

ANGLICAN CHURCH OF AUSTRALIA
EPISCOPAL STANDARDS PROTOCOL (GENERAL) 2011

1- PRELIMINARY

1.1 - Introduction

- 1.1.1. This protocol forms part of the Church's strategy for ensuring the proper processes are in place for dealing with information that alleges misconduct or omission by a Bishop.
- 1.1.2 This protocol is adopted in accordance with the requirements of the *Episcopal Standards Canon 2007* of the General Synod of the Anglican Church of Australia and must be read in conjunction with that canon. In the event of an inconsistency between this protocol and the canon, the canon will prevail.
- 1.1.3 By virtue of the powers contained in s 12(2) of the *Special Tribunal Canon 2007* of the General Synod of the Anglican Church of Australia the Episcopal Standards Commission has considered it appropriate to adopt the provisions of this protocol in the exercise of its powers under the *Special Tribunal Canon* with appropriate modifications for particular matters arising under that Canon. In the event of an inconsistency between this protocol and that canon, the canon will prevail. The relationship between the exercise of powers under the two canons is the subject of further elaboration in this protocol. There is a clear overlap of powers of the Episcopal Standards Commission under the *Episcopal Standards Canon* with those which may be exercised by the Commission under the *Special Tribunal Canon*.
- 1.1.4 It is important to remember that under the *Special Tribunal Canon* the Commission deals with a 'complaint', whereas under the *Episcopal Standards Canon* the Commission deals with 'information'. These concepts are distinct but in a particular matter may overlap. For example, 'information' may turn into a 'complaint' and be dealt with either under the *Special Tribunal Canon* or the *Episcopal Standards Canon*. In this protocol, the word 'informant' includes a 'complainant'.
- 1.1.5 It is also possible for proceedings against a Bishop under the *Special Tribunal Canon* to be brought by another Bishop or in accordance with an Ordinance of a diocesan synod. This protocol cannot affect these processes, although the persons concerned may choose to adapt some or all of these provisions in such a case.
- 1.1.6 Subject to the scope of this protocol expressed in clause 1.2 below, in this protocol sections 5 and 6 describe the general procedure for dealing with information and complaints which are alleged to constitute a breach of discipline or an offence where the Diocese has adopted by Ordinance and has not excluded the *Episcopal Standards Canon*. The procedure to be adopted where the Diocese has not adopted or has excluded the *Episcopal Standards Canon* is dealt with in section 8. Complaints alleging a breach of faith ritual or ceremonial are a special case, and are dealt with in section 7.

1.2 - Scope

1.2.1 Subject to what follows in this clause 1.2, this protocol applies to any Bishop. For the purpose of this protocol a Bishop is one who is or who at any relevant time was –

- (a) a diocesan Bishop;
- (b) the Bishop to the Defence Force, or
- (c) the Aboriginal Bishop or the Torres Strait Islander Bishop referred to in s 17(8) of the Constitution.

1.2.2 This protocol does not apply to an assistant bishop of a Diocese. Assistant bishops are subject to diocesan regulation.

1.2.3 This protocol applies to a complaint about a Bishop in respect of an alleged breach of faith, ritual, ceremonial or discipline and of an offence specified by canon of the General Synod unless the Synod of the Bishop's diocese has by ordinance declared pursuant to section 43(2) of the *Special Tribunal Canon* that section 43(1)(a) of the Canon has no effect in respect of the Bishop of that diocese. In such a case the ESC must refer the complaint and the complainant-

- (a) where the diocese is part of a province and the complaint is not in respect of the Metropolitan, to the Metropolitan of that province;
- (b) where the diocese is part of a province and the complaint is in respect of the Metropolitan, to the Metropolitan of another province; and
- (c) where the diocese is not part of a province and the complaint is in respect of the Bishop of that diocese, to a Metropolitan;

and may take no further action in relation to the complaint.

1.2.4 Coercive powers under the *Episcopal Standards Canon* in respect of a diocesan Bishop can only be exercised in respect of a Bishop whose diocese has adopted the *Episcopal Standards Canon* by ordinance and which has not excluded that canon. Accordingly, in the case of a Bishop whose diocese has not adopted or has by Ordinance excluded the *Episcopal Standards Canon* the following will apply:

1.2.4.1 Neither the ESC nor the Director may exercise any of the powers conferred on them by the *Episcopal Standards Canon*, and the ESC and the Director may only act on a complaint.

1.2.4.2 If the Synod of the Bishop's diocese has not by Ordinance declared that section 43(1)(a) of the *Special Tribunal Canon* has no effect in respect of the Bishop of that diocese, the ESC may exercise the powers under the *Special Tribunal Canon* and this protocol in respect of a complaint alleging a breach of faith, ritual, ceremonial or discipline or of an offence specified by canon of the General Synod;

1.2.4.3 If the Synod of the Bishop's diocese has by Ordinance declared that section 43(1)(a) of the *Special Tribunal Canon* has no effect in

respect of the Bishop of that diocese, then the provisions of clause 1.2.3 above will apply.

