

## ANGLICAN DIOCESE OF MELBOURNE

### *Professional Standards Uniform Act Adoption Bill 2016*

#### Explanatory Memorandum

##### *Introduction*

1. This memorandum offers explanation of the *Professional Standards Uniform Act Adoption Bill 2016 (the Adoption Bill)* and its scheduled *Professional Standards Uniform Act 2016 (the Uniform Act)*. In addition, footnotes are endorsed on the Uniform Act, not so as to form part of the enactment, but to offer further explanation.
2. Clause 5 of the Adoption Bill provides that the Uniform Act as set out in the Schedule to the Act, modified as provided in the Adoption Bill and as in force from time to time—
  - (a) applies as a law of the Synod of the Diocese; and
  - (b) as so applying may be referred to as the *Professional Standards Uniform Act 2016 (Diocese of Melbourne)*; and
  - (c) so applies as part of the *Professional Standards Uniform Act Adoption Act 2016*.
3. The Uniform Act is based on the Professional Standards legislation and protocols of the dioceses of Ballarat, Melbourne and Wangaratta which have been revised to take into account the following developments -
  - (a) the completion of the model episcopal standards ordinance (the model legislation to deal with complaints or conduct matters involving the diocesan bishop);
  - (b) the audits of professional standards files in the 5 Victorian dioceses;
  - (c) the report of the Victorian Parliamentary Enquiry, Betrayal of Trust;
  - (d) the reports of the Royal Commission into Institutional Responses to Child Abuse; and
  - (e) the incorporation of diocesan corporations in Victorian dioceses with particular responsibility for professional standards.
4. On 29 August 2014, the Provincial Council of Victoria by resolution established a Provincial Working Group to undertake a review of professional standards across the Province with a view to establishing a common

Provincial Model Ordinance for Professional Standards for clergy and Church workers.

5. The Group comprises the Bishop of Bendigo, the Rt Rev Andrew Curnow as Chair, Ken Spackman as Deputy Chair, Michael Shand QC, Chancellor of Melbourne diocese, Charles Gunst QC (since October 2015), Chancellor of Ballarat diocese, Brian Norris, Registrar Gippsland Diocese, John Henry, Advocate, Bendigo Diocese, Damian Neylon, as Chair of Anglicare Victoria and more recently Rachel Ellyard, Advocate Wangaratta Diocese together with an independent consultant.
6. The present form of the Uniform Act was reached after 16 meetings of that committee and also after consultation with past participants in the complaints process and survivors as well as –
  - (a) the Professional Standards Commission of the National Church;
  - (b) the members of the Provincial Legal Committee comprising the Chancellors and Advocates of the Diocese;
  - (c) the President and Secretary of the Professional Standards Board;
  - (d) the President and Secretary of the Professional Standards Review Board;
  - (e) the Chair of the Professional Standards Committee and its members; and
  - (f) the Director of Professional Standards.
7. The Uniform Act was considered by Provincial Council at its meeting on 29 April 2016. Provincial Council approved it for consideration and where possible adoption by a synod of a diocese in the Province.
8. In late May this year, the Synod of the Diocese of Bendigo enacted the Uniform Act in substantially the same form as the present Bill. In speaking to the Bill, the Bishop of Bendigo, the Rt Rev Andrew Curnow outlined the need for a consistent approach in response to outcomes from the Royal Commission. He said–

In 2014 the chair of the Royal Commission into Institutional Child Abuse, Justice McClelland, observed that the Anglican professional standards models were “confusing too many survivors.” He said “Instead of there being one straight forward system across the whole of the Anglican Church of Australia, survivors were often confronted with a mishmash of approaches with each diocese doing its own thing.”

He called for a more uniform approach. In Victoria it was decided that we should at least attempt to have a uniform model in this state as a first stage in response to Justice McClelland’s challenge.

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***The goals of the Uniform Act***

9. The Uniform Act is not intended to replace the *Diocesan Tribunal Act 1963* which provides for the laying and hearing of charges for ecclesiastical offences against clergy. That process which is rarely used focuses on a disciplinary *sanction* for the commission of a specific offence.
10. The Uniform Act rather stands as a significant revision of our existing *Professional Standards Act 2009*. Like that legislation, it focuses on the question of *fitness* raised by misconduct, with a view to the protection of the community and the maintenance of standards in the Church. It does not provide for punishment, that is to say the imposition of a sanction for misconduct. It involves a discretionary judgment as to a person's fitness to engage in ministry or service.<sup>1</sup> The focus of the Uniform Act is on -
  - (a) a broad definition of misconduct (see cl 5);
  - (b) an orderly process that affords procedural fairness;
  - (c) greater flexibility in the disposition of a matter; and
  - (d) a more holistic approach to misconduct than that of a charge before a disciplinary tribunal.
11. The introduction of the Uniform Act is intended to achieve two key goals:
  - (a) the adoption of uniform legislation which takes into account the experience and learning of the last decade and which sets out processes which reflect best practice in this area; and
  - (b) the creation of a common Office of Professional Standards for the province and beyond, as practicable.

***Uniform legislation***

12. Under the proposed scheme, in due course, each diocesan synod in the Province may adopt the Uniform Act, so as to apply as a law of that synod. This approach acknowledges the legislative autonomy of individual dioceses whilst adopting as uniform an approach as possible. The Bishop in Council of each diocese must approve the regulations made under the Uniform Act for their diocese.

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<sup>1</sup> Cf *Albarran v Members of the Companies Auditors and Liquidators Disciplinary Board* (2006) 151 FCR 466 at [44] and [48] and in the High Court at [2007] 231 CLR 350

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***A common Office of Professional Standards within a corporate structure***

13. It is also proposed that for each participating diocese, professional standards services will be provided by a common Office of Professional Standards and that common office be within a company limited by guarantee (referred to in the Bill as the Scheme Corporation). The company will have the following features:

- (a) It will have as founding members at least the Bendigo and Melbourne, if not the other Victorian diocesan corporations who will have decided to participate from the outset;
- (b) The members will have the power to appoint and remove the directors of the company;
- (c) The board of directors will not be permitted to admit new members without the prior consent of the initial members; and
- (d) Its objects as stated in its constitution will be as set out in the schedule to this memorandum.

This corporate approach is the recommended model for the following principal reasons-

- (e) It is an approach that is more demonstrably independent of the individual diocese and its Bishop within the Church than existing arrangements. This is an aspect seen as crucial to winning the confidence of the community in the process and indeed in the Church as an institution;
  - (f) It offers the capacity to operate with consistency across diocesan boundaries in a uniform manner to provide professional standards services to each diocese and participating agencies and to achieve economies of scale;
  - (g) It has the structural flexibility to accommodate a range of corporate bodies in the Anglican community, not just the Victorian dioceses; and
  - (h) Finally, it best manages the risks associated with the proposed scheme in a contemporary and effective manner.
14. The board of directors of the Scheme Corporation will, ultimately, oversee the provision of professional standards services to all the participating dioceses and entities on a subscription and fee for service basis.

