

SAFE CHURCH ACT 2024

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Safe Church Act 2024

BE it enacted by the Bishop the Clergy and the Laity of the Anglican Church of Australia within the Diocese of Wangaratta duly met in Synod according to law as follows:—

Part 1 - Introductory

1 Purpose

- (1) The overriding purpose of this Act is to ensure, so far as that is possible, that the church is a safe place for everyone who is part of it and participates in its life and activities.
- (2) The further purposes of this Act are—
 - (a) to ensure that the church in this Diocese meets the requirements of the law of the Commonwealth and State in relation to the safety of children and people with disabilities;
 - (b) to enable the church in this Diocese to meet the requirements of the applicable Canons of the General Synod;
 - (c) to provide a means of clearing for ministry all clergy authorised to minister in the Diocese;
 - (e) to provide a means of clearing for service those laity requiring a clearance in order to serve in the Diocese;
 - (f) to provide a prompt, efficient, just and fair means for receiving, investigating and disposing of allegations that may call into question whether a person should continue to hold a safe ministry clearance or a safe service clearance (whether unconditionally or at all); and
 - (g) to support those who notify an allegation under this Act, and those who are the alleged victims of conduct notified under this Act.

2 Interpretation

- (1) In this Act—

authorisation to function means a licence or any written instrument by which the Diocesan Bishop appoints, authorises, permits or sanctions a member of the clergy to exercise ministry as a member of the clergy and **authorising to function** and **authorised to function** have a corresponding meaning;

Chapter means the Chapter or other governing body of the Cathedral of the Diocese;

child means a person aged less than 18 years;

child abuse has the same meaning as in the National Register Canon 2007;

church authority has the same meaning as in the National Register Canon 2007;

Church body has the same meaning as in the National Register Canon 2007;

clearance includes both a clearance for ministry and a clearance for service;

clearance for ministry means that the person has been cleared (unconditionally or conditionally) for authorisation to undertake ministry in the church;

clearance for service means that the person has been cleared (unconditionally or conditionally) for permission to undertake service in the church;

Clearances and Notifications Committee and **Committee** mean the Clearances and Notifications Committee established under Part 5;

clearing entity means an office holder or body which is under this Act able to grant a clearance;

Diocesan Bishop means the Bishop of this Diocese;

Director for Clearances and Notifications and **Director** mean the person holding office as the Director for Clearances and Notifications under section 73;

equivalent body means—

- (a) a body of
 - (i) another diocese; or
 - (ii) this Church—
with powers, duties or functions equivalent to those of the Clearances and Notifications Committee, the Safe Church Board, or the Safe Church Review Board as the case may be;
- (b) where there is no such body of a diocese, the bishop of the diocese; and
- (c) where there is no such body of the Anglican Church of Australia, the Primate;

medical includes psychiatric, psychological and other areas of health practice;

member of the clergy means a clerk;

National Register means the National Register established pursuant to the National Register Canon 2007 of the General Synod of this Church or any Canon enacted by General Synod in substitution for that Canon;

permission to function means any written instrument by which the Diocesan Bishops appoints, authorises, permits or sanctions a person who is not a member of the clergy to exercise ministry and **permitting to function** and **permitted to function** have a corresponding meaning;

Safe Church Board and **Board** mean the Safe Church Board established under Part 5;

Safe Church Review Board and **Review Board** mean the Safe Church Review Board established under Part 5;

sexual misconduct has the same meaning as in the National Register Canon 2007;

vicar means—

- (a) the clerk instituted by or on behalf of the Diocesan Bishop to the cure of souls in a parish;
- (b) a clerk appointed temporarily by the Diocesan Bishop to perform the ecclesiastical duties of that office holder; or
- (c) if there is no such office holder and no person appointed under paragraph (b), or if such a person is absent from the parish on leave, the Archdeacon;

vulnerable person means a person who by reason of an intellectual disability, mental illness or other impairment, age or circumstance, has reduced capacity, whether permanently or temporarily, to protect themselves from harm.

- (2) A reference to a Canon is a reference to a Canon of the General Synod of the Anglican Church of Australia.

Part 2 – Clearances

Division 1—Clearance for ministry

3 Clearance for ministry required

A clerk—

- (a) may not exercise ministry as a member of the clergy; and
- (b) may not be authorised to function—
without a clearance for ministry.

4 Clerk to seek clearance for ministry

- (1) A clerk who wishes to exercise ministry as a member of clergy in the Diocese must apply to the Director for Clearances and Notifications for a clearance for ministry.
- (2) An application for a clearance for ministry must be in the prescribed form and provide the prescribed information.
- (3) The form and information prescribed for the purposes of this section must not be inconsistent with any requirements in or under the legislation of the General Synod.

5 Requirements for grant of clearance for ministry

- (1) Subject to this section, a clearing entity may only grant a clearance for ministry if it is satisfied that doing so would not pose an unjustifiable risk to the safety of one or more members of the Church or of participants in the life and activities of the church.
- (2) Where a clearing entity—
 - (a) is not satisfied that granting an unconditional clearance for ministry would not pose an unjustifiable risk to the safety of one or more members of the Church or of participants in the life and activities of the church; but
 - (b) is satisfied that granting a clearance for ministry on certain conditions would not pose an unjustifiable risk to the safety of one or more members of the Church or of participants in the life and activities of the church—
it may grant a clearance for ministry on those conditions.
- (3) Subject to subsection (4), a clearing entity in deciding whether to grant a clearance for ministry may take into account any information—
 - (a) on the National Register; or
 - (b) that it holds by reason of the exercise of its functions (including the function of any clearing entity) under this Act.

- (4) Before taking into account any information under subsection (3) the clearing entity must inform the applicant of its intention to do so and of what that information is.

6 Who may give a clearance for ministry

- (1) The Director may—
 - (a) grant an unconditional clearance for ministry;
 - (b) grant a conditional clearance for ministry when the conditions or the circumstances giving rise to the conditions have been delegated by the Clearances and Notifications Committee; or
 - (c) refer the application for a clearance for ministry to the Committee.
- (2) An applicant for a clearance for ministry who is granted a conditional clearance under subsection (1) may within 14 days of receiving notice of being granted that conditional clearance seek to have the decision of the Director reviewed.
- (3) Within 45 days of receiving it, the Committee must in relation to an application for a clearance for ministry, including an application in respect of which the applicant has sought a review under subsection (2),—
 - (a) grant an unconditional clearance for ministry;
 - (b) grant a conditional clearance for ministry;
 - (c) defer its consideration of the application for a period not exceeding six months; or
 - (d) refuse the application.
- (4) The Committee may when it further considers an application for a clearance for ministry that has been deferred under subsection (3)(c)—
 - (a) grant an unconditional clearance for ministry;
 - (b) grant a conditional clearance for ministry; or
 - (c) refuse the application.

7 Appeal from the Clearances and Notifications Committee

- (1) An applicant for a clearance for ministry may appeal to the Safe Church Board when—
 - (a) the Committee has granted the applicant a conditional clearance for ministry;
 - (b) the Committee has refused the applicant a clearance for ministry;
 - (c) the Committee has not exercised any of its powers—

- (i) under section 6(3) within the time required by that subsection; or
 - (ii) under section 6(4) within 5 days of the date to which consideration was deferred under section 6(3)(c).
- (2) Where there is an appeal under subsection (1),—
 - (a) the Safe Church Board must consider the application from the beginning;
 - (b) the Director must present to the Board all the relevant material, including the material that would justify giving a clearance conditionally or not at all; and
 - (c) the applicant is responsible for satisfying the Safe Church Board that it should grant an unconditional clearance for ministry or grant a conditional clearance for ministry.
- (3) Where there is an appeal under subsection (1) the Board must after considering the application—
 - (a) grant an unconditional clearance for ministry;
 - (b) grant a conditional clearance for ministry; or
 - (c) refuse the application for a clearance for ministry.

8 Duration of a clearance for ministry

- (1) Subject to this section, an unconditional clearance for ministry operates for 5 years unless revoked or made conditional under this Act.
- (2) A conditional clearance for ministry operates according to its terms for the period (being not more than 5 years) specified in it unless revoked or varied under this Act.
- (3) Despite subsections (1) and (2), the Diocesan Bishop may require a clerk to seek and be given a new clearance for ministry before giving them an authorisation to function in a role, office or position in the Diocese other than that in respect of which they currently are or have been authorised.
- (4) A clearance for ministry ceases to operate if the person to whom it has been granted—
 - (a) dies;
 - (b) surrenders it; or
 - (c) ceases to have an authorisation to function.

9 Refusal of a clearance for ministry not a negative finding

For the purposes of this Act and for any other purposes, a decision of a clearing entity—

- (a) not to grant a clearance for ministry; or
- (b) to grant a clearance for ministry on conditions—

does not constitute, and is not to be taken to constitute, a finding that an applicant for a clearance would pose an unjustifiable risk to the safety of one or more members of the church [or should be on the National Register].

Division 2—Clearance for service

10 Who must have a clearance for service

- (1) A person requires a clearance for service if—
 - (a) they are in the Diocese a church worker within the meaning of the Safe Ministry to Children Canon 2017 of the General Synod;
 - (b) they are not a member of the clergy and undertake in the Diocese any ministry to vulnerable people and are in respect of that ministry—
 - (i) permitted to function by the Diocesan Bishop; or
 - (ii) employed by a Church body; or
 - (iii) whether for payment or not, holding a position or performing a function within this Diocese with the actual or apparent authority of the Diocesan Bishop or a Church body; or
 - (c) they are in a category of persons prescribed for the purposes of this section.
- (2) If the Bishop in Council prescribes a category of persons under subsection (1)(c) it must also prescribe the Church authority in relation to that category of persons.
- (3) A person who requires a clearance for service—
 - (a) may not perform a function that requires a clearance for service; and
 - (b) may not be permitted to perform a function—
without a clearance for service.

11 Person to seek clearance for service

- (1) A person who requires a clearance for service must apply to the Director for a clearance for service.
- (2) An application for a clearance for service must be in the prescribed form and provide the prescribed information.
- (3) The form and information prescribed for the purposes of this section must not be inconsistent with any requirements in or under the legislation of the General Synod.

- (4) Subject to subsection (3), the regulations may prescribe different forms and require the provision of different information in respect of a person requiring a clearance for service under paragraphs (a), (b) and (c) of section 10(1).

12 Requirements for grant of clearance for service

- (1) Subject to this section, a clearing entity must refuse to grant a clearance for service unless it is satisfied that doing so would not pose an unjustifiable risk to the safety of one or more members of the Church or of participants in the life and activities of the church.
- (2) Where a clearing entity—
 - (a) is not satisfied that granting an unconditional clearance for service would not pose an unjustifiable risk to the safety of one or more members of the Church or of participants in the life and activities of the church; but
 - (b) is satisfied that granting a clearance for service on certain conditions would not pose an unjustifiable risk to the safety of one or more members of the Church or of participants in the life and activities of the church—it may grant a clearance for service on those conditions.
- (3) Subject to subsection (4), a clearing entity in deciding whether to grant a clearance for service may take into account any information—
 - (a) on the National Register; or
 - (b) that it holds by reason of the exercise of its functions (including the function of any clearing entity) under this Act.
- (4) Before taking into account any information under subsection (3) the clearing entity must inform the applicant of its intention to do so and of what that information is.

13 Who may give a clearance for service

- (1) The Director may—
 - (a) grant an unconditional clearance for service;
 - (b) grant a conditional clearance for service when the conditions or the circumstances giving rise to the conditions have been delegated by the Committee; or
 - (c) refer the application for a clearance for service to the Committee.
- (2) An applicant for a clearance for service who is granted a conditional clearance under subsection (1) may within 14 days of receiving notice of being granted that conditional clearance seek to have the decision of the Director reviewed.

