

Professional Standards Statute 2016

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SCHEDULE 1	

A STATUTE RELATING TO PROFESSIONAL STANDARDS WITHIN THE CHURCH, AND FOR OTHER PURPOSES

PART 1 - PRELIMINARY

1 *Short title*

- 1.1 This Statute is titled the “Professional Standards Statute 2016” and will be referred to as the “Statute” throughout.

2 *Application*

- 2.1 This Statute applies to any person in the Diocese of North West Australia who is a Church worker or a Church volunteer.
- 2.2 This Statute applies to any agency worker or school worker, including a Church worker, who:
- (a) agrees to be bound by this Statute by a signed declaration, with the consent of their employer;
 - (b) is employed or engaged under a contract or some other instrument containing a provision which requires the person to be bound by this Statute; or
 - (c) agrees, subject to the consent of their employer, after a complaint is made or a matter is raised, to permit the procedure under this Statute to be adopted and the PSC has consented, in writing, to deal with the complaint.

3 *Definitions*

- 3.1 In this Statute, unless the context otherwise requires:

abuse means bullying, emotional abuse, harassment, physical abuse, neglect, sexual abuse, spiritual abuse or child abuse;

agency worker means a person employed or engaged by, or holding a position or performing a function for, a Church agency, whether for payment or in a voluntary capacity, with actual or apparent authority of the relevant Church agency;

Bishop means the Bishop of the Diocese of North West Australia appointed pursuant to Diocese of North West Australia Election of Bishop Statute 2008-2010;

Board means the Professional Standards Board established under Part 4.3;

bullying means repeated behaviour directed to a person or persons which a reasonable person considers:

- (a) having regard to all the circumstances, would victimise, humiliate, undermine or threaten the person or persons; and
- (b) is likely to pose a real risk to the health and safety of the person or persons;

ceremonial includes ceremonial according to the use of this Church, and also the obligation to abide by such use;

Chancellor means the Chancellor of the Diocese

child means a person under the age of 18 years;

child abuse means emotional abuse, neglect, physical abuse, sexual abuse or spiritual abuse in relation to a child and includes the possession of child pornography or the possession of child exploitation material;

child exploitation material means:

- (a) child pornography; or

- (b) material that, in a way likely to offend a reasonable person, described, depicts or represents a person, or part of a person, who is, or appears to be a child:
 - (i) in an offensive or demeaning context; or
 - (ii) being subjected to abuse, cruelty or torture (whether or not in a sexual context);

child pornography means material that, in a way likely to offend a reasonable person, describes, depicts or represents a person, or part of a person, who is, or appears to be a child:

- (a) engaging in sexual activity; or
- (b) in a sexual context;

Church means the Anglican Church of Australia within the Diocese;

Church agency means:

- (a) any separately incorporated entity of the Church in the Diocese, which has been established by the Synod, the Trustees of the Diocese of North West Australia or the Diocesan Council and includes all Church schools;
- (b) any organization or institution which is pre-dominantly funded by the Diocese; or
- (c) any organization or institution which operates under the direction of the Bishop.

Church authority means the Bishop or a person or entity having administrative authority of or in a Church entity to licence, appoint, authorise, dismiss or suspend a Church worker or Church volunteer;

Church entity means an unincorporated entity including a committee, commission, a parish or a parish council in the Diocese, the Cathedral or Chapter of the Cathedral, that exercises ministry within, or on behalf of, the Church with the actual or apparent authority of the Church;

Church school means a school or other educational institution:

- (a) where the Bishop sits on the governing body of the school or institution, or where the Bishop has a right to appoint a member of that governing body;
- (b) any school or institution which is pre-dominantly funded by the Diocese; or
- (c) any school or institution where the Bishop occupies the position of Visitor or a like position.

Church volunteer means a person aged 18 or more years who is not a Church worker but who:

- (a) holds a voluntary role, office or position in a congregation or parish or in the Cathedral; or
- (b) holds otherwise any specific voluntary role, office or position in the Diocese with the actual or apparent authority of the Church;

Church worker means any person who is or who at any relevant time was:

- (a) a member of the Clergy (including the Dean of the Cathedral) whether or not holding the Bishop's licence or permission to officiate;
- (b) employed or engaged by a Church authority or Church entity; or
- (c) holding a position or performing a function whether voluntary or for payment with the actual or apparent authority of a Church authority or Church entity,

but excludes the Bishop;

clearance for ministry means in relation to ministry–

- (a) within the Diocese, the licence, permission to officiate or other relevant authority as the case may be of the Bishop; and
- (b) outside the Diocese, written confirmation by the Bishop that the Church worker is fit for ministry either unconditionally or subject to certain conditions or restrictions;

Clergy or member of the Clergy - means a person in Holy Orders licenced in this Church; or any other person ordained in any other church in communion with this Church. Clerical has a corresponding meaning;

code of conduct means a code of conduct approved from time to time under Part 2;

complainant means a person who makes an allegation of misconduct against a Church worker or a Church volunteer;

complaint means a complaint of misconduct against any person who is or was a Church worker or Church volunteer, including conduct:

- (a) outside the Diocese alleged to have been engaged in by a person to whom this Statute applies; and
- (b) within the Diocese wherever that respondent may reside at the date of the complaint;

conduct means an act, an omission to perform an act, a state of affairs, refraining (otherwise than inadvertently) from doing an act, refusing to do any act, or making it known that an act will not be done;

Constitution means the Constitution Statute 2016 of the Diocese of the North West Australia;

Diocesan Council means the council of the Diocese established pursuant to the Diocesan Council Statute 1961-1994, or any successor body;

Diocese means the Diocese of North West Australia;

Diocesan Disciplinary Tribunal means the Tribunal established by Part 4.4;

Director means the Director of Professional Standards appointed under Part 4.2 and includes an acting Director of Professional Standards;

emotional abuse means:

- (a) subjecting a person to excessive and repeated personal criticism;
- (b) ridiculing a person, including the use of insulting or derogatory terms to refer to that person;
- (c) threatening or intimidating a person;
- (d) ignoring a person openly and pointedly;
- (e) behaving in a hostile manner or in any way that could reasonably result in another person feeling isolated or rejected; or
- (f) any other act or omission in relation to a person,

which has caused, or is likely to cause physical or mental harm including self-harm or in the case of a child, which has caused the child to suffer, or is likely to cause the child to suffer, significant harm to his or her wellbeing or development;

equivalent body means a body of another diocese exercising powers, duties or functions equivalent to those of the PSC or the Board as the case may be, or where there is no such body, the bishop of that diocese;

faith includes any obligation to hold the faith;

harassment means unwelcome conduct, whether intended or not, in relation to a person where the person reasonably feels in all circumstances offended, belittled or threatened which has caused, or is likely to cause physical or

mental harm including self-harm;

Holy Orders – means orders taken by any person which are recognized as Holy Orders by the Diocese and where the person taking the orders is under the authority of the Bishop;

material includes:

- (a) any object, picture, film, written or printed matter, data or other thing; and
- (b) anything form which text, picture, sound or data can be produced or reproduced, with or without the aid of anything else;

ministry means ordained ministry or lay ministry under or subject to the Bishop's authority;

misconduct means:

- (a) abuse;
- (b) the use of social media
 - (i) to access, share, disseminate child exploitation material;
 - (ii) to engage in child abuse; or
 - (iii) in such a way as could be seen to promote child abuse;
- (c) any breach of the duty to report a matter referred to in section 11 of this Statute;
- (d) willful or reckless failure to comply with a condition imposed by a Church authority under Part 5 of this Statute;
- (e) willful or reckless failure to comply with an undertaking given to the PSC, Board, Tribunal or a Church authority; or
- (f) other conduct by a person to whom this Statute applies which, if established, would call into question:
 - (i) the fitness of that person, whether temporarily or permanently, now or in the future to hold a particular or any role, office, licence or position in the Church or to be or remain in Holy Orders or in the employment of a Church entity; or
 - (ii) whether, in the exercise of that person's role, office, licence or position, or in the performance of any function, that person should be subject to certain conditions or restrictions,

but excludes for the purposes of this Statute any breach of faith, ritual or ceremonial;

national register means the national register established pursuant to the National Register Canon 2007 of the General Synod of the Church or any canon prescribed by General Synod in substitution for that canon;

neglect means the neglect of a child which causes the child to suffer, or is likely to cause the child to suffer, significant harm to his or her wellbeing or development;

physical abuse means any intentional or reckless act or use of force causing injury to, or involving unwelcome physical contact with, another person but does not include lawful discipline by a parent or guardian;

policy means any protocol or policy approved from time to time by the Bishop or Diocesan Council under Part 3;

prescribed information means for each complaint or matter arising under this Statute or any policy approved under it:

- (a) the names of the complainant and the respondent;
- (b) the contents of the complaint if in writing;

- (c) any written record or detail of a verbal complaint;
- (d) any application for a clearance for ministry;
- (e) any notes, correspondence, reports, statements or other documents created sent or received;
- (f) any determination of the PSC or the Board, as the case may be;
- (g) any decision of the Church authority and correspondence in connection with that decision; and
- (h) any other information of a kind prescribed by resolution of the Diocesan Council;

prescribed person means:

- (a) a complainant other than the Director;
- (b) any witness other than either the respondent or a witness as to character;
- (c) any child; or
- (d) any person against whom sexual abuse, a sexual offence, sexual exploitation or sexual harassment is alleged to have been committed;

process failure means the failure by a Church entity or Church authority to deal with or to investigate matters in a reasonable or timely manner involving:

- (a) abuse; or
- (b) alleged inappropriate or unreasonable conduct of a Church worker who had knowledge of conduct of another Church worker or Church volunteer constituting sexual abuse or child abuse;

Professional Standards Committee means the PSC established under Part 4.1;

prohibition order means an order prohibiting a Church worker or other person subject to this Statute from holding a specified position or office in or being employed by a Church entity or Church authority or from carrying out any specified functions in relation to any office or position in the Diocese or in relation to employment by a Church entity;

Province or Provincial means the Anglican province of Western Australia;

referring body means the PSC or an equivalent body which refers a question or questions to the Board;

respondent means a Church worker or Church volunteer against whom an allegation of misconduct is made and who is not deceased;

reviewable decision means a determination or recommendation of the Board which, if acted upon by the relevant Church authority, may have the effect of:

- (a) deposing the respondent from Holy Orders; or
- (b) terminating the respondent's contract of employment, or removing the capacity of the respondent to gain income as a Church worker;

Reviewer means a current or former

- (a) Supreme Court or District Court Judge; or
- (b) Senior Counsel appointed by the Chancellor;

ritual includes rites according to the use of this Church, and also the obligation to abide by such use;

school worker means a person employed or engaged by, or holding a position or performing a function for, a Church school, whether for payment or in a voluntary capacity, or with actual or apparent authority of the relevant Church school;

safety agreement means an agreement between a person, a relevant Church authority and the Director regulating the manner in which that person has entry and access to the premises and activities of the Church either generally or in a

specified location or circumstances;

sexual abuse means sexual assault, sexual exploitation, sexual harassment or sexually inappropriate behaviour in relation to a child or adult, and in relation to a child includes the use of a child by another person for his or her own sexual stimulation or gratification or for that of others;

sexual assault means any intentional or reckless act, use of force or threat to use force involving some form of sexual activity against an adult without their consent or against a child;

sexual exploitation means any form of sexual contact or invitation to sexual contact with another person, with whom there is a pastoral or supervisory relationship, whether or not there is consent and regardless of who initiated the contact or invitation. It does not include such contact or invitation within a marriage;

sexual harassment means unwelcome conduct of a sexual nature, whether intended or not, in relation to a person where the person reasonably feels in all circumstances offended, belittled or threatened;

social media means any form of online publication or presence that allows interactive communication, including, but not limited to, email, social networks, blogs, internet websites, internet forums, wikis, Facebook, Twitter, Snapchat, LinkedIn, Tumblr, and YouTube;

spiritual abuse means the mistreatment of a person by actions or threats directed specifically to that person and justified by appeal to God, faith or religion, which mistreatment has caused, or is likely to cause physical or mental harm including self-harm;

Tribunal means the Diocesan Disciplinary Tribunal established under Part 4.4.

4 *Overriding purpose of Statute*

4.1 The overriding purpose of this Statute and of any policy made under this Statute, in their application to any complaint under this Statute, is:

- (a) to respond to survivors of misconduct by a Church worker or Church volunteer;
- (b) to facilitate the just, expedient and efficient resolution of the real issues in the complaint in the best interests of all parties; and
- (c) to regulate fitness for ministry or service, to uphold standards in the Church and for the protection of the community.

5 *Overriding purposes to be given effect to*

5.1 The PSC and the Board must each seek to give effect to the overriding purpose when it exercises any power given to it by this Statute or by any policy and when it interprets any provision of this Statute or of any such policy.

6 *Agreements and arrangements with another diocese*

6.1 The Bishop may enter into such agreements or arrangements as the Bishop deems fit with the relevant authority of another diocese as to the terms on which the powers and functions of the equivalent bodies or persons of that diocese are to be exercised by the persons holding office in or as delegates of the PSC, or by the members or the secretary of the Board.

PART 2 – POLICIES & CODE OF CONDUCT

7 Diocesan Council may approve policies

- 7.1 The Diocesan Council may from time to time consider and approve one or more policies for implementation in relation to the matters the subject of this Statute.
- 7.2 The policies may include provisions or procedures for:
- (a) receiving a complaint;
 - (b) the appointment, role and function of professional support persons and carers for the complainant, any survivor or the respondent;
 - (c) informing a complainant and survivor of alleged misconduct, and a respondent, of rights, remedies and relevant procedures available to them under the Statute or policies;
 - (d) assisting or supporting, as appropriate, any person affected by alleged conduct the subject of a complaint;
 - (e) an explanation of the processes for investigating and dealing with a complaint;
 - (f) dealing fairly with each party to a complaint;
 - (g) referral to mediation and conciliation in appropriate circumstances;
 - (h) dealing with alleged process failure;
 - (i) clearance for ministry for Church workers within the Diocese or another diocese;
 - (j) regular information, reports, advice and recommendations to the Bishop and any other relevant Church authority; and
 - (k) working, where necessary, with law enforcement, prosecution or child protection authorities of the States and Territories and of the Commonwealth of Australia.
- 7.3 A policy may offer a process by which a Church authority offers redress to a survivor of misconduct by a Church worker or Church volunteer.

8 Diocesan Council may approve code of conduct

- 8.1 The Diocesan Council may from time to time consider and approve a code or codes of conduct for observance by a Church worker or a Church volunteer.
- 8.2 The code will set out standards of conduct expected of a Church worker or a Church volunteer and is relevant in determining whether the conduct of a person renders them unfit to hold a role office or position either subject to any condition or restriction at all.

9 Diocesan Council may promote policies and codes of conduct

- 9.1 The Diocesan Council through the PSC and by such other means as may be considered appropriate shall take such steps as may be necessary or desirable to promote the knowledge, understanding and observance in this Church of any policies and codes of conduct applicable in the Diocese.

PART 3 – DUTIES OF CHURCH WORKERS AND VOLUNTEERS

10 Duty to know policies and code of conduct

- 10.1 Church workers and Church volunteers must read and understand each Statute, policy and code of conduct as it applies to them.

11 *Duty to report certain matters*

- 11.1 If any person to whom this Statute applies or a Church authority believes on reasonable grounds that a person has suffered harm or is at risk of harm as a result of misconduct by another person to whom this Statute applies and has no reason to believe that the Director or a member of the PSC is aware of those facts, the first mentioned person to whom this Statute applies or Church authority shall as soon as possible report the matter to the Director or to a member of the PSC.
- 11.2 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.
- 11.3 If a Church worker or church volunteer has been charged in any jurisdiction in Australia or elsewhere with a sexual offence or an offence relating to child pornography whether committed within or outside the Diocese, that person must forthwith notify the Director, giving particulars, to the best of their knowledge, of the charge.

