



# EPISCOPAL STANDARDS STATUTE 2016

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**LONG TITLE**

A Statute relating to Professional Standards of the Bishop

The Synod of the Diocese of North West Australia resolves as follows.

### Chapter 1 – Preliminary

**NAME**

This is the *Episcopal Standards Statute 2016*

**PURPOSE**

The overriding purposes of this Statute are:

- (a) The overriding purposes of this Statute and of any protocol or policy made under this Statute, in their application to any complaint under this Statute, are to facilitate the just, expedient and efficient resolution of the real issues in the complaint and to regulate fitness for ministry of the Bishop for the protection of the community.
- (b) The Director, the ESC, the Board and the Review Board must each seek to give effect to the overriding purposes when exercising any power given by this Statute or by any protocol and when interpreting any provision of this Statute or of any such protocol.

**DEFINITIONS AND INTERPRETATION**

1.

- (1) In this Statute –

*abuse* means physical abuse, neglect of a child or sexual abuse;

*Administrator* means the person who would, in the absence or incapacity of a bishop, be the administrator of a Diocese.

*Board* means the Episcopal Standards Board established under Part 10.

*ceremonial* has the same meaning as that expression has in the Constitution.

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

*Church* means the Anglican Church of Australia within the Diocese.

*Church Agency* means any separately incorporated entity of the church in the Diocese, which has been established by the Synod, the Diocesan Trustees or the Diocesan Council and includes all Church schools.

*Church body* includes a parish, an incumbent, a vestry, a parish council, a school, agency, entity and any body corporate, organisation or association that exercises ministry within, or on behalf of, the Church.

*Church entity* means an unincorporated entity including a committee, commission, a parish, a vestry or a parish council in the Diocese or 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 established under any Statute of the Diocese, as well as the Provincial schools within the Diocese, which are affiliated with the Church.

*code of conduct* means a code of conduct approved from time to time under Part 1.

*complainant* means a person who makes a complaint.

*complaint* means a complaint under Schedule 1, section 4 of this Statute.

*Constitution* means the Constitution of the Anglican Church of Australia.

*Council of Bishops* in relation to a complaint has the meaning in section 1 (3), (4) and (5) of this Statute.

*diocese* means a diocese of the Anglican Church of Australia and in relation to the Bishop means the diocese of the Bishop.

*Archbishop* means the Archbishop of Perth and former Archbishop has a corresponding meaning.

*Bishop* means the Bishop of the Diocese of North West Australia.

*Diocesan Council* means the council of the Diocese established pursuant to The Diocesan Council Statute 2016.

*Director* means the Director of Episcopal Standards appointed under Part 6.

*Episcopal Standards Committee* or *ESC* means the Episcopal Standards Committee established under Part 5.

*Equivalent body* means a body of another Diocese exercising powers, duties or functions under legislation with respect to professional standards or discipline of a church worker, similar to those of the ESC or the Board as the case may be, or where there is no such body, the bishop of the Diocese.

*excluded conduct* has the meaning in section 1 (6) of this Statute.

*faith* has the same meaning as that expression has in the Constitution.

*incapable* in relation to the Bishop has the meaning in section 2 of the Bishop's Resignation Statute 1978-2008.

*medical* includes psychiatric, psychological and other areas of health practice.

*misconduct* has the meaning in section 1(7) of this Statute.

*ministry* means ordained ministry in Bishop's order.

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

*neglect of a child* means the neglect of a child where the child has suffered, or is like to suffer, significant harm to his or her wellbeing or development.

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

*prescribed person* means –

- (a) the complainant other than the Director; or
- (b) any witness other than either the Bishop or a witness as to character; or
- (c) any person against whom a prescribed sexual offence is alleged to have been committed.

*prescribed sexual offence* means –

- (a) a sexual offence; or
- (b) such other offence as may be prescribed under legislation of the relevant State or Territory for the purposes of prohibiting the publication of details of the identity of a victim of crime;

*protocol* means the protocol or policy approved from time to time by the Diocesan Council under Part 4.

*Provincial Tribunal* means the Provincial Tribunal of a province established under Chapter IX of the Constitution.

*Registrar* in relation to the Bishop, means the Registrar of the Bishop.

*relevant Metropolitan* in relation the Bishop means the Archbishop who is Metropolitan of the Province of Western Australia.

*Review Board* means the Episcopal Standards Review Board established under Part 13.

*ritual* has the same meaning as that expression has in the Constitution.

*sexual abuse* means sexual assault, sexual exploitation or sexual harassment and in relation to a child includes the use of a child for a person's 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 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. 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.

*sexual offence* means a sexual offence as defined in s36A of the Evidence Act 1906 (WA); and in relation to a particular jurisdiction, has the meaning given it by the applicable legislation of that jurisdiction.

*Special Tribunal* means the Special Tribunal established under the Constitution;

- (2) In this Statute, a reference to conduct shall be read as a reference to—
- (a) doing or refusing to do any act;
  - (b) refraining (otherwise than inadvertently) from doing an act; or,
  - (c) making it known that an act will not be done

### **Council of Bishops**

- (3) *Council of Bishops* in relation to a complaint, means a council of Bishops comprising –
- (a) the Primate;
  - (b) the most senior Metropolitan in office as at the date of the complaint (seniority being determined by date of consecration) as may be willing and able to act;
  - (c) the most senior Archbishop in office as at the date of the complaint (seniority being determined by date of consecration), other than a Metropolitan, as may be willing and able to act, each of whom shall have consented in writing as a member of the Council of Bishops in relation to the complaint and to abide by the provisions of Part 18 (Confidentiality and Publication).
- (4) If the Primate, Metropolitan, or an Archbishop referred to in subsection (3) –
- (a) Is a respondent to the complaint;
  - (b) Is a respondent to any other complaint that, as at the date of the first mentioned complaint, has been—
    - i. Either referred to the Board under Part 11 or Part 12 of this Statute and has not yet been dealt with by the Board or Review Board; or
    - ii. dealt with, has resulted in a recommendation to the Council of Bishops pursuant to section 20, 25 or 38 of this Statute;
  - (c) Is unable to act because of illness or absence from his or her Diocese;
  - (d) Otherwise ceases to hold office; or,
  - (e) Declines for whatever reason to consent in writing as set out in 1 (3) – the Primate, Metropolitan or Archbishop shall be ineligible, or shall cease, to be a member of the Council of Bishops and the place of that office holder –

- i. If the Primate, shall be taken by the Primate's successor in office or, if the office is vacant or the Primate is incapable, by the Metropolitan or Bishop who would exercise the authorities, powers, rights and duties of the Primate during such vacancy or incapacity;
  - ii. If the most senior Archbishop senior Metropolitan (other than the Primate), shall be taken by the Metropolitan next senior to that bishop (if any); and
  - iii. If the most senior Archbishop, shall be taken by the next most senior Archbishop.
- (5) If the Metropolitan or bishop who would exercise the authorities, powers, rights and duties of the Primate, when the office was then vacant, takes the place of the Primate and is already or would otherwise be a member of the Council of Bishops as senior Metropolitan, the place shall be taken by the Metropolitan next senior to that bishop not already or otherwise a member of the Council of Bishops.

#### Excluded conduct

- (6) The expression "excluded conduct" in relation to the Bishop means –
- (a) Any act or omission or refusal of the Bishop to ordain, appoint, correct, discipline, counsel, admonish, transfer, demote, suspend, retrench or dismiss a person, revoke a licence or refuse to renew a licence, permission, consent or authority; or,
  - (b) Any other act or omission or refusal of the Bishop in the course of episcopal ministry; or,
  - (c) Any decision of the Bishop relating to the same if the Bishop has acted or omitted or refused to act or make a decision in the lawful discharge of the duties and functions of the Bishop.

Nothing in this definition shall be read as imposing any duty or function on the Bishop.

