

**AN ACT**

relating to professional standards and for other purposes.

BE IT ENACTED by the Bishop, the Clergy and the Laity of the Anglican Church of Australia within the Diocese of Gippsland in Victoria duly met in Synod according to law as follows:

PART 1—PRELIMINARY

1. *Short title*

This Act may be cited as the **Professional Standards Act 2017**.

2. *Commencement*

(1) Sections 1, 2 and 3 come into operation on the day on which this Act receives the assent of the Bishop.

(2) The remaining provisions of this Act come into operation on the day or days determined by the Bishop on the advice of the Bishop in Council.

3. *Interpretation*

In this Act—

**Board** means the Professional Standards Board established under this Act and includes an equivalent body;

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

**child exploitation material** means material that describes or depicts a person who is, or appears to be, a child—

(a) engaged in sexual activity; or

(b) in a sexual context; or

(c) 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<sup>1</sup>.

**Church authority** means the Bishop 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** includes a parish, school or any other entity that exercises ministry within, or on behalf of, the National Church;

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<sup>1</sup> Child exploitation material includes a film, printed matter, electronic data, computer image and any other depiction.

**Church worker** means a person who is or who at any relevant time was—

- (a) a member of the clergy; or
- (b) a person employed by a Church body; or
- (c) a person holding a position or performing a function with the actual or apparent authority of a Church authority or Church body—

but does not include a bishop subject to the jurisdiction of the Special Tribunal established under the National Constitution;

**code of conduct** means a code of conduct approved from time to time under section 7;

**conduct** includes omission;

**Director** means the Director of Professional Standards appointed under section 19 and includes an acting Director of Professional Standards and a Deputy Director of Professional Standards;

**engagement** includes employment;

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

**examinable conduct** means conduct, wherever or whenever occurring, the subject of information which, if established, might call into question—

- (a) the fitness of a Church worker, whether temporarily or permanently, now or in the future to hold a particular office, licence or position of responsibility in the National Church or to remain in Holy Orders or in the employment of a Church body; or
- (b) whether, in the exercise of a Church worker's ministry or employment, or in the performance of any function, the Church worker should be subject to certain conditions or restrictions;

**General Synod** means the General Synod under the National Constitution;

**Gippsland corporation** means the Anglican Diocese of Gippsland Administration Ltd;

**information** means information of whatever nature and from whatsoever source relating to alleged—

- (a) physical, sexual, spiritual, financial or emotional abuse;
- (b) harassment or assault;

- (c) possession, making or distribution of child exploitation material;
- (d) bullying;
- (e) breach of a code of conduct;

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

***National Church*** means the Anglican Church of Australia;

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

***National Register*** means the National Register established by a Canon of General Synod or a system of recording determinations of the Board and equivalent bodies approved by the Standing Committee of General Synod;

***process failure*** means a failure, before the commencement of this Act, by a Church body or Church authority to deal appropriately with, or investigate, matters referred to in ~~paragraph (a) or (b)~~ of the definition of information;

***Professional Standards Committee or PSC*** means the Professional Standards Committee established under section 10.

***prohibition order*** means an order prohibiting a Church worker from—

- (a) holding a specified position or office in, or being employed by, a Church body or Church authority; or
- (b) carrying out any specified functions in relation to an office or position in the diocese or in relation to employment by a Church body;

***protocol*** means a protocol approved from time to time by the Gippsland corporation under section 9;

***referring body*** means the PSC or an equivalent body that refers a question, or questions, to the Board under section 44;

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

***sexual harassment or assault*** includes abusive behaviour—

- (a) by a person with a child for the sexual gratification of the person;
- (b) by a person in a position of authority over an adult for the sexual gratification of the person.

#### 4. *Conviction of a sexual offence against a child*

- (1) In this Act, a reference to a conviction of a sexual offence is a reference to a conviction of a sexual offence against a child within the meaning of Division (8C) of

Part 1 of the **Crimes Act 1958** of Victoria.

(2) If a person convicted of an offence against a law of another State or a Territory substantially similar to a sexual offence against a child within the meaning of the Division (8C) of the **Crimes Act 1958** of Victoria, the conviction for the offence against that law is to be taken for the purposes of this Act to be a conviction of a sexual offence against a child within the meaning of Division (8C) of Part 1 of the **Crimes Act 1958** of Victoria.

5. *When person is taken to be engaged*

For the purposes of this Act, a person—

- (a) employed by a Church authority or Church body; or
- (b) holding a position or performing a function with the actual or apparent authority of a Church authority or a Church body—

is to be taken to be engaged by the Church authority or Church body.

