

Proposed 8.2.2017

Kooyoora Ltd
The Scheme Corporation

PROTOCOL
for responding to complaints of
misconduct against Church workers

**A PROTOCOL UNDER THE
PROFESSIONAL STANDARDS UNIFORM
ACT 2016 (Melbourne)**

As approved by the Directors of Kooyoora Ltd on

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**A PROTOCOL UNDER THE
PROFESSIONAL STANDARDS UNIFORM ACT 2016 (Melb)
FOR RESPONDING TO COMPLAINTS
AGAINST CHURCH WORKERS**

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NOTE:

The Office of Professional Standards is established by Kooyoora Ltd to provide support to people who make complaints about abuse and other misconduct by Anglican clergy, church officers, church employees and volunteers in participating dioceses. The Director of Professional Standards is appointed by the directors of Kooyoora Ltd and operates independently of the Diocese.

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

1 Introduction

- 1.1 **Kooyoora Ltd** was incorporated on 12 January 2017 to operate independently of the Anglican Church a process to deal with the complaints against Church workers and to operate a screening regime, in each case, for participating Anglican dioceses pursuant to the *Professional Standards Uniform Act 2016* of those dioceses.
- 1.2 This protocol is made by the Directors of Kooyoora Ltd pursuant to the *Professional Standards Uniform Act 2016* (Melbourne) (**the Act**) and is intended:
- (a) to identify key aspects of the Act under which a complaint of misconduct against a Church worker is dealt with;
 - (b) to summarise the roles of office holders appointed by the directors of Kooyoora Ltd including-
 - the Professional Standards Committee (**PSC**)
 - the Director
 - the Executive Director
 - the Professional Standards Ombudsman
 - the Professional Standards Board (**the Board**) and
 - the Professional Standards Review Board (**the Review Board**); and
 - (c) to give useful information and guidelines about the way a complaint will be handled.
- The guidelines relating to correspondence with a party to a complaint are highlighted with a line in the margin for convenience.
- 1.3 The overriding purposes of the Act, in their application to any complaint under the Act, are
- (a) to facilitate the just, quick and inexpensive resolution of the real issues in the complaint or matter; and
 - (b) to regulate fitness for ministry or service to uphold standards in the Church and for the protection of the community.
- 1.4 By passing the Act and by appointing Kooyoora Ltd to administer the scheme, the participating Diocese aims to:
- (a) fulfill the overriding purposes of the Act
 - (b) meet the pastoral needs of complainants, respondents, survivors and communities, address their concerns; and
 - (c) ensure that no further harm is caused.
- 1.5 Using this protocol, Kooyoora Ltd will:
- (a) promptly respond and provide support to every complainant, survivor or informant;
 - (b) document the allegation, complaint or information;
 - (c) offer conciliation if appropriate;
 - (d) investigate the circumstances;
 - (e) determine, as far as possible, the truth of the matter;
 - (f) assess what action should be taken to resolve the allegation, complaint or information and to prevent further harm;
 - (g) deal fairly with and facilitate support of the respondent; and
 - (h) identify and advise participating dioceses and agencies of opportunities for improving the way they prevent, detect and

hold ourselves to account for the conduct to which this protocol relates.

Statement of Basic Principles

- 1.6 This Protocol for responding to abuse, harassment and other misconduct within the Church is intended to operate in conjunction with the codes of conduct respectively adopted by the participating Diocese. They are **Faithfulness in Service, the National code of personal behaviour and practice of pastoral ministry** by clergy and others who serve in the name of Christ in the fellowship of the Church and the **Code of Good Practice for Clergy**.

These codes provides a positive framework for conduct by Church workers. The preamble to Faithfulness in Service speaks of service as follows:

When Jesus spoke to his disciples he said they were not to be like the rulers of the day who exercised authority over others. They were to be servants of others, even as Jesus did not come to be served, but to serve.

When Peter wrote to the Christians scattered throughout Asia Minor, he reminded them of their identity in Christ as God's chosen people, sanctified by the Spirit for obedience to Jesus Christ. The call to be holy is reflected in both the Old and New Testaments as the appropriate response to God's grace. Christians live according to the knowledge that they have been created by God and redeemed by Christ.

When Paul wrote to the Philippian Christians he rejoiced in their fellowship and prayed that their love might grow in knowledge and discernment so that they might see what was significant for their Christian vocation and be enabled to live pure and blameless lives for the day of Jesus Christ. In the light of that growing knowledge of God's love they are to live in humility and faithfulness in the power of the Holy Spirit. They live out that love in their contact with others, especially those to whom they minister in Christ's name.

The Church is the fellowship that nurtures and sustains Christians as they seek to follow Christ faithfully and participate in God's mission. Its leaders especially are to be examples of Christian faith and obedience as they exercise their vocation, in dependence on the Holy Spirit.

The personal behaviour and practices of pastoral ministry required of clergy (bishops, priests and deacons) of the Anglican Church of Australia are specified in the Holy Scriptures as well as in its Constitution, canons, ordinances, the Book of Common Prayer and the Ordinal. Although not bound by the promises made by clergy, lay church workers are expected to conform to the same behaviour and practices as clergy—except in areas that apply only to clergy.