#### Misconduct

- (7) The expression *misconduct* in relation to the Bishop means –
- (a) Physical abuse;
  - (b) Neglect of a child;
  - (c) Sexual abuse;
  - (d) Any offence under a Statute of the Diocese;
  - (e) Any of the following offences under section 2 of the Offences Canon 1962 or any canon in substitution or amendment of that canon –
    - i. Unchastity;
    - ii. Drunkenness;
    - iii. Wilful failure to pay just debts;
    - iv. Wilful violation of the Constitution or of the canons made thereunder or of the Statutes of provincial synod or of the diocesan synod; and
    - v. Any conduct involving wilful and habitual disregard of the consecration vows of the Bishop;
  - (f) Wilful or reckless failure to comply with a condition imposed by the Council of Bishops under section 80 of this Statute;
  - (g) Wilful or reckless failure to comply with an undertaking given to the Board, the Review Board or the Council of Bishops;
  - (h) An act or omission, or series of acts or omissions, made inappropriately or unreasonably in response to a complaint relating to discipline or professional or episcopal standards about the conduct of a person in the Diocese who is subject to a canon of General Synod or a Statute of the Diocese;
  - (i) Any breach of the duty to report a matter referred to below in section 4;
  - (j) Any other conduct that is unbecoming or inappropriate to the office and duties and functions of a Bishop;
  - (k) Fraudulent conduct in relation to money or property;
  - (l) Alcohol, drug or substance abuse; or,

- (m) Conviction of any sexual offence, by the Bishop wherever or whenever occurring (whether before or after the commencement of this Statute) which, if established, would on its face call into question:
- i. The fitness of the Bishop to hold office, or to be or remain in Holy Orders; or,
  - ii. The fitness of the Bishop, whether temporarily or permanently, to exercise ministry and perform any duty or function of the office; or,
  - iii. Whether, in the exercise of ministry or in the performance of any duty or function, the Bishop should be subject to any condition but excludes for the purposes of this Statute any breach of faith ritual or ceremonial and excluded conduct.

## Chapter 2 – Scope of the Statute

### PART 1 – CODE OF CONDUCT

#### Approval of Code of Conduct

2. The Synod or Diocesan Council may from time to time by resolution approve a code of conduct for observance by the Bishop, which does not make provision for any matter concerning faith, ritual or ceremonial.

#### Promotion of Code of Conduct

3. The Diocesan Council through the ESC and by such other means as may be considered appropriate must take such steps as may be necessary or desirable to promote the knowledge, understanding and observance in the Church of the code of conduct.

### PART 2 – DUTY TO REPORT

- 4.
- (1) If the Bishop of the Diocese of North West Australia –
    - (a) 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 Episcopal Standards Statute or the Professional Standards Statute 2016 applies; and
    - (b) has no reason to believe that
      - i. the Director of Professional Standards or the Director of Episcopal Standards (as the case may be) appointed under the respective statutes; or,
      - ii. any member of the ESC or the Professional Standards Committee (PSC) appointed under the respective statutes is aware of those facts, then the Bishop must as soon as possible report the matter to that Director or to a member of the ESC or PSC (as the case may be).
  - (2) This section does not affect the operation of the Canon Concerning Confessions 1989 of General Synod as amended 1992 and 2014 or any other canon or legislative instrument relating to confessions in force in the Diocese.

### PART 3 – OTHER DUTIES OF THE BISHOP

#### Duties concerning the Process

- 5.
- (1) The Bishop must, subject to subsection (2) –
    - (a) comply with a requirement of the ESC pursuant to section 16(a) of this Statute to meet with an investigator to answer questions in relation to a complaint against the Bishop;
    - (b) comply with a requirement of the ESC pursuant to section 16(b) and (c) of this Statute to provide a verified detailed report to the ESC within a reasonable time; and

- (c) truthfully answer any question put by or on behalf of the ESC or the Board or the Review Board in the exercise of powers conferred by this Statute.
- (2) If the Bishop declines to answer a question on the ground that the answer might tend to incriminate him, a written record shall be made of the question and of the ground of refusal.
- (3) The Bishop must –
  - (a) not mislead the ESC or the Board or the Review Board or a member of any of them or a delegate of the ESC;
  - (b) not unreasonably delay or obstruct the ESC, the Board or the Review Board or a member of any of them or a delegate of the ESC in the exercise of powers conferred by this Statute; and
  - (c) attend a mediation, conciliation, neutral evaluation or other dispute resolution meeting arranged by the ESC in relation to a complaint.

#### **Duty to comply with an undertaking or direction**

- 6.
  - (1) The Bishop must –
    - (a) comply with any undertaking given to the Board, the Review Board or the Council of Bishops; and
    - (b) comply with a direction made by the Council of Bishops to give effect to a recommendation of the ESC, the Board or The Review Board (as the case may be) or any permitted variation or modification of that recommendation.
  - (2) Failure of the Bishop to comply with an undertaking or direction is an offence.
  - (3) The ESC may institute proceedings forthwith in the Special Tribunal in respect of an offence against this section or, if the bishop is no longer a Diocesan Bishop, shall refer the matter, together with such relevant information concerning the alleged offence as may be in its possession, to the Archbishop or Bishop of the Diocese in which the former Bishop is then resident.

### **PART 4 – PROTOCOL**

#### **Making and content of protocols**

- 7.
  - (1) The Diocesan Council must from time to time consider and approve a protocol or policy not inconsistent with this Statute for implementation in relation to complaints against the Bishop.
  - (2) The protocol or protocols must include:
    - (a) procedures for receiving a complaint;
    - (b) the appointment, role and function of support persons and carers;
    - (c) provision for informing a complainant and victim of alleged misconduct, and the Bishop, of rights, remedies and relevant procedures available to them;
    - (d) provision for assisting or supporting, as appropriate, any person affected by alleged conduct the subject of a complaint or the Bishop;
    - (e) an explanation of the processes for investigating and dealing with a complaint;
    - (f) provisions for dealing fairly with each party to a complaint;
    - (g) processes for mediation, conciliation and reconciliation, as appropriate, of a complaint or grievance;
    - (h) provisions for information, reports, advice and recommendations to the Primate or the relevant Administrator at each stage of the process of dealing with a complaint;
    - (i) procedures for working, where necessary, with law enforcement, prosecution or child protection authorities of the States and Territories and of the Commonwealth of Australia.

#### **Promoting knowledge and understanding or any protocol**

- 8. The Diocesan Council through the Director and the ESC and by such other means as they may consider appropriate must take steps to make this Statute and any protocols or policies publicly available.

## **PART 5 – EPISCOPAL STANDARDS COMMITTEE**

The Diocese of North West Australia delegates the responsibility of the Episcopal Standards Committee to the Episcopal Standards Committee of the Perth Diocese. The details of its establishment and operation can be found in Schedule 1.

## **PART 6 – DIRECTOR OF EPISCOPAL STANDARDS**

The Diocese of North West Australia delegates the responsibility of the Director of the Episcopal Standards Committee to the Director of the Episcopal Standards Committee of the Perth Diocese. The details of the appointment and functions can be found in Schedule 2.

## **PART 7 – COMPLAINTS**

### **Making a complaint of misconduct**

- 9.
- (1) Any person including the Director may make a complaint of misconduct to the ESC in relation to the Bishop.
  - (2) If the Director receives or makes a complaint against the Bishop, the Director must request the Registrar to, and the Registrar must, constitute the Council of Bishops in accordance with 1 (3), (4) and (5) of this Statute.

### **Form of a complaint**

- 10.
- (1) A complaint may be in any form, oral or in writing, whether by electronic means or otherwise.
  - (2) Where a complaint is oral, the Director must make a written record of the complaint as soon as practicable after receiving it.
  - (3) A complaint must include details of the misconduct complained about.
  - (4) The Director must not make a complaint based only on information provided anonymously.
  - (5) The ESC must not act on an anonymous complaint.
  - (6) Non-compliance with subsection (2) and (3) of this section does not invalidate a complaint.