15. The proposal represents a balancing of the interests of diocesan autonomy and the need for independence and to achieve consistency and economies of scale:
- (a) On the one hand, Synod must enact the Uniform Act and reserves the right to repeal it. As at present, the Archbishop in Council must approve any applicable code of conduct for Church workers and regulations under the legislation. The Scheme Corporation must also consult with Bishop in Council when appointing the Director of Professional Standards of a diocese and its Professional Standards Committee; and
  - (b) On the other hand, the directors of the Scheme Corporation will appoint the office holders of the Office of Professional Standards and approve operating protocols.

***A single process for complaints***

16. Under the Uniform Act, a complaint may be made against a ‘Church worker’, who may be either –
- (a) a ‘prescribed Church worker’ as defined in schedule 1 of the Act, for example clergy, lay ministers, remunerated office holders and specified Church volunteers in leadership positions; or
  - (b) other Church volunteers.

The model professional standards ordinance approved by General Synod in 2004 has a similar broad application to clergy and volunteers in the Church.

17. The Uniform Act adopts broadly the same process for all Church workers, subject to three principal exceptions:

**First**, the process for a complaint against a Church volunteer has a time limit of 60 days from referral for determination by the Professional Standards Board or Review Board, subject to extension (cl 85, 95)<sup>2</sup>.

**Second**, a Church volunteer who is not a prescribed Church worker may not appeal from a recommendation for suspension (cl 88). A suspension, however serious for a volunteer, would not affect their livelihood.

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<sup>2</sup> The imposition of time limits for adjudication is common in the building industry. This may call for a practical and robust approach to the process on the part of the board and their expressed reasons. Cf *SSC Plenty Road Pty Ltd v Construction Engineering (Aust) Pty Ltd* [2015] VSC 631 per Vickery J at [100] and [103].

These first and second points signal the intention of Synod by these means to reduce the risk of a protracted and expensive proceeding relating to the fitness of a person in an honorary role. They also respond to the Church's need as an institution to respond in a timely and cost effective manner to a complaint if any person is at risk of harm.

18. The **third** exception is that *prescribed* Church workers, including all clergy, lay ministers, remunerated office holders and Church volunteers in leadership positions (schedule 1) have a duty to report matters (cl 17). This recognises the heavier responsibility of the role office or position of a prescribed Church worker. The duty arises-

If any prescribed Church worker believes on reasonable grounds that a person has suffered harm or is at risk of harm as a result of misconduct by another Church worker and has no reason to believe that the Director is aware of those facts...<sup>3</sup>

This reflects the duty in the existing *Professional Standards Act 2009*, s22 and a similar duty in the *Model Professional Standards Ordinance* approved by General Synod in 2004, s24.

#### ***The steps in the process of dealing with a complaint***

19. The Uniform Act involves the same steps in the process that currently apply under the *Professional Standards Act 2009* of the Diocese and which have been in operation since 2010. In that time the Professional Standards Board in its various jurisdictions has heard at least seven matters, the Review Board at least four applications for review, two of which were clearance applications.

#### ***Step 1 – Assessment by the Professional Standards Committee***

20. A complaint goes to the Professional Standards Committee (**the PSC**) (cl 21) which must cause it to be investigated (cl 29). The PSC and its investigators have powers to collect information, including speaking to witnesses, seeking further details and verification from the complainant (cl 24) and requiring the respondent to the complaint to assist in the investigation (cl 31). These reflect the current *Professional Standards Act 2009*, s31 and the model professional standards ordinance of General Synod, s29.

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<sup>3</sup> A Church worker also has disclosure obligations under State law. In certain circumstances, it is an offence punishable by 3 years imprisonment for any person of or over the age of 18 years to fail to disclose to a member of the police force of Victoria information relating to the commission of a sexual offence against a child under the age of 16 years: s327 of the *Crimes Act 1958* (Vic).

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21. The PSC must decide whether the complaint raises a question concerning the fitness of the respondent Church worker. If the PSC forms the opinion that the conduct alleged in the complaint would, if proven, call the respondent's fitness into question either permanently or for a period of time, the PSC must refer the matter to the Board for adjudication (cl 69).
  22. In certain circumstances, the PSC has other options for alternative resolution of any dispute in connection with the matter in cases where the question of fitness does not arise (cl 22, 32). The PSC also has the option of dismissing or not proceeding with a complaint in certain circumstances (cl 27).
  23. The protocols to be made under the legislation will address with greater detail the procedural steps involved in the investigation process. They will include an obligation on the Director to notify promptly a respondent that a complaint has been made against them.

***Step 2 - (in appropriate cases) standing down or suspension***

24. The Uniform Act contemplates circumstances where a Church worker may be stood down or suspended during the investigation of a complaint (Part 3.5).
25. Generally, except in cases of an immediate unacceptable risk of harm to a person, it is the Board which recommends whether the respondent Church worker should be stood down or suspended from his or her duties but only if satisfied that there is an *unacceptable risk of harm to any person* if the respondent remains in his or her role office or position pending the outcome of the complaint (cl 42).
26. A prescribed Church worker may apply to the Review Board for review of that decision and recommendation (cl 88(a)). It is felt appropriate to give prescribed Church workers this right of review because of the nature of their positions and because in many cases their livelihood depends on the position they hold and standing down or suspension can have significant consequences.

***Step 3 - Adjudication by the Professional Standards Board***

27. If the PSC decides that the complaint raises a question concerning the fitness of the respondent Church worker, the PSC must refer the complaint for adjudication by a Professional Standards Board (the Board) (cl 69). The Board is established by Part 7.7 of the Uniform Act and is to be appointed

from a panel of available members by the directors of the Scheme Corporation.

28. The Board will operate in a manner similar to that provided for by the existing *Professional Standards Act 2009*. Part 5.2 sets out the procedure for referral. It also identifies the role of the PSC:
- (a) to present to the Board—
    - (i) the evidence on which it relies relevant to the reference;
    - (ii) any findings on material questions of fact and recommendations it proposes that the Board should make; and
    - (iii) any submissions in support; and
  - (b) to appear by an authorized representative at any hearing of the Board to assist the Board in its enquiry into the reference.

Part 5.3 sets out how the Board is to determine a complaint or matter, including questions of the standard of proof. Part 5.5 sets out the powers of the Board and how proceedings are to be conducted.

29. Under the Uniform Act, the PSC can refer a matter to the Board even if the Church worker is deceased (cl 70). This is to facilitate an enquiry into misconduct, the determination of which may bring closure to a complaint and facilitate the provision of care and assistance to the survivor. It may also inform constructive changes to process and systems to reduce the risk of such misconduct in the future. The Board can be constituted by a single member in an appropriate case to expedite the process.

***Step 4 (where relevant) – Review by the Professional Standards Review Board***

30. If aggrieved by the decision of the Board, either the respondent or the PSC can apply to the Review Board for review of the decision (cl 89). The review Board is established by Part 7.8 of the Uniform Act.
31. The review is in the nature of a merits review in which the Review Board has all the powers of the Board and may affirm, vary or set aside the decision under review. It stands in the shoes of the Board and must determine what is the correct or preferable decision. The experience in Victoria and South Australia has shown that a review of this nature works better in practice than a review on defined natural justice grounds by an outside legal practitioner specially appointed for the purpose.<sup>4</sup>

<sup>4</sup> See for example *Harrington v Coote* [2013] SASFC 154.

32. There are however constraints on the review process, intended to avoid a protracted hearing and the risk of re-traumatising a complainant. Section 100 of the Uniform Act provides as follows:

100. Subject to this Act, 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 or matter 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.

