

SYNOD OF THE ANGLICAN DIOCESE OF MELBOURNE

Professional Standards Uniform Act Adoption Bill 2016

SECOND READING SPEECH

21 October 2016

The Chancellor, Michael Shand QC

Mr President, members of Synod, I move that I do have leave to bring in a Bill entitled the *Professional Standards Uniform Act Adoption Bill 2016*. The motion is seconded by the Registrar.

I seek leave to speak to the Bills for no longer than 25 minutes and the seconder for no more than 8 minutes.

Professional Standards Uniform Act Adoption Bill 2016 (p138)

1. Mr President, members of Synod, I have great pleasure in seeking leave to bring in the *Professional Standards Uniform Act Adoption Bill 2016 (the Adoption Bill)* and its scheduled *Professional Standards Uniform Act 2016 (the Uniform Act)*.
2. As you will have seen, this is a substantial Bill. The explanatory memorandum runs to 27 pages and the Bill itself, 71 pages. It has seen 21 published versions in the preparation, since July 2014.
3. Synod passed the existing Professional Standards legislation in 2009. It amended it in 2012. Archbishop in Council has approved a number of protocols addressing particular aspects. Ballarat and Wangaratta dioceses followed suit, with their own legislation.
4. Since 2009, much has happened:
 - (a) In January 2013, the Commonwealth and States established the Royal Commission into Institutional Responses to Child Abuse;
 - (b) In November 2013, the Victorian Parliamentary Enquiry published its report, *Betrayal of Trust* on the processes by which religious and other non-government organisations respond to the criminal abuse of children by personnel within their organisations;
 - (c) In July 2014, General Synod approved the model episcopal standards ordinance. This is the model legislation to deal with complaints involving the diocesan bishop); this followed 4 years of work by the Episcopal Ministry Task Force of which I was a member;
 - (d) In response to the Royal Commission, each of the 5 Victorian dioceses conducted independent audits of professional standards files in their dioceses, with the opportunity to review the working of the existing legislation or protocols and identify areas for improvement;

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- (e) Since last year, we have seen the incorporation of diocesan corporations in all the Victorian dioceses, as the diocesan body with separate legal status in perpetuity to be accountable for abuse.
 - (f) Finally, amendments to State legislation - the Crimes Act and the Working with Children Act, already passed, and other amendments to the Wrongs Act still to be introduced, put a heavier onus on the Church and its responsible office holders to demonstrate that all reasonable care has been taken to prevent abuse.
5. Several significant Royal Commission hearings affecting the Anglican Church have taken place – the Diocese of Grafton, the Church of England Boys’ Society hearing in Hobart and most recently the Diocese of Newcastle.
 6. At these hearings, horrific evidence was given of persistent child abuse by clergy and others. This abuse has caused incalculable damage to the survivors and their families. It has also called into question the conduct of the diocesan bishops who held office at the time. It has diminished the Church in the eyes of the community and some of its members. It has betrayed the faithful members of our congregations and caused some to question their faith. Most significantly, when the bearer of the message of the Gospel commits abuse, it damages the credibility of the message itself. It frustrates and hinders our efforts to bring people to Christ.
 7. What do we do? As a Church, we can apologise and we have done so; we can acknowledge past failures; we can offer counselling and other support, including financial assistance: a redress scheme. This can help relieve the suffering of survivors and their families. The Bill empowers Archbishop in Council to establish a redress scheme for survivors.
 8. What we can also do as a Church is to look to the future, to resolve on steps to prevent or reduce the risk of such abuse happening again. We can decide on structures and processes so as to respond to the incidence of abuse in a manner modelled on Christ’s teachings. It is not an easy course. It is challenging, at times unpleasant, uncomfortable. How the Church in the diocese of Melbourne responds in future is yours to decide, as members of this Synod, in considering this Bill.
 9. Our legislation binds all members of the Church in the diocese. It can chart the way the diocese should respond in future. It can empower the setting of standards of conduct; it can define expectations and cast duties on various office holders. It can mandate a caring and transparent process, one with compassion, integrity, clarity and respect for all involved.
 10. Bear with me then, as I speak to some of the detail of the Bill which I commend to you as a worthy response of our Church.
 11. The Bill stands as a significant revision of our existing *Professional Standards Act 2009*. It maintains the overall broad structure of the Professional Standards Committee, Board and Review Board but reflects what we have learnt from the above developments. The explanatory memorandum at p114

explains the steps in the process of dealing with a complaint. There are provisions intended to ensure transparency at various stages of the process so that complaint and respondent are kept informed.

