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## A BILL FOR THE SAFE MINISTRY LEGISLATION AMENDMENTS CANON 2022

10 The General Synod prescribes as follows:

### PART 1 — INTRODUCTORY

#### **Title**

15 1.1 This Canon may be cited as the Safe Ministry Legislation Amendments Canon 2021.

#### **Purpose**

20 1.2 The purpose of this Canon is to amend the following Canons in order to implement certain recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse and to make some other technical amendments to those Canons:

- (a) Chancellors Canon 2001;
- (b) Episcopal Standards (Child Protection) Canon 2017;
- (c) National Register Canon 2007;
- (d) Offences Canon 1962;
- 25 (e) Safe Ministry to Children Canon 2017;
- (f) Special Tribunal Canon 2007;
- (g) Episcopal Standards Canon 2007.

#### **Adoption**

- 30 1.3 (1) Subject to sub-section (2)—
- (a) each Part in this Canon other than Part 1; and
  - (b) each Division in a Part of this Canon—
- is to be considered and treated as—
- (c) a separate bill for the purposes of section 28 of the Constitution; and
  - 35 (d) a separate canon for the purposes of section 30 of the Constitution.
- (2) If this Canon is a provisional canon and a diocesan synod—
- (a) does not assent to this canon in its entirety; and
  - (b) assents to a Part or Division of this canon under sub-section (1)—

5 it is to be considered to have validly assented to the canon constituted by that Part or Division only if on the first occasion on which it assents to a Part or Division it also assents to Part 1 of this canon.

(3) If a diocese—

(a) does not adopt to this canon in its entirety; and

10 (b) adopts a Part or Division of this canon under sub-section (1)—

it is to be considered to have validly adopted the canon constituted by that Part or Division only if on the first occasion on which it adopts that Part or Division it also adopts Part 1 of this canon.

## 15 **Amendments adding definitions to sections listing definitions**

1.4 Where a provision of this Canon amends some other Canon by inserting into a section, sub-section, clause, sub-clause, Schedule or other provision of that other Canon the definition of a word or expression, that definition is to be inserted so that all the definitions in that section, sub-section, clause, sub-clause, Schedule or other provision are and continue to be in alphabetical order.

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## **PART 2 — INTERPRETATION PROVISIONS AND OTHER DRAFTING CHANGES**

### **Division 1 — Definitions of children and offences relating to children**

#### **Definition of sexual offence relating to a child in Episcopal Standards (Child Protection) Canon**

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2.1 In section 2(1) of the Episcopal Standards (Child Protection) Canon 2017 insert:

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

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

30 (b) the possession, production or distribution by a person of any form of child pornography—

in respect of which—

(c) the person has been convicted, or been found guilty without a conviction being recorded, under the laws of the Commonwealth, State or Territory; or

35 (d) a court, commission or tribunal of the Commonwealth, a State or a Territory has made an adverse finding of fact in relation to that person; or

(e) the person has been convicted, or been found guilty without a conviction being recorded, in some other country under the laws of that country that are equivalent to a law of the Commonwealth or of a State or Territory; or

40 (f) the person has not been tried by a court of competent jurisdiction and which if proved—

- 5 (i) if alleged to have been committed within Australia, would constitute a criminal offence in the State or Territory in which it is alleged to have occurred; and
- 10 (ii) if alleged to have been committed in a country other than Australia, would if committed in Australia constitute a criminal offence under a law of the Commonwealth or of a State or Territory.”

### Definitions relating to child abuse in National Register Canon

2.2 In the Third Schedule of the National Register Canon 2007—

- 15 (a) in the definition of “child abuse” for “child offence” substitute “child abuse reporting offence”;
- (b) following the definition of child abuse, insert:
- 20 “**child abuse reporting offence** means a criminal offence against the law of the Commonwealth, a State or a Territory, or against the law of another country which is equivalent to a criminal offence against the law of the Commonwealth, a State or a Territory, involving the failure by a person committing the offence to report child abuse;”
- (c) omit the definition of “child offence”.

### Definition of child in Offences Canon

25 2.3 In section 2B of the Offences Canon 1962 insert:

“child has the same meaning as in the National Register Canon 2007;”.

### Consequential changes to definitions in Special Tribunal Canon

2.4 In section 2 of the Special Tribunal Canon 2007

- 30 (a) insert “child abuse has the same meaning as in the National Register Canon 2007;” and
- (b) insert “sexual offence relating to a child has the same meaning as in the Episcopal Standards (Child Protection) Canon 2017;”.

