

DIOCESE OF ARMIDALE

PROFESSIONAL STANDARDS ORDINANCE 2017

An Ordinance relating to professional standards for lay Church workers within the Diocese of Armidale, and for other purposes.

PART 1 - PRELIMINARY

1. The *Professional Standards Ordinance 2004* is hereby repealed but such repeal shall not affect the past operation thereof nor anything done or commenced nor any rights, privileges, obligations or liabilities acquired, accrued or incurred thereunder.

2. In this Ordinance, unless the context otherwise requires:

“Bishop” means the Bishop of the Diocese of Armidale;

“Board” means the Professional Standards Board established under Part 7;

“Bullying” means such actions as making derogatory comments about a person, communicating in an abusive manner and such other bullying actions as defined in *Faithfulness in Service* or an equivalent code of conduct adopted by Diocesan Council;

“Chancellor” means the Chancellor of the Diocese of Armidale;

“Child” means anyone under the age of 18;

“Child abuse” means the following conduct in relation to a child:-

- (a) bullying; or
- (b) emotional abuse, or
- (c) harassment; or
- (d) neglect, or
- (e) physical abuse, or
- (f) sexual abuse, or
- (g) spiritual abuse;

“Church” means the Anglican Church of Australia;

“Church authority” means the Bishop or a person or body having administrative authority in a Church body to license, appoint, authorise, dismiss or suspend a lay Church worker;

“Church body” means a parish, a special district, school, a body corporate, organisation or association that exercises ministry within, or on behalf of, the Church;

“Church worker” means a person who is or who at any relevant time was:-

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

“Code of Conduct” means a code of conduct approved from time to time under Part 2 which governs the personal behaviour and the practice of pastoral ministry in the Diocese of Armidale;

“Complainant” means a person who makes a complaint;

“Complaint” means a complaint pursuant to this Ordinance;

“Diocesan Council” means the Diocesan Council of the Diocese of Armidale;

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

“Emotional abuse” means acts or omissions in relation to a child where the child has suffered, or is likely to suffer, emotional harm or lead to serious behavioural or cognitive disorders. It includes subjecting a person to excessive and repeated personal criticism and ridicule and other forms of emotional abuse as defined in *Faithfulness in Service* or an equivalent code of conduct adopted by Diocesan Council;

“Equivalent body” means a body of another Diocese exercising powers, duties or functions equivalent to those of the Professional Standards Committee (see below for definition) 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 lay Church worker, whether temporarily or permanently, now 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 the employment of a Church body, or
- (b) whether, in the exercise of a lay Church worker’s ministry or employment, or in the performance of any function, the lay Church worker should be subject to certain conditions or restrictions;

“Information” means information of whatever nature and from whatever source relating to:-

- (a) alleged conduct of a lay Church worker wherever or whenever occurring involving sexual abuse or sexual misconduct, or
- (b) alleged inappropriate or unreasonable conduct or omission of a Church worker who had knowledge of conduct of another lay Church worker involving sexual abuse or sexual misconduct, or
- (c) an alleged process failure;

“Member of the Clergy” means a person in Holy Orders;

“National Register” means the National Professional Standards Register established by the *National Register Canon 2007* as amended from time to time;

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

“Physical abuse” means the physical assault of a person as defined in *Faithfulness in Service* or an equivalent code of conduct adopted by Diocesan Council but excludes the lawful exercise of discipline by a parent or guardian;

“Process failure” means the failure by a Church body or Church authority prior to this Ordinance coming into effect, or subsequently, to deal appropriately with or to investigate matters referred to in paragraphs (a) or (b) of the definition of information;

“Professional Standards Committee” or **“PSC”** means the Professional Standards Committee established under Part 4;

“Prohibition order” means an order prohibiting a lay Church worker from holding a specified position or office in or being employed by a Church body or Church authority or from carrying out any specified functions in relation to any office or position in the Diocese or in relation to employment by a Church body;

“Protocol” means the protocol approved from time to time by Diocesan Council under Part 3;

