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**Anglican Church of Australia**



**Anglican Diocese of Ballarat**

# **POWER AND TRUST IN THE CHURCH**

## **A PROTOCOL UNDER THE PROFESSIONAL STANDARDS ACT 2010 FOR RESPONDING TO ABUSE HARASSMENT AND OTHER MISCONDUCT WITHIN THE CHURCH**

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Office of Professional Standards  
Anglican Diocese of Ballarat

Phone: 1800 135 246

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**NOTE:**

The Office of Professional Standards is established by the Archbishop of Melbourne to provide support to people who make complaints about abuse and other misconduct by Anglican clergy, church officers, church employees and volunteers in the Anglican Province of Victoria. The Director of Professional Standards is as independent as possible from the Church but is paid by the Church.

- We take all complaints very seriously.
- We will do all we can to lessen harm by providing the best care possible.
- We offer respect, pastoral care and on-going long-term support to anyone who makes a complaint.
- We also offer support to any priest or Church worker who is accused of abuse or harassment or other misconduct. The rights of the person accused of misconduct will be respected.

# 1 Introduction

- 1.1 This protocol is made by the Bishop-in-Council of the Diocese of Ballarat pursuant to the *Professional Standards Act 2010 (the Act)*. It is intended:
- (a) to identify key aspects of the Act;
  - (b) to confirm the appointment of those serving as Director, a member of the Professional Standards Committee, Board and Review Board Panel; and
  - (c) to give useful information and guidelines about the way a complaint will be handled.
- The guidelines relating to correspondence with a party to a complaint are highlighted with a line in the margin for convenience.
- 1.2 By passing the Act and using this Protocol the Anglican Diocese of Ballarat aims to:
- (a) meet the pastoral needs of complainants, respondents, survivors and communities, address their concerns; and
  - (b) ensure that no further harm is caused.
- 1.3 Using this protocol we will:
- (a) promptly respond and provide support to every complainant, survivor or informant;
  - (b) document the allegation, complaint or information;
  - (c) offer conciliation if appropriate;
  - (d) investigate the circumstances;
  - (e) determine, as far as possible, the truth of the matter;
  - (f) assess what action should be taken to resolve the allegation, complaint or information and to prevent further harm;
  - (g) deal fairly with and facilitate support of the respondent; and
  - (h) identify opportunities for improving the way we prevent, detect and hold ourselves to account for the conduct to which this protocol relates.

## Statement of Basic Principles

- 1.4 This Protocol for responding to abuse, harassment and other misconduct within the Church is intended to operate in conjunction with both:
- (a) the Code of Good Practice for Clergy; and
  - (b) Faithfulness in Service, the National code of personal behaviour and practice of pastoral ministry by clergy and church workers.

These codes provide a positive framework for conduct by church workers.

## The Protocol adopts the following principles:

- 1.5 We, the Anglican Diocese of Ballarat within the Anglican Church of Australia, will not tolerate abuse or harassment or other misconduct within our communities.

- (a) We take all complaints very seriously and any lessons learnt from individual complaints will be taken into account in deciding whether and if so how the Church might do things better.
  - (b) We offer respect, pastoral care and ongoing long-term or episodic support, including professional counselling where appropriate, to anyone who makes a complaint and to those who have suffered the secondary effects of abuse. We will do all we can to lessen harm by providing the best care possible.
  - (c) We will also offer support to any church worker who is accused of abuse or harassment. The rights of a person accused of wrongdoing must be respected.
  - (d) We will be as open, transparent and accountable as possible while respecting the rights of complainants to privacy and to make their own informed choices about whether to engage with Diocesan processes or to seek assistance elsewhere.
  - (e) We will use confidentiality clauses in agreements settling claims only where there is clear justification for doing so with respect to the rights of individuals to privacy.
  - (f) Where allegations of abuse involve behaviour that may constitute a criminal offence, we will support complainants if they decide to report those matters to police and will report serious criminal offences ourselves.
  - (g) We will continue to invite any person who has been abused, no matter when, to come forward and make the matter known, so that his or her ongoing needs can be addressed.
  - (h) Any person engaged in ministry or leadership or in our employ who is alleged to have committed abuse must face the appropriate diocesan process.
  - (i) Confidentiality must be respected by all participants in this protocol.
  - (j) No one should interfere with or attempt to have an improper influence on Professional Support Persons, respondent Carers, the Investigator, the Director, the Committee, the Board or the Review Board in the exercise of their functions.
- 1.6 **Scope:** Nothing in this Protocol shall exclude the jurisdiction of a secular court or tribunal or prevent any person from pursuing other actions and procedures which are available at law. It is not intended that this Protocol shall protect people from the law.
- 1.7 **Church workers:** These include a member of the clergy, a lay minister and others referred to in the definition of 'Church worker' in s 3 of the Act. The definition does not include the Bishop of Ballarat or any other Bishop of a Diocese.
- 1.8 **Definitions:** In this Protocol, expressions used have the same meaning as in s 3 of the Act.