### **ESC may require more information and verification**

- 11.
- (1) The ESC may require a complainant to -
    - (a) give further details of the complaint; and
    - (b) verify the accuracy of the written record or details of the complaint by statutory declaration.
  - (2) A requirement under subsection (1) must be in writing and allow the complainant a reasonable time to comply.

### **ESC may dismiss a complaint or take no further action**

12. The ESC may dismiss a complaint or take no further action in relation to a complaint if -
- (a) the ESC is of the opinion that the complaint does not fall within the provisions of this Statute; or,
  - (b) the complainant has failed to provide further details to the ESC or to verify the allegations by statutory declaration when requested by the Director to do so; or,
  - (c) the ESC is of the opinion that the complaint is false, vexatious, malicious, misconceived, frivolous or lacking in substance; or,
  - (d) the ESC is of the opinion that there is insufficient reliable evidence to warrant an investigation or further investigation and may take no further action or may delay further action in relation to a complaint if -



- i. the behaviour, the subject matter of the complaint, can properly be dealt with by other means; or,
- ii. the subject matter of the complaint is under investigation by some other competent person or body or is the subject of legal proceedings.

### **ESC must give the complainant notice of the outcome of complaint and reasons**

13. If a complaint is dealt with by the ESC under the preceding section, the ESC must give the complainant a written notice of the outcome including the reasons for the outcome.

## **PART 8 – INVESTIGATIONS**

### **When ESC is to investigate**

- 14.
- (1) Subject to this Statute, the ESC must investigate each complaint as expeditiously as possible.
  - (2) The ESC may investigate the conduct of the Bishop if the ESC has reason to believe that the conduct may amount to misconduct under this Statute; and whether or not a complaint about the conduct has been withdrawn.
  - (3) The Director must 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 to the Bishop;
    - (b) the investigation of the complaint by the ESC or its delegate;
    - (c) the ESC otherwise dealing with it under this Statute;
    - (d) the hearing and determination of the complaint by the Board and on any review, the Review Board, either by hearing or otherwise in accordance with this Statute; and
    - (e) the making of recommendations to the Council of Bishops in accordance with this Statute.
  - (4) If the complainant (other than the Director) has not given the written consent referred to in the preceding subsection –
    - (a) the ESC shall not be required to investigate the complaint or otherwise to refer it to the Board; and
    - (b) the ESC may dismiss the complaint or take no further action in relation to the complaint.

### **ESC to obtain material**

15. For the purpose of an investigation the ESC or its delegate shall obtain such statutory declarations, written statements, recorded conversations, reports, documents and other material as the ESC or its delegate considers necessary or advisable for presentation to the ESC.

### **Bishop to respond to ESC**

16. The ESC may by notice in writing to the Bishop require the Bishop -
- (a) to meet with an investigator to answer questions in relation to a complaint;
  - (b) to provide a detailed report to the ESC within a reasonable time specified in the notice in relation to any matter relevant to the investigation; and
  - (c) to verify the report by statutory declaration or another specified manner.

## **PART 9 – OUTCOMES OF ESC**

### **How ESC may or must respond after receipt of complaint**

17. At any time after the ESC receives a complaint, the ESC may:
- (a) recommend mediation, conciliation, neutral evaluation or other alternative resolution of the complaint;
  - (b) if it considers on reasonable grounds that the Bishop may be incapable, report the matter in writing to the relevant Metropolitan;

- (c) if the Bishop whose conduct is under investigation ceases to be the Diocesan Bishop prior to any reference of the complaint to the Board, refer the complaint, together with such information as it shall have received, to:
    - i. the equivalent body having jurisdiction in the Diocese by whose Bishop the former Bishop is licensed or, where the former Bishop is not licensed, in which the former Bishop resides; or,
    - ii. the Primate, if the Bishop has been appointed Metropolitan or Bishop in another diocese; and
  - (d) exercise its powers under section 12 of this Statute to dismiss a complaint or to take no further action in relation to a complaint.
18. At any time after investigation of a complaint in accordance with Part 11, the ESC:
- (a) must, if required under section 32 of this Statute to do so, refer the complaint to the Board; and
  - (b) may institute, amend or withdraw proceedings by way of charge against the Bishop before the Special Tribunal.

#### **If a complaint is settled or resolved**

- 19.
- (1) The fact that the subject matter of a complaint may be settled or resolved in whole or in part between the parties affected thereby does not prevent the ESC from taking any of the steps referred to in sections 17(b), (c) and (d) and 18 in respect of the subject matter of the complaint.
  - (2) Any term of settlement or resolution referred to in subsection (1) which purports to:
    - (a) prevent or to limit the institution of action; or,
    - (b) purports to dispose of, dispense with or dismiss proceedings, under either of sections 17(b), (c) and (d) and 18, shall be of no effect.
  - (3) The ESC may agree with the Bishop for the submission to the Board or the Review Board of either or both a statement of the facts relevant to the complaint and any recommendation proposed to be made by the Board or the Review Board to the Council of Bishops.
  - (4) The Board or the Review Board may in its discretion proceed on the basis of the statement of agreed facts and determine any recommendation to be made to the Council of Bishops, having regard to but not bound by any proposed recommendation agreed between the ESC and the Bishop.

### **PART 10 – EPISCOPAL STANDARDS BOARD**

The Diocese of North West Australia delegates the responsibility of the Episcopal Standards Board to the Episcopal Standards Board of the Perth Diocese. The details of its establishment and functions can be found in Schedule 3.

### **PART 11 – SUSPENSION**

#### **ESC may refer to Board or recommend suspension**

20. Where after receipt of a complaint or at any time during the progress of a complaint under this Statute, the ESC is satisfied that if the Bishop remains in office pending the outcome of the complaint –
- (a) there is an unacceptable risk of harm to any person; or
  - (b) there will be serious damage to the reputation of the Church the ESC must refer the matter to the Board or, as the urgency of the matter requires, make a recommendation to the Council of Bishops that pending that outcome –
  - (c) the Bishop be suspended from the duties of office or certain of those duties; and
  - (d) such other action be taken as may be thought fit.

#### **Bishop to be given notice**

21. Before making a recommendation pursuant to section 19 or referring the matter to the Board, the ESC must give the Bishop notice that grounds exist for the ESC to be satisfied as stated in section 24 (specifying the

same) and notice of any proposed recommendation and request the Bishop to show cause in writing within 7 days why the recommendation should not be made.

#### **No notice where immediate unacceptable risk**

22. The provisions of the preceding section shall not apply if the ESC is satisfied that there is an immediate unacceptable risk of harm to any person if the Bishop is given notice.

#### **Referral to the Board**

23. Where the ESC is satisfied that there is an immediate unacceptable risk of harm to any person if the Bishop is given notice and makes a recommendation to the Council of Bishops pursuant to section 24 –

- (a) the ESC must forthwith refer the matter to the Board; and
- (b) the Director must as soon as practicable give the Bishop notice that -
  - i. the recommendation has been made without notice and the grounds relied on;
  - ii. the ESC will report the recommendation to the Board at its next meeting (specifying the date) and that the Board will consider whether the recommendation should stand; and
  - iii. the Bishop may advance written submissions to the Board prior to the next meeting if he or she wishes to do so.

#### **ESC or Board to consider Bishop's response**

- 24.
- (1) The ESC or the Board (as the case may be) must consider the response if any from the Bishop received within the time specified above or any further period allowed, before making a decision on the recommendation to be made.
  - (2) The provisions of subsection (1) shall not apply in relation to any recommendation of the ESC to the Council of Bishops under section 21.

