

**Diocese of Wangaratta**



**PROTOCOL**  
**for complaints of misconduct**  
**against Church volunteers**

**A PROTOCOL UNDER THE**  
**PROFESSIONAL STANDARDS ACT 2010**  
**FOR RESPONDING TO COMPLAINTS**  
**AGAINST CHURCH VOLUNTEERS**

*As approved by the Bishop in Council on 23 July 2013*

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**NOTE:**

The Office of Professional Standards is established to provide support to people who make complaints about abuse and other misconduct by Anglican clergy, church officers, church employees and volunteers 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.

- We take all complaints very seriously.
- We will do all we can to lessen harm by providing the best care possible.
- We offer respect, pastoral care and on-going long-term support to anyone who makes a complaint.
- We also offer support to any priest or Church worker who is accused of abuse or harassment or other misconduct. The rights of the person accused of misconduct will be respected.

# 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 to prescribe the process for dealing with complaints against Church volunteers.  
The guidelines relating to correspondence with a party to a complaint are highlighted with a line in the margin for convenience.
- 1.2 By passing the Act and using this Protocol the Diocese of Wangaratta aims to:
- (a) meet the pastoral needs of complainants, respondents, survivors and communities, address their concerns; and
  - (b) ensure that no further harm is caused.
- 1.3 Using this protocol we will:
- (a) promptly respond and provide support to every complainant, survivor or informant;
  - (b) document the allegation, complaint or information;
  - (c) offer conciliation if appropriate;
  - (d) investigate the circumstances;
  - (e) determine, as far as possible, the truth of the matter;
  - (f) assess what action should be taken to resolve the allegation, complaint or information and to prevent further harm;
  - (g) deal fairly with and facilitate support of the respondent; and
  - (h) identify opportunities for improving the way we prevent, detect and hold ourselves to account for the conduct to which this protocol relates.

## Statement of Basic Principles

- 1.4 This Protocol for responding to abuse, harassment and other misconduct within the Church is intended to operate in conjunction with **Faithfulness in Service, the National code of personal behaviour and practice of pastoral ministry** by clergy and others who serve in the name of Christ in the fellowship of the Church.

This code provides a positive framework for conduct by Church volunteers. Its preamble speaks of service as follows:

When Jesus spoke to his disciples he said they were not to be like the rulers of the day who exercised authority over others. They were to be servants of others, even as Jesus did not come to be served, but to serve.

When Peter wrote to the Christians scattered throughout Asia Minor, he reminded them of their identity in Christ as God's chosen people, sanctified by the Spirit for obedience to Jesus Christ. The call to be holy is reflected in both the Old and New Testaments as the appropriate response to God's grace. Christians live according to the knowledge that they have been created by God and redeemed by Christ.

When Paul wrote to the Philippian Christians he rejoiced in their fellowship and prayed that their love might grow in knowledge and discernment so that they might see what was significant for their Christian vocation and be enabled to live pure and blameless lives for the day of Jesus Christ. In the light of that growing knowledge of God's love they are to live in humility and faithfulness in the power of the Holy Spirit. They live out that love in their contact with others, especially those to whom they minister in Christ's name.

The Church is the fellowship that nurtures and sustains Christians as they seek to follow Christ faithfully and participate in God's mission. Its leaders especially are to be examples of Christian faith and obedience as they exercise their vocation, in dependence on the Holy Spirit.

The personal behaviour and practices of pastoral ministry required of clergy (bishops, priests and deacons) of the Anglican Church of Australia are specified in the Holy Scriptures as well as in its Constitution, canons, ordinances, the Book of Common Prayer and the Ordinal. Although not bound by the promises made by clergy, church workers [and church volunteers] (lay persons who are employed or hold a position or perform a function within the Anglican Church of Australia) are expected to conform to the same behaviour and practices as clergy—except in areas that apply only to clergy. [Words added for clarity]

### **The Protocol adopts the following principles:**

- 1.5 We, the Diocese of Wangaratta within the Anglican Church of Australia, will not tolerate abuse or harassment or other misconduct within our communities.
- (a) We take all complaints very seriously and any lessons learnt from individual complaints will be taken into account in deciding whether and if so how the Church might do things better.
  - (b) We offer respect, pastoral care and ongoing long-term or episodic support, including professional counselling where appropriate, to anyone who makes a complaint and to those who have suffered the secondary effects of abuse. We will do all we can to lessen harm by providing the best care possible.
  - (c) We will also offer support to any Church volunteer who is accused of abuse or other misconduct. The rights of a person accused of misconduct must be respected.
  - (d) We will be as open, transparent and accountable as possible while respecting the rights of complainants to privacy and to make their own informed choices about whether to engage with Diocesan processes or to seek assistance elsewhere.
  - (e) We will respect and not abuse confidentiality and will not use confidentiality in a way that seeks to protect the Church.
  - (f) Where allegations of misconduct involve behaviour that may constitute a criminal offence, we will support complainants if they decide to report those matters to police. We will ourselves report serious criminal offences including child abuse.
  - (g) We will continue to invite any person who has been abused, no matter when, to come forward and make the matter known, so that his or her ongoing needs can be addressed.
  - (h) Any Church volunteer who is alleged to have committed misconduct must face the appropriate diocesan process.
  - (i) No one should interfere with or attempt to have an improper influence on Professional Support Persons, respondent Carers, the Investigator, the Director, the Committee, the Board or the Review Board in the exercise of their functions.
- 1.6 **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.