“Referring body” means the PSC or an equivalent body which refers a question or questions under sections 38 and 60 to the Board;

“Respondent” means a lay Church worker whose alleged conduct or omission is the subject of information or a complaint;

“Reviewable decision” means a determination or recommendation of the Board which, if acted upon, by the relevant Church authority, may have the effect of terminating the respondent’s contract of employment, or removing or suspending the capacity of the respondent to gain income as a Church worker;

“Sexual abuse” means sexual misconduct in relation to a child as defined in *Faithfulness in Service* or an equivalent code of conduct adopted by Diocesan Council;

“Sexual misconduct” means sexual assault, sexual exploitation or sexual harassment of an adult; and

“Spiritual abuse” means the mistreatment of a person by actions or threats when justified by appeal to God, faith or religion. It includes using a position of spiritual authority to dominate another person or group, using a position of spiritual authority to seek inappropriate deference from others, isolating a person from friends and family members, and using Biblical or religious terminology to justify abuse.

3. For the purposes of this Ordinance:
 - (a) a lay person employed by a Church body; or
 - (b) a lay person holding a position or performing a function with the actual or apparent authority of a Church authority or Church body;will be taken to be engaged by a Church authority.
4. Diocesan Council may enter into such agreements or arrangements as it sees 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 – CODE OF CONDUCT

5. Diocesan Council shall adopt *Faithfulness in Service*, or an equivalent code of conduct, for observance by Church workers in the Diocese.
6. Diocesan Council through the PSC and by such other means as may be considered appropriate shall take such steps as may be necessary or desirable to promote the knowledge, understanding and observance in this Church of any code of conduct applicable in the Diocese.

PART 3 – THE PROTOCOL

7. (1) Diocesan Council shall from time to time consider and approve a protocol for implementation in relation to information and complaints.

(2) The protocol must include:
 - (a) procedures for receiving information and complaints;
 - (b) the appointment, role and function of contact persons;
 - (c) provision for informing complainants and victims of alleged conduct the subject of information or complaints, and respondents, of 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 or complaints;
 - (e) an explanation of the processes for investigating and dealing with information or complaints;
 - (f) provisions 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 and complaints; and
 - (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.
8. Diocesan Council through the PSC and by such other means as it may consider appropriate shall take such steps as may be necessary or desirable to promote

throughout the community a knowledge and understanding of the protocol.

PART 4 – PROFESSIONAL STANDARDS COMMITTEE

9. There shall be a PSC for the Diocese.
10. On the coming into force of this Ordinance at the first Diocesan Council meeting and thereafter at the first Diocesan Council meeting after the first session of every Synod, Diocesan Council shall appoint a person to be the Chairman of the PSC and up to three clergy and three lay people who are resident in the Diocese, not including the Director of Professional Standards who shall be an ex officio member of the PSC, to be members of the PSC.
11. (1) The membership of the PSC shall be constituted so as collectively to provide:
 - (a) experience in law;
 - (b) experience in the ordained ministry; and
 - (c) experience and appropriate professional qualifications in child protection, social work or counselling.

(2) The PSC so far as it is reasonably practicable shall have an equal number of men and women.
12. The office of a member of the PSC shall be declared vacant if the person:
 - (a) dies; or
 - (b) ceases to reside in the Diocese; or
 - (c) resigns their office; or
 - (d) refuses or neglects to act in their office; or
 - (e) becomes in the opinion of the Bishop incapable of acting in their office and is given notice accordingly in writing by the Bishop; or
 - (f) is subject to information or a complaint under this Ordinance or a complaint under the *Clergy Standards and Discipline Ordinance 2017*.
13. (1) The Chairman, working in concert with the Director, shall convene the PSC.

(2) The PSC may meet from time to time as determined by the Chairman or a majority of its members and may conduct its business by telephone or electronic communication.

