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Anglican Church of Australia

Anglican Diocese of Wangaratta

CLEARANCE FOR MINISTRY

A PROTOCOL UNDER THE PROFESSIONAL STANDARDS ACT 2010

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NOTE:

The Office of Professional Standards is established by the Archbishop to provide support to people who make complaints about abuse and other misconduct by Anglican clergy, church officers, church employees and volunteers in the Diocese of Melbourne and other subscribing dioceses in the Anglican Province of Victoria. The Director of Professional Standards is as independent as possible from the Church but is paid by the Church.

1 Introduction

- 1.1 This protocol is made by the Bishop-in-Council of the Diocese of Wangaratta pursuant to the *Professional Standards Act 2010 (the Act)*. It is intended:
- (a) to identify key aspects of the Act relating to clearance for ministry;
 - (b) to give useful information and guidelines about the way an application for a clearance for ministry will be handled.
- The guidelines relating to correspondence with an applicant for a clearance for ministry are highlighted by a line in the margin for convenience.
- 1.2 This Protocol operates in conjunction with the Power and Trust Protocol for responding to complaints of misconduct by Church workers and is intended to promote proper professional standards of ministry in the Church. For details of the role and powers of the Director, the Professional Standards Committee, the Professional Standards Board and the Professional Standards Review Board, please refer to the Act and the Power and Trust Protocol.
- 1.3 Using this protocol we will promptly respond to an application for a clearance for ministry.
- 1.4 Scope: Nothing in this Protocol shall exclude the jurisdiction of a secular court or tribunal or prevent any person from pursuing other actions and procedures which are available at law. It is not intended that this Protocol shall protect people from the law.
- 1.5 Definitions: In this Protocol, expressions used have the same meaning as in s 3 of the Act and “Registrar” means the Bishop of Wangaratta’s Registrar.
- 1.6 A reference in this Protocol to the Director includes so far as permitted by the Act a delegate of the PSC appointed to stand in for the Director when he or she is unavailable.

2 Clearance for ministry

- 2.1 When a Church worker intends for the purpose of ministry—
- (a) to transfer from one office licence or position of responsibility in a Church body in the Diocese to another in the Diocese;
 - (b) to take up an office licence or position of responsibility in a Church body in the Diocese;
 - (c) to transfer from one office licence or position of responsibility in a Church body in the Diocese to another in another diocese; or
 - (d) to take up an office licence or position of responsibility in a Church body in another diocese.

the Church worker must obtain a clearance for ministry (s 50).

3 Ministry

- 3.1 Under the Act, 'Ministry' means ordained ministry or lay ministry authorised by the Bishop pursuant to the Authorised Lay Ministry Canon 1992; (adopted by Act No. 6 of 1992) or an equivalent Act of the synod of another diocese, as the case may be. (s 3)
- 3.2 A 'clearance for ministry' means in relation to ministry–
- (a) within the Diocese, the license, permission to officiate or other relevant authority as the case may be of the Bishop; and
 - (b) outside the Diocese, written confirmation by the Bishop that the Church worker is fit for ministry either unconditionally or subject to certain conditions or restrictions. (s 3) This includes the 'Letter of Good Standing' that traditionally the Bishop has issued in an appropriate case.

4 Fitness for ministry

- 4.1 The Act makes it a condition of eligibility for a clearance for ministry within the Diocese that the Church worker is fit to hold the proposed office, license or position of responsibility in the Church whether unconditionally or subject to certain conditions or restrictions. (s 51)

5 Codes of Conduct

- 5.1 The Bishop in Council of the Diocese has under the Act (s7) approved the following codes of conduct for observance by Church workers within the Diocese:
- (a) Code of Good Practice for Clergy (Wangaratta Diocese September 2010); and
 - (b) Faithfulness in Service, a national code of the Anglican Church of Australia as in force from time to time.
- 5.2 These codes together with the general law inform standards of conduct for determining fitness for ministry of clergy and lay people.

6 Applying for a clearance for ministry

- 6.1 Any application by a Church worker for a clearance for ministry shall be made to the Bishop. (s 52)
- 6.2 The form of application has been prescribed by regulations made by the Bishop in Council and is set out in the schedule to this Protocol for convenience.

