

PROFESSIONAL STANDARDS ORDINANCE 2022
(As Amended 29th June 2022)

NO. 1 of 2022

Preamble

WHEREAS the Anglican Diocese of Riverina is convinced that:

- A. every person must be respected and treated with respect, for all people are created in the image of God and are loved by God, as revealed in the reconciling life, death and resurrection of Jesus Christ;
- B. the manner in which we deal with abuse, pain or distress is part of our witness to the truth of God, who loves and cares for the world. The manner in which we deal with allegations of misconduct is part of our witness to the truth of God who requires integrity, justice, mercy and humility in God's people;
- C. the Diocese lives, works and ministers in an increasingly complex and dynamic environment and must continue to develop further policies, processes and protocols to ensure that the Diocese maintains the confidence and trust of the community in which it serves by ensuring integrity and professionalism in Professional Standards.

NOW THEREFORE the Council of the Diocese of Riverina, on behalf of the Synod of the Diocese of Riverina, by virtue of the authority conferred upon it by the *Diocesan Administration Ordinance 1926* **DECLARES DIRECTS RULES AND ORDAINS** as follows:

Part 1 – Preliminary

1. Transitional Provision and Repeal

- (a) *The Professional Standards Ordinance 2018* continues to apply to any professional standards information where an investigation into the matter commenced before 16 June 2022.
- (b) *The Professional Standards Ordinance 2018* is otherwise repealed, effective 16 June 2022, the date on which the Ordinance commences, apart from as indicated in Clause 1. (a) above.

2. Short Title

This Ordinance may be cited as the "*Professional Standards Ordinance 2022*".

3. Definitions

In *this Ordinance*, unless the context otherwise requires:

"**Bishop**" means the Bishop of the Diocese of Riverina or in the vacancy of the See of Riverina, the Administrator of the Diocese appointed under the *Diocesan Administration Ordinance 1926* as amended from time to time;

"**Board**" means the Professional Standards Board established under Part 8;

"**Charge**" has the meaning as defined in the *Diocesan Discipline Ordinance 2022*.

"**Church**" means the Anglican Church of Australia;

"**Church Authority**" means the Bishop or a person or body having administrative authority of or in a Church Body to license, appoint, authorise, dismiss or suspend a Church Worker;

"**Church Body**" includes a parish, school, any body corporate, organization or association that exercises ministry within, or on behalf of, the Diocese;

"**Church Worker**" means a Member of the Clergy or lay person:

- a. who is licensed or authorised by the bishop of a diocese; and/or
- b. who is employed by a Church Body in respect of whom the Code of Conduct is part of their employment contract; or
- c. who, for payment or not, holds a position or performs a function with the actual or apparent authority of a Church Authority or Church Body: including any office or position within the Anglican community recognized to have standing within the Diocese;
- d. does not include a bishop who is subject to the jurisdiction of the Special Tribunal of the Church;

"**Code of Conduct**" means a code of conduct approved from time to time under Part 2;

"**Diocese**" means the Anglican Diocese of Riverina

"**Diocesan Council**" means the Council of the Synod of the Diocese of Riverina, however composed from time to time, established under the *Diocesan Administration Ordinance 1926* as amended from time to time;

"**Director**" means the Director of Professional Standards (the person in a diocese who has responsibility for the maintenance of Professional Standards of Church Workers) appointed under Part 6;

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

"Examinable Conduct" means conduct wherever or whenever occurring the subject of Information which, if established, might call into question:

- a. the fitness of a Church Worker, whether temporarily or permanently, now or in the future to hold a particular or any office, licence or position of responsibility in the Diocese or to be or remain in Holy Orders or in the employment of a Church Body; or
- b. whether, in the exercise of a Church Worker's ministry or employment, or in the performance of any function, the Church Worker should be subject to certain conditions or restrictions;

"Information" means information of whatever nature and from whatever source relating to:

- a. alleged conduct of a Church Worker wherever or whenever occurring involving sexual harassment or assault, or sexually inappropriate behaviour; or
- b. alleged inappropriate or unreasonable conduct or omission of a Church Worker who had knowledge of conduct of another Church Worker involving sexual harassment or assault, or sexually inappropriate behaviour; or
- c. an alleged process failure (that is, the failure by a Church Body or Church Authority prior to *this Ordinance* coming into effect to deal appropriately with or to investigate matters referred to in paragraphs (a) or (b) above); or
- d. an alleged serious breach of standards set out in the 'code of conduct' as defined by the *Safe Ministry to Children Canon 2017*; or
- e. alleged "Abuse" or "Child Abuse" as defined in the Code of Conduct;

"Investigations Committee" means the Investigations Committee established under Part Nine of the Diocesan Discipline Ordinance 2022;

"Member of the Clergy" means a person in Holy Orders: bishops, priests and deacons of the church of God, but excludes a bishop subject to the jurisdiction of the Special Tribunal of the Church from examination;

"National Register" means any national register established pursuant to a Canon of General Synod or a resolution of the Standing Committee of General Synod for the purpose of recording determinations of the Board and other Equivalent Bodies;

"**Process Failure**" means the failure by a Church Body or Church Authority prior to *this Ordinance* coming into effect to deal appropriately with or to investigate matters referred to in paragraphs (a) or (b) of the definition of Information;

"**Professional Standards**" refers to the standards and expectations of the Anglican Diocese of the Riverina as expressed and adopted in Faithfulness in Service, as amended by the Synod from time to time.

