

Proposed 8.2.2017

Kooyoora Ltd

CLEARANCE FOR SERVICE for lay people

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

As approved by the Directors of Kooyoora Ltd on

This document is published by Kooyoora Ltd.

Copyright resides in Kooyoora Ltd.
It may be reproduced, but only with permission of Kooyoora Ltd.

Office of Professional Standards
Kooyoora Ltd
St James Centre, 12 Batman Street, West Melbourne Victoria
Phone:

A PROTOCOL UNDER THE PROFESSIONAL STANDARDS UNIFORM ACT 2016

Table of Contents

1	Introduction	3
2	Clearance for ministry	3
3	Ministry	4
4	Fitness for ministry	4
5	Codes of conduct	5
6	Applying for a clearance for ministry	
	Error! Bookmark not defined.	
7	How the application is handled	6
8	An adverse opinion of the PSC on fitness for ministry	6
9	Reference to the Professional Standards Board	7
10	Professional Standards Review Board	8
11	Application for review	8
12	Proceedings of the Board and the Review Board	9
13	The Archbishop	10
14	Completion of the process	10
15	Confidentiality	10
16	Co-operation with Government Authorities	11
17	Co-operation with other Dioceses, other Denominations and other Child	
	Related Employers	11
18	Grievance procedure	11

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 the Anglican Diocese of Melbourne. 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 the 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**). It is intended:
- (a) to identify key aspects of the Act relating to clearance for ministry or service;
 - (b) to give useful information and guidelines about the way an application for a clearance for ministry or service will be handled.
- The guidelines relating to correspondence with an applicant for a clearance for ministry or service are highlighted by a line in the margin for convenience.
- 1.3 This Protocol operates in conjunction with the Protocol for responding to complaints of misconduct by Church workers (**the Principal Protocol**) and is intended to promote proper professional standards of ministry in the Church.
- 1.4 Using this protocol we will promptly respond to an application for a clearance for ministry or service.
- 1.5 Definitions: In this Protocol, a reference to the **Principal Protocol** is a reference to the Protocol for responding to complaints of misconduct against Church workers in participating Anglican dioceses, as approved by the Scheme Directors. Otherwise, expressions used have the same meaning as in the Act.

2 Service

- 2.1 The clearance for service provisions in Part 4.2 of the Act do not apply to ordained ministry or authorized lay ministry. In that respect, see the separate Clearance for Ministry Protocol. Although the term 'service' therefore refers to all service in the Church other than 'ministry', not every role office or position for service requires a clearance - only those specifically prescribed by the Diocesan Bishop in Council.
- 2.2 In the Act, "clearance for service" means the certificate issued by the Office of Professional Standards that the Church worker is fit to hold the proposed role office or position for service in the Church other than for ministry whether unconditionally or subject to any condition or restriction: s59(1) of the Act.
- 2.3 A "prescribed role office or position" means any role office or position for service in the Church other than for ministry that—
- (a) falls within a class from time to time prescribed by the Diocesan Bishop-in-Council; or

(b) involves in substance the duties inherent in the description of that class:

s59(2) of the Act.

2.4 Each Diocesan Bishop-in-Council must therefore prescribe the class of roles offices and positions for which a clearance is required. Each such prescription will be published on the website of the Scheme Corporation.

3 Clearance for service

3.1 A Church worker is eligible to apply for a clearance for service to the Office of Professional Standards: s60(1) of the Act.

3.2 A Church worker appointed or elected to any prescribed role office or position must apply to the Office of Professional Standards for a clearance for service—

(a) no later than 30 days following their appointment or election, as the case may be; or

(b) if the role office or position is prescribed after the appointment of the Church worker, no later than 30 days following written notice from the Director to the person of that prescription.

s60(2) of the Act.

3.3 Nothing in s60 precludes a Church authority in his or her or its discretion from requiring in writing as a condition of any appointment that a person whose role office or position does not otherwise fall within a class referred to above in subsection (2) of the preceding section apply for and obtain a clearance for service: s60(2) of the Act. The Church authority may be the Diocesan Bishop, the Dean or the incumbent or priest in charge, as the case may be.

