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## PROFESSIONAL STANDARDS ORDINANCE 2007

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An Ordinance to make provision with respect to the standard of conduct and the discipline of church workers.

BISHOP-IN-COUNCIL OF BEHALF OF THE SYNOD OF THE DIOCESE OF BATHURST  
ORDAINS –

### CHAPTER 1

#### PRELIMINARY

##### 1. Name

This Ordinance is the *Professional Standards Ordinance 2007*.

##### 2. Definitions

In this Ordinance –

**Appellate Tribunal** means the Appellate Tribunal constituted by and under Chapter IX of the 1961 Constitution.

**Bishop** means the Bishop of the Diocese or, in his absence, his Commissary or, if the See is vacant, the Administrator of the Diocese.

**Board of Enquiry** means the Board of Enquiry appointed under this Ordinance.

**ceremonial** has the same meaning as in the 1961 Constitution.

**Note:** Under section 74(1) of the 1961 Constitution, ceremonial includes ceremonial according to the use of this Church, and also the obligation to abide by such use.

**charge** means a charge under the 1961 Constitution or a charge under this Ordinance.

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

**chief executive officer** of an organisation constituted by an ordinance of the Synod or of Bishop-in-Council means the person who is responsible to the governing body of the organisation for the work of the organisation.

**child abuse** has the same meaning as in Faithfulness in Service.

**Note:** In Faithfulness in Service, child abuse means the following conduct in relation to a child –

- *bullying*
- *emotional abuse*
- *harassment*
- *neglect*
- *physical abuse*
- *sexual abuse, or*
- *spiritual abuse.*

*Each of these components of child abuse is further defined in Faithfulness in Service.*

**church authority** means the Bishop or a person or body having administrative authority of or in a church body to license, appoint, authorise, dismiss or suspend a church worker.

**church body** includes a parish, school, any body corporate, organisation or association that exercises ministry within, or on behalf of, this Church in this Diocese.

**church worker** means a lay person who holds or has held any position of leadership within the Diocese and without limiting the generality of the foregoing a position of leadership includes –

- (i) a person employed by a church body, or
- (ii) membership of a body incorporated by or under the Bodies Corporate Act, or
- (iii) a churchwarden, or
- (iv) membership of a parish council, or
- (v) membership of any other board, council or committee established by the Synod, a Regional Ministry Council or a Parish Council, or
- (vi) a chief executive officer of an organisation constituted by an ordinance of the Synod, including the Head of a Diocesan School
- (viii) an appointment by a Parish Priest, a Priest in Charge, churchwarden or parish council.

**Clergy** means a person in holy orders.

**Covenanting Diocese** means the Dioceses of Canberra and Goulburn and Riverina.

**Diocesan Tribunal** means the Diocesan Tribunal constituted for the Diocese in accordance with Chapter IX of the 1961 Constitution and Part 3 of Chapter 8 of this Ordinance.

**Director** means the person appointed for the time being under section 100.

**disciplinary action** includes a sentence as referred to in Chapter IX of the 1961 Constitution.

**Disciplinary Tribunal** means a Tribunal constituted in accordance with Part 4 of Chapter 8.

**discipline** has the same meaning as in the 1961 Constitution.

**Note:** Under section 74(9) of the 1961 Constitution, in the context of a charge for a breach of discipline in respect of a person in Holy Orders licensed by the Bishop or resident in the Diocese, discipline means –

- the obligations in the ordinal undertaken by the person, and
- the ordinances in force in the Diocese.

**doctrine** has the same meaning as in the 1961 Constitution.

**Note:** Under section 74(1) of the 1961 Constitution, doctrine means the teaching of this Church on any question of faith.

**elected member** of the Board of Enquiry means a member of the Board of Enquiry elected under section 125 or appointed under section 128 to fill a vacancy in the office of a member elected under section 125.

**elected member** of the Diocesan Tribunal means a member of the Diocesan Tribunal elected under section 114 or appointed under section 116 to fill a vacancy in the office of a member elected under section 114.

**exempt conduct** means conduct that is the subject of a declaration under Chapter 6.

**exercise a function** includes, if the function is a duty, performance of the duty.

**experienced lawyer** means a person –

- (a) who is or has been a judge or justice of an Australian, State or Territorial court or tribunal, or
- (b) who has been admitted as a legal practitioner for not less than 10 years.

**faith** has the same meaning as in the 1961 Constitution.

**Note:** Under section 74(1) of the 1961 Constitution, *faith* includes the obligation to hold the *faith*. Under section 74(4), reference to *faith* extends to doctrine.

**Faithfulness in Service** means the code for personal behaviour and the practice of pastoral ministry by clergy and church workers adopted by Bishop-in-Council as amended from time to time by the Standing Committee of the General Synod.

**function** includes power, authority and duty.

**Holy orders** means the orders of Bishop, Priest or Deacon but excludes a Bishop subject to the jurisdiction of the Special Tribunal.

**licence** and **licensed** have the same meanings as in the 1961 Constitution.

**Note:** Under section 74(1) of the 1961 Constitution, *licence* means a licence under seal of the bishop of a diocese, and *licensed* has a meaning corresponding with that of *licence*.

**member of this Church** has the same meaning as in the 1961 Constitution.

**Note:** Under section 74(1) of the 1961 Constitution, *member of this church* means a baptised person who attends the public worship of this Church and who declares that he or she is a member of this Church and of no Church which is not in communion with this Church.

**national register** means any national register established pursuant to a canon of General Synod or a resolution of the Bishop-in-Council of General Synod for the purposes of recording determinations of the Diocesan Tribunal or the Disciplinary Tribunal and other equivalent bodies.

**parish** has the same meaning as in the 1961 Constitution.

**Note:** Under section 74(1) of the 1961 Constitution, *parish* includes any parochial district or similar pastoral division constituted by or under ordinance of the synod of a diocese.

Section 500 of the Diocese of Bathurst Administration Ordinance constitutes a parish as a geographic area in the Diocese with at least one church. Section 503 of the Administration Ordinance provides for the establishment of 'special ministries', pastoral divisions which may or may not encompass a geographic area. Special ministries include chaplaincies.

**parishioner** has the same meaning as the 1961 Constitution.

**Note:** Under section 74(1) of the 1961 Constitution, *parishioner* means a member of this Church who is entitled to vote at a meeting of a parish for the election of churchwardens, or who if no such meeting is provided for is at least 18 years of age.

**person under legal incapacity** has the same meaning as in the Civil Procedure Act 2005.

**Note:** Under section 3(1) of the Civil Procedure Act 2005, *person under legal incapacity* means any person who is under a legal incapacity in relation to the conduct of legal

*proceedings (other than an incapacity arising under section 4 of the Felons (Civil Proceedings) Act 1981) and, in particular, includes –*

- (a) a child under the age of 18 years, and*
- (b) a temporary patient, continued treatment patient or forensic patient within the meaning of the Mental Health Act 1990, and*
- (c) a person under guardianship within the meaning of the Guardianship Act 1987, and*
- (d) a protected person within the meaning of the Protected Estates Act 1983, and*
- (e) an incommunicate person, being a person who has such a physical or mental disability that he or she is unable to receive communications, or express his or her will, with respect to his or her property or affairs.*

**Professional Standards Committee** or **PSC** means the Professional Standards Committee established under Part 2 of Chapter 8.

**prohibition order** means an order prohibiting a church worker from holding a specified position or office in or being employed by a church body or church authority or from carrying out any specified functions in relation to any office or position in the Diocese or in relation to employment by a church body.

**ritual** has the same meaning as in the 1961 Constitution.

**Note:** *Under section 74(1) of the 1961 Constitution, ritual includes rites according to the use of this Church, and also the obligation to abide by such use.*

**serious offence** means –

- (a) a serious sex offence within the meaning of Division 2 of Part 7 of the Commission for Children and Young People Act 1998.*
- (b) a registrable offence within the meaning of the Child Protection (Offenders Registration) Act 2000.*

**sexual abuse** has the same meaning as in Faithfulness in Service.

**Note:** *In Faithfulness in Service, sexual abuse of an adult means sexual assault, sexual exploitation or sexual harassment of an adult. Sexual abuse of a child means the use of a child by another person for his or her own sexual stimulation or gratification or for that of others. It includes –*

- exposing oneself indecently to a child*
- having vaginal or anal intercourse with a child*
- penetrating a child's vagina or anus with an object or any bodily part*
- forcing a child to perform oral sex*
- sexually touching or fondling a child*
- kissing, touching, holding or fondling a child in a sexual manner*
- making any gesture or action of a sexual nature in a child's presence;*
- making sexual references or innuendo using any form of communication;*
- staring at or secretly watching a child for the purpose of sexual stimulation or gratification*
- exposure to any form of sexually explicit or suggestive material;*
- discussion of, or inquiry about, personal matters of a sexual nature;*
- being forced to masturbate self or others, or watch others masturbate; and*
- exposing a child to any form of sexually explicit or suggestive material*

*Sexual abuse of a child does not include –*

- sex education with the prior consent of a parent or guardian; or*

- *age appropriate consensual sexual behaviour between peers (ie the same or a similar age).*
- *Inquiries by clergy and church workers with a pastoral responsibility for a child or investigation responsibility into complaints that may involve sexual abuse.*

**Special Tribunal** means the Special Tribunal constituted by and under Chapter IX of the 1961 Constitution.

**substantiated** means an allegation having sufficient evidence to prove to true on the balance of probabilities

**Synod** means the Synod of the Diocese.

**the 1961 Constitution** means the Schedule to the *Anglican Church of Australia Constitution Act 1961*.

**this Church** has the same meaning as in the 1961 Constitution.

**Note:** Under section 74(1) of the 1961 Constitution, *this Church* means the Anglican Church of Australia.

**unsubstantiated** means an allegation having insufficient evidence to prove it true on the balance of probabilities.

**wrongdoing** means –

- (a) a breach of faith, ritual, ceremonial or discipline, or
- (b) an offence specified by canon, ordinance or rule.

### 3. Notes

- (1) Notes in this Ordinance are for explanatory purposes only and do not form part of this Ordinance.
- (2) The Registrar is authorised to update the notes in this Ordinance when reprinting this Ordinance.

