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Professional Standards Uniform Act 2016 Diocese of Melbourne

**An Act
relating to professional standards of Church workers, and for other
purposes**

CHAPTER 1 – PRELIMINARY

PART 1.1 - INTRODUCTION

Short title

1. This Act may be cited as the *Professional Standards Uniform Act 2016*.

Commencement

2. The *Professional Standards Uniform Act 2016* or any of its provisions come into operation as provided by the Act or Ordinance of that jurisdiction that applies this Act as a law of that jurisdiction.

PART 1.2 - INTERPRETATION

3. (1) In this Act, unless the context otherwise requires:

“abuse” means bullying, emotional abuse, harassment, physical abuse, neglect, sexual abuse or spiritual abuse;

“Board” means the Professional Standards Board established under Part 7.7 and includes where appropriate an equivalent body;

“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 safety

but does not include excluded conduct as defined in this Act;

“ceremonial” includes ceremonial according to the use of this Church, and also the obligation to abide by such use;

“Chapter” means the Chapter or other governing body of the Cathedral of the Diocese;

“child” means a person under the age of 18 years;

“Church” means the Anglican Church of Australia within the Diocese;

“Church authority” has the meaning in section 173;

“Church body” includes a parish, vicar, rector, parish council, the Dean or Chapter of the Cathedral, a school affiliated with the Church, Anglicare Victoria and any other body corporate, organization or association that exercises ministry within, or on behalf of, the Church;

“Church volunteer” has the meaning in schedule 1;

“Church worker” has the meaning in schedule 1;

“clearance for ministry” has the meaning in section 49;

“clearance for service” has the meaning in section 59;

“clearance for participation” has the meaning in section 67B;

“code of conduct” means a code of conduct approved from time to time under Part 1.5;

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

“complaint” means a complaint against a Church worker under section 21;

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

“Diocesan Bishop” means the Archbishop of the Diocese [or the Bishop of the Diocese] and includes a person appointed Vicar-General or Commissary pursuant to legislation of the Synod of the Diocese and any Administrator of the Diocese within the meaning of that legislation;

“Diocesan Bishop-in-Council” means for the diocese of Melbourne the Archbishop in Council constituted under the Archbishop in Council Act 2018 (Melb) “Diocesan Bishop-in-

Council means ~~and for other dioceses~~ the Diocesan Bishop acting with the advice and consent of the Diocesan Council;

“Diocesan Office” means the administrative offices of the Diocese and the Diocesan Corporation, wherever situate;

“Diocesan Corporation” means the Melbourne Anglican Diocesan Corporation Ltd;

“Diocesan Council” means the Council of the Diocese constituted under an ordinance of the Synod of the Diocese.

“Diocesan Synod” means the synod of the Diocese;

“Diocesan Tribunal” means the Tribunal established by the Diocesan Synod and section 53 of the Constitution;

“Diocese” means the Diocese of Melbourne;

“Director” means the Director of Professional Standards appointed under Part 7.3 and includes an acting Director of Professional Standards and a Deputy Director of Professional Standards;

“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 in relation to a person 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) a body of another diocese; or
- (b) a body of the Anglican Church of Australia

exercising powers, duties or functions equivalent to those of the PSC, the Board, the Review Board or the applicable panel as the case may be; or—

- (c) where there is no such body of that diocese, the bishop of the diocese; and
- (d) where there is no such body of the Anglican Church of Australia, the Primate;

“excluded conduct” has the meaning in section 4;

“Executive Director” means the Executive Director of the Office of Professional Standards appointed under Part 7.4 and includes an acting Executive Director and a Deputy Executive Director;

"faith" includes the obligation to hold the faith;

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

"General Synod" means the General Synod established under the Constitution;

“harassment” means unwelcome conduct, whether intended or not, in relation to a person in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated but does not include excluded conduct.¹

“Interim Safety Arrangement” means the interim safety arrangement in writing determined by the Director under section 67E;

“investigator” means a person appointed from the panel of investigators under this Act to investigate a complaint or matter;

“lay minister” means a person engaged in lay ministry of a kind that is or may be authorised by the Diocesan Bishop under the *Authorised Lay Ministry (Adoption) Act 1992*;

“matter” includes a complaint and an application for a clearance under this Act;

“medical” includes psychiatric, psychological and other areas of health practice;

¹ The language of the definition reflects both s92 of the *Equal Opportunity Act 2010* (Vic) and s22A of *Anti-Discrimination Act 1977* (NSW). Cf also the *Sex Discrimination Act* (1984), s28A.

“member of the Church” means a baptised person who attends the public worship of the Church and who declares that he or she is a member of the Church and of no church which is not in communion with the Church;

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

“misconduct” has the meaning in section 5;

“ministry” means—

- (a) ordained ministry; or
- (b) lay ministry of a kind that is or may be authorised by the Diocesan Bishop under the *Authorised Lay Ministry (Adoption) Act 1992* or an equivalent Act of the synod of another diocese, as the case may be

whether in a parish or congregation or in the Cathedral or in a school or other entity or otherwise;

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

“neglect” means the failure of a parent or guardian to provide a child the basic necessities of life where the child has suffered, or is likely to suffer, significant harm to his or her wellbeing or development;

“Office of Professional Standards” means the Office of Professional Standards established by the Scheme Corporation and referred to in Part 7.2 of this Act;

“ordinance” includes an Act;

“parish” includes, in connection with a Person of Concern, a congregation and the Cathedral;

“Parish Accountability Group” means the group established under section 67R;

“participate in the life of a parish” means attending public worship in a parish, otherwise participating in activities of a parish, or any of those things;

“participating diocese” means a diocese the Synod of which has enacted like legislation to this Act and through the Diocesan Corporation appointed the Scheme Corporation to provide services through its Office of Professional Standards;

“participating entity” means an entity which has approved terms of reference either generally or a particular class of persons in like terms of this Act and appointed the Scheme Corporation to provide services through its Office of Professional Standards;

“participating diocese and entity” means a participating diocese and a participating entity;

“person in Holy Orders” means a person ordained into Holy Orders as bishop, priest or deacon according to the rites and ceremonies of this Church or of a Church in communion with this Church;

“Person of Concern” has the meaning in section 67C;

“prescribed Person of Concern” means a Person of Concern declared to be a prescribed Person of Concern under section 67G;

“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.

“prescribed” in relation to—

- (a) a class of role office or position referred to in Part 4.2; or
- (b) a form

means as prescribed by the Diocesan Bishop-in-Council pursuant to section 183;

“prescribed Church worker” has the meaning in schedule 1;

“prescribed sexual offence” means—

- (a) a sexual offence; or
- (b) such other offence referred to in s4(1A) of the *Judicial Proceedings Reports Act 1958* (Vic)²;

“Professional Standards Committee” or **“PSC”** means the

² Section 4(1A) provides - A person who publishes or causes to be published any matter that contains any particulars likely to lead to the identification of a person against whom a sexual offence, or an offence where the conduct constituting it consists wholly or partly of taking part, or attempting to take part, in an act of sexual penetration as defined in section 35 of the *Crimes Act 1958*, is alleged to have been committed is guilty of an offence, whether or not a proceeding in respect of the alleged offence is pending in a court.

The reference here to a Victorian Act is for a diocese in Victoria. For a diocese in another State or Territory, substitute the relevant legislation of the State or Territory in which the diocese is located.

Professional Standards Committee established under Part 7.1;

“Professional Standards Ombudsman” means the Professional Standards Ombudsman appointed under Part 7.5 and includes an acting Professional Standards Ombudsman;

“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.

“protocol” means any protocol approved from time to time by the Scheme Directors under Part 1.4;

“rector” means—

- (a) the person in Holy Orders instituted by or on behalf of the Diocesan Bishop to the cure of souls in a parish;
- (b) a person in Holy Orders appointed temporarily by the Diocesan Bishop to perform the ecclesiastical duties of that office holder;
- (c) if there is no such office holder and no person appointed under paragraph (b), or if such a person is absent from the parish on leave, the Archdeacon;

“referring body” means the PSC or an equivalent body which refers a

question or questions under section 69 or 70 to the Board;

“respondent” means a Church worker against whom an allegation of misconduct is made and who is not deceased;

“Review Board” means the Professional Standards Review Board established under Part 7.8;

"ritual" includes rites according to the use of this Church, and also the obligation to abide by such use;

"redress" means—
(a) care and assistance, interim and final, that may be provided under a scheme approved by the Diocesan Bishop-in-Council; and
(b) any other action that may be taken under this Act in respect of a complaint;

"role office or position" includes any function authorised under a licence or other authority granted by the Diocesan Bishop 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;

“Safety Agreement” means an agreement in writing approved by the PSC under section 67M(b);

“Safety Plan” means a plan in writing determined by the PSC under section 67M(c).

“Scheme Corporation” means the company limited by guarantee known as Kooyoora Limited, ACN 616 776 919.

“Scheme Directors” means the board of directors of the Scheme Corporation;

“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—
(a) against an adult without their consent or a reasonable belief³ in their consent; or
(b) against a child;

³ Whether a belief is reasonable depends on the circumstances. See Crimes Act 1958 (Vic) section 37G

“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—

- (a) an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person, or
- (b) other unwelcome conduct of a sexual nature in relation to the other person,

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated.⁴

“sexual offence” means—

- (a) an offence as defined in s4(1) of the Judicial Proceedings Reports Act 1958 (Vic)⁵ and in relation to a jurisdiction outside Victoria, has the meaning given it by the applicable legislation of that jurisdiction; and
- (b) any like offence under the laws of the Commonwealth, another State or Territory or another country;

“sexual offence relating to a child” means a sexual offence against or involving a child and includes a sexual offence constituted by—

- (a) sexual activity with or in the presence of a child;
- (b) the production or distribution of any form of child pornography;
- (c) administering a website used to deal with child abuse material;
- (d) encouraging use of a website to deal with child abuse material ;
- (e) possessing child abuse material; or
- (f) accessing child abuse material.

⁴ The language of the definition reflects both s92 of the *Equal Opportunity Act 2010* (Vic) and s22A of *Anti-Discrimination Act 1977* (NSW). Cf also the *Sex Discrimination Act* (1984), s28A.

⁵ ‘Sexual offence’ is defined to mean an offence under subdivision (8A), (8B), (8C), (8D) or (8E) of Division 1 of Part I of the *Crimes Act 1958* (Vic) or under any corresponding previous enactment or an attempt to commit any such offence or an assault with intent to commit any such offence. For a diocese outside Victoria, substitute the relevant legislation of the State in which the diocese is located.

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

“**vicar**” has the same meaning as rector.

- (2) For the purposes of this Act—
 - (a) a person employed by a Church body; or
 - (b) a person holding a role office or position or performing a function whether voluntarily or for payment with the actual or apparent authority of a Church authority or Church body—
is to be taken to be engaged by a Church authority.
- (3) In this Act, a reference to a general meeting of a parish is to be taken as including a reference to a statutory parish meeting.
- (4) In this Act, a reference to conduct shall be read as a reference to—
 - (a) doing or refusing to do any act;
 - (b) refraining (otherwise than inadvertently) from doing an act; or
 - (c) making it known that an act will not be done.
- (5) Where in this Act, the Board or the Review Board is required to give reasons for a decision, the instrument giving the reasons must also set out the findings on material questions of fact and refer to the evidence or other material on which those findings were based.⁶

What is excluded conduct?

4. The expression “**excluded conduct**” in relation to a Church worker means—
 - (a) any act or omission or refusal of that person to appoint, correct, discipline, counsel, admonish, transfer, demote, suspend, retrench or dismiss a person; or
 - (b) any other act or omission or refusal of that person in the course of ministry or service; or
 - (c) any decision of that person relating to the same
if that person has acted or omitted or refused to act or decided—
 - (d) in good faith;
 - (e) reasonably; and

⁶ Cf *QLD North Australia Pty Ltd v Takeovers Panel* [2015] FCAFC 68 at [97].

- (f) in the lawful discharge of the duties and functions of the role office or position held by that person.⁷

Nothing in this definition shall be read as imposing any duty or function on the person.

What is misconduct?

5. The expression “**misconduct**” in relation to a Church worker means—
- (a) bullying;
 - (b) emotional abuse;
 - (c) harassment;
 - (d) physical abuse;
 - (e) neglect of a child;
 - (f) sexual abuse;
 - (g) spiritual abuse;
 - (h) wilful violation of the Constitution or of a canon of the General Synod or of an ordinance of provincial synod or of the Diocesan Synod or of a synod of another diocese in which the Church worker was at the time of the violation a member of the Church in that diocese;
 - (i) any offence under the Offences Canon 1962 as amended and in force from time to time and as adopted by the Diocesan Synod;
 - (j) any offence under a law of the State or Territory or the Commonwealth for which the maximum penalty prescribed is imprisonment for at least 6 months;
 - (k) any offence under an ordinance of another diocese in which the Church worker was at the time of the offence a member of the Church in that diocese;
 - (l) any breach of the duty to report a matter referred to below in section 17 or 18 or of a like duty to report a matter under any previous ordinance or protocol of the Diocese or another diocese in which the Church worker was at the time of the breach a member of the Church in the relevant diocese;
 - (m) wilful or reckless failure to comply with a requirement of section 57;⁸
 - (n) wilful or reckless failure to comply with a condition imposed by the Church authority under section 119;
 - (o) wilful or reckless failure to comply with an undertaking given to the Board, the Review Board or the Church authority;
 - (p) any other conduct (other than excluded conduct) that is unbecoming or inappropriate to the role office or position of the Church worker or their duties and functions⁹

by the person whenever occurring (whether before or after the commencement of this Act) which, if established, would on its face call into question—

- (i) the fitness of the person to hold a role office or position, or to be

⁷ See the definitions of *bullying*, *emotional abuse*, *harassment* and *spiritual abuse*.

⁸ Clearance for ministry provisions.

⁹ Cf *Clergy Discipline Measure* (UK), s8(1)(d)).

- or remain in Holy Orders;
- (ii) the fitness of the person, whether temporarily or permanently, to exercise ministry or perform any duty or function of the role office or position; or
- (iii) whether, in the exercise of ministry or in the performance of any duty or function, the person should be subject to any condition or restriction

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

and includes in relation to a former Diocesan bishop examinable conduct as defined in the *Episcopal Standards (Child Protection) Canon 2017*.

Delegation of powers

6. Where—
- (a) the discharge, exercise or performance by a person of a responsibility, power, authority, duty or function under this Act or any regulation under it is dependent upon the opinion, belief or state of mind of that person in relation to a matter; and
 - (b) the responsibility, power, authority, duty or function is, in accordance with this Act or any regulation under it, delegated,

the delegate may, unless the contrary intention appears, discharge, exercise or perform the responsibility, power, authority, duty or function upon the delegate's own opinion, belief or state of mind (as the case requires) in relation to that matter.¹⁰

Construction of power to delegate

7. Where this Act confers on a person or body a power to delegate the discharge, exercise or performance of a responsibility, power, authority, duty or function under this Act or any subordinate instrument, then, unless the contrary intention appears—
- (a) the delegation does not prevent the discharge, exercise or performance of the responsibility, power, authority, duty or function by the person or body;
 - (b) the delegation may be made subject to such conditions or limitations as the person or body may specify; and
 - (c) a responsibility, power, authority, duty or function so delegated, when discharged, exercised or performed by the delegate, shall, for the purposes of the Act or subordinate instrument, be taken to have been discharged, exercised or performed by the person or body.
8. If this Act or any regulation under it confers power to delegate to the holder of

¹⁰ Cf *Interpretation of Legislation Act 1984* (Vic), ss 42, 42A.

a role office or position, then, unless the contrary intention appears, a delegation may be made to any person for the time being acting in or performing the duties of that role office or position.

