

# ANGLICAN CHURCH OF AUSTRALIA

## DIOCESE OF GOULBURN

### <sup>1</sup>PROFESSIONAL STANDARDS ORDINANCE 2004<sup>2</sup>

An Ordinance relating to professional standards within this Church, and for other purposes

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<sup>1</sup> Please note that the Original Ordinances included in this Consolidation are recorded in the Ordinance books of the Diocese of Canberra and Goulburn.

If you have any concern about this consolidation please contact [ordinances@anglicands.org.au](mailto:ordinances@anglicands.org.au) .  
This version of the Ordinance has been approved by the Chancellor in accordance with section 75 of the Diocesan Legislation Ordinance 2007

<sup>2</sup> See also Professional Standards Provisions (Delegation) Ordinance 2003

# PROFESSIONAL STANDARDS ORDINANCE

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## PROFESSIONAL STANDARDS ORDINANCE

*The Bishop-in-Council, in accordance with the Professional Standards Provisions (Delegation) Ordinance 2003 of the Synod of the Diocese of Canberra and Goulburn enacts as follows:*

### **Part A – Preliminary**

#### **1 Title**

This Ordinance is the Professional Standards Ordinance 2004

#### **2 Objects**

The object of this Ordinance is to establish a Code of Good Practice for Church Workers and processes for responding effectively and fairly to dissatisfaction or discontent with the actions of Church Workers<sup>3</sup>

#### **3 Summary of Procedures under the Ordinance for Responding to Complaints**

The tables attached to Schedule A show in schematic form the processes established by this Ordinance for responding to Complaints

#### **4 Commencement**

This Ordinance commences on the day fixed by the Bishop-in-Council after consulting with the Co-operating Dioceses<sup>4</sup>

#### **5 Application of this Ordinance**

- (1) Subject to sub-section 5(2), this Ordinance applies to all Church Workers
- (2) Subject to sub-section 5(3), if Bishop-in-Council is satisfied that a Church Body has established procedures that are sufficiently equivalent to the procedures established by this Ordinance, it may exempt the Church Workers subject to those alternative procedures from the provisions of this Ordinance<sup>5</sup>
- (3) Where sub-section 5(2) applies, a Church Body shall advise Bishop-in-Council of any amendments made to the procedures as soon as possible after their making and Bishop-in-Council may revoke the exemption if it considers that the amended procedures are no longer sufficiently equivalent to the procedures established under this Ordinance<sup>6</sup>
- (4) Sub-section 5(2) does not apply to Parts B and D<sup>7</sup>

#### **6 Interpretation and Schedules**

- (1) The Schedules at the end of this Ordinance are to be read as if they were included with the other sections as part of this Ordinance
- (2) The meaning given to terms in the Dictionary at section A1 will apply to the interpretation of this Ordinance

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<sup>3</sup> Amended by the Professional Standards Amendment Ordinance 2013

<sup>4</sup> Bishop-in-Council by resolution fixed 6 August 2004 as the commencement date.

<sup>5</sup> BiC has granted exemptions to the following bodies:

- Anglicare Diocese of Canberra and Goulburn – see Anglicare’s code and procedures
- Canberra Grammar School – see the school’s code and procedures
- Canberra Girls Grammar School – see the school’s code and procedures
- Radford College – see the school’s code and procedures
- St Martins College – see Charles Stuart University’s code and procedures but also note that Warden is also subject to the Code of Good Conduct and this Ordinance
- Anglican Diocesan Services (14 October 2022) – see ADS’s code and procedures
- St Peter’s Anglican College (25 October 2022) – see the school’s code and procedures
- Sapphire Coast Anglican College (25 October 2022) – see the school’s code and procedures
- The Anglican School Googong (30 October 2022) – see the school’s code and procedures
- The Riverina Anglican College (2 November 2022) – see the school’s code and procedures

<sup>6</sup> Amended by the Professional Standards Ratification Ordinance 2004

<sup>7</sup> Amended by the Professional Standards Ratification Ordinance 2004

## Part B – Code of Good Practice

### 7 Code of Good Practice

- (1) After Diocesan-wide consultation, Bishop-in-Council shall approve and issue a Code of Good Practice setting out norms of behaviour for observance by Church Workers in the Diocese.
- (2) Despite sub-section 7(1), if Bishop-in-Council is satisfied that a Church Body has a Code of Conduct which is more appropriate for that Church Body but which is sufficiently equivalent to the Code of Good Practice, it may exempt the Church Workers employed by or working with that Church Body from compliance with the Code of Good Practice for so long as they are subject to that Code of Conduct and any amendments to it<sup>8</sup>
- (3) For sub-section (2), Bishop-in-Council shall take into account when deciding whether a Code of Conduct is more appropriate for the Church Body whether the Code is or is based on a Code of or used in the relevant industry<sup>9</sup>
- (4) Bishop-in-Council may revoke any exemption granted under sub-section (2) if it considers that the Code of Conduct or any amendment to it is no longer sufficiently equivalent to the Code of Good Practice<sup>10</sup>
- (5) The exemption of a Church Worker from compliance with the Code Of Good Practice granted by virtue of a decision of Bishop-in-Council under s 7 (2) only exempts that Church Worker from compliance with the Code of Good Practice when employed by or working for the Church Body, whose more appropriate Code of Conduct has justified the exemption, and does not exempt that Church Worker from compliance with the Code of Good Practice if, outside the employment or any working for that Church Body, the Church Worker assumes any position in any other Church Body, the Church Workers for whom no exemption has been granted, or for any employment or working as a Church Worker in a position for which an exemption has not been granted. Example: A person who is employed by a Diocesan School, whose Church Workers have been exempted from compliance with the Code of Good Practice, is not exempted from compliance with that Code if she or he is appointed or elected as a Churchwarden or Parish Councillor in her or his Parish and while she or he is acting in such a role. An example is part of the Ordinance, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see s 15 of the Diocesan Legislation Ordinance 2007).<sup>12</sup>
- (6) Where a member of the clergy is employed by or works for a Church Body whose Church Workers have been exempted from compliance with the Code of Good Practice by virtue of a decision of Bishop-in-Council under s 7 (2), the member of the clergy is not thereby exempted from any duty of canonical obedience, any compliance with her or his ordination vows or any provision of any episcopal licence granted to her or him and does not exempt her or him from compliance with the Code of Good Practice if, outside the employment or any working for that Church Body, the member of the clergy assumes any external clerical service or any position in any other Church Body, the Church Workers of whom no exemption has been granted.<sup>13</sup>

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<sup>8</sup> Inserted by the Professional Standards Ratification Ordinance 2004

<sup>9</sup> Inserted by the Professional Standards Ratification Ordinance 2004

<sup>10</sup> Inserted by the Professional Standards Ratification Ordinance 2004

<sup>11</sup> Inserted by the Professional Standards Ratification Ordinance 2004

<sup>12 & 13</sup> Inserted by the Professional Standards Amendment Ordinance 2023



**8 Amendment of the Code of Good Practice**

- (1) Subject to sub-section 8(2) the Bishop may, on the advice of Bishop-in-Council, amend the Code of Good Practice from time to time
- (2) Before making any amendment the Bishop will consult with the Professional Standards Reference Group
- (3) Where Bishop-in-Council has exempted Church Workers under sub-section 7(2), the Church Body shall cause any amendment to its Code of Conduct to be provided to Bishop-in-Council as soon as possible after it is made<sup>14</sup>

**9 Tabling of Code of Good Practice**

- (1) The Code of Good Practice and any amendments to it must be sent to all members of Synod within 3 weeks of making, and tabled at the next session of Synod
- (2) The Code or any amendments to it tabled at a session of Synod may be disallowed or amended at that session of Synod by resolution of Synod of which not less than 5 clear days notice has been given Any disallowance or amendment will not have retrospective effect and not affect the validity of the Code of Good Practice or any amendment to it for the period between the making of the Code or the amendment and any subsequent disallowance or amendment.

**10 Professional Standards Reference Group**

- (1) Bishop-in-Council will establish a Professional Standards Reference Group and appoint such members as it considers appropriate. The membership of the Group will be drawn from the clergy and the laity of the Diocese and from the Church Workers in Church Bodies in the Diocese
- (2) The Professional Standards Reference Group will:
  - (a) review the Code of Good Practice and other matters relating to professional standards that may be referred to it by the Bishop from time to time,
  - (b) report to the Bishop at regular intervals on the operation of the Code of Good Practice and the other matters that have been referred to it;
  - (c) cause to be conducted from time to time such education about the Code of Good Practice as is desirable to ensure that all those subject to it are aware of it and the obligations it imposes on Church Workers;
  - (d) ensure that the Code of Good Practice is accessible by electronic means;<sup>15</sup>
  - (e) cause copies of the Code of Good Practice to be available to all Church Bodies; and<sup>13</sup>
  - (f) advise Bishop-in-Council on the procedures and Codes of Conduct of a Church Body where an application for exemption is made under sections 5 or 7 and any amendments of those procedures or Codes of Conduct<sup>16</sup>

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<sup>14</sup> Amended by the Professional Standards Ratification Ordinance 2004

<sup>15</sup> Amended by the Professional Standards Ratification Ordinance 2004

<sup>16</sup> Amended by the Professional Standards Ratification Ordinance 2004

## PROFESSIONAL STANDARDS ORDINANCE

### Part C – Grievances and Complaints

#### <sup>17</sup>10A Matters dealt with under this Ordinance

- (1) Where a person considers that a matter should be dealt with under this Ordinance, that person shall refer the matter to the Director.
- (2) For a matter other than a Sexually Related Complaint, which must be dealt with as a Complaint, the Director shall decide whether the matter is a Grievance or is a Complaint and cause the matter to be dealt with under this Ordinance accordingly.<sup>18</sup>
- (3) A person who is affected by a decision of the Director under subsection (2) and who disagrees with it may ask the PSC to review the decision and the decision of the PSC on the review shall be final.
- (4) If the Director has relevant information about a matter, the Director may treat the matter as a Grievance or a Complaint even if no other person has requested that the matter should be dealt with under this Ordinance and the Director may then proceed to deal with the matter under this Ordinance as if the Director were the person raising the matter.<sup>19</sup>

#### <sup>20</sup>10AB Policies, Protocols and Procedures

- (1) Bishop-in-Council shall ensure that the Diocese has effective complaint handling policies, protocols and procedures for dealing with all grievances and complaints, especially those that involve a child in any way, and that all reporting, privacy and employment law obligations are met in the dealing with all grievances and complaints.
- (2) The Professional Standards Reference Group is responsible for recommending to Bishop-in-Council the appropriate policies, protocols and procedures that should be made which will ensure that grievances and complaints are managed in accordance with the requirements of section 10AA.
- (3) In particular, and without limiting section 10AB (2), the Professional Standards Reference Group shall recommend to Bishop-in-Council the appropriate policies, protocols and procedures that it should make to ensure the ease of and efficient receipt of grievances and complaints, the handling of them effectively, promptly and efficiently, including making clear the relevant roles and responsibilities of those involved, and making clear any variations that are required for the handling of different types of grievance or complaints.