12 *Duties in respect of a complaint*

- 12.1 A Church worker or Church volunteer respondent must, subject to section 12.2:
- (a) comply with a requirement of the PSC to meet on reasonable notice with an investigator to answer questions in relation to a complaint;
 - (b) comply with a requirement of the PSC to provide a verified detailed report within a reasonable time;
 - (c) truthfully answer any question put by or on behalf of the PSC or the Board in the exercise of powers conferred by this Statute;
 - (d) not mislead the Director or the PSC or the Board or a member or delegate of any of them;
 - (e) not unreasonably delay or obstruct the Director or the PSC or the Board or a member or delegate of any of them in the exercise of powers conferred by this Statute; and
 - (f) attend a mediation, conciliation, neutral evaluation or other dispute resolution meeting arranged by the Director in relation to a complaint.
- 12.2 If a respondent declines to answer a question on the ground that the answer might tend to incriminate the person, a written record shall be made of the question and of the ground of refusal.

13 *Duty to comply with an undertaking or direction*

- 13.1 A Church worker or Church volunteer respondent must:
- (a) comply with any undertaking given to the PSC, the Board or a Church authority; and
 - (b) comply with a direction made by a Church authority to give effect to a recommendation of the PSC or the Board (as the case may be) or any permitted variation or modification of that recommendation.

14 *Failure to comply*

- 14.1 Failure of a respondent to comply with an undertaking or direction constitutes a breach of this Statute.
- 14.2 The PSC may institute proceedings forthwith in the Tribunal in respect of any breach of this Statute.

- 14.3 A failure to comply with any provision of this Statute is a relevant factor in determining the fitness or otherwise of the Church worker or Church volunteer for any role office or position.

PART 4 – STRUCTURE OF PROFESSIONAL STANDARDS GOVERNANCE

15 Professional Standards Committee, Director of Professional Standards, Professional Standards Board and Diocesan Disciplinary Tribunal

- 15.1 There shall be a:
- (a) Professional Standards Committee constituted and appointed in accordance with Part 4.1;
 - (b) Director of Professional Standards appointed in accordance with Part 4.2;
 - (c) Professional Standards Board constituted and appointed in accordance with Part 4.3; and
 - (d) Diocesan Disciplinary Tribunal constituted and appointed in accordance with Part 4.4.

PART 4.1 - PROFESSIONAL STANDARDS COMMITTEE

16 Appointment of members of PSC

- 16.1 The members of the PSC shall be appointed and shall hold office on such terms and conditions as may be determined from time to time by the Bishop or in accordance with any policy of the Diocesan Council.
- 16.2 Instead of appointing members of the PSC in accordance with section 16.1, the Bishop may instead choose to delegate the responsibilities of the PSC to the Professional Standards Committee of the Diocese of Perth or an equivalent body. Such a delegation may be revoked at any time by the Bishop, but any such revocation shall not affect any case pending before the Professional Standards Committee of the Diocese of Perth at the time of the revocation.
- 16.3 If members of the PSC are appointed pursuant to section 16.1, then sections 17 and 18 apply.
- 16.4 If the Bishop chooses to delegate the responsibilities of the PSC to the Professional Standards Committee of the Diocese of Perth or an equivalent body, the provisions of this statute (apart from sections 17 and 18) shall apply to the Professional Standards Committee of the Diocese of Perth as if it is PSC.

17 Membership of PSC

- 17.1 The PSC shall have at least three members including the chair.
- 17.2 The membership of the PSC shall be constituted so as collectively to as far as it is reasonably practicable, provide experience and appropriate professional qualifications in:
- (a) law;
 - (b) ordained ministry; and
 - (c) child protection, investigations, psychology, psychiatry, social work or ethics.
- 17.3 So far as it is reasonably practicable, the PSC shall include:
- (a) at least one person who is not a member of this Church, who agrees in acting as a member of the PSC to abide by the provisions of this Statute; and

- (b) at least one man and at least one woman.

18 *Chair*

- 18.1 The chair of the PSC shall be appointed on such terms and conditions as may be determined from time to time by the Bishop or in accordance with any regulations or policies of the Diocesan Council;
- 18.2 The chair's functions are to oversee PSC business and meetings.

19 *Procedures of PSC*

- 19.1 The PSC may meet from time to time as determined by the chair or a majority of its members and may conduct its business by telephone or electronic communication.
- 19.2 Subject to any policy and to this Statute, the procedures of the PSC shall be as determined by the PSC.
- 19.3 A majority of the members shall constitute a quorum.
- 19.4 The PSC shall act in all things as expeditiously as possible.

20 *Acts and proceedings of PSC validated*

- 20.1 An act or proceeding of the PSC is not 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.

21 *PSC may be an equivalent body of another diocese.*

- 21.1 The members of the PSC may be drawn from or constitute an equivalent body of another diocese, either generally or for a particular case or matter.

22 *Functions of PSC*

- 22.1 Subject to the provisions of this Statute, the PSC has the following powers and duties:
- (a) to implement this Statute and any policy to the extent that any policy is not inconsistent with this Statute;
 - (b) to receive a complaint against a person to whom this Statute applies and, where appropriate, cause to be investigated the complaint in a timely and appropriate manner;
 - (c) to review and monitor the work of the Director under this Statute;
 - (d) to appoint suitable persons to fulfil the several roles required to implement any policy in each particular case;
 - (e) where appropriate, to arrange for the conciliation or mediation of any complaint;
 - (f) where appropriate, to recommend to the Bishop any changes to any policy and any other changes to Church processes, structures and education programs that would mitigate the risk of misconduct in the Diocese;
 - (g) subject to any limit imposed by the Bishop to authorise such expenditure on behalf of the Diocese or the Church entity as may be necessary to implement, in a particular case, the policy and the provisions of this Statute;
 - (h) to advise any relevant Church authority or Church entity as to the financial or other needs of a person affected by alleged misconduct and as to any possible or actual legal proceedings against such Church entity or Church authority arising out of the alleged misconduct of a Church worker and how a parish or

- congregation may best be supported;
- (i) where appropriate or required under any policy, to refer any allegation of misconduct in its possession to a member of a law enforcement, prosecution or child protection authority of a State or Territory or of the Commonwealth of Australia to which the allegation is or may be relevant; and
 - (j) to exercise such other powers and functions as are conferred on it by this or any other Statute or by a policy.

PART 4.2 - DIRECTOR OF PROFESSIONAL STANDARDS

23 *Appointment of Director*

- 23.1 The Director shall be appointed by the Bishop and shall hold office on such terms and conditions as may be determined from time to time by the Diocesan Secretary with the approval of the Diocesan Trustees or in accordance with any regulations or policy of the Diocesan Council.
- 23.2 Instead of appointing the Director in accordance with section 23.1, the Bishop may instead choose to delegate the responsibilities of the PSC to the Director of Professional Standards of the Diocese of Perth or another Anglican diocese. Such a delegation may be revoked at any time by the Bishop, but any such revocation shall not affect any case pending before the Director of Professional Standards of the Diocese of Perth at the time of the revocation.
- 23.3 If the Director is appointed pursuant to section 23.1, then section 24 applies.
- 23.4 If the Bishop chooses to delegate the responsibilities of the Director to the Director of Professional Standards of the Diocese of Perth or another Anglican diocese, the provisions of this statute (apart from section 24) shall apply to the Director of Professional Standards of the Diocese of Perth as if he or she is the Director.

24 *Appointment of Acting Director*

- 24.1 The Diocesan Secretary with the approval of the Diocesan Trustees, and in consultation with the Director, may appoint an acting Director of Professional Standards on such terms and conditions as may be determined.
- 24.2 The Acting Director of Professional Standards may act in that capacity during the absence of the Director or during a vacancy in the office of Director.
- 24.3 An Acting Director of Professional Standards when acting in that capacity is taken to be the Director and has all the powers and functions of the Director.