PART 1.3 – OVERRIDING PURPOSES OF THE ACT

Overriding purposes

9. The overriding purposes of this Act and of any protocol made under this Act are—
- (a) to facilitate the just, quick and inexpensive resolution of the real issues in the complaint or matter; and
 - (b) to regulate fitness for ministry or service to uphold standards in the Church and for the protection of the community.

Overriding purposes given effect to

10. 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.

PART 1.4 – PROTOCOLS, ARRANGEMENTS AND PROMOTION

Making and content of protocols

11. (1) The Scheme Directors must 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 provisions or procedures for—
- (a) receiving a complaint or information concerning misconduct;
 - (b) the appointment, role and function of professional support persons and carers for the complainant, any survivor, any related party or the respondent;
 - (c) informing a complainant and any survivor of alleged misconduct, and a respondent, of rights, remedies and relevant procedures available to them under the Act or otherwise;

- (d) assisting or supporting, as appropriate, any person affected by alleged conduct the subject of a complaint and the respondent;
- (e) the provision of redress to such classes of persons and on account of such misconduct as may be specified in the protocol;
- (f) an explanation of the processes for investigating and dealing with a complaint;
- (g) dealing fairly with each party to a complaint;
- (h) alternative processes for complaint resolution including referral to mediation and conciliation in appropriate circumstances;
- (i) regular information, reports, advice and recommendations to the Diocesan Bishop, the Board of the Diocesan Corporation and any other relevant Church authority; and
- (j) working, where necessary, with law enforcement, prosecution or child protection and other authorities of the States and Territories and of the Commonwealth of Australia.

Promoting knowledge and understanding

12. Each of the Scheme Corporation and the Diocesan Corporation by such means as it may consider appropriate shall take such steps as may be necessary or desirable to promote throughout the community knowledge and understanding of this Act and the protocol or protocols and any relevant legislation of the States and Territories and of the Commonwealth of Australia.

Power to enter into necessary agreements and arrangements

13. The Diocesan Corporation may enter into such agreements or arrangements as it sees fit with the relevant authority of another diocese as to the financial 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 or the Review Board.

PART 1.5 – CODES OF CONDUCT

Diocesan Bishop-in-Council may approve code of conduct

14. (1) The Diocesan Bishop-in-Council may from time to time and after consultation with the Scheme Corporation by resolution approve a code or codes of conduct for observance by a Church worker.
- (2) The code sets out standards of conduct expected of a Church worker and is relevant in determining whether the conduct of a person renders them unfit to hold a role office or position or fit subject to any condition or restriction.

Promoting a code of conduct

15. Each of the Scheme Corporation and the Diocesan Corporation by such means as may be considered appropriate must take such steps as may be necessary or desirable to promote the knowledge, understanding and observance in the Church of any code of conduct applicable in the Diocese and any relevant legislation of the States and Territories and of the Commonwealth of Australia.

CHAPTER 2 – DUTIES OF THE CHURCH WORKER

PART 2.1 – KNOWING THE CODE OF CONDUCT

Code of conduct

16. A Church worker must familiarise themselves with each code of conduct approved under this Act that relates to them.

PART 2.2 – DUTY OF PRESCRIBED CHURCH WORKER TO REPORT

Certain matters must be reported

17. (1) If any prescribed 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 and has no reason to believe that the Director is aware of those facts, the first mentioned Church worker must as soon as possible report the matter to the Director.¹¹

(1A) If any prescribed Church worker believes on reasonable grounds that a Person of Concern is participating or wishes to participate in the life of a parish and has no reason to believe that the Director is aware of those facts, the prescribed Church worker must as soon as possible report the matter to the Director.

- (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.
- (3) A failure to comply with subsection (1) is a relevant factor in determining the fitness or otherwise of the Church worker for any role

¹¹ In certain circumstances, it is an offence punishable by 3 years imprisonment for any person of or over the age of 18 years to fail to disclose to a member of the police force of Victoria information relating to the commission of a sexual offence against a child under the age of 16 years: s327 of the *Crimes Act 1958* (Vic).

office or position.

PART 2.3 – DUTY OF CHURCH WORKER TO REPORT

Certain matters must be reported

18. (1) If a Church worker has been charged in any jurisdiction in Australia or elsewhere with a sexual offence or an offence relating to child pornography whether committed within or outside the Diocese, that person must forthwith notify in writing the Director, giving particulars of the charge.¹²
- (2) A failure to comply with subsection (1) is a relevant factor in determining the fitness or otherwise of the Church worker for any role office or position.

PART 2.4 –DUTIES IN RELATION TO COMPLAINTS

Duty to comply with a direction

19. (1) A Church worker respondent must, subject to this section—
- (a) comply with any requirement of an investigator under section 31;
 - (b) truthfully answer any question put by an investigator in the exercise of powers conferred by this Act;
 - (c) not mislead the Director or the PSC or an investigator or other delegate of any of them;
 - (d) not unreasonably delay or obstruct the Director or the PSC, or an investigator or other delegate of any of them in the exercise of powers conferred by this Act; and
 - (e) attend a mediation, conciliation, neutral evaluation or other dispute resolution meeting when directed by the PSC in relation to a complaint.
- (2) A Church worker may not refuse to comply with subsection (1) on the ground that the production of a record or the giving of information or the verifying of it may tend to expose the person to a penalty and –

¹² Independently of this provision, a Church worker in Victoria who holds a working with children clearance is subject to a statutory obligation under s20 of the *Working with Children Act 2005* (Vic) to notify the Secretary to the Department of Justice and the Church authority of any relevant change in circumstances as defined in that section.

- (a) the privilege if any against exposure to a penalty is to that extent taken to have been waived¹³; and
 - (b) the record or the information given may be used in evidence in any proceeding against the person before the Board or the Review Board.
- (3) A Church worker may refuse to comply with subsection (1) on the ground that the production of a record or the giving of information or the verifying of it may tend to incriminate the person.
 - (4) 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.¹⁴
 - (5) A failure to comply with any provision of subsection (1) is a relevant factor in determining the fitness or otherwise of the Church worker for any role office or position.

PART 2.5 - UNDERTAKINGS

Duty to comply with an undertaking or direction

- 20. (1) A Church worker respondent must—
 - (a) comply with any undertaking given to the PSC, the Board, the Review Board or the Church authority; and
 - (b) comply with a direction made by the Church authority to give effect to a recommendation of the PSC, the Board or the Review Board (as the case may be) or any permitted variation or modification of that recommendation.
- (2) Failure of the respondent to a complaint to comply with an undertaking or direction is an offence.
- (3) The PSC may institute proceedings forthwith in the Diocesan Tribunal in respect of an offence against this section against any person in respect of whom the Diocesan Tribunal has jurisdiction.
- (4) A failure to comply with any provision of subsection (1) is a relevant factor in determining the fitness or otherwise of the Church worker for any role office or position.

¹³ Cf *Legal Services Commissioner v Spaulding (Legal Practice)* [2015] VCAT 292 per Garde J.

¹⁴ The legislation does not purport to abrogate the common law privilege against self-incrimination. See the discussion in *Essendon Football Club v CEO of ASADA* [2014] FCA 1019 at [279].

CHAPTER 3

PROCESS FOR A COMPLAINT OF MISCONDUCT AGAINST A CHURCH WORKER OR A CLEARANCE APPLICATION

PART 3.1 - INTRODUCTION

Complaint of misconduct

21. (1) Any person including the Director may make a complaint of misconduct of a Church worker to the PSC.

~~(1A) Any person including the Director may make a complaint of misconduct of a person who is a Person of Concern (but not a Church worker) to the PSC.~~

~~(1B) To the extent that a complaint is made of misconduct of a person who is a Person of Concern and who is not a Church worker, the provisions of this Act apply as if the complaint was made against a Church worker and are modified insofar as their participation in the life of a parish shall be taken to be a role office or position held by the Person of Concern.~~

~~(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 119 of the Church authority nominated by them in the submission on a recommendation under this Act from the PSC, the Board or the Review Board; and

(b) the PSC has consented in writing to that submission.

Note: This part deals with complaints against Church workers which class includes both a sub-class of clergy, lay leaders and certain other specified roles (prescribed Church workers) and a sub-class of Church volunteers. The process for each subclass is broadly the same except for two particular matters. First 60 day time limits are imposed on the Board and Review Board (subject to extension) for determining complaints against volunteers. Second, volunteers are not given the right on suspension by recommendation of the Board to apply to the Review Board for a review.

A complaint may be made against a deceased Church worker.

Consent to process

22. (1) The Director must prior to any investigation seek from the complainant his or her written consent to—
- (a) the giving by the Director of notice of the complaint and the identity of the complainant to the respondent;
 - (b) the investigation of the complaint by the PSC or its delegate;
 - (c) the PSC otherwise dealing with it under this Act;
 - (d) the hearing and determination of the complaint by the Board and on any review, the Review Board, either by hearing or otherwise in accordance under this Act; and
 - (e) the making of recommendations to the Church authority in accordance with this Act.
- (2) If the complainant (other than the Director) has not given the written consent referred to in the preceding subsection—
- (a) the Director and the PSC must, subject to any obligation referred to in subsection (3), respect the confidentiality of the identity of the complainant;
 - (b) the PSC may, subject to subsection (2)(a), investigate the complaint but shall not be required to do so and otherwise to refer it to the Board;
 - (c) the PSC may but is not obliged to dismiss the complaint or take no further action in relation to the complaint; but
 - (d) the PSC may with the consent of the complainant arrange with the complainant, the respondent and if appropriate, the Church authority mediation conciliation neutral evaluation or other alternative resolution of any dispute associated with the complaint, with a view to addressing any breakdown in relationships and achieving a reconciliation between the parties.
- (3) The relevant obligations are under any State or Federal law—
- (a) to disclose information to a member of the police force¹⁵; and
 - (b) otherwise to take reasonable steps to reduce or remove a substantial risk that a relevant child will become the victim of a sexual offence committed by a person or of over the aged of 18 years who is associated with the Church in the diocese.¹⁶

¹⁵ In certain circumstances, it is an offence punishable by 3 years imprisonment for any person of or over the age of 18 years to fail to disclose to a member of the police force of Victoria information relating to the commission of a sexual offence against a child under the age of 16 years: s327 of the *Crimes Act 1958* (Vic).

¹⁶ See *Crimes Act 1958* (Vic), s49C. A negligent failure by person in authority to protect a child from a sexual offence is also an offence

- (4) In this section, ‘relevant child’ means a child (whether identifiable or not) under the age of 16 years who is, or may come, under the care, supervision or authority of the Church in the Diocese.¹⁷

Form of complaints

23. (1) A complaint may be in any form, in writing on paper or by email or facsimile or conveyed orally.
- (2) A complaint must—
- (a) identify the complainant; and
 - (b) 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(1)(b).

Further requirements of complainant

24. (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 or the PSC.
- (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

25. (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) Without limiting the discretion of the PSC under subsection (1), it is open to refer a complaint, or the investigation of a complaint, to an equivalent body or bodies—
- (a) if when the complaint is made—
 - (i) the Church worker, the subject of the complaint, resides in another diocese or holds a licence or permission to officiate or other authority from a Church authority in another diocese; and
 - (ii) neither resides in the Diocese nor holds a licence or permission to officiate or other authority from a Church authority in the Diocese; or

¹⁷ The definition reflects the definition of ‘relevant child’ in s49C.

- (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.
- (3) 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 69(a) should be referred to the Board or to an equivalent body which has jurisdiction—

the PSC must refer the disagreement for decision by two independent persons agreed upon by the PSC and the equivalent body or bodies.

- (4) The PSC must act in accordance with the unanimous decision of those independent persons referred to in subsection (3) or, if such persons cannot agree within a reasonable time of the disagreement being referred, in accordance with the decision of the Primate or his nominee.
- (5) In all matters affecting the operation of this Act the PSC and the Director must co-operate with and assist an equivalent body and a person acting in the corresponding capacity of the Director in another diocese.
- (6) In making a decision under subsection (3) the independent persons will 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.

Consolidation of complaint proceedings

- 26. (1) This section applies if a complaint against a Church volunteer raises the same or similar issues of fact or law as a complaint that has been made against a prescribed Church worker.
- (2) The PSC may apply to the Board for a direction under this section in relation to proceedings against a Church volunteer and other proceedings against a prescribed Church worker under this Act on the ground that—
 - (a) a common question of law or fact arises in all those proceedings;
 - (b) the determinations and recommendations sought in all those proceedings are in respect of, or arise out of, the same transaction or series of transactions; or
 - (c) for some other reason specified in the application, it is desirable that a direction be made under this section.

- (3) In this section, 2 or more proceedings that are the subject of an application under subsection (1) are called the **related proceedings**.
- (4) The Board may make the following directions under this subsection in relation to the related proceedings—
 - (a) that the proceedings be consolidated on the terms specified in the direction;
 - (b) that the proceedings be heard or considered by the Board at the same time or in a sequence specified in the direction;
 - (c) that any of the proceedings be stayed pending the determination of any of the other proceedings.

PART 3.2 – SUMMARY DETERMINATION OF A COMPLAINT OR CLEARANCE APPLICATION

PSC may dismiss or ~~can proceed~~ without referral to the Board with certain complaints

27. (1) The PSC may dismiss a complaint or other matter or take no further action or may take limited action in relation to a complaint or other matter if—
- (a) the PSC is of opinion that—
 - (i) the complaint or other matter does not fall within the provisions of this Act;
 - (ii) the complaint or other matter is false, vexatious, misconceived, frivolous or lacking in substance; or
 - (iii) ~~there is insufficient reliable the~~ evidence is not of sufficient weight to warrant an investigation or further investigation;
 - (iv) the evidence is not of sufficient weight to support a determination of the Board that the alleged conduct occurred¹⁸.
 - (b) whether or not the PSC forms the opinion referred to in paragraphs (a), (b) or (c) of section 69, the behaviour the subject matter of the complaint or other matter can properly be dealt with by other means other than referral to the Board, consistent with the overriding purposes of this Act, such as but not limited to—

¹⁸ Criminal Procedure Act 2009 (Vic), s141(4)(a) – “to support a conviction for any indictable offence...”

- ~~(i) accepting a written undertaking or taking other limited action with or without any admission or finding;~~
 - ~~(ii) exercising its functions under Part 4.3;~~
 - ~~(iii) mediation;~~
 - ~~(iv) conciliation;~~
 - ~~(v) neutral evaluation and any other alternative resolution of any dispute associated with the complaint or matter;~~
 - ~~mediation conciliation neutral evaluation or other alternative resolution of any dispute associated with the complaint;~~
 - (c) the subject matter of a complaint or other matter is under investigation by some other competent person or body or is the subject of legal proceedings;
 - (d) the person making the complaint or raising the matter 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.
- (2) In acting under subsection (1), without limiting the generality of that subsection, the PSC may recommend to the Church authority any steps that might reduce or eliminate the risk of misconduct either generally by Church workers or in relation to the respondent by way of educational, training, counselling or mentoring programme or by way of changes to any protocol, whether diocesan or under this Act.
- (3) A recommendation pursuant to the preceding subsection is advisory only and not binding on the Church authority.
- ~~(4) In this section, "matter" includes any allegation that has been made or issue that has arisen in an application for a clearance under this Act.~~

Complainant and respondent 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 PSC must give the complainant and the respondent or applicant a written notice of the outcome including the reasons for the outcome.

