

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

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

<b>BOARD MEMBERS:</b>	Mr Robin Brett QC (Deputy President) Rev Richard Wilson Ms Beatrice Melita
<b>WHERE HELD:</b>	Melbourne
<b>DATE OF HEARING:</b>	26 June 2019
<b>DATE OF DETERMINATION:</b>	26 June 2019
<b>CASE MAY BE CITED AS:</b>	<i>Professional Standards Committee v Rev BW</i>
<b>MEDIUM NEUTRAL CITATION:</b>	[2019] PSB (Melb) 2

**FITNESS FOR OFFICE – criminal offence of transmitting child pornography material using a carriage service – *Professional Standards Uniform Act 2009* (Melb), s 78 – deposition from Holy Orders.**

Between December 2016 and February 2017, the Rev BW (**the respondent**), then aged 51 and when a Church worker as defined by s 3 of the *Professional Standards Uniform Act 2016* (**the Act**), engaged in online chats with four separate men within which child exploitation material was shared. On 16 April 2018, the respondent pleaded guilty in the County Court of Victoria to an offence against s 474.19(1)(a)(iii) of the Commonwealth Criminal Code of transmitting child pornography material using a carriage service. On 20 April 2018, the respondent was sentenced to 12 months' imprisonment, but directed that he be released forthwith upon giving security to comply with three conditions:

- (a) That he be of good behaviour for 12 months;
- (b) That he be under the supervision of the Deputy Commissioner, Community Correctional Services and Sex Offender Management for 12 months;
- (c) That he attend, undertake and complete the sex offender program within a period of 12 months.

The respondent also became, by virtue of having been sentenced, a registrable offender under the *Sex Offenders Registration Act 2004*, and was required to report his personal details and begin a regime of annual reporting under that Act to continue for 8 years.

**Held:**

- (1) The Board determines that the respondent is guilty of misconduct by reason of engaging in the conduct of which he was convicted in the County Court of Victoria on 20 April 2018.
- (2) The Board determines that the respondent is, by reason of having engaged in such conduct, permanently unfit to be in Holy Orders.
- (3) The Board recommends that the respondent be deposed from Holy Orders.
- (4) The Board directs the Office of Professional Standards to cancel the respondent's clearance for ministry and any other licence or authority that he holds from the Church.
- (5) The Board recommends that the respondent should be required to enter into a Safety Agreement with the Church authority, failing which he shall be excluded from entry or access to premises or activities of the Church generally.

<b>APPEARANCES:</b>	<u>Counsel</u>	<u>Solicitors</u>
For the PSC	Caitlyn Dwyer	PSC
For the respondent	No appearance	

**Referral** by the Professional Standards Committee under s 69 of the Act of a complaint against the respondent raising a question of fitness for office.

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**REASONS FOR DETERMINATION**

**Mr Robin Brett QC (Deputy President)**  
**Rev Chris Appleby**  
**Mr Malcolm Tadgell**

- (1) *The facts*

1. BW (**the respondent**) was born on 7 March 1965 in the United Kingdom. He grew up in Hong Kong and was educated there before returning to the United Kingdom to study law. He also completed a degree in theological studies and in 1991, at the age of 24 or 25, he was ordained a priest in the Church of England.
2. The respondent worked as a priest in England until 2001, then came to Australia. He was a parish priest in Victoria until 2009, then for the next three years worked in the community sector. In 2012 he travelled to Hong Kong and worked as a chaplain. In 2015 or 2016 he returned to Australia and worked as a priest first at East Burwood and then at Sunshine.
3. In February 2017, on his return from a trip to Hong Kong, the respondent's notebook computer was seized by Australian Border Force officers at Melbourne Airport on the basis that it contained objectionable material. The contents of the notebook were downloaded by the Border Force. On 8 May 2017 Victoria Police obtained under warrant a copy of all the data that had been downloaded by the Border Force. On 3 August 2017 Victoria Police executed search warrants at the respondent's home and workplace and seized or re-seized his mobile phone, notebook computer and other electronic devices. The respondent was interviewed by investigators and attended a formal interview at Sunshine Police Station. He cooperated fully with the investigators.
4. In the course of his interviews, the respondent said that he had used the Skype, Wickr and Grindr computer applications to make contact with other men and chat with them about "getting together with someone underage". Sometimes the chats would be all text messages; on other occasions the participants would activate their webcams and engage in live video chats.
5. On 16 November 2017, the respondent entered a plea of guilty under committal caution to an offence against s 474.19(1)(a)(iii) of the Commonwealth Criminal Code of transmitting child pornography material using a carriage service. The charge alleged that between 23 December 2016 and 25 February 2017 he used Skype to chat online with others about sexual activity. The communications were classified as Category 6 on the Child Exploitation Tracking System, which includes audio and text describing child pornography material. In engaging in these chats, the respondent used the usernames "Peter Private" and "Pervert".
6. On occasion, the respondent would attempt to convince the person to whom he was chatting that he could be trusted by disclosing that he was an Anglican priest and showing his clerical dress.
7. The respondent's trial took place in the County Court of Victoria before Judge Philip Coish on 16 April 2018 and, as stated above, he pleaded guilty. The Crown's opening of the case, which was accepted as correct by the respondent's counsel, alleged that on various occasions between 20 September 2016 and 25

