

Professional Standards Bill 2009

EXPLANATORY MEMORANDUM

General

An overview of the proposed legislation

1. At its meeting on 23 July 2009, Archbishop in Council unanimously resolved to bring for the consideration of Synod the *Professional Standards Bill 2009*. That Bill provides for a complaints resolution process to deal with complaints of misconduct against Church workers. The attached flow chart illustrates the proposed structure. Accompanying the Bill in these papers is a draft protocol which is indicative of the protocol that following enactment of the Bill, Archbishop in Council would make after due consultation. It is a proposed document and subject to change upon consideration by Archbishop in Council.
2. The Bill seeks to implement a legislative regime that respects the National approach of the General Synod professional standards model ordinance yet recognizes the specific needs of the Melbourne diocese for a right of review. As with the Model Ordinance, the scheme of the proposed Bill is based on fitness for service of the Church worker. It establishes a comprehensive system both to handle complaints with sensitivity and expedition and, in the interests of the community, to regulate those in the service of the Church; it leaves any issue of punishment for misconduct to the disciplinary Tribunal legislation already in place.
3. Almost every other diocese in Australia, except the Victorian dioceses, now has legislation in this area. The dioceses of Brisbane, Adelaide, Perth, Tasmania and Sydney all have legislation; the first four follow closely the General Synod model ordinance. Regard has been had in the preparation of the Bill to the experience of these other dioceses. For matters concerning abuse and harassment, Melbourne Diocese currently uses the Province of Victoria's own Power and Trust Protocol, first published in 2003 and last updated in June 2005. The proposed *Professional Standards Bill 2009* is the product of more than 18 months of extensive review and consultation. Discussions have been held with national church officers and advisers, provincial bishops, the professional standards director and committee and, confidentially, with some complainants and respondents on their experience of the workings of the current Protocol.
4. If the Bill is passed by Synod, it will come into operation on a date fixed by Archbishop in Council. This will allow time for further consultation with the other Dioceses of Victoria with a view to their consideration of the question whether they wish to adopt a similar legislative approach and share the same Professional Standards Committee, Board and Review Board.

5. The legislative model and its accompanying protocol offers several distinct advantages:
 - It ensures the system has the foundational support of Synod and therefore the broader Church community, lay and clergy.
 - It is consistent with the national scheme of the Church and promotes co-operation between dioceses.
 - It provides for a Director and Professional Standards Committee, as at present, but adds a separate Professional Standards Board to adjudicate on complaints and questions of fitness.
 - The board would have broad and flexible powers to respect the often vulnerable position of complainants. It would operate without the formality of a court of law but would have to act with fairness and according to equity, good conscience, natural justice and the substantial merits of the case without regard to technicalities and legal forms.
6. The demarcation between the committee and the board is to ensure that the deliberative and decision-making stage is kept separate from the investigative stage. This promotes confidence in the integrity and independence of the process and respect for the decisions that are made.
7. The Professional Standards Committee, under the new structure, would continue to have a broad and significant role. It would focus on the preliminary appraisal and investigation of complaints and where appropriate, referral to law enforcement agencies or to the Board for adjudication; it would also arrange conciliation and mediation to resolve complaints. It would advise the Diocese on issues of financial assistance and generally on ways to promote good conduct in Church workers. The Director would support the committee in all this work.
8. The legislation would also introduce a right to a review of a determination by the Board by a Professional Standards Review Board, similar to the review process available to members of the wider community through the Victorian Civil and Administrative Tribunal.
9. The new structure offers a transparent and fair process. The respondent would receive prompt notice of a complaint. Both the complainant and respondent would receive notice of the substance of proposed findings by the investigator and the opportunity to respond, notice of any reference to the Board for adjudication and the opportunity to make submissions, notice of any determination by either the Board or the Review Board and the reasons for that determination.
10. The new structure also empowers the Archbishop or other relevant church authority to give effect to the recommendations of the Board or Review Board as the case may be.