The Protocol adopts the following principles:

- 1.7 Each participating Diocese has affirmed that it will not tolerate abuse or harassment or other misconduct within their communities. They have engaged Kooyoora Ltd as an independent operator of this complaints and fitness regime. As such-

- (a) We, Kooyoora Ltd will take all complaints very seriously and any lessons learnt from individual complaints will be taken into account in deciding whether and if so how the Church might do things better.
- (b) We offer respect, pastoral care and ongoing long-term or episodic support, including professional counselling where appropriate, to anyone who makes a complaint and to those who have suffered the secondary effects of abuse. We will do all we can to lessen harm by providing the best care possible.
- (c) We will also offer support to any Church worker who is accused of abuse or other misconduct. The rights of a person accused of misconduct must be respected.
- (d) We will be as open, transparent and accountable as possible while respecting the rights of complainants to privacy and to make their own informed choices about whether to engage with Diocesan processes or to seek assistance elsewhere.
- (e) We will respect and not abuse confidentiality and will not use confidentiality in a way that seeks to protect the Church.
- (f) Where allegations of misconduct involve behaviour that may constitute a criminal offence, we will support complainants if they decide to report those matters to police. We will ourselves report serious criminal offences including child abuse.
- (g) We will continue to invite any person who has been abused, no matter when, to come forward and make the matter known, so that his or her ongoing needs can be addressed.
- (h) Any Church worker who is alleged to have committed misconduct must face the appropriate process.
- (i) No one should interfere with or attempt to have an improper influence on Professional Support Persons, respondent Carers, the Investigator, the Director, the Committee, the Board or the Review Board in the exercise of their functions.

Each participating diocese has affirmed these principles as applying to the Church in their diocese.

- 1.8 **Scope:** Nothing in this Protocol shall exclude the jurisdiction of a secular court or tribunal or prevent any person from pursuing other actions and procedures which are available at law. It is not intended that this Protocol shall protect people from the law.
- 1.9 **Definitions:** In this Protocol, expressions used have the same meaning as in s 3 of the Act. Unless the context requires otherwise-
 - “Director” means the Director of Professional Standards as defined in s3 of the Act;
 - “PSC” means the Professional Standards Committee;
 - “Church authority” has the meaning given it in s173 of the Act.

2 Upholding this Protocol – a shared responsibility

- 2.1 It is the responsibility of each church worker to be aware of and meet the standards of the *Faithfulness in Service* National Code and also, in

the case of clergy, the Code of Good Practice for Clergy applicable in the Diocese: s16 of the Act.

- 2.2 A 'prescribed Church worker' is defined in schedule 1 of the Act, and includes clergy, lay ministers, remunerated office holders and specified Church volunteers in leadership positions. A prescribed Church worker is subject to mandatory reporting obligations. Section 17 of the Act provides –

17. (1) 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, the first mentioned Church worker must as soon as possible report the matter to the Director.
- (2) This section does not affect the operation of the Canon Concerning Confessions 1989 of General Synod or any other canon or legislative instrument relating to confessions in force in the Diocese.
- (3) A failure to comply with subsection (1) is a relevant factor in determining the fitness or otherwise of the Church worker for any role office or position.

3 Who is a Church worker?

- 3.1 Under the Act, a complaint may be made to the PSC 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) a Church volunteer.

4 Who is a Church authority?

- 4.1 A Church worker is accountable for misconduct found proven under the Act and this Protocol to the Church authority as defined in s173 of the Act. That authority is generally to the office holder or body who appointed or elected the Church worker, as well as the Diocesan Corporation.
- 4.2 For clergy, the Church authority is primarily the Archbishop or the Bishop of the Diocese (**the Diocesan Bishop**).
- 4.3 For lay volunteers in a parish, the Church authority will most commonly be the incumbent or priest in charge. In the Cathedral, it will most commonly be the Chapter or the Dean, depending on the role office or position.
- 4.4 A Church volunteer means a person aged 18 or more years who is or was at any relevant time not a prescribed Church worker but the holder of a voluntary role office or position in a congregation or parish or in the Cathedral or the Diocesan Offices or in the Cursillo movement or otherwise in the Church in the Diocese.

5 A complaint against a Church worker

- 5.1 Anyone including the Director of Professional Standards may make a complaint to the Church authority of misconduct of a Church worker, living or deceased: s21 of the Act.
- 5.2 A complaint may be in any form, in writing on paper or by email or facsimile or conveyed orally: s 23(1).
- 5.3 If you are a complainant, you must provide details of the complaint: s23(2).
- 5.4 The Act defines what is 'misconduct': s5. Not all behaviour that may be considered bad will necessarily be 'misconduct'. The behaviour in question must answer the description of one or other of the categories in the definition and be conduct which, if established, would on its face call into question:
- (i) the fitness of the person, whether temporarily or permanently, to hold the role office licence or position; or
 - (ii) whether, in the performance of any duty or function, the person should be subject to any condition or restriction.
- 5.5 If a complaint is made that clearly falls outside the scope of 'misconduct', the Director may inform the complainant accordingly. The Director may nevertheless seek by mediation, conciliation or otherwise, foster a settlement of any dispute connected with the complaint and a reconciliation between the parties.
- 5.6 A breach of faith ritual or ceremonial falls outside the definition of misconduct and the scope of the Act: s5.¹
- 5.7 When a complaint of abuse or other misconduct is made, the matter remains confidential, subject to the Act², unless and until the Director has obtained informed consent from the complainant to provide information to other participants in the process.
- 5.8 A complaint against a deceased Church worker is to be dealt under the Act. After investigation in accordance with Part 3.3 of this Act of a complaint of misconduct against a Church worker who is deceased, unless the complaint has been dismissed or otherwise dealt with under s27 or should be dismissed or otherwise dealt with under that section, the PSC must refer the complaint to the Board or may refer the matter to an equivalent body if it is appropriate: s70 of the Act.

¹ The Diocesan Tribunal may hear a charge of a breach of faith ritual or ceremonial against a member of the clergy: *Constitution of the Anglican Church of Australia*, s54(2).