25 *Functions of Director*

- 25.1 The Director shall have the following functions:
 - (a) to receive any complaint on behalf of the PSC against a church worker or other person to whom this Statute applies;
 - (b) in his or her discretion to make a complaint against a person to whom this Statute applies;
 - (c) to manage the implementation of this Statute and any policy in respect of any complaint;
 - (d) to be the executive officer of the PSC;
 - (e) to attend meetings of the PSC;
 - (f) to provide a central focus in matters involving personal ethics and behaviour including advice about appropriate standards and enforcement;
 - (g) to provide or arrange care or treatment of parties to the process of this Statute and

- any policy;
- (h) to provide input into education and vocational training programs for members of the Diocese, including those involved in managing or providing pastoral care and other community services;
 - (i) to provide advice to complainants and persons to whom this Statute applies about the operation of a policy, with particular emphasis on helping those persons in authority to understand and discharge their responsibilities under this Statute and any policy;
 - (j) to keep proper records of complaints, decisions, meetings, employment screening details, police checks and people affected by allegations of misconduct;
 - (k) to consult and co-operate with Church agencies to promote consistency between them regarding this Statute and any policies;
 - (l) in cases of alleged criminal behaviour, to support the complainant in making a report to the Western Australian Police and / or the relevant child protection authorities;
 - (m) to report to the PSC on any recommended changes to the policy and any other changes to Church processes, structures and education programs that would reduce the risk of abuse in a Diocese;
 - (n) such specific functions and duties as may be determined from time to time by the PSC; and
 - (o) such other functions and duties as may be prescribed by this or any other Statute or as may be determined by the Bishop.
- 25.2 The Director shall act in all things as expeditiously as possible.

26 *Director may have corresponding capacity for another diocese.*

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

PART 4.3 - PROFESSIONAL STANDARDS BOARD

27 *Appointment of members of the Board*

- 27.1 The Board members shall be appointed by the Bishop and shall hold office on such terms and conditions as may be determined from time to time by the Diocesan Council or in accordance with any policy of the Diocesan Council.
- 27.2 Instead of appointing members of the Board in accordance with section 27.1, the Bishop may instead choose to delegate the responsibilities of the Board to the Professional Standards Board of the Diocese of Perth or an equivalent body. Such a delegation may be revoked at any time by the Bishop, but any such revocation shall not affect any case pending before the Professional Standards Board of the Diocese of Perth at the time of the revocation.
- 27.3 If members of the Board are appointed pursuant to section 27.1, then sections 28, 29, 31 and 32 apply.
- 27.4 If the Bishop chooses to delegate the responsibilities of the Board to the Professional Standards Board of the Diocese of Perth or an equivalent body, the provisions of this statute (apart from sections 28, 29, 31 and 32) shall apply to the Professional Standards Board of the Diocese of Perth as if it is the Board.

28 *Membership of the Board*

- 28.1 The Board shall have at least three members including the President or a Deputy President.
- 28.2 The membership of the Board shall be constituted so as to as far as it is reasonably practicable, collectively to provide experience and appropriate professional qualifications in:
- (a) law;
 - (b) ordained ministry; and
 - (c) child protection, investigations, social work, psychology, psychiatry, or ethics.
- 28.3 So far as reasonably practicable, the Board shall include:
- (a) one member of the clergy;
 - (b) at least one man and at least one woman; and
 - (c) two members who are not members of the Church, who agree in acting as a member of the Board to abide by the provisions of this Statute.

29 *President*

- 29.1 The President and Deputy President of the Board shall be appointed on such terms and conditions as may be determined from time to time by the Diocesan Council or in accordance with any policy of the Diocesan Council.

30 *Procedures of the Board.*

- 30.1 The Board may meet from time to time as determined by the President or a majority of its members and may conduct its business by telephone or electronic communication.
- 30.2 The Board, separately constituted in accordance with this Part, may sit simultaneously for the purpose of matters referred to it or for conducting separate business of the Board.
- 30.3 Subject to this Statute and the relevant rules and policy, the practice and procedure of the Board will be as directed by the President.
- 30.4 A majority of members of the Board present shall constitute a quorum.
- 30.5 The Board shall act in all things as expeditiously as possible.

31 *Filling vacancies in the Board*

- 31.1 Any vacancy in the membership of the Board shall be filled by the Diocesan Council or in accordance with any policy made by the Diocesan Council.

32 *Secretary to the Board*

- 32.1 There shall be a secretary to the Board who shall be appointed by the Board on such terms and conditions as may be determined from time to time by the Board or in accordance with any policy of the Diocesan Council.
- 32.2 The secretary to the Board may act in a corresponding capacity for another diocese either generally or for a particular case or matter.

33 *How questions decided by Board*

- 33.1 A question before the Board may be decided by a majority of the votes of those present and voting and in the case of an equality of votes, the finding of the President shall prevail.

34 *Acts and proceedings of Board validated*

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

35 *Member of Board may be an equivalent body*

35.1 The members of the Board may be drawn from or constitute an equivalent body either generally or for a particular case or matter.

36 *Function of Board in respect of referrals*

36.1 Subject to the provisions of this Statute the function of the Board is to:

(a) enquire into and determine a question or questions referred to it by the PSC pursuant to Part 5; and

(b) to make a determination referred to under Part 5 and where appropriate to make a recommendation in accordance with the provisions of this Statute.

36.2 The Board shall not, in the course of inquiring into any question:

(a) inquire into any matter which is or has been the subject of any formal investigation or enquiry conducted:

(i) under or pursuant to any provision of the Constitution Statute 2016;

(ii) under or pursuant to a Statute of the General Synod, a Statute or an Ordinance of another diocese relating to the discipline of clergy or Church workers by a board of enquiry, Tribunal or other body; or

(iii) with the authority of the bishop of a diocese resulting in a formal report to the bishop with findings and which concluded or was commenced prior to the date on which this Statute takes effect in the diocese

but may take into account the finding of any such formal investigation or enquiry.

(b) inquire into, make any findings in relation to or take into account any alleged breach of:

(i) faith of the Church;

(ii) ritual of the Church, including the rites according to the use of the Church and the obligation to abide by such use; or

(iii) ceremonial of the Church, including ceremonial according to the use of the Church and the obligation to abide by such use.

PART 4.4 – DIOCESAN DISCIPLINARY TRIBUNAL

37 *Appointment of members of the Tribunal*

37.1 The Tribunal members shall be appointed by the Bishop and shall hold office on such terms and conditions as may be determined from time to time by the Diocesan Council or in accordance with any policy of the Diocesan Council.

37.2 Instead of appointing members of the Tribunal in accordance with section 37.1, the Bishop may instead choose to delegate the responsibilities of the Tribunal to the Diocesan Tribunal of the Diocese of Perth or an equivalent Tribunal of another Anglican diocese. Such a delegation may be revoked at any time by the Bishop, but any such revocation shall not affect any case pending before the Diocesan Tribunal of

the Diocese of Perth at the time of the revocation.

- 37.3 If members of the Tribunal are appointed pursuant to section 37.1, then section 38 applies.
- 37.4 If the Bishop chooses to delegate the responsibilities of the Tribunal to the Diocesan Tribunal of the Diocese of Perth or an equivalent Tribunal of another Anglican diocese, the provisions of this statute (apart from section 38) shall apply to the Diocesan Tribunal of the Diocese of Perth as if it were the Tribunal.

38 *Membership of the Tribunal*

- 38.1 The Tribunal shall be constituted by the following three members:
- (a) the Bishop;
 - (b) Counsel appointed by the Chancellor; and
 - (c) a member of the laity elected by the Synod.

39 *Function of Tribunal*

- 39.1 The function of the Tribunal is to hear and determine disputes or proceedings instituted by the PSC in respect of any breach of this Statute.

PART 5 - COMPLAINT OF MISCONDUCT

PART 5.1 - COMPLAINTS

40 *Complaints of misconduct to the PSC*

- 40.1 Any person including the Director may refer a matter or make a complaint of misconduct to the PSC against any person to whom this Statute applies.