## CHAPTER 2

### WRONGDOING BY CHURCH WORKERS (OTHER THAN BREACHES OF FAITH, RITUAL OR CEREMONIAL)

#### Part 1 Complaints

### 4. Complaints relating to offences under s. 54(2) of the 1961 Constitution

A complaint may be made against a person licensed by the Bishop, or a person in holy orders resident in the Diocese, alleging that the person has committed or, if a charge is preferred, would at that time have committed –

- (a) an offence specified by the *Offences Ordinance 2007*, or
- (b) an offence under section 12 of the *General Synod Holy Orders, Relinquishment and Deposition Canon 2004*, or
- (c) an offence under section 9 or 24 of this Ordinance.

**Notes:**

- (1) *Offences included under the Offences Ordinance 2007 are –*
- (a) *unchastity,*
  - (b) *drunkenness,*
  - (c) *habitual and willful neglect of ministerial duty after written admonition in respect thereof by the Bishop of the Diocese,*
  - (d) *willful failure to pay just debts,*
  - (e) *conduct, whenever occurring –*
    - (i) *which would be disgraceful if committed by a member of the clergy, and*
    - (ii) *which at the time the charge is preferred is productive, or if known publicly would be productive, of scandal or evil report,*
  - (f) *sexual abuse,*
  - (g) *child abuse,*
  - (h) *conviction in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or upwards or the conviction outside New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable.*
- (2) *The offences under section 12 of the General Synod – Holy Orders, Relinquishment and Deposition Canon 2004 are –*
- (a) *for a person who has relinquished the exercise of his or her holy orders under section 3 of the Canon to hold out that the person continues to exercise those orders, and*
  - (b) *for a person who has been deposed under section 4 of the Canon to hold out that the person remains in holy orders.*

**5. Complaints relating to offences under s. 54(2A) of the 1961 Constitution**

A complaint may be made against a member of the clergy alleging that the member of the clergy has committed an offence of unchastity, an offence involving sexual misconduct or an offence relating to a conviction for a criminal offence that is punishable by imprisonment for 12 months or upward if –

- (a) the conduct of the member of the clergy which gave rise to the complaint is alleged to have occurred in the Diocese, or
- (b) the member of the clergy was licensed by the Bishop or was resident in the Diocese within 2 years before the complaint is made, or
- (c) the member of the clergy is in prison as a convicted person at the time the complaint is made but within 2 years before such imprisonment was licensed by the Bishop or was ordinarily resident in the Diocese.

**6. 6. Complaints against lay church workers**

A complaint may be made against a church worker (not being a person licensed by the Bishop or a person in holy orders resident in the Diocese) alleging that the person has committed or, if a charge is preferred, would at that time have committed –

- (a) an offence specified by the *Offences Ordinance 2007*, or
- (b) an offence under section 9 or 24 of this Ordinance.

**Notes:**

*Offences included under the Offences Ordinance 2007 are –*

- (a) *unchastity,*
- (b) *drunkenness,*
- (c) *habitual and willful neglect of the duties of the person's position after written admonition in respect thereof by the appropriate church authority,*
- (d) *willful failure to pay just debts,*
- (e) *conduct, whenever occurring –*
  - (i) *which would be disgraceful if committed by a person holding the position held by the person against whom the allegation is made or in which the person acts, and*
  - (ii) *which at the time a charge is preferred is productive, or if known publicly would be productive, of scandal or evil report,*
- (f) *sexual abuse,*
- (g) *child abuse,*
- (h) *conviction in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or upwards or the conviction outside New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable.*

## **7. Other complaints**

A complaint may allege that a person (including a person who may be the subject of a complaint under this Part) has attempted, by threat, intimidation or inducement –

- (a) to dissuade a person from making a complaint, or
- (b) to persuade a person to withdraw a complaint, or
- (c) to persuade a person to consent to the withdrawal of a complaint.

## **8. Who can make a complaint?**

- (1) A complaint may be made by any person, including the Director.
- (2) A complaint may be made by –
  - (a) a person on his or her own behalf, or
  - (b) a person on behalf of a person under legal incapacity.

## **9. Obligation to report knowledge or reasonable suspicion of child abuse**

- (1) A church worker who knows or reasonably suspects that another church worker has engaged in conduct which constitutes child abuse is to report to the Director, as soon as practicable, the name or a description of the other church worker and the grounds for suspecting that the other church worker has engaged in such conduct.
- (2) A person licensed by the Bishop or a person in holy orders resident in the Diocese who, without reasonable excuse, fails to make a report under subsection (1) commits an offence.
- (3) A church worker who, without reasonable excuse, fails to make a report under subsection (1) commits an offence.
- (4) This section does not affect the operation of the General Synod Canon Concerning Confessions 1989 or any other Ordinance relating to confessions in force in the Diocese.

**10. Complaint by Director on knowledge or reasonable suspicion of inappropriate conduct**

If the Director knows or reasonably suspects that a person has engaged in conduct that constitutes an offence specified by canon, ordinance or rule and a complaint has not been made against the person in respect of that conduct, the Director is to make a complaint against the person in respect of that conduct.

**11. Person to whom complaint is made**

- (1) A complaint is to be made to the Director.
- (2) A church worker who receives a written complaint against another church worker is to forward a copy of that complaint to the Director as soon as practicable.

**12. Form of complaint**

- (1) A complaint may be made orally or in writing, or partly orally and partly in writing.
- (2) Details of the conduct the subject of the complaint are to be provided with the complaint.
- (3) The Director, or a person nominated by the Director, may assist a person to make a complaint, to provide details of the conduct the subject of the complaint and, if the complaint is required to be verified under subsection (6), to verify the complaint.
- (4) The Director is to reproduce in writing a complaint, or that part of a complaint, that is made orally.
- (5) The Director may require a complainant to provide, within a period of not less than 14 days specified by the Director, further details of the conduct the subject of the complaint and other details that, in the opinion of the Director, may be relevant to the complaint.
- (6) The Director may require a complainant to verify the complaint by statutory declaration within a period of not less than 14 days specified by the Director.

**13. Circumstances in which a complaint may be declined or deferred**

- (1) The Director may decline to deal with a complaint if –
  - (a) the person making the complaint has failed to provide details of the conduct the subject of the complaint or any further details required by the Director under section 12(5), or
  - (b) the complainant has failed to verify the complaint by statutory declaration as required by the Director under section 12(6), or
  - (c) the complaint is withdrawn under section 16, or
  - (d) in the case of a complaint against a member of the clergy –
    - (i) the member of the clergy is not licensed by the Bishop and was not licensed by the Bishop at the time the conduct the subject of the complaint is alleged to have occurred, or
    - (ii) the member of the clergy is not resident in the Diocese and was not resident in the Diocese within 2 years before the complaint was made, or
    - (iii) the conduct the subject of the complaint did not occur in the Diocese.



- (2) The Director, with the concurrence of the PSC, may decline to deal with a complaint at any time if the PSC is of the opinion that –
  - (a) the complaint is false, vexatious or misconceived or the subject-matter of the complaint is trivial, or
  - (b) there is insufficient evidence to warrant an investigation under Part 2 of this Chapter, or
  - (c) the complaint does not allege any conduct which may be the subject of a complaint under this Part or
  - (d) the subject matter of the complaint is under investigation by some other competent person or body.
- (3) The Director may defer consideration of a complaint if the subject matter of the complaint is under investigation by some other competent person or body or is the subject of legal proceedings.
- (4) The Director is to record the reasons for declining to deal with a complaint or for deferring consideration of a complaint and is to provide a copy of the record to the PSC.
- (5) If the Director declines to deal with a complaint or defers consideration of a complaint, the Director may do all such things as are necessary or convenient to give effect to the decision.

#### **14. Subject-matter of complaint already dealt with**

No action is to be taken or continued under this Ordinance in respect of a complaint against a person if the Director, with the concurrence of the PSC, determines that the conduct alleged in the complaint is not materially different from conduct already dealt with under –

- (a) this Ordinance, or
- (b) the *Professional Standards Ordinance 2004*, or
- (c) the *Clergy Discipline Ordinance 1965*

unless, in the opinion of the Director, the complaint is supported by apparently credible evidence of fresh facts likely to lead to a different result.

#### **15. Exempt conduct**

No action is to be taken or continued under this Ordinance if the Director, with the concurrence of the PSC, determines that the whole of the conduct concerning which the complaint has been made is exempt conduct.

#### **16. Withdrawal of complaint**

- (1) A complainant may, by notice in writing to the Director, withdraw the complaint at any time before the Director refers the complaint to the PSC under section 32.
- (2) A complaint is also withdrawn if at any time before the Director refers the complaint to the PSC under section 32 –
  - (a) the complainant notifies the Director orally of the complainant's decision to withdraw the complaint, and
  - (b) the Director provides the complainant with written confirmation of the withdrawal.

- (3) If the Director knows the name and address of a person who is alleged to have been a subject of conduct to which the complaint relates, the complaint cannot be withdrawn without the written consent of the person or the person's representative.

#### **17. Investigation or notification of making of complaint**

- (1) After receiving a complaint, the Director may investigate the complaint or may appoint a person to investigate the complaint.
- (2) After receiving the investigator's report or if, after receiving a complaint, the Director decides not to appoint a person at that particular time to investigate the complaint, the Director is –
  - (a) to provide a copy of the complaint to the person against whom the complaint is made, and
  - (b) to request the person to provide a response to the complaint within a period of not less than 21 days specified by the Director, and
  - (c) to inform the person generally of the processes under this Ordinance, including the opportunity for conciliation (which may be done by providing the person with a copy of this Ordinance), and
  - (d) to advise the person of the possible sanctions that might follow if the allegations in the complaint are proven, and the opportunities for their mitigation or suspension, and
  - (e) to caution the person not to make any admissions without the benefit of legal advice.

#### **18. Response to complaint**

- (1) A person against whom a complaint is made and who has been provided with a copy of the complaint may respond to the complaint by admitting or denying it in whole or in part.
- (2) A response must be in writing signed by the person against whom the complaint is made or, in the case of a person under legal incapacity, by –
  - (a) a parent or guardian, or
  - (b) a person responsible for the welfare of the person under legal incapacity or acting on his or her behalf.

### **Part 2 Investigation and assessment of complaints**

#### **19. Admission of complaint or substance of complaint—referral of complaint to PSC**

If the person against whom the complaint is made admits the complaint or the substance of the complaint, the Director is to refer the complaint to the PSC.

#### **20. Non-admission of complaint—appointment of investigator**

If the person against whom the complaint is made denies the complaint, or does not admit the complaint or the substance of the complaint within the period specified by the Director, the Director is to investigate the complaint personally or appoint a person to investigate the complaint, unless the complaint has been investigated under section 17.

