

# **2018 Session of Synod**

## **Book 4**

(Pages 501 to 579)

### **Principal Legislation and Other Background Materials**

**Standing Committee of the Synod  
Anglican Church Diocese of Sydney**

**2018 Principal Legislation and Other Background Materials**  
**(proposed to be amended or otherwise considered)**

Contents

*Page*

**Synod business rules**

Conduct of the Business of Synod Ordinance 2000 .....	503
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**Principal Legislation**

Assistant Ministers Ordinance 2017 .....	520
Constitution of the Anglican Church of Australia, Extract of Section 57 .....	523
General Synod – Safe Ministry to Children Canon 2017 Adopting Ordinance 2017 .....	524
Ministry Standards Ordinance 2017 (marked to show proposed changes) .....	537
Special Tribunal Canon 2007 .....	570

# Conduct of the Business of Synod Ordinance 2000

(Reprinted under the Interpretation Ordinance 1985.)

The Conduct of the Business of Synod Ordinance 2000 as amended by the Conduct of the Business of Synod Amendment Ordinance 2002, the Conduct of the Business of Synod Amendment Ordinance 2005, the Archbishop of Sydney Election Amendment Ordinance 2009, the Conduct of the Business of Synod Ordinance 2000 Amendment Ordinance 2014 and the Conduct of the Business of Synod Ordinance 2000 Amendment Ordinance 2016.

## Table of Provisions

### Clause

1	.....	Name
2	.....	Adoption of new rules of procedure
3	.....	Repeal of previous rules
4	.....	Commencement
		Schedule
		Part 1 – Meeting Time, President, Houses of the Synod and Quorum
1.1	.....	Meeting time
1.2	.....	President
1.3	.....	Houses of the Synod
1.4	.....	Quorum
		Part 2 – Officers and Committees of the Synod
2.1	.....	Introduction
2.2	.....	The Secretary of the Synod
2.3	.....	The Chair of Committees
2.4	.....	The Deputy Chair or Chairs of Committees
2.5	.....	The Committee of Elections and Qualifications
2.6	.....	The Committee for the Order of Business
2.7	.....	The Minute Reading Committee
2.8	.....	Casual Vacancies
		Part 3 – The Order of Business of the Synod
3.1	.....	Introduction
3.2	.....	Order of business for the first day of a session
3.3	.....	Order of business for the second and third days of a session
3.4	.....	Order of business for the fourth and subsequent days of a session
3.5	.....	Order of motions
		Part 4 – Resolutions
4.1	.....	Introduction
4.2	.....	General rules
4.3	.....	Notice of motions required
4.4	.....	Motions to be seconded
4.5	.....	Calling the motions on the business paper
4.5A	.....	Incorporation of amendments in principal motion
4.6	.....	Time limits for speeches
4.7	.....	Number of speeches
4.8	.....	After a motion has been seconded
4.9	.....	Amendments to motions
4.10	.....	Putting a motion to the vote
4.11	.....	Right of reply
4.12	.....	Voting on a motion
4.13	.....	Adjournment of debate
4.14	.....	Not voting on a motion
4.15	.....	Withdrawal of a motion
4.16	.....	Motions previously voted on
4.17	.....	Synod in Committee
4.18	.....	Proposed policies of the Synod

**Part 5 – Making of Ordinances by the Synod**

- 5.1 .....Introduction
- 5.2 .....Notice of the proposed ordinance is to be given
- 5.3 .....Introduction of the proposed ordinance
- 5.4 .....Passing the proposed ordinance formally
- 5.5 .....Approving the proposed ordinance in principle
- 5.6 .....Considering the text of the proposed ordinance
- 5.7 .....Passing the proposed ordinance
- 5.8 .....Further consideration of the text of the proposed ordinance
- 5.9 .....Reconsideration of the text of the proposed ordinance if assent is withheld
- 5.10 .....Proposed ordinances referred from the Standing Committee
- 5.11 .....Referral of ordinances by the Synod

**Part 6 – Other Matters**

- 6.1 .....Questions about the election or qualification of a member
- 6.2 .....Petitions to Synod
- 6.3 .....Questions
- 6.4 .....Personal explanations
- 6.5 .....Suspension of these rules
- 6.6 .....Media
- 6.7 .....Rules
- 6.8 .....Application of business rules

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An Ordinance to make rules for the conduct of the business of the Synod of the Diocese of Sydney.

The Synod of the Diocese of Sydney ordains.

**1. Name**

This Ordinance is the Conduct of the Business of Synod Ordinance 2000.

**2. Adoption of new rules of procedure**

The rules for the conduct of the business of the Synod of the Diocese of Sydney are in the Schedule to this Ordinance.

**3. Repeal of previous rules**

- (1) The Standing Orders Ordinance 1968 is repealed.
- (2) Each reference in an ordinance (other than this Ordinance) to the Standing Orders Ordinance 1968 is changed to the Conduct of the Business of Synod Ordinance 2000.

**4. Commencement**

Clauses 2 and 3 of this Ordinance commence on the day next following the last day of the second session of the 45th Synod or on the day on which assent is given to this Ordinance, whichever is later.

**Schedule****Synod of the Diocese of Sydney****Rules for Conducting the Business of the Synod****Part 1 Meeting Time, President, Houses of the Synod and Quorum****1.1 Meeting time**

- (1) The Synod is to meet at 3.15 pm on each appointed day unless it decides to meet at another time.
- (2) No motion about a proposed ordinance may be considered before 4.30 pm apart from the unopposed introduction of a proposed introduction.

**1.2 President**

- (1) The Archbishop is the President.
- (2) In the absence of the Archbishop, the President is the person appointed by the Archbishop as his commissary under section 11 of the Constitutions in the Schedule to the 1902 Constitutions.

- (3) In the absence of the Archbishop and the commissary, the President is the person next in ecclesiastical rank who is licensed in the Diocese and is present at the meeting of the Synod.
- (4) If the person who is the President of the Synod is, for any reason, unwilling or unable (otherwise than by absence) to preside in respect of any business of the Synod, the President is the person next in ecclesiastical rank after that person who is licensed in the Diocese and is present at the meeting of the Synod.
- (5) Nothing in this rule amends the provisions of the Constitutions in the Schedule to the 1902 Constitutions concerning the giving of assent to an ordinance of the Synod. Accordingly, a person who is President of the Synod under rule 1.2(2) or (3) or (4) may not assent to an ordinance unless that person is authorised to do so under those Constitutions.
- (6) In this rule 1.2, the word “Archbishop” means, if the See is vacant, the person appointed under an ordinance of the Synod to administer the Diocese.

### **1.3 Houses of the Synod**

- (1) Each member of the Synod (other than the President) is a member of a House of the Synod.
- (2) A member who is ordained is a member of the House of Clergy.
- (3) A member of the Synod who is not ordained is a member of the House of Laity.

### **1.4 Quorum**

- (1) When a motion about a proposed ordinance is being considered, one fourth of the members of each House is a quorum.
- (2) Otherwise, 50 members of the House of Clergy and 100 members of the House of Laity is a quorum.
- (3) If at the time fixed for a meeting of the Synod or during a meeting of the Synod, a quorum is not present the President is to adjourn the Synod to a time determined by him. If a debate is interrupted as a consequence then, subject to rules 3.3, 3.4 and 3.5, the debate is to resume at the point where it was interrupted.

## **Part 2 Officers and Committees of the Synod**

### **2.1 Introduction**

The Synod elects several officers and committees to assist it in conducting its business. Those officers and committees are

- (a) the Secretary of the Synod
- (b) the Chair of Committees
- (c) the Deputy Chair or Chairs of Committees
- (d) the Committee of Elections and Qualifications
- (e) the Committee for the Order of Business
- (f) the Minute Reading Committee.

This Part sets out the functions of the officers and committees of the Synod.

### **2.2 The Secretary of the Synod**

- (1) One member is to be elected as Secretary of the Synod on the first day of the first session of each Synod and, subject to rule 2.8, is to hold office until the first day of the first session of the next Synod.
- (2) The Secretary of the Synod is to
- (a) prepare the business paper for each day after the first day of each session of a Synod, and
  - (b) take minutes of the meetings of the session, and maintain the minute book, and
  - (c) record the ordinances passed by the Synod, and
  - (d) prepare and publish the report of the session of the Synod.
- (3) With the permission of the President, the Secretary of the Synod may give notices to the Synod about any matter concerning the business of the Synod.
- (4) The Secretary of the Synod may approve any report or other material from a Diocesan Body or Organisation being made available to members.

### **2.3 The Chair of Committees**

- (1) One member is to be elected as the Chair of Committees on the first day of the first session of each Synod and, subject to rule 2.8, is to hold office until the first day of the first session of the next Synod.

(2) The Chair of Committees presides during meetings of the Synod in Committee and, when presiding, has the same authority as the President.

#### **2.4 The Deputy Chair or Chairs of Committees**

(1) One or more members is to be elected as the Deputy Chair or Deputy Chairs of Committees on the first day of the first session of each Synod and, subject to rule 2.8, is to hold office until the first day of the first session of the next Synod.

(2) The Deputy Chair of Committees presides during meetings of the Synod in Committee if the Chair of Committees is unable or unwilling to act, or if the Chair of Committees requests that a Deputy Chair of Committees act. When presiding, the Deputy Chair has the same authority as the President.

(3) If more than one Deputy Chair of Committees is elected, the person to preside in the place of the Chair of Committees is to be determined by the persons who have been elected as Deputy Chairs of Committees or, if they are unable to agree, by the President.

(4) If

(a) the Chair of Committees, and

(b) the Deputy Chair of Committees or each of the Deputy Chairs of Committees,

are unable or are unwilling to preside during a meeting of the Synod in Committee, the person to preside during that meeting is to be a member appointed by the Synod as a result of a motion without notice passed by the Synod. When presiding, that person has the same authority as the President.

#### **2.5 The Committee of Elections and Qualifications**

(1) The Committee of Elections and Qualifications is to consist of not more than 5 members elected on the first day of the first session of each Synod and who, subject to rule 2.8, are to hold office until the first day of the first session of the next Synod.

(2) The Committee of Elections and Qualifications is to investigate and report when required by rule 6.1.

(3) A person may not act as a member of the Committee of Elections and Qualifications in relation to a question referred by the Synod about

(a) the validity of the election or appointment of that person as a member of the Synod, or

(b) that qualification of that person to be a member of the Synod.

#### **2.6 The Committee for the Order of Business**

(1) The Committee for the Order of Business is to consist of

(a) the Secretary of the Synod, and

(b) not more than 5 members elected by the Synod on the first day of the first session of each Synod and who, subject to rule 2.8, are to hold office until the first day of the first session of the next Synod

(2) The Committee for the Order of Business is to review the business paper for each day of a session, other than the first day, and settle the order of motions appearing on the business paper.

#### **2.7 The Minute Reading Committee**

(1) The Minute Reading Committee is to consist of not more than 8 members elected on the first day of the first session of each Synod and who, subject to rule 2.8, are to hold office until the first day of the first session of the next Synod.

(2) Any 2 members of the Minute Reading Committee are to review the minutes of the proceedings of each day and certify their correctness, or otherwise, to the President.

#### **2.8 Casual vacancies**

(1) A casual vacancy in any office or in the membership of any committee elected under this Part 2 arises if the person holding the office or membership –

(a) dies,

(b) resigns by written notice given to the President, or

(c) ceases to be a member of the Synod.

(2) A casual vacancy in any office or in the membership of any committee held by a person elected under this Part 2 also arises if the Synod declares, as a result of a motion with or without notice passed by the Synod, the office or membership to be vacant.

(3) A casual vacancy arising under rule 2.8(1) or (2) may be filled by the Synod or, if the Synod is not in session, by the Standing Committee. A person who is elected by the Standing Committee to fill a casual vacancy holds office or remains a member of the committee until the next session of the Synod.

### **Part 3 The Order of Business of the Synod**

#### **3.1 Introduction**

This Part sets out the order in which the business of the Synod is to be conducted on each day of a session.

#### **3.2 Order of business for the first day of a session**

The order of business for the first day of a session of is as follows.

- (a) The President, or a person appointed by him, is to read prayers.
- (b) The President is to table a list of the members of the Synod.
- (c) The President may make a speech to the Synod.
- (d) The President is to table a document appointing a commissary.
- (e) The Synod is to consider any motion to declare a vacancy or vacancies among the membership of the Property Trust in accordance with the Anglican Church Property Trust Diocese of Sydney Ordinance 1965.
- (f) The President is to table a list of the results of uncontested elections and declare the persons concerned elected.
- (g) Where required under Part 2, the Synod is to consider motions for the election of
  - the Secretary of Synod
  - the Chair of Committees
  - the Deputy Chair or Chairs of Committees
  - the Committee of Elections and Qualifications
  - the Committee for the Order of Business
  - the Minute Reading Committee.
- (h) The minute book of the Standing Committee is to be tabled.
- (i) The President is to allow members to present petitions.
- (j) The President is to allow members to ask questions in accordance with rule 6.3.
- (k) The President is to allow members to move or give notice of procedural motions and is to invite members to give notice of other motions.
- (l) The President is to call the motions in the order in which they appear on the business paper in accordance with rule 4.5.
- (m) The Synod is to consider motions for the formal reception and printing of reports, accounts and other documents in the order in which they appear on the business paper.
- (n) The Synod is to consider motions for proposed ordinances which have been referred from a previous session of the Synod, or from a previous Synod, in the order in which they appear on the business paper, unless the Synod determines, by motion without notice, that those motions should be considered on a subsequent day.
- (o) The Synod is to consider motions to be moved at the request of the Synod or the Standing Committee in the order in which they appear on the business paper.
- (p) The Synod is to consider motions to be moved at the request of a regional council in the order in which they appear on the business paper.
- (q) The Synod is to consider motions received by the Standing Committee from members in accordance with rule 4.3(3) in the order in which they were received.

#### **3.3 Order of business for the second and third days of a session**

The order of business for the second and third days of a session is as follows.

- (a) The President, or a person appointed by him, is to read prayers.
- (b) The President, or a person appointed by him, is to read a passage from the Bible and apply it.
- (c) The minutes of the proceedings of the previous day are to be signed by the President as a correct record, or be otherwise dealt with.
- (d) Subject to rule 6.3(5), answers to questions asked on the previous day are to be given.
- (e) The President is to allow members to ask questions in accordance with rule 6.3.

- (f) The President is to allow members to move or give notice of procedural motions and is to invite members to give notice of other motions.
- (g) The President is to call the motions in the order in which they appear on the business paper in accordance with rule 4.5.
- (h) The Synod is to consider motions about proposed ordinances in the order in which they appear on the business paper.
- (i) The Synod is to consider other motions in the order in which they appear on the business paper.

### **3.4 Order of business for the fourth and subsequent days of a session**

The order of business for the fourth and subsequent days of a session of the Synod is the order specified in rule 3.3 except that no member may

- (a) ask a question, or
- (b) give notice of a motion,

except with the permission of the majority of the members then present.

### **3.5 Order of motions**

Motions are to be considered in the order in which they appear on the business paper. The Synod may determine, as a result of a procedural motion passed by the Synod,

- (a) to vary the order in which motions are considered, or
- (b) to fix a time for when a motion is to be considered.

## **Part 4 Resolutions**

### **4.1 Introduction**

The main way in which the Synod expresses a view on a matter is by the making of a resolution. Generally, a resolution is made in the following way.

- (a) A member of the Synod (referred to in these rules as the “mover”) moves a motion (referred to in these rules as the “principal motion”). Usually, the mover will have given notice of the principal motion on a previous day.
- (b) Except during a meeting of the Synod in Committee, a motion is to be seconded.
- (c) When called by the President, the mover will speak in support of the principal motion and the seconder may also speak in support of the motion.
- (d) Instead of making separate speeches in support of the principal motion, the mover and seconder may, by notice to the Synod, elect to make a joint presentation in support of the principal motion for up to the combined length of time the mover and seconder would otherwise be permitted to speak.
- (e) A speech or presentation referred to in paragraph (c) or (d) may, by arrangement with the Secretary of the Synod, be accompanied by overhead visual material.
- (f) If any member wishes to speak against the principal motion, or move a proposed amendment, debate will proceed.
- (g) If no member wishes to speak against the principal motion or move an amendment, the President is to ask the Synod to vote on the principal motion.
- (h) After debate has concluded, the President is to ask the Synod to vote on any amendments. After any amendments have been agreed to or rejected, the President is to ask the Synod to vote on the principal motion, as amended by any amendments which have been agreed.
- (i) If the principal motion, with or without amendments, is passed, it becomes a resolution of the Synod.

The remaining rules in this Part contain the details of this procedure, and the details of the special situations in which the general procedure is modified.

### **4.2 General rules**

- (1) A member may only address the Synod when called by the President to do so.
- (1A) A member who wishes to be called by the President to address the Synod is to stand in his or her place, or if directed by the President, to stand near a microphone. The President is to call from among those standing the member who may address the Synod.
- (2) The President may take part in debate.

- (3) If the President stands, all other members are to sit and remain seated until the President sits down.
- (4) Any member may speak to a question about procedure. A question about procedure is to be decided by the President whose decision is final unless immediately altered as a result of a motion without notice passed by the Synod.
- (5) The President is to confine each speaker to the subject matter being debated. A member may not interrupt a speaker, except with the permission of the President, or as a result of a motion without notice passed by the Synod.
- (6) A speaker may not make a remark which reflects adversely on the personality of any member or imputes an improper or questionable motive to any member. If a speaker makes such a remark, the President is to
  - (a) ask the speaker to withdraw the remarks and apologise and,
  - (b) warn the speaker against making such remarks in future.

If, having been asked, the speaker refuses to withdraw the remark and apologise, the member may be suspended from the Synod as a result of a motion with or without notice passed by the Synod, for the time specified in the motion.

- (7) A member may not act in a disorderly way. If a member acts in a disorderly way, he or she may be suspended from the Synod as a result of a motion with or without notice passed by the Synod, for the time specified in the motion.

#### **4.3 Notice of motions required**

- (1) The Synod is not to consider a motion unless
  - (a) notice of the motion was given on a previous day, or
  - (b) the Synod agrees to consider the motion.
- (2) Motions intended to facilitate the consideration of business are known as 'procedural motions'. Rule 4.3(1) does not apply to procedural motions and those other motions for which notice is not required by Parts 4 and 5.
  - (2A) Rule 4.3(1) does not apply to motions to amend a motion.
- (3) A member may send notice of a motion to the Standing Committee to be received at least 1 month before the first day of the session. Notice of such motion is to be printed on the business paper for the first day of the session. A member may not send notice of more than 2 motions.
- (4) If notice in writing is given to a Secretary of the Synod by 7.00 pm on the first day of a session then notice of the motion will be regarded as having been given on a previous day for the purposes of rule 4.3(1).

#### **4.4 Motions to be seconded**

- (1) No motion, or motion to amend a motion, is to be considered unless it is seconded.
- (2) Rule 4.4(1) does not apply to a motion moved in a meeting of the Synod in Committee.

#### **4.5 Calling the motions on the business paper**

- (1) At the time required by rule 3.2, 3.3 or 3.4, the President is to call the motions in the order in which they appear on the business paper, except those motions about a proposed ordinance or those motions to be considered at a time fixed by the Synod.
- (2) When a motion is called, the President is to ask for the motion to be formally moved and seconded unless 8 or more members call "object" or 1 or more members calls "amendment". If the motion is formally moved and seconded, the Synod is to vote on the motion without any speeches or debate.
- (3) If 8 or more members call "object" or 1 or more members calls "amendment"
  - (a) the President is to immediately call the next motion on the business paper to be called under this rule or, if there is no such motion, proceed to the next item of business, and
  - (b) any member who calls "amendment" is to
    - deliver a written copy of the proposed amendment to the Secretary of the Synod, and
    - make himself or herself available to discuss the proposed amendment with the mover of the motion on the day on which the call is made.

##### **4.5A Incorporation of amendments in principal motion**

If the mover of a principal motion (the 'Mover') notifies the Secretary of the Synod that –

- (a) having discussed a proposed amendment with the mover of the amendment, the Mover agrees to include the proposed amendment in the principal motion, or
- (b) the Mover wishes to move the principal motion in an amended form,

the motion in the amended form becomes the principal motion and is to be printed in a suitably marked form on the next day's business paper.

#### **4.6 Time limits for speeches**

- (1) The following time limits for speeches apply.
  - (a) For a motion that a proposed ordinance be approved in principle –
    - the mover may speak for up to 15 minutes, and up to 5 minutes in reply
    - other members may speak for up to 5 minutes.
  - (b) For other motions, except the motions referred to in paragraphs (c) and (d) –
    - the mover may speak for up to 10 minutes, and up to 5 minutes in reply
    - other members may speak for up to 5 minutes.
  - (c) For procedural motions and for motions to amend a motion, a member may speak for up to 5 minutes.
  - (d) For motions moved in a meeting of the Synod in Committee, a member may speak for up to 3 minutes.
- (2) A member, not being the speaker at the time, may, without making a speech, move a procedural motion for the speaker to continue for a nominated number of minutes.

#### **4.7 Number of speeches**

- (1) No member may speak more than once on the same motion except
  - (a) during a meeting of the Synod in Committee, or
  - (b) when invited to give an explanation, or
  - (c) when exercising a right of reply under rule 4.11.
- (2) A member who formally seconds a motion is not regarded as having spoken to the motion.

#### **4.8 After a motion has been seconded**

- (1) After a motion has been moved and seconded, the President is to ask a question to the effect "Does any member wish to speak against the motion or move an amendment?"
- (2) If no member indicates a wish to speak against the motion or move an amendment, the Synod is to vote on the motion without any debate.
- (3) If a member indicates a wish to speak against the motion or move an amendment, debate on the motion is to proceed.

#### **4.9 Amendments to motions**

- (1) A member may move a motion to amend a principal motion at any time before the close of debate. The motion to amend must be in writing and a copy handed to the President.
- (2) A member may move a motion to amend a motion to amend a principal motion. The motion to amend must be in writing and a copy handed to the President.
- (2A) A motion to amend is not to be irrelevant to the principal motion or give rise to an entirely different subject matter from or a direct negative of the principal motion.
- (3) A member may, with the permission of the Synod, withdraw their own motion to amend at any time before the close of debate.
- (4) If motions to amend have been moved, but not passed by the Synod, the motion to be put to the vote is the principal motion.
- (5) If motions to amend have been moved and passed by the Synod, the motion to be put to the vote is the amended principal motion.
- (6) If a member has moved a motion to amend and another member moves a motion for a different amendment or indicates an intention to move a motion for a different amendment, the President may
  - (a) put to the Synod questions about the principal motion and the proposed amendment to establish the mind of the Synod on the principle or principles of the motions, or
  - (b) nominate a person or persons to

- prepare a suitable form of words which expresses the mind of the Synod
  - report to the Synod,
- and adjourn the debate on the principal motion and the proposed amendments until the report has been received.

(7) If debate on a motion is adjourned under rule 4.9(6)(b), the Synod is to proceed to the next item of business.

(8) If the President considers that the strict application of rule 4.9 may cause confusion or prevent the Synod from expressing its mind, he may waive the application of this rule, or so much of it as he thinks fit.

#### **4.10 Putting a motion to the vote**

(1) If, during the time for debate on a motion, no further member indicates a wish to speak to the motion, the President may declare that the debate has ended, subject to the mover of the motion exercising or declining to exercise a right of reply under rule 4.11.

(2) If the President thinks that sufficient time has been allowed for debate on a motion but there remains one or more members indicating a wish to speak to the motion, the President is to ask the Synod a question to the effect

“Does the Synod consider that the motion has been sufficiently debated and should now be voted on?”

If the majority of the members present answer “Aye”, the debate on the motion will be regarded as having ended, subject to the mover of the motion exercising or declining to exercise a right of reply under rule 4.11. If the majority of members present answer “No” the President is to allow the debate to continue. Rule 4.10(1) and rule 4.10(2) apply until debate has ended.

#### **4.11 Right of reply**

(1) The mover of a motion has a right of reply after debate on a motion has ended unless the motion is

- (a) a procedural motion, or
- (b) a motion for an amendment, or
- (c) a motion moved in a meeting of the Synod in Committee.

(2) After the mover has exercised or declined to exercise their right of reply, the motion is to be voted on.

