PROFESSIONAL STANDARDS ORDINANCE 2015

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

Contents

Part 1 – Preliminary

1. Title
2. Definitions, including "misconduct"
3. Membership of equivalent bodies
4. Overriding purpose
5. Duty to give effect to the purpose

Part 2 – Code of Conduct

6. Approval of Code of Conduct
7. Promotion of Code of Conduct

Part 3 – Protocols

8. Making and content of protocols

Part 4 – Professional Standards Committee

9. Establishment of PSC
10. Functions of the PSC
11. Membership of the PSC
12. Conduct of business
13. Validity of proceedings
14. Delegation of functions

Part 5 – Director of Professional Standards

15. Appointment
16. Functions of the Director

Part 6 – Information

17. Disclosure of information
18. Director to report

Part 7 – Complaints

19. Who may make a complaint
20. Form of complaint
21. Further information and verification

22. Power to dismiss or take no further action

Part 8 – Investigations

23. Investigation and report
24. Investigation by equivalent bodies
25. Material to be obtained
26. Response of respondent
27. Duties of respondent
28. Exercise of powers by the PSC

Part 9 – Certificate of conviction

29. Summary hearing and recommendations
30. No review of determination
31. Effect on other proceedings

Part 10 – Suspension and Prohibition

32. Interpretation
33. PSC may recommend
34. Matters to be taken into account
35. Mandatory orders
36. Church authority may give effect to a recommendation
37. Termination of suspension or prohibition
38. Effect of suspension order or prohibition order

Part 11 – Consent determination

39. Application and interpretation
40. PSC to report to the Bishop
41. Bishop may request reconsideration
42. Reconsideration by the PSC
43. Bishop to determine
44. Implementation by agreement
45. Consequence of no agreement
46. Director to notify complainant

Part 12 – Professional Standards Board

47. Constitution
48. Functions and jurisdiction
49. Panel
50. Appointment of the panel
51. Appointment of the Board
52. Vacancies on the Board
53. Secretary
54. Quorum
55. Simultaneous sittings
56. Validity of proceedings

Part 13 – Reference of a complaint to the Board

57. Reference after investigation
58. Procedure for reference
59. Convening of the Board
60. Board to act expeditiously
61. Powers of the Board
62. Power to dismiss or take no further action
63. Power to defer final recommendation

Part 14 – Professional Standards Review Board

64. Establishment of Review Board
65. Function of the Review Board
66. Panel of Review Board members
67. Appointment of Panel
68. Convening a Review Board
69. Vacancies on the Review Board
70. Secretary
71. Simultaneous sittings
72. Validity of proceedings

Part 15 – Application for Review

73. Interpretation
74. Application to Review Board
75. Documents and material to be delivered following application
76. President to determine membership of Review Board
77. Review Board may exercise the powers of the Board
78. Review Board to deal with application expeditiously

Part 16 – Proceedings of the Board and the Review Board

79. Conduct of proceedings
80. Failure to appear
81. Powers and duties
82. Review Board proceedings
83. Matters to be considered
84. Legal representation
85. Directions
86. Appointment of a person to assist
87. Directions to PSC
88. Written evidence
89. Decisions of other bodies
90. Standard of proof
91. Members of board and Review Board not to meet with parties
92. Disqualification where personal interest
93. Medical examination
94. Duties of the respondent
95. Limitation on promotion of a charge in the Diocesan Tribunal
96. Certain matters not to be inquired into
97. Costs
98. Making of rules

99. Practice and procedure
100. Determination of questions
101. Open sittings
102. Provision of copies of determination and recommendation

Part 17 – Church Authority and compliance

103. Church authority to give effect
104. Compliance by Church worker

Part 18 – Deposition from Holy Orders

105. Effect of deposition
106. Instrument of deposition

Part 19 – Confidentiality and Publication

107. Duty of confidentiality
108. Release of information by PSC
109. Church authority may release information
110. PSC reports

Part 20 – Indemnity

111. Obligation to indemnify

Part 21 – Regulations

112. Regulation making power

Part 22 – Repeal, Commencement and Transitional

113. Repeal
114. Commencement
115. Transitional

The Schedule

The Synod hereby determines:

PART 1 - PRELIMINARY

Title

1. This Ordinance may be cited as the "Professional Standards Ordinance 2015".

Interpretation

2. (1) In this Ordinance, unless the context otherwise requires:

"Board" means the Professional Standards Board established under Part 12.

"**ceremonial**" has the same meaning as that expression has in the Constitution;

"Certificate of Conviction" means a certificate of conviction given under or in accordance with sections 42 or 43 of the *Evidence Act 1929* (SA) certifying as to the conviction of a Church worker of a criminal offence referred to in Part 3, Divisions 11, 11A or 12 of the *Criminal Law Consolidation Act 1935* (SA) or Parts 6 or 7 of the *Summary Offences Act 1953* (SA) or any equivalent provision in legislation which repeals or replaces those Acts, or any equivalent provision in any Commonwealth, State or Territory legislation;

"child" means a person under the age of 18;

"Church" means the Anglican Church of Australia;

"Church authority" means the Bishop or a person or body having administrative authority of or in a Church body to license, appoint, authorise, dismiss or suspend a Church worker;

"Church body" includes a parish, school and any body corporate, organisation or association that exercises ministry within, or on behalf of, the Church;

"Church worker" means a person who is or who at any relevant time was:

(a) a member of the clergy; or

(b) a person employed by a Church body; or

(c) a person holding a position or performing a function with the actual or apparent authority of a Church authority or Church body;

but excludes a bishop subject to the jurisdiction of the Special Tribunal of the Church;

"Code of Conduct" means the code adopted under Part 2;

"complainant" means a person who makes a complaint;

"complaint" means a complaint under section 19 of this Ordinance;

"Constitution" means the Constitution of the Anglican Church of Australia;

"Director" means the Director of Professional Standards appointed under Part 5;

"equivalent body" means a body of another diocese exercising powers, duties or functions equivalent to those of the Director, the PSC the Board or the Review Board as the case may be, or where there is no such body, the bishop of the diocese;

"faith" has the same meaning as that expression has in the Constitution;

"information" means information of whatever nature and from whatever source relating to alleged misconduct on the part of a Church worker;

"member of the clergy" means a person in Holy Orders;

"misconduct" has the meaning in subsection (3) of this section;

"national register" means any national register established pursuant to a Canon of General Synod or a resolution of the Standing Committee of General Synod for the purpose of recording determinations of the Board and other equivalent bodies;

"Professional Standards Committee" or **"PSC"** means the Professional Standards Committee established under Part 4;

"prohibition order" means an order prohibiting a Church worker from holding a specified position or office in or being employed by a Church body or Church authority or from carrying out any specified functions in relation to any office or position in the diocese or in relation to employment by a Church body, and includes a variation of a prohibition order;

"protocol" means a protocol approved from time to time by the Diocesan Council under Part 3;

"respondent" means a Church worker whose alleged conduct is the subject of a complaint;

"Review Board" means the Professional Standards Review Board established under Part 14;

"ritual" has the same meaning as that expression has in the Constitution;

"suspension order" has the meaning in section 32.

(2) For the purposes of this Ordinance –

(a) a person employed by a Church body; or

(b) a person holding a position or performing a function with the actual or apparent authority of a Church authority or Church body;

will be taken to be engaged by a Church authority.

