Ministry Standards Ordinance 2017

(Reprinted under the Interpretation Ordinance 1985.)

The Ministry Standards Ordinance 2017 as amended by the Ministry Standards Ordinance 2017 Amendment Ordinance 2018, the Ministry Standards Ordinance 2017 Amendment Ordinance 2019, the Ministry Standards Ordinance 2017 Amendment Ordinance 2022, the Ministry Standards and Safe Ministry Amendment Ordinance 2022, the Ministry Standards Ordinance 2017 Amendment Ordinance 2023, and the Miscellaneous Amendments Ordinance 2024.

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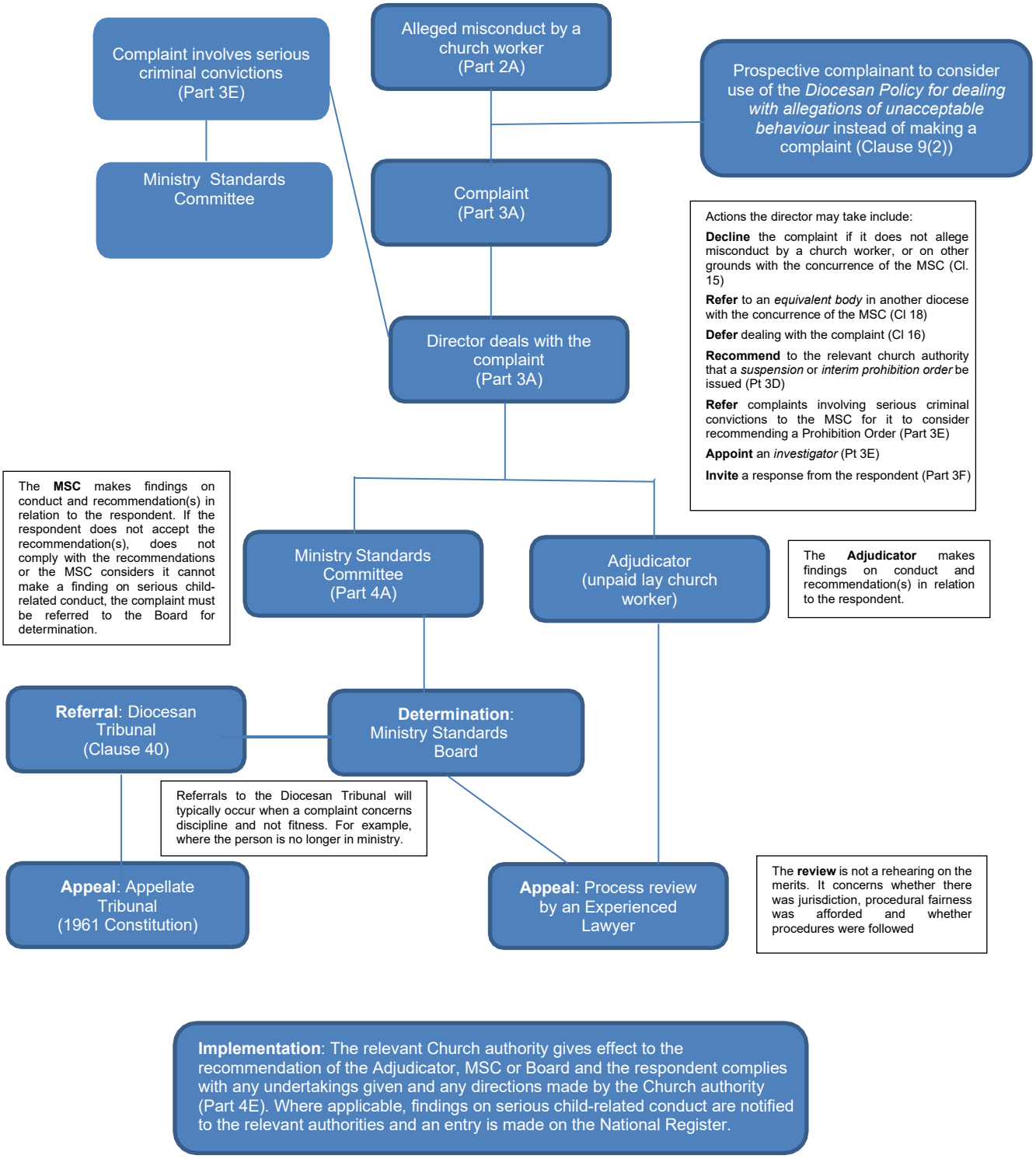
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Diagrammatic Summary of the Complaints Process



***Please note**: This diagram is indicative only and does not set out all possible actions or steps that may be taken under the Ordinance.*

Features of the Complaints Process

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.

Key Feature	***Ministry Standards Ordinance 2017***	***Diocesan policy for dealing with allegations of unacceptable behaviour***
What is the aim of the process?	To: • uphold the standards of conduct expected of church workers in the Diocese, • protect the community, • provide a mechanism for resolving complaints that church workers are not fit to hold office and undertake ministry, and • to facilitate the just, expedient and efficient resolution of complaints.	To resolve allegations of unacceptable behaviour in a way that encourages reconciliation and leads to agreed outcomes that are fair and effective.
Who can complaints be made about?	Church workers (as defined in clause 5).	Church workers (as defined in clause 5).
Who can make a complaint or allegation?	Any person.	Any person.
How does a person make a complaint/initiate the process?	By contacting the Office of the Director of Safe Ministry. (https://safeministry.org.au/contact/)	If the church worker is the Rector, by contacting the Regional Bishop. (https://sydneyanglicans.net/seniorclergy) In all other cases, by contacting the Rector of the church worker.
Are church workers who are the subject of an allegation required to participate in the process?	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.
Role of complainant	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.

Key Feature	***Ministry Standards Ordinance 2017***	***Diocesan policy for dealing with allegations of unacceptable behaviour***
What types of complaints can be made?	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.
Is there any subject matter that cannot be dealt with under the process?	Subject matter that does not call a church worker's fitness into question. Allegations of a breach of faith, ritual or ceremonial. Certain exclusions from the definition of 'misconduct'. (See clause 6(1)). Exempt conduct. (See Part 2B). Conduct that has previously been dealt with under a diocesan complaints process. 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.	The Policy cannot be used for allegations concerning sexual misconduct, misconduct involving children, criminal conduct or professional misconduct. The Regional Bishop may also decide that allegations raise questions of fitness that are more appropriately dealt with under the MSO.
What form of investigation will be undertaken?	If the complaint progresses 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.
How long does the process take from start to finish?	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.
What are the outcomes from the process?	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. In most cases this is determined by either the: (a) Ministry Standards Committee if its recommendations are accepted and complied with by the church worker, or	Mutually agreed by the parties with the assistance of the Regional Bishop. 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.

Key Feature	*Ministry Standards Ordinance 2017*	*Diocesan policy for dealing with allegations of unacceptable behaviour*
	(b) if not, by the Ministry Standards Board or Diocesan Tribunal. 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. The outcomes are implemented by the Archbishop or other Church Authority.	
Are the outcomes confidential?	Generally, yes. However the Archbishop and the MSC have power to release information. Parishioners are generally informed about the outcome of a complaint concerning a person on the staff of the parish. 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. Certain allegations and findings may need to be referred to the police or to a government authority.	Generally, yes. Parishioners would only be told if this was agreed as an outcomes of the process. The Office of the Director of Safe Ministry will be told when an allegation is made about a church worker but no other detail. Certain allegations may need to be referred to the police or to a government authority.

Long Title

An Ordinance to make provision with respect to resolving complaints concerning the fitness of church workers.

The Synod of the Diocese of Sydney ordains as follows.

CHAPTER 1 – PRELIMINARY

1. Name

This Ordinance is the *Ministry Standards Ordinance 2017*.

PART 1A – PURPOSE AND APPLICATION

2. Overriding purpose

(1) The overriding purposes of this Ordinance are:

(a) to uphold the standards of conduct expected of church workers in the Diocese;

(b) to protect the community, including complainants, respondents and Church bodies;

(c) to provide a mechanism whereby complaints that church workers are not fit to hold office or ministry can be resolved; and

(d) to facilitate the just, timely and efficient resolution of complaints.

(2) The Director, the MSC, Adjudicators and the Board must each seek to give effect to these overriding purposes when exercising any power given by this Ordinance and when interpreting any provision of this Ordinance.

3. Application

(1) This Ordinance applies only in respect of alleged misconduct by church workers:

(a) resident, licensed or authorised in the Diocese, or engaged by a Church authority; or

(b) not resident, licensed or authorised in the Diocese nor engaged by a Church authority but whose misconduct is alleged to have occurred in the Diocese or when the church worker was resident, licensed or authorised in the Diocese or was engaged by a Church authority.

(2) This Ordinance applies to misconduct wherever and whenever it is alleged to have been engaged in by a church worker, including misconduct that is alleged to have occurred before or after the commencement of this Ordinance.

PART 1B - INTERPRETATION

4. Interpretation

(1) For the purposes of this Ordinance:

"**Adjudicator**" means a person appointed under subclause 28(2) or 28(3);

"**Appellate Tribunal**" means the Appellate Tribunal constituted by and under Chapter IX of the Constitution;

"**Board**" means the Ministry Standards Board established under Part 5C;

"**ceremonial**" has the same meaning as that expression has in the Constitution;

"**Chancellor**" means the person holding office from time to time as Chancellor of the Diocese;

"**child**" means a person under the age of 18 years;

"**child exploitation material**" means material that describes or depicts a person who is or who appears to be a child –

(i) engaged in sexual activity; or

(ii) in a sexual context; or

(iii) as the subject of torture, cruelty or abuse (whether or not in a sexual context) in a way that a reasonable person would regard as being, in all the circumstances, offensive;

"**child-related work**" has the same meaning as in the *Child Protection (Working with Children) Act 2012*;

"**Church**" means the Anglican Church of Australia;

"**Church authority**" means the Archbishop or a person or body having administrative authority of or in a Church body to license, appoint, authorise, dismiss or suspend a church worker;

"**Church body**" means –

(i) a parish, and

(ii) any school, body corporate, organisation or association that exercises ministry within, or on behalf of, this Church in this Diocese –

(A) which is constituted by ordinance or resolution of the Synod,

(B) in respect of whose organisation or property the Synod may make ordinances, or

(C) in relation to which the Synod, the Standing Committee, the Archbishop or a body referred to in paragraphs (i) or (ii) elects or appoints a majority of the members of the governing body;

"**church worker**" has the meaning given in Part 2A;

"**Clergy**" means a person in holy orders;

"**Code of Conduct**" means *Faithfulness in Service* and any other code of conduct approved from time to time by the Synod or which operates in the Diocese pursuant to an ordinance of the Synod;

"**complainant**" means a person who makes a complaint;

"**complaint**" means a complaint made in accordance with Part 3A of this Ordinance;

"**Constitution**" means the Constitution of the Anglican Church of Australia;

"**Diocese**" means the Anglican Church of Australia in the Diocese of Sydney;

"**Diocesan policy for dealing with allegations of unacceptable behaviour**" means the policy of that name adopted by the Synod on in October 2015, as amended from time to time;

"**Diocesan Tribunal**" means the Diocesan Tribunal constituted for the Diocese in accordance with Chapter IX of the 1961 Constitution;

"**Director**" means the Director of Safe Ministry appointed under the *Safe Ministry Board Ordinance 2001;*

"**disqualifying offence**" means a criminal offence listed in Schedule 2 of the *Child Protection (Working with Children) Act 2012*;

"**equivalent body**" means a body of another diocese exercising powers, duties or functions equivalent to those of the Director, the MSC the Board as the case may be, or where there is no such body, the bishop of the diocese;

"**experienced lawyer**" means a person who is or has been a judge or justice of an Australian, State or Territorial court or tribunal, or who has been admitted as an Australian legal practitioner for not less than 10 years;

"**faith**" has the same meaning as that expression has in the Constitution;

"**Faithfulness in Service**" means the code for personal behaviour and the practice of pastoral ministry by clergy and church workers adopted by the Synod in October 2004, as amended from time to time pursuant to an ordinance or resolution of the Synod;

"**information**" means information of whatever nature and from whatever source relating to alleged misconduct on the part of a church worker;

"**investigator**" means a person appointed by the Director to investigate a complaint;

"**member of the clergy**" means a person in Holy Orders;

"**Ministry Standards Committee**" or "**MSC**" means the Ministry Standards Committee established under Part 5B;

"**misconduct**" has the meaning given in Part 2A;

"**national register**" means any national register established pursuant to a Canon of General Synod for the purpose of recording determinations of the Board and other equivalent bodies;"

Office of the Director of Safe Ministry" means the Office of the Director of Safe Ministry of the Diocese;

"**Panel of experienced lawyers**" means the panel compiled under clause 27A**;**

"**prohibition order**" means an order prohibiting a church worker from holding a specified position or office in or being employed by a Church body or Church authority or from carrying out any specified functions in relation to any office or position in the diocese or in relation to employment by a Church body, and includes a variation of a prohibition order;

"**respondent**" means a church worker whose alleged conduct is the subject of a complaint;

"**ritual**" has the same meaning as that expression has in the Constitution;

"**Safe Ministry Board**" means the body of that name constituted under the *Safe Ministry Board Ordinance 2001*;

"**safety plan**" means the form of agreement developed by the Office of the Director of Safe Ministry to regulate a person's participation in the ministry activities of a church of the Diocese;

"**serious child-related conduct**" has the meaning given in clause 7;

"**sexual offence relating to a child**" means –

(i) sexual activity by a person against, with or in the presence of a child, or

(ii) the possession, production or distribution of any form of child pornography;

"**Standing Committee**" means the Standing Committee constituted under the *Standing Committee Ordinance of 1897*;

"**suspension order**" has the meaning in clause 19;

"**under legal incapacity**" has the same meaning as in the *Civil Procedure Act 2005*; and

"**unpaid lay church worker**" means a lay church worker who does not hold a paid role, office or position in the Diocese at the time a complaint is made against them under this Ordinance.