² Section 22(2)(a) of the Act.

6 How the Office of Professional Standards must proceed

- 6.1 In summary, the Director must –
- (a) in writing acknowledge receipt of the complaint and make available to the complainant relevant material as referred to below;
 - (b) determine whether the complaint is one of misconduct against a Church worker and therefore within the scope of the Act and if not, consider how the complaint might be addressed informally through an alternative dispute resolution process; and
 - (c) if the complaint is within the scope of this Protocol, follow the process set out below in Parts 7 and following of this Protocol.
- 6.2 **Insurance:** The Executive Director must in the appropriate case notify the Chief Executive Officer of the Diocesan Corporation or Registrar of the diocese, if there is no such corporation, that the complaint discloses circumstances which may give rise to a claim on the applicable policy of insurance held by the diocese and that notification to the insurer should be considered.
- 6.3 The Director and the PSC must deal with the complaint as expeditiously as possible.

7 The complainant

- 7.1 When you make a complaint to the PSC, the Director will contact you to find out about the complaint³. Generally that contact will be by meeting at the complainant's choice of place.
- 7.2 The Director will advise you that they are required to keep a record of the name of the respondent if that is provided. They will also advise you that the matter is to be referred to the police or child protection authorities in the circumstances described below in Part 27 the complaint falls within the Act and the Protocol and advise you accordingly.
- 7.4 If you have lodged a complaint and have consented to the complaint being dealt with under this Protocol or are contemplating doing so, the Director will make available to you —
- (a) a copy of the Act and this Protocol;
 - (b) a brochure and booklet outlining the nature of the Scheme's complaint process;
 - (c) a "complaint form" in the form of appendix A to assist you in providing details of the complaint;
 - (d) a consent to process form, attached as appendix B to this Protocol;

³ The guidelines relating to correspondence with a party to a complaint are highlighted with a line in the margin for convenience.

- (e) where the complaint involves an allegation of physical abuse or sexual abuse, a summary of any Redress Scheme adopted by the diocese and the available care and assistance.
- 7.3 **Consent:** The Director will explain to you the processes available under the Act and this Protocol and seek your written consent as provided in s22(1) of the Act. This consent to process is Form 1 of the *Professional Standards Uniform Regulations* and for convenience is attached as appendix B.
- 7.4 If the complainant (other than the Director) has not given the required written consent—
- (a) the Director and the PSC must, subject to any obligation referred to in s22(3), respect the confidentiality of the identity of the complainant;
 - (b) the PSC may, subject to s22(2)(a), investigate the complaint but shall not be required to do so and otherwise to refer it to the Board;
 - (c) the PSC may but is not obliged to dismiss the complaint or take no further action in relation to the complaint; but
 - (d) the PSC may with the consent of the complainant arrange with the complainant, the respondent and if appropriate, the Church authority mediation conciliation neutral evaluation or other alternative resolution of any dispute associated with the complaint, with a view to addressing any breakdown in relationships and achieving a reconciliation between the parties.
- 7.5 The obligations referred to in s22(3) of the Act are those under State or Federal law —
- (a) to disclose information to a member of the police force⁴; and
 - (b) otherwise to reduce or remove a substantial risk that a relevant child will become the victim of a sexual offence committed by a person or of over the aged of 18 years who is associated with the Church in the diocese.
- See further Part 27 below.
- 7.6 The Director will also explain to you how it is your choice whether to make a complaint and proceed with this Protocol and will advise you of alternative avenues of formal and informal redress that are open to you e.g. dealing with the complaint informally, making a report to the police, or complaining to the Equal Opportunity Commission or instituting other legal action.
- 7.7 If you as complainant have given the written consent referred to above, the Director and PSC—

⁴ 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). A negligent failure by person in authority to protect a child from a sexual offence is also an offence: s49C.

- (a) will proceed to deal with the complaint in accordance with the Act and this protocol; and
 - (b) in the case of a complaint of physical abuse or sexual abuse, advise the Redress Manager appointed under the Redress Scheme of the complaint and the circumstances of the complainant or other person the subject of the abuse.
- 7.8 **Welfare of the complainant:** Whatever the nature of the complaint, the Redress Manager or other officer of the Office of Professional Standards will actively assess your welfare and that of any other person affected by the conduct complained about. They may in the appropriate case arrange care and assistance for you by way of counseling or other services from a Professional Support Person appointed from a panel of trauma informed professionals maintained by the Office of Professional Standards. The Diocese will meet the reasonable costs of these services if you decide to take up the offer.
- 7.9 **Complainant Carer:** The Office of Professional Standards may also in an appropriate case select a suitable person to act as your Carer in the process of dealing with the complaint. If you agree, that person will liaise with the Office on your behalf and will be given a copy of the complaint. The Office will send a copy of all notices and letters which they send to you to the complainant Carer so that the latter receives them in time to give you support when you receive them.
- 7.10 **Victim impact statement:** You may if you wish provide a victim impact statement to help the PSC and the Board understand how you have been affected by the misconduct the subject of your complaint. The Director can provide further information to you about this statement and your Professional Support Person can assist you with its preparation.
- 7.11 The Director will inform you if the complaint does not concern a matter which is dealt with under the Act.
- 7.12 Neither the respondent nor anyone associated with the respondent should have any contact with you about your complaint except the Director or otherwise in accordance with the Act and this protocol.