"**Professional Standards Committee**" or "**PSC**" means the Professional Standards Committee established under Part 5;

"**Professional Standards Board**" or "**Board**" means the Board established under Part 8;

"**Prohibition Order**" means an order prohibiting a Church Worker from holding a specified position or office in or being employed by a Church Body or Church Authority or from carrying out any specified functions in relation to any office or position in the Diocese or in relation to employment by a Church Body;

"**Protocol**" means the Protocol approved from time to time by the Synod under Part 3;

"**Referring Body**" means the PSC or an Equivalent Body (for example from another diocese) which refers a question or questions under section 52 to the Board;

"**Respondent**" means a Church Worker whose alleged conduct or omission is the subject of Information.

"**Review Panel**" means the panel appointed under section 76;

"**Reviewable Decision**" means a determination or recommendation of the Professional Standards 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 the person appointed under section 75;

"**Secretary of the Board**" means the Secretary of the Board appointed under section 46.

“Special Complaint” refers to a complaint against a Bishop.

“Synod” means the Synod of the Diocese of Riverina or during the recess of the Synod, the Diocesan Council.

“Trust” refers to the Riverina Diocesan Trust.

4. When person is taken to be engaged

For the purposes of *this Ordinance*-

- (1) a person employed by a Church Body; or
- (2) a person holding a position or performing a function with the actual or apparent authority of a Church Authority or Church Body;

will be taken to be engaged by a Church Authority.

Part 2 – Code of Conduct

5. Code of Conduct

The Synod or the Diocesan Council shall from time to time by resolution approve a Code of Conduct for observance by Church Workers in the Diocese.

6. Promulgation of Code of Conduct

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

Part 3 – Policies and Protocols

7. Protocols

- (1) The Diocesan Council shall from time to time consider and approve policies, processes and/or protocol(s) for:
 - a. the prevention of misconduct, harm and abuse;
 - b. response to Information and allegations concerning misconduct, harm, and abuse which are beyond the scope of this Ordinance.
- (2) The policies and/or protocol(s) may include:
 - a. procedures for safe ministry in the Diocese;

- b. provision for informing complainants and victims of alleged conduct the subject of Information, and Respondents, of rights, remedies and relevant procedures available to them;
- c. provision for assisting or supporting, as appropriate, all persons affected by alleged conduct the subject of Information;
- d. an explanation of the processes for investigating and dealing with Information;
- e. provisions for dealing fairly with Respondents;
- f. processes for dealing with alleged Process Failure;
- g. processes for the screening of Church Workers;
- h. provisions for regular information, reports, advice and recommendations to the Bishop and any other relevant Church Authority at each stage of the process of dealing with Information;
- 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.

8. Promoting of Protocols

The Diocesan Council through the PSC and by such other means as it may consider appropriate shall take such steps as may be necessary or desirable to promote throughout the community a knowledge and understanding of the policies and/or protocol(s).

Part 4 – Arrangements with other dioceses

9. Arrangements and Agreements

The Diocesan Council may enter into such agreements or arrangements as it sees fit with the relevant authority of another diocese within the Anglican Church of Australia as to the terms on which the powers and functions of the Equivalent Bodies or persons of that diocese are to be exercised by the persons holding office in or as delegates of the PSC, or by the members or the secretary of the Board.

Part 5 – Professional Standards Committee

10. Professional Standards Committee

- (1) There shall be a Professional Standards Committee for the Diocese of Riverina.

- (2) The members of the PSC shall be appointed and shall hold office on such terms and conditions as may be determined by the Diocesan Council from time to time or in accordance with any Regulations of the Diocesan Council.
- (3) a. The PSC shall have at least three members one of whom is the Director.
- b. The membership of the PSC shall be constituted so as collectively to provide:
 - i. experience in law;
 - ii. experience in the ordained Ministry; and
 - iii. experience and appropriate professional qualifications in child protection, social work or counselling.

11. Meetings and procedure

- (1) The Director shall be the Chair of the PSC unless otherwise determined by the Diocesan Council from time to time or in accordance with any Regulations of the Diocesan Council.
- (2) The PSC may meet from time to time as determined by the Chair or a majority of its members and may conduct its business by telephone or electronic communication.
- (3) The procedures of the PSC shall be as determined by the PSC.
- (4) A majority of the members shall constitute a quorum.
- (5) A decision taken other than at a meeting of the PSC, if supported by a majority of members of the PSC, constitutes a decision of the PSC.
- (6) The PSC shall act in all things as expeditiously as possible.

12. Vacancies

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

13. Indemnification

The Trust indemnifies any member or delegate of the PSC for any act or omission by the member or delegate 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.

14. PSC may constitute equivalent body

The members of the PSC, or in the absence of a PSC, Diocesan Council, may constitute an Equivalent Body, either generally or for a particular case or matter. Constitution of an Equivalent Body under this Ordinance includes the Diocese entering into an agreement for the use of another Anglican Diocese within Australia's PSC, or alternatively engaging a firm specialising in such matters to conduct such work.

15. Confidentiality

Subject to the provisions of this Ordinance, a member of the PSC, a Church Authority or a person employed or engaged in work related to the affairs of the PSC must not divulge information that comes to their knowledge by virtue of that office or position except:

- (1) in the course of carrying out the duties of that office or position;
- (2) as may be authorised by or under this Ordinance;
- (3) in any proceedings before a diocesan tribunal, a provincial tribunal or the special tribunal;
- (4) as may be required by law; or
- (5) to any insurer or insurance broker of a Church Body or Church Authority where the information may give rise to or be relevant to a claim for indemnity by the Church Body or Church Authority against the insurer or is relevant to obtaining or continuing insurance cover.

16. Disclosure to an Equivalent Body

The PSC must disclose to an Equivalent Body relevant details of information in its possession concerning the alleged conduct of a Church Worker:

- (1) which is information that is relevant to, or arising during the course of, an investigation being undertaken by the PSC where the PSC knows that the Church Worker is residing in the diocese of the Equivalent Body; or
- (2) which is information concerning conduct alleged to have occurred in the diocese of the Equivalent Body; and shall co-operate with any Equivalent Body regarding criminal matters.

