

Diocesan Tribunal Act 2021

AN ACT

to provide for a Diocesan Tribunal for the Diocese of Melbourne, to amend the **Offences Act 1963**, and the **Professional Standards Uniform Act 2016 (Diocese of Melbourne)**, to repeal the **Diocesan Tribunal Act 1963**, and for other purposes

BE IT ENACTED by the Archbishop, the Clergy and the Laity of the Anglican Church of Australia within the Diocese of Melbourne in Victoria duly met in Synod according to law as follows:

Preamble

- A. Section 53 of the Constitution provides that there shall be a diocesan tribunal of each diocese.
- B. Part IX of the Constitution provides in various ways for the constitution and functioning of a diocesan tribunal.
- C. In matters not provided for in the Constitution it is necessary or convenient for provision to be made by legislation of this Diocese in relation to the Diocesan Tribunal of this Diocese.

Part 1—Introduction

1 Commencement

This Act comes into operation on 1 January 2022.

2 Definitions

(1) In this Act—

Advocate includes a person appointed temporarily under section 18 to act as the Advocate in relation to a matter;

Board of Enquiry means the Board of Enquiry constituted under Division 2 of Part 2;

certificate of conviction means a certificate provided under the laws of the State of Victoria of a conviction under the laws of that State or a similar certificate provided by the Commonwealth or of another Australian State or Territory of conviction under the laws of the Commonwealth or that State or Territory;

clearance for ministry has the same meaning as in the **Professional Standards Uniform Act 2016 (Diocese of Melbourne)**;

complainants means the persons bringing a charge or, where one person has brought the charge, that person

offence means an offence prescribed in the Offences Canon 1962 of General Synod but does not include an act or omission that the Professional Standards Committee has referred to the Professional Standards Board under section 69 of the **Professional Standards Uniform Act 2016 (Diocese of Melbourne)**;

parties means the complainants and the respondent;

President means the person appointed by the Archbishop under section 54(1) of the Constitution;

respondent means the person charged;

sexual offence means—

- (a) an offence as defined in section 4(1) of the **Judicial Proceedings Reports Act 1958 (Vic)**; and
- (b) an offence referred to in s 4(1A) of the **Judicial Proceedings Reports Act 1958 (Vic)**; and
- (c) any similar offence under the laws of the Commonwealth, another State or Territory or another country; and

Tribunal means the Diocesan Tribunal.

- (2) For the purposes of this Act, a person has a *conflict of interest* if it may reasonably be concluded that their responsibilities as a member may be influenced or affected, or if they may reasonably be perceived as being influenced or affected, by—
- (a) their personal financial interest, or those of their family or friends;
 - (b) their reputation, or that of their family or friends;
 - (c) their obligations or loyalty to another person or organization;
 - (d) their previous or current relationship (whether personal or professional) with someone who might be affected by how they discharge those responsibilities; or
 - (e) their previous or current involvement in another capacity in a matter now falling within those responsibilities.

Part 2—Entities and offices

Division 1—Constitution of Tribunal

3 Tribunal for a hearing

- (1) Subject to subsection (2), for the purposes of a hearing, the Tribunal comprises the President together with the other members of the Tribunal holding office under section 4.¹
- (2) If a member other than the President ceases to be a member, or is disqualified, or section 5(5) applies in relation to that member, the place of that member is to be taken—
 - (a) in accordance with section 5(5); or
 - (b) where despite section 5 there remain insufficient members, in accordance with section 8.

4 Members other than the President

- (1) The Tribunal comprises, in addition to the President—
 - (a) two clerks holding a clearance for ministry; and
 - (b) two members of the laity—elected at the first ordinary session of each Synod.
- (2) Subject to sections 5 and 8, members of the Tribunal hold office until the next election under subsection (1).

5 Reserve list of members

- (1) At the first ordinary session of each Synod the Synod must elect to a reserve list—
 - (a) two clerks holding a clearance for ministry, and
 - (b) two members of the laity.

¹ The President is appointed by the Archbishop: see Constitution s 54(1)

- (2) One clerk is the first reserve clerk and the other is the second reserve clerk determined by agreement between them or, in the absence of agreement, by lot.
- (3) One member of the laity on the reserve list is the first reserve lay member and the other is the second reserve lay member determined by agreement between them or, in the absence of agreement, by lot.
- (4) Subsection (5) applies if, before the Tribunal commences to dispose of a matter (to an extent greater than conducting directions hearings or other procedural steps), a member of the Tribunal (other than the President)—
 - (a) has ceased to be a member by virtue of section 7;
 - (b) is unavailable to participate in the hearing of a matter due to an apprehension of bias or a conflict of interest;
 - (c) declares that he or she is unavailable to participate in the hearing of a matter for any reason; or
 - (d) is or becomes temporarily incapable of acting.
- (5) If this subsection applies, the member is not to have any further part in hearing or disposing of that matter, and the place of that member on the Tribunal in relation to that matter is to be taken—
 - (a) if the member is a clerk—
 - (i) by the first reserve clerk; or
 - (ii) where if the first reserve clerk were a member of the Tribunal this subsection would apply in respect of that clerk, by the second reserve clerk; and
 - (b) if the member is a lay person—
 - (i) by the first reserve lay person; or

- (ii) where if the first reserve lay person were a member of the Tribunal this subsection would apply in respect of that person, by the second reserve lay person.