11. If the Bill is passed into law, Archbishop in Council will then in accordance with section 9 of the Act consider and approve a protocol or protocols for implementation in relation to the matters the subject of the Act. As mentioned above, an indicative draft protocol accompanies the Bill for the information of Synod members.

History

12. The Power and Trust Protocol (**the 2003 Protocol**) was first published in July 2003 as a non-litigious approach to the handling of complaints of abuse and harassment. The then Acting Registrar appointed the following people to the Professional Standards Committee –
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| Ms Angie Were, Chair | social worker |
| Professor Jeanette Lawrence | Associate Professor of Behavioural Science, University of Melbourne |
| The Rev Rodney Warne | recently retired vicar |
| Mr Gerald Pearce | businessman, retired child protection social worker |
| Dr Jane Hendtlass | Director of Professional Standards |
13. The conduct of cases involving alleged abuse has been managed by the Director (DPS) who operates independently of the Church. As the Director of Professional Standards stated in her report for 2004/5, “This is designed to avoid interference and cover up by the Church, to promote transparency and to give complainants and the community confidence that concerns are treated seriously.” The protocol set out by an administrative document a process by which complaints were handled.
14. The 2003 protocol was directed to complaints of ‘abuse’ which was defined as including –
- physical, sexual, spiritual, financial or emotional abuse, including bullying, and any breach of the Code of Good Practice for Clergy.
- That code, last updated June 2005, covers a range of conduct beyond abuse itself. The Protocol covers a broader range of complaints than the General Synod Model Professional Standards Ordinance which covers only sexual abuse. The current protocol makes no mention of the National code of conduct ‘Faithfulness in Service’ which Archbishop in Council has adopted for the Diocese of Melbourne.
15. Under the 2003 protocol, the Director of Professional Standards liaises with the complainant and the respondent or his or her carer and either investigates the matter or commissions another to undertake an investigation. She is then to form a view on the complaint (clause 9.1) including as to whether she will make a recommendation to the Archbishop/ Bishop. Paragraph 9.2 of the existing protocol then provides–

- 9.2 Where the Director has formed a view that a recommendation is to be made to the Archbishop/Bishop, where penalties or discipline in relation to a Respondent are in consideration, the Professional Standards Committee will review the matter, prior to the recommendation being provided to the Archbishop/Bishop unless the provisions of clauses 4.3 and 4.4 apply.
16. If either the Director or the Committee make a recommendation, there is no provision in the Protocol for either the complainant or the respondent to hear about it before the matter is referred to the Archbishop. There is no provision in the Protocol for the respondent to be heard by either the Director or the Committee on the issue of any recommendation affecting the right of the person to engage in ministry¹.
17. There is no right of review or appeal from any recommendation made by either the Director or the Committee to the Archbishop. The matter is simply referred to the Archbishop for decision. He is free to accept or reject the recommendation but the protocol gives him no legislative authority to give effect to any recommendation. The Archbishop is constrained by existing Diocesan legislation.
18. In its early days, the 2003 protocol was seen as a developing process. In July 2004, the then Registrar supported a motion before Synod noting the protocol and stating inter alia that Synod –
- (b) endorses the principles upon which the draft Model Professional Standards Ordinance, as prepared under the auspices of the General Synod, is based;
 - (c) acknowledges that protocols used in the various Dioceses in Australia are being developed and amended from time to time.
 - (d) calls upon the Council of the Diocese to monitor these changes and to ensure that they, and the principles referred to in (b) above, are given effect through the structures and legal processes within this Diocese, as appropriate to the needs of this Diocese.
19. In July 2004, the Rev Allan Huggins, retired vicar joined the Committee in place of the Rev Warne, and Professor Rowan Walker, surgeon and Gabrielle Canon, solicitor joined the Committee. Claire Sargent had been appointed Director of Professional Standards.
20. In June 2005, the 2003 protocol was revised and published and this stands as the last publication of the Protocol. On 23 June 2005, the Archbishop in Council of the Diocese resolved that the Protocol be adopted for use in the

¹ Note that the National Abuse Protocol Working Group of General Synod in their *Benchmark Principles and Framework for an Abuse Protocol* (2003) stated at paragraph 32(ii) that ‘the respondent has a right to natural justice (including procedural fairness, the right to know the full details of the allegation if a complaint is made, a right of reply and a right to a fair hearing.’”