#### **4.12 Voting on a motion**

(1) A vote on a motion is taken by the President asking members present who are in favour of the motion to say “Aye” and then to ask those members who are against the motion to say “No”. Voting may also take place by a show of hands at the option of the President or if requested by a member. A motion is passed only if a majority of the persons present and voting vote in favour of the motion.

(2) If requested by 8 or more members, voting on a motion is to be conducted by ballot. If a ballot is requested, the Synod shall vote in accordance with the directions of the Secretary of the Synod.

(3) The members of the Synod are to vote collectively unless 8 members request that the vote be taken by Houses.

(4) If a vote is required to be taken by Houses, each House is to vote separately in accordance with the directions of the Secretary of the Synod, provided that the House of Laity is to vote first. The motion is passed only if a majority of persons present and voting in each House vote in favour of the motion. If a majority of the persons present and voting in the House of Laity do not vote in favour of the motion, the House of Clergy is not required to vote.

#### **4.13 Adjournment of debate**

(1) A procedural motion for the adjournment of either the Synod or a debate may be moved without notice at any time between speeches.

(2) If debate on a motion is adjourned, that debate takes precedence over all other business, unless these rules provide otherwise, or the Synod decides otherwise as a result of a motion without notice passed by the Synod.

#### **4.14 Not voting on a motion**

(1) If it is desired to avoid or postpone a vote on a motion, a member may move without notice the procedural motion

“That the motion not be voted on.”

(2) When this procedural motion is moved, the President is to immediately ask the Synod a question to the effect

“Does the Synod wish the debate on the principal motion to continue before the procedural motion is put to the Synod?”

(3) The question asked by the President in rule 4.14(2) may be debated but the debate is to be limited to that question until it is disposed of by vote of the Synod.

(4) If the majority of members present and answering answer “Aye” to the question asked by the President in rule 4.14(2), debate on the principal motion is to continue and the mover of that motion has a right of reply before the procedural motion is voted on. If the procedural motion is not passed, the principal motion, and any amendments, are to be voted on immediately without further debate.

(5) If the majority of members present and answering answer “No” to the question asked by the President in rule 4.14(2), the President is to immediately put the procedural motion without debate and without any right of reply.

(6) The procedural motion in rule 4.14(1) is not to be moved in a meeting of the Synod in Committee.

#### **4.15 Withdrawal of a motion**

A motion may be withdrawn at any time by its mover with the permission of the Synod.

#### **4.16 Motions previously voted on**

(1) No motion which has been considered by the Synod and voted on is to be debated again during the same session of the Synod.

(2) No motion which is substantially the same as one which has been voted on during the same session is to be considered. However a motion is not to be regarded as substantially the same as one which has been voted on during the same session if –

- (a) the motion is a direct negative of the one voted on, and
- (b) the one voted on was not passed.

(3) Any question about whether a motion is substantially the same as one which has been voted on during the same session is to be decided by the President whose decision is final unless immediately altered as a result of a motion without notice agreed to by the Synod.

#### **4.17 Synod in Committee**

(1) The Synod may, as a result of a procedural motion passed by the Synod, resolve itself into the Synod in Committee to consider any matter. A motion for the Synod to resolve itself into the Synod in Committee to consider the text of a proposed ordinance (see rule 5.6) is

“That Synod resolves itself into the Synod in Committee to consider [further] the text of the [name of proposed ordinance].”

(2) During a meeting of the Synod in Committee, the Chair of Committees or the Deputy Chair of Committees has the functions set out in rules 2.3 and 2.4.

(3) The Synod in Committee may, as a result of a procedural motion passed by the Committee, resolve to adjourn its meeting. A motion to adjourn a meeting of the Synod in Committee is

“That the Chair of Committees leaves the chair and reports progress.”

(4) On a motion to adjourn a meeting of the Synod in Committee being passed, the Chair of Committees is to report progress to the Synod.

(5) When the Synod in Committee has concluded consideration of the matter before it, the Chair of Committees is to report to Synod. Where the matter being considered was the text of a proposed ordinance, the Chair of Committees is to report in the manner referred to in rule 5.6(3).

(6) The rules of procedure in this Part 4, so far as applicable, apply to a meeting of the Synod in Committee.

(7) In a meeting of the Synod in Committee the same number of members constitutes a quorum as in the Synod itself. If a quorum is not present, the Chair of Committees is to leave the chair and report progress.

#### **4.18 Proposed policies of the Synod**

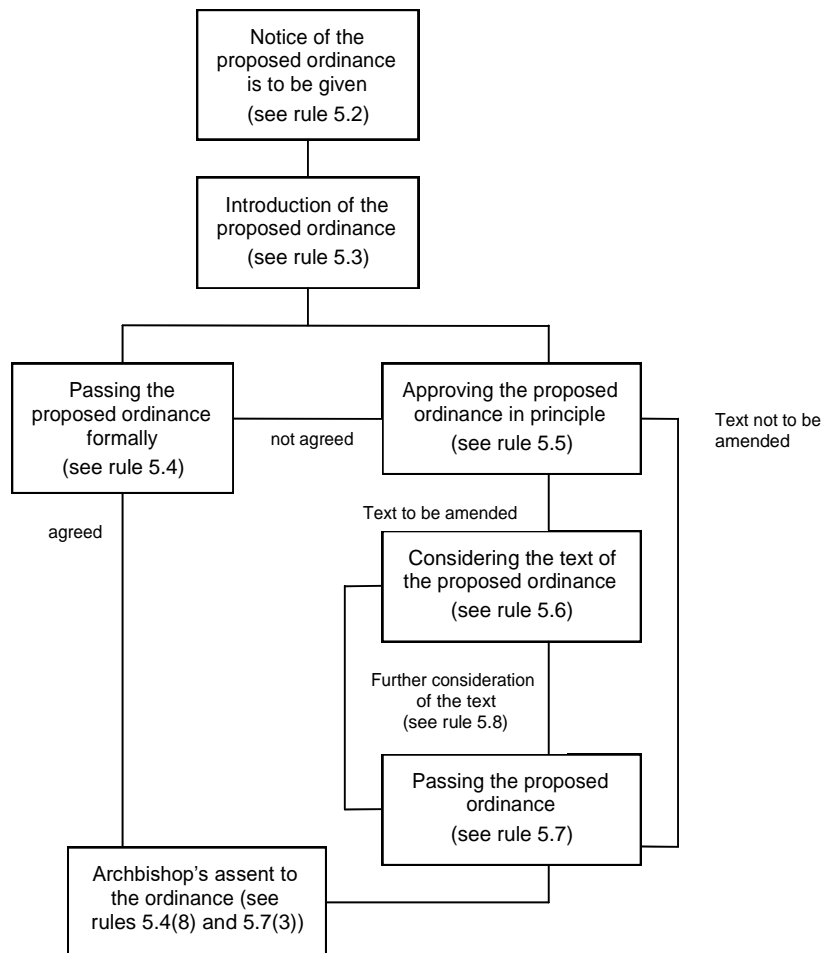
(1) The Standing Committee or the Synod may designate a written statement as a proposed policy of the Synod. A statement designated by the Standing Committee as a proposed policy of the Synod must be clearly marked as such.

- (2) The Synod may consider a proposed policy of the Synod only if a copy has been circulated to members present before consideration of the proposed policy commences in accordance with rule 4.18(3).
- (3) For the purposes of considering a proposed policy of the Synod, the procedures for the making of ordinances under Part 5 (from and including rule 5.5 but excluding rules 5.7(3)(b), 5.9 and 5.10) apply as if the proposed policy were a proposed ordinance.

## Part 5 Making of Ordinances by the Synod

### 5.1 Introduction

The general procedure for the making of an ordinance by the Synod is summarised in the following diagram.



The remaining rules in this Part contain the detail of this procedure, and the details of the special situations where the general procedure is modified.

### 5.2 Notice of the proposed ordinance is to be given

- (1) Notice of a proposed ordinance is to be given to members before the Synod may consider the proposed ordinance.
- (2) Except as provided by rule 5.2(3), notice will be regarded as having been given only if a copy of the proposed ordinance has been circulated to members present before a motion to introduce the proposed ordinance is moved.
- (3) If a proposed ordinance seeks
- (a) to assent to a canon of the General Synod of the Anglican Church of Australia to amend the Constitution in the Schedule to the Anglican Church of Australian Constitution Act 1961, or
  - (b) to amend rule 5.2,
- notice will be regarded as having been given only if

- (c) a copy of the proposed ordinance was sent to each member at least 3 months before the first day of the session at which the proposed ordinance is to be considered, or
- (d) 75% of the members present and voting permit the proposed ordinance to be introduced without notice, other than the notice provided for in rule 5.2(2).

### **5.3 Introduction of the proposed ordinance**

- (1) A proposed ordinance is introduced by a member moving a motion to the effect  
“That Synod permits the introduction of the [name of the proposed ordinance].”
- (2) If the motion to introduce the proposed ordinance is passed, the mover may immediately move a motion to the effect -  
“That Synod agrees to consider passing the proposed ordinance formally.”
- (3) If the motion to consider passing the proposed ordinance formally is passed, the procedure in rule 5.4 applies.
- (4) If
  - (a) the mover does not move a motion to the effect that the Synod agrees to consider passing the proposed ordinance formally, or
  - (b) such a motion is moved but is not passed,

the mover may immediately move the motion in rule 5.5(1). If the mover does not immediately move that motion, the mover is to move a motion to the effect –

“That Synod agrees to consider [at a specified time] a motion that the [name of the proposed ordinance] be approved in principle.”

### **5.4 Passing the proposed ordinance formally**

- (1) If the Synod agrees to consider passing a proposed ordinance formally, the mover may immediately make a speech for not longer than 3 minutes about the proposed ordinance.
- (2) At the end of the speech, the President is to ask a question of the Synod to the effect  
“Does any member have a question about the proposed ordinance?”
- (3) If a member indicates that he or she has a question, the President is to allow the question to be asked and rules 5.4(4), 5.4(5) and 5.4(6) apply. If no member indicates that he or she has a question, the time for questions will be regarded as having ended.
- (4) A question is to be answered by the mover or seconder unless the President allows another person to answer the question.
- (5) If, during the time for questions, no further member indicates that he or she has a question, the President may declare that the time for questions has ended.
- (6) If the President thinks that sufficient time has been allowed for questions but there remains one or more members indicating a wish to ask a question, the President is to ask the Synod a question to the effect

“Does the Synod consider that sufficient time has been allowed for questions?”

If the majority of members present answer “Aye”, the time for questions will be regarded as having ended. If the majority of members present answer “No”, the President is to allow the time for questions to continue. Rules 5.4(5) and 5.4(6) apply until the time for questions has ended.

- (7) Subject to rule 5.4(9), after the time for questions has ended, the mover is to immediately move a motion to the effect

“That the [name of the proposed ordinance] pass formally as an ordinance of the Synod.”

- (8) If the Synod passes the proposed ordinance formally as an ordinance of the Synod, as soon as possible the Secretary of the Synod is to send to the Archbishop for his assent, the original copy of the ordinance upon which

- (a) the Chair of Committees has certified the text of the ordinance, and
- (b) the Secretary of the Synod has certified that the ordinance has passed as an ordinance of the Synod.

- (9) If
- (a) prior to the motion in rule 5.4(7) being voted on, 8 members stand in their place to object to the proposed ordinance being passed formally, or
  - (b) the motion in rule 5.4(7) is not passed,
- the mover is to immediately move a motion to the effect
- “That Synod agrees to consider [forthwith or at a specified time] a motion that the [name of proposed ordinance] be approved in principle.”

### **5.5 Approving the proposed ordinance in principle**

- (1) At the time permitted by these rules, the mover of a proposed ordinance may move a motion to the effect

“That the [name of the proposed ordinance] be approved in principle.”

- (2) After this motion has been moved and seconded, and the mover and seconder have spoken, the President is to ask the Synod a question to the effect

“Does any member have a question about the proposed ordinance?”

- (3) If a member indicates that he or she has a question, the President is to allow the question to be asked and rules 5.5(4), 5.5(5) and 5.5(6) apply. If no member indicates that he or she has a question, the time for questions will be regarded as having ended.

- (4) A question is to be answered by the mover or seconder unless the President allows another person to answer the question. If, during the time for questions, no further member indicates that he or she has a question, the President may declare that the time for questions has ended.

- (5) If the President thinks that sufficient time has been allowed for questions but there remains one or more members indicating a wish to ask a question, the President is to ask the Synod a question to the effect –

“Does the Synod consider that sufficient time has been allowed for questions?”

- (6) If the majority of members present answer “Aye”, the time for questions will be regarded as having ended. If the majority of members present answer “No”, the President is to allow the time for questions to continue. Rules 5.5(5) and 5.5(6) apply until the time for questions has ended.

- (7) After the time for questions has ended, the President is to immediately ask the Synod a question to the effect

“Does any member wish to speak for, or against the motion, or to move an amendment to it?”

- (8) If a member indicates that he or she wishes to speak for, or against the motion, or to move an amendment, the President is to allow debate on the motion to proceed.

- (9) Upon a proposed ordinance being approved in principle, the President is to immediately ask the Synod a question to the effect

“Does any member wish to move an amendment to the text of the proposed ordinance?”

- (10) If a member indicates to the President that he or she wishes to move an amendment to the text of the proposed ordinance, rule 5.6 applies.

- (11) If no member indicates to the President that he or she wishes to move an amendment, rule 5.7 applies and the mover is to immediately move the motion in rule 5.7(1).

### **5.6 Considering the text of the proposed ordinance**

- (1) If upon the President asking the question under rule 5.5(9) a member indicates that he or she wishes to move an amendment to the text of the proposed ordinance, the Synod is to

- (a) immediately consider the text of the proposed ordinance in a meeting of the Synod in Committee, or
- (b) determine another time for such consideration.

- (2) When considering the text of a proposed ordinance in a meeting of the Synod in Committee, the Chair of Committees is to put each clause of the proposed ordinance separately in the order in which the clauses occur in the proposed ordinance, leaving the title and the preamble to be considered last, unless, in the opinion of the Chair of Committees, it is expedient to put 2 or more consecutive clauses together.

(3) When consideration of the text of the proposed ordinance has been completed by the Synod in Committee, the Chair of Committees is to report the proposed ordinance to the Synod, with or without amendments as the case may be.

(4) Upon the report of an ordinance with amendments being adopted by the Synod as a result of a motion without notice passed by the Synod, the mover of the proposed ordinance is to immediately move a motion to the effect

“That Synod agrees to consider [on a specified future day/on a specified future day and at a specified time] a motion that the [name of the proposed ordinance] pass as an ordinance of the Synod.”

(5) Upon the report of an ordinance without amendments being adopted by the Synod as a result of a motion without notice passed by the Synod, the mover of the proposed ordinance may move the motion under rule 5.7(1) unless 8 members object, in which case the mover is to immediately move the motion under rule 5.6(4).

### **5.7 Passing the proposed ordinance**

(1) When permitted by these rules, the mover may move a motion to the effect

“That the [name of proposed ordinance] pass as an ordinance of the Synod.”

(2) A motion that a proposed ordinance pass as an ordinance of the Synod is not to be moved until the Chair of Committees has certified the text on the original copy of the proposed ordinance.

(3) If the Synod passes a motion that a proposed ordinance pass as an ordinance of the Synod, the Secretary of the Synod is to

- (a) certify on the original copy of the ordinance that the ordinance has passed as an ordinance of the Synod, and
- (b) as soon as possible, send the original copy of the ordinance to the Archbishop to enable him to consider his assent.

### **5.8 Further consideration of the text of the proposed ordinance**

At any time before the Synod passes a motion that a proposed ordinance pass as an ordinance of the Synod, the Synod may, as a result of a motion with or without notice passed by the Synod, refer the proposed ordinance, or any clause of the proposed ordinance, or any amendment, to the Synod in Committee for consideration. Rules 5.6, 5.7 and 5.8 then apply, so far as they are relevant.

### **5.9 Reconsideration of the text of the proposed ordinance if assent is withheld**

If the Archbishop withholds assent to an ordinance then, ignoring rules 5.3, 5.4 and 5.5, the Synod may, as a result of a motion with notice passed by the Synod, refer the proposed ordinance, or any clause of the proposed ordinance, or any amendment, to the Synod in Committee for consideration. Rules 5.6, 5.7 and 5.8 then apply, so far as they are relevant.

### **5.10 Proposed ordinances referred from the Standing Committee**

If an ordinance proposed to be made by the Standing Committee is referred to the Synod then, subject to notice of the proposed ordinance being given in accordance with rule 5.2, consideration of the proposed ordinance by the Synod is to commence with a member moving the motion in rule 5.3(1).

### **5.11 Referral of ordinances by the Synod**

(1) The Synod may, as a result of a motion with or without notice passed by the Synod, refer a proposed ordinance at any point in the procedure concerning it

- (a) to the next session of the same Synod, or
- (b) to a session of the next Synod.

(2) Consideration of the proposed ordinance at the next session of the Synod or at a session of the next Synod, as the case may be, resumes at the point in the procedure reached when it was referred.

## **Part 6 Other Matters**

### **6.1 Questions about the election or qualification of a member**

(1) A question about

- (a) the validity of the election or appointment of a member, or
- (b) the qualification of any person to be a member,

may be referred by the Synod to the Committee of Elections and Qualifications for investigation.

- (2) The Committee of Elections and Qualifications
  - (a) may meet during a session of the Synod, and
  - (b) when investigating a question referred to it, may receive such evidence as is available, whether that evidence would be admissible in legal proceedings or not.
- (3) After completing its investigation, the Committee of Elections and Qualifications is to report to the Synod its findings about
  - (a) whether the relevant member was validly elected or appointed, or
  - (b) whether the person is qualified to be a member.
- (4) A member of the Synod may move, with or without notice, that the report of the Committee of Elections and Qualifications be adopted. The motion is to state whether the member who is the subject of the report has been validly elected or appointed or not, or whether the person is qualified to be a member.
- (5) If the Synod passes a motion to the effect that a person has not been validly elected or appointed, or that the person is not qualified to be a member, that person is not to thereafter take part in the proceedings of the Synod unless and until that person becomes duly elected, appointed or qualified, as the case may be.

## **6.2 Petitions to Synod**

- (1) This rule 6.2 applies to the petitions referred to in rule 3.2(i).
- (2) Petitions must be in writing and conclude with the signatures of the petitioners.
- (3) No petition is to
  - (a) be expressed in language which, in the opinion of the President, is disrespectful or offensive, or
  - (b) have been altered by erasure or interlineation.
- (4) A member presenting a petition is to
  - (a) be acquainted with the contents of the petition, and
  - (b) affix his or her name at the beginning of the petition, and
  - (c) state from whom it comes and its contents.
- (5) On the presentation of a petition, the only motion the Synod is to consider is a motion to the effect  
“That Synod receives the petition.”

## **6.3 Questions**

- (1) This rule 6.3 applies to the questions referred to in rule 3.3(e).
- (2) A question may be asked by any member. A member called on by the President to do so is to make a brief statement informing the Synod of the subject matter of the question and hand the full text of the question to the Secretary of the Synod to be printed in the business paper for the next day of the session.
- (3) A question is to relate to a matter connected with the business of
  - (a) the Synod, or
  - (b) any committee, board or commission of the Synod, or established by or under an ordinance, or by resolution of the Synod or the Standing Committee.
- (4) No question is to
  - (a) contain an assertion, or
  - (b) express an opinion, or
  - (c) offer an argument, or
  - (d) make any inference or imputation, or
  - (e) be expressed in language which, in the opinion of the President, is disrespectful or offensive, or
  - (f) seek a legal opinion.
- (5) An answer to a question is to be read orally to the Synod by the President on the next day or as soon as convenient after the next day without the question being asked again. As soon as possible a written copy is to be posted on a notice board in a prominent position in or near the building in which the Synod is meeting. A written copy is also to be handed to the member asking the question upon request made to the Secretary of the Synod.

(6) If the answer includes statistics or other detailed material, the answer may be supplemented with data projected on a screen or a document which need not be read orally.

(7) Each question and reply is to be recorded in the minutes of the Synod.

#### **6.4 Personal explanations**

With the permission of the President, a member may explain matters of a personal nature. These matters are not to be debated.

#### **6.5 Suspension of these rules**

Any rule of procedure may be suspended by motion

- (a) with notice, or
- (b) without notice unless 8 members object.

#### **6.6 Media**

(1) Unless the Synod otherwise determines as a result of a motion with or without notice passed by the Synod, the proceedings of the Synod are to be open to the media.

(2) With the permission of the President, the proceedings, or parts of the proceedings, may be televised, broadcast or photographed.

#### **6.7 Rules**

A rule which the Synod is authorised to make by the Constitutions set out in the Schedule to the Anglican Church of Australia Constitutions Act 1902 may be made by resolution, unless those Constitutions require the rule to be made by ordinance. No rule made by resolution is to be contrary to the terms of an ordinance.

#### **6.8 Application of business rules**

(1) Any question about the application of these rules, the form of motions and ordinances and the voting on motions and ordinances during a session of the Synod is to be decided by the President. The President's decision on all such questions is final unless immediately altered as a result of a motion without notice agreed to by the Synod.

(2) In making a decision under rule 6.8(1), the President may have recourse to the rules, forms and practice of the Legislative Assembly of New South Wales.

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#### **Table of Amendments**

Rule 1.2	Amended by Ordinance No 34, 2005.
Rule 2.1	Amended by Ordinance No 38, 2014.
Rule 2.2	Amended by Ordinance No 38, 2014.
Rule 2.3	Amended by Ordinance No 38, 2014.
Rule 2.4	Amended by Ordinance No 38, 2014.
Rule 2.5	Amended by Ordinance No 38, 2014.
Rule 2.6	Amended by Ordinance No 38, 2014.
Rule 2.7	Amended by Ordinance No 38, 2014.
Rule 2.8	New rule inserted by Ordinance No 38, 2014.
Rule 3.2	Amended by Ordinances Nos 61, 2002 and 38, 2014.
Rule 3.3	Amended by Ordinances Nos 61, 2002 and 38, 2014.
Rule 3.5	Amended by Ordinance No 38, 2014.
Rule 4.1	Amended by Ordinance No 44, 2016.
Rule 4.2	Amended by Ordinances Nos 26, 2009 and 38, 2014.
Rule 4.3	Amended by Ordinance No 38, 2014.
Rule 4.5	Amended by Ordinance No 38, 2014.
Rule 4.5A	New rule inserted by Ordinance No 38, 2014.
Rule 4.6	Amended by Ordinances Nos 61, 2002 and 38, 2014.
Rule 4.9	Amended by Ordinance No 38, 2014.
Rule 4.10	Amended by Ordinance No 61, 2002.

Rule 4.11	Amended by Ordinance No 38, 2014.
Rule 4.12	Amended by Ordinances Nos 61, 2002 and 38, 2014.
Rule 4.14	Amended by Ordinance No 61, 2002.
Rule 4.16	Amended by Ordinance No 38, 2014.
Rule 4.17	Amended by Ordinance No 38, 2014.
Rule 4.18	New rule inserted by Ordinance No 38, 2014.
Rule 5.3	Amended by Ordinance No 61, 2002.
Rule 5.4	Amended by Ordinances Nos 61, 2002; 38, 2014 and 44, 2016.
Rule 5.5	Amended by Ordinances Nos 61, 2002 and 44, 2016.
Rule 5.6	Amended by Ordinance No 38, 2014.
Rule 5.7	Amended by Ordinance No 38, 2014.
Rule 6.1	Amended by Ordinance No 38, 2014.
Rule 6.2	Amended by Ordinance No 38, 2014.
Rule 6.3	Amended by Ordinance No 38, 2014.
Rule 6.8	New rule inserted by Ordinance No 38, 2014.



## Assistant Ministers Ordinance 2017

(Reprinted under the Interpretation Ordinance 1985.)

### Long Title

An Ordinance to provide terms for the appointment of deacons and presbyters to assist rectors of parishes.

### Preamble

Whereas it is expedient to make further provision for the terms of appointment of deacons and presbyters appointed to assist rectors of parishes.

The Synod of the Diocese of Sydney ordains as follows.

### 1. Name

This Ordinance is the *Assistant Ministers Ordinance 2017*.