(2) For the purposes of complaints dealt with by an Adjudicator under Part 3H, references to the MSC and the Board in Chapters 1 to 3 of this Ordinance are taken to be references to the Adjudicator unless the context or subject matter otherwise requires.

(3) The Features of the complaint processes, the diagram appearing before the Long Title, and the notes in the footnotes of this Ordinance are for explanatory purposes only and do not form part of this Ordinance. The Diocesan Secretary is authorised to update the Features of the complaint processes, the diagram, and the notes when reprinting this Ordinance under clause 8 of the *Interpretation Ordinance 1985*.

CHAPTER 2 – SCOPE OF THE ORDINANCE

PART 2A – CHURCH WORKERS AND MISCONDUCT

5. Who is a church worker?

This Ordinance applies to fitness for office of church workers. Subject to clause 3, **church worker** means a person who:

(a) is or has been a member of the clergy; or

(b) holds or has held a position of leadership within the Diocese and without limiting the generality of the foregoing a position of leadership includes -

(i) an office, or

(ii) membership of a body incorporated by or under the *Anglican Church of Australia Bodies Corporate Act 1938*, or

(iii) membership of a body corporate following election or appointment by the Synod, Standing Committee, the Archbishop or a Church body, or

(iv) a warden, or

(v) membership of a parish council, or

(vi) membership of any other board, council or committee established by the Synod, the Standing Committee, a regional council or a parish council, or

(vii) a chief executive officer of an organisation constituted by an ordinance of the Synod or the Standing Committee, meaning the person who is responsible to the governing body of the organisation for the work of the organisation; or

(viii) an officer of a kind specified in the *Parish Administration Ordinance 2008,* or

(ix) an appointment or authorisation by a rector, warden or parish council or by any delegate or agent of such a person or body of persons,

but excludes a bishop who is subject to the jurisdiction of the Special Tribunal.

6. What conduct is misconduct by a church worker?

(1) Misconduct by a church worker means conduct which, if established, would call into question:

(a) the fitness of the person to hold a role, office or position, or to be or remain in Holy Orders;

(b) the fitness of the person, whether temporarily or permanently, to exercise ministry or perform any duty or function of the role, office or position; or

(c) whether, in the exercise of ministry or in the performance of any duty or function, the person should be subject to any condition or restriction,

but does <u>not mean</u> –

(d) any breach of faith, ritual or ceremonial,

(e) any act or omission that involves:

(i) refusing to appoint, correcting, disciplining, counselling, admonishing, transferring, demoting, suspending, retrenching or dismissing a person if done –

(A) in good faith;

(B) reasonably; and

(C) in the normal and lawful discharge of the duties and functions; or

(ii) respectfully disagreeing with or criticising someone's beliefs or opinions or actions, except in the case of conduct which, if established, would constitute serious child-related conduct, or

(f) public statements, acts or practices made or done in good faith for a proper purpose that are within the standards and doctrines of the Church in the Diocese, or

(g) exempt conduct to which Part 2B applies.

(2) Misconduct may include but is not limited to the following:

(a) acts or omissions that would constitute the commission of an offence under the *Offences*

Ordinance 1962, as amended from time to time,[1]

(b) **abuse**, which means:

(i) **bullying** (as defined below);

(ii) **child abuse**, which means bullying, emotional abuse, harassment, neglect, physical abuse, sexual abuse or spiritual abuse in relation to a child, and includes possessing, producing or distributing child exploitation material;

(iii) **emotional abuse**, which means acts or omissions that have caused, or could cause significant harm to the wellbeing or development of another person, which may include but is not limited to:

- subjecting a person to excessive and repeated personal criticism;
- ridiculing a person, including the use of insulting or derogatory terms to refer to them;
- threatening or intimidating a person;
- ignoring a person openly and pointedly; and
- behaving in a hostile manner or in any way that could reasonably result in another person feeling isolated or rejected;

(iv) **harassment**, which means unwelcome conduct, whether intended or not, in relation to another person where the person feels with good reason in all the circumstances offended, belittled or threatened;

(v) **neglect**, which means the failure to provide the basic necessities of life where a child's health and development are placed at risk of harm, which may include but is not limited to being deprived of food, clothing, shelter, hygiene, education, supervision and safety, attachment to and affection from adults and medical care;

(vi) **physical abuse**, which means any intentional or reckless act, use of force or threat to use force causing injury to, or involving unwelcome physical contact with, another person, but does not include lawful discipline by a parent or guardian;

(vii) **sexual abuse,** which has the same meaning set out in *Faithfulness in Service*;

(viii) **spiritual abuse,** which means the mistreatment of a person by actions or threats when justified by appeal to God, faith or religion;

(c) **bullying** which means behaviour directed to a person or persons which:

(i) is repeated;

(ii) is unreasonable (being behaviour that a reasonable person, having considered the circumstances, would see as unreasonable, including behaviour that is victimising, humiliating, intimidating or threatening); and

(iii) creates a risk to their health and safety.

Bullying can include:

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[1] *Offences under the Offences Ordinance 1962 include:*

(i) unchastity;

(ii) drunkenness;

(iii) habitual and wilful neglect of ministerial duty after written admonition in respect thereof by the Bishop of the Diocese;

(iv) wilful failure to pay just debts;

(v) conduct, whenever occurring –

(a) which would be disgraceful if committed by a member of the clergy; and

(b) which at the time the charge is preferred is productive, or if known publicly would be productive, of scandal or evil report;

(vi) sexual abuse;

(vii) child abuse; or

(viii) conviction in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or upwards or the conviction outside New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable; or

(ix) grooming,

(x) inappropriate pastoral conduct involving a child, and

(xi) possession, production or distribution of child exploitation material.

(i) making derogatory, demeaning or belittling comments or jokes about someone's appearance, lifestyle, background or capability;

(ii) communicating in an abusive manner;

(iii) spreading rumours or innuendo about someone or undermining in other ways their performance or reputation;

(iv) dismissing or minimising someone's legitimate concerns or needs;

(v) inappropriately ignoring, or excluding someone from information or activities;

(vi) touching someone threateningly or inappropriately;

(vii) invading someone's personal space or interfering with their personal property;

(viii) teasing someone, or playing pranks or practical jokes on someone;

(ix) displaying or distributing written or visual material that degrades or offends;

(x) cyberbullying which is a form of bullying that involves the use of information and communication technologies.

Bullying does not include lawful conduct of clergy or church workers carried out in a reasonable manner, such as:

(i) disagreeing with or criticising someone's belief or opinions or actions in an honest and respectful way;

(ii) giving information about inappropriate behaviour in an objective way to the person or persons concerned and to any other person with a proper reason for having that information;

(iii) setting reasonable performance goals, standards or deadlines;

(iv) giving information about unsatisfactory performance in an honest and constructive way;

(v) taking legitimate disciplinary action;

(d) **grooming** which means actions deliberately undertaken with the aim of engaging and influencing an adult or a child for the purpose of sexual activity; in the case of sexual abuse of a child, an offender may groom not only the child, but also those close to the child, including the child's parents or guardians, other family members, clergy and church workers; grooming can include providing gifts or favours to the child or their family. In the case of sexual abuse of an adult, an offender may groom not only the adult, but also those close to them, including their children, clergy and church workers;

(e) **inappropriate pastoral conduct involving a child** which means engaging in a pattern of conduct involving a child or a group of children that is inconsistent with the standards and guidelines of *Faithfulness in Service*;

(f) **process failure,** which means any of the following:

(i) failure without reasonable excuse to comply with the laws of the Commonwealth or a State or Territory requiring the reporting of child abuse to the police or other authority;

(ii) a failure by a person licensed by the Archbishop, a person in holy orders resident in the Diocese or a person who holds an authority under the *Authorisation of Lay Ministry Ordinance 2015* for the purposes of paid work, without reasonable excuse, to make a report under clause 10 or a failure by that person to cooperate with an investigation of that conduct;

(iii) failure without reasonable excuse by a Church authority to deal with or to investigate in a reasonable or timely manner matters involving:

(A) abuse; or

(B) alleged inappropriate or unreasonable conduct of a church worker who had knowledge of conduct of another church worker constituting sexual abuse or child abuse;

in circumstances where the Church authority has an obligation by law or under this Ordinance to deal with or investigate such conduct;

(g) **safe ministry training failure** which means a failure without a reasonable excuse to satisfactorily complete mandatory training approved for the purposes of the *Safe Ministry to Children Ordinance 2020*;

(h) **sexual misconduct** which has the same meaning as in the *Children's Guardian Act 2019*;

(i) **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;

(j) attempts, by threat, intimidation or inducement to –

(i) dissuade a person from making a complaint,

(ii) persuade a person to withdraw a complaint, or

(iii) persuade a person to consent to the withdrawal of a complaint;

(k) failure without reasonable excuse by a respondent to cooperate with the investigation of a complaint under the Ordinance;

(l) failure without reasonable excuse to comply with a condition imposed by a Church authority under this Ordinance;

(m) failure without reasonable excuse to comply with an undertaking given to or a direction or order given by an Adjudicator, the MSC, Board or a Church authority; or

(n) conduct that would constitute a breach of section 316 of the *Crimes Act 1900* with respect to the reporting of serious indictable offences.

7. What is serious child-related conduct?

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*.

PART 2B – EXEMPT CONDUCT

8. Declaration of exemption following disclosure of past conduct

(1) If a person makes a full disclosure to the Archbishop in writing that the person has engaged in conduct that may be the subject of a complaint under this Ordinance in the following circumstances:

(a) by a person prior to ordination by or on behalf of the Archbishop as a deacon; or

(b) by a person who is not ordained prior to being issued with an authority under the *Deaconess, Readers and Other Lay Persons Ordinance 1981* or the *Authorisation of Lay Ministry Ordinance 2015* for the purpose of undertaking paid work; or

(c) by a person who has been ordained, otherwise than by or on behalf of the Archbishop prior to being first licensed by the Archbishop where conduct was committed prior to ordination as a deacon;

the Archbishop, with the concurrence of the MSC, may declare that the conduct cannot be the subject of a complaint under this Ordinance.

(2) The Archbishop must not make a declaration under this Part:

(a) in respect of a person who has been convicted of a disqualifying offence listed in Schedule 2 of the *Child Protection (Working with Children) Act 2012*.[2]; or

(b) if the person has been refused a declaration in relation to the same or similar conduct in the previous 5 years.