February 2017, the respondent engaged in chats with four separate men in the course of which child exploitation material within the category described above was transmitted.

8. Judge Coish in his sentencing remarks referred to the following facts and findings:
  - (a) The offending was very serious. It occurred over two months and involved seven written descriptions of child pornography to four Skype users. The respondent described himself engaging in sexual activity with children. He would tell the men to whom he chatted that he was interested in very young ages, between 2 and 6 years old. He told police that they were sexual fantasy chats about possibilities rather than about things that had actually happened, and that he had understood that child pornography included anything that involved “naked images of underage children”, but not that it included text or oral communications.
  - (b) As the offending did not involve real children it therefore fell towards the lower end of child pornography offences. However, it had a tendency to “normalize” exploitative sexual activity involving children and thus to stimulate a susceptible recipient to engage in such activity with real children.
  - (c) The offending occurred at a difficult time for the respondent as a result of his mother’s deteriorating health and the extradition of his brother to the United Kingdom. The respondent was suffering from an adjustment disorder with mixed anxiety and depressed mood.
  - (d) The respondent had made significant voluntary contributions to a large number of good causes in the community, both in Australia and in the United Kingdom, over a number of years. His prospects for rehabilitation were good “with appropriate treatment”, but he would not be able to return to work with the Church. (The basis of this last finding is not apparent; the decision as to whether the respondent will return to work with the Church rests with the Church).
9. The respondent was sentenced by Judge Coish on 20 April 2018 to 12 months’ imprisonment, but the judge directed that the respondent be released forthwith upon giving security to comply with three conditions:
  - (a) That he be of good behaviour for 12 months;
  - (b) That he be under the supervision of the Deputy Commissioner, Community Correctional Services and Sex Offender Management for 12 months;
  - (c) That he attend, undertake and complete the sex offender program within a

period of 12 months.

10. The respondent also became, by virtue of having been sentenced, a registrable offender under the *Sex Offenders Registration Act 2004*, and was required to report his personal details and begin a regime of annual reporting under that Act to continue for 8 years.
- (2) *The Professional Standards Committee Investigation*
11. On 3 August 2017 Warren Peacock, an investigator engaged by Kooyoora Ltd, was given information by Victoria Police concerning their investigation of the respondent. Mr Peacock sought a recommendation from the Professional Standards Committee to the Archbishop of the Melbourne Diocese that the respondent be stood down from his duties. The recommendation was made and on 4 August 2017 Archbishop Freier suspended the respondent with immediate effect, the suspension to remain in force until the charges against the respondent had been disposed of. The respondent was shortly afterwards offered the services of a counsellor at the expense of the Diocese.
  12. On 14 February 2018 the Professional Standards Committee resolved, pursuant to s 69 of the *Professional Standards Uniform Act 2016 (the Act)*, to refer to the Professional Standards Board the matter of the suspension of the respondent. The Committee had formed the view that the conduct of the respondent had called into question whether he was fit to hold any licence or position of responsibility within the Diocese or to be or remain in Holy Orders.
  13. Unfortunately, the conveyance of the reference to the Professional Standards Board was delayed and it was not received until 27 March 2019. With the reference was a set of copies of all the documents on which the Committee intended to rely.
- (3) *Reference to the Professional Standards Board*
14. The Board to determine the reference was constituted on 21 May 2019 by Mr Robin Brett QC, Deputy President, as the President was then not in Victoria. On the same day Mr Brett, pursuant to s101 of the Act, wrote to the respondent and the Committee inviting each of them to propose a procedural timetable for determination of the reference.
  15. The respondent did not respond to that invitation, but on 30 May 2019, Ms Bebbington of Bebbington Lawyers, who had been retained on behalf of the Committee, wrote to Mr Brett requesting that the reference be set down for hearing, with oral submissions to be made on behalf of the Committee by counsel retained by the Committee. On 10 June 2019, Mr Brett directed that the reference should be set down for hearing and determination on 26 June 2019 at 5.00 pm. As no response had been received from the respondent to any communication

