

ATTACHMENT 2



MODEL EPISCOPAL STANDARDS ORDINANCE

RELATING TO PROFESSIONAL STANDARDS OF THE DIOCESAN BISHOP, AND FOR OTHER PURPOSES

Approved by resolution of General Synod July 2014 with minor
amendments approved by the General Synod Standing Committee
on 21-23 November 2014

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23 November 2014

Model Episcopal Standards Ordinance

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BE IT ENACTED by [Diocesan Ordinance enactment provision]:

PART 1 – PRELIMINARY

Short title

1. This Ordinance may be cited as the Episcopal Standards Ordinance.

Commencement

2. This Ordinance or provisions of this Ordinance come into operation on a day or days to be appointed by the Diocesan bishop in Council so that the Diocesan bishop in Council may appoint-
 - (a) a day for the Ordinance or provisions of the Ordinance to come into operation; or
 - (b) different days for different provisions of the Ordinance to come into operation.

Interpretation

3. (1) In this Ordinance, unless the context otherwise requires:

“abuse” means bullying, emotional abuse, harassment, physical abuse, neglect of a child, sexual abuse or spiritual abuse;

“Administrator” means the person who would, in the absence or incapacity of a bishop, be the administrator of a Diocese;

“Board” means the Episcopal Standards Board established under Part 11;

“bullying” means repeated behaviour directed to a person or persons -

 - (a) which a reasonable person, having regard to all the circumstances, would expect to victimise, humiliate, undermine or threaten the person or persons; and
 - (b) which creates a real risk to the health and safety of the person or persons

but does not include excluded conduct as defined in this Ordinance;

"**ceremonial**" has the same meaning as that expression has in the Constitution;

"**child**" means a person under 18 years of age;

"**Church**" means the Anglican Church of Australia within the Diocese;

"**Church body**" includes a parish, an incumbent, a parish council, a vestry, a school, and any body corporate, organization or association that exercises ministry within, or on behalf of, the Church;

"**code of conduct**" means a code of conduct approved from time to time under Part 2;

"**complainant**" means a person who makes a complaint;

"**complaint**" means a complaint under section 16 of this Ordinance;

"**Constitution**" means the Constitution of the Anglican Church of Australia;

"**Council of Bishops**" in relation to a complaint has the meaning in subsections (3), (4) and (5) of this section;

"**Diocese**" means a diocese of the Anglican Church of Australia and in relation to the Diocesan bishop means the diocese of the Diocesan bishop;

"**Diocesan bishop**" means the Archbishop / Bishop of and former Diocesan bishop has a corresponding meaning and "**diocesan bishop**" in relation to another diocese or a body constituted under this Ordinance, means the Bishop of another Diocese holding office as a diocesan bishop under the Constitution;

"**Diocesan bishop in Council**" means the Diocesan bishop acting with the advice and consent of the Council of the Diocese;¹

"**Diocesan Council**" means –

- (a) the body exercising powers and functions of the synod of the Diocese on its behalf when it is not in session, or
- (b) where there is no such body, the body constituted or determined by the synod of the Diocese to be the diocesan council.

¹ This definition is appropriate in a case where the Diocesan Council is a body exercising the powers and functions of the synod on its behalf when it is not in session. This is because Synod designates some matters to be dealt with by the Archbishop in Council. This definition and the definition of "Diocesan Council" may need to be adjusted to conform with other diocesan legislation. For example, in a Metropolitan diocese, for the expression "Diocesan bishop in Council" substitute "Archbishop in Council".

“Director” means the Director of Episcopal Standards appointed under Part 7;

“emotional abuse” means:

- (a) subjecting a person to excessive and repeated personal criticism;
- (b) ridiculing a person, including the use of insulting or derogatory terms to refer to that person;
- (c) threatening or intimidating a person;
- (d) ignoring a person openly and pointedly;
- (e) behaving in a hostile manner or in any way that could reasonably result in another person feeling isolated or rejected; or
- (f) any other act or omission in relation to a person; which has caused, or is likely to cause physical or mental harm including self harm but does not include excluded conduct;

“Episcopal Standards Committee” or **“ESC”** means the Episcopal Standards Committee established under Part 6;

“equivalent body” means a body of another Diocese exercising powers, duties or functions under legislation with respect to professional standards or discipline of a church worker, similar to those of the ESC or the Board as the case may be, or where there is no such body, the bishop of the Diocese;

“excluded conduct” has the meaning in subsection (6) of this section;

“faith” has the same meaning as that expression has in the Constitution;

“harassment” means unwelcome conduct, whether intended or not, in relation to a person where the person reasonably feels in all circumstances offended, belittled or threatened which has caused, or is likely to cause physical or mental harm including self harm but does not include excluded conduct;

“incapable” in relation to the Diocesan bishop has the meaning in section 2 of the Bishop (Incapacity) Canon 1995²;

“medical” includes psychiatric, psychological and other areas of health practice;

² Section 2 provides-

“Incapable”, in relation to a person who is the bishop of a diocese, means-

- (a) *incapable, continuously or intermittently, of managing the person’s affairs; or*
- (b) *by reason of a physical or mental disability of any kind, unable, continuously or intermittently, to make reasonable judgments in respect of matters relating to all or any part of the carrying out of the person’s affairs or the affairs of the person’s office as the bishop of the diocese;*

“**misconduct**” has the meaning in subsection (7) of this section;

“**ministry**” means ordained ministry in Bishop’s orders;

“**national register**” means the national register established pursuant to the National Register Canon 2007 or any canon prescribed by General Synod in substitution for that canon;

“**neglect of a child**” means the neglect of a child where the child has suffered, or is likely to suffer, significant harm to his or her wellbeing or development;

“**physical abuse**” means any intentional or reckless act, use of force or threat to use force causing injury to, or involving unwelcome physical contact with, another person but does not include lawful discipline by a parent or guardian.

“**prescribed person**” means –

- (a) the complainant other than the Director; or
- (b) any witness other than either the respondent or a witness as to character; or
- (c) any person against whom a prescribed sexual offence is alleged to have been committed;

“**prescribed sexual offence**” means-

- (a) a sexual offence; or
- (b) such other offence as may be prescribed under legislation of the relevant State or Territory for the purposes of prohibiting the publication of details of the identity of a victim of crime³;

“**protocol**” means the protocol approved from time to time by the Diocesan bishop in Council under Part 5;

“**Provincial Tribunal**” means the Provincial Tribunal of a province established under Chapter IX of the Constitution;

“**Registrar**” in relation to the Diocesan bishop, means the Registrar of the Diocesan bishop;

³ Each diocese by their legal officers should ascertain the legislation in their State or Territory which prohibits the publication of certain information relating to sexual offences and insert the appropriate language in the definition. The following references are offered as a guide only and need to be verified -

Victoria, the suggested language which derives from s4(1A) of the *Judicial Proceedings Reports Act 1958 (Vic)* is –

a prescribed sexual offence means a sexual offence, or an offence where the conduct constituting it consists wholly or partly of taking part, or attempting to take part, in an act of sexual penetration as defined in section 35 of the *Crimes Act 1958*;

New South Wales - the reference might be to “a prescribed sexual offence as defined under s290A of the *Criminal Procedure Act 1986*”;

“respondent” means the Diocesan bishop in respect of whom a complaint is made;

“relevant Metropolitan” in relation to a Diocesan bishop means:

- (a) unless paragraph (c) or (d) applies, the Metropolitan of the Province in which the diocese of the Diocesan bishop is situated; or
- (b) if the Diocesan bishop is the Metropolitan but not the Primate, the Primate;
- (c) if the Diocese is an extra-provincial Diocese, the Primate;
- (d) if the Diocesan bishop is the Primate, the person who, at the relevant time, is the next most senior Metropolitan who is available, seniority being determined by the date of consecration⁴;

“Review Board” means the Episcopal Standards Review Board established under Part 14;

“ritual” has the same meaning as that expression has in the Constitution;

“sexual abuse” means sexual assault, sexual exploitation or sexual harassment and in relation to a child includes the use of a child for a person’s own sexual stimulation or gratification or for that of others;

“sexual assault” means any intentional or reckless act, use of force or threat to use force involving some form of sexual activity against an adult without consent or against a child;

“sexual exploitation” means any form of sexual contact or invitation to sexual contact with another person, with whom there is a pastoral or supervisory relationship, whether or not there is consent and regardless of who initiated the contact. It does not include such contact or invitation within a marriage;

“sexual harassment” means unwelcome conduct of a sexual nature, whether intended or not, in relation to a person where the person reasonably feels in all circumstances offended, belittled or threatened;

“sexual offence” means-

- (a) a sexual offence as defined under the Crimes legislation of the State or Territory in which the Diocese is located⁵; or

⁴ See s2 of the *Bishop (Incapacity) Canon* 1985.