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

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

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

- (6) The PSC shall act in all things as expeditiously as possible.
14. 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.
15. The Diocese indemnifies any member or delegate of the PSC for any act or omission by the member or delegate or by the PSC in good faith and in the exercise or purported exercise of powers or functions, or in the discharge or purported discharge of duties under this Ordinance.
16. The members of the PSC may constitute an equivalent body, either generally or for a particular case or matter.
17. Subject to the provisions of this Ordinance, a member of the PSC, a Church authority or a person employed or engaged on work related to the affairs of the PSC must not divulge information that comes to his or her knowledge by virtue of that office or position except:
- (a) in the course of carrying out the duties of that office or position;
 - (b) as may be authorised by or under this Ordinance;
 - (c) in any proceedings before a Diocesan tribunal or the Appellate Tribunal;
 - (d) as may be required by law; and
 - (e) 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 body or Church authority against the insurer or is relevant to obtaining or continuing insurance cover.
18. The PSC must disclose to an equivalent body relevant details of information in its possession concerning the alleged conduct of a Church worker:
- (a) which is information that is relevant to, or arising during the course of, an investigation being undertaken by the PSC where the PSC knows that the Church worker is residing in the Diocese of the equivalent body; or
 - (b) which is information concerning conduct alleged to have occurred in the Diocese of the equivalent body;
- and shall co-operate with any equivalent body.
19. (1) Subject to sub-section (2), the PSC may release to the public such material as it may determine with respect to any information.
- (2) In relation to a matter that is the subject of a reference to the Board the PSC shall make public such information concerning the matter as the Board may direct or approve.

20. (1) Without disclosing the identity of any informant, complainant or the respondent, the PSC shall report annually to Diocesan Council on its activities for that calendar year.
- (2) Notwithstanding sub-section (1), the report of the PSC pursuant to that sub-section may identify 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.
- (3) The PSC and the Director shall, in respect of every matter with which they are dealing, report either orally or in writing to the Bishop with such frequency and as fully as the Bishop shall reasonably require.
21. (1) Subject to sub-section (2), the PSC may delegate, upon such terms and conditions as the PSC may approve, any of its powers or functions under this Ordinance to any person.
- (2) The PSC is unable to delegate:
- (a) its powers under sub-section (1);
 - (b) its powers under sections 38 and 41; or
 - (c) the power to refer a matter to the Board.
- (3) A delegation under this section must be made by instrument in writing signed by the Chairman or in the Chairman's absence by another member of the PSC.
22. (1) Subject to the provisions of this Ordinance the PSC has the following powers and duties:
- (a) to implement the protocol to the extent that the protocol is not inconsistent with this Ordinance;
 - (b) to receive information and complaints;
 - (c) to act on information and complaints in accordance with the provisions of this Ordinance, and the protocol to the extent that it is not inconsistent with this Ordinance;
 - (d) to appoint suitable persons to fulfil the several roles required to implement the protocol in each particular case;
 - (e) where appropriate, to arrange for the conciliation or mediation of any complaint;
 - (f) to investigate information in a timely and appropriate manner;
 - (g) where appropriate, to recommend to Diocesan Council any changes to the protocol;
 - (h) subject to any limit imposed by Diocesan Council, to authorise such expenditure on behalf of the Diocese or the Church body as may be necessary

to implement, in a particular case, the protocol and the provisions of this Ordinance;

- (i) to advise 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 such Church body or Church authority arising out of the alleged conduct of a Church worker;
- (j) to refer any information in its possession to a member of a law enforcement, prosecution or child protection authority of a State or Territory or of the Commonwealth of Australia to which the information is or may be relevant; and
- (k) to maintain proper records of all information received and of action taken in relation to such information.

23. (1) To exercise such other powers and functions as are conferred on it by this or any other Ordinance.