(3) The Archbishop must not make a declaration under this Part in respect of the conduct of a person unless the Archbishop and the MSC consider that the person:

(a) has made appropriate reparation for the conduct; and

(b) is fit to be ordained, to be issued with an authority or to be licensed by the Archbishop, as the case may be; and

(c) does not pose a risk to the safety of any person taking into account the following matters:

(i) the circumstances in which the conduct occurred;

(ii) the seriousness of the conduct;

(iii) the age of the person at the time of the conduct;

(iv) the age of the victim(s) at the time;

(v) the difference in ages between the person and the victim(s);

(vi) the person's criminal record, if any;

(vii) such other matters as are considered relevant.

(4) If the Archbishop makes a declaration under this Part in respect of the conduct of a person:

(a) the declaration has effect for the purposes of this Ordinance according to its terms; and

(b) no action is to be taken or continued under this Ordinance in respect of a complaint if the Director, with the concurrence of the MSC, determines that the whole of the conduct that is the subject of the complaint is exempt conduct.

[2] *Note: Disqualifying offences in Schedule 2 of the Child Protection (Working with Children) Act 2012 include the murder or manslaughter of a child, intentional wounding or committing grievous bodily harm to a child, abandonment of a child, serious sex offences, incest, bestiality and offences related to child pornography/child abuse material. In general, these are sex offences or offences involving children which are punishable by imprisonment of 12 months or more.*

CHAPTER 3 – PROCESSING OF COMPLAINTS

PART 3A – MAKING COMPLAINTS

9. Who may make a complaint?

(1) Any person, including the Director, may make a complaint of misconduct in relation to a church worker.

(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*.

10. Obligation to report knowledge or reasonable belief of certain matters

A church worker who knows or has reason to believe that another church worker has engaged in conduct which constitutes child abuse, grooming, inappropriate pastoral conduct involving a child or possession, production or distribution of child exploitation material must report to the Director, as soon as practicable, the name or a description of the other church worker and the grounds for believing that the other church worker has engaged in such conduct, unless the church worker knows that the conduct has already been reported to the Director.

11. How to make a complaint

(1) All complaints must be made to the Director.

(2) A complaint may be in any form, oral or in writing, whether by electronic means or otherwise.

(3) Where a complaint is oral, the Director must make a written record of the complaint as soon as practicable after receiving it.

(4) A complaint must include details of the misconduct complained about.

(5) The Director must not make a complaint based only on information provided anonymously, except in the case of allegations of conduct which, if established, would constitute serious child related conduct.

(6) Non-compliance with this clause does not invalidate a complaint unless the Board determines otherwise.

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 (1), 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 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 (1) 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(1) 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.

12A. Risk Assessment by Director

(1) If the Director receives a complaint alleging child abuse, the Director must promptly undertake a risk assessment to identify any risks to children.

(2) The risk assessment must include, but is not limited to, consideration of the following –

(a) any immediate and ongoing risks associated with the complaint, including the safety of the complainant and any children,

(b) whether preliminary action could and should be taken concerning the respondent including supervision, removal of contact with children or suspension,

(c) the available expertise to assess the risk and whether expert advice should be obtained,

(d) the need for cultural and linguistic interpreters to be involved in the complaint process,

(e) whether it is necessary to report the complaint to an external authority,

(f) who should be informed about the complaint, and whether there are restrictions on the information they can be given (for example, due to privacy laws and other confidentiality obligations), and

(g) how to implement the decisions made as a result of the risk assessment.

(3) The Director must review the risk assessment during the complaints process in response to any changes in the risk profile and make modifications where necessary.

13. Withdrawal of complaint

(1) Subject to subclause (2), a complaint is taken to have been withdrawn if the complaint does not allege serious child-related conduct and:

(a) the complainant gives written notice of the withdrawal of the complaint to the Director; or

(b) the complainant gives oral notice of the withdrawal of the complaint to the Director, and the Director provides the complainant with written confirmation of the withdrawal.

(2) If the complaint has already been referred to the MSC at the time the notice of withdrawal is received by the Director, the complaint will only be taken to be withdrawn if the MSC consents to the withdrawal.

PART 3B - HANDLING OF COMPLAINTS BY THE DIRECTOR

14. What can the Director do when dealing with a complaint?

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

(2) The Director must deal with the complaint as expeditiously as possible and must take at least one or more of the following courses of action:

(a) recommend that the parties engage in conciliation under clause 18A;

(b) refer the matter directly to the MSC and, with the concurrence of the MSC, in the case of a respondent's first bullying complaint, request that the respondent participate in appropriate training as soon as practicable under clause 18B, and recommend that the parties engage in conciliation;

(c) decline to deal with the complaint under clause 15;

(d) refer to the matter directly to the MSC and seek the concurrence of the MSC that the complaint be declined or deferred under clause 16;

(e) ask the complainant to verify the complaint by statutory declaration;

(f) ask the complainant to provide further details of the conduct that is the subject of the complaint;

(g) recommend to the relevant Church authority that the respondent should be suspended from exercising the functions of office or employment by one or more Church bodies or that an interim prohibition order be made against the respondent under Part 3D;

(h) if the respondent is an unpaid lay church worker, refer the matter to an Adjudicator under

Part 3H;

(i) investigate, or appoint a person to investigate the complaint under Part 3F;

(j) invite a response from the respondent under Part 3G.

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

PART 3C – DECLINING, DEFERRING OR REFERRING COMPLAINTS

15. When must the Director decline a complaint?

The Director must decline a complaint if the complaint does not allege any misconduct which may be the subject of a complaint under this Ordinance 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).

16. When may the Director decline or defer a complaint with the concurrence of the MSC?

(1) The Director may at any time, with the concurrence of the MSC, decline to deal with a complaint, or defer dealing with a complaint if:

(a) the complainant has not provided further details or a verifying statutory declaration after being asked to do so and it is reasonable in the circumstances to conclude that the complainant will not do so; or

(b) the complaint is false, vexatious or misconceived or the subject-matter of the complaint is trivial; or

(c) there is insufficient reliable evidence to warrant an investigation or further investigation; or

(d) the conduct that is the subject matter of the complaint can properly be dealt with by other means, unless the conduct is serious child-related conduct;

(e) the conduct which is the subject of the complaint is under investigation by some other competent person or body or is the subject of legal proceedings, or

(f) there would be no utility in dealing with the complaint under this Ordinance having regard to:

(i) whether the respondent currently holds any position of leadership within the Diocese,

(ii) the length of time since the respondent has held any position of leadership within the Diocese,

(iii) the age of the respondent,

(iv) the health of the respondent, and

(v) any other relevant circumstance.

(2) The Director, with the concurrence of the MSC, must decline to deal with a complaint if the misconduct the subject of the complaint is not materially different from conduct already dealt with under:

(a) this Ordinance, or

(b) the *Discipline Ordinance 2006*, or

(c) the *Church Discipline Ordinance 1996*, or

(d) the *Church Discipline Ordinance 2002*, or

(e) the *Tribunal Ordinance 1962*, or

(f) a formal investigation or inquiry with the authority of the Archbishop which was commenced prior to the date of assent to the *Church Discipline Ordinance 2002*,

unless,

(g) in the opinion of the Director, the complaint is supported by apparently credible evidence of fresh facts likely to lead to a different result; or

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

(i) the complaint has only been dealt with under Part 3E, or;

(j) the complaint alleges serious child-related conduct and the Director decides to deal with the complaint under this Ordinance in order to make a finding that the respondent has or has not engaged in the alleged serious child-related conduct in connection with:

(i) any requirement by law to notify a person or authority that a finding has been made that the respondent engaged in conduct the subject of any such requirement to notify; and

(ii) entering on the National Register the details of information required by the provisions of the National Register Canon 2007.

(3) In dealing with a complaint for the purposes of clause 2(h) above, any prior findings of fact made by a body exercising functions under any of the ordinances (or a formal investigation or inquiry with the authority of the Archbishop) listed in subclause (2) are conclusive.

17. Notification of a decision to decline to deal with or defer a complaint

(1) Subject to subclause (2), if the Director declines to deal with or defer a complaint under this Part, the Director must give the complainant and the respondent written notice of this decision, including reasons for the decision.

(2) The Director may, but is not required to, provide written notice to the respondent under this clause if the Director believes on reasonable grounds that the respondent is not aware of the existence of the complaint.

18. When may a complaint be referred to an equivalent body?

(1) The Director may, with the concurrence of the MSC, if they think it appropriate to do so, refer a complaint, or the investigation of a complaint, to an equivalent body or bodies.

(2) Without limiting the discretion of the MSC under subclause (1), it is appropriate to refer a complaint, or the investigation of a complaint, to an equivalent body or bodies if when the complaint is made the respondent:

(a) resides in another diocese or holds a licence or from a Church authority in another diocese; and

(b) neither resides in the Diocese nor holds a licence or permission to officiate or other authority from a Church authority in the Diocese.

(3) When the MSC and an equivalent body or bodies have the power and duty to investigate information concerning the alleged misconduct of the respondent and the respective bodies cannot agree on:

(a) which body shall carry out the investigation or any parts of such investigation; or

(b) whether a complaint should be referred to the Board or to an equivalent body which has jurisdiction,

the MSC must refer the disagreement for decision by an independent person agreed upon by the MSC and the equivalent body or bodies who is to reach a decision within a reasonable time.

(4) In all matters affecting the operation of this Ordinance the MSC and the Director must co-operate with and assist an equivalent body and a person acting in the corresponding capacity of the Director in another diocese.

(5) In making a decision under subsection (3) the independent person will not be bound by the views or instruction of the MSC but shall take into account the most convenient course for all concerned and the proper and expeditious conduct of the investigation or referral as the case may be.

18A. Director may recommend conciliation

(1) At any time after a complaint is made, the Director may recommend to the parties that they engage in conciliation if –

(a) the Director considers that conciliation may assist the parties, and

(b) the complaint does not allege serious child-related conduct.

(2) In considering whether to make a recommendation under subclause 18A(1), the Director is to consider any power imbalance between the parties.

(3) The Director may recommend a conciliator to the parties and otherwise facilitate the conciliation occurring.

(4) If the parties agree to engage in conciliation on the basis of a recommendation under subclause 18A(1) –

(a) the Director is not prevented from undertaking any of the other courses of action listed in clause 14 during the period of conciliation,

(b) the mediation is to be undertaken expeditiously,

(c) the attendees for any conferences must be agreed upon by all parties in advance of the conciliation, and

(d) the costs of the conciliator are to be met from funds under the control of the Synod, subject to the Director approving those costs before they are incurred.

18B. Director may request appropriate training

(1) The Director may, with the concurrence of the MSC, request that the respondent participate in appropriate training and recommend that the parties engage in conciliation if –

(a) the complaint relates primarily to bullying,

(b) it is the first bullying complaint against the respondent that has been received by the Director, and

(c) the complaint does not allege serious child-related conduct.

(2) The respondent is to undertake such training as soon as practicable and provide suitable evidence to the Director that such training has been completed.

(3) While, in the interests of staff development and reconciliation, this combination of appropriate training and conciliation would ordinarily be considered appropriate in the case of first time complaints, the Director is not prevented from undertaking any of the other courses of action listed in clause 14 during the period of conciliation.

(4) The costs of the appropriate training and any costs for the conciliator are to be met from funds under the control of Synod, subject to the Director approving those costs before they are incurred.

PART 3D - SUSPENSION AND INTERIM PROHIBITION ORDERS

19. What can the Director recommend?

(1) At any time after a complaint is made the Director may recommend to the relevant Church authority that the respondent is suspended from being a church worker or may recommend that an interim prohibition order be made against the respondent, subject to the following:

(a) the Director must give the respondent the opportunity to be heard in relation to the proposed recommendation or order; and

(b) in deciding whether to make the recommendation or order the Director must take the following matters into account:

(i) the seriousness of the conduct alleged in the complaint;

(ii) the nature of the material to support or negate the complaint;

(iii) whether any person is at risk of harm;

(iv) the likely effect on the respondent and on the relevant Church body;

(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.

(2) The Director must recommend that the respondent is suspended if, after giving the respondent the opportunity to be heard under subclause 19(1)(a), the Director is satisfied that –

(a) the respondent has been convicted under the laws of the Commonwealth, State or Territory or under the laws of some other country that are equivalent to a law of the Commonwealth or of a State or Territory of a sexual offence relating to a child, or

(b) the complaint involves allegations of serious child-related conduct, and –

(i) the Director considers the complaint is plausible, and

(ii) there is a risk that the respondent may come into contact with children in the course of their functions as a church worker.

