

IN THE MATTER of the Royal Commission into Institutional Responses to Child Sexual Abuse

and

IN THE MATTER of an enquiry into the current policies and procedures of the Anglican Diocese of Melbourne in relation to child protection and child-safe standards, including responding to allegations of child sexual abuse

STATEMENT OF MICHAEL WARNER SHAND

Background

1. I am a practising barrister and chartered arbitrator, with chambers at 205 William Street Melbourne. I was appointed Queen's Counsel in Victoria in 1997. I served on the Victorian Bar Council from 2001 – 2007, culminating in serving as Chairman in 2006-7.
2. I am a Fellow of the Chartered Institute of Arbitrators since 2003, serving on the Council of the Chartered Institute of Arbitrators Australian Branch from 2003 – 2006, and as President in 2006. I am a director of the Australian Centre for International Commercial Arbitration (ACICA), since 2006.
3. This statement should be read with the statement and supplementary statement of the Archbishop of Melbourne filed in this proceeding. Legislation, explanatory memoranda and submissions referred to in this statement are annexed to those statements.

Church roles

4. I hold the following principal honorary roles in the Anglican Church:
 - (a) the Chancellor of the Anglican Diocese of Melbourne, since 2007;
 - (b) an ex officio member of the Diocesan Council of the Diocese of Melbourne;
 - (c) an ex officio member of the Melbourne Anglican Trust Corporation;
 - (d) a member of the Provincial Working Group on Professional Standards, since late 2014;
 - (e) a Presidential member of the Special Tribunal of the National Church, since 2011;
 - (f) a member of the Professional Standards Commission of the National Church since December 2014; and
 - (g) a representative of the General Synod of the National Church, since 2011; and

(h) a member of the Provincial Legal Committee since 2002.

5. I served as Chancellor of the Diocese of Ballarat from 2002 to 2010, having been appointed by Bishop David Silk and, from 2004, serving under his successor, Bishop Michael Hough.

Law making in the Church in Victoria

6. In Victoria, it is the Synod of each diocese that enacts laws for the diocese. The General Synod of the National Church has a limited law making jurisdiction. The diocesan synod in a Victorian diocese acts with the enabling authority conferred by the Victorian Parliament in the 1854 *Church of England Constitution Act*. It empowers a 'Church Assembly' or Synod of a diocese to pass legislation binding on members of the Church in the diocese, when passed by separate vote of the House of Clergy and the House of Laity and approved by the Bishop of the Diocese. It has been regarded as revolutionary for its time, in introducing in 1854 the model of democratic synodical government of the Church of England in the colonies.

2003 - 2007

7. In 2003, the 'Anglican Bishop of Ballarat' and "Anglican Diocese of Ballarat' along with the Rt Rev Peter Hollingworth were sued in the Supreme Court of Victoria by the late Ms Annie Jarmyn who alleged she had suffered abuse at the hands of church workers. The proceedings raised the issue of finding the proper institutional defendant in the Church for a plaintiff to sue.
8. In July 2007, I was appointed Chancellor of the Anglican Diocese of Melbourne. Following my appointment, Archbishop Freier asked me to review the professional standards regime of the Diocese. I undertook this process with wide consultation of complainants, respondents, the Director of Professional Standards, the members of the Professional Standards Committee and the Provincial Legal Committee. The latter comprises the Chancellors and Advocates of each of the 5 dioceses in Victoria – the others being Ballarat, Bendigo, Wangaratta and Gippsland.
9. Neither the Diocese of Melbourne nor any of the other four dioceses in Victoria had adopted the 2004 *Model Professional Standards Ordinance* of the National Church. All Victorian dioceses had instead adopted a Power and Trust

Protocol, establishing a Professional Standards Committee to determine complaints against Church workers.

2008

10. In 2008, the Bishop of Ballarat was the subject of complaints from at least 12 of the clergy of the diocese and a lay person. The complaints were investigated over a period of at least 18 months by the Episcopal Standards Commission of the National Church. At that time the only legislation that provided a process to deal with the complaints was the Special Tribunal Canon 2004. This was by way of charge of an ecclesiastical offence to be heard by the Special Tribunal. Eventually, following a settlement reached in June 2010, the Bishop subsequently resigned and no proceedings were commenced in the Special Tribunal. The matter highlighted the need for appropriate diocesan legislation to deal with complaints against the Diocesan Bishop.