- 1.7 **Definitions:** In this Protocol, expressions used have the same meaning as in s 3 of the Act. Unless the context requires otherwise-
- “Director” means the Director of Professional Standards;
  - “delegate of the Director” means a person appointed by the Bishop in Council as a delegate of the Director for the purposes of this Protocol;
  - “PSC” means the Professional Standards Committee;
  - “Church authority” means so far as relevant to Church volunteers the person or body having administrative authority of or in a Church body to license, appoint, authorise, dismiss or suspend a Church volunteer, usually in a congregation or parish the Incumbent or Priest in Charge, in the Cathedral, the Dean;

## **2 Upholding this Protocol – a shared responsibility**

- 2.1 It is the responsibility of each Church volunteer to be aware of and meet the standards of the *Faithfulness in Service* National Code.
- 2.2 This Protocol applies to a complaint against a person who is a Church volunteer. A complaint against a member of the clergy, a Vestry member or lay leaders must be lodged with the Professional Standards Committee through the Director of Professional Standards.

## **3 Who is a Church volunteer?**

- 3.1 A Church volunteer is defined in the Act to mean a person aged 18 or more years who is not a Church worker and who–
- (a) holds a voluntary role office or position in a congregation or parish or in the Cathedral; or
  - (b) holds otherwise any specific voluntary role office or position in the Diocese within a class of persons prescribed by the Bishop in Council under this definition or who carries out in substance the duties inherent in such a role office or position.

## **4 Who is a Church authority?**

- 4.1 A Church volunteer is accountable to the Church authority for misconduct found proven under the Act and this Protocol. A Church authority is defined in the Act to mean the person or body having administrative authority of or in a Church body to license, appoint, authorise, dismiss or suspend a Church volunteer.
- 4.2 In a parish, the Church authority will most commonly be the incumbent or priest in charge. In the Cathedral, the Church authority will most commonly be the Dean.

## 5 A complaint against a Church volunteer

- 5.1 Anyone including the Director of Professional Standards may make a complaint to the Church authority of misconduct of a Church volunteer (s 23A).
- 5.2 A complaint may be in any form, in writing on paper or by email or facsimile or conveyed orally (s 24(2)).
- 5.3 If you are a complainant, you must provide particulars of the complaint (s 24(2)).
- 5.4 The Act defines what 'misconduct' is: s3. Not all behaviour that may ordinarily be considered bad will necessarily be 'misconduct'. The behaviour in question must both answer the description of one or other of the categories in the definition<sup>1</sup> and be conduct which, if established, would on its face call into question:
- (i) the fitness of the person, whether temporarily or permanently, to hold the role office licence or position; or
  - (ii) whether, in the performance of any duty or function, the person should be subject to any condition or restriction.
- 5.5 If a complaint is made to the Church authority that falls outside the scope of 'misconduct', the Church authority may inform the complainant accordingly. The Church authority may nevertheless seek to give effect to any parish grievance policy that is applicable and, by mediation, conciliation or otherwise, foster a settlement of the dispute and a reconciliation between the parties.
- 5.6 A breach of faith ritual or ceremonial falls outside the definition of misconduct and the scope of the Act (s75).<sup>2</sup>
- 5.7 When a complaint of abuse or other misconduct is made, the matter remains confidential until and unless the Church authority has obtained informed consent from the complainant to provide information to other participants in the process.
- 5.8 The Church authority may as appropriate seek the assistance of the Director (or a delegate of the Director appointed by the Bishop in Council) in the investigation and handling of the complaint.
- 5.9 It would be appropriate for the Church authority to seek the assistance of the Director (or his or her delegate) where-

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<sup>1</sup> The categories are –

- (a) bullying;
- (b) emotional abuse;
- (c) harassment;
- (d) physical abuse;
- (e) neglect of a child;
- (f) sexual abuse;
- (g) spiritual abuse;
- (h) other conduct

<sup>2</sup> The Diocesan Tribunal may hear a charge of a breach of faith ritual or ceremonial against a member of the clergy: *Constitution of the Anglican Church of Australia*, s54(2).

- (a) there is a complaint that a person has suffered harm or is likely to suffer harm as a result of misconduct; or
- (b) where otherwise the complexity of the matter warrants that assistance.

