

28. EPISCOPAL STANDARDS ACT 2012

PART 1 – PRELIMINARY

1. This Act may be cited as the Episcopal Standards Act 2012.
2. This Act or provisions of this Act come into operation on a day or days to be appointed by the Diocesan Bishop-in-Council so that the Diocesan Bishop-in-Council may appoint-
 - (a) a day for the Act or provisions of the Act to come into operation; or
 - (b) different days for different provisions of the Act to come into operation.

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

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

“Administrator” means the person who would, in the absence or incapacity of a bishop, be the administrator of a Diocese;

“Board” means the Episcopal Standards Board established under Part 9;

“bullying” means repeated behaviour directed to a person or persons –

- (a) which a reasonable person, having regard to all the circumstances, would expect to victimise, humiliate, undermine or threaten the person or persons; and
- (b) which creates a real risk to the health and safety of the person or persons but does not include excluded conduct as defined in this Act;

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

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

“Church authority” in relation to a complaint has the meaning in sub-sections (3), (4) and (5) of this section;

“Church body” includes a parish, an incumbent, a parish council, a vestry, a school, and any body corporate, organization or association that exercises ministry within, or on behalf of, the Church;

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

“complainant” means a person who makes a complaint;

“complaint” means a complaint under section 13 of this Act;

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

“Diocese” means a diocese of the Anglican Church of Australia and in relation to the Diocesan bishop means the diocese of the Diocesan bishop;

“Diocesan bishop” means the Bishop of Ballarat and former Diocesan bishop has a corresponding meaning;

“Diocesan Bishop-in-Council” means the Diocesan bishop acting with the advice and consent of the Council of the Diocese;

“Diocesan Council” means the Council of the Diocese of Ballarat, meeting when the Diocesan Bishop is not present;

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

“emotional abuse” means:

- (a) subjecting a person to excessive and repeated personal criticism;
- (b) ridiculing a person, including the use of insulting or derogatory terms to refer to that person;
- (c) threatening or intimidating a person;
- (d) ignoring a person openly and pointedly;
- (e) behaving in a hostile manner or in any way that could reasonably result in another person feeling isolated or rejected; or
- (f) any other act or omission which has caused, or is likely to cause physical or mental harm including self harm but does not include excluded conduct;

“Episcopal Standards Committee” or “ESC” means the Episcopal Standards Committee established under Part 4;

“equivalent body” means a body of a Diocese (whether or not in Victoria) exercising powers, duties or functions under legislation with respect to professional standards or discipline of a church worker, similar to those of the ESC or the Board as the case may be, or where there is no such body, the bishop of the Diocese;

“excluded conduct” means –

- (a) any act or omission or refusal of the Diocesan bishop to ordain, appoint, correct, discipline, counsel, admonish, transfer, demote, suspend, retrench or dismiss a person; and
- (b) any decision of the Diocesan bishop to do so if the Diocesan bishop has acted or omitted or refused to act or decided –
- (c) in good faith;
- (d) reasonably; and
- (e) in the normal and lawful discharge of the duties and functions of the Diocesan bishop.

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

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

“incapable” in relation to the Diocesan bishop has the meaning in section 2 of the Bishop (Incapacity) Canon 1995 ;

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

“misconduct” means –

- (a) bullying;
- (b) emotional abuse;
- (c) harassment;
- (d) physical abuse;
- (e) neglect of a child;
- (f) sexual abuse;
- (g) spiritual abuse;
- (h) any offence under an ordinance of the Diocese or under the Offences Canon 1962 or any canon in substitution or amendment of that canon;
- (i) wilful or reckless failure to comply with a condition imposed by a Church authority under section 84 of this Act;
- (j) wilful or reckless failure to comply with an undertaking given to a Church authority;
- (k) any other conduct unbecoming or inappropriate to the office and duties and functions of the Bishop of a Diocese by the Diocesan bishop whenever occurring which, if established, would on its face call into question:
 - (i) the fitness of the Diocesan bishop, whether temporarily or permanently, to hold office, or to be or remain in Holy Orders; or
 - (ii) whether, in the exercise of ministry or in the performance of any duty or function, the Diocesan bishop should be entitled to act free of any condition or restriction but excludes for the purposes of this Act any breach of faith ritual or ceremonial;

“ministry” means ordained ministry in Bishop’s orders.

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

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

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

“protocol” means the protocol approved from time to time by the Diocesan bishop in Council under Part 3;

“Provincial Tribunal” means the Provincial Tribunal of a province established under Chapter IX of the Constitution;

“Registrar” in relation to the Diocesan bishop, means the Registrar of the Diocesan bishop;

“respondent” means the Diocesan bishop in respect of whom a complaint is made;

“relevant Metropolitan” in relation to a Diocesan bishop means:

- (i) unless paragraph (iii) applies, the Metropolitan of the Province in which the diocese of the Diocesan bishop is situated; or
- (ii) if the Diocesan bishop is the Metropolitan but not the Primate, the Primate;

“Review Board” means the Episcopal Standards Review Board established under Part 12;

“sexual abuse” means sexual assault, sexual exploitation or sexual harassment and in relation to a child includes the use of a child for a person’s own sexual stimulation or gratification or for that of others;

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

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

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

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

“Special Tribunal” means the Special Tribunal established under the Constitution;

(2) In this Act, a reference to conduct shall be read as a reference to—

- (a) doing or refusing to do any act;
- (b) refraining (otherwise than inadvertently) from doing an act; or
- (c) making it known that an act will not be done.