6. *Agreements and arrangements*

The Gippsland corporation may enter into such agreements or arrangements, as it sees fit, with a relevant authority of another diocese as to the terms on which powers and functions of the equivalent bodies or person of that diocese are to be exercised by the persons holding office in, or as delegates of, the PSC, or by the members or secretary of the Board.

7. *Code of conduct*

The Synod or the Bishop in Council must from time to time, by resolution, approve a Code of Conduct for observance by Church workers in the Diocese.

8. *Promulgation of Code of Conduct*

The Bishop in Council, through the PSC and by such other means as may be considered appropriate, must take such steps as may be necessary or desirable to promote the knowledge, understanding and observance of any Code of Conduct applicable in the Diocese.

9. *Protocols*

(1) The Gippsland corporation must from time to time consider and approve protocols, not inconsistent with this Act, for implementation in relation to information.

(2) The protocols must include—

- (a) procedures for receiving information;
- (b) the appointment, role and function of contact persons;
- (c) provision for informing complainants and victims of alleged conduct the subject of information, and respondents, or rights, remedies and relevant procedures available to them;

- (d) provision for assisting or supporting, as appropriate, all persons affected by alleged conduct the subject of information;
- (e) an explanation of the processes for investigating and dealing with information;
- (f) provision for dealing fairly with respondents;
- (g) processes for referral to mediation and conciliation in appropriate circumstances;
- (h) processes for dealing with alleged process failure;
- (i) provisions for regular information, reports, advice and recommendations to the Bishop and any other relevant Church authority at each stage of the process of dealing with information;
- (j) procedures for working, where necessary, with law enforcement, prosecution or child protection authorities of the States and Territories and of the Commonwealth of Australia;
- (k) procedures for mandatory reporting of alleged examinable conduct to the Director or a member of the police, or both;
- (l) procedures and requirements—
  - (i) for the issue by the Director of clearances for fitness to members of the clergy;
  - (ii) for the issue by the Director of clearances for fitness to Church workers, other than members of the clergy—

including the manner of making an application for a clearance, the period for which a clearance is current and the terms and conditions to which a clearance may be subject.

## PART 2—PROFESSIONAL STANDARDS COMMITTEE

### 10. *Professional Standards Committee*

- (1) There must be a Professional Standards Committee for the Diocese, consisting of not less than 5 members.
- (2) The members of the PSC must be appointed, and hold office, on such terms and conditions as may be determined by the directors of the Gippsland corporation from time to time or in accordance with regulations made by the Bishop in Council.
- (3) The directors of the Gippsland corporation must appoint one of the members of the PSC as its convener.

- (4) The membership of the PSC must be constituted so as collectively to provide experience and appropriate professional qualifications in—
  - (a) law;
  - (b) ordained ministry;
  - (c) child protection, social work, ethics or counselling.
- (5) The PSC must include at least one person who is not a member of the National Church and, so far as it is reasonably practicable, must include at least one man and one woman.

11. *Meetings and procedure*

- (1) The PSC may meet from time to time as determined by the convener or by a majority of its members and may conduct its business by telephone or electronic communication.
- (2) The procedures of the PSC are as determined by the PSC.
- (3) A majority of the members constitutes a quorum.
- (4) A decision taken otherwise than at a meeting of the PSC, if supported by a majority of the members of the PSC, constitutes a decision of the PSC.
- (5) The PSC must in all things act as expeditiously as possible.

12. *Vacancies*

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

13. *PSC may constitute equivalent body*

PSC may constitute an equivalent body, either generally or for a particular case or matter.

14. *Confidentiality*

Subject to this Act, the Director, a member of the PSC, a Church authority or a person engaged on work related to the affairs of the PSC must not divulge information that comes to his or her knowledge by reason of that office or position otherwise than—

- (a) in the course of carrying out duties of an office or position;
- (b) as authorised by or under this Act or a protocol;
- (c) under a requirement of law;
- (d) to an insurer or insurance broker if the information may give rise to, or be relevant to, a claim for indemnity by a Church body or Church authority

against the insurer or relevant to obtaining or continuing insurance cover.

15. *Disclosure to an equivalent body*

The PSC must disclose to an equivalent body relevant details of information in its possession concerning the alleged conduct of a Church worker that—

- (a) is relevant to, or arises during the course of, an investigation undertaken by the PSC where the PSC knows that the Church worker resides in the diocese of the equivalent body;
- (b) is information concerning conduct alleged to have occurred in the diocese of the equivalent body—

and must co-operate with any equivalent body.