8 The respondent – the Church worker about whom the complaint is made

- 8.1 If a complaint of misconduct has been made against you, unless it is impracticable in the particular circumstances, within a week from the complainant giving written consent to the Director giving you notice of the complaint and to the PSC dealing with it under the Act, the Director or a PSC delegate will contact you, as provided in the following paragraph.
- 8.3 The Director will make available to you –
- (a) a copy of the complaint and any further details provided;
 - (b) a copy of the Act and this Protocol; and
 - (c) a respondent's brochure and booklet which outline the nature of the Scheme's complaint process.

- 8.4 You have the right –
- (a) to obtain independent legal or other professional advice, at your cost, before responding to the complaint; and
 - (b) to make submissions (with or without evidence) as to why the PSC without embarking on any investigation should not entertain the complaint or should dismiss it or take no further action in relation to it.

The Director will inform you of these rights when contacting you about the complaint. In a serious matter, it is in your best interests to have legal representation.

- 8.5 The Act imposes on you as respondent certain obligations, subject to s19, to—
- (a) comply with any requirement of an investigator under s31;
 - (b) truthfully answer any question put by an investigator in the exercise of powers conferred by this Act;
 - (c) not mislead the Director or the PSC or an investigator or other delegate of any of them;
 - (d) not unreasonably delay or obstruct the Director or the PSC, or an investigator or other delegate of any of them in the exercise of powers conferred by this Act; and
 - (e) attend a mediation, conciliation, neutral evaluation or other dispute resolution meeting when directed by the PSC in relation to a complaint.

The privilege against self-incrimination is preserved: s19(4).

- 8.6 **Welfare of the respondent:** Whatever the nature of the complaint, an officer of the Office of Professional Standards will actively assess your welfare. They may in the appropriate case arrange care and assistance for you by way of counseling or other services from a Professional Support Person. The Diocese will meet the reasonable costs of these services if you decide to take up the offer.
- 8.7 **Respondent Carer:** The Director may in an appropriate case select a suitable person to act as your Carer in the process of dealing with the complaint. If you agree, that person will liaise with the Director on your behalf and will be given a copy of the complaint. The Director will send a copy of all notices and letters which they send to you to the respondent Carer so that the latter receives them in time to give you support when you receive them. **The Carer is not expected to act and should not act as your legal adviser or advocate in the matter.**
- 8.8 The respondent Carer will contact you within 24 hours of accepting the role and will follow up any initial offer of professional counselling support.
- 8.9 As respondent, you will be expected to provide the PSC with a written response to the complaint within 3 weeks (or such longer period as the Director may allow in writing) of your receiving a copy of the complaint and any accompanying details. The Director will write to you about this time line and what happens if you do not respond.

- 8.10 If you choose not to respond, the PSC may continue the process under the Act and may refer the complaint to the Professional Standards Board which may make any finding of fact and recommendation to the Archbishop or other relevant Church authority or direction as the Board sees fit. See Part **15** below.
- 8.11 The respondent Carer (if appointed) will be in regular contact with you, and if appropriate the Professional Support Person about the progress of the complaint and options which are available.
- 8.12 The respondent Carer will keep things strictly confidential.
- 8.13 The complainant should not be questioned by anyone about their right to make a complaint.
- 8.14 Neither you nor anyone associated with you should have any contact with the complainant about the complaint except through the Director or otherwise in accordance with the Act and this Protocol.

9 The Investigation

- 9.1 The PSC must cause to be investigated each complaint or matter against a Church worker as expeditiously as possible: s29(1)(a) of the Act.
- 9.2 If the subject matter of the complaint is under investigation by some other competent body or is the subject of legal proceedings, the investigation may be discontinued or deferred until these other proceedings are concluded. Support Persons' services to all parties may continue to be provided.
- 9.3 The role of the investigator is to gather information about a complaint and the allegations and, by a confidential report to the PSC, to make recommendations on findings on relevant questions of fact.
- 9.4 An investigator shall not present her or himself as a counsellor or advocate for the complainant or respondent or any family member of a deceased respondent.
- 9.5 An investigator shall, where the nature and gravity of the complaint warrants it –
- (a) make a written record of each interview with a person and may, with the consent of the person, make an audio and or video record of the same;
 - (b) provide the person with a copy of the record; and
 - (c) have the person, if willing, verify the record by signing a copy of it or, in the case of an audio and or video record, by signing a statement to the effect that the record is a true record of the interview.
- 9.6 An investigator shall be independent, objective and impartial and shall not have nor be perceived to have any conflict of interest in relation to the matter, the parties or the outcome.

- 9.7 The complainant and the respondent or a family member or friend of a deceased respondent nominated by the Director (**the nominated representative**) will be given a reasonable opportunity to present to the investigator any relevant facts or circumstances on which they wish to rely.
- 9.8 Where the nature and gravity of the complaint warrants it –
- (a) before completing the investigation, the investigator shall inform the complainant in writing of the substance of any proposed recommendations on findings on any relevant questions of fact and shall give the complainant a reasonable period to respond in writing, not being greater than 14 days; and
 - (b) the investigator shall inform the respondent (or nominated representative) in writing of the substance of any proposed recommendations on findings on any relevant questions of fact and any response from the complainant and shall give the respondent or nominated representative a reasonable period to respond in writing, not being greater than 14 days.
- 9.9 Once the investigator has any responses from the complainant and the respondent or nominated representative within the prescribed period and is satisfied that the matter has been adequately investigated, he or she shall prepare a final report including where the nature and gravity of the complaint warrants it –
- (a) the complaint;
 - (b) the steps taken in the investigation;
 - (c) any responses from the complainant and the respondent;
 - (d) any statements, records of interview and other relevant material; and
 - (e) his or her recommendations on findings on any relevant questions of fact and a statement of the weight given to various accounts of the allegations.