- (3) Any conduct apparently constituting a crime reported to the PSC must be recorded and handed over to the relevant law enforcement agency or agencies. A finding of criminal conviction by a court will be viewed as a determination of the PSC, which may also make further or other determinations as they see fit.

17. Making material public

- (1) Subject to subsection (2), the PSC may release to the public such material as it may determine with respect to any Information.
- (2) In relation to a matter that is the subject of a reference to the Board the Bishop shall make public such information concerning the matter as the Board may direct or approve.

18. Annual Report

- (1) Without disclosing the identity of any informant, complainant or the Respondent, the PSC shall report annually to the Diocesan Council on its activities for that calendar year, or when requested.
- (2) Notwithstanding subsection (1), the report of the PSC pursuant to that subsection may identify a Respondent who has been exonerated from an allegation the subject of Information or who has been the subject of a determination or recommendation by the Board.
- (3) The PSC shall, in respect of every matter with which it is dealing, report either orally or in writing to the Bishop with such frequency and as fully as the Bishop shall reasonably require.

19. Delegation of powers

- (1) Subject to subsection (2), the PSC may delegate, upon such terms and conditions as the PSC may approve, any of its powers or functions under this Ordinance to any person.
- (2) The PSC cannot delegate:
 - a. its powers under subsection (1);
 - b. its powers under section 27 or section 31; or
 - c. the power to refer a matter to the Board.
- (3) A delegation under this section must be made by instrument in writing signed by a member of the PSC.

20. Powers and duties of the PSC

- (1) Subject to the provisions of this Ordinance the PSC has the following powers and duties:
 - a. to implement the Professional Standards Protocol to the extent that the policies and/or protocol(s) are not inconsistent with this Ordinance;
 - b. to receive Information;
 - c. to act on Information in accordance with the provisions of this Ordinance, and the Protocol to the extent that it is not inconsistent with this Ordinance;
 - d. to appoint suitable persons to fulfil the several roles required to implement the Protocol in each particular case;
 - e. where appropriate, to arrange for the conciliation or mediation of any complaint the subject of Information;
 - f. to investigate Information in a timely and appropriate manner;
 - g. where appropriate, to recommend to the Diocesan Council any changes to the Protocol;
 - h. subject to any limit imposed by the Diocesan Council to authorise such expenditure on behalf of the Synod or the Church Body as may be necessary to implement, in a particular case, the Protocol and the provisions of this Ordinance;
 - i. to advise any relevant Church Authority or Church Body as to the financial or other needs of a person affected by conduct the subject of Information and as to any possible or actual legal proceedings against such Church Body or Church Authority arising out of the alleged conduct of a Church Worker;
 - j. to refer any Information in its possession to a member of a law enforcement, prosecution or child protection authority of a State or Territory or of the Commonwealth of Australia to which the Information is or may be relevant;
 - k. to maintain proper records of all Information received and of action taken in relation to such Information;
 - l. to exercise such other powers and functions as are conferred on it by this or any other Ordinance.

- m. to advise and make recommendations to a Church Authority in relation to a lay Church Worker, if the PSC after investigation of the complaint is satisfied that the complaint is sustained and that the specified action is appropriate in all the circumstances.
- (2) The power and duty of the PSC to exercise its functions under this Ordinance arises in respect of:
- a. conduct wherever it is alleged to have been engaged in by a Church Worker resident or licensed in the Diocese, or engaged by a Church Authority;
 - b. an omission, whenever it is alleged to have occurred, by a Church Worker resident or licensed in the Diocese, or engaged by a Church Authority;
 - c. conduct which is alleged to have occurred within the Diocese wherever the Church Worker involved in the alleged conduct may reside;
 - d. conduct, wherever it is alleged to have been engaged in, or an omission, wherever it is alleged to have occurred, by a Church Worker, wherever the Church Worker may reside –
 - i. in respect of or affecting a person resident in the Diocese; or
 - ii. that may affect a Church Body or Church Authority in the Diocese, or church property or property held in trust for the benefit of or in connection with the Diocese or a Church Body in the Diocese.
- (3) The PSC shall have the jurisdiction to investigate and make recommendations in respect to Charges referred to it under Section 42 of the Diocesan Discipline Ordinance 2022 in accordance with the procedures under this Ordinance as if the Charge was Examinable Conduct under this Ordinance provided that the facts of the Charge may not be taken into consideration in the making of a recommendation for disposition from Holy Orders.

Part 6 – Director of Professional Standards

21. Appointment of Director

- (1) There shall be a Director of Professional Standards.

- (2) The Director shall be appointed by and shall hold office in accordance with a resolution or any regulation of the Diocesan Council.

22. Function of Director

The Director shall have the following functions:

- (1) to manage the implementation of the policies and protocol(s) in respect of any Information;
- (2) to be the executive officer of the PSC;
- (3) to chair meetings of the PSC, unless otherwise determined by the Diocesan Council from time to time or in accordance with Regulations of the Council;
- (4) such other functions and duties as may be determined by the Diocesan Council or the PSC.

23. Director may act for another diocese

The Director may act in a corresponding capacity for another diocese either generally or for a particular case or matter.

Part 7 - Examinable Conduct

24. Information to be reported

- (1) A Church Worker and a Church Authority in the Diocese shall as soon as possible refer any Information in their possession or knowledge to the Professional Standards Director unless there are reasonable grounds to believe that the Professional Standard Director already knows the Information.
- (2) This section does not affect the operation of the Canon Concerning Confessions 1989 as amended of General Synod or any other canon or legislative instrument relating to confessions in force in the Diocese.