41 *Complaints of misconduct of Church worker or Church volunteer*

- 41.1 Any person including the Director may make a complaint of misconduct of a Church volunteer or Church worker to the relevant Church authority.
- 41.2 The relevant Church authority must refer that complaint to the PSC subject to this Statute and in accordance with any policy made by the Diocesan Council.
- 41.3 The PSC must act in relation to the complaint in accordance with any policy made by the Diocesan Council.

42 *Form of complaints*

- 42.1 A complaint may be in any form, in writing on paper or by email or facsimile or conveyed verbally.
- 42.2 A complaint must include details of the misconduct complained about.
- 42.3 The PSC may choose not to act on an anonymous complaint.

43 *Further particulars of a complaint*

- 43.1 The PSC may require a complainant to:
- (a) give further details of the complaint; and
 - (b) verify any details of the complaint by statutory declaration or in another manner specified by the Director,
- before commencing or further investigating a complaint.

- 43.2 A requirement under section 43.1 must be in writing and allow the complainant a reasonable time to comply.
- 44 *PSC may refer a complaint to an equivalent body of another diocese*
- 44.1 The PSC may, if it thinks it appropriate to do so, refer a complaint, or the investigation of a complaint, to an equivalent body or bodies.
- 44.2 When the PSC and an equivalent body or equivalent bodies have the power and duty to investigate information concerning the alleged misconduct of the same person to whom this Statute applies and the respective bodies cannot agree on:
- (a) which body shall carry out the investigation or any parts of such investigation; or
 - (b) whether a question or questions specified in section 57 should be referred to the Board or to an equivalent body which has jurisdiction,
- the PSC shall refer the disagreement for decision by the Director and the persons acting in a corresponding capacity for every other diocese acting together.
- 44.3 The PSC shall act in accordance with the unanimous decision of the persons referred to in section 44.2 or, if such persons cannot agree within a reasonable time of the disagreement being referred, in accordance with the decision of the Primate or a member of the House of Bishops appointed by the Primate.
- 44.4 In all matters affecting the operation of this Statute the PSC and the Director shall cooperate with and assist an equivalent body and a person acting in the corresponding capacity of the Director in another diocese.
- 44.5 In making a decision under section 44.2 the Director shall not be bound by the views or instruction of the PSC but shall take into account the most convenient course for all concerned and the proper and expeditious conduct of the investigation or referral as the case may be.
- 45 *PSC may dismiss certain complaints*
- 45.1 The PSC may refrain from further investigation and dismiss a complaint if:
- (a) the PSC is of opinion that the complaint does not fall within the provisions of this Statute;
 - (b) the misconduct the subject matter of the complaint can properly be dealt with by other means;
 - (c) the subject matter of a complaint is under investigation by some other competent person or body or is the subject of legal proceedings;
 - (d) the person making the complaint has failed to provide further details to the Director or to verify the allegations by statutory declaration or otherwise when requested by the Director to do so;
 - (e) the PSC is of opinion that the complaint is false, vexatious, misconceived, frivolous or lacking in substance; or
 - (f) the PSC is of opinion that there is insufficient reliable evidence to warrant an investigation or further investigation.
- 45.2 In acting under section 45.1, the PSC may recommend to the Church authority any steps that might reduce or eliminate the risk of misconduct either generally by Church workers or in relation to the respondent by way of educational or mentoring program.
- 45.3 For the avoidance of doubt, a recommendation pursuant to the preceding subsection is advisory only and not binding on a Church authority.

46 *Complainant to be given notice of outcome of complaint and reasons*

- 46.1 If the PSC refrains from further investigation and dismisses a complaint under the preceding section, the Director must give the complainant, the respondent and/or the Church authority a written notice of the outcome, including the reasons for the outcome.

PART 5.2 – INVESTIGATIONS

47 *When PSC is to investigate*

- 47.1 Subject to section 50, the PSC shall investigate:

- (a) each complaint; and
- (b) the conduct of any person to whom the Statute applies if the PSC has reason to believe that the conduct referred to may amount to misconduct under this Statute.

- 47.2 The PSC shall investigate conduct under section 47.1(b) even though:

- (a) no complaint has been made about the conduct;
- (b) a complaint about the conduct is anonymous;
- (c) a complaint about the conduct has been withdrawn; or
- (d) the complainant has not given the written consent referred to in section 47.3.

- 47.3 The Director must on receipt of a complaint or prior to any investigation seek from the complainant his or her written consent to:

- (a) the giving by the Director of notice of the complaint and the identity of the complainant to the respondent;
- (b) the investigation of the complainant by the PSC;
- (c) the PSC otherwise dealing with it under this Statute;
- (d) the hearing and determination of the complaint by the Board, either by hearing or otherwise in accordance with this Statute; and
- (e) the making of recommendations to the Church authority in accordance with this Statute.

- 47.4 If the complainant (other than the Director) has not given the written consent to the Director referred to in the preceding subsection:

- (a) the Director and the PSC must, subject to any obligation to disclose to a member of the police force, respect the confidentiality of the identity of the complainant;
- (b) the PSC shall not be required to investigate the complaint and otherwise to refer it to the Board; and
- (c) the PSC or the Director may, but is not obliged to, refrain from further investigation and dismiss the complaint.

- 47.5 Subject to section 47.3, the PSC may cause to be investigated the conduct of a Church worker if the PSC has reason to believe that the conduct may amount to misconduct under this Statute even though:

- (a) no complaint has been made about the conduct;
- (b) a complaint about the conduct is anonymous or has been withdrawn; or
- (c) the complainant does not give the written consent referred to in subsection 47.3.

- 47.6 The PSC may by instrument in writing delegate, upon such terms and conditions as the PSC may approve, the powers to investigate any person to whom the Statute applies under this section.
- 48 *PSC to obtain material*
- 48.1 For the purpose of an investigation the PSC or its delegate shall obtain such statutory declarations, written statements, recorded conversations, reports, documents and other material as the PSC or its delegate considers necessary or advisable for presentation to the PSC.
- 49 *Respondent to respond to PSC and comply with undertakings and directions*
- 49.1 The PSC may by notice in writing to a respondent require the respondent:
- (a) to meet on reasonable notice with an investigator to answer questions in relation to a complaint;
 - (b) to provide a detailed report to the PSC within 21 days or such further period as the Director may allow in relation to any matter relevant to the investigation; and
 - (c) to verify the report by statutory declaration or in another manner specified by the PSC.
- 50 *PSC may decline to investigate*
- 50.1 The PSC may decline to investigate or refrain from further investigation and dismiss a complaint if:
- (a) the PSC is of opinion that the complaint does not fall within the provisions of this Statute;
 - (b) the misconduct the subject matter of the complaint can properly be dealt with by other means;
 - (c) the subject matter of a complaint is under investigation by some other competent person or body or is the subject of legal proceedings;
 - (d) the person making the complaint has failed to provide further details to the Director or to verify the allegations by statutory declaration or otherwise when requested by the Director to do so;
 - (e) the PSC is of opinion that the complaint is false, vexatious, misconceived, frivolous or lacking in substance; or
 - (f) the PSC is of opinion that there is insufficient reliable evidence to warrant an investigation or further investigation.
- 50.2 In acting under section 50.1, the PSC may recommend to the Church authority any steps that might reduce or eliminate the risk of misconduct either generally by Church workers or in relation to the respondent by way of educational or mentoring program.
- 50.3 For the avoidance of doubt, a recommendation pursuant to the preceding section is advisory only and not binding on the Church authority.
- 51 *Complainant to be given notice of outcome of complaint and reasons*
- 51.1 If the PSC refrains from further investigation and dismisses a complaint under the preceding section, the Director must give the complainant, the respondent and/or the

Church authority a written notice of the outcome, including the reasons for the outcome.