10 Suspension from duties

- 10.1 Where after receipt of a complaint about the conduct of a Church worker and at any time during the progress of a complaint under this Act, the PSC is satisfied that there is an unacceptable risk of harm to any person if the respondent remains in his or her present role office or position pending the outcome of the complaint, the PSC may refer the matter to the Board or, as the urgency of the matter requires, make a recommendation direct to the Diocesan Bishop or other Church authority that pending that outcome—
- (a) the respondent be suspended or stood down from the duties or functions of any role office or position held by the respondent or certain of those duties;
 - (b) a prohibition order be made against the respondent;
 - (c) the respondent be required to enter into a Safety Agreement with the Church authority, failing which he or she be excluded from entry or access to premises or activities of the Church

either generally or in a specified location or circumstances;⁵ or

(d) such other action be taken as may be thought fit.

10.2 The provisions of Part 3.5 of the Act set out a procedure which the PSC and the Board must follow to ensure that appropriate procedural fairness is accorded to the respondent.

11 Summary dismissal of a complaint

11.1 The Church authority may decide under s27 of the Act to dismiss a complaint or to take no further action in relation to a complaint if—

- (a) the PSC is of opinion that—
 - (i) the complaint does not fall within the provisions of this Act;
 - (ii) the complaint is false, vexatious, misconceived, frivolous or lacking in substance; or
 - (iii) there is insufficient reliable evidence to warrant an investigation or further investigation;
- (b) the behaviour the subject matter of the complaint can properly be dealt with by other means such as but not limited to mediation conciliation neutral evaluation or other alternative resolution of any dispute associated with the complaint;
- (c) the subject matter of a complaint is under investigation by some other competent person or body or is the subject of legal proceedings;
- (d) the person making the complaint has failed to provide further details to the Director or to verify the allegations by statutory declaration when requested by the Director to do so.

11.2 If a complaint is dealt with by the Church authority under the preceding paragraph, it must give the complainant a written notice of the outcome including the reasons for the outcome: s28.

12 Alternative Dispute Resolution and other outcomes

12.1 At any time after the PSC receives a complaint, the PSC may-

- (a) direct the respondent to attend mediation conciliation neutral evaluation or other alternative resolution of any dispute associated with the complaint; and
- (b) exercise its powers under s27 of this Act to dismiss a complaint or to take no further action in relation to a complaint or to recommend any steps to be taken: s32.

12.2 This provision is intended to facilitate the early intervention of the PSC in a matter which is suitable for resolution by an alternative dispute resolution process involving the Director, the complainant, the respondent and, in the appropriate case, the Diocesan Bishop. If a question of fitness of the respondent arises, the fact that the subject

⁵ See the definition of ‘Safety Agreement’ in section 3 of the Act.

matter of a complaint or application for a clearance for ministry may be settled or resolved in whole or in part between the parties affected thereby does not prevent the PSC from acting under s32 or s33 of the Act in respect of the subject matter of the complaint or matter.

- 12.3 At any time after investigation of a complaint in accordance with Part 3.3 of the Act, the PSC—
- (a) must, if required under s69 or s70 of the Act to do so, refer the complaint to the Board; and
 - (b) may institute, amend or withdraw proceedings by way of charge against the respondent to the complaint before the Diocesan Tribunal: s33 of the Act.
- 12.4 The Director must make available to the PSC by electronic means all the material relating to the complaint for the purpose of the PSC considering how to deal with it. It is not the function of the PSC, prior to making a decision, to conduct any hearing at which witnesses give evidence or submissions are made of the Act.
- 12.5 Alternative dispute resolution proceedings (including mediation) are confidential, and all communications made by the complainant and the respondent and other participants in the course of them are without prejudice and may not be used by any party in subsequent legal proceedings.

13 Referral to the Professional Standards Board

- 13.1 The PSC must refer a complaint or matter to the Board where it has formed the opinion that —
- (a) the alleged conduct of the respondent Church worker if established would call into question whether —
 - (i) the Church worker is unfit, whether temporarily or permanently, to hold a particular or any role office or position in the Church or to be or remain in Holy Orders or in the employment of a Church body; or
 - (ii) in the exercise of a church worker's role office or position or in the performance of any function, the Church worker should be subject to any condition or restriction; or
 - (b) in connection with an application by a Church worker for a clearance for ministry or a clearance for service, by reason of misconduct the church worker may not be fit for ministry in the Church either generally or to hold a proposed role office or position in the Church or may be fit subject to any condition or restriction: s69 of the Act.
- 13.2 The PSC must also refer a complaint or matter to the Board against a deceased Church worker to the Board except in certain specified circumstances: s70 of the Act.

14 Procedure for referral

- 14.1 Part 5.2 of the Act sets out the procedure for referral of a complaint or matter to the Board.
- 14.2 Under s72 of the Act, within 14 days of the date of the referral of a complaint or matter to the Board, the PSC must cause to be delivered to the complainant and the respondent a copy of the written report of the PSC to the Board.
- 14.3 Within 14 days of the date of the referral of a complaint or matter to the Board, the PSC must cause to be delivered to the nominated representative of a deceased respondent a copy of the written report of the PSC to the Board.
- 14.4 The PSC as a party to the proceeding has the carriage of the complaint or matter before the Board and has the particular functions prescribed in s73 of the Act.
- 14.5 It is a matter for the Board or Review Board whether to give the nominated representative of a deceased respondent a reasonable opportunity to make submissions to them or otherwise to participate in any hearing: s98(d).