12. If we don't have this careful process, we risk having disputes being determined by the Court. Significantly, that has not happened in the diocese of Melbourne. It has happened elsewhere in the dioceses of Adelaide, Perth and Newcastle.
13. Like the existing legislation, the Bill focuses on the question of *fitness* of Church workers, clergy and lay people, raised by an allegation of misconduct. The aim is the protection of the community and the maintenance of standards in the Church. The Bill seeks at the same time to provide safeguards to ensure an orderly process that affords procedural fairness to a respondent Church worker and greater flexibility in the disposition of a matter. It will make for quicker handling of complaints.
14. The Bill maintains in clause 5 (p 148) the breadth of the definition of 'misconduct' in the existing legislation but offers more particularity on relevant elements to assist the Committee to determine whether the complaint falls within the legislation and should be entertained. It reinforces the concept of excluded conduct. For example, in a complaint of bullying, where the office holder has acted in good faith, reasonably and in the lawful discharge of their duties, there is no misconduct under the Act and the complaint can be dismissed summarily (cl 4)
15. The preparation of the Bill has been the work of a Provincial Working Group, chaired by the Bishop of Bendigo, Bishop Curnow and comprising representatives from across the Province. Details of the membership are set out at paragraph 5 of the explanatory memorandum (p 110).
16. The Uniform Act was considered by Provincial Council at its meeting on 29 April 2016. Provincial Council approved it for consideration and, where possible, adoption by a synod of a diocese in the Province.
17. In late May this year, the Synod of the Diocese of Bendigo enacted the Uniform Act in substantially the same form as the present Bill. The other Victorian dioceses have the matter on their agenda for next year.
18. As you have heard from the Archbishop, the Bill is drafted as a model for any of the other dioceses of the Australian Church to adopt, with such modifications as their Synod considers appropriate, taking into account relevant State legislation and local conditions.
19. This Bill presents a distinct vision for how the Anglican Church should respond to a complaint that a Church worker has committed abuse.
 - (a) First, that each diocese should so far as possible adopt uniform legislation which takes into account the experience and learning of the last decade and which sets out processes which reflect best practice in this area;

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- (b) Second, that there should be a common Office of Professional Standards, within a company structure, to serve dioceses in the province and beyond, as practicable.
20. To fulfil this vision, we do need an operating company that is separate from our own Diocesan Corporation because the scheme will operate not just for our diocese but for other dioceses and agencies. The scheme company provides professional standards services whereas our own Diocesan Corporation is the body ultimately accountable for any misconduct of Church workers in our diocese.
21. These key goals offer the following advantages:
- (a) First, the proposed Office of Professional Standards is more demonstrably independent of the individual diocese and its Bishop within the Church than existing arrangements. This is an aspect seen as crucial to winning the confidence of the community in the process and indeed in the Church as an institution;
- (b) Second, it offers the capacity to operate across diocesan boundaries in a uniform manner to provide professional standards services to each diocese and participating agencies and to achieve economies of scale;
- (c) Third, it offers the structural flexibility to accommodate a range of corporate bodies in the Anglican community as clients, not just dioceses; and
- (d) Finally, it best manages the risks associated with complaints by having a dedicated body under the governance of its own board of directors focus on a sound professional standards process. We see a reasonable prospect for better outcomes than if individual dioceses seek to deal with these matters on their own and limited by their own resources.
22. Will other dioceses join? The Bill seeks to balance the interests of diocesan autonomy and the need for independence and to achieve consistency and economies of scale. The scheme of the proposed arrangements is as follows:
- (a) Synod enacts the Uniform Act and reserves the right to repeal or modify it. As at present, the Archbishop in Council must approve any applicable code of conduct for Church workers and any regulations under the legislation (cl 14).
- (b) The Scheme Corporation must consult with the Diocesan Corporation when appointing the Director of Professional Standards, the Executive Director and the Ombudsman (cl 132).
- (c) The directors of the Scheme Corporation will approve operating protocols under the scheme. (cl 11)
23. Two further points of explanation.
24. First, why an Adoption Bill? Clause 5 of the Adoption Bill (p138) provides that the Uniform Act as set out in the Schedule to the Act, modified as

provided in the Adoption Bill applies as a law of the Synod of the Diocese. We offer the Uniform Act as a model for other dioceses.