PART 3.3 – INVESTIGATIONS

When PSC is to investigate

29. (1) Subject to this Act, the PSC –
- (a) must cause to be investigated each complaint ~~or matter~~ against a Church worker as expeditiously as possible;
 - (b) may cause to be investigated 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—
 - (i) no complaint has been made about the conduct;
 - (ii) a complaint about the conduct is anonymous or has been withdrawn; or
 - (iii) the complainant does not give the written consent referred to in section 22;
- (c) may cause to be investigated any allegation or issue arising on an application for a clearance under this Act.;
- (2) The PSC may by instrument in writing appoint, upon such terms and conditions as the PSC may approve, a competent person to conduct an investigation under this section.

PSC to obtain material

30. For the purpose of an investigation the PSC or its ~~investigator delegate~~ must obtain such statutory declarations or 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) Prior to any referral of a complaint or other matter to the Board, for the purpose of carrying out an investigation of a complaint or matter, an investigator appointed by the PSC may by notice in writing to a respondent require the respondent or applicant for a clearance to do any one or more of the following¹⁹—
- (a) to meet on reasonable notice with the investigator to answer questions in relation to a complaint or other matter;
 - (b) to assist in or co-operate with the investigation of the complaint or matter in a specified manner;
 - (c) to provide written information to the investigator within 21 days or such further period as the Director may allow in relation to

¹⁹ Cf *Legal Profession Uniform Law*, s371 made under the *Legal Profession Uniform Law Application Act 2014* (Vic).

- any matter relevant to the investigation;
- (d) to verify the report by statutory declaration or another manner specified by the PSC; and
 - (e) to produce at or before a specified time and at a specified place, any specified document (or a copy of the document).²⁰
- (2) Subject to any lawful objection, an investigator may inspect any document provided pursuant to a requirement under this Part and may make copies of the document or any part of the document.

—

²⁰ See Part 2.4 above for the consequences of non-compliance.

PART 3.4 – OUTCOMES OF PSC

How PSC may or must respond after receipt of complaint

32. At any time after the PSC receives a complaint, the PSC may—
- (a) direct the respondent to attend mediation conciliation neutral evaluation or other alternative resolution of any dispute associated with the complaint;²¹ and
 - (b) exercise its powers under section 27 of this Act to dismiss a complaint or to take no further action in relation to a complaint or to recommend any steps to be taken.
33. At any time after investigation of a complaint in accordance with Part 3.3, the PSC—
- (a) must, if required under section 69 or 70 to do so, refer the complaint to the Board; and
 - (b) may institute, amend or withdraw proceedings by way of charge against the respondent to the complaint before the Diocesan Tribunal.

If a complaint or application for a clearance for ministry is settled or resolved

34. (1) The fact that the subject matter of a complaint or application for a clearance for ministry may be settled or resolved in whole or in part between the parties affected thereby does not prevent the PSC from acting under sections 32 or 33 in respect of the subject matter of the complaint or matter.
- (2) Any term of settlement or resolution referred to in subsection (1) which purports to prevent or to limit the institution of action under the preceding section shall be of no effect.

If agreement on facts or recommendation concerning a complaint

35. (1) The PSC may agree with the respondent to a complaint for the submission to the Board or the Review Board of—
- (a) a statement of the facts relevant to the complaint; or
 - (b) any recommendation proposed to be made by the Board or the Review Board to the Church authority; or
 - (c) both a statement and any recommendation.
- (2) The Board or the Review Board may in its discretion proceed on the basis of the statement of agreed facts and determine any

²¹ This provision is intended to facilitate the early intervention of the PSC in a matter which is suitable for resolution by an alternative dispute resolution process involving the DPS, the complainant, the respondent and, in the appropriate case, the Diocesan Bishop. The protocol would expand on this aspect.

recommendation to be made to the Church authority, having regard to but not bound by any proposed recommendation agreed between the PSC and the respondent to the complaint.

If agreement on facts or determination concerning an application for a clearance

36. (1) The PSC may agree with an applicant for a clearance for ministry or clearance for service for the submission to the Board or the Review Board of —
- (a) a statement of the facts relevant to the application for a clearance; or
 - (b) any proposed determination on that application; or
 - (c) both a statement and any proposed determination.
- (2) The Board or the Review Board may in its discretion proceed on the basis of the statement of agreed facts and determine the application for a clearance, having regard to but not bound by any proposed determination agreed between the PSC and the applicant for a clearance.

PART 3.5 – SUSPENSION

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

37. 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 role office or position 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 Diocesan Bishop or other Church authority that pending that outcome—
- (a) the respondent be suspended or stood down from the duties or functions of any role office or position held by the respondent or certain of those duties;
 - (b) a prohibition order be made against the respondent;
 - ~~(c) that the respondent be required to enter into and comply with an Interim Safety Arrangement or a Safety Plan or Safety Agreement with the Church authority and the Director acting on behalf of the PSC, and that, if the respondent fails to do so, after notice from the Director requiring the respondent to comply—~~
 - ~~(i) the Diocesan Bishop direct that the minister who has the cure of souls refuse to admit the respondent to the Holy Communion or the Lord’s Supper except in circumstances approved in advance in writing by the Diocesan Bishop; and~~
 - ~~(ii) the Church authority take reasonable steps to prevent the respondent from having entry or access to premises or activities of the Church either generally or in a specified location or circumstances, except to be admitted to the Holy Communion or the Lord’s Supper in circumstances approved in advance in writing by the Diocesan Bishop; or~~
 - ~~(e) the respondent be required to enter into a Safety Agreement with the Church authority, failing which he or she be excluded from entry or access to premises or activities of the Church either generally or in a specified location or circumstances;²² or~~
 - (d) such other action be taken as may be thought fit.

Respondent to be given notice

38. Before—
- (a) making a recommendation pursuant to the preceding section; or
 - (b) referring the matter to the Board—

²² ~~See the definition of ‘Safety Agreement’ in section 3.~~

the PSC must give the respondent notice that grounds exist for the PSC being satisfied under the preceding paragraph that there is an unacceptable risk of harm and in that notice —

- (c) specify the grounds;
- (d) give details of the proposed recommendation; and
- (e) 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

39. The provisions of the preceding section and section 41 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 role office or position.

Referral to the Board

40. 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 role office or position and makes a recommendation direct to the Diocesan Bishop or other Church authority pursuant to section 37—
- (a) the PSC must forthwith refer the matter to the Board; and
 - (b) the Director must as soon as practicable give the respondent written 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 and that the Board will consider whether the recommendation should stand; and
 - (iii) the respondent may advance further submissions to the Board within a period specified by the Director if he or she wishes to do so.

PSC or Board to consider respondent's response

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

Powers of Board if satisfied as to unacceptable risk

42. 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 role office or position pending the outcome of the complaint, the Board may after considering any further response from the respondent within the period specified in section 40(b)(iii)—

- (a) determine accordingly and make a recommendation to the relevant Church authority that pending that outcome action be taken as referred to above in section 37; or

where the PSC has already made a recommendation under section 37—

- (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

43. 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 specific duties of the role office or position held by the Church worker and their Holy Orders if any;
 - (d) the extent to which any person is at risk of harm if a recommendation for action is not made;
 - (e) 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
 - (f) any other allegation of similar conduct previously made to the PSC or to an equivalent body
- and may take into account any other relevant matter.

Criminal charges – Notice of suspension

44. (1) If a Church worker has been charged in any jurisdiction in Australia or elsewhere with a sexual offence or a ~~sexual~~ offence relating to ~~a child pornography~~ whether committed within or outside the Diocese, that person must forthwith stand down from the duties of the role office or position pending the determination of the charge.
- (2) If the person fails to do so, any relevant Church authority must on receiving notice of the charge serve on the person a notice of suspension.
- (3) Upon service of that notice, the person shall be deemed to have been suspended by the Church authority pending the outcome of the hearing of the charge.

Suspension by the Church authority

45. The Church authority to whom a recommendation is made under this Part must unless a stay is directed under section 90, and is hereby empowered to give effect to—

- (a) that recommendation of the PSC or the Board or if applicable the Review Board; or
- (b) any variation or modification of that recommendation, consistent with the matters taken into account under section 43 and provided that the substance of that recommendation is preserved, as the Church authority sees fit.

Publication of decision

46. (1) Subject to subsection (2), the relevant Church authority—
- (a) must as soon as practicable release to the persons referred to in subsection 118(1) and to the public a written statement disclosing—
 - (i) their decision on any recommendation received in respect of a complaint;
 - (ii) the steps to be taken or that have been taken pursuant to the preceding section to give effect to it; and
 - (iii) the reasons for any variation or modification of a recommendation under the preceding section; and
 - (b) must soon as practicable provide to the Diocesan Bishop where he or she is not the Church authority the written statement referred in the preceding paragraph.
- (2) The Church authority must ensure that any information released to the public is anonymised and redacted so as not to contain any particulars that identify or are likely to lead to the identification of—
- (a) the complainant other than the Director;
 - (b) any witness other than the respondent or applicant for a clearance or a witness as to either character or a question on which expert evidence is given;
 - (c) any person against whom a prescribed sexual offence is alleged to have been committed; or
 - (d) the respondent (whether as a witness or otherwise), unless—
 - (i) the Board or the Review Board has already made public the name of the respondent in the exercise of its discretion; or otherwise
 - (ii) in the discretion of the Church authority, the disclosure of the identity of that person is necessary or desirable in the public interest; or
 - (iii) a stay has been directed under section 90.
- (3) Where in relation to any complaint, the Church authority is both—
- (a) the Diocesan Bishop or other office holder or the Chapter (as the

- case may be); and
- (b) the board of the Diocesan Corporation
- for the purposes of this section, the relevant Church authority is the Diocesan Bishop or other office holder or the Chapter (as the case may be).

Termination of a standing down or suspension

47. 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 5.4 shall be terminated by the Church authority—
- (a) if the PSC terminates the investigation without referring the matter to the Board; or
- (b) 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 119.

Consequences of suspension, prohibition or voluntary standing down

48. 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 must comply with the terms of any prohibition order;
- (b) the respondent is ineligible for appointment to any role office or 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.

CHAPTER 4 – CLEARANCES

PART 4.1 – CLEARANCE FOR MINISTRY

Definition

49. In this Act, “**clearance for ministry**” means the certificate granted by the Office of Professional Standards stating that the Church worker is fit²³ to hold the proposed role office or position for ministry in the Church whether within or beyond the Diocese (as the case may be) and whether unconditionally or subject to any condition or restriction and includes any provisional clearance issued pursuant to a direction of the Board or Review Board under section 80.

Church worker to obtain clearance for ministry

50. A Church worker who intends to engage in ministry either within or beyond the Diocese is eligible to apply for a clearance for ministry in the prescribed form to the Office of Professional Standards.²⁴
51. The Director, the PSC and the Office of Professional Standards must deal with the application in accordance with this Act and any applicable protocol.

Condition of eligibility for clearance for ministry

52. Subject to section 80, it shall be a condition of eligibility for a clearance for ministry within or beyond the Diocese that the Church worker is fit to hold the proposed role office or position in the Church whether unconditionally or subject to any condition or restriction.

Determination by the Director

53. (1) If to the best of his or her knowledge information or belief, the Director

²³ The Uniform Act uses the expression ‘fit’ but could equally have used the expression ‘fit and proper’. In *Hughes and Vale & Anor v State of New South Wales and Ors* [No 2] (1955) 93 CLR 127, it was stated at 156: “ ‘Fit’ (or ‘idoneus’) with respect to an office is said to involve three things, honesty knowledge and ability: ‘honesty to execute it truly, without malice affection or partiality; knowledge to know what he ought duly to do; and ability as well in estate as in body, that he may intend and execute his office, when need is, diligently, and not for impotency or poverty neglect it.’ ” In *Australian Broadcasting Tribunal v Bond* [1009] 170 CLR 321, it was stated at 380 “The expression “fit and proper person”, standing alone, carries no precise meaning. It takes its meaning from its context, from the activities in which the person is or will be engaged and the ends to be served by those activities. The concept of “fit and proper” cannot be entirely divorced from the conduct of the person who is or will be engaging in those activities. However, depending on the nature of the activities, the question may be whether improper conduct has occurred, whether it is likely to occur, whether it can be assumed that it will not occur, or whether the general community will have confidence that it will not occur. The list is not exhaustive but it does indicate that, in certain contexts, character (because it provides indication of likely future conduct) or reputation (because it provides indication of public perception as to likely future conduct) may be sufficient to ground a finding that a person is not fit and proper to undertake the activities in question.”

²⁴ ‘ministry’ is defined. See s3.

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 role office or position; 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 Director shall determine accordingly and the Office of Professional Standards must grant to the applicant a clearance for ministry.

- (2) Otherwise the Director must refer the application to the PSC.

Determination by the PSC

- 54. (1) If on that referral, 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 role office or position; 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 the Office of Professional Standards must grant to the applicant a clearance for ministry.

- (2) Otherwise the PSC must deal with the application in accordance with this Act and subject to section 69.

Certificate of the PSC as to fitness by ministry

- 55. A certificate of the Office of Professional Standards stating that a Church worker is fit for ministry in a particular role office or position shall be conclusive evidence of the fitness of the person for that ministry.

Duration of clearance for ministry

- 56. (1) A clearance for ministry granted under this Act is in force from the date specified in it until the earlier of—
 - (a) the specified expiry date being not greater than 5 years; and
 - (b) the resignation or retirement of the person from the role office or position

unless it is sooner suspended or cancelled by the Office of Professional Standards pursuant to a direction of the Board or the Review Board.

- (2) If an application for the renewal of a clearance for ministry granted for

a **specified** term of ~~5~~ years has been lodged within 6 months²⁵ prior to the expiration of that term but has not been finally determined before that expiration, the clearance for ministry remains in force, unless suspended or cancelled sooner, until the application has been finally determined²⁶.

- (3) For the purposes of subsection (2), an application is finally determined—
 - (a) by the renewal of the clearance for ministry; or
 - (b) by the exhaustion of all rights of review in relation to a decision to refuse to renew the clearance for ministry.
- (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*.

Prohibition on ministry without clearance for ministry

57. (1) A Church worker appointed or elected to hold any role office or position for ministry in the Diocese—
- (a) must not engage in that ministry without—
 - (i) a clearance for ministry for that role office or position²⁷; and
 - (ii) the licence, permission to officiate or other written authority of the Diocesan Bishop; and
 - (b) must comply with any condition or restriction specified in the clearance for ministry or imposed by the Diocesan Bishop in the licence, permission to officiate or other written authority.
- (2) A wilful or reckless failure to comply with a requirement of subsection (1) renders the Church worker liable to be dealt with for misconduct under this Act.
- (3) The role office or position for ministry in the Diocese of a person whose clearance for ministry is cancelled by the Office of Professional Standards on the direction of the Board or on review, the Review Board becomes vacant upon that cancellation.

²⁵ Cf s19, *Working with Children Act 2005*.

²⁶ Cf s2.4.5 *Legal Profession Act 2004*

²⁷ The intention is that each time a Church worker in ministry intends to transfer to or take up a new role office or position in the Diocese they must apply for and obtain a clearance for that ministry.

Diocesan Bishop's discretion regarding ministry

58. (1) Subject to the prior grant of a clearance for ministry to a person, the Diocesan Bishop may in his or her discretion grant or refuse the person the licence, permission to officiate or other relevant authority as the case may be of the Diocesan Bishop to engage in ministry, whether unconditionally or subject to any condition or restriction endorsed on the same.
- (2) A condition or restriction specified in the clearance for ministry shall be taken to form part of any licence, permission to officiate or other relevant authority and the Diocesan Bishop must incorporate the same in the licence, permission to officiate or other relevant authority.