### 2. Definition of terms

(1) In this Ordinance -

“assistant minister” means a deacon or presbyter licensed by the Archbishop to the office of assistant minister in a parish and does not include a senior assistant minister;

“senior assistant minister” means:

(a) a deacon or presbyter who has served:

(i) as an assistant minister in the Diocese; or

(ii) in an equivalent office in another Diocese,

for a period of at least 4 years or periods, which in aggregate total at least 4 years, and who is licensed by the Archbishop, at the request of the rector and the parish council of the parish, to the office of senior assistant minister in the parish; or

(b) a presbyter who has served:

(i) as a rector in the Diocese; or

(ii) in an equivalent office in another Diocese,

who is licensed by the Archbishop, at the request of the minister and the parish council of the parish, to the office of senior assistant minister in the parish.

(2) Any terms appearing in the Schedule to the *Interpretation Ordinance 1985* are defined by reference to the meaning set out in that Ordinance.

### 3. Term of Appointment

(1) An assistant minister or a senior assistant minister holds office subject to:

(a) the terms of his or her licence; and

(b) where the assistant minister or the senior assistant minister is paid a stipend or is entitled to any other benefit or allowance, written notice of the termination of the appointment and the payment of such stipend and provision of such entitlement given by the rector with the concurrence of the wardens of the principal or only church of the parish in which the assistant minister or senior assistant minister holds office.

(2) For the purposes of clause 3(1)(b), notice is due notice if:

(a) in the case of an assistant minister, the period of notice is at least 3 months; and

(b) in the case of a senior assistant minister, the period of notice is the longest of:

(i) 3 months; or

(ii) the period of notice, to a maximum period of 9 months, calculated at the rate of one month's notice for each year (or part thereof) of continuous service as assistant minister or senior assistant minister, or both, in that parish; or

(iii) such other period of notice, if any, which, at the time the senior assistant minister was licensed as senior assistant minister, was agreed for the purposes of this clause between the senior assistant minister and -

(A) the Archbishop; and

(B) the rector of the parish; and

(C) the parish council.

(2A) Notwithstanding subclause (2), the assistant minister or senior assistant minister may choose to waive some of the period of notice and leave their office earlier, provided that they give written notice to the rector and wardens, and the rector and wardens agree to the earlier date in writing.

(3) Notice must not be given under clause 3(1)(b), unless:

- (a) the regional bishop of the region within which the parish is situated has been notified of the proposal to issue the notice; and
- (b) the notice is proposed to be given due to -
  - (i) unsatisfactory conduct, performance or capacity on the part of the assistant minister or senior assistant minister where a genuine and recorded performance management program or similar has been unsuccessful in resolving the issue or issues;
  - (ii) the parish council determining that the office held by the assistant minister or senior assistant minister will no longer be funded; or
  - (iii) other reasons determined by the rector having regard to the ministry needs of the parish; and
- (c) the assistant minister or senior assistant minister has been given a written statement containing -
  - (i) particulars of the grounds or reasons under clause 3(3)(b), and
  - (ii) in the case of unsatisfactory conduct, performance or capacity that is not serious misconduct: a warning that a notice may be issued under clause 3(1)(b) if the relevant conduct is not addressed; and
- (d) the assistant minister or senior assistant minister has been given a reasonable period in which to provide a written response to the statement of particulars; and
- (e) the rector and wardens have considered any response given by or on behalf of the assistant minister or senior assistant minister within the period; and
- (f) the rector and wardens have given due regard to any guidelines issued by the Archbishop-in-Council under clause 7; and

#### **4. Lodgement of material with the Registrar**

Any written statement issued under clause 3(3)(c), any response given under clause 3(3)(d) and any record of the consideration specified in clause 3(3)(e) must be lodged with the Registrar of the Diocese.

#### **5. Undertaking by rector**

Nothing in this Ordinance prevents the Archbishop from requiring an undertaking of the rector whom the assistant minister or senior assistant minister will assist concerning the work to be undertaken by the assistant minister or the senior assistant minister, as the case may be, or any other matter relating to the office to be exercised by the assistant minister or the senior assistant minister, as the case may be.

#### **6. Vacancy in office of rector and appointment of new rector**

Subject to clause 3, the term of office of an assistant minister or a senior assistant minister does not cease by reason of a vacancy occurring in the office of rector of the parish or upon a new rector being appointed to the parish and, in accepting an appointment to the parish, the new rector is taken to have:

- (a) adopted any obligation on the part of a former rector of the parish expressed in the assistant minister's or senior assistant minister's licence as if the new rector was named in the licence as the person subject to that obligation; and
- (b) adopted any agreement in relation to the office of the assistant minister or senior assistant minister made between the former rector and the assistant minister or senior assistant minister with the approval of:
  - (i) the Archbishop; and
  - (ii) the parish council.

#### **7. Guidelines**

The Archbishop-in-Council may issue guidelines with respect to the termination of appointments under this Ordinance.

#### **8. Commencement, repeal and transitional**

- (1) Except for this clause, this Ordinance commences on 1 January 2018.
- (2) The *Assistant Ministers Ordinance 1990* is repealed on 1 January 2018.

(3) Notwithstanding subclause (2) and subject to subclause (4), an assistant minister or a senior assistant minister will cease to hold office in accordance with the provisions of the *Assistant Ministers Ordinance 1990* as if that Ordinance had not been repealed if, before 1 January 2018:

- (a) a valid notice was issued under clause 3(1) of the *Assistant Ministers Ordinance 1990*, or
- (b) a new rector was licensed to the same parish to which the assistant minister was also licensed at the time and 90 days have not elapsed since the licence was issued to the rector.

(4) For the purposes of subclause (3), “office” means the office of assistant minister or senior assistant minister in a parish that was held by the member of clergy on 1 January 2018.



## Extract from the Constitution of the Anglican Church of Australia

### Chapter IX. - THE TRIBUNALS

57. (1) The Appellate Tribunal shall consist of seven members three of whom shall be diocesan bishops and four of whom shall be laymen.

The members shall be appointed by the General Synod as follows, that is to say, a bishop and a layman on the nomination of the House of Bishops, a bishop and a layman on the nomination of the House of Clergy and a bishop and two laymen on the nomination of the House of Laity.

A president and deputy president shall as often as may be necessary be chosen from among the lay members of the tribunal by the House of Bishops, or, if General Synod be not in session, by a meeting of the members of the House of Bishops.

A layman shall not be a member unless he is qualified to be a lay representative of a diocese, and is or has been a Justice of the High Court of Australia, a Justice of the Supreme Court of a State or Territory of Australia or a Justice or Judge of a Court prescribed by canon of the General Synod or is or has been a practising barrister or solicitor, of at least ten years' standing of the Supreme Court of a State or Territory.<sup>31</sup>

- (2) The members of the tribunal shall be nominated and appointed in such manner, hold office for such period and be subject to such disqualifications, and vacancies shall occur and be filled in such manner, as may be prescribed by or under canon of General Synod.

No party to an appeal shall be a member of the tribunal for any purpose of the appeal and his place shall be filled for the purpose of the appeal by the other members co-opting a person qualified for the office.

The Appellate Tribunal shall have jurisdiction to hear and determine appeals from any determination of the Special Tribunal and from any determination of any diocesan or provincial tribunal in any case in which an appeal lies there from to the Appellate Tribunal.

Every appeal to the Appellate Tribunal shall be by way of re-hearing.

Any person charged before a diocesan tribunal and aggrieved by any sentence recommended by it who has no right of appeal under this Constitution or under an ordinance of the diocesan synod may petition the metropolitan of the province or, if the diocese be not part of a province, the Primate that his case be reviewed and the metropolitan or Primate as the case may be may refer the same to the Appellate Tribunal for review and any case so referred shall be heard and determined as an appeal provided however that no such petition may be presented in respect of an order for costs only.

- (3) Unless otherwise prescribed by canon of General Synod, the Appellate Tribunal may hear and determine any appeal question or matter made or referred to it although all the members thereof be not present at such hearing or determination, provided that there be present at least two bishops and three laymen. And provided further that if during the hearing of any appeal a member attending the tribunal should die or become unable to continue with the hearing the appeal may proceed so long as the president two bishops and one other lay member or the deputy president two bishops and one other lay member be present provided further that if the number of those present on any appeal should be evenly divided on any question of evidence or procedure the president (or in his absence the deputy president) shall have a casting as well as a deliberate vote.



<sup>31</sup> Words inserted by Schedule Two of Canon 14, 1992 which came into effect on 25 June 1995.

## General Synod – Safe Ministry to Children Canon 2017 Adopting Ordinance 2017

(Reprinted under the Interpretation Ordinance 1985.)

### Long Title

An Ordinance to adopt Canon No 4, 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 – Safe Ministry to Children Canon 2017 Adopting Ordinance 2017*.

### 2. Adoption of Canon No 4, 2017

The Synod adopts Canon No 4, 2017 of the General Synod of the Anglican Church of Australia, the text of which is set out in the Schedule.

### 3. Commencement

Except for this clause, this Ordinance commences on a date determined by resolution of the Standing Committee or on a date to be determined at the next ordinary session of this Synod, if the Standing Committee has not resolved that the Ordinance should commence by that date.

## Schedule

Whereas –

- A. in 2004 the General Synod adopted the Safe Ministry Policy Statement which states that this Church is committed to the physical, emotional and spiritual welfare and safety of all people, particularly within its own community, and includes the commitments to carefully recruit and train its clergy and church workers, adopt and encourage safe ministry practices by its clergy and lay church workers, and provide pastoral support to and supervision of any person known to have abused a child or another vulnerable person,
- B. in 2014 the General Synod adopted the Charter for the Safety of People within the Churches of the Anglican Communion which includes the commitments to adopt standards for the practice of pastoral ministry by clergy and other church personnel, to assess the suitability of persons for ordination as clergy or appointment to positions of responsibility in the church, and to promote a culture of safety in parishes and church organisations by education and training;

now the General Synod prescribes as follows:

## PART 1 - PRELIMINARY

### Title

- 1. This canon is the Safe Ministry to Children Canon 2017.

### Object

- 2. The object of this canon is:
  - (a) to prescribe a code of conduct for safe ministry to children;
  - (b) to prescribe minimum standards and guidelines for safe ministry to children; and
  - (c) to implement the Protocol so far as it provides for obtaining and taking into account Ministry Suitability Information before authorising clergy and church workers to undertake ministry to children.

### Interpretation

- 3. In this canon, unless the context otherwise requires:
  - 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 authority** has the same meaning as in the National Register Canon 2007;
  - Church body** means any body corporate, organisation or association that exercises ministry within,

or on behalf of, or in the name of, the Church, and is controlled by a diocese or province or the General Synod;

**church worker** means a lay person undertaking any ministry to children:

- (a) who is licensed or authorised by the bishop of a diocese; or
- (b) who is employed by a Church body; or
- (c) who, for payment or not, holds a position or performs a function with the actual or apparent authority of a Church authority or Church body;

**clergy** means a person who is a bishop, priest or deacon in this Church;

**code of conduct** means a code of conduct for safe ministry to children;

**cogent** means clear, logical and convincing;

**contact** means physical contact, oral communication (whether face-to-face or by telephone), written communication or electronic communication (which includes email, instant messaging, social media and video chats);

**controlled by a diocese or province or the General Synod** has the same meaning as in the National Register Canon 2007;

**diocesan audit** means an audit as to whether:

- (a) any diocesan code of conduct containing additional standards of conduct for observance, and additional guidelines for conduct to be followed, is inconsistent with the standards of conduct and the guidelines for conduct contained in the prescribed code of conduct, or an equivalent code of conduct in respect of which the Standing Committee has made a determination under section 5(3);
- (b) a diocese has standards, and guidelines unless there are cogent reasons for not doing so, that give effect to the prescribed standards and guidelines;
- (c) a diocese has in place procedures which:
  - (i) effectively monitor observance by clergy and church workers in the diocese of the standards, and guidelines unless there are cogent reasons for not doing so, applicable to them that give effect to the prescribed standards and guidelines; and
  - (ii) provide for an appropriate response to instances of non-observance; and
- (d) the procedures in paragraph (c) have, in all material respects, been followed, and
- (e) any additional standards and guidelines for safe ministry to children prescribed by a diocese are inconsistent with the prescribed standards and guidelines, or equivalent standards and guidelines applicable to a Church body in respect of which the Standing Committee has made a determination under section 9(3);

**diocesan safe ministry authority** means a Church body with responsibility for safe ministry to children in a diocese, and where not established is the diocesan council;

**General Synod audit** means an audit as to whether:

- (a) any code of conduct that applies to clergy and church workers in a Church body in respect of which the Standing Committee has made a determination under section 5(3) gives substantial effect to the standards of conduct and the guidelines for conduct contained in the prescribed code of conduct as appropriately adapted to the context of the Church body;
- (b) the prescribed standards have been observed, and guidelines have been followed unless there are cogent reasons for not doing so, by the person or body appointing or electing clergy and church workers to a General Synod professional standards role or a General Synod safe ministry role;
- (c) any standards and guidelines for safe ministry to children that apply to clergy and church workers in a Church body in respect of which the Standing Committee has made a determination under section 9(3) give substantial effect to the applicable prescribed standards and guidelines as appropriately adapted to the context of the Church body;

**General Synod professional standards role** means a professional standards role to which a person is elected or appointed by the General Synod or the Standing Committee or the Primate or the General Secretary;

**General Synod safe ministry role** means a safe ministry role to which a person is elected or appointed by the General Synod or the Standing Committee or the Primate or the General Secretary;

**licence** means a licence, an authority, or a permission to officiate, issued by the bishop of a diocese;

**ministry to children** means work of a kind where a person:

- (a) is required to hold a working with children check, or a working with vulnerable people check by reason that the person has contact with a child as part of engaging in a regulated activity; or
- (b) exercises a pastoral ministry which has direct, regular and not incidental contact with children; or
- (c) provides services to children that are ancillary to the exercise of a pastoral ministry within paragraph (b) which involve:
  - (i) contact with children during an overnight activity (such as camps and similar activities); or
  - (ii) close, personal contact with children (such as changing clothes, washing and toileting); or
- (d) supervises the ministry of a person within any one or more of paragraphs (a) to (c); or
- (e) performs a professional standards role; or
- (f) performs a safe ministry role;

**pastoral ministry** includes the provision of spiritual advice and support, education, counselling, medical care, and assistance in times of need;

**Person of Concern** is a person who is currently participating or wishes to participate in the life of a parish or congregation and whose presence constitutes a risk of harm from sexual abuse to others in the parish or congregation;

**prescribed code of conduct** means the code of conduct prescribed under this canon from time to time;

**prescribed standards and guidelines** means the standards and guidelines prescribed under this canon from time to time;

**professional standards process** has the same meaning as in the Episcopal Standards (Child Protection) Canon 2017;

**professional standards role** means a role in:

- (a) recommending or determining whether an action is to be taken; or
- (b) providing support to a person;

under a professional standards process;

**Protocol** means the Protocol for the disclosure of ministry suitability information between the churches of the Anglican Communion which the Anglican Consultative Council referred to in resolution 16.27 passed in 2016, and the text of which is set out in the Third Schedule;

**Safe Ministry Commission** means the Safe Ministry Commission established pursuant to the Strategic Issues, Commissions, Task Forces and Networks Canon 1998;

**safe ministry role** means a role:

- (a) in recommending or determining standards and guidelines for safe ministry to children or with Person of Concern; or
- (b) in recommending or determining or supervising safe ministry in a parish or congregation with a Person of Concern;

but excludes a role as a member of the synod of the diocese and, if a diocese has established a diocesan safe ministry authority separate from its diocesan council excludes a role as a member of the diocesan council;

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

**standards for safe ministry with Persons of Concern** means the standards for safe ministry with Persons of Concern for clergy and church workers;

**standards of screening** means the standards of screening for clergy and church workers;

**standards of training** means the standards of training for clergy and church workers;

**working with children check** has the same meaning as in the National Register Canon 2007;

**working with vulnerable people check** has the same meaning as in the National Register Canon 2007.

## PART 2 - CODES OF CONDUCT

### Prescribed code of conduct

4. (1) The code of conduct is prescribed in the First Schedule.
- (2) The General Synod, or the Standing Committee by a two-thirds majority, may by resolution amend the First Schedule by:
  - (a) prescribing amendments to the prescribed code of conduct or a substituted code of conduct; and
  - (b) determining the date on which the amendments to the prescribed code of conduct, or the substituted code of conduct, shall come into force.
- (3) The Standing Committee prior to amending the First Schedule shall consult with the Safe Ministry Commission and diocesan safe ministry authorities as to the proposed amendments to the prescribed code of conduct or the proposed substituted code of conduct, and the date on which the proposed amendments to the prescribed code of conduct, or the proposed substituted code of conduct, shall come into force.
- (4) Any amendments to the prescribed code of conduct, or any substituted code of conduct, shall not deal with or concern the faith ritual or ceremonial of this Church other than in relation to the spiritual abuse of a child or the confession of child abuse.
- (5) Subject to section 5, clergy and church workers shall:
  - (a) observe the standards of conduct, and
  - (b) follow the guidelines for conduct unless there are cogent reasons for not doing so, contained in the prescribed code of conduct.

### Equivalent code of conduct

5. (1) In this section **Church body** does not include a diocese or a diocesan safe ministry authority.
- (2) The prescribed code of conduct shall not apply to clergy and church workers in a Church body which has a code of conduct applicable to them pursuant to:
  - (a) the laws of the Commonwealth or a State or Territory; or
  - (b) a requirement or condition for registration, approval or funding to provide services for children under the laws of the Commonwealth or a State or Territory; or
  - (c) a contract or arrangement with the Commonwealth or a State or Territory or an agency or authority of the Commonwealth or a State or Territory.
- (3) Subject to subsection (2), the prescribed code of conduct shall apply to clergy and church workers in a Church body unless the Standing Committee by a two-thirds majority, on application by a province or diocese, determines that the Church body has a code of conduct containing equivalent standards of conduct for observance, and guidelines for conduct to be followed, by its clergy and church workers as appropriately adapted to the context of the Church body that give substantial effect to the standards of conduct and the guidelines for conduct contained in the prescribed code of conduct.
- (4) The General Secretary shall publish on the General Synod website a list of all Church bodies that have been determined under subsection (3) to have an equivalent code of conduct, the date on which the determination was made, and if applicable the period during which the determination had effect.

### Additional code of conduct

6. A diocese may prescribe a code of conduct containing additional standards of conduct for observance, and additional guidelines for conduct to be followed, by the following persons, other than clergy and church workers in a Church body specified in section 5(2):
  - (a) in the case of clergy and church workers to whom the prescribed code of conduct applies, that are not inconsistent with the standards of conduct and the guidelines for conduct contained in the prescribed code of conduct; or
  - (b) in the case of clergy and church workers to whom a code of conduct specified in section 5(3) applies, that are not inconsistent with the standards of conduct and the guidelines for conduct contained in that code of conduct.

**Publication of prescribed code of conduct**

7. (1) The General Secretary shall publish the prescribed code of conduct on the General Synod website.
- (2) The General Secretary shall table at each ordinary session of the General Synod any amendments to the prescribed code of conduct, or any substituted code of conduct, prescribed by the Standing Committee since the preceding ordinary session of the General Synod.

**PART 3 - STANDARDS AND GUIDELINES****Prescribed standards and guidelines**

8. (1) Standards of screening, standards of training and standards for safe ministry with Persons of Concern are prescribed in the Second Schedule.
- (2) The General Synod, or Standing Committee by a two-thirds majority, may by resolution amend the Second Schedule by:
  - (a) prescribing amendments to the prescribed standards and guidelines or substituted standards and guidelines;
  - (b) prescribing further minimum standards for observance, and guidelines to be followed, for safe ministry to children; and
  - (c) determining the date on which the amendments to the prescribed standards and guidelines, or substituted standards and guidelines, or further standards and guidelines, shall come into force.
- (3) The Standing Committee prior to amending the Second Schedule shall consult with the Safe Ministry Commission and diocesan safe ministry authorities as to the proposed amendments to the prescribed standards and guidelines, or proposed substituted standards and guidelines, or proposed further standards and guidelines, and the date on which the proposed amendments to the prescribed standards and guidelines, or proposed substituted standards and guidelines, or proposed further standards and guidelines, shall come into force.
- (4) Any amendments to the prescribed standards and guidelines, or any substituted standards and guidelines, or any further standards and guidelines, shall not deal with or concern the faith ritual or ceremonial of this Church other than in relation to the spiritual abuse of a child or the confession of child abuse.
- (5) Subject to section 9:
  - (a) each diocese shall have standards, and guidelines unless there are cogent reasons for not doing so, that give effect to the prescribed standards and guidelines; and
  - (b) clergy and church workers in a diocese shall observe:
    - (i) the standards, and
    - (ii) the guidelines unless there are cogent reasons for not doing so, applicable to them that give effect to the prescribed standards and guidelines.
- (6) The prescribed standards and guidelines apply to clergy and church workers who perform a General Synod professional standards role or a General Synod safe ministry role.

**Equivalent standards and guidelines**

9. (1) In this section **Church body** does not include a diocese or a diocesan safe ministry authority.
- (2) The prescribed standards and guidelines shall not apply to clergy and church workers in a Church body which:
  - (a) is registered or approved or funded to provide services to children pursuant to the laws of the Commonwealth or a State or Territory; or
  - (b) provides services to children pursuant to a contract or arrangement with the Commonwealth or a State or Territory or an agency or authority of the Commonwealth or a State or Territory.
- (3) Subject to subsection (2), the prescribed standards and guidelines shall apply to clergy and church workers in a Church body unless the Standing Committee by a two-thirds majority, on application by a province or diocese, determines that the Church body has equivalent standards for observance, and guidelines to be followed, by its clergy and church workers for

safe ministry to children as appropriately adapted to the context of the Church body that give substantial effect to the applicable prescribed standards and guidelines.

- (4) The General Secretary shall publish on the General Synod website a list of all Church bodies that have been determined under subsection (3) to have equivalent standards and guidelines, the date on which the determination was made, the applicable prescribed standards and guidelines for which the Church body has equivalent standards and guidelines, and if applicable the period during which the determination had effect.

#### **Additional standards and guidelines**

10. A diocese may prescribe additional standards and guidelines for safe ministry to children, other than for a Church body specified in section 9(2):
  - (a) that are not inconsistent with the prescribed standards and guidelines; or
  - (b) in the case of a Church body specified in section 9(3), that are not inconsistent with the standards and guidelines applicable to that Church body.

#### **Publication of prescribed standards and guidelines**

11. (1) The General Secretary shall publish the prescribed standards and guidelines on the General Synod website.
- (2) The General Secretary shall table at each ordinary session of the General Synod any amendments to the prescribed standards and guidelines, or substituted standards and guidelines, or further standards and guidelines, prescribed by the Standing Committee since the preceding ordinary session of the General Synod.

### **PART 4 – AUDIT**

#### **Audit**

12. (1) In this section:  
**church worker** has the same meaning as in the National Register Canon 2007;  
**independent person** means a person who:
  - (a) is not a member of the clergy or a church worker; and
  - (b) has experience in undertaking audits of a similar nature to a General Synod audit and a diocesan audit.
- (2) The General Secretary shall appoint an independent person to undertake a General Synod audit and a diocesan audit of each diocese at intervals of three years or such lesser period as determined by the Standing Committee, and provide as soon as practicable after the completion of the audit:
  - (a) a report of the General Synod audit to the Standing Committee; and
  - (b) a report of the diocesan audit to the diocesan council of the diocese concerned, the diocesan safe ministry authority of that diocese and the Standing Committee.
- (3) The General Secretary shall consult with diocesan safe ministry authorities as to when the audit of each diocese shall be conducted.
- (4) The Standing Committee shall determine the scope of the General Synod audit and a diocesan audit.
- (5) The Primate and the General Secretary shall provide access to such of their records, the records of the General Synod and the records of the Standing Committee, and provide such information, as requested by the independent person undertaking the General Synod audit as is reasonably necessary to enable the General Synod audit to be undertaken.
- (6) Each diocesan safe ministry authority shall provide access to such of the records of the diocese, and provide such information, as requested by the independent person undertaking the diocesan audit as is reasonably necessary to enable the diocesan audit to be undertaken.
- (7) The General Secretary shall as soon as practicable after:
  - (a) the report of the General Synod audit has been provided to the Standing Committee, and
  - (b) the report of the diocesan audit has been provided to the diocesan council of the diocese concerned, the diocesan safe ministry authority of that diocese and the Standing

Committee,

publish the report on the General Synod website.

- (8) The General Secretary is authorised to provide:
- (a) the report of the General Synod audit to an agency or authority of the Commonwealth or a State or Territory with responsibility for child safe standards in institutions providing services for children; and
  - (b) the report of a diocesan audit to an agency or authority of the Commonwealth, or an agency or authority of the State or Territory in which the diocese is located, with responsibility for child safe standards in institutions providing services for children.