- (3) Within 45 days of receiving it, the Committee must in relation to an application for a clearance for service, including an application in respect of which the applicant has sought a review under subsection (2),—
 - (a) grant an unconditional clearance for service;
 - (b) grant a conditional clearance for service;
 - (c) defer its consideration of the application for a period not exceeding six months; or
 - (d) refuse the application.
- (4) The Committee may when it further considers an application for a clearance for service that has been deferred under subsection (2)(c)—
 - (a) grant an unconditional clearance for service;
 - (b) grant a conditional clearance for service; or
 - (c) refuse the application.

14 Appeal from the Clearances and Notifications Committee

- (1) An applicant for a clearance for service may appeal to the Board when—
 - (a) the Committee has granted the applicant a conditional clearance for service;
 - (b) the Committee has refused the applicant a clearance for service; or
 - (c) the Committee has not exercised any of its powers—
 - (i) under section 13(3) within the time required by that subsection; or
 - (ii) under section 13(4) within 5 days of the date to which consideration was deferred under section 13(3)(c).
- (2) Where there is an appeal under subsection (1)—
 - (a) the Board must consider the application from the beginning; and
 - (b) the Director must present to the Board all the relevant material, including the material that would justify giving a clearance conditionally or not at all; and
 - (c) the applicant is responsible for satisfying the Safe Church Board that it should grant an unconditional clearance for service or grant a conditional clearance for service.
- (3) Where there is an appeal under subsection (1) the Board must after considering the application—
 - (a) grant an unconditional clearance for service;
 - (b) grant a conditional clearance for service; or
 - (c) refuse the application for a clearance for service.

15 Duration of a clearance for service

- (1) Subject to this section, an unconditional clearance for service operates for 5 years unless revoked or made conditional under this Act.
- (2) A conditional clearance for service operates according to its terms for the period (being not more than 5 years) specified in it unless revoked or varied under this Act.
- (3) A clearance for service ceases to operate if the person to whom it has been granted—
 - (a) dies;
 - (b) surrenders it; or
 - (c) ceases to have a permission to function.

16 Refusal of a clearance for service not a negative finding

For the purposes of this Act and for any other purposes, a decision of a clearing entity—

- (a) not to grant a clearance for service; or
- (b) to grant a clearance for service on conditions—

does not constitute, and is not to be taken to constitute, a finding that an applicant for a clearance would pose an unjustifiable risk to the safety of one or more members of the church [or should be on the National Register].

Division 3—Register of clearances

17 Director for Clearances and Notifications to maintain register

- (1) The Director must establish and maintain a register of clearances.
- (2) The register of clearances must include in relation to each person who holds a clearance—
 - (a) their name;
 - (b) the clearance that they hold;
 - (c) whether the clearance is conditional or unconditional;
 - (d) the date on which the clearance expires;
 - (e) whether the clearance is suspended; and
 - (e) any other information as is prescribed.
- (4) The Director must establish means by which a Church authority or Church body can establish readily, and as soon as practicably possible when the Church authority or Church body has a reason to do so, the information on the register of clearances regarding—

- (a) whether a person holds a clearance that is not suspended;
- (b) whether that clearance is unconditional or conditional; and
- (c) the date on which the clearance is due to expire.

Part 3 – Notifications

Division 1 — Interpretation

18 Definitions

In this Part:

clearance revision decision means a decision—

- (a) by the Safe Church Board on the application of the Director; or
- (b) by the Safe Church Review Board on appeal from a decision of the Safe Church Board—

that—

- (c) makes an unconditional clearance conditional;
- (d) varies a conditional clearance; or
- (e) revokes a clearance.

notification includes an allegation.

19 Procedures where child involved

In relation to any notification by or in respect of a child, every person and body on which powers and responsibilities are conferred under this Part—

- (a) must apply processes that are appropriate and sensitive to receiving and using information from a child;
- (b) must educate those administering this Part in the procedures best suited to receiving and using information from a child; and
- (c) in deciding on the conduct of a matter, including in relation to evidence and how it is received, adjournments and communication, must have the reasonably possible impact on that child as a dominant consideration.

Division 2 — Receiving, considering and investigating and with notifications

20 Director for Clearances and Notifications to receive notifications

- (1) The Director is competent to receive notifications in relation to anything done or not done by a person holding a clearance for ministry or a clearance for service that may constitute—
 - (a) an offence under the Offences Act 1962;
 - (b) grounds for a clearance revision decision; or
 - (c) grounds for any other action permitted by this Act or available to the Diocesan Bishop in relation to—

- (i) whether the person is authorised to function or permitted to function; or
 - (ii) how they discharge the powers and functions of their role, office or position.
- (2) Any person may make a notification under subsection (1).

Note: Section 84 provides for who must make a notification to the Director.

21 Form of notifications

- (1) A notification may be in any form, in writing on paper or by email or conveyed orally.
- (2) A notification must—
 - (a) identify the person making it; and
 - (b) include details of what is alleged to have been done or not done.
- (3) Subject to subsection (4), the Director may not act on an anonymous notification.
- (4) Where the Director becomes aware of facts or matters that could be the subject matter of a notification, they may proceed in relation to those facts or matters, subject to subsection (5), as if they constituted a notification made under this Division.
- (5) Where the Director proceeds in relation to facts or matters under subsection (4) –
 - (a) the Director is conducting an investigation under this Division; and
 - (b) the provisions of this Division apply to the investigation save for those provisions that impose a requirement in relation to a notifier.

22 Consent of person giving notification

- (1) Before commencing an investigation, the Director must seek the written consent of the notifier to the disclosure of the notifier's identity to the person the subject matter of the notification.
- (2) Until that consent has been obtained the identity of the notifier must be kept confidential.

23 Actions following receipt of notification

- (1) The Director may at any time until a recommendation is made to the Committee under section 34—
 - (a) investigate the notification;

- (b) refer the matter to the Committee for the purposes of it considering whether to refer the notification or the investigation of a notification under section 35;
 - (b) refer the subject matter of the notification to the Registrar to be dealt with under the Diocesan Tribunal Act 1993-2006;
 - (c) refer the subject matter of the notification to the Diocesan Bishop;
 - (d) decide not to take any further action in relation to the notification because—
 - (i) the notification is false, vexatious, misconceived, frivolous or lacking in substance;
 - (ii) the available evidence is not sufficient or not of sufficient weight to warrant an investigation or further investigation;
 - (iii) the available evidence is not sufficient or of sufficient weight to constitute grounds to revoke, make conditional or vary the conditions of a clearance; or
 - (iv) the subject matter of a notification is under investigation by some other competent person or body or is the subject of legal proceedings.
- (2) Subject to this section, the person who is the subject of a notification must be informed of the notification.
- (3) A person who is the subject of a notification must not be informed of a notification or investigation if a request to that effect has been made by a relevant law enforcement authority or it would otherwise be contrary to law to do so.
- (4) The Director may ask a notifier—
- (a) to give further details of the notification; and
 - (b) to verify any details in the notification by statutory declaration or in another manner specified by them.
- (5) A request under subsection (4) must be in writing and allow the notifier a reasonable time to comply.
- (6) The notifier and the person who is the subject of a notification must be informed of each decision by the Director under subsection (1).
- (7) In this section **relevant law enforcement authority** means a police force or other statutory body with investigative powers of the Commonwealth of Australia, or of a State or Territory in Australia that informs the Director that it is conducting an investigation into matters the subject of the notification.

24 Investigation

- (1) For the purpose of an investigation the Director must obtain such statutory declarations or written statements, recorded conversations, reports, documents and other material as the Director considers necessary or advisable.
- (2) As part of an investigation, the Director may by notice in writing to a respondent require the person who is the subject of the notification—
 - (a) to meet on reasonable notice with the Director to answer questions in relation to a notification or other matter;
 - (b) to assist in or co-operate with the investigation of the notification or matter in a specified manner;
 - (c) to provide written information to the Director within 21 days or such further period as they may allow in relation to any matter relevant to the investigation;
 - (d) to verify the report by statutory declaration or another manner specified by the Director; or
 - (e) to produce at or before a specified time and at a specified place, any specified document (or a copy of the document).
- (3) Subject to any lawful objection, the Director may inspect any document provided pursuant to a requirement under this Part and may make copies of the document or any part of the document.
- (4) A reference in this section to the Director includes a reference to an investigator appointed by the Director for the purposes of assisting in the investigation of the notification.

25 Duty to assist investigation

- (1) A person who is the subject matter of a notification must, subject to this section—
 - (a) comply with a notice given under section 24(2);
 - (b) answer truthfully a question put by an investigator in the exercise of powers conferred by this Act;
 - (c) not mislead the Director, the Committee, a delegate of either of them or an investigator; and
 - (d) not unreasonably delay or obstruct the Director or the Committee or a delegate of either of them or an investigator in the exercise of powers conferred by this Act.
- (2) A respondent may not refuse to comply with subsection (1) on the ground that the production of a record or the giving of information or the verifying of it may tend to expose the person to an adverse finding under this Act or under some other law of this Church and—

- (a) the privilege if any against exposure to such an adverse finding is to that extent taken to have been waived; and
 - (b) the record or the information given may be used in evidence in any application or appeal involving the person before the Board or the Review Board.
- (3) A respondent may refuse to comply with subsection (1) on the ground that the production of a record or the giving of information or the verifying of it may tend to incriminate the person.
- (4) If a respondent declines to answer a question on the ground that the answer might tend to incriminate the person a written record must be made of the question and of the ground of refusal.
- (5) A failure to comply with a provision of subsection (1) is a relevant factor in an application for a clearance revision decision.

Division 3 — Temporary suspension of and conditions on clearance

26 Suspension where unacceptable risk

- (1) If at any time while a person is the subject of a notification, the Committee forms a reasonable belief that the person poses an unacceptable risk of harm to another person, it must—
- (a) apply to the Safe Church Board to have the person’s clearance suspended or made temporarily conditional; or
 - (b) if there is an immediate unacceptable risk, suspend the person’s clearance.
- (2) If the Committee suspends a person’s clearance under subsection (1), the person becomes a provisional person of concern for the purposes of Part 4 and the provisions of that Part are to apply in addition to the provisions of this Part until the notification is disposed of under this Part.

27 Person to be given notice

Before making an application under section 26, the Committee must give the person notice that there are grounds to consider that the person poses an unacceptable risk of harm and in that notice —

- (a) specify those grounds;
- (b) give details of any proposed Interim Safety Agreement; and
- (c) invite the respondent to show cause in writing within 14 days why the Board should not grant the application.

28 Clearances and Notifications Committee to apply to the Board to confirm its suspension

Where the Committee has suspended a person's clearance under section 26(1)(b), it must forthwith apply to the Board for the suspension to be confirmed and the Director must as soon as practicable give written notice to the person stating the grounds of suspension and informing the person that—

- (a) the Director has applied to the Board to have the suspension confirmed;
- (b) the person may make submissions to the Board within a period specified by the Director or (at its discretion) subsequently by the Board; and
- (c) the person is a provisional person of concern and may make an application under section 63.

29 Powers of Board where an unacceptable risk

If on an application under section 26 or 28 the Board forms a reasonable belief that the person poses an unacceptable risk of harm to another person—

- (a) it must suspend the person's clearance or continue the clearance with temporary conditions; and
- (b) if there is an application by the person under section 64, it may grant or otherwise dispose of that application.