**21. Investigation of complaint**

The Director or a person appointed to investigate a complaint under section 17 or section 20 is to investigate the complaint promptly.

**22. General functions of investigator or Director**

- (1) For the purposes of an investigation, the investigator or Director is, subject to this section, to obtain such statutory declarations, written statements, recorded conversations, reports, documents and other material as the investigator considers necessary or advisable.
- (2) The investigator or Director may require the person making the complaint to verify the complaint by statutory declaration if this has not already been done.
- (3) If the investigator or Director interviews a person, the investigator must allow the person to have another person present with them, being a person who is not a witness to the matters which are the subject of the complaint.
- (4) The investigator or Director is –
  - (a) to make a written record or, with the consent of the person, an audio record, of all interviews with the person, and
  - (b) to provide the person with a copy of the record, and
  - (c) to have the person verify the record by signing a copy of it or, in the case of an audio record, by signing a statement to the effect that the audio record is a true record of the interview.

**23. Responsibility of person against whom complaint is made to co-operate in the investigation**

- (1) The investigator or Director may, by notice in writing to the person against whom the complaint is made, require the person –
  - (a) to respond to a question or series of questions within the time specified in the notice in relation to any matter relevant to the investigation, and
  - (b) to otherwise assist in, or cooperate with the investigation of the complaint in a specified manner.
- (2) It is the obligation of a person against whom a complaint is made –
  - (a) to answer truthfully any question put by or on behalf of the investigator or Director in the exercise of powers conferred by this Ordinance, and
  - (b) not to mislead or obstruct the investigator or Director, and
  - (c) not unreasonably to delay the investigator or Director in the exercise of functions conferred by this Ordinance.

**24. Offences in relation to an investigation**

- (1) A person licensed by the Bishop or a person in holy orders resident in the Diocese who, without reasonable excuse, fails to comply with a notice issued under section 23(1) commits an offence.
- (2) A church worker who, without reasonable excuse, fails to comply with a notice issued under section 23(1) commits an offence.

- (3) A person referred to in subsection (1) or (2) must not mislead or obstruct the investigator or Director in the exercise of powers conferred by this Ordinance. The willful contravention of this subsection is an offence.

**25. Report of investigation**

The investigator is to make and forward to the Director or the Director is to prepare, without unnecessary delay, a report setting out the results of the investigation, including a recommendation as to whether the complaint is substantiated or unsubstantiated, together with a copy of all records made as referred to in sections 22 and 23 and any other relevant material obtained in the course of the investigation.

**26. Revocation of appointment of investigator**

The Director may, by notice in writing, revoke the appointment of an investigator if the investigator fails or refuses to comply with section 21, 22 or any reasonable requirement of the Director.

**Part 3 Suspension and prohibition orders**

**27. Recommendation for suspension or prohibition order**

- (1) At any time after a complaint is made against a person, the Director or the PSC, may after giving the person an opportunity to be heard, recommend to the relevant Church authority either or both of the following –
- (a) that the person should be suspended from exercising the functions of office or employment by one or more Church bodies,
  - (b) that a prohibition order be made against the person.
- (2) A recommendation made by the Director under subsection (1) must be reviewed by the PSC within 7 days of the making of the recommendation. The PSC may confirm, vary or terminate the suspension or order.

**28. Matters to be considered before making a recommendation**

Before making a recommendation under section 27, the Director and the PSC are to take the following matters into account –

- (a) the seriousness of the conduct alleged in the complaint,
- (b) the nature of the material to support or negate the complaint,
- (c) whether any person is at risk of harm,
- (d) after consultation with the relevant Church body or its representative, the effect on the person against whom the complaint is made, a relevant Church body and on the Church of acting and of not acting under section 27,
- (e) any other allegation of conduct similar to that alleged in the complaint previously made to the Director or to an equivalent person or body within the previous 10 years, and may take into account any other relevant matter.

**29. Giving effect to a recommendation**

The relevant Church authority is authorised to do all such things as may be necessary to give effect to a recommendation made under section 27.

### **30. Termination of suspension or prohibition order**

A suspension or prohibition order made by a Church authority pursuant to a recommendation under section 27 must be terminated by the Church authority –

- (a) if the Director terminates the investigation without referring the matter to the PSC, or
- (b) upon any direction to that effect given by the PSC, or
- (c) upon the Church authority giving effect to a recommendation of the Diocesan Tribunal under section 60 (1) of the 1961 Constitution or the Disciplinary Tribunal under section 64.

### **31. Effect of suspension or prohibition order**

During a suspension or prohibition order pursuant to the provisions of this Part or during a period when a person voluntarily stands down from a position while conduct the subject of a complaint is dealt with under this Ordinance –

- (a) the person against whom the complaint is made must comply with the terms of any prohibition order, and
- (b) the person against whom the complaint is made is ineligible for appointment to any position or function covered by any suspension or prohibition order, and
- (c) the relevant Church authority may fill the vacancy caused by any suspension or prohibition order, or while the person against whom the complaint is made is standing down, and
- (d) the person against whom the complaint is made is entitled to whatever stipend, salary, allowances and other benefits that he or she would otherwise have received and which may be met or reimbursed from funds under the control of the Synod.

## **Part 4 Reference of complaints to the PSC**

### **32. Action on receipt of investigator's report**

- (1) On completion of his or her investigation or on receipt of the investigator's report, the Director must –
  - (a) notify the PSC of the identity of the person against whom the complaint is made, and
  - (b) furnish the PSC with a copy of all material in the Director's possession relevant to the complaint, including a copy of the investigator's report, and
- (2) The Director must –
  - (a) notify the person against whom the complaint is made that the complaint has been referred to the PSC, and
  - (b) furnish the person with a copy of all material in the Director's possession relevant to the complaint, including a copy of the investigator's report, and
  - (c) invite the person to provide any further information or material, and to make written representations to the PSC, relating to the complaint, within 28 days or such longer period as may be agreed to by the Director and the PSC at any time.

### **33. Review of material by the PSC**

- (1) The PSC is to review the material furnished to it by the Director and any further information or material provided to it by the person against whom the complaint is made.

- (2) The PSC may request further material from the Director or the person against whom the complaint is made.
- (3) The PSC must provide a written report to the Director within 42 days or such longer period as may be agreed to by the Director and the PSC at any time.
- (4) In conducting its review the PSC must include in its report its conclusions as to the factual circumstances of the complaint, its findings as to whether the complaint is substantiated or unsubstantiated and such other matters in section 34(2)(a) as are relevant.

#### **34. Recommendations and directions of the PSC**

- (1) After conducting its review, the PSC may make one or more of the following recommendations in relation to the person against whom the complaint is made –
  - (a) if arrangements for the conciliation of the complaint have not previously been made, that the complaint be the subject of conciliation,  
*Note: Chapter 3 makes provision for the conciliation of complaints.*
  - (b) that the person make an apology of a kind specified by the PSC,
  - (c) that the person make reparation as specified by the Committee for the conduct the subject of the complaint,
  - (d) that the person be admonished,
  - (e) that the person undertake training, or retraining, of a nature specified by the PSC,
  - (f) that the person receive counseling of a nature specified by the PSC,
  - (g) that the person's ministry or employment be made subject to conditions or restrictions of the kind specified by the PSC,
  - (h) that the person's ministry or employment be terminated,
  - (i) if the person is subject to the jurisdiction of the Diocesan Tribunal, and if the PSC is of the opinion that there is a reasonable likelihood that the complaint, if sustained, will result in the Diocesan Tribunal making a recommendation for the person's deposition from orders, prohibition from functioning or removal from office, that the Bishop appoint a person to promote a charge against the person before the Diocesan Tribunal, or that the complaint be referred to a body in another diocese with equivalent jurisdiction,  
*Note: As to the persons who are subject to the jurisdiction of the Diocesan Tribunal, see the note to Division 1 of Part 2 of Chapter 4.*
  - (j) if the person is subject to the jurisdiction of the Disciplinary Tribunal, and if the PSC is of the opinion that there is a reasonable likelihood that the complaint, if sustained, will result in the Disciplinary Tribunal making a recommendation for a prohibition order against the person, that the Bishop appoint a person to promote a charge against the person before the Disciplinary Tribunal, or that the complaint be referred to a body in another diocese with equivalent jurisdiction,  
*Note: The persons who are subject to the jurisdiction of the Disciplinary Tribunal are church workers who are not subject to the jurisdiction of the Diocesan Tribunal – see section 42A.*
  - (k) that no further action be taken with respect to the complaint.
- (2) In making a recommendation, the PSC is to take the following matters into consideration –
  - (a) the factual circumstances of the complaint as determined by the PSC

- (b) the nature of the complaint, the circumstances in which the conduct is alleged to have occurred and the seriousness of the conduct the subject of the complaint, in particular, whether that conduct comprises a serious offence or child abuse,
  - (c) whether there is more than one complaint,
  - (d) whether the complaint alleges more than one incident, or only a single incident,
  - (e) when the conduct is alleged to have occurred,
  - (f) the ages of the complainant and the person against whom the complaint is made at the time the conduct is alleged to have occurred,
  - (g) if the person against whom the complaint is made –
    - (i) is a member of the clergy – whether the person was a member of the clergy at the time the conduct is alleged to have occurred, or
    - (ii) is not a member of the clergy – the position held or function performed by the person at the time the conduct is alleged to have occurred,
  - (h) whether the evidence of the complainant is corroborated,
  - (i) any views expressed by the complainant as to the desired outcome of the complaint,
  - (j) whether the person against whom the complaint is made has made any reparation for the conduct the subject of the complaint and, if so, the nature and extent of the reparation,
  - (k) any other offences committed by the person against whom the complaint has been made,
  - (l) any other complaints, whether investigated or not and unsubstantiated or not made against the person,
  - (m) whether any part of the conduct the subject of the complaint is exempt conduct,
  - (n) the practicability and likely effectiveness of the recommendation,
  - (o) such other matters as the PSC considers relevant.
- (3) The PSC may direct that a suspension or prohibition order made by a Church authority pursuant to a recommendation under section 27 must be terminated by the Church authority.
- (4) If the PSC considers –
- (a) that the material furnished to it by the Director does not disclose any conduct which may be the subject of a complaint under Part 1 of this Chapter, or
  - (b) that the conduct that is alleged to give rise to the complaint did not occur, or
  - (c) that the complaint is vexatious or misconceived, or
  - (d) that the subject-matter of the complaint is trivial,
- the PSC is to recommend that no further action be taken with respect to the complaint.
- Note: Section 39 of the Commission for Children and Young People Act 1998 imposes a duty on employers to notify the Commission for Children and Young People of certain disciplinary proceedings taken against employees for causing harm to a child. However, there is an exemption from the requirement to notify if there has been a finding in the disciplinary proceedings that the allegations in respect of which they were brought were vexatious or misconceived (see section 8 of the Commission for Children and Young People Regulation 2000) or the alleged conduct did not occur.*

### **35. Notice of recommendation**

- (1) The PSC is to give notice in writing of its recommendation to the complainant, the person against whom the complaint is made, the Director and the Bishop as soon as practicable after the recommendation is made.