PART 4.2 – CLEARANCE FOR SERVICE

Definitions

59. (1) In this Act, “**clearance for service**” means the certificate granted by the Office of Professional Standards that the Church worker is fit to hold ~~the proposed~~each specified role office or position (whether specified by class or otherwise) for service in the Church other than for ministry whether unconditionally or subject to any condition or restriction.
- (2) In this Part, a “**prescribed role office or position**” means any role office or position for service in the Church other than for ministry that—
- (a) falls within a class from time to time prescribed by the Diocesan Bishop-in-Council; or
- (b) involves in substance the duties inherent in the description of that class.

Who may or must apply for a clearance for service

60. (1) A Church worker is eligible to apply for a clearance for service to the Office of Professional Standards.
- (2) A Church worker appointed or elected to any prescribed role office or position must apply to the Office of Professional Standards for a clearance for service—
- (a) no later than 30 days following their appointment or election, as the case may be; or
- (b) if the role office or position is prescribed after the appointment of the Church worker, no later than 30 days following written notice from the Director to the person of that prescription.

- (2A) A Church worker is exempt from having to apply for a clearance for service if they already hold–
- (a) a clearance for service for any class of roles offices or positions that include the one to which the person has been elected or appointed; or
- (b) a clearance for ministry for any role office or position.
- (3) Nothing in this section precludes a Church authority in his or her or its discretion from requiring in writing as a condition of any appointment that a person whose role office or position does not otherwise fall within a class referred to above in subsection (2) of the preceding section apply for and obtain a clearance for service²⁸.
- (4) Any application for a clearance for service must be in or to the effect of the prescribed form.

61. The Director, the PSC and the Office of Professional Standards must deal with the application in accordance with this Act and any applicable protocol.

Condition of eligibility for clearance for service

62. It shall be a condition of eligibility for a clearance for service within the Diocese that the Church worker is fit to hold ~~each specified the proposed~~ role office or position in the Church whether unconditionally or subject to any condition or restriction.

Determination by the Director

63. (1) If to the best of his or her knowledge information or belief, the Director is of the opinion that the applicant is unconditionally fit for the proposed role office or position, the Director shall determine accordingly and the Office of Professional Standards must grant to the applicant a clearance for service.
- (2) Otherwise the Director must refer the application to the PSC.

Determination by the PSC

64. (1) If on that referral, to the best of its knowledge information or belief, the PSC is of the opinion that the applicant is unconditionally fit for ~~each specified the proposed~~ role office or position, the PSC shall determine accordingly and the Office of Professional Standards must grant to the applicant a clearance for ministry.
- (2) Otherwise the PSC must deal with the application in accordance with

²⁸ This reserves some discretion to the Archbishop/Bishop, the Dean or the incumbent or priest in charge (as the case may be) to determine in the case of a particular role office or description not already prescribed that a person should apply for a clearance in the interests of protecting those with whom the person may engage or for other good reason.

this Act and subject to section 69.

Certificate as to fitness for service

65. A certificate of the Office of Professional Standards stating that a Church worker is fit for service in ~~each specified a particular~~ role office or position shall be conclusive evidence of the fitness of the person for that service.

Duration of clearance for service

66. (1) A clearance for service granted under this Act is in force for the period specified in the clearance being not greater than 5 years from the date ~~specified in it of the clearance until the earlier of—~~

~~(a) the specified expiry date being not greater than 5 years; and~~

~~(b) the resignation or retirement of the person from the role office or position;~~

~~—~~ unless it is sooner suspended or cancelled by the Office of Professional Standards pursuant to a direction of the Board or the Review Board.

- (2) If an application for the renewal of a clearance for service granted for a specified term of ~~5~~ years has been lodged within 6 months²⁹ prior to the expiration of that term but has not been finally determined before the expiration of that period, the clearance for service remains in force, unless suspended or cancelled sooner, until the application has been finally determined.

- (3) For the purposes of subsection (2), an application is finally determined—

(a) by the renewal of the clearance for service; or

(b) by the exhaustion of all rights of review in relation to a decision to refuse to renew the clearance for service.

- (4) The Office of Professional Standards must and is hereby empowered to give effect to any determination, recommendation or direction of the Board or the Review Board in relation to a clearance for service.

Prohibition on service without a clearance

67. (1) If a Church worker—

(a) fails to apply for a clearance for service ~~for a prescribed role office of position~~ in compliance with section 60(2) and that default continues for more than 21 days after written request to the person by the Director to do so; or

(b) has been refused a clearance for service for a role office or position, whether or not prescribed, by the Office of

²⁹ Cf s19, *Working with Children Act 2005*.

Professional Standards on the direction of the Board or on review, the Review Board; or

- (c) has his or her clearance for service cancelled by the Office of Professional Standards on the direction of the Board or on review, the Review Board

then—

- (d) the Church worker must not engage or continue to engage in that service; and

- (e) the role office or position of that Church worker becomes vacant.

- (2) A Church worker who has been granted a clearance for service subject to any condition or restriction specified in the clearance or in the instrument of appointment must comply with that condition or restriction.

- (3) A wilful or reckless failure to comply with a requirement of subsection (1) or (2) renders the Church worker liable to be dealt with for misconduct under this Act.

PART 4.3 – CLEARANCE FOR PARTICIPATION

Purpose of the Part

67A. The purpose of this Part is to regulate the participation in the life of any parish of a Person of Concern.

Definition of clearance for participation

67B. In this Act, unless the context otherwise requires, “clearance for participation” means a clearance for participation granted under this Act.³⁰

Definition of Person of Concern

67C. Unless the context requires otherwise, a Person of Concern is a person whose presence may constitute an unacceptable risk of harm to any person engaged in the activities of the parish as a result of sexual abuse or physical abuse and includes one or more of the following:

- (a) a person who has pleaded guilty to, has been convicted of, or has admitted to having committed, a sexual offence or other offence against the person;
- (b) a person who is currently charged with a sexual offence or other offence against the person;
- (c) a person who has been disciplined or had other action taken against them under a disciplinary or professional standards process of the Church or another organization because of sexual abuse or physical abuse, or who has been refused ordination, employment or appointment in the Church or another organization because of an adverse risk assessment arising from sexual abuse or physical abuse;
- (d) a person who, as a result of sexual abuse or physical abuse, has received an adverse risk assessment from a professional with appropriate qualifications and experience in accordance with the requirements of another church or a statutory authority;
- (e) a person who has received or is receiving treatment for disordered sexual behaviour;
- (f) any other person within a class of persons prescribed from time to time by the Diocesan Bishop in Council.

Duties of the Director

67D. If the Director receives a report under section 17(2) or otherwise becomes aware that a Person of Concern is participating or wishes to participate in the life of a parish, the Director must –

- (a) determine in their preliminary assessment–

³⁰ Other terms used in this Part and elsewhere are defined in s3(1).

- (i) whether the person is a Person of Concern;
 - (ii) whether the person may constitute an unacceptable risk of harm to any person engaged in the activities of a parish if, pending any process of assessment, the Person of Concern participates or continues to participate in the life of the parish; and
 - (iii) whether the PSC should by resolution declare the person a prescribed Person of Concern and by force of section 67H require the person to apply for a clearance for participation in the life of the parish and a National Police Check;
- (b) report on that preliminary assessment to the PSC; and
- (c) otherwise act in accordance with any protocol made under this Act.

Director to determine Interim Safety Arrangement

- 67E. (1) After consultation with the vicar and churchwardens of the parish, the Director may determine an Interim Safety Arrangement pending determination by the PSC as to whether the Person of Concern may participate in the life of the parish.
- (2) An Interim Safety Arrangement must be in writing and specify either—
- (a) the interim conditions for participation of the Person of Concern in the life of the parish; or
 - (b) that the Person of Concern must abstain from that participation.

PSC to consider the matter

- 67F. The PSC must consider the report of the Director under section 67D and any submission from the Person of Concern given within the time allowed by the Director.

PSC may declare a prescribed Person of Concern

- 67G. The PSC may in its absolute discretion by resolution declare that a Person of Concern is a prescribed Person of Concern for the purposes of this Act.

A prescribed Person of Concern must make application

- 67H. (1) A person declared to be a prescribed Person of Concern under section 67G must—
- (a) apply to the Office of Professional Standards for a clearance for participation; and
 - (b) apply for a national Police Check at the expense of the Diocesan Corporation—
- no later than 14 days following written notice from the Director which specifies the requirement to make those applications and which has

been sent to the person.

(2) Any application for a clearance for participation must be in or to the effect of the prescribed form.

How application is to be dealt with

67I. The Director, the PSC and the Office of Professional Standards must deal with an application under s 67H in accordance with this Act and any applicable protocol

Condition of eligibility for clearance for participation

67J. It shall be a condition of eligibility for the grant of a clearance for participation that the Person of Concern does not constitute an unacceptable risk of harm to any person engaged in the activities of the parish whether unconditionally or subject to a satisfactory Safety Plan or Safety Agreement or other condition or restriction.

Determination by the PSC in favour of the Person of Concern

67K. If to the best of its knowledge information or belief, the PSC is of the opinion that the applicant does not constitute an unacceptable risk of harm to any person engaged in the activities of the parish, the PSC must determine accordingly and the Office of Professional Standards must grant to the applicant a clearance for participation.

Determination by the PSC adverse to the Person of Concern

67L. If the PSC is of the opinion that the applicant –

- (a) does constitute an unacceptable risk of harm to a person engaged in the activities of the parish; or
- (b) that without a satisfactory Safety Plan or Safety Agreement or other condition or restriction, the applicant would constitute an unacceptable risk of harm to any person engaged in the activities of the parish—

the PSC must determine that the application for a clearance for participation—

- (c) be refused, or
- (d) be granted subject to a satisfactory Safety Plan or Safety Agreement or other condition or restriction

and the Office of Professional Standards must refuse or grant the clearance for participation accordingly.

Powers of the PSC

67M. The PSC may on any application for a clearance for participation or in relation to any complaint against a Person of Concern—

- (a) determine whether a Person of Concern may participate in the life of the parish or any other parish and if so on what if any condition or restriction in a Safety Plan or Safety Agreement or otherwise;
- (b) as a condition of granting a clearance for participation, approve a Safety Agreement in relation to the Person of Concern between that person, a relevant Church authority and the Director on behalf of the PSC regulating how that person may participate in the life of the parish and for that purpose have entry and access to the premises and activities of the parish;
- (c) as a condition of granting a clearance for participation, approve a Safety Plan only where the Person of Concern has an intellectual or other disability that prevents the person from giving informed consent to a Safety Agreement;
- (d) determine whether a Safety Plan or a Safety Agreement should be varied or terminated and if so on what conditions;
- (e) determine whether the operation and arrangements of any Parish Accountability Group should be varied and if so how;
- (f) exercise its powers under section 37 in relation to the Person of Concern.

Terms of Safety Agreement or Safety Plan

67N. A Safety Agreement or a Safety Plan must state at least–

- (a) any condition or restriction on participation by the Person of Concern in the life of the parish that the PSC may determine ;
- (b) any additional conditions, such as an obligation to undertake child protection training, as may be seen fit;
- (c) a restriction on participating in the life of any parish other than the specified parish without a clearance for participation;
- (d) the consequences of any breach of the Safety Agreement or Safety Plan by the Person of Concern;
- (e) what information should be released to whom; and
- (f) a process for advising a new vicar and new churchwardens in the parish of the existence and terms of the Safety Agreement or Safety Plan.

PSC may refer to the Board

67O. The PSC may on any application for a clearance for participation or in relation to any complaint against a Person of Concern determine to refer the application or complaint to the Board under section 69 on the happening of any of the following events–

- (a) if the PSC has made a determination under paragraph (a) or (b) or (c) of section 67M and the Person of Concern has by written notice to the Director objected to the same within 21 days from the date of the determination;
- (b) if a Person of Concern has breached a condition of an Interim Safety Arrangement or a Safety Plan or a Safety Agreement or any variation of the same and has failed to remedy the same within 7 days from written notice from the Director notifying the breach;
- (c) if a Person of Concern is prohibited by the provisions of section 67Q from participating or continuing to participate in the life of a parish or any other parish and in contravention of that prohibition participates or continues to participate in the life of the parish or any other parish;
- (d) if the Church authority has breached a condition of an Interim Safety Arrangement or a Safety Agreement or Safety Plan or any variation of the same and has failed to remedy the same within 7 days from written notice from the Director notifying the breach;
- (e) the PSC determines for other good reason, the complaint or matter should be referred to the Board.

Duration of clearance for participation

- 67P. (1) A clearance for participation granted under this Act is in force from the date specified in it until the earlier of—
- (a) the specified expiry date being not greater than 5 years; and
 - (b) the cessation of their participation in the life of the parish—
- unless it is sooner suspended or cancelled by the Office of Professional Standards pursuant to a direction of the Board or the Review Board.
- (2) If an application for the renewal of a clearance for participation granted for a specified term of years has been lodged within 6 months³¹ prior to the expiration of that term but has not been finally determined before the expiration of that period, the clearance for participation remains in force, unless suspended or cancelled sooner, until the application has been finally determined.
- (3) For the purposes of subsection (2), an application is finally determined—
- (a) by the renewal of the clearance for participation; or
 - (b) by the exhaustion of all rights of review in relation to a decision

³¹ Cf s19, *Working with Children Act 2005* (Vic).

to refuse to renew the clearance for participation.

- (4) The Director, the PSC and the Office of Professional Standards must and is hereby empowered to give effect to any determination, recommendation or direction of the Board or the Review Board in relation to a clearance for participation.

Prohibition on participation without a clearance

67Q. (1) If a prescribed Person of Concern—

(a) has failed to apply for a clearance for participation in relation to a parish and for a national Police Check in compliance with section 67H and that default continues for more than 7 days after written notice of that default from the Director requiring the person to remedy the same; or

(b) has been refused a clearance for participation by the PSC and has not by written notice to the Director objected to the same within 21 days from the date of the determination; or

(c) has been refused a clearance for participation by the PSC on the direction of the Board or on review, the Review Board; or

(d) has had his or her clearance for participation cancelled by the PSC on the direction of the Board or on review, the Review Board

then—

(e) the prescribed Person of Concern must not participate or continue to participate in the life of that parish or any other parish except to be admitted to the Holy Communion or the Lord's Supper in circumstances approved in advance in writing by the Diocesan Bishop.³²

(2) A prescribed Person of Concern who has been granted a clearance for participation subject to any condition or restriction specified in the clearance for participation or otherwise must comply with that condition or restriction.

(3) A wilful or reckless failure to comply with a requirement of subsection (1) or (2) renders the prescribed Person of Concern liable to be dealt with for misconduct under this Act as if a Church worker.

Parish Accountability Group

67R. (1) The vicar and churchwardens of the parish may appoint members of the Church or other persons with appropriate qualifications and experience to a Parish Accountability Group after consultation with the

³² Holy Communion Canon 2001

Person of Concern and the Director.

- (2) The functions of the Parish Accountability Group are to–
- (a) monitor compliance with any obligations under the Safety Agreement or Safety Plan on the part of the Person of Concern or other person obligated;
 - (b) hold the Person of Concern accountable for the performance of their obligations under the same;
 - (c) support and help the Person of Concern manage their personal risks and behaviour to the extent necessary or desirable according to their level of risk, their offending history and the information gathered.
- (3) It is not a function of the Parish Accountability Group to provide pastoral support to the Person of Concern.
- (4) A member of the Parish Accountability Group must notify as soon as practicable the vicar or a churchwarden if they know or reasonably suspect that the Person of Concern has breached a condition of the Safety Agreement or Safety Plan.

