

20/17 General Synod – Safe Ministry to Children Canon 2017 Adopting Ordinance 2017

(A report from the Standing Committee.)

Key Points

- A Committee appointed by the Standing Committee has engaged with the General Synod Standing Committee and the Safe Ministry Commission of the General Synod in respect to concerns about the Safe Ministry Standards in the Canon, which include:
 - the wording of the Safe Ministry Check and the lack of an alternative form for volunteers under 18 years of age,
 - the requirement for volunteers under 18 years of age to obtain a National Police History Check due to their ineligibility for a Working with Children Check, and
 - the inefficiency of the process for running checks against the National Register.
- The Safe Ministry Commission has accepted there is a need for an alternative form of Safe Ministry Check for persons under 18 years of age. However there remains disagreement on a number of matters. The General Synod Standing Committee is yet to approve any changes to the Safe Ministry Standards.
- The Standing Committee has passed the *Safe Ministry to Children Ordinance 2018* to give effect to the Canon in the form of a diocesan ordinance, minus those provisions that are not considered to be suitable or workable in the Diocese of Sydney.
- It is proposed that the *General Synod – Safe Ministry to Children Canon 2017 Adopting Ordinance 2017* be amended to make the commencement provision in clause 3 indefinite.

Purpose

1. The purpose of this report is to update the Synod with respect to the work of the committee appointed by the Standing Committee to address the request of Resolution 20/17.

Recommendations

2. It is recommended that –
 - (a) Synod receive this report.
 - (b) Synod pass the Bill for the General Synod – Safe Ministry to Children Canon 2017 Adopting Ordinance 2017 Amendment Ordinance 2018.

Background

The General Synod Canon

3. The General Synod of the Anglican Church of Australia passed the *Safe Ministry to Children Canon 2017* (the Canon) at its 2017 session.
4. The Canon prescribes a code of conduct and minimum standards for safe ministry to children (the Safe Ministry Standards). The legislation was designed to promote a nationally consistent approach to minimum standards.
5. The Canon includes a declaration that it affects the order and good government of the Church within a diocese and does not come into force and effect in a diocese unless and until the diocese by ordinance adopts the Canon.

Proceedings at the Synod of the Diocese of Sydney in 2017

6. The *General Synod – Safe Ministry to Children Canon 2017 Adopting Ordinance 2017* (the Adopting Ordinance) was passed by the Synod of our Diocese on 10 October 2017, and received assent.
7. The Adopting Ordinance included a clause to defer its commencement to a date determined by the Standing Committee of the Diocese of Sydney (the Standing Committee) or on a date to be determined at the next ordinary session of the Synod, if the Standing Committee has not resolved to commence the Ordinance by that date.
8. The commencement was delayed to ensure that the Canon can be implemented effectively in our Diocese.
9. The Synod report outlined concerns about requiring volunteer church workers who are themselves children (i.e. under 18 years of age) to obtain a National Police History Check and complete a 'Safe Ministry

Check' that includes age inappropriate questions about sexual conduct and other matters. The report also noted concerns about requiring volunteer church workers to be assessed against the National Register given the current cumbersome nature of the National Register checking process and the large number of assessments that would need to be undertaken (in the order of 15,000 for the Diocese of Sydney alone).

10. The Synod passed resolution 20/17 following passage of the Adopting Ordinance –

“This Synod, having passed the *General Synod – Safe Ministry to Children Canon 2017 Adopting Ordinance 2017* calls upon the Standing Committee to –

- (a) prioritise the preparation, drafting and other work needed on aspects of Part 2 of the Second Schedule of the Canon, which it considers would make the standards in this Part more suitable and workable within the Diocese of Sydney,
- (b) promptly engage in the consultation process required in order to present proposed changes to the General Synod Standing Committee meeting on the 8 – 9 December 2017,
- (c) take all necessary steps to make preparations within the Diocese for the implementation of this Canon, and
- (d) where possible consider implementing those aspects of the Canon (and its Schedules) that are not subject to the processes in part (a) and (b) of this motion.”

(Synod Resolution 20/17).

Appointment of Committee

11. At its meeting on 13 November 2017, the Standing Committee appointed a committee to address the requests in the resolution.