15 Determination of a complaint by the Board

- 15.1 Part 5.3 of the Act sets out the provisions dealing with the determination by the Board of a complaint or an application for a clearance.
- 15.2 The proceedings of the Board and the Review Board are governed by Part 5.5 of the Act.
- 15.3 The Board and the Review Board must cause a copy of their determination, reasons and recommendations or directions to be provided to the persons referred to in s118 of the Act⁶ including the complainant and respondent in the manner there provided.
- 15.4 The Executive Director must as soon as practicable cause a copy of the determination of the Board or the Review Board, their reasons and recommendations or directions to be provided to the nominated representative of a deceased respondent.

⁶ See Part 18 below. Under s 118 of the Act, each of the Board and the Review Board shall cause a copy of each determination and recommendations or directions to be provided to-

- (a) each relevant Church authority and the Chancellor of the Diocese, and where the Church authority is not the Diocesan Bishop, the Diocesan Bishop;
- (b) the complainant, if any;
- (c) the respondent or applicant for a clearance;
- (d) the Director, the Executive Director and the PSC; and
- (e) the Professional Standards Ombudsman

- 15.5 Within 7 days of the Board making any final finding of fact or recommendation on the complaint (**the decision**), if the finding of fact or recommendation is adverse to the respondent, the Executive Director shall inform the respondent-
- (a) that he or she may within 30 days from the date of the decision or such further period as the Professional Standards Review Board may allow, apply to the Professional Standards Review Board for review of the decision; and
 - (b) that if he or she does not apply to the Review Board for a review, he or she has the opportunity within a further 14 days to address any submissions to the Archbishop or other relevant Church authority directed to any permissible variation or modification of a recommendation⁷.
- 15.6 The Act does not give any nominated representative of a deceased respondent the opportunity to apply to the Professional Standards Review Board for review of the decision of the Board. That nominated representative may however make submissions to the PSC as to why it should seek a review of the decision of the Board pursuant to the Act. The Executive Director shall inform the nominated representative in writing of that opportunity.
- 15.7 The PSC shall give due consideration to any submissions of the nominated representative together with any other relevant factors in deciding whether to seek a review of the decision of the Board.

16 Application for review

- 16.1 If you are a respondent to a complaint, and are aggrieved by a decision of the Board, you may within 30 days from the date of the decision or such further period as the Professional Standards Review Board may allow, apply to the Review Board for review of the decision. The PSC may also make an application for review if it thinks fit: s89 of the Act.
- 16.2 In this part, “decision” means any finding of fact, determination or recommendation by the Board under either—
- (a) section 42 of the Act but only in respect of a prescribed Church worker (suspension);
 - (b) sections 75 to 79 (both inclusive) (complaint);
 - (c) sections 80 and 81 (application for clearance).
- 16.3 Within 14 days of the date of the application to the Review Board or within 14 days of the date of a document or material coming into existence, whichever is the later, the Director must cause to be delivered to the secretary of the Review Board—
- (a) the determination and recommendations or directions of the Board; and

⁷ For a permitted variation or modification, see s119(b) of the Act.

- (b) every other document held by the Office of Professional Standards which the Director considers is relevant to the application for review: s91 of the Act.⁸
- 16.4 If you are a complainant, the Director shall give you notice of any application by the respondent or the PSC to the Review Board for review of a decision. A complainant is invited to communicate any comments they wish to make to the Director. A complainant is not a party to the proceeding: s98(2) of the Act. They will be advised of the determination of the Review Board: s118(1) of the Act.
- 16.5 Within 7 days of the Review Board making a decision on the review of a complaint, if the decision on the review is adverse to the respondent, the Executive Director shall inform the respondent that he or she has the opportunity within 14 days to address any submissions to the Church authority directed to any permissible variation or modification of a recommendation under s119(b) of the Act. See Part 18 below.

17 Proceedings of the Board and the Review Board

- 17.1 Each of the Board and the Review Board –
- (a) must act with fairness and according to equity, good conscience, natural justice and the substantial merits of the case without regard to technicalities or legal forms; and
- (b) is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks fit: s 97 of the Act.
- 17.2 Part 5.5 of the Act contains provisions dealing with the proceedings of the Board and the Review Board.
- 17.3 Any communication to the Board or the Review should be directed to the Secretary of the Board or the Review Board.
- 17.4 It is open to the Board or the Review Board to correct a clerical mistake in any final determination, recommendation or direction or an error arising in a final determination, recommendation or direction from any accidental slip or omission. Otherwise the decision of the Board or the Review Board relating to the complaint or matter is final and no correspondence shall be entered into.

18 The Diocesan Bishop or other Church authority

- 18.1 Pursuant to s119 of the Act, the Diocesan Bishop or other relevant Church authority, to whom in respect of a Church worker a recommendation on a complaint under this Act (including a recommendation made by an equivalent body) is made, must and is thereby empowered to give effect to—
- (a) a recommendation of the Board or if applicable, the Review Board or an equivalent body having jurisdiction to make a recommendation to the Church authority; or

⁸ Cf *Victorian Civil and Administrative Tribunal Act 1998*, s49. See s102 for the board's power to direct the supply of further documents.

- (b) any variation or modification of that recommendation, consistent with any facts found by the body making the recommendation and the substance of the determination made by that body under s76, as the Diocesan Bishop or other relevant Church authority sees fit.
- 18.2 Pursuant to s120 of the Act, the Diocesan Bishop or other relevant Church authority has certain obligations to release to the complainant, the respondent and others and to the public a written statement disclosing—
- (i) their decision on any recommendation received in respect of a complaint;
 - (ii) the steps to be taken or that have been taken pursuant to the preceding section to give effect to it; and
 - (iii) the reasons for any variation or modification of a recommendation under s119 of the Act.
- 18.3 Any release to the public must be anonymised in the manner prescribed in s119(2).
- 18.4 The Director shall release to the nominated representative of a deceased respondent the written statement of the Diocesan Bishop or other relevant Church authority referred to above.
- 18.5 The Diocesan Bishop or other Church authority should not have any contact with a respondent or complainant in relation to a complaint except through the Director or the PSC until that Church authority has received a recommendation from the PSC and/or the Board or the Review Board, as the case may be.