## PART 5 – GENERAL

### Diocesan safe ministry authority

13. (1) Each diocese shall have a diocesan safe ministry authority.
- (2) A diocesan safe ministry authority shall at the request of General Secretary promptly inform the General Secretary of the details of the screening and training of persons from the diocese who are being considered for appointment or election for a General Synod professional standards role or a General Synod safe ministry role.

## PART 6 – COMING INTO FORCE

### Coming into force of particular provisions

14. (1) Subject to this section, this canon will come into force on and from the date appointed by the President, being not later than one calendar month from the date on which the canon is passed.
- (2) The standards of screening, standards of training and standards for safe ministry with Persons of Concern prescribed under section 8(1) shall come into force on the date specified in the Second Schedule.
- (3) Section 12 shall come into force on 1 January 2019.
- (4) Section 13 shall come into force on 1 January 2018.

### Coming into force in a diocese

15. The provisions of this canon affect the order and good government of the Church within a diocese and shall not come into force in a diocese unless and until the diocese by ordinance adopts this canon.

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## FIRST SCHEDULE

### Interpretation

1. In this Schedule:
- Faithfulness in Service** means Faithfulness in Service: A national code for personal behaviour and the practice of pastoral ministry by clergy and church workers as tabled at the 17<sup>th</sup> ordinary session of the General Synod held in 2017.

### Code of conduct

2. The code of conduct is the standards and guidelines of Faithfulness in Service set out in:
- (a) section 3 (Putting this Code into Practice) so far as they relate to section 5 (Children), and
  - (b) section 5 (Children),
- when read in each case with section 1 (About this Code) and section 2 (Key Terms).
-

## Interpretation

1. In this Schedule, unless the context otherwise requires:

**accredited training** means:

- (a) training that:
  - (i) includes the course content in the Safe Ministry Training National Benchmarks so far as it relates to ministry to children, with reasonable adjustments for cultural, linguistic and ability diversity; and
  - (ii) is delivered by persons who are accredited, and/or online training which is accredited, by a diocesan safe ministry authority; or
- (b) training of another Church body or organisation that a diocesan safe ministry authority has determined is equivalent to the training in paragraph (a);

**church ministry assessment** means a reasonable endeavour made to obtain information about the person from the responsible authority, and if obtained consideration of that information;

**criminal history assessment** means consideration of a National Police History Check of the person;

**denominational authority** means a person or body of another denomination having authority to ordain, license, elect, appoint, dismiss or suspend a member of the clergy or a lay person of that denomination;

**diocesan authority** means a person or body of another diocese of this Church having authority to ordain, license, elect, appoint, dismiss or suspend a member of the clergy or a lay person of that diocese;

**information** means a written statement by a responsible authority which discloses:

- (a) whether or not there has been, and
- (b) if there has been, the substance of,

any untested allegation, charge, finding or admission of the commission of a criminal offence, or a breach of the rules in force in the applicable Province or diocese or denomination regarding the moral conduct of clergy and lay persons undertaking ministry, including rules relating to sexual conduct and conduct towards children and vulnerable adults;

**licensed clergy** means clergy issued with a licence;

**medical assessment** means consideration of a medical report of the person by a registered medical practitioner;

**National Register** means the National Register established under the National Register Canon 2007;

**national register assessment** means a check whether there is any information about the person entered in the National Register, and if so consideration of that information;

**Persons of Concern Policy** means the Policy for Safe Ministry in a parish where there is a risk of sexual abuse by a Person of Concern as tabled at the 17<sup>th</sup> ordinary session of the General Synod held in 2017;

**professional standards personnel** means clergy and church workers performing a professional standards role;

**Province** means a member church of the Anglican Consultative Council other than this Church and includes part of a Province;

**provincial authority** means the person or body in a Province having authority to ordain, license, elect, appoint, dismiss or suspend a member of the clergy or a lay person of that Province;

**psychological assessment** means consideration of a psychological report that includes an assessment of psychosexual maturity of the person by a registered psychologist;

**responsible authority** means:

- (a) a provincial authority; or
- (b) a diocesan authority; or
- (c) a denominational authority;

**risk assessment** means a risk assessment provided by the Department for Communities and Social Inclusion Screening Unit of South Australia;

**safe ministry assessment** means consideration of the person's completed Safe Ministry Check, and if applicable referees' completed Safe Ministry Checks;

**Safe Ministry Check** means a check that includes the applicable Safe Ministry Check as tabled at the 17<sup>th</sup> ordinary session of the General Synod held in 2017;

**safe ministry personnel** means clergy and church workers performing a safe ministry role;

**Safe Ministry Training National Benchmarks** means the Safe Ministry Training National Benchmarks as tabled at the 17<sup>th</sup> ordinary session of the General Synod held in 2017;

**screening authority** means:

- (a) in the case of a person to be ordained as a deacon, or a member of the clergy to be licensed, or a church worker to be licensed or authorised, the bishop of the diocese or his or her delegate; or
- (b) in the case of a member of the clergy to be elected or appointed as the bishop of the diocese, the electing or appointing body or its delegate; or
- (c) in the case of a church worker to undertake paid or voluntary ministry to children, the appointing person or body or their delegate; or
- (d) in the case of a professional standards personnel and safe ministry personnel, the electing or appointing body or its delegate.

## **PART 2 - STANDARDS OF SCREENING**

### **Application**

2. (1) This Part applies to all persons ordained as deacons, or licensed as clergy, appointed or elected as the bishop of a diocese, or licensed or authorised or appointed as church workers, after this Part comes into force.
- (2) This Part so far as it requires a working with children check, or a working with vulnerable people check by reason that the person has contact with a child as part of engaging in a regulated activity, or a criminal history assessment, or a risk assessment, applies to all persons licensed as clergy, appointed or elected as the bishop of a diocese, or licensed or authorised or appointed as church workers, when this Part comes into force.
- (3) This Part so far as it requires a national register assessment and a safe ministry assessment by the screening authority applies to all persons licensed as clergy, appointed or elected as the bishop of a diocese, or licensed or authorised or appointed as church workers, when this Part comes into force, except where the screening authority is reasonably satisfied this has previously been done, and where not so satisfied provided that these assessments are undertaken by 1 January 2021.
- (4) Subject to subclauses (2) and (3), this Part does not apply to persons ordained as deacons, licensed as clergy, appointed or elected as the bishop of a diocese, or licensed or authorised or appointed as church workers, when this Part comes into force.

### **Deacons**

3. The standards of screening for a person to be ordained as a deacon are:
  - (1) the person holds an unconditional working with children check, or an unconditional working with vulnerable people check by reason that the person has contact with a child as part of engaging in a regulated activity, where required by the laws of the Commonwealth or a State or Territory; and
  - (2) the following assessments by the screening authority:
    - (a) where a working with children check, or a working with vulnerable people check by reason that the person has contact with a child as part of engaging in a regulated activity, is not required by the laws of the Commonwealth or a State or Territory, a criminal history assessment or a risk assessment;
    - (b) a national register assessment;
    - (c) a safe ministry assessment;
    - (d) a medical assessment;
    - (e) a psychological assessment; and
    - (f) where the person was previously authorised for ministry in a Province or in another diocese of this Church or another denomination, a church ministry assessment, except where reasonably satisfied this has previously been done.

**Licensed clergy or the bishop of the diocese**

4. The standards of screening for a member of the clergy to be licensed, or to be elected or appointed as the bishop of the diocese, are:
  - (1) the person holds an unconditional working with children check, or an unconditional working with vulnerable people check by reason that the person has contact with a child as part of engaging in a regulated activity, where required by the laws of the Commonwealth or a State or Territory; and
  - (2) the following assessments by the screening authority:
    - (a) where a working with children check, or a working with vulnerable people check by reason that the person has contact with a child as part of engaging in a regulated activity, is not required by the laws of the Commonwealth or a State or Territory, a criminal history assessment or a risk assessment;
    - (b) a national register assessment;
    - (c) a safe ministry assessment; and
    - (d) where the person was previously authorised for ministry in a Province or in another diocese of this Church or another denomination, a church ministry assessment, except where reasonably satisfied this has previously been done.

**Licensed, authorised or paid church workers**

5. The standards of screening for church workers to be licensed or authorised or to undertake paid ministry to children are:
  - (1) the person holds an unconditional working with children check, or an unconditional working with vulnerable people check by reason that the person has contact with a child as part of engaging in a regulated activity, where required by the laws of the Commonwealth or a State or Territory; and
  - (2) the following assessments by the screening authority:
    - (a) where a working with children check, or a working with vulnerable people check by reason that the person has contact with a child as part of engaging in a regulated activity, is not required by the laws of the Commonwealth or a State or Territory, a criminal history assessment or a risk assessment;
    - (b) a national register assessment;
    - (c) a safe ministry assessment; and
    - (d) where the person was previously authorised for ministry in a Province or in another diocese of this Church or another denomination, a church ministry assessment, except where reasonably satisfied this has previously been done.

**Voluntary church workers**

6. The standards of screening for church workers, who are not professional standards personnel and safe ministry personnel, to undertake voluntary ministry to children are:
  - (1) the person holds:
    - (a) an unconditional working with children check, or
    - (b) an unconditional working with vulnerable people check by reason that the person has contact with a child as part of engaging in a regulated activity, or
    - (c) a conditional working with children check that authorises the voluntary ministry to be undertaken, or
    - (d) a conditional working with vulnerable people check by reason that the person has contact with a child as part of engaging in a regulated activity that authorises the voluntary ministry to be undertaken,

where required by the laws of the Commonwealth or a State or Territory; and
  - (2) the following assessments by the screening authority:
    - (a) where a working with children check, or a working with vulnerable people check by reason that the person has contact with a child as part of engaging in a regulated activity, is not required by the laws of the Commonwealth or a State or Territory, a criminal history assessment where a National Police History Check can be applied for by a volunteer or a risk assessment;
    - (b) a national register assessment; and

- (c) a safe ministry assessment.

**Professional standards personnel and safe ministry personnel**

7. The standards of screening for professional standards personnel, and safe ministry personnel, who have not otherwise been screened as a deacon, a licensed member of the clergy, the bishop of the diocese, or a licensed, authorized, paid or voluntary church worker, are a national register assessment by the screening authority.

**Creation and retention of records**

8. Accurate records of the screening of clergy and church workers are to be created and maintained in a secure manner.

**PART 3 - STANDARDS OF TRAINING****Application**

9. (1) This Part applies to all persons ordained as deacons, or licensed as clergy, appointed or elected as the bishop of a diocese, or licensed or authorised or appointed as church workers, or elected or appointed as professional standards personnel or safe ministry personnel, after this Part comes into force.
- (2) This Part applies to all persons licensed as clergy, appointed or elected as the bishop of a diocese, or licensed or authorised or appointed as church workers, or elected or appointed as professional standards personnel or safe ministry personnel, when this Part comes into force, provided that accredited training is undertaken by 1 January 2021.

**Accredited training**

10. The standards of training for clergy and church workers are satisfactory completion of accredited training:
- (1) (a) by the bishop of the diocese, within three years prior to his or her election or appointment, or in exceptional circumstances prior to his or her installation; or
- (b) by deacons, licensed clergy, and licensed, authorised, paid and voluntary church workers, within three years prior to being ordained, licensed, or authorised, or appointed to undertake ministry to children, except where the bishop of the diocese or his or her delegate is satisfied there are exceptional circumstances and in such case the training is to be completed as soon as practicable but not later than three months after being ordained, licensed, or authorised, or appointed to undertake ministry to children; or
- (c) by professional standards personnel, who are not a deacon, a licensed member of the clergy, the bishop of the diocese, or a licensed, authorised and paid church worker, within three years prior to election or appointment to a professional standards role; or
- (d) by safe ministry personnel, who are not a deacon, a licensed member of the clergy, the bishop of the diocese, or a licensed, authorised and paid church worker, within three years prior to election or appointment to a safe ministry role; and
- (2) by clergy and church workers in paragraph (a), at intervals of not more than three years after prior satisfactory completion of accredited training.

**Creation and retention of records**

11. Accurate records of the satisfactory completion of accredited training by clergy and church workers are to be created and maintained in a secure manner.

**PART 4 - STANDARDS FOR SAFE MINISTRY WITH PERSONS OF CONCERN****Standards**

12. (1) The standards for safe ministry with a Person of Concern in a parish are the actions required to implement the process specified in section 5 of the Persons of Concern Policy.
- (2) The standards for safe ministry with a Person of Concern in a congregation are the actions required to implement the process specified in section 5 of the Persons of Concern Policy as adapted by a diocesan safe ministry authority to apply to a congregation.

### Creation and retention of records

13. Accurate records relating to the implementation of the Persons of Concern Policy in respect of each Person of Concern are to be created and maintained in a secure manner.

### PART 5 - COMING INTO FORCE OF PARTICULAR PROVISIONS

14. (1) Parts 2 (except paragraph (b) of clause 6(2)) and 3 when read with Part 1 of this Schedule shall come into force on 1 January 2018.
- (2) Paragraph (b) of clause 6(2) when read with Part 1 of this Schedule shall come into force on a date determined by the Standing Committee.
- (3) Part 4 when read with Part 1 of this Schedule shall come into force on 1 January 2019.

### THIRD SCHEDULE

### Protocol for the disclosure of ministry suitability information between the churches of the Anglican Communion

#### Definitions

1. In this Protocol:
 

**Assessing Province** means the Province in which a Church authority is to assess whether the Church worker should be authorised for ministry;

**Authorising Province** means the Province or Provinces in which the Church worker is authorised, or has previously been authorised, to undertake ministry by a Church authority;

**Church authority** means the person or body responsible for authorising Church workers to undertake ministry in the Authorising Province or the Assessing Province;

**Church worker** means a member of the clergy or a lay person who:

  - (a) is authorised, or has previously been authorised, to undertake ministry by a Church authority of the Authorising Province; and
  - (b) has applied to undertake authorised ministry, or has been nominated for appointment to a position or office involving the undertaking of authorised ministry, in the Assessing Province;

**Ministry Suitability Information** means a written statement by a Church authority of the Authorising Province about the Church worker that discloses:

  - (a) whether or not there has been; and
  - (b) if so, the substance of;

any allegation, charge, finding or admission of the commission of a criminal offence, or the breach of the Authorising Province's rules regarding the moral conduct of clergy and lay persons undertaking ministry, including rules relating to sexual conduct and conduct towards children and vulnerable adults;

**Province** includes part of a Province.

#### System for the disclosure of Ministry Suitability Information by the Authorising Province

2. The Authorising Province will have and maintain a system for the disclosure of Ministry Suitability Information about a Church worker of the Province to the applicable Church authority of the Assessing Province that includes the following requirements:
  - (a) the applicable Church authority of the Province is to promptly deal with an application by the applicable Church authority of the Assessing Province for the disclosure of Ministry Suitability Information; and
  - (b) the applicable Church authority of the Province is to disclose the Ministry Suitability Information to the applicable Church authority of the Assessing Province.

#### System for assessing the suitability of a Church worker for authorised ministry in the Assessing Province

3. The Assessing Province will have and maintain a system for the assessment of the suitability of a Church worker to undertake authorised ministry in the Province that includes the following requirements:

- (a) the applicable Church authority is to make an application to the Authorising Province for Ministry Suitability Information;
- (b) the applicable Church authority is not to authorise the Church worker to undertake ministry in the Province unless and until it has carried out an assessment of whether the Church worker is a risk to the physical, emotional and spiritual welfare and safety of people that takes into account the Ministry Suitability Information disclosed by the Authorising Province; and
- (c) the applicable Church authority is to keep the Ministry Suitability Information confidential, except where its disclosure:
  - (i) is required by law; or
  - (ii) is reasonably believed to be necessary to protect any person from the risk of being harmed by the Church worker; or
  - (iii) is necessary for the purpose of undertaking the assessment of whether the Church worker is suitable to undertake authorised ministry in the Province or any disciplinary action against the Church worker.



# Ministry Standards Ordinance 2017

(Reprinted under the Interpretation Ordinance 1985.)

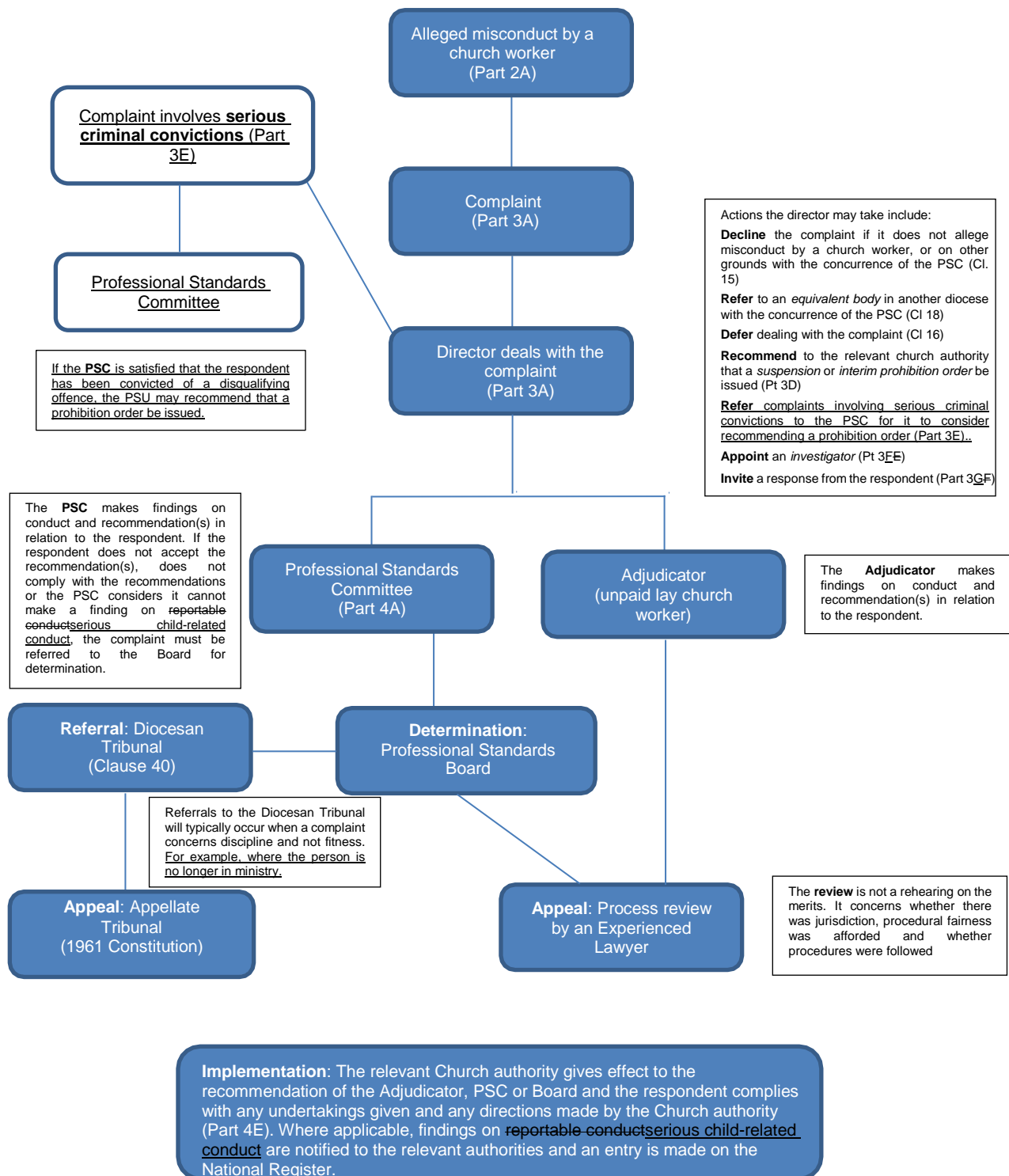
## Table of Provisions

### Diagrammatic Summary of the Complaints Process

#### Long Title

<b>Chapter 1</b>	<b>Preliminary</b>
	Part 1A – Purpose and Application Part 1B – Interpretation
<b>Chapter 2</b>	<b>Scope of the Ordinance</b>
	Part 2A – Church workers and Misconduct
	Part 2B – Exempt Conduct
<b>Chapter 3</b>	<b>Processing of Complaints</b>
	Part 3A – Making Complaints
	Part 3B – Handling of Complaints by the Director
	Part 3C – Declining, Deferring or Referring Complaints Part 3D – Suspension and Interim Prohibition Orders
	<u>Part 3E – Complaints involving serious criminal convictions</u>
	Part 3 <del>EE</del> – Investigation of Complaints
	Part 3 <del>EG</del> – Notification of and Response to the Complaint
	Part 3 <del>HG</del> – Special procedure for unpaid lay church workers (Adjudicators)
<b>Chapter 4</b>	<b>Resolving Complaints</b>
	Part 4A – Consideration by the PSC
	Part 4B – Determination of Complaints by the Board Part 4C – Review of Board Determinations
	Part 4D – Procedural matters for the PSC and the Board Part 4E – Church Authorities and Compliance
<b>Chapter 5</b>	<b>Persons or Bodies performing Functions under this Ordinance</b>
	Part 5A – The Director
	Part 5B – The Professional Standard Committee Part 5C – The Professional Standards Board
<b>Chapter 6</b>	<b>Miscellaneous</b>
	Part 6A – Confidentiality and Publication Part 6B – Indemnity
	Part 6C – Regulations Part 6D – Other

## Diagrammatic Summary of the Complaints Process



**Please note:** This diagram is indicative only and does not set out all possible actions or steps that may be taken under the Ordinance.

**Long Title**

An Ordinance to make provision with respect to resolving complaints concerning the fitness of church workers.  
The Synod of the Diocese of Sydney ordains as follows.

**CHAPTER 1 – PRELIMINARY****1. Name**

This Ordinance is the *Ministry Standards Ordinance 2017*.

**PART 1A – PURPOSE AND APPLICATION****2. Overriding purpose**

- (1) The overriding purposes of this Ordinance are:
- (a) to uphold the standards of conduct expected of church workers in the Diocese;
  - (b) to protect the community;
  - (c) to provide a mechanism whereby complaints that church workers are not fit to hold office or ministry can be resolved; and
  - (d) to facilitate the just, expedient and efficient resolution of complaints.
- (2) The Director, the PSC, Adjudicators and the Board must each seek to give effect to these overriding purposes when exercising any power given by this Ordinance and when interpreting any provision of this Ordinance.

**3. Application**

- (1) This Ordinance applies only in respect of alleged misconduct by church workers:
- (a) resident, licensed or authorised in the Diocese, or engaged by a Church authority; or
  - (b) not resident, licensed or authorised in the Diocese nor engaged by a Church authority but whose misconduct is alleged to have occurred in the Diocese or when the church worker was resident, licensed or authorised in the Diocese or was engaged by a Church authority.
- (2) This Ordinance applies to misconduct wherever and whenever it is alleged to have been engaged in by a church worker, including misconduct that is alleged to have occurred before or after the commencement of this Ordinance.