## 2 Upholding this Protocol – a shared responsibility

- 2.1 It is the responsibility of each church worker to be aware of and meet the standards of the *Faithfulness in Service* National Code and also, in the case of clergy, the Code of Good Practice for Clergy applicable in the Diocese.

- 2.2 A Church worker is subject to mandatory reporting obligations. Section 22 of the Act provides as follows -

22. (1) *If any Church worker believes on reasonable grounds that a person has suffered harm or is at risk of harm as a result of misconduct by another Church worker and has no reason to believe that the Director or a member of the PSC is aware of those facts, the first mentioned Church worker shall as soon as possible report the matter to the Director or to a member of the PSC.*
- (2) *This section does not affect the operation of the Canon Concerning Confessions 1989 of General Synod or any other canon or legislative instrument relating to confessions in force in the Diocese.*

### **3 Role of the Director of Professional Standards**

- 3.1 The Director of Professional Standards -
- (a) is independent of the Church administration and structures;
  - (b) has investigative skills and qualifications or experience in legal practice or procedure, or in counselling or an associated area; and
  - (c) is neither a member of the clergy nor married to a member of the clergy.
- 3.2 The first Director under the Act is named in the Schedule.
- 3.3 The Director assists the Diocese in providing a central focus in matters involving personal ethics and behaviour including advice about appropriate standards and enforcement, in managing and implementing the processes necessary to give effect to the Act and this Protocol and performing other functions prescribed in s 20 of the Act.

### **4 The Role and Composition of the Professional Standards Committee**

- 4.1 The Professional Standards Committee (**PSC**) comprises at least 3 people including its chair (s 13(1)). Its role includes –
- (a) to implement the Act and the protocol to the extent that the protocol is not inconsistent with the Act;
  - (b) to receive a complaint against a Church worker;
  - (c) to review and monitor the work of the Director;
  - (d) to refer a matter to the Professional Standards Board in an appropriate case; and
  - (e) to perform other functions prescribed by the Act.

The powers, duties and functions of the Committee are more completely set out in s 18 of the Act.

- 4.2 The membership of the PSC is constituted so as collectively to provide experience and appropriate professional qualifications in:
- (a) law;
  - (b) the ordained or authorised lay ministry; and
  - (c) child protection, investigations, social work, ethics or counselling (s 13(2)).

The PSC includes at least one person who is not a member of this Church and so far as it is reasonably practicable shall have at least one man and at least one woman (s13(3)).

- 4.3 The Director attends the meetings of the Committee and provides such assistance to the Committee as it may request but may not vote (s 20(1)(d)).
- 4.4 The first Chair of the PSC as constituted under the Act is named in the Schedule and is appointed for a term of 18 months from the date of commencement of the Act.

## 5 Commencing the Process

- 5.1 The Director on behalf of the PSC will be the first point of contact for a complaint of misconduct by a Church worker.
- 5.2 When a complaint of abuse or other misconduct is made, the matter remains confidential until and unless the Director has obtained informed consent from the complainant to provide information to other participants in the process.
- 5.3 The Director shall as soon as practicable make a preliminary assessment whether the complaint relates to misconduct as defined in the Act and whether the respondent is a person defined as a Church worker under the Act and shall report to the PSC accordingly.
- 5.4 NOTE: If the complainant has not given written consent to the Director giving notice of the complaint to the respondent and to the PSC dealing with it under Part 12 of the Act, the PSC is not required to investigate the complaint or to refer it to the Board and the PSC or the Director may dismiss the complaint or take no action in relation to the complaint (s 29(3)).
- 5.5 The PSC may also decide to dismiss a complaint or to take no further action in relation to a complaint if–
- (a) the PSC is of opinion that the complaint does not fall within the provisions of this Act;
  - (b) the behaviour the subject matter of the complaint can properly be dealt with by other means;
  - (c) the subject matter of a complaint is under investigation by some other competent person or body or is the subject of legal proceedings;
  - (d) the person making the complaint has failed to provide further details to the Director or to verify the allegations by statutory declaration when requested by the Director to do so;
  - (e) the PSC is of opinion that the complaint is false, vexatious,