30 Matters to be considered by Committee or Board

In the exercise of their powers under section 26 and 29 the Committee and the Board must take into account—

- (a) the seriousness of the subject matter of the notification;
- (b) the nature of the material available to support or negate the notification;
- (c) the specific duties of the role, office or position held by the person the subject matter of the notification;
- (d) the extent to which a person will be at risk of harm if the person is not suspended;
- (e) the extent to which that risk can be mitigated by the imposition of conditions; and
- (f) on the material available to it, whether there has previously been a similar notification against that person made to the Committee or an equivalent body—

and may take into account anything else it considers relevant.

31 Criminal charges – Notice of suspension

- (1) A charge of sexual misconduct or child abuse in any jurisdiction in Australia operates of its own force to suspend a clearance.

- (2) If the Director receives notice that the holder of a clearance is charged with sexual misconduct or child abuse in any jurisdiction in Australia, the Director must immediately give notice to the person that their clearance is suspended.
- (3) A suspension under this section continues until the person has been tried or the prosecution withdrawn.

32 Termination of a standing down or suspension

A suspension under this Division ceases when—

- (a) an application for a clearance revision decision has been finally disposed of; or
- (b) section 31(3) applies.

Division 4 — Reference to Clearances and Notifications Committee

34 Outcome of investigation to be considered by Clearances and Notifications Committee

- (1) When the Director has concluded an investigation and has not exercised any power under paragraphs (c), (d) or (e) of section 23, they must report on the investigation to the Clearances and Notifications Committee.
- (2) The report under subsection (1) must include a recommendation as to what decision the Committee should take under subsection (3).
- (3) On receiving a report under subsection (1), the Committee may decide to—
 - (a) apply to the Safe Church Board for it to make a clearance revision decision;
 - (b) refer the subject matter of the notification to the Registrar to be dealt with under the Diocesan Tribunal Act 1993-2006;
 - (c) refer the subject matter of the notification to the Diocesan Bishop;
 - (d) take no further action in relation to the notification because—
 - (i) the notification is false, vexatious, misconceived, frivolous or lacking in substance;
 - (ii) the evidence is not sufficient or not of sufficient weight to warrant an investigation or further investigation;
 - (iii) the evidence is not sufficient or of sufficient weight to constitute grounds to revoke, make conditional or vary the conditions of a clearance; or
 - (iv) the subject matter of a notification is under investigation by some other competent person or body or is the subject of legal proceedings; or
 - (e) take some other action permitted under this Division.

- (4) The Committee must make a decision under subsection (3) within 30 days of receiving the report.
- (5) The person who gave the notification and the person who is the subject of a notification must be informed of each decision by the Clearances and Notifications Committee under subsection (3).

35 Clearances and Notifications Committee may refer notification to another body

- (1) The Committee may, if it thinks it appropriate to do so, refer a notification, or the investigation of a notification, to an equivalent body or bodies.
- (2) The circumstances in which the Committee may exercise its powers under subsection (1) include, but are not limited to—
 - (a) when at the time the notification is made the person the subject of the notification—
 - (i) resides in another diocese or has an authorisation to function or a permission to function in another diocese; and
 - (ii) does not reside in the Diocese and does not have an authorisation to function or a permission to function in the Diocese; or
 - (b) when the notification is given in respect of a person who was once the Bishop of a diocese in this Church and, at the time of the referral, the Episcopal Standards Commission has jurisdiction under the Episcopal Standards (Child Protection) Canon 2017 to deal with the matter.
- (3) When the Committee and an equivalent body or equivalent bodies have or may have the power and duty to investigate matters that may be the subject of an application to the Safe Church Board under section 34 and the Committee cannot agree with that body or those bodies—
 - (a) which body will carry out the investigation or any parts of the investigation; or
 - (b) whether it or an equivalent body which has jurisdiction should determine whether a clearance should be revoked, made conditional or varied—

the Committee must refer the disagreement for decision by two independent persons agreed upon by the Committee and the equivalent body or bodies.

- (4) In making a decision under subsection (3) the independent persons are not to be bound by the views or instruction of the Committee and are to take into account the most convenient course for all concerned and the proper and expeditious conduct of the investigation and dealing with the notification as the case may be.
- (5) The Committee must act in accordance with the unanimous decision of those independent persons referred to in subsection (3) or, if such persons cannot

agree within a reasonable time of the disagreement being referred to them, in accordance with the decision of the Primate or their nominee.

- (6) In all matters affecting the operation of this Act the Committee and the Director must co-operate with and assist an equivalent body and any person or body with corresponding functions in another diocese.

36 Consolidation of notification proceedings

- (1) This section applies when proceedings in relation to a notification regarding a person holding a clearance raise the same or similar issues of fact or law as proceedings in relation to a notification regarding another person holding a clearance.
- (2) When this section applies, the Committee may apply to the Board for a direction that—
 - (a) a common question of law or fact arises in all those proceedings;
 - (b) the applications in all those proceedings are in respect of, or arise out of, the same transaction or series of transactions; or
 - (c) for some other reason specified in the application, it is desirable that a direction be made under this section.
- (3) In this section, two or more proceedings that are the subject of an application under subsection (1) are called the ***related proceedings***.
- (4) The Board may direct that—
 - (a) related proceedings be consolidated in the manner specified in the direction;
 - (b) related proceedings be heard or considered by the Board at the same time or in a sequence specified in the direction; or
 - (c) that one or more of the related proceedings be stayed pending the conclusion of some other related proceeding.
- (5) A direction under subsection (4) must not prolong unreasonably the final disposition of an application or other proceeding as it affects an individual person.

Division 5 — Application to the Safe Church Board

37 Interpretation

In this Division ***application*** means an application by the Committee to the Safe Church Board for a clearance revision decision.

38 How application made

- (1) The Committee makes an application by delivering to the Secretary of the Board in writing—

- (a) a statement of the decision sought;
 - (b) the report of the Director for Clearances and Notifications under section 34(1); and
 - (c) any further submission that it wishes the Board to consider.
- (2) Within 7 days of making an application under this section the Committee must deliver to the person the subject of the application copies of all the documents delivered to the Board under subsection (1).

39 How matter presented

- (1) The Director has carriage of the application on behalf of the Committee.
- (2) The Director may appear in person or by an authorised representative and any references in this Act to the role of the Director in proceedings before the Board include a reference to an authorised representative.
- (3) The Director must—
- (a) present to the Board—
 - (i) the evidence on which the Committee relies in support of the application;
 - (ii) any findings on material questions of fact it proposes that the Board should make;
 - (iii) any submissions in support;
 - (iv) any other facts or matters of which they are aware that are relevant to the application and of which the Board should have knowledge in order to make a fair, just and fully informed decision; and
 - (b) appear at any hearing of the Board to assist the Board in its consideration of the application.
- (4) The Director and the person the subject of the application may submit to the Board an agreed statement of facts.
- (5) Where the Board believes on reasonable grounds that some useful purpose would be served by doing so, it may consider an application and make the findings of fact referred to in section 40(2) even though the person who is the subject of the application has surrendered their clearance, has ceased to be a person who requires a clearance, or has ceased to be authorised to function or permitted to function, but in such a case may not make a decision in relation to the application.
- (6) The Board must give a person the subject of an application a reasonable opportunity to appear and be heard in relation to the application, including, subject to subsection (7), a reasonable opportunity to cross examine witnesses of fact on whom the Director relies.

- (7) Where the witness to be cross examined is giving evidence in relation to any allegation of sexual abuse or is otherwise a vulnerable witness, the Board, in giving a reasonable opportunity to cross examine, must give directions to the person or their legal representatives regarding the manner in which witnesses may be cross examined as if the matter were subject to Parts 8.2 and 8.2A of the **Criminal Procedure Act 2009** (Vic).
- (8) The Board may undertake and complete all its functions under this Division even if the person the subject of the application chooses not to participate in the consideration of the application.

40 Function of the Safe Church Board

- (1) The Safe Church Board must make a decision in relation to the application.
- (2) The Board must make findings of fact in relation to the evidence available to it, and on the basis of those findings decide—
 - (a) whether the person the subject of the application poses, or is likely to pose, an unjustifiable risk to the safety of one or more members of the church or of participants in the life and activities of the church; and
 - (b) whether the person the subject of the application, if granted a clearance on certain conditions, would pose, or would be likely to pose, an unjustifiable risk to the safety of one or more members of the Church or of participants in the life and activities of the church.
- (3) The Director is responsible for satisfying the Safe Church Board that a clearance revision decision should be made.
- (4) Subject to section 41, the Board must after reaching its finding under subsection (2) make a clearance revision decision or dismiss the application.

41 Board may adjourn on terms

- (1) After making findings under section 40(2), the Board may defer disposing of the application under section 40(3) and may for that purpose adjourn any hearing or consideration of an application from time to time for a period or periods not exceeding 24 months in total, on terms and conditions that the respondent undertake for a specified period and in a form approved by the Board to do one or more of the following acts or omissions under the supervision of the Director or another person nominated by the Board—
 - (a) stand down from the duties of office or from performing specified duties;
 - (b) undertake counselling from a person approved by it;
 - (c) submit to periodic medical examination by a person approved by it;
 - (d) undertake a specified program of medical treatment or rehabilitation whether as an outpatient or inpatient;
 - (e) provide medical or other evidence requested by it to assist it; and

- (f) perform or refrain from performing some other specified act.
- (2) If, within a period specified by the Board, the person the subject of the application declines to give an undertaking required under subsection (1), the Board must proceed to make a clearance revision decision or dismiss the application.
- (3) In disposing of an application the Board may take into account the failure of the person the subject of the application to comply with an undertaking given under subsection (2).

Division 6 — Appeal to the Safe Church Review Board

42 Interpretation

In this Division—

appeal means an appeal by the Clearances and Notifications Committee or by a subject person against a clearance revision decision of the Safe Church Board and includes both an appeal by that Committee and an appeal by the subject person

appellant means the Committee or person who is bringing an appeal; and

subject person means a person who was the subject of an application under Division 5.

43 How appeal made

- (1) An appeal is brought by the appellant delivering to the Secretary of the Review Board in writing—
 - (a) a notice of appeal;
 - (b) the grounds of appeal.
- (2) An appeal must be brought within 30 days of the clearance revision decision by the Board or such longer time as is determined by the Board or the Review Board.
- (3) Unless the Board or the Review Board directs otherwise, the bringing of an appeal does not operate as a stay of the decision of the Board.

44 How matter presented

- (1) Where an appeal is brought by the Clearances and Notifications Committee the Director has carriage of the appeal on behalf of the Committee.
- (2) Where an appeal is brought by a subject person the Director has carriage of the response to the appeal on behalf of the Clearances and Notifications Committee.

- (3) The Director may appear in person or by an authorized representative and any references in this Act to the role of the Director in proceedings before the Review Board include a reference to an authorised representative.
- (4) The Director must—
 - (a) present to the Review Board all facts and materials of which the Director is aware that are relevant to the appeal and of which the Review Board should have knowledge in order to make a fair, just and fully informed decision; and
 - (b) appear at any hearing of the Review Board to assist the Review Board in its consideration of the application.
- (5) Subject to this section, the Review Board must consider an appeal from the beginning as if it were the Board.
- (6) The Review Board may at any time dismiss an appeal if the subject person has died, has surrendered their clearance, has ceased to be a person who requires a clearance, has ceased to be authorised for ministry, has discontinued the appeal, or has not taken or has ceased to take reasonable steps to prosecute the appeal.
- (7) Despite subsection (4), if there is no ground of appeal other than a ground relating to a question of law, the Review Board may dispose of the appeal without taking evidence or otherwise considering the matter from the beginning.