25. Obligation to investigate examinable conduct

Subject to this Ordinance, where the Professional Standards Committee ('PSC') considers that the subject matter of Information constitutes Examinable Conduct it shall investigate the Information as expeditiously as possible and shall meet, either electronically or in person, within 10 days of receipt of Information that may become the subject of an investigation.

26. PSC may refer matters to an equivalent body

- (1) The PSC may, if it thinks it appropriate to do so, refer the subject matter of Information, or the investigation of Information, to an Equivalent Body or bodies.
- (2) When the PSC and an Equivalent Body or Equivalent Bodies have the power and duty to investigate Information concerning the alleged conduct or omission of the same Church Worker and the respective bodies cannot agree on:
 - a. which body shall carry out the investigation or any parts of such investigation; or
 - b. whether a question or questions specified in section 52 should be referred to the Board or to an Equivalent Body which has jurisdiction;

then the PSC shall refer the disagreement for decision by the Director and the persons acting in a corresponding capacity for every other dioceses acting together.

- (3) The PSC shall act in accordance with the unanimous decision of the persons referred to in subsection (2) or, if such persons cannot agree within a reasonable time of the disagreement being referred, in accordance with the decision of the Primate or a member of the House of Bishops appointed by the Primate.
- (4) In all matters affecting the operation of this Ordinance the PSC and the Director shall cooperate with and assist an Equivalent Body and a person acting in the corresponding capacity of the Director in another diocese.
- (5) In making a decision under subsection (2) the Director shall not be bound by the views or instruction of the PSC but shall take into account the most convenient course for all concerned and the proper and expeditious conduct of the investigation or referral as the case may be.

27. When PSC may refrain from further investigation

The PSC may refrain from further investigation of the Information if:

- (1) in its opinion, the allegations the subject of the Information are false, vexatious or misconceived, or their subject matter is trivial;
- (2) the subject matter is under investigation by some other competent person or body or is the subject of legal proceedings. If this be a law enforcement

agency or Court, then their findings will be viewed as the findings of the PSC;

- (3) the person making allegations of Examinable Conduct or a person affected by the conduct the subject of the Information has failed to provide further particulars or to verify the allegations by statutory declaration; or
- (4) in its opinion there is insufficient reliable evidence to warrant an investigation or further investigation.

28. Statutory Declarations etc for the board

For the purpose of an investigation the PSC or an investigator shall legally obtain such statutory declarations, written statements, recorded conversations, reports, documents and other material as the PSC or its delegate considers necessary or advisable for presentation to the Board. The standard of proof to apply when deciding whether a complaint has been substantiated is the balance of probabilities, taking into account matters the seriousness of the allegations made, the gravity of the consequences flowing from a particular finding and the likelihood of alleged conduct occurring.

29. Respondent to provide report

- (1) The PSC may by notice in writing to a Respondent require the Respondent to provide a detailed report to the PSC within the time specified in the notice in relation to any matter relevant to the investigation.
- (2) It is the obligation of a Respondent:
 - a. truthfully to answer any question relevant to the matters raised in the complaint, put by or on behalf of the PSC in the exercise of powers conferred by this Ordinance;
 - b. not to mislead the PSC or a member or delegate of the PSC;
 - c. not unreasonably to delay or obstruct the PSC or a member or delegate of the PSC in the exercise of powers conferred by this Ordinance.
- (3) If a Respondent declines to answer a question on the ground that the answer might tend to incriminate the person a written record shall be made of the question and of the ground of refusal.

30. Duty of Confidentiality

- (1) During the course of an investigation by the PSC neither the person making allegations of Examinable Conduct, or if more than one any of the persons, nor the Respondent may make any disclosure of the nature or details of the Information that would be prejudicial to the procedural fairness or natural justice of the investigation.
- (2) In making any disclosure under subsection 30(1), the person disclosing the nature or details of the Information must use their best efforts to prevent the person or persons to whom the disclosure is made further disclosing the nature or details of the Information.
- (3) Neither the person making allegations of Examinable Conduct, or if more than one any of the persons, nor the Respondent must contact or attempt to contact the other regarding the allegations, either personally or through a third party unless permitted or directed by the PSC.
- (4) Neither the person making allegations of Examinable Conduct, or if more than one any of the persons, nor the Respondent must contact or attempt to contact a member of the PSC regarding the allegations, either personally or through a third party other than as permitted under this Ordinance or Protocol.
- (5) The failure by a party to comply with this Section 30 may be taken into account by the PSC in their investigation and where appropriate may be included in the Information or dealt with as new Information.
- (6) Nothing in this Section prevents any person disclosing the existence, nature or details of the Information to any Equivalent Body, law enforcement agency, court, tribunal or as required to or compelled by law.

31. Recommendations by PSC

- (1) At any time after the PSC has commenced or caused to be commenced an investigation of Information under this Part, it may, after giving the Respondent an opportunity to be heard, recommend to, or counsel, the Respondent, or a Church Authority ways to correct, mitigate, or repair any perceived breach of Faithfulness in Service or Ordinances which led to an investigation being commenced and may include one or more of the following:
 - a. that the Respondent should be suspended from the duties or office or employment by a Church Body;

- b. that a Prohibition Order be made against the Respondent;
 - c. such other recommendation as it sees fit, including disciplinary action or dismissal of the complaint.
- (2) A finding of criminal conviction by a court will be viewed as a determination of the PSC, which may also make further or other determinations as they see fit.

32. Church Authorities power to make decision

The relevant Church Authority is authorised to consider and give effect to a recommendation made under section 31 where the relevant Church Authority sees it appropriate to do so or may substitute another determination and give effect to such other determination.