16. *Making material public*

- (1) Subject to subsection (2), the PSC may, without disclosing the identity of any person who has provided information to the PSC, make public such material on its activities as it lawfully may disclose.
- (2) The PSC must not make public any material that is the subject of a reference to the Board, unless the Board directs or approves.

17. *Annual reports*

- (1) The PSC must report each year to the Bishop in Council on its activities in the preceding year, but without disclosing the identity of any informant, complainant or respondent.
- (2) Despite (1), the PSC may disclose the identity of a respondent who has been exonerated from an allegation the subject of information or who has been the subject of a determination or recommendation by the Board.

18. *Powers and duties of the PSC*

- (1) Subject to this Act, the PSC has the following powers and duties—
  - (a) implementing the protocols;
  - (b) receiving information;
  - (c) acting on information in accordance with this Act and the protocols;
  - (d) appointing suitable persons to fulfill the several roles required to implement the protocols;
  - (e) where appropriate, arranging for the conciliation or mediation of a complaint the subject of information;
  - (f) investigating information in a timely and appropriate manner;

- (g) where appropriate, recommending to the Bishop in Council any changes to the protocols;
  - (h) advising any relevant Church authority or Church body as to the financial or other needs of a person affected by conduct the subject of information and as to any possible or actual legal proceedings against a Church body or Church authority arising out of the alleged conduct of a Church worker;
  - (i) referring any information in its possession to a member of a law enforcement, prosecution or child protection authority of a State or Territory or of the Commonwealth of Australia to which the information is, or may be, relevant;
  - (j) maintaining proper records of all information received and of action taken in relation to such information;
  - (k) exercising such other powers and functions as are conferred on it by this or any other Act.
- (2) The power and duty of the PSC to exercise its functions under this Act arise in respect of—
- (a) conduct wherever it is alleged to have been engaged in by a Church worker resident or licensed in the Diocese, or engaged in by a Church authority;
  - (b) conduct that is alleged to have occurred within the Diocese, wherever the Church worker involved in the alleged conduct may reside;
  - (c) conduct, wherever it is alleged to have been engaged in, and wherever it is alleged to have occurred, by a Church worker, wherever the Church worker may reside—
    - (i) in respect of or affecting a person resident in the Diocese; or
    - (ii) that may affect a Church body or Church authority or property held in trust for the benefit of, or in connection with, the National Church or a Church body in the Diocese.

### PART 3—DIRECTOR OF PROFESSIONAL STANDARDS

#### 19. *Appointment of Director*

- (1) There must be a Director of Professional Standards for the Diocese.
- (2) There may also be a Deputy Director of Professional Standards or more than one such Deputy.
- (3) The Director, and any Deputy Director, must be appointed by the Gippsland corporation and hold office on such terms and conditions as may be determined from time to time by resolution of the Directors of the Gippsland corporation, after consultation with the Bishop in Council.

#### 20. *Appointment of Acting Director*

- (1) The Gippsland corporation may appoint an acting Director of Professional Standards



on such terms and conditions as may be determined by resolution of the Directors of the Corporation.

- (2) The acting Director of Professional Standards may act in that capacity during the absence of the Director or during a vacancy in the office of Director.
- (3) An acting Director of Professional Standards when acting in that capacity is taken to be the Director and has all the powers and functions of the Director.

*Functions of Director*

21. The Director has the following functions—

- (a) to receive information on behalf of the PSC;
- (b) to manage the implementation of the protocols in respect of information;
- (c) to be the executive officer of the PSC;
- (d) to attend meetings of the PSC unless the PSC, in respect of a particular meeting or part of a meeting, otherwise determines;
- (e) such other functions and duties as may be prescribed by this or any other Act or as may be determined by the Gippsland corporation or the PSC.

22. *Director may act for another Diocese*

The Director may act in a corresponding capacity for another Diocese either generally or for a particular case or matter.

PART 4—INVESTIGATION

23. *Information to be reported*

A Church worker or Church authority must, as soon as possible after becoming aware of any information (within the meaning of section 3)—

- (a) report the information to the PSC;
- (b) in the case of becoming aware of an alleged sexual offence against a child, within the meaning of the *Crimes Act 1958*, report the information to the PSC and a member of the police, unless there are reasonable grounds to believe that the information is already known to the PSC or a member of the police.

24. *Obligation to investigate examinable conduct*

Subject to this Act, if the PSC considers that the subject matter of information constitutes examinable conduct, it must investigate the information.

25. *PSC may refer matters to an equivalent body*

If the PSC considers it appropriate to do so, it may refer the subject matter of information, or the investigation of information, to an equivalent body.