- (2) The notice must include a statement that if the person against whom the complaint is made does not accept the PSC's recommendation within 14 days after the date of the notice, proceedings will be taken against the person in accordance with section 36.

### **36. Response to the recommendation**

- (1) If the person against whom the complaint is made, by notice in writing to the Director, accepts the recommendation of the PSC within 14 days after the date of the notice of the recommendation and complies with the recommendation to the satisfaction of the Director, no further action is to be taken against the person under this Ordinance in relation to the complaint, except as provided by this section.
- (2) If the only recommendation is for the conciliation of the complaint and conciliation is attempted but the parties to the conciliation and the person conducting the conciliation are not satisfied that the subject of the complaint has been properly dealt with by the conciliation, the Director is to refer the complaint to the PSC for a further recommendation under section 34.
- (3) If the person against whom the complaint is made fails to comply with the recommendation to the satisfaction of the Director –
  - (a) in the case of a person subject to the jurisdiction of the Diocesan Tribunal—the Bishop is to appoint a person to promote a charge against the person before the Diocesan Tribunal or refer the complaint to a body in another diocese with equivalent jurisdiction, or
  - (b) in the case of a person who is subject to the jurisdiction of the Disciplinary Tribunal — the Bishop is to appoint a person to promote a charge before the Disciplinary Tribunal or refer the complaint to a body in another diocese with equivalent jurisdiction.
- (4) If the person against whom the complaint is made does not accept the recommendation of the PSC by notice in writing to the Director within 14 days after the date of the notice of the recommendation –
  - (a) in the case of a person subject to the jurisdiction of the Diocesan Tribunal — the Bishop is to appoint a person to promote a charge against the person before the Diocesan Tribunal or refer the complaint to a body in another diocese with equivalent jurisdiction, or
  - (b) in the case of a person subject to the jurisdiction of the Disciplinary Tribunal — the Bishop is to appoint a person to promote a charge before the Disciplinary Tribunal or refer the complaint to a body in another diocese with equivalent jurisdiction.

### **37. Recommendation that a complaint be dealt with by a Tribunal**

If the recommendation of the PSC is that the Bishop appoint a person to promote a charge before the Diocesan Tribunal or the Disciplinary Tribunal, the Bishop must comply with the recommendation.



## **CHAPTER 3**

### **CONCILIATION OF COMPLAINTS**

#### **38. Arrangements for conciliation**

- (1) The Director may, with the consent of the complainant and the consent of the person against whom the complaint is made, make arrangements for the conciliation of the complaint.
- (2) Arrangements for the conciliation of a complaint may be made –
  - (a) at any time before the PSC makes a recommendation under section 34, or
  - (b) if the PSC makes a recommendation that the complaint be the subject of conciliation, at any time after the recommendation is made and before a charge arising from the complaint is promoted before the Diocesan Tribunal or the Disciplinary Tribunal.
- (3) Conciliation cannot be arranged if –
  - (a) the complaint alleges child abuse and the person alleged to have been abused is still a child, or
  - (b) the complaint alleges sexual abuse which comprises a serious offence, or
  - (c) the conduct the subject of the complaint, if proven, is likely, in the Director's opinion, to result in the imposition of a penalty on the person against whom the complaint is made which comprises or includes either or both of the following –
    - (i) in the case of a person who is a licensed by the Bishop – the suspension or revocation of the person's licence,
    - (ii) in any case – the issue of a prohibition against the person.

#### **39. Conduct of conciliation**

- (1) The conciliation of a complaint is to be conducted by a person appointed by the Director in such manner as the person thinks fit.
- (2) Any other process under this Ordinance which is current at the time when conciliation is commenced or which may be implemented at any subsequent time may be suspended or deferred in accordance with such directions as may be given from time to time by the PSC.
- (3) Any such direction has effect according to its terms.

#### **40. Termination of conciliation**

- (1) The person conducting the conciliation of a complaint may terminate the conciliation at any time.
- (2) The person conducting the conciliation of a complaint must terminate the conciliation if requested to do so by any party to the conciliation.
- (3) The conciliation of a complaint is terminated, unless it is completed or terminated at an earlier time, on the expiration of 3 months after the conciliation commenced to be conducted.

#### **41. Outcome of conciliation**

- (1) If the parties to a conciliation and the person conducting the conciliation are satisfied that the matter the subject of the complaint has been properly dealt with by the conciliation, no further action is to be taken under this Ordinance with respect to the matter.
- (2) The outcome of a conciliation to which subsection (1) applies is to be recorded in writing and signed by the parties to the conciliation.
- (3) If the parties to conciliation and the person conducting the conciliation are not satisfied that the matter the subject of the complaint has been properly dealt with by the conciliation, any process which was suspended or deferred under section 39(2) may be resumed or implemented.

#### **42. Confidentiality of conciliation**

- (1) A person involved in a conciliation is to treat as confidential all communications, whether written or oral, that take place during the course of the conciliation and those communications cannot be used in –
  - (a) an investigation under this Ordinance, or
  - (b) proceedings before the Diocesan Tribunal or the Disciplinary Tribunal.
- (2) This section does not apply to the agreed outcome of the conciliation.
- (3) The agreed outcome of the conciliation is to be recorded by the Director and a copy is to be given to each party to the conciliation, the Bishop and, if the conciliation was recommended under section 34, the PSC.
- (4) The agreed outcome may be notified by the Director to Bishop-in-Council (and by Bishop-in-Council to the Synod), but the notification must not disclose the names of a party to the conciliation, or any other information that would enable a party to be identified, unless the party has consented to his or her name being disclosed.

### **CHAPTER 4**

#### **THE TRIBUNALS**

##### **Part 1 Introductory**

*Note: This Chapter, in so far as it applies to the Diocesan Tribunal, is made under and for the purposes of the Anglican Church of Australia Constitution Act 1961 and, in particular, Chapter IX (The Tribunals) of the Schedule to that Act. In order to understand more easily the disciplinary scheme that is found partly in that Act and partly in this Ordinance, summaries of the relevant provisions of that Act are included as notes at appropriate places in this Ordinance. As the notes do not necessarily reproduce the exact text of that Act, reference should, where necessary, be made directly to that Act.*

#### 43. Definition

In this Chapter, *the Tribunal* means –

- (a) in the case of a person who is subject to the jurisdiction of the Diocesan Tribunal – the Diocesan Tribunal, and
- (b) in the case of a person who is subject to the jurisdiction of the Disciplinary Tribunal – the Disciplinary Tribunal.

#### *Division 1 Jurisdiction of the Tribunals*

##### **What is the nature of the Diocesan Tribunal?**

*Note:* Section 54(1) of the 1961 Constitution provides that the Diocesan Tribunal is the court of the Bishop.

##### **What is the jurisdiction of the Diocesan Tribunal?**

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

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

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

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

#### 44. What is the jurisdiction of the Disciplinary Tribunal?

The Disciplinary Tribunal has jurisdiction to hear and determine charges brought against church workers who are not subject to the jurisdiction of the Diocesan Tribunal.

#### *Division 2 Charges*

*Note:* By section 80 of this Ordinance, Divisions 2 and 3 of Part 1 of this Chapter apply to a charge in respect of a breach of faith, ritual or ceremonial in the same way as those Divisions apply to a charge for other wrongdoing except as provided by Chapter 5.

#### 45. Who may make a charge

A charge of an offence other than breach of faith ritual ceremonial may be made by the Bishop or a person appointed by the Bishop.

**46. Bishop's appointee**

- (1) The appointment by the Bishop of a person to make a charge is to be in writing signed by the Bishop. In the case of a charge that does not relate to faith, ritual or ceremonial, the person appointed may be the Director.
- (2) The appointment continues until it is revoked in writing by the Bishop, unless the appointment is expressed to be for the purpose of making a particular charge or charges or for a specified period of time.

**9. 47. What is the form of a charge?**

- (1) A charge must state –
  - (a) the wrongdoing that it is alleged the person has committed, and
  - (b) particulars of the acts or omissions alleged to constitute the wrongdoing.
- (2) A charge may allege more than one wrongdoing.
- (3) The allegations in the charge must be verified by statutory declaration made by the person or persons making the charge or by any other person or persons.
- (4) A charge must be signed by the person or persons making the charge.
- (5) A charge must include an address within the Diocese for service of documents on the person or persons making the charge.
- (6) A charge may be, but does not have to be, in the form of Schedule 1, Schedule 2 or Schedule 3, to this Ordinance.

**48. How is a charge made?**

A charge is made by lodging a copy of the charge at the Diocesan Registry Office together with the statutory declaration or declarations verifying the allegations in the charge.

**49. Is there a time limit to the making of a charge?**

- (1) Subject to section 81, there is no time limit to the making of a charge.
- (2) However, the Tribunal, under section 62, may dismiss a charge for delay in making the charge.

**50. Can a charge be withdrawn?**

- (1) The person who has or the persons who have made a charge may, with the consent of the person charged, withdraw the charge at any time before it has been referred to the Tribunal by the Registrar.
- (2) The person who has or the persons who have made a charge may, with the consent of the person charged and of the Tribunal, withdraw the charge at any time after it has been referred to the Tribunal by the Registrar.

- (3) In granting its consent, the Tribunal may direct that a specified person or persons be substituted for the person or persons who made the charge.
- (4) A charge is withdrawn by lodging a copy of the notice of withdrawal at the office of the Registrar.
- (5) The notice of withdrawal is to be signed by the person or persons making the charge and the person charged.
- (6) If a charge is withdrawn, no further proceedings may be taken under this Ordinance in relation to the charge by the person or persons who made the charge.
- (7) However, the withdrawal of a charge does not prevent another person or other persons from making the same or a different charge against the person named in the charge that is withdrawn.