Both the Board and the Review Board have an overriding obligation to 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 (cl 97).

***Final step (whether after review or otherwise) – action by the Church authority***

33. The role of the Board is to make a determination and recommendations on the referral of a complaint or application for a clearance. The role of the Review Board is to determine an application for review.

34. It is the applicable Church authority, however, which is the body empowered to take action against the respondent (cl 173). That authority will be primarily the Archbishop for the purposes of a complaint against clergy and lay ministers and the incumbent of a parish for the purposes of a complaint against a Church worker appointed by that office holder.<sup>5</sup>

35. The applicable Church authority *must* give effect to the determination and recommendations of the Board or Review Board *or* any modification of them consistent with any facts found by the body making the recommendation and the substance of the determination made by that body (Part 6.1). It has been the practice of the Archbishop to treat the recommendations of the Board in that way, despite the present legislation giving him a discretion.

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<sup>5</sup> The Diocesan Corporation, as the legal entity accountable on behalf of the Church for misconduct, will also constitute the Church Authority to the extent applicable to it.

36. There has been careful consideration given to both the mandatory nature of this provision and the scope for flexibility. In the view of the working group, clause 119 strikes the right balance. This provision precludes the Diocesan Bishop from seeking to ‘second guess’ the substantive outcome reached by the relevant board. If the intended scheme were otherwise, the Diocesan Bishop could only do so, upon a full re-consideration of the matter and the affording of procedural fairness to the parties. The process contemplated by the Uniform Act frees the Diocesan Bishop from these burdens. Currently the board includes distinguished members from different professions. If the outcome of their careful deliberations were liable to be set aside by an administrative decision of the Diocesan Bishop, it would likely be more difficult to find people of the required calibre willing to serve in these roles.
37. The concept of the Church authority in the legislation is developed to cover the case where both the Diocesan Bishop and the diocesan corporation are involved (cl 173(d)). In those circumstances, good governance requires that both the Diocesan Bishop and the board of the diocesan corporation should receive the recommendations of the Board and the Review Board and act on them to the extent applicable to each. The board of the Diocesan Corporation can reasonably be expected to be concerned about the implications of a particular determination and recommendation for any general system of operation or risk management. The corporation has a moral duty, if not legal, to take reasonable steps to ensure that members of the public are not exposed to risks to their safety arising from the ministry or service of Church workers.<sup>6</sup>

#### ***Duties on Church worker and Church volunteer***

38. As already noted, the Uniform Act imposes duties on both a *prescribed Church worker* and a *Church volunteer* (ch 2), more onerous duties in the case of the former:
- (a) The prescribed Church worker is subject to a duty to report matters where a person has suffered harm or is likely to suffer harm (cl 17(1)). See above paragraph 18.
  - (b) Every Church worker is subject to a duty to notify the Director if charged with a prescribed offence (cl 18). These are in addition to any duties on the Church worker under Victorian law.<sup>7</sup>

<sup>6</sup> Cf *Occupational Health & Safety Act 2004*, s23.

<sup>7</sup> Independently of this provision, a Church worker in Victoria who holds a working with children clearance is subject to a statutory obligation under s20 of the *Working with Children Act 2005* (Vic) to

- (c) A Church worker, including a Church volunteer also has a duty to assist with the handling of the complaint (cl 19). These reflect the current *Professional Standards Act 2009* and the model professional standards ordinance of General Synod. They also have a duty to comply with any undertaking given by them (cl 20).

### ***Clearances***

39. The Uniform Act reaffirms the existing requirement for each person in either ordained ministry or lay ministry to apply for a *clearance for ministry* (Ch 4). A person is prohibited from engaging in ministry without both that clearance and the licence or other authority of the Diocesan Bishop (cl 57). These provisions for clearance are intended to improve the existing provisions on clearance for ministry in Part 11 of the *Professional Standards Act 2009*.
40. The Bill also introduces Part 4.2 on *clearance for service*, which authorises the Archbishop in Council to prescribe any particular role office or position (other than clergy or lay ministry) for which a clearance must be obtained. There is at present no legislative basis for requiring lay volunteers in the diocese to apply for a clearance. Under the proposed provisions, a dispute about whether a clearance should be granted must be referred to the Professional Standards Board for determination or on review to the Review Board (cl 69(b)). This affords to lay people the same procedural fairness that is currently available to clergy and lay ministers.
41. It follows that not every lay role, office or position will require a clearance for service, rather as a general rule, only those the subject of a particular determination by the Archbishop in Council. This facilitates a measured and practical administrative response to the need for clearances in parishes and elsewhere.
42. In the case of both types of clearance:
- (a) The Director and the PSC each have the power to determine that a person is unconditionally fit and can do so, with a minimum of delay;
- (b) If a real question of fitness arises in connection with an application for a clearance, whether for ministry or for service, the PSC must refer the matter to the Board for determination: cl 69. This recognises the

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notify the Secretary to the Department of Justice and the Church authority of any relevant change in circumstances as defined in that section.

distinct adjudicative role of the Board and the need for procedural fairness to be afforded to the applicant.

- (c) The Office of Professional Standards is bound by the final determination of the Board or on review, the Review Board (cl 56(4) and 66(4)) as to whether or not to issue the clearance.

### ***Other aspects of the model***

43. The Bill incorporates some of the innovations in the General Synod Episcopal Standards model ordinance, with modification, including –
- (a) the concept of excluded conduct in the definition of misconduct so that in cases where the office holder has acted in good faith, reasonably and in the lawful discharge of their duties, the complaint can be dismissed summarily (cl 4)<sup>8</sup>;
  - (b) the concept of an agreed statement of facts and or recommendations to be placed before the Board (cl 35, 36);
  - (c) the concept of the Board adjourning a matter for no more than 24 months on undertakings given by the respondent (cl 82); this is to give greater flexibility to the Board in responding to the particular case at hand;
  - (d) the disclosure of any conflict of interest (cl 107);
  - (e) the mandatory publication of anonymised reasons for determination by the Board and Review Board (cl 118); and
  - (f) the mandatory publication by the Church authority of its decision on the recommendations received (cl 120).

### ***Administrative structure***

44. Chapter 7 of the Uniform Act sets out the structure of the various office holders and bodies who are to administer the processes. They include a formal structure of the Office of Professional Standards constituted by the Scheme Corporation involving-

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<sup>8</sup> The provisions are modelled on other legislative contexts including the following:

*Occupational Health and Safety Act 1986 (SA)*, s55A

*Trustee Act 1958 (Vic)*, s67

*Fair Work Act 2009 (Cth)*, s 789FD(2)

*Australian Defence Force* definitions of unacceptable behaviour which distinguish between a person reasonably exercising their legitimate authority at work and an instance of bullying or harassment.

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- (a) the Director of Professional Standards;
  - (b) the Executive Director; and
  - (c) the Professional Standards Ombudsman.
45. The Bill offers much greater flexibility in the composition of the Board determining the matter (cls 150 and 165). A complaint of sexual abuse requires a three member Board but otherwise the board may be one or more persons at the discretion of the President, depending on the nature of the matter. This should facilitate greater expedition in the determination of a complaint or matter.