7 How the application is handled

- 7.1 Generally, the Bishop refers the application or the matter of a prospective application for a clearance for ministry in the first instance to the Director of Professional Standards. The Director, in collaboration with the Bishop of Wangaratta's specially authorised delegate, processes it generally as follows:

- (a) The Bishop's delegate shall acknowledge to the applicant receipt of the application. If a prospective applicant has not completed an application, the delegate may send the applicant an application form.
- (b) The delegate shall in the appropriate case forward the applicant for completion an application for a Working with Children card.
- (c) The delegate shall forward the applicant an application for a National Police Certificate for completion and return to the delegate.
- (d) The National Police Certificate will be issued direct to the applicant who is responsible for posting the original to the Director who shall inform the delegate of the date and reference number of the National Police Certificate.
- (e) The delegate shall request a search of the National Professional Standards Register and communicate the results in strict confidence to the Director.
- (f) If to the best of his or her knowledge information or belief, the Director is of the opinion—
 - (a) in the case of an applicant for a clearance for ministry within the Diocese, that the applicant is unconditionally fit for the proposed office licence or position of responsibility; or
 - (b) in the case of an applicant for a clearance for ministry outside the Diocese, that the applicant is unconditionally fit for ministry—

the Director shall inform the delegate to that effect (the DPS fitness clearance).

- (g) The delegate shall refer to the Bishop:
 - (i) the results of the National Register search and the National Police check;
 - (ii) the results of the application for a Working with Children card, where applicable; and
 - (iii) the DPS fitness clearance.
- (h) If to the best of his or her knowledge information or belief, the Director is of an opinion in relation to the application other than as stated in paragraph (f), the Director shall inform the Bishop to that effect.

7.2 If, upon consideration, the matters referred to in paragraphs 7.1(g) and (h) raise no question about the fitness for ministry of the applicant, the Bishop may at that time decide the application for a clearance for ministry and the applicant will be notified of the outcome.

Reference to the PSC

- 7.3 If, upon consideration, the matters referred to in paragraph 7.1(g) or (h) raise a question about the fitness for ministry of the applicant, the Bishop may refer the matter to the PSC for a determination and advice by the PSC and, if necessary, the Board as to fitness for ministry. (s 52)

Consideration of the matter by the PSC

- 7.4 Upon a reference of a matter to the PSC by the Bishop, the Director shall review any professional standards history of the applicant and investigate any particular issues. The Director shall then report through the Chair to the PSC on the matter.
- 7.5 The provisions of the Power and Trust Protocol relating to an investigation shall apply to any investigation under this Protocol.
- 7.6 The PSC shall consider the matter. It may meet from time to time as determined by the chair or a majority of its members and may conduct its business by telephone or electronic communication. (s 14(2))
- 7.7 If to the best of its knowledge information or belief, the PSC is of the opinion—
- (a) in the case of an applicant for a clearance for ministry within the Diocese, that the applicant is unconditionally fit for the proposed office licence or position of responsibility; or
 - (b) in the case of an applicant for a clearance for ministry outside the Diocese, that the applicant is unconditionally fit for ministry—
- the PSC shall determine accordingly and recommend to the Bishop to that effect (the PSC fitness clearance) (s 53).
- 7.8 A certificate as to the fitness for ministry of a Church worker issued by the PSC shall be conclusive evidence of the determination and recommendation of the PSC in that respect. (s 54)
- 7.9 The Bishop, after receiving the favourable determination and recommendation of the PSC may in his discretion grant or refuse the clearance for ministry.

8 An adverse opinion of the PSC on fitness for ministry

- 8.1 After investigation in accordance with Part 8 of the Act or under a corresponding provision of an Act or Ordinance of another diocese, the PSC may form the opinion that in connection with the application by a Church worker for a clearance for ministry, by reason of alleged abuse or other conduct, the church worker may not be fit for ministry in the Church either generally or to hold a proposed office, license or position of responsibility in the Church or may be fit subject to certain conditions or restrictions.