3.4 It is open to the Church authority to determine in the case of a particular role office or description not already prescribed that a person should apply for a clearance in the interests of protecting those with whom the person may engage or for other good reason: s60(3) of the Act.

3.5 Any application for a clearance for service must be in or to the effect of the prescribed form: s60(4) of the Act. Great care should be taken in completing the application as a wilfully providing a false answer may bear on a person's fitness for service.

3.6 State law may also apply. Under the *Working with Children Act 2005* (Vic), a person commits an offence if he or she does not have a current assessment notice and engages in child-related work knowing it is child-related work and knows that he or she does not have a current assessment notice or is reckless as to whether he or she has one: s33.

3.7 The relevant Church authority may also commit an offence under that State law if they engage or continue to engage the person in child-related work, knowing that it is child-related work when the person does not have a current assessment notice: s35.

- 3.8 In a proceeding for an offence against that section, it is a defence to the charge for the accused to prove that, at the time the offence is alleged to have been committed, the worker had applied for a working with children check and the application had not been finally decided or withdrawn.

4 Fitness for service

- 4.1 It shall be a condition of eligibility for a clearance for service within the Diocese that the Church worker is fit to hold the proposed role office or position in the Church whether unconditionally or subject to any condition or restriction: s 62 of the Act.
- 4.2 Without limiting what constitutes unfitness as provided in Part 5.3 of the Act, 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: s75 of the Act.

5 Code of Conduct

- 5.1 The Archbishop in Council of the Diocese of Melbourne has under the Act (s7) approved the following codes of conduct for observance by Church workers within the Diocese:
- Faithfulness in Service, a national code of the Anglican Church of Australia as in force at November 2016, modified to correspond with the terms used in the Act.
- 5.2 This code together with the provisions of the Act and the general law inform standards of conduct for determining fitness for service of lay people: s14 of the Act.

6 Prohibition on engaging in service

- 6.1 If a Church worker—
- (a) fails to apply for a clearance for service for a prescribed role office of position in compliance with section 60(2) of the Act and that default continues for more than 21 days after written request to the person by the Director to do so; or
 - (b) has been refused a clearance for service for a role office or position, whether or not prescribed, by the Office of Professional Standards on the direction of the Board or on review, the Review Board; or
 - (c) has his or her clearance for service cancelled by the Office of Professional Standards on the direction of the Board or on review, the Review Board
- then—
- (d) the Church worker must not engage or continue to engage in that service; and
 - (e) the role office or position of that Church worker becomes vacant:

s67(1) of the Act.

- 6.2 A wilful or reckless failure to comply with a requirement of subsection (1) renders the Church worker liable to be dealt with for misconduct under the Act.

7 How the application is handled

Consideration of the matter by the Director

7.1 The Director must deal with the application as follows:

- (a) The Director shall acknowledge to the applicant receipt of the application. If a prospective applicant has not completed an application, the Director may send the applicant an application form.
- (b) The Director shall forward the applicant for completion an application for a Working with Children card where the applicant is to engage in child related work or is to be taken to be engaged in that work under the *Working with Children Act 2005* (Vic).
- (c) The Director shall forward the applicant an application for a National Police Certificate for completion and return to the delegate.
- (d) The National Police Certificate will be issued direct to the applicant who is responsible for posting the original to the Director to record the date and reference number of the National Police Certificate.
- (e) The Director shall conduct a search of the National Professional Standards Register and cause to be conducted such investigation and enquiry as may be appropriate to the matter.
- (f) The Director shall take into account the matters referred to in s112 of the Act.
- (g) If to the best of his or her knowledge information or belief, the Director is of the opinion that the applicant is unconditionally fit for the proposed role office or position, the Director shall determine accordingly and the Office of Professional Standards must issue to the applicant a clearance for service for that role office or position: s63 of the Act.
- (h) Otherwise the Director must refer the application to the PSC.
- (i) The Director must as soon as practicable after that referral —
 - (i) give written notice to the applicant of the referral of the matter to the PSC;
 - (ii) inform the applicant that he or she has the opportunity within a further 14 days to address any submissions to the PSC directed to the question of the applicant's fitness for service; and
 - (iii) make available to the applicant a copy of the Act and this Protocol.