sent by the Board, Mr Brett also directed as follows:

I therefore direct the PSC to provide a copy of these directions, and a copy of my email of 21 May 2019, to the respondent by such means as it considers appropriate and as soon as practicable, and to produce evidence that it has done so at the hearing on 26 June 2019. At the hearing on 26 June 2019, the Board will, notwithstanding these directions, hear any submission the respondent may wish to make as to the appropriate procedure to be followed in this matter and may rescind or vary any of these directions. However, if the Board does not rescind or vary these directions it will proceed to hear and determine this matter.

(4) *The hearing*

16. The hearing duly commenced at 5pm on 26 June 2019. Ms Caitlyn Dwyer appeared on behalf of the Committee; there was no appearance by or on behalf of the respondent. A detailed affidavit sworn by Alexis Bebbington of Bebbington Lawyers established to the satisfaction of the Board that the respondent had been provided with all relevant documents and full notice of the date, time and place of the hearing. Section 74 of the Act provides that if, after a matter is referred to the Board, the respondent abstains from participation in the process by which the complaint is dealt with under the Act, the Board may nevertheless proceed with the process. Ms Bebbington in her affidavit deposed that on 18 June 2019, i.e., a week before the hearing, she spoke to Bishop Lindsay Urwin, who is acting as the respondent's carer. She swore that Bishop Urwin told her that he had spoken to the respondent, who had told him that he was aware that the matter was listed for hearing but thought that it was useless for him to be involved in the process. The Board was therefore satisfied that the respondent voluntarily abstained from attending the hearing and proceeded with the determination of the reference in his absence.
17. Ms Dwyer, on behalf of the Committee, provided the members of the Board with a written outline of her submissions and spoke to them. From time to time members of the Board asked questions to which Ms Dwyer responded. The submission of the Committee was that the Board should—
  - (a) determine that the respondent engaged in misconduct;
  - (b) recommend that the respondent be deposed from Holy Orders;
  - (c) recommend that the respondent's licence or authority (if any) be revoked; and,
  - (d) recommend that the respondent be required to enter into a Safety Agreement with the Church Authority falling which he be excluded from entry or access to premises or activities of the Church generally.
18. The Board has been very greatly assisted by Ms Dwyer's written and oral

submissions. She will find echoes of those submissions, particularly the written submissions, in this determination.

