

Professional Standards Amendment Bill 2017

EXPLANATORY MEMORANDUM

13 September 2017

Introduction

1. This Bill introduces a number of amendments to the *Professional Standards Uniform Act 2016*, being amendments that include—
 - (a) to correct drafting issues or matters of uncertainty identified since its enactment;
 - (b) to reflect recent enactments by General Synod;
 - (c) to address an issue of indemnifying a witness; and
 - (d) to address an issue concerning the definition of “Church worker” in the model professional standards ordinance identified by the Appellate Tribunal in its determination in the matter of Keith Slater.

General

2. At its meeting in September 2017, the General Synod of the Church enacted the *Holy Orders (Removal from Exercise of Ministry) Canon 2017*. The canon provides for the deposition of a member of the clergy from the exercise of Holy Orders following the sentence of a tribunal or a determination of a professional standards board or episcopal standards board and for the effect of that deposition. This produces consequential amendments to the Act, in particular, the repeal of Part 6.2 dealing with deposition from Holy Orders and a reframing of the definition of “prohibition order” to work in with the operation of the canon. Similarly there is a consequential amendment to the definition of “Church authority” in s173, Part 7.9 with regard to a deposition from the exercise of Holy Orders.
3. This Bill effects amendments to ensure consistency with the operation of the canon to the extent that the question of deposition or prohibition from functioning arises in a professional standards proceeding.
4. General Synod also enacted the *Episcopal Standards (Child Protection) Canon 2017* which applies to diocesan bishops and former diocesan bishops and relates to child protection matters. New sections 25(2)(b) and 76(2) are intended to facilitate the transfer of a matter to either the Episcopal Standards Commission or the Episcopal Standards Board. Various other consequential amendments are made to the Act to reflect the role that the Episcopal Standards Board may play under that canon. Other amendments to the definition of “misconduct” are intended to ensure that the *Professional Standards Uniform Act 2016* is a complying ordinance for the purposes of that canon. If it is, an appropriate matter can be transferred to the regime established under the canon.
5. Clause 18 of the Bill inserts a new section 98A in the Principal Act. This provision is intended in a limited way to give both the Professional Standards Board and Review Board the power to stipulate special procedures to apply

where in a proceeding it is sought to examine or cross examine a child or a victim of sexual abuse. The provisions are derived from the provisions in Part 2 of the *Criminal Procedure Act 2009* (Vic) which provides for special procedures in cases of this kind. They are intended to encourage such persons to come forward and give evidence where otherwise they may be reluctant to do so. The amendment seeks to ensure that best practice is observed.

6. Clause 21 empowers the Diocesan Corporation to indemnify a witness in a professional standards proceeding if the directors so resolve. Unlike a witness before a State court or tribunal, a witness before a professional standards Board or Review Board does not enjoy immunity from suit in connection with giving evidence. The due administration of justice can be adversely affected if a witness is dissuaded from giving evidence by the threat of civil litigation. The provision is intended to empower the Diocesan Corporation to indemnify witness in those circumstances if it is appropriate to do so and thereby offer some protection to the witness.
7. Clause 22 amends the definition of “Church worker” to make clear that the Diocesan Bishop and the Bishop of another diocese is excluded from the definition but that a former Diocesan Bishop is included.

Clause notes

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| Clause 1 | states the short title of the Bill. |
| Clause 2 | provides that a reference to the Principal Act is a reference to the <i>Professional Standards Uniform Act 2016</i> . |
| Clause 3 | states the purpose of the Bill, to amend the Principal Act. |
| Clause 4 | provides for the Act to come into operation on the day on which it receives the assent of the Archbishop. |
| Clause 5(a) | substitutes a new definition of “bullying” to correspond better with the National Register Canon. |
| Clause 5(b) | inserts a definition of “former Diocesan bishop”. |
| Clause 5(c) | substitutes a new definition of “prohibition order” to reflect the language of the Holy Orders (Removal from Ministry) Canon 2017. |
| Clause 5 (d) and (e) | makes amendments for the sake of clarity. |
| Clause 6 | amends the definition of ‘misconduct’ to incorporate reference to “examinable conduct” under the <i>Episcopal Standards (Child Protection) Canon 2017</i> . This is to make the Act a complying ordinance for the purposes of that canon. |
| Clause 7 | amends section 14(2) of the Principal Act to correct a drafting error. |
| Clause 8 | is a consequential amendment flowing from the <i>Episcopal Standards (Child Protection) Canon 2017</i> . |
| Clause 9 | reflects a technical drafting amendment. |