Diocese “and Council invites further written comments for consideration and response.” The unsigned report to Council stated-

Finally all involved in the preparation of this document acknowledge that is ‘a living document’ in that the Protocol should be continuously improved in the light of ongoing experience.

2003 commentary

21. The Power and Trust Protocol was the subject of a critical commentary dated 28 August 2003 by Dr Bruce Kaye, then General Secretary of General Synod. He pointed to some important differences from General Synod’s model ordinance which appeared to him to be “to the great disadvantage of the Melbourne model.” They included the following –

(a) The Melbourne model [ie the Protocol] does not have the foundational support of the Synod of the Diocese; in 2003, it did not even have the support of the Council of the Diocese.

(b) The model is open to claims that it lacks transparency and procedural fairness;

...the [General Synod Professional Standards] model ordinance makes a clear distinction between the role of the Professional Standards Committee and the role of the Professional Standards Board. The Professional Standards Committee has the responsibility of deciding whether or not a complaint should proceed for decision by the Professional Standards Board. The decision that the Professional Standards Board makes is to advise the relevant church authority. (p2)

(c) The Melbourne protocol departs from the national scheme of the model ordinance and fails to achieve “a substantial degree of commonality in canonical arrangements and procedures that such cases can be dealt with effectively”, particularly in cases where an event may have occurred in one diocese, the complainant lives in another diocese and the respondent in another. Dr Kaye stated at page 7 of his paper on the General Synod Professional Standards Model Ordinance –

The issue is whether dioceses are prepared to recognize that this is the model which provides best for the public witness of this Church in the national arena at this time. If there is not manifest recognizable consistency in the way in which we handle these questions across the dioceses, then our position in the wider community will be significantly compromised and those differences will become matters of notoriety, especially if the procedures in particular cases are manifestly

less demanding and less compassionate than those set out in the model ordinance.²

Review and Consultation

22. The recent review of the 2003 Protocol began in February 2008 when Archbishop Philip Freier asked the Chancellor as a first step in a consultative process to review the protocol. The matter was discussed by the Provincial Legal Committee, a committee of the Chancellors and Advocates of the Province of Victoria, in February, May and November 2008. The Bishops of the Province discussed the matter at their meetings in May and November 2008.
23. In January 2009, Archbishop Philip Freier asked the Chancellor to consider the content of a legislative model for professional standards as a further option in the review. This required careful examination of General Synod's model professional standards ordinance and how the Power and Trust Protocol might be translated to a legislative model. The outcome of this work is the Professional Standards Bill 2009 and accompanying draft protocol. A draft of the Bill has been independently reviewed by Garth Blake SC, the Chair of the Professional Standards Commission of General Synod. The drafts were discussed at a meeting of the Diocesan Law Committee on 21 May 2009 and tabled at a meeting of the Provincial Legal Committee on 13 June 2009 for distribution within their respective dioceses. Detailed and helpful comments were received from the Chancellor of the Diocese of Wangaratta.

The legislative approach

24. The process of the proposed Professional Standards Committee, the Board and the Review Board is administrative in character; its task is not to decide any controversy as to existing rights and obligations of the parties as would a Court, but rather to exercise an 'evaluative and discretionary' function to determine a complaint and discern fitness for service for the protection of the church going public³.

Who is a 'Church worker'?

25. The Bill contains a flexible definition of Church worker. It includes a member of the clergy, a lay minister, a church warden or vestry member, a

² Cf Bray, *The Oath of Canonical Obedience* (2004) at page 44 – “A bishop in the Church of England is not (and cannot be) any more than an agent of a discipline which is that of this church as a whole. The nature of the church demands that this discipline be reasonably uniform across the country and that its application be, as far as is humanly possible, divorced from personal idiosyncrasies on both sides.”

