

Amanda Zaicos

From: Bishop Peter
Sent: Tuesday, 31 August 2010 1:12 PM
To: Paul Rosser; Bishop Secretary; John Cleary
Subject: RE: Professional Standards (Amendment) Ordinance 2010

Dear Paul, John and +Brian:

I am grateful for the work that you have done. Thanks for circulating it to me. I offer the following comments

1. Change from 'Prohibition Order' to 'Directions Order' – I am not sure of the reasons for adopting a terminology different to the National Model Ordinance (NMO).
2. There are some definitions in the NMO which are not included in the Ordinance for this Diocese – child, child abuse, neglect, physical abuse, sexual abuse, sexual misconduct and spiritual abuse. I am not sure whether those terms are then used in the Ordinance or whether they establish the definitions that are used in the protocol. They could be considered in the context of the protocol.
3. The NMO provides in section 15(e) the authority to make disclosures to insurers.
4. I note that our section 19 and the NMO section 16 are drafted differently. I don't think our Ordinance excludes anything proposed by the NMO but there may be some legal permutation in the drafting I don't understand.
5. I note that our section 20 replicates NMO section 17 and allows the PSC to release information to the public as it determines. At the very least I think there should be consultation with the Bishop and I would hold the view that the Bishop should authorise any public release of information.
6. The NMO makes specific provision in section 22 (our section 25) for the PSD to receive information on behalf of the PSC. I think that is a useful inclusion.
7. NMO 22(c) provides for the exclusion of the PSD from PSC meetings in specific circumstances. We should include that provision.
8. I am concerned about the Diocesan Council wittingly or unwittingly meddling in complex investigations which may have serious legal or pastoral consequences. I think section 21(3) currently provides that the Bishop should have relevant up-to-date information. I suggest that your proposed section 21(4) should read "The PSC shall provide to the Diocesan Council in its annual report information on ... then sub-sections (a) – (c)"
9. Having reviewed the NMO I wonder if your intention in your proposed 22(c) is section 35 rather than section 34.
10. I think your proposed 23(4) may be bad policy in the event of certain types of information that may come before a PSC. There will be annual scrutiny under your proposed section 21(4). Would it be sufficient that your proposed section 23(4) were to read "The PSC shall not appoint any person or organisation under paragraph 1(e) without prior consultation with the Bishop."
11. I would have thought the matters covered in your proposed section 23(5) and 23(6) would be covered by the DC making resolutions in accordance with section 23(i).
12. In relation to your proposed 26C I would have thought the Church authority in that circumstance is the Bishop. The Bishop exercising the relationship envisaged by the Diocesan Council Ordinance 1929 may seek the advice of the Diocesan Council. I am concerned that the introduction of 26C could introduce a delaying tactic where a person the subject of a significant complaint could frustrate proceedings by issuing a complaint against the PSD. I wonder whether your proposed Part 12 and the other suggestions around suspension alleviate the majority of these concerns or whether there is another way of protecting our processes.
13. I am not sure it is clear that it is the PSC to whom the respondent needs to show cause under your proposed section 35(2)
14. Your proposed section 35 inverts the framework for suspension in the current Ordinance and NMO section 32. The drafting of those sections allow the PSC to consider anything but they must give attention to certain things. Your proposal limits the PSC to specified circumstances. I worry that we will discover something in the future which a reasonable person may suggest there should be a suspension but for which we have lost the power of suspension. If there is support for the drafting you propose I suggest that in your proposed

- section 35(4)(a)(ii) the word 'substantial' should be replaced by the word 'reasonable'. I wonder whether the phrase '*whether or not the information is publicly known*' at the end of that paragraph. I suggest that an additional paragraph be included in section 35(4)(a)... *there is, in the opinion of the PSC, a reasonable likelihood that a failure to suspend could impede an investigation by the PSC or by any authority referred to in paragraph 23(1)(k)*
15. I suggest that in your proposed sub-section 35(7) would have the same effect without the words "alleged to be".
 16. I wonder if in your proposed subsection 35(6) whether the words "after due consultation with the PSC" should be inserted after the word "may".
 17. I wonder whether we should continue to allow for representation by people other than lawyers in section 68. It may be that the respondent wants another person to speak on their behalf but is not seeking recourse to law.
 18. I note that by your proposed section 76A you seek to re-introduce the Bishop into the propose in a way that the NMO only intimates but does not assist. I am concerned that the proposed section 76A and the consequential references to it may place the Bishop in an untenable situation. Most of the concerns about process and appropriateness about a PSB recommendation will be attended to by the introduction of PART 12 which I think broadly mirrors the NMO. I wonder if the same option of the Bishop or Church authority exercising a prerogative of mercy could be given by reproducing a variant of section 60(2) of the Constitution.

Paul, this is a response to the basic wording of what you have proposed. I have not had the opportunity to discuss it with others and my views could be shaped further by those conversations.

Grace and peace

+Peter

From: Paul Rosser [mailto:REDACTED]
Sent: Tuesday, 31 August 2010 12:34 AM
To: Bishop Secretary; Bishop Peter; John Cleary
Subject: Professional Standards (Amendment) Ordinance 2010

Gentlemen,

Attached find a draft which I would propose presenting to DC at the meeting on 30 September.

1. Appropriate renumbering has been effected.
2. The suspension provisions adhere to the circulated draft.
3. I have spelled out specific powers for DC with respect to finance and persons engaged by the PSC. It is ironic that DC appoints both the Director and the PSC but has no specific power over the persons it might engage
4. I have proposed that only qualified persons should represent partes before the Board; this appears to me to be highly desirable.
5. I have introduced an additional step prior to the acceptance of the Board's recommendation.
6. I have adopted from the Model Ordinance the review provisions.
7. I have made specific provision for complaints against the Director and PSC

There is still, I believe, a body of opinion that the Ordinance should be repealed in its entirety. My proposals do, I think, deal with those areas that appear to have caused the greatest concerns.

I welcome comments

Paul Rosser

31/08/2010

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