#### <sup>21</sup>10B Grievances

- (1) This section applies to Grievances
- (2) If the Director considers that a matter is a Grievance the Director is not required to refer the matter to the PSC but shall, subject to this section, resolve the Grievance in the most appropriate way

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<sup>17</sup> Amended by the Professional Standards Amendment Ordinance 2013

<sup>18</sup> Inserted by the Professional Standards Amendment Ordinance 2013

<sup>19</sup> Amended by the Professional Standards Amendment Ordinance 2017

<sup>20</sup> Inserted by the Professional Standards Amendment Ordinance 2023

<sup>21</sup> Inserted by the Professional Standards Ordinance Amendment Ordinance 2022

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- (3) Bishop-in-Council may, by resolution, establish a Protocol for addressing Grievances and responding to conflicts
- (4) If a Protocol has been established under sub-section 10A3, the Director shall proceed to resolve any Grievance in accordance with that Protocol
- (5) If a grievance cannot be resolved under sub-section (2) or (4), then the Director may refer the Grievance to the PSC for consideration, including a direction that it be considered to be a Complaint and dealt with accordingly

### <sup>22</sup> 10C Examinable Conduct

- (1) For the purposes of this Ordinance, “examinable conduct” means conduct wherever or whenever occurring being the subject of an information which, if established, might call into question:
  - (a) the fitness of a Church Worker, whether temporarily or permanently, now or in the future, to hold a particular or any office, licence or position of responsibility within the Diocese or, in the case of a member of the clergy, to be or remain in holy orders; or
  - (b) whether, in the exercise of ministry or employment or in the performance of any function by a Church Worker within the Diocese, the Church Worker should be subject to any conditions or restrictions.
- (2) In this section and subject to sections 10C(3) and 10C(4), “information” means:
  - (a) alleged conduct of a Church Worker whenever or wherever occurring involving sexual assault, sexual harassment or sexually inappropriate behaviour;
  - (b) alleged inappropriate or unreasonable conduct by a Church Worker who had knowledge involving sexual assault, sexual harassment or sexually inappropriate behaviour or who allegedly omitted to take any steps to stop, report to an appropriate person or otherwise address that behaviour with a view to having it stopped or brought to the attention of an appropriate authority;
  - (c) allegations of any abuse, including significant bullying, whether as part of emotional abuse or otherwise, by a Church Worker; and
  - (d) any alleged process failure by a Church Worker, which means any fault or flaw in the performance by the Church Worker of any process for which the Church Worker has any significant responsibility.
- (3) For any Church Worker engaged in the ministry to children as defined in s 3 of the Safe Ministry to Children Canon 2017 of the Church, “information” includes, in addition to the matters set out in s 10C(2), the following:
  - (a) an allegation that the Church Worker engaged in Reportable Conduct; and
  - (b) an alleged serious breach of the standards set out in the Code of Conduct defined in clause 2 of the First Schedule of the Safe Ministry to Children canon 2017 of the Church.

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<sup>22</sup> Inserted by the Professional Standards Amendment Ordinance 2023

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- (4) For any member of the clergy, “information” includes, in addition to the matters set out in s 10C(2) and, where applicable, those set out in s 10C(3), the following (including those set out in the Offences Canon 1962 of the Church), namely:
- (a) unchastity;
  - (b) drunkenness;
  - (c) habitual and willful neglect of ministerial duty after written admonition in respect of it by the Bishop;
  - (d) wilful failure to pay debts;
  - (e) conduct, whenever occurring,
    - (i) which would be disgraceful if committed by a member of the clergy; and
    - (ii) which, at the time the allegation is made, is productive, or, if known publicly, would be productive, of scandal or evil report;
  - (f) any other offence prescribed by an ordinance of the Synod;
  - (g) child abuse; and
  - (h) failure, without reasonable excuse, to comply with any applicable laws of the Commonwealth or, as applicable, of New South Wales or the Australian Capital Territory requiring the reporting of child abuse to the police or any other authority.

### 11 Complaints

- (1) Where a person claims that a Church Worker has committed any conduct which could amount to examinable conduct,<sup>23</sup> he or she may make a Complaint to the Director under this Ordinance.
- (2) Where a person claims that a member of the clergy or a licensed lay person has committed a serious breach<sup>24</sup> of a term of his or her licence, he or she may make a Complaint to the Director under this Ordinance
- (3) Where a person claims that a member of the clergy or a licensed lay person has taught doctrine that is contrary to the Doctrines of this Church or has otherwise committed any breach of faith, ritual, ceremonial or discipline, he or she may make a Complaint to the Director under this Ordinance. Such a Complaint shall be called a Special Complaint
- (4) Where a Complaint under this section relates to alleged conduct of a Church Worker involving Sexual Harassment or Assault, Sexually Inappropriate Behaviour, alleged inappropriate or unreasonable conduct or omission of a worker who had knowledge of the conduct of another Church Worker involving Sexual Harassment or Assault, or Sexually Inappropriate Behaviour or an alleged Process Failure, the Complaint shall be called a Sexually Related Complaint
- (5) Where the Director has proceeded to deal with a matter under subsection 10A(4) of this Ordinance and which the Director has decided is a Complaint, the Director, if so authorised by the PSC, may act as the Complainant for all purposes under this Ordinance except for the provisions of section 15.<sup>25</sup>

<sup>23</sup> Amended by the Professional Standards Ordinance Amendment Ordinance 2022

<sup>24</sup> Amended by the Professional Standards Amendment Ordinance 2013

<sup>25</sup> Inserted by the Professional Standards Amendment Ordinance 2017

## **12 Making a Complaint**

- (1) Persons who wish to make a Complaint may do so but the Director may require the Complaint to be in writing<sup>26</sup>
- (2) The Director will undertake an initial investigation of any Complaint, including presenting the Complaint to the Respondent in such manner as the Director considers appropriate, but so that the Respondent is fully aware of the substance of the Complaint, and receiving the Respondent's written response.<sup>27</sup>
- (3) When a Complaint is presented to a Respondent who is a member of the clergy, the Director shall inform the Respondent that he or she may resign from any position held but cannot relinquish holy orders until the Complaint is resolved<sup>28</sup>
- (4) Where a person is the subject of conduct which could constitute a Complaint Person, the Complaint may be made by the Disable Person's Representative

## **13 Time limit on laying a Grievance or Complaint<sup>29</sup>**

Except in the case of a Complaint about Sexual Assault or Sexually Inappropriate behaviour, a Grievance or a Complaint must be made within 7 years after the subject matter occurred but a Grievance should be made as promptly as it can reasonably be done<sup>30</sup>

- (1) The PSC may at its discretion extend the time limited in sub-section 13(1) but will have regard to any prejudice to the Respondent's ability to defend such a matter and to the interests of justice
- (2) Despite anything to the contrary in this Ordinance, no Special Complaint shall be entertained by the Director, a BOI or the Board under this Ordinance unless the Complaint has been sent to the Director within one year after the commission of the alleged breach

## **14 Responding to Grievance or Complaints<sup>31</sup>**

- (1) Grievance or Complaints against Church Workers should be:
  - (a) responded to as promptly as is practicable; and
  - (b) dealt with as informally as possible consistent with the rights of the parties and the interests of this Church
- (2) Nothing in this Ordinance may be used to stop a person from making a Grievance or <sup>30</sup> Complaint or taking proceedings in the temporal courts or administrative tribunals
- (3)

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<sup>26-31</sup> Amended by the Professional Standards Amendment Ordinance 2013

**Part D – Support Persons<sup>31</sup>**

**15 Support Persons<sup>32 33</sup>**

- (1) The Bishop shall offer to arrange for a suitable Support Person to provide support and assistance to any person who wishes to make or has made a Complaint and to each Respondent.
- (2) The offer may be accepted by a Complainant or a Respondent at any time until the Complaint has been resolved.
- (3) If a Complainant or a Respondent accepts the Bishop's offer, the Bishop shall arrange for an appropriate person to act as a Support Person and who is, to the best of the Bishop's ability, acceptable to the Complainant or the Respondent, to be made available to support and assist that person.

**16 34**

**17 35**

**18 Protocols**

Bishop-in-Council may from time to time on the recommendation of the Professional Standards Reference Group, approve Protocols for the guidance of Support Persons<sup>36</sup>

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<sup>31</sup> Amended by the Professional Standards Amendment Ordinance 2013

<sup>32</sup> Amended by the Professional Standards Amendment Ordinance 2013

<sup>33</sup> Repealed and replaced by the Professional Standards Amendment Ordinance 2017

<sup>34</sup> Omitted by the Professional Standards Amendment Ordinance 2013

<sup>35</sup> Amended by the Professional Standards Ratification Ordinance 2004

<sup>36</sup> Amended by the Professional Standards Amendment Ordinance 2013

## **Part E – Professional Standards Committee (PSC)**

### **19 Establishment of the PSC**

There shall be a Professional Standards Committee for this Diocese

### **20 Powers duties and jurisdiction of the PSC**

- (1) Subject to this Ordinance, the PSC has the following powers and duties:
- (a) to resolve Complaints in accordance with the provisions of this Ordinance;
  - (b) on request review a decision of the Director under sections 10A and 25 of this Ordinance<sup>37</sup>;
  - (c) to investigate a Complaint in a timely and appropriate manner;
  - (ca)<sup>38</sup> to recommend that the Complaint be further investigated where, after the initial investigation by the Director, it is accepted that there is a significant dispute as to facts between the Complainant and the Respondent.
  - (cb) to recommend that a Church Authority should take specified action in relation to a<sup>39</sup>lay Church Worker, if the PSC after investigation of the Complaint is satisfied that the Complaint is sustained and that the specified action is appropriate in all the circumstances.
  - (d) to decline to investigate or to investigate further a Complaint which is false, vexatious, misconceived or trivial;
  - (e) to recommend to a Church Authority the exercise of any power under this Ordinance following the resolution of a Complaint which is made with the consent of the Complainant and Respondent;
  - (f) to refer to the Board any Complaint which is not otherwise resolved under this Ordinance
  - (g) to recommend the imposition of a suspension or a Prohibition Order in accordance with Part J;
  - (h) to refer any information 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 information is or may be relevant;
  - (i) to maintain proper records of all Complaints received and of action taken in relation to them;
  - (j) subject to any limit imposed by Bishop-in-Council, authorise such expenditure on behalf of the Synod or a Church Body as may be necessary to implement, in a particular case, the provisions of this Ordinance;
  - (k) Authority arising out of the alleged conduct of a Church Worker;
  - (l) where appropriate, recommend to Bishop-in-Council any changes to this Ordinance;
  - (m) where appropriate, recommend to Bishop-in-Council any changes in policies or procedures that relate to the matters dealt with in this Ordinance, and to exercise such other powers and functions may reasonably be necessary or desirable for giving effect to the provisions of this Ordinance or as are conferred on it by this or any other Ordinance<sup>40</sup>

<sup>37</sup> Amended by the Professional Standards Amendment Ordinance 2013

<sup>38</sup> Repealed and replaced by the Professional Standards Amendment Ordinance 2017