### ***Sharing of information***

46. Chapter 8 of the Bill includes provision for a joint register in which the Office of Professional Standards is required to keep relevant information (cl 174). The aim is to share the information within the Office of Professional Standards in respect of each other participating diocese, particularly in the province. Discussions in the hearings of the Royal Commission have highlighted the need for dioceses to work together on professional standards and not act as independent stand alone autonomous units. Part 8.2 regulates the disclosure and receiving of information.

### ***Grievance procedure***

47. Part 8.4 of the Uniform Bill puts in place a grievance procedure for complaints about the operation of the Act and protocols which is handled by first, the Executive Director and second, if necessary, the Professional Standards Ombudsman (cl 181).

### ***Biennial audit***

48. Part 8.5 makes provision for a biennial audit to ensure that the Office of Professional Standards is compliant with the provisions of the Uniform Act and protocols. This is to ensure that any systemic issues are identified and rectified as part of a process of continuous improvement.

## **Clause Notes to the Adoption Bill**

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- Clause 1 provides for the short title
- Clause 2 provides for the purposes of the Adoption Bill - to provide for the adoption of the *Professional Standards Uniform Act 2016* and for other purposes.
- Clause 3 gives a definition of *Professional Standards Uniform Act 2016*;
- Clause 4 provides for the Act or provisions of the Act to come into operation on a day (or days, for different parts of the Act) appointed by Archbishop-in-Council.
- Clause 5 provides for the adoption of the *Professional Standards Uniform Act 2016* as a law of the Synod of the Diocese;
- Clause 6 provides for the modifications to the *Professional Standards Uniform Act 2016* –
- “Diocesan Corporation” means the Melbourne Anglican Diocesan Corporation Ltd;
- “Diocese” means the Diocese of Melbourne.
- Clause 7 gives definitions of various terms in Part 3 dealing with transitional provisions;
- Clause 8 provides for those existing complaints which have not been referred to the Professional Standards Board to be dealt with under the *Professional Standards Uniform Act 2016*;
- Clause 9 provides for those existing investigations, if not completed, to be conducted under the *Professional Standards Uniform Act 2016*;
- Clause 10 provides that an existing clearance for ministry is to be taken to be a clearance issued by the Office of Professional Standards pursuant to the *Professional Standards Uniform Act 2016* –
- (a) commencing from the date of that clearance;
  - (b) for the shorter of the period stipulated in the clearance if any and 5 years; and
  - (c) subject to any condition stipulated in the clearance.

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Clause 11 repeals the *Professional Standards Act 2009* and the regulations made thereunder.

### **Clause Notes to the Schedule containing the Uniform Act**

#### **CHAPTER 1 – Preliminary**

##### **1.1 Introduction**

##### **1.2 Interpretation**

##### **1.3 Overriding purposes of the Act**

##### **1.4 Protocols, arrangements and promotion**

##### **1.5 Codes of Conduct**

- Clause 1 provides for the short title.
- Clause 2 provides for the *Professional Standards Uniform Act 2016* or any of its provisions to come into operation as provided by the *Professional Standards Uniform Act Adoption Bill 2016*.
- Clause 3 gives definitions of certain terms used in the Act, including “church worker” and “church volunteer” (see Schedule 1 to the Act).
- Clause 4 provides a definition of excluded conduct – that is, conduct which might otherwise fall within the definition of “bullying”, “emotional abuse”, “harassment” or “spiritual abuse” but which is excluded as misconduct under the Act.
- Clause 5 provides a definition of misconduct of church workers. The definition is intentionally broad and covers a wide range of behaviours, including both the traditional disciplinary offences and other behaviour like bullying and some forms of criminal conduct. It is no wider in concept than the definition of misconduct in the *Professional Standards Act 2009*.
- Clause 6 provides that where any power or function under the Act is delegated and that power or function depends upon a state of mind, the delegate may act according to his or her own state of mind.
- Clause 7 and 8 provide for the delegation of powers on terms and conditions.
- Clause 9 sets the overriding purposes of the Act.

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- Clause 10 provides that the PSC, Board and Review Board must seek to give effect to the overriding purposes in any exercise of power under, or interpretation of, the Act and the protocols.
- Clause 11 provides for the making of protocols to cover procedures and provisions for matters including how complaints are received, how support persons are appointed and the support that can be provided, the provision of information to complainants and respondents, the provision of redress, and procedural fairness.
- Clause 12 empowers the Scheme Corporation and the Diocesan Corporation to promote knowledge and understanding of the Act and the protocols.
- Clause 13 empowers the Diocesan Corporation to enter into arrangements with the relevant corporation or authority of another diocese about the financial terms on which the PSC, Board and Review Board might perform functions on behalf of that diocese.
- Clause 14 provides that Bishop in Council may approve codes of conduct containing the standards of conduct to be observed by Church workers and which will be relevant to questions of fitness to hold a role office or position.
- Clause 15 provides that the Scheme Corporation and the Diocesan Corporation must take such steps as are necessary or desirable to promote knowledge and understanding of any code of conduct.

## **CHAPTER 2**

- 2.1 Knowing the code of conduct**
- 2.2 Duty of the prescribed Church worker to report**
- 2.3 Duty of the Church worker to report**
- 2.4 Duties in relation to complaints**
- 2.5 Undertakings**

Chapter 2 sets out the duties of all Church workers.

- Clause 16 requires every Church worker to familiarise themselves with codes of conduct which are applicable to them.
- Clause 17 imposes a mandatory reporting obligation on prescribed Church workers where they believe on reasonable grounds

that a person is at risk of harm as a result of the misconduct of a Church worker (except where they have reason to believe the harm is already known to the Director).

Clause 18 requires any Church worker who is charged with an offence which is a sexual offence or an offence relating to child pornography to notify the Director of that fact in writing.

Clause 19 sets out the duties of a Church worker when a complaint is made against them.

Clause 20 provides that a Church worker must comply with any undertaking given to, or direction made by, the PSC, Board, Review Board or Church authority.

### **CHAPTER 3**

- 3.1 Introduction**
- 3.2 Summary determination**
- 3.3. Investigations**
- 3.4 Outcomes**
- 3.5 Suspension**

Chapter 3 sets out the process by which complaints against church workers can be made, investigated, and dealt with.

#### ***Complaints***

Clause 21 provides that any person may make a complaint of misconduct by a Church worker, including misconduct by persons who are deemed to be Church workers because they and the PSC and the complainant have consented to the matter being dealt with under this Act.

Clause 22 provides that, before conducting an investigation, the Director must seek the written consent of the complainant to the sharing of information about the complaint and the complainant's identity, the investigation of the complaint and the hearing and determination of the complaint by the Board or the Review Board

Where the complainant does not provide that written consent the PSC is not required to investigate the matter and may dismiss it or take no further action. It may, however, arrange

alternative dispute resolution if the complainant agrees to that, with a view to reconciling the parties.

*For example, a complaint may be made about bullying of a lay worker by the assistant priest of a parish. The complainant may not wish the matter to be formally investigated but does want to try and repair the relationship so wants the opportunity for mediation between the parties.*

Clause 23 provides for how a complaint may be made. It may be in any form, in writing on paper or by email or facsimile or conveyed orally.

Clause 24 provides that the PSC may require further details about a complaint from a complainant and require those details to be verified.

