

# General Synod – Episcopal Standards (Child Protection) Canon 2017 Adopting Ordinance 2017

(Reprinted under the Interpretation Ordinance 1985.)

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## Long Title

An Ordinance to adopt Canon No 5, 2017 of the General Synod of the Anglican Church of Australia.

The Synod of the Diocese of Sydney ordains as follows.

### 1. Name

This Ordinance is the *General Synod – Episcopal Standards (Child Protection) Canon 2017 Adopting Ordinance 2017*.

### 2. Adoption of Canon No 5, 2017

The Synod adopts Canon No 5, 2017 of the General Synod of the Anglican Church of Australia, the text of which is set out in the Schedule.

## Schedule

The General Synod prescribes as follows:

### Title

1 This Canon is the Episcopal Standards (Child Protection) Canon 2017.

### Definitions

2 (1) In this Canon, unless the context otherwise requires:

**assistant to the Primate** means any bishop assistant to the Primate in the Primate's capacity as Primate;

**Bishop** means a bishop who is or was a member of the House of Bishops or an assistant to the Primate;

**child** has the same meaning as in the National Register Canon 2007;

**child abuse** has the same meaning as in the National Register Canon 2007;

**complying ordinance** means an ordinance of a diocese relating to episcopal standards or professional standards in which examinable conduct or misconduct which may give rise to a question of fitness to be determined by the board constituted under that ordinance is defined as including examinable conduct as defined in this canon and which applies to a Bishop;

**examinable conduct** means:

(a) in relation to a Bishop who is a member of the House of Bishops or assistant to the Primate, any conduct or omission, other than exempt conduct, involving:

(i) child abuse; or

(ii) conduct that impedes or undermines a professional standards process; or

- (iii) the failure without reasonable excuse to perform a function under a professional standards process; or
- (iv) the failure without reasonable excuse to comply with the laws of the Commonwealth, a State or Territory requiring the reporting of child abuse to the police or other authority;

wherever or whenever occurring, and the subject of information which, if established, might call into question the fitness of the Bishop to hold office or to remain in Holy Orders, but excludes any breach of faith, ritual or ceremonial;

- (b) in relation to a Bishop who was a member of the House of Bishops or an assistant to the Primate, any conduct or omission involving:

- (i) child abuse; or
- (ii) conduct that impedes or undermines a professional standards process; or
- (iii) the failure without reasonable excuse to perform a function under a professional standards process; or
- (iv) the failure without reasonable excuse to comply with the laws of the Commonwealth, a State or Territory requiring the reporting of child abuse to the police or other authority;

occurring while a member of the House of Bishops or assistant to the Primate whether before or after the commencement of this canon, and the subject of information which, if established, might call into question the fitness of the Bishop to hold office or to remain in Holy Orders, but excludes any breach of faith, ritual or ceremonial;

**exempt conduct** means any conduct or omission which would be examinable conduct, had not the Bishop disclosed the material facts of such conduct to the ordaining bishop prior to the Bishop's ordination as a deacon;

**former Bishop** means a Bishop whose conduct falls within paragraph (b) of the definition of examinable conduct;

**professional standards process** means a process for determining the fitness for office of clergy or lay persons under any canon of the General Synod or diocesan ordinance or a process under Chapter IX of the Constitution, where the conduct that is the subject of the process relates to child abuse;

**relevant diocesan bishop** in relation to a former Bishop means the bishop of the diocese in which the former Bishop is licensed or resides.

- (2) Where there is examinable conduct in relation to a former Bishop, the examinable conduct extends to any other conduct or omission of the former Bishop that falls within subparagraphs (i) to (iv) of paragraph (b) of the definition of examinable conduct (other than exempt conduct), but occurring before or after any period in which the Bishop was a member of the House of Bishops or an assistant to the Primate, and is the subject of information that, if established, together with the relevant conduct or omission occurring while a member of the House of Bishops or assistant to the Primate, might call into question the fitness of the Bishop to hold office or to remain in Holy Orders (but excluding any breach of faith, ritual or ceremonial).

### **Application of specified provisions of the Episcopal Standards Canon 2007**

- 3 (1) The following provisions of the Episcopal Standards Canon 2007 are incorporated in this canon as if they were set out in full in this Canon and were limited to examinable conduct as defined in this Canon:

- (a) section 2 other than the definitions of "Bishop" and "examinable conduct"; and with the following amendments to the definition of "relevant Metropolitan":

- (i) substitute for paragraph (b) "in relation to any other member of the House of Bishops or an assistant to the Primate, the Primate;"
- (ii) insert paragraph (c) after paragraph (b):
  - “(c) in relation to a former Bishop:
    - (i) the Metropolitan of the Province in which the Bishop is licensed or resides; or
    - (ii) if the Bishop is licensed or resides in an extra-provincial diocese, the Primate.”