**PART 1B - INTERPRETATION****4. Interpretation**

- (1) For the purposes of this Ordinance:
- “**Adjudicator**” means a person appointed under subclause 28(2);
- “**Appellate Tribunal**” means the Appellate Tribunal constituted by and under Chapter IX of the Constitution;
- “**Board**” means the Professional Standards Board established under Part 5C;
- “**ceremonial**” has the same meaning as that expression has in the Constitution;
- “**Chancellor**” means the person holding office from time to time as Chancellor of the Diocese;
- “**child**” means a person under the age of 18 years;
- “**child exploitation material**” means material that describes or depicts a person who is or who appears to be a child –
- (i) engaged in sexual activity; or
  - (ii) in a sexual context; or
  - (iii) as the subject of torture, cruelty or abuse (whether or not in a sexual context) in a way that a reasonable person would regard as being, in all the circumstances, offensive;
- “**child-related work**” has the same meaning as in the *Child Protection (Working with Children) Act 2012* (NSW);
- “**Church**” means the Anglican Church of Australia;
- “**Church authority**” means the Archbishop or a person or body having administrative authority of or in a Church body to license, appoint, authorise, dismiss or suspend a church worker;
- “**Church body**” means –
- (i) a parish, and

- (ii) any school, body corporate, organisation or association that exercises ministry within, or on behalf of, this Church in this Diocese –
  - (A) which is constituted by ordinance or resolution of the Synod,
  - (B) in respect of whose organisation or property the Synod may make ordinances, or
  - (C) in relation to which the Synod, the Standing Committee, the Archbishop or a body referred to in paragraphs (i) or (ii) elects or appoints a majority of the members of the governing body;

**“church worker”** has the meaning given in Part 2A;

**“Clergy”** means a person in holy orders;

**“Code of Conduct”** means *Faithfulness in Service* and any other code of conduct approved from time to time by the Synod or which operates in the Diocese pursuant to an ordinance of the Synod;

**“complainant”** means a person who makes a complaint;

**“complaint”** means a complaint made in accordance with Part 3A of this Ordinance;

**“Constitution”** means the Constitution of the Anglican Church of Australia;

**“Diocese”** means the Anglican Church of Australia in the Diocese of Sydney;

**“Diocesan policy for dealing with allegations of unacceptable behaviour”** means the policy of that name adopted by the Synod on 1 October 2015, as amended from time to time;

**“Diocesan Tribunal”** means the Diocesan Tribunal constituted for the Diocese in accordance with Chapter IX of the 1961 Constitution;

**“Director”** means the Director of Professional Standards appointed under Part 5A;

**“disqualifying offence”** means a criminal offence listed in Schedule 2 of the *Child Protection (Working with Children) Act 2012*;

**“doctrine”** has the same meaning as in the Constitution;

**“equivalent body”** means a body of another diocese exercising powers, duties or functions equivalent to those of the Director, the PSC the Board as the case may be, or where there is no such body, the bishop of the diocese;

**“experienced lawyer”** means a person who is or has been a judge or justice of an Australian, State or Territorial court or tribunal, or who has been admitted as an Australian legal practitioner for not less than 10 years;

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

**“Faithfulness in Service”** means the code for personal behaviour and the practice of pastoral ministry by clergy and church workers adopted by the Synod in October 2004, as amended from time to time pursuant to an ordinance or resolution of the Synod;

**“information”** means information of whatever nature and from whatever source relating to alleged misconduct on the part of a church worker;

**“investigator”** means a person appointed by the Director to investigate a complaint;

**“member of the clergy”** means a person in Holy Orders;

**“misconduct”** has the meaning given in Part 2A;

**“national register”** means any national register established pursuant to a Canon of General Synod for the purpose of recording determinations of the Board and other equivalent bodies;

**“Professional Standards Committee”** or **“PSC”** means the Professional Standards Committee established under Part 5B;

**“Professional Standards Unit”** means the Professional Standards Unit of the Diocese;

**“prohibition order”** means an order prohibiting a church worker from holding a specified position or office in or being employed by a Church body or Church authority or from carrying out any specified functions in relation to any office or position in the diocese or in relation to employment by a Church body, and includes a variation of a prohibition order;

**“Registrar”** means the person appointed by the Archbishop under his hand and seal to be Registrar of the Diocese or in his absence the person appointed by the Archbishop to perform the duties of the Registrar either in his absence or as his deputy;

**“reportable conduct”** has the meaning given in Part 2A;

**“respondent”** means a church worker whose alleged conduct is the subject of a complaint;

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

**“Safe Ministry Board”** means the body of that name constituted under the *Safe Ministry Ordinance 2005*;

**“safety plan”** means the form of agreement developed by the Professional Standards Unit to regulate a person’s participation in the ministry activities of a church of the Diocese;

**“serious child-related conduct”** has the meaning given in clause 7;

**“suspension order”** has the meaning in clause 19;

**“under legal incapacity”** has the same meaning as in the *Civil Procedure Act 2005 (NSW)*; and

**“unpaid lay church worker”** means a lay church worker who does not hold a paid role, office or position in the Diocese at the time a complaint is made against them under this Ordinance.

(2) For the purposes of complaints dealt with by an Adjudicator under Part 3HG, references to the PSC and the Board in Chapters 1 to 3 of this Ordinance are taken to be references to the Adjudicator unless the context or subject matter otherwise requires.

(3) The diagram appearing before the Long Title and the notes in the footnotes of this Ordinance are for explanatory purposes only and do not form part of this Ordinance. The Diocesan Secretary is authorised to update the diagram and the notes when reprinting this Ordinance under clause 8 of the *Interpretation Ordinance 1985*.

## CHAPTER 2 – SCOPE OF THE ORDINANCE

## PART 2A – CHURCH WORKERS AND MISCONDUCT

**5. Who is a church worker?**

This Ordinance applies to fitness for office of church workers. Subject to clause 3, **church worker** means a person who:

- (a) is or has been a member of the clergy; or
- (b) holds or has held a position of leadership within the Diocese and without limiting the generality of the foregoing a position of leadership includes -
  - (i) an office, or
  - (ii) membership of a body incorporated by or under the *Anglican Church of Australia Bodies Corporate Act 1938*, or
  - (iii) membership of a body corporate following election or appointment by the Synod, Standing Committee, the Archbishop or a Church body, or
  - (iv) a warden, or
  - (v) membership of a parish council, or
  - (vi) membership of any other board, council or committee established by the Synod, the Standing Committee, a regional council or a parish council, or
  - (vii) a chief executive officer of an organisation constituted by an ordinance of the Synod or the Standing Committee, meaning the person who is responsible to the governing body of the organisation for the work of the organisation; or
  - (viii) an officer of a kind specified in the Parish Administration Ordinance 2008, or
  - (ix) an appointment or authorisation by a rector, warden or parish council or by any delegate or agent of such a person or body of persons,

but excludes a bishop who is subject to the jurisdiction of the Special Tribunal.

**6. What conduct is misconduct by a church worker?**

(1) **Misconduct** by a church worker means conduct which, if established, would call into question:

- (a) the fitness of the person to hold a role, office or position, or to be or remain in Holy Orders;
- (b) the fitness of the person, whether temporarily or permanently, to exercise ministry or perform any duty or function of the role, office or position; or
- (c) whether, in the exercise of ministry or in the performance of any duty or function, the person should be subject to any condition or restriction,

but does not mean –

- (d) any breach of faith, ritual or ceremonial,
- (e) any act or omission that involves:
  - (i) refusing to appoint, correcting, disciplining, counselling, admonishing, transferring, demoting, suspending, retrenching or dismissing a person if done –
    - (A) in good faith;
    - (B) reasonably; and
    - (C) in the normal and lawful discharge of the duties and functions; or
  - (ii) respectfully disagreeing with or criticising someone's beliefs or opinions or actions, except in the case of conduct which, if established, would constitute ~~reportable conduct~~serious child-related conduct, or
- (f) public statements, acts or practices made or done in good faith for a proper purpose that are within the standards and doctrines of the Church in the Diocese, or
- (g) exempt conduct to which Part 2B applies.

(2) Misconduct may include but is not limited to the following –

- (a) acts or omissions that would constitute the commission of an offence under the *Offences Ordinance 1962*, as amended from time to time,<sup>1</sup>

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<sup>1</sup> *Offences under the Offences Ordinance 1962 include:*

- (i) *unchastity;*
- (ii) *drunkenness;*

- (b) **abuse**, which means:
- (i) **bullying** (as defined below);
  - (ii) **child abuse**, which means bullying, emotional abuse, harassment, neglect, physical abuse, sexual abuse or spiritual abuse in relation to a child, and includes possessing, producing or distributing child exploitation material;
  - (iii) **emotional abuse**, which means acts or omissions that have caused, or could cause ~~emotional harm or lead to serious behavioural or cognitive disorders~~ significant harm to the wellbeing or development of another person, which includes –
    - subjecting a person to excessive and repeated personal criticism;
    - ridiculing a person, including the use of insulting or derogatory terms to refer to them;
    - threatening or intimidating a person;
    - ignoring a person openly and pointedly; and
    - behaving in a hostile manner or in any way that could reasonably result in another person feeling isolated or rejected;
  - (iv) **harassment**, which means unwelcome conduct, whether intended or not, in relation to another person where the person feels with good reason in all the circumstances offended, belittled or threatened;
  - (v) **neglect**, which means the failure to provide the basic necessities of life where a child's health and development are placed at risk of harm, which includes being deprived of food, clothing, shelter, hygiene, education, supervision and safety, attachment to and affection from adults and medical care;
  - (vi) **physical abuse**, which 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;
  - (vii) **sexual abuse**, which has the same meaning set out in *Faithfulness in Service*;
  - (viii) **spiritual abuse**, which means the mistreatment of a person by actions or threats when justified by appeal to God, faith or religion;
- (c) **bullying** which means behaviour directed to a person or persons which:
- (i) is repeated;
  - (ii) is unreasonable (being behaviour that a reasonable person, having considered the circumstances, would see as unreasonable, including behaviour that is victimising, humiliating, intimidating or threatening); and
  - (iii) creates a risk to their health and safety.

Bullying can include:

- (i) making derogatory, demeaning or belittling comments or jokes about someone's appearance, lifestyle, background or capability;
- (ii) communicating in an abusive manner;
- (iii) spreading rumours or innuendo about someone or undermining in other ways their performance or reputation;
- (iv) dismissing or minimising someone's legitimate concerns or needs;
- (v) inappropriately ignoring, or excluding someone from information or activities;
- (vi) touching someone threateningly or inappropriately;

- 
- (iii) *habitual and wilful neglect of ministerial duty after written admonition in respect thereof by the Bishop of the Diocese;*
  - (iv) *wilful failure to pay just debts;*
  - (v) *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;*
  - (vi) *sexual abuse;*
  - (vii) *child abuse; or*
  - (viii) *conviction in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or upwards or the conviction outside New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable; or*
  - (ix) *grooming,*
  - (x) *inappropriate pastoral conduct involving a child, and*
  - (xi) *possession, production or distribution of child exploitation material.*

- (vii) invading someone's personal space or interfering with their personal property;
- (viii) teasing someone, or playing pranks or practical jokes on someone;
- (ix) displaying or distributing written or visual material that degrades or offends;
- (x) cyberbullying which is a form of bullying that involves the use of information and communication technologies.

Bullying does not include lawful conduct of clergy or church workers carried out in a reasonable manner, such as:

- (i) disagreeing with or criticising someone's belief or opinions or actions in an honest and respectful way;
  - (ii) giving information about inappropriate behaviour in an objective way to the person or persons concerned and to any other person with a proper reason for having that information;
  - (iii) setting reasonable performance goals, standards or deadlines;
  - (iv) giving information about unsatisfactory performance in an honest and constructive way;
  - (v) taking legitimate disciplinary action;
- (d) **grooming** which means actions deliberately undertaken with the aim of engaging and influencing an adult or a child for the purpose of sexual activity; in the case of sexual abuse of a child, an offender may groom not only the child, but also those close to the child, including the child's parents or guardians, other family members, clergy and church workers; grooming can include providing gifts or favours to the child or their family. In the case of sexual abuse of an adult, an offender may groom not only the adult, but also those close to them, including their children, clergy and church workers;
- (e) **inappropriate pastoral conduct involving a child** which means engaging in a pattern of conduct involving a child or a group of children that is inconsistent with the standards and guidelines of *Faithfulness in Service*;
- (f) **process failure**, which means any of the following:
- (i) failure without reasonable excuse to comply with the laws of the Commonwealth or a State or Territory requiring the reporting of child abuse to the police or other authority;
  - ~~(i)~~(ii) a failure by a person licensed by the Archbishop, a person in holy orders resident in the Diocese or a person who holds an authority under the *Authorisation of Lay Ministry Ordinance 2015* for the purposes of paid work, without reasonable excuse, to make a report under clause 12 or a failure by that person to cooperate with an investigation of that conduct;
  - ~~(i)~~(iii) failure without reasonable excuse by a Church authority to deal with or to investigate in a reasonable or timely manner matters involving:
    - (A) abuse; or
    - (B) alleged inappropriate or unreasonable conduct of a church worker who had knowledge of conduct of another church worker constituting sexual abuse or child abuse;
 in circumstances where the Church authority has an obligation by law or under this Ordinance to deal with or investigate such conduct;
- (g) **safe ministry training failure**, which means a failure without a reasonable excuse to complete satisfactorily mandatory training approved by the Safe Ministry Board for the purposes of Chapter 7 of Schedule 1 and Schedule 2 of the Parish Administration Ordinance 2008;
- (h) **sexual misconduct** which has the same meaning as in the *Child Protection (Working with Children) Act 2012 (NSW)*;
- (i) threatening or taking, or attempting to take, action against a person because they have made, or have been involved in, a complaint under this Ordinance;
- ~~(g)~~(j) attempts, by threat, intimidation or inducement to –
- (i) dissuade a person from making a complaint,
  - (ii) persuade a person to withdraw a complaint, or
  - (iii) persuade a person to consent to the withdrawal of a complaint;
- ~~(h)~~(k) failure without reasonable excuse by a respondent to cooperate with the investigation of a complaint under the Ordinance;
- ~~(i)~~(l) failure without reasonable excuse to comply with a condition imposed by a Church authority under this Ordinance;

- ~~(j)(m)~~ failure without reasonable excuse to comply with an undertaking given to or a direction or order given by an Adjudicator, the PSC, Board or a Church authority; or
- ~~(k)(n)~~ conduct that would constitute a breach of section 316 of the *Crimes Act 1900 (NSW)* with respect to the reporting of serious indictable offences.

## 7. What is ~~reportable serious child-related~~ conduct?<sup>2</sup>

~~Reportable conduct~~ Serious child-related conduct means conduct that is sexual misconduct committed against, with or in the presence of a child, including grooming of a child, or any serious physical assault of a child by a person:

- (a) when engaged in child-related work in the Diocese; or
- (b) who –
  - (i) is in child-related work in the Diocese at the time a complaint concerning their conduct is made, or
  - (ii) has performed child-related work in the Diocese at any time in the two years prior to the date that a complaint concerning their conduct is made.

## PART 2B – EXEMPT CONDUCT

### 8. Declaration of exemption following disclosure of past conduct

(1) If a person makes a full disclosure to the Archbishop in writing that the person has engaged in conduct that may be the subject of a complaint under this Ordinance in the following circumstances:

- (a) by a person prior to ordination by or on behalf of the Archbishop as a deacon; or
- (b) by a person who is not ordained prior to being issued with an authority under the *Deaconess, Readers and Other Lay Persons Ordinance 1981* or the *Authorisation of Lay Ministry Ordinance 2015* for the purpose of undertaking paid work; or
- (c) by a person who has been ordained, otherwise than by or on behalf of the Archbishop prior to being first licensed by the Archbishop where conduct was committed prior to ordination as a deacon;

the Archbishop, with the concurrence of the PSC, may declare that the conduct cannot be the subject of a complaint under this Ordinance.

(2) The Archbishop must not make a declaration under this Part:

- (a) in respect of a person who has been convicted of a disqualifying offence listed in Schedule 2 of the *Child Protection (Working with Children) Act 2012*.<sup>3</sup>; or
- (b) if the person has been refused a declaration in relation to the same or similar conduct in the previous 5 years.

(3) The Archbishop must not make a declaration under this Part in respect of the conduct of a person unless the Archbishop and the PSC consider that the person:

- (a) has made appropriate reparation for the conduct; and
- (b) is fit to be ordained, to be issued with an authority or to be licensed by the Archbishop, as the case may be; and
- (c) does not pose a risk to the safety of any person taking into account the following matters:
  - (i) the circumstances in which the conduct occurred;
  - (ii) the seriousness of the conduct;
  - (iii) the age of the person at the time of the conduct;
  - (iv) the age of the victim(s) at the time;
  - (v) the difference in ages between the person and the victim(s);
  - (vi) the person's criminal record, if any;

<sup>2</sup> ~~Section 35(1) of the Child Protection (Working With Children) Act 2012 (NSW) imposes a duty on a reporting body (which includes the Anglican Church in New South Wales, including organisations of dioceses) to notify the Children's Guardian of the name and other identifying particulars of any child-related worker against whom the reporting body has made a finding that the worker has engaged in sexual misconduct committed against, with or in the presence of a child, including grooming of a child, or any serious physical assault of a child.~~

<sup>3</sup> Note: Disqualifying offences in Schedule 2 of the *Child Protection (Working with Children) Act 2012* include the murder or manslaughter of a child, intentional wounding or committing grievous bodily harm to a child, abandonment of a child, serious sex offences, incest, bestiality and offences related to child pornography/child abuse material. In general, these are sex offences or offences involving children which are punishable by imprisonment of 12 months or more.

(vii) such other matters as are considered relevant.

- (4) If the Archbishop makes a declaration under this Part in respect of the conduct of a person:
- (a) the declaration has effect for the purposes of this Ordinance according to its terms; and
  - (b) no action is to be taken or continued under this Ordinance in respect of a complaint if the Director, with the concurrence of the PSC, determines that the whole of the conduct that is the subject of the complaint is exempt conduct.

**CHAPTER 3 – PROCESSING OF COMPLAINTS****PART 3A – MAKING COMPLAINTS****9. Who may make a complaint?**

Any person, including the Director, may make a complaint of misconduct in relation to a church worker.

**10. How to make a complaint**

- (1) All complaints must be made to the Director.
- (2) A complaint may be in any form, oral or in writing, whether by electronic means or otherwise.
- (3) Where a complaint is oral, the Director must make a written record of the complaint as soon as practicable after receiving it.
- (4) A complaint must include details of the misconduct complained about.
- (5) The Director must not make a complaint based only on information provided anonymously.
- (6) Non-compliance with this clause does not invalidate a complaint unless the Board determines otherwise.

**11. Director to explain the complaints process**

The Director must use reasonable endeavours to explain the processes set out in this Ordinance to the complainant prior to any investigation of the complaint.

**12. Obligation to report knowledge or reasonable belief of certain matters**

A church worker who knows or has reason to believe that another church worker has engaged in conduct which constitutes child abuse, grooming, inappropriate pastoral conduct involving a child or possession, production or distribution of child exploitation material must report to the Director, as soon as practicable, the name or a description of the other church worker and the grounds for believing that the other church worker has engaged in such conduct.

**13. Withdrawal of complaint**

- (1) Subject to subclause (2), a complaint is taken to have been withdrawn if the complaint does not allege ~~reportable conduct~~ serious child-related conduct and:
  - (a) the complainant gives written notice of the withdrawal of the complaint to the Director; or
  - (b) the complainant gives oral notice of the withdrawal of the complaint to the Director, and the Director provides the complainant with written confirmation of the withdrawal.
- (2) If the complaint has already been referred to the PSC at the time the notice of withdrawal is received by the Director, the complaint will only be taken to be withdrawn if the PSC consents to the withdrawal.

**PART 3B - HANDLING OF COMPLAINTS BY THE DIRECTOR****14. What can the Director do when dealing with a complaint?**

The Director must deal with the complaint as expeditiously as possible and must take at least one or more of the following courses of action:

- (a) decline to deal with the complaint under clause 15;
- (b) refer to the matter directly to the PSC and seek the concurrence of the PSC that the complaint be declined or deferred under clause 16;
- (c) ask the complainant to verify the complaint by statutory declaration;
- (d) ask the complainant to provide further details of the conduct that is the subject of the complaint;
- (e) recommend to the relevant Church authority that the respondent should be suspended from exercising the functions of office or employment by one or more Church bodies or that an interim prohibition order be made against the respondent under Part 3D;
- (f) if the respondent is an unpaid lay church worker, refer the matter to an Adjudicator under Part 3GH;
- (g) investigate, or appoint a person to investigate the complaint under Part 3EF;
- (h) invite a response from the respondent under Part 3FG.

**PART 3C – DECLINING, DEFERRING OR REFERRING COMPLAINTS****15. When must the Director decline a complaint?**

The Director must decline a complaint if the complaint does not allege any misconduct which may be the subject of a complaint under this Ordinance.

**16. When may the Director decline or defer a complaint with the concurrence of the PSC?**

(1) ~~Apartment from complaints about reportable conduct, the~~ The Director may at any time, with the concurrence of the PSC, decline to deal with a complaint, or defer dealing with a complaint if:

- (a) the complainant has not provided further details or a verifying statutory declaration after being asked to do so and it is reasonable in the circumstances to conclude that the complainant will not do so; or
- (b) the complaint is false, vexatious or misconceived or the subject-matter of the complaint is trivial; or
- (c) there is insufficient reliable evidence to warrant an investigation or further investigation; or
- (d) the conduct that is the subject matter of the complaint can properly be dealt with by other means, ~~unless the conduct is serious child-related conduct including but not limited to alternative dispute resolution, whether through the process set out in the *Diocesan policy for dealing with allegations of unacceptable behaviour* or otherwise, and there is a reasonable likelihood that it will be dealt with by those other means;~~
- (e) the conduct which is the subject of the complaint is under investigation by some other competent person or body or is the subject of legal proceedings, or
- (f) there would be no utility in dealing with the complaint under this Ordinance having regard to:
  - (i) whether the respondent currently holds any position of leadership within the Diocese,
  - (ii) the length of time since the respondent has held any position of leadership within the Diocese,
  - (iii) the age of the respondent,
  - (iv) the health of the respondent, and
  - (v) any other relevant circumstance.

(2) The Director, with the concurrence of the PSC, must decline to deal with a complaint if the misconduct the subject of the complaint is not materially different from conduct already dealt with under –

- (a) this Ordinance, or
- (b) the Discipline Ordinance 2006, or
- (c) the Church Discipline Ordinance 1996, or
- (d) the Church Discipline Ordinance 2002, or
- (e) the Tribunal Ordinance 1962, or
- (f) a formal investigation or inquiry with the authority of the Archbishop which was commenced prior to the date of assent to the Church Discipline Ordinance 2002,

unless,

- (g) in the opinion of the Director, the complaint is supported by apparently credible evidence of fresh facts likely to lead to a different result; ~~or~~
- (h) the complaint has only been dealt with under Part 3E, or
- ~~(h)(i) the complaint alleges reportable conduct~~ serious child-related conduct and the Director decides to deal with the complaint under this Ordinance in order to make a finding that the respondent has or has not engaged in the alleged ~~reportable conduct~~ serious child-related conduct in connection with –
  - (i) any requirement by law to notify a person or authority that a finding has been made that the respondent engaged in conduct the subject of any such requirement to notify; and
  - (ii) entering on the National Register the details of information required by the provisions of the National Register Canon 2007.

(3) In dealing with a complaint for the purposes of clause 2(h) above, any prior findings of fact made by a body exercising functions under any of the ordinances (or a formal investigation or inquiry with the authority of the Archbishop) listed in subclause (2) are conclusive.

**17. Notification of a decision to decline to deal with or defer a complaint**

(1) Subject to subclause (2), if the Director declines to deal with or defer a complaint under this Part, the Director must give the complainant and the respondent written notice of this decision, including reasons for the decision.

(2) The Director may, but is not required to, provide written notice to the respondent under this clause if the Director believes on reasonable grounds that the respondent is not aware of the existence of the complaint.

**18. When may a complaint be referred to an equivalent body?**

- (1) The Director may, with the concurrence of the PSC, if they think it appropriate to do so, refer a complaint, or the investigation of a complaint, to an equivalent body or bodies.
- (2) Without limiting the discretion of the PSC under subclause (1), it is appropriate to refer a complaint, or the investigation of a complaint, to an equivalent body or bodies if when the complaint is made the respondent –
  - (a) resides in another diocese or holds a licence or from a Church authority in another diocese; and
  - (b) neither resides in the Diocese nor holds a licence or permission to officiate or other authority from a Church authority in the Diocese.
- (3) When the PSC and an equivalent body or bodies have the power and duty to investigate information concerning the alleged misconduct of the respondent and the respective bodies cannot agree on –
  - (a) which body shall carry out the investigation or any parts of such investigation; or
  - (b) whether a complaint should be referred to the Board or to an equivalent body which has jurisdiction,

the PSC must refer the disagreement for decision by an independent person agreed upon by the PSC and the equivalent body or bodies who is to reach a decision within a reasonable time.

(4) In all matters affecting the operation of this Ordinance the PSC and the Director must co-operate with and assist an equivalent body and a person acting in the corresponding capacity of the Director in another diocese.

(5) In making a decision under subsection (3) the independent person will not be bound by the views or instruction of the PSC but shall take into account the most convenient course for all concerned and the proper and expeditious conduct of the investigation or referral as the case may be.

