

No. 2 of 2009 Serial No.

## **Professional Standards Act 2009<sup>1</sup>**

### **AN ACT**

### **relating to professional standards within the Church, and for other purposes**

BE IT ENACTED by the Archbishop, the Clergy and the Laity of the Anglican Church of Australia within the Diocese of Melbourne in Victoria duly met in Synod according to law as follows:

#### **PART 1 – PRELIMINARY**

##### ***Short title***

1. This Act may be cited as the **Professional Standards Act 2009**.

##### ***Commencement***

2. This Act comes into operation on a day to be appointed by the Archbishop in Council.

##### ***Interpretation***

- 2A. This Act applies to any person in the Diocese who is a Church worker or a Church volunteer.
3. (1) In this Act, unless the context otherwise requires:
  - “**abuse**” means bullying, emotional abuse, harassment, physical abuse, neglect, sexual abuse or spiritual abuse;
  - “**Archbishop**” means the Archbishop of Melbourne and includes a person appointed Vicar-General or Commissary pursuant to the *Melbourne Archbishopric Act 1980* and any Administrator of the Diocese within the meaning of that legislation;
  - “**Board**” means the Professional Standards Board established under Part 9;
  - “**bullying**” means repeated behaviour directed to a person or persons -
    - (a) which a reasonable person, having regard to all the circumstances, would expect to victimise, humiliate, undermine or threaten the person or persons; and

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<sup>1</sup> Incorporating amendments passed at the 2012 Synod.

- (b) which creates a real risk to the health and safety of the person or persons but does not include excluded conduct as defined in this Act;

**“Church”** means the Anglican Church of Australia;

**“Church authority”** means the Archbishop or a person or body having administrative authority of or in a Church body to license, appoint, authorise, dismiss or suspend a Church worker or Church volunteer and in relation to a churchwarden or vestry member elected by a general meeting of a parish, the Archbishop in Council;

**“Church body”** includes a parish, an incumbent, Vestry of a parish, the Dean or Chapter of the Cathedral, school, any body corporate, organization or association that exercises ministry within, or on behalf of, the Church;

**“Church volunteer”** means a person aged 18 or more years who is not a Church worker and who—

- (a) holds a voluntary role office or position in a congregation or parish or in the Cathedral; or
- (b) holds otherwise any specific voluntary role office or position in the Diocese within a class of persons prescribed by the Archbishop in Council under this definition or who carries out in substance the duties inherent in such a role office or position.

**“Church worker”** means a person who is or who at any relevant time was:

- (a) a member of the clergy;
- (b) a lay minister;
- (c) a church warden or vestry member, whether elected by the general meeting of a parish or appointed by the incumbent or appointed by the vestry or the incumbent to fill a vacancy;
- (d) a treasurer appointed by the churchwardens;
- (e) a person aged 18 or more years holding in a congregation or parish or in the Cathedral the role position or office described below or carrying out in substance the duties inherent in that role position or office-

- (i) Children’s group leader or co-ordinator;
  - (ii) Creche leader or co-ordinator;
  - (iii) Director or co-ordinator of the choir or other music group;
  - (iv) Director or co-ordinator of music;
  - (v) Home visit leader or co-ordinator;
  - (vi) Nursing home visit leader or co-ordinator;
  - (vii) Organist or pianist;
  - (viii) Salaried or otherwise remunerated lay person;
  - (ix) Superintendent or other person in charge of a Sunday school or other educational programme;
  - (x) Youth group leader or co-ordinator
- (f) a person employed or appointed by a Church body (other than a person referred to in paragraph (e)) within a class of persons prescribed from time to time by the Archbishop-in-Council in a protocol; or
- (g) any other person holding a position or performing a function, whether voluntarily or for payment with the actual or apparent authority of a Church authority or Church body, within a class of persons prescribed from time to time by the Archbishop-in-Council in a protocol—

resident in the Diocese or holding a licence or permission to officiate or other authority from a Church authority but excludes a bishop subject to the jurisdiction of the Special Tribunal of the Church;

**“clearance for ministry”** means in relation to ministry—

- (a) within the Diocese, the licence, permission to officiate or other relevant authority as the case may be of the Archbishop; and
- (b) outside the Diocese, written confirmation by the Archbishop that the Church worker is fit for ministry either unconditionally or subject to certain conditions or restrictions;

**“code of conduct”** means a code of conduct approved from time to time under Part 2;

**“complainant”** means a person who makes an allegation of misconduct against a Church worker or a Church

volunteer;

**“complaint”** means a complaint under section 23 or section 23A of this Act, as the case requires;

**“Constitution”** means the Constitution of the Anglican Church of Australia;

**“Diocese”** means the Diocese of Melbourne;

**“Diocesan Tribunal”** means the Tribunal established by the *Diocesan Tribunal Act 1963* and section 53 of the Constitution;

**“Director”** means the Director of Professional Standards appointed under Part 5;

**“emotional abuse”** means:

- (a) subjecting a person to excessive and repeated personal criticism;
- (b) ridiculing a person, including the use of insulting or derogatory terms to refer to that person;
- (c) threatening or intimidating a person;
- (d) ignoring a person openly and pointedly;
- (e) behaving in a hostile manner or in any way that could reasonably result in another person feeling isolated or rejected; or
- (f) any other act or omission

which has caused, or is likely to cause physical or mental harm including self harm but does not include excluded conduct;

**“equivalent body”** means a body of another diocese exercising powers, duties or functions equivalent to those of the PSC, the Board or the panel as the case may be, or where there is no such body, the bishop of the diocese;

**“excluded conduct”** means –

- (a) any act or omission or refusal of a person to whom this Act applies to appoint correct discipline counsel admonish transfer demote suspend retrench or dismiss a person; and
- (b) any decision of that person to do so if that person has acted or omitted or refused to act or decided–
- (c) in good faith;
- (d) reasonably; and

- (e) in the normal and lawful discharge of the duties and functions of that person.

Nothing in this definition shall be read as imposing any duty or function on a person to whom this Act applies.

**“harassment”** means unwelcome conduct, whether intended or not, in relation to a person where the person reasonably feels in all circumstances offended, belittled or threatened which has caused, or is likely to cause physical or mental harm including self harm but does not include excluded conduct;

**“incumbent”** has the same meaning as in the *Parishes Act 1987*<sup>2</sup>;

**“member of the Clergy”** means a person in Holy Orders;

**“misconduct”** means –

- (a) abuse; or
- (b) other conduct

by a person to whom this Act applies which, if established, would call into question:

- (i) the fitness of that person, whether temporarily or permanently, now or in the future to hold a particular or any role, office, licence or position in the Church or to be or remain in Holy Orders or in the employment of a Church body; or
- (ii) whether, in the exercise of that person’s role, office, licence or position, ministry or employment, or in the performance of any function, that person should be subject to certain conditions or restrictions

but excludes for the purposes of this Act any breach of faith ritual or ceremonial;

**“ministry”** means ordained ministry or lay ministry authorised under the *Authorised Lay Ministry (Adoption) Act 1992* or an equivalent Act of the synod of another diocese, as the case may be.