- (b) Parts 2 to 7 and 9 modified as follows:

- (i) substitute “;” for “.” at the end of paragraph (k) of section 7 and insert after paragraph (k):
  - “(l) to have carriage under this Canon of the referral of a question to the Board from an equivalent body to the ESC under a complying ordinance.”
- (ii) delete paragraph (d) of section 16 and section 51(2);
- (iii) insert after “section 16” in section 19(1) “or pursuant to a corresponding provision of a complying ordinance”;
- (iv) insert subsection (3) after subsection (2) of section 19:
  - “(3) Where there is a referral of a question to the Board from an equivalent body to the ESC under a complying ordinance, if the equivalent body would have, but for this Canon, referred at the same time other complaints against the Bishop to the board constituted under the complying ordinance in respect of conduct that does not fall within examinable conduct as defined in this Canon which might call into question the fitness of the Bishop to hold office or to remain in Holy Orders, the equivalent body may refer to the Board, and the Board may determine, the question arising from the conduct other than the examinable conduct in conjunction with the question arising from the examinable conduct.”
- (v) substitute “;” for “.” at the end of paragraph (k) of section 49 and insert after paragraph (k):
  - “(l) determine that the Bishop be prohibited, either temporarily or permanently, from functioning as a bishop or as a bishop and priest; or
  - (m) determine the Bishop be deposed from the exercise of Holy Orders.”
- (vi) delete “and” at the end of paragraph (d) of section 50 and insert after paragraph (d):
  - “(e) to the ESC;
  - (f) where appropriate, to any relevant complainant;
  - (g) in the case of a former Bishop, to the relevant diocesan bishop; and”
- (vii) insert section 50A after section 50:
  - “50A The relevant Metropolitan and, where applicable, the relevant diocesan bishop, is authorised and must give effect to the determination of the Board.”
- (c) Part 8 modified as follows:
  - (i) delete the definitions of “Review Tribunal”; “the appropriate state professional body” and “the relevant Chancellor” in section 52;
  - (ii) insert the following definition in section 52:
    - “**Review Board** means the Episcopal Standards Review Board constituted for the purposes of this Part.”
  - (iii) delete sections 53, 55, 63 and 66;
  - (iv) delete section 54 and substitute:
    - “54 A Bishop or the ESC, if aggrieved by a reviewable decision, may appeal by notice to the General Secretary.”
  - (v) insert a new section 55:
    - “55(1) The Review Board will be constituted from the members of the panel referred to in section 20 and the members of the panel to be convened for an appeal to the Review Board will be determined by whichever of the President or the Deputy President was not a member of the Board which made the determination that is the subject of the appeal, as soon as possible after the appeal is notified to the President or Deputy President.

(2) For the purpose of an appeal, the Review Board shall consist of the President or Deputy President, who shall be the presiding member, and an equal number not exceeding two from the episcopal members and two from the other members of the panel who were not members of the Board which made the determination that is the subject of the appeal.

(3) Subsections (3) to (5) of section 23, subsection (1) of section 24, sections 25 to 27, 29 and 31 to 33, subsections (2) and (3) of section 36, and sections 41(1), 42, 45 and 46 apply to an appeal to the Review Board, as if the reference to the Board is a reference to the Review Board.”

- (vi) substitute “appeal” for “application to review” in sections 56 to 58 and 65 and for “review” in paragraph (b) of section 61 and in section 64;
- (vii) substitute “notice of appeal” for “application” in paragraph (a) of section 58 and for “application for review” in section 61;
- (viii) delete section 59 and substitute:

“59 If the Review Board on appeal confirms, varies or makes another determination in substitution for a reviewable decision, the Review Board must cause the details of the confirmed, varied or substituted determination to be forwarded to the General Secretary and the persons referred to in section 50 and the General Secretary shall cause relevant details to be forwarded for entry into the national register.”
- (ix) substitute “the Review Board” for “the Review Tribunal”, “a Review Tribunal”, or “the Tribunal” wherever occurring;
- (x) delete the first sentence in section 61 and substitute:

“An appeal against the reviewable decision must be made within 28 days of a copy of the Board’s determination under section 50 being provided to the Bishop and the ESC.”
- (xi) insert “General Secretary” for “Director” in paragraph (a) of section 61 and in section 62;
- (xii) in section 65, insert “and making another determination in substitution for it” at the end of paragraph (a), omit paragraphs (c) and (d), and insert “or varying” after “confirming” in paragraph (e);
- (xiii) delete section 67 and substitute:

“67 The appeal shall be by way of rehearing.”

- (2) The Episcopal Standards Board established by Part 6 of the Episcopal Standards Canon 2007 is the Episcopal Standards Board for the purpose of this Canon.

### **Coming into force by adoption**

- 4 The provisions of this Canon affect the order and good government of this Church within a diocese and do not come into force in a diocese unless and until the diocese adopts this canon by ordinance of the synod of the diocese.

### **Notes**

1. The text of the Episcopal Standards (Child Protection) Canon 2017 incorporating in full the provisions of the Episcopal Standards Canon 2007 as incorporated and modified for the purpose of examinable conduct as defined in the Episcopal Standards (Child Protection) Canon 2017 is set out in the Appendix.

