



Clergy Complaints and Performance Protocol

ANGLICAN CHURCH OF AUSTRALIA – DIOCESE OF BRISBANE
September 2007

INTRODUCTION

The Diocesan Council received an issues paper prepared by the Deanery of Brisbane North West entitled '*Clergy Secure Working Environment*'. The Diocesan Council resolved to appoint a sub-committee (convened by The Venerable Jim Nolan and including Mr Rob Freeman, The Reverend Lee Gauld and Mr Ian Fraser) to liaise with the North West Deanery to further develop the ideas in the paper. The sub-committee was to recommend how the issues identified in the paper could be progressed and in particular to frame specific terms of reference for the Council's consideration.

The sub-committee convened on a number of occasions and delivered a Clergy Secure Working Environment Report ('the Report') outlining four (4) recommendations, as follows:

1. *Diocesan Council appoints a committee;*
2. *That committee, as a matter of urgency, formulate a 'New Complaints and Disciplinary Protocol', based on the principles of natural justice that is suitable for implementation across the Diocese;*
3. *That the committee provide a progress report to Synod 07; and*
4. *The work of the committee informs the preparation of new Canons and amendments as necessary to Canons for consideration at Synod 08.*

Recommendation one (1) has been actioned and a Clergy Secure Working Committee (chaired by Mr Peter Read and including Mr Rob Freeman, The Reverend Tom Sullivan and Ms Kylie Reed) has been established. The Clergy Secure Working Committee ('the Committee') has now, completed its first assignment in the development and delivery of this Clergy Complaints and Performance Protocol (the procedure).

This Protocol outlines the steps to be followed if a complaint is received relating to a member of the clergy, with the exception of when the complaint:

1. concerns matters of sexual harassment, or assault or sexually inappropriate behaviour. In these types of matters, the *Professional Standards Canon* and the revised Protocol for Dealing with Complaints of Sexual Harassment or Assault or Sexually Inappropriate Behaviour [August 2006] will still apply;
2. is a matter of Faith or Ritual as covered by the Tribunal Canon;
3. is a report under section 59 (1)(e) of the Parish Regulations Canon, unless the Archbishop chooses to utilise this Protocol.

This Procedure also provides a system for the management of disciplinary or performance matters concerning clergy and outlines the steps required to initiate a review of any decision. **This Procedure does not focus directly on processes for performance review and professional development, as a distinct protocol will be developed to deal specifically with these matters.**

On this basis, this Procedure has been separated into three (3) parts:

- PART A: Complaints Against Clergy brought by Third Parties.
- PART B: Disciplinary or Performance Matters Concerning Members of the Clergy.
- PART C: Review Mechanisms.

Complaints of sexual harassment, sexual assault or sexually inappropriate behaviour which fall under the *Professional Standards Canon* are not dealt with under this Procedure.

Where it is unclear whether an allegation of harassment or bullying includes a sexual component, a complaint may initially be made under this Procedure. If it is then considered more properly dealt with under the Professional Standards Canon, appropriate arrangements will be made.

It is expected that this procedure will be followed in all cases of complaints against and disciplinary or performance matters related to members of the clergy. Any action to be taken against a member of the clergy resulting from this Procedure is a matter for the Archbishop. For a rector of a beneficed parish, any such action would need to take into account the operation of the Benefices Avoidance Canon.

1. PRINCIPLES FOR THE RESOLUTION OF COMPLAINTS AND DISCIPLINARY OR PERFORMANCE MATTERS

The following principles apply to all matters (ie. Third Party Complaints and Disciplinary or Performance Matters) addressed under these Procedures.

1. Natural Justice

The process is based on the principles of natural justice including the rights of the complainant to:

- be heard;
- have his/her complaint treated seriously and investigated and considered by unbiased parties;
- be informed of the process for managing the complaint;
- be informed of the outcome and the reasons for that outcome.