#### **Powers of Board if satisfied as to unacceptable risk or serious damage to reputation**

25. If the Board is satisfied that if the Bishop remains in office pending the outcome of the complaint –

- (a) there is an unacceptable risk of harm to any person; or
- (b) there will be serious damage to the reputation of the church,

the Board may after considering the response if any from the Bishop determine accordingly and make a recommendation to the Council of Bishops that pending that outcome action be taken as referred to above in section 24.

Where the ESC has already made a recommendation under section 24, the Board may:

- (c) affirm or vary that recommendation; or
- (d) set aside that recommendation and make another in substitution for it.

#### **Matters to be considered by ESC or Board before recommending**

26. Before making a recommendation under this Part, the ESC or the Board (as the case may be) must take into account:
- (a) the seriousness of any 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) any breach of a duty imposed on the Bishop under this Statute;
  - (e) after consultation with the DNWA Diocesan Council, the effect on the Bishop, and on the Church and its reputation of acting and of not acting under this Part; and
  - (f) any other allegation of similar conduct previously made to the ESC or to an equivalent body and may take into account any other relevant matter.

#### **Suspension by the Council of Bishops**

27.

- (1) The Council of Bishops to whom a recommendation is made under this Part must, and is hereby empowered to give effect to –
  - (a) that recommendation of the ESC or the Board; or
  - (b) any variation or modification of that recommendation, consistent with any facts found by the body making the recommendation provided that the substance of that recommendation is preserved, as the Council of Bishops sees fit.
- (2) Subject to subsection (3), the Council of Bishops 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.
- (3) The Council of Bishops 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.

#### **Decision of the Council of Bishops to be decided by a majority of the votes**

28. A question before the Council of Bishops under this Part may be decided by a majority of the votes of the members of the Council of Bishops.

#### **Criminal charges – notice of suspension by the relevant Metropolitan**

29.
  - (1) If the Bishop is charged in any jurisdiction in Australia with a sexual offence or an offence relating to child pornography whether committed within or outside the Diocese, the Bishop must forthwith stand down from the duties of office pending the determination of the charge.
  - (2) If the Bishop fails to do so, the relevant Metropolitan may serve on the Bishop a notice of suspension signed by the relevant Metropolitan.
  - (3) Upon service of that notice, the Bishop shall be deemed to have been suspended pending the outcome of the hearing of the charge.

#### **Effect and consequences of suspension**

30. A suspension of the Bishop made by the Council of Bishops following a recommendation under this Statute or a suspension deemed under the preceding section:
  - (a) has effect as an absence of the Bishop from the see; and
  - (b) continues until it ceases to have effect by reason of:
    - i. the ESC terminating the investigation of the complaint without referring the matter to the Board; or,
    - ii. a determination to that effect by the Council of Bishops; or,
    - iii. the Council of Bishops giving effect to a recommendation of the Board or such a recommendation as varied or modified by the Council of Bishops under section 80; or
    - iv. the see becoming vacant (whether or not under this Statute) whichever first occurs.

#### **Continuation of stipend, allowances and other benefits**

31. During any such suspension or any voluntary standing down from the duties of office pending the outcome of a complaint, the Bishop is entitled to receive whatever stipend, allowances and other benefits as would otherwise have accrued and they are to be met or reimbursed by the body normally responsible for their payment.

## **PART 12 – REFERENCE OF A COMPLAINT TO THE BOARD**

### **ESC to refer certain matters to the Board**

32. After investigation of a complaint in accordance with Part 9, where the ESC has formed the opinion that the conduct the subject of the complaint if established would call into question whether –
  - (a) the Bishop is unfit –
    - i. to hold office or to be or remain in Holy Orders; or,

- ii. whether temporarily or permanently, to exercise ministry and perform any duty or function of the office; or,
  - (b) in the exercise of ministry or in the performance of any duty or function, the Bishop should be subject to any condition
- the ESC must refer the complaint to the Board.

### **How ESC to refer matters**

- 33.
- (1) The ESC must refer the complaint to the Board by delivering to the Secretary of the Board a written report of its investigation and opinion signed by a member of the ESC.
  - (2) As soon as practicable after delivering the report referred to in section (1)7, the ESC shall cause to be delivered to the Bishop a copy of the report and opinion and notify the Bishop that he may advance any submissions to the Board if he wishes to do so.

### **If Bishop resigns from office**

34. If after a complaint is referred to the Board, the Bishop resigns from office, the Board may continue to enquire into and determine the complaint, notwithstanding such resignation.

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

35. Within 14 days of the date of the reference of a complaint to the Board or as soon as practicable following the receipt of further documents or materials the ESC must cause to be delivered to the Secretary of the Board any documents and material relevant to the reference.
36. The Board must deal with a complaint as expeditiously as possible.

### **Powers of Board**

- 37.
- (1) If the Board is not satisfied that the Bishop committed any misconduct or that the complaint is false, vexatious or misconceived, the Board may determine accordingly and must dismiss the complaint.
  - (2) If the Board is satisfied that the Bishop has committed misconduct, but is not satisfied as to any of the matters in paragraphs (a) and (b) of section 61, the Board may determine accordingly and must take no further action in relation to the complaint.
38. If the Board is satisfied that the Bishop has committed misconduct and that –
- (a) the Bishop is unfit –
    - i. to hold office or to be or remain in Holy Orders; or,
    - ii. whether temporarily or permanently, to exercise ministry and perform any duty or function of the office; or,
  - (b) in the exercise of ministry or in the performance of any duty or function, the Bishop should be subject to any condition

the Board may determine in writing accordingly and may recommend to the Council of Bishops any one or more of the following:

- (a) that the Bishop be counselled;
- (b) that for a specified period the Bishop's holding of office or performance of a function as the case may be, shall be subject to such conditions or restrictions as the Board may specify;
- (c) that the Bishop be suspended from office or from performing a function as the case may be for such period recommended by the Board;
- (d) that the Bishop be directed to do or to refrain from doing a specified act;
- (e) that the Bishop be removed from office and the See be declared vacant;
- (f) that the implementation of a determination shall be suspended for such period and upon such conditions as the Board shall specify;
- (g) that a charge be promoted against the Bishop before the Special Tribunal;

- (h) that the Bishop be prohibited from functioning as a bishop;
- (i) that the Bishop be deposed from Holy Orders; or
- (j) otherwise as the Board sees fit.

39. If the Board is satisfied that the Bishop is unfit –

- (a) to hold office or to be or remain in Holy Orders; or
- (b) whether temporarily or permanently, to exercise ministry and perform any duty or function of the office

its recommendation must include one or more of those recommendations specified in paragraphs 38 (e), (g) and (j).

#### **Board may adjourn on terms**

40.

- (1) The Board may defer making any recommendation under section 43 on a complaint and may for that purpose adjourn any hearing from time to time for a period or periods not exceeding in the aggregate 12 months, on terms that the Bishop undertake for a specified period and in a form approved by the Board to do one or more of the following acts –
  - (a) stand down from the duties of office or from performing specified episcopal duties;
  - (b) undertake counselling from a person approved by the Board;
  - (c) submit to periodic medical examination or testing by a person approved by the Board;
  - (d) undertake a specified program of medical treatment or rehabilitation whether as an outpatient or inpatient;
  - (e) provide medical or other evidence requested by the Board to assist it in deciding on any final recommendation; or
  - (f) perform or refrain from performing some other specified act.
- (2) If, within a period specified by the Board, the Bishop declines to give an undertaking in accordance with subsection (1), the Board must proceed to make a determination and recommendation.
- (3) The Board may take into account the failure of the Bishop to comply with his or her undertaking under subsection (1) in deciding on any recommendation on a complaint.

### **PART 13 – EPISCOPAL STANDARDS REVIEW BOARD**

Though the Diocese of North West Australia delegates the responsibility of the Episcopal Standards Review Board to the Episcopal Standards Review Board of the Perth Diocese it recommends the following for its establishment and operation:

#### **Establishment of the Review Board**

- 41. There shall be an Episcopal Standards Review Board comprising 5 persons with at least one member from each of the three dioceses of the Province of Western Australia and constituted and appointed in accordance with the provisions of this Part.