misconceived, frivolous or lacking in substance; or

- (f) the PSC is of opinion that there is insufficient reliable evidence to warrant an investigation or further investigation (s 27).

- 5.6 If a complaint is dealt with by the PSC under the preceding paragraph, the Director must give the complainant a written notice of the outcome including the reasons for the outcome (s 28).
- 5.7 The PSC may take independent professional advice as it considers necessary in the discharge of its functions.

## **6 Professional Support Persons**

- 6.1 The Director may engage suitably qualified professionals ("Professional Support Persons") to provide assistance to complainants, respondents, Church workers, informants, and victims involved in disclosures of abuse by Church workers. Professional Support Persons may also provide informal advice to the Director and the PSC from time to time as requested.
- 6.2 Professional Support Persons will act in their individual capacity in their work for the Diocese. Their duty is to the person for whom they are providing services, and they are required to act always in that person's best interests even when those interests conflict with their own personal interests or those of the Diocese or other parties involved in the matter.
- 6.3 Professional Support Persons will be independent of Diocesan organisations, structures, and office holders and not have any other role under the Protocol in respect of a current matter.
- 6.4 The complainant's Professional Support Person will assist the complainant by providing counselling, explaining the process, and clarifying what outcomes are possible and what the complainant may expect to achieve from making a complaint. They may also assist the complainant where this is requested, to document the complaint. The Professional Support Person will also provide acknowledgement to the Director of the complainant's informed consent to the process.
- 6.5 Professional Support Persons' services are available to all parties involved in this process. A Professional Support Person may not provide services to, or receive information from, a complainant and respondent in the same matter.

## **7 The complaint and the complainant**

- 7.1 Anyone including the Director may make a complaint of misconduct of a Church worker to the PSC (s 23).
- 7.2 A complaint may be in any form, in writing on paper or by email or facsimile or conveyed orally (s 24(2)). The PSC may not act on an anonymous complaint (s 24(3)).
- 7.3 If you are a complainant, you must provide particulars of the complaint (s 24(2)).

- 7.4 When you make a complaint to the PSC, the Director will contact you to find out about the complaint<sup>1</sup>. The Director will advise you that he or she is required to keep a record of the name of the respondent if that is provided. The Director will also advise you that the matter is to be referred to the police or child protection authorities in the circumstances described below in paragraph 21.
- 7.5 The Director shall provide you with a copy of the Act and this Protocol if you have lodged a complaint and have consented to the complaint being dealt with by the PSC under Part 12 of the Act or are contemplating doing so.
- 7.6 **Consent:** The Director will explain to you the processes available under the Act and seek your written consent to give notice of the complaint to the respondent and for the PSC to deal with the complaint under Part 12 of the Act. The Director will also explain to you how it is your choice whether to make a complaint and proceed with this Protocol and will advise you of alternative avenues of formal and informal redress that are open to you e.g. dealing with the complaint informally, making a report to the police, or complaining to the Equal Opportunity Commission or instituting other legal action. If you do not give your consent, the PSC will not have to investigate the matter.
- 7.7 **Professional Support Person:** If you agree, the Director may refer you to counselling or other services as appropriate from a Professional Support Person, irrespective of whether you make a formal complaint. This Support Person will usually be the main contact person throughout the process.
- 7.8 **Victim impact statement:** You may if you wish provide a victim impact statement to help the PSC and the Board understand how you have been affected by the misconduct the subject of your complaint. The Director can provide further information to you about this statement and your Professional Support Person can assist you with its preparation.
- 7.9 The Director will inform you if the complaint does not concern a matter which is dealt with under the Act.
- 7.10 **Mediation:** If the PSC determines that mediation or some other means of dispute resolution is likely to resolve the issues raised by the complainant, the Director will seek your consent to that course of action as well as that of any other party.
- 7.11 Alternative dispute resolution proceedings (including mediation) are confidential, and all communications made by you and the respondent and other participants in the course of them are without prejudice and may not be used by any party in subsequent legal proceedings.
- 7.12 Neither the respondent nor anyone associated with the respondent or the Church authority should have any contact with you about your

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<sup>1</sup> The guidelines relating to correspondence with a party to a complaint are highlighted with a line in the margin for convenience.



complaint except through the Director or the PSC or otherwise in accordance with the Act.