## 6 How the Church authority must proceed

- 6.1 In summary, the Church authority or its delegate must –
- (a) in writing acknowledge receipt of the complaint and make available to the complainant a copy of the Act and this Protocol;
  - (b) determine whether the complaint is one of misconduct against a Church volunteer and therefore within the scope of this Protocol and if not, consider how the complaint might be addressed informally through an alternative dispute resolution process;
  - (c) if the complaint is within the scope of this Protocol, follow the process set out below in sections 7 and following;
  - (d) if the Church authority believes on reasonable grounds that a person has suffered harm or is at risk of harm as a result of misconduct by another Church worker or a Church volunteer and has no reason to believe that the Director or a member of the PSC is aware of those facts, discharge its duty under s22 of the Act to report the matter to the Director or the PSC;
  - (e) consider whether, under section 10 below, the Church volunteer should be suspended or stood down from the duties of her or her role, office or position or certain of those duties, pending the outcome of the complaint;
  - (f) consider in the appropriate case the option of alternative dispute resolution of the dispute, described below in section 14;
  - (g) before making any determination, give both the complainant and the respondent a reasonable opportunity to be heard either in person or in writing in relation to the complaint and otherwise comply with the requirements below in section 23; and
  - (h) if appropriate, exercise the power to make a determination on the complaint (section 15).
- 6.2 The Church authority must deal with the complaint as expeditiously as possible.

## 7 The complainant

- 7.1 When you make a complaint to the Church authority, that person or heir authorized agent will contact you to find out about the complaint<sup>3</sup>. They will advise you that they are required to keep a record of the name of the respondent if that is provided. They will also advise you

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<sup>3</sup> The guidelines relating to correspondence with a party to a complaint are highlighted with a line in the margin for convenience.

that the matter is to be referred to the police or child protection authorities in the circumstances described below in paragraph 28.2. The Church authority must make a preliminary assessment whether the complaint falls within the Act and the Protocol and advise you accordingly.

- 7.2 They will make available to you a copy of the Act and this Protocol if you have lodged a complaint and have consented to the complaint being dealt with under this Protocol or are contemplating doing so.
- 7.3 **Consent:** The Church authority will explain to you the processes available under the Act and this Protocol and seek your written consent to give notice of the complaint to the respondent and for the Church authority to deal with the complaint under the Act and this Protocol. If you do not give your consent in writing to the Church authority giving notice of the complaint to the respondent and to the Church authority dealing with it under this Protocol, the Church authority may refrain from investigating the complaint or determining it and may dismiss the complaint.
- 7.4 The Church authority will also explain to you how it is your choice whether to make a complaint and proceed with this Protocol and will advise you of alternative avenues of formal and informal redress that are open to you e.g. dealing with the complaint informally, making a report to the police, or complaining to the Equal Opportunity Commission or instituting other legal action.
- 7.5 **Professional Support Person:** In an appropriate case, if you agree, the Director or his or her delegate at the request of the Church authority may refer you to counselling or other services as appropriate from a Professional Support Person, irrespective of whether you make a formal complaint. See below section 22.
- 7.6 **Victim impact statement:** You may if you wish provide a victim impact statement to help the Church authority understand how you have been affected by the misconduct the subject of your complaint. The Director can provide further information to you about this statement and your Professional Support Person can assist you with its preparation.
- 7.7 The Church authority will inform you if the complaint does not concern a matter which is dealt with under the Act.
- 7.8 Neither the respondent nor anyone associated with the respondent should have any contact with you about your complaint except through the Church authority or the Director or otherwise in accordance with the Act and this Protocol.

## **8 The respondent – the Church volunteer about whom the complaint is made**

- 8.1 If a complaint of misconduct has been made against you, unless it is impracticable in the particular circumstances, within a week from the complainant giving written consent to the Church authority giving you



notice of the complaint, the Church authority or at their request, the Director, will contact you, as provided in the following paragraph.

- 8.2 The Church authority will provide you with a copy of the complaint and any further particulars provided, and will make available to you a copy of the Act and this Protocol. You have the right –
- (a) to obtain independent legal or other professional advice, at your cost, before responding to the complaint; and
  - (b) to make submissions (with or without evidence) as to why the Church authority without embarking on any investigation should not entertain the complaint or should dismiss it or take no further action in relation to it.
- 8.3 The Church authority will inform you of these rights when contacting you about the complaint.
- 8.4 You will in the appropriate case be offered the services of a Professional Support Person chosen by the Director (or a delegate of the Director) to provide professional counseling. The Diocese will meet the reasonable costs of these services if you decide to take up the offer.
- 8.5 **Respondent Carer:** The Church authority or at its request the Director may in an appropriate case select a suitable person to act as your Carer in the process of dealing with the complaint. If you agree, that person will liaise with the Church authority on your behalf and will be given a copy of the complaint. The Church authority will send a copy of all notices and letters which they send to you to the respondent Carer so that the latter receives them in time to give you support when you receive them.
- 8.6 The respondent Carer will contact you within 24 hours of accepting the role and will follow up on the initial offer of professional counselling support.
- 8.7 As respondent, you will be expected to provide the Church authority with a written response to the complaint within 3 weeks (or such longer period as the Church authority specifies in writing) of your receiving a copy of the complaint and any accompanying particulars. The Church authority will write to you about this time line and what happens if you do not respond.
- 8.8 If you choose not to respond, the Church authority may continue the process and may make any finding of fact and determination as the Church authority sees fit.
- 8.9 The respondent Carer (if appointed) will be in regular contact with you, and if appropriate the Professional Support Person about the progress of the complaint and options which are available.
- 8.10 The respondent Carer will keep things strictly confidential.
- 8.11 The complainant should not be questioned by anyone about their right to make a complaint.

