

**PROFESSIONAL STANDARDS STATUTE 2021**

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A STATUTE RELATING TO PROFESSIONAL STANDARDS WITHIN THE CHURCH, AND FOR OTHER PURPOSES

**PART 1 - PRELIMINARY**

- 1     **Short title**
- 1.1   This Statute may be cited as the Professional Standards Statute 2021.
- 1.2   This Statute will take effect upon assent being given to the Clergy Discipline Statute.
- 1.3   The Professional Standards Statute 2015 is repealed.
- 2     **Application**
- 2.1   This Statute applies to any person in the Diocese who is a Church worker or a Church volunteer.
- 2.2   This Statute applies to an agency worker or school worker who:
- (a)   agrees to be bound by this Statute by a declaration, with the consent of their employer;
- (b)   is employed or engaged under a contract or some other instrument containing a provision which requires the person to be bound by this Statute; or
- (c)   agrees, subject to the consent of their employer, after a complaint is made or a matter is raised, to permit the procedure under this Statute to be adopted and the PSC has consented in writing to the submission of the complaint to it,
- and in such a case, any reference to ‘Church worker’ in this Statute will be deemed to include that agency worker or school worker.
- 3     **Definitions**
- 3.1   In this Statute, unless the context otherwise requires:
- abuse** means bullying, emotional abuse, harassment, physical abuse, sexual abuse, spiritual abuse, financial abuse or child abuse;
- agency worker** means a person employed or engaged by, or holding a position or performing a function for, a Church agency, whether for payment or in a voluntary capacity, with actual or apparent authority of the relevant Church agency;
- allied ministry** means ministry in a Church agency or other institution or organisation, including a university, school, hospital, correctional facility, detention centre, industrial workplace, the Australian Defence Force or field of ministry other than a parish;
- Archbishop** means the Archbishop of the Diocese elected in accordance with the Archbishop's Statute, or the Administrator acting in the absence of the Archbishop;
- Board** means the Professional Standards Board established under Part 4.3;
- breach of professional standards** means:
- (a)   abuse;
- (b)   any breach of the duty to report a matter referred to in section 11 of this Statute;
- (c)   wilful or reckless failure to comply with a condition imposed by a Church authority under Part 5 of this Statute;
- (d)   wilful or reckless failure to comply with an undertaking given to the PSC, Board or a Church authority pursuant to this Statute; or
- (e)   wilful, reckless or negligent failure of a Church worker to act or act appropriately in relation to information or a complaint of breach of professional standards involving another Church worker or Church volunteer in circumstances where there was a duty or requirement to act on the part of that Church worker,
- (f)   wilful or reckless failure to comply with the Safe Ministry to Children Canon 2017 or any policy or code of conduct made pursuant to that Canon in force at the time of the complaint which, if established, would call into question:

- (i) the fitness of a person, whether temporarily or permanently, now or in the future to hold a particular or any role, office, licence or position in the Church or in the employment of a Church entity; or
- (ii) whether, in the exercise of a person's role, office, licence or position, or in the performance of any function, that person should be subject to certain conditions or restrictions;

but excludes for the purposes of this Statute any breach of faith, ritual or ceremonial;

**bullying** means repeated behaviour directed to a person or persons which a reasonable person would consider:

- (a) having regard to all the circumstances, would victimise, humiliate, undermine or threaten the person or persons; and
- (b) is likely to pose a real risk to the health and safety of the person or persons;

**ceremonial** includes ceremonial according to the use of this Church, and also the obligation to abide by such use;

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

**child abuse** means

- (a) the following conduct in relation to a child:
  - (i) bullying;
  - (ii) emotional abuse;
  - (iii) neglect;
  - (iv) physical abuse;
  - (v) sexual assault, sexual exploitation, sexual harassment or sexually inappropriate behaviour;
  - (vi) spiritual abuse;
  - (vii) grooming;
  - (viii) a child abuse reporting offence; or
  - (ix) failure without reasonable excuse to report child abuse; or
  - (x) image-based abuse;
- (b) possessing, producing or distributing child exploitation material in circumstances that have been found to constitute, or may constitute, a criminal offence; however done, including by or through the use of the internet, electronic means and other like technology.

**child exploitation material** means material that depicts a person who is or appears to be a child:

- (a) engaging 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. Child exploitation material can include any film, printed matter, electronic data, computer image or any other depiction;

**child abuse reporting offence** means a criminal offence against the law of the Commonwealth, a State or Territory, or against the law of another country which is equivalent to a criminal offence against the law of the Commonwealth, a State or a Territory, involving the failure by a person to report child abuse;

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

**Church agency** means any separately incorporated entity of the Church in the Diocese, which has been established by the Synod, The Perth Diocesan Trustees or the Diocesan Council and includes all Church schools;

**Church authority** means the Archbishop or a person or entity having administrative authority of or in a Church entity to licence, appoint, authorise, dismiss or suspend a Church worker or Church volunteer;

**Church entity** means an unincorporated entity including a committee, commission, a parish or a parish council in the Diocese, the Cathedral or Chapter of the Cathedral, that exercises ministry within, or on behalf of, the Church with the actual or apparent authority of the Church;

**Church school** means a school or other educational institution within the meaning of the section 1(1)(f) of the Constitution Act of the Diocese of Perth 1871 as well as the Provincial schools within the Diocese, which are affiliated with the Church;

**Church volunteer** means a person aged 18 or more years who is not a Church worker but who:

- (a) holds a voluntary role, office or position in a congregation or parish or in the Cathedral; or
- (b) holds otherwise any specific voluntary role, office or position in the Diocese with the actual or apparent authority of the Church;

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

- (a) a member of the clergy (including the Dean of the Cathedral) whether or not holding the Archbishop's licence or permission to officiate;
- (b) an ordination candidate;
- (c) a church warden or parish council member;
- (d) a treasurer of a parish;
- (e) employed or engaged by a Church authority or Church entity; or
- (f) holding a position or performing a function with the actual or apparent authority of a Church authority or Church entity,

but excludes the Archbishop;

**clergy or member of the clergy** means a person in Holy Orders ordained in this Church or any other church in communion with this Church;

**Clergy Discipline Statute** means the Clergy Discipline Statute 2021;

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

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

**complaint** means an allegation of a breach of professional standards against any person who is or was a Church worker or Church volunteer, including conduct:

- (a) outside the Diocese alleged to have been engaged in by a person to whom this Statute applies; and  
 (b) within the Diocese wherever that respondent may reside at the date of the complaint;
- conduct** means an act, an omission to perform an act, a state of affairs, refraining (otherwise than inadvertently) from doing an act, refusing to do any act, or making it known that an act will not be done and includes the use of electronic communication;
- Conduct Committee** means the conduct committee established by the Clergy Discipline Statute;
- Constitution** means The Constitution of the Anglican Church of Australia;
- delegate** means a person sent or authorised to represent others and includes:
- (a) a casual or contracted employee of the Diocese; and  
 (b) an investigator;
- Diocesan Council** means the body constituted by the Diocesan Council Statute 2016;
- Diocesan Tribunal** means the tribunal established by the Clergy Discipline Statute and section 53 of the Constitution;
- Director** means the Director of Professional Standards appointed under Part 4.2 and includes an Acting Director of Professional Standards;
- electronic communication**
- (a) means a communication by electronic means; and  
 (b) without limiting paragraph (a), includes a communication by any of these means —  
 (i) email;  
 (ii) the internet;  
 (iii) facsimile;  
 (iv) telephone, including mobile telephone;  
 (v) radio; or  
 (vi) television;
- emotional abuse** means:
- (a) subjecting a person to excessive and repeated personal criticism;  
 (b) ridiculing a person, including the use of insulting or derogatory terms to refer to that person;  
 (c) threatening or intimidating a person;  
 (d) ignoring a person openly and pointedly;  
 (e) behaving in a hostile manner or in any way that could reasonably result in another person feeling isolated or rejected;  
 or  
 (f) any other act or omission in relation to a person,  
 which has caused, or is likely to cause, physical or mental harm including self-harm, or in the case of a child which has caused the child to suffer, or is likely to cause the child to suffer, significant harm to his or her wellbeing or development;
- equivalent body** means a body of another diocese 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 that diocese;
- faith** includes any obligation to hold the faith;
- financial abuse** means the abuse of a position of trust that involves
- (a) removing or interfering with a person's access to money or property,  
 (b) manipulating a person's financial or testamentary decisions, or  
 (c) using a person's money or property without consent or authority;
- grooming** means conduct deliberately undertaken with the aim of engaging and influencing a person for the purpose of sexual activity;
- harassment** means unwelcome conduct, whether intended or not, in relation to a person where the person reasonably feels in all circumstances offended, belittled or threatened or which has caused, or is likely to cause physical or mental harm including self-harm;
- Holy Orders** has the meaning contained in section 14 of The Constitution Act of the Diocese of Perth 1871;
- Image-based abuse** means taking, distributing or threatening to distribute intimate, nude or sexual images of another person in circumstances that have been found to constitute, or may constitute, a criminal offence.
- Information** means information of whatever nature and from whatever source relating to:
- (a) alleged conduct of a Church worker or Church volunteer wherever or whenever occurring involving sexual abuse or child abuse;  
 (b) alleged inappropriate or unreasonable conduct of a Church worker who had knowledge of conduct of another Church worker or Church volunteer involving sexual abuse or child abuse; or  
 (c) an alleged process failure;
- material** includes:
- (a) any object, picture, film, written or printed matter, data or other thing; and  
 (b) anything from which text, picture, sound or data can be produced or reproduced, with or without the aid of anything else;
- ministry** means ordained ministry or lay ministry authorised under the Authorised Lay Ministry Canon 1992 (No 17, 1992) Adoption Statute 1992 or an equivalent statute of another diocese, as the case may be;
- national register** means the national register established pursuant to the National Register Canon 2007 of the General Synod of the Church or any canon prescribed by General Synod in substitution for that canon;
- neglect** means the neglect of a child which causes the child to suffer, or is likely to cause the child to suffer, significant harm to his or her wellbeing or development;
- physical abuse** means any intentional or reckless act or use of force causing injury to, or involving unwelcome physical contact with, another person but does not include lawful discipline by a parent or guardian;

**policy** means any protocol or policy approved from time to time by the Archbishop or Diocesan Council under Part 2;

**prescribed information** means for each complaint or matter arising under this Statute or any policy approved under it:

- (a) the names of the complainant and the respondent;
- (b) the contents of the complaint if in writing;
- (c) any notes, correspondence, reports, statements or other documents created, sent or received;
- (d) any determination of the PSC or the Board, as the case may be;
- (e) any decision of the Church authority and correspondence in connection with that decision; and
- (f) any other information of a kind prescribed by resolution of the Diocesan Council;

**prescribed person** means:

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

**process failure** means the failure by a Church entity or Church authority to deal with or to investigate matters involving:

- (a) a breach of professional standards; or
- (b) alleged inappropriate or unreasonable conduct of a Church worker who had knowledge of conduct of another Church worker or Church volunteer constituting sexual abuse or child abuse,

in a reasonable or timely manner;

**Professional Standards Committee** or **PSC** means the Professional Standards Committee established under Part 4.1;

**prohibition order** means an order prohibiting a Church worker or other person subject to this Statute from holding a specified position or office in or being employed by a Church entity 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 entity;

**Province** or **Provincial** means the Anglican Province of Western Australia;

**referring body** means the PSC or an equivalent body which refers a question or questions to the Board;

**respondent** means a Church worker or Church volunteer against whom a complaint is made and who is not deceased;

**reviewable decision** means a determination or recommendation of the Board which, 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 of employment, or removing the capacity of the respondent to gain income as a Church worker;

**Reviewer** means a current or former:

- (a) Supreme Court or District Court Judge; or
- (b) Senior Counsel, appointed by the Chancellor;

**ritual** includes rites according to the use of this Church, and also the obligation to abide by such use;

**school worker** means a person employed or engaged by, or holding a position or performing a function for, a Church school, whether for payment or in a voluntary capacity, with actual or apparent authority of the relevant Church school;

**sexual abuse** means sexual assault, sexual exploitation, sexual harassment or sexually inappropriate behaviour in relation to a child or adult, and in relation to a child includes the use of a child by another person for his or her own sexual stimulation or gratification or for that of others;

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

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

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

**spiritual abuse** means the mistreatment of a person by actions or threats directed specifically to that person and justified by appeal to God, faith or religion, which mistreatment has caused, or is likely to cause, physical or mental harm including self-harm; and

**worshipping agreement** means an agreement between a person, a relevant Church authority and the Director regulating the manner in which that person has entry and access to the premises and activities of the Church either generally or in a specified location or circumstances.

#### 4 **Overriding purpose of Statute**

4.1 The overriding purpose of this Statute and of any policy made under this Statute, in their application to any complaint under this Statute, is:

- (a) to respond to survivors of abuse by a Church worker or Church volunteer;
- (b) to facilitate the just, expedient and efficient resolution of the real issues in the complaint in the best interests of all parties; and
- (c) to regulate fitness for ministry or service, to uphold standards in the Church and for the protection of the community.

#### 5 **Overriding purpose to be given effect to**

5.1 Each of the PSC and the Board must seek to give effect to the overriding purpose when it exercises any power given to it by this Statute or by any policy and when it interprets any provision of this Statute or of any such policy.

#### 6 **Agreements and arrangements with another diocese**

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

## PART 2 – POLICIES AND CODE OF CONDUCT

### 7 **Diocesan Council may approve policies**

- 7.1 The Diocesan Council may from time to time consider and approve one or more policies for implementation in relation to the matters which are the subject of this Statute.
- 7.2 The policies may include provisions or procedures for:
- (a) receiving a complaint;
  - (b) the appointment, role and function of professional support persons and carers for the complainant, any survivor of alleged abuse or the respondent;
  - (c) informing a complainant and any survivor of alleged abuse and a respondent of rights, remedies and relevant procedures available to them under the Statute or policies;
  - (d) assisting or supporting, as appropriate, any person affected by alleged conduct the subject of a complaint;
  - (e) an explanation of the processes for investigating and dealing with a complaint;
  - (f) dealing fairly with each party to a complaint;
  - (g) providing funding to assist respondents and/or complainants to obtain relevant legal advice;
  - (h) referral to mediation and conciliation in appropriate circumstances;
  - (i) dealing with alleged process failure;
  - (j) regular information, reports, advice and recommendations to the Archbishop and any other relevant Church authority; and
  - (k) working, where necessary, with law enforcement, prosecution or child protection authorities of the States and Territories and of the Commonwealth of Australia.
- 7.3 A policy may offer a process by which a Church authority offers redress to a survivor of abuse by a Church worker or Church volunteer.

### 8 **Diocesan Council may approve code of conduct**

- 8.1 The Diocesan Council may from time to time consider and approve a code or codes of conduct for observance by a Church worker or a Church volunteer.
- 8.2 The code will set out standards of conduct expected of a Church worker or a Church volunteer and is relevant in determining whether the conduct of a person renders them unfit to hold a role, office or position either subject to any condition or restriction at all.

### 9 **Diocesan Council may promote policies and codes of conduct**

- 9.1 The Diocesan Council through the PSC and by such other means as may be considered appropriate must take such steps as are necessary or desirable to promote the knowledge, understanding and observance in this Church of any policies and codes of conduct.

## PART 3 – DUTIES OF CHURCH WORKERS AND VOLUNTEERS

### 10 **Duty to know policies and code of conduct**

- 10.1 Church workers and Church volunteers must familiarise themselves with each policy and code of conduct that relates to them.

