

## PROFESSIONAL STANDARDS PROTOCOL 2020

### PART 1 – PRELIMINARY

1. This Protocol is designed to assist in the understanding of the procedures to be followed in accordance with the Professional Standards Ordinance 2012 (as amended) (**the Ordinance**).

#### Definitions

In this Protocol, unless there is something in the subject or context which is inconsistent:

<b>Bishop</b>	means the Bishop of the Diocese for the time being or any Commissary of the Bishop serving while the Bishop is absent, on leave or acting with the delegated authority of the Bishop, or the Administrator during any vacancy in the office of Bishop.
<b>Church</b>	means the Anglican Church of Australia.
<b>Church Body</b>	means a parish, school, any body corporate, organisation or association that exercises ministry within, or on behalf of the Church.
<b>Church Worker</b>	means a person who is or who at any relevant time was a Church Worker as defined under the <i>Professional Standards Ordinance 2012</i> .
<b>Clergy</b>	means the group or body of ordained persons in a religion.
<b>Contact Person</b>	means the person serving as the point of contact for information and complaints made in respect of the conduct of Church Workers.
<b>Diocesan Council</b>	means the Bishop acting with the advice and consent of the Diocesan Council established in accordance with the <i>Diocesan Management Ordinance 2003</i> .
<b>Diocese</b>	means the Diocese of Newcastle of the Anglican Church of Australia.
<b>Laity</b>	means a body of religious worshippers, as distinguished from the Clergy.
<b>Professional Standards Committee</b>	means the committee established under the <i>Professional Standards Ordinance 2012</i> .
<b>Professional Standards Director</b>	means the person appointed to the role of Professional Standards Director in accordance with Part 6 of the <i>Professional Standards Ordinance 2012</i> .
<b>Protocol</b>	means this protocol.
<b>Respondent</b>	means a Church Worker whose alleged conduct or omission is the subject of information.
<b>Sensitive Information</b>	means personal information including information about an individual's: <ul style="list-style-type: none"> <li>a. health;</li> <li>b. race or ethnic origin;</li> <li>c. political opinions;</li> <li>d. religious beliefs or affiliations;</li> <li>e. philosophical beliefs;</li> <li>f. sexual orientation or practices; or</li> <li>g. criminal record.</li> </ul>

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In Force Date: 28 May 2020

Last Review: 28 May 2020

## PROFESSIONAL STANDARDS PROTOCOL 2020

<b>Synod</b>	means the Synod of the Diocese, and includes when the Synod is in recess, the Diocesan Council.
<b>Working with Children Check</b>	means a criminal history record check and a review of reportable workplace misconduct; the outcome of a check is either a clearance to work with children or a bar against working with children.

### Interpretation

2. This Protocol is to be read in conjunction with the Ordinance and the Code of Conduct for Church workers called *Faithfulness in Service* as well as, where appropriate, the *Children's Guardian Act (NSW) 2019* (the Act) (as amended).
3. Where there is any inconsistency between the Ordinance and the Protocol, the Ordinance takes precedence. Where there is any inconsistency between the Act and the Protocol, the Act takes precedence.

## PART 2 - PROTOCOL

### Our commitment

4. The Diocese of Newcastle does not tolerate abuse or other forms of inappropriate behaviour within its communities.

### Diocesan undertakings

5. The Diocese provides the following undertakings in relation to the operation of this Protocol:
  - a. all information provided to the Diocese will be taken seriously;
  - b. where misconduct involves an allegation of child abuse, we will comply with our mandatory reporting obligations according to law;
  - c. where misconduct involves an allegation of other forms of illegal conduct that do not require mandatory reporting, we will support the person affected by the misconduct in reporting the matter to the police or to any other appropriate authority;
  - d. we will comply with our responsibilities under law to make a report to police or other appropriate authorities;
  - e. we will continue to invite any person who has been adversely affected by misconduct, no matter when it has occurred, to come forward and make the matter known. We do this to ensure that his or her needs can be addressed;
  - f. nothing in this Protocol prevents a person from pursuing a legal process or right of action at law;
  - g. any person against whom an allegation is made (the respondent) will be dealt with in a procedurally fair manner. That is, the investigation will be conducted by an unbiased decision maker, and the respondent will be given the opportunity to respond to the allegation; and

This document is current at the date of last review and is maintained electronically by the Anglican Diocese of Newcastle. Users should refer to the Newcastle Anglican website to confirm the currency of the instrument.	
In Force Date: 28 May 2020	Last Review: 28 May 2020
	Page 2 of 13

## PROFESSIONAL STANDARDS PROTOCOL 2020

- h. any body considering the outcomes of an investigation will be unbiased in its decision making.

What complaints can be made under this Protocol?

- 6. Any person may advise the Director of Professional Standards of the Diocese of any information or knowledge about a Church worker (whether lay, ordained, paid, voluntary or retired) being involved at any time in:
  - a. sexual misconduct with an adult;
  - b. any form of child abuse (including sexual, physical, psychological and emotional);
  - c. failing to report knowledge of sexual misconduct by another Church worker;
  - d. failing to report knowledge of child abuse by another Church worker;
  - e. failing to administer an aspect of the professional standards process prior to 2005 for which they had responsibility;
  - f. any conduct from which a person has suffered harm or is at a risk of harm which is contrary to the standards or guidelines of Faithfulness in Service;
  - g. an allegation relating to process failure involving a Church worker, Church body or Church authority failing to deal appropriately with or to investigate matters that fall within the definition of “information” set out in Part 3 of the Ordinance.

Who must report information?

- 7. If a Church worker has knowledge of any or all of the following conduct in relation to a Church worker, he or she must report it immediately to the Office of the Director of Professional Standards:
  - a. conduct wherever or whenever occurring involving sexual misconduct or child abuse;
  - b. inappropriate or unreasonable conduct or omission of a Church worker who had knowledge of conduct of another Church worker involving sexual misconduct or child abuse;
  - c. criminal conduct;
  - d. reportable conduct as defined in the Children’s Guardian Act 2019; or
  - e. process failure being the failure to deal appropriately with or to investigate conduct referred to in sub-clauses (a) –(d) above.
- 8. The responsibility in clause 7 shall exist concurrently with any separate mandatory reporting obligation that may arise for a Church worker under NSW child protection legislation, compliance with the standards under Faithfulness in Service and any obligation that may arise for a Church worker under NSW criminal law to make a report to the police.

This document is current at the date of last review and is maintained electronically by the Anglican Diocese of Newcastle. Users should refer to the Newcastle Anglican website to confirm the currency of the instrument.	
In Force Date: 28 May 2020	Last Review: 28 May 2020
	Page 3 of 13

## PROFESSIONAL STANDARDS PROTOCOL 2020

When a complaint is made

### Making a complaint

9. A complaint may be made in any form (including verbal, handwritten, type written or email).

### Confidentiality of the complainant

10. Only persons who have a specific role within the Diocese in the operation of the Ordinance will be informed of the details of the complaint.
11. Depending on the nature of the complaint, the Diocese may also refer the complaint to the Police or to other government agencies (as is determined by reference to clauses 31, 32 and 33 below).
12. A complainant has the right to refer the allegations to the Police at any time.
13. Any disclosure of information about a complaint may be provided to the National Registrar as required by reference to the Canon.

### Receiving a complaint from an Informant

14. Where a complaint is made or notified by a person other than the complainant, that is by an informant, the provisions of this Protocol shall apply to that informant as if he/she were a complainant, provided that the informant shall not be provided with access to any information or evidence gathered during or about an investigation directly or indirectly related to the complaint notified by that informant.

### Advising the respondent of the complaint

15. The Director of Professional Standards shall determine when the respondent to a complaint will be notified of that complaint.
16. If the complaint relates to matters that must be reported to the Police, the respondent shall not be advised by the Diocese of the complaint or of the fact that the complaint has been reported to the Police until the Police have approved the notification.
17. When the respondent is notified of the complaint, the Director of Professional Standards shall determine whether the identity of the complainant shall be disclosed, taking into account the age of the complainant or whether such disclosure shall create an undue risk to the complainant. Any decision shall also consider the impact of notification upon the integrity of the investigation of the complaint or is otherwise the subject of a protected disclosure.

### Disclosing the complainant's name

18. If the complainant requests confidentiality and the Professional Standards Committee reasonably believes that providing the complainant's name or details to the respondent may cause undue risk to the complainant, the Committee may decide not to inform the respondent about the complaint or may not disclose full details of the complaint to the respondent. In making any such decision, the

This document is current at the date of last review and is maintained electronically by the Anglican Diocese of Newcastle. Users should refer to the Newcastle Anglican website to confirm the currency of the instrument.	
In Force Date: 28 May 2020	Last Review: 28 May 2020
	Page 4 of 13

## PROFESSIONAL STANDARDS PROTOCOL 2020

Committee shall have regard for the preservation of the integrity of its investigation (including consideration of procedural fairness issues).

### Disclosing the respondent's name

19. In certain circumstances it may be appropriate to inform certain persons of the name of the respondent where it is considered necessary to protect a person or persons from the respondent.
20. The disclosure of such information shall be limited to, and provided on, an as needs basis (for example, the parents of a child who is considered at risk).

### Pastoral support or assistance for complainant

21. The Diocese will offer pastoral support or assistance to a complainant at the time a complaint is made.
22. The complainant may nominate a person of his or her own choosing to provide pastoral support or the Director of Professional Standards may, in consultation with the complainant, nominate a person.
23. The support will be provided for as long as is considered necessary in consultation with the provider. The Diocese shall be responsible for the costs of such support.

### Pastoral support or assistance for the respondent

24. Pastoral support will also be offered to the respondent at the time that the respondent is notified of the complaint.
25. The respondent may nominate a person of his or her own choosing to provide pastoral support or the Director of Professional Standards may, in consultation with the respondent, nominate a person.
26. The support will be provided for as long as is considered necessary in consultation with the provider. The Diocese shall be responsible for the costs of such support

### Keeping the complainant and the respondent informed of the investigation

27. Both the complainant and the respondent (once notified of an investigation) will be kept informed of the investigation.
28. The Director of Professional Standards will contact the complainant and respondent at times as determined by the Director.
29. When the process or investigation is completed, both the complainant and respondent will be advised accordingly. This advice will be written.
30. The complainant or respondent may contact the Director of Professional Standards in relation to the process of the investigation.

This document is current at the date of last review and is maintained electronically by the Anglican Diocese of Newcastle. Users should refer to the Newcastle Anglican website to confirm the currency of the instrument.

In Force Date: 28 May 2020

Last Review: 28 May 2020

Page 5 of 13

## PROFESSIONAL STANDARDS PROTOCOL 2020

Referring a complaint to another body or Diocese

### Referral to the police

31. Upon receiving information relating to child sexual abuse where the victim is under 18 years at the time the information is received, the Director of Professional Standards must immediately report the matter to the police.
32. Upon receiving information relating to child sexual abuse where the victim is no longer under 18 years at the time the information is received, the Director of Professional Standards must consult with the victim and make reference to the Protocol before determining whether to report the matter to the Police.
33. Upon receiving information relating to an incident where the victim was an adult at the time of the commission of the alleged incident, the Director of Professional Standards must consult with the victim before making any decision to notify. Such consultation must be documented by the Director of Professional Standards.
34. Where a victim does not wish to report the incident to the Police, then the Director must:
  - a. obtain sufficient evidence to show that the victim is over 18 years;
  - b. record in writing the statements made by the Director to the victim about the process of reporting to the Police;
  - c. record in writing the wishes of the victim not to report the incident to the Police and any reason provided for those wishes;
  - d. record in writing the reasonable grounds that the Director relies upon to support the belief that the victim does not wish to report the incident; and
  - e. record in writing any further statement from the Director of Professional Standards to the victim about the victim's ability to change his/her wishes,so as to satisfy the relevant provisions of s316A(2) of the *Crimes Act 1900* (NSW) or any successor provisions.
35. Where a matter is referred to the Police, the Director of Professional Standards shall ensure that any investigation of an incident is suspended until the Police determine whether a criminal investigation shall be undertaken and any investigation by the Diocese shall remain suspended during any Police investigation.

### Report to child protection agencies

36. The receipt of information relating to child sexual abuse may enliven separate obligations to comply with mandatory reporting obligations under concurrent child protection legislation, including the Act. The Director of Professional Standards shall ensure such compliance.

This document is current at the date of last review and is maintained electronically by the Anglican Diocese of Newcastle. Users should refer to the Newcastle Anglican website to confirm the currency of the instrument.	
In Force Date: 28 May 2020	Last Review: 28 May 2020
	Page 6 of 13

## PROFESSIONAL STANDARDS PROTOCOL 2020

### Referral to another Diocese

37. If the information or allegation relates to:
- a. conduct which had occurred in another Diocese; or
  - b. a complainant resides in another Diocese; or
  - c. a respondent resides in another Diocese,

the matter shall be notified to the Professional Standards Committee of that Diocese by reference to the Anglican Church Statement of Principles for Sharing Information between Directors of Professional Standards.

38. A referral of conduct or information to another Diocese shall not preclude this Diocese from conducting its own investigation into such matters, provided such investigation does not prejudice any concurrent investigation about the same matters by another Diocese.

### Commencement of the investigation

39. Upon receipt of a complaint, the Director of Professional Standards may undertake some preliminary work in relation to the subject matter of the complaint to assist the briefing of the Professional Standards Committee. In the case of alleged child abuse matters, this may include any relevant notifications under the law.
40. Following any briefing from the Director of Professional Standards, the Professional Standards Committee shall determine whether to commence and maintain an investigation by reference to its jurisdictional powers under the Ordinance.

### Complaints not proceeded with

41. If a complaint is:
- a. considered to be false, vexatious, misconceived or the subject matter is trivial;
  - b. under investigation by another competent body or person;
  - c. the subject of any legal proceedings (whether civil or criminal); or
  - d. it is considered that there is insufficient evidence to proceed,

then the Committee shall consider whether to commence, suspend or close an investigation into the complaint. The Committee may review any such decision at its discretion.

42. If the complainant:
- a. fails to provide further particulars when requested; or
  - b. does not verify the allegations by signing a statutory declaration,

then the Committee may suspend or close the investigation. The Committee may review any such decision at its discretion upon being notified a change in any material facts.

This document is current at the date of last review and is maintained electronically by the Anglican Diocese of Newcastle. Users should refer to the Newcastle Anglican website to confirm the currency of the instrument.	
In Force Date: 28 May 2020	Last Review: 28 May 2020
	Page 7 of 13

## PROFESSIONAL STANDARDS PROTOCOL 2020

### Referral to an Investigator

43. If allegations are to be investigated by the Professional Standards Committee, it will appoint an investigator who is considered suitably qualified and experienced to undertake such investigations.
44. The Diocese employs its own investigators who report to the Director of Professional Standards.
45. In appointing an investigator, the Professional Standards Committee shall consider whether there are any issues (e.g. conflict of interests or complexity) that may prevent the investigation being referred to the Diocese's own investigators, and if so, may refer the investigation to be conducted by an individual or organisation external to the Diocese.

### The Investigative Process

#### Details given to an Investigator

46. The investigator will be given all of the details of the complaint by the Director of Professional Standards.
47. The investigator may prepare a draft investigation plan and, if necessary, a risk assessment relevant to the matters the subject of the investigation. Any draft investigation plan or risk assessment shall be submitted to the Director of Professional Standards for approval and shall, upon approval, be forwarded to the Chair of the Professional Standard Committee for tabling at the next Professional Standards Committee meeting.
48. Upon approval of the plan, the investigator will investigate the matter in accordance with the Ordinance, this Protocol and, in the case of alleged child abuse, the Act.

#### Interviews conducted by the investigator

49. In conducting the investigation, the investigator will consider how to gather evidence, including the conduct of formal interviews.
50. The investigator may ask the Director of Professional Standards to arrange interviews with the complainant, respondent and other persons who the investigator considers to be relevant witnesses, subject to the processes described elsewhere in this protocol. Where appropriate, the investigator may arrange these interviews of his or her own accord.
51. When interviews are arranged, the person concerned should be advised that they may have a support person present. Any support person attending an interview shall not be permitted to answer questions on behalf of the interviewee.
52. The investigator may wish to record conversations or records of interview between the investigator and the person the investigator is speaking with. The permission of the interviewee must be obtained before a recording proceeds.
53. The investigator shall determine the form of any written record of interview.

<b>This document is current at the date of last review and is maintained electronically by the Anglican Diocese of Newcastle. Users should refer to the Newcastle Anglican website to confirm the currency of the instrument.</b>	
In Force Date: 28 May 2020	Last Review: 28 May 2020
	Page 8 of 13

## PROFESSIONAL STANDARDS PROTOCOL 2020

54. The investigator may request statements, reports, documents and other material relevant to the investigation.

### Dealing with the complainant

55. The investigator shall determine the appropriate manner in which to contact the complainant and gather information from the complainant, including whether it is appropriate to obtain a written statement or conduct an interview.
56. When the investigator contacts the complainant, the investigator will advise the complainant that:
- a. the purpose of the investigator's contact with the complainant is to obtain particulars of the allegations;
  - b. the particulars will be put to the respondent who will have an opportunity to respond to them;
  - c. any interview will be recorded with the complainant's permission to ensure the details are accurate;
  - d. recordings, statements and other material provided to the investigator during the course of the investigation may be produced to a court, tribunal or board (for example if legal action is commenced or the material is produced under subpoena);
  - e. the identity of the complainant may be disclosed to the respondent (a matter dealt with in clause 17 above);
  - f. the complainant may obtain independent legal advice at their own expense; and
- at the conclusion of the investigation, the investigator will provide a report to the Director of Professional Standards for presentation to the Professional Standards Committee and that the Professional Standards Committee will determine what action will be taken.
57. If the complainant is unwilling to provide further information or be interviewed (as the case may be), the complainant shall be advised in writing as to how such a decision may impact on the progress and outcome of the investigation and shall be provided with another opportunity to participate.
58. If the complainant is unable (for any reason including for any medical reason) to provide further information or be interviewed (as the case may be), and the investigator is of the view the reason for such inability will be permanent or for a significant duration, the investigator shall discuss the matter with the Director of Professional Standards to determine whether the investigation should continue or be suspended and if so, on what terms.

### Dealing with the Respondent

59. The investigator shall determine the appropriate manner in which to contact the respondent for the purposes of the investigation. Subject to consideration of the matters set out in clause 60 below, the investigator may write to the respondent outlining the allegations and offering an opportunity for the respondent to provide a written response to any allegations.

This document is current at the date of last review and is maintained electronically by the Anglican Diocese of Newcastle. Users should refer to the Newcastle Anglican website to confirm the currency of the instrument.	
In Force Date: 28 May 2020	Last Review: 28 May 2020
	Page 9 of 13

## PROFESSIONAL STANDARDS PROTOCOL 2020

60. Prior to contacting the respondent, the investigator shall determine, in consultation with the Director of Professional Standards:
- a. whether the identity of the complainant is to be disclosed by reference to the considerations in clauses 19 and 20 above;
  - b. what particulars of allegations will be notified to the respondent;
  - c. the form of the notice of those allegations; and
  - d. whether the disclosure of the content of the allegations to the respondent will affect the integrity of the investigation,

with any such determination being made by reference to relevant procedural fairness principles as well as any previous decision made by the Director of Professional Standards under clauses 15 and 16.

61. The investigator shall determine whether a request should be made for the respondent to participate in an interview. If the investigator has decided to request a written response to the allegations from the respondent as contemplated in clause 59 above, the investigator may refrain from requesting a formal interview with the respondent until that written response has been received and considered.
62. In contacting the respondent with any request for a written response or an interview, the investigator shall advise that:
- a. the respondent does not have to say or do anything;
  - b. that if the respondent chooses not to say or do anything, that adverse findings may still be made against the respondent;
  - c. subject to permission being granted to record the interview, whatever the respondent says or does will be recorded and can be used against them;
  - d. whatever the respondent says or does during the interview may be relied upon in any future proceedings;
  - e. he or she is entitled to obtain independent legal advice or have a legal advisor present as the support person (if requested); and
  - f. at the conclusion of the investigation, the investigator will provide a report to the Director of Professional Standards for presentation to the Professional Standards Committee.
63. For the purposes of clause 62(e) above, a Respondent may be entitled to receive reimbursement of up to \$5,000 plus GST for reasonable legal costs associated with participating in any investigations under this Protocol.
64. The respondent should also be advised that:
- a. until the conclusion of the investigation, he or she shall be presumed innocent; and
  - b. any determination of the allegations will be assessment of the balance of probabilities.

This document is current at the date of last review and is maintained electronically by the Anglican Diocese of Newcastle. Users should refer to the Newcastle Anglican website to confirm the currency of the instrument.

In Force Date: 28 May 2020

Last Review: 28 May 2020

Page 10 of 13

## PROFESSIONAL STANDARDS PROTOCOL 2020

### Respondent declining to participate

65. In accordance with clause 37(2) of the Ordinance, a Respondent is obliged to truthfully and expeditiously answer any question put by or on behalf of the Professional Standards Committee. However, a Respondent may decline to participate in an investigative process (whether a face to face interview or provision of responses to written questions) if the Respondent reasonably believes that such participation may tend to incriminate the Respondent. In such circumstances, the investigation will continue, and the investigator shall provide written notice to the respondent:
- a. confirming that a request for interview or provision of documents etc was made;
  - b. the Respondent has refused to submit for interview or supply the documents etc, as the case may be;
  - c. reminding the Respondent of his/her obligations under s37(2) of the Ordinance;
  - d. that the investigation shall continue and, despite the decision of the respondent not to cooperate or participate in the investigation, it is possible that findings about the allegations may be made that are adverse to the respondent; and
  - e. inviting the respondent to re-consider the decision not to cooperate.

### Interviewing children or persons with a disability

66. Children must only be interviewed with a parent, guardian, or other suitable adult (with the prior approval of the parent or guardian) being present.
67. Any interview of a child or person with a disability shall only be conducted by a suitably trained and qualified investigator.

### The outcome of the investigation

#### Report and findings

68. The investigator will provide a report to the Director of Professional Standards at the conclusion of the investigation.
69. The report will contain:
- a. reference to all evidence and information obtained in the course of the investigation;
  - b. the investigator's findings in respect of the allegations determined on the basis of the balance of probabilities and the Briginshaw principles (as set out in Briginshaw –v- Briginshaw [1938] 60 CLR 336); and
  - c. any other matter that the investigation considers appropriate, including, in the case of a sustained finding, any matters relevant to the assessment of risk in relation to the allegations.
70. Where the investigation sustains some or all allegations the subject of the investigation:

This document is current at the date of last review and is maintained electronically by the Anglican Diocese of Newcastle. Users should refer to the Newcastle Anglican website to confirm the currency of the instrument.	
In Force Date: 28 May 2020	Last Review: 28 May 2020
	Page 11 of 13

## PROFESSIONAL STANDARDS PROTOCOL 2020

- a. the sustained allegations will be considered by the Professional Standards Committee at the next scheduled meeting and decisions will be made about the referral of the allegations in accordance with the Ordinance;
  - b. the findings relating to any allegations not sustained shall be reported to the Professional Standards Committee and shall be noted as not requiring any further action; and
  - c. the complainant and the respondent shall be notified of the outcome of the investigation and any next steps.
71. Where the investigation does not sustain any allegation the subject of the investigation, the findings shall be reported to the Professional Standards Committee and shall be noted as not requiring any further action.

### The Role of the Bishop

72. The Bishop is to receive regular and comprehensive briefings from the Director of Professional Standards as provided for in the Ordinance and to enable him/her to discharge the responsibility of Head of Entity under the Act.
73. In the event that the Bishop receives any communications or information from or about an informant, complainant or respondent in relation to a matter for which the Ordinance applies he/she shall refer such communications or information to the Professional Standards Committee through the Director of Professional Standards. Where the Bishop receives such communication or information, he/she is not obliged to consider it or to acknowledge receipt of it.
74. The Bishop should only have contact with a complainant or a respondent after obtaining advice from or receiving a recommendation of the Professional Standards Committee or the Director of Professional Standards.
75. The Bishop may release to the public or the media information about professional standard complaints, investigations and determinations. The Bishop may seek the advice of or receive a recommendation from the Professional Standards Board, the Professional Standards Committee or the Director of Professional Standards about any such release.

### Amendment and Review of this Protocol

76. Every two years, the Professional Standards Committee must give consideration to whether the Protocol is effectively supporting the administration of the Ordinance and may, as appropriate, direct the Director of Professional Standards to undertake a review of the Protocol to ensure that it satisfies its objectives and shall receive and consider any recommendations arising from any such review and make any necessary referrals to the Diocesan Council for approval.

This document is current at the date of last review and is maintained electronically by the Anglican Diocese of Newcastle. Users should refer to the Newcastle Anglican website to confirm the currency of the instrument.	
In Force Date: 28 May 2020	Last Review: 28 May 2020
	Page 12 of 13

# PROFESSIONAL STANDARDS PROTOCOL 2020

## PART 3 - ADMINISTRATION

### Table of Amendments

Date	Section	Amendment

### Related Documents

*Professional Standards Ordinance 2012*  
*National Register Canon 2007*

*Anglican Diocese of Newcastle Board Code of Conduct*  
*Code of Conduct for Church Workers – Faithfulness in Service*  
*Children and Young Persons (Care and Protection) Act 1998 (NSW)*  
*Child Protection (Working With Children) Act 2012*  
*Child Protections (Prohibited Employment) Act 1998 (NSW)*

### Previous Instrument

*This protocol replaces the Professional Standards Protocol 2013*

**This document is current at the date of last review and is maintained electronically by the Anglican Diocese of Newcastle. Users should refer to the Newcastle Anglican website to confirm the currency of the instrument.**

In Force Date: 28 May 2020

Last Review: 28 May 2020

Page 13 of 13