- 1.2.5 The Church is committed to providing an avenue for redress to people who consider that they have been the subject of misconduct committed by or the omission (other than in relation to issues of faith, ritual or ceremonial) of a Bishop. Further information about its application to specific areas may be obtained by contacting the Director of the Episcopal Standards Commission.

1.3 - Code of Conduct and standards of behaviour

The General Synod has adopted the code for personal behaviour and the practice of pastoral ministry by clergy and Church workers known as “Faithfulness in Service”. It is relevant to the operation of this protocol as it sets out standards to be observed by all Church workers, including Bishops, in the performance of their ministry.

1.4 - Principles

Bishops are spiritual and administrative leaders of the Church and guardians of the faith. Breaches of faith, ritual, ceremonial and discipline, commission of offences specified by canon and other acts of misconduct or omission by a Bishop are serious matters, reflect a brokenness of the Body of Christ and an impediment to the spread of the Gospel. This Church adopts the following principles in connection with the operation of this protocol.

- 1.4.1 All complaints and information will be taken seriously.
- 1.4.2 This Church will offer respect and pastoral care, including professional counselling where appropriate, to anyone who makes a complaint and to victims.
- 1.4.3 This Church will also offer appropriate support to any Bishop who is accused of misconduct or omission. The rights of a Bishop accused of wrongdoing will be respected.
- 1.4.4 This Church will be as open, transparent and accountable as possible while respecting the rights of informants, victims and respondents to privacy. Further, the Church will respect the rights of informants and victims to make their own informed choices about whether to participate in the processes of the Church or to seek assistance elsewhere.
- 1.4.5 This Church will respect and not abuse confidentiality and will not use confidentiality in a way that seeks to protect the Church.
- 1.4.6 Where an allegation involves alleged child abuse, officers of the Church will report the abuse to a relevant authority and will comply with any relevant mandatory reporting requirements under State or Territory law.
- 1.4.7 Where an allegation involves other forms of illegal behaviour, this Church will support a complainant or victim by, in appropriate cases and after discussion with the complainant, reporting the matter to the police or to any other appropriate authority.

- 1.4.8 This Church continues to invite any person who has been adversely affected by misconduct or omission, no matter when, to come forward and to make the matter known, so that his or her ongoing needs can be addressed and appropriate action taken.
- 1.4.9 A Bishop who is alleged to have committed criminal or non-criminal acts that breach the professional standards of the Church must face the appropriate Church processes.
- 1.4.10 No person may interfere with or attempt to improperly influence the Primate, another Bishop, the Director of the Episcopal Standards Commission, the Episcopal Standards Commission, the Episcopal Standards Board, the Special Tribunal, the respondent, support persons, contact persons or investigators in the exercise of a function.
- 1.4.11 Nothing in this protocol prevents a person from pursuing any legal process or right of action at law.

1.5 - Definitions

In this protocol –

“Board” or **“ESB”** means the Episcopal Standards Board constituted under the ES Canon;

“Church” means the Anglican Church of Australia;

“Church body” includes the Primate, the General Synod, a diocese, diocesan synod, diocesan council, diocesan trustee or trust corporation or other body responsible for administering the affairs of a diocese, or an institution or agency of this Church or of a diocese;

“Church worker” includes –

- (a) a member of clergy;
- (b) a lay church worker employed by or for the purposes of this Church, a diocese, a parish or church institution or agency; and
- (c) a lay church worker holding office or working as a volunteer in this Church.

“Commission” or **“ESC”** means the Episcopal Standards Commission constituted under the ST Canon;

“complainant” means a person who makes a complaint;

“complaint” means –

- (a) a complaint alleging a breach of faith, ritual, ceremonial or discipline or an offence specified by canon for the purposes of the ST Canon; or
- (b) an allegation of misconduct or omission on the part of a Bishop;

“contact person” means a person appointed by the Director in clause 6.3.1.

“Director” means the Director of the Episcopal Standards Commission;

“ES Canon” means the Episcopal Standards Canon 2007;

“examinable conduct” means any conduct or omission wherever or whenever occurring the subject of information which, if established, might call into question the fitness of a Bishop to hold office or to remain in Holy Orders but excludes any breach of faith, ritual or ceremonial;

“informant” means a person who provides information and includes a complainant;

“information” means information of whatever nature and from whatever source relating to the alleged misconduct or omission of a Bishop wherever or whenever occurring;

“national register” means the national register established under the National Register Canon 2007 of the General Synod of the Anglican Church of Australia;

“respondent” means a Bishop whose alleged conduct or omission is the subject of information;

“ST Canon” means the Special Tribunal Canon 2007;

“Standing Committee” means the Standing Committee of General Synod;

“support person” – see Part 4.1 of this protocol;

“Tribunal” means the Special Tribunal constituted under the ST Canon;

“victim” means a person who is alleged to have suffered from the effects of misconduct or omission of a Bishop or from the effects of a breach of discipline or of an offence which may be the subject of a charge before the Tribunal.