PART 5.3 – SUSPENSION

- 52 *Suspension or other action without prior notice, where unacceptable risk*
- 52.1 If after receipt of a complaint or a referral or at any time during the progress of investigation of a complaint under this Statute, the Director or the PSC are satisfied that there is an unacceptable risk of harm to any person if the respondent remains in his or her present office or position of responsibility pending the outcome of further investigation of the complaint, the Director or the PSC may, as the urgency of the matter requires, make a recommendation direct to the Bishop or other relevant Church authority that pending the outcome of further investigation:
- (a) the respondent be suspended immediately from the duties of any office or position of responsibility held by the respondent or certain duties;
 - (b) a prohibition order be made against the respondent;
 - (c) the respondent be required to enter into a Safety Agreement with the Church authority, failing which he or she is excluded from entry or access to premises or activities of the Church that either generally or in a specified location or circumstances; or
 - (d) such other action be taken as may be thought fit.
- 53 *Criminal Charges*
- 53.1 If a Church worker has been charged in any jurisdiction in Australia or elsewhere with a sexual offence, a serious criminal offence or an offence relating to child pornography whether committed within or outside the Diocese, that person must be suspended from duties of office pending the determination of the charge.
- 53.2 The relevant Church entity must serve on the person a notice of suspension.
- 53.3 Upon service of that notice, the person shall be deemed to have been suspended pending the outcome of the hearing of the charge.
- 54 *Respondent to be given notice*
- 54.1 As soon as reasonably practicable after making a recommendation pursuant to the preceding sections or referring the matter to the Board, the PSC shall give the respondent notice of any recommendation or referral to the Board. The respondent shall have the right to seek to have the recommendation or referral to the Board revoked or withdrawn.
- 55 *No reference to the Board on notice where immediate unacceptable risk*
- 55.1 The provisions of section 54.1 shall not apply if the PSC is satisfied that there is an immediate unacceptable risk of harm to any person if the respondent remains in his or her present office or duties.

56 *Matters to be considered by the Director and PSC before recommending suspension*

56.1 Before making a recommendation under this Part, the Director or the PSC (as the case may be) shall take into account:

- (a) the seriousness of the alleged misconduct;
- (b) the nature of the material to support or negate the allegations;
- (c) the extent to which any person is at risk of harm;
- (d) after consultation with the relevant Church entity or its representative, the effect on the respondent, a relevant Church entity and on the Church in the diocese of acting and of not acting under this Part; and
- (e) any other allegation of similar conduct previously made to the PSC or to an equivalent body within the previous ten years;

and may take into account any other relevant matter.

57 *Suspension by the Church authority*

57.1 The Church authority to whom a recommendation is made under this Part must and is hereby empowered to give effect to that recommendation of the Director or the PSC.

57.2 Subject to section 57.3, the Church authority may release to the public as soon as practicable a written statement disclosing their decision on the recommendation received and the steps to be taken or that have been taken pursuant to this section to give effect to it.

57.3 The Church authority must ensure that any statement so released is anonymised and redacted so as not to contain any particulars that identify or are likely to lead to the identification of a prescribed person.

58 *Powers under section 57 may be exercised while matter under consideration*

58.1 The Bishop or other Church authority may exercise the powers referred to in section 57 of this Statute, notwithstanding that a recommendation under this Part is under consideration by the Board by the process referred to in this Statute.

59 *Termination of suspension*

59.1 A suspension or prohibition order made by a Church authority following a recommendation under this Part shall be set aside by the Church authority:

- (a) if the PSC terminates the investigation without referring the matter to the Board;
- (b) upon any direction to that effect given by the Bishop or other Church authority;
- or
- (c) upon the Church authority giving effect to a recommendation of the Board or such a recommendation as varied or modified by a Church authority under section 85.

60 *Consequences of suspension, prohibition*

60.1 During a suspension or prohibition pursuant to the provisions of this Part or while conduct the subject of a complaint is dealt with under this Statute:

- (a) the respondent shall comply with the terms of any prohibition order;
- (b) the respondent will be ineligible for appointment to any position or function covered by any suspension or prohibition order;
- (c) the relevant Church authority may fill the vacancy caused by any, suspension or

- prohibition order; and
- (d) subject to the discretion of the Diocesan Trustees (to be exercised from time to time in the circumstances of each individual case), the respondent will be entitled to whatever stipend, salary, allowances and other benefits that he or she would ordinarily have received and such entitlements are to be met or reimbursed from funds of the Diocese, the Parish or other Church entity as the case may be ordinarily.

PART 5.4 – REFERENCE OF A COMPLAINT OR MATTER TO BOARD

61 *PSC may refer certain matters to the Board*

61.1 After the investigation of a complaint or referral in accordance with this Statute, the PSC may refer to the Board, one or more of the following questions:

- (a) the conduct being the subject of the complaint which if established would call into question whether:
- (i) a Church worker is unfit, whether temporarily or permanently, then or in the future to hold a particular or any role, office, licence or position in the Church or in the employment of a Church entity; or
 - (ii) in the exercise of a Church worker's role, office, licence or position or in the performance of any function, the Church worker should be subject to certain conditions or restrictions; or
- (b) by reason of alleged abuse or other conduct the Church worker may not be fit for ministry in the Church either generally or to hold a proposed role, office, licence or position of responsibility in the Church or may be fit subject to certain conditions or restrictions; or
- (c) in the case of a complaint against a Church worker who is deceased, there are plausible grounds for believing the Church worker did commit any alleged misconduct.

62 *How PSC to refer matters*

62.1 The PSC must refer the question or questions to the Board by delivering to the President/Secretary of the Board a written report setting out:

- (a) its investigation and opinion; and
- (b) a statement of any allegations of misconduct made against the Church worker signed by a member of the referring body.

62.2 The report must be signed by a member of the referring body.

63 *Complainant may refer dismissal of complaint to the Board*

63.1 If the PSC refrains from further investigation and dismisses a complaint under the sections 45.1 or 50.1, the claimant may refer the matter to the Board.

64 *Board to invite submissions from parties*

64.1 In the case of a reference pursuant to section 61.1, as soon as practicable after delivering the report referred to in section 62.1 to the President of the Board, the PSC shall cause to be delivered to the respondent and, in the case of a complaint, the complainant a copy of the report and opinion and notice that each party may advance written submissions to the Board if he or she wishes to do so.

64.2 In the case of a referral pursuant to section 61.1, the PSC shall advise the respondent and the complainant of the rights each has under this Statute and any relevant policies.

64.3 In the case of a reference pursuant to section 63.1, the Board shall give notice to the complainant that they may advance written submissions to the Board if they wish to do so.

65 *Documents and materials to be delivered to the Board*

65.1 Within 14 days of the date of the reference of a matter to the Board or within 14 days of the date of the document or material coming to existence, whichever is the latter:

- (a) in the case of a reference pursuant to section 61.1, the PSC shall cause to be delivered to the President of the Board any documents and material relevant to the reference; and
- (b) in the case of a reference pursuant to section 63.1, and the claimant shall cause to be delivered to the President of the Board the written notice of the outcome including the reasons for the outcome given by the Director in relation to the decision by the PSC or the Director to dismiss the original complaint.

66 *Board may give directions as to documents and conduct of inquiry*

66.1 The Board may at any time and from time to time give directions:

- (a) as to the inspection by and supply of copies to the respondent or any other person of the documents or material relevant to the reference;
- (b) the service of any witness statements, summary of proposed evidence, submissions or other documents on which a party may wish to rely; and
- (c) as to the conduct of its inquiry into the matter,

and for that purpose the Board may be constituted by the President or Deputy President alone.

67 *Resignation to have no effect*

67.1 If after a complaint is referred to the Board, the respondent resigns from his or her role, office or position, the Board may continue to enquire into and determine the complaint, notwithstanding that resignation.

68 *The role of the PSC on the reference*

68.1 The PSC has the carriage of the matter before the Board and has the following particular functions to present to the Board:

- (a) the evidence on which it relies relevant to the reference;
- (b) any findings and recommendations it proposes that the Board should make;
- (c) any submissions in support; and
- (d) to appear by the Director or other authorised representative at any hearing of the Board to assist the Board in its enquiry into the reference.

PART 5.5 – DETERMINATION OF COMPLAINT OR MATTER BY BOARD

69 *How Board is to respond to a reference*

69.1 Where a matter is referred to the Board, the Board shall consider the matter and may

make any finding on any relevant question of fact, taking into account:

- (a) the final report if any of the investigator including attachments;
- (b) any further material received from the complainant and the respondent;
- (c) any other relevant evidentiary material;
- (d) such reports of the PSC as may be submitted;
- (e) any applicable professional standards; and
- (f) the record of any court or tribunal.