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1 November 2017

## Appendix

### EPISCOPAL STANDARDS (CHILD PROTECTION) CANON 2017

Incorporating in full the provisions of the Episcopal Standards Canon 2007 as incorporated and modified for the purpose of examinable conduct as defined in the Episcopal Standards (Child Protection) Canon 2017

The General Synod prescribes as follows:

#### PART 1

##### Title

- 1 This Canon is the Episcopal Standards (Child Protection) Canon 2017.

##### Definitions

- 2 (1) In this Canon, unless the context otherwise requires:
- Administrator** means the person who would, in the absence or incapacity of a Bishop, be the administrator of a diocese;
- assistant to the Primate** means any bishop assistant to the Primate in the Primate's capacity as Primate;
- Bishop** means a bishop who is or was a member of the House of Bishops or an assistant to the Primate;
- bishop** means a person in bishop's orders;
- Board** means the Episcopal Standards Board established under Part 6;
- child** has the same meaning as in the National Register Canon 2007;
- child abuse** has the same meaning as in the National Register Canon 2007;
- Church** means the Anglican Church of Australia;
- Church body** includes the Primate, the General Synod, a diocese, diocesan synod, diocesan council, diocesan trustee or trust corporation or other body responsible for administering the affairs of a diocese, or an institution or agency of this Church or of a diocese;
- Code of Conduct** means a code of conduct approved from time to time under Part 2;
- complying ordinance** means an ordinance of a diocese relating to episcopal standards or professional standards in which examinable conduct or misconduct which may give rise to a question of fitness to be determined by the board constituted under that ordinance is defined as including examinable conduct as defined in this canon and which applies to a Bishop;
- Director** means the Director of the ESC appointed under the Special Tribunal Canon 2007;
- Episcopal Standards Commission** or **ESC** means the Episcopal Standards Commission appointed under the Special Tribunal Canon 2007;
- examinable conduct** means:
- (a) in relation to a Bishop who is a member of the House of Bishops or assistant to the Primate, any conduct or omission, other than exempt conduct, involving:
- (i) child abuse, or
- (ii) conduct that impedes or undermines a professional standards process; or
- (iii) the failure without reasonable excuse to perform a function under a professional standards process; or
- (iv) the failure without reasonable excuse to comply with the laws of the Commonwealth, a State or Territory requiring the reporting of child abuse to the police or other authority;
- wherever or whenever occurring, and the subject of information which, if established, might call into question the fitness of the Bishop to hold office or to remain in Holy Orders, but excludes any breach of faith, ritual or ceremonial;

- (b) in relation to a Bishop who was a member of the House of Bishops or an assistant to the Primate, any conduct or omission involving:
- (i) child abuse; or
  - (ii) conduct that impedes or undermines a professional standards process; or
  - (iii) the failure without reasonable excuse to perform a function under a professional standards process; or
  - (iv) the failure without reasonable excuse to comply with the laws of the Commonwealth, a State or Territory requiring the reporting of child abuse to the police or other authority;

occurring while a member of the House of Bishops or assistant to the Primate whether before or after the commencement of this canon, and the subject of information which, if established, might call into question the fitness of the Bishop to hold office or to remain in Holy Orders, but excludes any breach of faith, ritual or ceremonial;

**exempt conduct** means any conduct or omission which would be examinable conduct, had not the Bishop disclosed the material facts of such conduct to the ordaining bishop prior to the Bishop's ordination as a deacon;

**former Bishop** means a Bishop whose conduct falls within paragraph (b) of the definition of examinable conduct;

**information** means information of whatever nature and from whatever source relating to the alleged misconduct or omission of a Bishop wherever or whenever occurring;

**national register** means a national register established pursuant to a Canon of General Synod for a purpose which includes the recording of determinations of the Board;

**professional standards process** means a process for determining the fitness for office of clergy or lay persons under any canon of the General Synod or diocesan ordinance or a process under Chapter IX of the Constitution, where the conduct that is the subject of the process relates to child abuse;

**protocol** means the protocol approved from time to time by the Standing Committee under Part 3;

**relevant diocesan bishop** in relation to a former Bishop means the bishop of the diocese in which the former Bishop is licensed or resides.

**relevant Metropolitan**, means:

- (a) in relation to the bishop of a diocese:
  - (i) unless paragraph (iii) or (iv) applies, the Metropolitan of the Province in which the diocese is situated; or
  - (ii) if the diocese is an extra-provincial diocese, the Primate; or
  - (iii) if the bishop is the Metropolitan but not the Primate, the Primate; or
  - (iv) if the 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 consecration; and
- (b) in relation to any other member of the House of Bishops or an assistant to the Primate, the Primate;
- (c) in relation to a former Bishop:
  - (i) the Metropolitan of the Province in which the Bishop is licensed or resides; or
  - (ii) if the Bishop is licensed or resides in an extra provincial diocese, the Primate.