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<sup>2</sup> Section 3(1) of the *Parishes Act 1987* provides –

**“Incumbent”** in relation to a parish, means –

- (a) the clerk instituted or collated to the cure of souls in the parish;
- (b) if there is no such clerk, a person appointed by the Archbishop to the charge of the parish; or
- (c) if for a period of five weeks or more the Incumbent is absent or otherwise unable to perform duties under this Act, the Archdeacon of the area in which the parish is situated or a clerk appointed by the Archbishop.

**“national register”** means the national register established pursuant to the National Register Canon 2007 of the General Synod of the Church or any canon prescribed by General Synod in substitution for that canon;

**“neglect”** means the neglect of a child where the child has suffered, or is likely to suffer, significant harm to his or her wellbeing or development;

**“physical abuse”** means any intentional or reckless act, use of force or threat to use force causing injury to, or involving unwelcome physical contact with, another person but does not include lawful discipline by a parent or guardian.

**“process failure”** means the failure by a Church body or Church authority prior to this Act coming into effect to deal appropriately with or to investigate matters involving –

- (a) abuse; or
- (b) alleged inappropriate or unreasonable conduct of a Church worker who had knowledge that another Church worker or Church volunteer had engaged in conduct constituting sexual abuse;

**“Professional Standards Committee”** or **“PSC”** means the Professional Standards Committee established under Part 4;

**“prohibition order”** means an order prohibiting a Church worker from holding a specified position or office in or being employed by a Church body or Church authority or from carrying out any specified functions in relation to any office or position in the Diocese or in relation to employment by a Church body;

**“protocol”** means any protocol approved from time to time by the Archbishop-in-Council under Part 3;

**“referring body”** means the PSC or an equivalent body which refers a question or questions under section 56 to the Board;

**“respondent”** means a Church worker or Church volunteer against whom an allegation of misconduct is made;

**“Review Board”** means the Professional Standards Review Board established under Part 13;

**“sexual abuse”** means sexual assault, sexual exploitation or sexual harassment and in relation to a child includes the use of

a child by another person for his or her own sexual stimulation or gratification or for that of others;

**“sexual assault”** means any intentional or reckless act, use of force or threat to use force involving some form of sexual activity against an adult without their consent or against a child;

**“sexual exploitation”** means any form of sexual contact or invitation to sexual contact with another person, with whom there is a pastoral or supervisory relationship, whether or not there is consent and regardless of who initiated the contact or invitation. It does not include such contact or invitation within a marriage;

**“sexual harassment”** means unwelcome conduct of a sexual nature, whether intended or not, in relation to a person where the person reasonably feels in all circumstances offended, belittled or threatened;

**“spiritual abuse”** means the mistreatment of a person by actions or threats justified by appeal to God, faith or religion, which mistreatment has caused, or is likely to cause physical or mental harm including self harm but does not include excluded conduct.

- (2) For the purposes of this Act—
- (a) a person employed by a Church body; or
  - (b) a person holding a position or performing a function whether voluntarily or for payment with the actual or apparent authority of a Church authority or Church body—
- will be taken to be engaged by a Church authority.
- (3) In this Act, a reference to conduct shall be read as a reference to—
- (i) doing or refusing to do any act;
  - (ii) refraining (otherwise than inadvertently) from doing an act; or
  - (iii) making it known that an act will not be done.

#### ***Overriding purposes of Act***

4. The overriding purpose of this Act and of any protocol made under this 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.

***Overriding purposes given effect to***

5. 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 this Act or by any protocol and when it interprets any provision of this Act or of any such protocol.

***Power to enter into necessary agreements and arrangements***

6. The Archbishop-in-Council may 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.

**PART 2 – CODE OF CONDUCT**

***Archbishop-in-Council may approve code of conduct***

7. The Archbishop-in-Council may from time to time by resolution approve a code or codes of conduct for observance by persons to whom this Act applies.

***Archbishop-in-Council may promote code of conduct***

8. The Archbishop-in-Council through the PSC and by such other means as may be considered appropriate shall take such steps as may be necessary or desirable to promote the knowledge, understanding and observance in this Church of any code of conduct applicable in the Diocese.

**PART 3 – PROTOCOLS**

***Making and content of protocols***

9. (1) The Archbishop-in-Council shall from time to time consider and approve a protocol or protocols for implementation in relation to the matters the subject of this Act.
- (2) The protocol or protocols must include:
- (a) procedures for receiving a complaint;
  - (b) the appointment, role and function of professional support persons and carers;
  - (c) provision for informing a complainant and victim of alleged misconduct, and a respondent, of rights, remedies and relevant procedures available to them;
  - (d) provision for assisting or supporting, as appropriate, any person affected by alleged conduct the subject of a complaint;



- (e) an explanation of the processes for investigating and dealing with a complaint;
- (f) provisions for dealing fairly with each party to a complaint;
- (g) processes for referral to mediation and conciliation in appropriate circumstances;
- (h) processes for dealing with alleged process failure;
- (i) provisions for regular information, reports, advice and recommendations to the Archbishop and any other relevant Church authority; and
- (j) procedures for working, where necessary, with law enforcement, prosecution or child protection authorities of the States and Territories and of the Commonwealth of Australia.

***Promoting knowledge and understanding of protocols***

10. The Archbishop-in-Council through the Director and the PSC and by such other means as it may consider appropriate shall take such steps as may be necessary or desirable to promote throughout the community a knowledge and understanding of the protocol.

**PART 4 – PROFESSIONAL STANDARDS COMMITTEE**

***Establishment of Professional Standards Committee***

11. There shall be a Professional Standards Committee for the Diocese.

***Appointment of members of Professional Standards committee***

12. The members of the PSC shall be appointed and shall hold office on such terms and conditions as may be determined from time to time by the Archbishop-in-Council or in accordance with any regulations or protocol of the Archbishop-in-Council.

***Membership of PSC***

13. (1) The PSC shall have at least 3 members including the chair.
- (2) The membership of the PSC shall be constituted so as collectively to provide experience and appropriate professional qualifications in:
- (a) law;
  - (b) the ministry; and
  - (c) child protection, investigations, social work, ethics or counselling.

- (3) The PSC shall include at least one person who is not a member of this Church and so far as it is reasonably practicable shall have at least one man and at least one woman.

