese of Sydney on  
2022.

Secretary

I Assent to this Ordinance.

Archbishop of Sydney

/     /2022