### 11 **Duty to report certain matters**

- 11.1 If any person to whom this Statute applies or a Church authority believes on reasonable grounds that a person has suffered harm or is at risk of harm as a result of abuse by another person to whom this Statute applies and has no reason to believe that the Director or a member of the PSC is aware of those facts, the first mentioned person to whom this Statute applies or Church authority must, as soon as possible, report the matter to the Director or to a member of the PSC.
- 11.2 This section does not affect the operation of the Canon Concerning Confessions 1989 of General Synod or any other canon or legislative instrument relating to confessions in force in the Diocese.
- 11.3 Any Church worker or Church volunteer who has been charged in any jurisdiction in Australia or elsewhere with an offence relating to sexual abuse or child abuse, whether committed within or outside the Diocese, must forthwith notify the Director, giving particulars of the charge.

### 12 **Duties in respect of a complaint**

- 12.1 A Church worker or Church volunteer respondent must, subject to section 12.2:
- (a) comply with a requirement of the PSC to meet on reasonable notice with an investigator to answer questions in relation to a complaint;
  - (b) comply with a requirement of the PSC to provide a verified detailed report within a reasonable time;
  - (c) truthfully answer any question put by or on behalf of the PSC or the Board in the exercise of powers conferred by this Statute;
  - (d) not mislead the Director or the PSC or the Board or a member or delegate of any of them;
  - (e) not unreasonably delay or obstruct the Director or the PSC or the Board or a member or delegate of any of them in the exercise of powers conferred by this Statute; and
  - (f) attend a mediation, conciliation, neutral evaluation or other dispute resolution meeting arranged by the Director in relation to a complaint.
- 12.2 If a respondent declines to answer a question on the grounds that the answer might tend to incriminate them, a written record must be made of the question and of the grounds of refusal.

### 13 **Duty to comply with an undertaking or direction**

- 13.1 A Church worker or Church volunteer respondent must:
- (a) comply with any undertaking given to the PSC, the Board or a Church authority; and

- (b) comply with a direction made by a Church authority to give effect to a recommendation of the PSC or the Board (as the case may be) or any permitted variation or modification of that recommendation.

**14 Failure to comply**

- 14.1 Failure of a respondent to comply with an undertaking or direction constitutes a breach of this Statute.  
 14.2 The PSC may institute proceedings forthwith in the Diocesan Tribunal in respect of any breach of this Statute.  
 14.3 A failure to comply with any provision of this Statute is a relevant factor in determining the fitness or otherwise of the Church worker or Church volunteer for any role, office or position.

**PART 4 – THE STRUCTURE OF PROFESSIONAL STANDARDS GOVERNANCE**

**15 Professional Standards Committee, Director of Professional Standards, Professional Standards Board**

- 15.1 There is to be a:
- (a) Professional Standards Committee constituted and appointed in accordance with Part 4.1;
  - (b) Director of Professional Standards appointed in accordance with Part 4.2; and
  - (c) Professional Standards Board constituted and appointed in accordance with Part 4.3.

**PART 4.1 - PROFESSIONAL STANDARDS COMMITTEE**

**16 Appointment of members of PSC**

- 16.1 The members of the PSC are to be appointed by Diocesan Council and will hold office on such terms and conditions and for such term of office as may be determined from time to time by the Archbishop or in accordance with any policy.

**17 Membership of PSC**

- 17.1 The PSC must have at least three (3) members including the chair.  
 17.2 The membership of the PSC must comprise collectively and, as far as it is reasonably practicable, provide experience and appropriate professional qualifications in:
- (a) law;
  - (b) ordained ministry; and
  - (c) child protection, human resources, pastoral ministry, investigations, psychology, psychiatry, social work, education or ethics.
- 17.3 So far as it is reasonably practicable, the PSC must:
- (a) include at least one (1) person who is not a member of this Church; and
  - (b) be composed equally of men and women,
- each of whom agrees in acting as a member of the PSC to abide by the provisions of this Statute.

**18 Chair**

- 18.1 The chair of the PSC will be appointed on such terms and conditions as may be determined from time to time by the Archbishop or in accordance with any regulations or policies of the Diocesan Council.

**19 Procedures of PSC**

- 19.1 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 electronic communication.  
 19.2 Subject to the relevant Diocesan policies and to this Statute, the procedures of the PSC will be as determined from time to time by the PSC.  
 19.3 A majority of the members constitutes a quorum.  
 19.4 The PSC must act in all things as expeditiously as possible.

**20 Acts and proceedings of PSC validated**

- 20.1 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.

**21 PSC may be an equivalent body of another diocese**

- 21.1 The members of the PSC may be drawn from or constitute an equivalent body of another diocese, either generally or for a particular case or matter.

**22 Functions of PSC**

- 22.1 Subject to the provisions of this Statute, the PSC has the following powers and duties:
- (a) to implement this Statute and any policy to the extent that any policy is not inconsistent with this Statute;
  - (b) to receive a complaint against a person to whom this Statute applies and where appropriate, cause the complaint to be investigated in a timely and appropriate manner;
  - (c) to determine whether the complaint should be dealt with pursuant to this Statute or in accordance with the Clergy Discipline Statute;
  - (d) to review and monitor the work of the Director under this Statute;
  - (e) to appoint suitable persons to fulfil the several roles required to implement any policy in each particular case;
  - (f) where appropriate, to arrange for the conciliation or mediation of any complaint;
  - (g) where appropriate, to recommend to the Archbishop any changes to any policy or other Church processes, structures or education programs that would reduce the risk of abuse in the Diocese;
  - (h) subject to any limit imposed by the Archbishop, to authorise such expenditure on behalf of the Diocese or the Church entity as may be necessary to implement, in a particular case, the policy and the provisions of this Statute;
  - (i) to advise any relevant Church authority or Church entity of the financial or other needs of a person affected by alleged abuse and of any possible or actual legal proceedings against such Church entity or Church authority arising out of the alleged abuse by a Church worker and how a parish or congregation may best be supported;

- (j) where appropriate or required under any policy, to refer any allegation of a breach of professional standards the subject of a complaint 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 allegation is or may be relevant; and
- (k) to exercise such other powers and functions as are conferred on it by this or any other Statute or by a policy.

#### **PART 4.2 - DIRECTOR OF PROFESSIONAL STANDARDS**

##### **23 Appointment of Director**

- 23.1 The Director is appointed by and holds office on such terms and conditions and for such term of office as may be determined from time to time by the Diocesan Secretary, with the approval of The Perth Diocesan Trustees, or in accordance with the relevant regulations or policies of the Diocesan Council.

##### **24 Appointment of Acting Director**

- 24.1 The Diocesan Secretary with the approval of The Perth Diocesan Trustees, and in consultation with the Director, may appoint an Acting Director of Professional Standards on such terms and conditions as may be determined.
- 24.2 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.
- 24.3 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.

##### **25 Functions of Director**

- 25.1 The Director has the following functions:

- (a) to receive any complaint on behalf of the PSC against any person to whom this Statute applies;
- (b) in his or her discretion to make a complaint against a person to whom this Statute applies;
- (c) to manage the implementation of this Statute and any policy in respect of any complaint;
- (d) to be the executive officer of the PSC;
- (e) to attend meetings of the PSC;
- (f) to provide a central focus in matters involving personal ethics and behaviour including advice about appropriate standards and enforcement;
- (g) to provide or arrange care or treatment of parties to the process of this Statute and any policy;
- (h) to provide input into education and vocational training programs for members of the Diocese, including those involved in managing or providing pastoral care and other community services;
- (i) to provide advice to complainants and persons to whom this Statute applies about the operation of a policy, with particular emphasis on helping those persons in authority to understand and discharge their responsibilities under this Statute and any policy;
- (j) to keep proper records of complaints, decisions, meetings, employment screening details, police checks and of people affected by allegations of abuse;
- (k) to consult and co-operate with Church agencies to promote consistency between them regarding this Statute and any policies;
- (l) in cases of alleged criminal behaviour, to support the complainant in making a report to the Western Australian Police and/or the relevant child protection authorities;
- (m) to report to the PSC on any recommended changes to policy and any other changes to Church processes, structures and education programs that would reduce the risk of abuse in a Diocese;
- (n) such specific functions and duties as may be determined from time to time by the PSC; and
- (o) such other functions and duties as may be prescribed by this or any other Statute or as may be determined by the Archbishop.