45 Function of the Safe Church Review Board

- (1) The Review Board must make a decision in relation to the appeal.
- (2) The Review Board must make findings of fact in relation to the evidence available to it, and on the basis of those findings decide—
 - (a) whether the subject person poses, or is likely to pose, an unjustifiable risk to the safety of one or more members of the church or of participants in the life and activities of the church; and
 - (b) whether the subject person, if granted a clearance on certain conditions, would pose, or would be likely to pose, an unjustifiable risk to the safety of one or more members of the Church or of participants in the life and activities of the church.
- (3) The Director is responsible for satisfying the Review Board that a clearance revision decision should be made.
- (4) The Review Board must dispose of the appeal in a manner consistent with its findings under subsection (2) by making a clearance revision decision, dismissing the appeal, or dismissing the original application to the Board.

46 Review Board may adjourn on terms

- (1) After making findings under section 45(2), the Review Board may defer disposing of the appeal under section 45(3) and may for that purpose adjourn any hearing or consideration of an appeal from time to time for a period or periods not exceeding 24 months in total, on terms and conditions that the subject person undertake for a specified period and in a form approved by the Review Board to do one or more of the following acts or omissions under the supervision of the Director or another person nominated by the Review Board—
 - (a) stand down from the duties of office or from performing specified duties of an office for which a clearance is required;
 - (b) undertake counselling from a person approved by it;
 - (c) submit to periodic medical examination by a person approved by it;
 - (d) undertake a specified program of medical treatment or rehabilitation whether as an outpatient or inpatient;
 - (e) provide medical or other evidence requested by it to assist; and
 - (f) perform or refrain from performing some other specified act.
- (2) If, within a period specified by the Review Board, the subject person declines to give an undertaking required under subsection (1), the Review Board must proceed to dispose of the appeal under section 45.
- (3) In disposing of an appeal the Review Board may take into account the failure of the appellant to comply with an undertaking given under subsection (1).

Division 7 — Procedures and support

47 Application of this Division

This Division applies to applications and appeals under Parts 2 and 4 as well as to applications and appeals under this Part.

48 Board and Review Board to act fairly and not bound by the rules of evidence

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) are not bound by the rules of evidence and may inform themselves on any matter in such manner as they think fit.

49 Previous findings of fact *prima facie* evidence

- (1) A finding of fact by the Board or the Review Board regarding a person that has not been displaced by a subsequent finding of fact by the Board or Review Board may be relied on in an application regarding that person unless rebutted.

- (2) A finding of fact by the Diocesan Tribunal regarding a person that has not been displaced by a subsequent finding of fact by the Diocesan Tribunal or the Appellate Tribunal may be relied on in an application regarding that person unless rebutted.
- (3) Where the Board or the Review Board is satisfied that a person the subject matter of an application or an appellant has in respect of their conduct or alleged conduct—
 - (a) been convicted by a court within or outside Australia of an offence involving that conduct;
 - (b) been found guilty (without conviction) by a court within or outside Australia of an offence involving that conduct;
 - (c) admitted in proceedings before a court or tribunal within or outside Australia or before an equivalent body having engaged in that conduct;
 - (d) been found by a court or tribunal within or outside Australia to have engaged in that conduct; or
 - (e) been disqualified by a court or tribunal within or outside Australia from professional practice on account of that conduct—
 then—
 - (f) a certificate, reasons for judgment or other record from the court or tribunal or board (as the case may be) is conclusive evidence that that person engaged in that conduct; and
 - (g) neither the respondent nor any other party may call or give evidence or make submissions for the purpose of calling into question the conviction or finding of guilt of the respondent or denying that that person engaged in that conduct.

50 Standard of proof

- (1) The standard of proof for the Director, the Board or the Review Board to form a reasonable belief is that of objective circumstances sufficient to support the belief.
- (2) The standard of proof for the Board and the Review Board to establish an allegation of fact or a conclusion as to unjustifiable or unacceptable risk is that of reasonable satisfaction on the balance of probabilities.
- (3) The Board and the Review Board must 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.

51 Board or the Review Board may seek further information

The Board and the Review Board may seek further information from the Committee and may at any time give directions to it as to any further enquiries or investigation it requires to be carried out for the purposes of considering and deciding on the application and the Committee must to the best of its ability cause such directions to be carried out.

52 Board or the Review Board may appoint an expert to assist it

The Board and the Review Board may for the purpose of considering (but not deciding) an application appoint an expert person or persons to assist it.

53 Board and the Review Board to act expeditiously

The Board and the Review Board must reach a decision in relation to an application as expeditiously as possible, and wherever possible within 90 days of the delivery of the application.

54 Board and the Review Board to circulate and publish reasons

- (1) Subject to this section and to the **Judicial Proceedings Reports Act 1958** (Vic), the Board and the Review Board must cause a copy of their decision and reasons (including its reasons in relation to any decision under Division 3 of this Part) to be provided to—
 - (a) each relevant Church authority and the Chancellor, and where the Church authority is not the Diocesan Bishop, the Diocesan Bishop;
 - (b) a person who gave a notification under section 20;
 - (c) the person affected;
 - (d) the Director and the Committee; and
 - (e) the Safe Church Ombudsman.
- (2) Where in this Act, the Board or the Review Board is required to give reasons for a decision, the instrument giving the reasons must also set out the findings on material questions of fact and refer to the evidence or other material on which those findings were based.
- (3) The Board and the Review Board must release to the public as soon as practicable its decision and reasons anonymised and redacted.
- (4) For the purposes of subsection (3), decisions and reasons are anonymised and redacted if they do not contain any particulars that identify or are likely to lead to the identification of—
 - (a) a person who gave a notification under section 20;
 - (b) a witness other than the person affected or a witness as to character or witness on a question on which expert evidence is given;

- (c) any person against whom sexual misconduct or child abuse is alleged to have been committed; or
- (d) the person affected unless in the discretion of the Board or the Review Board, the disclosure of the identity of that person is necessary or desirable in the public interest.

55 Duties to and involvement of those giving notifications and alleged victims

- (1) This section applies to—
 - (a) persons making a notification under section 20; and
 - (b) persons who are alleged to be the victims of, or directly affected by, the matters giving rise to the notification.
- (2) The Committee must establish and maintain systems to provide adequate support and counselling, including externally-sourced professional support and counselling, to a person to whom this section applies.
- (3) A person who is found to have been the victim of, or directly affected by, the matters giving rise to the notification is entitled to make a victim impact statement to the Board and the Review Board.
- (4) A person to whom this section applies—
 - (a) has no role in the decision taken by the Director for Clearances and Notifications under section 23;
 - (b) is entitled to be kept informed regularly about the progress of a notification, application or appeal (including an application in relation suspension); and
 - (c) is not entitled to participate (other than as a witness or under subsection (3)) in any proceedings before the Board or the Review Board.

56 Financial support and costs

- (1) At the time when a person is notified under section 22 that they are the subject of a notification, they are entitled to be reimbursed by the Diocese for the costs they incur in obtaining legal advice, not exceeding \$1000 or such greater sum as may be from time to time prescribed.
- (2) The Board may in its discretion award costs to the person the subject of a notification that is dismissed under section 40.
- (3) Where the Review Board allows an appeal brought by a subject person, the subject person is entitled to an award of costs to be determined in its discretion by the Review Board.
- (4) In the exercise of its discretion under subsection (3) the Review Board may have regard to whether the outcome of the appeal was materially different from the decision of the Board.

- (5) Where the Review Board allows an appeal brought by the Committee, the Review Board may make an award of costs in the Committee's favour.
- (6) In the exercise of its discretion under subsection (5), the Review Board may have regard to the way in which the appeal was conducted by the subject person at first instance and before the Review Board.

Part 4 — Persons of concern

57 Purpose of the Part

The purpose of this Part is to regulate the participation in the life of a parish of persons who may cause harm to others in the parish.

58 Parish to include cathedral

In this Part *parish* includes an Authorised Anglican Congregation, Holy Trinity Cathedral and the Parish of Wangaratta.

59 Preliminary assessment

- (1) If as a result of a notification or in any other way the Director has reason to believe that a person who is participating or who wishes or intends to participate in the life of a parish may, if they do so, constitute an unacceptable risk of harm to someone else in the parish, the Director must—
 - (a) make a preliminary assessment; and
 - (b) report on that preliminary assessment to the Clearances and Notifications Committee.
- (2) The report on the preliminary assessment must be accompanied by any submission provided to the Director by the person.
- (3) A preliminary assessment under this section must include the opinion of the Director regarding—
 - (a) whether the person may constitute an unacceptable risk of harm to someone engaged in the activities of a parish if, pending any process of assessment, they participate or continue to participate in the life of that parish; and
 - (b) whether the Committee should declare the person a provisional person of concern.
- (4) In making a preliminary assessment, the Director may have regard to any facts or circumstances relevant to forming a belief for the purposes of subsection (1) but must have regard to whether the person—
 - (a) has pleaded guilty to, has been convicted of, or has admitted to having committed, sexual misconduct, child abuse or some other offence against the person;
 - (b) is currently charged with sexual misconduct, child abuse or some other offence against the person;
 - (c) has been disciplined or had other action taken against them under a disciplinary or other process of the Church or another organization because of their alleged abuse of someone else, or who has been refused ordination, employment or appointment in the Church or

another organization because of an adverse risk assessment attributable to their past or potential abuse of others;

- (d) as a result of abuse, has received an adverse risk assessment from a professional with appropriate qualifications and experience in accordance with the requirements of another church or a statutory authority;
- (e) has received or is receiving treatment for disordered sexual behaviour; and
- (f) is within a prescribed class of persons.

60 Interim Safety Arrangement

- (1) At any time—
 - (a) after commencing the preparation of a preliminary assessment under section 59(2); and
 - (b) before the Committee has decided whether to declare the person a provisional person of concern or a person of concern—the Director may, after consultation with the vicar and churchwardens of the parish, make an Interim Safety Arrangement.
- (2) An Interim Safety Arrangement must be in writing and must state either—
 - (a) the interim conditions for participation of the person in the life of the parish; or
 - (b) that the person must abstain from participation in the life of the parish.
- (3) Subject to subsection (4), an Interim Safety Arrangement operates for a period of 3 months from the day it is made.
- (4) The Committee may extend the period for which an Interim Safety Agreement operates.

61 Clearances and Notifications Committee to consider the preliminary assessment

The Committee must consider the report of the Director under section 60(1), and any submission from the person received under section 60(2).

62 Interim resolution of the Clearances and Notifications Committee

- (1) Following its consideration under section 61, the Committee must in its absolute discretion by resolution—
 - (a) declare that the person is a provisional person of concern; or
 - (b) if it is satisfied that the person does not constitute an unacceptable risk of harm to anyone engaged in the activities of the parish, direct the Director to advise the person that they are not a person of concern or a provisional person of concern.

- (2) If the Committee declares a person to be a provisional person of concern, it must continue the Interim Safety Arrangement with or without variation.
- (3) The Director must immediately inform the provisional person of concern, and the vicar and churchwardens of the parish of the terms of an Interim Safety Agreement continued under subsection (2).

63 Provisional person of concern may seek clearance for participation

- (1) A person who has been declared a provisional person of concern may apply to Committee for a clearance for participation.
- (2) The Director must give notice to a provisional person of concern that—
 - (a) they may apply in the prescribed form to the Director for a clearance for participation; and
 - (b) if they apply for a clearance for participation they must apply for a national police check which they then provide to the Director.
- (3) A national police check conducted under this section is to be paid for by the Diocese.
- (4) An application for clearance for participation must be made within 14 days of the provisional person of concern receiving the notice under subsection (2).
- (5) The Council of the Diocese may prescribe further how a clearance for participation is to be applied for and considered.
- (6) An application for a clearance for participation must include any prescribed information and may include any information or submission that the applicant wishes to have considered.