(3) The expression **"misconduct"** in relation to a Church worker means an activity or wilful or careless inactivity that –

a) involves harassment, or causes harm to a person's physical, spiritual, emotional or financial well-being or, in the case of a child, to his or her development; or

b) is carried out by a person in a position of power or authority over another –

(i) for the inappropriate gratification of that person; or

(ii) for the exploitation of the other; or

c) involves the exploitation of an office or position within the Church or a Church body; or

d) brings an office within the Church or a Church body or, if relevant, brings the Church or a Church body more generally into disrepute; or

e) involves a breach of the standards of sexual conduct prescribed in the Code of Conduct;

and includes:

f) wilful or careless failure to comply with an undertaking given to or a direction imposed by a Church authority under section 104 of this Ordinance;

g) wilful or careless failure to comply with an undertaking given to the Board, the Review Board or the Church authority;

h) wilful or careless failure to comply with the provisions of section 17; and

i) a breach of the Offences Canon 1962 or any Canon amending or replacing that Canon which is in force in and is not excluded from this diocese;[1]

by the Church worker whenever occurring which, if established, would on its face call into question:

(i) the fitness of the Church worker, whether temporarily or permanently, to hold a particular or any office, licence or position of responsibility in the Church or to be or remain in the employment of a Church body, or in Holy Orders; or

(ii) whether, in the exercise of the Church worker's ministry or

[1] . Section 1 of the *Offences Canon 1962* provides for the following offences in respect of a person licensed by the Bishop:

1. Unchastity.
2. Drunkenness.
3. Habitual and wilful neglect of ministerial duty after written admonition in respect thereof by the bishop of the diocese.
4. Wilful failure to pay just debts.
5. Conduct, wherever occurring,
   (a) which would be disgraceful if committed by a member of the clergy, and
   (b) which at the time the charge is preferred is productive, or if known publicly would be productive, of scandal or evil report.
6. Any other offence prescribed by an ordinance of the Synod of the diocese.

employment, or in the performance of any duty or function, the Church worker should be subject to any condition ;

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

Membership of equivalent bodies

3. 1) The Director, the members of the PSC, the Board and the Review Board may constitute or be members of an equivalent body either generally or for a particular case or matter.

2) The Diocesan Council may enter into such agreements or arrangements as it sees fit with the relevant authority of another diocese as to the terms on which the powers and functions of the equivalent bodies or persons of that diocese are to be exercised by the persons holding office in or as delegates of the PSC, or by the members or the secretary of the Board or of the Review Board.

Overriding Purposes

4. The overriding purposes of this Ordinance and of any protocol made under this Ordinance, in their application to any complaint under this Ordinance, 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.

Purposes to be given effect

5. The Director, the PSC, the Board and the Review Board must each seek to give effect to the overriding purposes when exercising any power given by this Ordinance or by any protocol and when interpreting any provision of this Ordinance or of any such protocol.

PART 2 – CODE OF CONDUCT

Adoption of Code of Conduct

6. (1) There will be a Code of Conduct for observance by Church workers in the diocese.

(2) *Faithfulness in Service*, as adopted by the Synod from time to time, is the Code of Conduct.

(3) The Synod may adopt *Faithfulness in Service* with any modifications determined to be appropriate by the Synod.

Promotion of Code of Conduct

7. The Diocesan Council through the PSC and by such other means as may be considered appropriate shall take such steps as may be necessary or desirable to promote the knowledge, understanding and observance in this Church of any code of conduct applicable in the diocese.

PART 3 – PROTOCOLS

Making and content of protocols

8. (1) The Diocesan Council must from time to time consider and approve a protocol or protocols not inconsistent with this Ordinance for implementation in relation to information and complaints.

(2) The protocol or protocols must include:

(a) procedures for dealing with information and complaints;

(b) the appointment, role and function of contact persons;

(c) provision for informing complainants and victims of alleged misconduct, and respondents, of rights, remedies and relevant procedures available to them;

(d) provision for assisting or supporting, as appropriate, any person affected by alleged misconduct the subject of information;

(e) an explanation of the processes for investigating and dealing with information and complaints;

(f) provisions for dealing fairly with each party to a complaint;

(g) processes for mediation, conciliation and reconciliation, as appropriate;

(h) provisions for information, reports, advice and recommendations to the Bishop and any other relevant Church authority at each stage of the process of dealing with a complaint or information;

(i) procedures for working, where necessary, with law enforcement, prosecution and child protection authorities of the States and Territories of the Commonwealth of Australia.

(3) The Diocesan Council, through the Director and the PSC and by such other means as they may consider appropriate, must take such steps as may be necessary or desirable to promote throughout the community a knowledge and understanding of any protocol.

PART 4 – PROFESSIONAL STANDARDS COMMITTEE

Establishment of PSC

9. There shall be a Professional Standards Committee for the diocese constituted in accordance with the provisions of this Part.

Functions of the PSC

10. (1) The PSC has the following functions:

(a) to implement a protocol;

(b) to receive information;

(c) to act on information in accordance with the provisions of this Ordinance and any protocol;

(d) to receive a complaint against a Church worker;

(e) to act on a complaint in accordance with the provisions of this Ordinance and any protocol and, where appropriate, to obtain independent legal advice for that purpose;

(f) to appoint suitable persons to fulfil the several roles required to implement the protocol in each particular case;

(g) where appropriate, to recommend conciliation or mediation;

(h) to investigate a complaint in a timely and appropriate manner;

(i) where appropriate, to recommend to the Diocesan Council any changes to a protocol and any other changes to Church processes, structures and education programmes that would reduce the risk of misconduct;

(j) subject to any limit imposed by the Diocesan Council to authorise such expenditure as may be necessary or appropriate to implement, in a particular case, a protocol and the provisions of this Ordinance;

(k) to advise any relevant Church body as to the financial, pastoral or other needs of a person affected by misconduct the subject of a complaint and in connection with any legal proceedings, anticipated or existing, against such Church body arising out of that alleged misconduct;

(l) 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;

(m) to maintain proper records of all information and complaints received and of action taken in relation to each of them; and

(n) to exercise such other powers and functions as are conferred on it by this or any other Ordinance or by a protocol.

(2) The exercise of functions by the PSC under this Ordinance arises in respect of alleged misconduct of a Church worker:

(a) resident or licensed in the diocese, or engaged by a Church authority;

(b) not resident or licensed in the diocese nor engaged by a Church authority but whose misconduct is alleged to have occurred in the diocese or when the Church worker was resident or licensed in the diocese or was engaged by a Church authority;

(c) wherever and whenever it is alleged to have been engaged in by a Church worker; and

(d) whether such misconduct is alleged to have occurred before or after the commencement of this Ordinance.

(3) Any action taken by the PSC must be consistent with the principles of procedural fairness and natural justice.

Membership of the PSC

11. (1) The members of the PSC will be appointed:

(a) by the Diocesan Council; or

(b) under an arrangement established by the Diocesan Council in connection

with the constitution of the PSC.

(2) The members of the PSC will hold office:

(a) on such terms and conditions as may be determined from time to time by the Diocesan Council; or

(b) under an arrangement established by the Diocesan Council in connection with the constitution of the PSC.

(3) The PSC must have at least five members including the chair, any of whom may reside outside the diocese.

(4) The membership of the PSC must include one or more persons who can provide experience and appropriate professional qualifications in–

(a) law;

(b) the ordained ministry; and

(c) human resources, pastoral ministry, investigations, social work, ethics or counselling.

(5) The PSC must –

(a) include at least one person who is not a member of the Church;

(b) so far as is reasonably practicable have at least one man and one woman;

(c) include at least one member, so far as is reasonably practicable, who is eligible to be a member of the Synod.

(6) The chair of the PSC must be appointed by the Diocesan Council, or under an arrangement established by the Diocesan Council.

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

(8) A member of the PSC must not act unless the member has agreed in writing to abide by this Ordinance.

Conduct of business

12. (1) The PSC may meet from time to time as determined by the chair or a majority of its members and may conduct its business by telephone or electronic communication.

(2) The chair must convene a meeting of the PSC at the request of the Director.

(3) The procedures of the PSC shall be as determined by the PSC.

(4) A majority of the members shall constitute a quorum.

(5) A decision taken other than at a meeting of the PSC, if supported by a majority of members of the PSC, constitutes a decision of the PSC.