### 35 Division 2 — Definition of “church worker”

#### Definition of church worker in Episcopal Standards (Child Protection) Canon

2.5 In section 2(1) of the Episcopal Standards (Child Protection) Canon 2017 insert:

“**church worker** means a person who is not a member of the clergy and who—

- 5 (a) is permitted to function by the Bishop of a diocese;
- (b) is employed by a Church body; or
- 10 (c) whether for payment or not, holds a position or performs a function with the actual or apparent authority of a Church authority or a Church body";

#### Definition of church worker in Offences Canon

2.6 In section 2B of the Offences Canon 1962 insert:

- 15 "**church worker** means a person who is not a member of the clergy and who—
- (a) is permitted to function by the Bishop of a diocese;
- (b) is employed by a Church body; or
- 20 (c) whether for payment or not, holds a position or performs a function with the actual or apparent authority of a Church authority or a Church body"

#### Definition of church worker in Safe Ministry to Children Canon

25 2.7 In section 3 of the Safe Ministry to Children Canon 2017 for the definition of "church worker" substitute:

"church worker means a person undertaking any ministry to children who is not a member of clergy and who —

- (a) is permitted to function by the Bishop of a diocese; or
- 30 (b) is employed by a Church body; or
- (c) whether for payment or not, holds a position or performs a function with the actual or apparent authority of a Church authority or a Church body."

#### Division 3 - Definitions relating to "clergy"

#### 35 Definition of member of the clergy in Offences Canon

2.8 In section 2B of the Offences Canon 1962 insert "**member of the clergy** means a person who is a bishop, priest or deacon in the Church."

#### Definition of member of the clergy in Episcopal Standards (Child Protection) Canon

40 2.9 In section 2(1) of the Episcopal Standards (Child Protection) Canon 2017 insert "**member of the clergy** means a person who is a bishop, priest or deacon in the Church."

## 5 **Definition of “other clergy” in Safe Ministry to Children Canon**

2.10 In clause 1 of the Second Schedule of the Safe Ministry to Children Canon 2017 insert:

**"other clergy** means—

- 10 (a) a bishop, priest or deacon in a Province; and  
(b) an ordained minister of a denomination;".

### **Division 4 — Definition of “denomination”**

#### **Definition of denomination in Safe Ministry to Children Canon**

15 2.11 In Clause 1 of the Second Schedule of the Safe Ministry to Children Canon 2017 insert:

**"denomination** means a religious body or a religious organisation declared to be a recognised denomination for the purposes of the *Marriage Act 1962* (Cth), other than the Anglican Church of Australia, that holds the Christian Faith as set forth in the Nicene Creed and the Apostles' Creed;".

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### **Division 5 — Definition of “examinable conduct”**

#### **Refinement to definition of examinable conduct in Episcopal Standards (Child Protection) Canon**

25 2.12 In section 2(1) of the Episcopal Standards (Child Protection) Canon 2017 in the definition of "examinable conduct" in sub-paragraph (iii) after "to perform" insert "a duty or".

### **Division 6 - Definition of authorisation to function and authorising to function**

#### **Definitions in Episcopal Standards Canon 2007**

30 2.13 In section 2 of the Episcopal Standards Canon 2007 insert:

**"authorisation to function** means a licence or any written instrument by which a member of the clergy is appointed, authorised, permitted or sanctioned to exercise ministry as a member of the clergy and **authorising to function** and **authorised to function** have a corresponding meaning;".

#### **Definitions in Episcopal Standards (Child Protection) Canon**

2.14 In section 2(1) of the Episcopal Standards (Child Protection) Canon 2017 insert:

- 40 (a) **"authorisation to function** means a licence or any written instrument by which a member of the clergy is appointed, authorised, permitted or sanctioned to exercise ministry as a member of the clergy and **authorising to function** and **authorised to function** have a corresponding meaning;" and

- 5 (b) **"permission to function** means a licence or any written instrument by which a person who is not a member of the clergy is appointed, authorised, permitted or sanctioned to exercise ministry and **permitting to function** and **permitted to function** have a corresponding meaning;".

#### 10 **Definitions in Offences Canon**

2.15 In section 2B of the Offences Canon 1962—

- (a) insert:

15 **"authorisation to function** means a licence or any written instrument by which a member of the clergy is appointed, authorised, permitted or sanctioned to exercise ministry as a member of the clergy and **authorising to function** and **authorised to function** have a corresponding meaning;"; and

- (b) insert:

20 **"permission to function** means a licence or any written instrument by which a person who is not a member of the clergy is appointed, authorised, permitted or sanctioned to exercise ministry and **permitting to function** and **permitted to function** have a corresponding meaning;".