64 Person of concern may make fresh application for a clearance for participation

- (1) A person of concern who has a clearance for participation may apply to have the clearance varied or revoked.
- (2) An application under this section must be in substantially the same form as an application under section 63.
- (2) An application under this section cannot be made sooner than 12 months after the applicant's last application for a clearance for participation.

65 Decision by the Clearances and Notifications Committee

- (1) If the Committee is not satisfied that the applicant, with or without a satisfactory Safety Plan or Safety Agreement or other condition or restriction, would not constitute an unacceptable risk of harm to a person engaged in the activities of the parish, it must refuse the application for a clearance for participation.

- (2) If the Committee is satisfied that the applicant with, but not without, a satisfactory Safety Plan or Safety Agreement or other condition or restriction, would not constitute an unacceptable risk of harm to any person engaged in the activities of the parish, it must determine that the application for clearance for participation be granted subject to a satisfactory Safety Plan or Safety Agreement or other condition or restriction.
- (3) In the exercise of its powers under this section the Committee may further—
 - (a) as a condition of granting a clearance for participation, approve a Safety Agreement in relation to that person between that person, a relevant Church authority and the Director on behalf of the Committee regulating how that person may participate in the life of the parish and for that purpose have entry and access to the premises and activities of the parish;
 - (c) as a condition of granting a clearance for participation approve a Safety Plan, but only where the person has an intellectual or other disability that prevents them from giving informed consent to a Safety Agreement;
 - (d) determine whether a Safety Plan or a Safety Agreement should be varied or terminated and if so on what conditions;
 - (e) determine whether the operation and arrangements of any Parish Accountability Group should be varied and if so how; and
 - (f) exercise its powers under section 29 in relation to the person.
- (2) A person of concern must comply with any condition or restriction specified in their clearance for participation.

66 Requirements of a Safety Agreement or Safety Plan

A Safety Agreement or a Safety Plan must include at least—

- (a) any condition or restriction on participation by the person of concern in the life of the parish determined by the Committee;
- (b) any additional conditions, such as an obligation to undertake child protection training, as the Committee may see fit;
- (c) a restriction on the person of concern participating in the life of any parish other than the specified parish without a clearance for participation;
- (d) the consequences of any breach of the Safety Agreement or Safety Plan by the person of concern;
- (e) what information can and should be released and to whom; and
- (f) a process for advising a new vicar and new churchwardens in the parish of the existence and terms of the Safety Agreement or Safety Plan.

67 When application or other matter to be referred to the Safe Church Board

The Committee must refer a matter to the Board in any of the following circumstances:

- (a) the person of concern has by written notice to the Director objected to a decision under section 65 within 21 days of when it was made;
- (b) the person of concern is alleged to have breached a condition of an Interim Safety Arrangement or a Safety Plan or a Safety Agreement (as varied) and has failed to remedy the breach or alleged breach within 7 days from written notice from the Director notifying the breach;
- (c) a person of concern has contravened or continues to contravene a prohibition on participating in the life of the parish or has participated in the life of another parish;
- (d) a Church authority is alleged to have breached a condition of an Interim Safety Arrangement or a Safety Plan or a Safety Agreement (as varied) and has failed to remedy the breach or alleged breach within 7 days from written notice from the Director notifying the breach; or
- (e) the Committee determines for other good reason that the matter should be referred to the Board.

68 Duration of a clearance for participation

- (1) A clearance for participation granted under this Act is in force from the date specified in it until—
 - (a) the specified expiry date (being not greater than 5 years);
 - (b) the person of concern ceases to participate in the life of the parish; or
 - (c) it is suspended or cancelled at the direction of the Board or the Review Board—whichever occurs first.
- (2) If an application for the renewal of a clearance for participation granted for a specified term has been lodged within 6 months before the clearance is due to expire and has not been finally determined before that date, the clearance for participation remains in force, subject to subsection (1), until the application has been finally determined.
- (3) For the purposes of subsection (2), an application is ***finally determined***—
 - (a) by the renewal of the clearance for participation; or
 - (b) by the exhaustion of all rights of review in relation to a decision to refuse to renew the clearance for participation.

69 Prohibition on participation

- (1) This section applies to a person—

- (a) who has been found to be a provisional person of concern and has not applied for a clearance for participation within the time provided in section 63;
 - (b) who has been refused a clearance for participation by the Committee and made an objection under section 67 within 21 days from the date of the determination; or
 - (c) has been refused a clearance for participation by the Committee at the direction of the Board or, on review, the Review Board; or
 - (d) has had a clearance for participation cancelled by the Committee at the direction of the Board or, on review, the Review Board.
- (2) Subject to subsection (3), a person to whom this section applies must not participate or continue to participate in the life of any parish.
 - (3) A person to whom this section applies is to be admitted to the Holy Communion or the Lord's Supper in circumstances approved in advance in writing by the Diocesan Bishop.
 - (4) A wilful or reckless failure by a person to whom this section applies who is in Holy Orders is an offence for the purposes of the **Offences Act 1962**.

70 Parish Accountability Group

- (1) The vicar and churchwardens of a parish may establish a Parish Accountability Group in relation to a person of concern in the parish.
- (2) The vicar and churchwardens of the parish may after consultation with the person of concern and the Director appoint members of the Church or other persons with appropriate qualifications and experience to the Parish Accountability Group.
- (3) The functions of a Parish Accountability Group are—
 - (a) to monitor compliance with the obligations in any Safety Agreement or Safety Plan on the part of the person of concern or other person obligated;
 - (b) to hold the person of concern accountable for the performance of their obligations under any Safety Agreement or Safety Plan; and
 - (c) to support and help the person of concern manage their personal risks and behaviour to the extent necessary or desirable according to their level of risk, their offending history and the information gathered.
- (4) It is not a function of a Parish Accountability Group to provide pastoral support to the person of concern.
- (5) A member of the Parish Accountability Group must as soon as practicable notify -

- (a) the Director; and
- (b) the vicar or a churchwarden

if they know or reasonably suspect that the person of concern has breached a condition of the Safety Agreement or Safety Plan.

- (6) A person who is a relative or partner of a person of concern is not eligible to be a member of the Parish Accountability Group.

71 Duties of Church authority

- (1) Where a Church authority in relation to a person of concern in any parish has received written notice from the Director that section 69 applies to a person, the Church authority must subject to subsection (2) take all reasonable steps to prevent the person of concern from having entry or access to premises or activities of the Church either generally or in a specified location or circumstances, except to be admitted to the Holy Communion or the Lord's Supper in circumstances approved in advance in writing by the Diocesan Bishop.
- (2) The Church authority who is in Holy Orders must admit the person of concern to the Holy Communion or the Lord's Supper under subsection (1) in circumstances approved in advance in writing by the Diocesan Bishop.
- (3) A wilful or reckless failure by a Church authority who is in Holy Orders, other than the Bishop, to comply with a provision of this section is an offence for the purposes of the **Offences Act 1962**.

Part 5 — Offices and entities

72 Offices and entities established

- (1) For the purposes of this Act there are—
 - (a) a Director for Clearances and Notifications;
 - (b) a Clearances and Notifications Committee;
 - (c) a Safe Church Board;
 - (d) a Safe Church Review Board; and
 - (e) a Safe Church Act Ombudsman.
- (2) An office or body in subsection (1) may function as the equivalent body of another Diocese of the Anglican Church of Australia.
- (3) If there is a Safe Church Board or a Safe Church Review Board appointed by the Diocesan Corporation or by a corporation engaged by the Diocesan Corporation for the purposes of appointing a Safe Church Board or a Safe Church Review Board, the person appointing the Board or the Review Board must also appoint a person to be the Secretary of the Board or the Review Board (as the case requires).

73 Director for Clearances and Notifications

- (1) The Director for Clearances and Notifications must be—
 - (a) employed by the Diocesan Corporation; or
 - (b) employed or otherwise engaged by a corporation engaged by the Diocesan Corporation for purposes that include employing or engaging the Director for Clearances and Notifications for the Diocese; or
 - (c) a person with similar functions and responsibilities employed or otherwise engaged by the Diocesan Corporation of another Diocese in the Province of Victoria with which this Diocese has a contract or similar arrangement; or
 - (d) employed or otherwise engaged by a corporation engaged by another Diocese in the Province of Victoria for purposes that include employing or engaging the Director for Clearances and Notifications for this Diocese or employing or engaging a person with similar functions and responsibilities for that Diocese.
- (2) The Director for Clearances and Notifications has the power to perform the functions and responsibilities given to and required of the Director for Clearances and Notifications under this Act.
- (3) The Director for Clearances and Notifications has the other functions and responsibilities—

- (a) in Schedule 1; and
 - (b) from time to time prescribed.
- (4) A Deputy Director of Clearances and Notifications appointed by the Director has such functions and powers of the Director as the Director assigns to that Deputy Director but does not have the power to appoint a Deputy Director.

74 Clearances and Notifications Committee

- (1) The Clearances and Notifications Committee must be—
- (a) appointed by the Diocesan Corporation; or
 - (b) appointed by a corporation engaged by the Diocesan Corporation for purposes that include appointing a Clearances and Notifications Committee for the Diocese; or
 - (c) a committee with similar functions and responsibilities appointed by another Diocese in the Province of Victoria with which this Diocese has a contract or similar arrangement; or
 - (d) a committee with similar functions and responsibilities appointed by a corporation engaged by another Diocese in the Province of Victoria for purposes that include appointing a Clearances and Notifications Committee for this Diocese or appointing a committee with similar functions and responsibilities for that Diocese.
- (2) A Clearances and Notifications Committee appointed under subsection (1)(a) or (b) must have at least four members and be constituted—
- (a) with a chair appointed by the Diocesan Corporation;
 - (b) so as collectively to provide experience and appropriate professional qualifications in the law, in Christian ministry and in child protection, investigations, social work, ethics or counselling;
 - (b) to include at least one person who is not a member of the Anglican Church of Australia; and
 - (c) so as to include at least one man and one woman.
- (3) The Clearances and Notifications Committee has the functions and responsibilities given to it by this Act and the other functions and responsibilities—
- (a) in Schedule 2; and
 - (b) from time to time prescribed.
- (4) The provisions of Schedule 2 apply to the procedures and functioning of the Clearances and Notifications Committee appointed under subsection (1)(a) or (b).

75 Safe Church Board

- (1) The Safe Church Board may be—
 - (a) constituted in accordance with the provisions of this Act; or
 - (b) an equivalent body constituted in accordance with the provisions of an Act of another Diocese in the Province of Victoria and recognized by the Council of the Diocese as the Safe Church Board for the purposes of this Act.
- (2) The Council of the Diocese may determine at any time and from time to time that for some purposes the Safe Church Board will be a body constituted under subsection (1)(a) and for other purposes will be an equivalent body referred to in subsection (1)(b).

76 Safe Church Board constituted under this Act

- (1) In this section, a reference to the Safe Church Board is a reference to a Safe Church Board constituted under this Act.
- (2) A person may become a member of a Safe Church Board by being—
 - (a) appointed by the Council of the Diocese;
 - (b) selected from a Panel appointed by the Council of the Diocese; or
 - (c) appointed by a corporation engaged by the Diocesan Corporation for purposes that include appointing a Safe Church Board for the Diocese; or
 - (d) selected from a Panel appointed by a corporation engaged by the Diocesan Corporation for purposes that include appointing a Safe Church Board Panel for the Diocese.
- (3) A Safe Church Board constituted for the purposes of any matter under this Act must a presiding member, a member of the clergy and a member of the laity.
- (4) The Council of the Diocese and the Diocesan Corporation have the powers necessary to give effect to sub-section (2).
- (5) The presiding member, or the members of the Panel of presiding members, must each—
 - (a) be or have been a judicial officer; or
 - (b) be an Australian lawyer who has practised for at least ten years and is practising or has in the previous 10 years been practising in the State of Victoria or the State of New South Wales.
- (6) The members of a Safe Church Board who are not presiding members should so far as possible be persons with professional qualifications and experience—

- (a) in psychiatry or psychology with current or recent clinical experience with patients who have been victims of child abuse or sexual misconduct; or
 - (b) in child protection, investigations, social work, ethics, medicine or counselling.
- (7) The lay members of a Safe Church Board who are not presiding members should so far as possible be persons who are not members of the Anglican Church of Australia.
- (8) The President of the Safe Church Board is—
 - (a) if there is one presiding member, that presiding member; and
 - (b) if there are two or more presiding members, the presiding member who is appointed to be the President by the body or person who appoints the presiding members.
- (9) If at the time when an application to the Board is received there is a Panel established under subsection (2), the President must determine the composition of the Safe Church Board for the purposes of that application.
- 10) The Safe Church Board and the presiding members and other members of a Safe Church Board have the functions and responsibilities given by this Act and the other functions and responsibilities—
 - (a) in Schedule 3; and
 - (b) from time to time prescribed.