70 *Power to order further enquiry*

70.1 With the exception of suspending Clergy Orders, where the Board is satisfied that a complaint which was previously dismissed under sections 45.1 or 50.1 requires further investigation, the Board may direct the PSC to undertake further inquiries or a fresh investigation and the PSC shall to the best of its ability cause such directions to be carried out.

71 *Notification of determination and recommendation*

71.1 The Board shall cause a copy of each determination and recommendation to be provided:

- (a) to the relevant Church authority; and
- (b) to the respondent,

and shall cause relevant details to be forwarded to the Director for entry into the national register.

72 *Powers of Board satisfied of unfitness*

72.1 Subject to section 72.2, the Board may recommend to the Bishop any one or more of the following:

- (a) that the respondent be suspended from any role office or position or from performing any function as the case may be for such period recommended by the Board;
- (b) that the licence or authority of the respondent be revoked;
- (c) that the respondent's contract of employment (if any) be terminated;
- (d) that the respondent cease to hold any role office or position then held;
- (e) that a prohibition order be made in terms specified by the Board;
- (f) that the respondent's holding of any role office or position or the performance of any function as the case may be, shall be subject to such conditions or restrictions as the Board may specify;
- (g) that the respondent be required to enter into a Safety Agreement with the Church authority, failing which he or she be excluded from entry or access to premises or activities of the Church either generally or in a specified location or circumstances;
- (h) that the implementation of a determination shall be suspended for such period and upon such conditions as the Board shall specify;
- (i) that the respondent be counselled;
- (j) that a person be appointed to promote a charge against the respondent before the Tribunal; and/or
- (k) otherwise as the Board sees fit.

72.2 The Board may further recommend to the Church authority, without binding it, that

- (a) an apology or other acknowledgement be given to the complainant, survivor or

other person affected by the misconduct found to have been committed by the respondent;

- (b) such other steps of a systemic or process or administrative nature be implemented by the Church authority as may be judged worthwhile to prevent or reduce the likelihood of future incidence of misconduct and harm to any person.

73 *When Board must dismiss a complaint*

73.1 If the Board is not satisfied that the respondent committed any alleged misconduct or that the complaint is false, vexatious or misconceived, the Board may determine accordingly and must dismiss the complaint.

73.2 If the Board is satisfied that the respondent did commit any of the alleged misconduct, not including abuse, but is not satisfied as to any of the matters in sections 61.1(a)(i) or (ii), the Board may determine accordingly and must take no further action in relation to the complaint.

74 *Board may appoint persons to assist inquiry*

74.1 The Board may, for the purpose of any particular reference, appoint such person or persons, including the Director, to assist it in inquiring into (but not determining) a reference as the Board thinks fit.

75 *Board may seek further information*

75.1 The Board may seek further information from the PSC and may at any time and from time to time give directions to it as to any further inquiries or investigation it requires to be carried out for the purposes of the reference and the PSC shall to the best of its ability cause such directions to be carried out.

76 *Where Board may dismiss complaint*

76.1 If the Board:

- (a) makes a finding that the respondent did not commit any misconduct as alleged;
 - or
 - (b) is not satisfied as to any of the matters in paragraphs 60.1(a) and (b) above,
- the Board may dismiss the complaint or take no further action in relation to the complaint.

77 *Proceedings of the Board*

77.1 The Board shall deal with a complaint or other reference as expeditiously as possible.

77.2 The Board may, as it sees fit, proceed with the determination of a reference or complaint notwithstanding that there may mediation or conciliation proceedings relating to the subject matter of the reference or complaint being conducted by or at the direction of the referring body and notwithstanding that there may be criminal or other proceedings being taken against the respondent or some other person.

77.3 The place and time of sitting of the Board shall be as determined by the President.

77.4 Subject to section 77.5, the Board must give the following persons reasonable notice of the time and place of the sitting of the Board: the Director, the respondent, the subject of any alleged abuse and such authorised persons as the Board believes

have a proper interest in the matter.

- 77.5 The Board is not obliged to give notice of a sitting to a person whose whereabouts cannot, after reasonable enquiries, be ascertained.

PART 5.6 – APPLICATION FOR REVIEW OF A BOARD DECISION

78 Application for review

- 78.1 A respondent who is aggrieved by a reviewable decision may apply to the Director for a review of the decision.

79 Grounds for review of reviewable decisions

- 79.1 Application for review of reviewable decisions may only be made on any one or more of the following grounds:
- (a) that a breach of the rules of natural justice (including a failure of the right to be heard and/or the right for a respondent to know the case against them) happened in relation to the making of the reviewable decision which materially affected the Board's decision;
 - (b) that procedures that were required by this Statute to be observed in relation to the making of the reviewable decision were not observed, and the non-observance materially affected the Board's decision;
 - (c) that the Board did not have jurisdiction to make the reviewable decision;
 - (d) that the reviewable decision was so devoid of any plausible justification that no reasonable Board could have made it; or
 - (e) the availability of fresh and compelling evidence which, if available at the time, would be likely to have materially affected the Board's decision.

80 Stay of reviewable decisions

- 80.1 A Church authority shall not give effect to a reviewable decision of the Board until the time for lodging an application for review has passed, and no application has been lodged.
- 80.2 The making of an application for review acts as a stay of the reviewable decision pending the determination by the Reviewer.
- 80.3 Nothing in this Part affects the power of a Church authority to take any action against a respondent which would be open to the Church authority apart from its powers under this Statute.
- 80.4 For a reviewable decision, the Board shall not cause the relevant details to be forwarded for entry into the national register until:
- (a) the time for lodging an application for review has passed, and no application has been lodged; or
 - (b) where an application for review is lodged, then after the application has been heard and determined.

81 Time limit and form of application for review

- 81.1 An application to the Director for review of a reviewable decision must be made within 14 days of the respondent being provided with a copy of the Board's determination and recommendation.

- 81.2 The application for review must:
- (a) be in writing addressed to the Director; and
 - (b) set out the grounds for review in the application.

82 *Costs for review of reviewable decisions*

- 82.1 On receipt of an application for review, the Director must immediately seek the appointment of a Reviewer.
- 82.2 Upon appointment of a Reviewer, the Director must ask the Reviewer for the Reviewer's estimate of the fee to be charged by the Reviewer in making a determination under this Part.
- 82.3 Upon receipt of advice as to the estimated fee, the Director must immediately notify the respondent.
- 82.4 Within seven days of receipt of the Director's advice, the respondent must pay one-half of the estimated fee to the Reviewer, or to a person nominated by the Reviewer, unless evidence of exceptional financial circumstances is provided to justify waiver of the fee.
- 82.5 If the respondent fails to make the payment referred to in section 82.4, then the application for review will lapse.

PART 5.7 – PROCESS OF REVIEW OF A BOARD DECISION

83 *Process of review*

- 83.1 Any review shall be limited to the review of the recommendation or determination that is the subject of the review and not by way of a re-hearing of the merits, or a re-hearing of the facts.
- 83.2 Subject to section 83.1, the manner in which the review is to be conducted will be determined by the Reviewer.

84 *Determinations of Reviewer*

- 84.1 On an application for review of a reviewable decision, the Reviewer may make all or any of the following determinations:
- (a) a determination quashing or setting aside the reviewable decision;
 - (b) a determination declaring the rights of the respondent in relation to any matter to which the reviewable decision relates;
 - (c) a determination directing either the respondent or the Board, to do, or to refrain from doing, anything that the Reviewer considers necessary to do justice between the parties;
- and shall cause a copy of the determination or finding to be provided to the Director.
- 84.2 The Reviewer may make such order as to the costs of the review as the Reviewer thinks fit.