(7) The PSC must act in all things as expeditiously as possible.

Validity of proceedings

13. An act or proceeding of the PSC is not invalid by reason only of a vacancy in its membership and, notwithstanding the subsequent discovery of a defect in the nomination or appointment of a member, any such act or proceeding is as valid and

effectual as if the member had been duly nominated or appointed.

Delegation of functions

14. (1) Subject to subsection (2), the PSC may delegate, upon such terms and conditions as the PSC may approve, any of its functions under this Ordinance to any person.

(2) The PSC cannot delegate:

(a) its functions under subsection (1);

(b) its functions under paragraphs (g) and (j) of section 10(1);

(c) its functions under Part 10; or

(d) its functions under section 57.

(3) A delegation under this section must be made by instrument in writing signed by a member of the PSC.

Conflicts of interest

14A. If a member of the PSC has a personal interest in a matter that is, or forms part of, the subject matter of a complaint (including on account of their relationship with the complainant or the respondent), the member of the PSC must not act in relation to the matter.

PART 5 – DIRECTOR OF PROFESSIONAL STANDARDS

Appointment

15. (1) There shall be a Director of Professional Standards.

(2) The Director shall be appointed by the Diocesan Council.

(3) The Director will hold office:

(a) on such terms and conditions as may be determined from time to time by the Diocesan Council; or

(b) under an arrangement established by the Diocesan Council in connection with the office of Director of Professional Standards.

(4) The Director may act in a corresponding capacity or as Director of Episcopal Standards for another diocese either generally or for a particular case or matter.

Functions of the Director

16. (1) The Director shall have the following functions:

(a) to receive information and complaints on behalf of the PSC;

(b) in his or her discretion to make a complaint against a Church worker;

(c) to manage the implementation of any protocol in respect of any information and complaint;

(d) to be the executive officer of the PSC;

(e) to attend meetings of the PSC except for any part of a meeting which deals

with the conditions of employment, remuneration or performance of the Director;

(f) to provide advice about the code of conduct, the protocol and procedures under this Ordinance;

(g) to provide or arrange care or treatment of the complainant and respondent;

(h) to provide input into education and vocational training programs for Church workers;

(i) 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;

(j) to keep proper records of complaints, decisions, meetings, employment screening details, police checks and people affected by any allegation of misconduct;

(k) to consult and co-operate with other persons and bodies in the Church with responsibility for professional standards;

(l) in a case of alleged illegal behaviour:

(i) to support a complainant in making a report to police or child protection authorities; or

(ii) if the Director or the PSC considers it to be necessary, appropriate or in the interests of a victim or alleged victim – make a report to police or child protection authorities;

(m) to report to the PSC 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

(n) such specific functions and duties, consistent with this Ordinance, as may be determined from time to time by the PSC.

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

Conflicts of interest

16A. If the Director has a personal interest in a matter that is, or forms part of, the subject matter of a complaint (including on account of their relationship with the complainant or the respondent), the Director must not act in relation to the matter.

PART 6 – INFORMATION

Disclosure of information

17. (1) A Church worker or a Church authority in the diocese must as soon as possible refer any information in his her or its possession or knowledge to the Director unless there are reasonable grounds to believe that the information is already known to the Director or the PSC.

(2) This section does not affect the operation of the Canon Concerning Confessions 1989 of the General Synod or any other Canon or legislative instrument relating to confessions in force in the diocese.

Director to Report

18. Subject to this Ordinance, where the Director considers that the subject matter of information, if established, would constitute misconduct the Director must report the conduct to the PSC or, if appropriate, to an equivalent body.

PART 7 – COMPLAINTS

Who may make a complaint

19. Any person, including the Director, may make a complaint of misconduct to the PSC in relation to a Church worker.

Form of complaint

20. (1) A complaint may be in any form, oral or in writing, whether by electronic means or otherwise.

(2) Where a complaint is oral, the Director must make a written record of the complaint as soon as practicable after receiving it.

(3) A complaint must include details of the misconduct complained about.

(4) The Director must not make a complaint based only on information provided anonymously.

(5) The PSC may not act on an anonymous complaint.

(6) Non-compliance with a provision of this section shall not invalidate a complaint unless the Board determines otherwise.

Further information and verification

21. (1) The PSC may require a complainant to –

(a) give further details of the complaint; and

(b) verify any details of the complaint by a statutory declaration.

(2) A requirement under subsection (1) must be in writing and allow the complainant a reasonable time to comply.

Power to dismiss or take no further action

22. (1) The PSC may dismiss a complaint or 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 Ordinance;

(b) the complainant has failed to provide further details to the PSC or to verify the allegations by statutory declaration when requested by the Director to do so;

(c) the complainant (other than the Director) has not given consent to the Director's giving notice of the complaint to the respondent and to the PSC's dealing with it under this Ordinance;

(d) the PSC is of opinion that the complaint is false, vexatious, misconceived, frivolous or lacking in substance; or

(e) the PSC is of opinion that there is insufficient reliable evidence to warrant an investigation or further investigation

and may take no further action or delay further action in relation to a complaint if—

(f) the behaviour the subject matter of the complaint has been or can properly be dealt with by other means; or

(g) the subject matter of a complaint is under investigation by some other competent person or body or is the subject of legal proceedings.

(2) If a complaint is dealt with by the PSC under the preceding subsection, the PSC must give the complainant a written notice of the outcome including the reasons for the outcome.

PART 8 – INVESTIGATIONS

Investigation and report

23. (1) Subject to this Ordinance, the PSC must investigate each complaint as expeditiously as possible.

(2) The PSC may investigate the conduct of the Church worker if –

(a) the PSC has reason to believe that the conduct may amount to misconduct under this Ordinance; and

(b) notwithstanding that a complaint about the conduct has been withdrawn.

(3) If, in the opinion of the Director, the alleged misconduct constitutes an offence –

(a) if the offence is an indictable offence – the Director must take the action specified in subsection (3a); and

(b) if the offence is not an indictable offence – the Director may take the action specified in subsection (3a).

(3a) For the purposes of subsection (3), the action is to refer any information concerning the alleged misconduct in the possession of the PSC to a member of a law enforcement, prosecution or child protection authority to which the information may be relevant.

(4) In this section the expression "indictable offence" means an offence whether committed in or outside South Australia that is an indictable offence against a law of the Commonwealth or against a law of the State in which the offence is alleged to have been committed.

Investigation by equivalent bodies

24. (1) The Director may, if the Director thinks it appropriate to do so, refer the complaint, or the investigation of the complaint, to an equivalent body or bodies.

(2) When the PSC and an equivalent body or equivalent bodies have the power and duty to investigate a complaint concerning the alleged misconduct of the same Church

worker and the respective bodies cannot agree on:

(a) which body shall carry out the investigation or any parts of such investigation; or
(b) whether the complaint should be referred to the Board or to an equivalent body which has jurisdiction;

then the PSC must prefer the disagreement for decision by the Director and the persons acting in a corresponding capacity for every other diocese acting together.

(3) The PSC shall act in accordance with the unanimous decision of the persons referred to in subsection (2) or, if such persons cannot agree within a reasonable time of the disagreement being referred, in accordance with the decision of the Primate or a member of the House of Bishops appointed by the Primate.

(4) In all matters affecting the operation of this Ordinance the PSC and the Director shall cooperate with and assist an equivalent body.

(5) In making a decision under subsection (2) the Director shall not be bound by the views or instruction of the PSC but shall take into account the most convenient course for all concerned and the proper and expeditious conduct of the investigation or referral as the case may be

Material to be obtained

25. For the purpose of an investigation the PSC or an investigator shall obtain such statutory declarations, written statements, recorded conversations, reports, documents and other material as the PSC or its delegate considers necessary or advisable for presentation to the Board.