(3) “Church authority” in relation to a complaint, means a board of Bishops comprising-

- (a) the Primate; and
- (b) the two most senior Bishops of a Diocese as at the date of the complaint (seniority being determined by date of consecration), one of whom shall be a Metropolitan, if willing and able –

each of whom shall have consented in writing to act as a member of the board of Bishops in relation to the complaint and to abide by the provisions of Part 17 (Confidentiality and Publication).

(4) If an office holder referred to in subsection (3) –

- (a) is a respondent to the complaint;
- (b) is a respondent to any other complaint that, as at the date of the complaint, has been referred to the Board under section 39 of this Act;
- (c) has a personal interest in a complaint;
- (d) is unable to act because of illness or absence from his or her Diocese; or
- (e) otherwise ceases to hold office; or
- (f) declines to consent in writing as set out in subsection (3) —

that office holder shall (as the case may be) be ineligible, or shall cease, to be a member of the board of Bishops constituting the Church authority and the place of that office holder –

- (a) if the Primate, shall be taken by the Metropolitan or bishop who would exercise the authorities, powers, rights and duties of the Primate, if that office were then vacant;
- (b) if a Metropolitan (other than the Primate), shall be taken by the Metropolitan next senior to that bishop (if any); and
- (c) in any other case, shall be taken by the next most senior Bishop of a Diocese.

(5) If the Metropolitan or bishop who would exercise the authorities, powers, rights and duties of the Primate, if the office were then vacant, takes the place of the Primate and is already or would otherwise be a member of the board of Bishops as Senior Metropolitan, the place shall be taken by the Metropolitan next senior to that bishop not already or otherwise a member of the board of Bishops.

- (6) If the Director receives or makes a complaint against the Diocesan bishop, the Director must request the Registrar to, and the Registrar must, constitute the Church authority in accordance with subsections (3), (4) and (5).
4. The overriding purposes of this Act and of any protocol made under this Act, in their application to any complaint under this Act, are to facilitate the just, quick and inexpensive resolution of the real issues in the complaint and to regulate fitness for ministry for the protection of the community.
5. The Director, the ESC, the Board and the Review Board must each seek to give effect to the overriding purposes when exercising any power given by this Act or by any protocol and when interpreting any provision of this Act or of any such protocol.

PART 2 – CODE OF CONDUCT

6. The Diocesan Bishop-in-Council may from time to time by resolution approve a code of conduct for observance by the Diocesan bishop, which does not make provision for any matter concerning faith, ritual or ceremonial.
7. The Diocesan Bishop-in-Council through the ESC and by such other means as may be considered appropriate must take such steps as may be necessary or desirable to promote the knowledge, understanding and observance in the Church of the code of conduct.

PART 3 –PROTOCOL

8. (1) The Diocesan Bishop-in-Council shall from time to time consider and approve a protocol not inconsistent with this Act for implementation in relation to complaints.
 - (2) The protocol must include:
 - (a) procedures for receiving a complaint;
 - (b) the appointment, role and function of support persons and carers;
 - (c) provision for informing a complainant and victim of alleged misconduct, and the respondent, of rights, remedies and relevant procedures available to them;
 - (d) provision for assisting or supporting, as appropriate, any person affected by alleged conduct the subject of a complaint or the respondent;
 - (e) an explanation of the processes for investigating and dealing with a complaint;
 - (f) provisions for dealing fairly with each party to a complaint;
 - (g) processes for mediation, conciliation and reconciliation, as appropriate, of a complaint;
 - (h) provisions for information, reports, advice and recommendations to the Primate and the relevant Metropolitan or the relevant Administrator at each stage of the process of dealing with a complaint;

- (i) procedures for working, where necessary, with law enforcement, prosecution or child protection authorities of the States and Territories and of the Commonwealth of Australia.
- 9. The Diocesan Bishop-in-Council through the Director and the ESC and by such other means as it may consider appropriate must take such steps as may be necessary or desirable to promote throughout the community knowledge and understanding of the protocol.

PART 4 – EPISCOPAL STANDARDS COMMITTEE

10. (1) There shall be an Episcopal Standards Committee.
- (2) The members of the ESC shall be appointed and shall hold office on such terms and conditions as may be determined from time to time by the Diocesan Council.
- (3) The ESC shall have at least 3 members including the chair.
- (4) The membership of the ESC shall be constituted so as collectively to provide experience and appropriate professional qualifications in:
 - (a) law;
 - (b) ministry as the bishop of a Diocese; and
 - (c) child protection, investigations, social work, ethics or counselling.
- (5) The ESC shall –
 - (a) include at least one person who is not a member of this Church;
 - (b) so far as it is reasonably practicable have at least one man and at least one woman; and
 - (c) not include a person who is the bishop of a Diocese.
- (6) The ESC has the following powers and duties:
 - (a) to implement the protocol;
 - (b) to receive a complaint against the Diocesan bishop;
 - (c) to act on a complaint in accordance with the provisions of this Act and the protocol and to obtain independent legal advice for that purpose;
 - (d) to appoint suitable persons to fulfil the several roles required to implement the protocol in each particular case;
 - (e) where appropriate, to arrange for the conciliation or mediation of any complaint;
 - (f) to investigate a complaint in a timely and appropriate manner;
 - (g) where appropriate, to recommend to the Diocesan Council any changes to the model protocol and any other changes to Church processes, structures and education programmes that would reduce the risk of misconduct;
 - (h) subject to any limit imposed by the Diocesan Bishop-in-Council to authorise such expenditure as may be necessary or appropriate to implement, in a particular case, the protocol and the provisions of this Act;