<sup>39</sup> Amended by the Professional Standards Amendment Ordinance 2017

<sup>40</sup> Amended by the Professional Standards Amendment Ordinance 2013

## PROFESSIONAL STANDARDS ORDINANCE

- (2) The power and duty of the PSC to exercise its functions under this Ordinance arises in respect of:
- (a) Sexually Related Complaints:
    - (i) wherever or whenever the conduct the subject of the Complaint is alleged to have been engaged in by a Church Worker who is resident or licensed in this Diocese at the time the Complaint is made;
    - (ii) wherever or whenever the omission the subject of the Complaint occurred in respect of a Church Worker who is resident or licensed in this Diocese at the time the Complaint is made;
    - (iii) where the conduct, wherever or whenever it is alleged to have been engaged in, or the omission, wherever and whenever it is alleged to have occurred in respect of the subject of the Complaint, by a Church Worker, who is at the time of the Complaint neither resident nor licensed in this Diocese:
      - (I) affects a person resident in this Diocese; or
      - (II) affects a Church Body or Church Authority in the Diocese or Church property or property held in trust for the benefit of or in connection with this Church or a Church Body in this Diocese
  - (b) all other Complaints:
    - (i) where the Church Worker is, at the time of the Complaint, resident or licensed by this Diocese or is engaged by a Church Body if the conduct or omission the subject of the Complaint is alleged to have been engaged in or occurred within the Diocese and within the time specified in section 13; or
    - (ii) where the Church Worker was resident or licensed by this Diocese or was engaged by a Church Body at the time the conduct or omission is alleged to have been engaged in or occurred, wherever the conduct or omission is alleged to have been engaged in or occurred within the time specified in section 13
- (3) In this section 20, a reference to a Complaint does not include a Special Complaint (see Part I)

### **21 The Constitution and Operation of the PSC**

The constitution and operation of the PSC shall be in accordance with the provisions of Schedule E

### **22 Incapacity of a Member of the Clergy or Licensed Lay Person**

Where an Archdeacon, Parish Council or the Director advises the PSC that a Member of the Clergy or a licensed lay person may be unable through mental or physical incapacity to discharge his or her obligations under a licence issued to that person and is unlikely to become able to do so within 6 months from the date when the person first became incapable, the PSC may, after undertaking such investigations as seem appropriate to it, refer the allegation of incapacity to the Board for the Board to determine whether the Bishop should be advised to withdraw the person's licence or appointment and the Bishop may withdraw the person's licence or appointment

### **23 The temporal law**

- (1) Where the Complainant commences proceedings in the temporal courts or an administrative tribunal in respect of the subject matter of a Complaint, the PSC or the Board shall not proceed to investigate, hear or determine the Complaint unless it considers that it is in the interests of justice to do so but may nevertheless defer or adjourn the consideration of the Complaint until the completion of any such proceedings



## PROFESSIONAL STANDARDS ORDINANCE

- (2) Where criminal proceedings are commenced against the Respondent for an offence arising out of the subject matter of a Complaint, the PSC or Board shall not proceed to determine the Complaint until the criminal proceedings have been completed
- (3) Nothing in this section prevents the relevant Church Authority from suspending the Respondent or the making of a Prohibition Order under Part J

### **Part F –Professional Standards Director**

#### **24 Appointment of the Director**

- (1) There shall be a Professional Standards Director
- (2) The Director shall be appointed by and shall hold office in accordance with a resolution of the Bishop-in-Council
- (3) <sup>41</sup> Bishop-in-Council may appoint a Deputy Director of Professional Standards, who shall assist the Professional Standards Director in the discharge of the duties of that person under this Ordinance.
- (4) <sup>42</sup> The Deputy Director of Professional Standards may exercise such of the functions of the Professional Standards Director, from time to time, as the Professional Standards Director may determine or as may be specified by any Ordinance.

#### **25 Functions of the Director**

The Director shall have the following functions:

- (a) to be the executive officer of the PSC;
- (b) to convene but not to chair meetings of the PSC;
- (c) to receive matters under Part C, to conduct an initial investigation and to decide whether the matter is a Grievance or a Complaint and
  - (i) to take no further action;
  - (ii) to deal with the matter under Section 10B as a Grievance; or
  - (iii) to deal with the matter as a Complaint and refer the matter to the PSC for its consideration and if it thinks fit, further investigation;<sup>43</sup>
- (d) ensure that Complaints are dealt with in accordance with this Ordinance;
- (e) such other functions and duties as may be determined by the Bishop-in-Council or the PSC
- <sup>44</sup>(g) A person affected by a decision of the Director under paragraph (c)(i) and who disagrees with it may ask the PSC to review the decision and the decision of the PSC on the review shall be final<sup>45</sup>

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<sup>41</sup> Inserted by the Professional Standards Amendment Ordinance 2023

<sup>42</sup> Inserted by the Professional Standards Amendment Ordinance 2023

<sup>43</sup> Amended by the Professional Standards Amendment Ordinance 2013

<sup>44</sup> Please note there is no paragraph (f)

<sup>45</sup> Inserted by the Professional Standards Amendment Ordinance 2013

## PROFESSIONAL STANDARDS ORDINANCE

### **26 Director may act for each of the Co-operating Dioceses**

The Director may act in a corresponding capacity for each of the Co-operating Dioceses either generally or for a particular case or matter

### **27 Report to the Respondent and Complainant**

The Director will report in writing on the progress of the consideration of a Complaint to the Complainant and Respondent at least monthly until the matter is finally resolved by the PSC, a BOI, or by the Board

## **Part G – Responsibilities of Church Workers**

### **28 Responsibilities Before a Complaint is Made**

- (1) Where a Church Worker is aware or reasonably suspects that another Church Worker has engaged in conduct, or has failed to discharge an obligation, which may constitute a breach of the Code of Good Practice or any licence held by that other Church Worker, the first Church Worker may raise the matter with the other Church Worker in an endeavour to prevent the conduct or omission continuing or being repeated
- (2) Where a Church Worker is aware or reasonably suspects that another Church Worker has engaged in conduct, or has failed to discharge an obligation, which may constitute a serious<sup>46</sup> breach of the Code of Good Practice or any licence held by that other Church Worker, the first Church Worker should report the matter to the Director<sup>47</sup>

### **29 Responsibilities where a Complaint is Investigated**

A Church Worker who is aware of any information concerning a Complaint that has been made must refer that information to the Director unless he or she reasonably believes that the information is already known by the Director

### **30 Exemptions for Confession**

This Part G does not affect the Canon Concerning Confessions 1989 of the General Synod or any other canon or legislative instrument relating to confessions in force in this Diocese

## **Part H – Investigation of a Complaint**

### **31 Investigate Complaints**

Subject to this Ordinance, the PSC shall investigate any Complaint referred to it by the Director

### **32 Referral of an Information to an Equivalent Body**

- (1) The PSC may, if it thinks it appropriate to do so, refer a Sexually Related Complaint to an Equivalent Body or Bodies for investigation or resolution or both.

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<sup>46</sup> Inserted by the Professional Standards Amendment Ordinance 2013

<sup>47</sup> Omitted by the Professional Standards Amendment Ordinance 2013

## PROFESSIONAL STANDARDS ORDINANCE

- (2) When the PSC and an Equivalent Body or Equivalent Bodies both have the power and duty to investigate a Complaint or Complaints concerning the alleged conduct or omission of the same Church Worker 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 50 should be referred to the Board or to an Equivalent Body which has jurisdiction;then the PSC shall refer the disagreement for decision by the Director and the persons acting in a corresponding capacity to the Director for every other relevant diocese acting together
- (3) The PSC shall act in accordance with the unanimous decision of the persons referred to in sub-section 32(2) or, if such persons cannot agree unanimously within a reasonable time of the disagreement being referred, in accordance with the decision of the Primate or a member of the House of Bishops appointed by the Primate
- (4) In all matters affecting the operation of this Ordinance the PSC and the Director shall co-operate with and assist an Equivalent Body and a person acting in the corresponding capacity to the Director in another diocese
- (5) In making a decision under sub-section 32(2) the Director shall not be bound by the views or instruction of the PSC but shall take into account the most convenient course for all concerned and the best interest of this Church as a whole
- (6) For sub-section 32(2), relevant diocese means the Diocese for which an Equivalent Body has the power and duty to investigate the Complaint or Complaints

### **33 PSC may decline to investigate an Information**

- (1) The PSC may decline to investigate or may refrain, temporarily or permanently, from further investigation of the Information if:
  - (a) in its opinion, the allegations the subject of the Complaint are false, vexatious or misconceived, or their subject matter is trivial;
  - (b) The circumstances are being or have been investigated by some other competent person or body or are the subject of legal proceedings in the temporal courts or an administrative tribunal;
  - (c) the Complainant or Victim have, after a request, failed to provide further particulars or to verify the allegations by statutory declaration; or
  - (d) in its opinion there is insufficient reliable evidence to warrant an investigation or further investigation.
- (2) The PSC may not dismiss a Sexually Related Complaint just because the Complainant did not directly inform the Respondent that the behaviour was unwelcome

- (3) A Complaint about inappropriate behaviour in relation to church finances does not need to establish that any funds were lost but the Complaint must relate to funds of this Church rather than the person's own funds or the funds of a non-church body Evidence of such matters may, however, be considered by the PSC or Board to be relevant

34 Omitted<sup>48</sup>

### 35 Investigation of a Complaint

For the purpose of the investigation of a Complaint the PSC or an investigator appointed by it shall obtain such statutory declarations, written statements, recorded conversations, reports, documents and other material as the PSC or the Director considers necessary or advisable for presentation to the Board

### 36 The Respondent<sup>49</sup>

- (1) The Director shall present any Complaint to the Respondent in accordance with subsection 12(2) as soon as is reasonably practical after receipt of the Complaint and the initial investigation of it
- (2) The Respondent shall be invited to provide a written response to the Complaint within such reasonable time as the Director shall specify
- (3) The Respondent must not:
- (a) in the response, include any material that is calculated or likely to mislead the Director, the PSC or any other person involved in the investigation of the Complaint; or
  - (b) obstruct or unreasonably delay the Director, the PSC or any other person involved in the investigation of the Complaint
- (4) A breach of the Respondent's obligations under subsection (3) may be referred by the Director to the PSC and treated as a Complaint under this Ordinance
- (5) Where the Respondent is a Disable Person, their Representative may take all such steps under this Ordinance as may be necessary or desirable on behalf of the Disable Person to respond to the Complaint and protect the interests of the Disable Person

### 37 Referral of Complaint

- (1) After it has completed its investigation of a Complaint, the PSC shall determine whether
- (a) the Complaint should be referred to a Board for determination;
  - (b) no further action should be taken on the Complaint;
- and the Director must inform the Complainant and the Respondent of the decision of the PSC

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<sup>48</sup> Omitted by the Professional Standards Amendment Ordinance 2013

<sup>49</sup> Amended by the Professional Standards Amendment Ordinance 2013

## PROFESSIONAL STANDARDS ORDINANCE

- (2) Where the PSC determines that a Complaint should be referred to the Board, the Director, in consultation with the Chancellor, shall, subject to this Ordinance, determine the form of the statement of the Complaint and the supporting material to be sent to the Board
- (3) Where the PSC determines that no further action should be taken on the Complaint it shall terminate its consideration of the Complaints and the decision of the PSC shall be final

### **Part I – Board of Inquiry (BOI)**

#### **38 A Special Complaint**

- (1) Where a Special Complaint has been made, the Bishop may appoint a person to promote the Complaint (“the Promoter”)
- (2) The Promoter may conduct such investigation of the Special Complaint as seems appropriate and may appoint an appropriate person or persons to assist in that investigation
- (3) The Promoter shall report to the Director:
  - (a) that there are reasonable grounds for suspecting that the Special Complaint has been substantiated and that it should be referred to a BOI; or
  - (b) that no further action should be taken on the Special Complaint because it is unsubstantiated, frivolous, vexatious, not made in good faith, or too trivial to be further investigated