33. PSC to take relevant matters into account

Before making a recommendation under section 31 the PSC shall take into account:

- (1) the seriousness of the conduct alleged in the Information;
- (2) the nature of the material to support or negate the allegations;
- (3) whether any person is at risk of harm;
- (4) any other allegation of similar Examinable Conduct previously made to the PSC or to an Equivalent Body within the previous ten years;

and may take into account any other relevant matter.

34. When Church Authority must terminate suspension or prohibition order

A suspension or Prohibition Order made by a Church Authority pursuant to a recommendation under section 31 shall be terminated by the Church Authority:

- (1) if the PSC terminates the investigation without referring the matter to the Board;
- (2) upon any direction to that effect given by the Board; or
- (3) upon the Church Authority giving effect to a recommendation of the Board under section 66.

35. Arrangements during a suspension or prohibition order etc

During a suspension or prohibition pursuant to the provisions of this Part or during a period when a person voluntarily stands down from a position while conduct the subject of Information is dealt with under this Ordinance:

- (1) the Respondent shall comply with all legal terms of any Prohibition Order;
- (2) the Respondent is ineligible for appointment to any position or function covered by any suspension or Prohibition Order;
- (3) the relevant Church Authority may fill the vacancy caused by any suspension or Prohibition Order, or while the Respondent is standing down; and
- (4) the Respondent is entitled to whatever stipend, salary, allowances and other benefits that they would otherwise have received and which are to be met or reimbursed from funds under the control of the Synod, until such a time that the investigation is completed and a final determination is made by the Church Authority.

Part 8 - Professional Standards Board

36. Professional Standards Board

- (1) There shall be a Professional Standards Board constituted and appointed in accordance with the provisions of this Part.
- (2) 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 persons who are eligible for appointment as lay members of the Appellate Tribunal;
 - b. five members of the clergy of at least seven years' standing; and
 - c. five lay persons who are members of the Church.
- (3) The members of the panel shall be appointed by the Diocesan Council and shall hold office in accordance with a resolution or regulation of the Diocesan Council. It is not necessary that, at the time of appointment, or subsequently, members of the panel reside within the Diocese or have worked in the Diocese.

- (4) Any vacancy in the membership of the panel shall be filled by or in accordance with a resolution or Regulation of the Diocesan Council.

37. Arrangements with other dioceses

- (1) The Diocesan Council may enter into an agreement for the use of another professional standards board (by whatever name) of another Anglican Diocese within Australia.
- (2) The members of the Board may decide in a particular case that instead of investigating and determining a matter themselves, the preferable course is to refer the matter to the professional standards board of another diocese. If so, that board shall have all of the powers and authorities of the Board to investigate, make a determination and recommendations required of the Board.

38. Jurisdiction

The Board has jurisdiction to exercise its functions in respect of a Church Worker:

- (1) resident or licensed in the Diocese, or engaged by a Church Authority; and
- (2) not resident or licensed in the Diocese nor engaged by a Church Authority but whose conduct giving rise to the reference is alleged to have occurred in the Diocese or whose omission giving rise to the reference is alleged to have occurred when the Church Worker was resident or licensed in the Diocese or was engaged by a Church Authority.

39. Convening a panel

- (1) The members of the panel to be convened for any reference 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 the President or Deputy President, who shall be the presiding member, and an equal number not exceeding two of clerical and lay members of the panel.
- (3) Where possible, the Board shall include at least one man and at least one woman.
- (4) Where, in the opinion of the President, or if there is a vacancy in the office of the President, in the opinion of the Deputy President, a member of the

panel has a personal interest in a matter before the Board the member shall be disqualified from participating in the reference.

(5) For the purposes of this section a vacancy in the office of President includes a situation in which the President is not able to act because of a personal interest in a matter, illness or other pressing necessity, as determined by the Church Authority.

40. (1) The President may make rules of the Board reasonably required by or pursuant to this Ordinance and in relation to the practice and procedure of the Board.

(2) Subject to this Ordinance and the relevant rules, the practice and procedure of the Board will be as directed by the presiding member of the Board.

41. Rules of the Board

The rules of the 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, the Board may, at the direction of the presiding member, be constituted by a single member sitting alone.

42. Where a member of the board is unable to continue

If a member of the Board, other than the presiding member, dies or is for any other reason unable to continue with any matter referred to the Board, the Board constituted of the presiding member and the other member or members may, if the presiding member so determines, continue and complete the reference.

43. Convening two or more Boards

The Board, separately constituted in accordance with this Part, may sit simultaneously for the purpose of matters referred to it or for conducting separate business of the Board.

44. Proceedings of the Board not affected by vacancy of certain defects

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

45. Indemnification

The Trust indemnifies each of the members of the Board for any act or omission by the member in good faith and in the exercise of or purported exercise of powers or functions, or in the discharge or purported discharge of duties under this Ordinance.

46. Secretary of the Board

- (1) There shall be a Secretary to the Board who shall be appointed by or in accordance with a resolution or regulation of the Diocesan Council, and whose duties shall be defined by the President.
- (2) The Secretary to the Board may act in a corresponding capacity for another diocese either generally or for a particular case or matter.

47. Proceedings of the Board

- (1) In any proceedings of the Board where the Board is constituted by two or more members:
 - a. any question of law or procedure will 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 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.
- (3) The Board may determine its own procedure in relation to any matter for which this Ordinance or any rules made under the Ordinance do not otherwise make provision.
- (4) The Board is bound by the rules of natural justice and procedural fairness and must act with fairness and according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms and is not bound by the rules of evidence but may inform itself on any matter as it thinks fit.
- (5) Without limiting the meaning and effect of subsection (3), the Board may receive evidence of a witness in the form of an affidavit, statutory declaration or a signed statement without the need for the personal

attendance of the witness, and may also use electronic means such as video link or conference telephone to receive evidence and submissions,

- (6) The Board may inform itself from the record of any court or tribunal and may adopt any findings, and accept as its own, the record of any court or tribunal. A finding of criminal conviction by a court will be viewed as a determination of the Board, which may also make further or other determinations as the Board sees fit.