## **51. Notice of the charge**

As soon as practicable after a charge is made against a person, the Registrar must serve a copy of the charge on the person.

### **Circumstances in which the Bishop may suspend a person from office**

#### **Notes:**

- (1) *Suspension before promotion of charge –*  
*Section 61(2) of the 1961 Constitution provides that the Bishop may suspend a person licensed by the Bishop, or a person in holy orders resident in the Diocese, from the duties of office where –*
  - (a) *a charge is proposed to be promoted under this Ordinance, and*
  - (b) *the charge will not allege a breach of faith, ritual or ceremonial, and*
  - (c) *the charge relates to an offence that is punishable by imprisonment for 12 months or more of which the person has been charged or convicted or in respect of which the Bishop has received a report from an experienced lawyer stating that there is a prima facie case of the person having committed the offence.**Section 61(3) – (6) of the 1961 Constitution provide that the period of suspension must not exceed 28 days from the date of service of the Bishop’s notice of suspension on the person unless the charge is promoted within the period of suspension, in which case the period of suspension continues until the first meeting of Bishop-in-Council thereafter. The Bishop may revoke a suspension at any time during its currency. Suspension from the duties of office does not deprive a person from the emoluments appertaining to the office.*
- (2) *Suspension following promotion of charge –*  
*Section 61(1) of the 1961 Constitution provides that where a charge has been promoted before the Diocesan Tribunal against a person licensed by the Bishop, the Bishop, with the concurrence of Bishop-in-Council, may suspend the person from the duties of his or her office until determination of the charge, or a lesser time. The Bishop may make such arrangements for the performance of the duties of the office as may be authorised by any canon, ordinance or rule or, in the absence of such canon, ordinance or rule, as the Bishop deems proper.*
- (3) *The Bishop or a Church Authority may also give effect to a suspension order pursuant to Part 3 of Chapter 2 of this Ordinance.*

**52. Request for answer to the charge**

- (1) The Registrar must serve, with the copy of the charge –
  - (a) a request that the person charged lodge an answer to the charge at the Diocesan Registry Office within a period of not less than 21 days specified in the Registrar's request, and
  - (b) general information concerning the processes under this Ordinance, the possible sanctions that might follow if the charge is proven, and the opportunities for their mitigation or suspension (all of which may be done by providing the person charged with a copy of this Ordinance), and
  - (c) a caution not to make any admissions without the benefit of legal advice.
- (2) The Registrar may from time to time by notice in writing to the person charged extend the period specified for lodging the person's answer even though the period originally specified or any previous extension has elapsed.

**53. Answer to the charge**

- (1) An answer to a charge must be signed by the person charged.
- (2) In an answer, the person charged may do either or both of the following –
  - (a) admit all or any of the allegations in the charge,
  - (b) deny all or any of the allegations in the charge and verify such denial by way of statutory declaration lodged with the answer.
- (3) The answer, together with any statutory declaration verifying the denial of all or any of the allegations in the charge, is to be lodged at the Diocesan Registry Office.
- (4) The Registrar is to send a copy of the answer and any statutory declaration lodged with the answer to the person or persons making the charge.
- (5) The Registrar is to notify the person or persons making the charge if the person against whom the charge is made fails to lodge an answer within the requisite period.
- (6) A failure by the person against whom the charge is made –
  - (a) to admit in an answer any allegation in the charge, or
  - (b) to deny in an answer any allegation in the charge and to verify such denial by way of statutory declaration lodged with the answer,within the requisite period for lodging an answer to a charge is taken to be a denial of the allegation within the requisite period.

**54. What procedure applies if a charge (not relating to faith, ritual or ceremonial) is admitted?**

- (1) If any wrongdoing alleged in a charge, or part of a charge, that does not relate to faith, ritual or ceremonial, is admitted within the requisite period for lodging an answer to the charge, the Registrar is to refer the charge, or part, to the Tribunal.
- (2) The Diocesan Tribunal is to make a recommendation to the Bishop concerning the wrongdoing admitted, in accordance with section 60 (1) of the 1961 Constitution.

- (3) The Disciplinary Tribunal is to make a recommendation to the relevant church authority concerning the wrongdoing admitted in accordance with section 67.
- (4) A recommendation for disciplinary action must not be made without giving the person against whom the recommendation is proposed to be made an opportunity to be heard in relation to the recommendation.

**55. What procedure applies if a charge (not relating to faith, ritual or ceremonial) is denied?**

If any wrongdoing alleged in a charge, or part of a charge, that does not relate to faith, ritual or ceremonial, is denied within the requisite period for lodging an answer to the charge, the charge or part must be referred by the Registrar to the Tribunal.

*Division 3 Proceedings before the Tribunals*

**56. Right of appearance**

The person charged is entitled to appear before the Tribunal personally or by a legal practitioner.

*Note: As to the payment of the costs of legal representatives, see section 70.*

**57. Prosecution of charges by person appointed by the Director**

- (1) A charge is to be prosecuted by a person appointed by the Bishop.
- (2) The person appointed by the Bishop has a right of appearance before the Tribunal.

**58. Directions hearing**

- (1) If any allegation in a charge is denied, the Tribunal may hold a preliminary hearing in order to give directions concerning the conduct of the proceedings and the hearing of the charge.
- (2) At a preliminary hearing, the Tribunal may be constituted by the President or a Deputy President sitting alone.

**59. What happens if the person against whom the charge is made does not appear before the Tribunal?**

If the person against whom a charge is made does not appear before the Tribunal, the Tribunal may hear the charge in the person's absence.

**60. Public hearing**

- (1) A charge is to be heard in public.
- (2) However, the President or, in the absence of the President, the Deputy President –
  - (a) may, at any time, order that a charge, or a specified part of the proceedings before the Tribunal concerning a charge, is to be heard in private, and

- (b) must order that a charge, or a specified part of the proceedings before the Tribunal concerning a charge, is to be heard in private if requested to do so by 2 other members of the Tribunal.

#### **61. Suppression of names**

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

#### **62. Dismissal of charge**

The Tribunal may dismiss a charge if it is of the opinion that the delay in making the charge causes unfairness to the person against whom the charge is made.

#### **63. Amendment of charge**

- (1) The Tribunal may permit or direct an amendment to the charge, the particulars of the charge or the answer to the charge.
- (2) If an amendment is made to the charge, the particulars of the charge or the answer to the charge, the Registrar is to give notice of the amendment, as soon as practicable after it is made, to the person appointed under section 55(1), the person charged and the person or persons making the charge.

#### **64. Onus of proof**

A charge is required to be proved on the balance of probabilities.

#### **What are the powers of the Diocesan Tribunal concerning the production of evidence?**

*Note: Section 9 of the Anglican Church of Australia Constitution Act 1961 and section 62 of the 1961 Constitution provide that, for the purpose of securing the attendance of witnesses and the production of documents and for the examination of witnesses on oath or otherwise, the Diocesan Tribunal is taken to be an arbitrator as referred to in the Commercial Arbitration Act 1984 (NSW) and has power to administer an oath or to take an affirmation from any witness and for the same purpose any party to a proceeding before it or any person permitted by it to submit evidence to it is taken to be a party to a reference or submission to arbitration within the meaning of the Commercial Arbitration Act 1984.*

#### **65. What are the powers of the Disciplinary Tribunal concerning the production of evidence?**

The Disciplinary Tribunal may receive evidence, examine witnesses and administer oaths and affirmations.



## **66. Determination in relation to complaints of child abuse**

In dealing with a complaint of child abuse, a Tribunal must determine whether the complaint is vexatious or misconceived or the conduct alleged in the complaint did not occur.

### **What recommendations may the Diocesan Tribunal make?**

*Note: Section 60(1) of the 1961 Constitution provides that the Diocesan Tribunal shall make such recommendation as it thinks just in the circumstances, but shall not recommend any sentence other than one or more of the following –*

- *deposition from orders,*
- *prohibition from functioning*
- *removal from office*
- *rebuke.*

*The Diocesan Tribunal's recommendation is made to the Bishop.*

### **What action may be taken by the Bishop concerning the Diocesan Tribunal's recommendation?**

*Note: Section 60(2) of the 1961 Constitution provides that the Bishop is to give effect to the Diocesan Tribunal's recommendation. However, if disciplinary action is recommended, the Bishop may consult with the Diocesan Tribunal and in the exercise of his prerogative of mercy –*

- *mitigate the disciplinary action, or*
- *suspend its operation, or*
- *mitigate the disciplinary action and suspend its operation.*

*In each case, the Bishop is to pronounce the disciplinary action recommended even though he mitigates or suspends it.*

*If disciplinary action or mitigated disciplinary action has been suspended and remains suspended for 2 years, the disciplinary action has no operation after the 2-year period.*

## **67. What recommendations may the Disciplinary Tribunal make?**

The Disciplinary Tribunal may make any one or more of the following recommendations to the relevant church authority –

- (a) that no further action be taken in relation to the complaint,
- (b) that a prohibition order be made against the person in such terms as are specified in the recommendation,
- (c) such other recommendation as the Disciplinary Tribunal thinks fit.

## **68. What action may be taken by the relevant church authority concerning the Disciplinary Tribunal's recommendation?**

- (1) The relevant church authority is to give effect to the recommendations of a Disciplinary Tribunal, subject to this Part.
- (2) The relevant church authority may, after consulting with the Disciplinary Tribunal, in giving effect to a recommendation –
  - (a) mitigate its terms, or
  - (b) suspend its implementation, or
  - (c) mitigate its terms and suspend its implementation.
- (3) A recommendation, and any decision made by the relevant church authority in respect of the recommendation, ceases to have effect if its implementation is deferred for a period of not less than 2 years.

## **69. Report of finding**

- (1) A determination of the Tribunal, and any recommendation made by the Tribunal, is to be contained in a report –
  - (a) that sets out the Tribunal’s findings on material questions of fact, and
  - (b) that refers to any evidence or other material on which the Tribunal’s findings were based, and
  - (c) that gives the reasons for the Tribunal’s determination.
- (2) The Tribunal’s report is to be given to the Bishop, the relevant church authority (if any), the person or persons making the charge, the person charged and, subject to subsection (3), the Bishop-in-Council.
- (3) In making a report to the Bishop-in-Council where the charge was not found to be proven, the Tribunal should not disclose the name of, or other information that could lead to the identification of, the person charged or a person who appeared before it.

## **70. Costs**

- (1) The Tribunal has no power to award costs of any proceedings before it
- (2) A person charged may apply to Bishop-in-Council for the provision of legal assistance and Bishop-in-Council may grant such assistance on such terms and subject to such conditions as it sees fit.