***Chair and procedures of PSC***

14. (1) The chair of the PSC shall be appointed on such terms and conditions as may be determined from time to time by the Archbishop-in-Council or in accordance with any regulations or protocol of the Archbishop-in-Council.
- (2) The PSC may meet from time to time as determined by the chair or a majority of its members and may conduct its business by telephone or electronic communication.
- (3) Subject to any protocol and to this Act, the procedures of the PSC shall be as determined by the PSC.
- (4) A majority of the members shall constitute a quorum.
- (5) The PSC shall act in all things as expeditiously as possible.

***Acts and proceedings of PSC validated***

15. An act or proceeding of the PSC is not invalid by reason only of a vacancy in its membership and, notwithstanding the subsequent discovery of a defect in the nomination or appointment of a member, any such act or proceeding is as valid and effectual as if the member had been duly nominated or appointed.

***PSC may be an equivalent body of another diocese.***

16. The members of the PSC may constitute an equivalent body of another diocese, either generally or for a particular case or matter.

**Power of PSC to delegate**

17. (1) Subject to sub-section (2), the PSC may delegate, upon such terms and conditions as the PSC may approve, any of its powers or functions under this Act to any person.
- (2) The PSC cannot delegate—
  - (a) its powers under subsection (1); or
  - (b) its powers under Parts 10, 11 and 12 of this Act.
- (3) A delegation under this section must be made by instrument in writing signed by a member of the PSC in accordance with a resolution of the PSC.

***Powers and duties of PSC***

18. (1) Subject to the provisions of this Act, the PSC has the following powers and duties:
- (a) to implement the protocol to the extent that the protocol is not inconsistent with this Act;
  - (b) to receive a complaint against a Church worker;
  - (c) to review and monitor the work of the Director;
  - (d) to appoint suitable persons to fulfil the several roles required to implement any protocol in each particular case;
  - (e) where appropriate, to arrange for the conciliation or mediation of any complaint;
  - (f) where appropriate, to recommend to the Archbishop-in-Council any changes to any protocol and any other changes to Church processes, structures and education programmes that would reduce the risk of misconduct in the Diocese;
  - (g) subject to any limit imposed by the Archbishop-in-Council to authorise such expenditure on behalf of the Diocese or the Church body as may be necessary to implement, in a particular case, the protocol and the provisions of this Act;
  - (h) to advise any relevant Church authority or Church body as to the financial or other needs of a person affected by alleged misconduct and as to any possible or actual legal proceedings against such Church body or Church authority arising out of the alleged misconduct of a Church worker and how a parish or congregation may best be supported;
  - (i) where appropriate, to refer any allegation of misconduct in its possession to a member of a law enforcement, prosecution or child protection authority of a State or Territory or of the Commonwealth of Australia to which the allegation is or may be relevant;
  - (j) to exercise such other powers and functions as are conferred on it by this or any other Act or by a protocol.
- (2) The power and duty of the PSC to exercise its functions under this Act arises in respect of—
- (a) conduct wherever it is alleged to have been engaged in by a person to whom this Act applies; and
  - (b) conduct which is alleged to have occurred within the Diocese wherever that person involved in the alleged conduct may reside.

## **PART 5 – DIRECTOR OF PROFESSIONAL STANDARDS**

### ***Appointment of Director***

19. (1) There shall be a Director of Professional Standards.
- (2) The Director shall be appointed by and shall hold office on such terms and conditions as may be determined from time to time by the Archbishop-in-Council or in accordance with any regulations or protocol of the Archbishop-in-Council.

### ***Functions of Director***

20. (1) The Director shall have the following functions:
  - (a) to receive any complaint on behalf of the PSC against a Church worker;
  - (aa) in his or her discretion to make a complaint against a person to whom this Act applies;
  - (b) to manage the implementation of the protocol in respect of any complaint;
  - (c) to be the executive officer of the PSC;
  - (d) to attend meetings of the PSC except for any part of a meeting which deals with conditions of employment, remuneration or performance of the Director;
  - (e) to provide a central focus in matters involving personal ethics and behaviour including advice about appropriate standards and enforcement;
  - (f) to provide or arrange care or treatment of parties to the process of any protocol.
  - (g) to provide input into education and vocational training programs for members of the Diocese, including those involved in managing or providing pastoral care and other community services;
  - (h) to provide advice to complainants and persons to whom this Act applies about the operation of a protocol, with particular emphasis on helping those persons in authority to understand and discharge their responsibilities under any protocol;
  - (i) to keep proper records of complaints, decisions, meetings, employment screening details, police checks and people affected by allegations of misconduct;
  - (j) to consult and co-operate with Church associated organisations to promote consistency between them and the Diocesan

- protection policies and procedures;
- (k) in cases of alleged illegal behaviour, to support the complainant in making a report to Victoria Police and Child Protection Service Victoria; and
  - (l) to report to the PSC on any recommended changes to the Protocol and any other changes to Church processes, structures and education programmes that would reduce the risk of abuse in a Diocese.
  - (m) such specific functions and duties as may be determined from time to time by the PSC;
  - (n) such other functions and duties as may be prescribed by this or any other Act or as may be determined by the Archbishop-in-Council.
- (2) The Director shall act in all things as expeditiously as possible.

***Director may have corresponding capacity for another diocese.***

21. The Director may act in a corresponding capacity for another diocese of the Church either generally or for a particular case or matter.

**PART 6 – DUTY TO REPORT**

***Certain matters must be reported***

22. (1) If any Church worker believes on reasonable grounds that a person has suffered harm or is at risk of harm as a result of misconduct by another Church worker or a Church volunteer and has no reason to believe that the Director or a member of the PSC is aware of those facts, the first mentioned Church worker shall as soon as possible report the matter to the Director or to a member of the PSC.
- (2) This section does not affect the operation of the Canon Concerning Confessions 1989 of General Synod or any other canon or legislative instrument relating to confessions in force in the Diocese.

**PART 7 – COMPLAINT OF MISCONDUCT**

***Complaints to the PSC***

23. (1) Any person including the Director may make a complaint of misconduct of a Church worker to the PSC.
- (2) A complaint of misconduct against a person who is not a Church worker shall be deemed to be a complaint against a Church worker

under subsection (1) of this section if—

- (a) the complainant and the respondent to the complaint have agreed in writing to submit the complaint to the PSC to be dealt with under this Act as if it were a complaint under subsection (1) of this section and to be bound by any decision pursuant to section 103 of the Church authority nominated by them in the submission; and
  - (b) the PSC has consented in writing to that submission.
- 23A. (1) Any person including the Director may make a complaint of misconduct of a Church volunteer to the relevant Church authority.
- (2) The relevant Church authority must deal with that complaint subject to this Act and in accordance with any protocol made by the Archbishop in Council.
  - (3) The PSC must act in relation to the complaint in accordance with any protocol made by the Archbishop in Council.

