

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

**IN THE MATTER of a complaint against Rev ER**

<b>BOARD MEMBERS:</b>	Mr Stephen Wilmoth (President) Bishop Peter Danaher Ms Kerry Walker Dr Philip Greenway
<b>WHERE HELD:</b>	Melbourne
<b>DATE OF HEARING:</b>	11 November 2014
<b>DATE OF DETERMINATION:</b>	27 November 2014
<b>CASE MAY BE CITED AS:</b>	<i>Professional Standards Committee v Rev ER</i>
<b>MEDIUM NEUTRAL CITATION:</b>	[2014] PSB (Melb) 1

**FITNESS FOR OFFICE – sexual assault of a child - deposition from Holy Orders – Professional Standards Act 2009, s 62**

In 1969 or 1970, the Rev ER (**the respondent**), then aged 24, and when a Church worker as defined by s 3 of the *Professional Standards Act 2009*, sexually abused Ms AB, then 13 or 14-years-old, who was the daughter of an office holder at the parish at which he was the Organist and Assistant Choirmaster. The abuse occurred on a number of occasions, most commonly taking place at the local primary school, at which the respondent was a teacher and AB a student.

**Held:**

- (1) The Board declares itself to be satisfied that the respondent, being a Church worker as defined by s 3 of the Act, is permanently unfit to hold a licence for ministry or to remain in Holy Orders.
- (2) The Board recommends to the Archbishop pursuant to s 62 of the Act that the respondent cease to hold a licence for ministry and be deposed from Holy Orders.
- (3) The Board further recommends that the Archbishop or his delegate notify the Department of Justice of the State of Victoria and the Working with Children Unit of the Board's determination of its reference.

<b>APPEARANCES:</b>	<u>Counsel</u>	<u>Solicitors</u>
For the PSC	Mr Mark Gibson	PSC
For the respondent	Mr Sean Cash	Davies Elliott

**Referral** by the Professional Standards Committee under s 56 of the *Professional Standards Act 2009 (the Act)* of a complaint against the respondent raising a question of fitness for office.

### **The Board: Reasons for determination and recommendations**

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#### **Recommendations**

1. The Professional Standards Board (**the Board**) declares itself to be satisfied that the Rev ER (**the respondent**), being a Church worker as defined by s 3 of the Act, is permanently unfit to hold a licence for ministry or to remain in Holy Orders, and recommends to the Archbishop pursuant to s 62 of the Act that he cease to hold the said licence and cease to remain in Holy Orders, and further recommends to the Archbishop that he or his delegate notify the Department of Justice of the State of Victoria and the Working with Children Unit of the Board's determination of its reference.

(1) *Nature of the reference*

2. The Professional Standards Committee (**the PSC**) by its letter of 9 July 2014 has referred to the Board pursuant to s 56 of the *Professional Standards Act 2009 (the Act)* a complaint against the respondent made to the PSC by Ms AB.
3. The PSC's letter says that it had formed the opinion that the conduct which is the subject of the complaint would call into question whether the respondent is fit to hold any role, office, licence or position of responsibility in the Church (including, but not limited to, his fitness to remain in Holy Orders) and if fit, whether he should be subject to certain conditions or restrictions.

(2) *The complaint*

4. Ms AB alleged that as a 13 or 14-year-old child in 1969 or 1970<sup>1</sup>, she was sexually abused on a number of separate occasions by (now [senior office holder]) ER, who was about 10 years her senior. The respondent, Mr ER (as he then was), was at the relevant time a school teacher, the Organist and Assistant Choirmaster at Ms AB's parish, and a friend of her father, who was [an office holder in the parish].
5. The respondent responded in writing to the allegations. He provided both a response for the purposes of the Professional Standards process, and a letter of apology to Ms AB. He admitted that on about 6 occasions in 1970 he abused Ms AB in the circumstances which she described in her allegations. He agreed that this was "sexually inappropriate behavior" which was a "betrayal of trust". He agreed that he was the Organist and Assistant Choirmaster.

(3) *The PSC investigation*

6. Ms AB provided to the PSC a statutory declaration (and another one to the Board shortly before the hearing particularizing her allegations), and a police report was made, but Ms AB had decided not to co-operate with police in pursuing a criminal report.
7. The respondent admitted to the PSC that he was engaged in what the PSC's letter refers to, and the respondent admits, as "a number of sexually inappropriate encounters with a girl he acknowledges was then 14-years-old when he was aged approximately 24-years-old and working as a church worker."
8. The PSC's letter adds that "Although there is a degree of separation between Ms AB's and the respondent's recollections, this difference was not considered by the PSC to be very significant; the PSC regarded further investigation as unnecessary in the circumstances. The respondent has admitted the most serious aspects of his behavior as alleged by Ms AB".