Consideration of the matter by the PSC

- 7.2 The PSC must deal with the application as follows:
- (a) The PSC may conduct such further investigation and enquiry as may be appropriate to the matter.
 - (b) The PSC shall consider any submissions from the applicant and take into account the matters referred to in s112 of the Act.
 - (c) If to the best of its information or belief, the PSC is of the opinion that the applicant is unconditionally fit for the proposed role office or position, the PSC shall determine accordingly and the Office of Professional Standards must issue to the applicant a clearance for service for that role office or position: s64 of the Act.
- 7.3 Otherwise the PSC must deal with the application in accordance with this Act and subject to s 69: s64(2) of the Act.

8 An adverse opinion of the PSC on fitness for ministry

- 8.1 After investigation of an application for a clearance for service, where the PSC has formed the opinion that in connection with that application, by reason of misconduct the church worker may not be fit to hold a proposed role office or position in the Church or may be fit subject to any condition or restriction, the PSC must refer the matter to the Board: s69(b) of the Act.
- 8.2 The *Professional Standards Uniform Regulations 2017* prescribe the form to be used for that reference.
- 8.3 The PSC must refer the matter to the Board by delivering to the Secretary of the Board a written report setting out—
- (a) a statement of any allegations of misconduct made against the Church worker; and
 - (b) its investigation and opinion: s71(1) of the Act.
- 8.4 The report must be signed by a member of the referring body: s71(2) of the Act.
- 8.5 The Director must also give the applicant a copy of the written report.

9 Determination by the Board

- 9.1 Part 5.3 of the Act sets out the provisions dealing with the determination of the Board of an application for a clearance. For details of the composition of the Board, please refer to Part 22 of the Principal Protocol.
- 9.2 The proceedings of the Board and the Review Board are governed by Part 5.5 of the Act.
- 9.3 On the referral to the Board of an application for a clearance for service, the Board must enquire into and determine—

- (a) whether the Church worker did commit any alleged misconduct; and
- (b) whether—
 - (i) the Church worker is unfit, whether for a specified limited period or permanently, to hold a particular or any role office or position in the Church 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:

s81 of the Act.

9.4 The Board may hold a preliminary conference and give directions in relation to the application: s101 of the Act.

9.5 If the Board is satisfied that the respondent did commit any alleged misconduct and that—

- (a) the Church worker is unfit as provided above; or
- (b) in the exercise of a Church worker's role, office, licence or position or in the performance of any function, the Church worker should be subject to any condition or restriction

the Board may make a determination to that effect and may—

- (c) direct that the Office of Professional Standards refuse the application or issue the clearance for such period and subject to such condition or restriction as it may determine; and
- (d) exercise the powers referred to in sections 77 and 82 of the Act:

s81 of the Act.

9.6 Within 7 days of the Board making any final finding of fact or direction on the application (**the decision**) that is adverse to the applicant, the Executive Director shall inform the applicant -

- (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 a stay under s90 of the Act; and
- (b) that if he or she does not apply to the Review Board for a review or if no stay is granted, the Office of Professional Standards must comply with the direction of the Board.

11 Review of a decision by the Review Board

11.1 Where the Board has made any decision, a respondent or applicant for a clearance aggrieved by it or the PSC may within 30 days from the date of the decision or such further period as the Review Board may allow, apply to the Review Board for review of the decision: s89

of the Act. For details of the composition of the Review Board, please refer to Part 23 of the Principal Protocol.