***Form of complaints***

24. (1) A complaint may be in any form, in writing on paper or by email or facsimile or conveyed orally.
- (2) A complaint must include details of the misconduct complained about.
  - (3) The PSC may not act on an anonymous complaint.
  - (4) Nothing in the preceding subsection shall prevent or restrict the PSC in the exercise of its powers under section 29(2) of this Act.

***Further requirements of complainant***

25. (1) The PSC may require a complainant to—
- (a) give further details of the complaint; and
  - (b) verify any details of the complaint by statutory declaration or in another manner specified by the Director.
- (2) A requirement under subsection (1) must be in writing and allow the complainant a reasonable time to comply.

***How PSC may respond to a complaint***

26. (1) The PSC may, if it thinks it appropriate to do so, refer a complaint, or the investigation of a complaint, to an equivalent body or bodies.
- (2) When the PSC and an equivalent body or equivalent bodies have the

power and duty to investigate information concerning the alleged misconduct of the same person to whom this Act applies and the respective bodies cannot agree on—

- (a) which body shall carry out the investigation or any parts of such investigation; or
- (b) whether a question or questions specified in section 56(a) should be referred to the Board or to an equivalent body which has jurisdiction—

the PSC shall refer the disagreement for decision by the Director and the persons acting in a corresponding capacity for every other diocese acting together.

- (3) The PSC shall act in accordance with the unanimous decision of the persons referred to in subsection (2) or, if such persons cannot agree within a reasonable time of the disagreement being referred, in accordance with the decision of the Primate or a member of the House of Bishops appointed by the Primate.
- (4) In all matters affecting the operation of this Act the PSC and the Director shall cooperate with and assist an equivalent body and a person acting in the corresponding capacity of the Director in another diocese.
- (5) In making a decision under subsection (2) the Director shall not be bound by the views or instruction of the PSC but shall take into account the most convenient course for all concerned and the proper and expeditious conduct of the investigation or referral as the case may be.

***PSC may dismiss or can proceed with certain complaints***

27. The PSC may dismiss a complaint or take no further action in relation to a complaint if—
- (a) the PSC is of opinion that the complaint does not fall within the provisions of this Act;
  - (b) the behaviour the subject matter of the complaint can properly be dealt with by other means;
  - (c) the subject matter of a complaint is under investigation by some other competent person or body or is the subject of legal proceedings;
  - (d) the person making the complaint has failed to provide further details to the Director or to verify the allegations by statutory declaration when requested by the Director to do so;
  - (e) the PSC is of opinion that the complaint is false, vexatious, misconceived, frivolous or lacking in substance; or

- (f) the PSC is of opinion that there is insufficient reliable evidence to warrant an investigation or further investigation.

***Complainant to be given notice of outcome of complaint and reasons***

28. If a complaint is dealt with by the PSC under the preceding section, the Director must give the complainant a written notice of the outcome including the reasons for the outcome.

**PART 8 – INVESTIGATIONS**

***When PSC is to investigate***

29. (1) Subject to subsection (3), the PSC shall investigate each complaint or matter as expeditiously as possible.
- (2) The PSC may investigate the conduct of a Church worker if the PSC has reason to believe that the conduct may amount to misconduct under this Act even though no complaint has been made about the conduct or a complaint about the conduct is anonymous or has been withdrawn.
- (3) If the complainant has not given written consent to the Director giving notice of the complaint to the respondent and to the PSC dealing with it under Part 12 of this Act –
- (a) the PSC shall not be required to investigate the complaint and otherwise to refer it to the Board; and
- (b) the PSC or the Director may dismiss the complaint or take no action in relation to the complaint.
- (4) The PSC may by instrument in writing delegate, upon such terms and conditions as the PSC may approve, the powers to investigate a Church worker under this section.

***PSC to obtain material***

30. For the purpose of an investigation the PSC or its delegate shall obtain such statutory declarations, written statements, recorded conversations, reports, documents and other material as the PSC or its delegate considers necessary or advisable for presentation to the PSC.

***Respondent to respond to PSC***

31. (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; and
  - (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.

## **PART 9 – PROFESSIONAL STANDARDS BOARD**

### ***Establishment of Professional Standards Board***

32. There shall be a Professional Standards Board constituted and appointed in accordance with the provisions of this Part.

### ***Members of Board may be an equivalent body.***

33. The members of the Board may constitute an equivalent body either generally or for a particular case or matter.

### ***Function of the Board***

34. Subject to the provisions of this Act the function of the Board is to enquire into and determine a question or questions referred to it pursuant to section 56 or referred to it by an equivalent body to the PSC and to make a determination referred to in section 62 and where appropriate to make a recommendation in accordance with the provisions of this Act.

### ***Composition of the Board***

35. The Board shall have 4 persons including a President and Deputy President and shall be constituted so as collectively to provide experience and appropriate professional qualifications in—
- (a) law;

- (b) the ministry; and
- (c) child protection, investigations, social work, ethics or counselling

and shall so far as reasonably practicable have—

- (d) one member of the clergy;
- (e) at least one man and at least one woman; and
- (f) two members who are not members of the Church.

#### ***Appointment of members of the Board***

36. The President, Deputy President and other members of the Board shall be appointed and shall hold office on such terms and conditions as may be determined from time to time by the Archbishop-in-Council or in accordance with any regulations or protocol of the Archbishop-in-Council.

#### ***Filling vacancies on the Board***

37. Any vacancy in the membership of the Board shall be filled by the Archbishop-in-Council or in accordance with any regulations or protocol made by the Archbishop-in-Council.

#### ***Secretary to the Board***

- 37A. (1) There shall be a secretary to the Board who shall be appointed by the Board on such terms and conditions as may be determined from time to time by the Board or in accordance with any regulations or protocol of the Archbishop-in-Council.
- (2) The secretary to the Board may act in a corresponding capacity for another diocese either generally or for a particular case or matter.

#### ***Quorum of Board***

38. The quorum for a meeting of the Board shall be a majority of the members of the Board.

#### ***How questions decided by Board***

39. A question before the Board may be decided by a majority of the votes of those present and voting and in the case of an equality of votes, the opinion of the President shall prevail.

## **PART 10 – SUSPENSION**

### ***Suspension or standing down or prohibition order or other action where unacceptable risk***

40. Where after receipt of a complaint about the conduct of a Church worker and at any time during the progress of a complaint under this Act, the PSC is satisfied that 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, the PSC may refer the matter to the Board or, as the urgency of the matter requires, make a recommendation direct to the Archbishop or other Church authority that pending that outcome—
- (a) the respondent be suspended or stood down from the duties of any office or position of responsibility held by the respondent or certain of those duties;
  - (b) a prohibition order be made against the respondent; or
  - (c) such other action be taken as may be thought fit.