³ Cf *Albarran v Members of the Companies Auditors and Liquidators Disciplinary Board* (2006) 151 FCR 466 at [44] and [48] and in the High Court at [2007] 231 CLR 350.

treasurer, a choir director or member and a Sunday school teacher. It may include others employed or appointed by a Church body or holding a position or performing a function whether voluntarily or for payment provided they are within a class of persons prescribed from time to time by the Archbishop in Council. This power of prescription gives greater flexibility, by the definition of 'Church worker', in the operation of the legislative model.

Who is a 'Church body'?

26. A Church body is defined as including a parish, an incumbent, Vestry of a parish, school, any body corporate, organization or association that exercises ministry within, or on behalf of, the Church. For example, Anglicare is a Church body as is an Anglican Grammar School. As mentioned above, their employees or consultants, be they social workers, counsellors or teachers, are not automatically within the definition of 'Church worker'; they must be prescribed by the Archbishop in Council and this would only happen following consultation with the relevant Church body and consideration of the particular circumstances.

The Professional Standards Committee

27. The Professional Standards Committee, under the new structure, would have a broad and significant role. It would focus on the preliminary appraisal and investigation of complaints and where appropriate, referral to law enforcement agencies (s18(1)(i) or to the Board for adjudication (s56); it would also arrange conciliation and mediation to resolve complaints (s18(1)(e). It would advise the Diocese on issues of financial assistance (s18(1)(h) and generally on ways to promote good conduct in Church workers (s18(1)(f). The Committee has power to dismiss a complaint or take no action in relation to a complaint in prescribed circumstances (s27). The Director would support the committee in all this work.

The Professional Standards Board

28. The proposed legislation establishes a Professional Standards Board consisting of 4 persons to enquire into a reference from the Professional Standards Committee in relation to a complaint. The Board has an adjudicative role in determining the complaint and the question of fitness of the Church worker for service in the Church. It makes recommendations to the Archbishop or other relevant Church authority on that question. The Board includes two members who are not members of the Church. This promotes both the appearance and the reality of independence and impartiality and offers complainants greater assurance that their complaint will not be dealt with 'in house' and covered up.

The adjudication of a complaint

29. It is acknowledged that the prospect in a review process of having to go over the same ground again can deter a complainant from participating in

the process and therefore disadvantage them; that complainants may be damaged, socially isolated, lacking in confidence, personal resilience and education. This does not need to happen in a review under the proposed legislation. Both the Board and the Review Board are given considerable flexibility in the exercise of their powers and functions to fashion a process by way of administrative review that best meets the overriding purpose of the Act and has proper regard to the position of the parties (s89). They would not be bound by the strict adversarial process of the court room where, for example examination or cross examination takes place and a party has to undergo that process all over again in an appeal by way of fresh hearing. There are a range of options available to the Board or Review Board such as, for example, pre-recorded video interviews⁴.

Suspension of duties

30. The proposed legislation has detailed provisions on suspension from duties (s40). The question for the Committee is whether there is an unacceptable risk of harm to any person if the respondent remains in his or her present office or position of responsibility pending the outcome of the complaint.

Professional Standards Review Board

31. The legislation establishes a Professional Standards Review Board to hear any application for review of a decision of the Professional Standards Board (s67). This Review Board can serve an invaluable role in overseeing the process and developing sound principles for the guidance of the Committee and the Board. The Bill provides that both the Board and the Review Board may publish its reasons without identifying the parties to facilitate the development of a body of principles which might serve as precedent (s108).
32. The Bill imposes no restriction on the right of administrative review by the Review Board (s83). This approach is consistent with the scheme of the *Working with Children Act 2005* (Vic) which gives an aggrieved person the right to apply to VCAT for review of the decision to give that person a negative assessment notice⁵.