2- DIRECTOR OF THE EPISCOPAL STANDARDS COMMISSION

2.1 - Position and qualifications

- 2.1.1 The Director holds office in accordance with a resolution of the Standing Committee.
- 2.1.2 The Director is appointed for a specified term, subject to any terms and conditions of appointment.
- 2.1.3 The Director –
 - (a) will not hold any other office under the Constitution or any canon or resolution of the General Synod;
 - (b) will have relevant qualifications and experience in child protection, social work, counselling, law, human resources or an associated area;
 - (c) will not be a person in bishop's orders or be a spouse, parent, child or sibling of a person in bishop's orders;
 - (d) will not deal with a particular matter in which the Director has a material conflict of interest.

2.2 - Functions of the Director

The Director has the following functions;

- 2.2.1 To manage the implementation of this protocol in respect of any information;
- 2.2.2 To be the executive officer of the ESC;
- 2.2.3 To attend meetings of the ESC unless the ESC in respect of a particular meeting or part of a meeting otherwise determines;
- 2.2.4 To receive information on behalf of the ESC;
- 2.2.5 To carry out such other functions and duties as may be prescribed by the ESC Canon or the ST Canon or as may be set out in this protocol or as may be determined by the ESC.

2.3 - Corresponding Capacity

The Director may act in a corresponding capacity for a diocese either generally or for a particular case or matter.

2.4 – Professional supervision

The Director will be provided with external professional supervision in relation to the performance of their duties.

3- THE EPISCOPAL STANDARDS COMMISSION

3.1 - Composition of the Commission

- 3.1.1 The membership of the ESC is constituted so as collectively to provide –
- (a) experience in law; and
 - (b) a person in bishop's orders; and
 - (c) experience and appropriate professional qualifications in child protection, social work or counselling.
- 3.1.2 So far as reasonably practicable, the ESC has an equal number of men and women.
- 3.1.3 The Director is not a member of the ESC.

3.2 - Powers and duties of the ESC

- 3.2.1 The ESC will act in all things as expeditiously as possible.
- 3.2.2 The powers and duties of the ESC include:
- (a) to implement this protocol;
 - (b) to receive information;
 - (c) to act on information or complaints in accordance with the provisions of the ST Canon or the ES Canon, as the case may require, and of this protocol;
 - (d) to appoint suitable persons to fulfil the several roles required to implement this protocol in each particular case;
 - (e) where appropriate, to arrange for the conciliation or mediation of any complaint;
 - (f) to investigate information and complaints in a timely and appropriate manner;
 - (g) where the Commission forms the view that the matter is not properly 'information' or a 'complaint' to refer the complainant or informant to a person or body who they consider may be able to assist;
 - (h) subject to any limit imposed by the Standing Committee, to authorise expenditure on behalf of the General Synod as may be necessary or appropriate to implement, in a particular case, this protocol and the provisions of the ST Canon and the ES Canon;
 - (i) to advise any relevant Church body as to the financial or other needs of a victim and as to any possible or actual legal proceedings against such Church body arising out of the alleged conduct or omission of a Bishop;

- (j) where information relates to an alleged offence against the law of a State or Territory of the Commonwealth or against a law of the Commonwealth, to refer any information in its possession to a member of the appropriate law enforcement, prosecution or child protection authority and to co-operate as far as possible with any such authority;
 - (k) to maintain proper records of all information received and of action taken in relation to such information;
 - (l) to promote a charge against a Bishop before the Tribunal or to refer to the Board a question as to the fitness of a Bishop, whether temporarily or permanently, to hold office or to remain in Holy Orders.
- 3.2.3 Subject to the provisions of the ST Canon and the ES Canon, some or all of these powers may be delegated to the Director or to another person or body.
- 3.2.4 Where the only information received by the ESC is received from an undisclosed informant and there are no means to contact the informant, there is no obligation on the ESC to act on that information. However where the information alleges criminal conduct, the information will be forwarded to a relevant authority.

3.3 - Disclosure of information

- 3.3.1 A member of the ESC, and any person engaged in the work of the ESC, will not divulge information that comes to his or her knowledge by virtue of that office or position except-
- (a) in the course of carrying out the duties of that office or position; or
 - (b) as may be authorised by or under the ST Canon, the ES Canon or this protocol; or
 - (c) in any proceedings before the Tribunal or the Board, or
 - (d) as may be required by law: or
 - (e) to any insurer or insurance broker of a Church body where the information may give rise to or be relevant to a claim for indemnity by the Church body or Church authority against an insurer or is relevant to obtaining or continuing insurance cover.
- 3.3.2 The ESC will disclose to the equivalent body of a relevant diocese details of information in its possession concerning the alleged conduct of a Church worker other than a Bishop which conduct, if established, might call into question the fitness of the Church worker to hold his or her office or to remain in Holy Orders or which might constitute a breach of discipline or an offence, and -
- (a) which is information that is relevant to, or arising during the course of, an investigation being undertaken by the ESC where the ESC knows that the Church worker is residing in the diocese of the equivalent body; or
 - (b) which is information concerning conduct of the Church worker alleged to have occurred in the diocese of the equivalent body, and will co-operate with any equivalent body.