### ***Respondent to be given notice***

41. Before making a recommendation pursuant to the preceding section or before referring the matter to the Board, the PSC shall give the respondent notice that grounds exist for the PSC being satisfied as stated in the preceding paragraph (specifying the same) and notice of any proposed recommendation and request the respondent to show cause in writing within 7 days why the recommendation should not be made.

### ***No reference on notice where immediate unacceptable risk***

42. The provisions of sections 41 and 44 shall not apply if the PSC is satisfied that there is an immediate unacceptable risk of harm to any person if the respondent remains in his or her present office or duties.

### ***Referral to the Board***

43. Where the PSC is satisfied that there is an immediate unacceptable risk of harm to any person if the respondent remains in his or her present office or position of responsibility and makes a recommendation direct to the Archbishop or other Church authority pursuant to section 40—
- (a) the PSC must forthwith refer the matter to the Board; and
  - (b) the Director must as soon as practicable give the respondent notice that—
    - (i) the recommendation has been made without notice and the grounds relied on;
    - (ii) the PSC will report the recommendation to the Board at its next meeting and that the Board will consider whether the

- recommendation should stand; and
- (iii) the respondent may advance further submissions to the Board if he or she wishes to do so.

***PSC or Board to consider respondent's response***

44. The PSC or the Board (as the case may be) shall consider any response from the respondent received within the time specified above or any further period allowed, before making a decision on the recommendation to be made.

***Powers of Board if satisfied as to unacceptable risk***

45. If the Board is satisfied that 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, the Board may after considering any further response from the respondent—
- (a) determine accordingly and make a recommendation to the Archbishop or other Church authority that pending that outcome action be taken as referred to above in section 40;
- or where the PSC has already made a recommendation under section 40—
- (b) affirm or vary that recommendation; or
- (c) set aside that recommendation and make another in substitution for it.

***Matters to be considered by PSC or Board before recommending***

46. Before making a recommendation under this Part, the PSC or the Board (as the case may be) shall take into account:
- (a) the seriousness of the alleged misconduct;
- (b) the nature of the material to support or negate the allegations;
- (c) the extent to which any person is at risk of harm;
- (d) after consultation with the relevant Church body or its representative, the effect on the respondent, a relevant Church body and on the Church in the diocese of acting and of not acting under this Part; and
- (e) any other allegation of similar conduct previously made to the PSC or to an equivalent body within the previous ten years;
- and may take into account any other relevant matter.

***Powers under section 103 may be exercised while matter under consideration***

47. The Archbishop or other Church authority may exercise the powers conferred by section 103 of this Act, notwithstanding that a recommendation under this Part is under consideration by the Board or the Review Board (as the case may be) by the process referred to above.

***Termination of a standing down or suspension***

48. A standing down or suspension or prohibition order made by a Church authority following a recommendation under this Part or by the Review Board under Part 14 shall be terminated by the Church authority:
- (a) if the PSC terminates the investigation without referring the matter to the Board;
  - (b) upon any direction to that effect given by the Archbishop or other Church authority; or
  - (c) upon the Church authority giving effect to a recommendation of the Board or the Review Board as the case may be or such a recommendation as varied or modified by a Church authority under section 103.

***Consequences of suspension, prohibition or voluntary standing down***

49. During a suspension or prohibition pursuant to the provisions of this Part or during a period when a person voluntarily stands down from a position while conduct the subject of a complaint is dealt with under this Act:
- (a) the respondent shall comply with the terms of any prohibition order;
  - (b) the respondent is ineligible for appointment to any position or function covered by any suspension or prohibition order;
  - (c) the relevant Church authority may fill the vacancy caused by any suspension or prohibition order, or while the respondent is standing down; and
  - (d) the respondent is entitled to whatever stipend, salary, allowances and other benefits that he or she would otherwise have received and which are to be met or reimbursed from funds of the Diocese, the Parish or other Church body as the case may be.

**PART 11 – CLEARANCE FOR MINISTRY**

***Church worker to obtain clearance for ministry for purposes of ministry.***

50. A Church worker must obtain a clearance for ministry<sup>3</sup> when the Church worker intends for the purpose of ministry—
- (a) to transfer from one office licence or position of responsibility in a Church body in the Diocese to another in the Diocese;
  - (b) to take up an office licence or position of responsibility in a Church body in the Diocese;
  - (c) to transfer from one office licence or position of responsibility in a

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<sup>3</sup> ‘ministry’ is defined. See s3.

- Church body in the Diocese to another in another diocese; or
- (d) to take up an office licence or position of responsibility in a Church body in another diocese.

***Contribution of eligibility for clearance for ministry within the Diocese.***

51. It shall be a condition of eligibility for a clearance for ministry within the Diocese that the Church worker is fit to hold the proposed office, licence or position of responsibility in the Church whether unconditionally or subject to certain conditions or restrictions.

***Application for clearance for ministry***

52. Any application by a Church worker for a clearance for ministry shall be made to the Archbishop who may refer the matter to the PSC for a determination and advice by the PSC and if necessary, the Board as to fitness for ministry.

***Recommendation of PSC where applicant fit for ministry***

53. If to the best of its knowledge information or belief, the PSC is of the opinion—
- (a) in the case of an applicant for a clearance for ministry within the Diocese, that the applicant is unconditionally fit for the proposed office licence or position of responsibility; or
- (b) in the case of an applicant for a clearance for ministry outside the Diocese, that the applicant is unconditionally fit for ministry—

the PSC shall determine accordingly and recommend to the Archbishop to that effect.

***Certificate of the PSC as to fitness by ministry***

54. A certificate of the PSC as to the fitness for ministry of a Church worker shall be conclusive evidence of the determination and recommendation of the PSC in that respect.

***Archbishop's discretion regarding clearance for ministry***

55. The Archbishop after receiving any determination and recommendation in accordance with this Act from the PSC, the Board or the Review Board (as the case may be) as to fitness for ministry may in the discretion of the Archbishop grant or refuse the clearance for ministry.

## **PART 12 – REFERENCE OF A COMPLAINT OR MATTER TO THE BOARD**

### ***PSC to refer certain matters to the Board***

56. After investigation in accordance with Part 8 of this Act or under a corresponding provision of a canon of another diocese, where the PSC has formed the opinion that—
- (a) the conduct the subject of the complaint if established would call into question whether—
    - (i) the Church worker is unfit, whether temporarily or permanently, then or in the future to hold a particular or any role, office, licence or position in the Church or to be or remain in Holy Orders or in the employment of a Church body; or
    - (ii) in the exercise of a church worker’s role, office, licence or position or in the performance of any function, the Church worker should be subject to certain conditions or restrictions; or
  - (b) in connection with an application by a Church worker for a clearance for ministry, by reason of alleged abuse or other conduct the church worker may not be fit for ministry in the Church either generally or to hold a proposed office, licence or position of responsibility in the Church or may be fit subject to certain conditions or restrictions—

the PSC shall refer the matter, and an equivalent body may refer the matter, to the Board or if it is more appropriate, to an equivalent body which has jurisdiction.