Prior judicial proceedings or enquiry

33. The Bill contains provisions of a kind recently approved by General Synod Standing Committee to facilitate the reception of a certificate, reasons for judgment or other record from the court or tribunal as conclusive evidence that a person engaged in the conduct constituting the abuse (s92). It also bars an enquiry where there has been a previous Church investigation or

⁴ Recent amendments to the *Evidence Act 1958* (Vic), Div 3AA traverse these issues in the case of trials of sexual offences involving children or a person with a cognitive impairment, for example, s41G pre-recorded evidence.

⁵ *Working with Children Act 2005*, s26

enquiry into the conduct of a kind prescribed, save to the extent of any fresh evidence that was not reasonably available during the previous formal investigation or enquiry (s99).

34. The Bill provides an indemnity to members of the Committee, the Board, the Review Board and others involved in the complaint resolution process (s111).

Transparency

35. The proposed legislation and protocol seeks to put in place greater transparency in the process:
- (a) As at present, the respondent receives a copy of the complaint (Protocol (P), [8.3]);
 - (b) Before completion of the investigation, both complainant and respondent are informed of the substance of proposed findings of the investigator P[10.9] and [10.10];
 - (c) Both complainant and respondent receive a copy of the referral report and opinion of the Committee to the Board (s59);
 - (d) Both complainant and respondent are notified of the Board's decision and reasons (P [12.9] and those if any of the Review Board (P[14.7]);
 - (e) Each of the Board and the Review Board may make public its reasons without identifying any relevant parties (s108);
 - (f) As noted, the Archbishop may release to the public such material as he may determine with respect to any action taken against a Church worker (s109).

Duty to proceed with expedition

36. The Bill imposes a statutory duty to proceed with expedition, on the Committee (s14(5)), the Director (s20(b)), the investigation (s29(1)), the Board (s66) and the Review Board (s87). Other provisions are intended to advance this objective: for example, the Committee may meet by telephone (s14(2)).

Resources

37. The proposed protocol does require the Director and the Committee to observe a more structured process in the management of a complaint and is likely therefore to call for further secretarial assistance in that regard. The precise extent of the extra resources needed will await an evaluation following the introduction of the change. Whether the change will occasion increased legal costs on the part of the Office of Professional Standards is difficult to assess. In part it will depend on the extent to which

there is due observance of the Professional Standards Act and protocol. The Diocesan employment practice insurance policy is likely to respond to indemnify the Diocese and its office holders against claims in connection with the handling of a complaint.

38. There is however merit in considering the establishment of an honorary office of Counsel assisting the Office of Professional Standards to offer legal assistance to the Director and the Committee in their work as may be required.

The Archbishop or other church authority

39. Section 103 of the proposed Bill provides for the role of the Archbishop or other church authority on receiving a recommendation. A recommendation of the Board or Review Board of itself is not final and binding. The Archbishop or other relevant Church authority is empowered to give effect to a recommendation or to give effect to it as varied by the Archbishop, consistent with the findings of fact made below.
40. Section 113 and schedule amends s36 of the *Appointments Act* 1971 to provide that a priest who is instituted to a parish (except as priest in charge) is not removable from office against the will of the priest during the term of office except, and an additional event is specified, “following a recommendation under and in accordance with the *Professional Standards Act* 2009.” It also repeals part VI dealing with the suspension of clerks so that the *Professional Standards Act* 2009 is the sole source of statutory power to suspend the clerk in circumstances other than where charges are laid⁶.
41. There are competing considerations here, on the one hand, that of unfettered episcopal authority and on the other hand, the potential futility of having such a formal process involving the Committee, the Board and a Review Board if the outcome is simply that the Archbishop can ignore all that has happened before and do what he likes. Where the Archbishop can make whatever decision he likes, to afford procedural fairness, he would have to approach the matter afresh, that is to say, do it all over again, give all due procedural fairness, read all the reports and if necessary hear argument written or oral and so on. Having to do this tends to defeat the purpose of having a Committee, Board and Review Board.
42. The point of the model ordinance of General Synod is to obviate the need for any duplication by empowering the Archbishop or other relevant Church authority to give effect to the outcome of a fair and formal process. This relieves the Archbishop of the need to approach the matter afresh and gives credibility to the whole process and to those participating in it.