## 9 The Investigation

- 9.1 The Church authority itself or through an agent, where the nature and gravity of the complaint warrants it, must investigate the complaint as expeditiously as possible.
- 9.2 The Church authority must appoint an investigator approved by the Director to investigate any complaint of physical abuse or sexual abuse.
- 9.3 If the subject matter is under investigation by some other competent body or is the subject of legal proceedings, the investigation may be discontinued or deferred until these other proceedings are concluded. Support Persons' services to all parties may continue to be provided.
- 9.4 The role of the investigator is to gather information about a complaint and the allegations, make recommendations on findings on relevant questions of fact and to make a confidential report to the Church authority.
- 9.5 An investigator shall not present her or himself as a counsellor or advocate for the complainant or respondent.
- 9.6 An Investigator shall, where the nature and gravity of the complaint warrants it –
  - (a) make a written record of each interview with a person and may, with the consent of the person, make an audio record of the same;
  - (b) provide the person with a copy of the record; and
  - (c) have the person, if willing, 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.
- 9.7 An Investigator shall be independent, objective and impartial and shall not have nor be perceived to have any conflict of interest in relation to the matter, the parties or the outcome.
- 9.8 The complainant and the respondent will be given a reasonable opportunity to present to the investigator any relevant facts or circumstances on which they wish to rely.
- 9.9 Where the nature and gravity of the complaint warrants it –
  - (a) Before completing the investigation, the investigator shall inform the complainant in writing of the substance of any proposed recommendations on findings on any relevant questions of fact and shall give the complainant a reasonable period to respond in writing, not being greater than 14 days.
  - (b) The investigator shall inform the respondent in writing of the substance of any proposed recommendations on findings on any relevant questions of fact and any response from the complainant and shall give the respondent a reasonable period to respond in writing, not being greater than 14 days.

- 9.10 Once the investigator has any responses from the complainant and the respondent within the prescribed period and is satisfied that the matter has been adequately investigated, he or she shall prepare a final report including where the nature and gravity of the complaint warrants it –
- (a) the complaint;
  - (b) the steps taken in the investigation;
  - (c) any responses from the complainant and the respondent;
  - (d) any statements, records of interview and other relevant material; and
  - (e) his or her recommendations on findings on any relevant questions of fact and a statement of the weight given to various accounts of the allegations.

## **10 Suspension from duties**

- 10.1 Where after receipt of a complaint about the conduct of a Church volunteer and at any time during the progress of a complaint under this Protocol, the Church authority is satisfied that there is an unacceptable risk of harm to any person if the respondent remains in his or her present role office or position pending the outcome of the complaint, the Church authority may determine that, pending the outcome of the complaint, the respondent be suspended or stood down from the duties of any role, office or position held by the respondent or certain of those duties.
- 10.2 Before making a determination pursuant to the preceding section, the Church authority must give the respondent notice that grounds exist for the Church authority being satisfied as stated in the preceding paragraph (specifying the same) and notice of any proposed determination and request the respondent to show cause in writing within 7 days (or such shorter period not less than 24 hours, if the unacceptable risk of harm is immediate) why the respondent should not be suspended or stood down from the duties of the role office or position held by them or certain of those duties.

## **11 Summary dismissal of a complaint**

- 11.1 The Church authority may decide to dismiss a complaint or to take no further action in relation to a complaint if–
- (a) it is of opinion that the complaint does not fall within the provisions of this Act as a complaint of misconduct against a Church volunteer;
  - (b) the behaviour the subject matter of the complaint can properly be dealt with by other means;
  - (c) the subject matter of a complaint is under investigation by some other competent person or body or is the subject of legal proceedings;
  - (d) the person making the complaint has failed to provide further details to the Church authority or to verify the allegations by statutory declaration when requested by the Church authority to do so;

- (e) it is of opinion that the complaint is false, vexatious, misconceived, frivolous or lacking in substance; or
- (f) it is of opinion that there is insufficient reliable evidence to warrant an investigation or further investigation.

11.2 If a complaint is dealt with by the Church authority under the preceding paragraph, it must give the complainant a written notice of the outcome including the reasons for the outcome.