### ***How PSC to refer matters***

57. The PSC shall refer the question or questions to the Board by delivering to the President of the Board a written report of its investigation and opinion signed by a member of the referring body.

### ***Documents and materials to be delivered to the Board***

58. Within 14 days of the date of the reference of a matter to the Board or within 14 days of the date of the document or material coming to existence, whichever is the later, the referring body shall cause to be delivered to the President of the Board any documents and material relevant to the reference.

### ***Board to invite submissions from parties***

59. The referring body, as soon as practicable after delivering the report referred to in section 57 to the President of the Board, shall cause to be delivered to the respondent or applicant for a clearance for ministry (as the case may be) and, in the case of a complaint, the complainant a copy of the report and opinion and notice that each party may advance any submissions to the Board if he or

she wishes to do so.

***Board may give directions as to documents and conduct of inquiry.***

60. The Board may at any time and from time to time give directions:
- (a) as to the inspection by and supply of copies to the respondent or any other person of the documents or material relevant to the reference; and
  - (b) as to the conduct of its inquiry into the reference.

***How Board is to respond to a reference***

61. Where a matter is referred to the Board, the Board shall consider the matter and may make any finding on any relevant question of fact, taking into account—
- (a) the final report if any of the investigator including attachments;
  - (b) any further material received from the complainant and the respondent; and
  - (c) any other relevant evidentiary material;
  - (d) such report of the PSC as may be submitted; and
  - (e) any applicable professional standards prescribed by a code of conduct.

***Powers of Board satisfied of unfitness***

62. If the Board is satisfied that—
- (a) the Church worker is unfit, whether temporarily or permanently, then or in the future to hold a particular or any role, office, licence or position in the Church or to be or remain in Holy Orders or in the employment of a Church body; or
  - (b) in the exercise of a Church worker's role, office, licence or position or in the performance of any function, the Church worker should be subject to certain conditions or restrictions

the Board may determine accordingly and may recommend to the Archbishop or other Church authority any one or more of the following:

- (c) that the Church worker be counselled;
- (d) that the Church worker be suspended from office or employment or from performing the function as the case may be for such period recommended by the Board;
- (e) that the licence or authority of the Church worker be revoked;
- (f) that the Church worker's contract of employment (if any) be terminated;
- (g) that the Church worker cease to hold any office then held;



- (h) that the Church authority make a determination that for a specified period, whether temporary or permanent –
  - (i) the Church worker is unfit to hold a particular or any role, office, licence or position in the Church or to be or remain in Holy Orders or in the employment of a Church body; or
  - (ii) in the exercise of a Church worker’s ministry or employment or in the performance of any function, the Church worker shall be subject to such conditions or restrictions as the Board recommends;
- (i) recommend to the relevant Church authority that a prohibition order be made in terms specified by the Board;
- (j) that the Church worker’s holding of office or employment or performance of the function as the case may be, shall be subject to such conditions or restrictions as the Board may specify;
- (k) that the implementation of a determination shall be suspended for such period and upon such conditions as the Board shall specify;
- (l) that a person be appointed to promote a charge against the respondent before the Diocesan Tribunal;
- (m) that the Church worker should be deposed from Holy Orders;
- (n) otherwise as the Board sees fit.

***Board may appoint persons to assist inquiry***

63. The Board may, for the purpose of any particular reference, appoint such person or persons, including the Director, to assist it in inquiring into (but not determining) a reference as the Board thinks fit.

***Board may seek further information***

64. The Board may seek further information from the referring body and may at any time and from time to time give directions to it as to any further inquiries or investigation it requires to be carried out for the purposes of the reference and the referring body shall to the best of its ability cause such directions to be carried out.

***Where Board may dismiss complaint***

65. If the Board—
- (a) makes a finding that the respondent did not commit any misconduct as alleged; or
  - (b) is not satisfied as to any of the matters in section 62(a) and (b) above—
- the Board may dismiss the complaint or take no further action in relation to the complaint.

***Board to act expeditiously***

66. The Board shall deal with a complaint as expeditiously as possible.

**PART 13 – PROFESSIONAL STANDARDS REVIEW BOARD**

***Establishment of Review Board***

67. There shall be a Professional Standards Review Board constituted and appointed in accordance with the provisions of this Part.

***Review Board may be an equivalent body***

68. The members of the panel referred to in section 70 may constitute an equivalent body either generally or for a particular case or matter.

***Function of the Review Board***

69. Subject to the provisions of this Act the function of the Review Board is to determine any application for review of a decision of the Board under this Act.

***Panel of Review Board members***

70. The members of the Review Board in a particular case shall be appointed from a panel of 7 persons comprising:
- (a) a President and a Deputy President, both of whom shall be or shall have been either a judicial officer or a practising barrister or solicitor of at least 10 years' standing of the Supreme Court of a State or Territory; and
  - (b) five other persons of whom at least—
    - (i) two shall not be members of the Church;
    - (ii) two shall be members of the clergy; and
    - (iii) three shall have professional qualifications and experience in child protection, investigations, social work, ethics or counselling.

***Appointment of members of Review Board Panel***

71. The members of the panel shall be appointed and shall hold office on such terms and conditions as may be determined from time to time by the Archbishop-in-Council or in accordance with any regulations or protocol of the Archbishop-in-Council.

***Filling vacancies in the Review Board Panel***

72. Any vacancy in the membership of the panel shall be filled by the Archbishop-

in-Council or in accordance with any regulations or protocol made by the Archbishop-in-Council.

***Convening a Review Board***

73. (1) The members of the Review Board to be convened for any review of a decision of the Board shall be determined by the President or, if there is a vacancy in the office of President, by the Deputy President.
- (2) For the purpose of any application to the Review Board, the Review Board shall consist of the President or Deputy President, who shall be the presiding member, and one clergy member and one lay member of the panel.
- (3) So far as it is reasonably practicable, the Review Board shall include at least—
- (a) one man and at least one woman; and
- (b) one person who is not a member of the Church.
- (4) For the purposes of this section a vacancy in the office of President includes a situation in which the President is not able to act because of a personal interest in a matter, illness or absence from the Diocese.
- (5) The quorum for a meeting of the Review Board shall be all the members of the Review Board.

***Secretary to the Review Board***

74. (1) There shall be a secretary to the Review Board who shall be appointed by the President of the Review Board on such terms and conditions as may be determined from time to time by the President of the Review Board or in accordance with any regulations or protocol of the Archbishop-in-Council.
- (2) The secretary to the Review Board may act in a corresponding capacity for another diocese either generally or for a particular case or matter.