#### **Definitions in National Register Canon**

2.16 In the Dictionary in the Third Schedule to the National Register Canon 2007—

- (a) insert:

25 (i) **"authorisation to function** means a licence or any written instrument by which a member of the clergy is appointed, authorised, permitted or sanctioned to exercise ministry as a member of the clergy and **authorising to function** and **authorised to function** have a corresponding meaning;"; and

30 (ii) **"permission to function** means a licence or any written instrument by which a person who is not a member of the clergy is appointed, authorised, permitted or sanctioned to exercise ministry and **permitting to function** and **permitted to function** have a corresponding meaning;";

35 (b) the definition of "licence" is repealed.

#### **Definitions in Safe Ministry to Children Canon**

2.17 In section 3 of the Safe Ministry to Children Canon 2017—

- (a) insert:

40 (i) **"authorisation to function** means a licence or any written instrument by which a member of the clergy is appointed, authorised, permitted or sanctioned to exercise ministry as a member of the clergy and **authorising to function** and **authorised to function** have a corresponding meaning;" and

45 (ii) **"permission to function** means a licence or any written instrument by which a person who is not a member of the clergy is appointed,

5 authorised, permitted or sanctioned to exercise ministry and **permitting to function** and **permitted to function** have a corresponding meaning;”;

(b) the definition of "licence" is repealed.

10 2.18 In clause 1 of Schedule 2 of the Safe Ministry to Children Canon 2017 the definition of "licensed clergy" is repealed.

### Consequential amendments to Canons

2.19 Schedule 1 applies.

## 15 Division 7 — Definitions relating to prescribed standards

### Definition of standard of screening in the Episcopal Standards (Child Protection) Canon

2.20 In section 2(1) of the Episcopal Standards (Child Protection) Canon 2017 insert:

“**standard of screening** means—

20 (a) in a diocese in which the Safe Ministry to Children Canon 2017 is in force, a standard of screening applying under Part 3 of that Canon; or

(b) in a diocese in which the Safe Ministry to Children Canon 2017 is not in force, the standard of screening applying in that diocese;”.

### Definition of standard of screening in the Offences Canon

25 2.21 In section 2B of the Offences Canon 1962 insert:

“**standard of screening** means—

(a) in a diocese in which the Safe Ministry to Children Canon 2017 is in force, a standard of screening applying under Part 3 of that Canon; or

30 (b) in a diocese in which the Safe Ministry to Children Canon 2017 is not in force, the standard of screening applying in that diocese.”

### Definition of expressions relating to standards in the Safe Ministry to Children Canon

2.22 In section 3 of the Safe Ministry to Children Canon 2017

35 (a) for the definition of “standards for safe ministry with Persons of Concern” substitute “**standards for safe ministry with Persons of Concern** means the standards in Part 4 of the Second Schedule;”;

(b) for the definition of "standards of screening" substitute "**standards of screening** means the standards in Part 2 of the Second Schedule;”; and

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- 5 (c) for the definition of "standards of training" substitute "**standards of training** means the standards in Part 3 of the Second Schedule;".

### Division 8 - Definition of statutory clearance

#### Definition of statutory clearance in Safe Ministry to Children Canon

- 10 2.23 In section 3 of the Safe Ministry to Children Canon 2017 insert "**statutory clearance** has the same meaning as in the National Register Canon 2007;".

#### Definition of statutory clearance in the National Register Canon

- 15 2.24 In the Third Schedule of the National Register Canon 2007, insert—
- "**statutory clearance** means—
- (a) a working with children check; or
  - (b) a working with vulnerable people check by reason that the person has contact with a child as part of engaging in a regulated activity—
- under the laws of the Commonwealth or of a State or Territory;".

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### Division 9 —Other amendments to the Episcopal Standards (Child Protection) Canon 2017

#### Section 14 clarification

- 25 2.25 In the Episcopal Standards (Child Protection) Canon 2017 Canon, in section 14 following "the duties of office" insert "under section 13".

#### Use of information from commission of inquiry

- 30 2.26 In section 29(5) of the Episcopal Standards (Child Protection) Canon 2017, for "court or tribunal" where twice appearing substitute "court, tribunal or commission of inquiry".