26. *Where PSC and equivalent body have power and duty to investigate same matter*

(1) If the PSC and one or more equivalent bodies have the power and duty to investigate information concerning the alleged conduct or omission of the same Church worker and cannot agree—

- (a) which body is to carry out the investigation or part of it; or
- (b) whether a question specified in section 44 should be referred to the Board or an equivalent body that has power to investigate the matter—

the PSC must refer the disagreement for decision by the Director and the persons acting in a corresponding capacity for each other diocese acting together.

- (2) The PSC must act in accordance with the unanimous decision of the persons referred to in subsection (1) or, if those persons cannot agree within a reasonable time after the disagreement is referred, the PSC must refer the matter to a member of the House of Bishops appointed by the Primate.
- (3) In making a decision under subsection (2), the Director is not bound by the views or instructions of the PSC but must 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.
- (4) In all matters affecting the operation of this Act, 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.

27. *When PSC may refrain from further investigation*

(1) The PSC may refrain from further investigation of information if—

- (a) in its opinion, the allegations the subject of information are false, 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 allegations of examinable conduct or a person affected by the conduct the subject of the information has failed to provide further particulars or to verify the allegations by statutory declaration as requested by the Director or the PSC; or
- (d) in its opinion, there is insufficient reliable evidence to warrant an investigation or further investigation.

(2) The PSC may dismiss information if it considers that there is insufficient reliable evidence to warrant an investigation or further investigation.

28. *Statutory declarations etc for the Board*

For the purposes of an investigation, the PSC must obtain such statutory declarations, statements, recordings and other documents as the PSC considers necessary or advisable for presentation to the Board.

29. *Respondent to provide report*

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

(2) The respondent—

- (a) must truthfully answer any question put by, or on behalf of, the PSC in the exercise of the powers conferred by this Act;
- (b) must not mislead the PSC or a member of the PSC;
- (c) must not unreasonably delay or obstruct the PSC in the exercise of powers conferred by this Act.

(3) If a respondent declines to answer a question on the ground that the answer might tend to incriminate the respondent, a written record must be made of the question and the ground of refusal.

30. *Recommendation for suspension or a prohibition order*

(1) At any time after the PSC has commenced, or caused to be commenced, an investigation of information under this Act, the PSC may, after giving the respondent an opportunity to be heard, recommend to the relevant Church authority—

- (a) that the respondent be suspended from the duties of office or engagement by a Church body; or
- (b) that a prohibition order be made against the respondent—

or that the respondent be suspended and a prohibition order be made.

(2) The relevant Church authority may give effect to a recommendation made under subsection (1).

31. *PSC to take relevant matters into account*

Before making a recommendation under section 30, the PSC must take into account—

- (a) the seriousness of the conduct alleged in the information;
- (b) the nature of the material to support or negate the allegations;
- (c) whether any person is at risk of harm;

(d) any other allegation or similar examinable conduct previously made or reported to the PSC or to an equivalent body within the previous 10 years—

and any other relevant matter.

*32. When Church authority must terminate suspension or prohibition order*

A Church authority must terminate a suspension or prohibition order made by it in accordance with a recommendation under section 30—

- (a) if the PSC terminates the investigation without referring the matter to the Board;
- (b) upon a direction to that effect by the Board;
- (c) upon the Church authority giving effect to a recommendation of the Board under section 56.

*33. Arrangements during a suspension or prohibition order etc*

During a suspension or prohibition under this Part or during a period when a person voluntarily stands down from a position while conduct the subject of information is dealt with under this Act—

- (a) if there is a prohibition order, the respondent must comply with the terms of the prohibition order;
- (b) the respondent is not eligible for appointment to any position or function covered by any suspension or prohibition order;
- (c) the relevant Church authority may fill the vacancy caused by any suspension or prohibition order;
- (d) the respondent 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 Bishop in Council.

PART 5—PROFESSIONAL STANDARDS BOARD

*34. Professional Standards Board*

- (1) There shall be a Professional Standards Board constituted and appointed in accordance with this Part.
- (2) Subject to this Act, the function of the Board is to inquire into and determine a question referred to it under section 44 and a question within its jurisdiction referred to it by an equivalent body to the PSC and to make a determination referred to in section 56 and, where appropriate, to make a recommendation in accordance with this Act.
- (3) The Board may exercise its functions in respect of a Church worker—
  - (a) resident or licensed in the Diocese, or engaged by a Church authority;

- (b) not resident or licensed in the Diocese, nor engaged by a Church authority, but whose conduct is alleged to have occurred when the Church worker was resident or licensed in the Diocese or engaged by a Church authority.
- (4) The members of the Board are to be appointed from a panel comprising—
  - (a) a President and a Deputy President, each with at least 5 years as practising barrister or solicitor;
  - (b) 2 members of the clergy of at least 7 years standing;
  - (c) 7 lay members (who may or may not be members of the National Church) who have skills and qualifications appropriate for members of the Board.
- (5) The members of the panel referred to in section 35 may constitute an equivalent body, either generally or for a particular case or matter.
- (6) The members of the panel are to be appointed by the directors of the Gippsland corporation on such conditions as are set out in the terms of the appointment.
- (7) A vacancy in the membership of the panel is to be filled by, or in accordance with, a resolution of the Gippsland corporation.