⁵ Each diocese by their legal officers should ascertain the applicable legislation in their State or Territory and insert the appropriate language in paragraph (a) of the definition. The following references are offered as a guide only and need to be verified -

(b) an attempt to commit an offence referred to in paragraph (a); or

(c) an assault with intent to commit an offence referred to in paragraph (a)

and in relation to a particular jurisdiction, has the meaning given it by the applicable legislation of that jurisdiction;

“spiritual abuse” means the mistreatment of a person by actions or threats directed specifically to that person and justified by appeal to God, faith or religion, which mistreatment has caused, or is likely to cause physical or mental harm including self harm but does not include excluded conduct;

“Special Tribunal” means the Special Tribunal established under the Constitution;

3. (2) In this Ordinance, a reference to conduct shall be read as a reference to—
- (a) doing or refusing to do any act;
 - (b) refraining (otherwise than inadvertently) from doing an act; or
 - (c) making it known that an act will not be done.

Council of Bishops

- (3) **“Council of Bishops”** in relation to a complaint, means a council of Bishops comprising-
- (a) the Primate; and
 - (b) the two most senior diocesan bishops in office as at the date of the complaint (seniority being determined by date of consecration), one of whom shall be a Metropolitan, if willing and able -

each of whom shall have consented in writing to act as a member of the Council of Bishops in relation to the complaint and to abide by the provisions of Part 18 (Confidentiality and Publication).

- (4) If an office holder referred to in subsection (3) -
- (a) is a respondent to the complaint; or

Victoria - the reference might be to “a sexual offence as defined under s4 of the *Judicial Proceedings Reports Act 1958 (Vic)*”;

New South Wales - the reference might be to “a prescribed sexual offence as defined under s578A of the Crimes Act 1900 (NSW)”;

this in turn refers to the definition of “prescribed sexual offence” in s290A of the *Criminal Procedure Act 1986*;

Queensland - the reference might be to “a sexual offence as defined under the Criminal Law (Sexual Offences) Act 1978 (QLD)”;

South Australia - the reference might be to “a sexual offence as defined under s4 of the Evidence Act 1929 (SA);

Western Australia - the reference might be to “a sexual offence as defined in s36A of the Evidence Act 1906 (WA)”;

- (b) is a respondent to any other complaint that, as at the date of the first mentioned complaint, has been—
 - (i) either referred to the Board under Part 12 or Part 13 of this Ordinance and has not yet been dealt with by the Board or Review Board; or
 - (ii) if it has been dealt with, has resulted in a recommendation to the Council of Bishops pursuant to section 40, 45 or 58 of this ordinance; or
- (c) is unable to act because of illness or absence from his or her Diocese; or
- (d) otherwise ceases to hold office; or
- (e) declines for what ever reason to consent in writing as set out in subsection (3) —

that office holder shall (as the case may be) be ineligible, or shall cease, to be a member of the Council of Bishops and the place of that office holder —

- (f) if the Primate, shall be taken by the Primate's successor in office or, if the office is vacant or the Primate is incapable, by the Metropolitan or bishop who would exercise the authorities powers rights and duties of the Primate during such vacancy or incapacity;
 - (g) if a Metropolitan (other than the Primate), shall be taken by the Metropolitan next senior to that bishop (if any); and
 - (h) in any other case, shall be taken by the next most senior diocesan bishop.
- (5) If the Metropolitan or bishop who would exercise the authorities powers rights and duties of the Primate, when the office was then vacant, takes the place of the Primate and is already or would otherwise be a member of the Council of Bishops as Senior Metropolitan, the place shall be taken by the Metropolitan next senior to that bishop not already or otherwise a member of the Council of Bishops.

Excluded conduct

- (6) The expression “excluded conduct” in relation to the Diocesan bishop means —
- (a) any act or omission or refusal of the Diocesan bishop to ordain, appoint, correct, discipline, counsel, admonish, transfer, demote, suspend, retrench or dismiss a person; or
 - (b) any other act or omission or refusal of the Diocesan bishop in the course of episcopal ministry; or
 - (c) any decision of the Diocesan bishop relating to the same
- if the Diocesan bishop has acted or omitted or refused to act or decided —
- (d) in good faith;
 - (e) reasonably; and

- (f) in the lawful discharge of the duties and functions of the Diocesan bishop.

Nothing in this definition shall be read as imposing any duty or function on the Diocesan bishop.

Misconduct

3. (7) The expression “misconduct” in relation to the Diocesan bishop means –
- (a) bullying;
 - (b) emotional abuse;
 - (c) harassment;
 - (d) physical abuse;
 - (e) neglect of a child;
 - (f) sexual abuse;
 - (g) spiritual abuse;
 - (h) any offence under an ordinance of the Diocese;
 - (i) any of the following offences under the Offences Canon 1962⁶ or any canon in substitution or amendment of that canon-
 - (i) unchastity;
 - (ii) drunkenness;
 - (iii) wilful failure to pay just debts;
 - (iv) wilful violation of the Constitution or of the canons made thereunder or of the ordinances of provincial synod or of the diocesan synod; and
 - (v) any conduct involving wilful and habitual disregard of the consecration vows of the Diocesan bishop.
 - (j) wilful or reckless failure to comply with a condition imposed by the Council of Bishops under section 100 of this Ordinance;
 - (k) wilful or reckless failure to comply with an undertaking given to the Board, the Review Board or the Council of Bishops;
 - (l) 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 who is subject to a canon of General Synod or an ordinance of a

⁶ Section 2 of the *Offences Canon 1962 – 1998* provides-

- (1) *The Special Tribunal in addition to its powers under section 56(2) of the Constitution may hear and determine charges against any member of the House of Bishops made in respect of the following offences:*
1. *Unchastity.*
 2. *Drunkenness.*
 3. *Wilful failure to pay just debts.*
 4. *Conduct, whenever occurring,*
 - (a) *which would be disgraceful if committed by a member of the clergy,*
 - and*
 - (b) *which at the time the charge is preferred is productive, or if known publicly would be productive, of scandal or evil report.*
 5. *Wilful violation of the Constitution or of the canons made thereunder or of the ordinances of provincial synod or of his diocesan synod.*
 6. *Any conduct involving wilful and habitual disregard of his consecration vows.*

- diocesan synod relating to discipline or professional or episcopal standards;
- (m) any breach of the duty to report a matter referred to below in section 8;
 - (n) any other conduct (other than excluded conduct) that is unbecoming or inappropriate to the office and duties and functions of a diocesan bishop

by the Diocesan bishop whenever occurring (whether before or after the commencement of this Ordinance) which, if established, would on its face call into question:

- (i) the fitness of the Diocesan bishop to hold office, or to be or remain in Holy Orders; or
- (ii) the fitness of the Diocesan bishop, whether temporarily or permanently, to exercise ministry and perform any duty or function of the office; or
- (iii) whether, in the exercise of ministry or in the performance of any duty or function, the Diocesan bishop should be subject to any condition

but excludes for the purposes of this Ordinance any breach of faith ritual or ceremonial.

Overriding purposes of Ordinance

4. The overriding purposes of this Ordinance and of any protocol made under this Ordinance, in their application to any complaint under this Ordinance, are to facilitate the just, quick and inexpensive resolution of the real issues in the complaint and to regulate fitness for ministry for the protection of the community.
5. The Director, the ESC, the Board and the Review Board must each seek to give effect to the overriding purposes when exercising any power given by this Ordinance or by any protocol and when interpreting any provision of this Ordinance or of any such protocol.

PART 2 – CODE OF CONDUCT

Approval of code of conduct

6. The Synod or Diocesan bishop in Council⁷ may from time to time by resolution approve a code of conduct for observance by the Diocesan bishop, which does not make provision for any matter concerning faith, ritual or ceremonial.

Promotion of code of conduct

7. The Diocesan bishop in Council through the ESC and by such other means as may be considered appropriate must take such steps as may be necessary or desirable to promote the knowledge, understanding and observance in the Church of the code of conduct.

⁷ The intention is that the Diocesan bishop must be party to approving the code of conduct and protocol.

PART 3 – DUTY TO REPORT

8. (1) If the Diocesan bishop –
- (a) believes on reasonable grounds that a person has suffered harm or is at risk of harm as a result of abuse by a person who is subject to a canon of General Synod or an ordinance of a Diocese relating to discipline or professional or episcopal standards; and
 - (b) has no reason to believe that the Director of Professional Standards or the Director of Episcopal Standards (as the case may be) appointed under that canon or ordinance or any member of the Professional Standards Committee or Episcopal Standards Committee appointed under that canon or ordinance is aware of those facts
- the Diocesan bishop must as soon as possible report the matter to that Director or to a member of that Professional Standards Committee or that Episcopal Standards Committee as the case may be.
- (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.