(2) The power and duty of the PSC to exercise its functions under this Ordinance arises in respect of:

- (a) conduct wherever it is alleged to have been engaged in by a Church worker resident in the Diocese, or engaged by a Church authority;
- (b) an omission, whenever it is alleged to have occurred, by a Church worker resident in the Diocese, or engaged by a Church authority;
- (c) conduct which is alleged to have occurred within the Diocese wherever the Church worker involved in the alleged conduct may reside; and
- (d) conduct, wherever it is alleged to have been engaged in, or an omission, 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 in the Diocese, or Church property or property held in trust for the benefit of or in connection with the Church or a Church body in the Diocese.

PART 5 – DIRECTOR OF PROFESSIONAL STANDARDS

24. (1) There shall be a Director of Professional Standards.

(2) The Director shall be appointed by and shall hold office in accordance with a resolution of Diocesan Council.

25. The Director shall have the following functions:

- (a) to manage the implementation of the protocol in respect of any information involving examinable conduct and other complaints;

- (b) to conduct, after consultation with the Chairman of the PSC, investigations into examinable conduct and complaints;
 - (c) to report his findings in relation to examinable conduct and complaints and to make recommendations to the PSC concerning these matters;
 - (d) to participate in meetings of the PSC; and
 - (e) to perform such other functions and duties as provided for in this Ordinance or as may be determined by Diocesan Council or the PSC.
26. The Director may act in a corresponding capacity for another Diocese either generally or for a particular case or matter.

PART 6 – EXAMINABLE CONDUCT AND COMPLAINTS

27. (1) A member of the clergy and a Church authority in the Diocese shall as soon as possible refer any information in their possession or knowledge to the Director or the Chairman of the PSC unless there are reasonable grounds to believe that the information is already known to either party.
- (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.
28. Subject to this Ordinance, where the Chairman and the Director agree that the information referred constitutes examinable conduct, the Director shall investigate the information and they shall follow the same procedure in respect of a complaint.
29. (1) Notwithstanding the authority bestowed on the Chairman and Director in section 28, the PSC may when informed, if it thinks it appropriate to do so, refer the subject matter of information, or the investigation of information or a complaint, to an equivalent body or bodies.
- (2) When the PSC and an equivalent body or equivalent bodies have the power and duty to investigate information concerning the alleged conduct or omission of the same Church worker and the respective bodies are unable to agree on:
- (a) which body shall carry out the investigation or any parts of such investigation; or
 - (b) whether a question or questions specified in section 60 should be referred to the Board or to an equivalent body which has jurisdiction;
- then the PSC shall refer the disagreement for decision by the Director and the persons acting in a corresponding capacity for all other Dioceses acting together.
- (3) The PSC shall act in accordance with the unanimous decision of the persons referred to in sub-section (2) or, if such persons are unable to 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.

(4) In all matters affecting the operation of this Ordinance the PSC and the Director shall cooperate with and assist an equivalent body and a person acting in the corresponding capacity of the Director in another Diocese.

(5) In making a decision under sub-section (2) the Director shall not be bound by the views or instruction of the PSC but shall take into account the most convenient course for all concerned and the proper and expeditious conduct of the investigation or referral as the case may be.

30. The Chairman and the Director, or the PSC may refrain from further investigation of the information or a complaint if:

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

31. For the purpose of an investigation the Director or the PSC or an investigator shall obtain such statutory declarations, written statements, recorded conversations, reports, documents and other material as the Director or the PSC or its delegate consider necessary or advisable to progress the investigation.

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

(2) It is the obligation of a respondent:

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

(3) If a respondent declines to answer a question on the ground that the answer

might tend to incriminate the person a written record shall be made of the question and of the ground of refusal.