20. What is the effect of the Director recommending a suspension order?

If the Director recommends that the respondent be suspended from being a church worker:

(a) the relevant Church authority is authorised to do all such things as may be necessary to give effect to the recommendation and must give effect to the recommendation if the recommendation was mandatory under subclause 19(2);

(b) during any period of suspension by the Church Authority, or during a period when a person voluntarily stands down from a position:

(i) the respondent is ineligible for appointment to any position or function covered by the suspension;

(ii) the relevant Church authority may fill the vacancy during the term of any suspension; and

(iii) the person against whom the complaint is made is entitled to continue to receive their ordinary stipend, salary, allowances and other benefits in connection with the position, except to the extent that these are provided on account of expenses incurred in undertaking their duties or functions; and

(iv) in the case of a respondent who is licensed or authorised for ministry in a parish – the parish concerned is entitled to reimbursement from funds under the control of the Synod for the reasonable additional costs incurred by the parish for the engagement of any temporary personnel to undertake the duties of the person against whom the complaint is made during the period of suspension;

(c) the respondent must comply with the terms of recommendation; and

(d) the suspension ceases to have any effect:

(i) if the Director terminates the investigation without referring the matter to the MSC, or

(ii) upon any direction to that effect given by the MSC, or

(iii) upon the Church authority or the respondent (as the case may be) giving effect to the recommendation(s) of the Adjudicator, MSC or the Board.

21. What is the effect of the Director recommending an interim prohibition order?

(1) If the Director recommends that an interim prohibition order be made the Archbishop must give prompt consideration to the Director's recommendation and may make an Interim Prohibition Order.

(2) If the Archbishop makes an Interim Prohibition Order:

(a) the respondent and any relevant Church authority must comply with the Interim Prohibition Order;

(b) the respondent is ineligible for appointment to any position or function covered by the order;

(c) the relevant Church authority may fill the vacancy caused by the order;

(d) the person against whom the complaint is made is entitled to continue to receive their ordinary stipend, salary, allowances and other benefits in connection with the position, except to the extent that these are provided on account of expenses incurred in undertaking their duties or functions; and

(e) in the case of a respondent who is licensed or authorised for ministry in a parish – the parish concerned is entitled to reimbursement from funds under the control of the Synod for the reasonable additional costs incurred by the parish for the engagement of any temporary personnel to undertake the duties of the person against whom the complaint is made during the period of the order.

(3) An Interim Prohibition Order ceases to have effect:

(a) if the Director terminates the investigation without referring the matter to the MSC, or

(b) upon any direction to that effect given by the MSC, or

(c) upon –

(i) the respondent complying with all recommendation(s) (if any) of the MSC accepted by the respondent, subject to the respondent continuing to comply with the recommendation(s) within any period set out in the notice; and

(ii) the Church authority giving effect to the recommendation(s) (if any) of the Adjudicator, MSC or the Board.

(d) if the Archbishop suspends the respondent under section 61 of the 1961 Constitution.

PART 3E – COMPLAINTS INVOLVING SERIOUS CRIMINAL CONVICTIONS

21A. Application of this Part

This Part 3E applies to complaints concerning respondents who have been convicted of a disqualifying offence, being an offence listed in Schedule 2 of the *Child Protection (Working with Children) Act 2012,* and the conviction is not subject to a stay or an appeal against the conviction.

21B. Notification to respondent

(1) If the Director is in possession of the reasons for judgment or other record from a court, a police history check, or a notification from a statutory authority, which indicates that the respondent has been convicted of a disqualifying offence, the Director may:

(a) notify the substance of the complaint to the respondent,

(b) provide the respondent with a copy of the judgment, record or notification evidencing the conviction,

(c) inform the respondent that it is the intention of the Director to refer the complaint to the MSC for a recommendation to the Archbishop that a prohibition order be issued, and

(d) invite a response to the complaint within a period of not less than 21 days or such longer period specified by the Director.

(2) Following expiration of the period within which the respondent may provide a response under clause 21B(1)(d), the Director must refer the complaint to the MSC, including a copy of all the material provided to the respondent and any response from the respondent.

21C. Recommendations of the MSC

If the MSC is satisfied that the respondent has been convicted of a disqualifying offence, the MSC may recommend to the Archbishop that a prohibition order be made against a respondent in terms recommended by the MSC. If the MSC is not satisfied that the respondent has been convicted of the relevant offence, this Part 3E ceases to apply to the complaint and the Director is to deal with the complaint in accordance with the other provisions of this Ordinance.

PART 3F - INVESTIGATION OF COMPLAINTS

22. Conduct of Investigation

(1) Subject to Part 3C, the Director may appoint a person to investigate a complaint, and such investigations are to be conducted as promptly as reasonably possible.

(2) The Director may, by notice in writing, revoke the appointment of an investigator if the investigator fails or refuses to comply with the requirements of this Ordinance or any other reasonable requirements of the Director.

23. Powers of the investigator

(1) For the purposes of an investigation:

(a) the investigator may obtain such statutory declarations, written statements, recorded conversations, reports, documents and other material as the investigator considers necessary or advisable;

(b) the investigator may require the person making the complaint to verify the complaint by statutory declaration if this has not already been done;

(c) if the investigator interviews a person, the investigator must:

(i) record the interview, subject to the interviewee giving their consent, and

(ii) allow the person to have another person present with them, being a person who is not a witness to the matters which are the subject of the complaint;

(d) the investigator may, by notice in writing, require the respondent –

(i) to respond to a question or series of questions within the time specified in the notice in relation to any matter relevant to the investigation, and

(ii) to otherwise assist in, or cooperate with the investigation of the complaint in a

specified manner.

(2) A person must answer truthfully any question put by or on behalf of the investigator in exercising the powers conferred by this Ordinance, and must not mislead or obstruct the investigator in the exercise of powers conferred by this Ordinance.[3]

24. Outcome of the investigation

The investigator is to make and forward to the Director, without unnecessary delay, a report setting out the results of the investigation together with a copy of all records made in the course of the investigation.

PART 3G - NOTIFICATION OF AND RESPONSE TO THE COMPLAINT

25. What notification must the Director provide to the respondent?[4]

After receiving the investigator's report or if, after receiving a complaint, the Director decides not to appoint a person at that particular time to investigate the complaint, the Director is –

(a) to notify the substance of the complaint to the respondent, and

(b) to request the respondent to provide a response to the complaint within a period of not less than 21 days or such longer period specified by the Director, and

(c) to inform the respondent generally of the processes under this Ordinance (which may be done by providing a copy of this Ordinance), and

(d) to advise the respondent of the possible outcomes if the allegations in the complaint are upheld, and

(e) to caution the respondent not to make any admissions without the benefit of legal advice.

26. What responses may be given by a respondent?

(1) A respondent may respond by admitting or denying the complaint in whole or in part.

(2) A response must be in writing signed by the respondent or, in the case of a respondent under legal incapacity, by –

(a) a parent or guardian, or

(b) a person responsible for the welfare of the respondent under legal incapacity or acting on his or her behalf.

(3) If the complaint has not been investigated and the respondent denies the complaint, or does not admit the complaint or the substance of the complaint, the Director may appoint a person to investigate the complaint in the manner set out in Part 3F.

PART 3H – SPECIAL PROCEDURE FOR UNPAID LAY CHURCH WORKERS (ADJUDICATORS)

27. Application of this Part

(1) Subject to subclause (2), this Part applies to complaints made against unpaid lay church workers to the exclusion of Parts 4A to 4D.

(2) If the Director considers that a complaint against an unpaid lay church worker raises substantially the same circumstances as another complaint that has been or will be referred to the MSC, the Director may instead refer the complaint to the MSC to be dealt with under Chapter 4.

27A. Panel of Adjudicators

The Director is to compile a panel of experienced lawyers with the concurrence of the Chancellor who are to act as Adjudicators under this Part.

28. Action on receipt of an admission or the investigator's report

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[3] *Misconduct for the purposes of this Ordinance includes failure without reasonable excuse by a respondent to cooperate with the investigation of a complaint.*

[4] *Upon notifying the substance of the complaint to the person against whom the complaint is made, the complaint may become a notifiable complaint for the purposes of the National Register Canon 2007. In this case, section 8 of the Canon requires the Director to notify the General Secretary of certain information about the complaint for inclusion on the National Register within 1 month of having access to that information.*

(1) On receipt of an admission under clause 26 or the investigator's report, the Director must:

(a) request the Chancellor to appoint a person from the Panel of experienced lawyers to be the Adjudicator for a complaint to which this Part applies;

(b) notify the Adjudicator of the identity of the respondent; and

(c) furnish the Adjudicator with a copy of all material in the Director's possession relevant to the complaint, including a copy of any investigator's report.

(2) The Chancellor must promptly appoint a member of the Panel of experienced lawyers following a request from the Director under subclause (1)(a).

(3) If the adjudicator has any actual or perceived conflict of interest in the exercise or performance of their functions under this Ordinance in relation to a complaint, the Adjudicator must disclose this to the Chancellor and the Chancellor is to appoint another member of the Panel of experienced lawyers to be the Adjudicator for the complaint.

(4) The Director must also:

(a) notify the respondent that the complaint has been referred to the Adjudicator; and

(b) furnish the respondent with a copy of all material in the Director's possession relevant to the complaint, including a copy of any investigator's report; and

(c) invite the respondent to provide any further information or material, and to make written representations to the Adjudicator relating to the complaint within 28 days or such longer period as may be agreed to by the Director.

29. Review of material by the Adjudicator

(1) The Adjudicator is to review the material provided by the Director and any further information or material provided by the respondent.

(2) If the complaint or the substance of the complaint has been admitted by the respondent, the Adjudicator may proceed to make recommendations under clause 30.

(3) If the complaint or the substance of the complaint has not been admitted by the respondent, the Adjudicator –

(a) must act with fairness and according to equity, good conscience, procedural fairness and the substantial merits of the case without regard to technicalities or legal forms in resolving the complaint,

(b) is not bound by the rules of evidence but may inform himself or herself on any matter in such manner as her or she thinks fit,

(c) must give written reasons for any findings and recommendations, unless the findings and recommendations are made by consent of the respondent, and

(d) must deal with the complaint as expeditiously as possible.

(4) The standard of proof for the Adjudicator to establish an allegation is that of reasonable satisfaction on the balance of probabilities.[5]

30. Powers and Recommendations by the Adjudicator

(1) If the Adjudicator is satisfied that the church worker:

(a) is not fit to hold a role office or position; or

(b) is not fit, whether temporarily or permanently, to exercise ministry or perform any duty or function of the role or position; or

(c) should be subject to any condition or restriction in the exercise of ministry or in the performance of any duty or function;

the Adjudicator must find accordingly in writing and make recommendations to the relevant Church Authority, including but not limited to any one or more of the following:

(d) that the church worker be counselled;

(e) that the church worker be suspended from performing function(s) for such period determined by the Adjudicator;

[5] *The standard of proof is to be applied with regard to the principles in Briginshaw v Briginshaw [1938] HCA 34.*

(f) that the authority of the church worker be revoked;

(g) that any agreement for the church worker's engagement (if any) be terminated;

(h) that the church worker's performance of function(s) be made subject to such conditions or restrictions as the Adjudicator may specify;

(i) that the church worker be directed to do or to refrain from doing a specified act;

(j) that a prohibition order be made in terms specified by the Adjudicator.

(2) Prior to making any recommendations under subclause (1), the Adjudicator may inform the Archbishop, the relevant Church authority and the respondent of the proposed recommendations and provide a reasonable opportunity for each to make written submissions.

31. Making findings on serious child-related conduct

If the complaint alleges that the respondent has committed serious child-related conduct, the Adjudicator must make a finding on whether the respondent engaged in any or all of the conduct so alleged, and these findings shall constitute findings for the purpose of –

(a) any requirement by law to notify a person or authority that a finding has been made that the respondent engaged in conduct which is the subject of any such requirement to notify; and

(b) entering on the National register the details of information required by the provisions of the *National Register Canon 2007*.

32. Costs of responding to a complaint

The Adjudicator has no power to award costs. The respondent is responsible for meeting their own costs of responding to the complaint.