## **71. Recommendation as to payment of witness expenses**

The Tribunal may make a recommendation to the Registrar for the payment of the expenses, in an amount determined by the Tribunal, of any person who appeared as a witness before the Tribunal.

## **72. Tribunal procedures**

The Tribunal may, subject to this Ordinance, the rules of procedural fairness and any rules made under section 73, determine the procedures applicable for the hearing of a charge.

## **73. Rules**

Bishop-in-Council may make rules for the conduct of the business of the Tribunal.

## **Part 2 Review of the decision of a Tribunal**

### *Division 1 The Diocesan Tribunal*

#### **Can there be an appeal from a determination of the Diocesan Tribunal?**

*Note: Section 59(4) of the 1961 Constitution provides that –*

- *the person who brings a charge before the Diocesan Tribunal, if dissatisfied with its determination or recommendation, and*
- *the person against whom the charge is brought, if dissatisfied with the recommendation or the disciplinary action imposed on that recommendation,*

*may appeal to the Appellate Tribunal within 28 days after the making of the determination or recommendation, or the imposing of the disciplinary action, or within such further time as the*

*President of the Appellate Tribunal may in writing allow. In the case of disciplinary action comprising the deprivation of or suspension from office, the Bishop may, on the lodging of the notice of appeal, if he sees fit, intermit the operation of the disciplinary action.*

*Section 60(4) of the 1961 Constitution provides that the provisions of the Constitution with respect to an appeal from a determination of the Diocesan Tribunal extend to and authorise an appeal from a recommendation or the imposition of disciplinary action but do not extend to a ruling of the Diocesan Tribunal of an interlocutory nature.*

*Section 57(2) of the 1961 Constitution provides that an appeal to the Appellate Tribunal is by way of re-hearing.*

## **Division 2 The Disciplinary Tribunal**

### **74. Application for review**

- (1) A person who is aggrieved by a decision of the Disciplinary Tribunal that 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,may apply to the Registrar for a review of the decision.
- (2) The application must be made within 21 days after the applicant receives a copy of the Disciplinary Tribunal's report under section 69(2) or such longer period as the Registrar may by notice in writing to the aggrieved person determine.
- (3) The application must be in writing and set out the grounds for the review.

### **75. Grounds for review**

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

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

### **76. Stay of proceedings**

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

### **77. Appointment of Reviewer**

- (1) As soon as practicable after receiving an application for review, the Registrar must notify the Chancellor.
- (2) The Chancellor is to appoint an experienced lawyer to undertake the review and notify the Registrar of the appointment.

- (3) Upon the appointment of an experienced lawyer, the Registrar is to obtain an estimate of the fee to be charged by the experienced lawyer in making a determination under this Part.
- (4) On receipt of the estimate, the Registrar is to notify the applicant for the review of the amount of the estimate and is to request the applicant to pay half of the estimated fee to the Registrar or a person nominated by the Registrar.
- (5) If the applicant does not pay half of the estimated fee within 21 days after receipt of the Registrar's request, the application for the review lapses.

#### **78. Conduct of review**

- (1) A review by an experienced lawyer of the determination of the Disciplinary Tribunal is to be conducted in the manner determined by the experienced lawyer.
- (2) A review is not to be a re-hearing of the merits, or a new hearing.
- (3) The experienced lawyer may make such order as to costs of the review as he or she thinks fit.

#### **79. Determination on review**

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

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

## **CHAPTER 5**

### **BREACHES OF FAITH, RITUAL AND CEREMONIAL**

#### **Part 1 Charges**

##### **Against whom may a charge be made?**

###### **Notes:**

- (1) *Section 54(2) of the 1961 Constitution provides that a charge in respect of a breach of faith, ritual or ceremonial may be made against –*
  - *a person licensed by the Bishop, or*
  - *any other person in holy orders resident in the Diocese.*
- (2) *Section 3(3)(c) of the Church Ministry Ordinance 1993 makes the failure by a member of this church (as provided in the 1902 Constitutions) to act in accordance with a provision of a Schedule to that Ordinance an offence. Section 3(3)(b) of that Ordinance states that, for the purposes of section 54(2) of the 1961 Constitution, the provisions of each Schedule are each a matter of ritual, ceremonial or discipline (as the case may be).*

### **Who may make a charge?**

*Note: Section 54(3) of the 1961 Constitution provides that a charge in respect of a breach of faith, ritual or ceremonial may be made by –*

- *a person appointed by the Bishop, or*
- *5 adult communicant members of this Church resident within the Diocese.*

*However, if the charge is made against the incumbent of a parish with respect to a breach alleged to have been committed in the parish, the 5 adult communicant members must be bona fide parishioners of the parish.*

### **80. Making of charges generally**

Except as provided by this Chapter, Divisions 2 and 3 of Part 1 of Chapter 4 apply to a charge in respect of a breach of faith, ritual or ceremonial in the same way as those Divisions apply to a charge for other wrongdoing.

### **81. Is there a time limit to the making of a charge?**

A charge in respect of a breach of faith, ritual or ceremonial must be made within one year after the alleged commission of the breach.

## **Part 2 The Board of Enquiry**

### **Reference of charges to the Board of Enquiry**

*Note: Section 54(3) of the 1961 Constitution provides that, before any charge relating to faith, ritual or ceremonial is heard by the Diocesan Tribunal, it must be referred to the Board of Enquiry appointed by this Ordinance. The charge may proceed to a hearing if the Board allows it as a charge that is proper to be heard.*

### **82. The role of the Board of Enquiry**

- (1) The Board of Enquiry is to inquire into a charge or part referred to it in order to determine if the charge or part is one that is proper to be heard by the Diocesan Tribunal.
- (2) Evidence and representations before the Board of Enquiry are to be given by means of written statements or statutory declarations.
- (3) For the purpose of enabling the Board of Enquiry to exercise its functions under this section it, may –
  - (a) require the person or persons making the charge or invite the person charged to provide, by statutory declaration, information concerning the charge, and
  - (b) permit or direct an amendment to the charge or the particulars of the charge or the answer to the charge.
- (4) A person who provides a statutory declaration may consent to it being given to any other party. If consent is not given, the Board of Enquiry may disregard the contents of the statutory declaration.
- (5) If an amendment is made to the charge, the particulars of the charge, or the answer to the charge, the Registrar is to give notice of the amendment, as soon as practicable after it is made, to the person charged and to the person or persons making the charge.

- (6) The Board of Enquiry may dismiss a charge if it is of the opinion that the delay in making the charge causes unfairness to the person charged.

### **83. Report of the Board of Enquiry**

After inquiring into a charge or part of a charge referred to it, the Board of Enquiry is to report in writing to the Registrar whether or not it is of the opinion that the charge or part is a charge that is proper to be heard by the Diocesan Tribunal.

### **84. Finding that the charge is a charge that is proper to be heard**

- (1) If a majority of the members for the time being of the Board of Enquiry report to the Registrar that they are of the opinion that the charge or part of the charge is a charge that is proper to be heard by the Diocesan Tribunal, the Registrar is –
  - (a) to forward the documents relating to the charge and the reports of the members of the Board of Enquiry to the Diocesan Tribunal, and
  - (b) to fix a date, time and place for the hearing of the charge or part, and
  - (c) to serve notice of the date, time and place fixed for the hearing on the person or persons making the charge and the person charged –
    - (i) personally, or
    - (ii) by posting it in a letter addressed to the person or persons at the residential address of the person or persons last known to the Registrar.
- (2) The date fixed for the hearing of a charge or part of a charge must not be less than 30 days after the date of the Registrar's notice.

### **85. Finding that the charge is not a charge that is proper to be heard**

- (1) If a majority of the members for the time being of the Board of Enquiry report to the Registrar that they are of the opinion that the charge or part of the charge is not a charge that is proper to be heard by the Diocesan Tribunal, the Registrar is to send a copy of the reports of the members of the Board of Enquiry to the person or persons who made the charge and the person charged.
- (2) No further proceedings may be taken in relation to a charge or part of a charge to which this section applies.
- (3) However, this section does not prevent another charge being made against the same person.

### **86. Report to Bishop**

The Registrar is to provide a copy of each report made to the Registrar under this Part to the Bishop.

### **Can there be an appeal from a determination of the Diocesan Tribunal?**

*Note: Section 54(4) of the 1961 Constitution provides that in matters involving any question of faith, ritual, ceremonial or discipline an appeal lies from the determination of the Diocesan Tribunal to the Appellate Tribunal.*

Section 59(4) of the 1961 Constitution provides that –

- the person who brings a charge before the Diocesan Tribunal, if dissatisfied with its determination or recommendation, and
- the person against whom the charge is brought, if dissatisfied with the recommendation or the disciplinary action imposed on that recommendation,

may appeal to the Appellate Tribunal within 28 days after the making of the determination or recommendation, or the imposing of the disciplinary action, or within such further time as the President of the Appellate Tribunal may in writing allow. In the case of disciplinary action comprising the deprivation of or suspension from office, the Bishop may, on the lodging of the notice of appeal, if he sees fit, intermit the operation of the disciplinary action.

Section 60(4) of the 1961 Constitution provides that the provisions of the Constitution with respect to an appeal from a determination of the Diocesan Tribunal extend to and authorise an appeal from a recommendation or the imposition of disciplinary action but do not extend to a ruling of the Diocesan Tribunal of an interlocutory nature.

Section 57(2) of the 1961 Constitution provides that an appeal to the Appellate Tribunal is by way of re-hearing.

## CHAPTER 6

### EXEMPT CONDUCT

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

- (1) A person or a church authority, on behalf of an employee, may make a full disclosure to the Bishop in writing that the person has committed an offence or whose circumstances may be the subject of a complaint under this Ordinance.
- (2) If the disclosure is made –
  - (a) by a person prior to ordination by or on behalf of the Bishop as a deacon, or
  - (b) by a person who is not ordained prior to being issued with a licence as a Licensed Lay Minister under the *Diocese of Bathurst Administration Ordinance*, or
  - (c) by a person who has been ordained, otherwise than by or on behalf of the Bishop, of conduct committed before ordination as a deacon, prior to being licensed by the Bishop,
  - (d) by a person, lay or ordained, prior to being employed by a church authority the Bishop, with the concurrence of the PSC, may declare that the conduct cannot be the subject of a complaint or a charge under this Ordinance.
- (3) A declaration has effect for the purposes of this Ordinance according to its terms.