PART 4 – OTHER DUTIES OF THE RESPONDENT

Duties concerning the process

9. (1) The Diocesan bishop must subject to subsection (2)–
- (a) comply with a requirement of the ESC pursuant to section 27(a) of this Ordinance to meet with an investigator to answer questions in relation to a complaint;
 - (b) comply with a requirement of the ESC pursuant to section 27(b) and (c) of this Ordinance to provide a verified detailed report to the ESC within a reasonable time; and
 - (c) truthfully answer any question put by or on behalf of the ESC or the Board or the Review Board in the exercise of powers conferred by this Ordinance.
- (2) If the respondent declines to answer a question on the ground that the answer might tend to incriminate the person, a written record shall be made of the question and of the ground of refusal.

- (3) The Diocesan bishop must—
 - (a) not mislead the ESC or the Board or the Review Board or a member of any of them or a delegate of the ESC;
 - (b) not unreasonably delay or obstruct the ESC, the Board or the Review Board or a member of any of them or a delegate of the ESC in the exercise of powers conferred by this Ordinance; and
 - (c) attend a mediation, conciliation, neutral evaluation or other dispute resolution meeting arranged by the ESC in relation to a complaint.

Duty to comply with an undertaking or direction

- 10. (1) The Diocesan bishop must -
 - (a) comply with any undertaking given to the Board, the Review Board or the Council of Bishops; and
 - (b) comply with a direction made by the Council of Bishops to give effect to a recommendation of the ESC, the Board or the Review Board (as the case may be) or any permitted variation or modification of that recommendation.
- (2) Failure of the Diocesan bishop to comply with an undertaking or direction is an offence.
- (3) The ESC may institute proceedings forthwith in the Special Tribunal in respect of an offence against this section or, if the bishop is no longer a Diocesan bishop, shall refer the matter, together with such relevant information concerning the alleged offence as may be in its possession, to the diocesan bishop of the Diocese in which the former Diocesan bishop is then resident.

PART 5 –PROTOCOL

Making and content of protocols

- 11. (1) The Diocesan bishop in Council must from time to time consider and approve a protocol or protocols not inconsistent with this Ordinance for implementation in relation to complaints.
- (2) The protocol or protocols must include:
 - (a) procedures for receiving a complaint;
 - (b) the appointment, role and function of support persons and carers;
 - (c) provision for informing a complainant and victim of alleged misconduct, and the respondent, of rights, remedies and relevant procedures available to them;
 - (d) provision for assisting or supporting, as appropriate, any person affected by alleged conduct the subject of a complaint or the respondent;
 - (e) an explanation of the processes for investigating and dealing with a complaint;

- (f) provisions for dealing fairly with each party to a complaint;
- (g) processes for mediation, conciliation and reconciliation, as appropriate, of a complaint or grievance;
- (h) provisions for information, reports, advice and recommendations to the Primate and the relevant Metropolitan or the relevant Administrator at each stage of the process of dealing with a complaint;
- (i) procedures for working, where necessary, with law enforcement, prosecution or child protection authorities of the States and Territories and of the Commonwealth of Australia.

Promoting knowledge and understanding of any protocol

12. The Diocesan bishop in Council through the Director and the ESC and by such other means as they may consider appropriate must take such steps as may be necessary or desirable to promote throughout the community knowledge and understanding of any protocol.

PART 6 – EPISCOPAL STANDARDS COMMITTEE

Establishment of ESC

13. (1) There shall be an Episcopal Standards Committee constituted in accordance with the provisions of this Part.
- (2) The members of the ESC including its chair shall be appointed by the Diocesan Council, meeting when the Diocesan bishop is not present.⁸
- (3) The members of the ESC shall hold office on such terms and conditions as may be determined from time to time by the Diocesan Council, meeting when the Diocesan bishop is not present.
- (4) The ESC shall have at least 3 members including the chair, any of whom may reside outside the Diocese.
- (5) The membership of the ESC shall be constituted, so far as reasonably possible, so as collectively to provide experience and appropriate professional qualifications in:
- (a) law;
 - (b) episcopal ministry; and
 - (c) human resources, pastoral ministry, investigations, social work, ethics or counselling.
- (6) The ESC shall –
- (a) include at least one person who is not a member of the Anglican Church of Australia;
 - (b) so far as it is reasonably practicable have at least one man and at least one woman; and

⁸ See footnote 1.

- (c) not include a person who is a diocesan bishop or a clergy person holding a licence or other authority from the Diocesan bishop.
- (7) The members of the ESC may constitute or include the members of an equivalent body either generally or for a particular complaint or matter.
- (8) A member of the ESC must not act in a matter unless the member has agreed in writing to abide by this Ordinance.

Conduct of business

- 14. (1) The ESC may meet from time to time as determined by the chair or a majority of its members and may conduct its business by telephone or electronic communication.
- (2) The chair must convene a meeting of the ESC at the request of the Director.
- (3) The procedures of the ESC shall be as determined by the ESC.
- (4) A majority of the members shall constitute a quorum.
- (5) A decision taken other than at a meeting of the ESC, if supported by a majority of members of the ESC, constitutes a decision of the ESC.
- (6) The ESC must act in all things as expeditiously as possible.

Validity of proceedings

- 15. An act or proceeding of the ESC is not invalid by reason only of a vacancy in its membership and, notwithstanding the subsequent discovery of a defect in the nomination or appointment of a member, any such act or proceeding is as valid and effectual as if the member had been duly nominated or appointed.

Functions of the ESC

- 16. The ESC has the following functions:
 - (a) to implement a protocol;
 - (b) to receive a complaint against the Diocesan bishop;
 - (c) to act on a complaint in accordance with the provisions of this Ordinance and any protocol and to obtain independent legal advice for that purpose;
 - (d) to appoint suitable persons to fulfil the several roles required to implement a protocol in each particular case;
 - (e) where appropriate, to recommend the conciliation or mediation of any complaint;
 - (f) to investigate or cause to be investigated a complaint in a timely and appropriate manner;
 - (g) where appropriate, to recommend to the Diocesan bishop in Council any changes to a protocol and any other changes to Church

processes, structures and education programmes that would reduce the risk of misconduct;

- (h) subject to any limit imposed by the Diocesan bishop in Council [by the Diocesan Council]⁹ to authorise such expenditure as may be necessary or appropriate to implement, in a particular case, a protocol and the provisions of this Ordinance;
- (i) to advise any relevant Church body as to the financial, pastoral or other needs of a person affected by conduct the subject of a complaint and in connection with any legal proceedings, anticipated or existing, against such Church body arising out of that alleged conduct;
- (j) to refer any information in its possession to a law enforcement, prosecution or child protection authority of a State or Territory or of the Commonwealth of Australia for which the information is or may be relevant;
- (k) to maintain proper records of all complaints received and of action taken in relation to each of them; and
- (l) to exercise such other powers and functions as are conferred on it by this or any other Ordinance or by a protocol.

Power of the ESC to delegate

- 17. (1) Subject to subsection (2), the ESC may delegate, upon such terms and conditions as the ESC may approve, any of its functions under this Ordinance to any person.
- (2) The ESC cannot delegate:
 - (a) its functions under subsection (1);
 - (b) its functions under paragraphs (e) and (g) of subsection 16;
 - (c) its functions under Part 12 (suspension); or
 - (d) its functions under sections 28 and 29.
- (3) A delegation under this section must be made by instrument in writing signed by a member of the ESC.

PART 7 – DIRECTOR OF EPISCOPAL STANDARDS

Appointment of the Director

- 18. (1) There shall be a Director of Episcopal Standards.
- (2) The Director shall be appointed by the Diocesan Council meeting when the Diocesan bishop is not present.
- (3) The Director shall hold office on such terms and conditions as may be determined from time to time by the Diocesan Council meeting when the Diocesan bishop is not present.

⁹ The choice of expression depends on the relevant governance model of the Diocese. See footnote 1.

- (4) The Director may act in a corresponding capacity as a Director of Episcopal Standards for another diocese either generally or for a particular case or matter.