6 Disqualification

A person who is—

- (a) the Archbishop;
- (b) the Chancellor or Deputy Chancellor;
- (c) the Advocate;
- (d) the Registrar;
- (d) an assistant bishop;
- (e) a member of the Appellate Tribunal;
- (f) the Director of Professional Standards, or a member of the Professional Standards Committee, the Professional Standards Board or the Professional Standards Review Board;
- (g) declared by any competent Court incapable of managing their affairs;
- (h) convicted by any Court of any offence punishable by imprisonment;
- (i) a clerk who does not hold a clearance for ministry;
- (j) a person against whom a charge has been laid under this Act when the charge has not been withdrawn or dismissed, or who is the subject of a complaint under the **Professional Standards Uniform Act 2016 (Diocese of Melbourne)**; or
- (k) not resident in the Province of Victoria—

is disqualified from being the President or other member of the Tribunal.

7 Ceasing to be a member of the Tribunal

A person ceases to be a member of the Tribunal or the Reserve List when the person—

- (a) dies;
- (b) resigns; or
- (c) becomes disqualified.

8 Appointment where insufficient members

If, despite section 7, at the time when the Tribunal is about to commence to hear a matter there are fewer than two clerks and two members of the laity available to constitute the Tribunal, the Archbishop in Council must appoint sufficient clerks and members of the laity to ensure that when the Tribunal commences to hear the matter the members of the Tribunal include two clerks and two members of the laity.

9 Members at commencement of hearing to continue

- (1) Once the Tribunal has commenced to hear a matter the members of the Tribunal at the time when it commenced to hear the matter—
 - (a) continue as members until the matter is disposed of; and
 - (b) other than in the case of the President, in the event of ceasing to be a member, are not to be replaced.
- (2) If after the Tribunal has commenced to hear a matter the President ceases to be a member of the Tribunal, the Archbishop must appoint a new President to take the place of the former President.
- (3) Subject to subsection (4), if the President is replaced under subsection (2), any hearings held previously must be repeated unless otherwise agreed by the parties.

- (4) If the President is replaced after the Tribunal has reached a verdict, hearings relating solely to that verdict are not to be repeated and the verdict remains in effect.

Division 2—Constitution of Board of Enquiry

10 Members of Board of Enquiry

- (1) The Board of Enquiry comprises five members appointed by the Archbishop in Council.
- (2) The Archbishop in Council must appoint the members of the Board of Enquiry at its first or second meeting after the first ordinary session of each Synod and must appoint one of those members to be the Chair.
- (3) Subject to subsection (4), a person is qualified to be a member of the Board of Enquiry if they have been in priest's orders for at least 10 years and are licensed by the Archbishop.
- (4) A person is disqualified from becoming a member of the Board of Enquiry, and ceases to be a member of the Board of Enquiry, if that person is—
- (a) appointed as an assistant bishop;
 - (b) declared by any competent Court incapable of managing their affairs;
 - (c) convicted by any Court of any offence punishable by imprisonment;
 - (d) no longer licensed by the Archbishop;
 - (e) no longer holding a clearance for ministry; or
 - (f) a person against whom a charge has been laid under this Act when the charge has not been withdrawn or dismissed, or who is the subject of a complaint under the **Professional Standards Uniform Act 2016 (Diocese of Melbourne)**.

- (5) The Archbishop in Council must fill a vacancy on the Board of Enquiry as soon as possible.
- (6) The Archbishop in Council must fill a vacancy in the position of Chair as soon as possible.

11 Temporary unavailability

- (1) This section applies if at any time a member of the Board of Enquiry—
 - (a) is unavailable to participate in the hearing of a matter due to an apprehension of bias or a conflict of interest;
 - (b) declares that they are unavailable to participate in the hearing of a matter for any reason; or
 - (c) is or becomes temporarily incapable of acting.
- (2) If this section applies, the place of that member on the Board of Enquiry in relation to that matter is to be taken in relation to that matter by a qualified person appointed by the Archbishop in Council.

12 Quorum and number required for a decision

- (1) The quorum at any meeting of a Board of Enquiry is three members.
- (2) A decision or recommendation of the Board of Enquiry must be agreed to by a majority of all the members.

