



# CLERGY STANDARDS AND DISCIPLINE ORDINANCE 2017 PROTOCOL

## SCOPE

This protocol for the Clergy Standards and Discipline Ordinance 2017 (the Ordinance) specifies how information is to be handled concerning complaints in regard to the professional standards applying to clergy in the Diocese of Armidale, disciplinary processes in relation to those standards and the trial of ecclesiastical offences of persons in holy orders licensed by the Bishop of Armidale and of other persons in holy orders resident in the Diocese of Armidale.

An underlying purpose of this protocol is to provide a fair process for all parties concerned.

## TERMINOLOGY

**Advocate:** means the Advocate of the Diocese appointed pursuant to the Ordinance;

**Articles of Accusation:** shall are articles that, with reasonable particularity, specify every alleged offence and the time place, and circumstances thereof;

**Board of Enquiry (Board):** means the Board of Enquiry constituted as provided by this Ordinance;

**Clergy:** means a person licensed by the Bishop or any other person in holy orders resident in the Diocese and any person to whom section 54(2A) of the Constitution of the Anglican Church of Australia applies

**Complainant:** means the person who makes a complaint.

**Complaint:** means a complaint pursuant to the Ordinance.

**Director of Professional Standards (Director):** means the Director of Professional Standards established in Part 5 of the Professional Standards Ordinance.

**Offence:** means any of the following: -

- (a) breach of faith, ritual, ceremonial or discipline,
- (b) sexual harassment or assault, or sexually inappropriate behaviour,
- (c) inappropriate or unreasonable conduct or omission of a member of clergy who had knowledge of conduct of another member of clergy or church worker involving sexual harassment or assault, or sexually inappropriate behaviour,
- (d) a process failure,
- (e) child abuse,
- (f) sexual abuse,
- (g) bullying,

(h) drunkenness,

(i) habitual or wilful neglect of ministerial duty after written admonition in respect thereof by the Bishop,

(j) bankruptcy,

(k) wilful failure to pay just debts,

(l) conduct disgraceful in a member of the clergy and productive or likely to be productive of scandal or ill report;

(m) the offences referred to in section 54(2A) of the Constitution of the Anglican Church of Australia.

**Panel of Triers:** means the Panel of Triers constituted as provided by this Ordinance;

**Registrar:** means the person referred to in section 176 of the Governance of the Diocese Ordinance 2016;

**Respondent:** means a member of clergy to whom this Ordinance applies against whom a complaint has been made

For other definitions, see Part 1, section 3 of the Ordinance

## **PRINCIPLES**

The principles associated with this protocol are as follows:

### **Procedural Fairness:**

- The Director, The Board of Enquiry (the Board), the Bishop and other appropriate officer holders shall act fairly, in good faith and without bias.
- The person subject to the allegations (the respondent) shall be given the particulars of the allegation in writing.
- Each party will have the opportunity to respond to statements made by the other.
- Each party will have the opportunity to adequately state their case, and to correct any relevant statement prejudicial to the person's case.
- Each party will be offered pastoral support by the Diocese.

**Privacy:** Every effort must be made to protect the privacy and confidentiality of all parties concerned. All parties will only release findings where appropriate to parties specified in the outcomes with the permission of person subject of allegations and or the person bringing the complaint after obtaining legal advice.

**Contact Persons:** The Director of Professional Standards is appointed by Diocesan Council (DC). The Chairman of the Board of Enquiry is appointed by Diocesan Council after the first session of every Synod.

## **PROCESS**

### **Step 1: Receiving the Complaint**

The Complaint shall be made by completing the form set out in Schedule A of the Ordinance, and is to be presented to the Registrar or Director of Professional Standards for an offence apart from a breach of faith, ritual or ceremonial, and can be received in writing or by email.

A complaint of breach of faith, ritual or ceremonial may be made only by:-

- (i) a person appointed by the Bishop,
  - (ii) or any five parishioners of that parish or special district;
- (b) in any other case – only by:-
- (iii) a person appointed by the Bishop, or
  - (iv) any five communicant members of the Church who are resident within the Diocese.

A complaint concerning a breach of faith, ritual or ceremonial must be made within twelve (12) months of the alleged commission of the breach.

Every complaint shall be accompanied by all documents referred to.

Every complaint presented to the Registrar or Director shall then be presented to the Bishop, other than complaints made by the Bishop.

### **Step 2: Referral to government authorities**

At the time in which the complaint is received, or during the formalisation process, if it becomes clear that this is a child protection or criminal matter, the Director will assist the person bringing the complaint to take the matter to the appropriate authorities. In accordance with Diocesan Safe Ministry policies, the Director must report all allegations of child abuse to the Police.

During police and or child protection proceedings, or during investigation by the Board (after giving the respondent opportunity to be heard), the person subject to the complaint may, for risk management reasons, need to be prohibited or suspended from duties, and temporary arrangements put in place. The Board of Enquiry will make a recommendation to the Bishop, who will make the final decision. (Ordinance, Part 3, sections 23-27).

At the conclusion or cessation of police or government child protection proceedings, or the police or government authority have stated that such an investigation will not prejudice any ongoing investigation, the Diocese may recommence the Ordinance process.

### **Step 3: Formalisation of the Complaint**

The presenting of the complaint to the Registrar or Director for any offence apart from a breach of faith, ritual or ceremonial, which in all respects complies with the requirements of the Ordinance as to the making of complaints, shall be sufficient for the making of that complaint.

If a complaint is a complaint of breach of faith, ritual or ceremonial, and not made by a person appointed by the Bishop, then the Bishop shall determine if the appropriate requirements are met under the Ordinance with regard to number and qualifications.