Functions of the Director

19. (1) The Director shall have the following functions under this Ordinance:
- (a) to receive any complaint on behalf of the ESC;
 - (b) in his or her discretion to make a complaint against the Diocesan bishop;
 - (c) to manage the implementation of the protocol in respect of any complaint or grievance;
 - (d) to be the executive officer of the ESC;
 - (e) to attend meetings of the ESC except for any part of a meeting which deals with conditions of employment, remuneration or performance of the Director;
 - (f) to provide advice about the code of conduct, the protocol and procedures under this Ordinance;
 - (g) to provide or arrange care or treatment of the complainant and respondent;
 - (h) to provide input into education and vocational training programs for the Diocesan bishop;
 - (i) to provide information to complainants and the respondent about the operation of the protocol, with particular emphasis on helping the respondent to understand and discharge his or her responsibilities under the protocol;
 - (j) to keep proper records of complaints, decisions, meetings, employment screening details, police checks and people affected by any allegation of misconduct;
 - (k) to consult and co-operate with other persons and bodies in the Church with responsibility for professional standards;
 - (l) in cases of alleged illegal behaviour, to support the complainant in making a report to police or child protection authorities;
 - (m) to report to the ESC on any recommended changes to the protocol and any other changes to Church processes, structures and education programmes that would reduce the risk of misconduct; and
 - (n) such specific functions and duties, consistent with this Ordinance, as may be determined from time to time by the ESC.
- (2) The Director must act in all things as expeditiously as possible.

PART 8 – COMPLAINTS

Making a complaint of misconduct

20. (1) Any person including the Director may make a complaint of misconduct to the ESC in relation to the Diocesan bishop.
- (2) If the Director receives or makes a complaint against the Diocesan bishop, the Director must request the Registrar to, and the Registrar must, constitute the Council of Bishops in accordance with subsections (3), (4) and (5) of section 3 of this Ordinance.

Form of a complaint

21. (1) A complaint may be in any form, oral or in writing, whether by electronic means or otherwise.
- (2) Where a complaint is oral, the Director must make a written record of the complaint as soon as practicable after receiving it.
- (3) A complaint must include details of the misconduct complained about.
- (4) The Director must not make a complaint based only on information provided anonymously.
- (5) The ESC must not act on an anonymous complaint.
- (6) Non compliance with subsection (2) and (3) of this section does not invalidate a complaint.

ESC may require more information and verification

22. (1) The ESC may require a complainant to—
- (a) give further details of the complaint; and
 - (b) verify any details of the complaint by statutory declaration.
- (2) A requirement under subsection (1) must be in writing and allow the complainant a reasonable time to comply.

ESC may dismiss a complaint or take no further action

23. The ESC may dismiss a complaint or take no further action in relation to a complaint if—
- (a) the ESC is of the opinion that the complaint does not fall within the provisions of this Ordinance; or
 - (b) the complainant has failed to provide further details to the ESC or to verify the allegations by statutory declaration when requested by the Director to do so; or
 - (c) the ESC is of the opinion that the complaint is false, vexatious, misconceived, frivolous or lacking in substance; or
 - (d) the ESC is of the opinion that there is insufficient reliable evidence to warrant an investigation or further investigation

and may take no further action or may delay further action in relation to a complaint if—

- (e) the behaviour, the subject matter of the complaint, can properly be dealt with by other means; or
- (f) the subject matter of the complaint is under investigation by some other competent person or body or is the subject of legal proceedings.

ESC must give the complainant notice of the outcome of complaint and reasons

24. If a complaint is dealt with by the ESC under the preceding section, the ESC must give the complainant a written notice of the outcome including the reasons for the outcome.

PART 9 – INVESTIGATIONS

When ESC is to investigate

25. (1) Subject to this Ordinance, the ESC must investigate each complaint as expeditiously as possible¹⁰.
- (2) The ESC may investigate the conduct of the Diocesan bishop if –
- (a) the ESC has reason to believe that the conduct may amount to misconduct under this Ordinance; and
 - (b) a complaint about the conduct has been withdrawn.
- (3) The Director must prior to any investigation seek from the complainant his or her written consent to –
- (a) the giving by the Director of notice of the complaint to the respondent;
 - (b) the investigation of the complaint by the ESC or its delegate;
 - (c) the ESC otherwise dealing with it under this Ordinance;
 - (d) the hearing and determination of the complaint by the Board and on any review, the Review Board, either by hearing or otherwise in accordance with this Ordinance; and
 - (e) the making of recommendations to the Council of Bishops in accordance with this Ordinance.
- (4) If the complainant (other than the Director) has not given the written consent referred to in the preceding subsection–
- (a) the ESC shall not be required to investigate the complaint and otherwise to refer it to the Board; and
 - (b) the ESC may dismiss the complaint or take no further action in relation to the complaint.

¹⁰ The ESC may delegate its investigation of a complaint: see clause 14.

ESC to obtain material

26. For the purpose of an investigation the ESC or its delegate shall obtain such statutory declarations, written statements, recorded conversations, reports, documents and other material as the ESC or its delegate considers necessary or advisable for presentation to the ESC.

Respondent to respond to ESC

27. The ESC may by notice in writing to the respondent require the respondent—
- (a) to meet with an investigator to answer questions in relation to a complaint;
 - (b) to provide a detailed report to the ESC within a reasonable time specified in the notice in relation to any matter relevant to the investigation; and
 - (c) to verify the report by statutory declaration or another specified manner.

PART 10 – OUTCOMES OF ESC

How ESC may or must respond after receipt of complaint

28. At any time after the ESC receives a complaint, the ESC may:
- (a) recommend mediation, conciliation, neutral evaluation or other alternative resolution of the complaint;
 - (b) if it considers on reasonable grounds that the Diocesan bishop may be incapable, report the matter in writing to the relevant Metropolitan¹¹;
 - (c) if the Diocesan bishop whose conduct is under investigation ceases to be the Diocesan bishop prior to any reference of the complaint to the Board, refer the complaint, together with such information as it shall have received, to the equivalent body having jurisdiction in the Diocese by whose Bishop the former Diocesan bishop is licensed or, where the former Diocesan bishop is not licensed, in which the former Diocesan bishop resides; and
 - (d) exercise its powers under section 23 of this Ordinance to dismiss a complaint or to take no further action in relation to a complaint.
29. At any time after investigation of a complaint in accordance with Part 9, the ESC:
- (a) must, if required under section 52 of this Ordinance to do so, refer the complaint to the Board; and
 - (b) may institute, amend or withdraw proceedings by way of charge against the Diocesan bishop before the Special Tribunal.

If a complaint is settled or resolved

30. (1) The fact that the subject matter of a complaint may be settled or resolved in whole or in part between the parties affected thereby does not prevent the ESC from taking any of the steps referred to in sections 28(b), (c) and (d) and 29 in respect of the subject matter of the complaint.
- (2) Any term of settlement or resolution referred to in subsection (1) which purports to prevent or to limit the institution of action under either of sections 28(b), (c) and (d) and 29 shall be of no effect.
 - (3) The ESC may agree with the Diocesan bishop for the submission to the Board or the Review Board of either or both a statement of the facts relevant to the complaint and any recommendation proposed to be made by the Board or the Review Board to the Council of Bishops.
 - (4) The Board or the Review Board may in its discretion proceed on the basis of the statement of agreed facts and determine any recommendation to be made to the Council of Bishops, having regard

¹¹ The Episcopal Ministry Task Force recommends that consideration be given to amending the *Bishop (Incapacity) Canon* 1995 to provide that the report of the ESC here referred to shall be a report for the purposes of section 4 of the *Bishop (Incapacity) Canon* 1995 as if it were made by three members of the Synod of a Diocese pursuant to that section.

to but not bound by any proposed recommendation agreed between the ESC and the Diocesan bishop¹².

PART 11 – EPISCOPAL STANDARDS BOARD

Establishment of the Board

31. There shall be an Episcopal Standards Board comprising 3 persons and constituted and appointed in accordance with the provisions of this Part.

Functions of the Board

32. Subject to the provisions of this Ordinance, the functions of the Board are –
- (a) to make a determination and where appropriate make a recommendation under section 45 of this Ordinance;
 - (b) to enquire into and determine a complaint referred to it under section 55; and
 - (c) to make a determination and where appropriate make a recommendation under section 58.

Board appointed from a panel

33. (1) The members of the Board in a particular case shall be appointed from a panel of at least 6 persons comprising¹³:
- (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 who are members of the Anglican Church of Australia; and
 - (b) at least four other persons of whom at least—
 - (i) two shall be clergy who are or have been a diocesan bishop; and
 - (ii) two shall be lay persons who are members of the Anglican Church of Australia.
- (2) As far as reasonably practicable the lay members of the panel should comprise an equal number of men and women.