### Division 10 — Various amendments to Safe Ministry to Children Canon 2017 and consequential amendments

#### Definitions of "occasional ministry"

- 35 2.27 In section 3 of the Safe Ministry to Children Canon 2017 insert
- "**occasional ministry** to children means the exercise of a pastoral ministry to children where the ministry is not regular and involves direct contact with children that is not incidental."

## 5 Definitions in Second Schedule of Safe Ministry to Children Canon

2.28 Clause 1 of the Second Schedule of the Safe Ministry to Children Canon 2017 is amended as follows:

(a) in the definition of "information"—

(i) after "or denomination" insert "or institution"; and

10 (ii) after "undertaking ministry" insert "or of persons working for the institution";

(b) insert:

"**institution** means an institution that is not an institution of this Church or of a Province or of a denomination;

15 **institutional assessment** means a reasonable endeavour made to obtain information about a person from an institution authority and includes consideration of any information so obtained;

20 **institution authority** means a person or body of an institution with the power to elect, appoint, suspend or dismiss a person as an officer, employee or volunteer of that institution;

(c) in the definition of "Province" after "Church" insert "or an extra-provincial church under the direct metro-political jurisdiction of the Archbishop of Canterbury";

(d) in the definition of "responsible authority" for paragraph (c) substitute:

"(c) a denominational authority; or

25 (d) an institution authority;"

### Meaning of "screened"

2.29 After clause 1 of the Second Schedule of the Safe Ministry to Children Canon 2017, insert:

30 "1A. A person is **screened** if the prescribed standards of screening have been applied in respect of that person by the relevant screening authority."

### Consequential amendment to National Register Canon 2007

2.30 In the Third Schedule to the National Register Canon 2007—

35 (a) in the definition of "adverse check", for "working with children check, or working with vulnerable people check" substitute "statutory clearance";

(b) omit the definition of "working with children check"; and

(c) omit the definition of "working with vulnerable people check".

**5 Consequential amendment to Safe Ministry to Children Canon 2017**

2.31 In section 3 of the Safe Ministry to Children Canon 2017—

(a) in paragraph (a) of the definition of “ministry to children”, for “working with children check, or working with vulnerable people check” substitute “statutory clearance;

10 (b) omit the definition of “working with children check”; and

(c) omit the definition of “working with vulnerable people check”.

**15 Definition of safe ministry role**

2.32 In section 3 of the Safe Ministry to Children Canon 2017 for the definition of "safe ministry role" substitute:

“safe ministry role means a role:

20 (a) in recommending or determining standards and guidelines for safe ministry to children or with a Person of Concern; or

(b) in recommending or determining or supervising safe ministry in a parish or congregation with a Person of Concern;

25 but excludes a role as a member of the synod of the diocese and, if a diocese has established a diocesan safe ministry authority separate from its diocesan council excludes a role as a member of the diocesan council;”

**PART 3 — NATURE AND AUDIT OF RECORDS AND PROCESSES****30 Division 1 — Matters on National Register****Additional matters in National Register Canon**

3.1 In the Third Schedule of the National Register Canon 2007—

(a) in the definition of “child abuse”, after paragraph (ix) insert:

35 “or;

(x) imaged-based abuse;”;

40 (b) for paragraph (b), substitute:

“possessing, producing or distributing child exploitation material in circumstances that have been found to constitute, or may constitute, a criminal offence;”

(c) after paragraph (b) insert:

45 “however done, including by or through the use of the internet, electronic means and other like technology.”

5 (d) insert:

“**image-based abuse** means taking, distributing or threatening to distribute intimate, nude or sexual images of another person in circumstances that have been found to constitute, or may constitute, a criminal offence;”;

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(e) in the definition of “sexually inappropriate behaviour” for “sexual exploitation or sexual harassment, or grooming” substitute “sexual exploitation, sexual harassment, grooming, or image-based abuse”.

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## **Division 2 — Statutory clearances**

### **Meaning of “Second Schedule”**

3.2 In this Division, “Second Schedule” means the Second Schedule of the Safe Ministry to Children Canon 2017.

### **Amendment to clause 2 of Second Schedule**

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3.3 In clause 2(2) of the Second Schedule, for “a working with children check or a working with vulnerable people check by reason that the person has contact with a child as part of engaging in a regulated activity” substitute “a statutory clearance”.