- 25.2 The Director must act in all things as expeditiously as possible.

##### **26 Director may have corresponding capacity for another diocese**

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

#### **PART 4.3 - PROFESSIONAL STANDARDS BOARD**

##### **27 Appointment of members to the panel for the Board**

- 27.1 Diocesan Council must appoint a panel of persons to serve as members of the Board as required and to hold office on such terms and conditions and for such term of office as may be determined from time to time by the Diocesan Council or in accordance with any policy.
- 27.2 The President or Deputy President must select members from the panel to constitute the Board in compliance with the requirements of clause 28.

##### **28 Membership of the Board**

- 28.1 The Board must have at least three (3) members including the President or a Deputy President.
- 28.2 The membership of the Board must comprise collectively and, as far as it is reasonably practicable, provide experience and appropriate professional qualifications in:
- (a) law;
  - (b) ordained ministry; and
  - (c) child protection, investigations, social work, psychology, psychiatry, or ethics.
- 28.3 So far as reasonably practicable, the Board must:
- (a) include at least one (1) member of the clergy;
  - (b) be composed equally of men and women; and
  - (c) include two members who are not members of the Church, each of whom agrees in acting as a member of the Board to abide by the provisions of this Statute.

29 **President**

29.1 The President and Deputy President of the Board are appointed by Diocesan Council on such terms and conditions as may be determined from time to time by the Diocesan Council or in accordance with the relevant policies of the Diocesan Council.

30 **Procedures of the Board**

30.1 The Board may meet from time to time as determined by the President or a majority of its members and may conduct its business by electronic communication.

30.2 The Board, separately constituted in accordance with this Part, may sit simultaneously for the purpose of matters referred to it or for conducting separate business of the Board.

30.3 Subject to this Statute and the relevant rules, the practice and procedure of the Board will be as directed by the President.

30.4 A majority of members of the Board present constitutes a quorum.

30.5 The Board must act in all things as expeditiously as possible.

31 **Filling vacancies in the Board**

31.1 Any vacancy in the membership of the Board must be filled by the Diocesan Council or in accordance with any policy.

32 **Secretary to the Board**

32.1 There is to be a secretary to the Board who is appointed by the Board on such terms and conditions as may be determined from time to time by the Board or in accordance with any policy.

32.2 The secretary to the Board may act in a corresponding capacity for another diocese either generally or for a particular case or matter.

33 **How questions are decided by the Board**

33.1 A question before the Board may be decided by a majority of the votes of those present and voting and, in the case of an equality of votes, the opinion of the President will prevail.

34 **Acts and proceedings of the Board validated**

34.1 An act or proceeding of the Board 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 members of the Board, any such act or proceeding is as valid and effectual as if the member had been duly nominated or appointed.

35 **Member of the Board may be an equivalent body**

35.1 The members of the Board may be drawn from or constitute an equivalent body either generally or for a particular case or matter.

36 **Function of the Board in respect of referrals**

36.1 Subject to the provisions of this Statute the function of the Board is to:

- (a) enquire into and determine a question or questions referred to it by the PSC pursuant to section 57.1; and
- (b) to make a determination referred to in section 65.1 and where appropriate to make a recommendation in accordance with the provisions of this Statute.

36.2 (a) The Board must not, in the course of inquiring into any question, inquire into any matter concerning professional standards which is currently, or which has previously been, the subject of any investigation or enquiry conducted:

- (i) under or pursuant to any provision of the Constitution;
- (ii) under or pursuant to a Canon of the General Synod, or a statute or an ordinance of another diocese relating to the professional standards of Church workers; or
- (iii) with the authority of a bishop of a diocese which has resulted, or which may result, in a report to the bishop; except to the extent of any fresh evidence not reasonably available during any previous investigation or enquiry.

(b) An investigation or enquiry referred to in sub-section (a) above does not include a situation where a charge under Part 4 of the Clergy Discipline Statute has been withdrawn or dismissed without being referred to the Diocesan Tribunal.

(c) The Board must not, in the course of inquiring into any question inquire into, make any findings in relation to or take into account any alleged breach of faith, ritual or ceremonial.

## PART 5 - COMPLAINTS

### PART 5.1 – COMPLAINT PROCESSING

37 **Lodgement and Withdrawal of Complaints**

37.1 Any person, including the Director, may refer a matter to the PSC or lodge a complaint with the PSC or the relevant Church authority.

37.2 A complainant may withdraw a complaint at any time before it has been referred to the Board by the PSC.

37.3 A complaint is withdrawn by lodging a copy of the notice of withdrawal at the office of the Director. The notice of withdrawal must be signed by the person or persons who made the complaint.

37.4 If a complaint is withdrawn, no further proceedings may be taken under this Statute in relation to the complaint by the person or persons who made the complaint. However, the withdrawal of a complaint does not prevent another person or other persons from making the same or a different complaint against the person named in a complaint that is withdrawn.

38 **Dealing with Complaints**

38.1 A Church authority that receives a complaint pursuant to section 37.1 must refer that complaint to the PSC in accordance with this Statute and relevant policies made by the Diocesan Council.

38.2 The PSC must act in relation to each complaint it receives in accordance with relevant policies made by the Diocesan Council.

38.3 Where a complaint concerns only conduct which is the subject of the Clergy Discipline Statute, the PSC must refer such complaint to the Conduct Committee.

38.4 The Conduct Committee must, if at any time it discovers that a complaint concerns a breach of professional standards, refer such complaint back to the PSC to be dealt with pursuant to this Statute.