33. Review

The decisions and recommendations of the Adjudicator are not appellable or subject to review, except that a respondent may make an application for review under Part 4C and for this purpose references to the Board and MSC in Part 4C are taken to be references to the Adjudicator.

CHAPTER 4 – RESOLVING COMPLAINTS

PART 4A – CONSIDERATION BY THE MSC

34. Referral to the MSC

On receipt of any report from the Investigator in relation to a complaint made against a person who is not an unpaid lay church worker and any response from the respondent, the Director must –

(a) notify the MSC of the identity of the person against whom the complaint is made, and

(b) furnish the MSC with a copy of all material in the Director's possession relevant to the complaint, including a copy of any investigator's report,

and must also -

(c) notify the respondent that the complaint has been referred to the MSC, and

(d) furnish the respondent with a copy of all material in the Director's possession relevant to the complaint, including a copy of any investigator's report, and

(e) invite the respondent to provide any further information or material, and to make written representations to the MSC, relating to the complaint, within 28 days or such longer period as may be agreed to by the Director.

35. What can the MSC do when dealing with the complaint?

(1) The MSC is to review the material furnished to it by the Director and any further information or material provided to it by the respondent and may take at least one or more of the following courses of action:

(a) request the Director to appoint an Investigator to further investigate the whole or any aspect of the complaint; or

(b) take no further action in relation to the Complaint under clause 36; or

(c) make findings on the conduct and dismiss the complaint under clause 37; or

(d) terminate suspension and prohibition orders under clause 38; or

(e) refer the matter to the Board under clause 39; or

(f) recommend that the complaint be referred to the Diocesan Tribunal under clause 40; or

(g) make one or more recommendations under clause 41.

(2) In deciding upon a course of action the MSC is to take the following matters into consideration:

(a) the nature of the complaint and the seriousness of the conduct the subject of the complaint, in particular, whether that conduct comprises child abuse, grooming, inappropriate pastoral conduct involving a child or possession, production or distribution of child exploitation material;

(b) whether there is more than one complaint;

(c) whether the complaint alleges more than one incident, or only a single incident;

(d) when the conduct is alleged to have occurred;

(e) the circumstances in which the conduct is alleged to have occurred;

(f) the ages of the complainant and the person against whom the complaint is made at the time the conduct is alleged to have occurred;

(g) if the person against whom the complaint is made:

(i) is a member of the clergy – whether the person was a member of the clergy at the time the conduct is alleged to have occurred; or

(ii) is not a member of the clergy – the position held or function performed by the person at the time the conduct is alleged to have occurred;

(h) whether the evidence of the complainant is corroborated;

(i) any views expressed by the complainant as to the desired outcome of the complaint;

(j) whether the person against whom the complaint is made has made any reparation for the conduct the subject of the complaint and, if so, the nature and extent of the reparation;

(k) any other misconduct committed by the person against whom the complaint has been made;

(l) whether any part of the conduct which is the subject of the complaint is exempt conduct;

(m) the practicability and likely effectiveness of the recommendation; and

such other matters as the MSC considers relevant.

36. No further action

If the MSC considers –

(a) that the material furnished to it by the Director does not disclose any misconduct which may be the subject of a complaint under this Ordinance, or

(b) that the complaint is false, vexatious or misconceived, or

(c) that it is more likely than not that the subject-matter of the complaint did not occur, or

(d) that the subject-matter of the complaint is trivial,

the MSC is to recommend that no further action be taken with respect to the complaint.[6]

37. Findings on conduct

If the MSC is satisfied on the material before it that the respondent did not engage in any of the misconduct which is the subject of the complaint, it must dismiss the complaint and recommend that no further action be taken with respect to the complaint, other than action which is incidental to dismissal.

38. Termination of suspension and prohibition orders

The MSC may direct that a suspension or prohibition order made by a Church authority pursuant to a recommendation under Part 3D must be terminated by the Church authority.

39. Reference to the Board

(1) The MSC must refer to the complaint to the Board if:

(a) the complaint alleges serious child-related conduct, and the MSC considers that it is unable to make a finding on the material before it that the respondent has or has not engaged in any or all of such misconduct which is the subject of the complaint; or

(b) the MSC makes a recommendation under clause 41 and the respondent does not accept the recommendation of the MSC by notice in writing to the Director within 14 days after the date of the notice of the recommendation or such longer period as the Director may determine under clause 42(3)(b); or

(c) the respondent fails to substantially comply with a recommendation made under clause 40 to the satisfaction of the MSC, including within or throughout any period that the notice issued under clause 42(1) states that the action required by the recommendation is to be undertaken.

(2) The MSC must refer the complaint to the Board by delivering to the secretary of the Board a written report of its assessment and opinion on the complaint signed by a member of the MSC and:

(a) within 14 days of the date of the reference of the complaint to the Board or within 14 days of the date of the document or material coming into existence, whichever is the later, the MSC must cause to be delivered to the secretary of the Board any documents and material relevant to the reference; and

(b) the MSC, as soon as practicable after delivering the report referred to in paragraph (a) to the secretary of the Board, shall, if they have not already been delivered to the respondent, cause to be delivered to the respondent:

(i) a copy of the report and opinion; and

(ii) a notice that the respondent may send any submissions in advance to the Board if he or she wishes to do so.

40. Recommendation that a complaint be dealt with by the Diocesan Tribunal

[6] *If the MSC considers that the complaint is false, vexatious or misconceived or that it is more likely than not that the subject-matter of the complaint did not occur, any information about the complaint which has been included on the National Register may be removed from the Register under section 10(1) of the National Register Canon 2007 on the basis that it relates to a notifiable complaint which has been exhausted.*

(1) The MSC may also recommend that the Archbishop appoint a person to promote a charge against the respondent before the Diocesan Tribunal, or that the complaint be referred to a body in another diocese with equivalent jurisdiction, if:

(a) the person is subject to the jurisdiction of the Tribunal;[7]

(b) the MSC is of the opinion that there is a reasonable likelihood that the complaint, if sustained, will result in the Tribunal making a recommendation for the respondent's deposition from orders, prohibition from functioning or removal from office; and

(c) the MSC is of the opinion that there is a reasonable likelihood that the complaint will be sustained before the relevant Tribunal.

(2) If the MSC makes a recommendation to the Archbishop under this clause, the Archbishop must comply with the recommendation. The complaint is then to be dealt with in accordance with the Diocesan Tribunal Ordinance 2017 and no further action is to be taken in respect to the complaint under this Ordinance.

41. What recommendations can the MSC make?

(1) The MSC may make one or more of the following recommendations in relation to the respondent:

(a) that the respondent make an apology of a kind specified by the MSC;

(b) that the respondent make reparation as specified by the MSC for the conduct the subject of the complaint;

(c) that the respondent undertake training, or retraining, of a nature specified by the MSC;

(d) that the respondent receive counselling of a nature specified by the MSC;

(e) that the respondent undertake to the Director, in such terms as are specified by the MSC, any one or more of the following:

(i) that they will resign from any specified position or office in the Diocese or any specified employment by a Church body or Church authority; or

(ii) that they will not, either indefinitely or for a period of time, accept nomination for or appointment to any specified position or office in the Diocese or any specified employment by a Church body or Church authority; or

(iii) that they will not, either indefinitely or for a period of time, exercise any specified function or will meet any specified condition or restriction, in relation to any office or position in the Diocese, or in relation to employment by any Church body or Church authority;

(f) that the respondent resign from office or employment, resign clerical licences and appointments, execute an instrument of relinquishment in accordance with the *Holy Orders (Removal from Exercise of Ministry) Canon 2017* or consent to deposition from holy orders, with such admissions and other conditions as the MSC considers appropriate in all the circumstances;

(g) that the respondent consent to the relevant Church authority issuing a prohibition order;

(h) that the respondent enter into a safety plan with the relevant Church authority;

(i) that the respondent be excluded from entry or access to specified Church premises or activities;

(j) that no further action be taken with respect to the complaint;

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[7] ***Note**: Section 54(2) of the Anglican Church of Australia Constitution Act 1961 provides that the Diocesan Tribunal has jurisdiction to hear and determine charges of breaches of faith, ritual, ceremonial or discipline and of such offences as may be specified by canon, ordinance or rule in respect of –*

- *a person licensed by the Archbishop, or*
- *any other person in holy orders resident in the diocese.*

Section 54(2A) of the 1961 Constitution provides that the Diocesan Tribunal also has jurisdiction to hear a charge relating to an offence of unchastity, an offence involving sexual misconduct or an offence relating to a conviction for a criminal offence that is punishable by imprisonment for 12 months or more in respect of a member of the clergy if –

- *the act of the member of the clergy which gave rise to the charge occurred in the Diocese, or*
- *the member of the clergy was licensed by the Archbishop or was resident in the Diocese within 2 years before the charge was laid, or*
- *the member of the clergy is in prison as a convicted person at the time the charge was laid, but within 2 years before imprisonment was licensed by the Archbishop or was ordinarily resident in the Diocese.*

(k) that the respondent consent to the release of material or the making of an announcement in any form and manner specified by the MSC to explain the outcome of the complaint.

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

(3) If a recommendation is made under subclause 41(1)(f) and the respondent consents to deposition form Holy Orders, the MSC's recommendation is a recommendation of deposition of a person by a bishop for the purposes of clause 6 of the *Holy Orders (Removal from Exercise of Ministry) Canon 2017* and the MSC has power to make that recommendation.

41A. Mandatory deposition – MSC

Where the MSC is satisfied that a church worker who is a member of clergy has been convicted under the laws of the Commonwealth, State or Territory or under the laws of some other country that are equivalent to a law of the Commonwealth or of a State or Territory of a sexual offence relating to a child committed while an adult, the MSC must make a recommendation under subclause 41(1)(f) that the church worker consent to deposition from Holy Orders.

42. Notice of the recommendations

(1) The MSC must give notice of its recommendation(s) to the complainant, the respondent, the Director, the Archbishop and the relevant church authority as soon as practicable after being made.

(2) If the MSC makes a recommendation under paragraph 41(e),(f) or (g), the MSC must include a statement of the reasons for the recommendation(s).

(3) In respect of any other recommendation(s) made by the MSC (except a recommendation that no further action be taken with respect to the complaint), the notice must include a statement that:

(a) if the respondent does not accept the MSC's recommendation(s) within 14 days after the date of the notice and subsequently comply with the recommendation to the satisfaction of the Director, the complaint will be referred to the Board, and

(b) the respondent may request the Director to allow a longer period for the recommendation to be accepted by the respondent.

(4) If any information about the complaint has been included on the National Register, the notice must indicate whether acceptance of and compliance with the MSC's recommendation(s) will result in the information being removed from or retained on the National Register.

43. Response to the recommendation

(1) If the respondent, by notice in writing to the Director:

(a) accepts the recommendation(s) of the MSC within 14 days after the date of the notice of the recommendation(s) or within such longer period as the Director determines under subclause 42(3)(b), and

(b) complies with any recommendation to the satisfaction of the Director, and continues to do so within or throughout any period that the notice issued under subclause 42(1) states that the action required by the recommendation is to be undertaken,

no further action is to be taken against the respondent under this Ordinance in relation to the complaint, except as provided by this clause.

(2) If the complaint alleges serious child-related conduct and the person against whom the complaint is made:

(a) admits the complaint or the substance of the complaint; or

(b) accepts the recommendation or recommendations of the MSC;

and the MSC is satisfied that the respondent has engaged in any or all of the conduct which is the subject of the complaint, the MSC must make a finding that the respondent engaged in that conduct.

PART 4B – DETERMINATION OF COMPLAINTS BY THE BOARD

44. Application of this Part

This Part applies to complaints that are referred to the Board by the MSC under clause 39.

45. Convening of the Board

(1) Upon a complaint being referred to the Board, the President or Deputy President as the case may be shall as soon as possible determine the membership of the Board for the purpose of the reference.

(2) The President or Deputy President as the case may require must convene the Board for the purpose of giving directions.

46. Powers of the Board

(1) Upon the referral of a complaint to the Board, the Board may take at least one or more of the following courses of action:

(a) make findings on serious child-related conduct under clause 47;

(b) dismiss the matter or take no further action under clause 48;

(c) make a recommendation under clause 49.