Division 3—The Advocate of the Diocese

13 The office of Advocate of the Diocese

There is established for the purposes of this Act the office of Advocate of the Diocese.

14 Appointment and removal of the Advocate

- (1) The Archbishop in Council must appoint an Advocate.
- (2) The Advocate is to be appointed for a term not exceeding 5 years, and may be re-appointed for further terms each not exceeding 5 years.
- (3) The Archbishop in Council may remove the Advocate from office.
- (4) Despite subsections (2) and (3), if during the time between when a charge has been lodged under section 20 and the time when—
 - (a) the charge is withdrawn or dismissed; or
 - (b) the Tribunal imposes a sentence under section 61—
either—
 - (c) the Advocate's term in office expires and they are not re-appointed, or
 - (d) the Archbishop in Council removes the Advocate from office—they continue to act in relation to that matter as if they had been appointed to do so under section 18 until a new Advocate is appointed.

15 Qualifications

A person appointed as the Advocate must be—

- (a) a communicant member of the Anglican Church of Australia; and
- (b) an Australian lawyer who has practised for at least seven years and is practising in the State of Victoria.

16 Disqualification

A person is disqualified from being or remaining the Advocate if they are—

- (a) a member of the Appellate Tribunal;
- (b) the Chancellor or Deputy Chancellor;
- (c) declared by any competent Court incapable of managing their affairs;
- (d) convicted by any Court of any offence punishable by imprisonment; or
- (e) no longer qualified under section 15.

17 Ceasing to be the Advocate

A person ceases to be the Advocate when—

- (a) they die;
- (b) they resign;
- (c) they become disqualified;
- (d) subject to section 14(4), their term of appointment expires and they have not been re-appointed; or
- (e) they are removed by the Archbishop in Council.

18 Temporary appointment

If the Advocate is unavailable to participate in a matter due to an apprehension of bias or a conflict of interest or for any other reason the Archbishop in Council must appoint another qualified person to act as the Advocate in relation to that matter.

Part 3—The Charge

19 Form and requirements of charge²

- (1) A charge must be in the form of Schedule 1 and state—
 - (a) the offence that it is alleged the person has committed; and
 - (b) particulars of the acts or omissions that it is alleged constitute the offence.
- (2) A charge may allege more than one offence.
- (3) The acts or omissions alleged in the charge must be verified by evidence in a statutory declaration.
- (4) In addition to anyone permitted by the Constitution to promote a charge, the Professional Standards Committee in the exercise of its powers under the **Professional Standards Uniform Act 2016 (Diocese of Melbourne)** may bring a charge.³
- (4) A charge must be signed by each of the complainants.
- (5) A charge must include an address within the Diocese for service of documents on the complainants.

20 How to bring a charge

- (1) A charge and the other documents required by section 19 must be lodged with the Registrar.
- (2) The Registrar must register a charge.
- (3) For the purposes of this Act the Registrar must create and maintain a register of charges.

² For the matters that may be the subject of a charge, see Constitution s 54(2) and the Offences Canon 1962

³ Section 54(3) of the Constitution states who may promote a charge. For rules relating to charges against a clerk see also Rule XVI of the Anglican Church of Australia.

- (4) Subject to this Act, the register of charges is open to public inspection.

21 Time limit on bringing a charge

- (1) Subject to this section, a charge must be lodged with the Registrar within one year of the date, or in the case of an ongoing offence the last date, of the alleged offence.
- (2) A charge that arises from a conviction by a secular court must be brought within six months of the date of the conviction or, if an appeal is lodged against that conviction, within six months of the date on which that appeal is finally disposed of.
- (3) A charge that arises from allegations that have been the subject of a prosecution in a secular court that has not resulted in a conviction must be brought within one year of the certified date.
- (4) In this section, *certified date* means the date certified by an Australian lawyer practising in Victoria in criminal law and independent of the Diocese and of the proceedings as being the date from which there is no realistic prospect of those allegations being the subject of further criminal prosecution.

22 Service of the charge

- (1) Within one month of registering a charge, the Registrar must serve on the respondent—
- (a) a copy of all the documents lodged pursuant to section 19;
- (b) a request that the respondent lodge an answer to the charge with the Registrar within a period of not less than 21 days specified in the Registrar's request;

- (c) a copy of this Act and general information concerning the processes under this Act;
 - (d) a caution not to make any admissions without the benefit of legal advice; and
 - (e) advice as to the possibility of the respondent's reasonable legal costs being met by the Diocese.
- (2) The Registrar may from time to time by notice in writing to the respondent extend the period specified for lodging the person's answer and may do so even though the period originally specified or any previous extension has elapsed.