### **Amendments to clause 3 of Second Schedule**

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3.4 In clause 3 of the Second Schedule—

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(a) in sub-clause (1) for “working with children check, or an unconditional working with vulnerable people check by reason that the person has contact with a child as part of engaging in a regulated activity, where required by the laws of the Commonwealth or a State or Territory” substitute “statutory clearance”;

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(b) in sub-clause (2)(a) for “where a working with children check, or a working with vulnerable people check by reason that the person has contact with a child as part of engaging in a regulated activity, is not required by the laws of the Commonwealth or a State or Territory, a criminal history assessment or a risk assessment” substitute “where a statutory clearance is not required by or is not able to be sought under the laws of a Commonwealth, State or Territory”.

### **Amendments to clause 4 of Second Schedule**

3.5 In clause 4 of the Second Schedule—

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(a) for sub-clause (1) substitute:

“(1) the person holds a statutory clearance; and”;

(b) in sub-clause (2)(a), for “where a working with children check, or a working with vulnerable people check by reason that the person has contact with a child as part of engaging in a regulated activity, is not required by the laws of

- 5 a Commonwealth, State or Territory" substitute "where an unconditional statutory clearance is not required by or is not able to be sought under the laws of a Commonwealth, State or Territory"

#### **Amendments to clause 5 of Second Schedule**

- 10 3.6 In clause 5 of the Second Schedule—
- (a) for sub-clause (1) substitute:
- "(1) the person holds a statutory clearance; and";
- (b) in sub-clause (2)(a), for "where a working with children check, or a working with vulnerable people check by reason that the person has contact with a child as part of engaging in a regulated activity, is not required by the laws of a Commonwealth, State or Territory" substitute "where an unconditional statutory clearance is not required by or is not able to be sought under the laws of a Commonwealth, State or Territory".
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#### **Amendments to clause 6 of Second Schedule**

- 20 3.7 In clause 6 of the Second Schedule—
- (a) for sub-clause (1) substitute:
- "(1) the person holds an unconditional statutory clearance or a conditional statutory clearance that enable the ministry to be undertaken where required by or is not able to be sought under the law of the Commonwealth or a State or Territory; and";
- (b) in sub-clause (2)(a), for "where a working with children check, or a working with vulnerable people check by reason that the person has contact with a child as part of engaging in a regulated activity, is not required by the laws of a Commonwealth, State or Territory the person is not able to obtain either check" substitute "where an unconditional statutory clearance or a conditional statutory clearance that authorises the ministry to be undertaken is not required by or is not able to be sought under the laws of a Commonwealth, State or Territory".
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### **Division 3 — Equivalent Audit**

#### **Provision for equivalent audit**

- 3.8 After section 12 of the Safe Ministry to Children Canon 2017 insert:
- "12A. (1) Where the Standing Committee is satisfied that—
- (a) an audit equivalent to a diocesan audit is required pursuant to the laws of the Commonwealth or of a State or Territory; and
- (b) the report of the audit is publicly available—
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5 the Standing Committee may by a two-thirds majority on the application of that diocese exempt the diocese from a diocesan audit.

(2) Where the Standing Committee is satisfied that—

10 (a) an audit equivalent to part of a diocesan audit is required pursuant to the laws of the Commonwealth or of a State or Territory; and

(b) the report of the audit is publicly available—

15 the Standing Committee may by a two-thirds majority on the application of that diocese exempt the diocese from that part of a diocesan audit."

#### Division 4 — Records and notifications

##### Address for notice

20 3.9 Sections 8(3)(b) and 10(2)(a) of the National Register Canon 2007 are amended by substituting for the words "his or her last known postal or electronic address" the words "his or her postal or electronic address where that address is known and reasonably believed to be used by the member of clergy or the lay person".

##### Amendments to Dictionary in National Register Canon

25 3.10 In the Third Schedule of the National Register Canon 2007—

(a) in the definition of "Information", after the word "Schedule" where twice appearing insert "so far as they are known";

(b) for paragraph (b) of the definition of "notifiable complaint" substitute:

30 "(b) which the Director of Professional Standards has certified has been sent to the postal or electronic address of the member of clergy or lay person that is known or has not been sent to the member of clergy or lay person because neither their postal nor their electronic address is known; or".