¹² The cases dealing with the imposition of a monetary penalty or disqualification for contravention of the Corporations Act or the Trade Practices Act hold that the Court should not depart from the penalty recommended by the prosecuting authority and the respondent unless in all the circumstances it is outside the permissible range: see *ASIC v Vizard* (2005) 54 ACSR 394 at [45] per Finkelstein J, *NW Frozen Goods Pty Ltd v ACCC* (1996) 71 FCR 285 at 291 (FC) and *ASIC v Vines* (2006) 58 ACSR 298 at [19] per Austin J.

¹³ It is proposed that General Synod be asked by resolution to authorise the Standing Committee of General Synod to establish an Episcopal Standards Board Panel and an Episcopal Standards Review Board Panel to be available as a resource to those dioceses who wish to make use of it.

Appointment of members of the panel

34. (1) The members of the panel shall be appointed by the Diocesan Council, meeting when the Diocesan bishop is not present.
- (2) The members of the panel shall hold office on such terms and conditions as may be determined from time to time by the Diocesan Council, meeting when the Diocesan bishop is not present.
- (3) Any vacancy in the membership of the panel shall be filled by the Diocesan Council, meeting when the Diocesan bishop is not present.

Appointment of members of the Board

35. (1) The members of the Board to be convened for a complaint referred to the Board shall be determined by the President or, if there is a vacancy in the office of President, by the Deputy President.
- (2) For the purpose of any reference to the Board, the Board shall consist of—
- (a) the President or Deputy President, who shall be the presiding member;
- (b) one person who is or has been a diocesan bishop; and
- (c) one lay person.
- (3) The Board must so far as reasonably practicable have at least one man and at least one woman.
- (4) A member of the Board may reside outside the Diocese.
- (5) A member of the Board must not act in a matter unless the member has agreed in writing to abide by this Ordinance.
- (6) The members of the Board may constitute or include the members of an equivalent body either generally or for a particular complaint or matter.

Quorum of Board

36. The quorum for a meeting of the Board shall be all the members of the Board except where the Board by its presiding member makes directions under section 81 of this Ordinance.

Secretary to the Board

37. There shall be a Secretary to the Board who shall be appointed by the President of the Board on such terms and conditions as may be determined from time to time by the President of the Board.

Filling vacancies on the Board

38. (1) Any vacancy in the membership of the Board shall be filled by the President of the Board, or if the President is not available, the Deputy President of the Board.

- (2) Where a member of the Board is unable to enquire into and determine a complaint, a substitute member may be appointed by the President of the Board, or if the President is not available, the Deputy President of the Board.

Validity of proceedings

39. An act or proceeding of the Board is not invalid by reason only of the subsequent discovery of a defect in the nomination or appointment of a member of the Board or the Panel, and any such act or proceeding is as valid and effectual as if the member had been duly nominated or appointed.

PART 12 – SUSPENSION

ESC may refer to Board or recommend suspension

40. Where after receipt of a complaint and at any time during the progress of a complaint under this Ordinance, the ESC is satisfied that if the Diocesan bishop remains in office pending the outcome of the complaint–

- (a) there is an unacceptable risk of harm to any person; or
- (b) there will be serious damage to the reputation of the Church

the ESC must refer the matter to the Board or, as the urgency of the matter requires, make a recommendation to the Council of Bishops that pending that outcome–

- (c) the Diocesan bishop be suspended from the duties of office or certain of those duties; and
- (d) such other action be taken as may be thought fit.

Respondent to be given notice

41. Before making a recommendation pursuant to section 40 or referring the matter to the Board, the ESC must give the Diocesan bishop notice that grounds exist for the ESC to be satisfied as stated in section 40 (specifying the same) and notice of any proposed recommendation and request the Diocesan bishop to show cause in writing within 7 days why the recommendation should not be made.

No notice where immediate unacceptable risk

42. The provisions of the preceding section shall not apply if the ESC is satisfied that there is an immediate unacceptable risk of harm to any person if the Diocesan bishop remains in office.

Referral to the Board

43. Where the ESC is satisfied that there is an immediate unacceptable risk of harm to any person if the Diocesan bishop remains in office and makes a recommendation to the Council of Bishops pursuant to section 40–

- (a) the ESC must forthwith refer the matter to the Board; and

- (b) the Director must as soon as practicable give the Diocesan bishop notice that—
 - (i) the recommendation has been made without notice and the grounds relied on;
 - (ii) the ESC will report the recommendation to the Board at its next meeting and that the Board will consider whether the recommendation should stand; and
 - (iii) the Diocesan bishop may advance submissions to the Board if he or she wishes to do so.

ESC or Board to consider respondent's response

- 44. (1) The ESC or the Board (as the case may be) must consider the response if any from the Diocesan bishop received within the time specified above or any further period allowed, before making a decision on the recommendation to be made.
- (2) The provisions of subsection (1) shall not apply in relation to any recommendation of the ESC to the Council of Bishops under section 40 where the ESC is satisfied that there is an immediate unacceptable risk of harm to any person if the Diocesan bishop remains in office and for that reason the provisions of section 41 do not apply.

Powers of Board if satisfied as to unacceptable risk or serious damage to reputation

- 45. If the Board is satisfied –
 - (a) that if the Diocesan bishop remains in office pending the outcome of the complaint—
 - (i) there is an unacceptable risk of harm to any person; or
 - (ii) there will be serious damage to the reputation of the Church

the Board may after considering the response if any from the Diocesan bishop—

 - (b) determine accordingly and make a recommendation to the Council of Bishops that pending that outcome action be taken as referred to above in section 40;

or where the ESC has already made a recommendation under section 40—

 - (c) affirm or vary that recommendation; or
 - (d) set aside that recommendation and make another in substitution for it.

Matters to be considered by ESC or Board before recommending

- 46. Before making a recommendation under this Part, the ESC or the Board (as the case may be) must take into account:
 - (a) the seriousness of any alleged misconduct;
 - (b) the nature of the material to support or negate the allegations;
 - (c) the extent to which any person is at risk of harm;

- (d) any breach of a duty imposed on the Diocesan bishop under this ordinance;
- (e) after consultation with the Diocesan Council, the effect on the Diocesan bishop, and on the Church and its reputation of acting and of not acting under this Part; and
- (f) any other allegation of similar conduct previously made to the ESC or to an equivalent body

and may take into account any other relevant matter.

Suspension by the Council of Bishops

47. (1) The Council of Bishops to whom a recommendation is made under this Part must, and is hereby empowered to give effect to –
- (a) that recommendation of the ESC or the Board¹⁴; or
 - (b) any variation or modification of that recommendation, consistent with any facts found by the body making the recommendation provided that the substance of that recommendation is preserved, as the Council of Bishops sees fit.
- (2) Subject to subsection (3), the Council of Bishops must release to the public as soon as practicable a written statement disclosing their decision on the recommendation received and the steps to be taken or that have been taken pursuant to this section to give effect to it.
- (3) The Council of Bishops must ensure that any statement so released is anonymised and redacted so as not to contain any particulars that identify or are likely to lead to the identification of a prescribed person.

Decision of the Council of Bishops to be decided by a majority of the votes

48. A question before the Council of Bishops under this Part may be decided by a majority of the votes of the members of the Council of Bishops.

Criminal charges – Notice of suspension by the relevant Metropolitan

49. (1) If the Diocesan bishop has been charged in any jurisdiction in Australia with a sexual offence or an offence relating to child pornography whether committed within or outside the Diocese, the Diocesan bishop must forthwith stand down from the duties of office pending the determination of the charge.
- (2) If the Diocesan bishop fails to do so, the relevant Metropolitan may serve on the Diocesan bishop a notice of suspension signed by the relevant Metropolitan.
- (3) Upon service of that notice, the Diocesan bishop shall be deemed to have been suspended pending the outcome of the hearing of the charge.

¹⁴ Add 'or if applicable, the Review Board' if an appeal to the Review Board is permitted.

Effect and consequences of suspension

50. A suspension of the Diocesan bishop made by the Council of Bishops following a recommendation under this Ordinance or a suspension deemed under the preceding section:
- (a) has effect as an absence of the Diocesan bishop from the see; and
 - (b) continues until it ceases to have effect by reason of :
 - (i) the ESC terminating the investigation of the complaint without referring the matter to the Board; or
 - (ii) a determination to that effect by the Council of Bishops; or
 - (iii) the Council of Bishops giving effect to a recommendation of the Board¹⁵ or such a recommendation as varied or modified by the Council of Bishops under section 100; or
 - (iv) the see becoming vacant (whether or not under this Ordinance)
- whichever first occurs.

Continuation of stipend, allowances and other benefits

51. During any such suspension or any voluntary standing down from the duties of office pending the outcome of a complaint, the Diocesan bishop is entitled to receive whatever stipend, allowances and other benefits as would otherwise have accrued and they are to be met or reimbursed by the body normally responsible for their payment.