12. The Committee comprised the Chair of the General Synod Relations Committee (Dr Robert Tong) as Chair, the Director of Professional Standards (Mr Lachlan Bryant), the Registrar (Mr Doug Marr), the Rev Dr Andrew Ford, Canon Phil Colgan, and the Rev Hayden Smith (the Committee). The Standing Committee requested that the Committee consult with the Chancellor and Deputy Chancellor in relation to its work.

13. The Committee promptly engaged with the General Synod Standing Committee (the GSSC) and the Safe Ministry Commission of the General Synod (the Commission) in an effort to give effect to Synod Resolution 20/17. The Committee put forward various amendments to the Second Schedule of the Canon to make the standards suitable and workable in the Diocese of Sydney.

14. The Appendix provides a detailed explanation of the work undertaken by the Committee and the present status of each of the matters of concern.

Safe Ministry to Children Ordinance 2018

15. It is evident from the material in the Appendix that progress in negotiating amendments to the Safe Ministry Standards to render them suitable and workable within the Diocese of Sydney has been slow and difficult. The Commission has accepted there is a need for an alternative form of Safe Ministry Check for volunteer church workers under 18 years of age and has accepted many of the amendments put forward by the Committee. However, beyond this, little agreement has been reached on making further amendments to the Safe Ministry Standards.

16. In view of this, the Standing Committee has passed the *Safe Ministry to Children Ordinance 2018* (the Ordinance) to mirror the provisions of the Canon in the form of an Ordinance, but modified to the extent necessary for the provisions of the Canon to be suitable and workable for implementation in the Diocese of Sydney.

17. The Committee's approach in preparing the Ordinance was to only make changes to the Canon to the extent necessary to make it workable in the Diocese of Sydney. It has taken this approach in order to maximise the similarity between the Canon and the Ordinance.

18. Given the complexity of the Canon (and the Ordinance), it is intended that short guidelines and/or a checklist be developed to explain the obligations in simple terms.

Differences between the Canon and the Ordinance

19. In summary, the Ordinance differs from the Canon in the following respects –

National Police Checks

20. Under the Canon a volunteer who proposes to undertake ministry to children must obtain a National Police History Check if they are not required to obtain a Working With Children Check (WWCC) by law. In NSW this means that a person under 18 years of age must obtain a National Police History Check. A National Police History Check costs \$42.00.

21. By contrast, the Ordinance will require a National Police History Check only if the volunteer –

- (a) is aged 18 years or more,
- (b) is not required or is not able to obtain a WWCC, and
- (c) is eligible to apply for a National Police History Check.

22. This will not prevent a parish or organisation from requiring a National Police History Check where the circumstances require a higher level of due diligence before appointing a person to a role involving ministry to children, but it will not be mandatory for a person under 18 years of age.

23. Another difference is that a person will not be required to obtain a National Police History Check if they are not required to obtain a WWCC by law, but are nonetheless able to obtain a WWCC, and they do so. There will be circumstances where a WWCC is not required by law (e.g., where an exemption applies under the *Child Protection (Working with Children) Act 2012*), but the person can still validly obtain a WWCC. There is no reason to require a National Police History Check in this circumstance.

24. It is expected that there will be very few (if any) circumstances where a person who is aged 18 years or more is unable to apply for a WWCC.

Safe Ministry Check

25. The Safe Ministry Check is a form of questionnaire and declaration that is to be completed before a person is ordained, issued with a licence/authority or undertakes ministry to children. It also includes a requirement for a character reference from 2 referees. The material is assessed in determining the person's suitability for ordination, licensing/authorisation or appointment to undertake ministry to children (as the case may be).

26. The Ordinance differs from the Canon in that –

- (a) the Safe Ministry Check will be the form prescribed by the Standing Committee of the Diocese of Sydney, and not the form tabled at the 17th ordinary session of the General Synod in 2017 including as subsequently amended by the GSSC, and
- (b) in the case of a volunteer church worker, the Safe Ministry Check will only be required if the person is aged 13 years or more.

27. It is understood there are approximately 50 young leaders involved in ministry to children in the Diocese who are aged below 13 years of age.