33. At any time after the Director, the PSC or its delegate has commenced or caused to be commenced an investigation of information or complaint under this Part, they may, after giving the respondent an opportunity to be heard, recommend to the relevant Church authority one or more of the following:
- (a) that the respondent should be suspended from the duties or office or employment by a Church body; or
 - (b) that a prohibition order be made against the respondent.
34. The relevant Church authority is authorised to give effect to a recommendation made under section 33.
35. Before making a recommendation under section 33 the Director, the PSC or its delegate shall take into account:
- (a) the seriousness of the conduct alleged in the information or complaint;
 - (b) the nature of the material to support or negate the allegations;
 - (c) whether any person is at risk of harm;
 - (d) after consultation with the relevant Church body or its representative, the effect on the respondent, a relevant Church body and on the Church in the Diocese of acting and of not acting under section 33; and
 - (e) any other allegation of similar examinable conduct previously made to the Director, the PSC or to an equivalent body; and
- may take into account any other relevant matter.
36. A suspension or prohibition order made by a Church authority pursuant to a recommendation under section 33 shall be terminated by the Church authority:
- (a) if the PSC terminates the investigation without referring the matter to the Board; or
 - (b) upon any direction to that effect given by the Board; or
 - (c) upon the Church authority giving effect to a recommendation of the Board under section 77.
37. During a suspension or prohibition pursuant to the provisions of this Part or during a period when a person voluntarily stands down from a position while their conduct the subject of information or a complaint is dealt with under this Ordinance:
- (a) the respondent shall comply with the terms of any prohibition order;
 - (b) the respondent is 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, or while the respondent is standing down; and

- (d) the respondent is entitled to whatever 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 Diocese.
38. Following an investigation the Director shall report his findings and make recommendations to the PSC. The PSC, either in relation to its investigation or the findings and recommendations of the Director or a delegate, may make a determination in relation to the findings and recommendations but where the recommendations have implications for the respondent's employment status as a church worker or their future capacity to gain income as a church worker the matter shall be referred to the Board.
39. Should the PSC make a determination pursuant to section 38, the respondent shall be informed in writing of the PSC's determination.
40. (1) Having received the details of the PSC's determination the respondent may in writing request a review of the determination by the Board.
- (2) Where the PSC's determination involves a reference to the Board because of its potential employment implications the respondent is able to waive the right for the matter to be considered by the Board in which case the PSC is able to make a further and final determination in relation to the matter.
41. The PSC shall cause a copy of the further and final determination and recommendation to be provided:
- (a) to the relevant Church authority; and
 - (b) to the respondent; and
 - (c) shall cause relevant details to be forwarded where appropriate to the Director for entry into the National Register.

PART 7 – PROFESSIONAL STANDARDS BOARD

42. On the coming into force of this Ordinance at the first Diocesan Council meeting and thereafter at the first Diocesan Council meeting after the first session of every Synod, Diocesan Council shall appoint a Professional Standards Board constituted and appointed in accordance with the provisions of this Part.
43. The members of the panel referred to in section 46 may constitute an equivalent body either generally or for a particular case or matter.
44. Subject to the provisions of this Ordinance the function of the Board is to inquire into and determine a question or questions referred to it pursuant to section 60 and questions within its jurisdiction referred to it by an equivalent body to the PSC and to make a determination referred to in section 77 and where appropriate to make a recommendation in accordance with the provisions of this Ordinance.

45. The Board has jurisdiction to exercise its functions in respect of a Church worker:
- (a) resident or licensed in the Diocese, or engaged by a Church authority; and
 - (b) not resident or licensed in the Diocese nor engaged by a Church authority but whose conduct giving rise to the reference is alleged to have occurred in the Diocese or whose omission giving rise to the reference is alleged to have occurred when the Church worker was resident or licensed in the Diocese or was engaged by a Church authority.
46. The members of the Board in a particular case shall be appointed from a panel comprising:
- (a) a President and a Deputy President, both of whom shall be persons who are eligible for appointment as lay members of the Appellate Tribunal;
 - (b) up to five members of the clergy resident in the Diocese of at least seven years' standing; and
 - (c) up to five lay persons resident in the Diocese and who are members of the Church.
47. Any vacancy in the membership of the panel shall be filled by, or in accordance with, a resolution of Diocesan Council.
48. (1) The members of the panel to be convened for any reference to the Board shall be determined by the President or, if there is a vacancy in the office of President, by the Deputy President.
- (2) For the purpose of any reference to the Board, the Board shall consist of the President or Deputy President, who shall be the presiding member, and an equal number not exceeding two each of clerical and lay members of the panel.
- (3) Where possible, the Board shall include at least one man and at least one woman.
- (4) Where, in the opinion of the President, or if there is a vacancy in the office of the President, in the opinion of the Deputy President, a member of the panel has a personal interest in a matter before the Board, the member shall be disqualified from participating in the reference.
- (5) For the purposes of this section a vacancy in the office of President includes a situation in which the President is not able to act because of a personal interest in a matter, illness or being otherwise unavailable.
49. The Rules of the Board made under this Part may provide that, in relation to the exercise of specified functions, or in relation to matters of a specified class, the Board may, at the direction of the presiding member, be constituted by a single member sitting alone.