*35. Convening a panel*

- (1) The members of the panel to be convened for a reference to the Board are to be determined by the President, or if there is a vacancy in the office of President, by the Deputy President.
- (2) For the purpose of a reference to the Board, the Board is to consist of the President or Deputy President, who is to preside, and an equal number (1 or 2) of clerical and lay members of whom, where possible, include at least one man and one woman.
- (3) If, in the opinion of the presiding member a member of the panel has a conflict of interest in a matter before the Board, the member must be disqualified from participating in the reference.
- (4) For the purpose of this section, a vacancy in the office of President includes a situation in which the President is unable to act because of a conflict of interest in a matter or illness or absence from the Diocese.

*36. Rules of the Board*

- (1) The President may make Rules of the Board reasonably required by or under this Act in relation to the practice and procedure of the Board.
- (2) The Rules may include a provision that, at the direction of the President, the Board be constituted by one member sitting alone.

37. *Where a member of the Board is unable to continue*

If a member of the Board, other than the presiding member, dies or is unable to continue to sit in a matter before the Board, the presiding member may determine to continue the matter, despite the vacancy.

38. *The President or Deputy President may convene two or more panels of the Board*

The President or Deputy President may convene two or more panels to sit concurrently.

39. *Secretary of the Board*

(1) The Bishop in Council may appoint a secretary of the Board on such terms and conditions determined by the Bishop in Council.

(2) The secretary of the Board may act in a corresponding capacity for another diocese either generally or for a particular matter.

40. *Proceedings of the Board*

(1) In proceedings of the Board constituted by two or more members—

(a) a question of law or procedure must be determined by the presiding member; and

(b) any other question is to be determined by a majority of the members and, in the event of an equality of votes, by the presiding member.

(2) If the Board is constituted by a member sitting alone, other than the President or Deputy President, a question of law that arises must be referred to the President or Deputy President for decision and the decision is a decision of the Board.

(3) The Board is bound by the rules of natural justice and procedural fairness and 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 as it thinks fit.

(4) Despite subsection (3), the Board may receive evidence of a witness in the form of an affidavit, statutory declaration or signed statement without the need for the personal attendance of the witness, and may use electronic means (such as video link or conference telephone) to receive evidence and submissions.

(5) The Board may inform itself from the record of any court or tribunal and may adopt any findings of a court or tribunal and accept them as its own.

41. *Assistance to the Board*

The Board, for the purpose of a particular reference, may appoint any one or more of the Director, a member of the PSC or another person or persons, to assist it into (but not determining) the reference as the Board thinks fit.

42. *Costs and legal assistance*

(1) The Board has no power to award costs.

(2) The Bishop in Council may grant legal assistance on such terms and conditions as it determines.

43. *Proceedings of the Board not affected by vacancy or certain defects*  
An act or proceeding of the Board is not invalid by reason only of—

- (a) a vacancy in its membership or the panel; or
- (b) a defect in the nomination or appointment of a member of the panel or the Board.

PART 6—REFERENCE OF MATTERS TO THE BOARD

44. *PSC may refer questions to the Board*

(1) After an investigation under Part 4 or a corresponding provision of an ordinance of a diocese in another State or a Territory, the PSC or an equivalent body may refer to the Board, or an equivalent body of another diocese the question—

- (a) of the fitness of a Church worker to hold a particular office, licence or position of responsibility in the Church or to be, or to remain, in Holy Orders, or in the employment or engagement of a Church body; or
- (b) whether, in the exercise of a Church worker's ministry or engagement, or in the performance of any function, the Church worker should be subject to conditions.

(2) A question under subsection (1) must be referred to the secretary of the Board in a written report of the PSC's investigation signed by the Director or a member of the PSC.

45. *Convening of the Board*

(1) Where a question has been referred to the Board under section 44, the President or Deputy President must as soon as possible determine the membership of the Board for the purpose of the reference and convene a sitting of the Board for the purpose of giving directions.