⁶ Section 61 of the *National Constitution of the Anglican Church of Australia* is noted.

43. Clause 105 of the Bill sets out how the Archbishop may effect a deposition from Holy Orders following a recommendation from the Board or Review Board. Consideration was given to whether the final decision on deposition should only be made after consideration of the matter by the Diocesan Tribunal. This was felt to be duplicating the process already being put in place under the Bill, causing undue time and expense in further process.
44. It would be desirable to give the Archbishop and his Assistant Bishops the opportunity, if they had any particular information or insights on a question of the fitness coming before the Board, through the Committee to convey that information or insights to the Board to form part of its deliberations. This practice would lend itself to greater finality and certainty in the process.

Parish disputes

45. The issue of a suitable process to deal with parish disputes has been under consideration for some time. As the Diocesan Law Committee observed in its report to Synod dated 18 August 2008 -

The issues that may arise in parish conflict are also frequently related to other issues that may need to be dealt with under the Power and Trust process, such as, for example, a complaint of abuse of power. It is thus desirable that the two forms of process be co-ordinated so that the most effective approach to resolution is applied. The Power and Trust Protocol is currently under review, and several refinements to procedure may be implemented that could have implications for the more general dispute resolution process contemplated in the recommendations of the Parish Dispute Resolution Committee.

The Law Committee therefore proposed to defer finalising its consideration of the dispute resolution proposals until the review of the Power and Trust Protocol has been completed and implemented.

46. Currently the provisions of Part V of the *Appointments Act* 1971 of the Diocese set out a process for a case that may involve an irretrievable breakdown in pastoral relations. There is provision to establish a Board of Reference to enquire into the matter. The proposed Professional Standards legislation leaves Part V in place. Time will tell whether its use becomes redundant by the passage of the proposed legislation.
47. In many but not all cases of pastoral breakdown, one or other of the parties will feel moved to lodge a formal complaint against another party. If the respondent is a church worker, as defined in the legislation, the complaint can be dealt under the Professional Standards legislation and if not, it can still be dealt with under that legislation by agreement (s23(2)). In the latter case, the Professional Standards Committee could bring to bear its skill and experience and the range of dispute resolution options to address the dispute, notwithstanding that the respondent is not a Church worker.

Clause Notes

- Clause 1 provides for the short title.
- Clause 2 provides for the Act to come into operation on a day to be appointed by the Archbishop in Council.
- Clause 3 gives definitions of terms used in the Act, including “Church authority”, “Church worker” and “misconduct”.
- Clause 4 state that the overriding purpose of the Act and of any protocol made under the Act, in their application to any complaint under this Act, is to facilitate the just, quick and inexpensive resolution of the real issues in the complaint.
- Clause 5 provides that the PSC, the Board and the Review Board must each seek to give effect to the overriding purpose when it exercises any power given to it by the Act or by any protocol and when it interprets any provision of the Act or of any such protocol.
- Clause 6 gives the Archbishop-in-Council power to enter into such agreements or arrangements as it sees fit with the relevant authority of another diocese as to the terms on which the powers and functions of the equivalent bodies or persons of that diocese are to be exercised by the persons holding office in or as delegates of the PSC, or by the members or the secretary of the Board.
- Clauses 7 and 8 - empowers the Archbishop-in-Council from time to time by resolution to approve and promote awareness of a code of conduct for observance by Church workers in the Diocese.
- Clauses 8 and 9 - empowers the Archbishop-in-Council from time to time by resolution to approve and promote a protocol or protocols for implementation in relation to the matters the subject of this Act.
- Clauses 11 – 17 – establish and regulate the Professional Standards Committee (the PSC).
- Clause 18 sets out the powers and duties of the PSC.
- Clause 19 establishes the office of Director of Professional Standards.
- Clauses 20 and 21 - sets out the functions of the Director.
- Clause 22 provides for mandatory reporting of certain matters to the Director or a member of the PSC.
- Clauses 23 to 26 – deal with the making and referral of a complaint of misconduct of a Church worker.