47. Making findings on serious child-related conduct

(1) If the complaint alleges that the respondent has committed serious child-related conduct, the Board must make a finding on whether the respondent engaged in any or all of the conduct so alleged, and these findings shall constitute findings for the purpose of –

(a) any requirement by law to notify a person or authority that a finding has been made that the respondent engaged in conduct which is the subject of any such requirement to notify; and

(b) entering on the National register the details of information required by the provisions of the *National Register Canon 2007*.

48. Power to dismiss or take no further action

(1) If the Board is not satisfied that the church worker committed any misconduct, or is satisfied that the complaint is false, vexatious or misconceived, the Board may determine accordingly and must dismiss the complaint.

(2) If the Board is satisfied that the church worker did commit misconduct but is not satisfied as to any of the matters in clause 49(1), the Board may determine accordingly and must take no further action in relation to the complaint. The Board may nonetheless recommend under clause 49 that the respondent be counselled.

49. Recommendations and Orders by the Board

(1) If the Board is satisfied that the church worker:

(a) is not fit to hold a role office or position, or to be or remain in Holy Orders; or

(b) is not fit, whether temporarily or permanently, to exercise ministry or perform any duty or function of the role office or position; or

(c) should be subject to any condition or restriction in the exercise of ministry or in the performance of any duty or function;

the Board must determine in writing accordingly and make recommendations to the Archbishop or relevant Church authority, including but not limited to any one or more of the following:

(d) that the church worker be counselled;

(e) that the church worker be suspended from office or employment or from performing the function as the case may be for such period determined by the Board;

(f) that the licence or authority of the church worker be revoked;

(g) that the church worker's contract of employment (if any) be terminated;

(h) that the church worker cease to hold any office then held;

(i) that the church worker's holding of office or employment or performance of the function, as the case may be, be made subject to such conditions or restrictions as the Board

may specify;

(j) that the church worker be directed to do or to refrain from doing a specified act;

(k) that a charge be promoted against the respondent before the Diocesan Tribunal;

(l) that the operation of a determination shall be suspended for such period and upon such conditions as the Board shall specify;

(m) that the church worker should be deposed from Holy Orders; and

(n) that a prohibition order be made in terms specified by the Board.

49A. Mandatory deposition – Board

Where the Board is satisfied that a church worker who is a member of clergy has been convicted under the laws of the Commonwealth, State or Territory or under the laws of some other country that are equivalent to a law of the Commonwealth or of a State or Territory of a sexual offence relating to a child committed while an adult, the Board must make a recommendation under subclause 49(1)(m) that the church worker be deposed from Holy Orders.

50. Provision of copies of determination and recommendation

(1) The Board must cause a copy of the determination and recommendations, together with reasons, to be provided to –

(a) the relevant Church authority;

(b) the complainant;

(c) the respondent;

(d) the MSC; and

(e) the Director or

(2) The Director must cause to be entered in the national register all details of information required by the provisions of the *National Register Canon 2007*.

51. Power to defer final recommendation

(1) The Board may defer making any final recommendation on a complaint and may for that purpose adjourn any hearing from time to time for a period or periods not exceeding in aggregate, 12 months, on terms that the church worker undertake for a specified period and in a form approved by the Board to do one or more of the following acts or omissions:

(a) stand down from the office or employment or from performing specified duties of office or employment;

(b) undertake counselling from a person approved by the Board;

(c) submit to periodic medical examination by a person approved by the Board;

(d) undertake a specified program of medical treatment or rehabilitation whether as an outpatient or inpatient;

(e) provide medical or other evidence requested by the Board to assist it in deciding on any final recommendation; or

(f) perform or refrain from performing some other specified act.

(2) If at the time of deferring a final recommendation in accordance with this clause the Board is satisfied that the church worker is at that time either unfit to hold office or to exercise ministry or to perform any duty or function of the office or employment, any undertaking given by the church worker must include an undertaking under clause 51(1)(a) in such form as the circumstances may require and as the Board may approve.

(3) If within a period specified by the Board the church worker declines to give an undertaking in accordance with clause 51(1), the Board must proceed to make a determination and recommendation.

(4) The Board may take into account the failure of the church worker to comply with his or her undertaking under clause 51(1) in deciding on any final recommendation on a complaint.

52. Effect of Prohibition Orders

A person who is subject to a prohibition order is, despite the provisions of any other ordinance, ineligible for election or appointment to any position or office to which the order applies, and any such office or position that the person is or was elected or appointed to becomes vacant.

PART 4C – REVIEW OF BOARD DETERMINATIONS

53. Application for review

(1) If the respondent is aggrieved by a decision of the Board, the respondent may apply to the Director for a review of the decision.

(2) If the MSC is aggrieved by a decision of the Board, the MSC may apply to the Director for a review of the decision.

(3) The application must be made within 21 days after the applicant is provided with a copy of the Board's report under clause 50 or such longer period as the Director may by notice in writing to the aggrieved person determine.

(4) The application must be in writing and set out the grounds for the review.

54. Grounds for review

The grounds on which an application for a review of a decision of the Board may be made are any one or more of the following –

(a) that a breach of the rules of procedural fairness occurred in relation to making the decision which materially affected the decision,

(b) that procedures required to be observed by this Ordinance in relation to the making of the decision were not observed and the non-observance materially affected the decision,

(c) that the Board did not have jurisdiction to make the decision,

(d) that the decision was so devoid of any plausible justification that no reasonable Board could have made it.

55. Stay of proceedings

An application for a review of a decision of the Board acts as a stay of the decision pending the determination of the review.

56. Appointment of Reviewer

(1) As soon as practicable after receiving an application for review, the Director must notify the Chancellor.

(2) The Chancellor is to appoint an experienced lawyer to undertake the review and notify the Director of the appointment.

(3) Upon the appointment of an experienced lawyer, the Director is to obtain an estimate of the fee to be charged by the experienced lawyer in making a determination under this Part.

(4) On receipt of the estimate, the Director is to notify the applicant for the review of the amount of the estimate and is to request the applicant to pay half of the estimated fee to the Director or a person nominated by the Director.

(5) If the applicant does not pay half of the estimated fee within 21 days after receipt of the Director's request, the application for the review lapses.

57. Conduct of review

(1) A review by an experienced lawyer of the determination of the Board is to be conducted in the manner determined by the experienced lawyer, subject to the process allowing the experienced lawyer to make a determination on the review within a reasonable period after the date that the Director receives payment from the applicant for half of the estimated fee.

(2) A review is not to be a re-hearing of the merits, or a new hearing.

(3) The experienced lawyer may make such order as to costs of the review as he or she thinks fit.

58. Determination on review

The experienced lawyer who reviews a determination of the Board may do any one or more of the following –

(a) quash or set aside the determination,

(b) refer the determination to the Board for further consideration in accordance with such terms and conditions as the experienced lawyer directs,

(c) declare the rights of the applicant for the review in relation to any matter to which the determination of the Board relates,

(d) direct the applicant or the Board to do, or to refrain from doing, anything that the experienced lawyer considers necessary to achieve justice between the parties.

PART 4D – PROCEDURAL MATTERS FOR THE MSC AND THE BOARD

59. Conduct of proceedings

Subject to the provisions of this Ordinance each of the MSC and the Board—

(a) must act with fairness and according to equity, good conscience, procedural fairness and the substantial merits of the case without regard to technicalities or legal forms; and

(b) is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks fit; and

(c) must deal with each matter as expeditiously as possible.

60. Failure to appear

(1) The MSC may make findings or recommendations in any proceedings in the absence of additional material from the respondent if satisfied that reasonable efforts were made to give the respondent an opportunity to provide that material.

(2) The Board may make a determination in any proceedings in the absence of a person affected by the determination if satisfied that reasonable efforts were made to give that person an opportunity to appear.

61. Powers and duties

(1) Subject to this Ordinance, the Board:

(a) may regulate the proceedings of its meetings as it sees fit;

(b) may inform itself from the record of or transcript of proceedings in any court or tribunal and may adopt any findings in, and accept as its own, the record of or transcript of proceedings of any court or tribunal;

(c) may conduct its business and any proceedings by video link, conference telephone or by any electronic means of communication; and

(d) must give written reasons for any determination and recommendation, other than by way of directions in the course of an application, unless the determination is made by consent of the respondent and the MSC.

(2) The Board must give the MSC and the respondent a reasonable opportunity to adduce evidence, to examine and cross-examine witnesses and to make submissions to the Board.

62. Legal representation

The MSC may and the respondent may each appoint a legal representative to assist in the process.

63. Directions

The Board may at any time give directions:

(a) as to the inspection by and supply of copies to the respondent or any other person of the documents or material relevant to the reference; and

(b) as to the conduct of its inquiry into the reference or review;

and for that purpose the Board may be constituted by the presiding member or by a member appointed for the purpose by the presiding member.

64. Appointment of a person to assist

The Board may, for the purpose of any particular reference, appoint such person or persons to assist it in inquiring into (but not determining) a reference as the Board thinks fit.

65. Directions to Director or the MSC

The Board may at any time, and from time to time, give directions to the Director or the MSC as to any further inquiries or investigation it requires to be carried out for the purposes of the reference and the Director or the MSC, as the case may be, must to the best of its ability cause such directions to be carried out.

66. Written evidence

Without limiting the meaning and effect of clause 61, The Board may receive a statutory declaration or a signed statement without the need for the personal attendance of the maker of the statutory declaration or statement and may also in its discretion use electronic means such as video link or conference telephone to receive evidence and submissions.

67. Decisions of other bodies

(1) In any proceedings before it, where the MSC or the Board is satisfied that the respondent:

(a) has been convicted by a court within Australia of an offence involving misconduct;

(b) has been found guilty (without conviction) by a court within Australia of an offence involving misconduct;

(c) has admitted in proceedings before a court, tribunal or commission of inquiry within Australia having engaged in conduct involving misconduct;

(d) has been found by a court, tribunal or commission of inquiry within Australia to have engaged in conduct involving misconduct; or

(e) has been disqualified by a court, tribunal or commission of inquiry within Australia from professional practice on account of conduct involving misconduct;

then:

(f) a certificate, reasons for judgment or other record from the court, tribunal or commission (as the case may be) shall be conclusive evidence that the respondent engaged in the misconduct concerned; and

(g) neither the respondent nor any other party shall be at liberty to call or give evidence or make submissions for the purpose of calling into question the conviction or finding of guilt of the respondent or denying that the respondent engaged in the misconduct concerned.

68. Standard of proof

The standard of proof to establish an allegation is that of reasonable satisfaction on the balance of probabilities.[8]

69. Members of Board not to meet with parties

No member of the MSC or the Board shall individually meet with in relation to the complaint either the complainant or the respondent or anyone acting on their behalf while the matter is in progress.

70. Disqualification where conflict of interest

(1) A member of the MSC or the Board must promptly disclose to the other members any actual conflict of interest they have as a member and any circumstances which might reasonably be perceived as a conflict of interest, including the reason(s) why such a conflict of interest might exist.

(2) Where a member of the MSC or the Board has an actual or perceived conflict of interest in a matter, the member shall be disqualified from participating in the matter.

(3) The opinion of a majority of the other members of the MSC or Board, as the case may be, shall be conclusive as to whether the member has an actual or perceived conflict of interest in a matter.

71. Medical examination

(1) The MSC or the Board may require the respondent to submit within a specified time to a medical, psychiatric or psychological examination by a person approved by the MSC or the Board (as the case may be) the cost of which shall be met from funds under the control of the Synod.

(2) A copy of the report of an examination under subclause (1) shall be provided to the respondent, the Director, the MSC and the Board.

72. Duties of the respondent

(1) The respondent must, subject to subclause (2), truthfully answer any question put by or on behalf of the Board in the exercise of powers conferred by this Ordinance.

(2) If the respondent declines to answer a question on the ground that the answer might tend to

[8] *The standard of proof is to be applied with regard to the principles in Briginshaw v Briginshaw [1938] HCA 34.*

incriminate the respondent, a written record shall be made of the question and of the ground of refusal.

(3) The respondent must not:

(a) mislead the Board or a member of the Board; or

(b) unreasonably delay or obstruct the Board in the exercise of powers conferred by this Ordinance.

73. Limitation on promotion of a charge in the Diocesan Tribunal

If the MSC or the Board is satisfied that there is no reasonable likelihood that the Diocesan Tribunal would find the respondent guilty of any offence, the MSC or the Board shall not recommend that a charge be promoted against the respondent in the Diocesan Tribunal.