28. The Committee was particularly concerned about a requirement for these young leaders to complete a questionnaire that asked personal questions about sexual matters that were not age appropriate. The Committee was not convinced that there was sufficient utility in requiring the Safe Ministry Check for this age group, and considered that under 13 year old should be exempt. This means that it will be generally be high schoolers and above that need to complete the Check.

29. The Standing Committee is yet to prescribe the form of the Safe Ministry Check. The form of Check is likely to at least include the current form of Lifestyle Questionnaire in use in the Diocese. An alternative form for volunteers under 18 years of age will also be required. The GSSC may approve a form for the purposes of the Canon, which may also be suitable for use for the purposes of the Ordinance.

National Register

30. The Ordinance does not amend the requirement for National Register Assessments. However it does delay its commencement in relation to volunteer church workers until a date determined by the Standing Committee.

31. There is insufficient assurance at present that the General Synod Office can efficiently process checks on the National Register. It is expected that approximately 15,000 National Register checks would be required in relation to volunteers in the Diocese of Sydney alone.

32. It is unlikely that this part of the Ordinance will be commenced until there is satisfaction that National Register Checks can be performed in a straightforward and timely manner.

Amending or prescribing Codes of Conduct or Safe Ministry Standards

33. Under the Canon, the General Synod and the GSSC (by a two-thirds majority) have power to amend the Code of Conduct or Standards or to prescribe further Codes of Conduct or Standards. These changes then have automatic force in a diocese that has adopted the Canon.

34. The Ordinance does not include this provision. An amendment or further Codes or Standards will only apply in the Diocese of Sydney if they are approved by the Synod or the Standing Committee of the Diocese of Sydney following consultation with the Safe Ministry Board of our Diocese. This could include adopting them in a modified form to ensure they are suitable and workable in our Diocese.

35. The Synod and Standing Committee will also be able to make amendments or prescribe further Codes of Conduct or Standards at its own initiative.

Auditing

36. The auditing provisions in Part 4 of the Ordinance are substantially the same as the equivalent provisions in the Canon, except that –

- (a) the Standing Committee determines the scope of the audit instead of the General Synod Standing Committee,
- (b) the Diocesan Registrar appoints an independent person to undertake the audit instead of the General Secretary,
- (c) the report is provided to the Standing Committee and the Safe Ministry Board instead of the General Synod Standing Committee, and
- (d) the report is to be published on the Safe Ministry website instead of the General Synod website.

Consequential Changes

37. The Ordinance also includes various consequential changes, including –

- (a) Replacing generic references to dioceses and bodies of dioceses with particular references to the Diocese of Sydney and the relevant bodies of the Diocese. For example, it will be the Standing Committee of our Diocese that determines if a Church Body has equivalent standards for observance to those in the Ordinance instead of the GSSC.
- (b) Removing references that are specific to particular dioceses (for example, the definition of “risk assessment” in clause 1 of the Second Schedule which is particular to South Australia).
- (c) Removing female pronouns referring to the office of the Archbishop.
- (d) Referring to lay persons as holders of authorisations rather than licences.

Amending the Adopting Ordinance

38. Clause 3 of the Adopting Ordinance provides that the Adopting Ordinance is to commence on a date determined by the Standing Committee or on a date to be determined at the next ordinary session of the Synod, if the Standing Committee has not resolved to commence the Ordinance by that date.

39. Given that the amendments necessary to make the Safe Ministry Standards suitable and workable in the Diocese of Sydney are yet to be resolved with the GSSC, and in view of the passing of the *Safe Ministry to Children Ordinance 2018*, it is no longer proposed that a date be set for the commencement of the Adopting Ordinance. It is recommended that the Adopting Ordinance be amended so that clause 3 simply provides that it commences on a date determined by the Synod or the Standing Committee, without giving a timeframe for commencement.

40. Clause 4 of the *Safe Ministry to Children Ordinance 2018* provides that it will cease to have effect in the event that the Adopting Ordinance is commenced.

For and on behalf of the Standing Committee.