- 8.2 In that event, the PSC shall refer the matter for determination to the Professional Standards Board or if it is more appropriate, to an equivalent body which has jurisdiction. (s 56) The Professional Standards Regulations prescribe the form to be used in that reference.
- 8.3 The Director shall give the applicant a written report of any investigation and any opinion of the PSC and the grounds relied on and notice that the applicant may advance any submissions to the Board if he or she wishes to do so (s 59)¹.
- 8.4 The Director shall also give the applicant a copy of the Act and this Protocol.

9 Reference to the Professional Standards Board

- 9.1 The Professional Standards Board (**the Board**) comprises 4 persons including a President and Deputy President and is constituted so as collectively to provide experience and appropriate professional qualifications in -
- (a) law;
 - (b) the ordained or authorized lay ministry; and
 - (c) child protection, investigations, social work, ethics or counselling
- and shall so far as reasonably practicable have -
- (i) one member of the clergy;
 - (ii) at least one man and at least one woman; and
 - (iii) two members who are not members of the Church (s 35).
- 9.2 Where an application is referred to the Board, the Board shall consider the matter expeditiously and make any finding on any relevant question of fact, taking into account-
- (a) the final report if any of the investigator including attachments;
 - (b) any material received from the applicant;
 - (c) any other evidentiary material;
 - (d) such report of the PSC as may be submitted; and
 - (e) any applicable professional standards prescribed by a code of conduct (s 61).
- 9.3 If the Board is satisfied that:
- (a) the applicant is unfit, whether temporarily or permanently, then to hold the particular or any office licence or position of responsibility in the Church; or
 - (b) in the exercise of the applicant's ministry or in the performance of any function, the Church worker should be subject to certain conditions or restrictions
- the Board may determine accordingly and recommend to the Archbishop as it sees fit, including that the application for a clearance for ministry be refused (s 62).

¹ The guidelines relating to correspondence with an applicant for a clearance for ministry are highlighted by the line in the margin for convenience.

- 9.4 If the Board is not satisfied as set out in paragraph 9.3, the Board shall determine accordingly and recommend to the Bishop as it sees fit.
- 9.5 Within 7 days of the Board making any final finding of fact or recommendation on the application (**the decision**) that is adverse to the applicant, the Director shall inform the applicant -
- (a) that he or she may within 30 days from the date of the decision or such further period as the Professional Standards Review Board may allow, apply to the Professional Standards Review Board for a fresh administrative reconsideration of the matter; and
 - (b) that if he or she does not apply to the Review Board for a review, the Director will give notice of the decision and the reasons for making it to the Bishop and that he or she has the opportunity within a further 14 days to address any submissions to the Bishop².

10 Professional Standards Review Board

- 10.1 The Professional Standards Review Board comprises 3 persons appointed by the President or Deputy President from a panel of 7 persons comprising -
- (a) a President and a Deputy President, both of whom shall be or shall have been either a judicial officer or a practising barrister or solicitor of at least 10 years' standing of the Supreme Court of a State or Territory; and
 - (b) five other persons of whom at least -
 - (i) two shall not be members of the Church;
 - (ii) two shall be members of the clergy; and
 - (iii) three shall have professional qualifications and experience in child protection, investigations, social work, ethics or counselling (s 70).
- 10.2 For the purpose of any application to the Review Board, the Review Board shall consist of the President or Deputy President, who shall be the presiding member, one clergy member and one lay member of the panel. So far as it is reasonably practicable, the Review Board shall include at least-
- (a) one man and at least one woman; and
 - (b) one person who is not a member of the Church (s 73(2) and (3)).

11 Application for review

- 11.1 In this part, "decision" means any finding of fact, determination or recommendation by the Board concerning fitness for ministry.

² Under s 102 of the *Professional Standards Act*, each of the Board and the Review Board shall cause a copy of each determination and recommendation to be provided to-

- (a) the relevant Church authority;
- (b) the complainant;
- (c) the respondent; and
- (d) the Director and the PSC.

