

Kooyoora Ltd

CLEARANCE FOR MINISTRY
for clergy and authorized lay ministers

**A PROTOCOL UNDER THE
PROFESSIONAL STANDARDS UNIFORM
ACT 2016 (Melbourne)**

As approved by the Directors of Kooyoora Ltd on 31 May 2017

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NOTE:

The Office of Professional Standards is established by Kooyoora Ltd to provide support to people who make complaints about abuse and other misconduct by Anglican clergy, church officers, church employees and volunteers in the Anglican Diocese of Melbourne. The Director of Professional Standards is appointed by the directors of Kooyoora Ltd and operates independently of the Diocese.

- We take all complaints very seriously.
- We will do all we can to lessen harm by providing the best care possible.
- We offer respect, pastoral care and on-going long-term support to anyone who makes a complaint.
- We also offer support to any priest or Church worker who is accused of abuse or harassment or other misconduct. The rights of the person accused of misconduct will be respected.

1 Introduction

- 1.1 **Kooyoora Ltd** was incorporated on 12 January 2017 to operate independently of the Anglican Church the process to deal with the complaints against Church workers and to operate a screening regime, in each case for participating Anglican dioceses pursuant to the *Professional Standards Uniform Act 2016* of those dioceses (**the Act**).
- 1.2 This protocol is made by the directors of Kooyoora Ltd pursuant to the *Professional Standards Uniform Act 2016* (**the Act**). It is intended:
- (a) to identify key aspects of the Act relating to clearance for ministry or service;
 - (b) to give useful information and guidelines about the way an application for a clearance for ministry or service will be handled.
- The guidelines relating to correspondence with an applicant for a clearance for ministry or service are highlighted by a line in the margin for convenience.
- 1.3 This Protocol operates in conjunction with the Protocol for responding to complaints of misconduct by Church workers (**the Principal Protocol**) and is intended to promote proper professional standards of ministry in the Church.
- 1.4 Using this protocol we will promptly respond to an application for a clearance for ministry or service.
- 1.5 Definitions: In this Protocol, a reference to the **Principal Protocol** is a reference to the Protocol for responding to complaints of misconduct against Church workers in participating Anglican dioceses, as approved by the Scheme Directors. Otherwise, expressions used have the same meaning as in the Act.

2 Clearance for ministry – clergy and authorized lay ministers

- 2.1 A Church worker (clergy or authorized lay minister) who intends to engage in ministry either within or beyond the Diocese is eligible to apply for a clearance for ministry in the prescribed form to the Office of Professional Standards: s50 of the Act.
- 2.2 The Director, the PSC and the Office of Professional Standards must deal with the application in accordance with the Act and any applicable protocol: s51 of the Act.
- 2.3 A Church worker appointed or elected to hold any role office or position for ministry in the Diocese—
- (a) must not engage in that ministry without—
 - (i) a clearance for ministry for that role office or position; and
 - (ii) the licence, permission to officiate or other written

authority of the Diocesan Bishop; and

- (b) must comply with any condition or restriction specified in the clearance for ministry or imposed by the Diocesan Bishop in the licence, permission to officiate or other written authority: s57 of the Act.
- 2.4 The intention is that each time a Church worker in ministry intends to transfer to or take up a new role office or position in the Diocese they must apply for and obtain a clearance for that ministry.
- 2.5 **Transitional provision for the Diocese of Melbourne:** A clearance for ministry which has been issued to a Church worker pursuant to the *Professional Standards Act 2009* and which is in force as at the date of commencement of Part 4.1 of the *Professional Standards Uniform Act 2016 (Diocese of Melbourne)* is to be taken to be a clearance issued by the Office of Professional Standards pursuant to that Act—
- (a) commencing from the date of that clearance;
 - (b) for the shorter of the period stipulated in the clearance if any and 5 years; and
 - (c) subject to any condition stipulated in the clearance:
- Professional Standards Uniform Act Adoption Act 2016, s10.*

3 Ministry

- 3.1 Under the Act, 'Ministry' means ordained ministry or lay ministry authorised under the *Authorised Lay Ministry (Adoption) Act 1992* or an equivalent Act of the synod of another diocese, as the case may be: s3 of the Act.
- 3.2 In the Act, "clearance for ministry" means the certificate issued by the Office of Professional Standards stating that the Church worker is fit to hold the proposed role office or position for ministry in the Church whether within or beyond the Diocese (as the case may be) and whether unconditionally or subject to any condition or restriction and includes any provisional clearance issued pursuant to a direction of the Board or Review Board under section 80: s49 of the Act.