(2) A person or body appearing or represented before the Board must comply with the Rules of the Board and any directions given by the Board.

46. *Documents and relevant material to be delivered to the Board*

(1) Within 14 days after the reference of a matter to the Board, or within 14 days after a document or material comes into existence, whichever is the latest, the referring body must cause the document or material to be delivered to the secretary of the Board.

(2) The referring body, as soon as practicable after delivering the report referred to in section 44 to the secretary of the Board, must cause a signed copy of the report to be delivered to the respondent.

47. *Board may give directions*

(1) The Board may at any time, and from time to time, give directions—

- (a) as to the inspection by, and supply of, copies to the respondent or any other person of the documents and material relevant to the reference;

(b) as to the conduct of its inquiry into the reference.

(2) The Board may, at any time and from time to time, give directions as to any further inquiries or investigation it requires to be carried out for the purposes of the reference.

48. *Board to deal with reference expeditiously*

(1) The Board must deal with each reference as expeditiously as possible.

(2) The Board may proceed with the determination of a reference despite that there may be mediation or conciliation proceedings relating to the subject matter of the reference being conducted by or at the direction of the referring body and despite that there may be criminal or other proceedings being taken against the respondent or another person.

49. *Sittings of the Board*

The place and time of sittings of the Board comprising two or more members is to be determined by the presiding member, and a sitting of the Board with one member only is to be determined by that member.

50. *Notice of sittings*

(1) Subject to subsection (2), the Board must give reasonable notice of the time and place of a sitting to the Director, the respondent, and such other persons as the Board considers have a proper interest in the matter.

(2) The Board is not obliged to give notice of a sitting to a person whose whereabouts cannot, after reasonable enquiries, be ascertained.

51. *Open sittings*

(1) Subject to subsection (2), a sitting of the Board on a reference is an open sitting.

(2) The Board has an absolute discretion—

(a) to direct that no person other than—

(i) the respondent and any person representing the respondent in the proceedings;

(ii) witnesses or persons making submissions (while giving evidence or making those submissions);

(iii) officers of the Board or persons assisting the Board;

(iv) members of, or persons appointed by, the referring body—

be present in the room while the Board is sitting;

(b) to direct that a particular person (other than a person referred to in paragraph (a)) not be present at the sitting.



52. *Proceedings*

In any proceedings before the Board—

- (a) the referring body and any person may be represented by a legal practitioner or, with leave of the Board, by any person;
- (b) the referring body or its appointed representative must do all it can to assist the Board and must carry out any directions of the Board.
- (c) the Board—
  - (i) must give the referring body and the respondent a reasonable opportunity to call evidence, to examine or cross-examine and to make submissions to the Board; and
  - (ii) must give any person to whom notice of proceedings was given or who satisfies the Board that he or she has a proper interest in the matter a reasonable opportunity to make submissions to the Board.

53. *Medical etc examination*

- (1) The Board may require a respondent to submit within a specified time to a medical, psychiatric or psychological examination by a person approved by the Board, the cost of which must be met from funds of the Bishop in Council.
- (2) A copy of the report of an examination referred to in subsection (1) must be provided to the respondent and the Board.

54. *Board not to inquire into certain matters*

The Board must not, in the course of inquiring into a question—

- (a) inquire into any matter that is or has been the subject of a formal investigation or enquiry conducted—
  - (i) under any provision of the National Constitution;
  - (ii) under a Canon of General Synod or a canon or ordinance of another diocese relating to the discipline of clergy or Church workers by a board of enquiry, tribunal or other body; or
  - (iii) with the authority of the bishop of another diocese resulting in a formal report to the bishop with findings and which concluded, or was commenced, before the date on which any part of this Act comes into effect—

but, if it considers it in the interests of justice to do so, may take into account the finding of any such formal investigation or inquiry.

- (b) inquire into, make findings in relation to, or take into account, any alleged breach of—

- (i) faith of the Church, including the obligation to hold the faith;
- (ii) ritual of the Church, including the rites according to the use of the Church and the obligation to abide by such use;
- (iii) ceremonial of the Church, including ceremonial according to the use of the Church and the obligation to abide by such use.

*55. Absence of person affected by determination of the Board*

The Board may make a determination in any proceedings in the absence of a person who is, or was, a Church worker affected by the determination if satisfied that reasonable efforts have been made to give that person an opportunity to appear.

*56. Determinations*

(1) In making any determination, the Board must take into account—

- (a) the conduct of the Church worker as it finds it to have been;
- (b) in the material before the Board, any other fact or circumstance relevant to the determination of the question or questions before it; and
- (c) any failure of the Church worker to comply with a provision of this Act or with a direction of the Board.