50. If a member of the Board, other than the presiding member, dies or is for any other reason unable to continue with any matter referred to the Board, the Board constituted of the presiding member and the other member or members may, if the presiding member so determines, continue and complete the reference.
51. 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.
52. An act or proceeding of the Board is not invalid by reason only of a vacancy in its membership or of the membership of the panel and, notwithstanding the subsequent discovery of a defect in the nomination or appointment of members of the panel or the Board, any such act or proceeding is as valid and effectual as if the member had been duly nominated or appointed.
53. The Diocese indemnifies each of the members of the Board for any act or omission by the member in good faith and in the exercise of or purported exercise of powers or functions, or in the discharge or purported discharge of duties under this Ordinance.
54. (1) There shall be a secretary to the Board who shall be appointed by or in accordance with a resolution of Diocesan Council, and whose duties shall be defined by the President.
- (2) The secretary to the Board may act in a corresponding capacity for another Diocese either generally or for a particular case or matter.
55. (1) In any proceedings of the Board where the Board is constituted by two or more members:
- (a) any question of law or procedure will be determined by the presiding member; and
 - (b) any other question will be determined by majority decision of the members, and in the case of an equality of votes the opinion of the presiding member shall prevail.
- (2) Where the Board is constituted by a member sitting alone who is not the President or the Deputy President, any question of law that arises must be referred to the President or Deputy President for decision and any decision made on such a reference is a decision of the Board.
- (3) The Board must act with fairness and according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms and is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks fit.

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

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

56. 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) that reference as the Board thinks fit.

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

58. (1) The Board has no power to award costs of any proceedings before it.

(2) A Church worker in relation to whom a question is the subject of a reference to the Board may apply to Diocesan Council for the provision of legal assistance.

(3) Diocesan Council may grant legal assistance to a Church worker on such terms and subject to such conditions as it shall determine.

59. (1) The President may make Rules of the Board reasonably required by or pursuant to this Ordinance and in relation to the practice and procedure of the Board.

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

PART 8 – REFERENCE OF MATTERS TO THE PROFESSIONAL STANDARDS BOARD

60. (1) After investigation in accordance with section 27, or under a corresponding provision of an Ordinance of another Diocese, the PSC or an equivalent body may refer to the Board, or to an equivalent body which has jurisdiction, one of more of the following questions:

- (a) the fitness of a Church worker, whether temporarily or permanently to hold a particular or any office, licence or position of responsibility in the Church or to be in the employment of a Church body; and
- (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.

(2) The question or questions shall be referred to the Board by delivering to the secretary of the Board a written report of its investigation signed by a member of the referring body.

61. (1) Upon delivery of the report to the secretary of the Board, the President or Deputy President as the case may be shall as soon as possible determine the membership of the Board for the purpose of the reference.

(2) The President or Deputy President as the case may require shall thereupon cause to be convened a sitting for the purpose of giving directions.

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

62. Within 14 days of the date of the reference of a matter to the Board or within 14 days of the date of the document or material coming to existence, whichever is the later, the referring body shall cause to be delivered to the secretary of the Board any documents and material relevant to the reference.