The respondent has the right to:

- be informed of the details of the complaint;
- be informed of the process for managing the complaint;
- have the complaint investigated and considered by unbiased parties;
- be able to respond fully to the complaint;
- have his/her response considered seriously;
- be informed of the outcome and the reasons for that outcome.

2. Privacy and Confidentiality

To respect and maintain privacy and confidentiality, all parties must ensure that information regarding complaints is restricted only to those who have a need to know. However, some information may need to be disclosed in accordance with legal and other regulatory requirements. Personal information collected in the course of managing a complaint will be dealt with in accordance with the Diocese's *Privacy Policy*.

3. Timeliness

All complaints will be managed openly and in a timely manner.

For matters involving Complaints Against Clergy Made by Third Parties, it is expected that all written complaints will be acknowledged in writing within seven working days. The process and timeframe for investigation and resolution of a complaint may vary according to the nature and complexity of the complaint, however, every endeavour will be made by the Regional Bishop to conclude the investigation process within 30 days of acknowledgement of the complaint. Relevant parties will be advised when this is not possible.

4. Pastoral Support

If the Regional Bishop decides to conduct an investigation, they may appoint one or more persons to make contact with and provide pastoral support to the member of the clergy.

2. COMPLAINTS AGAINST CLERGY BROUGHT BY THIRD PARTIES.

DEFINITIONS

‘Clergy’/‘Member of the Clergy’:

- *Any person holding the Archbishop’s Licence as a Bishop, Priest or Deacon, within the Diocese of Brisbane.*

‘Malicious, Frivolous or Vexatious Complaint’:

- *Complaints that are deliberately harmful, spiteful, trivial or unworthy of serious attention or resources.*

ASSISTANT BISHOPS AND ASSISTANT CLERGY

Assistant Bishops

This protocol applies to complaints against Assistant Bishops and to a disciplinary performance process involving Assistant Bishops. Where an Assistant Bishop is respondent to a complaint, or the subject of a disciplinary performance process, the Archbishop will act in place of the Regional Bishop and the Review provisions of this protocol will not apply.

Assistant Clergy

This protocol applies to complaints against Assistant Clergy and to a disciplinary performance process involving Assistant Clergy.

In respect of the complaints process only, where the respondent is an Assistant Clergy, the following provisions will apply:

- (1) Complaints in the first instance should be submitted in writing to the Parish Priest;
- (2) The Parish Priest is required to forward a copy of the complaint to the Regional Bishop;
- (3) The Parish Priest will act in place of the Regional Bishop in management of the complaint unless:
 - i) the Parish Priest asks the Regional Bishop to manage that process, in which case the Regional Bishop will do so; or
 - (ii) the Regional Bishop advises the Parish Priest that the Regional Bishop will manage the complaint, in which case the Regional Bishop will do so."

THE COMPLAINTS PROCESS

Defining a Complaint:

For the purposes of this Procedure a complaint against a member of the clergy brought by third parties includes complaints made by parishioners, other Church staff/volunteers or visitors to the Church relating to any matter other than sexual harassment, assault or sexually inappropriate behaviour.

Making the Complaint

A **complainant** is required to:

- a. submit their complaint in writing to the **Regional Bishop**, in the first instance;
- b. where the complaint is not submitted in writing the Regional Bishop will record the specific details of the complaint and provide to the complainant for confirmation and signing;
- c. provide complete and factual information and be aware that a refusal to provide certain information may inhibit the appropriate management of the complaint. As a guide, a complaint should include:
 - i. specific details of the complaint, including what occurred and when it occurred;
 - ii. who was involved in the incident(s) and any witnesses;
 - iii. what action/resolution is being sought in resolution of the complaint.

- d. deliver the complaint in a non-threatening manner;
- e. not include deliberately false or misleading information;
- f. not make frivolous, vexatious or false complaints.

Complainants should be aware that the respondent will be informed of the complaint and will be given an opportunity to respond to the complaint.