DR ROBERT TONG AM
Chair, Safe Ministry to Children Canon Subcommittee

29 October 2018

Work undertaken by the Committee for the purposes of Synod Resolution 20/17

1. The Committee first met on 21 November 2017 and resolved to write to the GSSC setting out its concerns regarding the Canon, following consultation with the Chancellor and Deputy Chancellor.
2. A letter was sent to the General Secretary of the General Synod on 24 November 2017.
3. It is not clear whether the letter was provided to the GSSC when it met on 8-9 December 2017. However the General Secretary did forward it to the Safe Ministry Commission of the General Synod (the Commission) for its consideration.

The requirement for National Police History Checks for volunteers under 18 years of age

4. The Chair of the Commission replied to the General Secretary on 21 February 2018 stating that the Commission did not support the Committee's recommendation that the Screening Standard be amended to omit the requirement for a National Police History Check for volunteer church workers who are under 18 years of age and ineligible for a Working with Children Check (WWCC) in their State or Territory.
5. In its reply, the Commission indicated that it interprets clause 6(1) of the Schedule to the Canon as enabling a person in NSW to undertake volunteer ministry to children without a National Police History Check (or WWCC) if they are under 14 years of age.¹
6. The Committee had some reservations about whether this is correct, but accepted the Commission's interpretation of the Canon. On this view, the concern about the need for National Police History Checks in NSW can be narrowed to the age range 14-18 years.
7. Notwithstanding this, the Committee remained deeply concerned about mandatory National Police History Checks for volunteers in this age bracket.
8. A National Police History Check may well be an appropriate form of screening for a person in this age group in certain circumstances, such as if the person is new to the church and has an unknown background, but it should not be a mandatory minimum standard. The Committee considered that the criminal history assessments that operate as a minimum standard should not be more extensive than what is required by State and Territory Governments.
9. The Standing Committee resolved to request the Sydney representatives on the General Synod Standing Committee (GSSC) to move and support a motion at a meeting of the GSSC that the consultation process set out in clause 8 of the Schedule be undertaken in respect to a proposed amendment to clause 6(2)(a) of the First Schedule as follows:
 - (a) inserting the matter " , the person is not able to obtain either check and the person is 18 years or over" after the word "Territory", and
 - (b) substituting the words "the person" for "a volunteer".
10. The proposal was deferred at the 11-12 May 2018 meeting of the GSSC. However the General Synod Office have initiated a consultation process in respect to the proposed amendments.
11. The Commission has indicated that it opposes the proposed amendment.

The Safe Ministry Check

12. Another component of the Screening Standard in the Canon is a Safe Ministry Check (the Check). This is to be completed before a person is ordained, issued with a licence or undertakes ministry to children. The Check requires answers to certain questions and a declaration that the answers are true and correct. It also includes a requirement for a character reference from 2 referees. The material is then to be assessed in determining the person's suitability for ordination, licensing or ministry to children (as the case may be).

¹ A person under the age of 14 years cannot apply for a National Police History Check in NSW.

13. The Canon provides for two forms of Safe Ministry Check – one for clergy and paid church workers and one for volunteers. The Committee objected to the volunteer Safe Ministry Check on the grounds that –
 - (a) the form is too complex and the questions are not age-appropriate for a person under 18 years of age,
 - (b) there is little utility, and there is the possibility for harm, in requiring a person who is 12 years or under (i.e. primary school aged) to complete the form, and
 - (c) the Canon is too prescriptive, and should give some flexibility for dioceses to modify the form to suit their particular context and requirements, without changing the substance of the form.
14. The Commission accepted that there is a need for an alternative form of Safe Ministry Check for persons under 18 years of age. Following consultation with dioceses, they developed a new form for this age group. The Commission adopted many, but not all, of the Committee's suggested changes. Parts of the form (in particular question 7) remained age inappropriate, children aged 12 years and under were still subject to the Check and there was no flexibility for dioceses to modify the form.
15. At its meeting on 11-12 May 2018, the GSSC received a report from the Commission concerning the Safe Ministry Check. The GSSC resolved to request representatives of the Commission and our Diocese to consult, with a view to bringing an agreed form of Check for volunteers under the age of 18, or alternative proposed amendments. The GSSC requested that responses be provided to the General Secretary by 31 July 2018.
16. On 12 July 2018, members of the Committee met with members of the Commission. The form of the Safe Ministry Check was debated and discussed at the meeting. Certain changes to the form were agreed at the meeting, but agreement was not reached on other matters. A revised form of the Check for volunteers under 18 years of age was produced by the Commission.
17. The Chair of the Commission requested that the Diocese of Sydney indicate whether it agrees with the revised form for voluntary church workers under the age of 18 years, with a view to our position then being communicated to the GSSC.
18. At its meeting in July 2018, the Standing Committee agreed to the content of the revised form of the Check for a person under 18 years of age, subject to –
 - (a) the Screening Standard in clause 6(2)(c) the Canon being amended to exempt a volunteer who is 12 years or under from the Check,
 - (b) the section "What you have to do" being amended by omitting the following paragraph –