Clause 25 gives the PSC power to refer a complaint or investigation to an equivalent body or bodies where the Church worker in question does not live in or hold a licence or permission to officiate (PTO) in the diocese but does live in, or hold a licence or PTO from, another diocese.

*For example – a complaint is received about a retired priest who holds neither a licence nor a PTO and who is now resident in an adjoining diocese. Such a complaint could be referred to the PSC or equivalent of that adjoining diocese.*

In cases where the PSC and its equivalent body cannot agree about which of them should investigate a matter, the question can be referred to two independent persons who will decide what is the most convenient way for the complaint to be investigated.

Clause 26 provides that if separate complaints are made against a Church worker and a Church volunteer which raise the same or similar facts or legal issues, the PSC may apply to the Board, and the Board may order, that the proceedings be consolidated, or heard together or in a particular sequence, or that one proceeding be stayed until after the other is determined.

**Summary determination by the PSC**

- Clause 27(1) provides that the PSC may dismiss or take no further action in relation to complaints in a range of circumstances, including those which -
- do not fall within the provisions of the Act;
  - are false, vexatious, misconceived, frivolous or lacking in substance;
  - do not have sufficient reliable evidence to warrant investigation;
  - can be dealt with by other means, including by alternative dispute resolution; or
  - are already under investigation or the subject of legal proceedings.

*For example: the PSC receives a complaint about sexual misconduct by a Church worker in their former diocese in circumstances where the Church worker is already the subject of an investigation in that diocese. The PSC decides to take no further action because the matter is under investigation already.*

- Clause 27(2) In acting under subsection cl 27(1), the PSC may recommend to the Church authority any steps that might reduce or eliminate the risk of misconduct either generally by Church workers or in relation to the respondent by way of educational, training or mentoring programme. This is not intended as any validation of the complaint or a finding against the respondent but as a positive step in the supervision of the respondent.

- Clause 28 provides that when dismissing such complaints the PSC must give written notice, including reasons, to both the complainant and the respondent.

**Investigations**

- Clause 29 provides that the PSC must cause all complaints against Church workers to be investigated. It may also investigate the conduct of a Church worker who has not been the subject of a complaint or where a complaint has been withdrawn.

*For example: the PSC becomes aware that a Church worker has been making public statements of a threatening nature towards colleagues on social media. The PSC may investigate that conduct even though no formal complaint has been made.*

Clause 30 requires the PSC or its delegate to obtain as much evidence and material as they think necessary or advisable for presentation to the PSC.

Clause 31 gives an investigator the power to require a respondent to do certain things or provide certain information. This mirrors the obligation on respondents in clause 19. A requirement of this kind is common. See for example the *Legal Profession Uniform Law*, s371. The *Professional Standards Act 2009*, s31 has similar provisions as does the General Synod model professional standards ordinance, s29.

### ***Outcomes***

Clause 32 provides that at any time after the PSC receives a complaint, the PSC has the discretion to direct a respondent to attend alternative dispute resolution, or under s27, to dismiss the complaint or take no action.

Clause 33 provides that the PSC must, after investigation, refer certain matters to the Board and may institute or amend proceedings by way of a charge in the Diocesan Tribunal.

Clause 34 provides that the PSC may still exercise its powers under clauses 32 and 33 even if the subject matter of the complaint or clearance for ministry application has been settled between the parties.

Clause 35 provides that the PSC and the respondent may reach agreed positions, both on facts and on proposed recommendations arising from a complaint, that any such agreed positions are not binding on the Board.

Clause 36 provides that the PSC and the applicant for a clearance may reach agreed positions, both on facts and on the proposed determination of the application; any such agreed positions are not binding on the Board.

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***Suspension***

- Clause 37 provides for the PSC to instigate a process for the suspension or standing down (or other action) of a Church worker where there is an unacceptable risk of harm posed by that person remaining in their present role, office or position pending determination of the complaint.
- The process may be instigated at any time after the receipt of a complaint about a Church worker and may be instigated either by referral to the Board or, in a case of immediate unacceptable risk of harm, directly by way of recommendation to the Diocesan Bishop or other applicable Church authority.
- Clause 38 provides that the PSC must give the respondent notice of the grounds upon which any referral or recommendation under the preceding section is to be made. The PSC must also invite the respondent to show cause why the recommendation should not be made. The time limit of 7 days reflects the urgency of such matters.
- Clause 39 provides for an exemption from the notice requirements in sections 39 and 41 where the unacceptable risk of harm to another person is immediate.
- Clause 40 provides that, where the PSC makes a recommendation directly to the Diocesan Bishop or other Church authority under section 37, it must refer the matter to the Board forthwith and notify the respondent accordingly.
- Clause 41 requires the PSC or the Board to consider any response received from the respondent before making a decision on the recommendation to be made.
- Clause 42 provides that the Board may make a recommendation for appropriate action of a kind set out in section 37 if it is satisfied that there is an unacceptable risk of harm, and may affirm or vary any such recommendation made by the PSC

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- Clause 43 sets out the matters which must be taken into account by the PSC or the Board before making a recommendation to stand down or suspend a respondent.
- Clause 44 provides that a person charged with a sexual offence or a child pornography offence *must* stand down, or be suspended, pending the hearing and determination of the charge.
- Clause 45 requires the church authority to whom a recommendation for suspension or standing down has been made to stand down or suspend a respondent to give effect to that recommendation or to a variation or modification, provided it is consistent with the factors in section 43 and the substance of the original recommendation.
- Clause 46 requires the Church authority to publish its decision in an appropriate form, respecting the anonymity of the parties except in the circumstances stated.
- Clause 47 provides that a suspension, standing down or other action will be terminated by the Church authority upon either the termination of the underlying investigation by the PSC or upon the Church authority giving effect to a recommendation arising from the hearing of the complaint.
- Clause 48 sets out the consequences of a suspension, standing down or other action.

#### **CHAPTER 4 - CLEARANCES**

##### **4.1 Clearance for ministry**

##### **4.2 Clearance for service**

Chapter 4 deals with clearances for ministry and clearances for service.

- Clause 49 contains the definition of ‘clearance for ministry’ as being the certificate that a person is fit to hold a particular proposed role, office or position for ordained or lay ministry in the Church and includes any provisional clearance issued pursuant to a direction of the Board or Review Board under section 80.
- Clause 50 provides that a Church worker intending to engage in ministry within or beyond the diocese is eligible to apply for a

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clearance for ministry. The clearance for ministry outside the diocese replaces the letter of good standing furnished by the Diocesan bishop in former times.

Clause 51 provides that the Director, the PSC and the Office of Professional Standards must deal with the application in accordance with the Act and the protocols.

Clause 52 provides that fitness to hold the proposed role is a condition of eligibility for a clearance for ministry.

Clause 53 provides that the Director may determine that a person is unconditionally fit for ministry and the Office of Professional Standards must issue a clearance accordingly.

Clause 54 provides that the PSC (where the matter has been referred to it by the Director) may determine that a person is unconditionally fit for ministry and the Office of Professional Standards must issue a clearance accordingly.

Clause 55 provides that a certificate issued by the Office of Professional Standards is conclusive evidence of fitness for ministry.

Clause 56 provides for the duration of a clearance for ministry being 5 years or the resignation or retirement of the person from the specified position, whichever is the earlier.