19 Role of the Director of Professional Standards

- 19.1 The Director of Professional Standards -
- (a) is appointed by the Scheme Corporation by resolution of its directors;
 - (b) has investigative skills and qualifications or experience in legal practice or procedure, or in counseling or an associated area; and
 - (c) is neither a member of the clergy nor married to a member of the clergy.
- 19.2 The Director assists the Diocese in providing a central focus in matters involving personal ethics and behaviour including advice to a Church authority about appropriate standards and enforcement, in managing and implementing the processes necessary to give effect to the Act and this Protocol and performing other functions prescribed in s 135 of the Act.

20 The Role and Composition of the Professional Standards Committee

- 20.1 The Professional Standards Committee (**PSC**) comprises at least 3 people including its chair: s 125(1) of the Act. Its role includes –

- (a) to implement the Act and the protocol to the extent that the protocol is not inconsistent with the Act;
- (b) to receive a complaint against a Church worker;
- (c) to refer a matter to the Professional Standards Board in an appropriate case; and
- (d) to perform other functions prescribed by the Act.

The powers, duties and functions of the Committee are more completely set out in s 131 of the Act and the protocols made under the Act.

- 20.2 The membership of the PSC is constituted so as collectively to provide experience and appropriate professional qualifications in:
- (a) law;
 - (b) the ministry; and
 - (c) child protection, investigations, social work, ethics or counselling: s125(2).

The PSC includes at least one person who is not a member of this Church and so far as it is reasonably practicable shall have at least one man and at least one woman: s125(3).

- 20.3 The Director attends the meetings of the Committee and provides such assistance to the Committee as it may request but is not a member of the Committee and is not entitled to vote: s135(1).

21 Professional Support Persons

- 21.1 The Director in consultation with the Church authority may engage suitably qualified professionals (“Professional Support Persons”) to provide assistance to complainants, respondents, Church workers, informants, and victims involved in disclosures of abuse by Church workers.
- 21.2 Professional Support Persons will act in their individual capacity in their work. Their duty is to the person for whom they are providing services, and they are required to act always in that person’s best interests even when those interests conflict with their own personal interests or those of the Diocese or other parties involved in the matter.
- 21.3 Professional Support Persons will be independent of Kooyoora Ltd and its office holders, the Diocesan organisations, structures, and office holders and not have any other role under the Protocol in respect of a current matter.
- 21.4 The complainant’s Professional Support Person will assist the complainant by providing counseling, explaining the process, and clarifying what outcomes are possible and what the complainant may expect to achieve from making a complaint. They may also assist the complainant where this is requested, to document the complaint. The Professional Support Person may also provide acknowledgement to the Director of the complainant’s informed consent to the process.
- 21.5 Professional Support Persons’ services are available to all parties involved in this process. A Professional Support Person may not

provide services to, or receive information from, a complainant and respondent in the same matter.

22 The Professional Standards Board

22.1 The Professional Standards Board (**the Board**) for any matter is appointed from a panel comprising –

(a) a President and a Deputy President appointed by the Scheme Directors, and Senior Members, each of whom shall be or shall have been either a judicial officer or a practising barrister or solicitor of at least 10 years' standing of the Supreme Court of a State or Territory; and

(b) at least 9 other persons of whom at least—

(i) two shall not be members of the Anglican Church of Australia;

(ii) two shall be members of the clergy; and

(iii) five who may or may not be members of the Church, having professional qualifications and experience —

(A) in psychiatry or psychology with current or recent clinical experience with patients who have been victims of child abuse or sexual misconduct; or

(B) in child protection, investigations, social work, ethics, medicine or counselling:

s147 of the Act.

22.2 The President determines who is to be appointed from the panel to constitute the Board for a particular matter: s150(1) of the Act.

22.3 For the purpose of any application to the Board, the Board shall consist of either—

(a) the President or Deputy President, or a Senior Member who shall be the presiding member, and one clergy member and at least one lay member of the panel; or

(b) at the discretion of the President or Deputy President in a matter that does not involve sexual abuse, a single member who is either one of them or a member of the panel of appropriate expertise and experience:

s150(2) of the Act.

22.4 So far as it is reasonably practicable, the Board consisting of more than one member shall include at least—

(a) at least one man and at least one woman; and

(b) one member who is not a member of the Church:

s150(3) of the Act.

23 Professional Standards Review Board

23.1 The Professional Standards Review Board comprises 3 persons

appointed by the President or Deputy President from a panel of 7 persons comprising -

- (a) a President and a Deputy President, both of whom shall be or shall have been either a judicial officer or a practising barrister or solicitor of at least 10 years' standing of the Supreme Court of a State or Territory; and
- (b) five other persons of whom at least -
 - (i) two shall not be members of the Church;
 - (ii) two shall be members of the clergy; and
 - (iii) three shall have professional qualifications and experience in child protection, investigations, social work, ethics or counselling:

s162 of the Act.

23.2 For the purpose of any application to the Review Board, the Review Board shall consist of the President or Deputy President, who shall be the presiding member, one clergy member and one lay member of the panel. So far as it is reasonably practicable, the Review Board shall include at least-

- (a) one man and at least one woman; and
- (b) one person who is not a member of the Church:

s165(2) and (3) of the Act.