Clause 27 and 28 - sets out the circumstances in which the PSC may dismiss a complaint or take no further action in relation to a complaint and requires notice of that outcome and reasons to the complainant if that happens.

Clauses 29 and 30 – deal with investigations by the PSC of a complaint or matter.

Clause 31 provides –

- (1) The PSC may by notice in writing to a respondent require the respondent –
 - (a) to provide a detailed report to the PSC within the time specified in the notice in relation to any matter relevant to the investigation; and
 - (b) to verify the report by statutory declaration or another manner specified by the PSC.
- (2) It is the obligation of a respondent, subject to subsection (3):
 - (a) truthfully to answer any question put by or on behalf of the PSC or the Board or the Review Board in the exercise of powers conferred by this Act;
 - (b) not to mislead the PSC or the Board or the Review Board or a member or delegate of any of them;
 - (c) not unreasonably to delay or obstruct the PSC, the Board or the Review Board or a member or delegate of any of them in the exercise of powers conferred by this Act.
- (3) If a respondent declines to answer a question on the ground that the answer might tend to incriminate the person a written record shall be made of the question and of the ground of refusal.

Clauses 32 to 39 – establish and regulate the Professional Standards Board.

Clauses 40 to 49 – provide for the circumstances in which a Church worker may be suspended and the process to be followed.

Clauses 50 to 55 – deal with the grant of a clearance for ministry by the Archbishop.

Clauses 56 to 61 – deal with the reference of a complaint or matter to the Professional Standards Board

Clause 62 empowers the Board to make a determination in relation to the reference and to make recommendations.

Clauses 67 to 81 – establish and regulate the Professional Standards Review Board.

Clause 82, 83 - provide that where the Board has made any decision, a respondent or applicant for a clearance for ministry aggrieved by it or the PSC may within 30 days from the date of the decision or such further period as the Professional Standards Review Board may allow, apply to the Review Board for a fresh administrative reconsideration of the matter.

Clauses 84, 85 - provide for the delivery of documents to the secretary of the Review Board and for the President or Deputy President to determine the membership of the Review Board from the Panel.

Clause 86 sets out the powers of the Review Board

Clause 87 provides that the Review Board shall deal with the application as expeditiously as possible and shall consider any further submissions from either the complainant or the respondent.

Clauses 88 to 102 – regulates proceedings of the Board and the Review Board.

Clause 88 provides that each of the Board and the Review Board –

- (a) shall act with fairness and according to equity, good conscience, natural justice 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.

Clause 89 provides that subject to the Act and in particular the provisions of the preceding section, each of the Board and the Review Board -

- (a) may regulate the proceedings of its meetings as it sees fit;
- (b) shall hold their meetings in private and permit such persons to attend as each may in its discretion direct;
- (c) may inform itself from the record of any court or tribunal and may adopt any findings, and accept as its own, the record of any court or tribunal;
- (d) is not obliged to hold a hearing at which evidence is adduced or submissions heard orally; and
- (e) must give 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.

Clause 90 provides that a party to a complaint may at their own expense appoint a legal representative to assist them in the process.