23 Charge to be provided to the Archbishop and the Advocate

As soon as practicable after registering a charge under section 20(2) the Registrar must provide a copy of all the documents lodged pursuant to section 20(1) to the Archbishop, any Chair of the Board of Enquiry, and the Advocate.

24 Amending the charge and the answer to the charge

- (1) The Tribunal may at any time permit or direct an amendment to the charge, the particulars of the charge or the answer to the charge upon such terms (if any) as it thinks fit.
- (2) The Board of Enquiry may prior to or in its report permit or direct an amendment to a charge that has been referred to it.
- (3) The Registrar must give notice of an amendment permitted or directed under this section as soon as practicable after it is made, to—
 - (a) the Advocate;
 - (b) the respondent; and
 - (c) the complainants.

25 Withdrawing a charge

- (1) The persons who have brought a charge may, with the consent of the respondent, withdraw the charge at any time before it has been referred to the Tribunal by the Registrar.
- (2) The persons who have brought a charge may, with the consent of the respondent and of the Tribunal, withdraw the charge at any time after it has been referred to the Tribunal by the Registrar.
- (3) A charge is withdrawn by lodging a copy of the notice of withdrawal, signed by the complainants and the respondent, with the Registrar.

26 Responding to a charge

- (1) The respondent may within the time for an answer specified under section 22 admit or deny the charge.
- (2) A person who does not within the time for an answer specified under section 22 admit or deny a charge is to be taken to have denied the charge.

Part 4—Consideration of the charge

Division 1—Application of this Part

27 Application of this Part

This Part applies to any charge that—

- (a) is not admitted by the respondent; or
- (b) alleges conviction of a criminal offence and is accompanied by a certificate of conviction

Division 2—Reference to the Board of Enquiry

28 Charges to be referred to the Board of Enquiry

Before the Tribunal considers a charge to which this Part applies that relates to a matter of ritual, faith or ceremonial, the charge must be referred to the Board of Enquiry.

29 Convening the Board of Enquiry

- (1) Where after the expiration of the time for an answer specified in section 22 it is apparent that a charge must be referred to the Board of Enquiry, the Registrar must convene the Board of Enquiry as soon as practicable.
- (2) The Board of Enquiry must at its first meeting appoint a member as the chair and if that person ceases to be the chair or a member of the Board of Enquiry must appoint some other member as the chair.

30 Function of the Board of Enquiry⁴

The function of the Board of Enquiry is to report on whether—

- (a) a *prime facie* case has been made out; and
- (b) the charge is proper to be heard.

⁴ see Constitution section 54(3)

31 Power and procedure of the Board of Enquiry

- (1) The Board of Enquiry may require the persons bringing a charge to provide a statutory declaration, in addition to the statutory declaration accompanying the charge, in support of the subject matter of the charge.
- (2) The Board of Enquiry must allow the respondent to provide a statutory declaration in support of the answer to the charge.
- (3) The Board of Enquiry may permit both parties, but not only one of them, to make a written submission.
- (4) If the charge proceeds to a hearing before the Tribunal, a statutory declaration or written submission provided by a party under this section to the Board of Enquiry must be provided by the Registrar to the other party.

32 Report of the Board of Enquiry

- (1) The charge is to be treated for all purposes as having been dismissed unless the chair of the Board of Enquiry—
 - (a) provides to the Registrar a report in writing on behalf of the Board stating that a *prime facie* case has been made out and that the charge is proper to be heard; and
 - (b) certifies to the Registrar in writing that a majority of the members of the Board of Enquiry have determined that a *prime facie* case has been made out and that the charge is proper to be heard.
- (2) Subsection (1) does not prevent the Board of Enquiry from providing a written report to the Registrar explaining why a majority of its members have not determined that a *prime facie* case has been made out and that the charge is proper to be heard.

- (3) The Registrar must provide immediately a report of the Board of Enquiry under this section to the Archbishop and to the Advocate.

Division 3—Reference to the Advocate

33 Charges to be referred to the Advocate

Before the Tribunal can consider a charge to which this Part applies that does not relate to a matter of ritual, faith or ceremonial, the charge must be referred to the Advocate.

34 Function of the Advocate

- (1) The function of the Advocate is to report in writing to the Archbishop in Council through the Registrar on whether there is sufficient evidence for the matter to be brought to hearing of the Tribunal and whether in all the circumstances the charge is proper to be heard.
- (2) If the report of the Advocate does not state that there is sufficient evidence to proceed to a hearing by the Tribunal and that in all the circumstances it is proper for the charge to be heard, the charge is to be treated for all purposes as having been withdrawn.

35 Powers of the Advocate

- (1) The Advocate may require the complainants to provide a statutory declaration in addition to the statutory declaration accompanying the charge in support of the subject matter of the charge.
- (2) The Advocate may permit one or both parties to make a written submission.
- (3) If the charge proceeds to a hearing before the Tribunal, a statutory declaration or written submission provided by a

party under this section to the Advocate must be provided by the Registrar to the other party.