- 11.2 In this part, “decision” means any finding of fact, determination or direction by the Board in relation to an application for a clearance for ministry under ss 80 or 81 of the Act.
- 11.3 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 to 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
 - (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.
- 11.4 The Director must cause to be delivered to the applicant notice in writing of the documents delivered to the secretary of the Review Board under s91 of the Act.
- 11.5 The Review Board may hold a preliminary conference and give directions in relation to the application: s101 of the Act.
- 11.5 The Review Board may exercise all the powers of the Board under the Act and may –
- (a) affirm the decision under review;
 - (b) vary the decision under review;
 - (c) set aside the decision under review and make another decision in substitution for it; or
 - (d) set aside the decision under review and remit the matter for reconsideration by the Board (whether constituted by the same members or different members) in accordance with any directions or recommendations of the Review Board:
- s93 of the Act.
- 11.6 The Review Board shall deal with the application as expeditiously as possible and shall consider any further submissions from either the PSC or the respondent: s94 of the Act.
- 11.7 The Office of Professional Standards must give effect to any determination or direction of the Board or the Review Board in relation to a clearance for ministry: s56(4) of the Act.

12 Proceedings of the Board and the Review Board

- 12.1 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: s97 of the Act.

- 12.2 Part 5.5 of the Act contains provisions dealing with the proceedings of the Board and the Review Board.
- 12.3 Neither the Board nor the Review Board must, in the course of inquiring into any question—
- (a) inquire into any matter which is or has been the subject of any formal investigation or enquiry conducted—
 - (i) under or pursuant to any provision of the Constitution; or
 - (ii) under or pursuant to a Canon of the General Synod, a Canon or an Ordinance of another diocese relating to the discipline or professional standards of clergy or Church workers by a board of enquiry, tribunal or other body—

save to the extent of any fresh evidence that was not reasonably available during the previous formal investigation or enquiry, but may take into account the finding of any such formal investigation or enquiry; or
 - (b) inquire into, make any findings in relation to or take into account any alleged breach of—
 - (i) faith of the Church, including the obligation to hold the faith;
 - (ii) ritual of the Church, including the rites according to the use of the Church and the obligation to abide by such use; or
 - (iii) ceremonial of the Church, including ceremonial according to the use of the Church and the obligation to abide by such use:

s111 of the Act.

13 The Church authority

- 13.1 If a Church worker—
- (a) fails to apply for a clearance for service for a prescribed role office of position in compliance with section 60(2) and that default continues for more than 21 days after written request to the person by the Director to do so; or
 - (b) has been refused a clearance for service for a role office or position, whether or not prescribed, by the Office of Professional Standards on the direction of the Board or on review, the Review Board; or
 - (c) has his or her clearance for service cancelled by the Office of Professional Standards on the direction of the Board or on review, the Review Board
- then—
- (d) the Church worker must not engage or continue to engage in that service; and
 - (e) the role office or position of that Church worker becomes vacant:

s67(1) of the Act.

- 13.2 A wilful or reckless failure to comply with a requirement of subsection (1) renders the Church worker liable to be dealt with for misconduct under the Act.
- 13.3 In these circumstances, the relevant Church authority should not continue to engage the person in the role office or position for which a clearance was refused or cancelled and which has become vacant.

14 Completion of the Process

- 14.1 As appropriate the Executive Director will liaise with those involved in this Protocol at the completion of the matter and will seek comments about the process and may discuss possible improvements.
- 14.2 Proposals regarding any changes within the structures of the Church which may assist to prevent further occasions of abuse will be considered.
- 14.3 Any recommendations resulting from this activity will be provided to the Scheme Directors.

15 Confidentiality

- 15.1 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.

16 Co-operation with Government Authorities

- 16.1 Reference should be made to Part 27 of the Principal Protocol.

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

- 17.1 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.

18 Grievance procedure

- 18.1 Any grievance about the operation of this Act or this protocol must in the first instance be addressed in writing to the Executive Director of the Scheme Corporation marked confidential.
- 18.2 The grievance is to be dealt with in accordance with the provisions of ss182 and 183 of the Act.
- 18.3 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.

- 18.4 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.
- 18.5 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.
- 18.6 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.
- 18.7 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.