#### **39 Appointment of Board of Inquiry**

- (1) Where the Director advises the Bishop that:
  - (a) a Special Complaint is supported by at least five Complainants or
  - (b) the Promoter has reported that the Special Complaint should be referred to a Board of Inquiry (BOI)

the Bishop shall require the PSC to request Bishop-in-Council to appoint a BOI to consider the Special Complaint but the PSC shall otherwise take no further action on the Special Complaint and shall advise the Complainant or Complainants accordingly
- (2) A BOI shall consist of a chairperson, two clergy persons and two lay persons (in each case there will be a man and a woman) appointed by Bishop-in-Council
- (3) The BOI shall consider the Special Complaint and any documents in support of it and determine whether the matters raised by the Special Complaint raise proper issues to be heard by the Board as constituted in accordance with section K7 In making such a determination the BOI will have regard to:
  - (a) whether, in its opinion, the Special Complaint is unsubstantiated or too trivial to be further considered;
  - (b) whether, in its opinion, the Special Complaint is frivolous, vexatious or not made in good faith;

## PROFESSIONAL STANDARDS ORDINANCE

- (c) whether the Special Complaint is being or has been investigated, or considered or is or has been the subject of proceedings by a competent person or body;
  - (d) whether the Complainants have, after a request, failed to provide further particulars or verify the allegations by statutory declaration; or
  - (e) any other matter it considers is relevant
- (4) When the BOI has made a determination in relation to the matter, the chair of the BOI shall inform the Director in writing of the BOI's decision
  - (5) Where the members of a BOI do not all agree on a question before them, the decision agreed to by a majority of the members of the BOI shall be taken to be the decision of the BOI The chair shall not have a casting vote
  - (6) Where the BOI finds that the matter should proceed for determination by the Board, the Director must, in consultation with the chair of the BOI and the Chancellor, determine the form of the statement of the Special Complaint and supporting material to be sent to the Board
  - (7) Where the BOI finds that the matter should not proceed for determination by the Board, the Director must inform the Complainant, the Respondent and the Bishop and take no further action on the Special Complaint

### **Part J – Suspension or Prohibition Order**

#### **40 Power to Recommend Suspension or Prohibition Order**

- (1) At any time after the PSC has commenced an investigation of a Complaint under this Part J, or a BOI has been established in accordance with section 39, the PSC or a BOI as the case may be, may, after giving the Respondent an opportunity to be heard and an opportunity to take paid or unpaid leave instead<sup>50</sup>, recommend to the relevant Church Authority one or more of the following:
  - (a) that the Respondent should be suspended from the duties of office or employment by a Church Body; or
  - (b) that a Prohibition Order be made against the Respondent
- (2) If a Respondent takes leave under this section, he or she must not engage in any ministry without the express written permission of the Bishop on the advice of PSC until the Complaint is resolved under this Ordinance<sup>51</sup>

#### **41 Factors affecting recommendation to suspend or issue a Prohibition Order**

Before making a recommendation under section 40 the PSC shall take into account:

- (a) the seriousness of the conduct alleged in the Information;
- (b) the nature of the material to support or negate the allegations;
- (c) whether any person is at risk of harm;
- (d) after consultation with any relevant Church Body or its representative, the effect on the Respondent, a relevant Church Body and on the Church of acting and of not acting under section 40; and
- (e) any other allegation of similar conduct previously made to the PSC or to an Equivalent Body within the previous ten years;

and may take into account any other relevant matter.

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<sup>50</sup> Amended by the Professional Standards Amendment Ordinance 2013

<sup>51</sup> Amended by the Professional Standards Amendment Ordinance 2013

## PROFESSIONAL STANDARDS ORDINANCE

### **42 Church Authority may Suspend or issue a Prohibition Order**

The relevant Church Authority is authorised to give effect to a recommendation made under section 40

### **43 Lifting a suspension or Prohibition Order**

A Suspension or Prohibition Order made by a Church Authority pursuant to a recommendation under section 40 shall be terminated by the Church Authority:

- (a) if the PSC terminates the investigation without referring the matter to the Board;
- (b) if the BOI finds that the Special Complaint should not proceed for determination by the Board;
- (c) upon any direction to that effect given by the Board; or
- (d) upon the Church Authority giving effect to a recommendation of the Board under section 54

### **44 Limitations on a Church Worker during a suspension or a Prohibition Order**

(1) During a Suspension or Prohibition pursuant to the provisions of this Part J:

- (a) the Respondent shall comply with the terms of any Suspension or Prohibition Order;
- (b) the Respondent is ineligible for appointment to any position or function covered by any Suspension or Prohibition Order;
- (c) the relevant Church Authority may temporarily fill the vacancy caused by the effect of any Suspension or Prohibition Order;
- (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 under the control of the Synod; and
- (e) Bishop-in-Council may levy Church bodies for the costs of the payments referred to in paragraph 44(1)(d)

(2) Subject to this Ordinance, the person is entitled to return to the position formerly occupied when a Suspension Order is lifted

## **Part K – Professional Standards Board**

### **45 Professional Standards Board**

- (1) There shall be a Professional Standards Board constituted and appointed in accordance with this Part K
- (2) The Board shall be the diocesan tribunal for the purposes of the Constitution of the Anglican Church of Australia

### **46 The Functions of the Board**

Subject to this Ordinance, the function of the Board is to inquire into and determine a question or questions referred to it under section 50 and questions within its jurisdiction referred to it by an Equivalent Body to the PSC and to make a determination referred to in section 54 and where appropriate to make a recommendation in accordance with this Ordinance.

## PROFESSIONAL STANDARDS ORDINANCE

### 47 Jurisdiction of the Board

The Board has jurisdiction to exercise its functions in respect of a Church Worker:

- (a) who is resident or licensed in the Diocese or engaged by a Church Body; and
- (b) in respect of a Sexually Related Complaint, who is not resident or licensed in the Diocese nor engaged by a Church Body; but whose conduct or omission giving rise to the Sexually Related Complaint is alleged to have occurred in the Diocese or when the Church Worker was resident or licensed in the Diocese or was engaged by a Church Body; and
- (c) when the Board is required to act as an Equivalent Body in respect of a matter that has been referred from another diocese

### 48 Rules of the Board

- (1) The President<sup>52</sup> and Deputy President<sup>53</sup> may make Rules of the Board reasonably required by or under this Ordinance and in relation to the practice and procedure of the Board
- (2) Subject to this Ordinance and the relevant Rules, the practice and procedure of the Board will be as directed by the presiding member of the Board
- (3) The rules of the Board will be published from time to time and made available to the members of this Church in electronic form
- (4) Any Rules of the Board developed in accordance with sub-section 59(4) will be tabled at Synod and may be disallowed by Synod

### 49 Appeals

- (1) The Chancellor, the Complainant or the Respondent may appeal from a Decision of the PSC to recommend any action to a Church Authority or an order under Part J or a recommendation of<sup>54</sup> the Board to the Provincial Tribunal, except in cases in respect of a Complaint laid in respect of a Special Complaint in which case the appeal lies to the Appellate Tribunal;
- (2) An appeal shall be commenced by lodging with the Provincial Registrar or the Registrar of the Appellate Tribunal as the case may be a Notice of Appeal which sets out the name of the appellant and the respondent, the finding or recommendation from which the appeal challenges and the grounds of the appeal;<sup>55</sup>
- (3)<sup>56</sup> If an appeal has been instituted from a decision of the Board the Church Authority shall not act on a recommendation until the appeal has been determined;
- (4)<sup>57</sup> Any appeal under this section must be lodged within 28 days of the date on which the Order of the Board is received by the Church Authority, Complainant or Respondent as the case may be, or any additional time granted by the Provincial Tribunal or the Appellate Tribunal as the case may be.

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<sup>52</sup> Amended by the Professional Standards Ordinance Amendment Ordinance 2022

<sup>53</sup> Amended by the Professional Standards Ordinance Amendment Ordinance 2022

<sup>54</sup> Amended by the Professional Standards Amendment Ordinance 2013

<sup>55</sup> Inserted by the Professional Standards Amendment Ordinance 2017

<sup>57</sup> Renumbered by the Professional Standards Amendment Ordinance 2017

<sup>57</sup> Renumbered by the Professional Standards Amendment Ordinance 2017



**49A Alternate Appeal<sup>58</sup>**

- (1) If there is no Provincial Tribunal or if there are no or insufficient members appointed to it to enable it to carry out its functions, the Provincial Registrar shall, upon receipt of a Notice of Appeal under subsection 49(2), refer the Notice to the Metropolitan who shall deal with it as follows.
- (2) Upon referral under subsection (1), the Metropolitan shall appoint a person (**the reviewer**) to hear and determine the appeal.
- (3) The reviewer shall be a person who is or has been a judge of the High Court of Australia, of a Supreme Court of a State or Territory, of the Federal Court of Australia or of the Family Court of Australia or a barrister who has been appointed as Senior Counsel and, in each case, who is a member of this Church.
- (4) The reviewer shall conduct the appeal as a rehearing and may give such directions and conduct the appeal in such way as he or she considers, subject to the rules of natural justice, necessary or desirable for a fair and expeditious determination of the appeal.
- (5) The Diocese shall bear the costs of the reviewer in undertaking the appeal.
- (6) If the reviewer upholds the appeal, then the recommendation of the reviewer shall be dealt with under this Ordinance as if it were a recommendation of the Board.

**Part L – Reference of matters to the Professional Standards Board**

**50 Who and What may be referred to the Board**

- (1) Where the PSC has determined that a Complaint other than a Sexually Related Complaint should be referred to a Board, the Director shall deliver the material referred to in sub-section 37(2) to the secretary of the Board
- (2) Where the PSC has determined that a Sexually Related Complaint should be referred to a Board, the Director shall refer to the secretary of the Board or to the proper officer of an Equivalent Body which has jurisdiction, one or both of the following questions:
  - (a) the fitness of a Church Worker, whether temporarily or permanently to hold a particular or any office, licence or position of responsibility in this Church or to be or remain in holy orders or in the employment of a Church Body;
  - (b) whether in the exercise of a Church Worker's ministry or employment, or in the performance of any function the Church Worker should be subject to certain conditions or restrictions;

together with a written report of its investigation signed by a member of the PSC

- (3) Where an Equivalent Body has investigated a Sexually Related Complaint and decided to refer it to the Board, it shall submit to the Board one or both of the following questions:

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<sup>58</sup> Inserted by the Professional Standards Amendment Ordinance 2017

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- (a) the fitness of a Church Worker, whether temporarily or permanently to hold a particular or any office, licence or position of responsibility in this Church or to be or remain in holy orders or in the employment of a Church Body;
  - (b) whether in the exercise of a Church Worker's ministry or employment, or in the performance of any function the Church Worker should be subject to certain conditions or restrictions; together with a written report of its investigation signed by a member of the Equivalent Body
- (4) Where the BOI has decided that a Special Complaint raises proper issues to be heard by the Board, it shall deliver the material referred to in section 39 to the secretary of the Board

### **51 Limitation on Jurisdiction of the Board**

Unless the Complaint separately includes a Special Complaint that has been the subject of a reference to the Board from the BOI, the Board shall not, in the course of inquiring into any question referred to it:

- (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;
  - (ii) under or pursuant to a Canon of the General Synod, a Canon or an Ordinance of another diocese relating to the discipline of clergy or Church Workers by a board of enquiry, tribunal or other body; or
  - (iii) with the authority of the Bishop of a diocese resulting in a formal report to the Bishop with findings and which concluded or was commenced prior to the date on which this Ordinance takes effect in the Diocese

but may take into account the finding of any such formal investigation or enquiry;

