



Anglican Diocese
of the Northern Territory

Protocol for Responding to Information about Sexual Misconduct

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TYPE	Protocol
SUBJECT	Protocol for Responding to information about sexual harassment, sexual assault or sexually inappropriate behaviour under the <i>Professional Standards Ordinance 2017</i>
AUTHORISED BY	Diocesan Council in accordance with Part 3 of the Professional Standards Ordinance 2017
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This Protocol has been prepared to assist understanding of the procedures to be followed when enacting the Diocese of the Northern Territory *Professional Standards Ordinance 2017*.

Where there is inconsistency between the Ordinance and the Protocol, the Ordinance prevails.

Similarly, a number of terms are briefly defined within the Protocol, while the Ordinance contains the full definition. Where inconsistencies occur, the definition within the Ordinance is full and correct.

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Glossary

The Professional Standards Ordinance contains the definitions relevant to this protocol. In addition, the following definitions are relevant:

Abuse of Power means the mistreatment of a person by actions or threats when justified by an appeal to God, faith, religion or professional knowledge; and includes the use of a position of spiritual or professional authority to dominate or manipulate another person or group, and claims for inappropriate deference to a person with spiritual or professional authority.

Allegation means information, as defined by the Professional Standards Ordinance, or an assertion which is still to be proved.

Child is a person under the age of eighteen years.

Confidentiality. Each worker who has access to information regarding suspected or disclosed sexual harassment or assault, or sexually inappropriate behaviour has an obligation to observe appropriate confidentiality. The Diocese is unable to promise absolute confidentiality since, in responding to the allegation, the steps of the Protocol will require some disclosure of certain details, either internally or externally.

State authorities may compel people to give evidence about actions under the Protocol and to produce relevant documents.

Investigator means a person who is appointed by the Professional Standards Committee (PSC) under the Professional Standards Ordinance (PSO) to investigate information on behalf of the Committee.

Jurisdiction means a Diocese or a church body who has responsibility for the source or the respondent.

Licensed Person means a bishop, priest, deacon or church worker licensed to officiate within the Diocese.

Natural Justice. The principles of natural justice will apply to all decisions made under the Protocol. As the consequences of any decision (that is, the effect/s on a person's rights, interests or

legitimate expectations) for any individual become more severe, so the importance of demonstrably acting fairly increases.

- The fundamental principles of natural justice are:
- the right to be given a fair hearing and the opportunity to present one's case;
- the right to have a decision made by an unbiased decision-maker; and
- the right to have that decision based on logically probative evidence.

Pastoral Support or Assistance means emotional and spiritual assistance from a person who is not necessarily qualified to provide professional counselling and which is offered to any parties involved in the process.

Privacy. Privacy legislation applies to records generated under the Protocol. The source and the alleged respondent may exercise their rights under that legislation. The *Privacy Act 1988* (Commonwealth) requires proper notice to be given before collecting personal information.

Professional Standards Board or **PSB** means a Board constituted under the *Professional Standards Ordinance*.

Professional Standards Committee or **PSC** means the committee as defined in the *Professional Standards Ordinance*.

Professional Standards Ordinance or **PSO** means the *Professional Standards Ordinance 2017* as passed by the Synod of the Diocese of The Northern Territory in 2017 and any subsequent amendments.

Reviewable Decision means a determination or recommendation of the Board which, if acted upon by the relevant Church Authority, may have the effect of:

- 1) deposing the respondent from Holy Orders; or
- 2) terminating the respondent's contract of employment, or removing or suspending the capacity of the respondent to gain income as a Church worker.

Reviewer means a barrister of not less than 5 years standing appointed at the Director's request by the President of a legal professional body

deemed appropriate by the director, or if such President is unwilling to appoint, or unreasonably delays in doing so, appointed by the Chancellor.

Sexual Misconduct includes any conduct falling within the definition of Information, as defined by the Professional Standards Ordinance.

Source means any person who makes an allegation or who provides information as defined in the Professional Standards Ordinance.

Stand Down and Prohibition. If an allegation of sexual harassment or sexual assault, or sexually inappropriate behaviour is made against a church worker, the church worker may, after being given an opportunity to be heard, be stood down from his/her position until the allegation has been dealt with after consideration of the following:

- the seriousness of the conduct alleged in the information;
- the nature of the material to support or negate the allegations;
- whether any person is at risk of harm;
- the effect on the respondent, a relevant Church body or the Church; and
- any similar allegation within the previous ten years.