74. Costs

(1) Neither the MSC nor the Board has the power to award costs of any complaint or matter before it.

(2) A respondent who is not an unpaid lay church worker may apply to the Standing Committee for reimbursement of their reasonable costs of obtaining advice and assistance from a legal practitioner for the purposes of a process under this Ordinance.

(3) The Standing Committee may grant legal assistance to a church worker on such terms and subject to such conditions as it shall determine.

(4) For the purposes of subclause (3), the Standing Committee may approve a scale of costs on the recommendation of the Director.

75. Making of rules

(1) The President of the Board may make or approve rules of the Board reasonably required in relation to the practice and procedure.

(2) The rules of the Board made under this clause may provide that, in relation to the exercise of specified functions, or in relation to matters of a specified class, other than the determination of an application including the making of a recommendation, the Board may, at the direction of the presiding member, be constituted by a single member sitting alone.

76. Practice and procedure

Subject to this Ordinance and the relevant rules, the practice and procedure of the Board will be as directed by the presiding member of the Board.

77. Determination of questions

(1) In any proceedings of the Board:

(a) any question of law or procedure shall be determined by the presiding member; and

(b) any other question will be determined by majority decision of the members, and in the case of an equality of votes the opinion of the presiding member shall prevail.

(2) Where the Board is constituted by a member sitting alone who is not the President or the Deputy President, any question of law that arises must be referred to the President or Deputy President for decision and any decision made on such a reference is a decision of the Board, as the case may be.

78. Public Hearings

(1) Subject to subclauses (2) and (3), any hearing of the Board must be held in public.

(2) The Board may direct:

(a) that the whole or part of a proceeding be held in private; or

(b) that only persons or classes of persons specified by it may be present during the whole or any part of a proceeding.

(3) The Board may only make a direction under the preceding subclause if satisfied that the direction is necessary on or more of the following grounds:

(a) to comply with applicable legislation of the State or a Territory or the Commonwealth;

(b) to prevent a real and substantial risk to the proper administration of justice that cannot be prevented by other reasonably available means;

(c) to protect the safety of any person;

(d) to avoid causing undue distress or embarrassment to a complainant (other than the Director) or a witness (other than the respondent) in a proceeding that relates in whole or part to a complaint;

(e) to avoid the disclosure of confidential information; and

(f) for any other reason in the interests of justice.

79. Suppression of names

(1) The Board may order that the name of, or other information that could lead to the identification of the respondent, or a person who appears, or is reasonably likely to appear, before the Board is not to be published or broadcast, except in such circumstances as the Board may authorise.

(2) An order of the Board under this clause does not apply to the publication of a report authorised or required under this Ordinance.

79A. Non-publication orders

(1) The Board may, on the application of a party or the Director, order that a party by himself or herself or through his or her agents and associates not publish verbally, in writing or by electronic means:

(a) any matter relevant to a fact or circumstance likely to be considered when the Director or Board is dealing with the complaint; or

(b) any aspersion on the character of a person who may be a material witness to such fact or circumstance.

(2) Such an order may be made ex parte, but may be discharged on the application of the person against whom it is made on at least five days' notice to the person on whose application it was made.

PART 4E – CHURCH AUTHORITIES AND COMPLIANCE

80. Church authority to give effect

(1) Subject to subclause (2), the Church authority to whom a recommendation under this Ordinance is made must and is empowered to do any acts to give effect to a recommendation of the Director, an Adjudicator, MSC or the Board.

(2) The Church authority referred to in subclause (1) may vary, modify or temporarily suspend the implementation of a recommendation consistent with any facts found by the body making the recommendation provided that the body making the recommendation agrees that the substance of the recommendation is preserved.

81. Compliance by church worker

A church worker must:

(a) comply with any undertaking given to an Adjudicator, MSC or the Board or the relevant Church authority; and

(b) comply with a direction made by the relevant Church authority to give effect to a recommendation of the Adjudicator, MSC or the Board, as the case may be, or any permitted variation or modification that recommendation.

CHAPTER 5 - PERSONS OR BODIES PERFORMING FUNCTIONS UNDER THIS ORDINANCE

PART 5A – THE DIRECTOR

82. …..

82A. …..

83. Functions of the Director

(1) The Director's functions include:

(a) to receive complaints;

(b) to make a complaint against a church worker;

(c) to appoint investigators to investigate complaints in a timely and appropriate manner;

(d) to be the executive officer of the MSC;

(e) to attend meetings of the MSC except for any part of a meeting which deals with the conditions of employment, remuneration or performance of the Director;

(f) to provide advice about the code of conduct and procedures under this Ordinance;

(g) to provide or arrange care for or treatment of the complainant and respondent;

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

(i) to provide input into education and vocational training programs for church workers;

(j) to appoint a Panel of experienced lawyers with the approval of the Chancellor;

(k) to keep proper records of complaints, decisions, meetings, employment screening details, police checks and people affected by any allegation of misconduct;

(l) to consult and co-operate with other persons and bodies in the Church with responsibility for professional standards;

(m) to support complainants in making a report to police or child protection authorities;

(n) to report to the MSC on any recommended changes to processes, structures and education programs that would reduce the risk of misconduct; and

(o) such specific functions and duties, consistent with this Ordinance, as may be determined from time to time by the MSC.

(2) The Director must act in all things as expeditiously as possible.

84. Relationship between the Director and the Archbishop

(1) The Director may inform the Archbishop of –

(a) any information known to the Director, or any reasonable belief held by the Director, that a church worker has engaged in conduct which may be the subject of a complaint, and

(b) any response made by a church worker to an allegation that is, or could be, the subject of a complaint.

(2) The Director may provide the Archbishop with such further information as the Archbishop may reasonably require for the proper discharge of the Archbishop's duties and responsibilities or as the Director deems necessary for that purpose.

(3) The Archbishop may provide the Director with such information as the Director may reasonably require, for the proper discharge of the Director's duties and responsibilities or as the Archbishop deems necessary for that purpose.

85. The Director's entitlement to information held by certain persons

A Church authority, Church body or relevant person that appointed a church worker to an office or position must provide the Director with such information as the Director may reasonably require.

86. The Safe Ministry Board to report annually to the Standing Committee

Before 1 August each year, the Safe Ministry Board is to make a report to the Standing Committee as to the actions taken under this Ordinance during the period of 12 months ending on the preceding 30 June.

PART 5B – THE MINISTRY STANDARDS COMMITTEE

87. Establishment of the MSC

There shall be a Ministry Standards Committee for the diocese constituted in accordance with the provisions of this Part.

88. Functions of the MSC

The MSC has the following functions:

(a) to act on a complaint in accordance with this Ordinance and, where appropriate, to obtain independent legal advice for that purpose;

(b) to recommend to the Standing Committee any changes to Church processes, structures and education programs, where appropriate, that would reduce the risk of misconduct;

(c) to authorise such expenditure as may be necessary or appropriate to implement, in a particular case, the provisions of this Ordinance subject to any limit imposed by the Standing Committee;

(d) to advise relevant Church bodies as to the financial, pastoral or other needs of a person affected by misconduct which is the subject of a complaint and to advise relevant Church bodies in connection with any legal proceedings, anticipated or existing, against such Church bodies arising out of that alleged misconduct;

(e) to refer any information in its possession to a law enforcement, prosecution or child protection authority of a State or Territory or of the Commonwealth of Australia for which the information is or may be relevant;

(f) to maintain proper records of all information and complaints received and of action taken in relation to each of them; and

(g) to exercise such other powers and functions as are conferred on it by this or any other Ordinance.

89. Membership of the MSC

(1) The members of the MSC shall be appointed by the Archbishop-in-Council.

(2) The members of the MSC shall hold office on such terms and conditions as may be determined from time to time by the Archbishop-in-Council.

(3) The MSC must have at least three members including the chair.

(4) The persons appointed as members of the MSC are to include –

(a) an experienced lawyer, and

(b) a person who has been a member of the clergy for not less than 10 years, and

(c) a person who is certified by the Safe Ministry Board as having other qualifications or experience appropriate to the discharge of the office of a member of the MSC, such as child protection, social work or psychiatry.

(5) The MSC must so far as is reasonably practicable:

(a) include at least one person who is not a member of the Church;

(b) have at least one man and one woman.

(6) The chair of the MSC must be appointed by the Archbishop.

(7) A member of the MSC must not act unless the member has agreed in writing to abide by this Ordinance.

90. Term of office

Subject to clause 89, a member of the MSC holds office until the first meeting of the Standing Committee which next follows the first day of the first ordinary session of the next Synod provided that the member continues to hold office until his or her successor is appointed.

91. Casual vacancies

(1) The office of a member of the MSC is vacated if –

(a) the member –

(i) dies, or

(ii) resigns by notice in writing to the Diocesan Secretary, or

(iii) becomes mentally incapacitated, or

(iv) becomes an insolvent under administration, or

(v) ceases to reside permanently in the Diocese, or

(b) the Archbishop-in-Council revokes the appointment.

(2) The Archbishop-in-Council may fill a casual vacancy in the office of a member of the MSC.

92. Conduct of business

(1) The MSC may meet from time to time as determined by the chair or a majority of its members and may conduct its business by telephone or electronic communication.

(2) The chair must convene a meeting of the MSC at the request of the Director.

(3) The procedures of the MSC shall be determined by the MSC.

(4) A majority of the members shall constitute a quorum.

(5) A decision taken other than at a meeting of the MSC, if supported by a majority of members of the MSC, constitutes a decision of the MSC.

(6) The MSC must act in all things as expeditiously as possible.

93. Validity of proceedings

An act or proceeding of the MSC is not invalid by reason only of a vacancy in its membership and, notwithstanding the subsequent discovery of a defect in the nomination or appointment of a member, any such act or proceeding is as valid and effectual as if the member had been duly nominated or appointed.

94. Delegation of functions

(1) Subject to subclause (2), the MSC may delegate, upon such terms and conditions as the MSC may approve, any of its functions under this Ordinance to any person.

(2) The MSC cannot delegate:

(a) its functions under subclause (1); or

(b) its functions under Part 4A.

(3) A delegation under this clause must be made by an instrument in writing signed by a member of the MSC pursuant to a resolution of the MSC.

PART 5C – THE MINISTRY STANDARDS BOARD

95. Establishment of the Board

There shall be a Ministry Standards Board comprising three persons constituted and appointed in accordance with the provisions of this Part.

96. Functions of the Board

The function of the Board is to enquire into and determine complaints referred to it by the MSC under this Ordinance.

97. Panel

(1) The members of the Board in a particular case shall be appointed from a panel comprising:

(a) a President and a Deputy President, both of whom shall be experienced lawyers;

(b) three members of the clergy of at least seven years' standing; and

(c) three laypersons who may or may not be members of the Church and at least two of whom are persons who are considered by the Archbishop-in-Council as having professional experience, training or skills in a field that is relevant to addressing the needs of persons who are subjected to misconduct.

(2) As far as reasonably practicable the members of the panel should comprise an equal number of men and women.

98. Appointment of the Panel

(1) The members of the panel shall be appointed by the Archbishop-in-Council and shall hold office on such terms and conditions as may be determined from time to time by the Archbishop-in-Council.

(2) Any vacancy in the membership of the panel shall be filled by the Archbishop-in-Council.

99. Appointment of the Board

(1) The members of the panel to be convened for a complaint referred to the Board shall be determined by the President or, if there is a vacancy in the office of President or if the President is unable to act, by the Deputy President.

(2) For the purpose of any reference to the Board, the Board shall consist of the President or Deputy President, who shall be the presiding member, and one clerical and one lay member of the panel.

(3) The Board must, so far as reasonably practicable, have at least one man and at least one woman.

(4) A member of the Board must not act in a matter unless the member has agreed in writing to abide by this Ordinance.

100. Vacancies on the Board

(1) If a member of the Board, other than the presiding member, dies or is for any other reason unable to continue with any matter referred to the Board –

(a) the Board constituted of the presiding member and the other member may, if the presiding member so determines, continue and complete the reference; or

(b) if the presiding member so determines, a substitute member may be appointed to fill the vacancy.

(2) If the presiding member dies or is for any reason unable to continue with any matter referred to the Board, the Deputy President becomes the presiding member for that matter.

101. Secretary

There shall be a secretary to the Board who shall be appointed by or in accordance with a resolution of the Archbishop-in-Council, and whose duties shall be defined by the President.