#### **Function of the Review Board**

- 42. Subject to the provisions of this Statute, the function of the Review Board is to determine any application authorised by this Statute for review of a decision of the Board.

#### **Panel of Review Board Members**

- 43. The members of the Review Board in a particular case shall be appointed from a panel of 14 persons comprising:
  - (a) a President and a Deputy President, both of whom shall be or shall have been either a judicial officer, or a practising barrister or solicitor of at least 10 years' standing of a Supreme Court of a State or Territory; and
  - (b) 12 other persons of whom -

- i. two shall be clergy who are or have been an Archbishop or Bishop;
- ii. four shall be clergy not in bishop's orders with at least one from each diocese in the Province; and
- iii. six shall be lay persons with two from each diocese in the Province.

#### **Appointment of Members of Review Board panel**

- 44.
- (1) The Diocesan Council of the Diocese of North West Australia shall appoint three members of the panel, of whom one shall be clergy and two shall be lay persons meeting when the Bishop is not present.
  - (2) The Diocesan Council of the Diocese of Bunbury shall appoint three members of the panel, of whom one shall be clergy and two shall be lay persons meeting when the Bishop is not present.
  - (3) The remaining members of the panel shall be appointed by the Perth Diocesan Council, meeting when the Archbishop of Perth is not present.
  - (4) The members of the panel shall hold office on such terms and conditions as may be determined from time to time by the Perth Diocesan Council, meeting when the Archbishop of Perth is not present.
  - (5) The members of the panel may constitute or include the members of an equivalent body either generally or for a particular complaint or matter.
  - (6) Any vacancy in the membership of the panel shall be filled by the Perth Diocesan Council, meeting when the Archbishop of Perth is not present.

#### **Convening a Review Board**

- 45.
- (1) The members of the Review Board to be convened for any review of a decision of the Board shall be determined by the President or, if there is a vacancy in the office of President, by the Deputy President.
  - (2) For the purpose of any application to the Review Board, the Review Board shall consist of the President or Deputy President, who shall be the presiding member, one clergy person in bishop's orders, one clergy person not in bishop's orders and two lay persons.
  - (3) So far as it is reasonably practicable, the Review Board shall include at least one man and at least one woman.
  - (4) The quorum for a meeting of the Review Board shall be all the members of the Review Board except where the Review Board by its President or Deputy President makes directions under section 66 of this Statute.
  - (5) A member of the Review Board shall not act as such a member unless the member has agreed in writing to abide by this Statute.

#### **Secretary to the Review Board**

46. There shall be a Secretary to the Review Board who shall be appointed on such terms and conditions as may be determined from time to time by the President of the Review Board. The Secretary shall not be a member of the Review Board.

#### **Separately constituted Review Boards may sit simultaneously**

47. The Review Board, separately constituted in accordance with this Part, may act simultaneously for the purpose of applications made to it.

#### **Review Board's proceedings valid despite vacancies etc.**

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

## **PART 14 – APPLICATION FOR REVIEW**

### **Interpretation**

49. In this Part, “reviewable decision” means any finding of fact, determination or recommendation by the Board under section 38 of this Statute.

### **Application to Review Board**

50. Where the Board has made any reviewable decision, the Bishop or the ESC may within 30 days from the date of the decision or such further period as the Review Board may allow, apply to the Review Board for review of the decision.

### **Stay**

51. Except in so far as the Board or the Review Board may direct otherwise, the application for review shall not operate as a stay of the action on any recommendation by the Council of Bishops required under this Statute.

### **Documents and material to be delivered following application**

52. Within 14 days of the date of the application to the Review Board or as soon as practicable following the receipt of further documents or materials the ESC shall cause to be delivered to the Secretary of the Review Board any documents and material relevant to the application for review including the reasons of the Board for its determination and any recommendations.

### **President to determine membership of Review Board**

53. Upon delivery to the Secretary of the Review Board the documents and material relevant to the application for review, the President or Deputy President of the Review Board as the case may be shall as soon as possible determine the membership of the Review Board for the purpose of the application for review.

### **Review Board may exercise the powers of the Board**

54. The Review Board may exercise all the powers of the Board under this Statute and may -
- (a) affirm the decision under review;
  - (b) vary the decision under review;
  - (c) set aside the decision under review and make another decision in substitution for it; or,
  - (d) set aside the decision under review and remit the matter for reconsideration by the Board in accordance with any directions or recommendations of the Review Board.

### **Review Board to deal with application expeditiously**

55. The Review Board must deal with the application as expeditiously as possible and must consider any further written submissions from the Bishop or the ESC.

## **PART 15 – PROCEEDINGS OF THE BOARD AND THE REVIEW BOARD**

### **Conduct of proceedings**

56. Each of the Board and the Review Board -
- (a) must act with fairness and according to equity, good conscience, natural justice and the substantial merits of the case without regard to technicalities or legal form; and
  - (b) is not bound by the rules of evidence, but may inform itself on any matter in such manner as it thinks fit.

### **Powers and duties of the Board and Review Board**

- 57.
- (1) Subject to this Statute, each of the Board and the Review Board –
    - (a) may the proceedings of its meetings as it sees fit;
    - (b) regulate may conduct its business and any proceedings by video link, conference telephone or by any electronic means of communication;



- (c) may inform itself from the transcript or other record of proceedings in any court or tribunal and may adopt any findings, and accept as its own, the record of any court or tribunal;
  - (d) may give any other person to whom notice of the proceedings was given or who satisfies them that he or she has a proper interest in the matter a reasonable opportunity to make written submissions to them; and
  - (e) must give written reasons for any determination and recommendation, other than by way of directions in the course of an application, unless the determination is made by consent of the Bishop and the ESC.
- (2) The Board must give the ESC and the Bishop a reasonable opportunity to adduce evidence, to examine or cross-examine witnesses and to make submissions to the Board.

58.

- (1) Subject to subsections (2) and (3), any hearing of the Board or the Review Board must be held in private with attendance only by -
- (a) the members of the Board or the Review Board (as the case may be);
  - (b) the Secretary of the Board or the Review Board and any person providing transcription services;
  - (c) the Director and any member of the ESC and any person representing any of them;
  - (d) the Bishop and any person representing the Bishop;
  - (e) the complainant;
  - (f) a person whom the complainant wishes to have present for the purpose of providing emotional support to him or her, who is reasonably available and who is approved by the Board or the Review Board to be present;
  - (g) any witness while giving evidence; and
  - (h) any other person to whom notice of the proceedings was given or who satisfies the Board that he or she has a proper interest in the matter.
- (2) Each of the Board and the Review Board may direct –
- (a) that the whole or part of a proceeding be held in public; or
  - (b) that any other persons or classes of persons specified by it may be present during the whole or any part of a proceeding.
- (3) Each of the Board and the Review Board may only make a direction under the preceding subsection if satisfied that the direction is in the public interest in the proper administration of justice.

#### **Review Board not obliged to hold hearing or admit certain evidence**

59. Subject to this Statute, the Review Board is not obliged –

- (a) to hold 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 Board in relation to the facts relevant to the complaint unless –
  - i. the evidence could not have been obtained with reasonable diligence for use at the hearing before the Board; and
  - ii. that there is a high probability that the result would have been different had it been received at that hearing.

#### **Legal representation**

60. The ESC, and the Bishop at his or her own expense, may appoint a legal representative to assist in the process.

## **Directions**

61. Each of the Board and the Review Board may at any time and from time to time give directions:
- (a) as to the inspection by and supply of copies to the Bishop or any other person of the documents or material relevant to the reference; and
  - (b) as to the conduct of its inquiry into the reference,
- and for that purpose, the Board or the Review Board may be constituted by the President or Deputy President alone.