- (i) to advise any relevant Church body as to the financial, pastoral or other needs of a person affected by conduct the subject of a complaint and in connection with any legal proceedings, anticipated or existing, against such Church body arising out of that alleged conduct;
 - (j) to refer any information in its possession to a law enforcement, prosecution or child protection authority of a State or Territory or of the Commonwealth of Australia for which the information is or may be relevant;
 - (k) to maintain proper records of all complaints received and of action taken in relation to each of them; and
 - (l) to exercise such other powers and functions as are conferred on it by this or any other Act or by a protocol.
- (7) The Director may receive a complaint on behalf of the ESC and shall carry out such functions under this Act as the ESC may determine.
- (8) A member of the ESC who is not a member of the Church resident in the diocese shall not act as such a member in a matter relating to the Diocesan bishop unless the member has agreed in writing to abide by this Act.
11. (1) Subject to subsection (2), the ESC may delegate, upon such terms and conditions as the ESC may approve, any of its powers or functions under this Act to any person.
- (2) The ESC cannot delegate:
- (a) its powers under subsection (1);
 - (b) its powers under Part 10; or
 - (c) its powers under sections 21 and 22.
- (3) A delegation under this section must be made by instrument in writing signed by a member of the ESC.

PART 5 – DIRECTOR OF EPISCOPAL STANDARDS

12. (1) There shall be a Director of Episcopal Standards.
- (2) The Director shall be appointed by and shall hold office on such terms and conditions as may be determined from time to time by the Diocesan Council on behalf of the Diocesan Corporation.
- (3) The Director shall have the following functions under this Act:
- (a) to receive any complaint on behalf of the ESC and in his or her discretion to make a complaint against the Diocesan bishop;
 - (b) to manage the implementation of the protocol in respect of any complaint;
 - (c) to be the executive officer of the ESC;

- (d) to attend meetings of the ESC except for any part of a meeting which deals with conditions of employment, remuneration or performance of the Director;
- (e) to provide advice about the code of conduct, the protocol and procedures under this Act;
- (f) to provide or arrange care or treatment of the complainant and respondent;
- (g) to provide input into education and vocational training programs for the Bishops of a Diocese;
- (h) to provide advice to complainants and the respondent about the operation of the protocol, with particular emphasis on helping the respondent to understand and discharge his responsibilities under the protocol;
- (i) to keep proper records of complaints, decisions, meetings, employment screening details, police checks and people affected by any allegation of misconduct;
- (j) to consult and co-operate with other persons and bodies in the Church with responsibility for professional standards;
- (k) in cases of alleged illegal behaviour, to support the complainant in making a report to police or child protection authorities;
- (l) to report to the ESC on any recommended changes to the protocol and any other changes to Church processes, structures and education programmes that would reduce the risk of misconduct; and
- (m) such specific functions and duties, consistent with this Act, as may be determined from time to time by the ESC.

(4) The Director must act in all things as expeditiously as possible.

PART 6 – COMPLAINTS

13. (1) Any eligible person may make a complaint to the ESC in relation to the Diocesan bishop of misconduct.
- (2) An eligible person is –
- (a) the Director;
 - (b) a person resident in the Diocese; or
 - (c) a person who was at the time of the events the subject of the complaint either in the Diocese or in the same diocese as that in which the Diocesan bishop was then in ministry in any orders.
14. (1) A complaint may be in any form, oral or in writing, whether by electronic means or otherwise.
- (2) A complaint must include details of the misconduct complained about.

- (3) The ESC may not act on an anonymous complaint.
 - (4) Nothing in subsection (3) shall prevent or restrict the Director in the exercise of the powers under section 13.
15. (1) The ESC may require a complainant to—
- (a) give further details of the complaint; and
 - (b) verify any details of the complaint by statutory declaration.
- (2) A requirement under subsection (1) must be in writing and allow the complainant a reasonable time to comply.
16. The ESC may dismiss a complaint or take no further action in relation to a complaint if—
- (a) the ESC is of opinion that the complaint does not fall within the provisions of this Act;
 - (b) the complainant has failed to provide further details to the ESC or to verify the allegations by statutory declaration when requested by the Director to do so;
 - (c) the ESC is of opinion that the complaint is false, vexatious, misconceived, frivolous or lacking in substance; or
 - (d) the ESC is of opinion that there is insufficient reliable evidence to warrant an investigation or further investigation
- and may take no further action in relation to a complaint if—
- (e) the behaviour the subject matter of the complaint can properly be dealt with by other means; or
 - (f) the subject matter of a complaint is under investigation by some other competent person or body or is the subject of legal proceedings.
17. If a complaint is dealt with by the ESC under section 16 of this Act, the Director must give the complainant a written notice of the outcome including the reasons for the outcome.

PART 7 – INVESTIGATIONS

18. (1) Subject to this Act, the ESC must investigate each complaint as expeditiously as possible.
- (2) The ESC may investigate the conduct of the Diocesan bishop if the ESC has reason to believe that the conduct may amount to misconduct under this Act even though no complaint has been made about the conduct or a complaint about the conduct has been withdrawn.
- (3) If the complainant (other than the Director) has not given written consent to the Director's giving notice of the complaint to the respondent and to the ESC's dealing with it under this Act—

- (a) the ESC shall not be required to investigate the complaint and otherwise to refer it to the Board; and
 - (b) the ESC may dismiss the complaint or take no action in relation to the complaint.
- (4) The ESC may by instrument in writing delegate, upon such terms and conditions as the ESC may approve, the powers to investigate the Diocesan bishop under this section.
19. For the purpose of an investigation the ESC or its delegate shall obtain such statutory declarations, written statements, recorded conversations, reports, documents and other material as the ESC or its delegate considers necessary or advisable for presentation to the ESC.
20. The ESC may by notice in writing to the respondent require the respondent—
- (a) to meet with an investigator to answer questions in relation to a complaint;
 - (b) to provide a detailed report to the ESC within a reasonable time specified in the notice in relation to any matter relevant to the investigation; and
 - (c) to verify the report by statutory declaration or another specified manner.