- (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

### **52 Factors to be taken into account in any determination of the Board**

In making any determination the Board shall take into account:

- (a) the conduct of the Church Worker as it finds it to have been;
- (b) in the material before the Board, any other fact or circumstance relevant to the determination of the question or questions before it; and
- (c) any failure of the Church Worker to comply with a provision of this Ordinance or with a direction of the Board

### **53 Hearings**

The Board, in order to come to a decision on the matter referred to it for consideration, may hold a hearing which shall be conducted in accordance with the provisions of Schedule L

**54 Findings concerning Church Workers<sup>59</sup>**

- (1) If, after investigating the question or questions referred to it in respect of a Sexually Related Complaint about a Church Worker, the Board is satisfied that:
  - (a) the Church Worker is unfit, whether temporarily or permanently, now or in the future to hold a particular or any office licence or position of responsibility in the Church or to be or remain in holy orders or in the employment of a Church Body; or
  - (b) in the exercise of a Church Worker's ministry or employment or in the performance of any function, the Church Worker should be subject to certain conditions or restrictions;the Board may determine accordingly and may:
  - (c) recommend that the Church Worker be counselled;
  - (d) recommend that the Church Worker be suspended from office or employment or from performing the function as the case may be for such period determined by the Board;
  - (e) recommend to the Church Authority that the licence or authority of the Church Worker be revoked;
  - (f) recommend to the relevant Church Authority that the Church Worker's contract of employment (if any) be terminated;
  - (g) recommend to the relevant Church Authority that the Church Worker cease to hold any office then held;
  - (h) recommend to the relevant Church Authority that a Prohibition Order be made in terms specified by the Board;
  - (i) recommend to the relevant Church Authority that the Church Worker's holding of office or employment or performance of the function as the case may be, shall be subject to such conditions or restrictions as the Board may specify;
  - (j) recommend that the operation of a determination shall be suspended for such period and upon such conditions as the Board shall specify;
  - (k) recommend that the Church Worker should be deposed from holy orders;
  - (l) make such other recommendation, including as to compensation payable to any Victim, as the Board sees fit
- (2) After hearing and determining a matter referred to it in respect of a Complaint other than a Sexually Related Complaint, the Board may recommend to the Bishop
  - (a) one or more of the following sentences, namely, monition, suspension from office, expulsion from office, deprivation of rights and emoluments appertaining to office, or deposition from holy orders; or
  - (b) any other matter which the Board considers appropriate, including the payment of compensation to any Victim

**55 Board deemed to be an Arbitrator**

For the purpose of securing the attendance of witnesses and the production of documents and for the examination of witnesses on oath or otherwise the Board is deemed by virtue of the Constitution to be an arbitrator within the meaning of the *Commercial Arbitration Act 1984* (New South Wales) or the *Commercial Arbitration Act 1986* (Australian Capital Territory) and shall have power to administer an oath to,

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<sup>59</sup> Amended by the Professional Standards Amendment Ordinance 2013

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or take an affirmation from, a witness, and for the same purpose any party to a proceeding before the Board or any person permitted by the Board to submit any evidence to it shall be deemed to be a party to a reference or submission to arbitration within the meaning of these Acts

### **56 Church Authority may act upon recommendation of the Board**

A relevant Church Authority to whom a recommendation under this Ordinance or a recommendation made by an equivalent Board applies is empowered to give effect to a recommendation of the Board and of an Equivalent Body having jurisdiction to make a recommendation to the Church Authority

### **57 Role of the Bishop or other Church Authority as decision maker**

- (1) Before making a decision, the Church Authority shall give the Respondent an opportunity to make submissions on the decision that should be made
- (2) After making the decision, the Church Authority must inform the PSC and the Board, the Complainant and Respondent of the decision but the Church Authority need not give reasons for the decision
- (3) The Church Authority may delay making any decision if a party to the proceedings has taken action to appeal or to take proceedings in another court or tribunal in respect of any of the matters included within the Complaint or the recommendation of the Board
- (4) Where the Church Authority considers it necessary or desirable for the rehabilitation and restoration of a Church Worker after a recommendation from the Board or during any time when the Church Worker has been suspended, the Church Authority may:
  - (a) appoint a suitably qualified Church Worker (“the supervisor”) to meet with the Respondent and to supervise the rehabilitation and restoration of that person;
  - (b) require additional professional counselling to be undertaken by the Respondent;
  - (c) receive regular reports of the supervision;
  - (d) end the period of supervision when the supervisor and the Respondent agree the issues involved have been satisfactorily addressed; and
  - (e) take any appropriate steps to endeavour to restore the Respondent to ministry where that is appropriate, including consultation with the Complainant
- (5) The Church Authority may, before making a decision in accordance with this section, seek such advice of the Chancellor on the decision to be made or any other relevant matter
- (6) The Church Authority shall give reasons for any decision under this section but such reasons may be as brief as the circumstances require<sup>60</sup>

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60 Inserted by the Professional Standards Amendment Ordinance 2013

**58 Effect of being deposed from holy orders**

A person who has been deposed from holy orders in accordance with this Ordinance or in accordance with the provisions of any ordinance, act, canon, constitution, statute, legislative measure or provision of the general synod or the diocesan synod of another diocese of this Church:

- (a) is incapable of:
  - (i) officiating or acting in any manner as a bishop, priest or deacon of this Church;
  - (ii) accepting or holding an office in this Church capable of being held only by a person in holy orders;
- (b) ceases to have any right privilege or advantage attached to the office of bishop priest or deacon;
- (c) shall not hold himself or herself out to be a Member of the Clergy; and
- (d) is not capable of holding an office in the Church which may be held by a lay person without the prior consent of the Bishop

**59 Bishop's role in deposing a person from holy orders**

- (1) The deposition of a person's holy orders by the Bishop following the recommendation of the Board or an Equivalent Body shall be effected by the execution by the Bishop of an Instrument of Deposition in or to the effect of the form in Annex 1
- (2) The Bishop must forthwith:
  - (a) register the Instrument in the Registry of the Diocese;
  - (b) deliver a copy of the Instrument to the Bishop of the Diocese in which the person who is the subject of the Instrument was ordained;
  - (c) deliver a copy of the Instrument to the Registrar of the Primate;
  - (d) cause relevant details to be forwarded for entry in the National Register; and<sup>59</sup>
  - (e) require the return of the person's Holy Orders to the Bishop's Office<sup>61</sup>

**60 National Register**

A relevant Church Authority to whom this Ordinance applies shall cause relevant details to be forwarded for entry into the National Register of any action taken in relation to a Church Worker on a Sexually Related Complaint in accordance with a recommendation of the Board <sup>62</sup>

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<sup>61</sup> Amended by the Professional Standards Amendment Ordinance 2013

<sup>62</sup> Inserted by the Professional Standards Amendment Ordinance 2013

## **Part M – Arrangements and Regulations**

### **61 Arrangements with Relevant Authorities in other Dioceses**

The Bishop-in-Council may enter into such agreements or arrangements as it sees fit with the Relevant Authority of another diocese as to the terms on which the powers and functions of the Equivalent Bodies or persons of that diocese are to be exercised by the persons holding office in or as delegates of the PSC, or by the members or the secretary of the Board. Any such arrangement will be tabled at the next Synod.

### **62 Report to Synod**

- (1) The Director shall report annually to the Bishop-in-Council for transmission to each session of Synod on the operation of this Ordinance and provide such information as the Director considers appropriate or which may be determined by Bishop-in-Council but must not provide information that may identify any Complainant or Respondent, unless that information has already been made public.
- (2) Notwithstanding sub-section 62(1), the Report may identify a Respondent who has been made the subject of a recommendation by the Board and which has been acted upon by a Church Authority, or, with the Respondent's approval, identify a Respondent who has been exonerated by the PSC or the Board.

### **63 Indemnity**

- (1) The Director, members of the PSC, a BOI and the Board, Contact Officers, the Promoter, secretary to the Board and Chancellor are jointly and severally entitled to be indemnified by the Registrar out of the general revenues of the Diocese, or out of any funds specially granted for the purpose, for all costs and expenses incurred in the course of carrying out their duties under this Ordinance or in accordance with the guidelines.
- (2) The indemnity in sub-section 63(1) must include:
  - (a) the reasonable costs of defending any legal action;
  - (b) the amount of any damages awarded in any legal action; and
  - (c) the amount of any damages agreed, with the approval of the Registrar, to be paid in settlement of any legal action; arising out of the performance by a person mentioned in sub-section 63(1) of the duties carried out by them under this Ordinance or in accordance with the guidelines.
- (3) The Registrar must as far as practicable, obtain and keep in force appropriate policies of insurance in respect of any claim that may be made against any of the persons referred to in sub-section 61(1) in respect of the performance of their duties under this Ordinance.
- (4) Bishop-in-Council may levy Church bodies to provide the funds necessary to meet the payment of costs and expenses referred to in sub-section 63(1).

### **64 Regulations**

The Bishop-in-Council may from time to time make, amend or repeal Regulations, not inconsistent with this Ordinance, providing for all matters arising out of or incidental to the operation of this Ordinance, and for all or any of the purposes whether general or to meet particular cases, which may be convenient for the administration of this Ordinance or which may be necessary or expedient to carry out the objects and purposes of this Ordinance.

**Part N – Transitional Arrangements and Repeal**

**65 Interim Panel**

- (1) In the period between the date when this Ordinance is assented to by the Bishop and the date when the Ordinance commences in accordance with section 4 Bishop-in- Council shall appoint the Director, the PSC, and the panel of Board members
- (2) If at the date of commencement a tribunal is hearing a Complaint under any other Ordinance that relates to matters that may be covered by this Ordinance, the members of that tribunal will continue in office to decide that Complaint

**66 Prior grievances**

- (1) The procedures under this Ordinance, including the PSC, a BOI, and the Board, shall be used to deal with any Complaint made after the commencement of this Ordinance whether the subject matter of the Complaint arose before or after the commencement of this Ordinance
- (2) Where a Complainant has made an allegation or complaint under the Discipline Ordinance 2001 the Complainant may elect to continue under that Ordinance or to have the proceedings dealt with under this Ordinance Where the Complainant so elects any evidence that has been taken under the Discipline Ordinance will be taken to have been given before the PSC under this Ordinance

**67 Repeal**

- (1) Except as provided in sub-section 66(2) upon the commencement of this Ordinance, the Discipline Ordinance 2001 is repealed
- (2) The Complaints about Sexual Abuse and Sexual Harassment Ordinance 1994 is repealed