Duties of the Church authority

- 67S. (1) If a Church authority in relation to a prescribed Person of Concern in any parish has received written notice from the Director of any of the matters in paragraphs (a), (b), (c) and (d) of section 67Q, the Church authority must subject to subsection (2) take all reasonable steps to prevent the prescribed Person of Concern from having entry or access to premises or activities of the Church either generally or in a specified location or circumstances, except to be admitted to the Holy Communion or the Lord’s Supper in circumstances approved in advance in writing by the Diocesan Bishop.
- (2) The Church authority who is in Holy Orders may admit the Person of Concern to the Holy Communion or the Lord’s Supper in circumstances approved in advance in writing by the Diocesan Bishop.
- (3) The Church authority must comply with any requirement under section 119 in relation to any recommendation of the Board or if applicable the Review Board about a Person of Concern.
- (4) A wilful or reckless failure to comply with a requirement of this section renders the Church authority liable to be dealt with for misconduct under this Act.
- (5) Subsection (4) does not apply to the Diocesan Bishop.³³

³³ The Diocesan Bishop is not within the definition of a Church worker – see the definition of Church worker in schedule 1.

CHAPTER 5 – DETERMINATIONS

PART 5.1 – REFERRAL OF A COMPLAINT OR MATTER TO THE BOARD

Definition of misconduct

68. In this and the following Part, unless the context otherwise requires, a reference to misconduct means conduct as described in any of paragraphs (a) to (n) (both inclusive) of section 5.

PSC must refer certain matters to the Board

69. After investigation of a complaint or other matter in accordance with Part 3.3 of this Act or under a corresponding provision of an ordinance of another diocese or after investigation of an application for a clearance for ministry, where the PSC or equivalent body has formed the opinion that—
- (a) the alleged conduct of the respondent Church worker if established would call into question whether—
 - (i) the Church worker is unfit, whether temporarily or permanently, to hold now or in the future a particular or any role office 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 or position or in the performance of any function now or in the future, the Church worker should be subject to any condition or restriction; or
 - (b) in connection with an application by a Church worker for a clearance for ministry or a clearance for service, by reason of misconduct the church worker may not be fit for ministry in the Church either generally or to hold a proposed role office or position in the Church or may be fit subject to any condition or restriction; or
 - (c) in connection with an application by a Person of Concern for a clearance for participation or a complaint against such a person, the Person of Concern constitutes an unacceptable risk of harm to any person and any of the events in paragraph (e) of section 67G have occurred, unless the PSC has determined under section 27 that the matter can be dealt with other than by referral to the Board

the PSC must subject to section 27 refer the complaint or other matter, and an equivalent body may refer the complaint or other matter, to the Board or if it is more appropriate, to an equivalent body which has jurisdiction.

A deceased Church worker

70. After investigation in accordance with Part 3.3 of this Act of a complaint of misconduct against a Church worker who is deceased, unless the complaint has been dismissed or otherwise dealt with under section 27 or should be dismissed or otherwise dealt with under that section, the PSC must refer the complaint to the Board or may refer the matter to an equivalent body if it is appropriate.

Note: The PSC can expedite the referral to the Board of a complaint against a Church worker who is deceased and it is open to the Board, constituted by a single member or by 3 members to make a determination.

PART 5.2 – PROCEDURE FOR REFERRAL

How PSC to refer matters

71. (1) The PSC must refer the complaint or **other** matter to the Board by delivering to the Secretary of the Board a written report setting out—
- (a) a statement of any allegations of misconduct made against the Church worker; and
 - (b) its ~~investigation and~~ opinion **under section 69**; and
- (2) The report must be signed by a member of the referring body.

Documents and materials to be delivered to the complainant and the respondent or applicant

72. Within 14 days of the date of the referral of a complaint or **other** matter to the Board, the PSC must cause to be delivered to the complainant and the respondent or applicant for a clearance for ministry (as the case may be) a copy of the written report.

The role of the PSC on the reference

73. The PSC as a party to the proceeding has the carriage of the complaint or **other** matter before the Board and has the following particular functions—
- (a) to present to the Board—
 - (i) the evidence on which it relies relevant to the reference;
 - (ii) any findings on material questions of fact and recommendations it proposes that the Board should make; and
 - (iii) any submissions in support; and
 - (b) to appear by an authorized representative at any hearing of the Board to assist the Board in its enquiry into the reference.

If Church worker resigns from or fails to take up office or abstains from participation

74. If ~~before a complaint or other matter is determined~~ after a complaint or matter is referred to the Board, the respondent resigns from or fails to take up his or her role office or position or abstains from participation in the process by which the complaint or other matter is dealt with under this Act, the Board may ~~continue to~~ enquire into and determine the complaint or matter, notwithstanding that resignation or failure or abstention.

PART 5.3 – DETERMINATION OF A COMPLAINT OR MATTER BY THE BOARD

Note: *This Part deals with both where the Church worker is still in service and where he or she is deceased.*

Unfitness

75. Without limiting what constitutes unfitness as provided in this Part, a Church worker is to be regarded as unfit, whether temporarily or permanently, to hold any particular or any role office or position if the person, in continuing to hold the role office or position constitutes on the balance of probabilities an unacceptable risk of harm to any person.

Enquiry on a complaint

76. (1) On the referral to the Board of a complaint, the Board must enquire into and determine—
- (a) whether the respondent Church worker³⁴ did commit any alleged misconduct; and
 - (b) unless the Church worker is deceased, whether—
 - (i) the Church worker is unfit, whether for a specified limited period or permanently, to hold a particular or any role office 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 that person's role office or position or in the performance of any function, the respondent should be subject to any condition or restriction.
- (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

³⁴ The definition of Church worker includes a person who previously had a role office or position in the Church but does not now have one.

functions of that equivalent body.

Determinations

77. (1) If the Board is satisfied that the respondent did commit any alleged misconduct and that—
- (a) the respondent is unfit, whether temporarily or permanently, then or in the future to hold a particular or any role office 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 the respondent's role office or position or in the performance of any function, that person should be subject to any condition or restriction

the Board must make a determination as to each of the matters in the preceding section and exercise the further powers referred to in this Part.

- (2) If the Board is satisfied that a deceased Church worker did commit any alleged misconduct, the Board may make a determination to that effect and may make any recommendation under subsection (2) of the following section.

Recommendations

78. (1) Subject to subsection (2), the Board may recommend to the Church authority any one or more of the following—
- (a) that the respondent be suspended from any role office or position or from performing any function as the case may be for such period recommended by the Board;
 - (b) that the licence or authority of the respondent be revoked;
 - (c) that the respondent's contract of employment (if any) be terminated;
 - (d) that the respondent cease to hold any role office or position then held;
 - (e) that a prohibition order be made in terms specified by the Board;
 - (f) that the respondent's holding of any role office or position or the performance of any function as the case may be, shall be subject to any condition or restriction as the Board may specify;
 - (g) that the respondent as a Person of Concern be required to enter into and comply with a Safety Plan or Safety Agreement with the Church authority and the Director acting on behalf of the PSC, and that, if the respondent fails to do so, after notice from the Director requiring the respondent to comply—
 - (i) the Diocesan Bishop direct that the minister who has the cure of souls refuse to admit the respondent to the Holy

Communion or the Lord's Supper except in circumstances approved in advance in writing by the Diocesan Bishop; and

~~(ii) the Church authority take reasonable steps to prevent the respondent from having entry or access to premises or activities of the Church either generally or in a specified location or circumstances, except to be admitted to the Holy Communion or the Lord's Supper in circumstances approved in advance in writing by the Diocesan Bishop;~~

~~(g) that the respondent be required to enter into a Safety Agreement with the Church authority, failing which he or she be excluded from entry or access to premises or activities of the Church either generally or in a specified location or circumstances;~~

(h) that the implementation of a determination shall be suspended for such period and upon such conditions as the Board shall specify;

(i) that the respondent be counselled;

(j) that a person be appointed to promote a charge against the respondent before the Diocesan Tribunal or the Special Tribunal if it has jurisdiction under the Constitution;

(k) that the respondent be deposed from the exercise of Holy Orders;

(l) otherwise as the Board sees fit;

and may direct the Office of Professional Standards to cancel or suspend respondent's clearance for ministry for such period as the Board may specify.

(2) The Board may further recommend to the Church authority without binding it that –

(a) an apology or other acknowledgement be given to the complainant or other person affected by the misconduct found to have been committed by the respondent;

(b) such other steps of a systemic or process or administrative nature be implemented by the Church authority as may be judged worthwhile to prevent or diminish in future the incidence of misconduct and harm to any person.

~~(3) Where the Board is satisfied to the required standard of proof that the respondent has been convicted of a sexual offence relating to a child committed when a member of the clergy, the Board must recommend that the respondent be deposed from the exercise of Holy Orders.~~

Dismissal or no further action or limited action

79. (1) If the Board is not satisfied to the required standard of proof that the respondent committed any alleged misconduct or if the Board is satisfied that the complaint is false, vexatious or misconceived, the Board must determine accordingly and ~~dismiss the complaint may—~~

(a) dismiss the complaint or matter; or

(b) take no further action on the complaint or matter; or

(c) take no further action other than to recommend to the Church authority any steps that might reduce or eliminate the risk of misconduct either generally by Church workers or in relation to the respondent by way of an educational, training, counselling or mentoring programme or by way of changes to any protocol, whether diocesan or under this Act.

(1A) A recommendation pursuant to paragraph (c) of the preceding subsection is advisory only and not binding on the Church authority.

(2) If the Board is satisfied to the required standard of proof that the respondent did commit any alleged misconduct but is not satisfied as to any of the matters in paragraphs (i) and (ii) of section 69(a), the Board must determine accordingly and take no further action in relation to the complaint or take no further action other than to make a recommendation referred to in subsection (1)(c) of this section.

Dealing with a clearance application

80. (1) On the referral to the Board of an application for a clearance for ministry, if the Board is satisfied that pending the final determination of the application—

(a) the applicant may otherwise lawfully engage in the ministry³⁵; and

(b) there is no unacceptable risk of harm to any person if a provisional clearance is granted,

the Board may in its discretion determine that it is so satisfied and direct that the Office of Professional Standards grant to the applicant a provisional clearance for ministry,³⁶ subject to any condition or

³⁵ Under the *Working with Children Act 2005* (Vic), a person commits an offence if he or she does not have a current assessment notice and engages in child-related work knowing it is child-related work and knows that he or she does not have a current assessment notice or is reckless as to whether he or she has one: s33.

³⁶ In some cases the Board may take some time to determine an application for a clearance for ministry. The applicant may hold the required Working with Children Check and pose no risk of harm. In these circumstances, it could work an injustice if he or she was precluded from working whilst the clearance process took its course.

restriction, to remain in force until the earlier of—

- (c) the final determination of the application; and
- (d) the resignation or retirement of the person from the role office or position,

unless it is sooner suspended or cancelled.

- (2) On the referral to the Board of an application for either a clearance for ministry or a clearance for service, the Board must enquire into and determine—
 - (a) whether the Church worker did commit any alleged misconduct; and
 - (b) whether—
 - (i) the Church worker is unfit, whether for a specified limited period or permanently, to hold a particular or any role office 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 or position or in the performance of any function, the Church worker should be subject to any condition or restriction.

Final determination of a clearance application

81. If on a final determination of the application, the Board is satisfied that the respondent did commit any alleged misconduct and that—

- (a) the Church worker is unfit as provided in subsection (2)(b)(i) of the preceding section; 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 any condition or restriction

the Board may make a determination to that effect and may—

- (c) direct that the Office of Professional Standards refuse the application or grant the clearance for such period and subject to such condition or restriction as it may determine; and
- (d) exercise the powers referred to in sections 77 and 82.

Board may adjourn on terms

82. (1) The Board may, subject to subsection (2), defer making any recommendation or direction under the preceding sections and may for that purpose adjourn any hearing or consideration of any complaint or application for a clearance for ministry from time to time for a period or periods not exceeding in the aggregate 24 months, on terms and

conditions that the respondent undertake for a specified period and in a form approved by the Board to do one or more of the following acts or omissions under the supervision of the Director or another person nominated by the Board—

- (a) stand down from the duties of office or from performing specified duties;
 - (b) undertake counselling from a person approved by the Board;
 - (c) submit to periodic medical examination by a person approved by the Board;
 - (d) undertake a specified program of medical treatment or rehabilitation whether as an outpatient or inpatient;
 - (e) provide medical or other evidence requested by the Board to assist it in deciding on any final recommendation or direction; and
 - (f) perform or refrain from performing some other specified act.
- (2) The Board must first make its determination as to whether the respondent did commit any alleged misconduct.
 - (3) If, within a period specified by the Board, the respondent declines to give an undertaking in accordance with subsection (1), the Board must proceed to make a recommendation or direction.
 - (4) The Board may take into account the failure of the respondent to comply with his or her undertaking under subsection (1) in deciding on any recommendation or direction.

Board may appoint persons to assist inquiry

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

Level Standard of Proof

84. (1) The standard of proof for the Board and the Review Board to establish an allegation is that of reasonable satisfaction on the balance of probabilities.
- (2) Each of the Board and the Review Board must in acting as provided in subsection (1) 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.³⁷

³⁷ This the test in *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 362-363 per Dixon J; see also *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 110 ALR 449 at 449-450 per Mason CJ, Brennan,

Time limit for adjudication – complaint against a Church volunteer

85. (1) In a complaint against a Church volunteer or an application for a clearance by a Church volunteer, the Board must subject to section 82 make its determination and decision within 60 days from the date of the reference of the complaint or such further period as may be authorised in writing by the President of the Board.
- (2) A determination or recommendation or direction of the Board is not invalid by reason only of the Board having dealt with the application beyond 60 days from the date of the application for review or such further period as may be authorised in writing by the President of the Board.

Board may seek further information

- 86 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.

Board to act expeditiously

87. The Board must deal with a complaint or application for a clearance as expeditiously as possible.

PART 5.4 – APPLICATION FOR REVIEW

Interpretation

88. In this part, “decision” means any finding of fact, determination, recommendation or direction by the Board under either—
- (a) section 42 but only in respect of a prescribed Church worker (suspension);
 - (b) sections 75 to 79 (both inclusive) (complaint);
 - (c) 80 and 81 (application for clearance).

Application to Review Board

89. Where the Board has made any decision, a respondent or applicant for a clearance aggrieved by it or the PSC may within 30 days from the date of the decision or such further period as the Review Board may allow, apply to the Review Board for review of the decision.

Stay

90. Except in so far as the Board or the Review Board may direct otherwise, the application for review shall not operate as a stay of the action on any recommendation or direction of the Board required under this Act.

Documents and material to be delivered following application

91. Within 14 days of the date of the application to the Review Board or within 14 days of the date of a document or material coming to existence, whichever is the later, the Director must cause to be delivered to the secretary of the Review Board—
- (a) the determination and recommendations or directions of the Board; and
 - (b) every other document held by the Office of Professional Standards which the Director considers is relevant to the application for review.³⁸

President to determine membership of Review Board

92. Upon delivery to the secretary of the Review Board of the material referred to in the preceding section, the President or Deputy President as the case may be must 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

93. (1) The Review Board may exercise all the powers of the Board under this Act and may—

³⁸ Cf *Victorian Civil and Administrative Tribunal Act 1998*, s49. See s102 for the board’s power to direct the supply of further documents.

- (a) affirm the decision under review;
- (b) vary the decision under review;
- (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 (whether constituted by the same members or different members) in accordance with any directions or recommendations of the Review Board.