(5) *The Board's consideration*

19. "Misconduct" is defined in s 5 of the Act to include any offence under a law of the Commonwealth for which the maximum penalty prescribed is imprisonment for at least 6 months. The offence of which the respondent was convicted is such an offence. The same section also includes within the definition conduct of a Church worker which would on its face call into question the fitness of the person to remain in Holy Orders. The respondent was clearly at the time of the offence a Church worker within the definition of that term in the Act, and the view of the Board is that the conduct with which he was convicted does on its face call into question his fitness to remain in Holy Orders. The allegation against the respondent is therefore an allegation of misconduct within the meaning of the Act.
20. Under ss 76(1) and 77 of the Act the Board is required to enquire into and determine whether the respondent did commit any alleged misconduct; whether he is unfit, for a specified limited period or permanently, to hold a role, office or position within the Church or to be or remain in Holy Orders; or whether in the exercise of any such role, office or position or in the performance of any function, he should be subject to any condition or restriction.
21. Thus, the first task of the Board is to consider whether the respondent is guilty of misconduct as alleged by the Committee, and whether he is unfit to remain in Holy Orders.
22. The Board's consideration of whether the respondent is guilty of misconduct is made simple by s 105 of the Act. The effect of that section is to provide that if the Board is satisfied that the respondent has been convicted by a Court of an offence, then the reasons for judgment or other record of the Court shall be conclusive evidence that he engaged in the conduct constituting the offence. The Board has before it the record of the County Court of the respondent's plea of guilty to the charge against him and Judge Coish's sentencing remarks. Thus, the Board is bound to determine that the respondent committed the offence described in the sentencing remarks of Judge Coish, i.e., that he transmitted child pornography material as described above. It follows therefore that he is guilty of misconduct, and the Board so determines.
23. In determining whether the respondent is unfit, whether for a specified limited period or permanently, to remain in Holy Orders, the Board is required by s 112(2) of the Act to take into account a number of matters, as follows:
  - (a) the respondent's conduct, as the Board finds it to have been;
  - (b) any failure of the respondent to comply with a provision of the Act;

- (c) any other relevant fact or circumstance;
- (d) any standards specified in any code of conduct approved under the Act;
- (e) the specific duties of the role, office or position the respondent held;
- (f) the extent to which any person is at risk of harm if he is permitted to engage in ministry or service either absolutely or subject to any condition;
- (g) the respondent's conduct both before and after any misconduct found to have been committed;
- (h) any further material received from the Committee or the respondent that is relevant to the Board's consideration.

24. The *Faithfulness in Service* Code contains a number of relevant provisions:

- (a) "The Church is the fellowship that nurtures and sustains Christians as they seek to follow Christ faithfully and participate in God's mission. Its leaders especially are to be examples of Christian faith and obedience as they exercise their vocation, in dependence on the Holy Spirit."
- (b) "You are not knowingly to use offensive language."
- (c) "You are to be chaste and not engage in sex outside of marriage and not engage in disgraceful conduct of a sexual nature."
- (d) "You are not to view, possess, produce or distribute any form of child pornography or child exploitation material."

25. Ms Dwyer also submitted that in making any determination any determination as to unfitness the Board should have regard to the overriding purposes of the Act set out in s 9 of the Act. Those purposes are to facilitate the just, quick and inexpensive resolution of the real issues in the complaint or matter, and to regulate fitness for ministry or service to uphold standards in the Church and for the protection of the community. Section 10 specifically requires the Board to seek to give effect to the overriding purpose when it exercises any power given to it by the Act or when it interprets any provision of the Act. The Board accepts Ms Dwyer's submission and notes in particular the references to upholding standards in the Church and protection of the community.

26. We found the submissions of Ms Dwyer as to the respondent's fitness to remain in Holy Orders highly persuasive. She submitted on behalf of the Committee that the seriousness of the respondent's conduct was obvious from its nature and demonstrated by the fact that he was sentenced to imprisonment for one year for engaging in it, and that the fact that he was not required to serve that term immediately does not diminish the seriousness of the conduct. What the respondent did, on a number of separate occasions over a period of two months, was to seek out persons who shared his sexual interest in children. He found four such persons, and on occasion used his clerical attire to gain their trust.



Having found them, instead of counselling them to seek professional treatment, he gratified his own sexual proclivities by describing how he wished to abuse them. It was premeditated, considered conduct. The very nature of the conduct, the fact that it amounted to breaches of the Faithfulness in Service Code in several respects, and the fact that it was far below the standard to be expected of a clergyman, mean that by engaging in it the respondent showed himself to be unfit to remain in Holy Orders.