## **12 Outcomes**

- 12.1 At any time after the Church authority receives a complaint, the Church authority may-
- (a) recommend mediation, conciliation, neutral evaluation or other alternative resolution of the complaint;
  - (b) exercise its powers described in the preceding paragraph to dismiss a complaint or to take no further action in relation to a complaint; or
  - (c) exercise its powers to suspend or stand down the respondent.
- 12.2 At any time after investigation of a complaint, the Church authority may proceed to make a determination on the complaint.

## **13 Where the Incumbent is unable to act**

- 13.1 If the Incumbent has a material personal interest in the matter or for other good reason, he or she may appoint a delegate (who must consent to act) to consider and determine the complaint and decide on any appropriate action. A reference in this Protocol to the Church authority includes unless the context requires otherwise that delegate.
- 13.2 The delegate must be the relevant Archdeacon or other suitably experienced person nominated by that Archdeacon with the consent of the Bishop.
- 13.3 Without limiting what may constitute a material personal interest in a matter, the Church authority will be taken to have a material personal interest in a matter if it is the Incumbent that made the complaint against the Church volunteer or that is a principal witness against the Church volunteer.
- 13.4 In the case of the Cathedral, references in this section to the Incumbent and the Archdeacon respectively shall be read *pari passu* as references to the Dean and Bishop.
- 13.5 A determination and decision of the delegate will stand as the decision of the Church authority.

## **14 Alternative Dispute Resolution**

- 14.1 If the Church authority determines that mediation or some other means of dispute resolution is likely to resolve the issues raised by the

complainant, the Church authority may seek the consent of the parties to that course of action.

- 14.2 For that purpose, the Church authority may give effect to a parish grievance policy not inconsistent with the Act or this Protocol or with any model parish grievance policy approved from time to time by the Bishop in Council.
- 14.3 Alternative dispute resolution proceedings (including mediation) are confidential, and all communications made by the complainant and the respondent and other participants in the course of them are without prejudice and may not be used by any party in subsequent legal proceedings.

## 15 Determination

- 15.1 If the Church authority is satisfied that:
- (a) the Church volunteer is unfit, whether temporarily or permanently, then or in the future to hold his or her particular or any role office licence or position in the Church or in a Church body; or
  - (b) in the exercise of a Church volunteer's role office licence or position or in the performance of any function, the Church volunteer should be subject to certain conditions or restrictions
- the Church authority may determine accordingly and may decide-
- (c) that the Church volunteer be counselled;
  - (d) that the Church volunteer be suspended from office or employment or from performing the function as the case may be for such period as the Church authority may determine;
  - (e) that any authority of the Church volunteer be revoked;
  - (f) that the Church volunteer's contract of employment (if any) be terminated;
  - (g) that the Church volunteer cease to hold any office then held;
  - (h) that a determination be made that for a specified period, whether temporary or permanent –
    - (i) the Church volunteer is unfit to hold a particular or any role, office, licence or position in the Church or in the employment of a Church body; or
    - (ii) in the performance of any function, the Church volunteer be subject to such conditions or restrictions as may be stipulated;
  - (i) that a prohibition order in relation to the Church volunteer's role office licence or position be made in terms specified by the Church authority;
  - (j) that the Church volunteer's holding of office or employment or performance of the function as the case may be, be subject to such conditions or restrictions as the Church authority may determine;
  - (k) that the implementation of a determination be suspended for

such period and upon such conditions as the Church authority may specify;

- (l) otherwise as the Church authority sees fit.

15.2 If the Church authority —

- (a) makes a finding that the respondent did not commit any misconduct as alleged; or
- (b) is not satisfied as to any of the matters in section 15.1(a) and (b) above—

the Church authority may dismiss the complaint or take no further action in relation to it.

15.3 The Church authority must –

- (a) provide a copy of the determination to the complainant, the respondent and the Director; and
- (b) give the complainant and the respondent written notice that if aggrieved, either of them may apply to the PSC for a fresh administrative reconsideration of the matter within 30 days from the date of the decision or such further period as the PSC may allow.

## **16 The Director or the complainant or respondent may apply for a review**

16.1 In this part, “decision” means any finding of fact or determination of a Church authority concerning the fitness for duties of a Church volunteer and includes a decision-

- (a) to suspend or stand down a volunteer under section 10; or
- (b) to dismiss a complaint or take no action in relation to a complaint under section 11.

16.2 If you are either a complainant or a respondent to a complaint, and are aggrieved by a decision of the Church authority, you may within 30 days from the date of the decision or such further period as the PSC may allow, apply to the PSC for a fresh administrative reconsideration of the matter. You should send your application to the Director.

16.3 The Director may, if aggrieved by a decision of the Church authority in respect of a complaint that a person has suffered or is likely to suffer harm as a result of misconduct, within 30 days from the date of the decision or such further period as the PSC may allow, apply to the PSC for a fresh administrative reconsideration of the matter.