PART 8 – OUTCOMES OF ESC

21. At any time after the ESC receives a complaint, the ESC may:
- (a) recommend mediation, conciliation, neutral evaluation or other alternative resolution of the complaint;
 - (b) if it considers on reasonable grounds that the Diocesan bishop may be incapable, report the matter in writing to the relevant Metropolitan;
 - (c) if the Diocesan bishop whose conduct is under investigation ceases to be the Diocesan bishop, refer the complaint, together with such information as it shall have received, to the equivalent body having jurisdiction in the Diocese by whose Bishop the former Diocesan bishop is licensed or, where the former Diocesan bishop is not licensed, in which the former Diocesan bishop resides;
 - (d) exercise its powers under section 16 to dismiss a complaint or to take no further action in relation to a complaint.
22. At any time after investigation of a complaint in accordance with Part 7, the ESC:
- (a) must, if required under section 39 of this Act to do so, refer the complaint to the Board; and
 - (b) may institute, amend or withdraw proceedings by way of charge against the Diocesan bishop before the Special Tribunal.
23. (1) The fact that the subject matter of a complaint may be settled or resolved in whole or in part between the parties affected thereby does not prevent the ESC from taking any of the steps referred to in sections 21(b), (c) and (d) and 22 in respect of the subject matter of the complaint.

- (2) Any term of settlement or resolution referred to in sub-section (1) which purports to prevent or to limit the institution of action under either of sections 21(b), (c) and (d) and 22 shall be of no effect.

PART 9 – EPISCOPAL STANDARDS BOARD

24. There shall be an Episcopal Standards Board constituted and appointed in accordance with the provisions of this Part.
25. Subject to the provisions of this Act, the functions of the Board are –
- (a) to enquire into and determine a complaint referred to it pursuant to section 39;
 - (b) to make a determination referred to in section 42; and where appropriate
 - (c) to make a recommendation in accordance with the provisions of this Act.
26. The Board shall consist of 3 persons including a President who shall be or shall have been either a judicial officer or a practising barrister or solicitor of at least 10 years' standing of the Supreme Court of a State or Territory and shall be constituted so as collectively to provide experience and appropriate professional qualifications in—
- (a) law;
 - (b) ministry as the bishop of a Diocese; and
 - (c) child protection, investigations, social work, ethics or counselling
- and shall so far as reasonably practicable have—
- (d) one member of the clergy who is or has been the bishop of a Diocese;
 - (e) at least one man and at least one woman; and
 - (f) two members who are lay members of the Church.
27. (1) The President and other members of the Board shall be appointed by the Diocesan Council and shall hold office on such terms and conditions as may be determined from time to time by the Diocesan Council.
- (2) A member of the Board who is not a member of the Church resident in the diocese shall not act as such a member in a matter relating to the Diocesan bishop unless the member has agreed in writing to abide by this Act.
28. (1) Any vacancy in the membership of the Board shall be filled by the Diocesan Council.
- (2) Where a member of the Board is unable to enquire into and determine a complaint, a substitute member may be appointed by the Diocesan Council.
29. The quorum for a meeting of the Board shall be all the members of the Board.

PART 10 – SUSPENSION

30. Where after receipt of a complaint and at any time during the progress of a complaint under this Act, the ESC is satisfied that if the Diocesan bishop remains in office pending the outcome of the complaint that there is an unacceptable risk of harm to any person, the ESC may refer the matter to the Board or, as the urgency of the matter requires, make a recommendation direct to the Church authority that pending that outcome—
- (a) the Diocesan bishop be suspended from the duties of office or certain of those duties; or
 - (b) such other action be taken as may be thought fit.
31. Before making a recommendation pursuant to section 30 or referring the matter to the Board, the ESC must give the Diocesan bishop notice that grounds exist for the ESC to be satisfied as stated in section 30 (specifying the same) and notice of any proposed recommendation and request the Diocesan bishop to show cause in writing within 7 days why the recommendation should not be made.
32. The provisions of section 31 shall not apply if the ESC is satisfied that there is an immediate unacceptable risk of harm to any person if the Diocesan bishop remains in office.
33. Where the ESC is satisfied that there is an immediate unacceptable risk of harm to any person if the Diocesan bishop remains in office and makes a recommendation direct to the Church authority pursuant to section 30, the Director must as soon as practicable give the Diocesan bishop notice that—
- (a) the recommendation has been made without notice and the grounds relied on;
 - (b) the ESC will report the recommendation to the Board at its next meeting and that the Board will consider whether the recommendation should stand; and
 - (c) the Diocesan bishop may advance submissions to the Board if he or she wishes to do so.
34. (1) The ESC or the Board (as the case may be) shall consider any response from the Diocesan bishop received within the time specified above or any further period allowed, before making a decision on the recommendation to be made.
- (2) The provisions of sub-section 34(1) shall not apply if the ESC is satisfied that there is an immediate unacceptable risk of harm to any person if the Diocesan bishop remains in office.
35. If the Board is satisfied that if the Diocesan bishop remains in office pending the outcome of the complaint, there is an unacceptable risk of harm to any person, the Board may after considering any further response from the Diocesan bishop
- (a) determine accordingly and make a recommendation to the Church authority that pending that outcome action be taken as referred to above in section 30;
- or where the ESC has already made a recommendation under section 30—
- (b) affirm or vary that recommendation; or

(c) set aside that recommendation and make another in substitution for it.