**respondent** means a Bishop whose alleged conduct or omission is the subject of information;

**Standing Committee** means the Standing Committee of General Synod;

**Tribunal** means the Special Tribunal.

- (2) Where there is examinable conduct in relation to a former Bishop, the examinable conduct extends to any other conduct or omission of the former Bishop that falls within subparagraphs (i) to (iv) of paragraph (b) of the definition of examinable conduct (other than exempt conduct), but occurring before or after any period in which the Bishop was a member of the House of Bishops or an assistant to the Primate, and is the subject of information that, if established, together with the relevant conduct or omission occurring while a member of the

House of Bishops or assistant to the Primate, might call into question the fitness of the Bishop to hold office or to remain in Holy Orders (but excluding any breach of faith, ritual or ceremonial).

## **PART 2 – CODE OF CONDUCT**

- 3 The General Synod or the Standing Committee shall from time to time by resolution approve a Code of Conduct for observance by Bishops, which does not make provision for any matter concerning faith, ritual or ceremonial, provided that any changes to the Code of Conduct made by the Standing Committee shall be referred to the next session of General Synod for ratification.
- 4 The Standing Committee through the ESC and by such other means as may be considered appropriate shall take such steps as may be necessary or desirable to promote the knowledge, understanding and observance in this Church of the Code of Conduct. A code of conduct must not make provision for any matter concerning faith, ritual or ceremonial.

## **PART 3 – THE PROTOCOL**

- 5 (1) The Standing Committee shall from time to time consider and approve a protocol for implementation in relation to information.  
(2) The protocol must include:
  - (a) procedures for receiving information;
  - (b) provision for informing complainants and victims of alleged conduct the subject of information, and respondents, of rights, remedies and relevant procedures available to them;
  - (c) provision for assisting or supporting, as appropriate, all persons affected by alleged conduct the subject of information;
  - (d) an explanation of the processes for investigating and dealing with information;
  - (e) provisions for dealing fairly with respondents;
  - (f) processes for referral to mediation and conciliation in appropriate circumstances;
  - (g) provisions for information, reports, advice and recommendations to the Primate, the relevant Metropolitan and to the relevant Administrator at each stage of the process of dealing with information;
  - (h) procedures for working, where appropriate, with law enforcement, prosecution or child protection authorities of the States and Territories and of the Commonwealth of Australia.
- 6 The Standing Committee through the ESC and by such other means as it may consider appropriate shall take such steps as may be necessary or desirable to promote throughout the Church a knowledge and understanding of the protocol.

## **PART 4 – THE EPISCOPAL STANDARDS COMMISSION**

- 7 (1) In addition to the powers conferred on it by the Special Tribunal Canon 2007 and subject to the provisions of this Canon the ESC has the following powers and duties:
  - (a) to implement the protocol to the extent that the protocol is not inconsistent with this Canon;
  - (b) to receive information;
  - (c) to act on information in accordance with the provisions of this Canon, and the protocol to the extent that it is not inconsistent with this Canon;
  - (d) to appoint suitable persons to fulfil the several roles required to implement the protocol in each particular case;
  - (e) where appropriate, to arrange for the conciliation or mediation of any complaint the subject of information;
  - (f) to investigate information in a timely and appropriate manner;
  - (g) where appropriate, to recommend to the Standing Committee any changes to the protocol;
  - (h) subject to any limit imposed by the Standing Committee to authorise such expenditure

on behalf of the General Synod as may be necessary or appropriate to implement, in a particular case, the protocol and the provisions of this Canon;

- (i) to advise any relevant Church body as to the financial, pastoral or other needs of a person affected by conduct the subject of information and as to any possible or actual legal proceedings against such Church body arising out of the alleged conduct of a bishop;
- (j) to refer any information in its possession to a member of a law enforcement, prosecution or child protection authority of a State or Territory or of the Commonwealth of Australia to which the information is or may be relevant;
- (k) to maintain proper records of all information received and of action taken in relation to such information;
- (l) to have carriage under this Canon of the referral of a question to the Board from an equivalent body to the ESC under a complying ordinance.

(2) The Director may receive information on behalf of the ESC and shall carry out such functions under this Canon as the ESC may determine.

- 8 (1) In the exercise of its powers and duties under this Canon the provisions of sections 8, 9 and 10 of the Special Tribunal Canon 2007 shall apply to the ESC as if reference therein to the Tribunal were a reference to the Board and reference to a complaint were a reference to information.
- (2) Subject to subsection (3), the ESC may delegate, upon such terms and conditions as the ESC may approve, any of its powers or functions under this Canon to any person.
- (3) The ESC cannot delegate:
- (a) its powers under subsection (2);
  - (b) its powers under section 13; or
  - (c) its powers under section 16.
- (4) A delegation under this section must be made by instrument in writing signed by a member of the ESC.

#### **PART 5 – EXAMINABLE CONDUCT**

9 Subject to this Canon, where the ESC considers that the subject matter of information constitutes examinable conduct it shall investigate the information.