The Professional Standards Committee will recommend to the relevant Church Authority that the respondent should be suspended from duties, or that a prohibition order may be made. A decision whether to stand down a church worker may be made at any time after an investigation has commenced.

Scope

This protocol describes the implementation of the Professional Standards Ordinance in responding to allegations of sexual misconduct concerning a church worker (ordained and lay, paid and voluntary, licensed and unlicensed) who are associated with the ministry of the Anglican Church in the Diocese of the Northern Territory.

1 How to report information?

1.1 Reporting information

If a church worker experiences or witnesses or suspects sexual misconduct he/she must report it immediately to the Safe Ministry Helpline. Other persons are also encouraged to report any concerns.

Any church worker who receives **information** about alleged conduct of a Church worker involving sexual misconduct must report it immediately to the Safe Ministry Helpline.

Information about an omission of a Church worker who had knowledge of the conduct of another church worker which may involve a sexual misconduct and has not informed the Helpline must also be reported.

If a person is unsure whether to report the information or not, then he/she should report the information.

In accordance with section 6 (2) of the Professional Standards Ordinance (PSO), the Contact Person in the Diocese of the NT is the Safe Ministry Helpline. If appropriate, the Helpline will assist the source to report to the Director of Professional Standards (Director). The source making the allegation may also report the matter directly to either the Director or a member of the Professional Standards Committee (PSC).

The Helpline will also ensure that all alleged criminal activity will be reported to the relevant authorities, and that all mandatory reporting is attended to.

1.2 Liability for defamation

A person providing information to a person who needs to know the information is generally excused from liability for defamation if the information is not provided maliciously.

1.3 Anonymous reports

Anonymous reports may be made and will be investigated to the extent practicable. At a minimum there will need to be an identified incident/s, victim and a respondent for a thorough investigation.

2 When information is provided

2.1 Making an allegation

An allegation may be made to the Safe Ministry Helpline. The information may be verbal, written, or communicated by email.

2.2 Who will see the information?

Only persons who need to know will be provided with the information.

These can include the Director, the respondent, members of the PSC, PSB, police, Child Protection Authorities (Territory Families), relevant Diocesan office holders, and those who will need to implement risk management and pastoral care measures during the PSO process.

In addition, after any investigation is completed, information may be required to be provided to the National Register in accordance with the *National Register Canon*.

2.3 Informing the respondent

A respondent will be provided with a written complaint as part of the investigation process, that is once all mandatory reporting, police reporting, and initial PSC decision making has occurred (see 4.1 below).

2.4 Disclosure of source's name

If, on consideration of a request for confidentiality, the PSC considers that providing the source's name or details may –

- cause undue risk to the source or
- adversely affect an investigation

the PSC may provide a written complaint with particulars including alleged event/s and victim name/s without naming the source of the initial report.

2.5 Disclosure of the respondent's name

Unless it is appropriate to publicly name the alleged respondent, information about the named person must be limited to only those who need to know for the purpose of investigation or child protection.

2.6 Pastoral support or assistance

Pastoral support or assistance will be offered to a source at the time the allegation is made. The source may nominate a person of his / her own choosing; or the Director, in consultation with the source, may nominate a person. The support will be provided for as long as is necessary.

Pastoral support will also be offered to the respondent when the respondent is notified of the allegation. In certain cases, this may be after the police have commenced their investigation.

Professional counselling will also be offered to the source and the respondent. The person may nominate a counsellor, or the Director may nominate a suitable counsellor. The selected counsellor will be professionally qualified and accredited with expertise in a field of work relevant to the specific circumstances. Costs will be borne by the Diocese.

2.7 Regular advice to all parties

Both parties will be kept informed of the progress of the investigation. The Director will contact the parties regularly, to inform them of progress.

3 Referral of the information

3.1 Referral to another jurisdiction

If the information relates to –

- alleged conduct which had occurred in another jurisdiction; or
- an abused person who resides in another jurisdiction; or
- allegations about a person who resides in another jurisdiction;

the matter may be referred to the Professional Standards Committee of that Diocese, or an equivalent body of that jurisdiction for investigation.

3.2 Referral to Police

All alleged criminal behaviour will be reported to the police, in accordance with relevant legislation.

