

**IN THE PROFESSIONAL STANDARDS BOARD  
ANGLICAN DIOCESE OF MELBOURNE**

**IN THE MATTER of a complaint against REV AS**

<b>BOARD MEMBERS:</b>	Mr Stephen Wilmoth (President) Rt Rev Peter Danaher Dr Philip Greenway Ms Kerry Walker Rev Chris Appleby
<b>WHERE HELD:</b>	Melbourne
<b>DATE OF HEARING:</b>	23 February 2017
<b>DATE OF DETERMINATION:</b>	19 April 2017
<b>CASE MAY BE CITED AS:</b>	<i>Professional Standards Committee v Rev AS</i>
<b>MEDIUM NEUTRAL CITATION:</b>	[2017] PSB (Melb) 1

**APPEARANCES**

For the Professional Standards Committee	Mr Mark Gibson of Counsel, instructed by the Director of Professional Standards
For the respondent	In person
For the complainant	By telephone from Western Australia

**FITNESS FOR OFFICE – convictions for child sexual abuse – complaint – permission to officiate – deposition from Holy Orders – *Professional Standards Act 2009*, ss 62.**

In 1964, the police apprehended the respondent, then aged 23 years, while engaging in sexual activity in his car with the complainant, a 10-12 year old boy. The respondent was convicted on 29 September 1964 by the County Court of Victoria of indecent assault on a male person under 16 years (2 counts) and commission of an act of gross indecency with a male person (2 counts) and released on probation for a period of 3 years, with special conditions that he follow the directions of a Court-appointed psychiatrist. Notwithstanding the convictions, he was ordained as a priest in 1970. The complainant lodged a complaint against the respondent.

**Held:**

The respondent is permanently unfit to be granted permission to officiate as a member of the clergy. The Board recommends that any application by the respondent for permission to officiate as a member of the clergy be refused. [20]

Deposing the respondent from Holy Orders might further protect the public, (beyond what reasonable protection required), but would certainly punish the respondent disproportionately to any extra protection to the public his deposition might afford. [18]

## REASONS FOR DETERMINATION

**Mr Stephen Wilmoth (President)**  
**Rt Rev Peter Danaher**  
**Dr Philip Greenway**  
**Ms Kerry Walker**  
**Rev Chris Appleby**

### *Nature of the Reference*

1. The referral of the Professional Standards Committee (**the Committee**) was as follows—
  - (a) The Committee by its letter of 23 August 2016 (**the referral**) has referred to the Professional Standards Board (**the Board**) pursuant to s 56 of the *Professional Standards Act 2009* (**the Act**) a complaint against the Reverend AS (**the respondent**) made by Mr TM in 1997.
  - (b) The Committee's referral says that it had formed the opinion that the conduct forming the subject of the complaint made against the respondent, if established, would call into question whether the respondent is, as a Church Worker, fit to hold any role, office, licence or position of responsibility within the Diocese and if fit, whether he should be subject to certain conditions or restrictions and/or remain in Holy Orders.
2. In addition to the complaint against the Respondent, the Committee's referral to the Board also raised for its determination the respondent's application for a Permission to Officiate, being a clearance to work in Anglican ministry under an authority issued by the Archbishop of Melbourne.
3. The respondent's application was made by his letter of 20 May 2016 to the Archbishop, but by his further letter of 5 October 2016 to the Archbishop and his letter of the same date to the Secretary to the Board, he withdrew his application.
4. The Board proceeded to deal with the referral as a complaint and after a directions hearing was held on 7 December 2016, the referral came on for final hearing on 23rd February 2017.

### *The complaint*

5. The complaint derives from the respondent's apprehension by police in 1964 while engaging in sexual activity in his car with the complainant, a 10-12 year old boy. The respondent, then 23 years of age, was convicted on 29 September 1964 by the County Court of Victoria of indecent assault on a male person under 16 years (2 counts) and commission of an act of gross indecency with a male person (2 counts) and released on probation for a period of 3 years, with special conditions that he follow the directions of a Court-appointed psychiatrist.