PART 13 – REFERENCE OF A COMPLAINT TO THE BOARD***ESC to refer certain matters to the Board***

52. After investigation of a complaint in accordance with Part 9, where the ESC has formed the opinion that the conduct the subject of the complaint if established would call into question whether—
- (a) the Diocesan bishop is unfit –
 - (i) to hold office or to be or remain in Holy Orders; or
 - (ii) whether temporarily or permanently, to exercise ministry and perform any duty or function of the office; or
 - (b) in the exercise of ministry or in the performance of any duty or function, the Diocesan bishop should be subject to any condition
- the ESC must refer the complaint to the Board.

How ESC to refer matters

53. The ESC must refer the complaint to the Board by delivering to the Secretary of the Board a written report of its investigation and opinion signed by a member of the ESC.

¹⁵ Add 'or the Review Board as the case may be' if an appeal to the Review Board is permitted.

If Diocesan bishop resigns from office

54. If after a complaint is referred to the Board, the Diocesan bishop resigns from office, the Board may continue to enquire into and determine the complaint, notwithstanding such resignation.

Documents and materials to be delivered to the Board

55. (1) Within 14 days of the date of the reference of a complaint to the Board or within 14 days of the date of the document or material coming into existence, whichever is the later, the ESC must cause to be delivered to the Secretary of the Board any documents and material relevant to the reference.
- (2) The ESC, as soon as practicable after delivering the report referred to in section 53 to the Secretary of the Board, shall cause to be delivered to the Diocesan bishop as the respondent a copy of the report and opinion and notice that the respondent may advance any submissions to the Board if he or she wishes to do so.
56. The Board must deal with a complaint as expeditiously as possible.

Powers of Board

57. (1) If the Board is not satisfied that the Diocesan bishop committed any misconduct or that the complaint is false, vexatious or misconceived, the Board may determine accordingly and must dismiss the complaint.
- (2) If the Board is satisfied that the Diocesan bishop did commit misconduct but is not satisfied as to any of the matters in paragraphs (a) and (b) of section 58, the Board may determine accordingly and must take no further action in relation to the complaint.
58. (1) If the Board is satisfied¹⁶ that the Diocesan bishop did commit any misconduct and that—
- (a) the Diocesan bishop is unfit –
- (i) to hold office or to be or remain in Holy Orders; or
- (ii) whether temporarily or permanently, to exercise ministry and perform any duty or function of the office; or
- (b) in the exercise of ministry or in the performance of any duty or function, the Diocesan bishop should be subject to any condition;
- the Board may determine in writing accordingly and may recommend to the Council of Bishops any one or more of the following:
- (c) that the Diocesan bishop be counselled;
- (d) that for a specified period the Diocesan bishop's holding of office or performance of a function as the case may be, shall be subject to such conditions or restrictions as the Board may specify;

¹⁶ See section 77.

- (e) that the Diocesan bishop be suspended from office or from performing a function as the case may be for such period recommended by the Board;
- (f) that the Diocesan bishop be directed to do or to refrain from doing a specified act;
- (g) that the Diocesan bishop be removed from office and the See be declared vacant;
- (h) that the implementation of a determination shall be suspended for such period and upon such conditions as the Board shall specify;
- (i) that a charge be promoted against the Diocesan bishop before the Special Tribunal;
- (j) that the Diocesan bishop be prohibited from functioning as a bishop;
- (k) that the Diocesan bishop be deposed from Holy Orders;
- (l) otherwise as the Board sees fit.

59. If the Board is satisfied that the Diocesan bishop is unfit-

- (a) to hold office or to be or remain in Holy Orders; or
- (b) whether temporarily or permanently, to exercise ministry and perform any duty or function of the office

its recommendation must include any one or more of those specified above in paragraphs (e), (g), (j) and (k).

Board may adjourn on terms

60. (1) The Board may defer making any recommendation under section 58 on a complaint and may for that purpose adjourn any hearing from time to time for a period or periods not exceeding in the aggregate 12 months, on terms that the Diocesan bishop undertake for a specified period and in a form approved by the Board to do one or more of the following acts or omissions –
- (a) stand down from the duties of office or from performing specified episcopal duties;
 - (b) undertake counselling from a person approved by the Board;
 - (c) submit to periodic medical examination by a person approved by the Board;
 - (d) undertake a specified program of medical treatment or rehabilitation whether as an outpatient or inpatient;
 - (e) provide medical or other evidence requested by the Board to assist it in deciding on any final recommendation; and
 - (f) perform or refrain from performing some other specified act.
- (2) If, within a period specified by the Board, the Diocesan bishop declines to give an undertaking in accordance with subsection (1), the Board must proceed to make a determination and recommendation.

- (3) The Board may take into account the failure of the Diocesan bishop to comply with his or her undertaking under subsection (1) in deciding on any recommendation on a complaint.

PART 14 – EPISCOPAL STANDARDS REVIEW BOARD

Establishment of the Review Board

61. There shall be a Episcopal Standards Review Board comprising 5 persons and constituted and appointed in accordance with the provisions of this Part.

Function of the Review Board

62. Subject to the provisions of this Ordinance, the function of the Review Board is to determine any application authorised by this Ordinance¹⁷ for review of a decision of the Board.

Panel of Review Board members

63. The members of the Review Board in a particular case shall be appointed from a panel of 10 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) eight other persons of whom—
 - (i) two shall be clergy who are or have been a diocesan bishop;
 - (ii) two shall be clergy not in bishop's orders; and
 - (iii) four shall be lay persons.

Appointment of members of Review Board Panel

64. (1) The members of the panel shall be appointed by the Diocesan Council, meeting when the Diocesan bishop is not present.
- (2) The members of the panel shall hold office on such terms and conditions as may be determined from time to time by the Diocesan Council, meeting when the Diocesan bishop is not present.
- (3) The members of the panel may constitute or include the members of an equivalent body either generally or for a particular complaint or matter.
- (4) Any vacancy in the membership of the panel shall be filled by the Diocesan Council, meeting when the Diocesan bishop is not present.

Convening a Review Board

65. (1) The members of the Review Board to be convened for any review of a decision of the Board shall be determined by the President or, if

¹⁷ So that it does not include, for example, a review of a decision to suspend unless particular provision is added to the model ordinance for that purpose. See footnotes 14 and 18.

there is a vacancy in the office of President, by the Deputy President.

- (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 person in bishop's orders, one clergy person not in bishop's orders and two lay persons.
- (3) So far as it is reasonably practicable, the Review Board shall include at least one man and at least one woman.
- (4) The quorum for a meeting of the Review Board shall be all the members of the Review Board except where the Review Board by its President or Deputy President makes directions under section 81 of this Ordinance.
- (5) A member of the Review Board shall not act as such a member unless the member has agreed in writing to abide by this Ordinance.

Secretary to the Review Board

66. There shall be a Secretary to the Review Board who shall be appointed on such terms and conditions as may be determined from time to time by the President of the Review Board.

Separately constituted Review Boards may sit simultaneously

67. The Review Board, separately constituted in accordance with this Part, may act simultaneously for the purpose of applications made to it.

Review Board's proceedings valid despite vacancies etc

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

PART 15 – APPLICATION FOR REVIEW

Interpretation

69. In this Part, “reviewable decision” means any finding of fact, determination or recommendation by the Board under section 58 of this Ordinance¹⁸

Application to Review Board

70. Where the Board has made any reviewable decision, the respondent or the ESC 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.

Stay

71. Except in so far as the Board or the Review Board may direct otherwise, the application for review shall not operate as a stay of the action on any recommendation by the Council of Bishops required under this Ordinance.

Documents and material to be delivered following application

72. Within 14 days of the date of the application to the Review Board or within 14 days of the date of the document or material coming to existence, whichever is the later, the ESC shall cause to be delivered to the Secretary of the Review Board any documents and material relevant to the application for review including the reasons of the Board for its determination and any recommendations.

President to determine membership of Review Board

73. Upon delivery to the Secretary of the Review Board the documents and material relevant to the application for review, the President or Deputy President of the Review Board as the case may be shall as soon as possible determine the membership of the Review Board for the purpose of the application for review.

Review Board may exercise the powers of the Board

74. The Review Board may exercise all the powers of the Board under this Ordinance 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 in accordance with any directions or recommendations of the Review Board.

¹⁸ If it is desired to afford the Diocesan bishop the right to seek a review of a decision by the Board to recommend his suspension under section 45, then the words ‘either section 45 or’ should be added before the words ‘section 58’.

Review Board to deal with application expeditiously

75. The Review Board must deal with the application as expeditiously as possible and must consider any further submissions from the respondent or the ESC.