#### 88. Circumstances in which a declaration cannot be made—prohibited persons

The Bishop must not make a declaration under this Chapter in respect of a person who is a prohibited person within the meaning of the *Child Protection (Prohibited Employment) Act 1998*.

*Note:* Under the *Child Protection (Prohibited Employment) Act 1998*, a prohibited person is a person who, subject to certain qualifications, has been convicted or found guilty of a serious sex offence or a registrable offence. In general, these are sex offences or offences involving children which are punishable by imprisonment of 12 months or more.

**89. Requirements to be satisfied before a declaration can be made**

- (1) The Bishop must not make a declaration under this Chapter in respect of the conduct of a person unless the Bishop and the PSC consider that the person –
  - (a) is fit to be ordained, employed, issued with an authority or to be licensed by the Bishop, as the case may be; and if appropriate
  - (b) has made any appropriate reparation for the conduct, and
  - (c) does not pose a risk to the safety of any person, and
  
- (2) In deciding whether or not a person poses a risk to the safety of any person, the following matters are to be taken into consideration –
  - (a) the circumstances in which the conduct occurred,
  - (b) the seriousness of the conduct,
  - (c) the age of the person at the time of the conduct,
  - (d) the age of each victim at the time,
  - (e) the difference in ages between the person and each victim,
  - (f) the person’s criminal record, if any,
  - (g) such other matters as are considered relevant.

**90. Effect of refusal to make a declaration**

If the Bishop refuses to make a declaration under this Chapter in respect of the conduct of a person –

- (a) except as provided by paragraph (b), the person is not entitled for 5 years to apply again for a declaration in respect of that conduct, or
- (b) in the case of a prohibited person within the meaning of the *Child Protection (Prohibited Employment) Act 1998*, the person is not entitled to apply for a declaration while the person remains a prohibited person but is entitled to apply for a declaration at any time after the person ceases to be a prohibited person.

**CHAPTER 7**

**MISCELLANEOUS**

**91. Confidentiality of information**

A church authority, the Director, a member of the PSC, a person employed or engaged in work related to the functions of the Director or the PSC, a member of the Diocesan Tribunal or the Disciplinary Tribunal and a member of the Board of Enquiry must not divulge information that comes to his or her knowledge by virtue of his or her office or position, except –

- (a) in the course of carrying out the duties of that office or position, or
- (b) as may be authorised by or under this Ordinance, or
- (c) in any proceedings before a diocesan tribunal, a disciplinary tribunal, a provincial tribunal, the Appellate Tribunal or the Special Tribunal, or
- (d) as may be required by law, or
- (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.



**92. Disclosure by PSC to equivalent bodies in other dioceses**

The PSC must disclose to an equivalent body in another diocese relevant details of information in its possession concerning the alleged conduct of a church worker –

- (a) which is information that is relevant to, or arises 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 is to co-operate with any such equivalent body.

**93. Indemnity**

The Synod of the Diocese indemnifies a member of the PSC, the Diocesan Tribunal, the Disciplinary Tribunal, the Board of Enquiry or the Bishop for an act or omission of the member, PSC, Tribunal or Board in good faith and in the exercise or purported exercise of a function under this Ordinance.

**94. National register**

The relevant details of any determination under this Ordinance by the PSC, the Diocesan Tribunal or the Disciplinary Tribunal are to be forwarded by the Director for entry in the national register.

**95. Protocol**

Bishop-in-Council shall from time to time approve a Protocol for the administration of this Ordinance, including the provision of pastoral care, counselling and other assistance to complainants and respondents.

**96. Service of documents**

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

**97. Exclusion of other bodies**

Other than the Board of Enquiry, the Diocesan Tribunal and the Disciplinary Tribunal, no other body is competent to hear or determine a matter relating to a charge made under this Ordinance until –

- (a) a majority of the members for the time being of the Board of Enquiry report to the Registrar that they are of the opinion that the charge is not a charge proper to be heard, or
- (b) the Diocesan Tribunal has dealt with the charge to finality and, if appropriate, the Bishop has given effect to the Diocesan Tribunal's recommendation relating to the charge, or
- (c) the Disciplinary Tribunal has dealt with the charge to finality and, if appropriate, the relevant church authority has given effect to the Disciplinary Tribunal's recommendation relating to the charge.

**98. Rights of employers**

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

**99. Repeals**

- (1) The *Professional Standards Ordinance 2005* is repealed.
- (2) The *Clergy Discipline Ordinance 1965* is repealed.

**100. Savings and transitional provisions**

- (1) Nothing in this Ordinance affects any proceeding commenced, but not completed, before the date of assent to this Ordinance under the *Professional Standards Ordinance 2005* or the *Clergy Discipline Ordinance 1965* and any such proceeding may be continued and completed as if this Ordinance had not been made.
- (2) The repeal of the *Professional Standards Ordinance 2005* and the *Clergy Discipline Ordinance 1965* does not affect or invalidate any act done or election or appointment made under either of those Ordinances.
- (3) All persons appointed as members of the Professional Standards Committee under the *Professional Standards Ordinance 2005* and holding office immediately before the repeal of that Ordinance are to remain in office as if they had been elected or appointed under this Ordinance.
- (4) All persons appointed as members of the Professional Standards Panel under the *Professional Standards Ordinance 2005* and holding office immediately before the repeal of that Ordinance remain in office as members of the Diocesan Tribunal and are taken to be members of the Disciplinary Tribunal.
- (5) All persons elected or appointed as members of the Board of Inquiry under the *Clergy Discipline Ordinance 1965* and holding office immediately before the repeal of that Ordinance are to remain in office as if they had been elected or appointed under this Ordinance.
- (6) The person holding office as the Director of Professional Standards under the *Professional Standards Ordinance 2005* immediately before the date of assent to this Ordinance is taken to have been appointed as the Director under this Ordinance and holds office on the same terms and conditions as those which applied immediately before the repeal of the *Professional Standards Ordinance 2005*.

- (7) All persons holding office as members of the Panel of Triers immediately prior to the repeal of the *Clergy Discipline Ordinance 1965* cease to hold office on that repeal.
- (8) As soon as practicable after the date of assent to this Ordinance, Bishop-in-Council is to appoint clergy or lay persons as the case might be to fill any casual vacancies in offices under this Ordinance.
- (9) This Ordinance extends to conduct occurring before the date of assent to this Ordinance.

## **CHAPTER 8**

### **ADMINISTRATION**

#### **Part 1 The Director**

##### **101. The Director**

- (1) The Bishop, with the approval of Bishop-in-Council, may appoint a person to be the Director for the purposes of this Ordinance.
- (2) The Director is to be appointed on such terms and conditions as Bishop-in-Council determines.
- (3) If, for any reason, the Director is unable or unwilling to exercise or perform any power, authority, duty or function of the Director under this Ordinance, the Bishop, may appoint another person to exercise or perform the power, authority, duty or function.
- (4) The Director may act in a corresponding capacity for another diocese either generally or for a particular case or matter.

##### **102. Relationship between the Director and the Bishop**

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

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

A person who, or body which, appointed a church worker to an office or position held by the church worker during any period relevant for the purposes of an allegation made against the church worker that is, or could be, the subject of a complaint is to provide the Director with such information as the Director may reasonably require.

**104. The Director to report annually to the Bishop-in-Council**

Before 1 March each year, the Director is to make a report to Bishop-in-Council as to the action taken under this Ordinance during the period of 12 months ending on the preceding 31 December.

**Part 2 The Professional Standards Committee**

**105. Establishment of the PSC**

There is to be a Professional Standards Committee for the Diocese.

**106. Appointment of members of the PSC**

- (1) Bishop-in-Council is to appoint at least 3 persons to be members of the PSC
- (2) The members of the PSC are to include –
  - (a) experience and appropriate qualifications in law;
  - (b) experience in the ordained Ministry and
  - (c) a person who has other qualifications or experience appropriate to the discharge of the office of a member of the PSC, such as child protection, social work or psychiatry.
- (3) A person may be appointed a member of the PSC notwithstanding that they are not a member of the Anglican Church of Australia.

**107. Term of Office**

Subject to section 105, a member of the PSC hold office until the first meeting of Bishop-in-Council which next follows the first day of the first ordinary session of the next Synod provided that the member continues to hold office until his or her successor is appointed.

**108. Casual vacancies**

- (1) The office if a member of the PSC is vacated if-
  - (a) the member-
    - (i) dies, or
    - (ii) resigns by notice in writing to the Registrar, or
    - (iii) becomes mentally incapacitated, or
    - (iv) ceases to reside permanently in the Diocese, or
  - (b) Bishop-in-Council revokes the appointment.
- (2) Bishop-in-Council may fill a casual vacancy in the office of a member of the PSC.

**109. Chairperson**

- (1) Bishop-in-Council is to appoint one of the members of the PSC to be the chairperson of the PSC.
- (2) The chairperson is to preside at all meetings of the PSC at which he or she is present.

- (3) In the absence of the chairperson, the members present at a meeting are to elect a member to be the chairperson.
- (4) At meetings of the PSC, the chairperson has a deliberative vote only.

### **110. Meetings**

- (1) The PSC may meet from time to time as determined by the chairperson or a majority of the members.
- (2) The PSC may conduct its business in such manner as it thinks fit.
- (3) Without limiting subsection (2), the PSC may conduct its business by telephone or electronic communication.

### **111. Quorum**

A majority of the members for the time being of the PSC constitutes a quorum at a meeting of the PSC.

### **112. Decisions**

- (1) A decision of the majority of the members of the PSC at a meeting at which a quorum is present is a decision of the PSC.
- (2) A decision taken other than at a meeting of the PSC, if supported by a majority of the members of the PSC, is a decision of the PSC.

## **Part 3 The Diocesan Tribunal**

### **Constitution of the Diocesan Tribunal**

*Note: Section 53 of the 1961 Constitution provides that there is to be a Diocesan Tribunal for the Diocese.*

### **Who are the members of the Diocesan Tribunal?**

*Note: Section 54(1) of the 1961 Constitution provides that the Diocesan Tribunal is to consist of –*

- a president (who is to be the Bishop) or a deputy president appointed by the Bishop, and
- not less than 2 other members as may be prescribed by ordinance of the Synod of the Diocese.