Response of respondent

26. The PSC 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 PSC within a reasonable time specified in the notice in relation to any matter relevant to the investigation;

(c) to verify the report by statutory declaration or another specified manner.

Duties of the respondent

27. (1) The respondent must, subject to subsection (2) –

(a) comply with a requirement of the PSC pursuant to paragraphs (a), (b) and (c) of the previous section; and

(b) truthfully answer any questions put by or on behalf of the PSC in the exercise of powers conferred by this Ordinance.

(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.

(3) The respondent must –

(a) not mislead the PSC or a member or delegate of the PSC;

(b) not unreasonably delay or obstruct the PSC or a delegate of the PSC in the exercise of powers conferred by this Ordinance; and

(c) attend a mediation, conciliation, neutral evaluation or other dispute resolution meeting arranged by the PSC in relation to a complaint.

Exercise of powers by the PSC

28. (1) At any time after the PSC receives a complaint, the PSC may:

(a) recommend mediation, conciliation, neutral evaluation or other alternative resolution of the complaint; and

(b) exercise its powers under section 22 of this Ordinance to dismiss a complaint or to take no further action in relation to a complaint.

(2) 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 PSC from taking any further action in accordance with the provisions of this Ordinance in respect of the complaint.

(3) Any term of settlement or resolution referred to in subsection (2) which purports to prevent or to limit the taking of any such further action shall, for the purposes of this Ordinance, be of no effect.

PART 9 – CERTIFICATE OF CONVICTION

Summary hearing and recommendations

29. If, during the course of carrying out their duties under this Ordinance, the Director, the PSC or the Board receives a Certificate of Conviction of a Church worker, then:

(a) If the person who receives the Certificate of Conviction is not the Director, the person must immediately hand the Certificate of Conviction to the Director;

(b) The Director must immediately provide a copy of the Certificate of Conviction to the secretary of the Board, stating that it is provided pursuant to this section;

(c) Upon receipt of the Certificate of Conviction by the secretary of the Board the President or Deputy President as the case may be must as soon as possible determine the membership of the Board for the purpose of making a recommendation under this Part;

(d) The Board may act pursuant to this section whether or not a complaint against the Church worker has been referred to the Board;

(e) Subject to giving the Church worker opportunity to show cause by such means as the Board may in its absolute discretion allow, the Board may make any of the recommendations referred to in section 51(1) in respect of the Church worker to whom the Certificate of Conviction relates.

No review of determination

30. A determination under this Part is not a reviewable decision for the purposes of Part 14.

Effect on other proceedings

31. No action taken under this Part shall, of itself, stay or preclude any act, proceeding, investigation or enquiry otherwise in progress or proposed under this Ordinance in respect of the Church worker to whom the Certificate of Conviction relates.

PART 10 – SUSPENSION AND PROHIBITION

Interpretation

32. (1) For the purposes of this Ordinance –

"suspension order" means an order suspending a respondent to a complaint from the duties of office or employment by a Church body and may include an order:

(a) that from a specified date the respondent and his or her immediate family cease to reside in any accommodation provided by the Church body;

(b) restricting or prohibiting the use by the respondent of a motor vehicle and any other property provided by the Church body;

(c) prohibiting the attendance of the respondent at a particular church or place of worship or within a specified geographical area;

and includes a variation of a suspension order.

(2) If a suspension order includes an order under paragraph (a) of subsection (1) the suspension order must include, for the duration of any period involved, an order that the respondent and, if appropriate, his or her immediate family be provided with a reasonable accommodation allowance from funds under the control of the Synod at a rate specified in the order.

PSC may recommend

33. (1) Subject to section 34, at any time after the PSC has commenced or caused to be commenced an investigation of a complaint it may recommend to the relevant Church authority that a suspension order or a prohibition order or both be made against the respondent.

(2) Subject to section 34, the PSC may at any time and from time to time recommend the variation of a suspension order or a prohibition order or both.

(3) Before making or varying a recommendation under this Part the PSC must give the respondent an opportunity to be heard.

Matters to be taken into account

34. Before making or varying a recommendation under section 33 the PSC must take into account:

(a) the seriousness of the misconduct alleged in the complaint;

(b) the nature of the material to support or negate the allegations;

(c) whether any person is at risk of harm;

(d) after consultation with the relevant Church body or its representative, the effect on the respondent, a relevant Church body and on the Church in the diocese of acting and of not acting under section 33;

(e) any other allegations of misconduct previously made to the PSC or to an equivalent body within the previous 10 years; and

(f) any other relevant matter.

Mandatory orders

35. If the PSC forms the opinion that –

(a) the evidence of misconduct, if accepted, would establish misconduct on the part of the Church worker which would be likely to call into question the fitness of the Church worker, whether temporarily or permanently, to hold the office, licence or position then held or to be or remain in Holy Orders and that the evidence is sufficiently strong to justify such a finding; or

(b) there is an unacceptable risk of harm to any person; or

(c) as a result of the alleged misconduct there is, or there is an unacceptable risk that there will be, serious damage to the reputation of the Church or a Church body;

the PSC must recommend to the relevant Church authority that a suspension order or a prohibition order or both, as the case may require, be made against the respondent.

Church authority may give effect to a recommendation

36. The relevant Church authority is authorised to give effect to a recommendation under sections 33 or 35.

Termination of suspension or prohibition

37. (1) Subject to subsection (2), a suspension order or prohibition order made by a Church authority pursuant to a recommendation under this Part must be terminated by the Church authority:

(a) if the PSC terminates the investigation without referring the matter to the Board;

(b) upon any direction to that effect given by the Board;

(c) upon an agreement being made and in force in accordance with the provisions of Part 10; or

(d) upon the Church authority giving effect to a recommendation of the Board or the Review Board under section 103.

(2) Upon an application being made to the Review Board in accordance with Part15, the PSC must reconsider whether a suspension order or prohibition order should be made, continued, varied or revoked and may recommend accordingly to the Church authority.

Effect of suspension order or prohibition order

38. During the period of operation of a suspension order or prohibition order pursuant to the provisions of this Part or during a period when a person voluntarily stands down from a position while a complaint is dealt with under this Ordinance:

(a) the respondent must comply with the terms of any suspension order or prohibition order;

(b) the respondent is ineligible for appointment to any position or function covered by any suspension order or prohibition order;

(c) the vacancy caused by the suspension order, prohibition order or standing down may be filled by another suitably qualified person; and

(d) subject to the terms of the suspension order or prohibition order the respondent is entitled to whatever stipend, salary, allowances and other benefits that he or she would otherwise have received and which are to be met or reimbursed from funds under the control of the Synod.

PART 11 – CONSENT DETERMINATION

Application and interpretation

39. (1) For the purposes of this Part:

"**a recommendation**" means any recommendation that the Board could make in respect of the respondent under section 61 if the alleged misconduct the subject of the complaint were established; and

"**the report**" means the report referred to in section 40 (1) and any amended report referred to in this Part and includes any documents and material referred to in or relevant to any part of the report.

(2) This Part only applies if the Church authority is the Bishop.

PSC to report to the Bishop

40. (1) As soon as practicable after investigation of a complaint in accordance with Part 8, where the PSC has formed the opinion that the alleged misconduct the subject of the complaint, if established, would call into question whether–

(a) the respondent is fit–

(i) to hold office or to be or remain in Holy Orders; or

(ii) whether temporarily or permanently to exercise ministry and perform any duty or function of the office; or

(b) in the exercise of ministry or in the performance of any duty or function the respondent should be subject to any condition or restriction;

the PSC must prepare a written report comprising a report of its investigation and opinion and a recommendation.

(1a) In acting under subsection (1), the PSC must take into account:

(a) the seriousness of the misconduct alleged in the complaint;

(b) the nature of the material provided in connection with the investigation;

(c) the extent to which it appears that any person is or has been at risk of harm;

(d) any findings of misconduct previously made in relation to the respondent; and

(e) any other relevant matter.

