

FAMILY AND COMMUNITY DEVELOPMENT COMMITTEE
INQUIRY INTO THE HANDLING OF CHILD ABUSE BY RELIGIOUS AND
OTHER ORGANISATIONS

SUBMISSION BY ANGLICAN DIOCESE OF WANGARATTA

HISTORICAL BACKGROUND

The Diocese of Melbourne, which was originally co-terminus with the Port Phillip district (as it was then called) of New South Wales, was created by Letters Patent of H.M. Queen Victoria dated 25th June, 1847; the same Letters Patent appointed Charles Perry (1807-1891) as the first Bishop of Melbourne (1847-1876), and elevated the Town of Melbourne to the status of a City.

The Port Phillip District became the separate Colony of Victoria pursuant to the (UK) Australian Colonies Government Act 1850.

The new Colony “inherited” from New South Wales certain legislation touching the local affairs of the United Church of England and Ireland (as it was known from 1801 to 1869). These Acts were eventually repealed and replaced here in Victoria. Their historical importance lies in the fact that, together with the 1847 Letters Patent, any Imperial legislation and English ecclesiastical law (so far as applicable), they constituted the initial legal foundation for the life and government of the Anglican Church in Victoria, and were the immediate predecessors of the (Victoria) Church of England Act 1854 which provided (among other things) for the establishment of synodical government.

The 1854 Act, with only minor amendments, is still on the Victorian statute-book, and is now to be regarded as the foundation legal instrument for all diocesan government in Victoria, subject only to the over-riding effect (so far as relevant) of the Constitution and Canons of the Anglican Church of Australia: (Victoria) Anglican Church of Australia Constitution Act 1960, No 6626 (as amended by Act No 8984 of 1977).

The Diocese of Ballarat was founded out of the original Diocese of Melbourne in 1875, and the Dioceses of Bendigo, Wangaratta and Gippsland in 1901.

Any legislation of the Synod of the Diocese of Wangaratta or, if applicable, the General Synod of the Anglican Church of Australia, is therefore underpinned by the legislative framework of the relevant Acts of the Victorian Parliament.

BACKGROUND TO PROFESSIONAL STANDARDS LEGISLATION

Throughout the last years of the last century a growing disquiet developed within the general community and the church in general about the increasing disclosure of child abuse which had been perpetrated within religious organisations. It was clear that religious organisations had not dealt with these instances of abuse in an appropriate manner. The Anglican Church of Australia came to the conclusion that action was required to address the issue of child abuse but also other forms of abuse within the Church.

In 2001 at its triennial General Synod the Anglican Church of Australia appointed a Committee to examine the issue of child protection. The Child Protection Committee reported to the next General Synod in 2004 and made several recommendations to that Synod, including the acceptance of a code of professional standards which would be adopted by all Dioceses in Australia. The Executive Summary of that report, known as **Making Our Church Safe: A Programme for Action** is attached as Annexure A.

As a result of this report a code, known as **Faithfulness in Service** was agreed for adoption by Dioceses. The Diocese of Wangaratta adopted this code by resolution of the Diocesan Synod in 2006. **Faithfulness in Service** as amended is contained in Annexure B.

The Child Protection Committee also recommended legislation which would create a national register of all clergy so that as clergy moved from Diocese, Diocese checks could be made of the Register to ascertain whether any breaches of conduct had occurred by the cleric. The legislation was enacted as the National Register Canon 2007.

The several Dioceses in Victoria have also been conscious of the need for action in relation to abuse by clergy, especially child abuse. In response to the growing concern about the handling of complaints against clergy of sexual abuse, the dioceses of Victoria have, since 2003 had a complaints regime in respect of abuse and harassment known as the Power and Trust Protocol. Most other dioceses in Australia adopted legislation to cover the situation, however the Victorian dioceses preferred a non-legislative protocol, and the Power and Trust Protocol was adopted by the various Councils of the dioceses. That Protocol as amended and updated is contained in Annexure C.

A Professional Standards Committee was appointed by the Diocese of Melbourne in accordance with the terms of the Protocol and a Director of Professional Standards was appointed to investigate complaints. The Diocese of Wangaratta considered that it was not feasible to provide its own Professional Standards Committee and Director of Professional Standards and thus along with the other regional Dioceses (other than the Diocese of Gippsland) it used the Melbourne Professional Standards Committee and Director of Professional Standards to deal with complaints.