77 Disclosure and material personal interest

- (1) A member of the board must without delay disclose in writing to the President (or, if there is no President, to the presiding member) and to all those entitled to be present at the hearing of an application any circumstances likely to give rise to justifiable doubts as to their impartiality or independence, as those circumstances arise, unless they have already informed them of the circumstances.
- (2) A member of the board who has a material personal interest or other conflict of interest in a matter before the Board is disqualified from participating in the matter.
- (3) In the case of a member of a Safe Church Board who is not a presiding member, the opinion of the President of the board (if any) or the presiding member as to whether the member is disqualified is conclusive.
- (4) In the case of a member of a Safe Church Board who is the President (or who is a presiding member when there is no President), the opinion of the President (or if there is no President, the presiding member) of the Safe Church Review Board as to whether the member is disqualified is conclusive.

- (5) Where a result of this section the Safe Church Board—
 - (a) has no presiding member; or
 - (b) has fewer than two members—any proceedings must be adjourned and the Board reconstituted.

78 Safe Church Review Board

- (1) The Safe Church Review Board may be—
 - (a) constituted in accordance with the provisions of this Act; or
 - (b) an equivalent body constituted in accordance with the provisions of an Act of another Diocese in the Province of Victoria and recognized by the Council of the Diocese as the Safe Church Review Board for the purposes of this Act.
- (2) The Council of the Diocese may determine at any time and from time to time that for some purposes the Safe Church Review Board will be a body constituted under subsection (1)(a) and for other purposes will be an equivalent body referred to in subsection (1)(b).

79 Safe Church Review Board constituted under this Act

- (1) In this section, a reference to the Safe Church Review Board is a reference to a Safe Church Review Board constituted under this Act.
- (2) A person may become a member of a Safe Church Review Board by being—
 - (a) appointed by the Council of the Diocese;
 - (b) selected from a Panel appointed by the Council of the Diocese; or
 - (c) appointed by a corporation engaged by the Diocesan Corporation for purposes that include appointing a Safe Church Review Board for the Diocese; or
 - (d) selected from a Panel appointed by a corporation engaged by the Diocesan Corporation for purposes that include appointing a Safe Church Review Board Panel for the Diocese.
- (3) A Safe Church Review Board constituted for the purposes of any matter under this Act must a presiding member, a member of the clergy and a member of the laity.
- (4) The Council of the Diocese and the Diocesan Corporation have the powers necessary to give effect to sub-section (2).
- (5) The presiding member must—
 - (a) be or have been a judicial officer; or

- (b) be an Australian lawyer who has practised for at least ten years and is practising or has in the previous 10 years been practising in the State of Victoria or the State of New South Wales.
- (6) The members of a Safe Church Review Board who are not presiding members should so far as possible be persons with professional qualifications and experience —
 - (a) in psychiatry or psychology with current or recent clinical experience with patients who have been victims of child abuse or sexual misconduct; or
 - (b) in child protection, investigations, social work, ethics, medicine or counselling.
- (7) The lay members of a Safe Church Review Board who are not presiding members should be so far as possible persons who are not members of the Anglican Church of Australia.
- (8) The President of the Safe Church Review Board is—
 - (a) if there is one presiding member, that presiding member; and
 - (b) if there are two or more presiding members, the presiding member who is appointed to be the President by the body or person who appoints the presiding members.
- (9) If at the time when an application to the Review Board is received there is a Panel established under subsection (2), the President must determine the composition of the Review Board for the purposes of that application.
- (10) The Review Board and the presiding members and other members of a Review Board have the functions and responsibilities given by this Act and the other functions and responsibilities—
 - (a) in Schedule 4; and
 - (b) from time to time prescribed.

80 Disclosure and material personal interest

- (1) A member of the Safe Church Review Board must without delay disclose in writing to the President (or, if there is no President, to the presiding member) and to all those entitled to be present at the hearing of an appeal any circumstances likely to give rise to justifiable doubts as to their impartiality or independence, as those circumstances arise, unless they have already informed them of the circumstances.
- (2) A member of the Review Board who has a material personal interest or other conflict of interest in a matter before the Review Board is disqualified from participating in the matter.

- (3) In the case of a member of a Review Board who is not a presiding member, the opinion of the President of the Review Board (if any) or the presiding member as to whether the member is disqualified is conclusive.
- (4) In the case of a member of a Review Board who is the President (or who is a presiding member when there is no President), the opinion of the President (or if there is no President, the presiding member) of the Safe Church Board as to whether the member is disqualified is conclusive.
- (5) Where a result of this section the Safe Church Review Board—
 - (a) has no presiding member; or
 - (b) has fewer than two members—
 any proceedings must be adjourned and the Review Board reconstituted.

81 Safe Church Ombudsman

- (1) The Council of the Diocese may appoint a person to be the Safe Church Ombudsman for the Diocese.
- (2) A Safe Church Ombudsman holds office on the terms and conditions determined from time to time by the Council of the Diocese.
- (3) The functions of the Safe Church Ombudsman are—
 - (a) to receive, investigate and respond to grievances about the operation of this Act or anything done or purportedly done under this Act and any subordinate legislation made under this Act in relation to a clearance or notification;
 - (b) to keep under scrutiny, by spot audits and otherwise, the systems in the Diocese for—
 - (i) ensuring that the Church is not an unsafe place for anyone who is part of it or who participates in its life and activities;
 - (ii) responding to and dealing with notifications; or
 - (iii) granting clearances;
 - (c) to report to the Council of the Diocese on any changes to the legislation or to Church processes, structures and education programmes that would reduce the risk of harm to anyone who is part of the church or who participates in its life and activities; and
 - (d) to exercise any other functions prescribed.
- (4) The Safe Standards Ombudsman is to have access to all the files of the Director for Clearances and Notifications, including any person engaged or authorized by the Director in the exercise of the Director's functions.

82 Power to employ, engage or appoint includes power to provide for remuneration

A power in this Part to employ, engage or appoint a person to or for a role, office or position established or constituted under this Part includes the power to remunerate the person.

Part 6 — Other means to a safe church

83 Codes of conduct

- (1) The Council of the Diocese may approve codes of conduct by persons requiring a clearance for the purposes of enabling the church to be a safe place for everyone who is part of it and participates in its life and activities.
- (2) Whether a person has met the requirements of a code of conduct is relevant in determining whether they should be granted a clearance and considering an application for a clearance revision decision.
- (3) A person holding a clearance must be familiar with a code of conduct that applies to them.

84 Duty to give a notification

- (1) The Diocesan Bishop or a person holding a clearance who has reasonable grounds for considering that the conduct of, or something done or not done by, a person holding a clearance for ministry or a clearance for service may constitute—
 - (a) an offence under the Offences Act 1962; or
 - (b) grounds for a clearance revision decision—must make a notification under section 20(1).
- (2) A person holding a clearance has a duty to make the Director aware of a person whom they have reasonable grounds for considering may be potentially a person of concern.
- (2) The provisions of this section are in addition to any obligations a person may have under the legislation or other laws of the Commonwealth of Australia, the State of Victoria, or the State of New South Wales.
- (3) This section does not affect the operation of the Canon Concerning Confessions 1989 of General Synod or any other Canon or legislative instrument relating to confessions in force in the Diocese.

85 Duty to report when charged

A person holding a clearance who has been charged in any jurisdiction in Australia or elsewhere with sexual misconduct or child abuse must immediately notify the Director of Clearances and Notifications in writing, giving particulars of the charge.

86 Definitions for sections 87 and 88

- (1) In this section and sections 87 and 88, unless the context otherwise requires, the following expressions have the following meanings—

alleged conduct means alleged misconduct involving—

 - (a) alleged child abuse;

- (b) alleged sexual misconduct; or
- (c) failing to report alleged child abuse or alleged sexual misconduct contrary to the legislation of this or another diocese.

Defence Force means the Australian Defence Force;

Defence Force Bishop means the Bishop to the Defence Force appointed pursuant to the Defence Force Ministry Canon 1985 of this Church.

87 Duty of the Director and Committee to disclose and receive information

- (1) In this section **Diocesan safe church entity** means each of the Director and the Committee.
- (2) A Diocesan safe church entity must disclose to a person or body holding a corresponding position in another diocese—
 - (a) information known by either of them through the exercise of their functions under this Act regarding a person residing or engaging or proposing to engage in ministry or service, in that other diocese; or
 - (b) information regarding alleged conduct which is alleged to have occurred in that other diocese.
- (2) A Diocesan safe church entity must disclose to a corresponding person or body with jurisdiction in another diocese information in their possession relating to the alleged misconduct of a Bishop referred to in section 56(6) of the Constitution.
- (3) A Diocesan safe church entity may disclose to a person or body of another church exercising powers, duties or functions similar to those of that Diocesan safe church entity information in their possession relating to the alleged conduct of a person whom that Diocesan safe church entity has reason to believe is now member or purported member of that church.
- (4) A Diocesan safe church entity must co-operate with the corresponding person or to whom the information is disclosed under this section.
- (5) To the extent that a Diocesan safe church entity receives information relating to alleged conduct from a person holding a corresponding position, that Diocesan safe church entity has a duty to receive that information.

88 Duty of the Director to disclose to Primate and Defence Force Bishop and receive information

- (1) The Director must disclose to the Primate and to the Defence Force Bishop, or to a person appointed by either of them for the purposes of receiving such information,—

- (a) information gained by the Director in the course of exercising the Director's functions, or by the Committee in exercising its functions, regarding a person engaging or proposing to engage in ministry in the Defence Force pursuant to a licence from the Primate or the Defence Force Bishop; or
 - (c) information regarding alleged conduct which is alleged to have occurred in the Australian Defence Forces.
- (2) The Director must co-operate with the relevant person or body to whom the information is disclosed.
- (3) To the extent that the Director receives information relating to alleged misconduct of a position holder from the Primate or the Defence Force Bishop or an office holder or body appointed by the Primate or the Standing Committee under a provision equivalent to this section, the Director has a duty to receive that information.

Part 7—Supporting provisions

89 Duty of confidentiality

Subject to the provisions of this Act, a person who is or has been exercising a function under this Act must not divulge information that has come to their knowledge by virtue of or in the course of exercising that function except—

- (a) in carrying out a function under this Act;
- (b) to a person exercising a function under the legislation of another diocese;
- (c) as may be otherwise authorised by or under this Act or by or under the legislation of another diocese;
- (d) as may be authorised or required by the National Register Canon 2007 of General Synod or any Canon enacted by General Synod in substitution for that Canon;
- (e) in any proceedings before a diocesan tribunal, a provincial tribunal or the special tribunal;
- (f) as may be required or permitted by law; or

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.