(2) In preparing the report the PSC may consult with the complainant and with the respondent and must include in the report any expressed view of the respondent on the taking of action under this Part.

(3) The report must-

(a) state the facts on which its opinion and recommendations are based;

(b) be accompanied by copies of any documents and material referred to in or relevant to any part of the report; and

(c) state whether the PSC considers it appropriate for action to be taken under section 43.

(4) A copy of the report signed by a member of the PSC must be delivered to the Bishop.

Bishop may request reconsideration

41. (1) Within 10 days of receiving a recommendation from the PSC the Bishop may request the PSC to reconsider the report.

(2) if the Bishop does not request a reconsideration in accordance with the provisions of subsection (1) the provisions of section 43 shall apply.

Reconsideration by the PSC

42. (1) If the Bishop does request a reconsideration in accordance with section 41 (1) the PSC must as soon as practicable reconsider the report in the light of any further information made available to it.

(2) If upon the reconsideration referred to in subsection (1) the PSC decides that the complaint should be dealt with under section 22 it shall inform the Bishop as if it were a direction made by the Bishop to give effect to a recommendation under section 103.

(3) If upon the reconsideration referred to in subsection (1) the PSC decides not to alter the report it must inform the Bishop accordingly and cause a copy of the report to be delivered to the respondent, and the provisions of section 43 shall apply.

(4) If upon the reconsideration referred to in subsection (1) the PSC decides to amend the report it shall deliver an amended copy of the report to the Bishop and to the respondent, and the provisions of section 43 shall apply.

Bishop to determine

43. Within 14 days of an event occurring which gives rise to the operation of this section the Bishop must determine either –

(a) that implementation by agreement of the recommendation contained in the report would be appropriate; or

(b) that implementation of the recommendation by agreement would not be appropriate.

Implementation by agreement

44. (1) If the Bishop makes a determination under paragraph (a) of section 43 the Bishop must invite the respondent to indicate whether or not he or she would agree to the implementation of the recommendation.

(2) If the respondent agrees to the implementation of the recommendation the Bishop must cause the determination to be reduced to writing and be signed by the Bishop and the respondent and, subject to subsection (3), the determination shall take effect as if it were a direction made by the Bishop to give effect to a recommendation under section 103.

(3) Where it is agreed that the determination should include a provision that –

(a) the Church worker's licence or authority be permanently revoked;

(b) the Church worker cease permanently to hold any office then or previously held; or

(c) the Church worker be deposed from Holy Orders;

the respondent may, within the period of seven days following the date of the signed agreement, withdraw from the agreement by written notice to the Bishop, whereupon the agreement will be ineffective and the determination will not be implemented in accordance with this section.

(4) If no agreement is reached or if an agreement becomes ineffective under subsection (3), the Bishop must inform the PSC accordingly.

(5) If agreement is reached under this section and is not rendered ineffective, the Bishop must inform the PSC accordingly and the facts referred to in section 40(3)(a) shall constitute a finding that the conduct referred to therein occurred for the purpose of –

(a) any requirement by law to notify a person or authority that a finding has been made that the respondent engaged in conduct the subject of any such requirement to notify; and

(b) entering on the National register the details of information required by the provisions of the National Register Canon 2007.

Consequence of no agreement

45. If the Bishop informs the PSC either –

(a) that implementation by agreement of any recommendation would not be appropriate; or

(b) that an agreement in accordance with this Part has not been reached or has become ineffective;

the PSC must refer the complaint to the Board in accordance with the provisions of this Ordinance.

Director to notify complainant

46. The Director must notify the complainant as soon as practicable of the result of any action taken pursuant to this Part.

PART 12 – PROFESSIONAL STANDARDS BOARD

Constitution

47. There shall be a Professional Standards Board comprising three persons constituted and appointed in accordance with the provisions of this Part.

Functions of the Board

48. (1) Subject to the provisions of this Ordinance, the functions of the Board are –

(a) to enquire into and determine a complaint referred to it under section 57; and

(b) to make a determination and, where appropriate, make a recommendation under section 61.

(2) The Board has jurisdiction to exercise its functions in respect of a Church worker:

(a) resident or licensed in the diocese, or engaged by a Church authority; and

(b) not resident or licensed in the diocese or engaged by a Church authority but whose conduct giving rise to the reference is alleged to have occurred in the diocese or whose omission giving rise to the reference is alleged to have occurred when the Church worker was resident or licensed in the diocese or was engaged by a Church authority.

Panel

49. (1) The members of the Board in a particular case shall be appointed from a panel 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;

(b) three members of the clergy of at least seven years' standing; and

(c) three laypersons who may or may not be members of the Church and at least two of whom are persons who are considered by the Diocesan Council as having professional experience, training or skills in a field that is relevant to addressing the needs of persons who are subjected to misconduct.

(2) As far as reasonably practicable the members of the panel should comprise an equal number of men and women.

Appointment of the panel

50. (1) The members of the panel will be appointed:

(a) by the Diocesan Council; or

(b) under an arrangement established by the Diocesan Council in connection with the constitution of the Board and its supporting structures.

(1a) The members of the panel will hold office:

(a) on such terms and conditions as may be determined from time to time by the Diocesan Council; or

(b) under an arrangement established by the Diocesan Council in connection with the constitution of the Board and its supporting structures.

(2) Any vacancy in the membership of the panel will be filled in the same manner as provided by subsection (1a).

Appointment of the Board

51. (1) The members of the panel to be convened for a complaint referred to the Board shall be determined by the President or, if there is a vacancy in the office of President or if the President is unable to act, by the Deputy President.

(2) For the purpose of any reference to the Board, the Board shall consist of the President or Deputy President, who shall be the presiding member, and one clerical and one lay member of the panel.

(3) The Board must, so far as reasonably practicable, have at least one man and at least one woman.

(4) A member of the Board may reside outside the diocese.

(5) A member of the Board must not act in a matter unless the member has agreed in writing to abide by this Ordinance.

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

Vacancies on the Board

52. (1) If a member of the Board, other than the presiding member, dies or is for any other reason unable to continue with any matter referred to the Board –

(a) the Board constituted of the presiding member and the other member may, if the presiding member so determines, continue and complete the reference; or

(b) if the presiding member so determines, a substitute member may be appointed to fill the vacancy.

Secretary

53. (1) There shall be a secretary to the Board who shall be appointed by or in accordance with a resolution of the Diocesan Council, and whose duties shall be defined by the President.

(2) The secretary to the Board may act in a corresponding capacity for another diocese either generally or for a particular case or matter.

Quorum

54. The quorum for a meeting of the Board shall be all the members of the Board except where the Board by its presiding member makes directions under section 84 of this

Ordinance.

Simultaneous sittings

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

Validity of proceedings

56. An act or proceeding of the Board is not invalid by reason only of a vacancy in its membership or of the membership of the panel and, notwithstanding the subsequent discovery of a defect in the nomination or appointment of members of the panel or the Board, any such act or proceeding is as valid and effectual as if the member had been duly nominated or appointed.

PART 13 – REFERENCE OF A COMPLAINT TO THE BOARD

Reference after investigation

57. As soon as practicable after investigation of a complaint in accordance with Part 8, and subject to the provisions of Part 11, where the PSC has formed the opinion that the alleged misconduct the subject of the complaint, if established, would call in question whether:

(a) the respondent is fit–

(i) to hold office or to be or remain in Holy Orders; or

(ii) whether temporarily or permanently to exercise ministry and perform any duty or function of the office; or

(b) in the exercise of ministry or in the performance of any duty or function the respondent should be subject to any condition or restriction;

the PSC must refer the complaint to the Board.

Procedure for reference

58. (1) The PSC must refer the complaint to the Board by delivering to the secretary of the Board a written report of its investigation and opinion signed by a member of the PSC.