If the Bishop determines the complaint concerning matters of faith, ritual and ceremonial is not made, he shall cause the complaint to be returned to the person who presented it to the Registrar and shall cause each of the persons who made the complaint to be given notice in writing of his determination, and of the reason that no further action will be taken under this Ordinance with respect to that

complaint, unless and until it is made by persons who in number and qualifications fulfil the appropriate requirements

**Step 4: Complaint procedure.**

The Bishop shall refer all complaints and documents to the Board.

The Board shall decide whether or not to allow the complaint as a proper complaint and shall inform the Bishop of its decision.

If the Board decides not to allow a complaint as a complaint proper to be heard, the Bishop shall inform the complainant in writing; accordingly. The complaint shall be returned to the Registrar or the Director as the case may be, and no further action will be taken under this Ordinance, with respect to that complaint.

**Step 5: Notification to the Respondent (i.e. person subject of the allegations)**

The Registrar will contact the person subject of the complaint within one month of the complaint being presented. The registrar will provide the respondent with a copy of the complaint and supporting documents, and present a notice in writing requiring the respondent to respond to the claim in writing within 30 days from the date of notice.

**Step 6: Response - non-disputed complaints**

Where the response of the person subject of the complaint/s is to admit to the commission of the offence/s, and they are willing to submit themselves without further proceedings to the judgement and sentence of the board;

Then the board will submit its recommended sentence to the Bishop.

The Bishop will:

- consider the sentence recommended by the Board
- inform the respondent of his intention to pronounce judgement and sentence at a set time and place
- allow all persons who so desire to be present.
- Allow the respondent to show cause and be heard in excuse or mitigation before judgement and sentence are pronounced, either in writing before the set date, or in person at the appointed time

Upon hearing the respondent, the Bishop shall either pronounce judgement and sentence either then or at a subsequent time which he will give notice of to both the complainant and respondent.

The Bishop may suspend the operation of the sentence for a period of time. If the sentence is not suspended, then it shall commence immediately it is pronounced

Once the sentence has been pronounced, no further action will be taken other than that which is required to satisfy the requirements of the national Register and sections 66, 70 and 72 under the Ordinance.

**Step 7: Response - disputed complaints – investigation**

Where the response of the person subject of the complaints disputes the complaints, then the respondent shall be tried by a Diocesan Tribunal (Panel of Triers).

The Bishop will appoint an Advocate of the Diocese to prosecute the complaint. The Advocate will receive the complaint, all documents referred to, a copy of the notice sent to the respondent and the response of the respondent.

The Advocate will prepare Articles of Accusation and send them and the complaint to the Registrar.

The Registrar, upon receipt of the Articles of Accusation will

- i) Send copies of the Articles of Accusation to the respondent and complainant
- ii) Serve a citation to the respondent to appear before the Diocesan Tribunal (no more than 60 days from the citation), to answer the Articles of Accusation.
- iii) Serve the complainant a copy of the citation
- iv) Serve notices in writing to both the complainant and respondent to secure any witnesses they require to attend the tribunal for the purpose of accusation or defence.

Complainants and respondents may be concerned about aspects of the process and the length of time certain actions may take. Both parties will be kept informed of the progress of the investigation by the Registrar. If at any time, the complainant or respondent wishes to ask a question, seek clarification about a matter, or simply speak to the Registrar, contact may be made by the means listed on the Diocesan website.

#### **Step 8: The Diocesan Tribunal (Panel of Triers)**

The Tribunal will assemble at the time and place appointed by the citation.

The Tribunal will act in accordance with the Requirements of Part 7 (Sections 39-57) of the Ordinance.

#### **Step 9: Decision, Recommendation and Sentence**

After due examination and hearing of the case and after due deliberation, the Tribunal shall decide the issue as to each offence alleged, and if it decides that the respondent is guilty of any offence, it shall make such recommendation as it thinks just in the circumstances. The Tribunal can not recommend to the Bishop any sentence other than one or more of the following; - monition, suspension from office, deprivation of rights and emoluments appertaining to office, deposition from holy orders.

The President shall give the Bishop notice in writing of the decision and the recommendation (if any) of the tribunal. The Bishop has discretion in determining the sentence ( in consultation with the Tribunal) and may exercise his prerogative of mercy to mitigate or suspend the operation of a sentence.

The Bishop will:

- a) If every issue is found in favour of the respondent- give notice in writing to the respondent and complainant of the decision
- b) In every other case-
  - Give notice in writing to the tribunal, respondent and complainant that the bishop will pronounce judgement at a set time and place
  - allow all persons who so desire to be present.

- Allow the respondent to show cause and be heard in excuse or mitigation before judgement and sentence are pronounced, either in writing before the set date, or in person at the appointed time

Upon hearing the respondent, the Bishop shall either pronounce judgement and sentence either then or at a subsequent time which he will give notice of to both the complainant and respondent.

The Bishop may suspend the operation of the sentence for a period of time. If the sentence is not suspended, then it shall commence immediately it is pronounced.

The Bishop shall certify every sentence, mitigation or suspension, and the certificate shall be lodged with the Registrar, a copy sent to the respondent, and where appropriate, the Director shall comply with notification requirements of the National Register.

### **Step 12: Review (Part 9)**

Subject to the leave of the Appellate Tribunal, an appeal may be made to it and shall be handled in accordance with the Appellate Tribunal Procedure Canon 1962.

### **REVIEW OF PROTOCOL**

This Protocol is to be reviewed prior to December 2024.