102. Quorum

The quorum for a meeting of the Board shall be all the members of the Board except where the Board by its presiding member makes directions under clause 63 of this Ordinance.

103. Validity of proceedings

An act or proceeding of the Board is not invalid by reason only of a vacancy in its membership or of the membership of the panel and, notwithstanding the subsequent discovery of a defect in the nomination or appointment of members of the panel or the Board, any such act or proceeding is as valid and effectual as if the member had been duly nominated or appointed.

CHAPTER 6 - MISCELLANEOUS

PART 6A – CONFIDENTIALITY AND PUBLICATION

104. Duty of confidentiality

(1) Subject to the provisions of this Ordinance, the Director, an Adjudicator, a member of the MSC, a member of the Board and a person employed or engaged on work related to the affairs of the MSC, must not divulge information that comes to his or her knowledge by virtue of that office or position except:

(a) in the course of carrying out the duties of that office or position;

(b) as may be authorised by or under this Ordinance;

(c) as may be authorised or required by or under the *National Register Canon 2007* or any canon prescribed by General Synod in substitution for that canon;

(d) in any proceedings before a Diocesan Tribunal, a Provincial Tribunal, the Special Tribunal or the Appellate Tribunal;

(e) to the Safe Ministry Board (including any agent acting on its behalf) for the purpose of that body fulfilling its functions;

(f) as may be required by law; or

(g) to any insurer or insurance broker of a Church body where the information may give rise to or be relevant to a claim for indemnity by the Church body is against the insurer or is relevant to obtaining or continuing insurance cover.

(2) The MSC may release to any person, including a Church authority, such material as it may determine with respect to any information or complaint.

105. Release of information by MSC

(1) The MSC must disclose to an equivalent body information in its possession concerning the alleged misconduct of a church worker:

(a) which is information relevant to, or arising during the course of, an investigation being undertaken by the MSC where the MSC knows that the church worker is residing in the diocese of the equivalent body; or

(b) which is information concerning misconduct alleged to have occurred in the diocese of the equivalent body;

and must co-operate with any equivalent body.

(2) The MSC may disclose to a person or body of another church or Christian denomination exercising powers, duties or functions similar to those of the MSC, details of information in its possession concerning the alleged misconduct of a church worker and the MSC must co-operate with such person or body to whom the information is disclosed.

106. Church authority may release information

(1) The Archbishop or the relevant Church authority may, following consultation with the Director, release to any person such material as the Church authority may determine with respect to any information, complaint or finding, including notifying the complainant of the outcome of the complaint and making a public announcement in the relevant church.

(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.

107. Duty of respondents in the release of information

A respondent must cooperate with and facilitate any instructions from the MSC, 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.

108. MSC reports

(1) Without disclosing the identity of any complainant or the details of any complaint, the MSC must report annually to the Synod on the operation this Ordinance and its activities for that calendar year.

(2) Notwithstanding subclause (1), the report of the MSC pursuant to that subclause may identify a church worker who has been exonerated from an allegation which is the subject of the complaint or who has been the subject of a determination or recommendation by the Board favourable to the church worker.

(3) The MSC may, in respect of every complaint with which it is dealing under this Ordinance, report either orally or in writing to the Archbishop for the proper discharge of the MSC's duties and responsibilities or as the MSC deems necessary for that purpose.

PART 6B – INDEMNITY

109. Obligation to indemnify

The Standing Committee must and is hereby authorised out of funds under the control of the Synod to indemnify –

(a) the Director and any delegate of the Director;
(b) each member of the MSC;
(c) any delegate of the MSC;
(d) an Adjudicator;
(e) each member of the Board;
(f) the secretary of the Board;
(g) any person appointed by the Board pursuant to this Ordinance; and
(h) the Archbishop;

in respect of any act or omission respectively by them in good faith and in the exercise or purported exercise of powers or functions, or in the discharge or purported discharge of duties, under this Ordinance in relation to a church worker.

PART 6C – REGULATIONS

110. Regulation making power

The Archbishop-in-Council may from time to time make, amend or repeal regulations not inconsistent with the provisions of this Ordinance providing for records arising out of or incidental to the operation of this Ordinance and for all or any of the purposes, whether general or to meet particular cases, which may be convenient for the administration of this Ordinance or which may be necessary or expedient to carry out the overriding purposes of this Ordinance.

PART 6D – OTHER

111. Rights of employers

Nothing in this Ordinance affects any right of an employer to terminate the employment of an employee.

112. Findings of certain other bodies may be treated as conclusive

Any findings made by an equivalent body or a court, tribunal or commission of inquiry, that have not been overturned on appeal, may be treated as conclusive by a person performing functions under this Ordinance.

113. Service of documents

(1) A document required to be served under this Ordinance on a person may be served –

(a) personally, or

(b) by posting a copy of the document by pre-paid post to the person at the person's proper address.

(2) The proper address of a person is the address for service of the person but, if the person has no address for service, the person's last known residential address.

(3) Service of a document that is posted by pre-paid post is taken to be effected 7 days after posting.

(4) In this clause, service of a document includes the giving of a notice.

114. Delegation of the Chancellor's functions

The Chancellor may delegate any of his or her functions under this Ordinance to a Deputy Chancellor.

115. Commencement

Except for this clause, this Ordinance commences on the date determined by the Archbishop on the advice of the Chancellor.

Notes

In accordance with Clause 113, the Archbishop determined the commencement date of the original form of this Ordinance to be 1 November 2017 on the advice of the Chancellor.

Table of Amendments

Diagram	Amended by Ordinance No 35, 2018, No 34, 2022, and No 37, 2022.
Schedule	Inserted by Ordinance No 34, 2022 and amended by No 37, 2022 and No 14, 2024.
Clause 2	Amended by Ordinance No. 34, 2022 and No 37, 2022.
Clause 4	Amended by Ordinance No 35, 2018, No 34, 2022, No37, 2022, No 34, 2023, and No 14, 2024.
Clause 6	Amended by Ordinance No 35, 2018, No 34, 2022, No 37, 2022, and No 14, 2024.
Clause 7	Amended by Ordinance No 35, 2018 and No 34, 2022.
Clause 8	Amended by Ordinance No 37, 2022.
Clause 9	Amended by Ordinance No 34, 2022.
Clause 10	Amended by Ordinance No 34, 2022.
Clause 11	Amended by Ordinance No 34, 2022.
Clause 12	Amended by Ordinance No 34, 2022 and No 14, 2024.
Clause 12A	Inserted by Ordinance No 45, 2019.
Clause 13	Amended by Ordinance No 35, 2018 and No 37, 2022.
Clause 14	Amended by Ordinance No 45, 2019, No 34, 2022 and No 37, 2022.
Clause 15	Amended by Ordinance No 34, 2022.
Clause 16	Amended by Ordinance No 35, 2018, No 34, 2022 and No 37, 2022.
Clause 18	Amended by Ordinance No 37, 2022.
Clause 18A	Inserted by Ordinance No 45, 2019.
Clause 18B	Inserted by Ordinance No 45, 2019 and amended by No 37, 2022.
Clause 19	Amended by Ordinance No 45, 2019, 34, 2022, and 34, 2023.
Clause 20	Amended by Ordinance No 35, 2018, 37, 2022, and 34, 2023.
Clause 21	Amended by Ordinance No 45, 2022 and No 37, 2022.
Clause 21A	Inserted by Ordinance No 35, 2018.
Clause 21B	Inserted by Ordinance No 35, 2018 and amended by No 37, 2022.
Clause 21C	Inserted by Ordinance No 35, 2018 and amended by No 37, 2022.
Clause 27	Amended by Ordinance No 37, 2022.
Clause 27A	Inserted by Ordinance No 37, 2022.
Clause 28	Amended by Ordinance No 45, 2019 and No 37, 2022.
Clause 29	Amended by Ordinance No 45, 2019.
Clause 30	Substituted by Ordinance No 35, 2018.
Clause 31	Amended by Ordinance No 35, 2018.
Clause 33	Amended by Ordinance No 37, 2022.
Clause 34	Amended by Ordinance No 37, 2022.
Clause 35	Amended by Ordinance No 35, 2018 and No 37, 2022.
Clause 36	Amended by Ordinance No 37, 2022.
Clause 37	Amended by Ordinance No 37, 2022.
Clause 38	Amended by Ordinance No 37, 2022.
Clause 39	Amended by Ordinance No 35, 2018 and No 37, 2022.
Clause 40	Amended by Ordinance No 37, 2022.
Clause 41	Amended by Ordinance No 34, 2022,37, 2022, and 34, 2023.
Clause 41A	Inserted by Ordinance No 34, 2023.
Clause 42	Amended by Ordinance No 37, 2022.
Clause 43	Amended by Ordinance No 35, 2018 and No 37, 2022.
Clause 44	Amended by Ordinance No 37, 2022.
Clause 46	Amended by Ordinance No 35, 2018.
Clause 47	Amended by Ordinance No 35, 2018.
Clause 49	Amended by Ordinance No 35, 2018.
Clause 49A	Inserted by Ordinance No 34, 2023.

Clause 50	Amended by Ordinance No 37, 2022.
Clause 51	Amended by Ordinance No 35, 2018.
Clause 53	Amended by Ordinance No 37, 2022.
Clause 56	Amended by Ordinance No 37, 2022.
Clause 57	Amended by Ordinance No 37, 2022.
Clause 59	Amended by Ordinance No 35, 2018 and No 37, 2022.
Clause 60	Amended by Ordinance No 37, 2022.
Clause 61	Amended by Ordinance No 37, 2022.
Clause 62	Amended by Ordinance No 37, 2022.
Clause 65	Amended by Ordinance No 35, 2018 and No 37, 2022.
Clause 67	Amended by Ordinance No 35, 2018 and No 37, 2022.
Clause 68	Amended by Ordinance No 45, 2019.
Clause 69	Amended by Ordinance No 35, 2018 and No 37, 2022.
Clause 70	Amended by Ordinance No 45, 2019 and No 37, 2022.
Clause 71	Amended by Ordinance No 37, 2022.
Clause 73	Amended by Ordinance No 37, 2022.
Clause 74	Amended by Ordinance No 37, 2022.
Clause 80	Amended by Ordinance No 37, 2022.
Clause 81	Amended by Ordinance No 37, 2022.
Clause 82	Amended by Ordinance No 35, 2018 and omitted by Ordinance No 37, 2022.
Clause 82A	Omitted by Ordinance No 37, 2022.
Clause 83	Inserted by Ordinance No 45, 2019 and amended by Nos. 34 and 37, 2022.
Clause 84	Amended by Ordinance No 34, 2022 and No 37, 2022.
Clause 85	Amended by Ordinance No 37, 2022.
Clause 86	Amended by Ordinance No 37, 2022.
Clause 87	Amended by Ordinance No 37, 2022.
Clause 88	Amended by Ordinance No 37, 2022.
Clause 89	Amended by Ordinance No 37, 2022.
Clause 90	Amended by Ordinance No 37, 2022.
Clause 91	Amended by Ordinance No 37, 2022.
Clause 92	Amended by Ordinance No 37, 2022.
Clause 93	Amended by Ordinance No 37, 2022.
Clause 94	Amended by Ordinance No 37, 2022.
Clause 95	Amended by Ordinance No 37, 2022.
Clause 96	Amended by Ordinance No 37, 2022.
Clause 104	Amended by Ordinance No 37, 2022.
Clause 105	Amended by Ordinance No 37, 2022.
Clause 106	Amended by Ordinance No 35, 2018, No 34, 2022, and No 37, 2022.
Clause 107	Inserted by Ordinance No 34, 2022.
Clause 108	Renumbered by Ordinance No 34, 2022 and amended by Ordinance No 35, 2018, No 34, 2022, and No 37, 2022.
Clause 109	Renumbered by Ordinance No 34, 2022 and amended by Ordinance No 37, 2022.
	Renumbered by Ordinance No 34, 2022.
Clause 110	Renumbered by Ordinance No 34, 2022
Clause 111	Renumbered by Ordinance No 34, 2022
Clause 112	Renumbered by Ordinance No 34, 2022
Clause 113	Inserted by Ordinance No 37, 2022.
Clause 114	Renumbered by Ordinance No 34, 2022
Clause 115	

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1 September 2026