### **113. Bishop's appointment of the Deputy President**

- (1) A person is qualified for appointment as the Deputy President if the person is an experienced lawyer.
- (2) The appointment by the Bishop of the Deputy President is to be in writing signed by the Bishop.
- (3) The appointment continues until it is revoked in writing by the Bishop unless the appointment is expressed to be for the purpose of hearing a particular charge or charges or for a specified period of time.

**114. Constitution of the Diocesan Tribunal for the purpose of hearing and determining a charge**

- (1) Subject to subsections (2) and (3), for the purpose of hearing and determining a charge, the Diocesan Tribunal is to be constituted by –
  - (a) the President or the Deputy President, and
  - (b) one member of the Diocesan Tribunal who is a member of the clergy appointed by the Registrar in consultation with the Deputy President, and
  - (c) one member of the Diocesan Tribunal who is a lay person appointed by the Registrar in consultation with the Deputy President.
- (2) For the purpose of hearing and determining a charge alleging an offence of child abuse or sexual abuse or an offence under section 9, the Diocesan Tribunal should, if possible, include at least one man and one woman.
- (3) For the purpose of hearing and determining a charge alleging a breach of faith, ritual or ceremonial, the Diocesan Tribunal may be constituted by six members in addition to the President or Deputy President. Of these six members, no more than two (one clergy and one layperson) may be Covenanting members.
- (4) Nothing in this section affects section 58.

**115. Membership of the Tribunal**

- (1) During the first session of each Synod, the members of Synod voting collectively are to elect 3 members of the clergy, and 3 lay persons, to be members of the Diocesan Tribunal (Diocesan Members).
- (2) A person duly elected by a covenanting Diocese as a member of that Diocese's Diocesan Tribunal is deemed to be a member of the Diocesan Tribunal of this Diocese (a Covenanting Member).
- (3) A covenanting member holds office on such terms as are prescribed by Ordinance of the covenanting Diocese.

**116. Term of office**

- (1) A Diocesan Member of the Diocesan Tribunal holds office until the member's successor is elected or until the office is vacated.
- (2) However, if a Diocesan or Covenanting member's successor is elected after the Diocesan Tribunal has commenced hearing a charge and before the Diocesan Tribunal's recommendation concerning the charge is made, the member continues to hold office until the recommendation is made.

**117. Casual vacancies**

The office of a Diocesan Member of the Diocesan Tribunal is vacated if –

- (a) the member –
  - (i) dies, or
  - (ii) resigns by notice in writing to the Registrar, or

- (iii) becomes mentally incapacitated, or
  - (iv) ceases to reside permanently in the Diocese, or
- (b) Bishop-in-Council declares, by resolution with a majority of not less than two-thirds of the members of Bishop-in-Council present and entitled to vote, the member's office to be vacated because of the member's refusal, neglect or inability to perform functions as a member or because of any other reason so declared.

**118. How are casual vacancies filled?**

- (1) Bishop-in-Council is to appoint a member of the clergy or a lay person (as the case requires) to fill a casual vacancy in the office of a Diocesan member of the Diocesan Tribunal.
- (2) A person appointed under this section holds office for the balance of his or her predecessor's term of office, subject to sections 115(2) and 116.

**119. Ineligibility of members of the Board of Enquiry**

A person who is a member of the Board of Enquiry is not eligible to be a member of the Diocesan Tribunal.

**120. Disqualification of certain members from hearing charges**

- (1) A member is disqualified from hearing a charge that concerns the member or where the member is the person or a person who has made a charge.
- (2) If a member is disqualified under this section, a person is to be appointed for the purpose only of hearing the particular charge in the same way as if the disqualified member had vacated office.

**121. Decision of the Diocesan Tribunal**

A decision supported by a majority of the votes of the members who constitute the Diocesan Tribunal is a decision of the Diocesan Tribunal.

**122. Voting on certain questions of evidence or procedure**

The President or, in the absence of the President, the Deputy President has a casting vote as well as a deliberative vote if voting on a question of evidence or procedure is equal.

**Part 4 Disciplinary Tribunal**

**123. Members of Disciplinary Tribunal**

The members of the Disciplinary Tribunal are the members for the time being of the Diocesan Tribunal and include a person appointed by the Bishop as Deputy President of the Diocesan Tribunal.

**124. Establishing a Disciplinary Tribunal**

- (1) The Registrar may establish a Disciplinary Tribunal to inquire into a complaint or, if more than one complaint is made against the same person, into those complaints.

- (2) A Disciplinary Tribunal comprises 3 members appointed by the Registrar.
- (3) The members of a Disciplinary Tribunal must include –
  - (a) an experienced lawyer who is to be the chairperson of the Disciplinary Tribunal, and
  - (b) a member of the clergy.

#### **125. Notice of establishment of Disciplinary Tribunal**

- (1) The Registrar is to give written notice of the establishment of a Disciplinary Tribunal to the complainant or complainants and the person against whom the complaint, or each complaint, is made as soon as practicable after the Disciplinary Tribunal is established.
- (2) The Registrar is to provide the Disciplinary Tribunal and the person against whom the complaint, or each complaint, is made with particulars of the complaint or complaints.

### **Part 5 Board of Enquiry**

#### **126. Election of members**

During the first session of each Synod, the members of Synod voting collectively are to elect 2 members of the clergy and 2 lay persons to be members of the Board of Enquiry.

#### **127. Appointment of members**

- (1) The Bishop is to appoint a person to be Chair of the Board of Inquiry and, in addition, is to appoint 1 member of the clergy and 1 lay person to be members of the Board of Enquiry
- (2) Each appointment is to continue until revoked in writing by the Bishop unless the appointment is expressed to be for the purpose of hearing a particular charge or charges or for a specified period of time.

#### **128. Term of office**

- (1) A member of the Board of Enquiry holds office until the member's successor is appointed or elected or until the office is vacated.
- (2) However, if a member's successor is appointed or elected after the Board of Enquiry has commenced an inquiry into a charge or part of a charge and before the Board of Enquiry's report of its inquiry is made, the member continues to hold office until the report is made.

#### **129. Casual vacancies**

The office of a member of the Board of Enquiry is vacated if –

- (a) the member –
  - (i) dies, or
  - (ii) resigns by notice in writing to the Registrar, or
  - (iii) becomes a mentally incapacitated person, or



- (iv) ceases to reside permanently in the Diocese, or
- (b) in the case of a member elected by Synod, Bishop-in-Council declares, by resolution with a majority of not less than two-thirds of the members of Bishop-in-Council present and entitled to vote, the member's office to be vacated because of the member's refusal, neglect or inability to perform functions as a member or because of any other reason so declared, or
- (c) in the case of a member appointed by the Bishop, the Bishop revokes the appointment.

**130. How are casual vacancies filled?**

- (1) In the case of a person elected by Synod, Bishop-in-Council is to appoint a member of the clergy or a lay person (as the case requires) to fill a casual vacancy in the office of a member of the Board of Enquiry.
- (2) A person appointed under this section holds office for the balance of his or her predecessor's term of office, subject to sections 127(2) and 128.

**131. Disqualification of certain members from inquiring into charges**

- (1) A member is disqualified from inquiring into a charge or part of a charge that concerns the member or where the member is the person or a person who has made the charge.
- (2) If a member is disqualified under this section, a person is to be appointed for the purpose only of inquiring into the particular charge or part of the charge in the same way as if the disqualified member had vacated office.

**132. Quorum**

The quorum for a meeting of the Board of Enquiry is the Chair and 3 members, one of whom is a member of the clergy and two of whom are lay persons.

**SCHEDULE 1**  
**Diocesan/Disciplinary Tribunal**  
**Charge**  
**(Made by a person appointed by the Bishop)**

I, \_\_\_\_\_ of \_\_\_\_\_, having been appointed by the Bishop of Bathurst under section 46 of the *Professional Standards Ordinance 2007*, claim that  
of \_\_\_\_\_,  
being

- \* a person licensed by the Bishop of Bathurst
- \* a person in holy orders resident in the Diocese of Bathurst,
- \* a member of the clergy, the act of whom which gave rise to this charge occurred in the Diocese of Bathurst
- \* a member of the clergy who was licensed by the Bishop of Bathurst or was resident in the Diocese of Bathurst within 2 years before this charge was laid
- \* a member of the clergy who is in prison as a convicted person at the time this charge is laid, but within 2 years before such imprisonment was licensed by the Bishop of Bathurst or was ordinarily resident in the Diocese of Bathurst
- \* a church worker who is not subject to the jurisdiction of the Diocesan Tribunal

has committed

- \* the following offence, namely
  
- \* a breach of faith/ritual/ceremonial/discipline

particulars of which are:

Signed:

Date:

The address at which documents may be served on the person making this charge is:

- \* delete whichever is not applicable.

**SCHEDULE 2**

**Diocesan Tribunal**

**Charge**

**(Made by 5 adult communicant members of the Church resident within the Diocese except where the charge is against an incumbent of a parish and relates to a breach of faith, ritual or ceremonial alleged to have been committed in the parish)**

We,

- 1.                                  of
- 2.                                  of
- 3.                                  of
- 4.                                  of
- 5.                                  of

being adult communicant members of the Anglican Church of Australia (within the meaning of the Anglican Church of Australia Constitution Act 1961) resident within the Diocese of Bathurst claim that

of    , being

- \*     a person licensed by the Bishop
  - \*     a person in holy orders resident in the Diocese of Bathurst
- has committed a breach of faith/ritual/ceremonial/discipline particulars of which are:

Signed:

Date:

The address at which documents may be served on the persons making this charge is:

\* delete whichever is not applicable.

**SCHEDULE 3**

**Diocesan Tribunal  
Charge**

**(Made by 5 adult communicant members of the Church resident within the Diocese where the charge is against an incumbent of a parish and relates to a breach of faith, ritual or ceremonial alleged to have been committed in the parish and where such members are bona fide parishioners of that parish)**

We,

- 1.                                  of
- 2.                                  of
- 3.                                  of
- 4.                                  of
- 5.                                  of

being adult communicant members of the Anglican Church of Australia (within the meaning of the Anglican Church of Australia Constitution Act 1961) resident within the Diocese of Bathurst and being bona fide parishioners (within the meaning of that Act) of the pastoral division consisting of the Parish/Special Ministry of

claim that                                  of                                  , being

- \*     a person licensed by the Bishop
- \*     a person in holy orders resident in the Diocese of Bathurst

has committed in and while the incumbent of the pastoral division a breach of faith/ritual/ceremonial particulars of which are:

Signed:

Date:

The address at which documents may be served on the persons making this charge is:

- \* delete whichever is not applicable.