**PART 3D - SUSPENSION AND INTERIM PROHIBITION ORDERS****19. What can the Director recommend?**

At any time after a complaint is made the Director may recommend to the relevant Church authority that the respondent is suspended from being a church worker or may recommend that an interim prohibition order be made against the respondent, subject to the following:

- (a) the Director must give the respondent the opportunity to be heard in relation to the proposed recommendation or order; and
- (b) in deciding whether to make the recommendation or order the Director must take the following matters into account:
  - (i) the seriousness of the conduct alleged in the complaint;
  - (ii) the nature of the material to support or negate the complaint;
  - (iii) whether any person is at risk of harm; and
  - (iv) the likely effect on the respondent and on the relevant Church body.

**20. What is the effect of the Director recommending a suspension order?**

If the Director recommends that the respondent be suspended from being a church worker:

- (a) the relevant Church authority is authorised to do all such things as may be necessary to give effect to the recommendation;
- (b) ~~during a period of suspension~~ any period of suspension by the Church Authority, or during a period when a person voluntarily stands down from a position:
  - (i) the respondent is ineligible for appointment to any position or function covered by the suspension;
  - (ii) the relevant Church authority may fill the vacancy during the term of any suspension; and
  - ~~(iii) the person against whom the complaint is made is entitled to whatever stipend, salary, allowances and other benefits that he or she would otherwise have received and which are to be met or reimbursed from funds under the control of the Synod;~~
  - (iii) the person against whom the complaint is made is entitled to continue to receive their ordinary stipend, salary, allowances and other benefits in connection with the position, except to the extent that these are provided on account of expenses incurred in undertaking their duties or functions; and
  - (iv) in the case of a respondent who is licensed or authorised for ministry in a parish – the parish concerned is entitled to reimbursement from funds under the control of the Synod for the reasonable additional costs incurred by the parish for the engagement of any

temporary personnel to undertake the duties of the respondent during the period of suspension:

- (c) the respondent must comply with the terms of recommendation; and
- (d) the suspension ceases to have any effect:
  - (i) if the Director terminates the investigation without referring the matter to the PSC, or
  - (ii) upon any direction to that effect given by the PSC, or
  - (iii) upon the Church authority or the respondent (as the case may be) giving effect to the recommendation(s) of the Adjudicator, PSC or the Board.

## **21. What is the effect of the Director recommending an interim prohibition order?**

- (1) If the Director recommends that an interim prohibition order be made the Archbishop must give prompt consideration to the Director's recommendation and may make an Interim Prohibition Order.
- (2) If the Archbishop makes an Interim Prohibition Order:
  - (a) the respondent and any relevant Church authority must comply with the Interim Prohibition Order;
  - (b) the respondent is ineligible for appointment to any position or function covered by the order;
  - (c) the relevant Church authority may fill the vacancy caused by the order;
  - (d) the person against whom the complaint is made is entitled to whatever stipend, salary, allowances and other benefits that he or she would otherwise have received and which are to be met or reimbursed from funds under the control of the Synod.
- (3) An Interim Prohibition Order ceases to have effect:
  - (a) if the Director terminates the investigation without referring the matter to the PSC, or
  - (b) upon any direction to that effect given by the PSC, or
  - (c) upon –
    - (i) the respondent complying with all recommendation(s) (if any) of the PSC accepted by the respondent, subject to the respondent continuing to comply with the recommendation(s) within any period set out in the notice; and
    - (ii) the Church authority giving effect to the recommendation(s) (if any) of the Adjudicator, PSC or the Board.
  - (d) if the Archbishop suspends the respondent under section 61 of the 1961 Constitution.

## **PART 3E – COMPLAINTS INVOLVING SERIOUS CRIMINAL CONVICTIONS**

### **21A. Application of this Part**

This Part 3E applies in respect to complaints concerning respondents who have been convicted of by a court of a disqualifying offence listed in Schedule 2 of the *Child Protection (Working with Children) Act 2012*.

### **21B. Notification to respondent**

(1) If the Director is in possession of the reasons for judgment or other record from a court within Australia, a police history check, or a notification from a statutory authority, which indicates that the respondent to a complaint has been convicted of a disqualifying offence, the Director may:

- (a) notify the substance of the complaint to the respondent,
- (b) provide the respondent with a copy of the judgment, record or notification evidencing the conviction,
- (c) inform the respondent that it is the intention of the Director to refer the complaint to the PSC for it to determine whether to make a recommendation to the Archbishop that a prohibition order be issued in respect to the respondent, and
- (d) request the respondent to provide a response to the complaint within a period of not less than 21 days or such longer period specified by the Director.

(2) Following expiration of the period within which the respondent may provide a response under clause 23(1)(d), the Director must refer the complaint to the PSC, including a copy of all the material provided to the respondent and any response from the respondent.

### **21C. Recommendations of the PSC**

If the PSC is satisfied that the respondent has been convicted of a disqualifying offence by a court within Australia, the PSC may recommend to the Archbishop that a prohibition order be made against a respondent in terms recommended by the PSC. If the PSC is not satisfied that the respondent has been convicted of the relevant offence, this Part 3E ceases to apply to the complaint and the Director is to deal with the complaint in

accordance with the other provisions of this Ordinance.

### **PART 3FE - INVESTIGATION OF COMPLAINTS**

#### **22. Conduct of Investigation**

- (1) Subject to Part 3C, the Director may appoint a person to investigate a complaint, and such investigations are to be conducted as promptly as reasonably possible.
- (2) The Director may, by notice in writing, revoke the appointment of an investigator if the investigator fails or refuses to comply with the requirements of this Ordinance or any other reasonable requirements of the Director.

#### **23. Powers of the investigator**

- (1) For the purposes of an investigation:
  - (a) the investigator may obtain such statutory declarations, written statements, recorded conversations, reports, documents and other material as the investigator considers necessary or advisable;
  - (b) the investigator may require the person making the complaint to verify the complaint by statutory declaration if this has not already been done;
  - (c) if the investigator interviews a person, the investigator must:
    - (i) record the interview, subject to the interviewee giving their consent, and
    - (ii) allow the person to have another person present with them, being a person who is not a witness to the matters which are the subject of the complaint;
  - (d) the investigator may, by notice in writing, require the respondent –
    - (i) to respond to a question or series of questions within the time specified in the notice in relation to any matter relevant to the investigation, and
    - (ii) to otherwise assist in, or cooperate with the investigation of the complaint in a specified manner.
- (2) A person must answer truthfully any question put by or on behalf of the investigator in exercising the powers conferred by this Ordinance, and must not mislead or obstruct the investigator in the exercise of powers conferred by this Ordinance.<sup>4</sup>

#### **24. Outcome of the investigation**

The investigator is to make and forward to the Director, without unnecessary delay, a report setting out the results of the investigation together with a copy of all records made in the course of the investigation.

### **PART 3GF - NOTIFICATION OF AND RESPONSE TO THE COMPLAINT**

#### **25. What notification must the Director provide to the respondent?<sup>5</sup>**

After receiving the investigator's report or if, after receiving a complaint, the Director decides not to appoint a person at that particular time to investigate the complaint, the Director is –

- (a) to notify the substance of the complaint to the respondent, and
- (b) to request the respondent to provide a response to the complaint within a period of not less than 21 days or such longer period specified by the Director, and
- (c) to inform the respondent generally of the processes under this Ordinance (which may be done by providing a copy of this Ordinance), and
- (d) to advise the respondent of the possible outcomes if the allegations in the complaint are upheld, and
- (e) to caution the respondent not to make any admissions without the benefit of legal advice.

#### **26. What responses may be given by a respondent?**

- (1) A respondent may respond by admitting or denying the complaint in whole or in part.
- (2) A response must be in writing signed by the respondent or, in the case of a respondent under legal incapacity, by –
  - (a) a parent or guardian, or

<sup>4</sup> Misconduct for the purposes of this Ordinance includes failure without reasonable excuse by a respondent to cooperate with the investigation of a complaint.

<sup>5</sup> Upon notifying the substance of the complaint to the person against whom the complaint is made, the complaint may become a notifiable complaint for the purposes of the National Register Canon 2007. In this case, section 8 of the Canon requires the Director to notify the General Secretary of certain information about the complaint for inclusion on the National Register within 1 month of having access to that information.

- (b) a person responsible for the welfare of the respondent under legal incapacity or acting on his or her behalf.

(3) If the complaint has not been investigated and the respondent denies the complaint, or does not admit the complaint or the substance of the complaint, the Director may appoint a person to investigate the complaint in the manner set out in Part 3FE.

### **PART 3HG – SPECIAL PROCEDURE FOR UNPAID LAY CHURCH WORKERS (ADJUDICATORS)**

#### **27. Application of this Part**

- (1) Subject to subclause (2), this Part applies to complaints made against unpaid lay church workers to the exclusion of Parts 4A to 4D.
- (2) If the Director considers that a complaint against an unpaid lay church worker raises substantially the same circumstances as another complaint that has been or will be referred to the PSC, the Director may instead refer the complaint to the PSC to be dealt with under Chapter 4.

#### **28. Action on receipt of an admission or the investigator's report**

- (1) On receipt of an admission under clause 26 or the investigator's report, the Director must –
  - (a) request the Registrar to appoint an experienced lawyer to be the Adjudicator for a complaint to which this Part applies;
  - (b) notify the Adjudicator of the identity of the respondent; and
  - (c) furnish the Adjudicator with a copy of all material in the Director's possession relevant to the complaint, including a copy of any investigator's report.
- (2) The Registrar must promptly appoint an experienced lawyer following a request from the Director under subclause (1)(a).
- (3) The Director must also –
  - (a) notify the respondent that the complaint has been referred to the Adjudicator; and furnish the respondent with a copy of all material in the Director's possession relevant to the complaint, including a copy of any investigator's report; and
  - (b) invite the respondent to provide any further information or material, and to make written representations to the Adjudicator relating to the complaint within 28 days or such longer period as may be agreed to by the Director.

#### **29. Review of material by the Adjudicator**

- (1) The Adjudicator is to review the material provided by the Director and any further information or material provided by the respondent.
- (2) If the complaint or the substance of the complaint has been admitted by the respondent, the Adjudicator may proceed to make recommendations under clause 30.
- (3) If the complaint or the substance of the complaint has not been admitted by the respondent, the Adjudicator must apply the rules of procedural fairness and otherwise determine a procedure for resolution of the complaint before proceeding to make recommendations under clause 30 or findings under clause 31.

#### **~~30. Recommendations by the Adjudicator~~**

- ~~(1) The Adjudicator may make recommendations in relation to the respondent and for this purpose may make recommendations to:~~
- ~~(2) the respondent; or~~
- ~~(3) the relevant Church authority.~~
- ~~(4) Prior to making any recommendations under subclause (1), the Adjudicator must inform the Archbishop, the relevant Church authority and the respondent of the proposed recommendations and provide a reasonable opportunity for each to make written submissions.~~
- ~~(5) In making recommendations the Adjudicator has the same powers as the Board.~~
- ~~(6) For the avoidance of doubt, if the Adjudicator makes a recommendation under clause 30(1)(a), the Adjudicator is not precluded from making further recommendations in relation to the respondent under clause 30(1)(b).~~

#### **30. Powers and Recommendations of the Adjudicator**

- (1) If the Adjudicator is satisfied that the church worker –
  - (a) is not fit to hold a role office or position; or
  - (b) is not fit, whether temporarily or permanently, to exercise ministry or perform any duty or function of the role or position; or

- (c) should be subject to any condition or restriction in the exercise of ministry or in the performance of any duty or function;

the Adjudicator must find accordingly in writing and make recommendations to the relevant Church Authority, including but not limited to any one or more of the following –

- (d) that the church worker be counselled;  
 (e) that the church worker be suspended from performing function(s) for such period determined by the Adjudicator;  
 (f) that the authority of the church worker be revoked;  
 (g) that any agreement for the church worker's engagement (if any) be terminated;  
 (h) that the church worker's performance of function(s) be made subject to such conditions or restrictions as the Adjudicator may specify;  
 (i) that the church worker be directed to do or to refrain from doing a specified act;  
 (j) that a prohibition order be made in terms specified by the Adjudicator.

(2) Prior to making any recommendations under subclause (1), the Adjudicator may inform the Archbishop, the relevant Church authority and the respondent of the proposed recommendations and provide a reasonable opportunity for each to make written submissions.

### **31. Making findings on ~~Reportable Conduct~~serious child-related conduct**

If the complaint alleges that the respondent has committed ~~reportable conduct~~serious child-related conduct, the Adjudicator must make a finding on whether the respondent engaged in any or all of the conduct so alleged, and these findings shall constitute findings for the purpose of –

- (a) any requirement by law to notify a person or authority that a finding has been made that the respondent engaged in conduct which is the subject of any such requirement to notify; and  
 (b) entering on the National register the details of information required by the provisions of the *National Register Canon 2007*.

### **32. Costs of responding to a complaint**

The Adjudicator has no power to award costs. The respondent is responsible for meeting their own costs of responding to the complaint.

### **33. Review**

The decisions and recommendations of the Adjudicator are not appellable or subject to review, except that a respondent may make an application for review under Part 4C and for this purpose references to the Board and PSC in Part 4C are taken to be references to the Adjudicator.

**CHAPTER 4 – RESOLVING COMPLAINTS****PART 4A – CONSIDERATION BY THE PSC****34. Referral to the PSC**

On receipt of any report from the Investigator in relation to a complaint made against a person who is not an unpaid lay church worker and any response from the respondent, the Director must –

- (a) notify the PSC of the identity of the person against whom the complaint is made, and
- (b) furnish the PSC with a copy of all material in the Director's possession relevant to the complaint, including a copy of any investigator's report,

and must also –

- (c) notify the respondent that the complaint has been referred to the PSC, and
- (d) furnish the respondent with a copy of all material in the Director's possession relevant to the complaint, including a copy of any investigator's report, and
- (e) invite the respondent to provide any further information or material, and to make written representations to the PSC, relating to the complaint, within 28 days or such longer period as may be agreed to by the Director.

**35. What can the PSC do when dealing with the complaint?**

(1) The PSC is to review the material furnished to it by the Director and any further information or material provided to it by the respondent and may take at least one or more of the following courses of action –

- (a) request the Director to appoint an Investigator to further investigate the whole or any aspect of the complaint; or
- (b) take no further action in relation to the Complaint under clause 36; or
- (c) make findings on the conduct and dismiss the complaint under clause 37; or
- (d) terminate suspension and prohibition orders under clause 38; or
- (e) refer the matter to the Board under clause 39; or
- (f) recommend that the complaint be referred to the Diocesan Tribunal under clause 40; or
- (g) make one or more recommendations under clause 41.

(2) In deciding upon a course of action the PSC is to take the following matters into consideration –

- (a) the nature of the complaint and the seriousness of the conduct the subject of the complaint, in particular, whether that conduct comprises child abuse, grooming, inappropriate pastoral conduct involving a child or possession, production or distribution of child exploitation material;
- (b) whether there is more than one complaint;
- (c) whether the complaint alleges more than one incident, or only a single incident;
- (d) when the conduct is alleged to have occurred;
- (e) the circumstances in which the conduct is alleged to have occurred;
- (f) the ages of the complainant and the person against whom the complaint is made at the time the conduct is alleged to have occurred;
- (g) if the person against whom the complaint is made –
  - (i) is a member of the clergy – whether the person was a member of the clergy at the time the conduct is alleged to have occurred; or
  - (ii) is not a member of the clergy – the position held or function performed by the person at the time the conduct is alleged to have occurred;
- (h) whether the evidence of the complainant is corroborated;
- (i) any views expressed by the complainant as to the desired outcome of the complaint;
- (j) whether the person against whom the complaint is made has made any reparation for the conduct the subject of the complaint and, if so, the nature and extent of the reparation;
- (k) any other misconduct committed by the person against whom the complaint has been made;
- (l) whether any part of the conduct which is the subject of the complaint is exempt conduct;
- (m) the practicability and likely effectiveness of the recommendation; and
- (n) such other matters as the PSC considers relevant.

**36. No further action**

If the PSC considers –

- (a) that the material furnished to it by the Director does not disclose any misconduct which may be the subject of a complaint under this Ordinance, or
- (b) that the complaint is false, vexatious or misconceived, or
- (c) that it is more likely than not that the subject-matter of the complaint did not occur, or
- (d) that the subject-matter of the complaint is trivial,

the PSC is to recommend that no further action be taken with respect to the complaint.<sup>6</sup>

### 37. Findings on conduct

If the PSC is satisfied on the material before it that the respondent did not engage in any of the misconduct which is the subject of the complaint, it must dismiss the complaint and recommend that no further action be taken with respect to the complaint, other than action which is incidental to dismissal.

### 38. Termination of suspension and prohibition orders

The PSC may direct that a suspension or prohibition order made by a Church authority pursuant to a recommendation under Part 3D must be terminated by the Church authority.

### 39. Reference to the Board

- (1) The PSC must refer to the complaint to the Board if:
  - (a) the complaint alleges ~~reportable conduct~~ serious child-related conduct, and the PSC considers that it is unable to make a finding on the material before it that the respondent has or has not engaged in any or all of such misconduct which is the subject of the complaint; or
  - (b) the PSC makes a recommendation under clause 41 and the respondent does not accept the recommendation of the PSC by notice in writing to the Director within 14 days after the date of the notice of the recommendation or such longer period as the Director may determine under clause 42(3)(b); or
  - (c) the respondent fails to substantially comply with a recommendation made under clause 40 to the satisfaction of the PSC, including within or throughout any period that the notice issued under clause 42(1) states that the action required by the recommendation is to be undertaken.
- (2) The PSC must refer the complaint to the Board by delivering to the secretary of the Board a written report of its assessment and opinion on the complaint signed by a member of the PSC and:
  - (a) within 14 days of the date of the reference of the complaint to the Board or within 14 days of the date of the document or material coming into existence, whichever is the later, the PSC must cause to be delivered to the secretary of the Board any documents and material relevant to the reference; and
  - (b) the PSC, as soon as practicable after delivering the report referred to in paragraph (a) to the secretary of the Board, shall, if they have not already been delivered to the respondent, cause to be delivered to the respondent:
    - (i) a copy of the report and opinion; and
    - (ii) a notice that the respondent may send any submissions in advance to the Board if he or she wishes to do so.

### 40. Recommendation that a complaint be dealt with by the Diocesan Tribunal

- (1) The PSC may also recommend that the Archbishop appoint a person to promote a charge against the respondent before the Diocesan Tribunal, or that the complaint be referred to a body in another diocese with equivalent jurisdiction, if:
  - (a) the person is subject to the jurisdiction of the Tribunal;<sup>7</sup>
  - (b) the PSC is of the opinion that there is a reasonable likelihood that the complaint, if sustained, will

<sup>6</sup> If the PSC considers that the complaint is false, vexatious or misconceived or that it is more likely than not that the subject-matter of the complaint did not occur, any information about the complaint which has been included on the National Register may be removed from the Register under section 10(1) of the National Register Canon 2007 on the basis that it relates to a notifiable complaint which has been exhausted.

<sup>7</sup> **Note:** Section 54(2) of the Anglican Church of Australia Constitution Act 1961 provides that the Diocesan Tribunal has jurisdiction to hear and determine charges of breaches of faith, ritual, ceremonial or discipline and of such offences as may be specified by canon, ordinance or rule in respect of –

- a person licensed by the Archbishop, or
- any other person in holy orders resident in the diocese.

Section 54(2A) of the 1961 Constitution provides that the Diocesan Tribunal also has jurisdiction to hear a charge relating to an offence of unchastity, an offence involving sexual misconduct or an offence relating to a conviction for a criminal offence that is punishable by imprisonment for 12 months or more in respect of a member of the clergy if –

result in the Tribunal making a recommendation for the respondent's deposition from orders, prohibition from functioning or removal from office; and

- (c) the PSC is of the opinion that there is a reasonable likelihood that the complaint will be sustained before the relevant Tribunal.

(2) If the PSC makes a recommendation to the Archbishop under this clause, the Archbishop must comply with the recommendation. The complaint is then to be dealt with in accordance with the Diocesan Tribunal Ordinance 2017 and no further action is to be taken in respect to the complaint under this Ordinance.

#### **41. What recommendations can the PSC make?**

The PSC may make one or more of the following recommendations in relation to the respondent –

- (a) that the respondent make an apology of a kind specified by the PSC;
- (b) that the respondent make reparation as specified by the PSC for the conduct the subject of the complaint;
- (c) that the respondent undertake training, or retraining, of a nature specified by the PSC;
- (d) that the respondent receive counselling of a nature specified by the PSC;
- (e) that the respondent undertake to the Director, in such terms as are specified by the PSC, any one or more of the following:
  - (i) that they will resign from any specified position or office in the Diocese or any specified employment by a Church body or Church authority; or
  - (ii) that they will not, either indefinitely or for a period of time, accept nomination for or appointment to any specified position or office in the Diocese or any specified employment by a Church body or Church authority; or
  - (iii) that they will not, either indefinitely or for a period of time, exercise any specified function or will meet any specified condition or restriction, in relation to any office or position in the Diocese, or in relation to employment by any Church body or Church authority;
- (f) that the respondent resign from office or employment, request relinquishment of holy orders or request voluntary deposition from holy orders, with such admissions and other conditions as the PSC considers appropriate in all the circumstances;
- (g) that the respondent consent to the relevant Church authority issuing a prohibition order;
- (h) that the respondent enter into a safety plan with the relevant Church authority;
- (i) that the respondent be excluded from entry or access to specified Church premises or activities;
- (j) that no further action be taken with respect to the complaint.

#### **42. Notice of the recommendations**

(1) The PSC must give notice of its recommendation(s) to the complainant, the respondent, the Director, the Archbishop and the relevant church authority as soon as practicable after being made.

(2) If the PSC makes a recommendation under paragraph 41(e),(f) or (g), the PSC must include a statement of the reasons for the recommendation(s).

(3) In respect of any other recommendation(s) made by the PSC (except a recommendation that no further action be taken with respect to the complaint), the notice must include a statement that:

- (a) if the respondent does not accept the PSC's recommendation(s) within 14 days after the date of the notice and subsequently comply with the recommendation to the satisfaction of the Director, the complaint will be referred to the Board, and
- (b) the respondent may request the Director to allow a longer period for the recommendation to be accepted by the respondent.

(4) If any information about the complaint has been included on the National Register, the notice must indicate whether acceptance of and compliance with the PSC's recommendation(s) will result in the information being removed from or retained on the National Register.

#### **43. Response to the recommendation**

(1) If the respondent, by notice in writing to the Director –

- 
- *the act of the member of the clergy which gave rise to the charge occurred in the Diocese, or*
  - *the member of the clergy was licensed by the Archbishop or was resident in the Diocese within 2 years before the charge was laid, or*
  - *the member of the clergy is in prison as a convicted person at the time the charge was laid, but within 2 years before imprisonment was licensed by the Archbishop or was ordinarily resident in the Diocese.*

- (a) accepts the recommendation(s) of the PSC within 14 days after the date of the notice of the recommendation(s) or within such longer period as the Director determines under subclause 42(3)(b), and
- (b) complies with any recommendation to the satisfaction of the Director, and continues to do so within or throughout any period that the notice issued under subclause 42(1) states that the action required by the recommendation is to be undertaken,

no further action is to be taken against the respondent under this Ordinance in relation to the complaint, except as provided by this clause.

(2) If the complaint alleges ~~reportable conduct~~ serious child-related conduct and the person against whom the complaint is made –

- (a) admits the complaint or the substance of the complaint; or
- (b) accepts the recommendation or recommendations of the PSC;

and the PSC is satisfied that the respondent has engaged in any or all of the conduct which is the subject of the complaint, the PSC must make a finding that the respondent engaged in that conduct.

#### PART 4B – DETERMINATION OF COMPLAINTS BY THE BOARD

##### 44. Application of this Part

This Part applies to complaints that are referred to the Board by the PSC under clause 39.

##### 45. Convening of the Board

- (1) Upon a complaint being referred to 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 must convene the Board for the purpose of giving directions.

##### 46. Powers of the Board

Upon the referral of a complaint to the Board, the Board may take at least one or more of the following courses of action –

- (a) make findings on ~~Reportable Conduct~~ serious child-related conduct under clause 47;
- (b) dismiss the matter or take no further action under clause 48;
- (c) make a recommendation under clause 49.

##### 47. Making findings on ~~Reportable Conduct~~ serious child-related conduct

If the complaint alleges that the respondent has committed ~~reportable conduct~~ serious child-related conduct, the Board must make a finding on whether the respondent engaged in any or all of the conduct so alleged, and these findings shall constitute findings for the purpose of –

- (a) any requirement by law to notify a person or authority that a finding has been made that the respondent engaged in conduct which is the subject of any such requirement to notify; and
- (b) entering on the National register the details of information required by the provisions of the *National Register Canon 2007*.