25. In doing it this way, we have followed the approach which State Parliaments have adopted in enacting uniform legislation, such as, for example, the National Health Practitioner Law and the Legal Profession Uniform Law. It reserves to each Parliament or in our case, each Synod the opportunity to modify the uniform law if necessary, but nevertheless sets a benchmark for consistency.
26. Second, how will the company administering the scheme work?
27. Clause 3(1) of the Uniform Bill (p146) contains a definition of the Scheme Corporation which, as currently drafted, requires the insertion of the name of the company. That company has not yet been incorporated. I propose therefore to move in Committee an amendment to the definition to provide that the Scheme Corporation means a company limited by guarantee –
 - (a) either incorporated or to be incorporated;
 - (b) having been approved by the Diocesan Bishop-in-Council to operate as the Scheme Corporation under this Act; and
 - (c) which has within 60 days of the Diocesan Bishop assenting to this Act, assented to this Act by executing and agreeing to be bound by the same;
28. The company will have the following features:
 - (a) It will have as founding members at least the Bendigo and Melbourne diocesan corporations;
 - (b) The members will have the power to appoint and remove the directors of the company;
 - (c) The board of directors will not be permitted to admit new members without the prior consent of the initial members.
 - (d) Its objects as stated in its constitution will be as set out at p137 of your papers.
29. The board of directors of the Scheme Corporation will, ultimately, oversee the provision of professional standards services to all the participating dioceses and entities on an agreed subscription and fee for service basis, that is still to be worked out.
30. It is important to note that although the Scheme company administers the scheme, the Professional Standards Board and Review Board will continue to operate independently in determining any question of fitness in a complaint or matter.
31. The present President of the Review Board is the Honourable Justice Dodds Streeton, an acting justice of the Supreme Court. She is assisted by a panel of Review Board members including a retired Supreme Court Justice David Habersberger, who is also the Chair of the Victorian Legal Admissions Board.

You will see the names of the other members of the panel, and for that matter, the Board and Committee members at p 186 of your Part B booklet.

32. I would like to take this opportunity to publicly thank Mr Tony Greenwood for his dedicated service as Secretary to the Review Board. He has announced his retirement from that role.
33. All the office holders under the existing legislation – Board and Review Board members, Secretaries, Committee members, Director and acting Directors have given hugely valuable service and have considerable experience in this work and we are fortunate to have people of this calibre serving in these roles.

Clearances

34. The Uniform Act reaffirms the existing requirement for each person in either ordained ministry or lay ministry to apply for a *clearance for ministry* (Ch 4) (p165).
35. The Bill also introduces Part 4.2 on *clearance for service*, which authorises the Archbishop in Council by a formal process of resolution to prescribe any particular role office or position (other than clergy or lay ministry) for which a clearance must be obtained. There is at present no legislative basis for requiring lay volunteers in the diocese to apply for a clearance. These changes will promote a more intentional approach to suitable screening of those in the service of the Church in the diocese where it is appropriate, taking into account our obligations under the State's Working with Children legislation.
36. As with complaints, a dispute about fitness and whether a clearance should be granted must be referred to the Professional Standards Board for determination or on review to the Review Board (cl 69(b)) p171. This affords lay people the same procedural fairness that is currently available to clergy and lay ministers.
37. It follows that not every lay role, office or position will require a clearance for service, rather as a general rule, only those the subject of a particular determination by the Archbishop in Council. This facilitates a measured and practical administrative response to the need for clearances in parishes and elsewhere.
38. The Office of Professional Standards will be bound by the final determination of the Board or on review, the Review Board (cl 56(4) and 66(4)) as to whether or not to issue the clearance.
39. It remains to speak to the administrative structure of the Office of Professional Standards.

Administrative structure

40. Chapter 7 of the Uniform Act (p189) sets out the structure of the various office holders who are to administer the processes. They include -

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- (a) the Director of Professional Standards;
 - (b) the Executive Director, expected to be a part time role, to oversee the running of the office; and
 - (c) the Professional Standards Ombudsman, expected to be an honorary role, to look into any grievances about the process by which a complaint or matter was dealt with.
41. The present form of the Uniform Act was reached after 16 meetings of the Provincial Working Group committee and also after consultation with past participants in the complaints process and survivors as well as –
- (a) the Professional Standards Commission of the National Church;
 - (b) the members of the Provincial Legal Committee comprising the Chancellors and Advocates of each diocese in the Province;
 - (c) the various office holders under the existing legislation.
- We propose these changes, confident that they will significantly improve the effectiveness of the Office of Professional Standards.
42. The Bill comes to Synod with the support of the Archbishop in Council.
43. Members of Synod, we are convinced that these changes will bring substantial improvements to our professional standards process and that they constitute a timely, significant and comprehensive response of the Diocese of Melbourne to the pressing issues of how institutions should respond to the incidence of child abuse in our community.
44. I commend to you the Bill.