## Schedule A – Preliminary

### A1 Dictionary

<b>Board:</b>	the Professional Standards Board established under section 45
<b>Board of Inquiry:</b>	(BOI) a board established under section 39;
<b>Church:</b>	the Anglican Church of Australia;
<b>Church Authority:</b>	the Bishop or a person or body having administrative authority of or in a Church Body to license, appoint, authorise, dismiss or suspend a Church Worker;
<b>Church Body:</b>	includes a ministry unit, parish, school, any body corporate, organisation or association that exercises ministry within, or on behalf of, the Church;
<b><sup>63</sup>Church Worker:</b>	means
i. a member of the Clergy;	
ii. a lay person who:	
	1. is or was permitted to function by the Bishop;
	2. is or was employed by a Church or Diocesan body;
	3. for payment or not, holds or has held a position or performs or has performed a function with the actual or apparent authority of a Church Authority or a Church or Diocesan body, including an office, position or function:
	(1) of leadership in a parish, the Diocese or a General Synod body;
	(2) as a member of the Synod or the General Synod;
	(3) as a member of a body controlled by the Diocese or a Province of the Church or the General Synod; and
	(4) as a churchwarden, member of a parish council or member of any committee constituted by or by the authority of the General Synod, the Synod or a parish council.
<b>Code of Good Practice:</b>	a code of conduct approved from time to time under Part B;
<b>Complainant:</b>	a person who makes a Complaint under this Ordinance;
<b>Complaint:</b>	means a complaint made under Section 11 <sup>64</sup> and, unless the context requires otherwise, includes a Special Complaint and a Sexually Related Complaint
<b>Conciliation:</b>	a process used in this Ordinance to resolve a Complaint without resort to a final decision of the PSC or Board and includes mediation and other forms of alternative dispute resolution;

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<sup>63</sup> Amended by the Professional Standards Ordinance Amendment Ordinance 2022

<sup>64</sup> Amended by the Professional Standards Amendment Ordinance 2013



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<b>Contact Officer:</b>	a person appointed under Part D;
<b>Co-operating Dioceses:</b>	the Dioceses of Bathurst, Canberra and Goulburn, and Riverina;
<b>Director:</b>	the Director of Professional Standards appointed under Part F and includes any Deputy Director of Professional Standards when that person is exercising any function of the Director”
<b>Disable Person:</b>	has the same meaning as in Rule 8 of Part 1 of the Supreme Court Rules 1970 of the State of New South Wales as amended from time to time
<b>Equivalent Body:</b>	a body of another diocese, including a Co-operating Diocese, exercising powers, duties or functions equivalent to those of the PSC or the Board as the case may be or where there is no such body, the bishop of the diocese;
<b>Grievance:</b>	means a disagreement between two or more people one of whom is a member of a Ministry Unit in this Diocese, a perceived offence caused by a member of a Ministry Unit in this Diocese or dissatisfaction with the manner in which a church worker who is licensed or employed by a Church Authority in this Diocese has fulfilled his or her ministry role and includes a breach of the Code of Good Practice which is not a serious breach <sup>63</sup>
<b><sup>66</sup>General Synod: Matter:<sup>67</sup></b>	means the body established by Chapter IV of the Constitution of the Church; any claim or allegation that the conduct of a Church Worker has breached the Code of Conduct or should be investigated to determine whether any such breach has been committed and includes a Grievance and a Complaint.
<b><sup>68</sup>National Register:</b>	any national register established pursuant to a Canon of General Synod or a resolution of the Standing Committee of General Synod for the purpose of recording determinations of the Board and other Equivalent Bodies;
<b>Order:</b>	a judgment, decree or order, whether final or interlocutory, or recommendation made by the Board or Tribunal or another body that has power to affect the operation of the Board or Tribunal;
<b>Procedural Fairness:</b>	the minimum standard of fairness to be applied in the investigation and adjudication of a Complaint The main requirements of procedural fairness involve: <ul style="list-style-type: none"><li>(a) fully informing Respondents of any allegations or Complaints made against them;</li><li>(b) giving them the opportunity to state their case, provide an explanation and put forward a defence;</li><li>(c) ensuring that proper investigation of the Information occurs, that all parties are heard and relevant submissions considered; and ensuring that the decision-maker acts fairly and without bias.</li></ul>

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<sup>65</sup> Inserted by the Professional Standards Amendment Ordinance 2013

<sup>66</sup> Inserted by the Professional Standards Ordinance Amendment Ordinance 2022

<sup>67</sup> Inserted by the Professional Standards Amendment Ordinance 2017

<sup>68</sup> Omitted by the Professional Standards Ordinance Amendment Ordinance 2022

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<b>Process Failure:</b>	means the failure by a Church Body or Church Authority prior to this Ordinance coming into effect to deal appropriately or to investigate alleged conduct of a Church Worker involving Sexual Harassment, or Sexually Inappropriate Behaviour or alleged inappropriate or unreasonable conduct or omission of a Church Worker who had knowledge of conduct or another Church Worker involving Sexual Harassment, or Sexually Inappropriate Behaviour;
<b>Professional Standards Committee or PSC:</b>	the Professional Standards Committee established under Part E;
<b>Professional Standards Reference Group:</b>	the group established under section 10;
<b>Prohibition Order:</b>	an order prohibiting a Church Worker from holding a specified position or office in or being employed by a Church Body or Church Authority or from carrying out any specified functions in relation to any office or position in the Diocese or in relation to employment by a Church Body;
<b>Promoter:</b>	see sub-section 38(1);
<b>Protocol:</b>	the protocol approved from time to time by the Bishop-in-Council under section 18;
<b>Referring Body:</b>	the PSC or an Equivalent Body which refers a question or questions under section 50 to the Board;
<b><sup>69</sup>Reportable Conduct:</b>	means, for conduct within New South Wales, that defined in s 20 of the <i>Children's Guardian Act 2019</i> (NSW) and, for conduct within the Australian Capital Territory, that defined in s 17E of the <i>Ombudsman Act 1989</i> (ACT);
<b>Representative:</b>	in relation to a Disable Person:
	(a) a parent or guardian of the Disable Person;
	(b) the person responsible for the welfare of the Disable Person or otherwise acting on behalf of the Disable Person; or
	(c) where there are two or more persons responsible for the welfare of the Disable Person, any one or more of those persons;
<b>Respondent:</b>	a Church Worker whose alleged conduct or omission is the subject of the Complaint;
<b>Rules of the Board:</b>	rules made in accordance with section 48;
<b>Serious or seriously:</b>	with respect to a breach of the Code of Good Practice means a breach which, if found to have occurred, may result in a temporary suspension, limitations placed on ministry, revocation of licence or deposition from holy orders of the Respondent <sup>70</sup>

<sup>69</sup> Inserted by the Professional Standards Ordinance Amendment Ordinance 2022

<sup>70</sup> Inserted by the Professional Standards Amendment Ordinance 2013

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<b>Sexual Assault:</b>	conduct involving the use of emotional or physical intimidation or violence to force another person to engage in sexual activity;
<b>Sexual Harassment:</b>	unwelcome conduct of a sexual nature which makes a person feel offended, humiliated or intimidated, and where that reaction is reasonable in the circumstances Many kinds of behaviour can amount to sexual harassment if they offend or intimidate another person: <ul style="list-style-type: none"><li>(a) jokes, gestures, displays of offensive pictures;</li><li>(b) telephone or e-mail messages;</li><li>(c) physical contact or expressions of affection that are not reciprocated;</li><li>(d) implicit or explicit demands of a sexual nature;</li><li>(e) refusing to leave another person alone when requested; (f) observation (such as by a “peeping Tom”)</li></ul>
	Sexual harassment does not arise in the context of choice and mutual consent;
<b>Sexually Related Complaint:</b>	see sub-section 11(4);
<b>Sexually Inappropriate Behaviour:</b>	conduct of a sexual nature which is regarded by right thinking members of the Church in the Diocese as disgraceful and inconsistent with the standards to be observed by a Member of the Clergy or a Church Worker;
<b>Special Complaint:</b>	see sub-section 11(3)
<b>Suspension Order:</b>	an order suspending a Church Worker from the duties or office or employment by a Church Body;
<b>Victim:</b>	person upon whom disclosed child abuse, Sexual Harassment, harassment, Sexual Assault, assault or Sexually Inappropriate Behaviour by a Church Worker is perpetrated

<sup>71</sup>**Note:** The Dictionary included in the Diocesan Legislation Ordinance 2007 provides for definitions of the following terms: *Bishop, Bishop-in-Council, Chancellor, Diocese, Diocesan Agency, Parish, Parish Council, Registrar and Synod*

### A2 Interpretation

- (1) For the purposes of this Ordinance: a person employed by a Church Body; or a person holding a position or performing a function with the actual or apparent authority of a Church Authority or Church Body; will be taken to be engaged by a Church Authority  
Unless the contrary intention appears definitions in the Dictionary in the Governance of the Diocese Ordinance 2000 apply to this Ordinance
- (2) Nothing in this Ordinance restricts any right which the employer of a Church Worker may have to exercise discipline over that Church Worker or to terminate that employment
- (3) The Attachments are to assist readers and are not to be used in the interpretation of this Ordinance

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<sup>71</sup> Inserted by the Professional Standards Ordinance Amendment Ordinance 2022

## **Schedule E – Professional Standards Committee**

### **E1 Appointment of members of the PSC**

- (1) The members of the PSC shall be appointed and shall hold office on such terms and conditions as may be determined by the Bishop-in-Council from time to time
- (2) The persons appointed to the PSC under this Ordinance may be the same persons as those who have been appointed under a similar Ordinance enacted by another Co- operating Diocese

### **E2 Qualifications of members of the PSC**

- (1) The PSC shall have at least four members<sup>72</sup>
- (2) The PSC shall be constituted so as collectively to provide:
  - (a) experience and appropriate qualifications in law;
  - (b) experience in the ordained Ministry; and
  - (c) experience and appropriate professional qualifications in child protection, social work or counselling
- (3) So far as it is reasonably practicable the PSC shall have an equal number of men and women
- (4) Before Bishop-in-Council appoints a person to be a member of the PSC, the Registrar shall require that person to obtain at least one confidential character reference from a person with qualifications in the areas referred to in sub-section E2(2) a relevant Safe Ministry Check Questionnaire<sup>73</sup> and a criminal history check from the Australian Federal Police or the New South Wales Police as appropriate and provide these documents to the Bishop
- (5) Members of the PSC must undertake appropriate professional development as reasonably arranged by the Director<sup>74</sup>

### **E3 Procedures of the PSC**

- (1) The Director shall be the convener of the PSC
- (2) The PSC shall elect one of its members to chair its meetings
- (3) The PSC may meet from time to time as determined by the Director or a majority of its members and may conduct its business by telephone or electronic communication
- (4) The procedures of the PSC shall be as determined by the PSC but must reflect the principles of Procedural Fairness
- (5) A majority of the members shall constitute a quorum  
A decision supported by a majority of members of the PSC constitutes a decision of the PSC
- (6) The PSC shall act in all things as expeditiously as possible, having regard to the rights and interests of Complainant and Respondent

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<sup>72</sup> Amended by the Professional Standards Amendment Ordinance 2013

<sup>73</sup> Inserted by the Professional Standards Amendment Ordinance 2013

<sup>74</sup> Inserted by the Professional Standards Amendment Ordinance 2013

**E4 Validity of decisions of the PSC**

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

**E5 PSC as Equivalent Body**

The members of the PSC may constitute an Equivalent Body, either generally or for a particular case or matter

**E6 Disclosure of information by PSC**

A member of the PSC, a Church Authority or a person employed or engaged on work related to the affairs of the PSC must not divulge information that comes to his or her knowledge by virtue of that office or position except:

- (a) in the course of carrying out the duties of that office or position;
- (b) as may be authorised by or under this Ordinance;
- (c) in any proceedings before the Board, a diocesan tribunal, a provincial tribunal or the special tribunal;
- (d) as may be required by the temporal law or the law of this Church; or
- (e) 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