27. We do not consider that the fact that the respondent was describing fantasies rather than actual events, or that no actual children were involved in the offences he committed, renders those offences and his conduct unimportant or insignificant. Although, as Judge Coish said, it was at the lower end of the scale of child pornography offences, it was nevertheless extremely serious.
28. We accept Ms Dwyer's submission that his conduct was inconsistent with the values that Christian ministry is required to uphold. We have considered the facts regarding the respondent's psychological condition and the pressures that he was under when the offending took place, but it remains our view that his engagement in that conduct evidences a moral flaw that is incompatible with the holding of Holy Orders.
29. For these reasons we determine that the respondent is unfit to remain in Holy Orders. We further determine that he is permanently unfit. In doing so we do not reject the possibility that the respondent's desire to engage in or fantasise about sexual activity with underage persons may cease to exist; but the fact that he has engaged in such conduct in the past in our view renders it impossible for him ever to be regarded as the sort of person who should be in Holy Orders.
30. Having made these determinations, the Board considered what further action it should take. The Board has power to make recommendations to the Church authority, as that term is defined in s 173 of the Act. The recommendations that the Board may make are set out in s 78(1) of the Act. The range of possible recommendations is wide and we set it out in full:
  - (a) that the respondent be suspended from any role office or position or from performing any function as the case may be for such period recommended by the Board;
  - (b) that the licence or authority of the respondent be revoked;
  - (c) that the respondent's contract of employment (if any) be terminated;
  - (d) that the respondent cease to hold any role office or position then held;
  - (e) that a prohibition order be made in terms specified by the Board;
  - (f) that the respondent's holding of any role office or position or the performance of any function as the case may be, shall be subject to any condition or restriction as the Board may specify;
  - (g) that the respondent be required to enter into a Safety Agreement with the Church authority, failing which he or she be excluded from entry or access

- to premises or activities of the Church either generally or in a specified location or circumstances;
- (h) that the implementation of a determination shall be suspended for such period and upon such conditions as the Board shall specify;
  - (i) that the respondent be counselled;
  - (j) that a person be appointed to promote a charge against the respondent before the Diocesan Tribunal or the Special Tribunal If it has jurisdiction under the Constitution;
  - (k) that the respondent be deposed from the exercise of Holy Orders;
  - (l) otherwise as the Board sees fit.
31. The same sub-section provides that the Board may also direct the Office of Professional Standards to cancel or suspend respondent's clearance for ministry for such period as the Board may specify.
32. We have considered all the alternatives available to us. Ms Dwyer submitted on behalf of the Committee that the Board should recommend that the respondent should be deposed from Holy Orders. We agree. We think that this recommendation follows necessarily from the determination we have made that he is permanently unfit to be in Holy Orders.
33. Ms Dwyer on behalf of the Committee also submitted that we should direct the Office of Professional Standards to cancel the respondent's clearance for ministry and any other licence or authority that he holds from the Church. We also accept this submission, and for similar reasons.
34. Finally, Ms Dwyer submitted on behalf of the Committee that the respondent should be required to enter into a Safety Agreement with the Church authority, failing which he be excluded from entry or access to premises or activities of the Church generally. Such agreements are tailored by the Church authority to the requirements of an individual case. In the case of the respondent, a Safety Agreement might, for example, provide that he should not be upon any Church premises where children are likely to be present except in the company of another suitable adult. We accept this submission as well and recommend accordingly.
- (6) *Conclusions*
35. We therefore make the following determinations, directions and recommendations:
- (a) The Board determines that the respondent is guilty of misconduct by reason of engaging in the conduct of which he was convicted in the County Court of Victoria on 20 April 2018.
  - (b) The Board determines that the respondent is, by reason of having engaged

in such conduct, permanently unfit to be in Holy Orders.

- (c) The Board recommends that the respondent be deposed from Holy Orders.
- (d) The Board directs the Office of Professional Standards to cancel the respondent's clearance for ministry and any other licence or authority that he holds from the Church.
- (e) The Board recommends that the respondent should be required to enter into a Safety Agreement with the Church authority, failing which he be excluded from entry or access to premises or activities of the Church generally.

**NOTES:**

1. These reasons are made public pursuant to s 118 of the *Professional Standards Uniform Act 2016* (Melb).
2. Pursuant to s 119 of the Act, on 17 December 2019, the Archbishop executed an instrument of deposition of the respondent from Holy Orders.
3. The Office of Professional Standards has cancelled the clearance for ministry of the respondent.
4. On 26 February 2020, the Archbishop gave his notice of decision of the steps he has taken to give effect to the recommendations of the Board, as required by s 120 of the Act. The Archbishop exercised his discretion to determine that the disclosure of the identity of the respondent was necessary or desirable in the public interest.