3.4 - Use of diocesan bodies

- 3.4.1 The ESC has responsibility for matters arising in respect of most Bishops in Australia. It will not be practicable for members of the ESC and the Director to discharge that responsibility in person in every case. Where the ESC considers it practicable and appropriate the ESC will delegate some of those functions to or engage the equivalent body or director of a diocese other than a body or director of the diocese in which the Bishop holds or held office, and will use the resources available to an equivalent body to carry out some or all of the functions of the ESC or the Director or to perform any necessary investigation.
- 3.4.2 The cost of providing the services referred to in subclause 3.4.1 will be negotiated between the General Secretary of the General Synod and the diocesan registrar concerned in consultation with the Director and his equivalent in the diocese concerned.
- 3.4.3 Negotiations as to the cost of providing such services are not to delay or frustrate the timely performance of any action considered necessary or advisable by the ESC to be taken under this protocol.

4- SUPPORT PERSONS AND PROFESSIONAL COUNSELLING

4.1 - Support persons

- 4.1.1 Where information, which the Director considers could constitute examinable conduct, has been received by the Director, the Director, as appropriate in the circumstances should offer to the complainant (or a group of them) and the respondent, and may offer any other person the services of a support person.
- 4.1.2 A support person is a person who is available to provide such services as, pastoral care, spiritual direction, explanation of the process and clarification of what outcomes are possible. They may also assist a complainant or respondent to prepare documentation for the ESC. A support person, if authorised by the person concerned, may also provide to the Director any acknowledgement of a person's consent for the purposes of any process under this protocol.
- 4.1.3 The Director must obtain the concurrence of the ESC before appointing a support person for a person who is not a complainant, a victim or respondent.
- 4.1.4 Any support person appointed by the Director should contact the person they are supporting promptly and make arrangements with them for their ongoing support.
- 4.1.5 A support person may only act for one or more complainants or persons the subject of a complaint or information, on the one hand, or for the respondent, on the other hand, in respect of a particular matter.
- 4.1.6 A support person must act in the best interests of the person in relation to whom an appointment has been made.
- 4.1.7 A support person may, with the consent or at the request of the person or persons they are supporting-
- (a) liaise with the Director;
 - (b) make or receive communications on behalf of the person.
- 4.1.8 A support person must deal with all information associated with a matter on a confidential basis.

4.2 - Professional Counselling

- 4.2.1 The Director may offer professional counselling to a victim of a matter before the ESC for a specified period.
- 4.2.2 If a counsellor is appointed in response to an offer by the Director, the reasonable costs associated with the counsellor will be borne by the General Synod.
- 4.2.3 The Director may request a report from the counsellor from time to time. Such a report should be limited to the counsellor's opinion as to whether and for what period further counselling would be beneficial to the victim, and the

counsellor's opinion as to the capacity of the person to participate in these processes or as to the support necessary for the person to do so.

5- THE PROCESS UNDER THIS PROTOCOL

Action to be taken under this protocol will depend on –

- 5.1 The nature of any complaint received by the ESC;
- 5.2 Whether the diocese of the Bishop the subject of information has adopted and has not excluded from operation the ES Canon.
- 5.3 Whether the synod of the Bishop's diocese has by ordinance declared pursuant to section 43(2) of the *Special Tribunal Canon* that section 43(1)(a) of the Canon has no effect in respect of the Bishop of that diocese.

6 - INFORMATION RELATING TO A POSSIBLE BREACH OF DISCIPLINE, AN OFFENCE SPECIFIED BY CANON OR TO ALLEGED MISCONDUCT OR OMISSION BY A BISHOP WHERE THE BISHOP'S DIOCESE HAS ADOPTED AND HAS NOT EXCLUDED THE ES CANON

6.1 General

- 6.1.1 Conduct the subject of this section 6 does not include conduct which is a breach of faith ritual or ceremonial.
- 6.1.2 Conduct may become the subject of a charge before the Tribunal or, if the diocese of the Bishop has adopted the ES Canon, the subject of a reference to the Board.
- 6.1.3 The Director should be the first point of contact for information or a complaint.
- 6.1.4 If the synod of the Bishop's diocese has by ordinance declared pursuant to section 43(2) of the *Special Tribunal Canon* that section 43(1)(a) of the Canon has no effect in respect of the Bishop of the diocese the ESC can only do what is set out in clause 1.2.3.

