

## **AN ORDINANCE TO AMEND THE PROFESSIONAL STANDARDS ORDINANCE 2005**

**BE IT ORDAINED AND RULED** by the Bishop and Diocesan Council of the Diocese of Newcastle pursuant to the **Synod (Delegation of Powers) Ordinance 2009** and every other power hereunto enabling, as follows

### **1. SHORT TITLE**

- (1)** This Ordinance may be cited as the **Professional Standards (Amendment) Ordinance 2010**.
- (2)** In this Ordinance the **Professional Standards Ordinance 2005** is referred to as 'the Principal Ordinance'.

### **2. AMENDMENT OF SECTION 4**

Section 4 of the Principal Ordinance is amended by deleting from subsection (1) the words and figures 'clause (2) below' and substituting 'sub-section (2)'.

### **3. AMENDMENT OF SECTION 22**

Section 22 of the Principal Ordinance is amended by inserting after paragraph 22(2)(b) the following:

' or

- (c) its powers under section 35.'

### **4. AMENDMENT OF SECTION 39**

Section 39 of the Principal Ordinance is amended

- (a) by deleting from paragraph (d) all words following the word 'received' and substituting the following

'and such payments are to be paid by the relevant church body provided that the Diocese shall pay, out of funds made available to it by Synod, such expenses in respect of a locum or other relief for the church body as the Bishop and the church body shall agree.' ;and

- (b) by adding the following paragraph

'(e) Notwithstanding paragraph (d), no suspended person shall be entitled to receive any stipend unless, but for the suspension, that person would otherwise have been able to carry out the duties of his or her office.'

### **5. VARIOUS NUMBERING AMENDMENTS**

- (1) The sections referred to in column 1 of the table hereunder are amended by deleting from such sections the number referred to in column 2 of the table opposite such section and substituting the number in column 3 of the table opposite such section.
- (2) The amendments effected by this section shall be deemed to have commenced on the commencement of the Principal Ordinance.

## TABLE

Column 1 (Section)	Column 2 (Number deleted)	Column 3 (Number substituted)
2 (Definition of "Director")	5	6
2 (Definition of "PSC")	4	5
2 (Definition of "protocol")	3	41
2 (Definition of "referring body")	54	59
36	34	35
37	34	35
38	34	35
38	69	74
41	43	44
42	58	59
42	73	74
62	58	59

### 6. NEW PART 12

The Principal Ordinance is amended by inserting after section 80 the following;

#### 'PART 12 – REVIEW

**81.** In this Part, unless the context otherwise requires:

**"reviewable decision"** means a determination or recommendation of the Board which, if acted upon by the relevant Church authority, may have the effect of:

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

**"Reviewer"** means a barrister of not less than 10 years standing appointed at the Director's request by the President of the NSW Bar Association, or if the President is unwilling to appoint, or unreasonably delays doing so, appointed by the Chancellor.

**82.** A respondent who is aggrieved by a reviewable decision may apply to the Director for a review of the decision.

**83.** The application may be made on any one or more of the following grounds:

- (a) that a breach of the rules of natural justice happened in relation to the making of the reviewable decision which materially affected the decision;

- (b) that procedures that were required by this ordinance to be observed in relation to the making of the reviewable decision were not observed, and the non-observance materially affected the decision; or
  - (c) that the Board did not have jurisdiction to make the reviewable decision; or
  - (d) that the reviewable decision was so devoid of any plausible justification that no reasonable Board could have made it; or
  - (e) the availability of fresh and compelling evidence which, if available at the time, would be likely to have materially affected the Board's decision; or
  - (f) that the Board seriously misdirected itself as to the applicable law.
- 84.** For a reviewable decision, a Church authority shall not act under the provisions of section 71 until the time for lodging an application for review has passed, and no application has been lodged.
- 85.** The making of an application for review acts as a stay of the reviewable decision pending the determination by the Reviewer.
- 86.** Nothing in this Part, however, affects the power of a Church authority to take any action against a respondent which would be open to the Church authority apart from its powers under this Ordinance.
- 87.** For a reviewable decision, the Board shall not cause the relevant details to be forwarded for entry into the national register under section 70 until:
- (a) the time for lodging an application for review has passed, and no application has been lodged; or
  - (b) where an application for review has been heard and determined, the determination has been made.
- 88.** If a determination on review confirms or varies a reviewable decision, then the Board must cause the details of the confirmed or varied decision to be forwarded to the Director for entry into the national register as soon as it receives the Reviewer's determination.
- 89.** If a Reviewer's determination refers a matter back to the Board, then the Board must:
- (a) determine to take no further action in respect of the matter; or
  - (b) deal with the matter in accordance with Part 10 of this Ordinance, in accordance with such directions or recommendation as the Reviewer may make in the Reviewer's determination; or
  - (c) deal with the matter in accordance with Part 10 of this Ordinance applying such of the provisions of Part 10 as, in the discretion of the Board and in accordance with the Reviewer's determination, the Board sees fit.
- 90.** (1) An application to the Director for review of the reviewable decision must be made within 14 days of the respondent's being provided with a copy of the Board's determination and recommendation under section 74.

- (2) The application for review must:
  - (a) be in writing addressed to the Director; and
  - (b) set out the grounds for review in the application.

- 91.** On receipt of an application for review, the Director must immediately seek the appointment of a Reviewer.
- 92.** (1) Upon appointment of a Reviewer, the Director must ask the Reviewer for the Reviewer's estimate of the fee to be charged by the Reviewer in making a determination under this Part.
- (2) Upon receipt of advice as to the estimated fee, the Director must immediately notify the respondent.
- (3) Within 7 days of receipt of the Director's advice, the respondent must pay one half of the estimated fee to the Reviewer, or to a person nominated by the Reviewer.
- (4) If the respondent fails to make the payment, then the application for review will lapse.
- 93.** Unless otherwise specified in this Ordinance, the manner in which the review is to be conducted will be determined by the Reviewer.
- 94.** On an application for review of a reviewable decision, the Reviewer may make all or any of the following determinations:
- (a) a determination quashing or setting aside the reviewable decision;
  - (b) a determination referring the matter to which the reviewable decision relates to the Board for further consideration, subject to such directions (including the setting of time limits for the further consideration, and for the steps to be taken in the further consideration) as the Reviewer determines;
  - (c) a determination declaring the rights of the respondent in relation to any matter to which the reviewable decision relates;
  - (d) a determination directing either the respondent or the Board, to do, or to refrain from doing, anything that the Reviewer considers necessary to do justice between the parties;
- and shall cause a copy of the determination or finding to be provided to the Director.
- 95.** The Reviewer may make such order as to the costs of the review as the Reviewer thinks fit.
- 96.** The review shall be by way of the review of the recommendation or determination that is the subject of the review and not by way of a re-hearing of the merits, or a hearing de novo.'

**I HEREBY CERTIFY** the Ordinance as printed is in accordance with the Ordinance as reported.

**PASSED BY DIOCESAN COUNCIL** on the **Thirtieth** day of **September 2010**.

Mr John Cleary  
**Secretary, Diocesan Council**

**THE ASSENT** of the Lord Bishop of the Diocese was given to the above Ordinance on the **Thirtieth** day of **September 2010** in the Nineteenth year of our Consecration and of our Translation to this See the Sixth.

**PRESIDENT**