***A single member may constitute Review Board for certain purposes***

75. The rules of the Review Board made under this Part may provide that, in relation to the exercise of specified functions, or in relation to matters of a specified class, other than the determination of the application, the Board may, at the direction of the presiding member, be constituted by a single member sitting alone.

***Review Board may determine an application despite vacancy***

76. If a member of the Review Board, other than the presiding member, dies or is for any other reason unable to continue with any matter referred to the Board, the Board constituted by the presiding member and the other member may, if the presiding member so determines, continue and determine the application.

***Separately constituted Review Boards may sit simultaneously***

77. The Review Board, separately constituted in accordance with this Part, may act simultaneously for the purpose of applications made to it.

***Review Board's proceedings valid despite vacancies etc***

78. An act or proceeding of the Review Board is not invalid by reason only of a vacancy in its membership or in the membership of the panel and, notwithstanding the subsequent discovery of a defect in the nomination or appointment of members of the panel or the Review Board, any such act or proceeding is as valid and effectual as if the member had been duly nominated or appointed.

***Determining questions of law and other questions***

79. (1) In any proceedings of the Review Board:
- (a) any question of law or procedure will be determined by the presiding member; and
  - (b) any other question will be determined by majority decision of the members, and in the case of an equality of votes the opinion of the presiding member shall prevail.
- (2) Where the Review Board is constituted by a member sitting alone who is not the President or the Deputy President, any question of law that arises must be referred to the President or Deputy President for decision and any decision made on such a reference is a decision of the Board.

***President may make rules of the Review Board***

80. The President may make rules of the Review Board reasonably required by or pursuant to this Act and in relation to the practice and procedure of the Review Board.

***Presiding member may determine practice and procedure of Review Board.***

81. Subject to this Act and the relevant rules, the practice and procedure of the Review Board will be as directed by the presiding member of the Review Board.

## **PART 14 – APPLICATION FOR REVIEW**

***Interpretation***

82. In this part, “decision” means any finding of fact, determination or recommendation by the Board under either section 45 or section 62.

***Application to Review Board***

83. 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.

***Documents and material to be delivered following application***

84. Within 14 days of the date of the application to the Review Board or within 14 days of the date of the document or material coming to existence, whichever is the later, the PSC shall cause to be delivered to the secretary of the Review Board any documents and material relevant to the application for review.

***President to determine membership of Review Board***

85. Upon delivery of the report to the secretary of the Board, the President or Deputy President as the case may be shall as soon as possible determine the membership of the Review Board for the purpose of the application for review.

***Review Board may exercise the powers of the Board***

86. The Review Board may exercise all the powers of the Board under this Act and may—
- (a) affirm the decision under review; or
  - (b) vary the decision under review; or
  - (c) set aside the decision under review and make another decision in substitution for it; or
  - (d) set aside the decision under review and remit the matter for reconsideration by the Board in accordance with any directions or recommendations of the Review Board.

***Review Board to deal with application expeditiously***

87. 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.

**PART 15 - PROCEEDINGS OF THE BOARD AND THE REVIEW BOARD**

***How Board and Review Board to conduct proceedings***

88. 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.

***Powers of Board and Review Board and requirement to give recommendations.***

89. Subject to this 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 and the PSC.

***Party may appoint legal representation***

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

***Board and Review Board may receive written evidence.***

91. 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.

***Board and Review Board may rely on decisions of other bodies***

92. In any proceedings before them, where the Board or the Review Board is satisfied that the respondent—
- (a) has been convicted by a court within or outside of Australia of an offence involving conduct that constitutes abuse;
  - (b) has been found guilty by a court within or outside of Australia (that did not proceed to a conviction) of an offence involving conduct that constitutes abuse;

- (c) has made an admission that the respondent engaged in conduct constituting abuse in proceedings before a court or tribunal within or outside of Australia;
- (d) has been the subject of a finding by a court or tribunal within or outside of Australia that the respondent engaged in conduct constituting abuse; or
- (e) has been disqualified by a court or tribunal within or outside of Australia from professional practice on account of conduct constituting abuse

then—

- (f) a certificate, reasons for judgment or other record from the court or tribunal (as the case may be) shall be conclusive evidence that the respondent engaged in the conduct constituting abuse; and
- (g) neither the referring body nor the respondent shall be at liberty to call or give evidence or make submissions for the purpose of calling into question the conviction or finding of guilt of the respondent or denying that the respondent engaged in the conduct constituting abuse.

***Standard of proof applying to Board and Review Board***

93. (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.

***Individual members of Board and Review Board not to meet with parties***

94. 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.

***Disqualification where personal interest***

95. 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.

***Medical reports***

96. (1) The PSC or the Board may request 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 (as the case may be) the cost of which shall be

met from church funds of the diocese of the referring body.

- (2) A respondent or applicant for a clearance for ministry is not obliged to comply with a request of the PSC or the Board under the preceding subsection.
- (3) A copy of the report of an examination under subsection (1) shall be provided to the respondent or applicant for a clearance for ministry and to the Director and the PSC, the Board and if applicable the Review Board.

***Certificate of Board or Review Board as to fitness for ministry conclusive evidence***

97. A 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.

***No further action where Diocesan Tribunal unlikely to find respondent guilty***

98. 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.

***Certain matters not to be inquired into***

99. Neither the Board nor the Review Board shall, in the course of inquiring into any question:
- (a) inquire into any matter which is or has been the subject of any formal investigation or enquiry conducted—
    - (i) under or pursuant to any provision of the Constitution; or
    - (ii) under or pursuant to a Canon of the General Synod, a Canon or an Ordinance of another diocese relating to the discipline or professional standards of clergy or Church workers by a board of enquiry, tribunal or other body—

save to the extent of any fresh evidence that was not reasonably available during the previous formal investigation or enquiry, but may take into account the finding of any such formal investigation or enquiry; or
  - (b) inquire into, make any findings in relation to or take into account any alleged 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.

***Matters Board and Review Board to consider***

100. In making any determination each of the Board and the Review Board shall take into account—
- (a) the conduct of the Church worker as it finds it to have been;
  - (b) in the material before the Board, any other fact or circumstance relevant to the determination of the question or questions before it; and
  - (c) any failure of the Church worker to comply with a provision of this Act.

***No costs to be awarded***

101. Neither the Board nor the Review Board has the power to award costs of any matter before it.

***To whom a copy of the determination and recommendation to be provided.***

102. Each of the Board and the Review Board shall 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.

**PART 16 - THE ARCHBISHOP OR OTHER CHURCH AUTHORITY**

***Church authority may give effect to recommendation***

103. A relevant Church authority to whom in respect of a Church worker a recommendation under this Act or a recommendation made by an equivalent body is made ~~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.