36. Before making a recommendation under this Part, the ESC or the Board (as the case may be) must take into account:

- (a) the seriousness of any alleged misconduct;
- (b) the nature of the material to support or negate the allegations;
- (c) the extent to which any person is at risk of harm;
- (d) any failure of the Diocesan bishop to comply with a provision of this Act;
- (e) after consultation with the Diocesan Council, the effect on the Diocesan bishop, and on the Church of acting and of not acting under this Part; and
- (f) any other allegation of similar conduct previously made to the ESC or to an equivalent body

and may take into account any other relevant matter.

37. The Church authority may exercise the powers conferred by section 84 of this Act in relation to a recommendation under this Part, notwithstanding that the recommendation is under consideration by the Board or the Review Board (as the case may be) by the process referred to above.

38. (1) A suspension made by the Church authority following a recommendation under this Part or by the Review Board under Part 13:

- (a) has effect as an absence of the Diocesan bishop from the see; and
- (b) continues until it ceases to have effect by reason of :
 - (i) the ESC terminating the investigation of the complaint without referring the matter to the Board;
 - (ii) a determination to that effect by the Church authority;
 - (iii) upon the Church authority giving effect to a recommendation of the Board or the Review Board as the case may be or such a recommendation as varied or modified by a Church authority under section 84; or
 - (iv) the see becoming vacant (whether or not under this Act)

whichever first occurs.

(2) During any such suspension, the Diocesan bishop is entitled to receive whatever stipend, allowances and other benefits as would otherwise have accrued and they are to be met or reimbursed by the body normally responsible for their payment.

PART 11 – REFERENCE OF A COMPLAINT TO THE BOARD

39. (1) After investigation of a complaint in accordance with Part 7, where the ESC has formed the opinion that the conduct the subject of the complaint if established would call into question whether—
- (a) the Diocesan bishop is unfit, whether temporarily or permanently, to hold office or to be or remain in Holy Orders; or
 - (b) in the exercise of ministry or in the performance of any duty or function, the Diocesan bishop should be subject to any condition or restriction
- the ESC must refer the complaint to the Board.
- (2) The ESC shall not refer to the Board any question whether the Diocesan bishop is incapable.
40. The ESC shall refer the complaint to the Board by delivering to the President of the Board a written report of its investigation and opinion signed by a member of the ESC.
41. (1) Within 14 days of the date of the reference of a complaint to the Board or within 14 days of the date of the document or material coming to existence, whichever is the later, the ESC shall cause to be delivered to the President of the Board any documents and material relevant to the reference.
- (2) The ESC, as soon as practicable after delivering the report referred to in section 40 to the President of the Board, shall cause to be delivered to the Diocesan bishop as the respondent a copy of the report and opinion and notice that the respondent may advance any submissions to the Board if he or she wishes to do so.
42. If the Board is satisfied that the Diocesan bishop did commit any misconduct and –
- (a) is unfit, whether temporarily or permanently, to hold office or to be or remain in Holy Orders; or
 - (b) in the exercise of ministry or in the performance of any duty or function, the Diocesan bishop should be subject to any condition or restriction the Board may determine in writing accordingly and may recommend to the Church authority any one or more of the following:
 - (c) that the Diocesan bishop be counselled;
 - (d) that for a specified period the Diocesan bishop's holding of office or performance of a function as the case may be, shall be subject to such conditions or restrictions as the Board may specify;
 - (e) that the Diocesan bishop be suspended from office or from performing a function as the case may be for such period recommended by the Board;
 - (f) that the Diocesan bishop be directed to do or to refrain from doing a specified act;
 - (g) that the Diocesan bishop be removed from office;

- (h) that the implementation of a determination shall be suspended for such period and upon such conditions as the Board shall specify;
 - (i) that a charge be promoted against the Diocesan bishop before the Special Tribunal;
 - (j) that the Diocesan bishop be directed to relinquish the exercise of Holy Orders within a specified time;
 - (k) otherwise as the Board sees fit but not that the Diocesan bishop be deposed from Holy Orders.
43. (1) If the Board makes a finding that the Diocesan bishop did not commit any misconduct or that the complaint is false vexatious or misconceived, the Board may determine accordingly and shall dismiss the complaint.
- (2) If the Board is satisfied that the Diocesan bishop did commit misconduct but is not satisfied as to any of the matters in paragraphs (a) and (b) of section 42(1), the Board may determine accordingly and shall take no further action in relation to the complaint.
44. (1) The Diocesan Bishop must comply with a direction made by the Church authority to give effect to a recommendation of the Board or the Review Board (as the case may be) under section 42(1)(j) that the Diocesan bishop relinquish the exercise of Holy Orders.
- (2) Failure of the Diocesan bishop to comply with a direction of the Church authority is an offence.
- (3) The ESC may institute proceedings forthwith in the Special Tribunal in respect of an offence against this section or, if the bishop is no longer a Diocesan bishop, shall refer the matter, together with such relevant information concerning the alleged offence as may be in its possession, to the bishop of the Diocese in which the former Diocesan bishop is then resident.
45. The Board must deal with a complaint as expeditiously as possible.