In 2009 the Diocese of Melbourne at its Synod adopted a Professional Standards Act to replace the Protocol. In 2010 the Diocese of Wangaratta adopted complementary legislation to that of Melbourne. It uses the Melbourne Director, Committee and Boards.

SUMMARY OF PROFESSIONAL STANDARDS ACT 2010

The legislation gives a legal framework to underpin the investigation and determination of complaints and the imposition of penalties if appropriate. The Professional Standards Act 2010 of the Wangaratta Diocesan Synod is attached as Annexure D.

The Act provides for a complaints resolution process to deal with complaints of misconduct against Church workers. The scheme of the Act is based on fitness for service of the Church worker. It establishes a comprehensive system both to handle complaints with sensitivity and expedition and, in the interests of the community, to regulate those in the service of the Church; it leaves any issue of punishment for misconduct to the disciplinary Tribunal legislation already in place and the criminal law of the State.

The legislative model offers several distinct advantages to that of the Protocol:

- It ensures the system has the foundational support of Synod and therefore the broader Church community, lay and clergy.
- It is consistent with the national scheme of the Church and promotes co-operation between dioceses.
- It provides for a Director and Professional Standards Committee, as at present, but adds a separate Professional Standards Board to adjudicate on complaints and questions of fitness.
- The board would have broad and flexible powers to respect the often vulnerable position of complainants. It would operate without the formality of a court of law, but would have to act with fairness and according to equity, good conscience, natural justice and the substantial merits of the case without regard to technicalities and legal forms.

There is a difference between the committee and the board so as to ensure that the decision-making process is kept separate from the investigation process. This promotes confidence in the integrity and independence of the process and respect for the decisions that are made.

The Professional Standards Committee focuses on the preliminary appraisal and investigation of complaints and where appropriate, referral to law enforcement agencies or to the Board for adjudication; it also arranges conciliation and mediation to resolve complaints. It advises the Diocese on issues of financial assistance and generally on ways to promote good conduct in Church workers. The Director supports the committee in all this work.

The legislation introduces a right to a fresh administrative review on the merits of a determination by the Board by a Professional Standards Review Board, similar to the review process available to members of the wider community through the Victorian Civil and Administrative Tribunal. This was not available under the Protocol, and is one of the reasons that the Protocol process had been reviewed. There was no right of review or appeal from any recommendation made by either the Director or the Committee to the Bishop under the Protocol. The matter was simply referred to the Bishop for decision. He was free to accept or reject the recommendation but the Protocol gave him no legislative authority to give effect to any recommendation. The Bishop was constrained by existing Diocesan legislation.

The current structure offers a transparent and fair process. The respondent receives prompt notice of a complaint. Both the complainant and respondent receive notice of the substance of proposed findings by the investigator and the opportunity to respond, notice of any reference to the Board for adjudication and the opportunity to make submissions, notice of any determination by either the Board or the Review Board and the reasons for that determination.

The current structure also empowers the Bishop or other relevant church authority to give effect to the recommendations of the Board or Review Board as the case may be.

The Bishop-in-Council in accordance with section 9 of the Act has approved protocols for implementation in relation to the matters the subject of the Act.

The various pieces of subordinate legislation and protocols are as follows :

- Professional Standards Regulations (Annexure E)
- Code of Good Practice (Annexure F)
- Clearance Protocol (Annexure G)

BACKGROUND TO EPISCOPAL STANDARDS LEGISLATION

The situation of a Diocesan Bishop is different from that of other clergy because of the uniqueness of the office they hold. Under the Constitution of the Anglican Church in Australia if a person has a complaint against a Diocesan Bishop that complaint could only be heard by the Special Tribunal as set up by the Constitution. In addition only a limited type of complaints could be brought against a Bishop. Experience showed that this process was unsatisfactory and a better process was required.

At the General Synod of 2007 the Episcopal Standards Canon 2007 was passed. This Canon was an attempt to put in place a process which would be fairer and more transparent than the former one. Before that Canon could come into force in a Diocese it had to be adopted by the Synod of that Diocese. In Victoria only the Diocese of Bendigo adopted the Canon. The other Dioceses were of the view that the Canon was so flawed as to be impossible of adoption. The Synod of Wangaratta specifically rejected adoption of the Canon. Discussions were begun to try to come up with a form of legislation which would be acceptable.

