

MEMORANDUM

To: Members of the Diocesan Council

From: The Bishop Administrator

Re: **DIOCESAN POLICY ON SAFE MINISTRY WITH PERSONS WHO HAVE BEEN CHARGED WITH OR CONVICTED OF SERIOUS SEXUAL MISCONDUCT**

Date: 12 November 2013

In seeking to work with the policy approved by the Diocesan Council it has become apparent that there is a potential issue that must be addressed.

The current policy utilises the definition of "*serious sexual misconduct*" in determining to whom the policy should apply.

Presently, the policy defines "serious sexual misconduct" as:

"sexual offences which would result in a person not being granted clearance to work with children in the state of NSW in accordance with the Child Protection (Working With Children) Act 2012 and sexual conduct against a person under the age of consent before a Board or Tribunal such as the Professional Standards Board".

The current definition ensures that the strategies in the policy do not come into effect until either:

The conduct identified is capable of denying a clearance to work under the relevant child protection legislation; and/or

There are concluded proceedings relating to such conduct before a relevant board.

In the course of their work, the Professional Standards Director and Professional Standards Committee become aware of certain conduct that could, on any reasonable basis and in time, be characterised as "serious sexual misconduct".

However the concern for care and safety associated for which the policy is designed to respond will almost always exist prior to the time that the threshold in the policy is reached. The advice I have received is that current policy may not cover aspects of our duty of care which come into play when the Diocese knows, or ought to know, about such conduct.

The current policy does not provide for effective risk management until the definition is established.

The Director already undertakes a process of risk identification and preliminary assessment during the course of investigations into alleged adverse conduct. The Director's findings are presented to the Committee which in turn is required to make its own assessment.

It is of serious concern that the Committee may identify an immediate risk that requires appropriate management, however due to the current scope of the policy, the policy's strategies cannot be deployed as the definition of "serious sexual misconduct" has not been satisfied.

On this basis, I will propose to the next DC that the current definition of serious sexual misconduct be revised to state:

"Serious sexual misconduct" means sexual offences which would result in a person not being granted clearance to work with children in the state of NSW in accordance with the Child Protection (Working with children) Act 2012, sexual conduct against a person under the age of consent before a Board or Tribunal such as the Professional Standards Board and/or sexual conduct about which the Professional Standards Committee has made an adverse risk assessment."

It already appears that for clarity, it would be helpful to introduce definitions for both terms. I will be proposing for simplicity:

"Charged with" in the context of this document means the criminal process of charging and any formal administrative process by which a person's suitability or fitness for a particular office is formally placed before a formally constituted board of review.

"Convicted" in the context of this document means the court process of conviction and any formal administrative process by which an adverse finding against a person's suitability or fitness for a particular office is made by a formally constituted board of review.

As at 11 November 2013, I have asked the Director of Professional Standards and the PSC to work from the broader scope of this proposal as an interim measure pending the decision of this Diocesan Council.