

The Professional Standards Ordinance Amendment Ordinance 2016

Explanatory Memorandum

- *Addition of new Section 76A*

Presently the Ordinance does not expressly deal with circumstances where the Professional Standards Board hears evidence that may be relevant to a potential indictable offence and is capable of securing a conviction for that criminal offence. The Board should not continue to conduct proceedings that have the potential to prejudice an investigation or prosecution of criminal acts.

Further there is no adequate direction as to how the Board can consider the fact of a conviction or acquittal of an indictable offence or where the Police and DPP decide to take no action as it relates to conduct being examined by the Board in making its determination and recommendations.

The insertion of a new Section 76A is designed to:

1. require the Board, during the course of a hearing, to suspend the hearing if the Board forms the view that the evidence is:
 - (a) capable of satisfying a jury beyond reasonable doubt that a person has committed an indictable offence; and
 - (b) there is a reasonable prospect that a jury would convict the person; and
 - (c) the misconduct alleged is such that the question of whether a person committed an indictable offence is in issue.
2. allow the Board to resume a hearing in the event that the person is not convicted of the indictable offence;
3. allow the Board to accept a Certificate of Conviction as conclusive evidence for the Board's purposes;
4. allow the Board to take into account the fact of acquittal of an indictable offence in its deliberations about conduct that relates to the subject matter of the subject indictable offence; and
5. allow the Board to resume a hearing in other circumstances where the Police or the DPP do not take timely action or the action results in a withdrawal of proceedings.

The proposed additional section is, in broad terms, similar to the provisions of Section 78 of the *Coroners Act 2009* (NSW).

- *Amendment to Section 108(b)*

Section 108(b) of the current Ordinance places a positive obligation on the Board and Review Board to consider suppressing the identities of the relevant parties by using a test of “practicability” when publically releasing any determination or recommendation. The section does not define “practicability”.

The Board and Review Board already follow well established legal principles in determining whether to suppress identities of parties at all other stages of Board and Review Board proceedings. Therefore the “practicability” test referenced in section 108(b) is inconsistent.

By requiring consideration of “practicability” when the Board or Review Board is publically sharing determinations or recommendations, there is the potential to constrain the Board and Review Board from being able to fully publicise the outcomes of their work.

Further, it is noted that the Royal Commission hearings examined the ability of the Board to keep any recommendation confidential. The effect of this amendment ensures that any such decision is a matter for the Board at its discretion.

The amendment is in keeping with the focus on procedural fairness, process transparency and reflects the recommendations of the Royal Commission with respect to publicising the outcomes of professional standards processes.

The Bill

The Professional Standards Ordinance Amendment Ordinance 2016

Be it ordained by the Diocesan Council in accordance with the Synod (Delegation of Powers) Ordinance 2009 as follows:

1. This Ordinance may be cited as the Professional Standards Ordinance Amendment Ordinance 2016.
2. The Professional Standards Ordinance 2012 is amended by the insertion of section 76A to read:

“Procedure at hearing before Professional Standards Board involving indictable offence

1. *If at any time during the course of a hearing, the Board is of the opinion that, having regard to all of the evidence given up to that time:
 - (a) *such evidence is capable of satisfying a jury beyond reasonable doubt that a known person has committed an indictable offence; and*
 - (b) *there is a reasonable prospect that a jury would convict the known person of the indictable offence; and*
 - (c) *the conduct alleged is such that the question as to whether the known person committed an indictable offence is in issue,*then the Board must suspend the hearing and forward copies of all evidence obtained for the purpose of the Board hearing to the Local Commander of the NSW Police Service, with a report confidentially identifying the known person and the details of the alleged indictable offence.*
2. *Should the known person be convicted of an indictable offence after referral of the matter pursuant to section 76A(1), the Board may accept a Certificate of such conviction which shall be conclusive evidence for the Board’s purposes and upon which it may make a determination and recommendation to the Church Authority.*
3. *Should the known person acquitted of an indictable offence after the referral of the matter pursuant to section 76A(1), the Board may resume the hearing of the alleged conduct, subject to giving appropriate notices to all interested parties of the time and place of the resumption.*
4. *Upon the resumption of a hearing to which section 76A(3) applies, the Board must have regard for any Certificate of Acquittal and such other evidence and submissions as may be appropriate before making is determination and recommendation to the Church Authority.*
5. *After referral of any matter under s76A(1), the Board shall regularly seek advice from the Local Commander of the New South Wales Police Service as to progress of any Police investigation or prosecution.*

6. The Board may reconvene a hearing after suspension in accordance with s76A(1) in the following circumstances:
- (a) where the advice received in accordance with s76A(5) or otherwise indicates that the Police:
 - (i) do not intend to investigate the matter referred; or
 - (ii) have completed such investigation and there is no recommendation for prosecution; or
 - (b) where the advice received in accordance with s76A(5) or otherwise indicates that the Police have not commenced an investigation and twelve months has elapsed since the referral of the matter under s76A(1), provided the Police have been provided with 90 days notice of the intention to recommence the hearing; or
 - (c) where the person has been discharged after a committal hearing relating to the matters referred; or
 - (d) where the Department of Public Prosecutions has decided to withdraw charges relating the matters referred.”
3. The Professional Standards Ordinance 2012 is amended by the repeal of sub-section 108(b) and the insertion in its place of a sub-section to read:
- “The Board and the Review Board may on or after the notification date release to the public any:
- (a) determination; and/or
 - (b) recommendation; and/or
 - (c) reasons for any determination or recommendation.”

PASSED BY DIOCESAN COUNCIL on the Ninth day of December 2016.



**Mrs Linda Wilson
Acting Secretary, Diocesan Council**

THE ASSENT of the Bishop Peter Stuart exercising authority as the Commissary to the Bishop of Newcastle was given to the above Ordinance on the **Ninth** day of **December 2016** in the Eight year of our Consecration

A handwritten signature in blue ink, appearing to read "Peter Stuart". The signature is written in a cursive, flowing style with a prominent initial "P".