- 38.5 Subject to section 38.6, where a complaint concerns abuse, or a combination of abuse and conduct which is the subject of the Clergy Discipline Statute, the PSC must proceed to deal with the complaint in accordance with this Statute.
- 38.6 If at any time the PSC forms the opinion that conduct which is the subject of the Clergy Discipline Statute may reasonably be separated from a breach of professional standards, it may refer that conduct to the Conduct Committee.
- 39 Form of complaints**
- 39.1 A complaint may be in any form, in writing on paper or by email or facsimile or conveyed verbally.
- 39.2 A complaint must include details of the breach of professional standards on which it is based.
- 39.3 The PSC may choose not to act on an anonymous complaint.
- 40 Further particulars of a complaint**
- 40.1 The PSC may require a complainant to:
- (a) give further details of the complaint; and
  - (b) verify any details of the complaint by statutory declaration or in another manner specified by the Director, before commencing or further investigating a complaint.
- 40.2 A requirement under section 40.1 must be in writing and allow the complainant a reasonable time to comply.
- 41 PSC may refer a complaint to an equivalent body of another diocese**
- 41.1 The PSC may, if it thinks it appropriate to do so, refer a complaint, or the investigation of a complaint, to an equivalent body or bodies.
- 41.2 When the PSC and an equivalent body or equivalent bodies have the power and duty to investigate information concerning the same person to whom this Statute applies and the respective bodies cannot agree on:
- (a) which body will carry out the investigation or any parts of such investigation; or
  - (b) whether a question or questions specified in section 57.1(a) should be referred to the Board or to an equivalent body which has jurisdiction,
- the PSC must refer the disagreement for decision by the Director and the persons acting in a corresponding capacity for every other diocese acting together.
- 41.3 The PSC must act in accordance with the unanimous decision of the persons referred to in section 41.2 or, if such persons cannot agree within a reasonable time of the disagreement being referred, in accordance with the decision of the Primate or a member of the House of Bishops appointed by the Primate, to whom the Director must refer such disagreement.
- 41.4 In all matters affecting the operation of this Statute 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.
- 41.5 In making a decision under section 41.2 the Director will not be bound by the views or instruction of the PSC but will 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.
- 42 PSC may dismiss certain complaints**
- 42.1 The PSC may at any time decline to investigate a complaint or refrain from further investigation and dismiss a complaint if the PSC considers that:
- (a) the complaint does not fall within the provisions of this Statute;
  - (b) the conduct which is the subject matter of the complaint can properly be dealt with by other means;
  - (c) the subject matter of a complaint is under investigation by some other competent person or body or is the subject of legal proceedings;
  - (d) the person making the complaint has failed to provide further details to the Director or to verify the allegations by statutory declaration or otherwise when requested by the Director to do so;
  - (e) the complaint is false, vexatious, misconceived, frivolous or lacking in substance; or
  - (f) there is insufficient reliable evidence to warrant an investigation or further investigation.
- 42.2 When acting pursuant to section 42.1, the PSC may:
- (a) recommend to the Church authority any steps that might reduce or eliminate the risk of abuse either generally by Church workers or in relation to the respondent, including by way of an educational or mentoring program;
  - (b) make a recommendation in accordance with section 47.1 or section 57.2; or
  - (c) make such other recommendation as the PSC considers necessary or desirable.
- 42.3 For the avoidance of doubt, a recommendation pursuant to the preceding subsection is advisory only and not binding on a Church authority.
- 42.4 The PSC may at any time decline to investigate a complaint or refrain from further investigation and dismiss a complaint if, whether or not the PSC forms the opinion referred to in paragraph 42.1, the complaint can properly be dealt with by means other than referral to the Board, consistent with the overriding purpose of this Statute, such as but not limited to:
- (a) accepting a written undertaking or taking other limited action with or without any admission or finding;
  - (b) mediation;
  - (c) conciliation; or
  - (d) neutral evaluation, restorative engagement or other alternative resolution of any dispute associated with the complaint.
- 43 Complainant to be given notice of outcome of complaint and reasons**
- 43.1 If the PSC refrains from further investigation and dismisses a complaint under the preceding section, the Director must give the complainant, the respondent and/or the Church authority a written notice of the outcome, including the reasons for the outcome.

## PART 5.2 – INVESTIGATIONS

- 44 When the PSC is to investigate**
- 44.1 Subject to section 42, the PSC must investigate:

- (a) each complaint and
- (b) the conduct of any person to whom the Statute applies if the PSC has reason to believe that such conduct amounts to a breach of professional standards even though:
  - (i) no complaint has been made;
  - (ii) a complaint is anonymous;
  - (iii) a complaint has been withdrawn; or
  - (iv) the complainant has not given the written consent referred to in section 44.3.

For the avoidance of doubt, the PSC may investigate a complaint where new or fresh material becomes available or where the PSC considers it necessary or desirable to do so, notwithstanding the prior investigation or determination of that complaint.

- 44.2 The Director must on receipt of a complaint or prior to any investigation seek the complainant's written consent to:
- (a) the Director giving notice of the complaint to the respondent;
  - (b) the Director disclosing the identity of the complainant to the respondent (if required);
  - (c) the investigation of the complaint by the PSC;
  - (d) the PSC otherwise dealing with the complaint under this Statute;
  - (e) the hearing and determination of the complaint by the Board, either by hearing or otherwise in accordance with this Statute; and
  - (f) the making of recommendations to the Church authority in accordance with this Statute.
- 44.3 If the complainant (other than the Director) does not give the Director the written consent:
- (a) referred to in section 44.2(b), the Director and the PSC must, subject to any obligation to disclose to a member of the police force, respect the confidentiality of the identity of the complainant;
  - (b) referred to in sections 44.2(a), 44.2(c) or 44.2(d), the PSC is not required to investigate the complaint and otherwise to refer it to the Board; and
  - (c) the PSC or the Director may, but is not obliged to, refrain from further investigation and dismiss the complaint.
- 44.4 The PSC may by instrument in writing delegate, upon such terms and conditions as the PSC may approve, the powers to investigate any person to whom the Statute applies under this section.
- 44.5 The PSC may recommend to the Church authority that the respondent be directed to cease engaging in specified conduct or to attend counselling to prevent a continuation of the circumstances that gave rise to the complaint. Unreasonable failure by the respondent to comply with such a direction may constitute a breach of professional standards for the purposes of this Statute.
- 44.6 In an investigation under section 44.1, the PSC may recommend to the Church authority any steps that might reduce or eliminate the risk of abuse, generally or in relation to the respondent, by way of education or mentoring or such other recommendation as the PSC may consider necessary or desirable.
- 44.7 For the avoidance of doubt, a recommendation pursuant to the preceding section is advisory only and not binding on the Church authority.
- 45 PSC to obtain and provide material to respondent and PSC**
- 45.1 For the purpose of an investigation the PSC or its delegate must obtain such statutory declarations, written statements, recorded conversations, reports, documents and other material as the PSC or its delegate considers necessary or advisable for presentation to the PSC.
- 45.2 In the case of a complaint against a member of the clergy, the Director must provide notice of the complaint to the respondent and must provide copies of the complaint and any statutory declarations, written statements or other materials to the respondent before requiring the respondent to provide an answer in relation to the complaint.
- 45.3 In the case of a complaint other than against a member of the clergy, if the complainant has given the written consent referred to in section 44.2(a), the Director must provide notice of the complaint to the respondent. The Director must also provide to the respondent any other documents or information which the Director has been authorised by the complainant to provide, before requiring the respondent to provide an answer to the complaint.
- 46 Respondent to respond to PSC and comply with undertakings and directions**
- 46.1 The PSC may by notice in writing to a respondent require the respondent:
- (a) to meet on reasonable notice with an investigator to answer questions in relation to a complaint;
  - (b) to provide a detailed report to the PSC within 21 days or such further period as the Director may allow in relation to any matter relevant to the investigation; and
  - (c) to verify the report by statutory declaration or in another manner specified by the PSC.

### **PART 5.3 – SUSPENSION**

- 47 Suspension or other action without prior notice, where unacceptable risk**
- 47.1 If, after receipt of a complaint or a referral or at any time during the progress of investigation of a complaint under this Statute, the Director or the PSC is satisfied that there is an unacceptable risk of harm to any person if the respondent remains in their present office or position of responsibility pending the outcome of further investigation of the complaint, the Director or the PSC may, as the urgency of the matter requires, make a recommendation to the Archbishop or other relevant Church authority that pending the outcome of further investigation, any one or more of the following:
- (a) the respondent be suspended immediately from the duties of any office or position of responsibility held by the respondent, or certain duties;
  - (b) following suspension, the respondent attend counselling, psychological or forensic assessment and, where relevant, treatment or rehabilitation for alcohol or substance abuse;
  - (c) a prohibition order be made against the respondent;

- (d) the respondent be required to enter into a worshipping agreement with the Church authority, failing which he or she be excluded from entry or access to premises or activities of the Church either generally or in a specified location or circumstances; or
- (e) such other action be taken as may be thought fit.