4 Fitness for ministry

- 4.1 Subject to s80 of the Act, it shall be a condition of eligibility for a clearance for ministry within or beyond the Diocese that the Church worker is fit to hold the proposed role office or position in the Church whether unconditionally or subject to any condition or restriction: s 52.
- 4.2 Without limiting what constitutes unfitness as provided in this Part, a Church worker is to be regarded as unfit, whether temporarily or permanently, to hold any particular or any role office or position if the person, in continuing to hold the role office or position constitutes on the balance of probabilities an unacceptable risk of harm to any person: s75 of the Act.

5 Codes of Conduct

- 5.1 The Archbishop in Council of the Diocese has under the Act (s7) approved the following codes of conduct for observance by Church workers within the Diocese:
- (a) Code of Good Practice for Clergy (Melbourne Diocese Revised August 2010); and
 - (b) Faithfulness in Service, a national code of the Anglican Church of Australia as in force at November 2016, modified to correspond with the terms used in the Act.
- 5.2 These codes together with the general law inform standards of conduct for determining fitness for ministry of clergy and lay people: s14 of the Act.

6 Applying for a clearance for ministry

- 6.1 Any application by a Church worker for a clearance for ministry for a role office or position shall be made in the prescribed form to the Office of Professional Standards: s50 of the Act.
- 6.2 The form of application has been prescribed by regulations made by the Archbishop in Council or Bishop in Council of each diocese and will be available on the website of the Office of Professional Standards.
- 6.3 Great care should be taken in completing the application as wilfully providing a false answer may bear on a person's fitness for ministry.

7 How the application is handled

Consideration of the matter by the Director

- 7.1 The Director must deal with the application as follows:
- (a) The Director shall acknowledge to the applicant receipt of the application. If a prospective applicant has not completed an application, the Director may send the applicant an application form.
 - (b) The Director shall forward the applicant for completion an application for a Working with Children card where the applicant is to engage in child related work or is to be taken to be engaged in that work under the *Working with Children Act 2005*.
 - (c) The Director shall forward the applicant an application for a National Police Certificate for completion and return to the delegate.
 - (d) The National Police Certificate will be issued direct to the applicant who is responsible for posting the original to the Director to record the date and reference number of the National Police Certificate.
 - (e) The Director shall conduct a search of the National Professional Standards Register and cause to be conducted

such investigation and enquiry as may be appropriate to the matter.

- (f) The Director shall take into account the matters referred to in s112 of the Act.
- (g) If to the best of his or her knowledge information or belief, the Director is of the opinion—
 - (i) in the case of an applicant for a clearance for ministry within the Diocese, that the applicant is unconditionally fit for the proposed role office or position; or
 - (ii) in the case of an applicant for a clearance for ministry outside the Diocese, that the applicant is unconditionally fit for ministry—

the Director shall determine accordingly and the Office of Professional Standards must issue to the applicant a clearance for ministry for that role office or position: s53 of the Act.

- (h) Otherwise the Director must refer the application to the PSC.
- (i) The Director must as soon as practicable after that referral —
 - (i) give written notice to the applicant of the referral of the matter to the PSC;
 - (ii) inform the applicant that he or she has the opportunity within a further 14 days to address any submissions to the PSC directed to the question of the applicant's fitness for ministry; and
 - (iii) make available to the applicant a copy of the Act and this Protocol.

Consideration of the matter by the PSC

7.2 The PSC must deal with the application as follows:

- (a) The PSC may conduct such further investigation and enquiry as may be appropriate to the matter.
- (b) The PSC shall consider any submissions from the applicant and take into account the matters referred to in s112 of the Act.
- (c) If on that referral, to the best of its knowledge information or belief, the PSC is of the opinion—
 - (i) in the case of an applicant for a clearance for ministry within the Diocese, that the applicant is unconditionally fit for the proposed role office or position; or
 - (ii) in the case of an applicant for a clearance for ministry outside the Diocese, that the applicant is unconditionally fit for ministry—

the PSC shall determine accordingly and the Office of Professional Standards must issue to the applicant a clearance for ministry.

- 7.3 Otherwise the PSC must deal with the application in accordance with the Act and subject to s 69: s54 of the Act.