(2) Where the Review Board is satisfied to the required standard of proof that the respondent has been convicted of a sexual offence relating to a child committed when a member of the clergy, the Review Board must recommend that the respondent be deposed from the exercise of Holy Orders.

Review Board to deal with application expeditiously

94. The Review Board shall deal with the application as expeditiously as possible and shall consider any further submissions from either the PSC or the respondent.

Review Board to deal with application within time limit – Church volunteers

95. (1) In a complaint against a Church volunteer or an application for a clearance by a Church volunteer, the Review Board must subject to section 82 deal with the application within 60 days from the date of the application for review or such further period as may be authorised in writing by the President of the Review Board.
- (2) The Review Board must consider any further submissions from the PSC or the respondent.
- (3) A determination or recommendation or direction of the Review Board is not invalid by reason only of the Review Board having dealt with the application beyond 60 days from the date of the application for review or such further period as may be authorised in writing by the President of the Review Board.

PART 5.5 - PROCEEDINGS OF THE BOARD AND THE REVIEW BOARD

How to conduct proceedings

96. In this Part, a reference to ‘the board’ means each of the Board and the Review Board.

The board to act fairly and not bound by the rules of evidence

97. The board—
- (a) must 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.³⁹

Powers of the board

98. (1) Subject to this Act and in particular the provisions of the preceding section, the board—
- (a) may regulate the proceedings of its meetings as it sees fit;
 - (b) may conduct its business and any proceedings by video link, teleconference or by any electronic means of communication;
 - (c) may inform itself from the transcript or other record of any court or tribunal or Royal Commission and may adopt any findings, and accept as its own, the record of any court or tribunal or Royal Commission;
 - (d) may give any other person to whom notice of the proceedings is given or who satisfies them that he or she has a proper interest in the matter a reasonable opportunity to make submissions to them; and
 - (e) is not obliged to hold a hearing at which evidence is adduced or submissions heard orally; and
 - (f) must give reasons for any determination and recommendation or direction, 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.

³⁹ It may be advisable, depending on the nature of the complaint, for the Board have regard to and follow, so far as practicable, the procedure and rules under the *Criminal Procedure Act 2009* (Vic) applicable to a trial in a criminal proceeding –

- (i) that relates (wholly or partly) to a charge for a sexual offence; or
- (ii) where the complainant in a criminal proceeding was at the time the proceeding commenced, under the age of 18 years or had a cognitive impairment.

The Act leaves it open to the Board to make rules about this if appropriate.

- (2) For the purposes of paragraph (d) of the preceding subsection, a person is not to be taken to have a proper interest in a matter by reason simply of being the complainant in the matter.⁴⁰
- (3) Subject to the following subsection, the Board must give the PSC and the respondent a reasonable opportunity to adduce evidence, to examine or cross-examine witnesses and to make submissions to the Board.
- (4) Subject to any terms prescribed by regulation, the 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.

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.

⁴⁰ The scheme of the Act is for the PSC and the respondent or applicant for a clearance to be the parties to the proceeding and to be legally represented if they so choose: cf s103. They alone may apply for a review of a decision: s89. A complainant is not automatically a party.

Hearing in private

99. (1) Subject to subsections (2) and (3), any hearing of the board must be held in private with attendance only by—
- (a) the members of the board;
 - (b) the Secretary of the board and any person providing transcription services;
 - (c) the Director and any member of the PSC and any person representing any of them;
 - (d) the respondent and any person representing the respondent;
 - (e) a person whom the respondent wishes to have present for the purpose of providing support to him or her, who is reasonably available and who is approved by the board to be present⁴¹;
 - (f) the complainant;
 - (g) a person whom the complainant wishes to have present for the purpose of providing support to him or her, who is reasonably available and who is approved by the board to be present;
 - (h) any witness while giving evidence;
 - (i) any person appointed by the Board to assist under section 83; and
 - (j) any other person to whom notice of the proceedings was given or who satisfies the board that he or she has a proper interest in the matter.
- (2) The board may direct—
- (a) that the whole or part of a proceeding be held in public; or
 - (b) that any other persons or classes of persons specified by it may be present during the whole or any part of a proceeding.
- (3) The board may only make a direction under the preceding subsection if satisfied that the direction is lawful and in the public interest in the proper administration of justice.

Review Board not obliged to hold hearing or admit certain evidence

100. Subject to this Act, the Review Board is not obliged—
- (a) to hold a hearing at which—
 - (i) evidence is adduced, whether by oral examination or signed statement or statutory declaration; or
 - (ii) submissions are heard orally; or

⁴¹ To adapt the language of clause 17 of schedule 5 of the *Magistrates' Court Act 1989* (Vic).

- (b) to admit evidence that was not adduced before the Board in relation to the facts relevant to the complaint or matter unless –
 - (i) the evidence could not have been obtained with reasonable diligence for use at the hearing before the Board; and
 - (ii) that there is a high probability that the result would have been different had it been received at that hearing.

~~101. (1) As soon as practicable, after being constituted, and after inviting each of the parties to propose a provisional timetable for the matter, the board may—~~

~~(a) hold a preliminary conference with the parties in person or by telephone or other means; and~~

~~(b) by directions set a procedural timetable for the matter.~~

~~(2) The board may at any time extend or vary the procedural timetable. Preliminary conference~~

101. (1) In this section and section 102, a reference to a “presidential member” means the President or Deputy President or a Senior Member of the Board or Review Board as the case may be.

(2) No later than 14 days after a reference of a complaint or other matter or an application for review (as the case may be) has been received by the secretary to the board, the board must —

(a) invite each of the parties to propose a provisional timetable for the complaint or matter or application for review;

(b) hold a preliminary conference with the parties in person or by telephone or other means;

(c) by directions set a procedural timetable for the matter.

(3) The board may at any time and from time to time extend or vary the procedural timetable.

(4) For the purpose of this and the following section, subject to subsection (5), the board may be constituted by a presidential member whether or not that office holder alone or with others later constitutes the board determining the complaint or other matter.

(5) Where the board to determine the complaint or other matter has been constituted, any directions for the purpose of this section must be given by the presiding member of the board as so constituted if that office holder is available.

(6) If that office holder is unavailable, directions may be given by a presidential member.

The board may give directions as to documents and conduct of inquiry

102. The board may at any time and from time to time give directions for—
- (a) the inspection by and supply of copies to the respondent or any other person of the documents or material relevant to the reference;
 - (b) the service of any witness statements, summary of proposed evidence, submissions or other documents on which a party may wish to rely; and
 - (c) the conduct of its inquiry into the matter.

~~and for that purpose the board when constituted by more than one person may be constituted by the President or Deputy President or Senior Member alone.~~

Party may appoint legal representation

103. The PSC may, and the respondent or applicant for a clearance for a ministry at their own expense may appoint a legal representative to assist them in the process.

The board may receive written evidence

104. Without limiting the meaning and effect of sections 97 and 98, the 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 video link or teleconference or other electronic means to receive evidence and submissions.

The board may rely on decisions of other bodies

105. In any proceedings before it, where the board is satisfied that the respondent—
- (a) has been convicted by a court within or outside Australia of an offence involving conduct as described in any of paragraphs (a) to (i) and (n) of section 5 (“specified conduct”);
 - (b) has been found guilty (without conviction) by a court within or outside Australia of an offence involving specified conduct;
 - (c) has admitted in proceedings before a court or tribunal within or outside Australia or before the Professional Standards Board or Review Board of another diocese having engaged in specified conduct;
 - (d) has been found by a court or tribunal within or outside Australia to have engaged in specified conduct; or
 - (e) has been disqualified by a court or tribunal within or outside Australia from professional practice on account of specified conduct,
- then, unless there are special extenuating circumstances—

- (f) a certificate, reasons for judgment or other record from the court or tribunal or board (as the case may be) shall be conclusive evidence that the respondent engaged in the specified conduct; and
- (g) neither the respondent nor any other party 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 specified conduct.

Individual members of the board not to meet with parties

106. Unless at the direction of the board, a member of the board must not individually meet with either the complainant or the respondent or any one acting on their behalf or the PSC to the exclusion of the other parties while the matter is in progress.

Disclosure and material personal interest

107. (1) A member of the board must without delay disclose in writing any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence, as they arise, to the President and the parties unless he or she has already informed them of the circumstances.
- (2) Where a member of the board has a material personal interest or other conflict of interest in a matter before it, the member shall be disqualified from participating in the matter.
- (3) The opinion of the President of the board or the Deputy President of the board in the case of the President (as the case may be) as to whether a member of the board has a material personal interest or other conflict of interest in a matter shall be conclusive and final and binding.

Medical reports

108. (1) The PSC or the board may request a respondent or applicant for a clearance for ministry or a clearance for service to submit within a specified time to a medical 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 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 and to the Director, the PSC and the board.

Determination of Board or Review Board as to fitness conclusive evidence

109. A determination of the Board or the Review Board as to the fitness of a Church worker to hold a role office or position for ministry or service shall be conclusive evidence of the fitness of that person as at that time to hold the role office or position.

No further action where Diocesan Tribunal unlikely to find respondent guilty

110. 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 or otherwise instituting or prosecuting proceedings by way of charge against the respondent before the Diocesan Tribunal.

Certain matters not to be inquired into

111. The board must not, 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 for the board to consider

112. (1) In considering whether the respondent or an applicant for clearance for ministry or a clearance for service has committed any misconduct, the board must take into account -
- (a) the conduct of the Church worker as it finds it to have been,
 - (b) any failure of the Church worker to comply with a provision of

- this Act;
- (c) any other relevant fact or circumstance including, where a sexual offence is alleged, the matters in subsection (3); and
 - (d) any standards specified in any code of conduct approved under this Act, whenever the conduct may have occurred.
- (2) In making any determination as to unfitness, the board must take into account—
- (a) the matters set out above in subsection (1);
 - (b) the specific duties of the role office or position held or to be held by the Church worker and their Holy Orders if any;
 - (c) the extent to which any person is at risk of harm if the Church worker is permitted to engage in ministry or service either absolutely or subject to any condition;
 - (d) the conduct of the Church worker as it finds it to have been, both before and after any misconduct found to have been committed;
 - (e) any further material received from the PSC and the respondent relevant to its consideration;
- (3) Experience shows, according to the Victorian Parliament, that—
- (a) people may react differently to sexual offences and there is no typical, proper or normal response to a sexual offence; and
 - (b) some people may complain immediately to the first person they see, while others may not complain for some time and others may never make a complaint; and
 - (c) delay in making a complaint in respect of a sexual offence is a common occurrence.⁴²

No costs to be awarded

113. The board has no power to award costs of any matter before it.

Making of rules

114. (1) The President of the board may make rules of the board in relation to the practice and procedure of the board.
- (2) The PSC, the respondent and any other party joined to a complaint or matter by leave of the board must comply with the rules of the board (as the case may be) and with any directions given by the board.

⁴² Cf *Jury Directions Act 2015* (Vic), s52(4).

Practice and procedure

115. Subject to this Act and the relevant rules—
- (a) the practice and procedure of the Board must be as directed by the presiding member of the Board; and
 - (b) the practice and procedure of the Review Board must be as directed by the presiding member of the Review Board.

Determining questions of law and other questions

116. (1) In any proceedings of the board—
- (a) any question of law or procedure must be determined by the presiding member; and
 - (b) where the board is constituted by more than one member, 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 must prevail.
 - (c) If a question of law arises in a proceeding where the board is constituted other than by the President or Deputy President or a Senior Member, whether alone or sitting with others—
 - (i) the question must be decided by another member of the Board Panel who is the President or Deputy President or a Senior Member eligible for appointment as the President; and
 - (ii) for that purpose only, the board in the proceeding is to be reconstituted to include that other member.
- (2) In this section, question of law includes a question of mixed law and fact.

The board may determine an application despite vacancy

117. If a member of the 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 or members may, if the presiding member so determines, continue and complete the matter.

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

118. (1) Subject to this section, the board must cause a copy of the determination, reasons and recommendations or directions (whether under section 42 or parts 5.3 or 5.4) to be provided to—
- (a) each relevant Church authority and the Chancellor of the Diocese, and where the Church authority is not the Diocesan Bishop, the Diocesan Bishop;

- (b) the complainant, if any;
 - (c) the respondent or applicant for a clearance;
 - (d) the Director, the Executive Director and the PSC; and
 - (e) the Professional Standards Ombudsman.
- (2) The board must release to the public as soon as practicable—
- (a) its determination and reasons; and
 - (b) the recommendations or directions
- anonymised and redacted as referred to in the following subsection.
- (3) The board must ensure that any determination, reasons and recommendations or directions which are released to the public are anonymised and redacted so as not to contain any particulars that identify or are likely to lead to the identification⁴³ of—
- (a) the complainant other than the Director;
 - (b) any witness other than the respondent or applicant for a clearance or a witness as to either character or a question on which expert evidence is given;
 - (c) any person against whom a prescribed sexual offence is alleged to have been committed; or
 - (d) the respondent or applicant for a clearance (whether as a witness or otherwise), unless—
 - (i) in the discretion of the board, the disclosure of the identity of that person is necessary or desirable in the public interest; or
 - (ii) a stay has been directed under section 90.

⁴³ This is to ensure that there is no contravention of s4(1A) of the *Judicial Proceedings Reports Act 1958 (Vic)* or like provisions in another State or Territory and that otherwise there is no embarrassment to a complainant or witness.

CHAPTER 6 - IMPLEMENTATION

PART 6.1 - THE DIOCESAN BISHOP OR OTHER CHURCH AUTHORITY

Church authority must give effect to recommendation on a complaint

119. Subject to section 90, the Diocesan Bishop or other relevant Church authority, to whom in respect of a Church worker a recommendation on a complaint under this Act (including a recommendation made by an equivalent body) is made, must and is hereby empowered to give effect to—
- (a) a recommendation of 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 and the substance of the determination made by that body under section 76, as the Diocesan Bishop or other relevant Church authority sees fit.

Publication of decision of the Church authority on a complaint

120. (1) Subject to subsection (2), the relevant Church authority—
- (a) must as soon as practicable release to the persons referred to in section 118(1) and to the public a written statement disclosing—
 - (i) their decision on any recommendation received in respect of a complaint;
 - (ii) the steps to be taken or that have been taken pursuant to the preceding section to give effect to it; and
 - (iii) the reasons for any variation or modification of a recommendation under the preceding section; and
 - (b) must as soon as practicable provide to the Diocesan Bishop where he or she is not the Church authority the written statement referred in the preceding paragraph.
- (2) The Church authority must ensure that any information which is released to the public is anonymised and redacted so as not to contain any particulars that identify or are likely to lead to the identification of—
- (a) the complainant other than the Director;
 - (b) any witness other than the respondent or applicant for a clearance or a witness as to either character or a question on which expert evidence is given;

- (c) any person against whom a prescribed sexual offence is alleged to have been committed; or
 - (d) the respondent (whether as a witness or otherwise), unless—
 - (i) the Board or the Review Board has already made public the name of the respondent in the exercise of its discretion; or otherwise
 - (ii) in the discretion of the Church authority, the disclosure of the identity of that person is necessary or desirable in the public interest.
- (3) Where in relation to any complaint, the Church authority is both—
- (i) the Diocesan Bishop or other office holder or the Chapter (as the case may be); and
 - (ii) the board of the Diocesan Corporation
- for the purposes of this section, the relevant Church authority is the Diocesan Bishop or other office holder or the Chapter (as the case may be).