(2) Within 14 days of the date of the reference of the complaint to the Board or within 14 days of the date of the document or material coming into existence, whichever is the later, the PSC must cause to be delivered to the secretary of the Board any documents and material relevant to the reference.

(3) The PSC, as soon as practicable after delivering the report referred to in subsection (1) to the secretary of the Board, shall, if they have not already been delivered to the respondent, cause to be delivered to 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.

(4) The report referred to in subsection (1) may be the report referred to in Part 11 without any reference to any action taken or not taken under Part 11.

Convening of the Board

59. (1) Upon a complaint being referred to the Board, the President or Deputy President as the case may be shall as soon as possible determine the membership of the Board for the purpose of the reference.

(2) The President or Deputy President as the case may require must thereupon cause to be convened a sitting for the purpose of giving directions.

Board to act expeditiously

60. (1) The board must deal with a complaint as expeditiously as possible.

(2) The Board may, if it sees fit, proceed with the determination of a reference notwithstanding that there may be mediation or conciliation proceedings relating to the subject matter of the reference being conducted by or at the direction of the PSC and notwithstanding that there may be criminal or other proceedings being taken against the respondent or some other person.

Powers of the Board

61. (1) If the Board is satisfied[2] that the Church worker did commit any misconduct and that:

(a) the Church worker is unfit-

(i) to hold a particular or any office, licence or position of responsibility in the Church or to be or remain in the employment of a Church body or in Holy Orders; or

(ii) whether temporarily or permanently to exercise ministry or employment or perform any duty or function of the office, licence or position;

or

(b) in the exercise of the Church worker's ministry or employment or in the performance of any duty or function, the Church worker should be subject to any condition;

the Board may determine in writing accordingly and may recommend to the relevant Church authority any one or more of the following:

(c) that the Church worker be counselled;

(d) that the Church worker be suspended from office or employment or from performing the function as the case may be for such period determined by the Board;

(e) that the licence or authority of the Church worker be revoked;

(f) that the Church worker's contract of employment (if any) be terminated;

(g) that the Church worker cease to hold any office then held;

(h) that a prohibition order be made in terms specified by the Board;

[2] See section 90.

(i) that the Church worker's holding of office or employment or performance of the function, as the case may be, shall be subject to such conditions or restrictions as the Board may specify;

(j) that the Church worker be directed to do or to refrain from doing a specified act;

(k) that a charge be promoted against the respondent before the Diocesan Tribunal;

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

(m) that the Church worker should be deposed from Holy Orders;

(n) otherwise as the Board sees fit.[3]

(2) If the Board is satisfied[4] that the Church worker is unfit –

(a) 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) whether temporarily or permanently to exercise Ministry and perform any duty or function of office;

its recommendation must include any one or more of those specified in paragraphs (d), (e), (f), (g), (h) or (m) of subsection (1).

Power to dismiss or take no further action

62. (1) If the Board is not satisfied that the Church worker committed any misconduct or that the complaint is false, vexatious or misconceived, the Board may determine accordingly and must dismiss the complaint.

(2) If the Board is satisfied that the Church worker did commit misconduct but is not satisfied as to any of the matters in paragraphs (a) and (b) of subsection (1) of section 61, the Board may determine accordingly and must take no further action in relation to the complaint.

Power to defer final recommendation

63. (1) The Board may defer making any final recommendation on a complaint and may for that purpose adjourn any hearing from time to time for a period or periods not exceeding in the aggregate 12 months, on terms that the Church worker undertake for a specified period and in a form approved by the Board to do one or more of the following acts or omissions –

(a) stand down from the office or employment or from performing specified duties of office or employment;

(b) undertake counselling from a person approved by the Board;

(c) submit to periodic medical examination by a person approved by the Board;

[3] Recommendations which might be made under paragraph (n) include participation in conciliation or mediation; an apology; an admonition; retraining of a specified nature; reparation of a specified nature.
[4] See section 90.

(d) undertake a specified program of medical treatment or rehabilitation whether as an outpatient or inpatient;

(e) provide medical or other evidence requested by the Board to assist it in deciding on any final recommendation; and

(f) perform or refrain from performing some other specified act.

(2) If at the time of deferring a final recommendation in accordance with this section the Board is satisfied that the Church worker is at that time either unfit to hold office or to exercise ministry or to perform any duty or function of the office or employment, any undertaking given by the Church worker must include an undertaking under paragraph (a) of subsection (1) in such form as the circumstances may require and as the Board may approve.

(3) If within a period specified by the Board the Church worker declines to give an undertaking in accordance with subsection (1), the Board must proceed to make a determination and recommendation.

(4) The Board may take into account the failure of the Church worker to comply with his or her undertaking under subsection (1) in deciding on any final recommendation on a complaint.

PART 14 – PROFESSIONAL STANDARDS REVIEW BOARD

Establishment of Review Board

64. There shall be a Professional Standards Review Board comprising 3 persons and constituted and appointed in accordance with the provisions of this Part.

Function of the Review Board

65. Subject to the provisions of this Ordinance the function of the Review Board is to determine any application authorised by this Ordinance for review of a decision of the Board.

Panel of Review Board members

66. The members of the Review Board in a particular case shall be appointed from a panel of up to 8 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) at least one member of the clergy; and

(c) at least one layperson.

Appointment of Panel

67. (1) The members of the panel will be appointed:

(a) by the Diocesan Council; or

(b) under an arrangement established by the Diocesan Council in connection with the constitution of the Review Board and its supporting structures.

(2) The members of the panel will hold office:

(a) on such terms and conditions as may be determined from time to time by the Diocesan Council; or

(b) under an arrangement established by the Diocesan Council in connection with the constitution of the Review Board and its supporting structures.

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

(4) Any vacancy on the membership of the panel will be filled in the same manner as provided by subsection (2).

Convening a Review Board

68. (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 member of the clergy and one lay person.

(3) So far as it is reasonably practicable, the Review Board shall include at least one man and least one woman.

(4) The quorum for a meeting of the Review Board shall be all the members of the Review Board except where the Review Board by its presiding member makes directions under section 84 of this Ordinance .

(5) A member of the Review Board shall not act as a member unless the member has agreed in writing to abide by this Ordinance.

Vacancies on the Review Board

69. (1) If a member of the Review Board, other than the presiding member, dies or is for any other reason unable to continue with any matter referred to the Review Board–

(a) the Review Board constituted of the presiding member and the other

member may, if the presiding member so determines, continue and complete the review; or

(b) if the presiding member so determines, a substitute member may be appointed to fill the vacancy.

(2) Any vacancy in the membership of the Review Board, if required to be filled, shall be filled by the President or, if the President is not available, the Deputy President.

Secretary

70. 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.

Simultaneous sittings

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

Validity of proceedings

72. 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 a member 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 15 – APPLICATION FOR REVIEW

Interpretation

73. In this Part, "**reviewable decision**" means any finding of fact, determination or recommendation by the Board under sections 61 or 62 of this Ordinance.

Application to Review Board

74. Where the Board has made any reviewable decision, the respondent or the PSC may within 14 days from the date of the decision or such further period as the Review Board may allow, apply to the Review Board for review of the decision.

Documents and material to be delivered following application

75. 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 PSC

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.

President to determine membership of Review Board

76. 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.

Review Board may exercise the powers of the Board

77. The Review Board may exercise all the powers of the Board under this Ordinance and may—

(a) affirm the decision under review;

(b) vary the decision under review;

(c) set aside the decision under review and make another decision in substitution for it; or

(d) set aside the decision under review and remit the matter for reconsideration by the Board in accordance with any directions or recommendations of the Review Board.

Review Board to deal with application expeditiously

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

PART 16 – PROCEEDINGS OF THE BOARD AND THE REVIEW BOARD

Conduct of proceedings

79. Subject to the provisions of this Ordinance 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.

Failure to appear

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

(2) The Review Board may make a determination in the proceedings in the absence of any submissions from or on behalf of a person affected by the determination if

satisfied that reasonable opportunity was given to that person to make submissions.