63. The referring body, as soon as practicable after delivering the report referred to in section 62 to the secretary of the Board, shall cause a signed copy of the report to be delivered to the respondent.

64. 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) as to the conduct of its inquiry into the reference.

65. The Board may at any time and from time to time give directions to the referring body as to any further inquiries or investigation it requires to be carried out for the purposes of the reference and the referring body shall to the best of its ability cause such directions to be carried out.

66. (1) The Board shall deal with any reference as expeditiously as possible.

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

67. (1) The place and time of sitting of the Board comprising two or more members shall be as determined by the presiding member.

(2) The place and time of sitting of the Board comprising one member shall be as

determined by that member.

68. (1) Subject to sub-section (2), the Board must give the following persons reasonable notice of the time and place of a sitting of the Board:

- (a) the Director; and
- (b) the respondent; and
- (c) such other persons as the Board believes have a proper interest in the matter.

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

69. 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 other person;
- (b) the referring body or its appointed representative shall do all in its power to assist the Board and shall carry out any directions of the Board; and
- (c) the Board:-
 - (i) must give the referring body and the respondent a reasonable opportunity to call or give evidence, to examine or cross-examine witnesses and to make submissions to the Board, and
 - (ii) must give any other person to whom notice of the proceedings was given or who satisfies the Board that he or she has a proper interest in the matter a reasonable opportunity to make submissions to the Board.

70. (1) Subject to sub-section (2), a sitting of the Board on a reference before the Board is an open sitting.

(2) On any such sitting before the Board, the Board has an absolute discretion:

- (a) to direct that no person other than:-
 - (i) the respondent and any person representing him or her in the proceedings, and
 - (ii) witnesses or persons making submissions (while giving evidence or making those submissions), and
 - (iii) officers of the Board or persons assisting the Board, and
 - (iv) members of or persons appointed by the referring body, be present in the room while the Board is sitting; or
- (b) to direct that a particular person (other than a person referred to in paragraph (a)) not be present in the room while the Board is sitting.

71. The Board may make a determination in any proceedings in the absence of a person

affected by the determination if satisfied that reasonable efforts were made to give that person an opportunity to appear.

72. (1) The Board may require a respondent to submit within a specified time to a medical, psychiatric or psychological examination by a person approved by the Board the cost of which shall be met from funds under the control of the Diocese of the referring body.

(2) A copy of the report of an examination under sub-section (1) shall be provided to the respondent and to the Board.

73. The Board shall not, in the course of enquiring into any question:

(a) enquire into any matter which is or has been the subject of any formal investigation or enquiry conducted:-

- (i) under or pursuant to any provision of the Constitution,
- (ii) under or pursuant to a Canon of the General Synod, a Canon or an Ordinance of another Diocese relating to the discipline of Church workers by a board of enquiry, tribunal or other body, or
- (iii) with the authority of the Bishop of a Diocese resulting in a formal report to the Bishop with findings and which concluded or was commenced prior to the date on which this Ordinance takes effect in the Diocese

but may take into account the finding of any such formal investigation or enquiry; and

(b) inquire into, make any findings in relation to or take into account any alleged breach of as defined in the *Clergy Standards and Discipline Ordinance 2017*:-

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

74. In making any determination, including to exonerate a respondent, the Board shall 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 Ordinance or with a direction of the Board.

75. 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, now or in the future to hold a particular or any office licence or position of responsibility in the Church or in the employment of a Church body; or
- (b) 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;

the Board may determine accordingly and may:

- (a) recommend that the Church worker be counselled;
- (b) recommend that the Church worker be suspended from office or employment or from performing the function as the case may be for such period determined by the Board;
- (c) recommend to the Church authority that the licence or authority of the Church worker be revoked;
- (d) recommend to the relevant Church authority that the Church worker's contract of employment (if any) be terminated;
- (e) recommend to the relevant Church authority that the Church worker cease to hold any office then held;
- (f) recommend to the relevant Church authority that a prohibition order be made in terms specified by the Board;
- (g) recommend to the relevant Church authority that the Church worker's holding of office or employment or performance of the function as the case may be, shall be subject to such conditions or restrictions as the Board may specify;
- (h) recommend that the operation of a determination shall be suspended for such period and upon such conditions as the Board shall specify; and
- (i) make such other recommendation as the Board sees fit.