10 The ESC may decide not to investigate the information or may refrain from further investigation of the information if:

- (a) in its opinion, the allegations the subject of the information are vexatious or misconceived, or their subject matter is trivial;
- (b) the subject matter is under investigation by some other competent person or body or is the subject of legal proceedings;
- (c) the person making allegations of examinable conduct or a person affected by the conduct the subject of the information has failed, when requested by the ESC, to provide further particulars or to verify the allegations by statutory declaration; or
- (d) in its opinion there is insufficient reliable evidence to warrant an investigation or further investigation.

11 For the purpose of an investigation the ESC or an investigator shall obtain such statutory declarations, written statements, recorded conversations, reports, documents and other material as the ESC or its delegate considers necessary or desirable.

12 (1) The ESC may by notice in writing to a respondent require the respondent to provide a detailed report to the ESC within the time specified in the notice in relation to any matter relevant to the investigation.

- (2) It is the obligation of a respondent:
- (a) not to mislead the ESC or a member or delegate of the ESC;
  - (b) not unreasonably to delay or obstruct the ESC or a member or delegate of the ESC in

the exercise of powers conferred by this Canon.

- (3) If a 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.
- 13
- (1) At any time after the ESC has commenced or caused to be commenced an investigation of information under this Part in circumstances where it considers that action may be taken under paragraph (b) or (c) of section 16, it may recommend to the Diocesan Council or, in the case of a Bishop who is not a diocesan bishop, to the Primate, that the Bishop be suspended from the duties of office.
  - (2) If the Diocesan Council, meeting when the Bishop is not present, or the Primate, as the case may be, concurs in the recommendation, the President of the Board, after considering any submission from the Bishop, may suspend the Bishop from the duties of office.
  - (3) The meeting of the Diocesan Council referred to in sub-section (2) shall be chaired by a Diocesan Bishop appointed by the Primate with the concurrence of a majority of the Metropolitans. The Diocesan Bishop so appointed shall not have a vote at the meeting.
  - (4) Where an investigation has been commenced against the Primate under this part, the powers and functions of the Primate under sub-section (3) shall be exercised by the person who would exercise the authorities, powers, rights and duties of the Primate if there were a vacancy in the office.
  - (5) For the purposes of this section a reference to the Metropolitans excludes a Metropolitan who at the time is the subject of an investigation under this part.
- 14
- Before suspending a Bishop from the duties of office the President of the Board shall take into account:
- (a) the seriousness of the conduct alleged in the information;
  - (b) the nature of the material to support or negate the allegations;
  - (c) whether any person is at risk of harm;
  - (d) after consultation with the relevant Diocesan Council or its representative, the effect on the respondent, a relevant Church body and on the Church in the diocese of acting and of not acting under section 13; and
  - (e) any other allegation of similar examinable conduct previously made to the ESC or to an equivalent body within the previous ten years;
- and may take into account any other relevant matter.
- 15
- (1) A suspension under section 13 or a voluntary standing down from office by the Bishop as a result of an investigation by the ESC:
    - (a) has effect as an absence of the Bishop from the see or from office as the case may require; and
    - (b) continues until it ceases to have effect by reason of:
      - (i) the ESC terminating the investigation without taking action under section 16;
      - (ii) a determination to that effect by the Board or the Tribunal as the case may be; or
      - (iii) the see or the office becoming vacant (whether or not under this Canon); whichever first occurs.
  - (2) During any such suspension or voluntary standing down the Bishop is entitled to receive whatever stipend, allowances and other benefits that would otherwise have accrued and which are to be met or reimbursed by the body normally responsible for their payment.
- 16
- At any time after the commencement of an investigation under this Part the ESC may:
- (a) if it considers on reasonable grounds that the Bishop may be incapable, report the matter in writing to the relevant Metropolitan, and such report 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; refer to the Board the fitness of the Bishop, whether temporarily or permanently, to hold office or to remain in Holy Orders;
  - (b) whether or not the information the subject of the investigation is also the subject of a complaint under the Special Tribunal Canon 2007, institute, amend or withdraw proceedings by way of

charge against the Bishop before the Tribunal.

- 17 (1) The fact that the subject matter of a complaint or dispute concerning examinable conduct 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 section 16 in respect of the subject matter of the complaint or dispute.
- (2) Any term of settlement or resolution referred to in sub-section (1) which purports to prevent or to limit the institution of such proceedings shall be of no effect.
- (3) A matter shall not be referred to the Board, a reference to the Board shall not continue and proceedings shall not be instituted or maintained in the Special Tribunal where the bishop concerned has relinquished or has been deposed from Holy Orders in accordance with the Holy Orders Relinquishment and Deposition Canon 2004.