- Clauses 10 – 12 substitute “grant” for “issue” or “granted” for “issued” so that the language is consistent throughout the Act.
- Clause 13 is a consequential amendment flowing from the *Episcopal Standards (Child Protection) Canon 2017*.
- Clauses 14 – 17 substitute “grant” for “issue” or “granted” for “issued” so that the language is consistent throughout the Act.
- Clause 18 introduces a consequential amendment flowing from the *Episcopal Standards (Child Protection) Canon 2017* to provide that on the referral of a complaint to an equivalent body to the Board, that equivalent body shall deal with the complaint in accordance with the provisions of any canon or ordinance governing the powers and functions of that equivalent body.
- Clause 19 allows for an amendment to the Constitution to give the Special Tribunal jurisdiction to hear a charge against a former Diocesan bishop.
- Clause 20 is intended to achieve consistency in language with the *Holy Orders (Removal from Exercise of Ministry) Canon 2017*.
- Clauses 21 and 22 again substitute “grant” for “issue”.
- Clause 23 corrects a drafting omission by insert reference to a direction that may be made by the Board.
- Clause 24 empowers the Professional Standards Board and Professional Standards Review Board to stipulate special procedures in certain cases.
- Clause 25 introduces a consequential amendment flowing from the *Holy Orders (Removal from Exercise of Ministry) Canon 2017*.
- Clause 26 repeals section 122 as a consequential amendment flowing from the *Holy Orders (Removal from Exercise of Ministry) Canon 2017*.
- Clause 27 amends the definition of Church authority to cover a complaint against an Administrator;
- Clause 28 empowers the Diocesan Corporation to indemnify a witness in a particular case.
- Clause 29 amends the definition of worker to make clear that only the Diocesan Bishop and the Bishop of another diocese is excluded. This removes a possible ambiguity which the Appellate Tribunal identified in relation to the definition of church worker in the General Synod model professional standards ordinance as adopted by the diocese of Grafton. It is intended to remove any doubt that a former diocesan bishop who holds the licence of the Archbishop is subject to the Professional Standards regime of the Diocese and amenable to being dealt under the *Professional Standards Uniform Act 2016*.
- Clause 30 contains definitions for the transitional provisions.
- Clause 31 contains a transitional provision.

Clause 32 repeals the Act on the anniversary of the date on which it received the Archbishop's assent.

No. of 2017 Serial No.

Professional Standards Amendment Bill 2017

A Bill for an Act to amend the *Professional Standards Uniform Act 2016*.

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:

Short title

1. This Act may be cited as the **Professional Standards Amendment Act 2017**.
2. In this Act, a reference to the Principal Act is a reference to the **Professional Standards Uniform Act 2017**.

Purpose of this Act

3. The purpose of this Act is to amend the Principal Act.

Commencement

4. This Act comes into operation on the day on which it receives the assent of the Archbishop.

Amendments

5. In section 3–
 - (a) substitute for the definition of “bullying” the following–

“**bullying**” means behaviour directed to a person which:
 - (a) is repeated;
 - (b) is unreasonable (being behaviour that a reasonable person, having considered the circumstances, would see as unreasonable, including behaviour that is victimising, humiliating, intimidating or threatening); and
 - (c) creates a risk to the person’s health and safetybut does not include excluded conduct as defined in this Act;
 - (b) insert after the definition of “faith” the following–

“**former Diocesan bishop** means a person who was once the Bishop of a Diocese;

- (c) substitute for the definition of “prohibition order” the following—
- “prohibition order”** means an order prohibiting a Church worker either permanently or for a specified period—
- (a) from holding a specified role office or position in or being employed by a Church body or Church authority or in relation to any role office or position in the Diocese or in relation to employment by a Church body; or
 - (b) if the Church worker is a person ordained to the order of bishop, from carrying out any functions—
 - (i) as a bishop, or
 - (ii) as a bishop and priest; or
 - (iii) as a bishop, priest and deacon;
 - (c) if the Church worker is a person ordained to the order of priest, from carrying out any functions—
 - (i) as a priest, or
 - (ii) as a priest and deacon;
 - (d) if the Church worker is a person ordained to the order of deacon, from carrying out any functions of a deacon.
- (d) amend the definition of “role office or position” by adding after the words “Diocesan Bishop” the following—
- and includes the position of having been ordained into Holy Orders to the rank of bishop, priest or deacon according to the rites and ceremonies of this Church or of a Church in communion with this Church
- (e) substitute for the definition of “Scheme Corporation” the words – “Kooyoora Ltd”;
6. In section 5, insert on a new line at the end after “faith ritual and ceremonial” –
- and includes in relation to a former Diocesan bishop examinable conduct as defined in the *Episcopal Standards (Child Protection) Canon* 2017.
7. In section 14(2) of the Principal Act, substitute for the words “either subject to any condition or restriction or at all” the words — “or fit subject to any condition or restriction”.
8. In section 25(2) substitute “open” for “appropriate”, insert (a) on a new line after the words – “to an equivalent body or bodies” and renumber the subparagraphs (i) and (ii) and insert “or” at the end of subparagraph (ii).