PART 16 - PROCEEDINGS OF THE BOARD AND THE REVIEW BOARD***Conduct of proceedings***

76. 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.

Powers and duties of the Board and Review Board

77. (1) Subject to this Ordinance, each of the Board and the Review Board—
- (a) may regulate the proceedings of its meetings as it sees fit;
 - (b) may conduct its business and any proceedings by video link, conference telephone or by any electronic means of communication;
 - (c) may inform itself from the transcript or other record of proceedings in any court or tribunal and may adopt any findings, and accept as its own, the record of any court or tribunal;
 - (d) may give any other person to whom notice of the proceedings was given or who satisfies them that he or she has a proper interest in the matter a reasonable opportunity to make submissions to them; and
 - (e) must give written reasons for any determination and recommendation, other than by way of directions in the course of an application, unless the determination is made by consent of the respondent and the ESC.
- (2) The Board must give the ESC and the respondent a reasonable opportunity to adduce evidence, to examine or cross-examine witnesses and to make submissions to the Board.
78. (1) Subject to subsections (2) and (3), any hearing of the Board or the Review Board must be held in public.¹⁹
- (2) Each of the Board and the Review Board may direct –
- (a) that the whole or part of a proceeding be held in private; or

¹⁹ An alternative section 78 providing for a private hearing can be found at the end of this model ordinance.

- (b) that only persons or classes of persons specified by it may be present during the whole or any part of a proceeding.
- (3) Each of the Board and the Review Board may only make a direction under the preceding subsection if satisfied that the direction is necessary on or more of the following grounds²⁰-
 - (a) to comply with applicable legislation of the State or a Territory or the Commonwealth;
 - (b) prevent a real and substantial risk to the proper administration of justice that cannot be prevented by other reasonably available means;
 - (c) to protect the safety of any person;
 - (d) to avoid causing undue distress or embarrassment to a complainant (other than the Director) or witness (other than the respondent) in a proceeding that relates in whole or part to a complaint of a prescribed sexual offence;
 - (e) to avoid the disclosure of confidential information; and
 - (f) for any other reason in the interests of justice.

Review Board not obliged to hold hearing or admit certain evidence

79. Subject to this Ordinance, the Review Board is not obliged –
- (a) to hold a hearing at which-
 - (i) evidence is adduced, whether by oral examination or signed statement or statutory declaration; or
 - (ii) submissions are heard orally; or
 - (b) to admit evidence that was not adduced before the Board in relation to the facts relevant to the complaint unless –
 - (i) the evidence could not have been obtained with reasonable diligence for use at the hearing before the Board; and
 - (ii) that there is a high probability that the result would have been different had it been received at that hearing.

Legal representation

80. The ESC may and the respondent at the respondent's own expense may appoint a legal representative to assist in the process.

Directions

81. Each of the Board and the Review Board may at any time and from time to time give directions:
- (a) as to the inspection by and supply of copies to the respondent or any other person of the documents or material relevant to the reference; and
 - (b) as to the conduct of its inquiry into the reference

²⁰ These are adapted from s30 of the *Open Courts Act 2013* (Vic).

and for that purpose the Board or the Review Board may be constituted by the President or Deputy President alone.

Board and Review Board may appoint a person to assist

82. Each of the Board and the Review Board may, for the purpose of any particular reference, appoint such person or persons, to assist it in inquiring into (but not determining) a reference as the Board or the Review Board thinks fit.

Directions to ESC

83. Each of the Board and the Review Board may at any time and from time to time give directions to the ESC as to any further inquiries or investigation it requires to be carried out for the purposes of the reference and the ESC must to the best of its ability cause such directions to be carried out.

Board and Review Board may receive written evidence

84. Without limiting the meaning and effect of sections 76 and 77, each of the Board and the Review Board may receive a statutory declaration or a signed statement without the need for the personal attendance of the maker of the statutory declaration or statement and may also in its discretion use electronic means such as video link or conference telephone to receive evidence and submissions.

Board and Review Board may rely on decisions of other bodies

85. In any proceedings before it, where the Board or the Review Board is satisfied that the respondent—
- (a) has been convicted by a court within Australia of an offence involving conduct as described in any of paragraphs (a) to (i) and (l) of subsection 3(7) of this Ordinance (“specified conduct”);
 - (b) has been found guilty (without conviction) by a court within Australia of an offence involving specified conduct;
 - (c) has admitted in proceedings before a court or tribunal within Australia having engaged in specified conduct;
 - (d) has been found by a court or tribunal within Australia to have engaged in specified conduct; or
 - (e) has been disqualified by a court or tribunal within Australia from professional practice on account of specified conduct,
- then—
- (f) a certificate, reasons for judgment or other record from the court or tribunal (as the case may be) shall be conclusive evidence that the respondent engaged in the specified conduct; and
 - (g) neither the respondent nor any other party shall be at liberty to call or give evidence or make submissions for the purpose of calling into question the conviction or finding of guilt of the respondent or denying that the respondent engaged in the specified conduct.

Standard of proof applying to Board and Review Board

86. (1) The standard of proof to establish an allegation is that of a reasonable satisfaction on the balance of probabilities.
- (2) Each of the Board and the Review Board must scrutinize evidence with greater care if there is a serious allegation to be established, or an inherent unlikelihood of an occurrence of a given description or if there are grave consequences that would flow from a particular finding.

Individual members of Board and Review Board not to meet with parties

87. No member of the Board or the Review Board shall individually meet with either the complainant or the respondent or anyone acting on their behalf while the matter is in progress.

Disqualification where personal interest

88. (1) Where a member of the Board or the Review Board has a personal interest in a matter before it the member shall be disqualified from participating in the matter.
- (2) The opinion of the presiding member of the Board or the Review Board (as the case may be) as to whether any other member of the Board or the Review Board has a personal interest in a matter shall be conclusive.

Medical examination

89. (1) The ESC or the Board or the Review Board may request the respondent to submit within a specified time to a medical examination by a person approved by the ESC or the Board or the Review Board (as the case may be) the cost of which shall be met from church funds under the control of the Diocesan bishop in Council [the Diocesan Council].
- (2) A copy of the report of an examination under subsection (1) shall be provided to the respondent, the Director, the ESC, the Board and, if applicable, the Review Board.

No further action where Special Tribunal unlikely to find respondent guilty

90. If the Board or the Review Board is satisfied that there is no reasonable likelihood that the Special Tribunal would find the respondent guilty of any offence, the Board or the Review Board shall not recommend that a charge be promoted against the respondent in the Special Tribunal.

Certain matters not to be inquired into

91. Neither the Board nor the Review Board shall, in the course of considering a complaint or reconsidering a decision respectively:
- (a) inquire into any matter which is the subject of any completed formal investigation or enquiry and determination conducted—
- (i) pursuant to any provision of the Constitution; or

- (ii) pursuant to this Ordinance or the Episcopal Standards Canon 2007, a canon or an ordinance of a diocesan Synod in any case relating to the discipline or professional standards of 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 faith ritual or ceremonial.

Matters Board and Review Board to consider

92. Where a matter is referred to the Board or application for review is made to the Review Board, the Board or Review Board (as the case may be) shall consider the complaint or decision and may make any finding on any relevant question of fact, taking into account—
- (a) the final report (if any) of the investigator including any attachments;
 - (b) such report of the ESC as may be submitted;
 - (c) any further material received from the complainant and the Diocesan bishop relevant to its consideration;
 - (d) any other relevant evidentiary material;
 - (e) any standards prescribed by the code of conduct approved under this Ordinance, whenever the conduct may have occurred;
 - (f) the conduct of the Diocesan bishop as it finds it to have been;
 - (g) any failure of the Diocesan bishop to comply with a provision of this Ordinance; and
 - (h) in the case of the Review Board, the determination and reasons of the Board.

No costs to be awarded

93. Neither the Board nor the Review Board has the power to award costs of any complaint or matter before it.

Making of rules

94. (1) The President of the Board may make rules of the Board reasonably required in relation to the practice and procedure of the Board.
- (2) The President of the Review Board may make rules of the Review Board reasonably required in relation to the practice and procedure of the Review Board.
- (3) The ESC, the respondent and any other party joined to a complaint or matter by leave of the Board or the Review Board shall comply with the rules of the Board or the Review Board (as the case may be) and with any directions given by either the Board or the Review Board.
95. The rules of the Board or the Review Board made under this Part may provide that, in relation to the exercise of specified functions, or in relation to matters

of a specified class, other than the determination of an application including the making of a recommendation, the Board or the Review Board (as the case may be) may, at the direction of the presiding member, be constituted by a single member sitting alone.