## **PART 6 – EPISCOPAL STANDARDS BOARD**

- 18<sup>1</sup> There shall be an Episcopal Standards Board constituted and appointed in accordance with the provisions of this Part.
- 19 (1) Subject to the provisions of this Canon the function of the Board is to inquire into and determine a question referred to it pursuant to section 16 or pursuant to a corresponding provision of a complying ordinance, to make a determination referred to in section 49 and where appropriate to make a recommendation in accordance with the provisions of this Canon.
- (2) Subject to section 17(3) the Board may make a determination and recommendation referred to in sub-section (1) notwithstanding that the bishop whose conduct is the subject of the reference has ceased, after the reference, to be a Bishop.
- (3) Where there is a referral of a question to the Board from an equivalent body to the ESC under a complying ordinance, if the equivalent body would have, but for this Canon, referred at the same time other complaints against the Bishop to the board constituted under the complying ordinance in respect of conduct that does not fall within examinable conduct as defined in this Canon which might call into question the fitness of the Bishop to hold office or to remain in Holy Orders, the equivalent body may refer to the Board, and the Board may determine, the question arising from the conduct other than the examinable conduct in conjunction with the question arising from the examinable conduct.
- 20 (1) The members of the Board in a particular case shall be appointed from a panel comprising:
- (a) a President and a Deputy President, both of whom shall be persons who are eligible for appointment as lay members of the Appellate Tribunal;
- (b) five persons in bishop's orders; and
- (c) five persons who are members of the Church not in bishop's orders.
- (2) A person who is a member of the panel from whom the members of the Tribunal may be appointed is eligible for appointment to the panel.
- 21 The members of the panel shall be appointed by the Standing Committee and shall hold office in accordance with a resolution of the Standing Committee.
- 22 Any vacancy in the membership of the panel shall be filled by or in accordance with a resolution of the Standing Committee.
- 23 (1) The members of the panel to be convened for any reference 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 the President or Deputy President, who shall be the presiding member, and an equal number not exceeding two of the episcopal and other members of the panel.
- (3) Where possible, the Board shall include at least one man and at least one woman.
- (4) Where, in the opinion of the President or, if there is a vacancy in the office of the President, in the opinion of the Deputy President a member of the panel has a personal interest in a matter

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<sup>1</sup> The Episcopal Standards Board established by Part 6 of the Episcopal Standards Canon 2007 is the Episcopal Standards Board for the purpose of this Canon.

before the Board the member shall be disqualified from participating in the reference.

- (5) For the purposes of this section a vacancy in the office of President includes a situation in which the President is not able to act because of a personal interest in a matter, illness or absence from Australia.
- 24 (1) The Rules of the 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, the Board may, at the direction of the presiding member, be constituted by a single member sitting alone.
- (2) The Board, if constituted by a single member sitting alone, cannot make a determination under section 49.
- 25 If a member of the Board, other than the presiding member, dies or is for any other reason unable to continue with any matter referred to the Board, the Board constituted of the presiding member and the other member or members may, if the presiding member so determines, continue and complete the reference.
- 26 The Board, separately constituted in accordance with this Part, may sit simultaneously for the purpose of matters referred to it or for conducting separate business of the Board.
- 27 An act or proceeding of the Board is not invalid by reason only of a vacancy in its membership or of the membership of the panel and, notwithstanding the subsequent discovery of a defect in the nomination or appointment of members of the panel or the Board, any such act or proceeding is as valid and effectual as if the member had been duly nominated or appointed.
- 28 There shall be a Secretary to the Board who shall be appointed by or in accordance with a resolution of the Standing Committee, and whose duties shall be defined by the President.
- 29 (1) In any proceedings of the Board where the Board is constituted by two or more members:
- (a) any question of law or procedure will 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 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.
- (3) The Board must act with fairness and according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms and is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks fit.
- (4) Without limiting the meaning and effect of sub-section (3), the Board may receive evidence of a witness in the form of an affidavit, statutory declaration or a signed statement without the need for the personal attendance of the witness, and may also use electronic means such as video link or conference telephone to receive evidence and submissions, but must permit the respondent and his representative (if any) opportunity to adequately cross-examine each witness.
- (5) The Board may inform itself from the record of any court or tribunal and may adopt any findings, and accept as its own, the record of any court or tribunal.
- 30 The Board may, for the purpose of any particular reference and at the cost of the General Synod, appoint such person or persons, including the Director, to assist it in inquiring into (but not determining) that reference as the Board thinks fit.
- 31 The Board must give reasons for any determination, other than by way of directions in the course of an inquiry, unless the determination is made by consent of the respondent.
- 32 (1) The Board has no power to award costs of any proceedings before it.
- (2) A bishop in relation to whom a question is the subject of a reference to the Board may apply to the Standing Committee for the provision of legal assistance.
- (3) The Standing Committee may grant legal assistance to a bishop on such terms and subject to such conditions as it shall determine.

- 33 (1) The President may make Rules of the Board reasonably required by or pursuant to this Canon and in relation to the practice and procedure of the Board.
- (2) Subject to this Canon and the relevant Rules, the practice and procedure of the Board will be as directed by the presiding member of the Board.