23.3 For the purpose of any application to the Review Board, the Review Board shall consist of either—

- (a) the President or Deputy President who shall be the presiding member, and one clergy member and one lay member of the panel; or
- (b) at the discretion of the President or Deputy President a single member who is either one of them or a Senior Member or a member of the panel of appropriate expertise and experience.

23.4 So far as it is reasonably practicable, the Review Board consisting of more than one member shall include at least—

- (a) one man and at least one woman; and
- (b) one person who is not a member of the Anglican Church of Australia.

24 Pastoral Response

Where appropriate, the Church authority and the Director or his or her delegate may develop a pastoral response for the care of any church community or congregation affected by the matter.

25 Completion of the Process

25.1 As appropriate the Executive Director will liaise with those involved in this Protocol at the completion of the matter and will seek comment about the process and may discuss possible improvements.

- 25.2 Proposals regarding any changes within the structures of the Church which may assist to prevent further occasions of abuse will be considered.
- 25.3 Any recommendations resulting from this activity will be provided to the Scheme Directors.

26 Confidentiality

- 26.1 Part 8.2 of the Act imposes strict confidentiality obligations in connection with a complaint or matter but requires or authorizes disclosure in the circumstances there referred to. See also Part 28 below of this Protocol.

27 Co-operation with Government Authorities

- 27.1 The Director must notify the relevant child protection authorities if, arising from a complaint, the Church authority, the Director or the PSC forms the belief on reasonable grounds that a child is in need of protection within the meaning of that expression in the *Children, Youth and Young Families Act 2005 (Vic)*.
- 27.2 The Director must also in certain circumstances disclose to a member of the police force information relating to the commission of a sexual offence against a child under the age of 16 years. A 'sexual offence' is defined in the *Crimes Act 1958 (Vic)*. Contravention is an offence unless the person has a reasonable excuse for failing to comply.
- 27.3 Under the *Crimes Act 1958 (Vic)*, s327(3), a person has a reasonable excuse for failing to comply with that subsection if—
- (a) the person fears on reasonable grounds for the safety of any person (other than the person reasonably believed to have committed, or to have been involved in, the sexual offence) were the person to disclose the information to police (irrespective of whether the fear arises because of the fact of disclosure or the information disclosed) and the failure to disclose the information to police is a reasonable response in the circumstances; or
 - (b) the person believes on reasonable grounds that the information has already been disclosed to police by another person and the first mentioned person has no further information.
- 27.4 The Director is also subject to obligations under State law to take reasonable steps to reduce or remove a substantial risk that a relevant child will become the victim of a sexual offence committed by a person or of over the aged of 18 years who is associated with the Church in the diocese.⁹
- 27.5 The Director is required by this Protocol also to disclose to a member of the police force conduct disclosed to the Director in the course of

⁹ See *Crimes Act 1958 (Vic)*, s49C. A negligent failure by person in authority to protect a child from a sexual offence is also an offence

their duties if to the knowledge or belief of the Director that conduct constitutes an offence whether committed in or outside Victoria that is an indictable offence against a law of the Commonwealth or any jurisdiction in Australia punishable by imprisonment for not less than five years (whether or not the offence is or may be dealt with summarily)¹⁰.

- 27.6 The Director may disclose to a member of the police force conduct disclosed to the Director in the course of their duties if to the knowledge or belief of the Director that conduct constitutes any other criminal offence.

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

- 28.1 Each of the Director and the PSC has a duty under the Act to disclose certain information in their possession relating to alleged misconduct of a Church worker to other office holders or bodies in the circumstances there prescribed: s177 - 180 of the Act.

29 Grievance procedure

- 29.1 Any grievance about the operation of this Act or any protocol approved under it must in the first instance be addressed in writing to the Executive Director of the Scheme Corporation marked confidential.
- 29.2 The grievance is to be dealt with in accordance with the provisions of ss182 and 183 of the Act.
- 29.3 The Executive Director must consider the grievance and forward the same to the Director and to the investigator or other staff member if any involved for a written response within 14 days or such longer period as the Executive Director may allow.
- 29.4 The Executive Director must provide the person lodging the grievance and the Scheme Directors with a written response and an outline of any proposed action.
- 29.5 If the person aggrieved about the operation of this Act or any protocol approved under it remains so after receiving the response from the Executive Director, that person may address their grievance in writing to the Professional Standards Ombudsman. That person is appointed by the Scheme Directors pursuant to Part 7.5 of the Act.
- 29.6 The Professional Standards Ombudsman must consider the grievance and forward the same to the Director and to the investigator or other staff member if any involved for a written response within 14 days or such longer period as the Professional Standards Ombudsman may allow.

¹⁰ See s325 of the *Crimes Act 1958* (Vic).

- 29.7 The Professional Standards Ombudsman must provide the person lodging the grievance and the Scheme Directors with a written response and an outline of any proposed action.

30 Records

- 30.1 The Office of Professional Standards must keep in a safe and secure place separate from other records –
- (a) a register of all complaints made to the Director under the Act otherwise including the names of the complainant and the respondent, the history of the matter and the outcome;
 - (b) a file of any notes, correspondence, reports or other documents created sent or received in connection with the complaint;
 - (c) a register of all reports made to the Director pursuant to section 17 of the Act;
 - (d) a register of all reports made to the Director pursuant to section 18 of the Act;
 - (e) a register of all clearances for ministry granted pursuant to the Act;
 - (f) a register of all clearances for service granted pursuant to the Act.

Attached

Complaint pro forma

Consent to process Form 1 of the *Professional Standards Uniform Regulations*