8 An adverse opinion of the PSC on fitness for ministry

- 8.1 After investigation of an application for a clearance for ministry, where the PSC has formed the opinion that in connection with that application, by reason of misconduct the church worker may not be fit for ministry in the Church either generally or to hold a proposed role office or position in the Church or may be fit subject to any condition or restriction, the PSC must refer the matter to the Board: s69(b) of the Act.
- 8.2 The *Professional Standards Uniform Regulations* 2017 prescribe the form to be used for that reference.
- 8.3 The PSC must refer the matter to the Board by delivering to the Secretary of the Board a written report setting out—
- (a) a statement of any allegations of misconduct made against the Church worker; and
 - (b) its investigation and opinion: s71(1) of the Act.
- 8.4 The report must be signed by a member of the referring body: s71(2) of the Act.
- 8.5 The PSC must also advise the Board whether in its view grounds exist for the Board to be satisfied that pending the final determination of the application—
- (a) the applicant may otherwise lawfully engage in the ministry¹; and
 - (b) there is no unacceptable risk of harm to any person if a provisional clearance is granted.
- 8.6 The Director must also give the applicant a copy of the written report and advice.

9 Determination by the Board

- 9.1 Part 5.3 of the Act sets out the provisions dealing with the determination of the Board of an application for a clearance. For details of the composition of the Board, please refer to Part 22 of the Principal Protocol.
- 9.2 The proceedings of the Board and the Review Board are governed by Part 5.5 of the Act.

¹ Under the *Working with Children Act* 2005 (Vic), a person commits an offence if he or she does not have a current assessment notice and engages in child-related work knowing it is child-related work and knows that he or she does not have a current assessment notice or is reckless as to whether he or she has one: s33.

9.3 **Provisional clearance:** On the referral to the Board of an application for a clearance for ministry, if the Board is satisfied that pending the final determination of the application—

- (a) the applicant may otherwise lawfully engage in the ministry and
- (b) there is no unacceptable risk of harm to any person if a provisional clearance is granted,

the Board may in its discretion determine that it is so satisfied and direct that the Office of Professional Standards issue to the applicant a provisional clearance for ministry,² subject to any condition or restriction, to remain in force until the earlier of—

- (c) the final determination of the application; and
- (d) the resignation or retirement of the person from the role office or position,

unless it is sooner suspended or cancelled: s80(1) of the Act.

9.4 On the referral to the Board of an application for a clearance for ministry, the Board must enquire into and determine—

- (a) whether the Church worker did commit any alleged misconduct; and
- (b) whether—
 - (i) the Church worker is unfit, whether for a specified limited period or permanently, to hold a particular or any role office or position in the Church or to be or remain in Holy Orders or in the employment of a Church body; or
 - (ii) in the exercise of a church worker's role office or position or in the performance of any function, the Church worker should be subject to any condition or restriction:

s80(2) of the Act.

9.5 The Board may hold a preliminary conference and give directions in relation to the application: s101 of the Act.

9.6 **If on a final determination of the application**, the Board is satisfied that the respondent did commit any alleged misconduct and that—

- (a) the Church worker is unfit as provided in subsection (2)(b)(i) of s80 of the Act; or
- (b) in the exercise of a Church worker's role, office, licence or position or in the performance of any function, the Church worker should be subject to any condition or restriction

the Board may make a determination to that effect and may—

- (c) direct that the Office of Professional Standards refuse the

² In some cases the Board may take some time to determine an application for a clearance for ministry. The applicant may hold the required Working with Children Check and pose no risk of harm. In these circumstances, it could work an injustice if he or she was precluded from working whilst the clearance process took its course.

application or issue the clearance for such period and subject to such condition or restriction as the Board may determine; and

- (d) exercise the powers referred to in sections 77 and 82 of the Act: s81 of the Act.

9.7 Within 7 days of the Board making any final finding of fact or direction on the application (**the decision**) that is adverse to the applicant, the Executive Director shall inform the applicant -

- (a) that he or she may within 30 days from the date of the decision or such further period as the Professional Standards Review Board may allow, apply to the Professional Standards Review Board for review of the decision and a stay under s90 of the Act; and
- (b) that if he or she does not apply to the Review Board for a review or if no stay is granted, the Office of Professional Standards must comply with the direction of the Board.

11 Review of a decision by the Review Board

11.1 Where the Board has made any decision, a respondent or applicant for a clearance aggrieved by it or the PSC 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: s89 of the Act. For details of the composition of the Review Board, please refer to Part 23 of the Principal Protocol.

11.2 In this part, “decision” means any finding of fact, determination or direction by the Board in relation to an application for a clearance for ministry under ss 80 or 81 of the Act.

11.3 Within 14 days of the date of the application to the Review Board or within 14 days of the date of a document or material coming to existence, whichever is the later, the Director must cause to be delivered to the secretary of the Review Board—

- (a) the determination and recommendations or directions of the Board; and
- (b) every other document held by the Office of Professional Standards which the Director considers is relevant to the application for review: s91 of the Act.