#### **PART 7 – REFERENCE OF MATTERS TO THE EPISCOPAL STANDARDS BOARD**

- 34 A question shall be referred to the Board by delivering to the Secretary of the Board a written report of the investigation of the ESC signed by a member of the ESC.
- 35 The Board shall not, 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 or an Ordinance of a diocese relating to the discipline of clergy or Church workers by a board of enquiry, tribunal or other body;
- but may take into account the finding of any such formal investigation or enquiry;
- (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.
- 36 (1) Upon delivery of the report to the Secretary of the Board, the President or Deputy President as the case may be shall as soon as possible determine the membership of the Board for the purpose of the reference.
- (2) The President or Deputy President as the case may require shall thereupon cause to be convened a sitting for the purpose of giving directions.
- (3) A person or body appearing or represented before the Board shall comply with the Rules of the Board and with any directions given by the Board.
- 37 Within 14 days of the date of the reference of a matter to the 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 Board any documents and material relevant to the reference.
- 38 The ESC, as soon as practicable after delivering the report referred to in section 34 to the Secretary of the Board, shall cause a signed copy of the report to be delivered to the respondent.
- 39 The 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;
- (b) as to the conduct of its inquiry into the reference.
- 40 The 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 shall to the best of its ability cause such directions to be carried out.
- 41 (1) The Board shall deal with any reference as expeditiously as possible.
- (2) The Board may, if it sees fit, proceed with the determination of a reference notwithstanding that there may be mediation or conciliation proceedings relating to the subject matter of the reference being conducted by or at the direction of the ESC and notwithstanding that there may be criminal or other proceedings being taken against the respondent or some other person.
- 42 (1) The place and time of sitting of the Board comprising two or more members shall be as determined by the presiding member.
- (2) The place and time of sitting of the Board comprising one member shall be as determined by that member.

- 43 (1) Subject to sub-section (2), the Board must give the following persons reasonable notice of the time and place of a sitting of the Board:
- (a) the Director; and
  - (b) the respondent; and
  - (c) such other persons as the Board believes have a proper interest in the matter.
- (2) The Board is not obliged to give notice of a sitting to a person whose whereabouts cannot, after reasonable enquiries, be ascertained.
- 44 In any proceedings before the Board:
- (a) the ESC and any person may be represented by a legal practitioner or, with leave of the Board, by any other person;
  - (b) the ESC or its appointed representative shall do all in its power to assist the Board and shall carry out any directions of the Board;
  - (c) the Board:
    - (i) must give the ESC and the respondent a reasonable opportunity to call or give evidence, to examine or cross-examine witnesses and to make submissions to the Board; and
    - (ii) must give 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 a reasonable opportunity to make submissions to the Board.
- 45 (1) Subject to sub-section (2), a sitting of the Board on a reference before the Board is an open sitting.
- (2) On any such sitting before the Board, the Board has an absolute discretion:
- (a) to direct that no person other than:
    - (i) the respondent and any person representing him or her in the proceedings; and
    - (ii) witnesses or persons making submissions (while giving evidence or making those submissions); and
    - (iii) officers of the Board or persons assisting the Board; and
    - (iv) members of or persons appointed by the ESC;
 be present in the room while the Board is sitting; or to direct that a particular person (other than a person referred to in paragraph (a)) not be present in the room while the Board is sitting.
- 46 The Board may make a determination in any proceedings in the absence of a person affected by the determination if satisfied that reasonable efforts were made to give that person an opportunity to appear.
- 47 (1) The Board may require a respondent to submit within a specified time to a medical, psychiatric or psychological examination by a person approved by the Board the cost of which shall be met from funds under the control of the General Synod.
- (2) A copy of the report of an examination under subsection (1) shall be provided to the respondent and to the Board.
- 48 In making any determination the Board shall take into account:
- (a) the conduct of the bishop as it finds it to have been;
  - (b) in the material before the Board, any other fact or circumstance relevant to the determination of the question before it; and
  - (c) any failure of the bishop to comply with a provision of this Canon or with a direction of the Board.
- 49 If, after investigating the question referred to it about a bishop, the Board is satisfied that:
- (a) the bishop should be counselled;
  - (b) the bishop's continuation in office should be subject to conditions or restrictions;
  - (c) the bishop is unfit, whether temporarily or permanently, to hold office; or
  - (d) the bishop is unfit to remain in Holy Orders;
- the Board may determine accordingly and may:

- (e) direct that the bishop be counselled;
- (f) direct that the bishop's holding of office shall be subject to such conditions or restrictions as the Board may specify;
- (g) direct that the bishop cease to carry out the duties and functions of his office from such time and for such period determined by the Board;
- (h) direct that the bishop resign from the office, within such time as is specified by the Board;
- (i) direct that the operation of a determination referred to in paragraphs (f) to (h) shall be suspended for such period and upon such conditions as the Board shall specify;
- (j) direct that the bishop relinquish Holy Orders within such time as is specified by the Board;
- (k) give such other direction as the Board sees fit;
- (l) determine that the Bishop be prohibited, either temporarily or permanently, from functioning as a bishop or as a bishop and priest; or
- (m) determine the Bishop be deposed from the exercise of Holy Orders.

50 The Board shall cause a copy of each determination and direction to be provided:

- (a) to the Primate;
- (b) to the relevant Metropolitan;
- (c) to the respondent;
- (d) to the relevant administrator;
- (e) to the ESC;
- (f) where appropriate, to any relevant complainant;
- (g) in the case of a former Bishop, to the relevant diocesan bishop; and shall cause relevant details to be forwarded for entry into the national register.