#### 35 PART 4 — CONDUCT TO SUPPORT PROCESSES AND PROTECT CHILDREN

##### Additional examinable conduct in relation to bishops

4.1 In section 2(1) of the Episcopal Standards (Child Protection) Canon 2017—

(a) insert—

40 "actual knowledge includes wilfully shutting one's eyes to the obvious and wilfully and recklessly failing to make such inquiries as an honest and reasonable person would make;"

- 5 (b) in the definition of “examinable conduct”—
- (i) after sub-paragraph (a)(iii) insert:
- “(iia) the failure without reasonable excuse to exercise a power to initiate, or to investigate whether to initiate, a professional standards process;”;
- 10 (ii) after sub-paragraph (a)(iv) insert:
- “(v) subject to section 60(2) of the Constitution, the failure without reasonable excuse to give effect to a recommendation to the Bishop under a professional standards process;
- 15 (vi) the Bishop ordaining or authorising to function a member of the clergy or permitting to function a church worker contrary to, or in the absence of, a recommendation of a screening authority, or with actual knowledge or reasonable grounds for suspecting that the screening authority may not have properly discharged its statutory functions in making its relevant recommendation;
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- (vii) the Bishop ordaining or authorising to function a member of the clergy, or permitting to function a church worker, who poses a serious risk to the safety of children with actual knowledge or reasonable grounds for suspecting that the person poses that risk;” and
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- (iii) in the definition of “examinable conduct” in paragraph (b) after sub-paragraph (iv) insert:
- “(v) subject to section 60(2) of the Constitution, the failure without reasonable excuse to give effect to a recommendation given to the Bishop under a professional standards process;
- 30
- (vi) ordaining or authorising to function a member of the clergy or permitting to function a church worker contrary to, or in the absence of, a recommendation of a screening authority, or with actual knowledge or reasonable grounds for suspecting that the screening authority may not have properly discharged its statutory functions in making its relevant recommendation;
- 35
- (vii) the Bishop ordaining or authorising to function a member of the clergy, or permitting to function a church worker, who poses a serious risk to the safety of children with actual knowledge or reasonable grounds for suspecting that the person poses that risk.”
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**5 Additional offence relating to making appointments**

4.2 In section 1 of the Offences Canon 1962, after item 8 insert:

- 10 "9. Authorising to function a member of the clergy or permitting to function a church worker contrary to, or in the absence of, a recommendation of a screening authority, or with actual knowledge or reasonable grounds for suspecting that the screening authority may not have properly discharged its statutory functions in making its relevant recommendation."

**Additional offences within the jurisdiction of the Special Tribunal**

15 4.3 (1) After Item 9 of section 2 of the Offences Canon 1962 insert:

- 20 "10. Subject to section 60(2) of the Constitution, failure without reasonable excuse to give effect to a recommendation given to the person under section 53 of the Constitution or by a Board established by or under an ordinance of a provincial synod or diocesan synod for dealing with the fitness of a member of the clergy or church worker to be or to remain in Holy Orders or in other ministry.

- 25 11. Ordaining or authorising to function a member of the clergy or permitting to function a church worker contrary to, or in the absence of, a recommendation of a screening authority, or with actual knowledge or reasonable grounds for suspecting that the screening authority may not have properly discharged its statutory functions in making its relevant recommendation.

- 30 12. Ordaining or authorising to function a member of the clergy, or permitting to function a church worker, who poses a serious risk to the safety of children with actual knowledge or reasonable grounds for suspecting that the person poses that risk."

(2) After Item 4 of section 2A of the Offences Canon 1962 insert:

- 35 "5. Subject to section 60(2) of the Constitution, failure without reasonable excuse to give effect to a recommendation given to the person under section 53 of the Constitution or by a Board established by or under an ordinance of a provincial synod or diocesan synod for dealing with the fitness of a member of the clergy or church worker to be or to remain in Holy Orders or in other ministry.

- 40 6. Ordaining or authorising to function a member of the clergy or permitting to function a church worker contrary to, or in the absence of, a recommendation of a screening authority, or with actual knowledge or reasonable grounds for suspecting that the screening authority may not have properly discharged its statutory functions in making its relevant recommendation.

- 45 7. Ordaining or authorising to function a member of the clergy, or permitting to function a church worker, who poses a serious risk to

5 the safety of children with actual knowledge or reasonable grounds for suspecting that the person poses that risk."

### Meaning of "actual knowledge"

10 4.4 In section 2B of the Offences Canon 1962 insert—

"**actual knowledge** includes wilfully shutting one's eyes to the obvious and wilfully and recklessly failing to make such inquiries as an honest and reasonable person would make;"

### 15 Date of operation of new offences

4.5 After section 4 of the Offences Canon 1962, insert:

20 "5. The offences in Item 9 of section 1, Items 10, 11 and 12 of section 2 and Items 5, 6 and 7 of section 2A apply only to conduct occurring after Part 4 of the Safe Ministry Legislation Amendments Canon 2020 has been adopted in the diocese in which the offences allegedly have occurred."