PART 12 – EPISCOPAL STANDARDS REVIEW BOARD

46. There shall be a Episcopal Standards Review Board constituted and appointed in accordance with the provisions of this Part.
47. Subject to the provisions of this Act the function of the Review Board is to determine any application for review of a decision of the Board under this Act.
48. The members of the Review Board in a particular case shall be appointed from a panel of 10 persons comprising:
- (a) a President and a Deputy President, both of whom shall be or shall have been either a judicial officer or a practising barrister or solicitor of at least 10 years' standing of the Supreme Court of a State or Territory; and
 - (b) eight other persons of whom at least—
 - (i) two shall be clerics who are or have been the bishop of a Diocese;

(ii) two shall be clerics not in Bishop's orders; and

(iii) four shall be lay persons.

50. Any vacancy in the membership of the panel shall be filled by the Diocesan Council.
51. (1) The members of the Review Board to be convened for any review of a decision of the Board shall be determined by the President or, if there is a vacancy in the office of President, by the Deputy President.
- (2) For the purpose of any application to the Review Board, the Review Board shall consist of the President or Deputy President, who shall be the presiding member, one cleric in bishop's orders, one cleric not in bishop's orders and two lay persons.
- (3) So far as it is reasonably practicable, the Review Board shall include at least one man and at least one woman;
- (4) The quorum for a meeting of the Review Board shall be all the members of the Review Board.
- (5) A member of the Review Board who is not a member of the Church resident in the Diocese shall not act as such a member in a matter relating to the Diocesan bishop unless the member has agreed in writing to abide by this Act.
52. There shall be a secretary to the Review Board who shall be appointed on such terms and conditions as may be determined from time to time by the Diocesan Council.
53. The Review Board, separately constituted in accordance with this Part, may act simultaneously for the purpose of applications made to it.
54. An act or proceeding of the Review Board is not invalid by reason only of a vacancy in its membership or in the membership of the panel and, notwithstanding the subsequent discovery of a defect in the nomination or appointment of members of the panel or the Review Board, any such act or proceeding is as valid and effectual as if the member had been duly nominated or appointed.

PART 13 – APPLICATION FOR REVIEW

55. In this part, "decision" means any finding of fact, determination or recommendation by the Board under either section 35 or section 42.
56. Where the Board has made any decision, the Diocesan bishop aggrieved by it or the ESC may within 30 days from the date of the decision or such further period as the Review Board may allow, apply to the Review Board for a fresh administrative reconsideration of the decision.
57. Within 14 days of the date of the application to the Review Board or within 14 days of the date of the document or material coming to existence, whichever is the later, the ESC shall cause to be delivered to the secretary of the Review Board any documents and material relevant to the application for review including the reasons of the Board for its determination and any recommendations.

58. Upon delivery to the secretary of the Review Board the documents and material relevant to the application for review, the President or Deputy President of the Review Board as the case may be shall as soon as possible determine the membership of the Review Board for the purpose of the application for review.
59. The Review Board may exercise all the powers of the Board under this Act and may—
- (a) affirm the decision under review; or
 - (b) vary the decision under review; or
 - (c) set aside the decision under review and make another decision in substitution for it; or
 - (d) set aside the decision under review and remit the matter for reconsideration by the Board in accordance with any directions or recommendations of the Review Board.
60. The Review Board must deal with the application as expeditiously as possible and must consider any further submissions from the complainant, the respondent or the ESC.

PART 14 - DUTIES OF THE RESPONDENT

61. (1) The Diocesan bishop as the respondent must subject to subsection (2)—
- (a) comply with a requirement of the ESC pursuant to section 20(a) of this Act to meet with an investigator to answer questions in relation to a complaint;
 - (b) comply with a requirement of the ESC pursuant to section 20(b) and (c) of this Act to provide a verified detailed report to the ESC within a reasonable time;
 - (c) truthfully answer any question put by or on behalf of the ESC or the Board or the Review Board in the exercise of powers conferred by this Act;
 - (d) not mislead the ESC or the Board or the Review Board or a member of any of them or a delegate of the ESC;
 - (e) not unreasonably delay or obstruct the ESC, the Board or the Review Board or a member of any of them or a delegate of the ESC in the exercise of powers conferred by this Act; and
 - (f) attend a mediation, conciliation, neutral evaluation or other dispute resolution meeting arranged by the ESC in relation to a complaint.
- (2) If the respondent declines to answer a question on the ground that the answer might tend to incriminate the person, a written record shall be made of the question and of the ground of refusal.

PART 15 - PROCEEDINGS OF THE BOARD AND THE REVIEW BOARD

62. Each of the Board and the Review Board—
- (a) must act with fairness and according to equity, good conscience, natural justice and the substantial merits of the case without regard to technicalities or legal forms; and
 - (b) is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks fit.
63. (1) Subject to this Act and in particular the provisions of section 62 and this section, each of the Board and the Review Board—
- (a) may regulate the proceedings of its meetings as it sees fit;
 - (b) must hold its meetings in private and permit such persons to attend as each may in its discretion direct;
 - (c) may inform itself from the record of any court or tribunal and may adopt any findings, and accept as its own, the record of any court or tribunal; and
 - (d) must give written reasons for any determination and recommendation, other than by way of directions in the course of an application, unless the determination is made by consent of the respondent and the ESC.
- (2) The Board must give the ESC and the respondent a reasonable opportunity to adduce evidence, to examine or cross-examine witnesses and to make submissions to the Board.
- (3) The Board may 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.
- (4) The Review Board is not obliged to hold a hearing at which evidence is adduced or submissions heard orally.
64. A party to a complaint may at the party's own expense appoint a legal representative to assist in the process.
65. Each of the Board and the Review Board may at any time and from time to time give directions:
- (a) as to the inspection by and supply of copies to the respondent or any other person of the documents or material relevant to the reference; and
 - (b) as to the conduct of its inquiry into the reference.
66. Each of the Board and the Review Board may, for the purpose of any particular reference, appoint such person or persons, to assist it in inquiring into (but not determining) a reference as the Board or the Review Board thinks fit.
67. Each of the Board and the Review Board may at any time and from time to time give directions to the ESC as to any further inquiries or investigation it requires to be carried out for the purposes of the reference and the ESC shall to the best of its ability cause such directions to be carried out.