A **respondent** is required to:

- a. provide factual and complete information and be aware that a refusal to provide certain information may inhibit the appropriate management of the complaint;
- b. deliver the response in a non-threatening manner;
- c. not include deliberately false or misleading information;
- d. not make frivolous, vexatious or false comments.

All parties have the right to have a support person present throughout any interview process.

Managing the Complaint

1. The written complaint is received by the Regional Bishop and acknowledged within seven (7) days. Where the complaint is not submitted in writing, the Regional Bishop will record the specific details of the complaint and provide to the complainant for confirmation and signing.

When the complaint is received, the Regional Bishop should:

- a. where appropriate, encourage the Complainant to discuss the matter with the clergy member;
- b. ensure all parties accurately understand the issues at the core of the complaint;
- c. acknowledge the feelings and concerns of the complainant;
- d. confirm what outcome the complainant is seeking;
- e. ensure the complainant and respondent are supported;
- f. resolve the matter, if possible, by using alternative conflict resolution strategies, such as:
 - i. facilitating a round table discussion of all parties;
 - ii. referring the matter to mediation, if all parties are willing;
- g. if it can't be resolved, advise on what process will be followed;
- h. dismiss any complaint that they consider to be malicious, frivolous or vexatious, as determined at any stage throughout the complaints process.

Many complaints can be satisfactorily resolved at the first point of contact by the provision of information and/or an explanation. In certain circumstances, it may be appropriate to offer the person either an apology, an acknowledgement of the effect the situation has had, or to provide advice regarding action to ensure the situation does not recur.

The Regional Bishop must record the actions they have taken to progress the management of the complaint to the point of resolution and maintain such a record in a secure and confidential file.

2. Where a complaint is not resolved at the first point of contact, nor through mediation or alternative conflict resolution and the Regional Bishop considers that a more formal process is necessary, the following procedure will apply:
 - a. Every endeavour will be made by the Regional Bishop to conclude the investigation process within 30 days of acknowledgement of the complaint. Relevant parties will be advised when this is not possible.
 - b. Where the Regional Bishop decides that an investigation into a complaint is necessary, they will appoint an independent investigator.
 - c. The Regional Bishop will provide, in writing, to the member of clergy, specific details of the complaint made against them, the name of the complainant (unless special circumstances exist) and the investigation process to be undertaken.



- d. The appointed investigator will conduct all necessary interviews with the complainant, respondent member of clergy and witnesses and will be given access to all relevant files and documentation.
- e. The investigator will retain records of all interviews conducted and have such records signed by each person interviewed.
- f. The investigator will draft and deliver an Investigation Report, including records of interviews, to the Regional Bishop, outlining their Findings and Recommendations.
- g. The Regional Bishop will provide the member of the clergy with a written "Notice of Meeting" letter to seek their response to the Findings of the Report. They should be provided with at least 72 hours notice of the proposed meeting. The letter will include:
 - i. the purpose of the meeting;
 - ii. a clear and specific outline of the Findings of the Investigation Report;
 - iii. meeting time and venue;
 - iv. who will be in attendance at the meeting;
 - v. possible consequences for the member of the clergy should their response to the Report Findings not be to the Regional Bishop's satisfaction;
 - vi. the entitlement to have a support person attend the meeting with them.
- h. The member of clergy will be provided with an opportunity to respond to the Report Findings and that response will then be considered and further questioning will take place if necessary.
- i. Following a full consideration of their response, a recommendation, based on the Report Recommendations, will be made to the Archbishop.
- j. This decision will be communicated to the member of the clergy in writing and a copy placed on their file.
- k. Where the Regional Bishop is not satisfied with the response from the member of the clergy and has formed the view that they cannot continue in their role, they must refer the matter to the Archbishop for consideration as to whether the licence should be revoked. For a rector of a benefice parish, this would need to be done in the context of the *Benefices Avoidance Canon* (BAV-1-2005).