The Victorian Dioceses had hoped that changes would be brought to the General Synod of 2010. The Standing Committee of General Synod, however, decided that the issue was so difficult that it would not take any legislation to the 2010 General Synod, but would rather continue discussions about possible changes to the legislation. The Victorian Dioceses, other than the Diocese of Bendigo, therefore decided that until the national Church was able to take some action it was necessary to provide a process for the Bishops of their respective Dioceses.

In 2010 this Diocese of Wangaratta, along with the Dioceses of Melbourne and Ballarat passed the Professional Standards Act for complaints against clergy and lay workers, (refer above). It was then felt that the Bishop should be subject to a regime as effective as that as the other clergy. Legislation was then prepared for the Province of Victoria for an Episcopal Standards Act.

In 2011 the Diocese of Melbourne passed their Episcopal Standards Act. If an agreed national ordinance is proposed acceptable to the Diocese that will be presented to Synod for adoption to replace this current Act. In the meantime this Act provides a legislative process for dealing with complaints against the Bishop of Wangaratta, and is compatible with the process in place for the Archbishop of Melbourne.

In 2012 complementary legislation was passed by the Synod of the Diocese of Wangaratta. The Episcopal Standards Act is attached as Annexure H.

SUMMARY OF EPISCOPAL STANDARDS ACT 2012

The process is similar to that with which we are familiar from the Professional Standards Act. In summary to legislation provides as follows:

- A Code of Conduct and a Protocol is to be approved by the Bishop in Council;
- An Episcopal Standards Committee (ESC) consisting of three people is established to receive and investigate complaints against the Bishop;
- A Director of Episcopal Standards is appointed to attend to administrative and executive functions of the ESC;
- A complaint against the Bishop can be made by the Director, a person resident in the Diocese or a person who was resident in another Diocese at the same time as the Bishop when the action complained of took place;
- The ESC can dismiss a complaint or take no further action in certain circumstances;
- The ESC must investigate the complaint and do so as expeditiously as possible;
- After investigation the ESC must, if required to do so, refer the complaint to the Episcopal Standards Board;
- An Episcopal Standards Board consisting of three persons is established to determine complaints and make recommendations as to action;
- If it considered that if the Bishop were to remain in office pending the outcome of a complaint there is an unacceptable risk of harm to any person the Board can recommend to the Church Authority (being a Board of the Primate and the two most senior Diocesan Bishops) that the Bishop be suspended from all or certain duties of office;
- Once the investigation is complete and it is considered that the Bishop is unfit to hold office, or remain in Holy Orders or that the Bishop should be subject to certain conditions or restrictions, the ESC must refer the complaint to the Board;
- If the Board is satisfied that the Bishop did commit any misconduct it will determine accordingly and recommend action to the Church Authority;
- An Episcopal Standards Review Board is appointed consisting of five members chosen from a panel of ten, and is to determine any application for review of a decision of the Board;
- If the Board makes a determination, and the Bishop or the ESC may apply to the Review Board for a reconsideration of the decision. The Review Board may affirm the decision, vary the decision, set aside the decision or refer the decision back to the Board for reconsideration;
- The Bishop must comply with the requirements of the Act;

- The Board and the Review Board must act with fairness, good conscience, equity and natural justice. They may make rules to ensure that the processes are carried out to achieve just results
- If a recommendation is referred to the Church Authority, it has power to give effect to that recommendation;
- All matters under the Act are to remain confidential unless required to be disclosed by the law or the provisions of the Act. The Church Authority may release to the public a statement as to whether the Bishop has been exonerated or the action taken against the Bishop;
- The Bishop in Council is required to indemnify the various appointed officers who acted in good faith in the exercise of their duties under the Act;
- The Bishop in Council may make regulations under the Act as required.
- The appointments of the ESC, the Director, the Board and the Review Board are made by the Bishop in Council in the absence of the Bishop so as to avoid a perception of bias in favour of the Bishop in the appointment of the various officials.

CONCLUSION

The Committee will see that a considerable amount of work and effort has been undertaken by the national Anglican Church, the Dioceses of the Province of Victoria and the Diocese of Wangaratta. Legislation has been put in place in the Diocese of Wangaratta which is enforceable pursuant to the Act of 1854. Allegations of child abuse and indeed abuse of all people, are dealt with in a transparent and meticulous manner. The Diocese of Wangaratta presents this submission for the consideration of the Committee.

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