## **Board and Review Board may appoint a person to assist**

62. Each of the Board and the Review Board may, for the purpose of any particular reference, appoint such person or persons, to assist it in inquiring into (but not determining) a reference as the Board or the Review Board thinks fit.

## **Directions to ESC**

63. Each of the Board and the Review Board may at any time and from time to time give directions to the ESC as to any further inquiries or investigation it requires to be carried out for the purposes of the reference and the ESC must to the best of its ability cause such directions to be carried out.

## **Board and Review Board may receive written evidence**

64. Without limiting the meaning or effect of sections 56 & 57, each of the Board and the Review Board may receive a statutory declaration or a signed statement without the need for the personal attendance of the maker of the statutory declaration or statement and may also in its discretion use electronic means such as video link or conference telephone to receive evidence and submissions.

## **Board and Review Board may rely on decisions of other bodies**

65. In any proceedings before it, where the Board or the Review Board is satisfied that the Bishop -
- (a) has been convicted by a court within Australia of an offence involving conduct as described in any of paragraphs (a) to (i), (l), (p) or (q) of subsection 1(7) of this Statute ("specified conduct");
  - (b) has been found guilty (without conviction) by a court within Australia of an offence involving specified conduct;
  - (c) has admitted in proceedings before a court or tribunal within Australia having engaged in specified conduct;
  - (d) has been found by a court or tribunal within Australia to have engaged in specified conduct; or
  - (e) has been disqualified by a court or tribunal within Australia from professional practice on account of specified conduct, then —
  - (f) a certificate, reasons for judgement or other record from the court or tribunal (as the case may be) shall be conclusive evidence that the Bishop engaged in the specified conduct; and
  - (g) neither the Bishop nor any other party shall be at liberty to call or give evidence or make submissions for the purpose of calling into question the conviction or finding of guilt of the Bishop or denying that the Bishop engaged in the specified conduct.

## **Standard of proof applying to Board and Review Board**

- 66.
- (1) The standard of proof to establish an allegation is that of a reasonable satisfaction on the balance of probabilities.
  - (2) Each of the Board and the Review Board must scrutinise 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.

## **Individual members of Board and Review Board not to meet or communicate with parties**

67. No member of the Board or the Review Board shall individually meet or communicate with either the complainant the Bishop or anyone acting on their behalf while the matter is in progress.

## **Disqualification where personal interest**

- 68.

- (1) Where a member of the Board or the Review Board has or develops a personal interest in a matter before it, the member shall be disqualified from participating in the matter.
- (2) The opinion of the presiding member of the Board or the Review Board (as the case may be) as to whether any other member of the Board or the Review Board has at the time a personal interest in a matter shall be conclusive.

### **Medical Examination**

69.

- (1) The ESC or the Board or the Review Board may request the Bishop to submit within a specified time to a medical examination or testing by a person or service provider approved by the ESC or the Board or the Review Board (as the case may be) the cost of which shall be met from church funds under the control of the Diocesan Council.
- (2) A copy of the report of an examination or tests under subsection (1) shall be provided to the Bishop, the Director, the ESC, the Board and, if applicable, the Review Board.

### **No further action where special tribunal unlikely to find Archbishop guilty**

70. If the Board or the Review Board is satisfied that there is no reasonable likelihood that the Special Tribunal would find the Bishop guilty of any offence, the Board or the Review Board shall not recommend that a charge be promoted against the Bishop in the Special Tribunal.

### **Certain matters not to be inquired into**

71. Neither the Board nor the Review Board shall, in the course of considering a complaint or reconsidering a decision respectively:
- (a) inquire into any matter which is the subject of any completed formal investigation or enquiry and determination conducted -
    - i. pursuant to any provision of the Constitution; or,
    - ii. pursuant to this Statute, a canon or a Statute of a diocesan Synod in any case relating to the discipline or professional standards of Church workers by a board of enquiry, tribunal or other body — save to the extent of any fresh evidence that was not reasonably available during the previous formal investigation or enquiry, but may take into account the finding of any such formal investigation or enquiry; or,
  - (b) inquire into, make any findings in relation to or take into account any alleged breach of faith ritual or ceremonial or excluded conduct.

### **Matters Board and Review Board to consider**

72. Where a matter is referred to the Board or application for review is made to the Review Board, the Board or Review Board (as the case may be) shall consider the complaint or decision and may make any finding on any relevant question of fact, taking into account —
- (a) the final report (if any) of the investigator including any attachments;
  - (b) such report of the ESC as may be submitted;
  - (c) any further material received from the complainant and the Bishop relevant to its consideration;
  - (d) any other relevant evidentiary material;
  - (e) any standards prescribed by the code of conduct approved under this Statute, whenever the conduct may have occurred;
  - (f) the conduct of the Bishop as it finds it to have been;
  - (g) any failure of the Bishop to comply with a provision of this Statute; and
  - (h) in the case of the Review Board, the determination and reasons of the Board.

### **No costs to be awarded**

73. Neither the Board nor the Review Board has the power to award costs of any complaint or matter before it.

### **Making of rules**

74.

- (1) The President of the Board may make rules of the Board reasonably required in relation to the practice and procedure of the Board.
  - (2) The President of the Review Board may make rules of the Review Board reasonably required in relation to the practice and procedure of the Review Board.
  - (3) The ESC, the Bishop and any other party joined to a complaint or matter by leave of the Board or the Review Board shall comply with the rules of the Board or the Review Board (as the case may be) and with any directions given by either the Board or the Review Board.
75. The rules of the Board or the Review Board made under this Part may provide that, in relation to the exercise of specified functions, or in relation to matters of a specified class, other than the determination of an application including the making of a recommendation, the Board or the Review Board (as the case may be) may, at the direction of the presiding member, be constituted by a single member sitting alone.

### **Practice and procedure**

76. Subject to this Statute and the relevant rules-
- (a) the practice and procedure of the Board will be as directed by the presiding member of the Board; and
  - (b) the practice and procedure of the Review Board will be as directed by the presiding member of the Review Board.
- 77.
- (1) In any proceedings of the Board or the Review Board:
    - (a) any question of law or procedure shall be determined by the presiding member; and
    - (b) 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 shall prevail.
  - (2) Where the Board or the Review Board is constituted by a member sitting alone who is not the President or the Deputy President, any question of law that arises must be referred to the President or Deputy President for decision and any decision made on such a reference is a decision of the Board or the Review Board (as the case may be).
78. If a member of the Board or the Review Board, other than the presiding member, dies or is for any other reason unable to continue with any complaint referred to the Board or any matter before the Review Board, the Board or the Review Board constituted by the presiding member and the other member or members may, if the presiding member so determines, continue and complete the matter.

### **To whom a copy of the determination and recommendation to be provided**

- 79.
- (1) Subject to this section, each of the Board and the Review Board must cause a copy of the determination and recommendations together with reasons (whether under section 25, 38 or 53) to be provided to –
    - (a) the Council of Bishops;
    - (b) the complainant;
    - (c) the Bishop;
    - (d) the Director and the ESC;
    - (e) the DNWA Diocesan Council; and
    - (f) the Professional Standards Commission of the Anglican Church of Australia;
 and must cause any required relevant details to be forwarded for entry onto the national register.
  - (2) Each of the Board and the Review Board must ensure that the determination and recommendations together with reasons are anonymised and redacted so as not to contain any particulars that identify or are likely to lead to the identification of a prescribed person.
  - (3) Each of the Board and the Review Board must release to the public as soon as practicable –
    - (a) its determination and reasons for decision; and

- (b) the recommendations made to the Council of Bishops anonymised and redacted as referred to above.
- (4) If to be effective, a recommendation must identify a prescribed person, the Board or the Review Board may communicate confidentially the name of that person to the Council of Bishops.