Professional Standards Bill 2009 (Melbourne)

11. Following the extensive review and consultation referred to above and with the support of Archbishop Freier, in October 2009, I took to the Synod of the Diocese of Melbourne the *Professional Standards Bill 2009*. Synod enacted the legislation which I had drafted, the *Professional Standards Act 2009*. It set up a clear legislative 'complaint based' framework for dealing with complaints against clergy and certain lay people based on the question of fitness of the Church worker. The Committee refers questions whether allegations against clergy and certain lay office holders have been made out and whether the person is fit for office to the Professional Standards Board for adjudication. On an application for review, the Professional Standards Review Board considers the matter afresh, in similar fashion to how the Victorian Civil and Administrative Tribunal (VCAT) works in Victoria. The Board or Review Board makes recommendations about the Church worker to which the Church authority is empowered to give effect. For clergy, the Church authority is the Archbishop.
12. The *Professional Standards Act 2009* also introduced a requirement for clearance for ministry for clergy and authorised lay ministers.
13. The following year, 2010, the Archbishop in Council of the Diocese (that is the Archbishop and members of the Diocesan Council) approved the applicable codes of conduct, regulations, and protocols for complaint handling and

clearance for ministry. The Professional Standards Committee and Boards were appointed. It was mandatory for the Committee to include at least one person who is not a member of the Church and so far as it was reasonably practicable, to have at least one man and at least one woman. Similar provisions applied to the Board and the Review Board. I drafted the regulations and protocols.

14. In 2010 and 2011, the dioceses of Ballarat and Wangaratta followed suit and passed virtually the same Professional Standards legislation and shared the same Director, Committee and Boards.

Episcopal Standards legislation

15. Legislation governing the conduct of the Diocesan Bishop is a key element in the legislative framework. The head of a diocese holds a central position in the diocesan hierarchy and should be as accountable as the ordinary Church worker.
16. In 2007, General Synod of the National Church enacted the *Episcopal Standards Canon 2007* (the 2007 Canon). The 2007 canon relates to the Diocesan Bishop. With the exception of the Diocese of Bendigo, for a number of reasons discussed in the explanatory memorandum to the Bill referred to below, the other dioceses in the Province of Victoria did not adopt the canon.
17. In October 2011, following a year of consultation with the other Victorian dioceses through the Provincial Council of Victoria and with the support of Archbishop Freier, I took to the October Synod of the Diocese of Melbourne a Bill for an *Episcopal Standards Act 2011* which I had drafted. The Bill incorporated a complaints regime similar to the Professional Standards legislation for clergy and other Church workers that the Synod of the Diocese had already enacted. It related exclusively to the Archbishop of Melbourne and put in place a process by which the holder of that office can be held accountable for misconduct. The latter included– “any other conduct unbecoming or inappropriate to the office and duties and functions of the Bishop of a Diocese”.
18. Subsequently, the Archbishop in Council approved the applicable codes of conduct, regulations, and protocols for complaint handling. Meeting when the Archbishop was not present, the Diocesan Council appointed the Director of

Episcopal Standards and the Episcopal Standards Committee. I drafted the regulations and the protocol.

19. Again, in 2012, the dioceses of Ballarat and Wangaratta followed suit and passed corresponding Episcopal Standards legislation, regulations and protocols and again shared the same Director and Committee.