76. The Board shall cause a copy of each determination and recommendation to be provided:

- (a) to the relevant Church authority; and
- (b) to the respondent; and
- (c) shall cause relevant details to be forwarded where appropriate to the Director for entry into the National Register.

77. A relevant Church authority to whom a recommendation under this Ordinance or a recommendation made by an equivalent Board applies is empowered to give effect to a recommendation of the Board and of an equivalent body having jurisdiction to make a recommendation to the Church authority.

PART 9 – REVIEW

78. If the respondent is aggrieved by a decision of the Board which if acted upon by the relevant church authority would, or may have the effect of:
- (a) terminating the person's employment; or
 - (b) removing or suspending the capacity of the person to gain income as a church worker
- the respondent may apply to the Registrar for a review of the decision.
79. The application for a review shall be made within 21 days after the respondent receives a copy of the Board's determination and recommendation or such longer period as the Registrar may by notice in writing to the aggrieved respondent determine.
80. The application must be in writing and set out the grounds for the review.
81. The application may 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 decision; or
 - (b) that procedures that were required by this Ordinance to be observed in relation to the making of the reviewable decision were not observed, and the non-observance materially affected the decision; or
 - (c) that the Board did not have jurisdiction to make the reviewable decision; or
 - (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 or further and compelling evidence which, if available at the time, would be likely to have materially affected the Board's decision; or
 - (f) that the Board seriously misdirected itself as to the applicable law; or
 - (g) that in the light of the evidence and submissions the determination and recommendation are manifestly excessive.
82. The making of an application for review acts as a stay of the reviewable decision pending the determination by the reviewing entity. Any suspension or prohibition order made under section 33, and if in place at the time of the decision, shall remain in place until either the experienced lawyer in this Part either directs its lifting, or, upon referral back to the Board, the Board so directs consistent with the power conferred on it by sub-section 36(b).
83. As soon as practicable after receiving an application for review, the Registrar must notify the Chancellor.

84. The Chancellor is to appoint an experienced lawyer to undertake the review and notify the Registrar of the appointment.
85. Upon the appointment of an experienced lawyer, the Registrar is to obtain an estimate of the fee to be charged by the experienced lawyer in making a determination under this Part.
86. On the receipt of the estimate, the Registrar is to notify the respondent who has requested the review the amount of the estimate and is to request the respondent to pay half of the estimated fee to the Registrar or a person nominated by the Registrar.
87. If the respondent does not pay half of the estimated fee within 21 days after the receipt of the Registrar's request, the application for review lapses.
88. The review by an experienced lawyer of the determination and recommendation of the Board is to be conducted in the manner determined by the experienced lawyer, subject to the process allowing the experienced lawyer to make a determination on the review within a reasonable period after the date the Registrar receives payment from the respondent for half the estimated fee.
89. A review is not to be a re-hearing of the merits, or a new hearing.
90. The experienced lawyer may make such order as to costs of the review as they think fit.
91. On an application for review of a reviewable decision, the experienced lawyer may make all or any of the following 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 the setting of time limits for further consideration, and for the steps to be taken in the further consideration) as the experienced lawyer 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 experienced lawyer considers necessary to do justice between the parties;and shall cause a copy of the determination or finding to be provided to the Registrar, the respondent and the Church authority.
92. Where under sub-section 76(c) the relevant details of the Board's determination and recommendation have been entered into the National Register, should the determination of the experienced lawyer quash or set aside any aspect of a determination and recommendation relevant to the National Register, the Director shall take as soon as possible all necessary steps to have the relevant details of the

entry in the National Register either amended or removed altogether where the experienced lawyer's determination requires this.

PART 10 - REGULATIONS

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