(4) *The hearing*

9. The Board was delayed in fixing the hearing of the complaint until the Board was fully re-constituted. A hearing was held on 11 November 2014, when the respondent, represented by Mr Sean Cash of counsel, gave evidence, and was cross-examined by Mr Mark Gibson of counsel.
10. The hearing involved no contest as to the facts of the complaint and was in the nature of a plea, and submissions were made as to the appropriate sanction warranted to be imposed by the Board. It was submitted, and the Board accepts, that it is to the credit of the respondent that he has admitted the sexual

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<sup>1</sup> The respondent's evidence was that it was in 1970.

misconduct alleged by the complainant.

11. Mr Gibson provided to the Board written submissions which in addition to submissions as to the criminality of the respondent's conduct and the appropriate sanction, and a timeline/chronology of events, alleged a coincidental issue of dishonesty, that the respondent "had repeatedly failed to act in accordance with Diocesan policies, by failing to disclose the fact of his past sexual impropriety, when making application for ordination as a Deacon and then as a Priest; when making application for priestly appointments in Victorian dioceses; and when making application for a clearance for ministry for the leadership position of [a senior office] in the Diocese of Melbourne.
12. These assertions, said by Mr Gibson to be "obviously one of the main features of this case", and "an important part of this matter" were not challenged by the respondent, who was unable to explain his omissions satisfactorily or at all. It was submitted he "didn't think to not disclose it to them". He said, "I believed I'd received forgiveness both from the Church through the priest I'd been to and also from the complainant...". These omissions contravene the Code of Good Practice of the Church.
13. The unchallenged timeline/chronology of events contained in the written submission of Mr Gibson is as follows:
  - (i) The complainant was born in 1956 and is now aged 58 years.
  - (ii) In 1967 when aged 11, the complainant's mother died.
  - (iii) In 1969/70 when aged 13/14, the complainant was sexually abused by the respondent who was then ten years her senior. The sexual abuse occurred on multiple occasions. It consisted of: laying down on a bed in the sick bay area of the [...] Primary School where the respondent worked as a teacher; kissing and cuddling the complainant, together with touching the complainant's private areas underneath her clothes. In addition, the abuse involved the respondent guiding the complainant's hand to the respondent's genital area underneath his clothing.
  - (iv) At the time of the abuse, the respondent was the Organist and Assistant Choirmaster at St [...] in [...].
  - (v) At the time of the abuse, the complainant's father was [an office holder] at St [...] in [...]. As such, the respondent knew the [office holders] family, including the complainant, and knew the family circumstances.
  - (vi) The abuse concluded in 1970.

- (vii) In 1971 at age 15, the complainant complained of the abuse to a teacher...
- (viii) In 1972/73, the complainant's father became the godfather to the respondent's first child.
- (ix) In 1990 at age 34, the complainant met the respondent at her home wherein a passing reference to the abuse was made by the respondent; "I always meant to talk to you about 'that'".
- (x) In mid-1990s at age 39, the complainant received counseling, partly referable to the abuse by the respondent.
- (xi) In 2000, the respondent resigned from the Education Department.
- (xii) In 2001 at age 45, the complainant met the respondent at "LifeWorks" in order to discuss the previous misconduct by the respondent, and in an attempt to overcome the adverse effects such conduct had had on the complainant.
- (xiii) In 2004, the respondent was ordained.
- (xiv) On 25 September 2013, the respondent applied to the Director of Professional Standards for clearance to become [a senior office holder], failing to cite his previous sexual impropriety in answers (g) or (h) of the application.
- (xv) On 12 June 2014, the respondent responded in writing to the written complaint of the complainant. In his written response, the respondent acknowledged and admitted:
  - A. behaving in a sexually inappropriate way towards the complainant as she alleged in her written complaint whilst she was approximately 14 years of age and he was organist and assistant choirmaster at St [...] in [...]. ;
  - B. his betrayal of trust;
  - C. the adverse consequences caused to the complainant by his conduct;
  - D. that the abuse occurred on multiple occasions ("over a period of some weeks");
  - E. that in 2001 they met up at Life Works where he unreservedly apologized to the complainant for his previous conduct, sought forgiveness for such conduct and expressed remorse for such conduct.
- (xvi) By letter dated 6 October 2014, the respondent's solicitor sought "clarification of the facts which are acknowledged as agreed."

(xvii) In a supplementary statutory declaration sworn 12 October 2014, the complainant further detailed/particularized the sexual abuse.

(xviii) Whilst there has been no written response to this further particularization within the supplementary statutory declaration, it is understood by the Applicant that apart from the respondent stating the abuse occurred on 6 occasions (not 8 or 9) over a period of weeks (not 2-3 months) and that the respondent has no recollection of it occurring at his home, there seems to be no issue taken by the respondent to the remainder of its contents. This can be confirmed by the respondent at the hearing on 11 November 2014.