68. Without limiting the meaning and effect of sections 62 and 63, each of the Board and the Review Board may receive a statutory declaration or a signed statement without the need for the personal attendance of the maker of the statutory declaration or statement and may also in its discretion use electronic means such as video link or conference telephone to receive evidence and submissions.
69. In any proceedings before it, where the Board or the Review Board is satisfied that the respondent—
- (a) has been convicted by a court within or outside of Australia of an offence involving conduct that constitutes abuse;
 - (b) has been found guilty (without conviction) by a court within or outside of Australia of an offence involving conduct that constitutes abuse;
 - (c) has admitted in proceedings before a court or tribunal within or outside of Australia having engaged in conduct constituting abuse;
 - (d) has been found by a court or tribunal within or outside of Australia to have engaged in conduct constituting abuse; or
 - (e) has been disqualified by a court or tribunal within or outside of Australia from professional practice on account of conduct constituting abuse,
- then—
- (f) a certificate, reasons for judgment or other record from the court or tribunal (as the case may be) shall be conclusive evidence that the respondent engaged in the conduct constituting abuse; and
 - (g) neither the respondent nor any other party shall be at liberty to call or give evidence or make submissions for the purpose of calling into question the conviction or finding of guilt of the respondent or denying that the respondent engaged in the conduct constituting abuse.
70. (1) The standard of proof to establish an allegation is that of a reasonable satisfaction on the balance of probabilities.
- (2) Each of the Board and the Review Board must scrutinize evidence with greater care if there is a serious allegation to be established, or an inherent unlikelihood of an occurrence of a given description or if there are grave consequences that would flow from a particular finding.
71. No member of the Board or the Review Board shall individually meet with either the complainant or the respondent or any one acting on their behalf while the matter is in progress.
72. (1) Where a member of the Board or the Review Board has a personal interest in a matter before it the member shall be disqualified from participating in the matter.
- (2) The opinion of the presiding member of the Board or the Review Board (as the case may be) as to whether any other member of the Board or the Review Board has a personal interest in a matter shall be conclusive.

73. (1) The ESC or the Board or the Review Board may request the Diocesan bishop as the respondent to submit within a specified time to a medical, psychiatric or psychological examination by a person approved by the ESC or the Board or the Review Board (as the case may be) the cost of which shall be met from church funds under the control of the Diocesan bishop in Council.
- (2) The respondent is not obliged to comply with a request of the ESC or the Board or the Review Board under subsection (1).
- (3) A copy of the report of an examination under subsection (1) shall be provided to the respondent and to the Director and the ESC, the Board and if applicable the Review Board.
74. If the Board or the Review Board is satisfied that there is no reasonable likelihood that the Special Tribunal would find the respondent guilty of any offence, the Board or the Review Board shall not recommend that a charge be promoted against the respondent in the Special Tribunal.
75. Neither the Board nor the Review Board shall, in the course of considering a complaint or reconsidering a decision respectively:
- (a) inquire into any matter which is the subject of any completed formal investigation or enquiry and determination conducted—
- (i) under or pursuant to any provision of the Constitution; or
- (ii) under or pursuant to this Act or the Episcopal Standards Canon 2007, a Canon or an Ordinance of a diocese in any case relating to the discipline or professional standards of Church workers by a board of enquiry, tribunal or other body—
- save to the extent of any fresh evidence that was not reasonably available during the previous formal investigation or enquiry, but may take into account the finding of any such formal investigation or enquiry; or
- (b) inquire into, make any findings in relation to or take into account any alleged breach of—
- (i) faith of the Church, including the obligation to hold the faith;
- (ii) ritual of the Church, including the rites according to the use of the Church and the obligation to abide by such use; or
- (iii) ceremonial of the Church, including ceremonial according to the use of the Church and the obligation to abide by such use.
76. Where a matter is referred to the Board or application for review is made to the Review Board, the Board or Review Board (as the case may be) shall consider the complaint or decision and may make any finding on any relevant question of fact, taking into account—
- (a) the final report (if any) of the investigator including any attachments;
- (b) such report of the ESC as may be submitted;
- (c) any further material received from the complainant and the Diocesan bishop relevant to its consideration;