General Synod Model Episcopal Standards Ordinance

20. In August 2011, the Episcopal Ministry Task Force which had been appointed by the Standing Committee of General Synod at its meeting in October 2010 met for the first time to consider issues concerning the accountability of diocesan bishops. The committee included the Archbishops of Melbourne and Sydney, the Bishop of Willochra and lay representatives including myself. It was chaired by the Hon David Bleby QC, the then Chancellor of the diocese of Adelaide. The committee had 5 meetings, the last in February 2014 and recommended to General Synod a *Model Episcopal Standards Ordinance* based on the Melbourne legislation, but with changes.
21. In July 2014, General Synod approved the model ordinance for adoption by dioceses. The relevant Church authority was designated to be a Council of senior Bishops who were bound to give effect to a recommendation of the Episcopal Standards Board or Review Board or any permissible modification of the same: s100.
22. In October 2015, the Synod of the Diocese of Melbourne enacted the *Episcopal Standards Act 2015*, adopting the model ordinance. The Synod of the Diocese of Bendigo has done likewise. The Act included in the definition of 'misconduct', as well as the conduct unbecoming paragraph in the 2011 Melbourne Act a further head of misconduct, being an 'act or omission, or series of acts or omissions, made inappropriately or unreasonably in response to a complaint about the conduct of a person...'

Incorporation of a Diocesan Corporation

23. In June 2015, the Synod of the Diocese of Melbourne enacted legislation authorising the incorporation of the Melbourne Anglican Diocesan Corporation Ltd and constituting that legal entity as the employer of diocesan office staff and the legal appointor of office holders, clergy and lay, in the diocese. With the

assistance of the Advocate of the Diocese, Dr Ian Gibson, I drafted the legislation for the incorporation.

24. The other dioceses in Victoria each incorporated their own diocesan corporations. A long period of consultation between the dioceses, assisted by the Provincial Legal Committee, had taken place to facilitate these steps. The explanatory memorandum to the legislation gives the background.

Professional Standards Uniform legislation

25. In August 2014, the Provincial Council of Victoria, comprising representatives of all five dioceses in Victoria, resolved to establish a provincial working group, chaired by the Bishop of Bendigo, the Rt Rev Andrew Curnow, 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. This was in the context of audits of professional standards files in the five Victorian dioceses, the passing by General Synod of the resolution for a model ordinance on episcopal standards and the establishment of the Royal Commission.

26. Following extensive consultation and with the support of Archbishop Freier, the Provincial working group, in October 2016, I brought to the Synod of the Diocese the *Professional Standards Uniform Act Adoption Bill 2016* which incorporated the *Professional Standards Uniform Act 2016* (Melbourne). Annexed are –

“A” an extract from the Archbishop’s Charge to Synod;

“B” my second reading speech to Synod on the Bill.

This step followed around two years of consultation within the Province of Victoria, including the Provincial Legal Committee as well as with the Professional Standards Commission of the National Church. The Synod of the diocese of Bendigo had passed similar legislation earlier in 2016. The scheme is modelled broadly along the lines of the *Health Practitioner Regulation National Law* and the Australian Health Practitioner Regulation Agency, substituting dioceses for States and the scheme corporation for the Agency.

27. The legislation, which I drafted, addresses some core standards that an institution such as the Anglican Church should address in responding to the incidence of child sexual abuse. I refer to the **summary and explanation of core standards attached to this statement and marked “C”**. References are

to the provisions of the *Professional Standards Uniform Act 2016* (Melbourne). As with the model Episcopal Standards Ordinance approved by General Synod, the Church authority is bound to give effect to a recommendation of the Board or Review Board or any permissible modification of the same: s118.

28. The scheme corporation, Kooyoora Ltd was incorporated on 12 January 2017. A commencement date of around 1 May 2017 is planned. With the Chancellor of Bendigo Diocese and the former Registrar of Bendigo, I am one of the founding directors for the purpose of establishing the company and the scheme. Accompanying this statement and marked as set out below are –

- “D” a diagram setting out the structure of the scheme;**
- “E” The constitution of Kooyoora Ltd;**
- “F” Proposed complaint protocol;**
- “G” Proposed clearance for ministry protocol;**
- “H” Proposed clearance for service protocol.**

29. I have prepared proposed regulations, protocols for complaint handling, clearance for ministry and clearance for service and these are currently subject to consultation, prior to adoption.