- Clause 91 provides that without limiting the meaning and effect of the preceding three sections, each of the Board and the Review Board may receive a statutory declaration or a signed statement without the need for the personal attendance of the maker of the statement and may also in its discretion use electronic means such as video link or conference telephone to receive evidence and submissions.
- Clause 92 provides for reception of a certificate, reasons for judgment or other record from a court or tribunal (as the case may be) as conclusive evidence that the respondent engaged in the conduct constituting abuse and precludes the parties from calling into question the conviction or finding of guilt of the respondent or denying that the respondent engaged in the conduct constituting abuse.
- Clause 93 provides –
- (1) The standard of proof to establish an allegation is that of a reasonable satisfaction on the balance of probabilities.
 - (2) Each of the Board and the Review Board shall scrutinize evidence with greater care if there is a serious allegation to be established, or an inherent unlikelihood of an occurrence of a given description or if there are grave consequences that would flow from a particular finding.
- Clause 94 provides that no member of the Board or the Review Board shall individually meet with either the complainant or the respondent or any one acting on their behalf while the matter is in progress.
- Clause 95 provides that where a member of the Board or the Review Board has a personal interest in a matter before it the member shall be disqualified from participating in the matter.
- Clause 96 empowers the PSC or the Board to request (but not require) a respondent or applicant for a clearance for ministry to submit within a specified time to a medical, psychiatric or psychological examination by a person approved by the PSC or the Board the cost of which shall be met from church funds of the diocese of the referring body.
- Clause 97 provides that certificate of the Board or the Review Board as to the fitness for ministry of a Church worker shall be conclusive evidence of the determination and advice of the Board or the Review Board in that respect.
- Clause 98 provides that if the Board or the Review Board is satisfied that there is no reasonable likelihood that the Diocesan Tribunal would find the respondent guilty of any offence, the Board or the Review Board shall take no further action by way of recommending the appointment of a person to lay a charge against the respondent.

- Clause 99 precludes the Board or the Review Board from inquiring into various matters there stated or from enquiring into, making any findings in relation to or taking into account any breach of:
- (i) faith of the Church, including the obligation to hold the faith;
 - (ii) ritual of the Church, including the rites according to the use of the Church and the obligation to abide by such use; or
 - (iii) ceremonial of the Church, including ceremonial according to the use of the Church and the obligation to abide by such use.
- Clause 100 sets out the matters the Board and the Review Board shall take into account.
- Clause 101 provides that neither the Board nor the Review Board has the power to award costs of any matter before it.
- Clause 102 requires each of the Board and the Review Board to cause a copy of each determination and recommendation to be provided to:
- (a) the relevant Church authority;
 - (b) the complainant;
 - (c) the respondent; and
 - (d) the Director and the PSC.
- Clause 103 empowers a relevant Church authority to whom a recommendation under this Act or a recommendation made by an equivalent body applies is empowered to do any act to give effect to –
- (a) a recommendation of the PSC, the Board or if applicable, the Review Board or an equivalent body having jurisdiction to make a recommendation to the Church authority; or
 - (b) any variation or modification of that recommendation, consistent with any facts found by the body making the recommendation, as the Church authority sees fit.
- Clause 104, 105 deals with the effect of a deposition from Holy Orders and how the same shall be effected by the Archbishop.
- Clause 106 provides for the confidentiality of information and precludes divulging the same except in the circumstances there specified.
- Clause 107 authorizes the disclosure of certain information to an equivalent body.

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- Clause 108 provides that each of the Board and the Review Board may release to the public its reasons for any determination without identifying any relevant parties.
- Clause 109 provides that a Church authority may release to the public such material as it may determine with respect to any action taken against a Church worker.
- Clause 110 provides that –
- (1) Without disclosing the identity of any informant, complainant or the respondent, the PSC shall report annually to the Archbishop-in-Council on its activities for that calendar year.
 - (2) The PSC shall, in respect of every matter with which it is dealing, report either orally or in writing to the Archbishop with such frequency and as fully as the Archbishop shall reasonably require.
- Clause 111 provides for an indemnity out of church funds for certain persons and office holders for 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 Act.
- Clause 112 authorises Archbishop in Council from time to time to make amend or repeal Regulations, not inconsistent with the provisions of this Act, providing for records arising out of or incidental to the operation of this Act, and for all or any of the purposes whether general or to meet particular cases, which may be convenient for the administration of this Act or which may be necessary or expedient to carry out the objects and purposes of this Act.
- Clause 113 amends the *Appointments Act* 1971 in accordance with schedule 2 to the Act by providing that an incumbency may be terminated following a recommendation under and in accordance with the Professional Standards Act 2009 and by repealing the provisions of Part VI dealing with the suspension of clerks.
- Clauses 114 to 117 - contain transitional provisions for the coming into operation of the Act.

Professional Standards legislation - proposed structure