- 7.13 The Director will subject to the Act and to any direction of the PSC determine if, when, and to whom in the diocese, the existence of a matter is made known.

## 8 The respondent – the person about whom the complaint is made

- 8.1 If a complaint of misconduct has been made against you, unless it is impracticable in the particular circumstances, within a week from the complainant giving written consent to the Director giving you notice of the complaint and to the PSC dealing with it under the Act, the Director or a PSC delegate will contact you, as provided in the following paragraph.
- 8.2 The Director (or a PSC delegate) will provide you with a copy of the complaint and any further particulars provided, together with a copy of the Act and this Protocol. You have the right –
- (a) to obtain independent legal or other professional advice, at your cost, before responding to the complaint; and
  - (b) to make submissions (with or without evidence) as to why the PSC without embarking on any investigation should not entertain the complaint or should dismiss it or take no further action in relation to it.

The Director will inform you of these rights when contacting you about the complaint.

You will be offered the services of a Professional Support Person chosen by the Director to provide professional counseling. The Diocese will meet the reasonable costs of these services if you decide to take up the offer.

- 8.3 The PSC may investigate the conduct of a Church worker if the PSC has reason to believe that the conduct may amount to misconduct under this Act even though no complaint has been made about the conduct or a complaint about the conduct is anonymous or has been withdrawn (s 29(2)). The Director may at his or her discretion contact a Church worker in those circumstances.
- 8.4 **Respondent Carer:** The Director will select an appropriate person to act as your Carer in the process of dealing with the complaint. If you agree, that person will liaise with the Director on your behalf and will be given a copy of the complaint. The Director will send a copy of all notices and letters which he or she sends to you to the respondent Carer so that the latter receives them in time to give you support when you receive them.
- 8.5 The respondent Carer will contact you within 24 hours of accepting the role and will follow up on the initial offer of professional counselling support.

- 8.6 As respondent, you must provide the PSC with a written response to the complaint within 3 weeks (or such longer period as the Director specifies in writing) of your receiving a copy of the complaint and any accompanying particulars. The Director will write to you about this time line and what happens if you do not respond.
- 8.7 If you choose not to respond, the Director and the PSC (as the case may be) may continue the process under the Act, the PSC may refer the complaint to the Professional Standards Board which may make any finding of fact and recommendation to the Bishop or other relevant Church authority as the Board sees fit. See Part 12 below.
- 8.9 The respondent Carer will be in regular contact with you, and if appropriate with the Professional Support Person about the progress of the complaint and options which are available.
- 8.10 The respondent Carer will keep things strictly confidential.
- 8.11 The complainant should not be questioned by anyone about their right to make a complaint.

## **9 Suspension from duties**

- 9.1 The Bishop or other relevant Church authority may determine that-
  - (a) the respondent be suspended or stood down from the duties of any office or position of responsibility held by the respondent or certain of those duties;
  - (b) an order be made against the respondent, for example, prohibiting that person from holding a specified position or office or from carrying out any specified functions;
  - (c) such other action be taken as may be thought fit (s 47, read with s 40).

The Act, Part 10, prescribes the role of the PSC and the Board in this regard.

## **10 The Investigation**

- 10.1 The PSC shall investigate each complaint as expeditiously as possible (s 29(1)).
- 10.2 If the subject matter is under investigation by some other competent body or is the subject of legal proceedings, the investigation may be discontinued or deferred until these other proceedings are concluded. The Director may however continue to provide Support Persons' services to all parties.
- 10.3 The role of the investigator is to gather information about a complaint and the allegations, make recommendations on findings on relevant questions of fact and to make a confidential report to the PSC.
- 10.4 An investigator shall not present her or himself as a counsellor or advocate for the complainant or respondent.