90 Indemnification of those with functions under the Act

The Diocesan Corporation must and is authorized to indemnify—

- (a) the Director for Clearances and Notifications;
- (b) the members of the Clearances and Notifications Committee individually and collectively;
- (c) any delegate of the Clearances and Notifications Committee;
- (d) the members of the Safe Church Board individually and collectively;
- (e) any person appointed by the Safe Church Board under this Act;
- (f) the secretary to the Safe Church Board;
- (g) the members of the Review Board individually and collectively;
- (h) the secretary to the Review Board;
- (i) any person appointed by the Review Board under to this Act;
- (j) any corporation engaged by the Diocesan Corporation under this Act; and
- (k) any witness in a proceeding under this Act, if the Diocesan Corporation so resolves in a particular case—

against all claims demands actions suits and liability for any act or omission respectively by them in good faith and in the exercise or purported exercise of

powers or functions, or in the discharge or purported discharge of duties under this Act.

91 Validity of acts and proceedings

- (1) Subject to this Act, the Clearances and Notifications Committee, the Safe Church Board and the Safe Church Review Board may act despite a vacancy in their membership.
- (2) An act or proceeding of—
 - (a) the Clearances and Notifications Committee;
 - (b) the Safe Church Board; or
 - (c) the Safe Church Review Board—

is not in each case invalid by reason only of a vacancy in its membership and, notwithstanding the subsequent discovery of a defect in the nomination or appointment of a member, any such act or proceeding is as valid and effectual as if the member had been duly nominated or appointed.

92 Council of the Diocese may make regulations

- (1) The Council of the Diocese may make regulations, not inconsistent with the provisions of this Act—
 - (a) for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act; and
 - (b) providing for records or forms arising out of or incidental to the operation of this Act.
- (2) Regulations made under this Act may—
 - (a) be of general or limited application;
 - (b) differ according to differences in time, place or circumstance; and
 - (c) confer a discretionary authority or impose a duty on a specified person or body or a specified class of person or body.

93 Council of the Diocese may make policies and protocols

The Council of the Diocese may make policies and protocols, not inconsistent with the provisions of this Act for the purposes of clarifying and facilitating the operation of this Act and the regulations, and for the purpose of enabling or improving compliance with any requirements or recommendations of the Commissioner for Children and Young People of the State of Victoria or the Advocate for Children and Young People of the State of New South Wales.

Part 8— Further interpretative provisions

94 Principles of and aids to interpretation

In the interpretation of this Act—

- (a) a construction that would promote the purpose or object underlying the Act (whether or not that purpose or object is expressly stated in the legislation) must be preferred to a construction that would not promote that purpose or object; and
- (b) consideration may be given to any matter or document that is relevant including but not limited to—
 - (i) all indications provided by the Act or subordinate legislation, including punctuation;
 - (ii) reports of proceedings in the Synod; and
 - (iii) explanatory memoranda or other documents laid before or otherwise presented to the Synod.

95 Gender and number

In this Act, unless the contrary intention appears—

- (a) words importing a gender include every other gender; and
- (b) words in the singular include the plural; and
- (c) words in the plural include the singular.

96 Definitions

In the Act—

Chancellor means the Chancellor of the Diocese holding office under the Chancellors Canon 2001 of this Church;

clerk means a person who, in accordance with the Canons of the General Synod or the law of this Church applying at the relevant time has been—

- (a) consecrated or ordained to that office by bishops, or a bishop, of this Church, or by bishops, or a bishop, of a Church in communion with this Church; or
- (b) received into the ministry of this Church by a bishop of a diocese of this Church in accordance with the Holy Orders (Reception and Ministry) Canon 2004—

and who has not relinquished or been deposed from all of the orders to which that person has been consecrated or ordained

clerk in full orders means a clerk who is a priest or a bishop;

Constitution means the Constitution of this Church;

Constitution of the Diocese means the Act of the Parliament of Victoria number 45 of 1854 as amended by the Act of the Parliament of Victoria number 454 of 1873;

Council of the Diocese means the Council of the Diocese established by The Council of the Diocese Act 1916-2012;

Deputy Chancellor means the Deputy Chancellor of the diocese holding office under the Chancellors Canon 2001 of this Church;

Diocesan Corporation means a corporation established by the Diocesan Synod and functioning as the deemed employer of clergy under clause 13 of Schedule 1 of the **Workplace Injury Rehabilitation and Compensation Act 2013** (Vic);

Diocesan Tribunal means the Diocesan Tribunal of this Diocese

member of this Church means a person in the Diocese of Wangaratta who is a member of this Church as defined in section 74(1) of the Constitution;

month means calendar month;

prescribed means prescribed by the Act in which the word is used or by subordinate legislation made under or pursuant to that Act;

Registrar and Registrar of the Diocese mean the person who, for the purposes of the Anglican Trusts Corporation Act 1884 (Vic), is the current holder of the office of registrar of this Diocese and is so registered in the Register of Successory Trusts of the State of Victoria;

teleconference means a form of electronic communication that enables contemporaneous audio communication between persons physically located at different places;

this Church means this Church constituted by the constitution in Schedule A of the **Anglican Church of Australia Constitution Act** 1960 of the Victorian Parliament;

this Diocese means the Diocese of Wangaratta;

this Synod means the Synod constituted by the Constitution of the Diocese;

videoconference means a form of electronic communication that enables contemporaneous audio and visual communication between persons physically located at different places.

97 Parts of speech and grammatical forms

Where a word or phrase is given a particular meaning in This Act, other parts of speech and grammatical forms of that word or phrase have, unless the contrary intention appears, corresponding meanings.

98 Exercise of powers and performance of duties

- (1) Unless the contrary intention appears, where this Act legislation confers a power or imposes a duty, the power may be exercised and the duty shall be performed—

- (a) from time to time as occasion requires; and
 - (b) if conferred or imposed on the holder of an office or position as such, by the person for the time being holding, acting in or performing the duties of the office or position.
- (2) A power to delegate includes the power to establish the scope and limitations of the function delegated, and circumstances and considerations applying to how the function is exercised.

99 Power to make instrument includes power to revoke or amend

- (1) Where this Act confers a power to make subordinate legislation the power shall, unless the contrary intention expressly appears, be construed as including a power, exercisable in the same manner and subject to the same conditions or limitations (if any), to repeal or amend subordinate legislation made in the exercise of that power.
- (2) Where this Act confers a power to make, issue or grant an instrument (not being subordinate legislation) the power shall, unless the contrary intention appears, be construed as including a power, exercisable in the same manner and subject to the same conditions or limitations (if any), to repeal, revoke, rescind, amend, alter or vary an instrument made in the exercise of that power.

100 Power to appoint

- (1) If This Act confers on a person or body (the appointer) a power to appoint a person to an office, the power, unless the contrary intention appears, includes a power—
- (a) to appoint a person to act in the office—
 - (i) until a person is appointed to the office; or
 - (ii) during a vacancy in the office;
 - (b) to remove a person appointed to the office;
 - (c) to suspend a person appointed to the office and to appoint another person temporarily in the place of the person so suspended;
 - (d) if the holder of the office is absent or, for any other reason, unable to perform the functions and duties of the office, to appoint a person to act in place of the holder;
 - (e) if the holder of the office is, for any reason, unable to perform a particular function or duty on a particular occasion or in relation to a particular matter, to appoint a person to perform that function or duty on that occasion or in relation to that matter.
- (2) The following paragraphs apply in relation to an appointment of a person (the appointee) made under subsection (1)—
- (a) the appointer—

- (i) may determine the terms and conditions of the appointment; and
 - (ii) may terminate the appointment at any time;
 - (b) the appointment ceases to have effect if the appointee resigns in writing delivered to the appointer;
 - (c) while the appointee is acting in the office under subsection (1) (except paragraph (e)), then, subject to the terms and conditions of the appointment—
 - (i) the appointee has and may exercise all the powers, and shall perform all the functions and duties, of the holder of the office; and
 - (ii) this or any other Act applies in relation to the appointment as if the appointee were the holder of the office;
 - (d) while the appointee is appointed to perform a function or duty on a particular occasion or in relation to a particular matter, then, subject to the terms and conditions of the appointment—
 - (i) the appointee has and may exercise all the powers of the holder of the office necessary for performing that function or duty; and
 - (ii) this or any other Act applies in relation to the appointment as if the appointee were the holder of the office.
- (3) If the power of a person or body to make an appointment to an office is exercisable only on the recommendation, or subject to the approval or consent, of some other person or body, the power to make an appointment to act in the office, or to remove or suspend, is only exercisable on the recommendation, or subject to the approval or consent, of that other person or body, unless the contrary intention appears.

101 Acting appointments

If a provision of an Act or of subordinate legislation confers on a person or body (the appointer) a power to appoint a person (the appointee) to act in a particular office, then, except so far as the Act or subordinate legislation otherwise provides—

- (a) the appointment may be expressed to have effect only in the circumstances specified in the instrument of appointment or in relation to a particular function or duty or on a particular occasion or in relation to a particular matter;
- (b) the appointer—
 - (i) may determine the terms and conditions of the appointment, including remuneration and allowances (if any);
 - (ii) may terminate the appointment at any time;
- (c) if the office is, or becomes, vacant while the appointee is acting, the appointee may, subject to paragraph (a), continue to act until—

- (i) the appointer otherwise directs; or
 - (ii) a person is appointed to the office or the vacancy is filled—whichever first occurs;
- (d) the appointment ceases to have effect if the appointee resigns in writing delivered to the appointer;
- (e) while the appointee is acting in the office, then, subject to the terms and conditions of the appointment—
 - (i) the appointee has and may exercise—
 - (A) all the powers, and shall perform all the functions and duties, of the holder of the office; or
 - (B) all the powers of the holder of the office necessary for performing the particular function or duty for which the appointment is made—as the case requires; and
 - (ii) this or any other Act applies in relation to the appointment as if the appointee were the holder of the office.

Part 9—Commencement and supporting provisions

102 Commencement

- (1) This section and section 103 come into effect on the day on which this Act is made.
- (2) Subject to this section, each other provision of this Act comes into effect on the date or dates determined by the Bishop in Council.
- (3) In subsection (2) **provision** means Part, Division, section or schedule.
- (4) A provision that is not in force on the anniversary of the day on which this section came into force comes into force on that day.

103 Exercise of powers between passing and commencement of Act

- (1) Where a provision of this Act will, on its coming into operation, confer power to—
 - (a) make subordinate legislation; or
 - (b) give notices; or
 - (c) make appointments; or
 - (d) establish a body; or
 - (e) prescribe forms; or
 - (f) do any other thing—for the purposes of this Act, then, unless the contrary intention appears—

the power may be exercised at any time after the passing this Act, but its exercise does not confer a right or impose an obligation on a person before the coming into operation of the Act or provision except insofar as is necessary or expedient for the purpose of—

 - (a) bringing the Act or provision into operation; or
 - (b) making the Act or provision fully effective at or after that coming into operation.
- (2) Without limiting subsection (1), an appointee may exercise a power, and a body may meet and exercise a power, under that subsection before the coming into operation of the Act or provision in the same manner and subject to the same conditions or limitations (if any) and with an entitlement to payment of the same remuneration or allowances (if any) as if the Diocesan legislation or provision were in operation.
- (3) For the purposes of any provision as to the duration of the term of office of an appointee (including a member of a body), that term does not begin until the coming into operation of the Act or provision despite the exercise of any power under this section before that coming into operation.

