

Working With Children Check (Clerical Licences) Ordinance 2014

Explanatory Report

Purpose of the bill

1. The purpose of the bill for the *Working With Children Check (Clerical Licences) Ordinance 2014* (the “bill”) is to ensure that clergy are not licensed to exercise any Anglican ministry in the Diocese which constitutes child-related work if the member of clergy does not hold a Working with Children Check clearance (“WWCC clearance”) under the *Child Protection (Working with Children) Act 2012* (the “Act”).

Recommendation

2. The Synod pass the bill as an ordinance of the Synod.

Background

3. In June 2013 the State Government introduced a new WWCC clearance under the Act for people who work with children. The new WWCC clearance covers a broader range of people and is more comprehensive in the matters checked. It therefore seeks to provide greater protection for children.

4. The WWCC clearance includes a national police check of criminal offences and a review of findings of misconduct involving children. The result is either a clearance to work with children for 5 years or a bar against working with children. Barred applicants (or persons who do not otherwise hold a WWCC clearance) must not work with children in either a paid or voluntary capacity. Employers must not employ or continue to employ a person in paid or voluntary child-related work if they do not hold a WWCC clearance.

5. The WWCC clearance is being introduced progressively between 15 June 2013 and 31 December 2017 for different classes of persons who currently work with children. In particular, clergy who were licensed as at 15 June 2013 for any ministry which constitutes child-related work were required to obtain a WWCC clearance number by 31 March 2014 and advise the Registry of that number. A small number of clergy holding a general licence from the Archbishop were not required to provide Registry with a WWCC clearance. These comprised elderly retired clergy for whom the Archbishop was satisfied no child-related work would be undertaken and clergy living interstate.

6. Since 15 June 2013, no new licences have been issued to clergy for any ministry unless the Registry has first been provided with a WWCC clearance number.

7. As a consequence of this work, the Registry currently holds WWCC clearance numbers for 904 clergy who hold the licence of the Archbishop.

8. In due course it is likely that some clergy licensed to undertake child-related work will, for a number of reasons, cease holding a WWCC clearance. The most likely reason for this is the expiry of the 5 year period for which WWCC clearances are issued. It is also possible for clergy holding a WWCC clearance to be subject to an interim bar under the Act or have their WWCC clearance cancelled by the NSW Children’s Guardian. In these circumstances, the Archbishop must have the capacity to suspend and, in appropriate cases, revoke the licence of a member of clergy if the member of clergy fails or is unable to have their WWCC clearance reinstated or renewed.

9. Under clause 3(4) of the Schedule to the 1902 Constitutions Act (the “1902 Constitutions”) the licence of a member of clergy may only be suspended or revoked by the Archbishop in the circumstances (or cases) determined by ordinance of the Synod. In order to ensure the Archbishop is able to comply with the requirements of the Act, the bill proposes that holding a licence to undertake child-related work without holding a WWCC clearance is a case in which the licence may be suspended or revoked.

10. The bill is being promoted to the Synod rather than being considered by the Standing Committee because clause 7(2) of the 1902 Constitutions prevents the Synod delegating to the Standing Committee the power to determine the cases in which a licence may be suspended or revoked.

Working with Children Check requirements under the Act

11. Under section 8 of the Act, a worker must not engage in child-related work unless he or she holds a WWCC clearance of a class applicable to the work or there is current application for such a clearance. In addition, a worker must not engage in child-related work at any time he or she is subject to an interim bar. The maximum penalty for failing to comply with this requirement is a fine of \$11,000, or imprisonment for 2 years, or both.

12. Under section 9 of the Act an employer must not commence employing, or continue to employ, a worker in child-related work if the employer knows or has reasonable cause to believe that –

- (a) the worker is not the holder of a WWCC clearance that authorises that work and there is no current application for such a clearance, or
- (b) the worker is subject to an interim bar.

The maximum penalty for failing to comply with this requirement (for an employer who is not a corporation) is a fine of \$5,500.

13. The Act generally provides that a worker is engaged in “child-related work” if they are engaged in work that involves direct contact with children in various contexts, including in any religious organisation. The regulations under the Act further provide that work for a religious organisation in which children form part of the congregation or organisation is deemed to be child-related work if the work is carried out –

- (a) as a minister, priest, rabbi, mufti or other like religious leader or spiritual officer of the organisation, or
- (b) in any other role in the organisation involving activities primarily related to children, including youth groups, youth camps, teaching children and child care.

14. The Act includes an extended definition of the term “employer” to include –

- (a) a person who, in the course of business, arranges for the placement of a person in employment with others, or
- (b) a person who engages a person under a contract to perform work, or
- (c) a person who engages a worker to perform work as a volunteer for the person under an agreement (whether written or unwritten).

15. The bill proceeds on the basis that clergy exercising any Anglican ministry in the Diocese are “workers” under the Act and that the Archbishop, as the person responsible for licensing or appointing clergy to exercise such ministry is the deemed employer under the Act. Any member of the clergy licensed by the Archbishop to undertake Anglican ministry in the Diocese which constitutes child-related work must therefore hold a WWCC clearance under the Act or must have applied for such a clearance.

Provisions of the bill

16. Clause 3 of the bill formalises the current practice of the Archbishop by preventing him from licensing clergy to exercise any Anglican ministry in the Diocese if the Archbishop knows or has reasonable cause to believe that the member of clergy does not hold a WWCC clearance. The only circumstance in which the Archbishop may license a member of the clergy who does not hold a WWCC clearance is where he is reasonably satisfied that the ministry involved does not constitute child-related work.

17. Clause 4 requires the Archbishop to suspend the licence of a member of the clergy if he is reasonably satisfied that the ministry permitted by the licence constitutes child-related work and knows or has reasonable cause to believe that the member of the clergy is not the holder of a WWCC clearance.

18. Clauses 4(2) and (3) provide that any suspension of a licence in these circumstances –

- (a) must be notified as soon as practicable to the member of clergy in writing and must specify the date on which the suspension takes effect, and
- (b) is for a period which expires on the earlier of –
 - (i) 3 months from the date on which the suspension takes effect, and
 - (ii) the date on which the Archbishop verifies the member of clergy holds or has applied for a WWCC clearance.

19. Clause 4(4) provides that if a period of suspension expires after the 3 month period because the Archbishop cannot verify that the member of clergy holds or has applied for a WWCC clearance, the Archbishop must revoke their licence. It is considered that if, having received notice of the suspension their licence, a member of the clergy fails to obtain or apply for a WWCC clearance (or cannot obtain a WWCC clearance), revocation of the licence is the appropriate course of action to enable the Archbishop to meet the requirements of the Act.

20. In order to ensure that the constitutional requirements of clause 3(4) of the 1902 Constitutions are met, clause 4(5) of the bill requires that before suspending or revoking the licence due to a failure to hold or apply for a WWCC clearance, the Archbishop must give the member of clergy an opportunity to show cause why the licence should not be suspended or revoked.

For and on behalf of the Standing Committee

ROBERT WICKS
Diocesan Secretary

26 June 2014