(2) If, after investigating the question or questions referred to it about a Church worker, the Board is satisfied that—

- (a) the Church worker is unfit, whether temporarily or permanently, at that time or in the future to hold a particular or any office, licence or position of responsibility in the Church or to be or remain in Holy Orders or in the engagement of a Church body; or
- (b) in the exercise of a Church worker's ministry or engagement in the performance of any function, the Church worker should be subject to certain conditions or restrictions—

the Board may determine accordingly, and may—

- (c) recommend that the Church worker be counselled or supervised;
- (d) recommend that the Church worker be suspended from office or engagement or from performing a specified function for such period as the Board determines;
- (e) recommend to the Church authority that the licence or authority of the Church worker be revoked;
- (f) recommend to the relevant Church authority that the Church worker's contract of engagement (if any) be terminated;

- (g) recommend to the relevant Church authority that the Church worker cease to hold any office or position then held;
- (h) recommend to the relevant Church authority that a prohibition order be made in terms specified by the Board;
- (i) recommend to the relevant Church authority that the Church worker's holding of an office or position or engagement or performance of the function, as the case may be, be subject to such condition or restrictions as the Board may specify;
- (j) recommend that the operation of a determination be suspended for such period, and upon such conditions, as the Board sees fit;
- (k) recommend that the Church worker, if a member of the clergy, be deposed from Holy Orders;
- (l) make such other recommendation as the Board sees fit<sup>2</sup>.

*57. Board to give reasons for a determination*

The Board must give reasons for its determination, other than by way of directions in the course of an inquiry, unless the determination is made with the consent of the respondent.

*58. Church authority may give effect to a recommendation of the Board*

A relevant Church authority to which a recommendation under this Act or a recommendation of an equivalent body applies, is empowered to give effect to a recommendation of the Board or an equivalent body having jurisdiction to make a recommendation to the Church authority.

*59. Copies of determinations and recommendations*

The Board must cause a copy of each determination and recommendation to be provided to—

- (a) the relevant Church authority, the Director and the PSC; and
- (b) the respondent—

and cause relevant details to be forwarded for entry into the National Register but, in the case of a reviewable decision within the meaning of Part 7, not until—

- (c) the time for lodging an application for review has passed and no application has been made; or
- (d) if an application for review has been heard and determined, the determination has been made.

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<sup>2</sup> Recommendations that may be made include participation in a conciliation, or mediation, an apology, an admonition, retraining of a specified nature, reparation of a specified nature.

60. *Deposition*

A person who has been deposed from Holy Orders in accordance with this Act or a in accordance with the provision of any ordinance, act, canon, constitution, statute, legislative measure or provision of a canon of the General Synod or the diocesan synod of another diocese of the National Church—

- (a) is incapable of—
  - (i) officiating or acting in any manner as a bishop, priest or deacon of the National Church;
  - (ii) accepting or holding an office in the National Church capable of being held only by a person in Holy Orders;
- (b) ceases to have any right, privilege or advantage attached to the office of bishop, priest or deacon;
- (c) is not capable of holding an office in the National Church that may be held by a lay person without the prior consent of the relevant bishop.

61. *Record of deposition*

(1) The deposition of a person from Holy Orders by the Bishop on the recommendation of the Board or an equivalent body is effected by the execution by the Bishop of an Instrument of Deposition in, or to the effect of, the form in the Schedule.

- (2) The Bishop must—
- (a) register the Instrument of Deposition in the Registry of the Diocese;
  - (b) deliver a copy of the Instrument of Deposition to the bishop of the diocese in which the person the subject of the Instrument was ordained;
  - (c) deliver a copy of the Instrument of Deposition to the Registrar of the Primate;
  - (d) cause relevant details of the Instrument of Deposition to be forwarded for entry into the National Register.

62. *Relevant Church authority to cause details to be registered*

A relevant Church authority to whom this Act applies must cause relevant details to be forwarded for entry into the National Register of any action taken in relation to a Church worker in accordance with a recommendation of the Board.

PART 7—REVIEW

63. *Interpretation*

(1) In this Part—

***reviewable decision*** means a determination or recommendation of the Board that, if acted upon by the relevant Church authority, may have the effect of—

- (a) deposing the respondent from Holy Orders; or
- (b) terminating the respondent's contract or engagement; or
- (c) removing or suspending the capacity of the respondent to gain income as a Church worker;

*reviewer* means a barrister of not less than 10 years standing with experience in administrative law appointed at the Director's request by the President or Vice-President of the Victorian Bar Council.