Insert new subparagraph (b) as follows—

- (b) if the complaint is made against a former Diocesan bishop and, at the time of the referral, the Episcopal Standards Commission has jurisdiction under the *Episcopal Standards (Child Protection) Canon 2017* to deal with the matter.
9. In section 29(1), substitute for “section 22” the words – “this Act”.
 10. In section 49 wherever occurring, substitute for the word “issued” the word– “granted”.
 11. In section 53(1), substitute for the word “issue” the word– “grant”.
 12. In section 54(1), substitute for the word “issue” the word– “grant”.
 13. Substitute for section 56(4) the following—
 - (4) The Office of Professional Standards must and is hereby empowered to give effect to, in relation to a clearance for ministry, any determination recommendation or direction of —
 - (a) the Board or the Review Board; or
 - (b) the Episcopal Standards Board or Episcopal Standards Review Board pursuant to the *Episcopal Standards (Child Protection) Canon 2017*.
 14. In section 59(1), substitute for the word “issued” the word– “granted”.
 15. In section 63(1), substitute for the word “issue” the word– “grant”.
 16. In section 64(1), substitute for the word “issue” the word– “grant”.
 17. In section 67(2), substitute for the word “issued” the word– “granted”.
 18. In section 76, insert “(1) before the words “on the referral” and add new subsection (2) as follows—
 - (2) On the referral of a complaint to an equivalent body to the Board, that equivalent body shall deal with the complaint in accordance with the provisions of any canon or ordinance governing the powers and functions of that equivalent body.
 19. In paragraph (j) of section 78(1), insert after the words “before the Diocesan Tribunal” the words — “or the Special Tribunal if it has jurisdiction under the Constitution”.
 20. In paragraph (k) of section 78(1), substitute for the words “all or any of the Holy Orders to which that person has been ordained” the words– “from the exercise of Holy Orders”.

21. In section 80(1), substitute for the word “issue” the word— “grant”.
22. In section 81(c), substitute for the word “issue” the word— “grant”.
23. In section 88, insert after the word “recommendation” the words— “or direction”.
24. After section 98, insert –

Board and Review Board may stipulate special procedures in certain cases

- 98A. Subject to any terms prescribed by regulation, each of the Board and the Review Board may stipulate the terms on which the examination or cross examination of a child or a victim of sexual abuse is to be conducted and may—
 - (a) refuse to permit any questions as to, or admit any evidence of, the general reputation of the victim of sexual abuse with respect to chastity;
 - (b) refuse to permit a victim of sexual abuse to be cross examined personally by the respondent;
 - (c) may direct that alternative arrangements be made for the giving of evidence by a victim of sexual abuse, including arrangements—
 - (i) permitting the evidence to be given from a place other than the hearing room by means of closed-circuit television or other facilities that enable communication between that place and the hearing room;
 - (ii) using screens to remove the respondent from the direct line of vision of the witness;
 - (iii) permitting a person, chosen by the witness and approved by the board for this purpose, to be beside the witness while the witness is giving evidence, for the purpose of providing emotional support to the witness;
 - (iv) permitting only persons specified by the board to be present while the witness is giving evidence;
 - (v) requiring legal practitioners to be seated while examining or cross-examining the witness.
25. Substitute for section 121 the following—

The failure without reasonable excuse to comply with a prohibition order or other matter

121. The failure of a respondent Church worker without reasonable excuse to comply with a prohibition order or other requirement

given effect to by the Church authority pursuant to section 119 is both—

- (a) an offence; and
- (b) is a relevant factor in determining the fitness or otherwise of the Church worker for any role office or position.

26. Repeal section 122.

27. In section 173—

(a) add after subparagraph (b) –

(c) in relation to a Church worker who is the Administrator of the Diocese (which is metropolitan) during a vacancy in the See, the most senior Diocesan bishop in the Province;

(d) in relation to a Church worker who is the Administrator of the Diocese (which is not metropolitan) during a vacancy in the See, the Metropolitan;

(b) in paragraph (e), delete –

“the Diocesan bishop and one other Bishop of a diocese nominated by the Metropolitan”

28. In section 181, delete “and” at the end of paragraph (k), insert “and” after paragraph (l) and then insert new paragraph (m) as follows—

(m) any witness in a proceeding under this Act, if the Diocesan Corporation so resolves in a particular case—

29. Solely for the avoidance of any ambiguity, in schedule 1 –Who is a Church worker – substitute for—

and where the context so admits or requires includes a person who is deceased but excludes a bishop subject to the jurisdiction of the Special Tribunal of the Church

the following—

and where the context so admits or requires—

(c) includes a person who is deceased; but

(d) excludes the Archbishop [or Bishop] of the Diocese and the Bishop of another diocese—

(i) to the extent necessary to preclude the making of a complaint under this Act against a person who holds the office of Diocesan Bishop or the Bishop of another diocese or to preclude dealing with such a complaint under this Act;

(ii) for the purposes of Chapter 2; and

- (iii) for the purposes of Part 4.1.

TRANSITIONAL PROVISIONS

Interpretation

30. In this section and the following—

“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

31. (1) This section applies to a complaint within the meaning of that expression in the Principal Act if—

- (a) the complaint was made before the commencement day; and
- (b) the complaint has not been the subject of a reference by the Professional Standards Committee to the Professional Standards Board before that day.

(2) On and after the commencement day the complaint is to be dealt with in accordance with the Principal Act as amended by this Act.

Repeal

32. This Act is repealed on the anniversary of the day on which it came into force.