Division 4—Consequences of decisions under this Part

36 No prejudice to the respondent

Subject to this Act, a decision under this part that a *prime facie* case has been made out or that there is sufficient evidence to proceed and that the charge is proper to be heard is not to be taken or relied on for the purposes of any other legislation of this Diocese or any proceedings or process operating by virtue of that legislation.

Part 5—Hearing by the Tribunal

Division 1—Generally

37 Notices to parties

- (1) The Registrar, at the direction of the President, is responsible for giving notice to the parties of any hearings or other procedural steps or requirements.
- (2) The Registrar must give the parties and the Advocate at least seven days notice of the date, time and place of any hearing or preliminary hearing, and at least three days notice of the date, time and place of any hearing that is resumed following an adjournment.

38 Records of proceedings

- (1) The Registrar, in a manner agreed with the President, must ensure that there is a note in writing of all evidence given in a hearing before the Tribunal.
- (2) The Registrar is to ensure that there is an audio recording of every hearing (including a preliminary hearing) before the Tribunal or President.
- (3) The Registrar is not required to procure a transcript of any hearing unless directed to do so by the President or requested to do so by a party.
- (4) If the transcript of a part of a hearing is requested only by the respondent, that party is to meet the actual cost of producing the transcript.

39 Safe custody of records

- (1) The Registrar must retain permanently and securely all the records of the registry, the Board of Enquiry, the Tribunal and the Advocate under this Act.

- (2) A record retained under this section must not be made available to anyone other than a party to the proceeding for a period of 30 years from the date of the charge, unless—
- (a) it is necessary to do so under the laws of the Commonwealth or a State or Territory, or for the purposes of any Canon of this Church or Act of this Synod; or
 - (b) within 14 days of the conclusion of a hearing the President with the agreement of at least two other members of the Tribunal so determines.

40 Other matters of procedure

- (1) The President may give directions as to the procedure in any matter that are not inconsistent with the Constitution or a canon of this Church or an Act of the Synod in force in the diocese.
- (2) Without affecting the generality of subsection (1), the President may give directions in relation to—
- (a) receiving evidence from a witness unable to attend a hearing;
 - (b) the exclusion of a witness during part of a hearing;
 - (c) conducting a hearing or preliminary hearing by audio conference or audio visual conference; or
 - (d) the suppression of the name of a witness.

41 Members of Tribunal not to meet with parties

- (1) Subject to subsection (2), a member of the Tribunal who meets with one or more parties or the Advocate or one or more persons acting for a party, other than when the Tribunal is conducting a preliminary hearing or hearing, between the time when a charge is laid and the matter is finally disposed of becomes disqualified from participating further in the hearing of the charge.

- (2) Subsection (1) does not apply to a meeting at which—
- (a) at least one person who is not a member of the Tribunal, a party or a legal representative is present; and
 - (b) the charge or the circumstances of the charge are not discussed.

Division 2—Procedure prior to hearing

42 Directions hearing

- (1) If any allegation in a charge is denied, the Tribunal constituted by the President sitting alone may hold a preliminary hearing in order to give directions concerning the conduct of the proceedings and the hearing of the charge.
- (2) The President may at a preliminary hearing order that the Advocate provide to the respondent before the hearing of the charges one or more of—
- (a) further particulars of any charge;
 - (b) a summary of the evidence to be led in support of the charges; or
 - (c) an outline of the evidence of witnesses to be called in support of the charge.

43 Procedure where charge admitted

If the respondent has admitted or during a hearing admits a charge, the Tribunal is to proceed as if it had found the respondent guilty of that charge.

44 Procedure where charge arises from conviction by a court

If the subject matter of a charge has been the subject of a criminal conviction and the charge is accompanied by a

certificate of conviction in relation to the offence giving rise to the charge, the Tribunal is to proceed as if it had found the respondent guilty of that charge.

Note: see also Constitution section 62(3)

Division 3—Hearing

45 Hearing to be *in camera*

- (1) The hearing of a charge by the Tribunal is to be in private unless the respondent applies for it to be in public.
- (2) Despite subsection (1), the President may at any time during a hearing that is being held in public order that the hearing be held in private because of the subject matter, or in order to maintain order, or for any other reason in the President's absolute discretion.

46 Appearance

- (1) The case against the respondent is to be conducted by the Advocate.
- (2) The Advocate may appoint a legal practitioner to appear with or instead of the Advocate in a hearing.
- (3) The Advocate and a person appearing under subsection (2) are bound by the same rules of conduct as would apply to a member of the Victorian Bar conducting a prosecution.
- (4) The Advocate may appoint a clerk in holy orders to appear with the Advocate or a legal practitioner appointed under subsection (2) in the hearing of a charge of a breach of faith ritual or ceremonial.
- (5) The respondent may appear in person or by a legal practitioner or (if charged with breach of faith ritual or ceremonial) by a person in holy orders.