Powers and duties

81. (1) Subject to this Ordinance, each of the Board and the Review Board –

(a) may regulate the proceedings of its meetings as it sees fit;

(b) may inform itself from the record of or transcript of proceedings in any court or tribunal and may adopt any findings in, and accept as its own, the record of or transcript of proceedings in of any court or tribunal;

(c) may conduct its business and any proceedings by video link, conference telephone or by any electronic means of communication; 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 PSC.

(2) The Board must give the PSC and the respondent a reasonable opportunity to adduce evidence, to examine and 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.

Review Board proceedings

82. (1) Subject to this Ordinance a review by the Review Board will be conducted upon a review of the material referred to in subsection (2) of section 83.

(2) Subject to this Ordinance, the Review Board is not obliged –

(a) to hold a hearing at which -

(i) evidence is adduced, whether by oral examination or signed statement or statutory declaration; or

(ii) submissions are heard orally; or

(b) to admit evidence that was not adduced before the Board in relation to the facts relevant to the complaint unless –

(i) the evidence could not have been obtained with reasonable diligence for use at the hearing before the Board; and

(ii) that there is a high probability that the result would have been different had it been received at that hearing.

Matters to be considered

83. (1) Where a matter is referred to the Board the Board must consider the complaint 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 PSC as may be submitted;

(c) any further material received from the complainant and the Church worker relevant to its consideration;

(d) any other relevant evidentiary material;

(e) whenever the conduct may have occurred, any standards prescribed by the code of conduct approved under this Ordinance;

(f) the conduct of the Church worker as it finds it to have been; and

(g) any failure of the Church worker to comply with a provision of this Ordinance.

(2) Where an application for review is made to the Review Board, the Review Board may make any finding on any relevant question of fact, and in making its determination must take into account –

(a) the determination and reasons of the Board;

(b) the evidentiary and any other material that was before the Board;

(c) any submissions made to the Review Board in relation to the review;

(d) any evidence admitted by the Review Board under section 82;

(e) whenever the conduct may have occurred, any standards prescribed by the code of conduct approved under this Ordinance;

(f) the conduct of the Church worker as it finds it to have been; and

(g) any failure of the Church worker to comply with a provision of this Ordinance.

Legal representation

84. The PSC may and the respondent at the respondent's own expense may appoint a legal representative to assist in the process.

Directions

85. 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 or review;

and for that purpose the Board or the Review Board may be constituted by the presiding member or by a member appointed for the purpose by the presiding member.

Appointment of a person to assist

86. 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.

Directions to PSC

87. Each of the Board and the Review Board may at any time and from time to time give directions to the PSC as to any further inquiries or investigation it requires to be carried out for the purposes of the reference and the PSC must to the best of its ability cause such directions to be carried out.

Written evidence

88. Without limiting the meaning and effect of section 82, 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.

Decisions of other bodies

89. (1) 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 Australia of an offence involving misconduct;

(b) has been found guilty (without conviction) by a court within Australia of an offence involving misconduct;

(c) has admitted in proceedings before a court or tribunal within Australia having engaged in conduct involving misconduct;

(d) has been found by a court or tribunal within Australia to have engaged in conduct involving misconduct; or

(e) has been disqualified by a court or tribunal within Australia from professional practice on account of conduct involving misconduct;

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 concerned; 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 concerned.

(2) Nothing in this section affects the operation of Part 9 of this Ordinance.

Standard of proof

90. (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.

Members of Board and Review Board not to meet with parties

91. No member of the Board or the Review Board shall individually meet with either the complainant or the respondent or anyone acting on their behalf while the matter is in progress.

Disqualification where personal interest

92. (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.

Medical examination

93. (1) The PSC or the Board or the Review Board may require the respondent to submit within a specified time to a medical, psychiatric or psychological examination by a person approved by the PSC 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 Synod.

(2) A copy of the report of an examination under subsection (1) shall be provided to the respondent, the Director, the PSC, the Board and, if applicable, the Review Board.

Duties of the respondent

94. (1) The respondent must, subject to subsection (2), truthfully answer any question put by on behalf of the Board or the Review Board in the exercise of powers conferred by this Ordinance.

(2) If the respondent declines to answer a question on the ground that the answer might tend to incriminate the respondent, a written record shall be made of the question and of the ground of refusal.

(3) The respondent must –

(a) not mislead the Board or the Review board or a member of either of them;

(b) not unreasonably delay or obstruct the Board or the Review Board or a member of either of them in the exercise of powers conferred by this Ordinance.

Limitation on promotion of a charge in the Diocesan Tribunal

95. If the Board or the Review Board is satisfied that there is no reasonable likelihood that the Diocesan Tribunal would find the respondent guilty of any offence, the Board or the Review Board shall not recommend that a charge be promoted against the respondent in the Diocesan Tribunal.

Certain matters not to be inquired into

96. (1) 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 a completed inquiry by a Board under the Professional Standards Ordinance 2006 or this Ordinance; or

(b) inquire into any matter which is or has been the subject of any completed formal investigation or inquiry and determination conducted pursuant to any provision of the Constitution, the Clergy Discipline Ordinance 1983 or an ordinance of a diocesan synod in any case relating to the discipline or professional standards of Church workers by a board of inquiry, 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.

(2) Neither the Board nor the Review Board shall inquire into, make any findings in relation to or take into account any alleged breach of faith, ritual or ceremonial.

Costs

97. (1) Neither the Board nor the Review Board has the power to award costs of any complaint or matter before it.

(2) A Church worker who is a respondent to a complaint to the Board or a party to proceedings before the Review Board may apply to the Diocesan Council for the provision of legal assistance.

(3) The Diocesan Council may grant legal assistance to a Church worker on such terms and subject to such conditions as it shall determine.

Making of rules

98. (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 rules of the Board or the Review Board made under this section 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.

(4) The PSC, the respondent and any other party joined to a complaint or matter by leave of the Board or the Review Board must 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.

Practice and procedure

99. Subject to this Ordinance 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.

Determination of questions

100. (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.

Open sittings

101. (1) Subject to subsections (2) and (3), any hearing of the Board or the Review Board must be held in public.

(2) Each of the Board and the Review Board may direct –

(a) that the whole or part of a proceeding be held in private; or

(b) that only persons or classes of persons specified by it may be present during the whole or any part of a proceeding.

(3) Each of the Board and the Review Board may only make a direction under the preceding subsection if satisfied that the direction is necessary on one or more of the following grounds -

(a) to comply with applicable legislation of the State or a Territory or the Commonwealth;

(b) prevent a real and substantial risk to the proper administration of justice that cannot be prevented by other reasonably available means;

(c) to protect the safety of any person;

(d) to avoid causing undue distress or embarrassment to a complainant (other than the Director) or witness (other than the respondent) in a proceeding that relates in whole or part to a complaint of a sexual offence

as defined in section 4 of the *Evidence Act 1929* (SA);

(e) to avoid the disclosure of confidential information; and

(f) for any other reason in the interests of justice.

Provision of copies of determination and recommendation

102 (1) The Board and the Review board must cause a copy of the determination and recommendations, together with reasons, to be provided to –

(a) the relevant Church authority;

(b) the complainant;

(c) the respondent; and

(d) the Director and the PSC.

(2) The Director must cause to be entered in the national register all details of information required by the provisions of the National Register Canon 2007.

PART 17 – CHURCH AUTHORITY AND COMPLIANCE

Church authority to give effect

103. The Church authority to whom a recommendation under this Ordinance is made must and is empowered to do any acts to give effect to –

(a) a recommendation of the PSC, the Board, an equivalent body or, if applicable, the Review Board; or

(b) any variation or modification of the recommendation consistent with any facts found by the body making the recommendation provided that the body making the recommendation agrees that the substance of the recommendation is preserved.