- 11.2 If an applicant has applied for a clearance for ministry, and is aggrieved by a decision of the Board, he or she may within 30 days from the date of the decision or such further period as the Professional Standards Review Board may allow, apply to the Review Board for a fresh administrative reconsideration of the matter. The PSC may also make such application if it thinks fit (s 83).
- 11.3 The Director shall give the applicant by notice the opportunity within 14 days to address any further submissions to the Review Board.
- 11.4 The Review Board may exercise all the powers of the Board under the Act and may –
- (a) affirm the decision under review; or
 - (b) vary the decision under review; or
 - (c) set aside the decision under review and make another decision in substitution for it; or
 - (d) set aside the decision under review and remit the matter for reconsideration by the Board in accordance with any directions or recommendations of the Review Board (s 86).
- 11.5 The Review Board shall deal with the application as expeditiously as possible and shall consider any further submissions from the applicant (s 87).
- 11.6 Within 7 days of the Review Board making a decision on the review that is adverse to the applicant, the Director shall inform the applicant that -
- (a) the Director will refer the decision including any recommendation or advice to the Bishop; and
 - (c) he or she has the opportunity within 14 days to address any submissions to the Bishop³.

12 Proceedings of the Board and the Review Board

- 12.1 Each of the Board and the Review Board –
- (a) must act with fairness and according to equity, good conscience, natural justice and the substantial merits of the case without regard to technicalities or legal forms; and
 - (b) is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks fit (s 88).
- 12.2 Part 15 of the Act contains provisions dealing with the proceedings of the Board and the Review Board.
- 12.3 Neither the Board nor the Review Board shall, in the course of inquiring into any question:
- (a) inquire into any matter which is or has been the subject of any formal investigation or enquiry conducted—
 - (i) under or pursuant to any provision of the Constitution; or

³ See footnote 2 above.

- (ii) under or pursuant to a Canon of the General Synod, a Canon or an Ordinance of another diocese relating to the discipline or professional standards of clergy or Church workers by a board of enquiry, tribunal or other body—

save to the extent of any fresh evidence that was not reasonably available during the previous formal investigation or enquiry, but may take into account the finding of any such formal investigation or enquiry; or

- (b) inquire into, make any findings in relation to or take into account any alleged breach of—
 - (i) faith of the Church, including the obligation to hold the faith;
 - (ii) ritual of the Church, including the rites according to the use of the Church and the obligation to abide by such use; or
 - (iii) ceremonial of the Church, including ceremonial according to the use of the Church and the obligation to abide by such use. (s 99)

13 The Bishop

- 13.1 Where any recommendation is made under the Act to the Bishop by the PSC (other than one favourable to the applicant), the Board or the Review Board (as the case may be), they shall give to the Bishop –
 - (a) the findings of facts and recommendations constituting the decision of the PSC, the Board or the Review Board, as the case may be;
 - (b) the reasons relied on in support of the decision;
 - (c) the final report if any of the investigator and attachments;
 - (d) any further material received from the applicant and any other relevant material; and
 - (e) any applicable professional standards prescribed by a code of conduct.
- 13.2. The Bishop after receiving any determination and recommendation in accordance with this Act from the PSC, the Board or the Review Board (as the case may be) as to fitness for ministry may in the discretion of the Archbishop grant or refuse the clearance for ministry. (s 55)

14 Completion of the Process

- 14.1 As appropriate the Director will liaise with those involved in this Protocol at the completion of the case and will seek comments about the process and may discuss possible improvements.
- 14.2 Any recommendations resulting from this activity will be provided to the Bishop and the Registrar.

15 Confidentiality

- 15.1 Part 17 of the Act imposes strict confidentiality obligations in connection with information received pursuant to the Act but requires or authorizes disclosure as set out in Parts 16 and 17 of this Protocol.

16 Co-operation with Government Authorities

- 16.1 If arising from an application for a clearance for ministry, the Director or the PSC forms the belief on reasonable grounds that a child is in need of protection within the meaning of that expression in the *Children, Youth and Young Families Act 2005*, the Director must notify the relevant child protection authorities.
- 16.2 The Director must notify the Police if the conduct disclosed in any application for a clearance for ministry may constitute an offence whether committed in or outside Victoria that is an indictable offence against a law of the Commonwealth or any jurisdiction in Australia punishable by imprisonment for not less than five years (whether or not the offence is or may be dealt with summarily).
- 16.3 The Director may notify the Police if the conduct disclosed may constitute any other criminal offence.