- (6) If the respondent does not appear and there is proof of due service on the respondent of the charges and of the date, time and place of the hearing, the hearing may proceed in the absence of the respondent.

47 Responding to the charges

- (1) At the commencement of a hearing the President must read or cause to be read each of the charges.
- (2) The respondent, if appearing, must then be asked to plead to each charge and the plea to that charge must be recorded.
- (3) If the respondent is asked to plead to a charge and does not do so, a plea of not guilty must be entered as the plea in relation to that charge.
- (4) If a hearing has proceeded in the absence of the respondent, a plea of not guilty must be entered in relation to each charge and the hearing proceed as far as possible as if the respondent had appeared and had so pleaded.

48 Evidence

- (1) The rules of evidence in force in the Supreme Court of Victoria, including provisions relating to judicial notice, proof and admissibility contained in Acts of the Victorian Parliament so far as is practicable apply in a hearing.
- (2) The Tribunal in the course of its proceedings, may—
- (a) receive in evidence a transcript of evidence taken in proceedings before a secular court, tribunal or other body constituted under the law of Australia, of any State or Territory of Australia or of another country, and may draw any conclusions of fact from the evidence which it considers proper; and

- (b) adopt, in its discretion if it considers proper, any finding, decision, judgment or reasons for judgment of any such secular court, tribunal or body which may be relevant to the proceedings.

Note: see also Constitution section 62(3).

- (3) The President shall determine all questions arising during the trial which are questions of law or questions of the admissibility of evidence.

49 Witnesses

- (1) A witness must be examined on oath or affirmation using the form of oath or affirmation in Schedule 2.
- (2) A witness may be cross-examined.
- (3) If so directed by the President—
- (a) a statutory declaration accompanying the charge or provided to the Board of Enquiry or the Advocate may be admitted in evidence in a hearing, and the witness cross-examined on it; and
- (b) a party may be required to provide at least 7 days before the trial an outline of the evidence of any witness it proposes to call, other than the respondent.

Division 4—The verdict

50 Standard of proof

- (1) The Tribunal must find the charge proved if it is satisfied that the case has been proved on the balance of probabilities.
- (2) Without limiting the matters that the Tribunal may take into account in deciding whether it is so satisfied, it is to take into account—
- (a) the nature of the charge or defence; and

- (b) the nature of the subject-matter of the proceeding;
and
- (c) the gravity of the matters alleged.

51 Required majority

The verdict must be agreed by a simple majority of all the members of the Tribunal, each exercising one vote.

52 Determination that a charge is trivial

The Tribunal may at any time after a hearing has commenced, by a decision of a simple majority of its members, determine that a charge is trivial and a verdict of not guilty be recorded.

53 Tribunal to give reasons⁵

- (1) Subject to this section, the Tribunal must cause a copy of the verdict, reasons and recommendations to be provided to—
 - (a) the Archbishop;
 - (b) the Chancellor;
 - (c) the Registrar;
 - (d) the complainants;
 - (e) the respondent; and
 - (f) the Advocate.
- (2) The Tribunal must publish through the Registrar so much of its reasons as relate to its determinations on matters of law, but not so as to enable the identification of—
 - (a) any witness other than the complainants or the respondent or a witness as to either character or a question on which expert evidence is given; or

⁵ See also Rule XVII of the Anglican Church of Australia

- (b) a person against whom a sexual offence is alleged to have been committed.

Part 6—Suspension and sentence

Division 1—Suspension

54 Operation of the Constitution

In addition to the matters provided for in section 61 of the Constitution that section applies to a person holding any form of clergy authorization as if the person was licensed.

55 Application of this Division

This Division applies when section 61 of the Constitution does not apply because a suspension did not occur at the time before a charge against the respondent was first promoted.

56 Suspension of clerks charged with child abuse

- (1) The Archbishop must suspend a respondent who has been charged in any jurisdiction in Australia with child abuse, whether committed within or outside the Diocese, from every role, office or position to which they are licensed or which they are permitted to hold only with a clergy authorization.
- (2) The Archbishop must suspend a respondent who has been charged with child abuse in a jurisdiction outside Australia where the Archbishop has sought and received a report from a lay person (other than the Chancellor, Deputy Chancellor or Advocate) who is qualified to be a member of the Appellate Tribunal stating that there is a *prima facie* case of the person having committed the offence.

Note: "Child abuse" is defined in the Third Schedule to the National Register Canon 2007.