Compliance by Church worker

104. (1) A Church worker must –

(a) comply with any undertaking given to the Board, the Review Board or the Church authority;

(b) comply with a direction made by the Church authority to give effect to a recommendation of the PSC, the Board or the Review Board, as the case may be, or any permitted variation or modification that recommendation; and

(c) comply with an agreement made under section 44 which is not rendered ineffective.

(2) Failure of a Church worker who is a member of the clergy to comply with an undertaking, direction or agreement referred to in sub-section (1)is an offence.

(3) Subject to section 95, the PSC may institute proceedings forthwith in the Diocesan Tribunal in respect of an offence against this section or, if the Church worker is no

longer a Church worker, 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 Church worker is then resident.

PART 18 – DEPOSITION FROM HOLY ORDERS

Effect of deposition

105. A person who has been deposed from Holy Orders in accordance with this Ordinance or in accordance with the provisions of any ordinance, act, canon, constitution, statute, legislative measure or provision of the General Synod or the diocesan synod of another diocese of this Church –

(a) is incapable of:

(i) officiating or acting in any manner as a bishop, priest or deacon of this Church;

(ii) accepting or holding an office in this Church capable of being held only by a person in Holy Orders;

(b) ceases to have any right privilege or advantage attached to the office of bishop priest or deacon;

(c) shall not hold himself or herself out to be a member of the clergy; and

(d) is not capable of holding an office in the Church which may be held by a lay person without the prior consent of the Bishop.

Instrument of deposition

106. (1) The deposition of a person from Holy Orders by the Bishop pursuant to the recommendation of the Board or an equivalent body shall be effected by the execution by the Bishop of an Instrument of Deposition in or to the effect of the form in the Schedule.

(2) The Bishop must forthwith:

(a) register the Instrument in the Registry of the Diocese;
(b) deliver a copy of the Instrument to the Bishop of the Diocese in which the person who is the subject of the Instrument was ordained;
(c) deliver a copy of the Instrument to the Registrar of the Primate;
(d) cause relevant details to be forwarded to the Director for entry into the national register.

PART 19 – CONFIDENTIALITY AND PUBLICATION

Duty of confidentiality

107. (1) Subject to the provisions of this Ordinance, the Director, a member of the PSC, a member of the Board or the Review Board and a person employed or engaged on work related to the affairs of the PSC, 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 Ordinance 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 where the information may give rise to or be relevant to a claim for indemnity by the Church body is against the insurer or is relevant to obtaining or continuing insurance cover.

(2) The PSC may release to any person, including a Church authority, such material as it may determine with respect to any information or complaint.

Release of information by PSC

108. (1) The PSC must disclose to an equivalent body information in its possession concerning the alleged misconduct of a Church worker:

(a) which is information relevant to, or arising during the course of, an investigation being undertaken by the PSC where the PSC knows that the Church worker is residing in the diocese of the equivalent body; or

(b) which is information concerning misconduct alleged to have occurred in the diocese of the equivalent body;

and must co-operate with any equivalent body.

(2) The PSC may disclose to a person or body of another church or Christian denomination exercising powers, duties or functions similar to those of the PSC, details of information in its possession concerning the alleged misconduct of a Church worker and the PSC must co-operate with such person or body to whom the information is disclosed.

Church authority may release information

109. The relevant Church authority may release to any person such material as the Church authority may determine with respect to any information, complaint or finding.

PSC reports

110. (1) Without disclosing the identity of any complainant or the details of any complaint, the PSC must report annually to the Diocesan Council on its activities for that calendar year.

(2) Notwithstanding subsection (1), the report of the PSC pursuant to that subsection may identify a Church worker who has been exonerated from an allegation the subject of the complaint or who has been the subject of a determination or recommendation by the Board or the Review Board favourable to the Church worker.

(3) The PSC must, in respect of every complaint with which it is dealing under this Ordinance, report either orally or in writing to the Bishop with such frequency and as fully as the Bishop may reasonably require.

PART 20 – INDEMNITY

Obligation to indemnify

111. The Diocesan Council must and is hereby authorised out of church funds under the control of the Synod to indemnify –

(a) the Director and any delegate of the Director;

(b) any carer appointed under this Ordinance or any protocol;

(c) the members of the PSC and each of them;

(d) any delegate of the PSC;

(e) the members of the Board and each of them;

(f) the secretary of the Board;

(g) any person appointed by the Board pursuant to this Ordinance;

(h) the members of the Review Board and each of them;

(i) the secretary of the Review Board;

(j) any person appointed by the Review Board pursuant to this Ordinance; and

(k) the Bishop;

in respect of 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 Ordinance in relation to a Church worker.

PART 21 – REGULATIONS

Regulation making power

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

PART 22 – REPEAL, COMMENCEMENT AND TRANSITIONAL

Repeal

113. The Professional Standards Ordinance 2006 (hereinafter referred to as "the repealed Ordinance") is repealed.

Commencement

114. This Ordinance shall take effect on a date ("the commencement date") to be determined by the Bishop after consultation with the Diocesan Council.

Transitional

115. (1) The Code of Conduct approved under the repealed Ordinance as at the commencement date shall continue as a Code of Conduct approved under this Ordinance.

(2) The members of the Professional Standards Committee and the Director of Professional Standards holding office under the repealed Ordinance at the commencement date shall continue in their respective offices under this Ordinance.

(3) Any delegation of a function made by the Professional Standards Committee under the repealed Ordinance, other than a delegation not permitted under section 14 of this Ordinance, shall remain in force under this Ordinance.

(4) Any step taken to refer any information, as defined in the repealed Ordinance, to a member of the Professional Standards Committee or the Director of Professional Standards under the repealed Ordinance shall continue to have effect under this Ordinance, unless the matter has been resolved or determined before the commencement date, and any action taken under Parts 4, 5 or 6 of the repealed Ordinance by the Professional Standards Committee, the Director of Professional Standards or any delegate in relation to such information shall continue to have effect as if it were action taken under this Ordinance and, in the case of a matter before the Professional Standards Committee, as if it were the subject of a complaint under this Ordinance, subject nevertheless to any decision of the Professional Standards Committee, director or delegate made after the commencement date.

(5) Any suspension or prohibition order made under Part 6 of the repealed Ordinance having effect on the commencement date shall continue to have effect as if it were a suspension order or a prohibition order as the case may be under this Ordinance.

(6) A Professional Standards Board constituted under the repealed Ordinance and holding office at the commencement date shall continue in office for the duration of the matter before it and shall have and may exercise any of the powers of a Board under this Ordinance in relation to that matter as if the matter were a complaint referred to the Board under this Ordinance.

(7) If any question arises as to the powers of a Professional Standards Board acting under subsection (6) the matter shall be resolved by the President of that Board having regard to the matters referred to in section 79 of this Ordinance.

(8) Any determination, recommendation or finding of fact of a Professional Standards Board acting under subsection (6) shall take effect as if it were a determination, recommendation or finding of fact made under this Ordinance.

(9) Nothing in this Ordinance shall affect the validity or operation of any determination or recommendation made or given effect under the repealed Ordinance.

THE SCHEDULE

TO

I, ARCHBISHOP OF ADELAIDE do by these presents hereby depose you from Holy Orders (particulars of which are set out below) in accordance with the recommendation of the Professional Standards Board of the Diocese of Adelaide.

PARTICULARS OF HOLY ORDERS:

FULL NAME AND ADDRESS:

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

DATED:

SEALED:

Legislative History

Passed 18 October, 2015

Amended 15 October 2022 – Sections 10(3), 14A, 16A, 23(3), 23(3a), 40(1)(a), 40(1a) & 57(a): effective 15 October 2022

Amended 28 October 2023 – Sections 2, 6, 11, 15, 16, 49, 50, 66 & 67: effective 28 October 2023