#### 48 **Criminal Charges**

- 48.1 If a Church worker has been charged in any jurisdiction in Australia or elsewhere with an offence relating to sexual abuse or child abuse, whether committed within or outside the Diocese, that person must be suspended from duties of office pending the determination of the charge.
- 48.2 The relevant Church entity must serve on the person a notice of suspension.
- 48.3 Upon service of that notice, the person is deemed to have been suspended pending the outcome of the hearing of the charge.
- 48.4 If a Church worker is found guilty or convicted in any jurisdiction in Australia or elsewhere of a criminal charge relating to sexual abuse or child abuse, whether committed within or outside the Diocese, the Director, the PSC or the Board (as may be relevant at the time) must refer the matter to the Archbishop or other Church authority and recommend to the Archbishop or other Church authority one or more of the following:
  - (a) the licence or authority of the respondent be revoked;
  - (b) the respondent be deposed from Holy Orders;
  - (c) the respondent's contract of employment (if any) be terminated; or
  - (d) the respondent ceases to hold any role, office or position then held.

#### 49 **Respondent and relevant Church entity to be given notice**

- 49.1 As soon as is reasonably practicable after making a recommendation pursuant to the preceding sections or referring the matter to the Board, the PSC must give to the respondent and to the relevant Church entity or Church agency or their representative notice of any recommendation or referral to the Board and provide them with sufficient information about the basis of the recommendation and a reasonable opportunity to respond. Upon receipt of such notice, the respondent or the relevant Church entity or Church agency or their representative may seek to have the recommendation or referral to the Board revoked or withdrawn.

#### 50 **No notice where immediate unacceptable risk**

- 50.1 The provisions of section 49.1 will not apply if the PSC is satisfied that there is an immediate unacceptable risk of harm to any person if the respondent remains in his or her present office or duties.

#### 51 **Standard of proof**

- 51.1 The standard of proof required to prove a breach of professional standards under this Statute is the civil standard, being that of a reasonable satisfaction on the balance of probabilities.
- 51.2 Each of the Board and the Reviewer must scrutinise evidence with greater care if the conduct referred to in the complaint is serious in nature, or there is an inherent unlikelihood of an occurrence as described in the complaint or if there are grave consequences that would flow from a particular finding in relation to the complaint.

#### 52 **Matters to be considered by the Director and PSC before recommending suspension**

- 52.1 Before making a recommendation under this Part, the Director or the PSC (as the case may be) must take into account:
  - (a) the seriousness of the alleged breach of professional standards;
  - (b) the nature of the material to support or negate the allegations;
  - (c) the extent to which any person is at risk of harm;
  - (d) after consultation with the relevant Church entity or its representative, the effect on the respondent, a relevant Church entity and on the Church of acting and of not acting under this Part; and
  - (e) any other allegation of similar conduct previously made to the PSC or to an equivalent body within the previous 10 years;
 and may take into account any other relevant matter.

- 52.2 Before making a recommendation under this Part, the PSC must advise and consult with the respondent and the relevant Church entity or their representative on potential recommendations being considered and provide them with sufficient information about the basis of the potential recommendation and with a reasonable opportunity to respond.

- 52.3 The provisions of section 52.2 do not apply if the PSC is satisfied that there is an immediate unacceptable risk of harm to any person or Church entity if the respondent remains in his or her present office or duties so that action under section 47.1 is required prior to any consultations.

#### 53 **Powers of the Church authority and written statements**

- 53.1 The Church authority to whom a recommendation is made under this Part must and is hereby empowered to give effect to that recommendation of the Director or the PSC.
- 53.2 Subject to section 53.3, the Church authority may release to the public a written statement disclosing their decision on the recommendation received and the steps to be taken or that have been taken pursuant to this section to give effect to it.
- 53.3 The Church authority must ensure that any statement so released is anonymised and redacted so as not to contain any particulars that identify or are likely to lead to the identification of a prescribed person.

#### 54 **Powers under section 53 may be exercised while matter under consideration**

- 54.1 The Archbishop or other Church authority may exercise the powers referred to in section 53 of this Statute, notwithstanding that a recommendation under this Part is under consideration by the Board by the process referred to in this Statute.

#### 55 **Termination of suspension**

- 55.1 A Church authority may set aside a suspension or prohibition order it has made following a recommendation under this Part at any time during its currency.
- 55.2 A Church authority must set aside a suspension or prohibition order it has made following a recommendation under this Part:
  - (a) if the PSC terminates the investigation without referring the matter to the Board;

- (b) upon any direction to that effect given by the Archbishop or other Church authority; or
- (c) upon the Church authority giving effect to a recommendation of the Board or such a recommendation as varied or modified by a Church authority under section 82.

56 **Consequences of suspension, prohibition**

- 56.1 During a suspension or prohibition pursuant to the provisions of this Part or while conduct the subject of a complaint is dealt with under this Statute:
- (a) the respondent must comply with the terms of any prohibition order;
  - (b) the respondent will be ineligible 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; and
  - (d) the respondent will be entitled to whatever stipend, salary, allowances and other benefits that he or she would ordinarily have received and, subject to any other decision of or policy made by Diocesan Council, such entitlements are to be met or reimbursed from funds of the Diocese, the Parish or other Church entity as the case may be ordinarily.

**PART 5.4 – REFERENCE OF A COMPLAINT OR MATTER TO THE BOARD**

57 **PSC may refer certain matters to the Board**

- 57.1 Subject to section 57.2, after the investigation of a complaint or referral in accordance with this Statute, the PSC may refer to the Board, one or more of the following questions:
- (a) whether the conduct being the subject of the complaint would if established call into question:
    - (i) a Church worker's fitness, whether temporarily or permanently, then or in the future to hold a particular role, or any role, office, licence or position in the Church or to be or remain in Holy Orders or in the employment of a Church entity; or
    - (ii) whether in the exercise of a Church worker's role, office, licence or position or in the performance of any function, the Church worker should be subject to certain conditions or restrictions; or
  - (b) whether by reason of alleged abuse or other conduct, the Church worker may not be fit for ministry in the Church either generally or to hold a proposed role, office, licence or position of responsibility in the Church or may be fit subject to certain conditions or restrictions; or
  - (c) whether in the case of a complaint against a Church worker who is deceased, there are plausible grounds for believing the Church worker did commit the alleged abuse set out in the complaint.

57.2 If the respondent admits some or all of the breach of professional standards set out in a complaint, the PSC need not refer to the Board those matters which have been admitted, but may make a recommendation to the Church authority directly.

58 **Written report by PSC**

- 58.1 The PSC must refer the question or questions to the Board by delivering to the President/Secretary of the Board a written report setting out:
- (a) its investigation and opinion;
  - (b) a statement of any allegations of breach of professional standards made against the Church worker signed by a member of the referring body.

58.2 The report must be signed by a member of the referring body.

59 **Complainant may refer dismissal of complaint to the Board**

59.1 If the PSC refrains from further investigation and dismisses a complaint under sections 42.1 or 42.4, the complainant may refer the matter to the Board.

60 **Board to invite submissions from parties**

60.1 In the case of a reference pursuant to section 57.1, as soon as practicable after delivering the report referred to in section 58.1 to the President of the Board, the PSC must cause to be delivered to the respondent and, in the case of a complaint, the complainant, a copy of the report and opinion and notice to the effect that each party may advance written submissions to the Board if they wish to do so.

60.2 In the case of a reference pursuant to section 57.1, the PSC must advise the respondent and the complainant of the rights each has under this Statute and any relevant policies.

60.3 In the case of a reference pursuant to section 59.1, the Board will give notice to the complainant that they may advance written submissions to the Board if they wish to do so.

61 **Documents and materials to be delivered to the Board**

- 61.1 Within 14 days of the reference of a matter to the Board or within 14 days of the document or material coming to existence, whichever is the later:
- (a) in the case of a reference pursuant to section 57.1, the PSC must cause to be delivered to the President of the Board any documents and material relevant to the reference; and
  - (b) in the case of a reference pursuant to section 59.1, the PSC must cause to be delivered to the President of the Board the written notice of the outcome including the reasons for the outcome given by the Director in relation to the decision by the PSC or the Director to dismiss the original complaint.