PART 5.8 - IMPLEMENTATION OF RECOMMENDATIONS AND PUBLICATION

85 *Church authority may give effect to recommendation*

- 85.1 Upon receiving a recommendation under section 72.1, the Bishop shall consider the recommendation and may give effect to:
- (a) that recommendation;
 - (b) any variation or modification of that recommendation, consistent with any facts found by the body making the recommendation, as the Bishop sees fit insofar as the Bishop has the power to implement that recommendation; or
 - (c) in any case where the Bishop does not exercise direct authority over the person the subject to the recommendation, refer the recommendation to the appropriate Church agency or Church school.

86 *Publication of decision of the Church authority*

- 86.1 Subject to section 86.2, the Church authority:
- (a) may release to the public a written statement disclosing their decision on any recommendation received in respect of a complaint and the steps to be taken or that have been taken pursuant to the preceding section to give effect to it; and
 - (b) may release to the public such further material as it may determine with respect to the exoneration of the respondent or any action taken against the respondent.
- 86.2 The Church authority must ensure that any statement or further material so released is anonymised and redacted so as not to contain any particulars that identify or are likely to lead to the identification of a prescribed person.

87 *Effect of deposition from Holy Orders*

- 87.1 A person who has been deposed from Holy Orders in accordance with this Statute or in accordance with the provisions of any ordinance, act, canon, constitution, statute, legislative measure or provision of the general synod or the diocesan synod of another diocese of the Anglican Church:
- (a) is incapable of:
 - (i) officiating or acting in any manner as a bishop, priest or deacon of this Church;
 - (ii) accepting or holding an office in this Church capable of being held only by a person in Holy Orders;
 - (b) ceases to have any right privilege or advantage attached to the office of bishop, priest or deacon;
 - (c) must not hold himself or herself out to be a member of the clergy; and
 - (d) is not capable of holding an office in this Church which may be held by a lay person without the prior consent of the Bishop.

88 *How deposition from Holy Orders effected*

- 88.1 The deposition of a person from all or any Holy Orders by the Bishop following the recommendation of the Board shall be effected by the execution by the Bishop of an Instrument of Deposition to that effect.
- 88.2 The Bishop shall not depose a person from Holy Orders until:
- (a) the time for lodging an application for review has passed and no application has been lodged; or
 - (b) where an application for review has been lodged, the Reviewer does not disturb the Board's recommendation.

- 88.3 The Bishop must forthwith:
- (a) register the Instrument in the Registry of the Diocese;
 - (b) deliver a copy of the Instrument to the Bishop of the Diocese in which the person who is the subject of the Instrument was ordained;
 - (c) deliver a copy of the Instrument to the Registrar of the Primate; and
 - (d) cause relevant details to be forwarded to the Director for entry into the national register.

PART 6 – NATIONAL REGISTER

89 The National Register

- 89.1 The Director must enter and keep in a register maintained under the National Register Canon all prescribed information acquired by them in relation to a complaint or matter arising under this Statute or any policy approved under it.
- 89.2 The Director must keep confidential the information in the register and must not disclose any of it except as authorised under this Statute.
- 89.3 The register must be accessible for inspection by the directors of professional standards or other authorised office holders of each participating diocese subject to password protection and to the condition in section 89.5.
- 89.4 The condition is that each person lawfully having access must keep confidential the information in the register and must not disclose any of it except as authorised under this Statute or any policy.
- 89.5 A participating diocese means the Diocese and any other diocese whose Synod has enacted like legislation to this Statute and which by resolution of its Bishop commits to a common protocol or policy governing access to and use of information in the register.

PART 7 – CONFIDENTIALITY AND PUBLICATION IN RELATION TO SEXUAL ABUSE

90 Duty of confidentiality

- 90.1 Subject to the provisions of this Statute, the Director, a member of the PSC, a member of the Board, the Tribunal, a Church authority or a person employed or engaged on work related to the affairs of the PSC or the Board must not divulge information that comes to his or her knowledge by virtue of that office or position except:
- (a) in the course of carrying out the duties of that office or position;
 - (b) as may be authorised by or under this Statute or any policy;
 - (c) as may be authorised or required by the National Register Canon 2007 or any canon prescribed by General Synod in substitution for that canon;
 - (d) in any proceedings before a diocesan tribunal, a provincial tribunal or the special tribunal;
 - (e) as may be required by law; or
 - (f) to any insurer or insurance broker of a Church body or Church authority where the information may give rise to or be relevant to a claim for indemnity by the Church entity or Church authority against the insurer or is relevant to obtaining or continuing insurance cover.

- 91 *Duty of disclosure*
- 91.1 The PSC must disclose to an equivalent body information in its possession concerning alleged misconduct of a Church worker or other person subject to this Statute:
- (a) which is information that is relevant to, or arising during the course of an investigation being undertaken by the PSC where the PSC knows that the Church worker or other person subject to this Statute is residing in the diocese of the equivalent body; or
 - (b) which is information concerning misconduct alleged to have occurred in the diocese of the equivalent body,
- and may co-operate with any equivalent body.
- 92 *Board may publish reasons publicly*
- 92.1 The Board may release to the public its reasons for any determination without identifying any relevant parties.
- 93 *Church authority may publicise action taken*
- 93.1 A Church authority may release to the public such material as it may determine with respect to any action taken against a Church worker or other person subject to this Statute including the identity of that person.
- 94 *PSC to report annually to Bishop and Diocesan Council*
- 94.1 Without disclosing the identity of any informant, complainant or the respondent, the PSC shall report annually to the Bishop and Diocesan Council on its activities for that calendar year.
- 94.2 The PSC shall, in respect of every matter with which it is dealing, report either orally or in writing to the Bishop with such frequency and as fully as the Bishop shall reasonably require.

PART 8 – INDEMNITY

- 95 *Indemnification of those with functions under the Statute*
- 95.1 The Trustees of the Diocese of North West Australia shall and are hereby authorised, out of church funds, to indemnify:
- (a) the Director and any delegate of the Director;
 - (b) any carer appointed under this Statute or any policy;
 - (c) the members of the PSC and each of them;
 - (d) any delegate of the PSC;
 - (e) the members of the Board and each of them;
 - (f) any person appointed by the Board pursuant to this Statute, including the secretary;
 - (g) the members of the Tribunal and each of them; and
 - (h) the Church authority or if more than one, each Church authority,
- for any conduct 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 Statute.

PART 9 – TRANSITIONAL PROVISIONS

96 *Interpretation*

96.1 In this Part:

commencement day means the day on which Professional Standards Statute 2016 comes into operation.

97 *Appointments already made*

97.1 Unless otherwise determined by the Bishop or in accordance with any policy of the Diocesan Council, any appointment to the PSC, the position of Director or to the Board current at the commencement day, shall be deemed to be an appointment made under this Statute.

98 *Complaints already made*

98.1 This section applies to a complaint within the meaning of that expression in this Statute if:

- (a) the complaint was made before the commencement day; and
- (b) the complaint has not been the subject of a determination or recommendation by the Director or the PSC before that day.

98.2 On and after the commencement day the complaint is to be dealt with under this Statute.

99 *Current investigation*

99.1 This section applies to an investigation of a complaint that the Director or the PSC has begun but not completed before the commencement day.

99.2 On and after the commencement day the investigation is to be conducted in accordance with this Statute.

100 *Misconduct to include conduct before commencement of this Statute*

100.1 For the purposes of the definition of “misconduct” in section 3(1) of this Statute, a reference to abuse or other conduct shall be taken to be a reference to abuse or other conduct, whether occurring before or after the commencement day.

SCHEDULE 1

TO:

I, *BISHOP OF THE DIOCESE OF NORTH WEST OF AUSTRALIA* do by these presents hereby depose you from Holy Orders (particulars of which are set out below) in accordance with the recommendation of the Professional Standards Board of the *Diocese of North West Australia*.

PARTICULARS OF HOLY ORDERS

FULL NAME AND ADDRESS:			
	ORDAINING BISHOP	PLACE	DATE
ORDINATION AS DEACON:			
ORDINATION AS PRIEST:			
CONSECRATION AS BISHOP:			

DATED:

Contact:

Director of Professional Standards Board
Diocese of North West Australia
P.O. Box 2783
Geraldton, Western Australia 6531

Telephone: +61 (8) 9921 7277