6.2 Disclosure and use of Information

- 6.2.1 If information including a complaint is given to the Director on the express basis that the information not be disclosed or used, the Director, will not disclose or use the information unless or until –
 - (a) the person imposing the confidence has provided his or her consent to the further disclosure or use of the information; or
 - (b) the information discloses criminal conduct or conduct constituting child abuse that should be reported to a relevant authority; or

- (c) a formal complaint has been lodged with the Director; or
- (d) the subject-matter of the information is substantiated in some other way;
or
- (e) disclosure of the matter is required by the provisions of the ST Canon or the ES Canon.

6.2.2 Nothing in subparagraph 6.2.1 prevents the Director from providing to the ESC or to the Primate, for reporting purposes, information or other material in a form that does not allow identification of a particular person while it remains confidential.

6.3 - Preliminary contact following the receipt of information, whether in writing, or not

6.3.1 The Director or other person appointed by the ESC to act in consultation with the Director (“the contact person”) may contact or meet with the informant or any other person to seek to obtain preliminary information about the matter.

6.3.2 The Director or the contact person will also advise the informant-

- (a) in a case involving an allegation of child abuse - that the matter will be reported to the relevant authority;
- (b) in a case involving an allegation of a criminal offence - that the matter may, after consultation with the informant, complainant or victim, be referred to a relevant authority.

6.3.3 The Director or the contact person will explain the processes available under this protocol and seek to obtain any necessary or appropriate consents to proceed on the basis of these procedures. The Director will explain the voluntary nature of the protocol as far as the informant or complainant is concerned and advise the informant or complainant in writing of any alternative avenues of formal or informal redress that may be open to the informant (for example, by making a report to police or to the Equal Opportunity Commissioner).

6.4 - Assessment of information or complaint

6.4.1 The Director will make an initial assessment of information or a complaint to determine whether the matter may constitute examinable conduct and/or the subject of a possible charge before the Tribunal and will inform the ESC of the assessment.

6.4.2 If the ESC considers (or subsequently forms the view) that the matter does not constitute examinable conduct or the subject of an offence which may be heard by the Tribunal, or that the matter can properly be dealt with by other means, the Director will advise the informant, if a complainant, accordingly. In such a case, the Director may assist the complainant to refer the matter to another body or authority, or may assist in resolving the matter through some other process.

- 6.4.3 If the Director considers at any time that an informant or any other person may be in immediate need of care or protection, or that there is a likelihood of a continuation of any serious behaviour or that any such behaviour may be repeated, or that some other reason exists to take action under this provision, the Director may immediately report the matter to another authority and may then co-operate with the authority in relation to the matter. For the purposes of this provision the Director will as far as possible act in accordance with any protocol established by a relevant equivalent body referred to in subparagraph 3.4.1 for co-operation with the authority.
- 6.4.4 The ESC may seek independent professional advice in order to assess or deal with a complaint.

6.5 - Recording of information or complaint

- 6.6.1 The Director will encourage an informant to provide details of the information or complaint in writing, or obtain written notes of the details of the complaint confirmed by the complainant's signature and will provide any such document to the ESC.
- 6.5.2 The Director may assist the informant to provide such details or notes, or may refer the informant to another person to provide such assistance.
- 6.5.3 The Director may, at the request of the ESC request further particulars of the information or complaint and may require the information or complaint to be verified by a statutory declaration within the time specified by the Director.

6.6 - Informal resolution or mediation

- 6.6.1 If the ESC considers that relevant conduct under a complaint or information can be properly dealt with between the complainant and the respondent by correction or an informal personal apology, the Director, may advise the complainant accordingly. The ESC may consider other means to address a complaint or information informally.
- 6.6.2 If the ESC considers that an alternative process (e.g. mediation or conciliation) is likely to resolve the issues as between the informant and any other person and the respondent, the Director may seek the consent of the relevant parties to refer the matter to such an alternative process.
- 6.6.3 Any settlement or informal resolution of the issues between the informant and any other person and the respondent will not prevent the ESC from taking steps under the ST Canon or the ES Canon in respect of the information or complaint.

6.7 Investigation

- 6.7.1 Where the ESC considers that the information or complaint constitutes examinable conduct, a breach of discipline or an offence the ESC shall investigate the matter.
- 6.7.2 The ESC may appoint an external investigator, upon such terms and conditions as the ESC determines, subject to any protocol approved by the

Standing Committee. **NOTE:** this may be a diocesan professional standards director or investigator.