57 Suspension in other cases

- (1) This section applies where in relation to the subject matter of a charge brought under this Act—
 - (a) a respondent is awaiting trial for a criminal offence with a penalty of more than one year's imprisonment; or
 - (b) in the opinion of the Archbishop, the respondent poses an immediate unacceptable risk of harm to another person.
- (2) Where this section applies, the Archbishop may—
 - (a) suspend the respondent's licence or clergy authorization or suspend them from any office that they hold; and
 - (b) prohibit the respondent from some or all duties.

58 Publication of decision to suspend

The Archbishop must as soon as practicable inform in writing—

- (a) the Director of Professional Standards;
- (b) the public—

of a suspension under section 56 or 57, but in doing so must not release information in a form that will identify or allow the identification of—

- (c) the complainant other than the Director;
- (d) any witness other than the respondent or a witness as to either character or a question on which expert evidence is given; or
- (e) a person against whom a sexual offence is alleged to have been committed.

59 Termination of a suspension

A suspension under this Division ends when—

- (a) the charge is withdrawn or deemed to be withdrawn;
- (b) the Board of Enquiry dismisses the charge;
- (c) the Tribunal records a verdict of not guilty under section 48; or
- (d) a sentence is imposed pursuant to section 60 of the Constitution.

60 Consequences of suspension

During a suspension under this Division—

- (a) the respondent is ineligible to hold or serve in any role, office or position or function covered by the suspension or which they are permitted to hold only while licensed;
- (b) the Archbishop may fill temporarily the vacancy caused by the suspension; and
- (c) the respondent is entitled to the stipend, salary, allowances and other benefits that would otherwise have been received, met or reimbursed from the funds of—
 - (i) the Diocese, the parish or other entity that was liable to pay that stipend, salary, allowance or other benefits immediately before the suspension, or
 - (ii) at the discretion of the Archbishop in Council, the Diocese.

Division 2—Sentence

61 Submissions as to sentence

Before imposing a sentence the Tribunal must hear any submission as to sentencing put by the respondent and any person appearing under section 46(1) to (4) including the Advocate.

62 Sentencing

The provisions of section 60 of the Constitution and of the Holy Orders (Removal from Exercise of Ministry) Canon 2017 of this Church apply.

Part 7—Appeal

63 Further rights of appeal

In addition to any right of appeal conferred by section 54 of the Constitution, a right of appeal lies to the Appellate Tribunal from—

- (a) a verdict of guilty by the Tribunal;
- (b) a ruling by the President on a matter of law under section 47; and
- (c) a recommendation as to sentencing under section 60(1) of the Constitution.

Part 8 — Costs

64 Costs to be met by the Diocese

- (1) The Diocese is to meet the costs of—
 - (a) travel and incidental expenses associated with the attendance of members of the Board of Enquiry and the Tribunal;
 - (b) any counsel engaged by the Advocate under section 46;
 - (c) any payments arising under section 65;
 - (c) any clerk appointed under section 46(4);
 - (d) where so ordered by the President as necessary and in the interests of justice, the reasonable costs of obtaining the evidence of a witness; and
 - (e) the administration of this Act.
- (2) On the certificate of the Advocate, the Diocese must meet the reasonable costs of the respondent in responding to a charge.

65 Discretion to pay fees

This Act does not preclude the Archbishop in Council in its absolute discretion from determining that it will pay the professional fees of the President or the Advocate in relation to a matter.

66 No power to award costs

The Tribunal does not have the power to award costs.

Part 9—Repeal, amendments and savings

67 Repeal of Diocesan Tribunal Act 1963

- (1) The **Diocese Tribunal Act 1963** is repealed.
- (2) Despite subsection (1)—
 - (a) the members of the Tribunal immediately before this Act comes into force continue as members of the Tribunal until the next election of members of the Tribunal under this Act;
 - (b) the members of the Tribunal reserve list immediately before this Act comes into force continue as members of the Tribunal reserve list until the next election of members of the Tribunal under this Act;
 - (c) the members of the Board of Enquiry immediately before this Act comes into force continue as members of the Board of Enquiry until the next election of members of the Board of Enquiry under this Act; and
 - (d) the person who is the Advocate immediately before this Act comes into force continues as Advocate until the expiration of their period of appointment and is eligible for reappointment.

68 Amendment of the Offences Act 1963

In section 3 of the **Offences Act 1963**, for all the words after "the provincial tribunal" **substitute** "as amended by any Canon of the General Synod that is adopted by this Synod are adopted."