The matter will not be investigated further by the Diocese until the police have completed their investigations or agreed that the Diocese can investigate the matter.

4 Before an Investigation

4.1 Before the investigation

- It is the responsibility of the Professional Standards Committee (PSC) to determine whether an investigation should proceed. They will only proceed after they have established that the information is not false, vexatious, or misconceived, and they have jurisdiction over the church worker.

4.2 Examinable conduct

If the PSC considers that the subject matter of the information constitutes examinable conduct, then the Committee will arrange for the matter to be investigated.

4.3 Allegations not proceeded with

In accordance with section 27 of the PSO, if the allegation is:

- considered to be false, vexatious, misconceived or trivial;
- under investigation by another competent person or body;
- the subject of legal proceedings;

or if the source:

- does not provide further particulars when requested;
- does not verify the allegations by signing a statutory declaration;

or if there is insufficient reliable information, then the information may not be investigated further.

4.4 Referral to an Investigator

If the information is to be investigated by the PSC, they will be referred to an investigator.

Investigators are appointed by the Professional Standards Committee to investigate information which may constitute examinable conduct.

Investigators have experience in legal, investigative and administrative matters, and have high level skills in investigating complex human issues. Investigators to whom these matters are referred are not employed by the Church: they are independent persons whose role is to investigate the information objectively and transparently.

5 Process of Investigation

5.1 Authority for Investigations

The authority for investigations under this *Protocol* arises from sections 19(1), 20(1) (f) and 25 of the PSO.

5.2 Details given to Investigator

The investigator will be given full details of the allegation by the Director, and the names and contact details of the source and the respondent, and any other relevant people. The investigator will carry out the investigation in accordance with the Ordinance and Protocol. The process will usually be to investigate the information and provide a report to the Director.

5.3 Interviews – general

The investigator may wish to speak with all parties to the information including the respondent; may request statements, reports, documents, and other material relevant to the information; and may wish to record conversations between him/herself and the other parties. The provision of this information is necessary to enable the investigator to make a full assessment of the information and to provide a report to the Director at the conclusion of the investigation.

The investigator may request the Director to arrange interviews for the investigator with the source, the respondent and any other people who the investigator believes are relevant. Alternatively, the investigator may prefer to contact relevant persons directly to arrange for the conduct of interviews.

Interviewing the source is always

critical to the process to obtain complete particulars of the information. An investigator will also interview the respondent, if practicable. As far as possible, these interviews will be conducted face-to-face.

Sources and respondents will be invited to have another person present during interviews; and it is recommended that all interviews are recorded by the investigator. It is preferable that statements be in the form of statutory declarations.

Interviewing the source:

When interviewing the source, the investigator will advise him/her that:

- the purpose of the interview is to obtain particulars of the information;
- the particulars will be put to the respondent who will have an opportunity to answer them;
- the interview will be recorded to ensure the details are correct;
- recordings, statements and other material provided during the investigation may have to be produced to a court if legal action is commenced or the material is subpoenaed;
- confidentiality of the allegation is to be maintained;
- he/she may obtain independent legal advice;
- at the end of the investigation, the investigator will provide a report to the Director for presentation to the PSC.

Interviewing the respondent:

5 When interviewing the respondent, the investigator will provide full particulars of the information and advise him/her that:

- he/she does not have to say anything;
- if he/she chooses not to say anything, adverse findings may be still be made against him/her;
- whatever he/she does say will be recorded and may have to be produced in a court if summonsed or subpoenaed;
- for the purposes of the investigation, he/she is presumed innocent until another conclusion is drawn on the balance of probabilities;
- confidentiality of the allegation is to be

maintained;

- he/she may obtain independent legal advice;
- at the end of the investigation, the investigator will provide a report to the Director for presentation to the PSC.

If the respondent chooses not to participate in any part of the investigation process, the investigation will continue and adverse findings may still be made against the respondent.

Interviewing children and disabled persons:

It is required that children are interviewed with a parent or guardian or other suitable adult (with the prior approval of the parent or guardian) being present. Care should be taken when interviewing persons with a disability.

The Director may appoint a second investigator, with appropriate qualifications, to assist in such interviews.

6 Outcome of investigation

6.1 Report and findings of the investigator

At the conclusion of the investigation, the investigator will provide a report to the Director.