48. Assistance to the Board

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

49. Board to give reasons for a determination

The Board must give reasons for any determination, other than by way of directions in the course of an inquiry, unless the determination is made by consent of the Respondent.

50. Costs and legal assistance

- (1) The Board has no power to award costs of any proceedings before it.
- (2) A Church Worker, in relation to whom a question is the subject of a reference to the Board may apply to the Diocesan Council for the provision of legal assistance.
- (3) The Diocesan Council may grant legal assistance to a Church Worker on such terms and subject to such conditions as it shall determine.

51. Confidentiality

Subject to the provisions of this Ordinance, a member of the Board, a Church Authority or a person employed or engaged in work related to the affairs of the Board must not divulge information that comes to their knowledge by virtue of that office or position except:

- (1) in the course of carrying out the duties of that office or position;
- (2) as may be authorised by or under this Ordinance;
- (3) in any proceedings before a diocesan tribunal, a provincial tribunal or the special tribunal;
- (4) as may be required by law; or

- (5) to any insurer or insurance broker of a Church Body or Church Authority where the information may give rise to or be relevant to a claim for indemnity by the Church Body or Church Authority against the insurer or is relevant to obtaining or continuing insurance cover.

Part 9 - Reference of Matters to the Professional Standards Board

52. PSC may refer questions to the Board

- (1) 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 may refer to the Board, or to an Equivalent Body which has jurisdiction, one or more of the following questions:
 - a. the fitness of a Church Worker, whether temporarily or permanently to hold a particular or any office, licence or position of responsibility in the Church or to be or remain in Holy Orders or in the employment of a Church Body;
 - b. whether in the exercise of a Church Worker's ministry or employment, or in the performance of any function the Church Worker should be subject to certain conditions or restrictions.
- (2) The question or questions shall be referred to the Board by delivering to the Secretary of the Board a written report of its investigation signed by a member of the Referring Body.

53. Convening of the Board

- (1) Upon delivery of the report to the Secretary of the Board, the President or Deputy President as the case may be shall as soon as possible determine the membership of the Board for the purpose of the reference.
- (3) The President or Deputy President as the case may require shall thereupon cause to be convened a sitting for the purpose of giving directions
- (4) A person or body appearing or represented before the Board shall comply with the rules of the Board and with any directions given by the Board.

54. Documents and relevant materials to be delivered to the Board

- (1) Within 14 days of the date of the reference of a matter to the Board or within 14 days of the date of the document or material coming to existence, whichever is the later, the Referring Body shall cause to be

delivered to the Secretary of the Board any documents and material relevant to the reference.

- (2) The Referring Body, as soon as practicable after delivering the report referred to in section 50 to the Secretary of the Board, shall cause a signed copy of the report to be delivered to the Respondent.

55. Respondent to provide address for service

The Respondent shall, as soon as possible after referral of the matter to the Board, provide a postal and email address for communication with the Board that is updated as required

56. Board may give directions

- (1) The Board may at any time and from time to time give directions:
 - a. as to the inspection by and supply of copies to the Respondent or any other person of the documents or material relevant to the reference;
 - b. as to the conduct of its inquiry into the reference.
- (2) The Board may at any time and from time to time give directions to the Referring Body as to any further inquiries or investigation it requires to be carried out for the purposes of the reference and the Referring Body shall to the best of its ability cause such directions to be carried out.

57. Board to deal with reference expeditiously

- (1) The Board shall deal with any reference as expeditiously as possible.
- (2) The Board may, if it sees fit, proceed with the determination of a reference notwithstanding that even if there may be mediation or conciliation proceedings relating to the subject matter of the reference being conducted by, or at the direction of, the Referring Body and notwithstanding that even if there may be criminal or other proceedings being taken against the Respondent or some other person.

58. Sitting of the board

- (1) The place and time of sitting of the Board comprising two or more members shall be as determined by the presiding member.
- (2) The place and time of sitting of the Board comprising one member shall be as determined by that member.

59. **Sittings of the Board**

- (1) Subject to subsection (2), the Board must give the following persons reasonable notice of the time and place of a sitting of the Board:
 - a. the Director; and
 - b. the Respondent; and
 - c. such any other persons who as the Board believes have a proper interest in the matter.
- (2) The Board is not obliged to give notice of a sitting to a person whose whereabouts cannot, after reasonable enquiries, be ascertained.

60. **Proceedings**

In any proceedings before the Board:

- (1) the Referring Body and any person, including the Respondent, may be represented by a legal practitioner or, with leave of the Board, by any other person, such leave may be revoked for misconduct on behalf of the representative, at the discretion of the Board.
- (2) the Referring Body and/or its appointed representative shall do all in its power to assist the Board and shall carry out any directions of the Board;
- (3) the Board:
 - a. must give the Referring Body and the Respondent a reasonable opportunity to call or give evidence, to examine or cross-examine witnesses and to make submissions to the Board; and
 - b. must give 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 a reasonable opportunity to make submissions to the Board.

61. **Open sittings**

- (1) Subject to subsection (2), a sitting of the Board on a reference before the Board is usually an open sitting.
- (2) On any such sitting before the Board, the Board has an absolute discretion:
 - a. to direct that no person other than:

- i. the Respondent and any person representing him or her in the proceedings; and
 - ii. witnesses or persons making submissions (while giving evidence or making those submissions); and
 - iii. officers of the Board or persons assisting the Board; and
 - iv. members of or persons appointed by the Referring Body, be present in the room while the Board is sitting; or
- b. to direct that a particular person (other than a person referred to in paragraph (a)) not be present in the room while the Board is sitting.