6. At the final hearing, the respondent repeated the assertion he made in correspondence that he had not been convicted, but only placed on probation, but ultimately he accepted the fact of his conviction.
7. The unchallenged evidence set out in the referral is that at the time of the offending the respondent was a parishioner at [name of parish]. The offending occurred before he became a theology student. Notwithstanding his convictions he was ordained a priest in 1970 by a Bishop whom the respondent says was aware of his offending.
8. However, the complainant alleges, but the respondent denies that the offences were part of ongoing sexual abuse of the boy, consisting according to the complainant of systematic and premeditated sexual assault of him as a 10-12 year old boy, over a 2 year period.
9. In 1997, the complainant told the then Archbishop of Melbourne of the assaults on him over a 2 year period by the now Reverend AS, and detailed the background and history of the assaults in his letters of 12 August and 10 November 1997.
10. Consistently with the complainant's allegation of offending by the respondent over 2 years, of which the incidents of which he was convicted were only a part, the complainant is also seeking, separately from this complaint, compensation for damages in negligence from the Anglican Church.
11. The respondent is, and has been since ordained a deacon in 1969, a member of the clergy and thereby a Church worker as defined in s 3 of the Act, and amenable to the Board's jurisdiction pursuant to s 56 of the Act (the fitness or unfitness provision) and s 62 of the Act containing sanctions available to be invoked where appropriate. The Board accepts Mr Gibson's submission, which the respondent did not challenge, that the Board has jurisdiction over the respondent despite his offending occurring prior to his ordination.
12. The Board further accepts that the respondent's ordination proceeded in ignorance of allegations that the respondent's offending exceeded that of which he was convicted.
13. Without the complainant's actual presence at the final hearing and cross-examination of him the Board is unable to be satisfied to the degree required by a serious allegation as to the extent if at all that the Respondent's offending exceeded that of which he was convicted.
14. However, the need for a finding by the Board as to the extent of offending by the respondent is obviated by reason of the Board being satisfied that the offending of which the respondent was convicted is sufficiently egregious to itself justify a recommendation that the respondent be permanently denied permission to officiate.

15. This recommendation satisfies the requirement of the Board that it protect the public, rather than punish the offender, this being the primary purpose of disciplinary proceedings for breaches of professional or vocational standards and ethics, as confirmed by the Professional Standards Review Board presided over by the Honourable David Habersberger QC in PSRB-2016 in its determination of 9 December 2016.
16. Mr Gibson's primary submission was, however, that the Board should invoke its power under s 62(m) by deposing the respondent from Holy Orders. Mr Gibson helpfully supported that submission by observing that community standards have changed since the respondent's ordination 47 years ago such that now, knowledge of the offending of which the respondent was convicted "would so alarm the public as to warrant the removal of Holy Orders", even though Mr Gibson conceded there to be "a degree of sympathy and an element of harshness about this....."
17. However, it is not a question for the Board of sympathy or harshness, but protection of the public. The Board determines the public to be sufficiently protected by denying the respondent permission to officiate.
18. Deposing the respondent from Holy Orders might further protect the public, (beyond what reasonable protection required), but would certainly punish the respondent disproportionately to any extra protection to the public his deposition might afford.
19. The respondent's unblemished record since ordination in 1970 is a sound basis for concluding that without permission to officiate, the public is sufficiently protected from future transgressions by him.

*Determination and recommendation*

20. The Board is satisfied that the respondent is permanently unfit to be granted permission to officiate as a member of the clergy and recommends that any application by the respondent for permission to officiate as a member of the clergy be refused.

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*Editor's Note: The Committee applied to the Professional Standards Review Board for a review of this determination. The Review Board upheld the application and recommended in substitution for that of the Board, that the respondent be deposed from Holy Orders.*