The report will contain all information relevant to the information; and will contain the findings of the investigator. These findings are based on the 'balance of probabilities', that is, based on all the available information and taking into account the seriousness of the allegations, would a reasonable person consider that the alleged behaviour did occur or did not occur.

The Briginshaw principle is – 'the seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the (tribunal).

In such matters "reasonable satisfaction"

should not be produced by inexact proofs, indefinite testimony or indirect inferences'.
Briginshaw v. Briginshaw (1983) 60 CLR 336.

The report of the investigator will be taken to the PSC by the Director.

6.2 Outcome: no case to answer

If the PSC considers that the respondent has no case to answer, the Director shall inform both the source and the respondent. The matter is then closed.

6.3 Outcome: case to answer

If, the PSC finds that the respondent does have a case to answer the Director shall inform both the source and the respondent.

If required under section 54 of the ordinance, the Committee will make an appropriate reference to the Professional Standards Board. For more information about the Board see part 7-9 of the PSO.

6.4 The Professional Standards Board

In accordance with Parts 7-9 of the PSO, after considering all the relevant material, the PSB will determine whether or not the respondent is unfit for office, and whether there should be certain conditions or restrictions placed on him/her. The respondent will have an opportunity to speak to the PSB, make submissions and may examine or cross-examine witnesses.

If the PSB determines that the respondent is unfit, it has a number of disciplinary actions which it may recommend to the **Church Authority**. The Church Authority is required to give effect to those recommendations.

The PSB will provide a copy of the determination and recommendation/s to –

- the Church Authority;
- the respondent; and
- the National Register.

7 Review of Decisions

7.1 Reviewable decisions

In accordance with Part 8AA of the PSO, certain decisions made by the Board are reviewable decisions.

7.2 Application for review

If a respondent is aggrieved by a reviewable decision of the Board, the respondent may apply in writing to the Director for a review of the decision **within 14 days** of being provided with a copy of the Board's determination and recommendation. The Church Authority cannot act on any recommendation made to it by the Board until 14 days have passed and no application has been received.

The grounds for review are set out in section 74AC of the PSO.

The application must be in writing and addressed to the Director, and must set out the grounds for review.

7.3 Cost of a review

In accordance with section 74AL of the PSO, the respondent will be required to pay 50% of the estimated reviewer's fee within seven days of being notified of the fee or enter into a mutually agreed payment plan. Otherwise the application for review will lapse.

7.4 The Review Process

When the Director receives an application for review, three things must happen:

- a reviewer will be appointed immediately; and
- a Church Authority shall not act on any recommendation; and
- no information will be forwarded to the National Register, until a determination by the reviewer has been made.

The reviewer will make a determination in accordance with the provisions in section 74AN of the PSO

For completion when document supersedes an existing policy, procedure or protocol.

VERSION NUMBER OF THIS DOCUMENT	DATE OF PREVIOUS DOCUMENT	SUMMARY OF CHANGE	REASON FOR CHANGE
3	29/08/2014	Significant changes to match 2017 PSO, including removal of some items duplicated from the PSO and additions of some items Diocese of SQ has added.	-Aiming for consistency with our new PSO and new SM protocols - Consistency in Qld Province; and - Alignment with NT legislation - SMR Advice

Information received – either by Helpline (1800 070 511), PSC or DPS

Triage of Information by Helpline

- Offer support and provide procedural information
- Write down the information (receive the complaint/information)
- Refer matter to appropriate body/office holder:
 - Information of a PSO nature:
 - criminal or child abuse PSO matters to Police / Territory Families
 - PSO matters to DPS (& PSC)
 - Grievances: refer to Grievance Protocol (& notify Bishop)
 - Allegation/s of serious breach of Faithfulness in Service: refer to FiS Investigation Committee and, if criminal, to Police and/or to relevant government statutory body

PSC formalise PSO matter

- (i) PSC (with DPS), prior to investigation, establishes “grounds” and “jurisdiction”
- (ii) PSC will either:
 - a. cease the matter ←
 - b. appoint an Investigator
- (iii) Support will be offered to all parties
- (iv) Implement Risk Management measures

Criminal / Child Protection / DV Matter

- (i) Helpline assists person in reporting to Police and other statutory bodies
- (ii) Bishop & Rector implement interim Risk Management measures – with Helpline’s advice
- (iii) Once Police / statutory body processes are completed, process continues