62. Duty of Confidentiality

- (1) During the course of proceedings of the Board neither the person making allegations of Examinable Conduct, or if more than one any of the persons, nor the Respondent may make any disclosure of the nature or details of the Information that would be prejudicial to the procedural fairness or natural justice of the proceedings.
- (2) In making any disclosure under subsection 62(1), the person disclosing the nature or details of the Information must use their best efforts to prevent the person or persons to whom the disclosure is made further disclosing the nature or details of the Information.
- (3) Neither the person making allegations of Examinable Conduct, or if more than one any of the persons, nor the Respondent must contact or attempt to contact the other regarding the allegations, either personally or through a third party unless permitted or directed by the Board.
- (4) Neither the person making allegations of Examinable Conduct, or if more than one any of the persons, nor the Respondent must contact or attempt to contact a member of the Board regarding the allegations, either personally or through a third party other than as permitted under this Ordinance or Protocol.
- (5) The failure by a party to comply with this Section 62 may be taken into account by the Board in their consideration.
- (6) Nothing in this Section prevents any person disclosing the existence, nature or details of the Information to any Equivalent Body, law enforcement agency, court, tribunal or as required to or compelled by law.

63. Absence of person affected by determination of the Board

The Board may make a determination in any proceedings in the absence of a person affected by the determination if satisfied that reasonable efforts were made to give that person an opportunity to appear.

64. Medical and other examinations

- (1) The Board may require a Respondent to submit within a specified time to a medical, psychiatric or psychological examination by a person approved by the Board the cost of which shall be met from funds under the control of the synod of the diocese of the Referring Body.
- (2) A copy of the report of an examination under subsection (1) shall be provided to the Respondent and to the Board.

65. Board not to inquire into certain matters

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

- (1) inquire into any matter which is or has been the subject of any formal investigation or enquiry conducted:
 - a. under or pursuant to any provision of the Constitution;
 - b. under or pursuant to a Canon of the General Synod, a Canon or an Ordinance of another diocese relating to the discipline of Church Workers by a board of enquiry, tribunal or other body; or
 - c. with the authority of the bishop of a diocese resulting in a formal report to the bishop with findings and which concluded or was commenced prior to the date on which this Ordinance takes effect in the Diocese but may take into account the finding of any such formal investigation or enquiry.
- (2) inquire into, make any findings in relation to or take into account any alleged breach of:
 - a. faith of the Church, including the obligation to hold the faith;
 - b. ritual of the Church, including the rites according to the use of the Church and the obligation to abide by such use; or
 - c. ceremonial of the Church, including ceremonial according to the use of the Church and the obligation to abide by such use.

66. Determinations

- (1) In making any recommendation the Board shall take into account:

- a. the conduct of the Church Worker as it finds it to have been;
 - b. in the material before the Board, any other fact or circumstance relevant to the determination of the question or questions before it; and
 - c. any failure of the Church Worker to comply with a provision of this Ordinance or with a direction of the Board.
- (2) If, after investigating the question or questions referred to it about a Church Worker, the Board is satisfied that:

- a. the Church Worker is unfit, whether temporarily or permanently, now or in the future to hold a particular or any office, licence or position of responsibility in the Church or to be or remain in Holy Orders or in the employment of a Church Body; or
- b. in the exercise of a Church Worker's ministry or employment or in the performance of any function, the Church Worker should be subject to certain conditions or restrictions;

the Board may determine accordingly and may:

- c. recommend that the Church Worker be counselled;
- d. recommend that the Church Worker be suspended from office or employment or from performing the function as the case may be for such period determined by the Board;
- e. recommend to the Church Authority that the licence or authority of the Church Worker be revoked;
- f. recommend to the relevant Church Authority that the Church Worker's contract of employment (if any) be terminated;
- g. recommend to the relevant Church Authority that the Church Worker cease to hold any office then held;
- h. recommend to the relevant Church Authority that a Prohibition Order be made in terms specified by the Board;
- i. recommend to the relevant Church Authority that the Church Worker's holding of office or employment or performance of the function as the case may be, shall be subject to such conditions or restrictions as the Board may specify;

- j. recommend that the operation of a determination shall be suspended for such period and upon such conditions as the Board shall specify;
- k. recommend that the Church Worker should be deposed from Holy Orders;
- l. make such other recommendation as the Board sees fit.

67. Copies of determinations and recommendations

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

- (1) to the relevant Church Authority; and
- (2) to the Respondent.

Part 11 – Decision of the Church Authority

68. Church Authority may give effect to a recommendation of the Board

A relevant Church Authority to whom a recommendation under *this Ordinance* or a recommendation made by an equivalent board applies is empowered to give effect to a recommendation of the Board and of an Equivalent Body having jurisdiction to make a recommendation to the Church Authority or to substitute a different decision and to give effect to that decision. Once a decision has been made by the Church Authority, relevant details shall be forwarded for entry into the National Register.

69. Disposition from Holy Orders

A person who has been deposed from Holy Orders in accordance with this Ordinance 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:

- (1) is incapable of:
 - a. officiating or acting in any manner as a bishop, priest or deacon of this Diocese;
 - b. accepting or holding an office in this Diocese capable of being held only by a person in Holy Orders;
- (2) ceases to have any right privilege or advantage attached to the office of bishop priest or deacon;

- (3) shall not hold themselves out to be a Member of the Clergy; and
- (4) is not capable of holding an office in the Diocese which may be held by a lay person without the prior consent of the Bishop.