(5) *Submissions made to the Board at the hearing*

14. Mr Gibson submitted that the respondent had committed a serious criminal offence, notwithstanding the absence of prosecution. It was committed on 6 occasions over a period of some weeks. It was not a one-off spontaneous occurrence/aberration, but rather a short course of improper conduct, involving a gross breach of trust, whether or not the respondent was then a “Church worker” as now defined, and the complainant a parishioner, properly so-called.
15. Mr Gibson further submitted that the respondent’s apology to the complainant given in 2001, forgiveness (actual or notional, by the Church or the complainant) and remorse of the respondent for his conduct is lessened or tempered by his failure to reveal his past impropriety when applying to the Church for appointment to positions in the Church between 2004 and 2013.
16. Mr Gibson finally submitted as to the appropriate sanction that the nature of the admitted sexual impropriety together with the subsequent failure to disclose such impropriety warrants:
  - (i) Revocation of Holy Orders; or alternatively
  - (ii) Revocation of the current (and possible future) licence for ministry, and that “the rationale for the above submission is that there is no place in ministry for abusers of minors, regardless of the fact that it occurred 44 years ago. Furthermore, had the disclosure been made as was required, it is more than likely original ordination and subsequent clearances would not have been approved.”
17. Mr Cash submitted that although revocation of the respondent’s current licence for ministry is warranted, he should be permitted to officiate in ministry under direction. The respondent contemplated doing occasional parish locum work, and providing ministry in aged-care facilities.
18. Father ....., who gave evidence as to the respondent’s good character, was nominated by Mr Cash as an example of someone who may supervise the respondent, or otherwise that be done by “somebody of the Board’s choosing”.

19. More generally, Mr Cash submitted that the respondent was, but for the subject incident, otherwise of good character and had rendered a decade of good service in ministry, and in those circumstances should be extended a degree of mercy as befits a Christian body.

(6) *The Board's function*

20. Section 62 of the Act provides that the Board may determine the respondent to be unfit to hold a particular or any role, office, licence or position in the Church or to be or remain in Holy Orders or in the employment of a Church body. The section also provides for recommendations to be made by the Board as to conditions or restrictions that may be imposed on the respondent in carrying out his function.

21. The PSC's letter (see paragraphs 1 and 2 hereof) includes a reference to the complainant remaining "deeply upset that [the respondent] holds a senior role as [a senior office holder] in the Church".

22. As observed by the Board at the hearing, the role of Archdeacon is not something applied or volunteered for. It is a role that is seen as requiring a very competent priest to exercise the role of [senior office]. There are pastoral aspects to that, but it really is the "drains and gutters" that are the role of the [senior office holder] . If chosen for the role, the Bishop making the choice obviously has some confidence in the appointee.

23. It perhaps matters not whether the complainant was motivated in making her complaint to any and if so what extent by the respondent's seniority and position of [a senior office], as she may have perceived them.

24. When asked by the Board about the applicability of the sentencing principle of deterrence, Mr Gibson submitted:

"I have no doubt that he won't do this again, so deterrence isn't really an aspect of it."

25. However, the Board is invited to recommend the imposition of conditions or restrictions in the form of supervision if the respondent is to be permitted to discharge clerical functions in future.

(7) *Conclusion*

26. The admitted misconduct is criminal, and involved a gross breach of trust by the respondent. It occurred about 44 years ago. There is no evidence of any similar or other impropriety by the respondent. He has as the Board finds discharged his functions of parish vicar for a decade in exemplary fashion.

27. His character, but for the misconduct is, the Board finds, good. Only his omission in failing to declare his misconduct when there was a clear and

formal requirement to do so, thus raising the spectre of dishonesty, casts any additional doubt there already may be on an assessment of his character. The respondent was unable to explain this failure satisfactorily or at all.

28. The Board finds no evidence to indicate a significant risk of any repetition of the respondent's misconduct. That being so, the proposed directions or supervision of his ministry designed to prevent repetition would be futile.
29. Notwithstanding his unblemished record since ordination, and his attempt to make amends to Ms AB by apologizing, the seriousness of his criminal conduct, compounded by his dishonesty in failing to disclose it when required to do so, compels the conclusion, which the Board hereby reaches, that he is unfit to hold a licence for ministry, or to remain in Holy Orders.

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**NOTES:**

1. *These anonymized reasons are made public pursuant to s108 of the Professional Standards Act 2009 (Melb).*
2. *Pursuant to ss 103 and 105 of the Act, on 22 January 2015, the Vicar-General, Bishop Philip Huggins, appointed with the full powers and authorities vested in the Archbishop, executed an instrument of deposition of the respondent from Holy Orders.*