Practice and procedure

96. Subject to this Ordinance and the relevant rules-
- (a) the practice and procedure of the Board will be as directed by the presiding member of the Board; and
 - (b) the practice and procedure of the Review Board will be as directed by the presiding member of the Review Board.
97. (1) In any proceedings of the Board or the Review Board:
- (a) any question of law or procedure shall be determined by the presiding member; and
 - (b) any other question will be determined by majority decision of the members, and in the case of an equality of votes the opinion of the presiding member shall prevail.
- (2) Where the Board or the Review Board is constituted by a member sitting alone who is not the President or the Deputy President, any question of law that arises must be referred to the President or Deputy President for decision and any decision made on such a reference is a decision of the Board or the Review Board (as the case may be).
98. If a member of the Board or the Review Board, other than the presiding member, dies or is for any other reason unable to continue with any complaint referred to the Board or any matter before the Review Board, the Board or the Review Board constituted by the presiding member and the other member or members may, if the presiding member so determines, continue and complete the matter.

To whom a copy of the determination and recommendation to be provided.

99. (1) Subject to this section, each of the Board and the Review Board must cause a copy of the determination and recommendations together with reasons (whether under section 45, 58 or 74) to be provided to—
- (a) the Council of Bishops;
 - (b) the complainant;
 - (c) the respondent;
 - (d) the Director and the ESC;
 - (e) the Diocesan Council; and
 - (f) the Professional Standards Commission of the Anglican Church of Australia;
- and must cause any required relevant details to be forwarded for entry onto the national register.

- (2) Each of the Board and the Review Board must ensure that the determination and recommendations together with reasons are anonymised and redacted so as not to contain any particulars that identify or are likely to lead to the identification of a prescribed person.²¹
- (3) Each of the Board and the Review Board must release to the public as soon as practicable –
 - (a) its determination and reasons for decision ; and
 - (b) the recommendations made to the Council of Bishops
 anonymised and redacted as referred to above.
- (4) If to be effective, a recommendation must identify a prescribed person, the Board or the Review Board may communicate confidentially the name of that person to the Council of Bishops.

PART 17 - THE COUNCIL OF BISHOPS

Council of Bishops must give effect

100. Subject to section 71 of this Ordinance, the Council of Bishops to whom a recommendation under section 58 or 74 of this Ordinance must, and is hereby empowered to give effect to–
- (a) the recommendation of the Board or if applicable, the Review Board; or
 - (b) any variation or modification of that recommendation, consistent with any facts found by the body making the recommendation provided that the substance of that recommendation is preserved, as the Council of Bishops sees fit.

Decision by majority of votes

101. A question before the Council of Bishops may be decided by a majority of the votes of the members of the Council of Bishops.

Publication of decision of the Council of Bishops

102. (1) Subject to subsection (2), the Council of Bishops –
- (a) must release to the public as soon as practicable a written statement disclosing its decision on any recommendation received and the steps to be taken or that have been taken pursuant to section 100 to give effect to it; and
 - (b) may release to the public such further material as it may determine with respect to the exoneration of the Diocesan bishop or any action taken against the Diocesan bishop.

²¹ This is to ensure that there is no contravention of s4(1A) of the *Judicial Proceedings Reports Act 1958 (Vic)* or like provisions in another State or Territory and that otherwise there is no embarrassment to a complainant or witness.

- (2) The Council of Bishops must ensure that any statement or further material so released is anonymised and redacted so as not to contain any particulars that identify or are likely to lead to the identification of a prescribed person.
- (3) The Council of Bishops must cause any required relevant details of a variation or modification to a recommendation made to it to be forwarded for entry onto the national register.

PART 18 – CONFIDENTIALITY AND REPORTING

Duty of confidentiality

103. Subject to the provisions of this Ordinance, the Director, a member of the ESC, a member of the Board or the Review Board or of a Council of Bishops or a person employed or engaged on work related to the affairs of the ESC, the Board or the Review Board must not divulge information that comes to his or her knowledge by virtue of that office or position except:
- (a) in the course of carrying out the duties of that office or position;
 - (b) as may be authorised by or under this Ordinance or any protocol;
 - (c) as may be authorised or required by or under the National Register Canon 2007 or any canon prescribed by General Synod in substitution for that canon;
 - (d) in any proceedings before a Diocesan Tribunal, a provincial tribunal, the Special Tribunal or the Appellate Tribunal;
 - (e) as may be required by law; or
 - (f) to any insurer or insurance broker of a Church body or Council of Bishops where the information may give rise to or be relevant to a claim for indemnity by the Church body or Council of Bishops against the insurer or is relevant to obtaining or continuing insurance cover.

Duty of disclosure to other church bodies

104. (1) The ESC must disclose to an equivalent body information in its possession concerning alleged misconduct of a former Diocesan bishop:
- (a) which is information relevant to, or coming to notice during the course of an investigation undertaken by the equivalent body of the Diocese by whose Bishop the former Diocesan bishop is licensed or in which the former Diocesan bishop is residing; or
 - (b) which is information concerning misconduct alleged to have occurred in the diocese of the equivalent body—
- and must co-operate with the equivalent body.
- (2) The ESC may disclose to a person or body of another church or Christian denomination exercising powers, duties or functions similar to those of the ESC, in relation to clergy, details of information in its possession concerning the alleged misconduct of a former Diocesan bishop and the ESC must co-operate with such person or body to whom the information is disclosed.

ESC to report annually to Diocesan Council

105. (1) The ESC must report annually to the Diocesan Council on its activities for that calendar year.
- (2) The report of the ESC pursuant to the preceding subsection may identify the Diocesan bishop as the respondent who has been exonerated from an allegation the subject of a complaint or who has been the subject of a determination or recommendation by the Board or the Review Board, favourable to the Diocesan bishop.

ESC to report to Primate or senior Metropolitan

106. (1) Subject to subsection (2), the ESC must, in respect of every complaint with which it is dealing under this Ordinance, report either orally or in writing to the Primate with such frequency and as fully as the Primate may reasonably require.
- (2) If the matter relates to the conduct of the Diocesan bishop who is the Primate, such reports must be made to and at the direction of the senior Metropolitan at the time in Australia who is not the Primate.

PART 19 – INDEMNITY***Indemnification of those with functions under the Act***

107. The Diocesan bishop in Council [the Diocesan Council] must and is hereby authorised, out of church funds under the control of the Diocesan bishop in Council [the Diocesan Council], to indemnify –
- (a) the Director and any delegate of the Director;
 - (b) any carer appointed under this Ordinance or any protocol;
 - (c) the members of the ESC and each of them;
 - (d) any delegate of the ESC;
 - (e) the members of the Board and each of them;
 - (f) the Secretary to the Board;
 - (g) any person appointed by the Board pursuant to this Ordinance;
 - (h) the members of the Review Board and each of them;
 - (i) the Secretary to the Review Board;
 - (j) any person appointed by the Review Board pursuant to this Ordinance; and
 - (k) the members of the Council of Bishops and each of them —
- for any act or omission respectively by them in good faith and in the exercise or purported exercise of powers or functions, or in the discharge or purported discharge of duties under this Ordinance in relation to the Diocesan bishop.

PART 20 – REGULATIONS

Making amending or repealing regulations

108. The Diocesan bishop in Council [the Diocesan Council] may from time to time make amend or repeal regulations, not inconsistent with the provisions of this Ordinance, providing for records arising out of or incidental to the operation of this Ordinance, and for all or any of the purposes whether general or to meet particular cases, which may be convenient for the administration of this Ordinance or which may be necessary or expedient to carry out the objects and purposes of this Ordinance.
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Alternative

78. (1) Subject to subsections (2) and (3), any hearing of the Board or the Review Board must be held in private with attendance only by-
- (a) the members of the Board or the Review Board (as the case may be);
 - (b) the Secretary of the Board or the Review Board and any person providing transcription services;
 - (c) the Director and any member of the ESC and any person representing any of them;
 - (d) the respondent and any person representing the respondent;
 - (e) the complainant;
 - (f) a person whom the complainant wishes to have present for the purpose of providing emotional support to him or her, who is reasonably available and who is approved by the Board or the Review Board to be present;²²
 - (f) any witness while giving evidence; and
 - (g) any other person to whom notice of the proceedings was given or who satisfies the Board that he or she has a proper interest in the matter.
- (2) Each of the Board and the Review Board may direct –
- (a) that the whole or part of a proceeding be held in public; or
 - (b) that any other persons or classes of persons specified by it may be present during the whole or any part of a proceeding.
- (3) Each of the Board and the Review Board may only make a direction under the preceding subsection if satisfied that the direction is in the public interest in the proper administration of justice.

²² To adapt the language of clause 17 of schedule 5 of the *Magistrates' Court Act 1989* (Vic).