**E7 Disclosure to an Equivalent Body**

The PSC must disclose to an Equivalent Body relevant details of a Complaint in its possession concerning the alleged conduct of a Church Worker:

- (a) which is information that is relevant to, or arising during the course of, an investigation being undertaken by the PSC where the PSC knows that the Church Worker is residing in the diocese of the Equivalent Body; or
- (b) which is information concerning conduct alleged to have occurred in the diocese of the Equivalent Body;

and shall co-operate with any Equivalent Body

**E8 Disclosure to the public**

Neither the PSC nor the Board shall make public any information it receives under this Ordinance<sup>75</sup>

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<sup>75</sup> Amended by the Professional Standards Amendment Ordinance 2013

**E9 Power to delegate**

- (1) Subject to sub-section E9(2), the PSC may delegate, upon such terms and conditions as the PSC may approve, any of its powers or functions under this Ordinance to any person
- (2) The PSC cannot delegate:
  - (a) its powers under sub-section E9(1);
  - (b) its powers under section 40; or
  - (c) the power to refer a matter to the Board
- (3) A delegation under sub-section E9(1) must be made by instrument in writing signed by a member of the PSC

**E10 Disable Persons**

Where any person involved in a Complaint is a Disable Person that person may be represented before the PSC, Board, Equivalent Body or BOI by a Representative

## **Schedule I – Board of Inquiry**

### **I1 Board of Inquiry**

- (1) A member of the panel established under section K1 is not eligible to be a member of a BOI
- (2) In appointing a person to be a member of a BOI, the Bishop-in-Council shall, as far as practicable, appoint persons learned in the matters of faith, ritual, ceremonial and discipline to which the Special Complaint relates
- (3) Upon the appointment of a BOI, the Director shall forward copies of the Special Complaint and of any other documents in support of it to each member of the BOI

### **I2 Disclosure of information by a BOI**

Subject to the provisions of this Ordinance, a member of a BOI, a Church Authority or a person employed or engaged on work related to the affairs of the BOI must not divulge information that comes to his or her knowledge by virtue of that office or position except:

- (a) in the course of carrying out the duties of that office or position;
- (b) as may be authorised by or under this Ordinance; tribunal or the special tribunal;
- (d) as may be required by the temporal law or the law of this Church; or
- (e) 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

### **I3 Disclosure to the public**

- (1) Subject to sub-sections I3 and I3(2), a BOI may release to the public such material as it may determine with respect to a Special Complaint
- (2) In relation to a matter that is the subject of a reference to the Board the BOI shall make public such information concerning the matter as the Board may direct or approve

## **Schedule K – Professional Standards Board**

### **K1 The Composition of the panel to form the Board**

The members of the Board in a particular case shall be appointed from a panel comprising:

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- (a) A President and Deputy President,<sup>77</sup> both of whom shall be a member of this Church and a lawyer of at least 10 years standing or a judge of a superior court of record;
- (b) no fewer than five and no more than nine members of the Clergy of at least seven years' standing at least two of whom shall be women; and
- (c) no fewer than five and no more than nine lay persons who are members of this Church, at least two of whom shall be women so that the number of persons appointed under this paragraph is the same as the number appointed under paragraph K1(b)

### **K2 Appointment to the panel**

- (1) The members of the panel shall be appointed by the Bishop-in-Council after consultation with the Bishop-in-Council in each of the Co-operating Dioceses and shall hold office in accordance with a resolution of the Bishop-in-Council
- (2) Before Bishop-in-Council appoints a person to be a member of the panel, the Registrar shall require that person to obtain at least one confidential character reference from a person with qualifications in the areas referred to in sub-section E2(2), complete a relevant Safe Ministry Check Questionnaire<sup>78</sup> and a criminal history check from the Australian Federal Police or the New South Wales Police as appropriate and provide these documents to the Bishop
- (3) The panel should seek to reflect the demographic, geographical and social diversity within the Co-operating Dioceses as appropriate to the matter
- (4) The panel appointed under this Ordinance may consist of the same people as the panel for each of the Co-operating Dioceses
- (5) The members of the panel will hold office for a period of three years but if a Board is continuing to hear a Complaint at the end of the term of office of any member, that member will continue in office to decide that Information
- (6)<sup>79</sup> The secretary will be appointed from time to time by the President of the Board
- (7) Members of the Panel must complete from time to time such professional development as is reasonably arranged by the Director<sup>80</sup>

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<sup>76</sup> Omitted by the Professional Standards Ordinance Amendment Ordinance 2022

<sup>77</sup> Amended by the Professional Standards Ordinance Amendment Ordinance 2022

<sup>78</sup> Amended by the Professional Standards Amendment Ordinance 2013

<sup>79</sup> Amended by the Professional Standards Amendment Ordinance 2013

<sup>80</sup> Inserted by the Professional Standards Amendment Ordinance 2013



**K3 Vacancy on the Panel**

Any vacancy in the membership of the panel shall be filled by or in accordance with a resolution of the Bishop-in-Council

**K4 Disqualification from the Board panel**

- (1) A vacancy on the panel shall occur:
  - (a) when a member
    - (i) dies;
    - (ii) resigns in writing to the Bishop;
    - (iii) is declared by a competent court or tribunal to be incapable of managing their affairs;
    - (iv) ceases to reside permanently in a Co-operating Diocese;
    - (v) reaches the age of 72 years;
    - (vi) is convicted of an indictable offence and sentenced to any period of imprisonment, whether such period is suspended or not or whether it is to be served by way of periodic detention, home detention or otherwise; or
    - (vii) ceases to be a member of this Church; or
  - (b) when Bishop-in-Council of a Co-operating Diocese by resolution declares the position of a member to be vacated by reason of the person's refusal neglect or inability to perform his or her duties as a member or for such other reason as Bishop-in-Council may declare in the resolution

**K5 Disqualification from the Board**

A member of the panel is not eligible to act as a member of the Board in respect of a proceeding if he or she:

- (a) is the Complainant or the Respondent or a witness in a Complaint before the PSC, a BOI or the Board; or
- (b) has been concerned in any matter connected with the Complaint to which the proceedings relate;

**K6 Forming a Board from the Panel**

- (1) Subject to section K5, the members of the panel to be convened for any reference to the Board shall be determined by the President or, if there is a vacancy in the office of President, by the Deputy President<sup>81</sup>
- (2) For the purpose of any reference to the Board, the Board shall consist of the President or Deputy President,<sup>82</sup> who shall be the presiding member, and an equal number not exceeding two of clerical and lay members of the panel
- (3) Where possible, the Board shall include at least one man and at least one woman

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<sup>81</sup> Amended by the Professional Standards Ordinance Amendment Ordinance 2022

<sup>82</sup> Amended by the Professional Standards Ordinance Amendment Ordinance 2022

## PROFESSIONAL STANDARDS ORDINANCE

- (4) Where, in the opinion of the President, or if there is a vacancy in the office of the President, in the opinion of the Deputy President,<sup>83</sup> a member of the panel has a personal interest in a matter before the Board the member shall be disqualified from participating in the reference
- (5) For the purposes of this section a vacancy in the office of President includes a situation in which the President<sup>84</sup> is not able to act because of a personal interest in a matter, illness or absence from the Diocese

### **K7 Establishment of the Board for Special Complaints**

- <sup>85</sup>(1) For the purposes of determining a Special Complaint or a Complaint where the Board is not constituted by a single member in accordance with section K8 the Board will consist of the President, and five members of the panel established under section K1 and appointed by the President.
- (2) The Board must comprise at least the President or the Deputy President, one Clergy and two lay members and have at least one man and one woman. The President<sup>84</sup> in choosing the members of the Board shall seek to reflect the demographic, geographical and social diversity within the Diocese or, where the matter involves another Diocese which is a Co-operating Diocese, of that Diocese as appropriate to the matter

### **K8 Board may be constituted by a single member**

The Rules of the Board made under section 48 may provide that, in relation to the exercise of specified functions, or in relation to matters of a specified class, the Board may, at the direction of the presiding member, be constituted by a single member sitting alone

### **K9 Member unable to continue**

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 of the presiding member and the other member or members may, if the presiding member so determines, continue and complete the reference

### **K10 Board may sit simultaneously**

The Board, separately constituted in accordance with this Schedule, may sit simultaneously for the purpose of matters referred to it or for conducting separate business of the Board

### **K11 Effect on the Board of a vacancy**

An act or proceeding of the Board is not invalid by reason only of a vacancy in its membership or of 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

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<sup>83</sup> Amended by the Professional Standards Ordinance Amendment Ordinance 2022

<sup>84</sup> Amended by the Professional Standards Ordinance Amendment Ordinance 2022

<sup>85</sup> Amended by the Professional Standards Ordinance Amendment Ordinance 2022

<sup>86</sup> Amended by the Professional Standards Ordinance Amendment Ordinance 2022

**K12 The secretary to the Board**

- (1) There shall be a secretary to the board who shall be appointed by Bishop-in-Council, and whose duties shall be defined by the President
- (2) The secretary to the Board may act in a corresponding capacity for another diocese either generally or for a particular case or matter

**K13 Decisions of the Board**

- (1) In any proceedings of the Board where the Board is constituted by two or more members:
  - (a) any question of law or procedure will be determined by the presiding member; and
  - (b) any other question will be determined by majority decision of the members, and in the case of an equality of votes the opinion of the presiding member shall prevail
- (2) Where the Board is constituted by a member sitting alone who is not the President or the Deputy President, any question of law that arises must be referred to the President or Deputy President<sup>87</sup> for decision and any decision made on such a reference is a decision of the Board

**K14 Assistance**

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

**K15 Reasons for determination**

The Board must give reasons for any determination, other than by way of directions in the course of an inquiry, unless the determination is made by consent of the Respondent

**K16 Costs and legal assistance**

- (1) Subject to sub-section K16(4), the Board has no power to award costs of any proceedings before it
- (2) A person, including the Complainant, Respondent or other Church Worker in relation to whom a question is the subject of a reference to the Board may apply to the Registrar for the provision of legal assistance from the funds made available generally or specifically for this purpose
- (3) The Registrar may grant legal assistance to a Church Worker on such terms and subject to such conditions as it shall determine from the funds made available generally or specifically for this purpose
- (4) Bishop-in-Council may levy Church bodies to provide the funds necessary to meet the payment or legal assistance referred to in sub-section K16(3)
- (5) If a party or person who has submitted to the jurisdiction of the Board is in default of any Order of the Board, the Board may order that party or person to pay any costs thrown away or occasioned by that party's default
- (6) When making any decision in accordance with sub-section K16(3) the Registrar will act in accordance with the Rules of the Board in force from time to time

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<sup>87</sup> Amended by the Professional Standards Ordinance Amendment Ordinance 2022

## **Schedule L – Reference of matters to the Professional Standards Board**

### **L1 Arranging a sitting of the Board**

- (1) Upon delivery of the report to the secretary of the Board, the President or Deputy President<sup>88</sup> as the case may be shall as soon as possible determine the membership of the Board for the purpose of the reference
- (2) The President or Deputy President<sup>89</sup> as the case may be shall convene the Board as soon as practicable for the purpose of giving directions
- (3) A person or body appearing or represented before the Board shall comply with the Rules of the Board and with any directions given by the Board

### **L2 Delivery of material to the Board**

Within 14 days of the date of the reference of a matter to the Board or within 14 days of the date of the document or material coming to existence, whichever is the later, the Referring Body shall cause to be delivered to the secretary of the Board any documents and material relevant to the reference