## **PART 16 – THE COUNCIL OF BISHOPS**

### **Council of Bishops must give effect**

80. Subject to section 51 of this Statute, the Council of Bishops to whom a recommendation under section 38 or 54 of this Statute must, and is hereby empowered to give effect to –
- (a) the recommendation of the Board or if applicable, the Review Board; or,
  - (b) any variation or modification of that recommendation, consistent with any facts found by the body making the recommendation provided that the substance of that recommendation is preserved, as the Council of Bishops sees fit.

### **Decision by majority of votes**

81. A question before the Council of Bishops may be decided by a majority of the votes of the members of the Council of Bishops.

### **Publication of decision of the Council of Bishops**

- 82.
- (1) Subject to subsection (2), the Council of Bishops –
    - (a) may release to the public as soon as practicable a written statement disclosing its decision on any recommendation received and the steps to be taken or that have been taken pursuant to section 80 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 Bishop or any action taken against the Bishop.
  - (2) The Council of Bishops 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.
  - (3) The Council of Bishops must cause any required relevant details of a variation or modification to a recommendation made to it to be forwarded for entry onto the national register.

## **PART 17 – CONFIDENTIALITY AND REPORTING**

### **Duty of confidentiality**

83. Subject to the provisions of this Statute, the Director, a member of the ESC, a member of the Board or the Review Board or of a Council of Bishops or a person employed or engaged on work related to the affairs of the ESC, the Board or the Review 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, including for the purposes of obtaining legal advice;
  - (b) as may be authorised by or under this Statute or any protocol;
  - (c) as may be authorised or required by or under 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, the Special Tribunal or the Appellate Tribunal;
  - (e) as may be required by law; or,
  - (f) to any insurer or insurance broker of a Church body or Council of Bishops where the information may give rise to or be relevant to a claim for indemnity by the Church body or Council of Bishops against the insurer or is relevant to obtaining or continuing insurance cover.

## **Duty of disclosure to other church bodies**

84.

- (1) The ESC must disclose to an equivalent body information in its possession concerning alleged misconduct of a former Bishop:
  - (a) which is information relevant to, or coming to notice during the course of an investigation undertaken by the equivalent body of the Diocese to whom the former Bishop has been appointed Metropolitan or bishop, or by whose Bishop the former Bishop is licensed or in which the former Bishop is residing; or,
  - (b) which is information concerning misconduct alleged to have occurred in the diocese of the equivalent body —and must co-operate with the equivalent body.
- (2) The ESC may disclose to a person or body of another church or Christian denomination exercising powers, duties or functions similar to those of the ESC, in relation to clergy, details of information in its possession concerning the alleged misconduct of a former Bishop and the ESC must co-operate with such person or body to whom the information is disclosed.

## **ESC to report annually to Diocesan Council**

85.

- (1) The ESC must report annually to each Diocesan Council on its activities for that calendar year.
- (2) The report of the ESC pursuant to the preceding subsection may identify the Bishop as the Bishop who has been exonerated from an allegation the subject of a complaint or who has been the subject of a determination or recommendation by the Board or the Review Board, favourable to the Bishop.

## **ESC to report to Primate or Senior Metropolitan**

86.

- (1) Subject to subsection (2), the ESC must, in respect of every complaint with which it is dealing under this Statute, report either orally or in writing to the Primate with such frequency and as fully as the Primate may reasonably require.
- (2) If the matter relates to the conduct of the Archbishop who is the Primate, such reports must be made to and at the direction of the senior Metropolitan at the time in Australia who is not the Primate.

## **PART 18 – INDEMNITY**

### **Indemnification of those with functions under the Act**

87. The Perth Diocesan Trustees may indemnify and is hereby authorised, with the approval of the Perth Diocesan Council, out of church funds under the control of the Perth Diocesan Council, to indemnify –
- (a) the Director and any delegate of the Director;
  - (b) any carer appointed under this Statute or any protocol;
  - (c) the members of the ESC and each of them;
  - (d) any delegate of the ESC;
  - (e) the members of the Board and each of them;
  - (f) the Secretary to the Board;
  - (g) any person appointed by the Board pursuant to this Statute;
  - (h) the members of the Review Board and each of them;
  - (i) the Secretary to the Review Board;
  - (j) any person appointed by the Review Board pursuant to this Statute; and
  - (k) the members of the Council of Bishops and each of them —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 Statute in relation to the Archbishop or Bishop.

## **PART 19 – REGULATIONS**

### **Making, amending or repealing Regulations**

88. It is intended that this Statute, as far as practicable, be Provincial in nature, providing common legislative effect across the three dioceses of the Province of Western Australia. Each Diocesan Council may, from time to time make amend or repeal protocols and other regulations, provided that all proposed changes have been advised to the Diocesan Councils of the two fellow Provincial dioceses, and provided that such changes are not inconsistent with the provisions of this statute, providing for records arising out of or incidental to the operation of this Statute, and for all or any of the purposes whether general or to meet particular cases, which may be convenient for the administration of this Statute or which may be necessary or expedient to carry out the objects and purposes of this Statute.

## **Chapter 3 – Regulations & Related Legislation**

### **REGULATIONS**

#### **Regulation making power**

The Diocesan Council may from time to time make, amend or repeal regulations (e.g. policies and procedures) not inconsistent with the provisions of this Statute providing for records arising out of or incidental to the operation of this Statute and for all or any of the purposes, whether general or to meet particular cases, which may be convenient for the administration of this Ordinance or which may be necessary or expedient to carry out the overriding purposes of this Statute.

## **Chapter 4 – General**

### **REPEAL**

The Adoption Statute is repealed in so far as it adopts the *Episcopal Standards Canon 2007* and the *Episcopal Standards Canon 2007* is hereby excluded.

Such repeal and exclusion does not invalidate any act taken under the *Episcopal Standards Canon 2007* prior to the date of this Statute.

### **RESPONSIBILITIES**

#### **Review**

The Diocesan Council will review the operation of this Statute on or before six years after its commencement.

#### **Records management**

The Registry maintains all records relevant to administering this Statute using its recordkeeping system.

## CERTIFICATIONS AND ASSENT

I Certify that the Statute as printed is in accordance with the Statute as reported.

P GRICE  
Chair of Committees

I Certify that this Statute was passed by the Synod of the Diocese of North West Australia on 01/10/2016.

K HARRIS  
Registrar

I Assent to this Statute.

G NELSON  
Bishop  
01/10/2016



## SCHEDULE 1 (Part 6)

### Establishment of ESC

1.
  - (1) there shall be an Episcopal Standards Committee constituted in accordance with the provisions of this Part.
  - (2) The members of the ESC including its chair shall be appointed by the Perth Diocesan Council, meeting when the Archbishop of Perth is not present.
  - (3) The members of the ESC shall hold office on such terms and conditions as may be determined from time to time by the Perth Diocesan Council, meeting when the Archbishop of Perth is not present.
  - (4) The ESC shall have at least three (3) members including the chair, any of whom may reside outside the Perth Diocese.
  - (5) The membership of the ESC shall be constituted, so far as reasonably possible, so as collectively to provide experience and appropriate professional qualifications in:
    - (a) Law;
    - (b) Episcopal ministry; and
    - (c) Human resources, pastoral ministry, investigations, social work, ethics or counselling.
  - (6) The ESC shall –
    - (a) Include at least one person who is not a member of the Anglican Church of Australia;
    - (b) So far as it is reasonably practicable have at least one man and at least one woman; and
    - (c) Not include a person who is an Archbishop or a clergy person holding a licence or other authority from the Archbishop of Perth.
  - (7) The members of the ESC may constitute or include the members of an equivalent body either generally or for a particular complaint or matter.
  - (8) A member of the ESC must not act in a matter unless the member has agreed in writing to abide by this Statute.

### Conduct of business

2.
  - (1) The ESC 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.
  - (2) The chair must convene a meeting of the ESC at the request of the Director.
  - (3) The procedures of the ESC shall be as determined by the ESC.
  - (4) A majority of the members shall constitute a quorum.
  - (5) A decision taken other than at a meeting of the ESC, if supported by a majority of members of the ESC, constitutes a decision of the ESC.
  - (6) The ESC must act in all things as expeditiously as possible.

### Validity of proceedings

3. An act or proceeding of the ESC is not invalid by reason only 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.

### Functions of the ESC

4. The Esc has the following functions:
  - (a) To implement a protocol;
  - (b) To receive a complaint against the Archbishop of Perth or Bishop of the DNWA;
  - (c) To act on a complaint in accordance with the provisions of this Statute and any protocol and to obtain independent legal advice for that purpose;

- (d) To appoint suitable persons to fulfil the several roles required to implement a protocol in each particular case;
- (e) Where appropriate, to recommend the conciliation, mediation or other dispute resolution of any complaint;
- (f) To investigate or cause to be investigated a complaint in a timely and appropriate manner;
- (g) Where appropriate, to recommend to the Diocesan Council any changes to a protocol and any other changes to Church processes, structures and education programmes that would reduce the risk of misconduct;
- (h) Subject to any limit imposed by the Diocesan Council to authorise such expenditure as many be necessary or appropriate to implement, in a particular case, a protocol and the provisions of this Statute;
- (i) To advise any relevant Church body as to the financial, pastoral or other needs of a person affected by conduct the subject of a complaint and in connection with any legal proceedings, anticipated or existing, against such Church body arising out of that alleged conduct;
- (j) To refer any information in its possession to a law enforcement, prosecution or child protection authority of a State or Territory or of the Commonwealth of Australia for which the information is or may be relevant;
- (k) To maintain proper records of all complaints received and of action taken in relation to each of them; and
- (l) To exercise such other powers and functions as are conferred on it by this or any other Statute or by a protocol.

#### **Power of the ESC to delegate**

5.

- (1) Subject to subsection (2), the ESC may delegate, upon such terms and conditions as the ESC may approve, any of its functions under this Statute to any person.
- (2) The ESC cannot delegate:
  - (a) Its functions under subsection (1);
  - (b) Its functions under paragraphs (e) and (g) of section 4;
  - (c) Its functions under Part 11 (suspension); or
  - (d) Its functions under sections 32 and 33
- (3) A delegation under this section must be made by instrument in writing signed by a member of the ESC.

## SCHEDULE 2 (PART 7)

### Appointment of the Director

1.
  - (1) There shall be a Director of Episcopal Standards.
  - (2) The Director shall be appointed by the Perth Diocesan Council meeting when the Archbishop of Perth is not present.
  - (3) The Director shall hold office on such terms and conditions as may be determined from time to time by the Perth Diocesan Council meeting when the Archbishop of Perth is not present.
  - (4) The Director may act in a corresponding capacity as a Director of Episcopal Standards for another diocese either generally or for a particular case or matter.

### Functions of the Director

2.
  - (1) The Director shall have the following functions under this Statute:
    - (a) to receive any complaint on behalf of the ESC;
    - (b) in his or her discretion to make a complaint against the Archbishop of Perth or Bishop of DNWA;
    - (c) to manage the implementation of the protocol in respect of any complaint or grievance;
    - (d) to be the executive officer of the ESC;
    - (e) to attend meetings of the ESC except for any part of a meeting which deals with conditions of employment, remuneration or performance of the Director;
    - (f) to provide advice about the code of conduct, the protocol and procedures under this Statute;
    - (g) to provide or arrange care or treatment of the complainant and Archbishop of Perth or Bishop of DNWA;
    - (h) to provide input into education and vocational training programs for the Archbishop of Perth and Bishop of DNWA;
    - (i) to provide information to complainants and the Archbishop of Perth or Bishop of DNWA about the operation of the protocol, with particular emphasis on helping the Archbishop of Perth or Bishop of DNWA to understand and discharge his responsibilities under the protocol;
    - (j) to keep proper records of complaints, decisions, meetings, employment screening details, police checks and people affected by any allegation of misconduct;
    - (k) to consult and co-operate with other persons and bodies in the Church with responsibility for professional standards;
    - (l) in cases of alleged illegal behaviour, to support the complainant in making a report to police or child protection authorities.
    - (m) To report to the ESC on any recommended changes to the protocol and any other changes to Church processes, structures and education programmes that would reduce the risk of misconduct; and
    - (n) Such specific functions and duties, consistent with this Statute, as may be determined from time to time by the ESC.
  - (2) The Director must act in all things as expeditiously as possible.

## **SCHEDULE 3 (PART 11)**

### **Establishment of the Board**

1. There shall be an Episcopal Standards Board comprising three (3) persons and constituted and appointed in accordance with the provisions of this Part.

### **Functions of the Board**

2. Subject to the provisions of this Statute, the functions of the Board are –
  - (a) to make a determination and where appropriate make a recommendation under section 25 of this Statute;
  - (b) to enquire into and determine a complaint referred to it under section 35; and
  - (c) to make a determination and where appropriate make a recommendation under section 38.

### **Board appointed from a panel**

3.
  - (1) The members of the Board in a particular case shall be appointed from an independent panel of at least six (6) persons who are members of the Anglican Church of Australia comprising:
    - (a) a President and a Deputy President, both of whom shall be or shall have been either a judicial officer, or a practising barrister or solicitor of at least 10 years; standing of a Supreme Court of a State or Territory; and
    - (b) at least four (4) other persons of whom at least –
      - i. two shall be clergy who are or have been an Archbishop (or Bishop); and
      - ii. two (2) shall be lay persons who are members of the Anglican Church of Australia.
  - (2) As far as reasonably practicable the members of the panel should comprise an equal number of men and women.

### **Appointment of members of the panel**

4.
  - (1) The members of the panel shall be appointed by the Perth Diocesan Council, meeting when the Archbishop of Perth is not present.
  - (2) The members of the panel shall hold office on such terms and conditions as may be determined from time to time by the Perth Diocesan Council, meeting when the Archbishop of Perth is not present.
  - (3) Any vacancy in the membership of the panel shall be filled by the Perth Diocesan Council, meeting when the Archbishop of Perth is not present.

### **Appointment of members of the Board**

5.
  - (1) The members of the Board to be convened for a complaint referred to the Board shall be determined by the President or, if there is a vacancy in the office of President, by the Deputy President.
  - (2) For the purpose of any reference to the Board, the Board shall consist of –
    - (a) the President or Deputy President, who shall be the presiding member;
    - (b) one (1) person who is or has been an Archbishop (or Bishop); and
    - (c) one (1) lay person.
  - (3) The Board must so far as reasonably practicable have at least one (1) man and at least one (1) woman.
  - (4) A member of the Board may reside outside the Perth Diocese.
  - (5) A member of the Board must not act in a matter unless the member has agreed in writing to abide by this Statute.
  - (6) The members of the Board may constitute or include the members of an equivalent body either generally or for a particular complaint or matter.

### **Quorum of Board**

6. The quorum for a meeting of the Board shall be all the members of the Board except where the Board by its presiding member makes directions under section 61 of this Statute.

### **Secretary to the Board**

7. There shall be a Secretary to the Board who shall be appointed by the President of the Board on such terms and conditions as may be determined from time to time by the President of the Board. The Secretary shall not be a member of the Board.

### **Filling vacancies on the Board**

8.
  - (1) Any vacancy in the membership of the Board shall be filled by the President of the Board, or if the President is not available, the Deputy President of the Board.
  - (2) Where a member of the Board is unable to enquire into and determine a complaint, a substitute member may be appointed by the President of the Board, or if the President is not available, the Deputy President of the Board.

### **Validity of proceedings**

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