Clause 57 prohibits any Church Worker from engaging in ministry in the diocese without both a clearance for ministry and the relevant licence, permission to officiate or other authority of the Diocesan Bishop.

Clause 58 provides that the Diocesan bishop has a discretion to grant or refuse any licence, permission to officiate or other relevant authority, subject to the person having a clearance for ministry.

***Clearance for service***

Clause 59 gives a definition of ‘clearance for service’, as being the certificate that the person is fit to hold a proposed role, office or position for service in the Church, not being for ministry

whether unconditionally or subject to any condition or restriction.

- Clause 60 provides that a Church Worker is eligible to apply for a clearance for service and that a Church worker appointed to a prescribed role, office or position must apply for a clearance for service within 30 days of their appointment or of their being notified that the role has become a prescribed role.
- Clause 61 provides that the Director, the PSC and the Office of Professional Standards must deal with the application in accordance with the Act and the protocols.
- Clause 62 provides that fitness to hold the proposed role is a condition of eligibility for a clearance for service.
- Clause 63 provides that the Director may determine that a person is unconditionally fit for service and the Office of Professional Standards must issue a clearance accordingly.
- Clause 64 provides that the PSC (where the matter has been referred to it by the Director) may determine that a person is unconditionally fit for service and the Office of Professional Standards must issue a clearance accordingly. If the PSC declines to grant the clearance, it must refer the application to the Board in accordance with s69.
- Clause 65 provides that provides that a certificate issued by the Office of Professional Standards is conclusive evidence of fitness for service.
- Clause 66 provides for the duration of a clearance for service being 5 years or the resignation or retirement of the person from the specified position, whichever is the earlier
- Clause 67 provides that a Church worker who has been refused, or has failed to apply for, a clearance for service must not engage in the service and their role office or position becomes vacant.

## **CHAPTER 5**

- 5.1 Referral of a complaint or matter to the Board**
- 5.2 Procedure for a referral**
- 5.3 Determination of a complaint or matter by the Board**

**5.4 Application for review by the Review Board****5.5 Proceedings in the Board and Review Board**

Chapter 5 deals with the determination of matters by the Board and Review Board.

Clause 68 defines ‘misconduct’ as provided paragraphs (a) to (n) of section 5 for the purposes of Parts 5.1, 5.2 and 5.3.

***Referral of a complaint or matter***

Clause 69 provides that after investigation the PSC must refer a complaint or matter to the Board or an equivalent body if it is of the opinion that

- (a) the alleged conduct of the Church worker would, if proven, call their fitness into question; or
- (b) a Church worker applicant for a clearance may not be fit for ministry or service because he or she has engaged in misconduct.

Clause 70 provides that the PSC must deal with a complaint against a deceased person in the same way as it would if the respondent were still alive; namely, refer it to the Board or to an equivalent body if it has not been otherwise dealt with by dismissal under section 27.

***Procedure for referral***

Clause 71 sets out the form (written report) by which the PSC makes a referral of a complaint or matter to the Board.

Clause 72 provides that the respondent is to receive a copy of the written report within 14 days.

Clause 73 provides that the role of the PSC in proceedings before the Board is to be the party with the carriage of the complaint or matter and to present the evidence and appear before the Board to assist the Board in its enquiry into the reference.

Clause 74 provides that the Board may continue to enquire into a matter even if the respondent Church worker resigns from his or her office or abstains from participation.

***Determinations***

Clause 75 provides that, without limiting what constitutes unfitness as provided in this Part, a Church worker is to be regarded as unfit, whether temporarily or permanently, to hold any particular or any role office or position if the person, in continuing to hold the role office or position constitutes on the balance of probabilities an unacceptable risk of harm to any person.

Clause 76 provides that the Board's role on the referral of a complaint is to determine:

- (a) whether the respondent committed any misconduct; and
- (b) (unless they are deceased) whether the respondent is unfit to hold a particular or any role in the Church or to be or remain in Holy Orders or the employment of any church body

Clause 77 provides that, if the Board is satisfied both that the respondent committed misconduct and is unfit, the Board must make determinations about both those matters and exercise the further powers referred to in this Part.

The Courts have long recognised the difficulty of defining with any specificity the concept of fitness. Gaudron and Toohey JJ in *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321 at 380<sup>9</sup>, noted that an expression such as 'fit and proper' always derives its meaning from the its statutory context:

The expression fit and proper person, standing alone, carries no precise meaning. It takes its meaning from its context, from the activities in which the person is or will be engaged and the ends to be served by those activities. The concept of 'fit and proper' cannot be entirely divorced from the conduct of the person who is or will be engaging in those activities. However, depending on the nature of the activities, the question may be whether improper conduct has occurred, whether it is likely to occur, whether it can be assumed that it will not occur, or whether the general community will have confidence that it will not occur.

### ***Powers of the Board***

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<sup>9</sup> See also *Burroughs v Australian Prudential Regulatory Authority* [2016] FCA 775 per Allsop CJ.

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Clause 78 provides that the Board may make recommendations to the Church authority regarding the respondent, including recommendations that they be counselled, suspended, made subject to conditions, have their licence revoked or varied or be deposed from Holy Orders and may direct the Office of Professional Standards to cancel or suspend respondent's clearance for ministry for such period as the Board may specify;

The Board may further recommend to the Church authority without binding it that –

- (a) an apology or other acknowledgement be given to the complainant or other person affected by the misconduct found to have been committed by the respondent;
- (b) such other steps of a systemic or process or administrative nature be implemented by the Church authority as may be judged worthwhile to prevent or diminish in future the incidence of misconduct and harm to any person.

Clause 79 provides that the Board must dismiss the complaint if it is not satisfied that the respondent committed misconduct or that the complaint is otherwise false, vexatious or misconceived.

Where the Board is satisfied that misconduct occurred but is not satisfied that the respondent is unfit, then the Board must make a determination that misconduct occurred but take no further action.

Clause 80 Subsection (1) provides that the Board may direct that the Office of Professional Standards issue a provisional clearance pending the final determination of the application (if there is no unacceptable risk of harm by it doing so)

Subsection (2) provides that, when dealing with a clearance application, the Board must enquire into and determine whether the Church worker committed any alleged

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misconduct and whether they are unfit to hold a particular or any role office or position in the Church.

Clause 81 provides that, if the Board is satisfied both that the Church worker committed misconduct and that he or she is either unfit or should be subject to conditions, the Board may so determine and may direct the Office of Professional Standards to refuse the application for clearance or to issue the clearance on conditions.

Clause 82 provides that the Board may defer its decision on a complaint or an application for clearance on terms and conditions such as the respondent undergoing counselling or medical examinations, standing down from his or her position, or undertaking a specified rehabilitation program.

Clause 83 provides that the Board may appoint an expert, other than the Director, to assist it in its enquiry.

### *Standard of proof*

Clause 84 provides that the standard of proof in matters before the Board and the Review Board is “reasonable satisfaction on the balance of probabilities” which is the civil standard, tempered with the direction in cl 84(2) that greater care should be taken in scrutinising evidence where the allegation is serious or inherently unlikely or where there are grave consequences attaching to the finding. This is the same approach applied in other disciplinary contexts such as the schemes which apply to doctors, nurses, psychologists and lawyers.