- 6.7.3 The role of the ESC or an external investigator is to gather information about the matter.
- 6.7.4 The ESC or an investigator shall-
- (a) make a written record of each interview with a person and may, with the consent of the person, make an audio record of the same;
 - (b) provide the person with a copy of the record; and
 - (c) have the person verify the record by signing a copy of it or, if the person refuses to sign a copy of it or in the case of an audio record, by signing a statement to the effect that the record is a true record of the interview.
- 6.7.5 An investigator shall be independent, objective and impartial and shall not have nor be perceived to have any conflict in relation to the complaint, the complainant or the respondent or any personal interest in the outcome.
- 6.7.6 The ESC may decide not to investigate the matter or may refrain from further investigation of the information or complaint if:
- (a) in its opinion, the allegations the subject of the information or complaint are vexatious or misconceived, or their subject matter is trivial;
 - (b) the subject matter is under investigation by some other competent person or body or is the subject of legal proceedings;
 - (c) the person making allegations of examinable conduct or breach of discipline or an offence, or a person affected by the conduct the subject of the information or complaint has failed, when requested by the ESC, to provide further particulars or to verify the allegations by statutory declaration; or
 - (d) in its opinion there is insufficient reliable evidence to warrant an investigation or further investigation.

6.8 - The respondent

- 6.8.1 Where the ESC considers that the complaint or information constitutes examinable conduct, a breach of discipline or an offence the ESC shall as soon as practicable notify the respondent of the matter, but may defer such notification where in its opinion further investigation would be prejudiced by the notification.
- 6.8.2 The notification of the matter will include the substance of the information or complaint in sufficient detail, including the identity of any complainant, to enable the respondent to make the response required by clause 6.8.4, and will advise the respondent of his or her right to obtain independent legal or other professional advice, at the respondent's cost, before responding to the matter.

- 6.8.3 Unless this has already occurred, the Director will offer the respondent the services of a support person.
- 6.8.4 The Director will also advise the respondent that in order to determine whether the facts of the case are significantly disputed, a written response to the complaint is required to be provided to the Director within 3 weeks of the respondent being notified of the complaint., or such further time that the ESC may allow. A support person may assist the respondent with this process and may liaise with the Director as appropriate.
- 6.8.5 In the event that the respondent fails, without reasonable cause, to respond to the complaint or information within the time prescribed by paragraph 6.8.4, the ESC will continue with the investigation and any other process under the ST or ES canons.
- 6.8.6 If both parties have given their consent and, in the opinion of the ESC, this is an appropriate way to proceed, the Director may arrange a face-to-face meeting or a written apology.
- 6.8.7 Any support person will also keep in regular contact with the respondent and may assist the respondent to liaise with the Director in accordance with the provisions of this protocol.

6.9 Outcomes

- 6.9.1 The ESC may at any time –
- (a) if it considers on reasonable grounds that the Bishop may be incapable, report the matter in writing to the relevant Metropolitan as defined in the ST Canon for possible action under the *Bishops (Incapacity) Canon 1995*;
 - (b) refer to the Board the fitness of a Bishop, whether temporarily or permanently, to hold office or to remain in Holy Orders;
 - (c) whether or not the information the subject of the investigation is also the subject of a complaint under the ST Canon, institute proceedings by way of charge against the Bishop before the Tribunal;
 - (d) in the event that the Bishop whose conduct under investigation ceases to be a Bishop, refer the matter, together with such information as it shall have received, to the Bishop of the diocese in which the former Bishop then resides; or
 - (e) determine that some other action, as considered appropriate by the ESC shall be taken.
- 6.9.2 Where a matter is being referred to the Board under subparagraph 6.9.1, the ESC will prepare a written report on the matter and transmit it to the Board.
- 6.9.3 In deciding what action should be taken under subclause 6.9.1, the ESC may
- (a) seek further information from the Director; and
 - (b) consider the views of any relevant person.

6.10 - Suspension

- 6.10.1 At any time after the ESC has commenced an investigation of information concerning alleged misconduct or omission of a Bishop in circumstances where it considers that action may be taken to refer a matter to the Board, it may, after consultation with the complainant or complainants, recommend to the Diocesan Council of the Bishop's diocese or to the Primate, as the case may require, that the Bishop be suspended from the duties of office. In that case the provisions of ss 13, 14 and 15 of the ES Canon shall then apply.
- 6.10.2 At any time after a charge has been brought against the Bishop in the Tribunal, the ESC may apply to the President of the Tribunal for an order suspending the Bishop from the duties of office until the determination of such charge or for some lesser time in accordance with the provisions of the Constitution.

7- COMPLAINT ALLEGING A BREACH OF FAITH, RITUAL OR CEREMONIAL

A complaint alleging a breach of faith, ritual or ceremonial can only be heard by the Special Tribunal. The complaint can only be dealt with if the conduct or omission is alleged to have occurred not more than 12 months prior to the date on which the complaint is received by the ESC.

7.1 Making of Complaint

- 7.1.1 The ESC will only act in respect of such an alleged breach where it receives a formal complaint in writing, signed by the person making the complaint, and where the complaint is accompanied by a statutory declaration or statutory declarations stating the facts on which the alleged breach is based. There is no obligation on the ESC or the Director to assist a person in determining the content of a complaint or of a statutory declaration.
- 7.1.2 However, if the synod of the Bishop's diocese has by ordinance declared pursuant to section 43(2) of the *Special Tribunal Canon* that section 43(1)(a) of the Canon has no effect in respect of the Bishop of the diocese the ESC can only do what is set out in clause 1.2.3.