## PART 5 — RESPONDING TO COMPLAINTS AND OFFENCES

### Risk assessment during investigation by ESC

25 5.1 After section 18 of the Special Tribunal Canon 2007 insert:

"18A. When the ESC has commenced an investigation of information under this Part, it must conduct an initial assessment to identify any risks to children and must take whatever steps are reasonably available and practicable to minimise risks identified."

### 30 Initial risks assessment by ESC

5.2 After section 12 of the Episcopal Standards (Child Protection) Canon 2017 insert:

35 "12A. When the ESC has commenced an investigation of information under this Part, it must conduct an initial assessment to identify any risks to children and must take whatever steps are reasonably available and practicable to minimise risks identified."

### Bringing a charge of child abuse

5.3 Section 43 of the Special Tribunal Canon 2007 is amended as follows:

(1) In sub-section (1), for "A charge against a bishop" substitute "Subject to sub-section (1A), a charge against a Bishop";

40 (2) After sub-section (1) insert:

"(1A) Only the ESC can bring a charge of a sexual offence relating to a child against a Bishop in the Tribunal."

5 **Amendments to section 49**

5.4 In section 49 of the Episcopal Standards (Child Protection) Canon 2017—

(a) for "If after investigating" substitute "(1) Subject to sub-section (2), if after investigating";

(b) in paragraph (l), for "Bishop" substitute "bishop"; and

10 (c) in paragraph (m), for "Bishop" substitute "bishop".

(d) after the current section 49, insert:

15 "(2) Where the Board is satisfied that the bishop has been convicted by a court exercising criminal jurisdiction of committing while a member of the clergy a sexual offence relating to a child, the Board must determine that the bishop be deposed from the exercise of Holy Orders."

**PART 6 — CONFLICTS OF INTEREST AND LOYALTY****Division 1 — Conflict of interest in panel for Episcopal Standards Board**20 **Definition of conflict of interest in Episcopal Standards (Child Protection) Canon**

6.1 In section 2 of the Episcopal Standards (Child Protection) Canon 2017 after sub-section (1) insert:

25 "(1A) For the purposes of this Canon, a person has a conflict of interest when their responsibilities arising from their role may be influenced or affected, or may be perceived as being influenced or affected, by—

(a) their personal financial interest, or those of their family or friends;

(b) their reputation, or that of their family or friends;

(c) their obligations or loyalty to another person or organisation;

30 (d) their previous or current relationship (whether personal or professional) with someone who might be affected by how they discharge those responsibilities; or

(e) their previous or current involvement in another capacity in a matter now falling within those responsibilities."

35 **Managing conflicts of interest**

6.2 In section 23 of the Episcopal Standards (Child Protection) Canon 2017—

(a) after sub-section (3) insert:

"(3A) A member of the panel must without delay disclose to the President, or if there is a vacancy in the office of President to the Deputy

5 President, any conflict of interest that the member has in relation to a matter before the Board.”;

(b) in sub-section (4), for "a personal interest in" substitute "a conflict of interest in relation to ";

10 (c) in sub-section (5), for "a personal interest in " substitute "a conflict of interest in relation to ".

## Division 2 — Special Tribunal

### Definition of conflict of interest for Special Tribunal

15 6.3 In section 2 of the Special Tribunal Canon—

(a) before the current section, insert “(1)”; and

(b) after the current section insert

20 “(2) For the purposes of this Canon, a person has a conflict of interest when their responsibilities arising from their role may be influenced or affected, or may be perceived as being influenced or affected, by—

(a) their personal financial interest, or those of their family or friends;

25 (b) their reputation, or that of their family or friends;

(c) their obligations or loyalty to another person or organisation;

30 (d) their previous or current relationship (whether personal or professional) with someone who might be affected by how they discharge those responsibilities; or

(e) their previous or current involvement in another capacity in a matter now falling within those responsibilities.”

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### Disqualification where conflict of interest

6.4 In the Special Tribunal Canon 2007 after section 30 insert:

40 "30A. A member of the panel must without delay disclose to the senior presidential member, or if there is a vacancy in the office of senior presidential member to the other presidential member, any conflict of interest that the member has in relation to a matter before the Tribunal.

- 5           30B.   Where—
- (a)     a member of the panel has disclosed a conflict of interest under section 30A; or
- (b)     in the opinion of the senior presidential member, or if there is a vacancy in the office of senior presidential member in the opinion of the other presidential member, a member of the panel has a conflict of interest in relation to a matter before the Tribunal—
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- that member is disqualified from participating in the matter."