- (d) any other relevant evidentiary material;
 - (e) any applicable standards prescribed by the code of conduct approved under this Act;
 - (f) the conduct of the Diocesan bishop as it finds it to have been;
 - (g) any failure of the Diocesan bishop to comply with a provision of this Act; and
 - (h) in the case of the Review Board, the determination and reasons of the Board.
77. Neither the Board nor the Review Board has the power to award costs of any complaint or matter before it.
78. (1) The President of the Board may make rules of the Board reasonably required in relation to the practice and procedure of the Board.
- (2) The President of the Review Board may make rules of the Review Board reasonably required in relation to the practice and procedure of the Review Board.
- (3) The ESC, the respondent and any other party joined to a complaint or matter by leave of the Board or the Review Board shall comply with the rules of the Board or the Review Board (as the case may be) and with any directions given by either the Board or the Review Board.
79. The rules of the Board or the Review Board made under this Part may provide that, in relation to the exercise of specified functions, or in relation to matters of a specified class, other than the determination of an application including the making of a recommendation, the Board or the Review Board (as the case may be) may, at the direction of the presiding member, be constituted by a single member sitting alone.
80. Subject to this Act and the relevant rules-
- (a) the practice and procedure of the Board will be as directed by the presiding member of the Board; and
 - (b) the practice and procedure of the Review Board will be as directed by the presiding member of the Review Board.
81. (1) In any proceedings of the Board or the Review Board:
- (a) any question of law or procedure shall 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 or the Review Board is constituted by a member sitting alone who is not the President or the Deputy President, any question of law that arises must be referred to the President or Deputy President for decision and any decision made on such a reference is a decision of the Board or the Review Board (as the case may be).

82. If a member of the Board or the Review Board, other than the presiding member, dies or is for any other reason unable to continue with any complaint referred to the Board or any matter before the Review Board, the Board or the Review Board constituted by the presiding member and the other member or members may, subject to section 28, if the presiding member so determines, continue and complete the matter.
83. Each of the Board and the Review Board must cause a copy of each determination and recommendation to be provided to—
- (a) the Church authority;
 - (b) the complainant;
 - (c) the respondent; and
 - (d) the Director and the ESC.

PART 16 - THE CHURCH AUTHORITY

84. The Church authority to whom a recommendation under this Act is made is empowered to do any act to give effect to –
- (a) a recommendation of the ESC, the Board or if applicable, the Review Board; or
 - (b) any variation or modification of that recommendation, consistent with any facts found by the body making the recommendation provided that the substance of that recommendation is preserved, as the Church authority sees fit.
85. A question before the Church authority may be decided by a majority of the votes of the members of the Church authority.

PART 17 – CONFIDENTIALITY AND PUBLICATION

86. Subject to the provisions of this Act, the Director, a member of the ESC, a member of the Board or the Review Board or of a Church authority or a person employed or engaged on work related to the affairs of the ESC, the Board or the Review Board must not divulge information that comes to his or her knowledge by virtue of that office or position except:
- (a) in the course of carrying out the duties of that office or position;
 - (b) as may be authorised by or under this Act or any protocol;
 - (c) as may be authorised or required by or under the National Register Canon 2007 or any canon prescribed by General Synod in substitution for that canon;
 - (d) in any proceedings before a Diocesan Tribunal, a provincial tribunal, the Special Tribunal or the Appellate Tribunal;
 - (e) as may be required by law; or

- (f) to any insurer or insurance broker of a Church body or Church authority where the information may give rise to or be relevant to a claim for indemnity by the Church body or Church authority against the insurer or is relevant to obtaining or continuing insurance cover.
87. (1) The ESC must disclose to an equivalent body information in its possession concerning alleged misconduct of a former Diocesan bishop:
- (a) which is information relevant to, or coming to notice during the course of an investigation undertaken by the equivalent body of the Diocese by whose Bishop the former Diocesan bishop is licensed or in which the former Diocesan bishop is residing; or
 - (b) which is information concerning misconduct alleged to have occurred in the diocese of the equivalent body—
- and must co-operate with the equivalent body.
- (2) The ESC may disclose to a person or body of another church exercising powers, duties or functions similar to those of the ESC, in relation to clergy, details of information in its possession concerning the alleged misconduct of a former Diocesan bishop and the ESC must co-operate with such person or body to whom the information is disclosed.
88. The Church authority may release to the public such material as it may determine with respect to the exoneration of the Diocesan bishop or any action taken against the Diocesan bishop.
89. (1) Without disclosing the identity of any complainant or the details of any complaint, the ESC must report annually to the Diocesan Council on its activities for that calendar year.
- (2) Notwithstanding subsection (1), the report of the ESC pursuant to that subsection may identify the Diocesan bishop as the respondent who has been exonerated from an allegation the subject of a complaint or who has been the subject of a determination or recommendation by the Board or the Review Board, favourable to the Diocesan bishop.
- (3) Subject to sub-section (4) the ESC must, in respect of every complaint with which it is dealing under this Act, report either orally or in writing to the Primate with such frequency and as fully as the Primate may reasonably require.
- (4) If the matter relates to the conduct of the Diocesan bishop who is the Primate, such reports must be made to and at the direction of the senior Metropolitan at the time in Australia who is not the Primate.

PART 18 – INDEMNITY

90. The Diocesan Corporation shall and is hereby authorized, out of its funds, to indemnify-
- (a) the Director and any delegate of the Director;
 - (b) any carer appointed under this Act or any protocol;
 - (c) the members of the ESC and each of them;
 - (d) any delegate of the ESC;

- (e) the members of the Board and each of them;
- (f) any person appointed by the Board pursuant to this Act;
- (g) the members of the Review Board and each of them;
- (h) the secretary to the Review Board;
- (i) any person appointed by the Review Board pursuant to this Act; and
- (e) the members of the Church authority and each of them —

for any act or omission respectively by them in good faith and in the exercise or purported exercise of powers or functions, or in the discharge or purported discharge of duties under this Act in relation to the Diocesan bishop.

PART 19 – REGULATIONS

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

Principal Act: Episcopal Standards Act 2012

Amended by: Ballarat Anglican Diocesan Corporations Act 2014

Gender Inclusive Language and Miscellaneous Amendments Act 2015