7.2 - Informal resolution or mediation

- 7.2.1 If the ESC considers that relevant conduct under a complaint or information can be properly dealt with between the complainant and the respondent by correction or an informal personal apology, the Director, may advise the complainant accordingly. The ESC may consider other means to address a complaint or information informally.
- 7.2.2 If the ESC considers that an alternative process (e.g. mediation or conciliation) is likely to resolve the issues as between the informant and any other person and the respondent, the Director may seek the consent of the relevant parties to refer the matter to such an alternative process.

- 7.2.3 To be effective any settlement or informal resolution will need to include a withdrawal of the complaint.

7.3 Investigation

- 7.3.1 In conducting an investigation the ESC and the Director shall be independent, objective and impartial and shall not have nor be perceived to have any conflict in relation to the complaint, the complainant or the respondent or any personal interest in the outcome
- 7.3.2 The Director may, at the request of the ESC, require within the time specified by the Director –
- (a) further particulars of the complaint;
 - (b) the complaint to be verified by a statutory declaration.
- 7.3.3 Subject to compliance with any request referred to in subparagraph 7.3.2, the ESC may further investigate the complaint and may take theological or other advice on the matter the subject of the complaint.
- 7.3.4 The ESC may refrain from further investigation of the complaint if:
- (a) In its opinion, the allegations are vexatious or misconceived, or their subject matter is trivial;
 - (b) The subject matter is under investigation by some other competent person or body or is the subject of legal proceedings;
 - (c) The person making the complaint has failed, when requested by the ESC, to provide further particulars or to verify the allegations by statutory declaration;
 - (d) In its opinion there is insufficient reliable evidence to warrant an investigation or further investigation.
 - (e) The subject matter of the complaint occurred more than 12 months prior to the date on which the complaint was received by the ESC.

7.4 Suspension

- 7.4.1 After a charge has been brought against the Bishop, the ESC may apply to the President of the Tribunal for an order suspending the Bishop from the duties of office until the determination of such charge or for some lesser time in accordance with the provisions of the Constitution.

7.5 Outcomes

- 7.5.1 If the ESC does not refrain from further investigation for a reason referred to in subparagraph 7.3.4, and if the complaint is not withdrawn, the ESC shall cause a charge to be brought against the Bishop in the Special Tribunal.

8- INFORMATION OR COMPLAINT WHERE THE BISHOP'S DIOCESE HAS NOT ADOPTED OR HAS EXCLUDED THE ES CANON

8.1 - Application of other provisions of this protocol

- 8.1 If the synod of the Bishop's diocese has by ordinance declared pursuant to section 43(2) of the *Special Tribunal Canon* that section 43(1)(a) of the Canon has no effect in respect of the Bishop of the diocese the ESC can only do what is set out in clause 1.2.3.
- 8.2 If no such declaration is in force and the Bishop's diocese has not adopted or has excluded the ES Canon, neither the ESC nor the Director may exercise any of the powers conferred on them by the *Episcopal Standards Canon*. However, there remain available to the ESC and the Director the powers conferred by the *Special Tribunal Canon*, but only in respect of a complaint. They cannot act merely on information.
- 8.3 If the Director or the ESC receives information from an identifiable informant they will inform the informant that they cannot take any action other than upon receipt of a complaint.
- 8.4 In dealing with a complaint the ESC and the Director will at all times maintain complete independence and detachment from the complainant and will not align themselves with the views and aspirations of the complainant but will give whatever assistance may be necessary in the circumstances in an independent and objective manner.
- 8.5 Accordingly, the provisions of paragraph 6 of this protocol will apply subject to the following variations:
- (a) It will only be read as applying to a complaint and a complainant and not to information, an informant or to examinable conduct;
 - (b) The Director and the ESC will apply such provisions with such modification as the exigencies of the case may require;
 - (c) Paragraph 6.7 will only apply if a formal complaint has been made and the complaint, either alone or taken with other complaints received by the ESC, has or have been accepted by the ESC as being the subject of a possible charge before the Tribunal against the Bishop;
 - (d) In lieu of paragraphs (a)-(e) of subparagraph 6.9.1 the ESC may –
 - (i) if it considers on reasonable grounds that the Bishop may be incapable, it may report the matter in writing to the relevant Metropolitan as defined in the ST Canon for possible action under the *Bishops (Incapacity) Canon 1995*;
 - (ii) institute proceedings by way of charge against the Bishop before the Tribunal; or
 - (iii) in the event that the Bishop whose conduct is under investigation ceases to be a Bishop, refer the matter, together with such

information as it shall have received, to the Bishop of the diocese in which the former Bishop then resides.