11.4 The Director must cause to be delivered to the applicant notice in writing of the documents delivered to the secretary of the Review Board under s91 of the Act.

11.5 The Review Board may hold a preliminary conference and give directions in relation to the application: s101 of the Act.

11.5 The Review Board may exercise all the powers of the Board under the Act 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 (whether constituted by the same members or different members) in accordance with any directions or recommendations of the Review Board:

s93 of the Act.

- 11.6 The Review Board shall deal with the application as expeditiously as possible and shall consider any further submissions from either the PSC or the respondent: s94 of the Act.
- 11.7 The Office of Professional Standards must give effect to any determination or direction of the Board or the Review Board in relation to a clearance for ministry: s56(4) of the Act.

12 Proceedings of the Board and the Review Board

- 12.1 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 forms; and
 - (b) is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks fit: s97 of the Act.
- 12.2 Part 5.5 of the Act contains provisions dealing with the proceedings of the Board and the Review Board.
- 12.3 Neither the Board nor the Review Board must, in the course of inquiring into any question—
 - (a) inquire into any matter which is or has been the subject of any formal investigation or enquiry conducted—
 - (i) under or pursuant to any provision of the Constitution; or
 - (ii) under or pursuant to a Canon of the General Synod, a Canon or an Ordinance of another diocese relating to the discipline or professional standards of clergy or 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—
 - (i) faith of the Church, including the obligation to hold the faith;
 - (ii) ritual of the Church, including the rites according to the use of the Church and the obligation to abide by such

use; or

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

s111 of the Act.

13 The Archbishop or Bishop of the Diocese

- 13.1 Subject to the prior grant of a clearance for ministry to a person, the Diocesan Bishop may in his or her discretion grant or refuse the person the licence, permission to officiate or other relevant authority as the case may be of the Diocesan Bishop to engage in ministry, whether unconditionally or subject to any condition or restriction endorsed on the same: s58(1) of the Act.
- 13.2 A condition or restriction specified in the clearance for ministry shall be taken to form part of any licence, permission to officiate or other relevant authority and the Diocesan Bishop must incorporate the same in the licence, permission to officiate or other relevant authority: s58(2) of the Act.

14 Completion of the Process

- 14.1 As appropriate the Executive Director will liaise with those involved in this Protocol at the completion of the matter and will seek comments about the process and may discuss possible improvements.
- 14.2 Proposals regarding any changes within the structures of the Church which may assist to prevent further occasions of abuse will be considered.
- 14.3 Any recommendations resulting from this activity will be provided to the Scheme Directors.

15 Confidentiality

- 15.1 Part 8.2 of the Act imposes strict confidentiality obligations in connection with a complaint or matter but requires or authorizes disclosure in the circumstances there referred to. See also Part 17 below of this Protocol.

16 Co-operation with Government Authorities

- 16.1 Reference should be made to Part 27 of the Principal Protocol.

17 Co-operation with other Dioceses, other Denominations and other Child Related Employers

- 17.1 Each of the Director and the PSC has a duty under the Act to disclose certain information in their possession relating to alleged misconduct of a Church worker to other office holders or bodies in the circumstances there prescribed: s177 - 180 of the Act.

18 Grievance procedure

- 18.1 Any grievance about the operation of this Act or this protocol must in the first instance be addressed in writing to the Executive Director of the Scheme Corporation marked confidential.
- 18.2 The grievance is to be dealt with in accordance with the provisions of ss182 and 183 of the Act.
- 18.3 The Executive Director must consider the grievance and forward the same to the Director and to the investigator or other staff member if any involved for a written response within 14 days or such longer period as the Executive Director may allow.
- 18.4 The Executive Director must provide the person lodging the grievance and the Scheme Directors with a written response and an outline of any proposed action.
- 18.5 If the person aggrieved about the operation of this Act or any protocol approved under it remains so after receiving the response from the Executive Director, that person may address their grievance in writing to the Professional Standards Ombudsman. That person is appointed by the Scheme Directors pursuant to Part 7.5 of the Act.
- 18.6 The Professional Standards Ombudsman must consider the grievance and forward the same to the Director and to the investigator or other staff member if any involved for a written response within 14 days or such longer period as the Professional Standards Ombudsman may allow.
- 18.7 The Professional Standards Ombudsman must provide the person lodging the grievance and the Scheme Directors with a written response and an outline of any proposed action.