16.4 If you are the complainant or the respondent, the Director must give you notice of any application to the PSC for a fresh administrative reconsideration of the matter.

16.5 The Director must give both the complainant and the respondent by notice the opportunity within 14 days to address any further submissions or material to the PSC.

- 16.6 If application for review is made in accordance with paragraphs 11.2 or 11.3, the Church authority must stay the giving effect to the decision under review.

## **17 Referral to the Board**

- 17.1 The PSC may, at any time after an application for review has been made to it, refer the complaint and application for review to the Board under s56 of the Act if –
- (a) the complainant and the respondent to the complaint have agreed in writing-
    - (i) to submit the complaint to the PSC to be dealt with under this Act as if it were a complaint under subsection (1) of s23; and
    - (ii) to be bound by any decision pursuant to section 103 of the Church authority nominated by them in the submission; and
  - (b) the PSC has consented in writing to that submission.
- 17.2 If the PSC refers the complaint and application to the Board in those circumstances, the complaint against the Church volunteer is deemed to be a complaint against a Church worker under subsection 23(1) of the Act and the separate Power and Trust Protocol will apply.

## **18 Review by the PSC**

- 18.1 The PSC may take independent professional advice as it considers necessary in the discharge of its functions.
- 18.2 The PSC may conduct such further investigations and enquiries as it sees fit.
- 18.3 Where an application for review is made to the PSC, the PSC shall consider the matter 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 further material received from the complainant including a victim impact statement and from the respondent;
  - (c) any other relevant evidentiary material; and
  - (d) the determination of the Church authority; and
  - (e) any applicable professional standards prescribed by a code of conduct.
- 18.4 The PSC may at any time and from time to time give directions:
- (a) as to the inspection by and supply of copies to the respondent or any other person of the documents or material relevant to the reference; and
  - (b) as to the conduct of its inquiry into the reference.
- 18.5 The PSC may exercise all the powers of the Church authority under sections 10, 11, 12, 14 and 15 of this Protocol and may—
- (a) affirm the decision under review;
  - (b) vary the decision under review;

- (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 Church authority in accordance with any directions or recommendations of the PSC.
- 18.6 The PSC must cause a copy of each determination and recommendation, with reasons, to be provided to—
- (a) the Bishop;
  - (b) the relevant Church authority;
  - (c) the complainant;
  - (d) the respondent;
  - (e) the Director; and
  - (f) any relevant delegate of the Director.
- 18.7 The PSC shall deal with the application as expeditiously as possible and shall consider any further submissions from either the complainant or the respondent.
- 18.8 Within 7 days of the PSC making a decision on the review, if the decision on the review is adverse to the respondent, the Director shall inform the respondent -
- (a) that the Director will refer the decision including recommendations or advice to the Church authority; and
  - (b) that he or she has the opportunity within 14 days to address any submissions to the Church authority.

## 19 The review – Relevant principles

- 19.1 The PSC is to undertake a fresh administrative reconsideration of the matter (s56). Consistent with well established principles applicable to the Victorian Civil and Administrative Tribunal and like bodies, the following features of that process are offered as guidance<sup>4</sup>:
- 19.2 First, when exercising its review jurisdiction, the PSC reviews a decision of the Church authority on the merits. It stands in the shoes of the Church authority and must decide whether the decision of the Church authority was the correct or preferable one.
- 19.3 Second, the review by the PSC must take place without any presumption as to the correctness of the decision under review. The PSC must conduct its own independent assessment and determination of the matters necessary to be addressed<sup>5</sup> – a ‘fresh administrative reconsideration of the matter’ to adopt the language of s56 of the Act<sup>6</sup>.

<sup>4</sup> See the discussion in *Pizer’s Annotated VCAT Act* (4<sup>th</sup> ed) at [VCAT 42.80].

<sup>5</sup> *Shi v Migration Agents Registration Authority* (2008) 235 CLR 286 at [141] per Kiefel J (with whom Crennan J agreed).

<sup>6</sup> See the discussion in *Kracke v Mental Health Review Board* (2009) 29 VAR 1 at [323]. The reconsideration is administrative rather than judicial in the sense that the Review Board does not determine contractual, tortious or other legal rights of the parties; it determines the question of fitness: *Kracke* at [310].