Challenges

30. The challenge for the 23 dioceses of the Anglican Church of Australia in the area of professional and episcopal standards is, in my opinion, to act together as part of the one institution in responding to child sexual abuse. That involves, in my opinion, respecting diocesan autonomy but at the same time recognising the need for each diocese to adopt model legislation (with or without modifications) that achieves the core standards referred to in the summary being annexure “C”, including –

- The one scheme corporation for the entire Church, operating an independent well resourced Office of Professional Standards and adjudication regime, with regional operations, for complaints, clearances and redress
- A common Code of Conduct that addresses child safety;
- Specified duties on clergy and other Church workers
- A clear demarcation of functions of Committee and adjudicating Boards

- A common clearance regime for clergy in ministry and for prescribed lay people in service
- Transparency of process and affording procedural fairness
- A joint register of information
- Independent oversight by an Ombudsman and biennial audit

State legislation

31. The interaction of the diocesan professional standards scheme with the State raises in my opinion two particular issues.
32. First, there is merit in the State Working with Children legislation recognising the determinations on child abuse matters of an accredited body such as the Professional Standards Board or Review Board as giving rise to a statutory basis to review a Working with Children Card which has been issued to a person. Currently these determinations have no standing under the legislation.
33. Second, in recognising those determinations, there is also merit in the State conferring on accredited professional standards boards and review boards of institutions the same immunities and powers to summons and otherwise which a State regulatory tribunal such as a Suitability Panel under the *Children Youth and Families Act 2005*, s117, enjoys.

Redress

34. In August 2014, Archbishop Freier made submissions on behalf of the Diocese to the State Government in support of establishing a complaints and redress scheme, administered by a company, for institutions and survivors together with the proposal for the same. I drafted the submissions.
35. Between November 2014 and October 2015, I attended on behalf of the Diocese meetings of a joint Victorian denominational working group to examine issues associated with establishing a State or Federal redress scheme. I also attended meetings with Government and survivors during this period.
36. In October 2015, Archbishop Freier made submissions on behalf of the Diocese addressing the State Government's consultation paper on redress. These have been supplied to the Royal Commission. I drafted the submissions.
37. Following discussions with the State Government and the announcement of the Commonwealth's proposals and consultation with the other dioceses in Victoria,

on the instructions of the Archbishop, I drafted and took to the December meeting of the Archbishop in Council proposed terms of reference to establish an interim redress scheme for the Diocese and any participating dioceses. These were approved by the Archbishop in Council. The terms of reference were prepared in consultation with a legal practitioner practising daily in the field of redress and with survivors and others with suitable expertise or experience.

38. Annexed to this statement are –

“I” Terms of Reference of Melbourne Anglican Redress Scheme approved 15 December 2016

“J” Summary of scheme

“K” List of issues addressed by the Terms of Reference

“L” a brief description of the scheme corporation, Kooyoora Ltd and its redress role.

39. Synod had authorised the establishment of a redress scheme. There was unanimous support on the Diocesan Council for establishing the interim scheme. For a number of reasons, the Diocese of Melbourne felt it was important to proceed with an interim scheme, and not delay until a Government scheme was established. First, as part of its desire to offer care and support for survivors, the Church in the diocese wishes, like other dioceses, to have its own scheme as part of its response to the incidence of child abuse. A survivor can choose whether to proceed through the Church scheme or the State scheme. Second, survivors have immediate needs. It is not helpful to defer giving them care and assistance under a scheme until some indeterminate date in the future.

40. Third, by adopting an interim scheme, the diocese models a scheme design which it sees as appropriately survivor focussed and otherwise meeting the guiding principles which the Church in the diocese articulates in the Terms of Reference. The diocese sees merit, in the case of any State or Commonwealth scheme, in having an independent company or statutory agency administering the redress process across State and Territory borders. This is in contrast to the court registry regime that delivers assistance to victims of crime. The diocese addressed this aspect in its October 2015 submissions to the Victorian Government.

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9 March 2017

Annexures

- "A" An extract from the Archbishop's Charge to the 2016 Melbourne Synod
- "B" Second reading speech to Synod on the *Professional Standards Uniform Act Adoption Bill* 2016 (Melb)
- "C" Summary and explanation of core standards attached to this statement
- "D" Diagram setting out the structure of the Uniform scheme
- "E" The constitution of Kooyoora Ltd
- "F" Proposed complaint protocol
- "G" Proposed clearance for ministry protocol
- "H" Proposed clearance for service protocol
- "I" Terms of Reference of Melbourne Anglican Redress Scheme approved 15 December 2016
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