##### 48. Power to dismiss or take no further action

- (1) If the Board is not satisfied that the church worker 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 church worker did commit misconduct but is not satisfied as to any of the matters in clause 49(1), the Board may determine accordingly and must take no further action in relation to the complaint. The Board may nonetheless recommend under clause 49 that the respondent be counselled.

##### 49. Recommendations and Orders by the Board

If the Board is satisfied that the church worker –

- (a) is not fit to hold a role office or position, or to be or remain in Holy Orders; or
- (b) is not fit, whether temporarily or permanently, to exercise ministry or perform any duty or function of the role office or position; or
- (c) should be subject to any condition or restriction in the exercise of ministry or in the performance of any duty or function;

the Board must determine in writing accordingly and ~~may recommend~~ make recommendations to the Archbishop or relevant Church authority, including but not limited to any one or more of the following –

- (d) that the church worker be counselled;

- (e) that the church worker be suspended from office or employment or from performing the function as the case may be for such period determined by the Board;
- (f) that the licence or authority of the church worker be revoked;
- (g) that the church worker's contract of employment (if any) be terminated;
- (h) that the church worker cease to hold any office then held;
- (i) that the church worker's holding of office or employment or performance of the function, as the case may be, be made subject to such conditions or restrictions as the Board may specify;
- (j) that the church worker be directed to do or to refrain from doing a specified act;
- (k) that a charge be promoted against the respondent before the Diocesan Tribunal;
- (l) that the operation of a determination shall be suspended for such period and upon such conditions as the Board shall specify;
- (m) that the church worker should be deposed from Holy Orders; and
- (n) that a prohibition order be made in terms specified by the Board.

#### **50. Provision of copies of determination and recommendation**

- (1) The Board must cause a copy of the determination and recommendations, together with reasons, to be provided to –
- (a) the relevant Church authority;
  - (b) the complainant;
  - (c) the respondent;
  - (d) the PSC; and
  - (e) the Director.
- (2) The Director must cause to be entered in the national register all details of information required by the provisions of the National Register Canon 2007.

#### **51. Power to defer final recommendation**

- (1) The Board may defer making any final recommendation on a complaint and may for that purpose adjourn any hearing from time to time for a period or periods not exceeding in aggregate, 12 months, on terms that the church worker 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 office or employment or from performing specified duties of office or employment;
  - (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; or
  - (f) perform or refrain from performing some other specified act.
- (2) If at the time of deferring a final recommendation in accordance with this clause the Board is satisfied that the church worker is at that time either unfit to hold office or to exercise ministry or to perform any duty or function of the office or employment, any undertaking given by the church worker must include an undertaking under clause 51(1)(a) in such form as the circumstances may require and as the Board may approve.
- (3) If within a period specified by the Board the church worker declines to give an undertaking in accordance with clause 51(1), the Board must proceed to make a determination and recommendation.
- (4) The Board may take into account the failure of the church worker to comply with his or her undertaking under clause 51(1) in deciding on any final recommendation on a complaint.

#### **52. Effect of Prohibition Orders**

A person who is subject to a prohibition order is, despite the provisions of any other ordinance, ineligible for election or appointment to any position or office to which the order applies, and any such office or position that the person is or was elected or appointed to becomes vacant.

### **PART 4C – REVIEW OF BOARD DETERMINATIONS**

#### **53. Application for review**

- (1) If the respondent is aggrieved by a decision of the Board, the respondent may apply to the Registrar for

a review of the decision.

(2) If the PSC is aggrieved by a decision of the Board, the PSC may apply to the Registrar for a review of the decision.

(3) The application must be made within 21 days after the applicant is provided with a copy of the Board's report under clause 50 or such longer period as the Registrar may by notice in writing to the aggrieved person determine.

(4) The application must be in writing and set out the grounds for the review.

#### **54. Grounds for review**

The grounds on which an application for a review of a decision of the Board may be made are any one or more of the following –

- (a) that a breach of the rules of procedural fairness occurred in relation to making the decision which materially affected the decision,
- (b) that procedures required to be observed by this Ordinance in relation to the making of the decision were not observed and the non-observance materially affected the decision,
- (c) that the Board did not have jurisdiction to make the decision,
- (d) that the decision was so devoid of any plausible justification that no reasonable Board could have made it.

#### **55. Stay of proceedings**

An application for a review of a decision of the Board acts as a stay of the decision pending the determination of the review.

#### **56. Appointment of Reviewer**

(1) As soon as practicable after receiving an application for review, the Registrar must notify the Chancellor.

(2) The Chancellor is to appoint an experienced lawyer to undertake the review and notify the Registrar of the appointment.

(3) Upon the appointment of an experienced lawyer, the Registrar is to obtain an estimate of the fee to be charged by the experienced lawyer in making a determination under this Part.

(4) On receipt of the estimate, the Registrar is to notify the applicant for the review of the amount of the estimate and is to request the applicant to pay half of the estimated fee to the Registrar or a person nominated by the Registrar.

(5) If the applicant does not pay half of the estimated fee within 21 days after receipt of the Registrar's request, the application for the review lapses.

#### **57. Conduct of review**

(1) A review by an experienced lawyer of the determination of the Board is to be conducted in the manner determined by the experienced lawyer, subject to the process allowing the experienced lawyer to make a determination on the review within a reasonable period after the date that the Registrar receives payment from the applicant for half of the estimated fee.

(2) A review is not to be a re-hearing of the merits, or a new hearing.

(3) The experienced lawyer may make such order as to costs of the review as he or she thinks fit.

#### **58. Determination on review**

The experienced lawyer who reviews a determination of the Board may do any one or more of the following –

- (a) quash or set aside the determination,
- (b) refer the determination to the Board for further consideration in accordance with such terms and conditions as the experienced lawyer directs,
- (c) declare the rights of the applicant for the review in relation to any matter to which the determination of the Board relates,
- (d) direct the applicant or the Board to do, or to refrain from doing, anything that the experienced lawyer considers necessary to achieve justice between the parties.

### **PART 4D – PROCEDURAL MATTERS FOR THE PSC AND THE BOARD**

#### **59. Conduct of proceedings**

Subject to the provisions of this Ordinance each of the PSC and the Board –

- (a) must act with fairness and according to equity, good conscience, ~~natural justice~~ procedural

- fairness 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; and
- (c) must deal with each matter as expeditiously as possible.

**60. Failure to appear**

- (1) The PSC may make findings or recommendations in any proceedings in the absence of additional material from the respondent if satisfied that reasonable efforts were made to give the respondent an opportunity to provide that material.
- (2) 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.

**61. Powers and duties**

- (1) Subject to this Ordinance, the Board –
  - (a) may regulate the proceedings of its meetings as it sees fit;
  - (b) may inform itself from the record of or transcript of proceedings in any court or tribunal and may adopt any findings in, and accept as its own, the record of or transcript of proceedings of any court or tribunal;
  - (c) may conduct its business and any proceedings by video link, conference telephone or by any electronic means of communication; and
  - (d) 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 PSC.
- (2) The Board must give the PSC and the respondent a reasonable opportunity to adduce evidence, to examine and cross-examine witnesses and to make submissions to the Board.

**62. Legal representation**

The PSC may and the respondent may each appoint a legal representative to assist in the process.

**63. Directions**

The Board may at any 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 or review;

and for that purpose the Board may be constituted by the presiding member or by a member appointed for the purpose by the presiding member.

**64. Appointment of a person to assist**

The 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 thinks fit.

**65. Directions to Director or the PSC**

The Board may at any time, and from time to time, give directions to the Director or the PSC as to any further inquiries or investigation it requires to be carried out for the purposes of the reference and the Director or the PSC, as the case may be, must to the best of its ability cause such directions to be carried out.

**66. Written evidence**

Without limiting the meaning and effect of clause 61, The 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.

**67. Decisions of other bodies**

In any proceedings before it, where the PSC or the Board is satisfied that the respondent –

- (a) has been convicted by a court within Australia of an offence involving misconduct;
- (b) has been found guilty (without conviction) by a court within Australia of an offence involving misconduct;
- (c) has admitted in proceedings before a court, tribunal or commission of inquiry within Australia having engaged in conduct involving misconduct;

- (d) has been found by a court, tribunal or commission of inquiry within Australia to have engaged in conduct involving misconduct; or
- (e) has been disqualified by a court, tribunal or commission of inquiry within Australia from professional practice on account of conduct involving misconduct;

then –

- (f) a certificate, reasons for judgment or other record from the court, tribunal or commission (as the case may be) shall be conclusive evidence that the respondent engaged in the misconduct concerned; 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 misconduct concerned.

#### **68. Standard of proof**

The standard of proof to establish an allegation is that of reasonable satisfaction on the balance of probabilities.

#### **69. Members of Board not to meet with parties**

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

#### **70. Disqualification where personal interest**

- (1) Where a member of the PSC or the 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 chair of the PSC or the presiding member of the Board, as the case may be, shall be conclusive as to whether any other member of the PSC or the Board has a personal interest in a matter.

#### **71. Medical examination**

- (1) The PSC or the Board may require the respondent to submit within a specified time to a medical, psychiatric or psychological examination by a person approved by the PSC or the Board (as the case may be) the cost of which shall be met from funds under the control of the Synod.
- (2) A copy of the report of an examination under subclause (1) shall be provided to the respondent, the Director, the PSC and the Board.

#### **72. Duties of the respondent**

- (1) The respondent must, subject to subclause (2), truthfully answer any question put by or on behalf of the 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 respondent, a written record shall be made of the question and of the ground of refusal.
- (3) The respondent must not –
  - (a) mislead the Board or a member of the Board; or
  - (b) unreasonably delay or obstruct the Board in the exercise of powers conferred by this Ordinance.

#### **73. Limitation on promotion of a charge in the Diocesan Tribunal**

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

#### **74. Costs**

- (1) Neither the PSC nor the Board has the power to award costs of any complaint or matter before it.
- (2) A respondent who is not an unpaid lay church worker may apply to the Standing Committee for reimbursement of their reasonable costs of obtaining advice and assistance from a legal practitioner for the purposes of a process under this Ordinance.
- (3) The Standing Committee may grant legal assistance to a church worker on such terms and subject to such conditions as it shall determine.
- (4) For the purposes of subclause (3), the Standing Committee may approve a scale of costs on the recommendation of the Director.

#### **75. Making of rules**

- (1) The President of the Board may make or approve rules of the Board reasonably required in relation to the practice and procedure.

(2) The rules of the Board made under this clause 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 may, at the direction of the presiding member, be constituted by a single member sitting alone.

#### **76. Practice and procedure**

Subject to this Ordinance and the relevant rules, the practice and procedure of the Board will be as directed by the presiding member of the Board.

#### **77. Determination of questions**

- (1) In any proceedings of the 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 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, as the case may be.

#### **78. Public Hearings**

- (1) Subject to subclauses (2) and (3), any hearing of the Board must be held in public.
- (2) The Board may direct –
- (a) that the whole or part of a proceeding be held in private; or
  - (b) that only persons or classes of persons specified by it may be present during the whole or any part of a proceeding.
- (3) The Board may only make a direction under the preceding subclause if satisfied that the direction is necessary on or more of the following grounds –
- (a) to comply with applicable legislation of the State or a Territory or the Commonwealth;
  - (b) to 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 a witness (other than the respondent) in a proceeding that relates in whole or part to a complaint;
  - (e) to avoid the disclosure of confidential information; and
  - (f) for any other reason in the interests of justice.

#### **79. Suppression of names**

- (1) The Board may order that the name of, or other information that could lead to the identification of the respondent, or a person who appears, or is reasonably likely to appear, before the Board is not to be published or broadcast, except in such circumstances as the Board may authorise.
- (2) An order of the Board under this clause does not apply to the publication of a report authorised or required under this Ordinance.

#### **79A. Non-publication orders**

- (1) The Board may, on the application of a party or the Director, order that a party by himself or herself or through his or her agents and associates not publish verbally, in writing or by electronic means:
- (a) any matter relevant to a fact or circumstance likely to be considered when the Director or Board is dealing with the complaint; or
  - (b) any aspersion on the character of a person who may be a material witness to such fact or circumstance.
- (2) Such an order may be made ex parte, but may be discharged on the application of the person against whom it is made on at least five days' notice to the person on whose application it was made.

### **PART 4E – CHURCH AUTHORITIES AND COMPLIANCE**

#### **80. Church authority to give effect**

- (1) Subject to subclause (2), the Church authority to whom a recommendation under this Ordinance is made must and is empowered to do any acts to give effect to a recommendation of the Director, an Adjudicator, PSC or the Board.

(2) The Church authority referred to in subclause (1) may vary, modify or temporarily suspend the implementation of a recommendation consistent with any facts found by the body making the recommendation provided that the body making the recommendation agrees that the substance of the recommendation is preserved.

**81. Compliance by church worker**

A church worker must –

- (a) comply with any undertaking given to an Adjudicator, PSC or the Board or the relevant Church authority; and
- (b) comply with a direction made by the relevant Church authority to give effect to a recommendation of the Adjudicator, PSC or the Board, as the case may be, or any permitted variation or modification that recommendation.

**CHAPTER 5 - PERSONS OR BODIES PERFORMING FUNCTIONS UNDER THIS ORDINANCE****PART 5A – THE DIRECTOR****82. Appointment**

- (1) There shall be a Director of Professional Standards.
- (2) The Director shall be appointed by the Archbishop.
- (3) The Director shall hold office on such terms and conditions as may be determined from time to time by the Archbishop.
- (4) If, for any reason, the Director is unable or unwilling to exercise or perform any power, authority, duty or function of the Director under this Ordinance, the Archbishop may appoint another suitably qualified person to exercise or perform the power, authority, duty or function.

**83. Functions of the Director**

- (1) The Director's functions include –
  - (a) to receive complaints;
  - (b) to make a complaint against a church worker;
  - (c) to appoint investigators to investigate complaints in a timely and appropriate manner;
  - (d) to be the executive officer of the PSC;
  - (e) to attend meetings of the PSC except for any part of a meeting which deals with the conditions of employment, remuneration or performance of the Director;
  - (f) to provide advice about the code of conduct and procedures under this Ordinance;
  - (g) to provide or arrange care for or treatment of the complainant and respondent;
  - (h) to provide input into education and vocational training programs for church workers;
  - (i) to keep proper records of complaints, decisions, meetings, employment screening details, police checks and people affected by any allegation of misconduct;
  - (j) to consult and co-operate with other persons and bodies in the Church with responsibility for professional standards;
  - (k) to support complainants in making a report to police or child protection authorities;
  - (l) to report to the PSC on any recommended changes to processes, structures and education programs that would reduce the risk of misconduct; and
  - (m) such specific functions and duties, consistent with this Ordinance, as may be determined from time to time by the PSC.
- (2) The Director must act in all things as expeditiously as possible.

**84. Relationship between the Director and the Archbishop**

- (1) The Director is to inform the Archbishop of –
  - (a) any information known to the Director, or any reasonable belief held by the Director, that a church worker has engaged in conduct which may be the subject of a complaint, and
  - (b) any response made by a church worker to an allegation that is, or could be, the subject of a complaint.
- (2) The Director is to provide the Archbishop with such further information as the Archbishop may reasonably require.
- (3) The Archbishop is to provide the Director with such information as the Director may reasonably require.

**85. The Director's entitlement to information held by certain persons**

A Church authority, Church body or relevant person that appointed a church worker to an office or position must provide the Director with such information as the Director may reasonably require.

**86. The Director to report annually to the Standing Committee**

Before 1 August each year, the Director is to make a report to the Standing Committee as to the actions taken under this Ordinance during the period of 12 months ending on the preceding 30 June and provide a copy of the report to the Safe Ministry Board.

**PART 5B – THE PROFESSIONAL STANDARDS COMMITTEE****87. Establishment of the PSC**

There shall be a Professional Standards Committee for the diocese constituted in accordance with the provisions of this Part.

**88. Functions of the PSC**

The PSC has the following functions –

- (a) to act on a complaint in accordance with this Ordinance and, where appropriate, to obtain independent legal advice for that purpose;
- (b) to recommend to the Standing Committee any changes to Church processes, structures and education programs, where appropriate, that would reduce the risk of misconduct;
- (c) to authorise such expenditure as may be necessary or appropriate to implement, in a particular case, the provisions of this Ordinance subject to any limit imposed by the Standing Committee;
- (d) to advise relevant Church bodies as to the financial, pastoral or other needs of a person affected by misconduct which is the subject of a complaint and to advise relevant Church bodies in connection with any legal proceedings, anticipated or existing, against such Church bodies arising out of that alleged misconduct;
- (e) 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;
- (f) to maintain proper records of all information and complaints received and of action taken in relation to each of them; and
- (g) to exercise such other powers and functions as are conferred on it by this or any other Ordinance.

**89. Membership of the PSC**

- (1) The members of the PSC shall be appointed by the Archbishop-in-Council.
- (2) The members of the PSC shall hold office on such terms and conditions as may be determined from time to time by the Archbishop-in-Council.
- (3) The PSC must have at least three members including the chair.
- (4) The persons appointed as members of the PSC are to include –
  - (a) an experienced lawyer, and
  - (b) a person who has been a member of the clergy for not less than 10 years, and
  - (c) a person who is certified by the Safe Ministry Board as having other qualifications or experience appropriate to the discharge of the office of a member of the PSC, such as child protection, social work or psychiatry.
- (5) The PSC must so far as is reasonably practicable –
  - (a) include at least one person who is not a member of the Church;
  - (b) have at least one man and one woman.
- (6) The chair of the PSC must be appointed by the Archbishop.
- (7) A member of the PSC must not act unless the member has agreed in writing to abide by this Ordinance.

**90. Term of office**

Subject to clause 89, a member of the PSC holds office until the first meeting of the Standing Committee which next follows the first day of the first ordinary session of the next Synod provided that the member continues to hold office until his or her successor is appointed.

**91. Casual vacancies**

- (1) The office of a member of the PSC is vacated if –
  - (a) the member –
    - (i) dies, or
    - (ii) resigns by notice in writing to the Diocesan Secretary, or
    - (iii) becomes mentally incapacitated, or
    - (iv) becomes an insolvent under administration, or
    - (v) ceases to reside permanently in the Diocese, or

(b) the Archbishop-in-Council revokes the appointment.

(2) The Archbishop-in-Council may fill a casual vacancy in the office of a member of the PSC.

**92. Conduct of business**

(1) The PSC 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 PSC at the request of the Director.

(3) The procedures of the PSC shall be determined by the PSC.

(4) A majority of the members shall constitute a quorum.

(5) A decision taken other than at a meeting of the PSC, if supported by a majority of members of the PSC, constitutes a decision of the PSC.

(6) The PSC must act in all things as expeditiously as possible.

**93. Validity of proceedings**

An act or proceeding of the PSC 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.

**94. Delegation of functions**

(1) Subject to subclause (2), the PSC may delegate, upon such terms and conditions as the PSC may approve, any of its functions under this Ordinance to any person.

(2) The PSC cannot delegate –

(a) its functions under subclause (1); or

(b) its functions under Part 4A.

(3) A delegation under this clause must be made by an instrument in writing signed by a member of the PSC pursuant to a resolution of the PSC.

**PART 5C – THE PROFESSIONAL STANDARDS BOARD**

**95. Establishment of the Board**

There shall be a Professional Standards Board comprising three persons constituted and appointed in accordance with the provisions of this Part.

**96. Functions of the Board**

The function of the Board is to enquire into and determine complaints referred to it by the PSC under this Ordinance.

**97. Panel**

(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 experienced lawyers;

(b) three members of the clergy of at least seven years' standing; and

(c) three laypersons who may or may not be members of the Church and at least two of whom are persons who are considered by the Archbishop-in-Council as having professional experience, training or skills in a field that is relevant to addressing the needs of persons who are subjected to misconduct.

(2) As far as reasonably practicable the members of the panel should comprise an equal number of men and women.

**98. Appointment of the Panel**

(1) The members of the panel shall be appointed by the Archbishop-in-Council and shall hold office on such terms and conditions as may be determined from time to time by the Archbishop-in-Council.

(2) Any vacancy in the membership of the panel shall be filled by the Archbishop-in-Council.

**99. Appointment of the Board**

(1) The members of the panel 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 or if the President is unable to act, 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 one clerical and one lay member of the panel.
- (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 must not act in a matter unless the member has agreed in writing to abide by this Ordinance.

#### **100. Vacancies on the Board**

- (1) 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 –
  - (a) the Board constituted of the presiding member and the other member may, if the presiding member so determines, continue and complete the reference; or
  - (b) if the presiding member so determines, a substitute member may be appointed to fill the vacancy.
- (2) If the presiding member dies or is for any reason unable to continue with any matter referred to the Board, the Deputy President becomes the presiding member for that matter.

#### **101. Secretary**

There shall be a secretary to the Board who shall be appointed by or in accordance with a resolution of the Archbishop-in-Council, and whose duties shall be defined by the President.

#### **102. Quorum**

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 clause 63 of this Ordinance.

#### **103. Validity of proceedings**

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.

**CHAPTER 6 - MISCELLANEOUS****PART 6A – CONFIDENTIALITY AND PUBLICATION****104. Duty of confidentiality**

(1) Subject to the provisions of this Ordinance, the Director, an Adjudicator, a member of the PSC, a member of the Board and a person employed or engaged on work related to the affairs of the PSC, 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;
- (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 where the information may give rise to or be relevant to a claim for indemnity by the Church body is against the insurer or is relevant to obtaining or continuing insurance cover.

(2) The PSC may release to any person, including a Church authority, such material as it may determine with respect to any information or complaint.

**105. Release of information by PSC**

(1) The PSC must disclose to an equivalent body information in its possession concerning the alleged misconduct of a church worker –

- (a) which is information relevant to, or arising during the course of, an investigation being undertaken by the PSC where the PSC knows that the church worker is residing in the diocese of the equivalent body; or
- (b) which is information concerning misconduct alleged to have occurred in the diocese of the equivalent body;

and must co-operate with any equivalent body.

(2) The PSC may disclose to a person or body of another church or Christian denomination exercising powers, duties or functions similar to those of the PSC, details of information in its possession concerning the alleged misconduct of a church worker and the PSC must co-operate with such person or body to whom the information is disclosed.

**106. Church authority may release information**

~~The relevant Church authority may~~ The Archbishop or the relevant Church authority may, following consultation with the Director, release to any person such material as the Church authority may determine with respect to any information, complaint or finding.

**107. PSC reports**

(1) Without disclosing the identity of any complainant or the details of any complaint, the PSC must report annually to the Synod on the operation this Ordinance and its activities for that calendar year.

(2) Notwithstanding subclause (1), the report of the PSC pursuant to that subclause may identify a church worker who has been exonerated from an allegation ~~the~~ which is the subject of the complaint or who has been the subject of a determination or recommendation by the Board favourable to the church worker.

(3) The PSC must, in respect of every complaint with which it is dealing under this Ordinance, report either orally or in writing to the Archbishop with such frequency and as fully as the Archbishop may reasonably require.

**PART 6B – INDEMNITY****108. Obligation to indemnify**

The Standing Committee must and is hereby authorised out of funds under the control of the Synod to indemnify –

- (a) the Director and any delegate of the Director;
- (b) each member of the PSC;
- (c) any delegate of the PSC;

- (d) an Adjudicator;
- (e) each member of the Board;
- (f) the secretary of the Board;
- (g) any person appointed by the Board pursuant to this Ordinance; and
- (h) the Archbishop;

in respect of 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 a church worker.

## PART 6C – REGULATIONS

### 109. Regulation making power

The Archbishop-in-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 overriding purposes of this Ordinance.

## PART 6D – OTHER

### 110. Rights of employers

Nothing in this Ordinance affects any right of an employer to terminate the employment of an employee.

### 111. Findings of certain other bodies may be treated as conclusive

Any findings made by an equivalent body or a court, tribunal or commission of inquiry, that have not been overturned on appeal, may be treated as conclusive by a person performing functions under this Ordinance.

### 112. Service of documents

- (1) A document required to be served under this Ordinance on a person may be served –
  - (a) personally, or
  - (b) by posting a copy of the document by pre-paid post to the person at the person's proper address.
- (2) The proper address of a person is the address for service of the person but, if the person has no address for service, the person's last known residential address.
- (3) Service of a document that is posted by pre-paid post is taken to be effected 7 days after posting.
- (4) In this clause, service of a document includes the giving of a notice.