- 10.5 An Investigator shall, where the nature and gravity of the complaint warrants it –
- (a) make a written record of each interview with a person and may, with the consent of the person, make an audio record of the same;
  - (b) provide the person with a copy of the record; and
  - (c) have the person, if willing, verify the record by signing a copy of it or, in the case of an audio record, by signing a statement to the effect that the audio record is a true record of the interview.
- 10.6 An Investigator shall be independent, objective and impartial and shall not have nor be perceived to have any conflict of interest in relation to the matter, the parties or the outcome.
- 10.7 The complainant and the respondent will be given a reasonable opportunity to present to the investigator any relevant facts or circumstances on which they wish to rely.
- 10.8 Before completing the investigation, the investigator through the Director shall inform the complainant in writing of the substance of any proposed recommendations on findings on any relevant questions of fact and shall give the complainant a reasonable period to respond in writing, not being greater than 14 days.
- 10.9 The investigator through the Director shall inform the respondent in writing of the substance of any proposed recommendations on findings on any relevant questions of fact and any response from the complainant and shall give the respondent a reasonable period to respond in writing, not being greater than 14 days.
- 10.10 Once the investigator has any responses from the complainant and the respondent within the prescribed period and is satisfied that the matter has been adequately investigated, he or she shall prepare a final report including –
- (a) the complaint;
  - (b) the steps taken in the investigation;
  - (c) any responses from the complainant and the respondent;
  - (d) any statements, records of interview and other relevant material; and
  - (e) his or her recommendations on findings on any relevant questions of fact and a statement of the weight given to various accounts of the allegations.

## 11 Outcomes

- 11.1 If the PSC has formed the opinion that the conduct the subject of the complaint if established would call into question whether -
- (a) the Church worker is unfit, whether temporarily or permanently, then 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 PSC shall refer the matter to the Board or if it is more appropriate, to an equivalent body in another Diocese which has jurisdiction (s 56).

- 11.2 The Director shall give each party a copy of the report of the investigation and any opinion of the PSC and the grounds relied on and notice that each party may advance any submissions to the Board if he or she wishes to do so (s 59).

## 12 Referral to the Professional Standards Board

- 12.1 The Professional Standards Board (**the Board**) comprises 4 persons including a President and Deputy President and is constituted so as collectively to provide experience and appropriate professional qualifications in -
- (a) law;
  - (b) the ordained or authorized lay ministry; and
  - (c) child protection, investigations, social work, ethics or counselling

and shall so far as reasonably practicable have -

- (i) one member of the clergy;
- (ii) at least one man and at least one woman; and
- (iii) two members who are not members of the Church (s 35).

- 12.2 The first President of the Board as constituted under the Act is named in the Schedule and is appointed for a term of 3 years from the date of commencement of the Act.
- 12.3 Where a matter is referred to the Board, the Board shall consider the matter and make any finding on any relevant question of fact, taking into account-
- (a) the final report if any of the investigator including attachments;
  - (b) any further material received from the complainant including a victim impact statement and from the respondent;
  - (c) any other relevant evidentiary material; and
  - (d) such report of the PSC as may be submitted; and
  - (e) any applicable professional standards prescribed by a code of conduct (s 61).
- 12.4 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; and
  - (b) as to the conduct of its inquiry into the reference (s 60).
- 12.5 Both the PSC and the Board shall deal with a complaint as expeditiously as possible (ss 29(1) and 66).
- 12.6 If the Board is satisfied that:
- (a) the Church worker is unfit, whether temporarily or permanently, then 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 recommend to the Bishop or other Church authority what action should be taken in relation to the Church worker as set out in s 62 of the Act.

12.7 If the Board—

- (a) makes a finding that the applicant did not commit any misconduct as alleged; or
- (b) is not satisfied as to any of the matters in section 12.6(a) and (b) above—

the Board may dismiss the complaint or take no further action in relation to the complaint. (s 65)

12.8 Within 7 days of the Board making any final finding of fact or recommendation on the complaint (**the decision**), if the finding of fact or recommendation is adverse to the respondent, the Director shall inform the respondent-

- (a) that he or she may within 30 days from the date of the decision or such further period as the Professional Standards Review Board may allow, apply to the Professional Standards Review Board for a fresh administrative reconsideration of the matter; and
- (b) that if he or she does not apply to the Review Board for a review, the Director will give notice of the decision and the reasons for making it to the Bishop or other relevant Church authority and that he or she has the opportunity within a further 14 days to address any submissions to the Bishop or other relevant Church authority<sup>2</sup>.