Clause 85 sets a time limit of 60 days within which a matter relating to a church volunteer must be determined.

Clause 86 provides that the Board may seek further information from the PSC or make directions for further investigations or inquiries to be made.

Clause 87 requires the Board to act as expeditiously as possible.

### *Applications for review*

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- Clause 88 provides a definition of ‘decision’ for the purposes of an application for review.
- Clause 89 provides that a respondent, an applicant for a clearance or the PSC may apply for review of a Board decision.
- Clause 90 provides that except in so far as the Board or the Review Board may direct otherwise, an application for review does not operate as an automatic stay of the determination or recommendation of the Board
- Clause 91 provides that the Director must cause all relevant documents held by the Office of Professional Standards to be delivered to the Review Board within 14 days.
- Clause 92 provides that the President is to determine the composition of the Review Board for a matter as soon as possible after receiving the material from the Director.

***Powers of the Review Board***

- Clause 93 provides that the Review Board has all the powers of the Board and may affirm, vary, or set aside the decision under review. This is a form of review called merits review and is broader than an appeal on questions of law or a review on specific errors of fact.
- Clause 94 provides that the Review Board must act as expeditiously as possible.
- Clause 95 sets a time limit of 60 days from the date of the application for review within which the Review Board must deal with a complaint or matter involving a Church volunteer.

***Proceedings of the Board or Review Board***

- Clause 96 defines ‘board’ for the purposes of the succeeding sections to be both the Board and the Review Board.
- Clause 97 imposes an obligation on the board to act fairly and according to the substantial merits of the case, and provides that the board is not bound by the rules of evidence that apply in court proceedings.

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- Clause 98 sets out the powers of the Board and the Review Board.
- Clause 99 provides that hearings will be in private unless the board otherwise directs.
- Clause 100 provides that the Review Board is not obliged to hold an oral evidentiary hearing or to admit new evidence. It does however have an obligation under cl 97 to act with fairness and equity which may mean that in some cases the Review Board will do one or both of those things.
- Clause 101 provides that a preliminary conference should be convened as soon as practicable after a board is constituted for a matter, so as to give directions for a procedural timetable.
- Clause 102 provides that the board may give directions at any time for the procedure to be followed in a matter, including directions about the service of witness statements and other documents.
- Clause 103 permits legal representation, at the party's own expense.
- Clause 104 permits the board to receive written evidence and video link and teleconference means to receive evidence and submissions.
- Clause 105 provides that the board may rely on decisions made by courts or tribunals about the respondent's past conduct.

***Disclosure and material personal interest***

- Clause 106 provides that ordinarily board members must not meet individually with either the complainant or the respondent, or anyone acting for them, while the matter is in progress.
- Clause 107 provides that members of the Board and Review Board must disclose, in writing, to the President all circumstances which might call their impartiality or independence into question, and that members will be disqualified from sitting in a particular matter where they have a material personal interest or other conflict of interest.
- Clause 108 empowers the board to *request* a respondent or applicant to submit to a medical examination. The person is not obliged to

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- comply with the request and the board has no power of compulsion.
- Clause 109 provides that the determination of the Board or Review Board as to the fitness of a Church worker is conclusive evidence of their fitness.
- Clause 110 provides that if it is satisfied that there is no reasonable likelihood of the respondent being found guilty of any offence, the Board or Review Board shall not recommend the laying of such a charge.
- Clause 111 prohibits the board from enquiring into any question arising under the Constitution or any Canon of General Synod (that is, the laws of the National Church) or of another diocese, or from inquiring into alleged breaches of the faith ritual or ceremonial of the Church (those being matters properly dealt with as charges before the Diocesan Tribunal).
- Clause 112 contains a non-exhaustive list of matters the board must take into account in making any determination.
- Clause 113 provides that the board has no power to award costs.
- Clause 114 provides that the President of the board may make, and all parties to a complaint or matter must comply with, rules for the practice and procedure of the board.
- Clause 115 provides that the presiding member of each board has the power to direct its practice and procedure, subject to this Act and the relevant rules.
- Clause 116 provides for the process by which any question of law or procedure to be determined by the board.
- Clause 117 provides that the Board or Review Board may continue with a matter despite for any reason a member other than the presiding member being unable to continue.
- Clause 118 provides for the persons and bodies to whom a copy of determination and the notifications which are to be given.

**CHAPTER 6**

**6.1 The Diocesan Bishop or other Church authority**  
**6.2 Deposition from Holy Orders**

Chapter 6 deals with the implementation of the recommendations of the Board or Review Board.

Clause 119 provides that the Church Authority must give effect to the recommendation or to any variation or modification that is consistent with any facts found by the Board or Review Board and the substance of the determination made by that body under section 76.

Clause 120 provides that the Church Authority must release a written statement of its decision and reasons to the parties to the proceeding. The Church Authority must ensure that any information released to the public is anonymised and redacted so as not to enable the identification of the complainant, any witnesses, any victims or the respondent (save where the respondent's name is already public or the disclosure of their identity is necessary or desirable in the public interest).

Clause 121 provides for the effect of deposition from Holy Orders.

Clause 122 provides for the means of effecting deposition from Holy Orders

**CHAPTER 7**

- 7.1 The Professional Standards Committee**
- 7.2 The Scheme Corporation and the Office of Professional Standards**
- 7.3 The Director of Professional standards**
- 7.4 The Executive Director of the Office of Professional Standards**
- 7.5 The Professional Standards Ombudsman**
- 7.6 The panel of investigators**
- 7.7 The Professional Standards Board**
- 7.8 The Professional Standards Review Board**
- 7.9 The Church Authority**

Chapter 7 establishes the various bodies which together form the structure of the professional standards regime.

Clause 123 establishes the Professional Standards Committee (PSC).

Clause 124 provides for the appointment of the members of the PSC by the Scheme Corporation.

- Clause 125 provides for the membership of the PSC.
- Clause 126 provides for the appointment of the Chair of the PSC by the Scheme Directors.
- Clause 127 to 131 deals with the powers and procedures of PSC.
- Clause 132 provides that the Diocesan Corporation must appoint the Scheme Corporation to provide professional standards services.

***Director of Professional Services***

- Clause 133 establishes the Director (and Deputy Director) of Professional Standards for the diocese, to be appointed by the Scheme Corporation.
- Clause 134 provides for the appointment of an acting Director.
- Clause 135 provides for the functions of the Director, which include the receipt of complaints and applications for clearances, the implementation of protocols and the keeping of appropriate records.
- Clause 136 provides that the Director may act in a corresponding capacity for another diocese (the intention being that there will be a common Director across all participating dioceses).

***Executive Director***

- Clause 137 establishes the Executive Director of the Office of Professional Standards.
- Clause 138 provides for the functions of the Executive Director.

***Professional Standards Ombudsman***

- Clause 139 establishes the Professional Standards Ombudsman.
- Clause 140 provides for the appointment of the Ombudsman by the Scheme Corporation.
- Clause 141 provides for the functions of the Ombudsman

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- Clause 142 provides for the Ombudsman to have access to all files and information held by the Office of Professional Standards relevant to any complaint or matter.
- Clause 143 provides for the establishment of a panel of investigators to carry out investigations under the Act.