69 Amendment of Professional Standards Uniform Act 2016 (Diocese of Melbourne)

- (1) In this section *principal Act* means the **Professional Standards Uniform Act 2016 (Diocese of Melbourne)**

- (2) In section 5 of the principal Act—
- (a) for "In this Act, *misconduct*" substitute "(1) Subject to this section, in this Act *misconduct*"; and
 - (b) after the section insert—
 - "(2) In sections 21(1), 23(2), 29(1), 43, 57(2), 67(4), 67Q(3), 67S(4), 76, 77(1), 77(2), 78(2)(a), 78(2)(b), 79(1), 79(2), 82(2), 112(1) and 135(1)(i), *misconduct* does not include conduct—
 - (a) in respect of which there is a charge under the **Diocesan Tribunal Act 2021** unless that charge has been withdrawn;
 - (b) in respect of which there has been a finding of guilt by the Diocesan Tribunal; or
 - (c) in respect of which a charge has been dismissed by the Diocesan Tribunal.
- (3) In sections 21(1A), 21(1B), 80(2), 81, and 112(2), *misconduct* does not include conduct—
- (a) in respect of which there is a charge under the **Diocesan Tribunal Act 2021** unless that charge has been withdrawn; or
 - (b) in respect of which a charge has been dismissed by the Diocesan Tribunal."
- (3) After section 21 of the Principal Act insert:
- “(3) A complaint of misconduct against—
- (a) a member of the Diocesan Tribunal,
 - (b) a member of the reserve list of the Diocesan Tribunal,
 - (c) the Advocate, or

(d) any person appointed by the Advocate to assist in presenting a charge to the Diocesan Tribunal—
which might disqualify them from continuing in that role in relation to a charge already brought under the **Diocesan Tribunal Act 2021** but not dismissed or withdrawn must be supported by a statutory declaration at the time it is made.”

Schedule 1—Form of charge

Form 1: Against a clerk in holy orders by a person appointed by the Archbishop

Names of Complainant

Name	
------	--

Name of respondent

The Reverend

Offence(s) alleged:

Offence:	
Particulars:	

(repeat if multiple charges)

Declarations

I declare that:

- (a) I am an adult communicant member of the Anglican Church of Australia resident in the Diocese of Melbourne;
- (b) I have been appointed by the Archbishop to bring this charge;
- (c) the respondent is a person licensed by the Archbishop of Melbourne or is a person in holy orders resident in the Diocese of Melbourne ;
- (d) I desire that the respondent be brought to trial on this/each charge;

- (e) I do not make any charge from any private ill-will towards the respondent or with any view to my own profit and I believe every charge to be substantially true; and
- (f) accompanying this form is a statutory declaration verifying the acts or omissions alleged in the particulars of the offence.

Dated.....

Signed:

Form 2: Against a clerk in holy orders by complainants

Names of Complainants

Name 1	
Name 2	
Name 3	
Name 4	
Name 5	

Name of respondent

The Reverend

Offence(s) alleged:

Offence:	
Particulars:	

(repeat if multiple charges)

Declarations

We declare that:

- (a) each of us is an adult communicant members of the Anglican Church of Australia resident in the Diocese of Melbourne;
- (b) the respondent is a person licensed by the Archbishop of Melbourne or is a person in holy orders resident in the Diocese of Melbourne ;
- (c) we desire that the respondent be brought to trial on this/each charge;

- (e) we do not make any charge from any private ill-will towards the respondent or with any view to our own profit and we believe every charge to be substantially true; and
- (f) accompanying this form is a statutory declaration verifying the acts or omissions alleged in the particulars of the offence.

Dated.....

Signed:

1

2

3

4

5

**Form 3: Against the vicar of a parish with reference to an offence
alleged to have been committed within that parish**

Names of Complainants

Name 1	
Name 2	
Name 3	
Name 4	
Name 5	

Name of respondent

The Reverend

Parish of which the respondent is the vicar

..... ("the parish")

Offence(s) alleged:

Offence:	
Particulars:	

(repeat if multiple charges)

Declarations

We declare that:

- (a) each of us is an adult communicant member of the Anglican Church of Australia resident in the Diocese of Melbourne;
- (b) each of us is a parishioner of the parish;
- (b) the respondent is a person licensed by the Archbishop of Melbourne as the vicar of the parish;

- (c) we desire that the respondent be brought to trial on this/each charge;
- (e) we do not make any charge from any private ill-will towards the respondent or with any view to our own profit and we believe every charge to be substantially true; and
- (f) accompanying this form is a statutory declaration verifying the acts or omissions alleged in the particulars of the offence.

Dated.....

Signed:

1

2

3

4

5

Schedule 2—Form of oath or affirmation

OATH OF WITNESS

I swear by Almighty God that the evidence I shall give before this Tribunal will be the truth the whole truth and nothing but the truth.

AFFIRMATION OF WITNESS

I do solemnly and sincerely declare and affirm that the evidence I shall give before this Tribunal will be the truth the whole truth and nothing but the truth.

NOTES

¹ The Diocesan Tribunal Act 2021 was passed on 14 October 2021 and was assented to 4 November 2022. It came into operation on 1 January 2022.