## 13 Professional Standards Review Board

13.1 The Professional Standards Review Board comprises 3 persons appointed by the President or Deputy President from a panel of 7 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

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<sup>2</sup> Under s 102 of the *Professional Standards Act*, each of the Board and the Review Board shall cause a copy of each determination and recommendation to be provided to-

- (a) the relevant Church authority;
- (b) the complainant;
- (c) the respondent; and
- (d) the Director and the PSC.

- (b) five other persons of whom at least -
  - (i) two shall not be members of the Church;
  - (ii) two shall be members of the clergy; and
  - (iii) three shall have professional qualifications and experience in child protection, investigations, social work, ethics or counselling (s 70).

13.2 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 clergy member and one lay member of the panel. So far as it is reasonably practicable, the Review Board shall include at least-

- (a) one man and at least one woman; and
- (b) one person who is not a member of the Church (s 73(2) and (3)).

13.3 The first President of the Review Board as constituted under the Act is named in the Schedule and is appointed for a term of 3 years from the commencement of the Act.

## **14 Application for review**

14.1 In this part, “decision” means any finding of fact, determination or recommendation by the Board to stand down a person or the like or concerning fitness for ministry.

14.2 If you are a respondent to a complaint, and are aggrieved by a decision of the Board, you may within 30 days from the date of the decision or such further period as the Professional Standards Review Board may allow, apply to the Review Board for a fresh administrative reconsideration of the matter. The PSC may also make an application for review if it thinks fit (s 83).

14.3 If you are a complainant, the Director shall give you notice of any application by the respondent or the PSC to the Review Board for a fresh administrative reconsideration of the matter.

14.4 The Director shall give both the complainant and the respondent by notice the opportunity within 14 days to address any further submissions to the Review Board.

14.5 The Review Board may exercise all the powers of the Board under the 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 (s 86).

14.6 The Review Board shall deal with the application as expeditiously as possible and shall consider any further submissions from either the complainant or the respondent (s 87).

- 14.7 Within 7 days of the Review Board making a decision on the review, if the decision on the review is adverse to the respondent, the Director shall inform the respondent -
- (a) that the Director will refer the decision including recommendations or advice to the Bishop or other relevant Church authority; and
  - (c) that he or she has the opportunity within 14 days to address any submissions to the Bishop or other relevant Church authority<sup>3</sup>.

## 15 Proceedings of the Board and the Review Board

- 15.1 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 (s 88).
- 15.2 Part 15 of the Act contains provisions dealing with the proceedings of the Board and the Review Board.
- 15.3 Neither the Board nor the Review Board shall, in the course of inquiring into any question:
- (a) inquire into any matter which is or has been the subject of any formal investigation or enquiry conducted—
    - (i) under or pursuant to any provision of the Constitution; or
    - (ii) under or pursuant to a Canon of the General Synod, a Canon or an Ordinance of another diocese relating to the discipline or professional standards of clergy or Church workers by a board of enquiry, tribunal or other body—

save to the extent of any fresh evidence that was not reasonably available during the previous formal investigation or enquiry, but may take into account the finding of any such formal investigation or enquiry; or
  - (b) inquire into, make any findings in relation to or take into account any alleged breach of—
    - (i) faith of the Church, including the obligation to hold the faith;
    - (ii) ritual of the Church, including the rites according to the use of the Church and the obligation to abide by such use; or
    - (iii) ceremonial of the Church, including ceremonial according to the use of the Church and the obligation to abide by such use. (s 99)

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<sup>3</sup>

See footnote 2 above.

## **16 The Bishop or other Church authority**

- 16.1 Where any recommendation is made under the Act to the Bishop or other Church authority by the PSC, the Board or the Review Board (as the case may be), they shall give to the Bishop or other Church authority –
- (a) the findings of facts and recommendations constituting the decision of the PSC, the Board or the Review Board, as the case may be;
  - (b) the reasons relied on in support of the decision;
  - (c) the final report if any of the investigator and attachments;
  - (d) any further material received from either the respondent or the complainant and any other relevant material; and
  - (e) any applicable professional standards prescribed by a code of conduct.
- 16.2. The Bishop or other relevant Church authority is empowered to do any act to give effect to –
- (a) a recommendation of the PSC, the Board or if applicable, the Review Board or an equivalent body having jurisdiction to make a recommendation to the Church authority; or
  - (b) any variation or modification of that recommendation, consistent with any facts found by the body making the recommendation, as the Church authority sees fit (s 103).
- 16.3 The Bishop or other Church authority should not have any contact with a respondent or complainant in relation to a complaint except through the Director or the PSC until the Bishop or other Church authority has received a recommendation from the PSC and/or the Board or the Review Board, as the case may be.