***Effect of deposition from Holy Orders***

104. A person who has been deposed from Holy Orders in accordance with this Act or in accordance with the provisions of any ordinance, act, canon, constitution, statute, legislative measure or provision of the general synod or the diocesan synod of another diocese of this Church—
- (a) is incapable of:
    - (i) officiating or acting in any manner as a bishop, priest or deacon of this Church;
    - (ii) accepting or holding an office in this Church capable of being held only by a person in Holy Orders;
  - (b) ceases to have any right privilege or advantage attached to the office of bishop priest or deacon;
  - (c) shall not hold himself or herself out to be a member of the clergy; and
  - (d) is not capable of holding an office in the Church which may be held by a lay person without the prior consent of the Archbishop.

***How deposition from Holy Orders effected***

105. (1) The deposition of a person from all or any Holy Orders by the Archbishop following the recommendation of the Board or Review Board or an equivalent body shall be effected by the execution by the Archbishop of an Instrument of Deposition in or to the effect of the form in Schedule 1.
- (2) The Archbishop must forthwith:
- (a) register the Instrument in the Registry of the Diocese;
  - (b) deliver a copy of the Instrument to the Bishop of the Diocese in which the person who is the subject of the Instrument was ordained;
  - (c) deliver a copy of the Instrument to the Registrar of the Primate; and
  - (d) cause relevant details to be forwarded to the Director for entry into the national register.

**PART 17 – CONFIDENTIALITY AND PUBLICATION**

***Duty of confidentiality***

106. Subject to the provisions of this Act, the Director, a member of the PSC, a member of the Board or the Review Board, a Church authority or a person employed or engaged on work related to the affairs of the PSC, the Board or the Review Board must not divulge information that comes to his or her

knowledge by virtue of that office or position except:

- (a) in the course of carrying out the duties of that office or position;
- (b) as may be authorised by or under this Act or any protocol;
- (c) as may be authorised or required by the National Register Canon 2007 or any canon prescribed by General Synod in substitution for that canon;
- (d) in any proceedings before a diocesan tribunal, a provincial tribunal or the special tribunal;
- (e) as may be required by law; or
- (f) to any insurer or insurance broker of a Church body or Church authority where the information may give rise to or be relevant to a claim for indemnity by the Church body or Church authority against the insurer or is relevant to obtaining or continuing insurance cover.

***Duty of disclosure to other church bodies***

107. (1) The PSC must disclose to an equivalent body information in its possession concerning alleged misconduct of a Church worker:
- (a) which is information that is relevant to, or arising during the course of an investigation being undertaken by the PSC where the PSC knows that the Church worker is residing in the diocese of the equivalent body; or
  - (b) which is information concerning misconduct alleged to have occurred in the diocese of the equivalent body—
- and shall co-operate with any equivalent body.
- (2) The PSC must disclose to the Episcopal Standards Commission relevant details of information in its possession concerning the alleged conduct of a Bishop referred to in section 56(6) of the Constitution and must co-operate with the Episcopal Standards Commission.
- (3) The PSC may disclose to a person or body of another church exercising powers, duties or functions similar to those of the PSC details of information in its possession concerning the alleged misconduct of a person who the PSC has reason to believe is a member or purported member of that church and the PSC must co-operate with such person or body to whom the information is disclosed.

***Board and Review Board may publish reasons publicly***

108. Each of the Board and the Review Board may release to the public its reasons for any determination without identifying any relevant parties.

***Church authority may publicise action taken***

109. A Church authority may release to the public such material as it may determine with respect to any action taken against a Church worker including the identity of that person.

***PSC to report annually to Archbishop and Archbishop-in-Council***

110. (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.

**PART 18 – INDEMNITY**

***Indemnification of those with functions under the Act***

111. The Archbishop-in-Council shall and is hereby authorized, out of church funds, to indemnify –

- (a) the Director and any delegate of the Director;
- (b) any carer appointed under this Act or any protocol;
- (c) the members of the PSC and each of them;
- (d) any delegate of the PSC;
- (e) the members of the Board and each of them;
- (f) any person appointed by the Board pursuant to this Act;
- (g) the members of the Review Board and each of them;
- (h) the secretary to the Review Board; and
- (i) any person appointed by the Review Board pursuant to this Act—

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.

**PART 19 – REGULATIONS**

***Archbishop-in-Council may make amend or repeal regulations***

112. The Archbishop-in-Council may from time to time 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.

## PART 20 – AMENDMENTS

### *Amendments to Appointments Act 1971*

113. The Act set out in Schedule 2 is amended in the manner set out in Schedule 2.

## PART 21 – TRANSITIONAL PROVISIONS

### *Interpretation*

114. In this Part—

“**commencement day**” means the day on which this Act comes into operation;

“**Director of Professional Standards**” means the director of professional standards of the Diocese as constituted before the commencement day;

“**Professional Standards Committee**” means the professional standards committee of the Diocese as constituted before the commencement day;

### *Complaints already made*

115. (1) This section applies to a complaint within the meaning of that expression in this Act if –
- (a) the complaint was made before the commencement day; and
  - (b) the complaint has not been the subject of a recommendation by the Director of Professional Standards or the Professional Standards Committee to the Church authority before that day.
- (2) On and after the commencement day the complaint is to be dealt with under this Act.

### *Current investigation*

116. (1) This section applies to an investigation of a complaint that the Director of Professional Standards or the Professional Standards Committee has begun but not completed before the commencement day.
- (2) On and after the commencement day the investigation is to be conducted in accordance with this Act.

**Misconduct to include conduct before commencement of this Act**

117. For the purposes of the definition of “misconduct” in section 3 of this Act, a reference to abuse or other conduct shall be taken to be a reference to abuse or other conduct, whether occurring before or after the commencement day.

**SCHEDULE 1**

TO:

I, *[ARCHBISHOP OF MELBOURNE]*  
do by these presents hereby depose you from Holy Orders (particulars of which are set out below) in accordance with the recommendation of the Professional Standards Board of the *[Diocese of Melbourne]*.

PARTICULARS OF HOLY ORDERS

FULL NAME AND ADDRESS:

	ORDAINING BISHOP	PLACE	DATE
ORDINATION AS DEACON:	.....	.....	.....
ORDINATION AS PRIEST:	.....	.....	.....
CONSECRATION AS BISHOP:	.....	.....	.....

DATED

**SCHEDULE 2**

The *Appointments Act 1971* is amended as follows—

1. **Amend** section 36 –
  - (a) by deleting “or” in paragraph (b)(iii);
  - (b) by substituting for the full stop at end of paragraph (c) – “; or”
  - (c) by adding after paragraph (c) –

“(d) following a recommendation under and in accordance with the *Professional Standards Act 2009*.”
2. **Repeal** Part VI – Suspension of Clerks