50A The relevant Metropolitan and, where applicable, the relevant diocesan bishop, is authorised and must give effect to the determination of the board.

51 (1) The bishop shall comply with a direction of the Board.

(2) [deleted]

(3) The ESC may institute proceedings forthwith in the Tribunal in respect of an offence against this section or, if the bishop is no longer a Bishop, shall refer the matter, together with such relevant information concerning the alleged offence as may be in its possession, to the bishop of the diocese in which the bishop is then resident.

## PART 8 – APPEAL

52 In this Part, unless the context otherwise requires

**reviewable decision** means a recommendation or determination of the Board other than by way of an interlocutory order;

**Review Board** means the Episcopal Standards Review Board constituted for the purposes of this Part.

53 [deleted]

54 A Bishop or the ESC, if aggrieved by a reviewable decision, may appeal by notice to the General Secretary.

55 (1) The Review Board will be constituted from the members of the panel referred to in section 20 and the members of the panel to be convened for an appeal to the Review Board will be determined by whichever of the President or the Deputy President was not a member of the Board which made the determination that is the subject of the appeal, as soon as possible after the appeal is notified to the President or Deputy President.

(2) For the purpose of an appeal, the Review Board shall consist of the President or Deputy President, who shall be the presiding member, and an equal number not exceeding two from the episcopal members and two from the other members of the panel who were not members of the Board which made the determination that is the subject of the appeal.

- (3) Subsections (3) to (5) of section 23, subsection (1) of section 24, sections 25 to 27, 29 and 31 to 33, subsections (2) and (3) of section 36, and sections 41(1), 42, 45 and 46 apply to an appeal to the Review Board, as if the reference to the Board is a reference to the Review Board.
- 56 For a reviewable decision, the provisions of section 51 shall not apply until the time for lodging an appeal has passed, and no application has been lodged.
- 57 The making of an appeal acts as a stay of the reviewable decision pending determination by the Review Board.
- 58 For a reviewable decision, the Board shall not cause the relevant details to be forwarded for entry into the national register under section 50 until:
- (a) the time for lodging an appeal has passed, and no notice of appeal has been lodged; or
  - (b) where an appeal has been heard and determined, the determination has been made.
- 59 If the Review Board on appeal confirms, varies or makes another determination in substitution for a reviewable decision, the Review Board must cause the details of the confirmed, varied or substituted determination to be forwarded to the General Section and the persons referred to in section 50 and the General Secretary shall cause relevant details to be forwarded for entry into the national register.
- 60 If a Review Board's determination refers a matter back to the Board, then the Board must:
- (a) determine to take no further action in respect of the matter; or
  - (b) deal with the matter in accordance with Part VII of this Canon, in accordance with such directions or recommendations as the Review Board may make in the Review Board's determination; or
  - (c) deal with the matter in accordance with Part VII of this Canon applying such of the provisions of Part VII as, in the discretion of the Board and in accordance with the Review Board's determination, the Board sees fit.
- 61 An appeal against the reviewable decision must be made within 28 days of a copy of the Board's determination under section 50 being provided to the Bishop and the ESC. The notice of appeal must:
- (a) be in writing addressed to the General Secretary; and
  - (b) set out the grounds for appeal in the application.
- 62 On receipt of an application for review<sup>2</sup>, the General Secretary must immediately seek the appointment of a Review Board.
- 63 [deleted]
- 64 Unless otherwise specified in this Canon, the manner in which the appeal is to be conducted will be determined by the Review Board.
- 65 On an appeal of a reviewable decision, the Review Board may make all or any of the following determinations:
- (a) a determination quashing or setting aside the reviewable decision and making another determination in substitution for it;
  - (b) a determination referring the matter to which the reviewable decision relates to the Board for further consideration, subject to such directions (including the setting of time limits for the further consideration, and for the steps to be taken in the further consideration) as the Review Board determines;
  - (c) [deleted]
  - (d) [deleted]
- a determination confirming or varying the reviewable decision.
- 66 [deleted]
- 67 The appeal shall be by way of a rehearing.

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<sup>2</sup> Consistent with other changes made to this Part, the reference to 'an application for review' should be read as 'a notice of appeal'.

## **PART 9 – REGULATIONS**

- 68 The Standing Committee may from time to time make, amend or repeal Regulations, not inconsistent with the provisions of this Canon, providing for records arising out of or incidental to the operation of this Canon, and for all or any of the purposes whether general or to meet particular cases, which may be convenient for the administration of this Canon or which may be necessary or expedient to carry out the objects and purposes of this Canon.

### **Coming into force by adoption**

- 69<sup>3</sup> The provisions of this Canon affect the order and good government of this Church within a diocese and do not come into force in a diocese unless and until the diocese adopts this canon by ordinance of the synod of the diocese.

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<sup>3</sup> This was section 4 in the Episcopal Standards (Child Protection) Canon 2017 as passed.