- 19.4 Third, the PSC will usually have to consider the factual findings upon which the decision under review was based in order to decide whether that decision was the correct or preferable one. The PSC must make its own findings of facts and is in no way bound by the Church authority's findings of fact. It is not obliged to but may hold a hearing at which evidence is adduced or evidence heard orally (s63(4)). It may be appropriate in a particular case for the PSC to give some weight to the findings and determination of the Church authority.
- 19.5 Fourth, the PSC reaches its own decision on the merits of the matter before it rather than reviewing the propriety or legality of the decision made by the Church authority. The PSC re-exercises the function of the Church authority.<sup>7</sup>
- 19.6 Fifth, the PSC does not conduct a judicial review of the actions of the Church authority; its function is not to review the decision making process of the Church authority as such but to determine the correct or preferable decision in the matter.
- 19.7 Sixth, the PSC may only review a 'decision' of the Church authority, that is to say, any finding of fact, determination or recommendation by the Church authority;
- 19.8 Seventh, when the decision of the Church authority is under review, the whole of the decision is under review – the applicant cannot, by accepting parts of the decision and rejecting others constrain the PSC to reviewing only those parts with which the applicant is dissatisfied.
- 19.9 Eighth, the nature of the review by the PSC will depend on the controversy between the complainant and the respondent. It may involve the PSC going over the same ground as that travelled by the Church authority when the issues remain – whether the events complained of occurred and whether the respondent is fit for office or duties. If there is no longer controversy over what occurred, the question of fitness may still be in controversy.
- 19.10 Ninth, generally the review of the matter will involve a complete reassessment, and the exercise of a judgment, in respect of the matter, and not just the acceptance of one side or the other.
- 19.11 Tenth, as a rule, bearing in mind the ultimate question of fitness, the PSC has regard to the facts as they exist at the time the matter is before the PSC, rather than at an earlier time when the matter was before the Church authority.

## **20 Role of the Director of Professional Standards**

- 20.1 The Director of Professional Standards -
  - (a) is independent of the Church administration and structures;
  - (b) has investigative skills and qualifications or experience in legal practice or procedure, or in counselling or an associated area;and

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<sup>7</sup>

See *Shi v Migration Agents Registration Authority* per Kiefel at [134].

- (c) is neither a member of the clergy nor married to a member of the clergy.

20.2 The Director assists the Diocese in providing a central focus in matters involving personal ethics and behaviour including advice about appropriate standards and enforcement, in managing and implementing the processes necessary to give effect to the Act and this Protocol and performing other functions prescribed in s 20 of the Act.

## **21 The Role and Composition of the Professional Standards Committee**

- 21.1 The Professional Standards Committee (**PSC**) comprises at least 3 people including its chair (s 13(1)). Its role includes –
- (a) to implement the Act and the protocol to the extent that the protocol is not inconsistent with the Act;
  - (b) to receive a complaint against a Church worker and to review a decision in respect of a complaint against a Church volunteer;
  - (c) to review and monitor the work of the Director;
  - (d) to refer a matter to the Professional Standards Board in an appropriate case; and
  - (e) to perform other functions prescribed by the Act.

The powers, duties and functions of the Committee are more completely set out in s 18 of the Act and the protocols made under the Act.

- 21.2 The membership of the PSC is constituted so as collectively to provide experience and appropriate professional qualifications in:
- (a) law;
  - (b) the ordained or authorised lay ministry; and
  - (c) child protection, investigations, social work, ethics or counselling (s 13(2)).

The PSC includes at least one person who is not a member of this Church and so far as it is reasonably practicable shall have at least one man and at least one woman (s13(3)).

- 21.3 The Director attends the meetings of the Committee and provides such assistance to the Committee as it may request but may not vote (s 20(1)(d)).

## **22 Professional Support Persons**

- 22.1 The Director in consultation with the Church authority may engage suitably qualified professionals (“Professional Support Persons”) to provide assistance to complainants, respondents, Church workers, informants, and victims involved in disclosures of abuse by Church workers.
- 22.2 Professional Support Persons will act in their individual capacity in their work for the Diocese. Their duty is to the person for whom they are providing services, and they are required to act always in that person’s best interests even when those interests conflict with their

own personal interests or those of the Diocese or other parties involved in the matter.

- 22.3 Professional Support Persons will be independent of Diocesan organisations, structures, and office holders and not have any other role under the Protocol in respect of a current matter.
- 22.4 The complainant's Professional Support Person will assist the complainant by providing counselling, explaining the process, and clarifying what outcomes are possible and what the complainant may expect to achieve from making a complaint. They may also assist the complainant where this is requested, to document the complaint. The Professional Support Person will also provide acknowledgement to the Director of the complainant's informed consent to the process.
- 22.5 Professional Support Persons' services are available to all parties involved in this process. A Professional Support Person may not provide services to, or receive information from, a complainant and respondent in the same matter.

## 23 Proceedings of the Church authority and the PSC

- 23.1 Each of the Church authority, including any delegate of the Church authority, and the PSC (in this section called **the Adjudicator**) –
- (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;
  - (b) is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks fit;
  - (c) may inform itself from the record of any court or tribunal and may adopt any findings, and accept as its own, the record of any court or tribunal;
  - (d) is not obliged to hold a hearing at which evidence is adduced or submissions heard orally; and
  - (e) must give reasons for any determination and recommendation, other than by way of directions in the course of an application, unless the determination is made by consent of the respondent and the Adjudicator.
- 23.2 The standard of proof to establish an allegation is that of a reasonable satisfaction on the balance of probabilities.
- 23.3 The Adjudicator shall scrutinize evidence with greater care if there is a serious allegation to be established, or an inherent unlikelihood of an occurrence of a given description or if there are grave consequences that would flow from a particular finding.
- 23.4 No member of the PSC shall individually meet with either the complainant or the respondent or any one acting on their behalf while the matter is in progress.
- 23.5 Where a member of the PSC has a personal interest in a matter before it the member shall be disqualified from participating in the matter.