Investigation

- (i) Investigator to interview all relevant parties
- (ii) The Respondent shall receive all the details of the allegations, and have an opportunity to respond
- (iii) Investigation Report prepared for the DPS
- (iv) PSC considers all reports and makes decisions:
 - a. no case to answer – close matter
 - b. case to answer – PSB consideration

PSB consideration and recommendations

- i) PSB examines information to determine the question of “fitness for office”
- ii) PSB outcomes – as per the PSO
- iii) Review Process is available to Respondent for reviewable decisions of the PSB

Bishop’s decisions and actions

Bishop considers PSB recommendations, makes decision and follows through with actions

Notes:
Information of examinable conduct: child abuse, sexual abuse, sexual misconduct, sexually inappropriate behaviour & process failures
Helpline: Safe Ministry Helpline operated by independent company – Safe Ministry Resources Pty. Ltd.
PSO: Professional Standards Ordinance 2017
DPS: Director of Professional Standards
PSC: Professional Standards Committee
PSB: Professional Standards Board

Frequently Asked Questions

Who can provide information?

Anybody who genuinely believes that sexual misconduct has occurred is encouraged to provide information.

Can I provide information anonymously?

You can provide information anonymously. However, it may be difficult to fully investigate anonymous information and you may find the result of the investigation is not as you would have liked. As a minimum there will need to be identified incident/s, victim/s and alleged perpetrator/s.

How do I provide information?

The Diocesan Safe Ministry Helpline may be contacted on **1800 070 511**.

Email: helpline@smr.org.au

PO Box: Safe Ministry Resources

PO Box 6016 Hammondville 2170 NSW

You may also contact the Director of Professional Standards or a member of the Professional Standards Committee directly.

In the Diocese of the Northern Territory, the Director of Professional Standards can be contacted on:

Telephone: 1800 242 544 or 07 3835 2266

Facsimile: 07 3831 9873

Email:

dops@anglicanchurchsg.org.au

Postal Address: GPO Box 421 Brisbane, QLD, 4001

What should I include in my information?

You should provide as much detail as you can including:

Your name and details, as the source;

Who was involved in the incident;

Details of the incident.

when it happened;

where it happened;

Whether you know of any other person who may have been affected;

About the contact person:

In the Diocese of The Northern Territory, in accordance with section 6 (2) of the Professional Standards Ordinance (PSO), the Safe Ministry Helpline acts as the Contact Person. The role of the Safe Ministry Helpline is to take information from persons who wish to make a complaint against clergy or a Church worker.

The Safe Ministry Helpline will respond to the person with dignity and respect and will provide any

necessary information about relevant ordinance, policy and/or protocol and procedures.

If the person wishes to proceed with the allegation, the Helpline can take full details and as appropriate, and forward the details of the allegation to the Director of Professional Standards and Police as relevant.

The functions of the Helpline include:

- to provide the first contact for persons who wish to make an allegation to the Diocese regarding assault by clergy or a Church worker;
- to provide information regarding the Policy and Protocols of the Diocese to those persons and to provide a copy of this Protocol as appropriate;
- to respond to and clarify any questions or concerns the person may have prior to proceeding with an allegation;
- to provide information about counselling and pastoral support which are offered to a source;
- to receive 'information' as defined in the Ordinance;
- to provide information regarding other options available to those who wish to make an allegation, including reporting the matter to the police and seeking legal advice and commencing legal action;

How long will an investigation take?

Each complaint will be dealt with as promptly as practicable. Some things such as counselling and support can be offered quickly.

The investigation may take further time depending on the complexity of the complaint and the number of persons to be interviewed. Generally, it is intended that the process is completed as efficiently as possible.

What happens to my information?

If the subject matter of the information is considered to be 'examinable conduct', then the matter will be investigated. An external investigator will obtain all statements, reports, other documents and any other material which will assist in a determination of the matter.

Mandatory Reporting:

In the Northern Territory, Mandatory Reporting Legislation requires all adults to report concerns of domestic violence and / or child abuse.

If there is an immediate risk of harm, contact Police on:

Telephone: 000 or 131444

However, assuming nobody is at immediate risk of harm, mandatory reporting should be undertaken by contacting the Northern Territory Central Intake Team:

Telephone: 1800 700 250

What if I am unhappy with the outcome of an investigation?

The Protocol does not remove the right of the source to seek remedy at law at any time. If you are unhappy with decisions made under the Protocol, you may write to the Bishop of the Diocese.