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.
122. [Original sections 121 and 122 repealed following the enactment of the *Holy Orders (Removal of Exercise of Ministry) Canon 2017*]

CHAPTER 7 - THE STRUCTURE

PART 7.1 – PROFESSIONAL STANDARDS COMMITTEE

Establishment of Professional Standards Committee

123. There shall be a Professional Standards Committee for the Diocese (**PSC**).

Appointment of members of Professional Standards committee

124. The members of the PSC shall be appointed by the Scheme Corporation and shall hold office on such terms and conditions as may be determined from time to time by resolution of the Scheme Directors.

Membership of PSC

125. (1) The PSC shall have at least 4 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 the Anglican Church of Australia and so far as it is reasonably practicable shall have at least one man and at least one woman.

Chair of PSC

126. The chair of the PSC shall be appointed on such terms and conditions as may be determined from time to time by the Scheme Directors.

Procedures of PSC

127. (1) 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.
- (2) Subject to this Act and any protocol approved under it, the procedures of the PSC shall be as determined by the PSC.
- (3) A majority of the members shall constitute a quorum.
- (4) The PSC shall act in all things as expeditiously as possible.

Acts and proceedings of PSC validated

128. 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.

129. 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

130. (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 may not delegate its powers under—
- (a) subsection (1);
 - (b) Part 3.5 (suspension);
 - (c) section 54 (clearance for ministry);
 - (d) section 64 (clearance for service); or
 - (e) Part 5.1 (referral to Board).
- (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

131. (1) Subject to the provisions of this Act, the PSC has the following powers and duties—
- (a) to implement this Act and, to the extent that the protocol is not inconsistent with this Act, any protocol and for that purpose to obtain independent legal advice;
 - (b) to receive a complaint against a Church worker and where appropriate, cause to be investigated the complaint in a timely and appropriate manner;
 - (c) to appoint suitable persons to fulfil the several roles required to implement any protocol in each particular case;
 - (d) where appropriate, to arrange through the Director for the conciliation or mediation or other method of resolving any dispute associated with a complaint;
 - (e) where appropriate, to recommend to the Board of the Diocesan Corporation and the Scheme Directors 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;
- (f) where appropriate or required under any protocol, 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;
 - (g) 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 Church worker; and
 - (b) conduct which is alleged to have occurred within the Diocese wherever that person involved in the alleged conduct may reside.

PART 7.2

SCHEME CORPORATION AND OFFICE OF PROFESSIONAL STANDARDS

132. (1) The Diocesan Corporation must appoint the Scheme Corporation to provide professional standards services to the Diocese in accordance with this Act.
- (2) The Scheme Corporation must constitute the Office of Professional Standards which shall include the following office holders appointed by the Scheme Corporation by resolution of its Scheme directors after consultation with the Diocesan Corporation—
- (a) the Director of Professional Standards;
 - (b) the Executive Director;
 - (c) the Professional Standards Ombudsman.

PART 7.3 – DIRECTOR OF PROFESSIONAL STANDARDS

Appointment of Director

133. (1) There shall be a Director of Professional Standards of the Diocese.
- (2) There may also be a Deputy Director of Professional Standards or more than one such Deputy.
- (3) The Director, and any Deputy Director, shall be appointed by the Scheme Corporation and shall hold office on such terms and conditions as may be determined from time to time by resolution of the Scheme Directors.
- (4) The Director and any Deputy Director must report to the Executive Director of the Scheme Corporation.

Appointment of Acting Director

134. (1) The Scheme Corporation may appoint an acting Director of Professional Standards on such terms and conditions as may be determined by resolution of the Scheme Directors.
- (2) The Acting Director of Professional Standards may act in that capacity during the absence of the Director or during a vacancy in the office of Director.
- (3) An acting Director of Professional Standards when acting in that capacity is taken to be the Director and has all the powers and functions of the Director.

Functions of Director

135. (1) The Director shall have the following functions—
- (a) to receive any complaint on behalf of the PSC against a Church worker and any report or notice under this Act required to be served on the Director;
 - (b) to receive any application for a clearance and deal with it in accordance with this Act and any protocol approved under it;
 - (c) to receive any application for redress and deal with it in accordance with this Act and any protocol approved under it;
 - (d) in his or her discretion to make a complaint against a Church worker;
 - (e) to manage the implementation of any protocol in respect of any complaint or application for redress;
 - (f) to attend meetings of the PSC;
 - (g) to provide a central focus in matters involving personal ethics and behaviour including advice to a Church authority about appropriate standards for Church workers and enforcement;
 - (h) to provide or arrange support care or treatment of parties to the process of any protocol and any person who are determined in accordance with any protocol to have suffered harm;
 - (i) to advise or arrange advice to any relevant Church authority or Church body as to—
 - (i) the financial or other needs of a person affected by alleged misconduct;
 - (ii) any legal proceedings, anticipated or existing, against such Church body or Church authority arising out of the alleged misconduct of a Church worker; and
 - (iii) how a parish or congregation may best be supported;
 - (j) 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;
 - (k) to provide information to each complainant and respondent and their respective carers about the operation of this Act and any protocol;
 - (l) to keep proper records of complaints, decisions, meetings, employment screening details, police checks and people affected by allegations of misconduct;
 - (m) to implement and record proper screening processes and procedures and to ensure that any information obtained is

- accurate, easily accessible and in keeping with contemporary management systems;
- (n) to consult and co-operate regularly with other Directors of Professional Standards and Church bodies to promote consistency between them and the Diocesan protection policies and procedures;
 - (o) where required by law or under this Act or any protocol, to report a matter to the police and in other cases to support the complainant in making a report to the police and the relevant State child protection authority; and
 - (p) to report to the Scheme Directors and the PSC on any recommended changes to a protocol and any other changes to Church processes, structures and education programmes that would reduce the risk of abuse in a Diocese.
 - (q) such specific functions and duties as may be determined from time to time by the Scheme Directors;
 - (r) such other functions and duties as may be provided by this Act or as may be determined by the Scheme Directors.
- (2) The Director and any Deputy Director must act in all things as expeditiously as possible.

Director may have corresponding capacity for another diocese.

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

PART 7.4 – EXECUTIVE DIRECTOR

Appointment of Director

137. (1) There shall be an Executive Director of the Office of the Professional Standards.
- (2) The Executive Director is appointed by the Scheme Directors on such terms and conditions as may be agreed.

Functions of the Executive Director

138. (1) The Executive Director shall have the following functions—
- (a) to discharge the functions assigned to that officer under this Act or any protocol under this Act;
 - (b) to oversee the operation of the Office of Professional Standards;

- (c) to have responsibility for the budget and financial performance of the Office of Professional Standards; and
- (d) to exercise such other functions as may be determined by the Scheme Directors.

PART 7.5 – PROFESSIONAL STANDARDS OMBUDSMAN

Appointment

139. (1) There shall be appointed a Professional Standards Ombudsman who shall be a lay person.
- (2) There may be appointed an acting Professional Standards Ombudsman.
140. (1) The Professional Standards Ombudsman, and any acting Professional Standards Ombudsman, shall be appointed by the Scheme Corporation and shall hold office on such terms and conditions as may be determined from time to time by resolution of the Scheme Directors.
- (2) The Professional Standards Ombudsman and any acting Professional Standards Ombudsman must report to the Scheme Directors.

Functions

141. (1) The Professional Standards Ombudsman shall have the following functions—
- (a) to discharge the functions assigned to that officer under this Act or any protocol approved under it including responding to grievances concerning any complaint or grievance about the operation of this Act or any protocol approved under it in relation to a complaint or other matter;
 - (b) to keep under scrutiny, by spot audits and otherwise, the systems in the Diocese for—
 - (i) preventing the incidence of misconduct by Church workers; and
 - (ii) responding to and dealing with complaints of misconduct;
 - (iii) responding to and dealing with an application for redress;
 - (iv) the grant of a clearance for ministry to any Church workers;
 - (c) to report to the Scheme Directors on any recommended changes to the Protocol and any changes to Church processes, structures and education programmes that would reduce the risk of abuse

- in a Diocese; and
- (d) to exercise such other functions as may be determined by the Scheme Directors.

Access to files and information

142. The Professional Standards Ombudsman shall have access to all files of the Office of Professional Standards and information relevant to any complaint or matter.

PART 7.6 –PANEL OF INVESTIGATORS

Appointment

143. (1) The Executive Director must establish and maintain a panel of investigators to carry out any investigation under this Act.
- (2) The members of the panel shall be appointed on such terms and conditions as may be determined from time to time by the Executive Director.
- (3) A member of the panel need not be a member of the Church.

PART 7.7 – PROFESSIONAL STANDARDS BOARD

Establishment of Board

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

Board may be an equivalent body

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

Function of the Board

146. Subject to the provisions of this Act the functions of the Board are—
- (a) to make a determination and where appropriate make a recommendation under section 42 (suspension) of this Act; and
 - (b) to enquire into and determine a complaint or matter and make recommendations or directions under Part 5.3.

Panel of Board members

147. The member or members of the Board in a particular case shall be appointed from a panel comprising—
- (a) a President and a Deputy President appointed by the Scheme Directors, and Senior Members, each 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) at least 9 other persons of whom at least—
 - (i) two shall not be members of the Anglican Church of Australia;
 - (ii) two shall be members of the clergy; and
 - (iii) five who may or may not be members of the Church, having professional qualifications and experience —
 - (A) in psychiatry or psychology with current or recent clinical experience with patients who have been victims of child abuse or sexual misconduct; or
 - (B) in child protection, investigations, social work, ethics, medicine or counselling.

Appointment of members of Board Panel

148. (1) The members of the panel shall be appointed by the Scheme Corporation by resolution of the Scheme Directors after consultation with the President of the Board.
- (2) The members of the panel shall hold office on such terms and

conditions as may be determined from time to time by resolution of the Scheme Directors.

- (3) The members of the panel may constitute or include the members of an equivalent body either generally or for a particular complaint or matter.

Filling vacancies in the Board Panel

149. Any vacancy in the membership of the panel shall be filled by the Scheme Directors.

Convening a Board

150. (1) The member or members of the Board to be convened for any matter 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 Board, the Board shall consist of either—
 - (a) the President or Deputy President, or a Senior Member who shall be the presiding member, and one clergy member and at least one lay member of the panel; or
 - (b) at the discretion of the President or Deputy President in a matter that does not involve sexual abuse, a single member who is either one of them or a member of the panel of appropriate expertise and experience.
- (3) So far as it is reasonably practicable, the Board consisting of more than one member 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.

Note: The intention is to give the President a discretion so as to constitute the Board in a manner that best suits the nature of the matter to be considered.

151. A member of the Board who is not a member of the Church agrees in acting as a member of the Board to abide by the provisions of this Act.
152. (1) Before appointment, a prospective member of the Board must sign a statement of availability, impartiality and independence in any form approved by the Scheme Directors.
- (2) The prospective member must disclose in writing to the President of the Board any circumstances likely to give rise to justifiable doubts as

to his or her impartiality or independence.

Quorum

153. The quorum for a meeting of the Board consisting of more than one member shall be a majority of the members of the Board, except where the Board by its President or Deputy President makes directions under section 102.

How questions decided by Board

154. A question before the Board constituted by more than one member 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 presiding member shall prevail.

Secretary to the Board

155. (1) There shall be a secretary to the Board who shall be appointed by the President of the Board on such terms and conditions as may be determined from time to time by the President of the Board.
- (2) The secretary to the 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

156. The rules of the Board made under this Part may provide that, in relation to the exercise of specified functions, or in relation to a complaint or matter within a specified class, the Board may, at the direction of the presiding member, be constituted by a single member sitting alone.

Separately constituted Boards may sit simultaneously

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

Board's proceedings valid despite vacancies etc

158. An act or proceeding of the 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 Board, any such act or proceeding is as valid and effectual as if the member had been duly nominated or appointed.

PART 7.8 – PROFESSIONAL STANDARDS REVIEW BOARD

Establishment of Review Board of three members

159. 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

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

Function of the Review Board

161. 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

162. The members of the Review Board in a particular case shall be appointed from a panel comprising—
- (a) a President and a Deputy President appointed by the Scheme Directors, and Senior Members, each 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) at least five other persons of whom at least—
 - (i) two shall not be members of the Anglican Church of Australia;
 - (ii) two shall be members of the clergy; and
 - (iii) three shall have professional qualifications and experience -
 - (A) in psychiatry or psychology with current or recent clinical experience with patients who have been victims of child abuse or sexual misconduct; or
 - (B) in child protection, investigations, social work, ethics, medicine or counselling.

Appointment of members of Review Board Panel

163. (1) The members of the panel shall be appointed by the Scheme Corporation by resolution of the Scheme Directors after consultation with the President of the Review Board.
- (2) The members of the panel shall hold office on such terms and conditions as may be determined from time to time by resolution of the Scheme Directors.
- (3) The members of the panel may constitute or include the members of an equivalent body either generally or for a particular complaint or

matter.

Filling vacancies in the Review Board Panel

164. Any vacancy in the membership of the panel shall be filled by resolution of the Scheme Directors.

Convening a Review Board

165. (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 either—
- (a) the President or Deputy President who shall be the presiding member, and one clergy member and one lay member of the panel; or
- (b) at the discretion of the President or Deputy President a single member who is either one of them or a Senior Member or a member of the panel of appropriate expertise and experience.
- (3) So far as it is reasonably practicable, the Review Board consisting of more than one member shall include at least—
- (a) one man and at least one woman; and
- (b) one person who is not a member of the Anglican Church of Australia.
- (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 constituted by more than one member shall be all the members of the Review Board, except where the Review Board by its President or Deputy President makes directions under section 102.
166. A member of the Review Board who is not a member of the Church agrees in acting as a member of the Review Board to abide by the provisions of this Act.
167. (1) Before appointment, a prospective member of the Review Board must sign a statement of availability, impartiality and independence in any form approved by the Scheme Directors.
- (2) The prospective member must disclose in writing to the President of the Review Board any circumstances likely to give rise to justifiable

doubts as to his or her impartiality or independence.

Secretary to the Review Board

168. (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.
- (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

169. The rules of the Review Board made under this Part may provide that where the Review Board is constituted by more than one member, 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 Review Board may, at the direction of the presiding member, be constituted by a single member sitting alone.

Separately constituted Review Boards may sit simultaneously

170. 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

171. 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.

Presiding member may determine practice and procedure of Review Board.

172. 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 7.9 – CHURCH AUTHORITY

173. The expression **Church authority** means—
- (a) in relation to a Church worker licensed or otherwise authorised by the Diocesan Bishop for ministry or other service in the Church, and the enjoyment or otherwise of that licence or other authority, the Diocesan Bishop;
 - (b) in relation to any recommendation that a priest or deacon resident in the Diocese who holds no role office or position in the Church and does not hold a licence or other authority be deposed from Holy Orders, the Diocesan Bishop;
 - (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;
 - (e) in relation to any recommendation that a bishop (other than a diocesan bishop) be deposed from the exercise of Holy Orders, the Metropolitan;
 - (f) in relation to a Church worker appointed or employed or deemed to be employed by the Diocesan Corporation on behalf of which the Diocesan Bishop or other office holder or the Chapter (as the case may be) has authority under any Act of the Synod of the Diocese or otherwise to appoint, authorise, dismiss or suspend the Church worker:
 - (i) the Diocesan Bishop or that other office holder or the Chapter (as the case may be); and
 - (ii) the board of the Diocesan Corporationfor their respective functions;
 - (g) in relation to any other Church worker appointed by the Diocesan Bishop or other office holder or the Diocesan Bishop-in-Council or the Chapter whether under any Act of the Synod of the Diocese or otherwise (as the case may be), in circumstances where paragraph (d) does not apply, the Diocesan Bishop or the Diocesan Bishop-in-Council or that other office holder or the Chapter (as the case may be);⁴⁴
 - (h) in relation to a Church worker appointed or employed by a participating entity, the board or committee of management of that entity or an office holder nominated by them for that purpose;
 - (i) in relation to a churchwarden or parish council member elected by a general meeting of a parish, the Diocesan Bishop-in-Council;
 - (j) in relation to a Church worker elected by Synod, the Synod;

⁴⁴ This paragraph applies where the diocese does not have a diocesan corporation.

