

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

**IN THE MATTER of a complaint against Reverend TFK**

**BOARD MEMBERS:** Stephen Wilmoth (President)  
**WHERE HELD:** On the papers  
**DATE OF DETERMINATION:** 24 July 2019  
**CASE MAY BE CITED AS:** *Professional Standards Committee v TFK*  
**MEDIUM NEUTRAL CITATION:** TFK [2019] PSB 3 (Melbourne)

**FITNESS FOR OFFICE – *Professional Standards Uniform Act 2009* (Melb), s 5  
Misconduct – Sexual misconduct – Sexual abuse – Conduct unbecoming - Respondent  
deceased – complaint dismissed**

**Held:**

- (1) The Board determines that the complaint be dismissed.

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

**REASONS FOR DETERMINATION**

**Mr Stephen Wilmonth (President)**

1. Nature of the Reference.
  - (a) On 20 June 2019 the Applicant (PSC) referred to the Professional Standards Board (the Board) a complaint against TFK (“the Respondent”) under s.69 of the *Professional Standards Uniform Act 2016* (the Act) alleging that TFK engaged in misconduct, within the meaning of s. 5 of the Act, being sexual abuse, and conduct that is unbecoming or inappropriate of someone in TFK’s position.

- (b) the Reference included a Statement of Allegations of the Complainant, that between 1961 and 1962 the Respondent engaged in misconduct, within the meaning of s. 5 of the *Professional Standards Act* 2016, by engaging in a course of conduct toward the Complainant which constituted sexual misconduct within the meaning of Section 3 of the Act.

The alleged course of conduct which comprises the alleged misconduct included the following:

- a) The Respondent grabbed the penis of the Complainant once and the Complainant pulled away straight away.
- b) The Respondent tried to kiss the Complainant. The Complainant pulled away again.
- c) The Respondent tried to cuddle the Complainant. The Complainant pulled away and then threatened the Respondent that he would 'belt him'.
- d) The Respondent tried doing the same again about two or three more times and every time the Complainant pushed him away.
- e) The Respondent brushed up against the Complainant in the hallway when they passed. This happened about half a dozen times. It stopped when the Complainant really hit the roof.

## 2. Conduct of the Referral

The PSC, when making the Reference on 20 June 2019, requested that this matter be dealt with "on the papers", meaning without conducting a hearing nor receiving evidence directly and personally from the Complainant, the Respondent or witnesses, if any. At the same time, the PSC informed the Board that the Complainant did not want to be involved in the professional standards process nor provide evidence at a hearing.

3. After receiving the Reference but before receiving from the PSC all documents upon which reliance was to be placed, including the Respondent's response to the complaint, the Board was informed by the PSC on 11 July 2019 that the Respondent had died.
4. On 18 July 2019 the PSC provided the Board with, among other documents, the complaint made by the Complainant in the form of a statutory declaration, a statutory

declaration made by a witness, a response statement dated 4 April 2019 (and separate summary of it) said to have been prepared and signed by, and taken by the PSC from the Respondent, and documents provided by the Respondent including a photograph and sketch of and address where the conduct in the complaint is alleged by the Complainant to have taken place.

5. By paragraphs 41, 42 and 47 of his response statement dated 4 April 2019 the Respondent denied all the allegations made against him by the Complainant.

#### The Act

6. Part 5.3 of the Act applies to a case of a deceased Church worker. Section 76 requires the Board to enquire into and determine whether the respondent Church worker did commit any alleged misconduct, although in the case of a deceased Church worker, no determination of fitness for any role, office or position is required.
7. In making any determination, the Act specifies in Section 84(1) that the standard of proof for the Board to establish an allegation is that of reasonable satisfaction on the balance of probabilities, and in Section 84(2) that the Board must scrutinize evidence with greater care if there is a serious allegation to be established, or an inherent unlikelihood of an occurrence of a given description or if there are grave consequences that would flow from a particular finding.
8. The Board finds that the allegations set out in paragraph 1(b) cause all three circumstances referred to in Section 84(2) to apply in this Reference, and the Board must therefore in making its enquiry and determination scrutinize with greater care the evidence before it in this Reference.
9. On 11 July 2019 the Deputy Director of Professional Standards was advised by the Complainant's Solicitors that in light of the Respondent's death they were instructed by the Complainant to "withdraw against the Respondent with the Professional Standards Board and proceed with his matter under Redress."<sup>1</sup>
10. The Board was asked by the PSC on 18 July 2019 to consider whether this matter could be determined on the papers as was requested at the time of referral, and at the same time the PSC submitted<sup>2</sup> that it "may be the view of the PSB that the available evidence is of insufficient weight to be able to make a finding", and "if

the PSB determine that they cannot make a finding on the papers, they may decide that the only way the matter can be dealt with is by dismissal. The PSB may determine that the matter must be dismissed as the Complainant has withdrawn his complaint and the Respondent is now deceased."

## **CONCLUSION**

Notwithstanding the seriousness of the allegations made, the Complainant's wish not to be involved in the professional standards process nor to give evidence at a hearing and his withdrawal of his complaint after the Respondent's death, thereby preventing the testing of his allegations, and the Respondent's firmly expressed denial of all the Complainant's allegations against him, causes the Board to conclude that it is not satisfied to the required standard of proof described in paragraph 7 that the Respondent committed any of the alleged misconduct and accordingly must pursuant to s. 79(1) of the Act dismiss the complaint.

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<sup>1</sup> Email dated 11 July 2019 3:59 pm from [REDACTED], Solicitor to [REDACTED] forwarded to Kooyoora DDPS.

<sup>2</sup> As the PSC may so do pursuant to Section 73(a)(iii) of the Act.