62 **Board may give directions as to documents and conduct of inquiry**

62.1 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 or material relevant to the reference; and
- (b) the service of any witness statements, summary of proposed evidence, submissions or other documents on which a party may wish to rely; and
- (c) as to the conduct of its inquiry into the matter,

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

**63 Resignation to have no effect**

63.1 If after a complaint is referred to the Board, the respondent resigns from his or her role, office or position, the Board may continue to enquire into and determine the complaint, notwithstanding that resignation.

**64 The role of the PSC on the reference**

64.1 The PSC has the carriage of the matter before the Board and has the following functions:

- (a) to present to the Board:
  - (i) the evidence on which it relies relevant to the reference;
  - (ii) any findings and recommendations it proposes that the Board should make;
  - (iii) any submissions in support; and
- (b) to appear by the Director or other authorised representative at any hearing of the Board to assist the Board in its enquiry into the reference.

**PART 5.5 – DETERMINATION OF COMPLAINT OR MATTER BY THE BOARD**

**65 How the Board is to respond to a reference**

65.1 Where a matter is referred to the Board, the Board must consider the matter and may make any finding on any relevant question of fact, taking into account:

- (a) the final report if any of the investigator including attachments;
- (b) any further material received from the complainant and the respondent;
- (c) any other relevant evidentiary material;
- (d) such report of the PSC as may be submitted;
- (e) any applicable professional standards; and
- (f) the record of any court or tribunal.

65.2 In the event that the respondent has been charged with a criminal offence arising out of the same matter as the matter which has been referred to the Board, the Board may defer its consideration of the matter until the conclusion of the criminal proceedings.

65.3 The Board may adopt the decision of any court or tribunal or equivalent body by way of its determination, without the need for further inquiries or investigation.

**66 Power to order further enquiry**

66.1 Where the Board is satisfied that a complaint which was previously dismissed under section 42.1 or 42.4 requires further investigation, the Board may direct the PSC to undertake further inquiries or a fresh investigation and the PSC must, to the best of its ability, cause such directions to be carried out.

**67 Notification of determination and recommendation**

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

- (a) to the relevant Church authority; and
  - (b) to the respondent; and
- cause relevant details to be forwarded to the Director for entry into the national register.

**68 Powers of the Board satisfied of unfitness**

68.1 Subject to section 69.2, the Board may recommend to the Archbishop any one or more of the following:

- (a) that the respondent be suspended from any role, office or position or from performing any function as the case may be for such period recommended by the Board;
- (b) that the licence or authority of the respondent be revoked;
- (c) that the respondent's contract of employment (if any) be terminated;
- (d) that the respondent ceases to hold any role, office or position then held;
- (e) that a prohibition order be made in terms specified by the Board;
- (f) that the respondent's holding of any role, office or position or the performance of any function as the case may be, will be subject to such conditions or restrictions as the Board may specify;
- (g) that the respondent be required to enter into a worshipping agreement with the Church authority, failing which they be excluded from entry or access to premises or activities of the Church either generally or in a specified location or circumstances;
- (h) that the implementation of a determination be suspended for such period and upon such conditions as specified by the Board;
- (i) that the respondent be counselled;
- (j) that a person be appointed to promote a charge against the respondent before the Diocesan Tribunal;
- (k) that the respondent be deposed from Holy Orders; or
- (l) such other actions as the Board sees fit.

68.2 The Board may further recommend to the Church authority, without binding it, that:

- (a) an apology or other acknowledgement be given to the complainant, survivor or other person affected by the abuse found to have been committed by the respondent; or that
- (b) such other steps of a systemic or process or administrative nature be implemented by the Church authority as may be judged worthwhile to prevent or diminish in future the incidence of abuse and harm to any person.

**69 When the Board must dismiss a complaint**

69.1 If the Board is not satisfied that the respondent committed any alleged breach of professional standards or is satisfied that the complaint is false, vexatious or misconceived, the Board may determine accordingly and must dismiss the complaint.

69.2 If the Board is satisfied that the respondent did commit any of the alleged breach of professional standards but is not satisfied as to any of the matters in paragraphs 57.1(a)(i) or 57.1(a)(ii), the Board may determine accordingly and must take no further action in relation to the complaint.

**70 Board may appoint persons to assist inquiry**

70.1 The Board may, for the purpose of any particular reference, appoint such person or persons, including the Director, to assist it in inquiring into (but not determining) a reference as the Board thinks fit.

**71 Board may seek further information**

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

**72 Where the Board may dismiss a complaint**

72.1 If the Board:

- (a) makes a finding that the respondent did not commit the alleged breach of professional standards; or
  - (b) is not satisfied as to any of the matters referred to in the foregoing sections 57.1(a) and 57.1(b),
- the Board may dismiss the complaint or take no further action in relation to the complaint.

**73 Proceedings of the Board**

73.1 The Board must deal with a complaint or other reference as expeditiously as possible.

73.2 The Board may, as it sees fit, proceed with the determination of a reference or complaint notwithstanding that there may be mediation or conciliation proceedings relating to the subject matter of the reference or complaint being conducted by or at the direction of the referring body and notwithstanding that there may be criminal or other proceedings being taken against the respondent or some other person.

73.3 The place and time of sitting of the Board will be as determined by the President.

73.4 Subject to section 73.5, the Board must give the following persons reasonable notice of the time and place of the sitting of the Board: the Director, the respondent, the subject of any alleged abuse and such authorised persons as the Board believes have a proper interest in the matter.

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

**PART 5.6 – APPLICATION FOR REVIEW OF A BOARD DECISION**

**74 Application for review**

74.1 A respondent who is aggrieved by a reviewable decision may apply to the Director for a review of the decision.

**75 Grounds for review of reviewable decisions**

75.1 Application for review of reviewable decisions may only be made on any one or more of the following grounds:

- (a) that a breach of the rules of natural justice happened in relation to the making of the reviewable decision which materially affected the Board's decision;
- (b) that procedures that were required by this Statute to be observed in relation to the making of the reviewable decision were not observed, and the non-observance materially affected the Board's 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; or
- (e) the availability of fresh and compelling evidence which, if available at the time, would be likely to have materially affected the Board's decision.

**76 Stay of reviewable decisions**

76.1 A Church authority must not give effect to a reviewable decision of the Board until the time for lodging an application for review has passed, and no application has been lodged.

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

76.3 Nothing in this Part affects the power of a Church authority to take any action against a respondent which would be open to the Church authority apart from its powers under this Statute.

76.4 For a reviewable decision, the Board must not cause the relevant details to be forwarded for entry into the national register:

- (a) until the time for lodging an application for review has passed, and no application has been lodged; or
- (b) where an application for review is lodged, then after the application has been heard and determined.

**77 Time limit and form of application for review**

77.1 An application to the Director for review of a reviewable decision must be made within 14 days of the respondent being provided with a copy of the Board's determination and recommendation.

77.2 The application for review must:

- (a) be in writing addressed to the Director; and
- (b) set out the grounds for review.

**78 Costs for review of reviewable decisions**

78.1 On receipt of an application for review, the Director must immediately seek the appointment of a Reviewer.

78.2 Upon appointment of a Reviewer, the Director must ask the Reviewer for the Reviewer's estimate of the fee to be charged by the Reviewer in making a determination under this Part.

78.3 Upon receipt of advice as to the estimated fee, the Director must immediately notify the respondent.

78.4 Within seven (7) days of receipt of the Director's advice, the respondent must pay one-half of the estimated fee to the Reviewer, or to a person nominated by the Reviewer.

78.5 If the respondent fails to make the payment referred to in section 78.4, then the application for review will lapse.