Communicating a Resolution

When a complaint has been satisfactorily dealt with, the outcome is to be communicated to the parties in writing. Specific details of the complaint and the actions taken to resolve it are to remain confidential between the parties and are not to be made public.

Details of the complaint, the process followed and the outcome are to be recorded and held securely and confidentially in the Regional Bishop's office.

3. DISCIPLINARY OR PERFORMANCE MATTERS CONCERNING MEMBERS OF THE CLERGY.

Purpose of the Disciplinary or Performance Process

From time to time, issues may arise relating to the conduct or performance of clergy that need to be addressed through a formal process. The purpose of such a formal process is to assist members of clergy to overcome identified problems in regard to their performance or conduct and provide a structured opportunity for them to improve in identified areas.

While most issues will be appropriately addressed on a day-to-day basis without having to follow a formal disciplinary or performance review process, there may be occasion when this will be required.

Principles of the Disciplinary or Performance Process

The principles underpinning any disciplinary process include:

- Fair and equitable treatment for any clergy involved in a disciplinary or performance review process;
- Addressing poor performance and conduct issues in a prompt and impartial manner;
- Confirming expectations regarding the conduct and performance of clergy by the Regional Bishop;
- Any allegations/concerns will be put to the member of clergy in writing and they will be given an opportunity to respond to any and all allegations made;
- All relevant facts and responses will be considered before reaching a conclusion on the appropriate action to be taken;
- The member of the clergy will have the opportunity to be supported by a third party during any formal disciplinary meeting;
- **The process** is to be used in a constructive way so as to provide an opportunity for improved performance or conduct.

Procedures for Conducting a Disciplinary or Performance Process

Stage 1 – Identifying an Issue

The Regional Bishop may initially identify an issue of conduct or performance that requires attention. The Regional Bishop will generally determine this through either observation, a situation being brought to his attention or a specific incident.

The Regional Bishop will consider the following factors when determining whether to progress to the disciplinary or performance review process:

- whether similar matters have been raised with the member of the clergy previously and if **improvement** expectations regarding the specific performance or conduct have been clearly communicated and understood;
- the seriousness and implications of the conduct or performance issues;
- the member of the clergy's explanation of their conduct;
- the member of the clergy's past work record; and
- any previous disciplinary action undertaken.

If the performance or conduct is not of a serious nature the Regional Bishop may choose to counsel the member of the clergy and clarify **performance improvement** expectations. The Regional Bishop should maintain a record of such meetings which will be made available to the clergy member, upon request.

Each situation will be assessed on a case by case basis using the following stages as a guide only.

Stage 2 – Identifying Required Support

At this stage, the Regional Bishop and the member of the clergy meet to discuss the issue of concern, the potential causes and possible solutions.

Such a meeting should be held in a private area.

The initial focus of discussion should be on the identification of development and support opportunities that are available to assist the member of clergy to improve their performance. Identification of poor performance does not automatically lead to Stage 3 – Engaging a Disciplinary Response.

At the conclusion of the discussion, the Regional Bishop and the member of the clergy may agree on:

- An individual plan or specific actions (for example: identification of specific training required or actions to be altered or undertaken by the member of the clergy) ; or
- A plan which may include improvements to systems, procedures,,equipment, resources etc.

The Regional Bishop should confirm, in writing, to the member of the clergy the outcome of their discussion(s) and agreed actions and the timeframes for these to be undertaken. If the conduct or performance does not meet the agreed expectations within the agreed time frame, the process should progress to the next stage.

Stage 3 – Engaging a Disciplinary Response

Where there is a question of serious misconduct, or continued and chronic unsatisfactory performance, (despite the provision of appropriate support) it is appropriate to engage in a formal Disciplinary Response. (In cases of gross and serious misconduct, this Disciplinary Response is likely to be the first Stage to be engaged).