(k) in relation to a recommendation concerning a Person of Concern and their entry or access to premises or activities (whether or not also a Church worker)—

~~that the respondent be required to enter into a Safety Agreement with the Church authority and the Executive Director of the Office of Professional Standards, failing which he or she be excluded from entry or access to premises or activities of the Church either generally or in a specified location or circumstances—~~

(i) in a parish, the vicar and the ~~Churchwardens~~churchwardens;

~~(ii) in the Cathedral, the Dean and any duly authorised representatives of the Chapter appointed for this purpose;~~

~~(iii) otherwise the Diocesan Bishop and any duly authorised representatives of the Diocesan Bishop in Council appointed for this purpose.~~

~~(ii) in the Cathedral, the Chapter;~~

~~(iii) otherwise the Diocesan Bishop in Council~~

~~in each case by their duly authorised representative or representatives.~~

CHAPTER 8 – GENERAL

PART 8.1 – THE JOINT REGISTER

174. (1) Each office holder in the Office of Professional Standards must enter and keep in a joint register all relevant information received or given by them in the discharge of their duties to the intent that the register will be a joint register for the Diocese and each participating diocese.
- (2) Each of those office holders must keep confidential the information in the joint register and must not disclose any of it except as authorised under this Act or any protocol approved under it.
- (3) Relevant information for the purposes of this Part means for each complaint or matter arising under this Act or under the Act of any participating diocese or any protocol approved under any of them—
- (a) the names of the complainant and the respondent;
 - (b) the contents of the complaint if in writing;
 - (c) any application for a clearance for ministry;
 - (d) any application for redress;
 - (e) any notes, correspondence, reports, statements or other documents created sent or received;
 - (f) any determination of the PSC, the Board, the Review Board, as the case may be;
 - (g) any decision of the Church authority and correspondence in connection with that decision; and
 - (h) any other information of a kind specified by resolution of the Scheme Directors.
- (4) The joint register must be accessible for inspection by, and relevant information may be disclosed to the office holders and authorised staff in the Office of Professional Standards in respect of the Diocese and each participating diocese subject to password protection and to the condition in subsection (5).
- (5) The condition is that each person lawfully having access must keep confidential the information in the joint register and must not disclose any of it except as authorised under this Act or under the Act of any participating diocese or any protocol approved under any of them.

PART 8.2 – CONFIDENTIALITY AND PUBLICATION

Duty of confidentiality

175. Subject to the provisions of this Act, the holder of an office or position who is or has been exercising a function under this Act must not divulge information that comes to his or her knowledge by virtue of that office or position or in the course of, or because of, the person exercising a function under this Act or any protocol approved under it except—
- (a) in the course of carrying out a function whether under this Act or any protocol approved under any of them;
 - (b) to the holder of an office or position who is exercising a function under the professional standards ordinance or the episcopal standards ordinance of another diocese or under any protocol approved under it and for that purpose;
 - (c) as may be otherwise authorised by or under this Act or any protocol approved under it or under the professional standards ordinance or the episcopal standards ordinance of another diocese or under any protocol approved under it;
 - (d) as may be authorised or required by the National Register Canon 2007 of General Synod or any canon enacted by General Synod in substitution for that canon;
 - (e) in any proceedings before a diocesan tribunal, a provincial tribunal or the special tribunal;
 - (f) as may be required or permitted by law; or
 - (g) 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.

Disclosure to other church bodies

176. (1) In this section and sections 177 and 178, unless the context otherwise requires, the following references have the following meanings -

“**alleged misconduct**” means alleged misconduct involving—

- (a) abuse;
- (b) a sexual offence; or
- (c) any breach of the duty to report a matter referred to in section 17 or 18 or of a like duty to report a matter under any previous ordinance or protocol of the Diocese or another diocese in

which the Church worker was engaged in ministry or service;

“Defence Force” means the Australian Defence Force;

“Defence Force Bishop” means the Bishop to the Defence Force appointed pursuant to the *Defence Force Ministry Canon* 1985.

Duty of the Director to disclose and receive information

177. (1) The Director must disclose to the director of professional standards of another diocese information in his or her possession relating to alleged misconduct of a Church worker—
- (a) which is information relevant to, or arising in the course of—
 - (i) the exercise of the functions of the Director; or
 - (ii) an investigation being undertaken by the PSCwhere the Director knows that the Church worker is residing or engaging or proposing to engage in ministry or service, in that other diocese; or
 - (b) which is information relevant to, or arising in the course of—
 - (i) the exercise of the functions of that director; or
 - (ii) an investigation being undertaken by the equivalent body of the PSCwhere the Director knows of that exercise of functions or investigation and that the Church worker is residing or engaging or proposing to engage in ministry or service, in that other diocese; or
 - (c) which is alleged to have occurred in the diocese of that director.
- (2) The Director must disclose to the director of episcopal standards having jurisdiction in a diocese information in his or her possession relating to the alleged misconduct of a Bishop referred to in section 56(6) of the Constitution.
- (3) The Director may disclose to a person or body of another church exercising powers, duties or functions similar to those of the PSC information in its possession relating to the alleged misconduct of a former Church worker whom the Director has reason to believe is a member or purported member of that church.
- (4) The Director must co-operate with the relevant director or person or body to whom the information is disclosed.
- (5) To the extent that the Director receives information relating to alleged

misconduct of a Church worker from a director of professional standards or a director of episcopal standards of another diocese under a provision equivalent to this section, the Director has a duty to receive that information.

Duty of the Director to disclose to Primate and Defence Force Bishop and receive information

178. (1) The Director must disclose to the Primate and the Defence Force Bishop or an office holder or body appointed by the Primate or the Standing Committee for that purpose information in his or her possession relating to alleged misconduct of a Church worker—
- (a) which is information relevant to, or arising in the course of—
 - (i) the exercise of the functions of the Director; or
 - (ii) an investigation being undertaken by the PSCwhere the Director knows that the Church worker is engaging or proposing to engage in ministry in the Defence Force pursuant to a licence from the Primate or the Defence Force Bishop; or
 - (b) which is information relevant to, or arising in the course of—
 - (i) the exercise of the functions of the Primate or the Defence Force Bishop or the office holder or body appointed for that purpose; or
 - (ii) an investigation being undertaken by the equivalent body of the PSCwhere the Director knows of that exercise of functions or investigation and that the Church worker engaging or proposing to engage in ministry in the Defence Force pursuant to a licence from the Primate or the Defence Force Bishop; or
 - (c) which is alleged to have occurred on service with the Defence Force.
- (2) The Director must co-operate with the relevant person or body to whom the information is disclosed.
- (3) To the extent that the Director receives information relating to alleged misconduct of a Church worker from the Primate or the Defence Force Bishop or an office holder or body appointed by the Primate or the Standing Committee under a provision equivalent to this section, the Director has a duty to receive that information.

Duty of the PSC to disclose and receive information

179. (1) The PSC must disclose to an equivalent body of another diocese or of

the Anglican Church of Australia information in its possession relating to alleged misconduct of a Church worker—

- (a) which is information relevant to, or arising in the course of an investigation being undertaken by the PSC where the PSC knows that the Church worker is residing or engaging or proposing to engage in ministry or service in that other diocese or in the Defence Force (as the case may be); or
 - (b) which is information relevant to, or arising in the course of an investigation being undertaken by the equivalent body where the PSC knows of that investigation and that the Church worker is residing or engaging or proposing to engage in ministry or service in that other diocese or in the Defence Force; or
 - (c) which is alleged to have occurred in that other diocese or on service in the Defence Force (as the case may be).
- (2) The PSC must disclose to the Episcopal Standards Commission or to the episcopal standards committee of a diocese (as the case may be) information in its possession relating to the alleged misconduct of a Bishop referred to in section 56(6) of the Constitution.
 - (3) The PSC may disclose to a person or body of another church exercising powers, duties or functions similar to those of the PSC information in its possession relating to the alleged misconduct of a former Church worker whom the PSC has reason to believe is a member or purported member of that church.
 - (4) The PSC must co-operate with the relevant person or body to whom the information is disclosed.
 - (5) To the extent that the PSC receives information relating to misconduct from an equivalent body under a provision equivalent to this section, the PSC has a duty to receive that information.

PSC to report annually to Scheme Directors Director or Executive Director to report

180. (1) Without disclosing the identity of any informant, complainant or the respondent, the PSC must report annually to the Scheme Directors and the Board of the Diocesan Corporation on its activities for that calendar year.
- (2) The Director or Executive Director must, in respect of every complaint or other matter with which the PSC is dealing, report either orally or in writing to the Diocesan Bishop with such frequency and as fully as the Diocesan Bishop shall reasonably require.
- (3) The Director or Executive Director must, in respect of every complaint or other matter with which the PSC is dealing that concerns a relevant Church authority, report either orally or in writing to that relevant

Church authority with such frequency and as fully as the Church authority shall reasonably require.

PART 8.3 – INDEMNITY

Indemnification of those with functions under the Act

181. The Diocesan Corporation must and is hereby authorized to indemnify—
- (a) each office holder of the Office of Professional Standards and any delegate of that person;
 - (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 secretary to the Board;
 - (h) the members of the Review Board and each of them;
 - (i) the secretary to the Review Board;
 - (j) any person appointed by the Review Board pursuant to this Act;
 - (k) the Church authority or if more than one, each Church authority;
 - (l) the Scheme Corporation; and
 - (m) any witness in a proceeding under this Act, if the Diocesan Corporation so resolves in a particular case—

against all claims demands actions suits and liability 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 8.4 – PROCEDURE FOR GRIEVANCE ABOUT PROCESS

182. (1) Any grievance about the operation of this Act or any protocol approved under it must in the first instance be addressed in writing to the Executive Director.
- (2) The Executive Director must consider the complaint or grievance and forward the same to the Director and to the investigator or other staff member if any involved for a written response within 14 days or such longer period as the Executive Director may allow.
- (3) The Executive Director must provide the person lodging the grievance and the Scheme Directors with a written response and an outline of any proposed action.
183. (1) If the person aggrieved about the operation of this Act or any protocol approved under it remains so after receiving the response from the Executive Director, that person may address their grievance in writing to the Professional Standards Ombudsman.
- (2) The Professional Standards Ombudsman must consider the complaint or grievance and forward the same to the Director and to the investigator or other staff member if any involved for a written response within 14 days or such longer period as the Professional Standards Ombudsman may allow.
- (3) The Professional Standards Ombudsman must provide the person lodging the grievance and the Scheme Directors with a written response and an outline of any proposed action.

PART 8.5 – ~~BIENNIAL~~ TRIENNIAL AUDIT

184. (1) Every ~~two~~ three years from the commencement of this Act, the Scheme Directors must ensure that an independent competent and qualified person conducts an audit of the compliance of the Office of Professional Standards with the provisions of this Act and any protocol and the Child Safe Standards published by the State Government by–
- (a) the Scheme Directors;
- (b) the Office of Professional Standards;
- (c) the Diocesan Bishop in Council;
- (d) the Diocesan Corporation; and
- (e) a Church authority.

(1A) A copy of the audit report shall be provided to each of the bodies referred to in paragraphs (a) to (d) and to the Diocesan Bishop.

(2) The Scheme Directors must within 6 months of receiving the audit report take such remedial action if any as may be thought fit and report to ~~the Scheme Corporation in general meeting the Diocesan Bishop in Council~~ and the Diocesan Corporation on such action.

(3) The office holders of the Office of Professional Standards, the Diocese and the Diocesan Corporation must give the auditor access to all files of the Office of Professional Standards and information relevant to any complaint that the auditor reasonably requests in connection with the conduct of the audit.

(4) The person appointed to conduct the audit may also act as the auditor appointed by the General Secretary of General Synod to conduct an audit in respect of the Diocese under the *Safe Ministry to Children Canon 2017*.

PART 8.6 – REGULATIONS

Diocesan Bishop-in-Council may make amend or repeal regulations

185. (1) The Diocesan Bishop-in-Council may by resolution from time to time after consultation with the Scheme Directors make amend or repeal regulations, not inconsistent with the provisions of this Act—
- (a) for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act; and
 - (b) providing for records or forms arising out of or incidental to the operation of this Act.
- (2) Regulations made under this Act may—
- (a) be of general or limited application;
 - (b) differ according to differences in time, place or circumstance; and
 - (c) confer a discretionary authority or impose a duty on a specified person or body or a specified class of person or body.

SCHEDULE 1

Who is a Church worker?

Unless the context otherwise requires, the expression “**Church worker**” means a person who is or was at any relevant time—

- (a) a prescribed Church worker or a Church volunteer; and
- (b) resident in the Diocese or holding a licence or permission to officiate or other authority from a Church authority

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.

Who is a prescribed Church worker?

Unless the context otherwise requires, the expression “**prescribed Church worker**” means—

- (a) a member of the clergy;
- (b) a lay minister⁴⁵;
- (c) a person who has been accepted by the Diocesan Bishop as a candidate for ordination;
- (d) a member of the Diocesan Council or the Chapter of the Cathedral;
- (e) a director or secretary of the Diocesan Corporation;
- (f) a church-warden or Parish Council member, whether elected by the general meeting of a parish or appointed by the vicar or appointed by the parish council or the incumbent to fill a vacancy;
- (g) a treasurer of a parish or congregation or of the Chapter of the Cathedral;
- (h) a person aged 18 or more years holding in a congregation or parish or in the Cathedral or the Diocesan Offices or the Diocesan Corporation 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;

⁴⁵ See the definition of ‘lay minister’ in s3.

- (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) Organist or pianist;
 - (vi) Home visit leader or co-ordinator;
 - (vii) Aged care facility visit leader or co-ordinator;
 - (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
- (i) a person deemed to be a Church worker pursuant to section 21(2) for the purposes of the complaint against them;
 - (j) the holders of the following roles offices and positions within the Cursillo movement in the Diocese–
 - (i) Diocesan Co-Lay Directors
 - (ii) Diocesan Co-Spiritual Directors
 - (iii) Secretariat Member responsible for Pre-Cursillo
 - (iv) Secretariat Member responsible for Post-Cursillo
 - (v) Secretary
 - (vi) Treasurer
 - (vii) Ordinary member or members as needed
 - (k) 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 Diocesan Bishop in Council; or
 - (l) 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 Diocesan Bishop in Council.

Who is a Church volunteer?

The expression “**Church volunteer**” means a person aged 18 or more years who is or was at any relevant time not a prescribed Church worker but the holder of a voluntary role office or position in a congregation or parish or in the Cathedral or the Diocesan Offices or in the Cursillo movement or otherwise in the Church in the Diocese.

NOTES

The whole of the *Professional Standards Uniform Act 2016*, except Part 4.2, commenced on 1 July 2017.

Part 4.2 of the Act commenced on 1 July 2018.

The *Professional Standards Amendment Act 2017* amended the following sections: sections 3, 5, 14(2), 25(2), 29(1), 49, 53(1), 56(4), 59(1), 63(1), 64(1), 67(2), 76, 78(1), 80(1), 81(c), 88, 121, 173, 181 and schedule 1. It repealed s122 and added s 98A.