104 Transitional

- (1) Any clearance for ministry granted under the Professional Standards Act 2010 continues to be a clearance for ministry under this Act until either -
 - (a) the holder of the clearance ceases the role, office or position for which the clearance was granted; or
 - (b) the expiration of 5 years from the date on which this Act comes into effect.
- (2) Any clearance for service granted under the Professional Standards Act 2010 continues to be a clearance for ministry under this Act until either -
 - (a) the holder of the clearance ceases the role, office or position for which the clearance was granted; or
 - (b) the expiration of 5 years from the date on which this Act comes into effect.
- (3) Any application, investigation, proceeding or appeal under the Professional Standards Act which is in progress as at the date of commencement of this Act shall continue to be heard and determined (including any appeals from decisions yet to be made) as if the Professional Standards Act had not been repealed.
- (4) The person or body holding office as Director of Professional Standards under the Professional Standards Act 2010 continues to hold office as if that Act had not been repealed for the purposes of any application or investigation which is in progress as at the date of commencement of this Act.
- (5) The members of the Professional Standards Committee, the Professional Standards Board and the Professional Standards Review Board continue to hold office as if that Act had not been repealed for the purposes of any application, investigation, proceeding or appeal which is in progress as at the date of commencement of this Act or which arises from any proceeding already in progress..
- (6) Any application for a clearance for ministry or clearance for service which is in progress as at the date of the commencement of this Act shall be continued as if it were an application under this Act.
- (7) Any Protocol or Code of Conduct made or adopted under the Professional Standards Act continues in force until amended or revoked by Bishop in Council.

105 Bishop in Council may make essential amendments

- (1) Subject to this section, where the Bishop in Council is satisfied on the advice of the Chancellor that it is necessary to amend this Act in relation to any matter of

the transition to, or of the application or operation of this Act (including the application or operation of amendments made by this Act) it may make regulations prescribing that amendment.

- (2) A regulation made under sub-section (1)—
 - (a) must be circulated to members of the Synod as soon as it is made; and
 - (b) ceases to operate at the conclusion of the next ordinary session of this Synod after this Act is made.
- (3) This section is repealed at the conclusion of the first ordinary session of this Synod after this Act is made.

106 Consequential amendments

- (1) All references to the Professional Standards Act 2010 in legislation or regulations in force in the Diocese shall from the date of the commencement of this Act be taken to include reference to this Act.
- (2) In all Acts and regulations of the Diocese for the expression "professional standards legislation" wherever appearing substitute "Canon of General Synod or legislation of this Synod"
- (3) In section 52.4 of the Appointments Act 2019:
 - (a) Delete the words "being removed from their office as a result of a professional standards process or the decision of the Diocesan Tribunal; and
 - (b) Insert the words "ceasing to hold a clearance for ministry or being removed from their office as a result of a decision of the Diocesan Tribunal".

107 Repeals

The Professional Standards Act 2010 is repealed.

The Professional Standards Regulations 2010 are revoked.

Schedule 1 – Director for Clearances and Notifications

Functions of Director

The Director has the following functions in addition to those in the Act:

- (a) to employ or otherwise engage such investigators and other staff as are necessary for the discharge of the Director's functions and responsibilities and (except as provided by other means under this Act) for giving effect to this Act;
- (b) to appoint one or more Deputy Directors of Clearances and Notifications;
- (b) to attend meetings of the Clearances and Notifications Standards Committee;
- (c) to provide a central focus in matters involving personal ethics and behaviour within the church;
- (d) to provide input on matters relating to creating and maintaining a safe church to education and vocational training programs for people in the Diocese, including those involved in managing or providing pastoral care and other community services;
- (e) to keep proper records of clearance applications, notifications, decisions, meetings, employment screening details, police checks and people affected by allegations of misconduct;
- (f) to implement and record proper screening processes and procedures and to ensure that any information obtained is accurate, easily accessible and in keeping with contemporary management systems;
- (g) to consult and co-operate regularly with the holders of comparable offices in other dioceses and Church bodies to promote consistency between them and the practice in this Diocese;
- (h) where required by law or under this Act, to report a matter to the police and in other cases to support a person giving a notification and the alleged victim the subject of a notification in making a report to the police and the relevant State child protection authority; and
- (i) to report to the Council of the Diocese on any recommended changes to codes, procedures, processes and programmes that would reduce the risk of unacceptable harm in a Diocese.

The Director for Clearances and Notifications is the Director of Professional Standards for the purposes of any law of this Church or another diocese of this Church that requires or refers to a Director of Professional Standards for this diocese.

The Director may act in a corresponding capacity for another diocese of the Church or a participating entity either generally or for a particular case or matter.

Director for Clearances and Notifications to report regularly on notifications

- (1) The Director must, in respect of every notification or other matter with which the Clearances and Notifications Committee is dealing, report either orally or in writing to the Diocesan Bishop with such frequency and as fully as the Diocesan Bishop reasonably requires.
- (2) The Director must, in respect of every notification or other matter with which the Clearances and Notifications Committee is dealing that concerns a relevant Church authority, report either orally or in writing to that relevant Church authority with such frequency and as fully as the Church authority reasonably requires.

Schedule 2 – Clearances and Notifications Committee

Further functions of the Clearances and Notifications Committee

Without disclosing the identity of anyone who has made a notification, been a witness or been the subject of a notification, the Clearances and Notifications Committee must report annually to the Diocesan Corporation on its activities for that calendar year.

The quorum of the Clearances and Notifications Committee is a majority of its members.

Schedule 3 - Safe Church Board

1.1 Rules and procedure

- 1.1.1 The President may make rules of the Board in relation to the practice and procedure of the Board.
- 1.1.2 Subject to this Act and the relevant rules the practice and procedure of the Board are those directed by the presiding member of the Board.
- 1.1.3 The Safe Church Board—
- (a) may receive evidence in any form that it sees fit;
 - (b) may inform itself from the transcript or other record of any court or tribunal or Royal Commission and may adopt any findings, and accept as its own, the record of any court or tribunal or Royal Commission; and
 - (c) may give any other person to whom notice of the proceedings is given or who satisfies them of a proper interest in the matter a reasonable opportunity to make submissions to them.
- 1.1.4 The Board must establish the terms on which the examination or cross examination of a child or a victim of sexual misconduct is to be conducted and in doing so may be guided by the procedures used by courts in the State of Victoria.
- 1.1.5 Unless it believes on reasonable grounds that it is lawful and in the public interest in the proper administration of justice that—
- (a) the whole or part of a proceeding be held in public; or
 - (b) any persons or classes of persons other than those necessary for the proper conduct of an application be present during the whole or any part of a proceeding—
- a hearing of the Board must be in private.
- 1.1.6 The Board constituted by the presiding member sitting alone—
- (a) must as soon as practicable after the [lodging] of an application and may at any time as necessary thereafter hold a preliminary hearing in order to give directions concerning the conduct of hearing in relation to an application;
 - (b) may at any time and from time to time give directions for—
 - (i) the inspection by and supply of copies to the respondent or any other person of the documents or material relevant to the application;
 - (ii) the service of any witness statements, summary of proposed evidence, submissions or other documents on which the person the subject of the application may wish to rely; and
 - (iii) the conduct of its enquiry into the matter.

- 1.1.7 In any proceedings of the Board—
- (a) any question of law or procedure must be determined by the presiding member; and
 - (b) where the Board is constituted by two or more members, any other question will be determined by majority decision of the members, and in the case of an equality of votes the opinion of the presiding member must prevail.

A question of law includes a question of mixed law and fact.

- 1.1.8 The person the subject of an application may at their own expense appoint a legal or other representative to assist them before the Board.
- 1.1.9 Unless at the direction of the board, a member of the board must not individually meet with anyone entitled to be present or represented at the hearing of an application while the hearing of the application is in progress.
- 1.1.10 A question before the Board constituted by two or more members may be decided by a majority of the votes of those present and voting and in the case of an equality of votes, the opinion of the presiding member prevails.
- 1.1.11 Medical reports
- (1) The Clearances and Notifications Committee or the board may request a respondent or applicant for a clearance to submit within a specified time to a medical examination by a person approved by the Committee or the board (as the case may be) the cost of which must be met from church funds of the diocese of the referring body.
 - (2) A respondent or applicant for a clearance is not obliged to comply with a request of the Professional Standards Committee or the board under subsection (1).
 - (3) A copy of the report of an examination under subsection (1) must be provided to the respondent or applicant for a clearance and to the Director, the Committee and the Board.

Schedule 4 – Safe Church Review Board

Procedures of the Safe Church Review Board

1.1 Rules and procedure

- 1.1.1 The President or, if there is no President, the presiding member of the Safe Church Review Board may make rules of the Review Board in relation to its practice and procedure.
- 1.1.2 Subject to this Act and the relevant rules the practice and procedure of the Review Board are those directed by the presiding member of the Review Board.
- 1.1.3 The Safe Church Review Board—
- (a) may receive evidence in any form that it sees fit;
 - (b) may inform itself from the transcript or other record of any court or tribunal or Royal Commission and may adopt any findings, and accept as its own, the record of any court or tribunal or Royal Commission; and
 - (c) may give any other person to whom notice of the proceedings is given or who satisfies them of a proper interest in the matter a reasonable opportunity to make submissions to them.
- 1.1.4 Subject to this Act, the Review Board is not obliged—
- (a) to conduct a hearing at which—
 - (i) evidence is adduced, whether by oral examination or signed statement or statutory declaration; or
 - (ii) submissions are heard orally; or
 - (b) to admit evidence that was not adduced before the Safe Church Board in relation to the facts relevant to the appeal unless it is necessary to do so in the interests of fairness and justice.
- 1.1.5 The Review Board must establish the terms on which the examination or cross examination of a child or a victim of sexual misconduct is to be conducted and in doing so may be guided by the procedures used by courts in the State of Victoria.
- 1.1.6 Unless it believes on reasonable grounds that it is lawful and in the public interest in the proper administration of justice that—
- (a) the whole or part of a proceeding be held in public; or
 - (b) any persons or classes of persons other than those necessary for the proper conduct of an application be present during the whole or any part of a proceeding—
- a hearing of the Review Board must be in private.
- 1.1.7 The Review Board constituted by the presiding member sitting alone—

- (a) must as soon as practicable after the [lodging] of an application and may at any time as necessary thereafter hold a preliminary hearing in order to give directions concerning the conduct of hearing in relation to an application;
- (b) may at any time and from time to time give directions for—
 - (i) the inspection by and supply of copies to the respondent or any other person of the documents or material relevant to the application;
 - (ii) the service of any witness statements, summary of proposed evidence, submissions or other documents on which a party may wish to rely; and
 - (iii) the conduct of its enquiry into the matter.

1.1.8 In any proceedings of the Review Board—

- (a) any question of law or procedure must be determined by the presiding member; and
- (b) where the Review Board is constituted by two or more members, any other question will be determined by majority decision of the members, and in the case of an equality of votes the opinion of the presiding member must prevail.

A question of law includes a question of mixed law and fact.

1.1.9 The person the subject of an application may at their own expense appoint a legal or other representative to assist them before the Review Board.

1.1.10 Unless at the direction of the Review Board, a member of the Review Board must not individually meet with anyone entitled to be present or represented at the hearing of an application while the hearing of the application is in progress.

1.1.11 A question before the Review Board constituted by two or more members may be decided by a majority of the votes of those present and voting and in the case of an equality of votes, the opinion of the presiding member prevails.

1.1.12 Medical reports

- (1) The Clearances and Notifications Committee or the Review Board may request a respondent or applicant for a clearance to submit within a specified time to a medical examination by a person approved by the Committee or the Review Board (as the case may be) the cost of which must be met from church funds of the diocese of the referring body.
- (2) A respondent or applicant for a clearance is not obliged to comply with a request of the Committee or the Review Board under subsection (1).
- (3) A copy of the report of an examination under subsection (1) must be provided to the respondent or applicant for a clearance and to the Director, the Committee and the Review Board.