"If you are over the age of 14 years, you will also need to provide a National History Police History Check unless you are required to have a Working with Children Check or Working with Vulnerable Person Check.", and
 - (c) dioceses having flexibility to use a form of check that "includes" the Safe Ministry Check, as per the consensus at the meeting on 12 July 2018 with respect to the definition of "Safe Ministry Check" in the Canon.
19. The issue will be considered by the GSSC at its meeting in November 2018.

Intervals for conducting the Safe Ministry Check

20. In the course of discussion with the Commission, it became apparent that there were different understandings about the required intervals for conducting a Safe Ministry Check in relation to a person.
21. Representatives of the Commission expressed the view that for a member of clergy, the Safe Ministry Assessment (on the basis of a fresh Check) would need to be conducted prior to ordination, and prior to each licence being issued to the member of clergy thereafter. They noted that this could lead to short or long periods between Safe Ministry Assessments, depending on how often the person was issued with a licence. The Commission has proposed that the Canon require the Safe Ministry Assessment to be conducted at 5 yearly intervals.
22. The Canon does not in fact specify when the Safe Ministry Check is to be completed, only that the results of the Safe Ministry Check and the responses of the person's referees be considered prior to ordination, licensing or undertaking ministry to children (as the case may be) as part of a Safe Ministry Assessment.
23. The Chair of the Commission requested an indication of the Committee's position on the proposal. The Committee has communicated that it does not support the Commission's proposal. The main reason is that the Standards are already too prescriptive and that this would remove discretion from

dioceses to determine themselves how often the Check should be completed before undertaking Safe Ministry Assessments. Five yearly intervals will require 20% of all clergy and church workers to complete the Check each year. This is a substantial number of people, especially if the Commission's proposal extends to volunteers, something the Commission has not clarified.

24. The Commission has not communicated further on this matter and it is unclear whether it will pursue the amendment with the GSSC.

National Register Assessments

25. The Screening Standard in the Canon also requires an assessment against the National Register. In its letter to the General Secretary of the General Synod of 24 November 2017, the Committee raised concerns about the inefficiency of the process proposed by the General Synod Office in view of the very large number of checks that will need to be conducted.

26. In response, on 29 January 2018 the General Secretary stated –

“The GSSC also received a report on the project underway to review the access and search capability of the National Register, to facilitate the increased number of searches anticipated following the application of the new screening requirements under the Canon.

This report outlined the issues associated with changes to the search process, specifically balancing the accessibility of the National Register with the principles of privacy and security entrenched in the design of the National Register Canon and protocols.

It should be noted that dioceses which adopt the Safe Ministry Canon are not obligated to commence National Register assessments until a date determined by the General Synod Standing Committee. (s 14(2) of the Second Schedule, Safe Ministry Canon 2017)

Only when the Standing Committee is satisfied that the National Register assessment process is workable will a date be set by which the requirement will come into force.

The General Synod Office anticipates consulting with dioceses on proposed options for revised search process for the National Register early in 2018 and it is intended to bring a recommendation to the GSSC's meeting in May 2018.

This office will be in contact with the Diocese of Sydney in regard to these initiatives.”

27. The Committee has not received any further update from the General Synod Office concerning the National Register processes.
28. The Committee remains of the view that there is insufficient assurance at present that checks against the National Register can be conducted in an efficient manner.