## **17 Pastoral Response**

Where appropriate, the Director and the PSC will develop a pastoral response for the care of any church community or congregation affected by the matter.

## **18 Completion of the Process**

- 18.1 As appropriate the Director will liaise with those involved in this Protocol at the completion of the case and will seek comment about the process and may discuss possible improvements.
- 18.2 Proposals regarding any changes within the structures of the Church which may assist to prevent further occasions of abuse will be considered.
- 18.3 Any recommendations resulting from this activity will be provided to the Bishop and the Registrar.



## 19 Confidentiality

- 19.1 Part 17 of the Act imposes strict confidentiality obligations in connection with a complaint but requires or authorizes disclosure as set out in Parts 20 and 21 of this Protocol.

## 20 Co-operation with Government Authorities

- 20.1 If arising from a complaint the Director or the PSC forms the belief on reasonable grounds that a child is in need of protection within the meaning of that expression in the *Children, Youth and Young Families Act 2005*, the Director must notify the relevant child protection authorities.
- 20.2 The Director must notify the Police if the conduct disclosed may constitute an offence whether committed in or outside Victoria that is an indictable offence against a law of the Commonwealth or any jurisdiction in Australia punishable by imprisonment for not less than five years (whether or not the offence is or may be dealt with summarily).
- 20.3 The Director may notify the Police if the conduct disclosed may constitute any other criminal offence.

## 21 Co-operation with other Dioceses, other Denominations and other Child Related Employers

- 21.1 The Director is authorised to disclose to the Director of Professional Standards of another diocese and the body of another diocese exercising powers duties or functions equivalent to those of the PSC information in the possession of the PSC or the Director concerning alleged misconduct of a Church worker:
- (a) which is information that is relevant to, or arises during the course of, an investigation being undertaken by the PSC where the Director or the PSC knows that the Church worker is residing in the diocese of the equivalent body; or
  - (b) which is information concerning misconduct alleged to have occurred in the diocese of the equivalent body—
- and to co-operate with that Director and equivalent body.
- 21.2 The Director is authorized to disclose to the Director of Episcopal Standards and the Episcopal Standards Commission relevant details of information in its possession concerning the alleged conduct of a Bishop referred to in section 56(6) of the Constitution, including the Bishop of a Diocese, and must co-operate with the Episcopal Standards Commission.
- 21.3 The Director is authorized to disclose to a person or body of another church exercising powers, duties or functions similar to those of the Director or the PSC details of information in its possession concerning the alleged misconduct of a person who the Director or the PSC has reason to believe is a member or purported member of that church

and to co-operate with such person or body to whom the information is disclosed.

## **22 Grievance procedure**

- 22.1 Any complaint or grievance about the operation of this Protocol should be addressed in writing both to the Bishop and to the Chair of the Professional Standards Committee marked confidential care of 209 Flinders Lane, Melbourne Victoria 3000.
- 22.2 The Chair shall forward the complaint or grievance to the Director and to the investigator or other staff member if any involved for a written response within 14 days and otherwise consider the matter, with or without assistance from the Committee as he or she judges appropriate to the circumstances.
- 22.3 The Chair will provide the complainant and the Bishop and the Registrar with a written response and an outline of any proposed action.

## **THE SCHEDULE**

- Para 3.2      The first Director under the Act is Ms Claire Sargent. She has served since 2004 as Director of Professional Standards of the Diocese of Melbourne.
- Para 4.4      The first Chair of the PSC as constituted under the Act is Ms Angela Were. She has served since 2003 as Chair of the Professional Standards Committee as constituted prior to the commencement of the Act.
- Para 12.2     The first President of the Professional Standards Board is Ms Rena Sofroniou.
- Para 13.3     The first President of the Professional Standards Review Board Panel is the Honourable Justice Julie Dodds-Streton.