64. *Application for review*

- (1) A respondent aggrieved by a reviewable decision may make an application to the Director for a review of the decision.
- (2) The application must be made in writing within 30 days after the respondent received a copy of the Board's determination or recommendation under section 56.
- (3) The application may be made on one or more of the following grounds—
  - (a) that a breach of the rules of natural justice occurred in relation to the making of the reviewable decision that materially affected the decision;
  - (b) that procedures required by this Act to be observed in relation to the making of the reviewable decision were not observed and the non-observance materially affected the decision;
  - (c) that the Board did not have jurisdiction to make the reviewable decision;
  - (d) that the reviewable decision was so devoid of any plausible justification that no reasonable Board could have made it;
  - (e) the availability of fresh and compelling evidence that, if available at the time, would have been likely to have materially affected the Board's decision.

65. *The application is a stay of the reviewable decision*

The making of an application for review acts as a stay of the reviewable decision pending determination by the reviewer.

66. *Appointment of Reviewer*

- (1) On receipt of an application for review, the Director must forthwith seek the appointment of a Reviewer.
- (2) Upon appointment of a Reviewer, the Director must ask the Reviewer for an estimate of the fee charged by the Reviewer in making a determination.
- (3) The Director must, on receiving the estimate of the fee, advise the respondent.

- (4) Within 7 days of receiving the Director's advice, the Respondent must pay half of the estimated fee to the Reviewer, or to a person nominated by the Reviewer.
- (5) If the respondent fails to make the payment within 7 days, the application for review lapses.

*67. Conducting the review*

Unless otherwise specified in this Act, the manner in which the review is to be conducted is to be determined by the Reviewer.

*68. Reviewer may make determinations*

- (1) On an application for review of a reviewable decision, the Reviewer may make all or any of the determinations—
  - (a) a determination quashing or setting aside the reviewable decision;
  - (b) a determination referring the matter to which the reviewable decision relates to the Board for further consideration, subject to such directions (including setting time limits for the further consideration and for the steps to be taken in the further consideration) as the Reviewer determines;
  - (c) a determination declaring the rights of the Respondent in relation to any matter to which the reviewable decision relates;
  - (d) a determination directing either the respondent or the Board to do or to refrain from doing, anything that the Reviewer considers necessary to do justice between the parties.
- (2) The Reviewer may make such order as to the costs of the review as is authorised by a protocol as the Reviewer thinks fit.
- (3) The review must be by way of review of the recommendation or determination that is the subject of the review and not by way of a re-hearing of the merits, or a hearing de novo.

*69. Where a Reviewer refers a matter back to the Board*

If a Reviewer refers a matter back to the Board, the Board must—

- (a) determine to take no further notice in respect of the matter; or
- (b) deal with the matter in accordance with Part 5 in accordance with such directions or recommendations as the Reviewer makes in the determination; or
- (c) deal with the matter in accordance with Part 5 applying such of the provision of Part 5 as, in the discretion of the Board and in accordance with the Reviewer's determination, the Board sees fit.

PART 8—GENERAL

70. *Church authority may take action under other powers*

Nothing in this Act affects the power of a Church authority to take any action against a respondent otherwise than under this Act.

71. *Indemnity*

The Gippsland corporation indemnifies the members of the PSC, the Director and prescribed persons for any act or omission by a member, the Director or a prescribed person in good faith and in the exercise or purported exercise of powers or functions, or in the discharge or purported discharge of functions under this Act.

72. *Regulations*

The Bishop in Council may make regulations not inconsistent with this Act prescribing any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act and may amend or repeal any regulations made under this Act.

PART 9—TRANSITIONAL

73. *Power and Trust in the Church*

The *Protocol for responding to abuse and harassment within the Church* as revised by Synod on 18 May 2013 continues to apply to a complaint or information received made before the day on which Part 2 of this Act comes into operation and is to be dealt with under that Protocol.

74. *Interim Protocols*

A provision of the *Protocol for responding to abuse and harassment within the Church*, to the extent that it is not inconsistent with the provisions of this Act, continues in force until it is repealed by regulations made under this Act.

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THE SCHEDULE

To.....

I,..... Bishop of Gippsland do by these presents hereby depose you from Holy Orders (particulars of which are set out below) in accordance with the recommendation of the Professional Standards Board of the Diocese of Gippsland.

PARTICULARS OF HOLY ORDERS			
FULL NAME AND ADDRESS			
	ORDAINING BISHOP	PLACE	DATE
ORDINATION AS DEACON			
ORDINATION AS PRIEST			
CONSECRATION AS BISHOP			

DATED:

SEALED: