

**PROFESSIONAL STANDARDS ORDINANCE 2004
AMENDING ORDINANCE 2017
Ordinance No. 7 of 2017**

An Ordinance to make various amendments to the Professional Standards Ordinance 2004.

PREAMBLE

Whereas provisions for matters involving professional standards and fitness for office or duty are contained in the Professional Standards Ordinance 2004; and

Whereas it is desirable to have the Ordinance amended in various respects including introduction of a mechanism for the review of decisions of the Professional Standards Board;

Therefore, the Bishop, Clergy and Laity of the Diocese of Grafton, assembled as the Synod, decree and enact as follows:

AMENDMENTS

Scope of the Ordinance

1. In clause 2 amend the definition of "process failure" by deleting the words "prior to this Ordinance coming into effect".

The Professional Standards Director and Professional Standards Committee

2. In sub-clause 10 (1) delete the words "one of whom is the Director".
3. Replace sub-clause 11 (1) with "The Chair of the PSC will be appointed by or in the manner determined by the Bishop-in-Council."
4. In sub-clause 11 (2) replace the word "Director" with "Chair".
5. Replace clause 13 with "The Synod indemnifies any member or delegate of the PSC and the Director for any act or omission by the member or delegate or the Director or by the PSC 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 Ordinance."
6. In clause 15 insert the words "the Director," immediately following the words "Subject to the provisions of this Ordinance,".
7. Replace clause 22 with the following:

"The Director shall have the following functions:

 - (a) to receive information on behalf of the PSC;
 - (b) to manage the implementation of the protocol in respect of any information;
 - (c) to be the executive officer of the PSC;
 - (d) to attend meetings of the PSC except for any part of a meeting which deals with conditions of employment, remuneration or performance of the Director;
 - (e) such other functions and duties as may be prescribed by this or any other Ordinance of the Diocese or by a Canon of the Anglican Church of Australia or as may be determined by the Bishop-in-Council or the PSC."
8. In sub-clause 24 (1) insert the words "the Director or" immediately following "... refer any information in his her or its possession or knowledge to".

9. Insert a new clause 54A as follows:

“Where, after investigation in accordance with section 25 or under a corresponding provision of a Canon or Ordinance of another diocese, the PSC or an equivalent body forms the opinion that the allegations the subject of the information are false, vexatious or misconceived, then the PSC or equivalent body shall cause a copy of the opinion to be provided:

- (a) to the relevant Church authority; and
- (b) to the respondent; and
- (c) to the Director.”

The Professional Standards Board

10. Replace clause 39 with the following:

“The members of the Board in a particular case shall be appointed from a panel comprising:

- (a) a President and a Deputy President, both of whom shall be qualified as per section 39 A.
- (b) four members of the clergy of at least five years’ standing; and
- (c) four lay persons who may or may not be members of the Church such that at least two of whom are certified by the PSC as having professional experience, training or skills relating to sexual harassment or assault or sexually inappropriate behaviour.”

11. Insert a new clause 39A as follows:

“The President and Deputy President appointed under 39(a) shall be or have been a Justice of the High Court of Australia, a Justice of the Supreme Court of a State or Territory of Australia, or a Judge or Justice of any of the Federal Court of Australia, the Family Court of Australia, The Family Court of Western Australia, or the District Court or County Court of any State of Australia, or be or have been a practising barrister or solicitor of at least ten years’ standing of the Supreme Court of a State or Territory.”

12. Amend sub-clause 69 (l) by adding the following at the end of the existing words “including but not limited to participation in conciliation or mediation; an apology; an admonition; retraining of a specific nature and or reparation of a specific nature.”

13. Insert a new clause 69A as follows:

“If, after investigating the question or questions referred to it about a Church worker arising out of alleged conduct within paragraph (a) of the definition of “information”, the Board:

- (a) determines that the allegations the subject of the information are false, vexatious or misconceived; or
- (b) finds that it is more likely than not that the subject matter of the information did not occur;

then the Board shall cause a copy of the determination or finding to be provided:

- (i) to the relevant Church authority; and
- (ii) to the respondent; and
- (iii) to the Director.”

14. Amend clause 70 by inserting the words “to the Director” immediately following “shall cause relevant details to be forwarded”.

15. Amend clause 74 by inserting the words “to the Director” immediately following “shall cause relevant details to be forwarded”.

Review Mechanism

16. Immediately following clause 74, insert a new Part of the Ordinance as follows:

“PART 8A—REVIEW

74A. In this Part, unless the context otherwise requires:

“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 or suspending the capacity of the respondent to gain income as a Church worker;

“Reviewer” means a barrister of not less than 5 years standing appointed by the Registrar on the recommendation of the President of the Bar Association of New South Wales, or if the President is unwilling to make a recommendation, or unreasonably delayed doing so, recommended by the Chancellor or the Metropolitan’s Chancellor.

74B. A respondent who is aggrieved by a reviewable decision may apply to the Registrar for a review of the decision.

74C. The application may be made on any one or more of the following grounds:

- (a) that a breach of the rules of natural justice happened in relation to the making of the reviewable decision which materially affected the decision;
- (b) that procedures that were required by this Ordinance to be observed in relation to the making of the reviewable decision were not observed, and the non-observance materially affected the decision; or

- (c) that the Board did not have jurisdiction to make the reviewable decision; or
 - (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.
- 74D. For a reviewable decision, a Church authority shall not act under the provisions of section 71 until the time for lodging an application for review has passed, and no application has been lodged.
- 74E. The making of an application for review acts as a stay of the reviewable decision pending the determination by the Reviewer.
- 74F. Nothing in this Part, however, 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 Ordinance.
- 74G. For a reviewable decision, the Board shall not cause the relevant details to be forwarded for entry into the national register under section 70 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 heard and determined, the determination has been made.
- 74H. If a determination on review confirms or varies a reviewable decision, then the Board must cause the details of the confirmed or varied decision to be forwarded to the Director for entry into the national register as soon as it receives the Reviewer's determination.
- 74I. If a Reviewer's determination refers a matter back to the Board, then the Board must:
- (a) determine to take no further action in respect of the matter; or
 - (b) deal with the matter in accordance with Part 8 of this Ordinance, in accordance with such directions or recommendation as the Reviewer may make in the Reviewer's determination; or
 - (c) deal with the matter in accordance with Part 8 of this Ordinance applying such of the provisions of Part 8 as, in the discretion of the Board and in accordance with the Reviewer's determination, the Board sees fit.
- 74J. (1) An application to the Registrar for review of the reviewable decision must be made within 14 days of the respondent being provided with a copy of the Board's determination and recommendation under clause 70.
- (2) The application for review must:
- (a) be in writing addressed to the Registrar; and
 - (b) set out the grounds for review in the application.
- 74K. On receipt of an application for review, the Registrar must immediately seek the appointment of a Reviewer.
- 74L. (1) Upon appointment of a Reviewer, the Registrar 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.

- (2) Upon receipt of advice as to the estimated fee, the Registrar must immediately notify the respondent.
 - (3) Within 7 days of receipt of the Registrar's advice, the respondent must pay one-half of the estimated fee to the Reviewer, or to a person nominated by the Reviewer.
 - (4) If the respondent fails to make the payment, then the application for review will lapse.
- 74M. Unless otherwise specified in this Ordinance, the manner in which the review is to be conducted will be determined by the Reviewer.
- 74N. 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 referring the matter to which the reviewable decision relates to the Board for further consideration, subject to such directions (including the setting of time limits for the further consideration, and for the steps to be taken in the further consideration) as the Reviewer determines;
 - (c) a determination declaring the rights of the respondent in relation to any matter to which the reviewable decision relates;
 - (d) 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 Registrar.
- 74O. The Reviewer may make such order as to the costs of the review as the Reviewer thinks fit.
- 74P. The review shall be by way of 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 hearing de novo."

Miscellaneous

- 17. In sub-clause 24 (2) replace the first instance of the word "Ordinance" with "Canon" and replace the second instance of the word "Ordinance" with "canon".
- 18. In sub-clause 54 (1) insert the words "Canon or" immediately following "After investigation in accordance with section 25 or under a corresponding provision of a".
- 19. Amend sub-clause 66 (1) by deleting the words "under the control of the Synod".
- 20. In sub-clause 67 (a) (ii) replace "under or pursuant to a Ordinance of the General Synod, a Ordinance or an Ordinance of another diocese" with "under or pursuant to a Canon of the General Synod, a Canon or Ordinance of another diocese".
- 21. Amend clause 72 by replacing the words "or in accordance with the provisions of any ordinance, act, Ordinance, constitution, statute, legislative measure or provision of the general synod or the diocesan synod of another diocese of this Church" with "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 this Church".

TRANSITION

22. Notwithstanding the amendments to clause 39 with regard to the membership of the Professional Standards Board, the members of that Board will continue until otherwise determined by a resolution of the Bishop-in-Council.

COMMENCEMENT


23. This Ordinance shall come into effect upon receiving the assent of the Bishop.

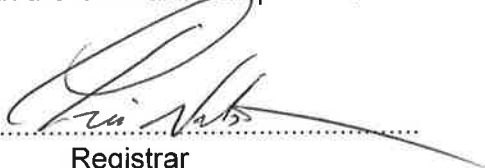
SHORT TITLE

24. This Ordinance may be cited as the Professional Standards Ordinance Amending Ordinance 2017.


ASSENT

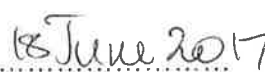
We hereby certify that this Ordinance was passed by Synod on the 17th day of June, 2017 and that the Ordinance as printed is in accordance with the Ordinance as passed.


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Chair of Committees


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Registrar

I assent to this Ordinance.


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Bishop


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Date