- 23.6 The Adjudicator must not, 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
    - (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.

## 24 The Church authority

- 24.1 The Church authority who, by him or herself or any delegate, makes a determination under section 15 above or to whom a determination and recommendation in respect of a Church volunteer under this Protocol is made must do any act necessary to give effect to –
- (a) the determination and recommendation, or an equivalent body having jurisdiction to make a determination and recommendation to the Church authority; or
  - (b) with the consent of the person referred to below, any variation or modification of that determination and recommendation, consistent with any facts found by the body making them, as the Church authority sees fit.
- That person is -
- (c) that person is both where the Church authority is in a congregation or parish, and the Dean Bishop;
- 24.2 The Church authority must then report to the Director in writing the acts taken to give effect to the determination and recommendation from the PSC or any variation or modification of them.
- 24.3 The Church authority should not have any contact with a respondent or complainant *in relation to a complaint* that is the subject of an application for review except through the Director until the Church

authority has received a determination and recommendation from the PSC.

## **25 Pastoral Response**

Where appropriate, the Church authority and the Director or her or her delegate may develop a pastoral response for the care of any church community or congregation affected by the matter.

## **26 Completion of the Process**

- 26.1 As appropriate the Director will liaise with those involved in this Protocol at the completion of the case and will seek comment about the process and may discuss possible improvements.
- 26.2 Proposals regarding any changes within the structures of the Church which may assist to prevent further occasions of abuse will be considered.
- 26.3 Any recommendations resulting from this activity will be provided to the Bishop and the Registrar.

## **27 Confidentiality**

- 27.1 Part 17 of the Act imposes strict confidentiality obligations in connection with a complaint but requires or authorizes disclosure as set out in Parts 28 and 29 of this Protocol.
- 27.2 Subject to the provisions of the Act, the Director, a member of the PSC, a Church authority or a person employed or engaged on work related to the affairs of the PSC, must not divulge information that comes to his or her knowledge by virtue of that office or position except:
  - (a) in the course of carrying out the duties of that office or position in relation to that information;
  - (b) as may be authorised by or under the Act or any protocol;
  - (c) as may be authorised or required by the National Register Canon 2007 or any canon prescribed by General Synod in substitution for that canon;
  - (d) in any proceedings before a diocesan tribunal, a provincial tribunal or the special tribunal;
  - (e) as may be required by law; or
  - (f) to any insurer or insurance broker of a Church body or Church authority where the information may give rise to or be relevant to a claim for indemnity by the Church body or Church authority against the insurer or is relevant to obtaining or continuing insurance cover: s106 of the Act.
- 27.3 A Church authority is hereby authorized and, on written request by the Director or his or her delegate required to disclose to the Director or that delegate all and any information concerning any complaint received by the Church authority under the Act and this Protocol.

## **28 Co-operation with Government Authorities**

- 28.1 If arising from a complaint the Church authority, 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.
- 28.2 Subject to paragraph 28.3:
- (a) each of the Church authority, the Director and the PSC must notify the Police if in their view the conduct disclosed 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); and
  - (b) each of the Church authority and the Director may notify the Police if the conduct disclosed may constitute any other criminal offence.
- 28.3 A Church authority must consult with the Director before notifying Police under the previous paragraph.

## **29 Co-operation with other Dioceses, other Denominations and other Child Related Employers**

- 29.1 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 volunteer:
- (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 volunteer 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.
- 29.2 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 Church volunteer or former Church volunteer 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.

## **30 Records**

- 30.1 Each Church authority must keep in a safe and secure place separate from other records –
- (a) a register of all complaints made to the Church authority in any form prescribed by regulations of the Bishop in Council under the Act otherwise including the names of the complainant and the respondent, the history of the matter and the outcome; and
  - (b) a file of any notes, correspondence, reports or other documents created sent or received in connection with the complaint.

## **31 Grievance procedure**

- 30.1 Any complaint or grievance about the operation of this Protocol should be addressed in writing to the Bishop marked confidential care of PO Box 457, Wangaratta 3676 and copied to the Chancellor of the Diocese.
- 30.2 The Bishop shall forward the complaint or grievance to the relevant Church authority or the Chair of the PSC or the Director or to the investigator or other staff member if any involved (as may be judged appropriate) for a written response within 14 days and otherwise consider the matter.
- 30.3 The Bishop will provide the complainant, the Director, the Chair of the PSC and the Registrar with a written response and an outline of any proposed action.

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