The Disciplinary Response will include the following process:

1. The Regional Bishop will provide the member of the clergy with a written “Notice of Meeting” letter. They should be provided with at least 72 hours notice of the proposed meeting. The letter will include:
 - the purpose of the meeting;
 - a clear and specific outline of the allegations being made against the member of the clergy;
 - meeting time and venue;
 - who will be in attendance at the meeting;
 - possible consequences for the member of the clergy should their response to the allegations not be to the Regional Bishop’s satisfaction;
 - the entitlement to have a support person attend the meeting with them.
2. The Regional Bishop will arrange to meet with the member of the clergy in a private setting. The Regional Bishop shall not conduct such a meeting alone, but shall have in attendance at least one other appropriate senior member of staff.
3. The allegation(s) will be outlined to the member of the clergy, providing specific examples.
4. They will be provided with an opportunity to respond to each of the allegations put to them. That response will then be considered and further questioning will take place if necessary.
5. Following a full consideration of their response, a recommendation will be made to the Archbishop in terms of disciplinary action. This may include, depending on the severity of the issue:
 - No Further Action
 - Performance Improvement Plan*

- Formal Warning
- First and Final Warning

*** A Performance Improvement Plan clearly identifies the expectations of desired performance or conduct that is required, the actions that the member of clergy is to undertake and specific timeframes when they are to occur by. It may also identify any additional resources, training or support that may be required for the member of clergy to meet expectations and set a timeline for regular meetings to review progress, where medium, to long term goals are established.**

6. This decision will be communicated to the member of the clergy in writing and a copy placed on their file.
7. Where the Regional Bishop is not satisfied with the response from the member of the clergy and has formed the view that they cannot continue in their role, they must refer the matter to the Archbishop for consideration as to whether the licence should be revoked. For a rector of a benefice parish, this would need to be done in the context of the *Benefices Avoidance Canon* (BAV-1-2005).

A Framework for the application of the **Disciplinary or Performance Process** is attached as Appendix A.

4. REVIEW

It is a **key principle** of this Procedure that each Regional Bishop retains the delegated and immediate responsibility for managing and resolving grievances which relate to clergy within his region.

However, it must be acknowledged that, in certain situations, persons affected by a particular decision or action may feel aggrieved and after the matter has been properly addressed by the Regional Bishop may wish to have the decision or action reviewed or reconsidered.

If the member of the clergy or the complainant is aggrieved by the outcome, he/she may appeal to the Archbishop of Brisbane for a re-consideration of the matter. The only grounds for any review will be:

- a. a failure in due process as outlined above to the extent that the failure affected the outcome;
- b. additional information has come to light which may affect the outcome;
- c. the outcome is considered to be unjust or unfair because of any one of the following reasons –
 - i. it was contrary to a law including a Church canon;
 - ii. it was a decision that was so devoid of any plausible justification that no reasonable person could have made it; and
 - iii. it was improperly discriminatory.

The onus of demonstrating that at least one of the above grounds of review exists will rest solely with the party appealing for a reconsideration of the matter.

Any request for review must be put to the Archbishop in writing and the Archbishop may refuse to consider a request until it is put in writing.

Review Process

- (a) Should a review be requested, the Regional Bishop must forward full details of the original complaint with any relevant documentation and the grounds for the review to the Archbishop of Brisbane.
- (b) If the Archbishop considers that the decision or action of the Regional Bishop was appropriate in the circumstances, they shall advise in writing both the concerned person and the Regional Bishop of his reasons.
- (c) If the Archbishop considers that the decision or action taken by the Regional Bishop was contrary to the grounds outlined above (at a., b. and c. i., ii, iii) they may recommend –
 - i. that action can be, and should be, taken to rectify, mitigate or alter the effects of, the decision or action; or
 - ii. that the decision or action of the Regional Bishop should be varied; or
 - iii. that reasons, or further reasons, should be given for the decision or action; or
 - iv. that any other steps should be taken.

Disciplinary or Performance Action Flowchart