### **Division 3 — Chancellors as members of diocesan tribunals**

#### **15 Chancellor not to be president of diocesan tribunal**

6.5       Section 2(3) of the Chancellors Canon 2017 is repealed.

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**Schedule 1****Sch 1.1 Amendments to Episcopal Standards (Child Protection) Canon 2017**

In—

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- (a) the definition of "relevant diocesan Bishop" in section 2(1); and
- (b) the paragraph (c) of the definition of "relevant Metropolitan" (where twice appearing)—

for "licensed" substitute "authorised to function".

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**Sch 1.2 Amendment to Offences Canon 1962**

In section 1 of the Offences Canon 1962, for "licensed" substitute "authorised to function".

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**Sch 1.3 Amendment to National Register Canon 2007**

(1) In the National Register Canon 2007, in—

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- (a) section 5(1)(e);
- (b) section 6(1)(d);

for "issued with a licence" substitute "authorised to function".

(2) In the National Register Canon 2007, in—

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- (a) item 8 of the First Schedule (where three times appearing);
- (b) item 21 of the First Schedule—

for "licence" substitute "licence or authorisation to function".

(3) In the National Register Canon 2007, in—

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- (a) item 5 of the Second Schedule (where three times appearing);
- (b) item 16 of the First Schedule—

for "licence" substitute "licence or permission to function".

(4) In the Third Schedule of the National Register Canon 2007—

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- (a) in the definition of "adverse risk assessment" for "a licence" substitute "an authorisation to function";
- (b) in the definition of "church authority" after "ordain," insert "authorise to function, permit to function,"; and
- (c) in the definition of church worker for "licensed or authorised" substitute "permitted to function".

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**Sch 1.4 Amendments to the Safe Ministry to Children Canon 2017**

(1) In the Safe Ministry to Children Canon 2017, in clause 1 of the Second Schedule in—

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- (a) the definition of "denominational authority";
- (b) the definition of "diocesan authority"; and
- (c) the definition of "provincial authority"—

- 5 after "ordain," insert "authorise to function, permit to function,".
- (2) In the Safe Ministry to Children Canon 2017, in clause 1 of the Second Schedule, in the definition of "screening authority" for "or a member of the clergy to be licensed, or a church worker to be licensed or authorised" substitute "or a member of the clergy to be authorised to function or a church worker permitted to function".
- 10
- (3) In the Safe Ministry to Children Canon 2017, in the Second Schedule, in—
- (a) in clause 2 (where four times appearing);
- (b) in clause 9 (where twice appearing—
- 15 for "licensed as clergy, appointed or elected as the bishop of a diocese, or licensed or authorised or appointed as church workers," substitute "authorised to function, appointed or elected as the bishop of a diocese, or permitted to function".
- (4) In the Safe Ministry to Children Canon 2017, in the Second Schedule, in clause 4—
- 20 (a) for the heading to the clause, substitute "The Bishop of the diocese and clergy authorised to function";
- (b) for "licensed" substitute "authorised to function".
- (5) In the Safe Ministry to Children Canon 2017, in the Second Schedule, in clause 5—
- 25 (a) for the heading to the clause, substitute "Church workers who are paid or permitted to function"; and
- (b) for "licensed or authorised" substitute "permitted to function".
- (6) In the Safe Ministry to Children Canon 2017, in the Second Schedule—
- 30 (a) in clause 7, for "a licensed member of the clergy, the bishop of the diocese, or a licensed, authorized, paid or voluntary church worker,,"; and
- (b) in clause 10(1) for "a licensed member of the clergy, the bishop of the diocese, or a licensed, authorised, paid or voluntary church worker," (where twice appearing)—
- 35 substitute "authorised to function, appointed or elected as the bishop of a diocese, or permitted to function as a paid or voluntary church worker".
- (7) In the Safe Ministry to Children Canon 2017, in the Second Schedule, in clause 10(1) for paragraph (b) substitute:
- 40 "by deacons, clergy authorised to function, and church workers permitted to function, within three years prior to being ordained, authorised to function, permitted to function or appointed to undertake ministry to children, except where the bishop of the diocese or his or her delegate is satisfied there are exceptional circumstances in which case the training is to be completed as soon as practicable but not later than three months after the person is ordained, authorised to function, permitted to function or appointed to undertake ministry to children; or".
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