17 Co-operation with other Dioceses, other Denominations and other Child Related Employers

- 17.1 The Director is authorised to disclose to the Director of Professional Standards of another diocese and the body of another diocese exercising powers duties or functions equivalent to those of the PSC information in the possession of the PSC or the Director concerning alleged misconduct 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 Director or the PSC knows that the Church worker is residing in the diocese of the equivalent body; or
 - (b) which is information concerning misconduct alleged to have occurred in the diocese of the equivalent body—
- and to co-operate with that Director and equivalent body.
- 17.2 The Director is authorized to disclose to a person or body of another church exercising powers, duties or functions similar to those of the Director or the PSC details of information in its possession concerning the alleged misconduct of a person who the Director or the PSC has reason to believe is a member or purported member of that church and to co-operate with such person or body to whom the information is disclosed.

18 Grievance procedure

- 18.1 Any complaint or grievance about the operation of this Protocol should be addressed in writing both to the Bishop and the Chair of the Professional Standards Committee marked confidential care of 209 Flinders Lane, Melbourne Victoria 3000.
- 18.2 The Chair shall forward the complaint or grievance to the Director and to the investigator or other staff member if any involved for a written response within 14 days and otherwise consider the matter, with or without assistance from the PSC as he or she judges appropriate to the circumstances.
- 18.3 The Chair will provide the person lodging the complaint or grievance and the Bishop and the Registrar with a written response and an outline of any proposed action.

THE SCHEDULE

Professional Standards Regulations 2010

FORM 2

Reg. 5

CONFIDENTIAL APPLICATION FOR CLEARANCE FOR MINISTRY

under s52 of the Professional Standards Act 2010

NOTES:

1. The contents of this application are strictly confidential and may not be divulged except as authorised by the Professional Standards Act.
2. You are asked to give frank and truthful answers to the questions below. Answering 'yes' does not automatically lead to refusal of the application but prompts closer consideration of it. An answer that lacks frankness or is untruthful will be taken into account in considering the merits of the application.
3. Under the Clearance for Ministry Protocol, you must apply for and obtain in support of the application for a clearance a National Police Certificate and, where appropriate, a Working with Children Card.

TO: The Rt Revd A J Parkes,
Bishop of Wangaratta

Name of applicant—

Address—

Telephone—

Email—

Proposed ministry— *(Details may be attached)*

I APPLY for a clearance for the above ministry as follows:

(Tick as appropriate)

Licence	
Permission to Officiate	
Other authority	
Letter of Good Standing	

Other than previously disclosed in writing to you:

- (a) Have you been found guilty by a court of an offence in Australia or a foreign country, whether or not a conviction was recorded against you? Yes/ No
(Delete as appropriate)
If so, give details here or by an attachment.

- (b) Are any criminal proceedings pending against you? Yes/ No
If yes, give or attach details of each charge made against you.
- (c) Are you currently subject to an unresolved complaint, investigation, reference or order under the Professional Standards Act 2010 of the Diocese of Wangaratta or any equivalent legislation of another Diocese? Yes/ No
If yes, give details here or by an attachment.
- (d) Have you ever had an order made against you, or entered into a composition with creditors or an assignment for the benefit of creditors, under the Bankruptcy Act? Yes/ No
If yes, give details here or by an attachment.
- (e) Do you have a history of alcohol abuse? Yes/ No
If yes, give details here or by an attachment.
- (f) Do you have a history of substance abuse including abuse of prescription, over the counter, recreational or illegal drugs? Yes/ No
If yes, give details here or by an attachment.
- (g) Have you ever had sexual relations with a person (other than your spouse) with whom you had a pastoral or professional relationship, for example, a parishioner, a client, a patient, an employee, a student, a subordinate? Yes/ No
If yes, give details here or by an attachment.
- (h) Is there any other matter or past conduct of yours that would be relevant for the Bishop to consider in deciding whether you are fit for ministry? Yes/ No
If yes, give details here or by an attachment.

I have carefully read:

- (i) the Code of Good Practice for Clergy (Wangaratta) (if I am a member of the clergy);
- (ii) the National Code of Conduct, Faithfulness in Service.

I agree to abide by the standards in these Codes as applicable to me.

I DECLARE that my answers to the above questions are true and correct.

Signature—

Date—