### **L3 Delivery of report to the Respondent**

The Referring Body, as soon as practicable after delivering the report referred to in section 50 to the secretary of the Board, shall cause a signed copy of the report to be delivered to the Respondent

### **L4 Directions as to conduct of the reference**

The Board may at any time and from time to time give directions:

- (a) as to the inspection by and supply of copies to the Respondent or any other person of the documents or material relevant to the reference;
- (b) as to the conduct of its inquiry into the reference

### **L5 Directions to the Referring Body**

The Board may at any time and from time to time give directions to the Referring Body 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 expeditiously

### **L6 Board to act as expeditiously as possible**

The Board shall deal with any reference as expeditiously as possible. The President will provide at least monthly progress updates to the PSC

### **L7 Board to operate informally**

- (1) The Board must proceed without undue formality and must endeavour to ensure that the proceedings are not protracted

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<sup>88</sup> Amended by the Professional Standards Ordinance Amendment Ordinance 2022

<sup>89</sup> Amended by the Professional Standards Ordinance Amendment Ordinance 2022

## PROFESSIONAL STANDARDS ORDINANCE

- (2) Proceedings in the Board are not invalidated by a formal defect or an irregularity, unless the Board is of opinion that:
  - (a) substantial injustice has been caused by the defect or irregularity; and
  - (b) the injustice cannot be remedied by an Order of the Board
- (3) The Board may, on such conditions (if any) as the Board thinks fit, make an Order declaring that a proceeding is not invalid:
  - (a) by reason of a defect that it considers to be formal; or
  - (b) by reason of an irregularity

### **L8 Other procedural matters**

- (1) Interrogatories and discovery are not allowed unless the Board declares that it is appropriate, in the interests of justice, to allow a party to administer interrogatories or require discovery
- (2) The Board will normally accept evidence given on affirmation or on oath and may permit evidence to be given by statutory declaration or by an affidavit but may, if it considers it to be in the interests of justice, receive evidence in another form
- (3) The Board is not bound by the rules of evidence
- (4) Subject to the Rules of the Board, the Board may give directions about limiting the time for the giving of testimony in a proceeding before the Board
- (5) In addition to its power under sub-section L8(9), the Board may by Order direct the examination of a person before an officer appointed by the Board at any place and empower a person to perform the function of officer of the Board for that purpose
- (6) The Board may permit any witness to be cross-examined and may limit such cross-examination but only if it is just to do so save that the Respondent may not in person cross-examine the Complainant<sup>90</sup>
- (6A) Where a Respondent is not represented, the Chancellor may at a Respondent's request appoint a person who may ask a complainant questions which the Respondent wishes to ask the Complainant in cross-examination but that person shall
  - (a) only ask questions that the Respondent has specified before the hearing or, with leave of the Board, at the hearing; and
  - (b) decline to ask questions that the person considers would be misleading or confusing or would be unduly annoying, harassing, intimidating, offensive, oppressive, humiliating, unfair or repetitive<sup>91</sup>
- (7) The Board may put a question to a person giving testimony in a proceedings and require the person to answer the question
- (8) The Board may conduct proceedings by telephone, video link or other

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<sup>90</sup> Amended by the Professional Standards Amendment Ordinance 2013

<sup>91</sup> Inserted by the Professional Standards Amendment Ordinance 2013

electronic means and shall only take evidence from the Complainant by such electronic means where the Complainant is not present in the room in which the Board is convened, unless the Complainant expressly states that he or she wishes to give evidence while physically present in that room<sup>91</sup>

- (9) The Board must act with Procedural Fairness and according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms and is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks fit
- (10) The Board may inform itself from the record of any court or tribunal and may adopt any findings, and accept as its own, the record of any court or tribunal
- (11) Contested facts before the Board must be proved on the balance of probabilities

**L9 The place and time of sitting of the Board**

- (1) The place and time of sitting of the Board comprising two or more members shall be as determined by the presiding member
- (2) The place and time of sitting of the Board comprising one member shall be as determined by that member

**L10 Notice of the sitting of the Board**

- (1) Subject to sub-section L10(2), the Board must give the following persons reasonable notice of the time and place of a sitting of the Board:
  - (a) the Director;
  - (b) the Complainant;
  - (c) the Respondent; and
  - (d) such other persons as the Board believes to have a proper interest in the matter
- (2) The Board is not obliged to give notice of a sitting to a person whose whereabouts cannot, after reasonable enquiries, be ascertained

**L11 Who may be represented before the Board**

In any proceedings before the Board:

- (a) the Referring Body, the Respondent, and any other person whom the Board considers has an interest in the proceedings and should be heard, may appear in person or be represented by a legal practitioner or, with leave of the Board, by any other person;
- (b) the Referring Body or its appointed representative shall do all in its power to assist the Board and shall carry out any directions of the Board;
- (c) the Board:
  - (i) must give the Referring Body and the Respondent a reasonable opportunity to call or give evidence, to examine or cross-examine witnesses and to make submissions to the Board; and
  - (ii) must give 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 a reasonable opportunity to make submissions to the Board; and

<sup>93</sup> Amended by the Professional Standards Amendment Ordinance 2013

## PROFESSIONAL STANDARDS ORDINANCE

- (d) the Chancellor may appear before the Board in person or by a legal practitioner to assist the Board

### **L12 Spiritual advisers and Support Persons<sup>91</sup>**

- (1) Nothing in this Ordinance prevents a Complainant or Respondent having a spiritual adviser and a friend present to assist and support them but the Board may prevent those persons from making representations to the Board on the person's behalf
- (2) Subject to subsection L12(3) the Board must not allow Support Persons<sup>92</sup> to give evidence of any matter of which they have learnt in respect of a Complaint in accordance with their duties under this Ordinance unless the Complainant and the Respondent both consent, or the evidence the Support Person<sup>93</sup> could give has been made public as the result of any proceedings under the temporal law
- (3) If the Complainant is not the Victim or if another person not the Complainant or the Respondent is the person who spoke to the Contact Officer, then their consent is also required before the Contact Officer may give evidence to the Board unless the evidence the Contact Officer could give has been made public as the result of any proceedings under the temporal law

### **L13 Who may attend a sitting of the Board**

- (1) Subject to sub-sections L12 and L13(2), a sitting of the Board on a reference before the Board is an open sitting
- (2) On any such sitting before the Board, the Board has an absolute discretion:
  - (a) to direct that no person other than:
    - (i) the Respondent and any person representing him or her in the proceedings;
    - (ii) the Complainant and any Support Person for the Complainant;
    - (iii) witnesses or persons making submissions (while giving evidence or making those submissions);
    - (iv) officers of the Board or persons assisting the Board;
    - (v) members of or persons appointed by the Referring Body; and
    - (vi) the Chancellor be present in the room while the Board is sitting; or
  - (b) to direct that a particular person (other than a person referred to in paragraph L13(2)(a)) not be present in the room while the Board is sitting

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<sup>91</sup> Amended by the Professional Standards Amendment Ordinance 2013

<sup>92</sup> Amended by the Professional Standards Amendment Ordinance 2013

<sup>93</sup> Amended by the Professional Standards Amendment Ordinance 2013

**L14 Decision may be made in absence of a person affected**

The Board may make a determination in any proceedings in the absence of a person affected by the determination if satisfied that reasonable efforts were made to give that person an opportunity to appear

**L15 Medical examination of the Respondent**

- (1) The Board may require a Respondent to submit within a specified time to a medical, psychiatric or psychological examination by a person approved by the Board the cost of which shall be met from funds under the control of the Synod of the Diocese of the Referring Body
- (2) A copy of the report of an examination under sub-section L15(1) shall be provided to the Respondent and to the Board

**L16 Copies of the Board's determination**

The Board shall cause a copy of each determination and recommendation to be provided:

- (a) to the relevant Church Authority;
- (b) to the Respondent;
- (c) to the Complainant; and

in the case of a Sexually Related Complaint shall cause relevant details to be forwarded for entry into the National Register



## **Schedule M – Arrangements and Regulations**

### **M1 Role of the Chancellor**

- (1) The Chancellor has a right of appearance in any proceeding before the PSC, the BOI, or the Board
- (2) Where the Bishop requests the Chancellor to arrange for this Church including the PSC, the BOI, or the Board to be represented in proceedings relating to a matter before a temporal court, members of the PSC, the BOI and the Board, Contact Officers, counsellors and others involved in the matter will co-operate with the Chancellor

### **M2 Control of Records**

- (1) The Director shall keep a register in which he or she shall enter such particulars of each Complaint and any proceedings against a Church Worker as the Bishop-in- Council determines
- (2) The Director has the custody of all documents deposited with the PSC, a BOI or the Board in connection with a proceeding or put in evidence before the Board and not returned to the person who put them in evidence
- (3) The documents in the custody of the Director in accordance with subsection M2(2) are not to be made available to any person and are not available for inspection without the permission of the Church Authority, except for the purposes of a proceeding in the Board or an appeal against a decision of the Board
- (4) Nothing in this section M2 will require a Support Person to make any records available to the Director, the Board or the Church Authority
- (5) The Director shall permanently and securely store all records in the custody of the Director, which relate to a Complaint including those under subsection (2)<sup>94</sup>
- (6)<sup>97</sup>
- (7)<sup>98</sup>

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<sup>96</sup> Amended by the Professional Standards Amendment Ordinance 2013

<sup>97</sup> Omitted by the Professional Standards Amendment Ordinance 2013

<sup>98</sup> Omitted by the Professional Standards Amendment Ordinance 2013

PROFESSIONAL STANDARDS ORDINANCE

**Annex 1 – Order to Depose a Person from Holy Orders**

TO

I, *BISHOP OF CANBERRA AND GOULBURN* do by these presents hereby depose you from holy orders (particulars of which are set out below) in accordance with the recommendation of the Professional Standards Board of the *Diocese of Canberra and Goulburn*

PARTICULARS OF HOLY ORDERS

FULL NAME AND ADDRESS:

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

DATED

SEALED

Notes

By the Professional Standards Provisions (Delegation) Ordinance 2003 the Synod of 2003 (assented to 14 September 2003) delegated to Bishop-in-Council the power to make an Ordinance to give effect in this Diocese to the proposed national legislation for professional standards

Original Ordinance Professional Standards Ordinance 2004 passed by BIC and assented to by Bishop George on 30 June 2004

The Professional Standards Provisions (Delegation) Ordinance 2003 required any such Ordinance to be ratified by the Synod

Amended by the Professional Standards Ratification Ordinance 2004

## PROFESSIONAL STANDARDS ORDINANCE

### Notes

Professional Standards Provision (Delegation) Ordinance 2003 passed with amendment and assented to by Bishop George on 14 September 2003.

Professional Standards Ordinance 2004 passed in accordance with the Professional Standards

Provision (Delegation) Ordinance 2003 by Bishop-in-Council without amendment and assented to by Bishop George on 30 June 2004.

Professional Standards Ratification Ordinance 2004 passed by Synod with amendment and assented to by Bishop George on 19 September 2004.

Professional Standards Amendment Ordinance 2013 passed by Synod with amendment and assented to by Bishop Stuart on 7 September 2013.

Professional Standards Amendment Ordinance 2017 passed by Synod without amendment and assented to by Bishop Stuart on 7 October 2017.

Professional Standards Amendment Ordinance 2022 passed by Synod without amendment and assented to by Bishop Mark on 10 September 2022.