9- PROVISIONS APPLICABLE TO ALL MATTERS BEFORE THE ESC

9.1 Information to informants, victims and respondents

- 9.1.1 The Director will from time to time keep or cause to be kept an informant and, where appropriate, a victim informed of progress of a matter involving them.
- 9.1.2 When a matter is the subject of a reference to the Board or to proceedings in the Tribunal, the Director will endeavour to ensure that the Board or the Tribunal as the case may be authorises the Director or some other person to keep the complainant and, where appropriate, the victim and the respondent informed of progress of the matter.
- 9.1.3 If the ESC, after receiving information or a complaint, refrains from further investigation of the allegations, or does not arrange for an alternative process to resolve the complaint and decides not to bring a charge in the Tribunal or refer a matter to the Board, the ESC, without delay, will provide the complainant and the respondent with full and complete reasons in writing for its decision.

9.2 Resolution between parties or commencement of legal proceedings

- 9.2.1 The Director, the ESC, the Board and the Tribunal as the case may be may continue to take action under this protocol, and to make or receive any recommendation, despite the fact that there has been a formal or informal resolution of a complaint between the parties to the complaint.
- 9.2.2 The Director, the ESC and any other person or entity appointed under this protocol may continue to exercise their respective roles even if litigation has been commenced against the Bishop or some organ of the Church.

9.3 Pastoral response

- 9.3.1 The ESC may recommend to the Primate and/or such other persons as may be appropriate that a pastoral response should be developed for the care of any diocese or Church community affected by a matter arising under this protocol.

9.4 Completion of the process

- 9.4.1 As appropriate, the ESC or the Director may, at the completion of a matter, liaise with those involved in a process under this protocol to explain the outcome and to discuss any further action that should be taken.

9.5 Contact with informant or victim

- 9.5.1 Other than for essential purposes for the administration of the diocese, the respondent should not have any contact with an informant or victim in the course of a resolution of a complaint except through, or on the advice of, the Director or the ESC.

- 9.5.2 Subject to the provisions of any relevant canon, nothing should be done or said that the complainant or any other person could reasonably interpret as questioning the capacity of a person to make a complaint, denying a person the right to determine whether or not to speak publicly about a matter or the Church's response to a complaint or questioning a right to pursue alternative redress or any counselling, therapy or other assistance.

9.6 Charges brought by other Bishops, persons or bodies in the Special Tribunal

- 9.6.1 Under the ST Canon it is possible for another Bishop to promote a charge against a Bishop. It is also possible that a diocesan synod has by ordinance authorised another person or body to bring such a charge. Where it is aware that such action is being, has been or may be taken, the ESC will co-operate fully in any inquiry or investigation with such a person or body, and will endeavour to avoid duplication, to co-ordinate any action taken and to share relevant information and, where appropriate, the cost of any investigation.
- 9.6.2 Where proceedings have been commenced in the Tribunal by another party the ESC may, by agreement with that other party and subject to the consent of the Tribunal and to any conditions imposed by the Tribunal, be substituted or joined as a body bringing the charge.
- 9.6.4 Where proceedings have been commenced in the Tribunal by the ESC, another party may, by agreement with the ESC and subject to the consent of the Tribunal and to any conditions imposed by the Tribunal, be substituted or joined as a party bringing the charge.

9.7 Records

- 9.7.1 The ESC must ensure that the Director establishes a file in relation to each matter that is dealt with under this protocol and that the file includes the names of the informant and the respondent, the history of the matter, and the outcome.
- 9.7.2 A file prepared for the purposes of this protocol will be kept apart from any other file within the Church, or held by any other body.
- 9.7.3 The Director will be responsible for ensuring the proper confidentiality and security of these files.
- 9.7.4 Access to a file is limited to-
- (a) the Director;
 - (b) any member of the ESC authorised pursuant to a resolution of the ESC;
 - (c) a person who has a right of access under a law of the State or Commonwealth;
 - (d) any other person authorised pursuant to a resolution of the ESC.
- 9.7.5 Access under subparagraph 9.7.4 may occur-
- (a) for a purpose directly related to the operation of this protocol; or
 - (b) for the purpose of proceedings in the Tribunal or before the Board; or

- (c) for the purpose of legal proceedings involving the Bishop or a Church body; or
- (d) for the purpose of screening related to the potential appointment of the Bishop to a position where a record made under this protocol may be relevant; or
- (e) for the purpose of complying with a law of the State or Commonwealth; or
- (f) for the purpose of the investigation of an alleged offence if the person seeking access is acting under a warrant, or for the purpose of the investigation of a criminal offence; or
- (g) for any other purpose determined by resolution of the ESC.

9.7.6 Access under subparagraph 9.7.5(f) does not prevent the ESC or the Bishop concerned from seeking to maintain confidentiality in relation to the relevant information.

9.7.7 Any access to a file should be limited to the access that is reasonably required to fulfil the purpose for which access is required.

9.7.8 The ESC may-

- (a) set terms and conditions under which access to a file or files may occur under this clause;
- (b) establish policies, guidelines and procedures that restrict or regulate access to files under this paragraph.