

BILL 16

A BILL FOR THE DISCLOSURE OF INFORMATION CANON 2017

EXPLANATORY MEMORANDUM

General Background

1. There have been instances where clergy and authorised lay persons in a diocese of this Church, who are known or suspected of having abused people, have moved to and become authorised for ministry in another diocese of this Church, another Province of the Anglican Communion, or another diocese or denomination, without disclosure of this information, and continued to abuse people. The current informal system, where it has operated, has not always ensured that accurate and complete information about such clergy and lay persons has been shared with other Provinces, other dioceses or denominations.
2. The Anglican Consultative Council in 2016 (ACC-16) by resolution 16.27 welcomed, and requested each member church of the Anglican Communion to implement, the Ministry Suitability Information Protocol which is intended to ensure that information as to the suitability for ministry of such clergy and lay persons is shared between Provinces.
3. The object of this canon is to:
 - (a) implement the Ministry Suitability Information Protocol so far as provides for the disclosure of information to the person or body in a Province responsible for authorising church workers to undertake ministry; and
 - (b) to provide for the disclosure of information to the bishop of another diocese of this Church, or a person or body of another denomination having authority to ordain, license, elect, appoint, dismiss or suspend a member of the clergy or a lay person of that diocese or that denomination.
4. The Ministry Suitability Information Protocol is set out in the Schedule to assist in understanding the requirement for the disclosure of Ministry Suitability Information.
5. This canon provides for:
 - (a) for the General Secretary, upon receiving an application for information about a church worker from a diocesan authority or a prescribed person, where permitted by a protocol under the National Register Canon 2007 to provide an extract from

- the National Register relating to the church worker to the prescribed person, except where disclosure of the information is unlawful or is reasonably believed to be likely to give rise to legal liability;
- (b) for a prescribed authority, upon receiving an application for information about a church worker from the General Secretary or a prescribed person, to reasonably endeavour to provide the information as soon as practicable to the prescribed person, except where disclosure of the information is unlawful or is reasonably believed to be likely to give rise to legal liability;
 - (c) the deemed consent of a church worker, in respect of whom an application for information by a prescribed person is received by the General Secretary or a prescribed authority, to the disclosure of information to the prescribed person.
6. It will be necessary to revise the Protocol for access to and disclosure of Information in the National Register 2007 to enable the General Secretary to obtain access to the National Register and disclose information to the prescribed person (which may be passed by a resolution).
7. Information may constitute personal information under privacy legislation. In general terms under privacy legislation, personal information which has been properly collected by an agency or organisation for certain purposes, as required or permitted by law, may be disclosed for those purposes. Restrictions on disclosure may be overcome in certain circumstances, including by consent and specified exemptions under privacy legislation. It is likely that an inference can be drawn that a church worker has consented to the disclosure of information to the prescribed person where the church worker has applied for employment or appointment to an office, licence or position of responsibility. In certain circumstances a specified exemption may exist under privacy legislation. To avoid doubt as to whether it is lawful for the General Secretary or a prescribed authority to disclose information to the prescribed person, the canon provides for the deemed consent of the church worker to its disclosure.
8. Consistent with the reasoning the Appellate Tribunal in its determination on the National Register Canon 2007, this canon does not affect the order and good government of the Church within, or the church trust property of, a diocese. Accordingly, this canon does not contain a declaration under s 30(b) of the Constitution. It is intended that the canon will come into force on a date appointed by the President.

Notes on Clauses

- Clause 1 states the title of the canon
- Clause 2 states the object of the canon.
- Clause 3 contains definitions of the following words and expressions used in the canon: **authorise, church worker, denominational authority, diocesan authority, information, prescribed person, prescribed authority, Protocol, Province** and **provincial authority**.
- Clause 4 provides that in respect of an application for information about a church worker received from a prescribed person the General Secretary, where permitted by a protocol under the National Register Canon 2007, is provide an extract from the National Register relating to the church worker to the prescribed person, and the applicable prescribed authority must reasonably endeavour to provide the information as soon as practicable to the prescribed person, except where disclosure of the information is prevented by law or is reasonably believed to be likely to give rise to legal liability.
- Clause 5 provides for the deemed consent of a church worker to the disclosure of information.
- Schedule sets out the Ministry Suitability Information Protocol.