70. Record of Disposition

- (1) The deposition of a person from Holy Orders by the Bishop pursuant to the recommendation of the Board or an Equivalent Body shall be effected by the execution by the Bishop of an Instrument of Deposition in or to the effect of the form in the Schedule.
- (2) The Bishop must forthwith:
 - a. register the Instrument in the Registry of the Diocese;
 - b. deliver a copy of the Instrument to the Bishop of the Diocese in which the person who is the subject of the Instrument was ordained;
 - c. deliver a copy of the Instrument to the Registrar of the Primate;
 - d. cause relevant details to be forwarded for entry into the National Register.

71. Relevant Church Authority to cause details to be registered

A relevant Church Authority to whom this Ordinance applies shall cause relevant details to be forwarded for entry into the National Register of any action taken in relation to a Church Worker in accordance with a recommendation of the Board.

Part 12 – Appeals

72. Right of Appeal

A Respondent may, by application to the Director, appeal a Reviewable Decision of the Board.

73. Application for Appeal

- (1) The appeal shall be commenced by lodging with the Director, a notice of appeal which sets out the name of the appellant and the respondent, the finding or recommendation from which the appeal challenges and the grounds of the appeal.
- (2) Any appeal under this section must be lodged within 21 days of the date on which the notice of a decision of the Church Authority was received by

the Respondent as the case may be, or any additional time granted by the Reviewer as the case may be.

- (3) If notice of the decision is sent by post or email, the Respondent will be taken to have received the decision within seven days of the decision being posted or emailed to an address that has been notified to the Board as being the postal and/or email address to which the Respondent wishes communication to be sent.

74. Grounds for Appeal

An appeal may be brought on one or more of the following grounds:

- (1) That a breach of the rules of natural justice occurred in relation to the making of the Reviewable Decision which materially affected the decision;
- (2) That procedures that were required by the ordinance to be observed in relation to the making of a Reviewable Decision were not observed, and the non-observance materially affected the decision;
- (3) That the Board did not have jurisdiction to make the Reviewable Decision;
- (4) That the Reviewable Decision was so devoid of any plausible justification that no reasonable Board could have made it;
- (5) The availability of fresh and compelling evidence or further and compelling evidence which, if available at the time, would have been likely to have materially affected the Board's decision;
- (6) That the Board seriously misdirected itself as to the applicable law;
- (7) That in light of the evidence and submissions, the recommendation is manifestly excessive.

75. Appointment of Reviewer

Upon receipt of an application for appeal, the Director shall appoint the Reviewer from the Review Panel to hear and determine the appeal.

76. Review Panel

- (1) The Review Panel shall comprise of one or more members, appointed by the Diocesan Council, who is or has been a judge of the High Court of Australia, of a Supreme or District Court of a State or Territory, of the Federal Court of Australia or of the Family Court of Australia or a

barrister who has been appointed as Senior Counsel and, in each case, who is a member of this Church;

- (2) Members of the Review Panel shall hold office until the first day of the first session of the Synod following their appointment;
- (3) It is not necessary that, at the time of appointment, or subsequently, members of the Review Panel reside within the Diocese or have worked in the Diocese.
- (4) Any vacancy in the membership of the panel shall be filled by Diocesan Council and such appointees shall hold office until the first day of the first session of the Synod following their appointment.
- (5) All members of the Review Panel are eligible for re-appointment after the expiry of their appointment.

77. Conducting the Review

- (1) The Reviewer shall conduct the appeal as a rehearing and may give such directions and conduct the appeal in such way as he or she considers, subject to the rules of natural justice, necessary or desirable for a fair and expeditious determination of the appeal.
- (2) The Diocese shall bear the costs of the Reviewer in undertaking the appeal.

78. Application is a stay of Reviewable Decision

The making of an application for appeal acts as a stay of the Reviewable Decision pending determination by the Reviewer.

79. Reviewer may make determinations

- (1) The Reviewer may make all or any of the following determinations:
 - a. A decision quashing or setting aside the Reviewable Decision;
 - b. A determination affirming the Reviewable Decision;
 - c. A determination referring the matter to which the Reviewable Decision related to the Board for further consideration, subject to such direction as the Reviewer determines;
 - d. A determination declaring the rights of the Respondent in relation to any matter to which the Reviewable Decision relates;

e. 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;

f. Such order as to the costs of the appeal as the Reviewer thinks fit.

and shall ensure that a copy of the determination or finding is provided to the Board, the Respondent and the Church authority.

(2) If the Reviewer upholds the appeal, then the recommendation of the Reviewer shall be dealt with under this Ordinance as if it were a recommendation of the Board.

80. **Indemnification**

The Trust indemnifies the Reviewer for any act or omission in good faith and in the exercise of or purported exercise of powers or functions, or in the discharge or purported discharge of duties under this Ordinance.

81. **Church authority may take action under other power**

Nothing in this Part, however, affects the power of a Church Authority to take any action against a Respondent which would be open to a Church Authority apart from its powers under this Ordinance.

Part 13 - Regulations

82. **Regulations**

The Diocesan Council may from time to time make amend or repeal Regulations, not inconsistent with the provisions of *this Ordinance*, providing for records arising out of or incidental to the operation of *this Ordinance*, 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 objects and purposes of *this Ordinance*.

SCHEDULE

TO _____

I, _____

BISHOP OF RIVERINA

do by these presents

hereby depose you from Holy Orders (particulars of which are set out below) in accordance with the recommendation of the Professional Standards Board of the Diocese of Riverina.

PARTICULARS OF HOLY ORDERS

FULL NAME AND

ADDRESS:

ORDAINING BISHOP PLACE
DATE

ORDINATION AS
DEACON:

ORDINATION AS
PRIEST:

CONSECRATION
AS BISHOP:

DATED

SEALED