### 113. Commencement

Except for this clause, this Ordinance commences on the date determined by the Archbishop on the advice of the Chancellor.

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## Notes

In accordance with Clause 113, the Archbishop determined the commencement date of this Ordinance to be 1 November 2017 on the advice of the Chancellor.



## SPECIAL TRIBUNAL CANON, 2007

Canon No. 13, 2007 as amended by

Canon 11, 2010

Canon 14, 2010

Canon 03, 2014

Canon 08, 2014

Canon 11, 2017

Canon 12, 2017

**A canon to provide for the investigation of matters which may become the subject of a charge before the Special Tribunal and to provide for the appointment and procedure of the Special Tribunal.**

The General Synod prescribes as follows:

### PART 1 - PRELIMINARY

- 1 This Canon may be cited as the "Special Tribunal Canon 2007".
- 2 In this Canon, unless the context otherwise requires:
  - "**Bishop**" means a bishop referred to in section 56(6) of the Constitution; and
  - "**bishop**" means a person in bishop's orders.
  - "**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;
  - "**Commonwealth**" means the Commonwealth of Australia;
  - "**complaint**" means a complaint against a Bishop alleging a breach of faith, ritual, ceremonial or discipline or alleging an offence as may be specified by Canon;
  - "**Director**" means the Director of the Episcopal Standards Commission appointed under Part 3;
  - "**Episcopal Standards Commission**" or "**ESC**" means the Episcopal Standards Commission established under Part 2;
  - "**incapable**" means incapable for the purposes of the Bishop (Incapacity) Canon 1995;
  - "**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 Tribunal;
  - "**priest**" means a person who is in priest's orders who is not a bishop;
  - "**protocol**" means the protocol approved under Part 3 of the Episcopal Standards Canon 2004;
  - "**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 Bishop, the Primate;
  - "**respondent**" means a bishop whose alleged conduct or omission is the subject of a complaint;
  - "**Subsection 43(2) Exclusion**"<sup>1</sup> means an ordinance made by the synod of a diocese under subsection 43(2) which:

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<sup>1</sup> Added by Canon 11, 2010.

- (a) declares that paragraph (a) of subsection 43(1) shall have no effect in respect of the Bishop of that diocese; and
- (b) has not been revoked by that synod.

"**Tribunal**" means the Special Tribunal.

- 2A<sup>2</sup> (1) The ESC has no powers or duties under this canon, apart from the duty imposed by subsection (2), in relation to a diocese or the Bishop thereof while there is a Subsection 43(2) Exclusion in effect in relation to that diocese.
- (2) If the ESC receives a complaint in relation to the Bishop of a diocese while there is a Subsection 43(2) Exclusion in effect in relation to that diocese, the ESC must refer the complainant and the complaint:
- (a) where the diocese is part of a province and the complaint is not in respect of the Metropolitan of that province, to the Metropolitan of that province;
  - (b) where the diocese is part of a province and the complaint is in respect of the Metropolitan of that province, to the Metropolitan of another province, and
  - (c) where the diocese is not part of a province and the complaint is in respect of the Bishop of that diocese, to a Metropolitan.

## PART 2 – EPISCOPAL STANDARDS COMMISSION

- 3 There shall be an Episcopal Standards Commission.
- 4 (1) The ESC shall have at least three members.
- (2) The membership of the ESC shall be constituted so as collectively to provide:
- (a) experience in law;
  - (b)<sup>3</sup> a person in bishops' orders who is not a Bishop; and
  - (c) experience and appropriate professional qualifications in child protection, social work or counselling.
- (3) The ESC so far as is reasonably practicable shall have an equal number of men and women.
- 5<sup>4</sup> (1) The members of the ESC shall be appointed by the Standing Committee.
- (2) The members of the ESC shall hold office for a term of not more than 5 years (which may be renewed) and on such other terms and conditions as may be determined by the Standing Committee from time to time.
- (3) Notwithstanding the provisions of this Canon (other than section 5A) or of any other canon, the members of the ESC holding office immediately before the Special Tribunal Canon 2007 Amendment Canon 2010 comes into force, will cease to hold office at the conclusion of the second meeting of the Standing Committee following the 15<sup>th</sup> General Synod.
- (4) If a member of the ESC is unable to undertake their role by reason of incapacity or conflict of interest, the Standing Committee may appoint an additional member to the ESC in accordance with this Canon for such period as the Standing Committee may determine.
- 5A<sup>5</sup> A member of the ESC shall cease to hold office upon:
- (a) death of the member;
  - (b) resignation of the member;
  - (c) declaration by a competent court or tribunal that the member is incapable of managing his or her affairs;
  - (d) the member ceasing to reside permanently in Australia;
  - (e) conviction or finding of guilt of the member in any court of any offence punishable by imprisonment;
  - (f) the member becoming a Bishop;

<sup>2</sup> Added by Canon 11, 2010.

<sup>3</sup> Amended by Canon 14, 2010.

<sup>4</sup> Amended by Canon 14, 2010.

<sup>5</sup> Inserted by Canon 14, 2010.

- (g)<sup>6</sup> the member reaching the age of 75 years; or
  - (h) the passing of a resolution –
    - (i) by the Standing Committee by a two-thirds majority of those members present and voting, or
    - (ii) by the General Synod voting as a whole passed by a two-thirds majority of those members present and voting
- to remove the member from office.
- 6
  - (1) The convenor of the ESC shall be appointed by the Standing Committee.
  - (2) The ESC may meet from time to time as determined by the convenor or a majority of its members and may conduct its business by telephone or electronic communication.
  - (3) Subject to this Canon 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 shall act in all things as expeditiously as possible.
- 7 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.
- 8 Subject to the provisions of this Canon, the Director, a member of the ESC and a person employed or engaged on work related to the affairs of the ESC 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 or another Canon;
  - (c) in any proceedings before the Special Tribunal;
  - (d) as may be required by law; or
  - (e) to any insurer or insurance broker of a Church body where the information may give rise to or be relevant to a claim for indemnity by the Church body against the insurer or is relevant to obtaining or continuing insurance cover.
- 9 Subject to section 51, the ESC may release to the public such material as it may determine with respect to any complaint.
- 10
  - (1) Without disclosing the identity of any complainant or the respondent, the ESC shall report annually to the Standing Committee on its activities for that calendar year.
  - (2) Notwithstanding subsection (1), the report of the ESC pursuant to that subsection may identify a 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 Tribunal.
  - (3) Subject to sub-section (4) the ESC shall, in respect of every matter with which it is dealing, report either orally or in writing to the Primate with such frequency and as fully as the Primate may reasonably require.
  - (4) If the matter relates to the conduct of the Primate, such reports shall be made to and at the direction of the senior Metropolitan at the time in Australia who is not the Primate.
- 11
  - (1) Subject to sub-section (2), 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.
  - (2) The ESC cannot delegate:
    - (a) its powers under subsection (1);
    - (b) its powers under section 12(1)(g); or
    - (c) its powers under section 22.
  - (3) A delegation under this section must be made by instrument in writing signed by a member of the ESC.

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<sup>6</sup> Amended by Canon 11, 2017

- 12 (1) Subject to the provisions of this Canon the ESC has the following powers and duties:
- (a) to receive complaints;
  - (b) to investigate the subject matter of complaint in a timely and appropriate manner;
  - (c) where appropriate to arrange for the conciliation and mediation of any complaint;
  - (d) where the complaint relates to an alleged offence against the law of a State or Territory of the Commonwealth or against a law of the Commonwealth, to refer any information in its possession to a member of the appropriate law enforcement, prosecution or child protection authority and to co-operate as far as possible with any such authority;
  - (e) to maintain proper records of all complaints received and of action taken in relation to such complaints;
  - (f) subject to any limit imposed by the Standing Committee to authorise such expenditure on behalf of the General Synod as may be necessary to implement, in a particular case, the provisions of this Canon;
  - (g) to promote a charge against a Bishop before the Tribunal.
- (2) In exercising its powers under this Canon the ESC may, where it considers it to be appropriate, adopt the provisions of the protocol.
- 13 (1) The ESC shall only take action in respect of a complaint alleging an offence mentioned in the First Schedule where the complaint relates to conduct or an omission alleged to have occurred not more than twelve calendar months prior to the date on which the complaint is received by the ESC.
- (2) For the purposes of this section a complaint will be deemed to have been received by the ESC when received at the office of the General Secretary of the General Synod or, if posted by certified or registered mail to the Director or to the General Secretary of the General Synod, forty-eight hours after the posting of the complaint.

### **PART 3 – DIRECTOR OF EPISCOPAL STANDARDS COMMISSION**

- 14 (1) There shall be a Director of the Episcopal Standards Commission.
- (2) The Director shall be appointed by and shall hold office in accordance with a resolution of the Standing Committee.
- 15 The Director shall have the following functions:
- (a) to be the executive officer of the ESC;
  - (b) to attend meetings of the ESC unless the ESC in respect of a particular meeting or part of a meeting shall otherwise determine;
  - (c) such other functions and duties as may be prescribed by this or any other Canon or as may be determined by the Standing Committee or the ESC.
- 16 The Director may act in a corresponding capacity for a diocese either generally or for a particular case or matter.

### **PART 4 – COMPLAINTS**

- 17 A person may make a complaint against a Bishop by writing signed by the person making the complaint.
- 18 Subject to this Canon, when the ESC receives a complaint it shall investigate the allegations contained in the complaint.
- 19 The ESC may refrain from further investigation of the allegations if:
- (a) in its opinion, the allegations 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 the complaint 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.

- 20 For the purpose of an investigation the ESC or an investigator shall endeavour to obtain such statutory declarations, written statements, recorded conversations, reports, documents and other material as the ESC or its delegate considers necessary or desirable.
- 21 (1) The ESC must by notice in writing allow 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, and must provide a summary of the complaint including the substance of the allegations and the name of the complainant.
- (2) 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.
- 22 At any time after the commencement of an investigation into a complaint against a Bishop 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 Bishops (Incapacity) Canon 1995 as if it were made by three members of the synod of a diocese pursuant to that section;
- (b) subject to section 43, institute proceedings by way of charge against a bishop before the Tribunal; or
- (c) in the event that the bishop whose conduct is under investigation ceases to be a Bishop, refer the matter, together with such information as it shall have received, to the bishop of the diocese in which the former Bishop then resides.
- 23 (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 section 22 in respect of the subject matter of the complaint.
- (2) Any term of settlement or resolution referred to in sub-section (1) which purports to prevent or to limit the institution of proceedings by way of charge against a bishop shall be of no effect.
- (3) Proceedings shall not be instituted or maintained in the 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.
- 24 If:
- (a) following the receipt of a complaint, the ESC, under section 19, refrains from further investigation of the allegations contained in the complaint;
- (b) the ESC does not arrange for the conciliation and mediation of the complaint, or
- (c) following an investigation, under this Part, of the allegations contained in a complaint, the ESC does not bring a charge, under section 43, against the bishop in respect of whom the complaint is made, or
- the ESC must, without delay, provide the person who made the complaint with full and complete reasons, in writing, for its decision.

#### **PART 5 – THE SPECIAL TRIBUNAL**

- 25 (1) The members of the Tribunal shall be appointed from a panel comprising:
- (a) A senior presidential member and another presidential member each of whom is qualified to be a lay member of the Appellate Tribunal;
- (b) three Bishops; and
- (c) three priests of at least seven years' standing;
- elected by General Synod in accordance with any Rule of General Synod for the conduct of elections.
- (2) In the event that a presidential member is nominated for election as the senior presidential member or that an election is otherwise required for the two presidential members, an election for both presidential members shall be held at the same time and the person with the highest number of votes shall be the senior presidential member and the person with the next highest number of votes shall be the other presidential member.
- 26 (1) Subject to sub-section (2), a member of the panel shall cease to hold office upon:

- (a) death;
  - (b) resignation;
  - (c)<sup>7</sup> declaration by any competent court or tribunal that the member is incapable of managing his or her affairs;
  - (d) ceasing to reside permanently in Australia;
  - (e) conviction or finding of guilt in any court of any offence punishable by imprisonment;
  - (f) in the case of a Bishop, ceasing to be a Bishop or on becoming the Primate;
  - (g) in the case of a priest, on becoming a bishop; and
  - (h)<sup>8</sup> in any event at the commencement of the ordinary session of General Synod which shall take place next after the member attains the age of 75 years.
- (2) A member of the panel who is a member of the Tribunal for particular proceedings of the Tribunal shall continue to hold office until the completion of the proceedings notwithstanding that the member may cease to be a Bishop or may otherwise cease to be a member of the panel by virtue of age.
- 27 Any Bishop who vacates office upon ceasing to be a Bishop, having accepted appointment to a different office of Bishop, shall, upon installation as Bishop in the different office, be automatically re-appointed to the panel or the Tribunal as the case may be.
- 28 If any vacancy in the membership of the panel occurs while the General Synod is not in session and it becomes necessary or desirable for the vacancy to be filled before the next ordinary session of the General Synod, the Primate shall cause the General Secretary to notify the members of the General Synod that such vacancy is to be filled, to invite the submission of names of candidates for nomination, and to notify them of the date fixed by the Primate, being a date not less than six weeks after posting such notification, by which names should be submitted. If no more names are received than the number of vacant positions to be filled, the General Secretary shall declare the persons named to be elected to the panel. Otherwise, the General Secretary shall conduct a postal ballot of the members of General Synod to determine the person or persons to be elected, such ballot to be conducted in accordance with the rules for the time being in force for the conduct of ballots with such modifications as are necessary, and the General Secretary shall declare the person or persons who are successful in such ballot to be the person or persons elected by the General Synod to the panel. Upon the Secretary declaring a person to be elected to the panel, the person or persons shall become a member or members of the panel.
- 29 Any vacancy not filled pursuant to section 27 or section 28 shall be filled at the next ordinary session of the General Synod by the election by the General Synod of a person qualified to fill the vacancy.
- 30 The members of the panel to be convened for any sitting of the Tribunal shall be appointed by the senior presidential member or, if he or she is unwilling or unable to act, or if there is a vacancy in the office of senior presidential member, by the other presidential member.
- 31 (1) The Rules of the Tribunal 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 Tribunal may, at the direction of the President, be constituted by a single member sitting alone.
- (2) The Tribunal constituted by a single member sitting alone cannot determine a charge or make a recommendation as to sentence.
- 32 The Tribunal, 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 Tribunal.
- 33 An act or proceeding of the Tribunal is not invalid by reason only of a vacancy in its membership or 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 Tribunal, any such act or proceeding is as valid and effectual as if the member had been duly nominated or appointed.
- 34 The Registrar of the Tribunal shall be the General Secretary of the General Synod.
- 35 (1) The place and time of sitting of the Tribunal shall be as determined by the President of the Tribunal.

<sup>7</sup> Amended by Canon 14, 2010.

<sup>8</sup> Amended by Canon 11, 2017.

- (2) In any proceedings of the Tribunal where the Tribunal is constituted by two or more members:
    - (a) any question of law or procedure will be determined by the President; 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 President shall prevail.
  - (3) Where the Tribunal is constituted by a member sitting alone who is not the President, any question of law that arises must be referred to the President for decision and any decision made on such a reference is a decision of the Tribunal.
  - (4) The Tribunal 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.
  - (5) Without limiting the meaning and effect of sub-section (4), the Tribunal 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
  - (6) The Tribunal 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.
- 36 The Tribunal must give reasons for any determination, other than by way of directions in the course of a proceeding, unless the determination is made by consent of the respondent.
- 37 At any hearing before the Tribunal or before a member of it the ESC and the bishop may be represented by a legal practitioner or, with leave of the Tribunal, by any other person.
- 38 A decision of the Tribunal is the decision of a majority of the Tribunal.
- 39 At any time during the course of a hearing the Tribunal may, if it sees fit, obtain the opinion of the Board of Assessors of the Appellate Tribunal.
- 40 The Tribunal may make an order by consent of the parties before it.
- 41 (1) The Tribunal has no power to award costs of any proceedings before it.
- (2) A bishop who is the subject of a charge before the Tribunal may apply to the Standing Committee for the provision of legal assistance.
- (3) The Standing Committee may grant legal assistance to the bishop on such terms and subject to such conditions as it shall determine.
- 42 (1) The presidential members of the panel may make rules of the Tribunal in relation to the practice and procedure of the Tribunal.
- (2) Subject to this Canon and the relevant rules, the practice and procedure of the Tribunal will be as directed by the President of the Tribunal.

#### **PART 6 – PROMOTION OF A CHARGE BEFORE THE SPECIAL TRIBUNAL**

- 43 (1) A charge against a bishop in the Tribunal may be brought:
- (a) by the ESC;
  - (b) by another Bishop; or
  - (c) in respect of a Bishop holding office or a licence in a diocese, in accordance with the provisions of an ordinance of the synod of that diocese.
- (2) The synod of a diocese may by ordinance declare that paragraph (a) of subsection (1) shall have no effect in respect of the Bishop of that diocese, in which case paragraph (a) of subsection (1) will not apply to that Bishop.
- (3) A declaration under subsection (2) –
- (a) shall not affect any proceedings in respect of a charge brought before such ordinance takes effect; and
  - (b) does not limit in any other respect the powers of the ESC contained in this or any other Canon in force in a diocese.

- (4) In respect of a charge brought pursuant to paragraph (c) of subsection (1) against the Bishop of a diocese in respect of whom there is in force a declaration under subsection (2), the General Synod shall not be responsible for the costs of bringing such a charge.
- (5) In respect of a charge brought pursuant to –
- (a) paragraph (b) of subsection (1), or
  - (b) paragraph (c) of subsection (1) where there is no declaration under subsection (2) in force in respect of that Bishop,
- the Special Tribunal or the Appellate Tribunal as the case may be may direct the General Synod to indemnify the person or body who or which brought the charge in respect of the costs of bringing the charge, and the General Synod will indemnify such person or body accordingly.
- 44 (1) A charge against a Bishop must:
- (a) be in writing;
  - (b) specify the alleged offence and provide particulars of the alleged offence;
  - (c) be signed by a member of the body or the person bringing the charge; and
  - (d) be lodged with the Registrar.
- (2) A signed copy of the charge shall be served on the Bishop personally or by leaving it at or posting it to the office of the Bishop's Registry in an envelope addressed to the bishop and marked "**Private and Confidential**".
- (3) A charge, once instituted, may be amended or withdrawn by the person or body which instituted it.
- (4) Amendment or withdrawal of a charge does not prevent another person or body from bringing or proceeding with a charge in terms the same as or similar to a charge before it was amended or withdrawn.

#### PART 7 – PROCEEDINGS BEFORE THE SPECIAL TRIBUNAL

- 45 (1) Upon lodgement of a charge with the Registrar, the presidential member referred to in section 30 shall as soon as possible appoint the members of the Tribunal for the purpose of hearing the charge.
- (2) The President of the Tribunal shall thereupon cause to be convened a directions hearing presided over by a member of the Tribunal.
- (3) The person or body bringing the charge and the bishop shall comply with the rules of the Tribunal and with any directions given by a member of the Tribunal at a directions hearing.
- 46 (1) The Tribunal shall deal with any charge as expeditiously as possible.
- (2) The Tribunal may, if it sees fit, proceed with the hearing of a charge notwithstanding that there may be mediation or conciliation proceedings relating to the subject matter of the charge being conducted by the ESC and notwithstanding that there may be criminal or other proceedings being taken against the bishop.
- (3) Subject to section 23(3) the Tribunal may make a recommendation notwithstanding that the bishop the subject of the charge has ceased, after lodgement of the charge with the Registrar, to be a Bishop.
- 47 (1) Subject to sub-section (2), the Tribunal must give the following persons reasonable notice of the time and place of a sitting of the Tribunal:
- (a) the person or body bringing the charge; and
  - (b) the respondent; and
  - (c) such other persons as the Tribunal believes have a proper interest in the matter.
- (2) The Tribunal is not obliged to give notice of a sitting to a person whose whereabouts cannot, after reasonable enquiries, be ascertained.
- 48 (1) Subject to sub-section (2), a sitting of the Tribunal on a reference before the Tribunal is an open sitting.
- (2) On any such sitting before the Tribunal, the Tribunal has an absolute discretion to direct that persons other than –:

- (a) the respondent and any person representing the respondent in the proceedings; and
  - (b) witnesses or persons making submissions (while giving evidence or making those submissions); and
  - (c) officers of the Tribunal or persons assisting the Tribunal; or
  - (d) the person or members of the body bringing the charge or their representatives; not be present in the room while the Tribunal is sitting.
- 49 The Tribunal 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.
- 50 In making any determination the Tribunal shall take into account:
- (a) the conduct of the bishop as it finds it to have been; and
  - (b) in the material before the Tribunal, any other fact or circumstance relevant to the determination of the question before it.
- 51 (1) At any time after the first directions hearing the Tribunal or, if so authorised by the Tribunal, the person or body bringing the charge, may make public a statement concerning the nature of the charge and the bishop against whom the charge is brought.
- (2) Upon the determination of any charge by the Tribunal and the recommendation of any sentence by the Tribunal, the Tribunal, or if so authorised by the Tribunal, the person or body bringing the charge, may make public a statement of the decision and, where appropriate, concerning the nature of the charge proved and the sentence imposed by the Tribunal, together with such reasons or a summary thereof as the Tribunal shall direct or approve.
- 52<sup>9</sup> In a case where entry is required under the *National Register Canon 2007*, a recommendation of the Tribunal, or the date and particulars of the recommendation, shall be entered on the National Register together with a record of any action taken consequent upon the recommendation.
- 53 Any appeal to the Appellate Tribunal from the Tribunal, other than in respect of a breach of faith, ritual or ceremonial, shall be by leave of the Appellate Tribunal.

#### **PART 8 – DEPOSITION FROM ORDERS**

- 54 (1) The deposition of a bishop from Holy Orders by the Primate pursuant to the recommendation of the Tribunal shall be effected by the execution by the Primate of an Instrument of Deposition in or to the effect of the form in the Second Schedule.
- (2) The Primate must forthwith:
- (a) register the Instrument in the Registry of the Primate;
  - (b) deliver a copy of the Instrument to the bishop of the diocese or dioceses in which the former Bishop who is the subject of the Instrument was ordained priest and bishop;
  - (c) if the former Bishop was a diocesan bishop, deliver a copy of the Instrument to the registrar of the diocese concerned; and
  - (d) cause relevant details to be forwarded for entry into the National Register.

#### **PART 9 – TRANSITIONAL**

- 55 The persons named hereunder shall hold the respective offices until their successors are appointed or elected in accordance with the provisions of this Canon:

Episcopal Standards Commission

Convenor: Mr Geoffrey Spring

Members: Ms Margaret Fuller, OAM; The Right Rev'd Ronald Stone.

Director of the Episcopal Standards Commission

Ms Rena Sofroniou

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<sup>9</sup> Amended by Canon 08, 2014.

Special Tribunal Panel

Senior Presidential Member: Sir Robert Woods, CBE.  
Presidential Member: The Hon Justice Debra Mullins  
Diocesan Bishops: The Most Rev'd Jeffrey Driver  
The Most Rev'd Philip Freier  
The Right Rev'd John Harrower  
Priests: The Rev'd Canon Dr Colleen O'Reilly  
The Ven. Dr Chris R Jones  
The Very Rev'd Andrew J Sempell

**FIRST SCHEDULE**

(Section 1 3(1))

- 1 Any breach of faith, ritual or ceremonial;
- 2 Drunkenness;
- 3 Wilful failure to pay just debts.

4<sup>1011</sup>

**SECOND SCHEDULE**

TO

I, PRIMATE/ARCHBISHOP of  
do hereby depose you from Holy Orders (particulars of which are set out below) in accordance  
with the recommendation of the Special Tribunal of the Anglican Church of Australia dated  
the day of

**PARTICULARS OF HOLY ORDERS**

FULL NAME AND  
ADDRESS

	ORDAINING BISHOP(S)	PLACE	DATE
ORDINATION AS DEACON	.....	.....	.....
ORDINATION AS PRIEST	.....	.....	.....
CONSECRATION AS BISHOP	.....	.....	.....

DATED:

SEALED



<sup>10</sup> Amended by Canon 03, 2014.

<sup>11</sup> Deleted by Canon 12, 2017.