### PART 5.7 – PROCESS OF REVIEW OF A BOARD DECISION

#### 79 **Process of review**

79.1 Any review must be by way of the 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 re-hearing of the facts.

79.2 Subject to section 79.1, the manner in which the review is to be conducted will be determined by the Reviewer.

#### 80 **Determinations of Reviewer**

80.1 On an application for review of a reviewable decision, the Reviewer may make all or any of the following:

- (a) a determination quashing or setting aside the reviewable decision;
- (b) a determination declaring the rights of the respondent in relation to any matter to which the reviewable decision relates;
- (c) 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;

and must cause a copy of the determination or finding to be provided to the Director.

80.2 The Reviewer may make such order as to the costs of the review as the Reviewer thinks fit.

#### 81 **Not used**

### PART 5.8 – IMPLEMENTATION OF RECOMMENDATIONS AND PUBLICATION

#### 82 **Church authority may give effect to recommendation**

82.1 Upon receiving a recommendation under section 57.2 or under section 68.1, the Church authority having considered the recommendation must:

- (a) give effect to that recommendation;
- (b) give effect to any variation or modification of that recommendation, consistent with any facts found by the body making the recommendation, as the Archbishop sees fit insofar as the Archbishop has the power to implement that recommendation, or
- (c) in any case where the Archbishop does not exercise direct authority over the person the subject to the recommendation, refer the recommendation to the appropriate Church agency or Church school.

#### 83 **Publication of decision of the Church authority**

83.1 Subject to section 83.2, the Church authority may release to the public:

- (a) a written statement disclosing their decision on any recommendation received in respect of a complaint and the steps to be taken or that have been taken pursuant to the preceding section to give effect to it; and
- (b) such further material as it may determine with respect to the exoneration of the respondent or any action taken against a Church worker or other person subject to this Statute including the identity of that person.

83.2 The Church authority must ensure that any statement or further material so released is anonymised and redacted so as not to contain any particulars that identify or are likely to lead to the identification of a prescribed person.

#### 84 **Effect of deposition from Holy Orders**

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

- (a) is incapable of officiating or acting in any manner as a bishop, priest or deacon of this Church;
- (b) is incapable of accepting or holding an office in this Church capable of being held only by a person in Holy Orders;
- (c) ceases to have any right, privilege or advantage attached to the office of bishop, priest or deacon;
- (d) must not hold themselves out to be a member of the clergy; and
- (e) cannot, without the prior consent of the Archbishop, hold an office in this Church which may be held by a lay person.

#### 85 **How deposition from Holy Orders effected**

85.1 The deposition of a person from all or any Holy Orders by the Archbishop following the recommendation of the Board must be effected by the execution by the Archbishop of an Instrument of Deposition to that effect.

85.2 The Archbishop must not depose a person from Holy Orders:

- (a) until the time for lodging an application for review has passed and no application has been lodged; or
- (b) where an application for review has been lodged, the Reviewer has not set aside the Board's recommendation.

85.3 The Archbishop must forthwith:

- (a) register the Instrument in the Registry of the Diocese;
- (b) deliver a copy of the Instrument to the Bishop of the Diocese in which the person who is the subject of the Instrument was ordained;
- (c) deliver a copy of the Instrument to the Registrar of the Primate; and
- (d) cause relevant details to be forwarded to the Director for entry into the national register.

### PART 6 – NATIONAL REGISTER

#### 86 **The National Register**

86.1 The Director must enter into the national register all prescribed information in relation to a complaint or matter arising under this Statute or any policy approved under it.

86.2 The Director must keep the prescribed information in the national register confidential, and must not disclose any of it except as authorised under this Statute.

86.3 The national register must be accessible for inspection by the directors of professional standards or other authorised office holders of each participating diocese subject to password protection and to the condition in section 86.4.

86.4 Each person lawfully having access must keep confidential the information in the national register and must not disclose any of it except as authorised under this Statute or under the statute of any participating diocese.

- 86.5 A participating diocese means the Diocese and any other diocese the synod of which has enacted like legislation to this Statute and which by resolution of its diocesan bishop or archbishop commits to a common protocol or policy governing access to and use of information in the register.

#### **PART 7 – CONFIDENTIALITY AND PUBLICATION**

##### **87 Duty of confidentiality**

- 87.1 Subject to the provisions of this Statute, the Director, a member of the PSC, a member of the Board, a Church authority or a person employed or engaged on work related to the affairs of the PSC or the Board must not divulge information that comes to his or her knowledge by virtue of that office or position except:
- (a) in the course of carrying out the duties of that office or position;
  - (b) as may be authorised by or under this Statute or any policy;
  - (c) as may be authorised or required by 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 or the special tribunal;
  - (e) as may be required by law; or
  - (f) to any insurer or insurance broker of a Church body or Church authority where the information may give rise to or be relevant to a claim for indemnity by the Church entity or Church authority against the insurer or is relevant to obtaining or continuing insurance cover.

##### **88 Duty of disclosure**

- 88.1 The PSC must disclose to an equivalent body information in its possession concerning a Church worker or other person subject to this Statute, that is:
- (a) relevant to, or arising during the course of an investigation being undertaken by the PSC where the PSC knows that the Church worker or other person subject to this Statute is residing in the diocese of the equivalent body; or
  - (b) concerning a breach of professional standards alleged to have occurred in the diocese of the equivalent body, and may co-operate with any equivalent body.

##### **89 Board may publish reasons publicly**

- 89.1 The Board may release to the public its reasons for any determination without identifying any relevant parties.

##### **90 PSC to report annually to Archbishop and Diocesan Council**

- 90.1 Without disclosing the identity of any informant, complainant or the respondent, the PSC must report annually to the Archbishop and Diocesan Council on its activities for that calendar year.
- 90.2 The PSC must, in respect of every matter with which it is dealing, report either orally or in writing to the Archbishop with such frequency and as fully as the Archbishop may reasonably require.

#### **PART 8 – INDEMNITY**

##### **91 Indemnification of those with functions under the Statute**

- 91.1 The Perth Diocesan Trustees are hereby authorised, out of church funds, to indemnify:
- (a) the Director and any delegate of the Director;
  - (b) any carer appointed under this Statute or any policy;
  - (c) the members of the PSC and each of them;
  - (d) any delegate of the PSC;
  - (e) the members of the Board and each of them;
  - (f) any person appointed by the Board pursuant to this Statute, including the secretary; and
  - (g) the Church authority or if more than one, each Church authority,
- for any conduct 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 Statute.

#### **PART 9 – TRANSITIONAL PROVISIONS**

##### **92 Interpretation**

- 92.1 In this Part:  
**commencement day** means the day on which Professional Standards Statute 2021 comes into operation.

##### **93 Appointments already made**

- 93.1 Unless otherwise determined by the Archbishop or in accordance with any policy, any appointment to the PSC, the position of Director or to the Board current at the commencement day, is deemed to be an appointment made under this Statute.

##### **94 Complaints already made**

- 94.1 This section applies to a complaint within the meaning of that expression in this Statute if:
- (a) the complaint was made before the commencement day; and
  - (b) the complaint has not been the subject of a determination or recommendation by the Director or the PSC before that day.
- 94.2 On and after the commencement day the complaint is to be dealt with under this Statute.
- ##### **95 Current investigation**
- 95.1 This section applies to an investigation of a complaint that the Director or the PSC has begun but not completed before the commencement day.
- 95.2 On and after the commencement day the investigation is to be conducted in accordance with this Statute.



96 **Breach of professional standards to include conduct before commencement of this Statute**

96.1 For the purposes of the definition of "breach of professional standards" in section 3.1 of this Statute, a reference to abuse or other conduct will be taken to be a reference to abuse or other conduct, whether occurring before or after the commencement day.

**Schedule 1**

TO:

I, \_\_\_\_\_ ARCHBISHOP OF PERTH 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 Perth.

**PARTICULARS OF HOLY ORDERS**

FULL NAME AND ADDRESS:			
	ORDAINING BISHOP	PLACE	DATE
ORDINATION AS DEACON:			
ORDINATION AS PRIEST:			
CONSECRATION AS BISHOP:			

**DATED**