***Professional Standards Board***

- Clause 144 establishes the Professional Standards Board.
- Clause 145 provides that the Board may constitute an equivalent body.
- Clause 146 provides for the functions of the Board.
- Clause 147 provides for the composition of the panel from which members of a particular Board will be chosen. The panel will include members who are not members of the Church, members who are clergy, and members with relevant qualifications in areas such as social work, psychology and child protection.
- Clause 148 provides for the mechanism by, and terms on which, members of the panel will be appointed.
- Clause 149 provides for the filling of vacancies on the panel.
- Clauses 150 to 152 provide for the convening of a Board in a particular case and how its membership will be determined and for the obligations of Board members
- Clause 153 sets the quorum for a Board when it consists of more than one member.
- Clause 154 sets the mechanism – majority vote – by which questions before a Board that consists of more than one member shall be decided.
- Clause 155 provides for the appointment of a secretary to the Board by the President.
- Clause 156 provides for the circumstances in which the Board may be constituted by a single member sitting alone.

Clause 157 provides that the Board, separately constituted in accordance with this Part, may act simultaneously for the purpose of references made to it.

Clause 158 provides that an act or proceeding of the Board is not invalid by reason only of a vacancy in its membership or in the membership of the panel and, notwithstanding the subsequent discovery of a defect in the nomination or appointment of members of the panel or the Board, any such act or proceeding is as valid and effectual as if the member had been duly nominated or appointed.

***Professional Standards Review Board***

Clause 159 establishes the Professional Standards Review Board.

Clause 160 provides that the Review Board may constitute an equivalent body either generally or for a particular case or matter.

Clause 161 provides that the function of the Review Board is to determine applications for review under the Act.

Clause 162 provides for the establishment of a panel of members from which the members of a Review Board in a given case will be appointed.

Clause 163 provides that the members of the panel shall be appointed by the Scheme Corporation by resolution of the Scheme Directors after consultation with the President of the Review Board.

Clause 164 provides that any vacancy in the membership of the panel shall be filled by resolution of the Scheme Directors.

Clause 165 provides the process by which a Review Board is to be convened.

Clause 166 provides that a member of the Review Board who is not a member of the Church agrees in acting as a member of the Review Board to abide by the provisions of the Act.

Clause 167 provides that before appointment, a prospective member of the Review Board must sign a statement of availability,

impartiality and independence in any form approved by the Scheme Directors.

Clause 168 provides for the appointment of a secretary to the Review Board who shall be appointed by the President of the Review Board.

Clause 169 provides for a single member to constitute the Review Board (where it is constituted by more than one member) for certain purposes.

Clause 170 provides that the Review Board, separately constituted in accordance with this Part, may act simultaneously for the purpose of applications made to it.

Clause 171 provides that an act or proceeding of the Review Board is not invalid by reason only of a vacancy in its membership or in the membership of the panel and, notwithstanding the subsequent discovery of a defect in the nomination or appointment of members of the panel or the Review Board, any such act or proceeding is as valid and effectual as if the member had been duly nominated or appointed.

Clause 172 provides that subject to the Act and the relevant rules, the practice and procedure of the Review Board will be as directed by the presiding member of the Review Board.

### *Church authority*

Clause 173 provides the definition of 'Church authority' in a range of circumstances.

## **CHAPTER 8**

### **8.1 The Joint Register**

### **8.2 Confidentiality and publication**

### **8.3 Indemnity**

### **8.4 Procedure for grievance about the process**

### **8.5 Biennial Audit**

### **8.6 Regulations**

Chapter 8 deals with the above matters.

Clause 174 provides for the establishment and maintenance of a joint register in which all office holders in the Office of

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- Professional Standards will enter and keep the information they receive regarding complaints and matters. The information in the joint register is to be kept confidential and only disclosed as authorised under the Act.
- Clause 175 provides for a general duty of confidentiality on all holders of offices under the Act and for the specified circumstances in which information may be disclosed.
- Clause 176 gives a definition of alleged misconduct for the purposes of sections 177 and 178.
- Clause 177 imposes a duty of disclosure on the Director in various circumstances, including where the Director has information about a church worker who resides in, or is alleged to have engaged in relevant conduct in, another diocese or who is a member of another church.
- Clause 178 imposes on the Director in various circumstances, a duty of disclosure to the Primate and the Defence Force Bishop or an office holder or body appointed by the Primate or the Standing Committee for that purpose.
- Clause 179 imposes a duty of disclosure on the PSC in various circumstances, including where the PSC has information relevant to a Church worker who is engaging in ministry or service in another diocese or in another church or in the Defence Force.
- Clause 180 provides for an annual report by the PSC to the Scheme Directors.
- Clause 181 provides for an indemnity of the specified persons against all claims demands actions suits and liability for any act or omission respectively by them in good faith and in the exercise or purported exercise of powers or functions, or in the discharge or purported discharge of duties under the Act.
- Clause 182 provides for the first stage of the procedure under which the Executive Director deals with a grievance about the operation of the Act or any protocol.

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- Clause 183 provides, where the person continues to be aggrieved after a response from the Executive Director, for the second stage of the procedure under which the Professional Standards Ombudsman deals with the grievance.
- Clause 184 provides for a biennial audit of the compliance of the Office of Professional Standards with the Act and the protocols, and for the taking of remedial action (where needed) within 6 months.
- Clause 185 provides that the Bishop in Council may (after consultation with the Scheme Directors) make amend or repeal regulations with respect to various matters arising under the Act
- Schedule 1 gives a definition of –
- Church worker
  - Prescribed Church worker
  - Church volunteer
- Schedule 2 prescribes the form of an instrument of deposition from Holy Orders.

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**SCHEDULE**

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**The purposes of the Scheme Corporation as stated in its proposed constitution**

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- (a) The company is established to provide professional standards and other services to charities, including charities that are Anglican dioceses, entities, colleges and schools, to enable them more effectively to fulfil their charitable objects and without limiting the foregoing and solely for that purpose, to:
- (1) establish administer and monitor procedures for handling complaints of misconduct and for resolving applications for redress;
  - (2) provide or arrange care support and treatment of parties to the process;
  - (3) provide mediation, adjudication and other dispute resolution services;
  - (4) provide advice either generally on policies or processes structures and educational programmes intended to reduce the risk of misconduct or specifically in relation to individual cases;
  - (5) administer and monitor procedures for screening for fitness for their role office or position of office holders, clergy, staff and volunteers and for the issue of fitness clearances;
  - (6) design or assist in designing relevant codes of conduct;
  - (7) promote awareness of relevant codes of conduct and the upholding of professional standards and to conduct educational and training programmes for that purpose;
  - (8) to publish or otherwise provide to charities issues of professional standards and safe community environments and compile and distribute statistical and other information;
  - (9) maintain and administer relevant information relating to the fitness of office holders, clergy, officers, staff and volunteers;
  - (10) promote and advance the services provided by the company;
  - (11) consult and maintain relations with other complaint handling schemes which have objects similar or complementary to those of the company;
  - (12) where required by law or any protocol report a matter to the police and any other relevant authority and to support a complainant in making such a report;
  - (13) maintain effective lines of communication between the company and its members.
- (b) In pursuing its purposes, the company may:
- (1) formulate policies;

- (2) make rules in connection with a policy; and
- (3) revoke or amend a policy or rules and formulate others.