

**IN THE PROFESSIONAL STANDARDS BOARD
ANGLICAN DIOCESE OF MELBOURNE**

IN THE MATTER of a complaint against Rev ST

BOARD MEMBERS:	Mr Stephen Wilmoth (President) Ms Elizabeth Brimer SC (Deputy President) Rev Chris Appleby Rev Richard Wilson Mr Malcolm Tadgell
WHERE HELD:	Melbourne
DATE OF HEARING:	21 November 2018
DATE OF DETERMINATION:	8 February 2019
CASE MAY BE CITED AS:	<i>Professional Standards Committee v Rev ST</i>
MEDIUM NEUTRAL CITATION:	[2018] PSB (Melb) 1

**FITNESS FOR OFFICE – sexual assault – Professional Standards Act 2009,
s 62, 89(c), 92 - deposition from Holy Orders**

On 27 February 2015, the Rev ST (**the respondent**), a married man with children, sexually assaulted a young woman (**the complainant**), whose family was known to the respondent, at the respondent's home. Within a week after the incident, the Director of Professional Standards lodged a complaint against the respondent with the Professional Standards Committee, pursuant to s 23(1) of the *Professional Standards Act 2009* (**the 2009 Act**).

On 8 August 2017, criminal charges were laid against the respondent. The respondent denied and contested the charges. On 11 October 2017, the respondent was convicted in the County Court at Victoria and sentenced by Her Honour Judge Gaynor to an 18-month Community Corrections Order. He was not placed on the sex offenders register.

The respondent was ordained as a deacon in the Church on 30 August 2014. He contended that he should not be deposed from Holy Orders.

Held:

In the circumstances as found by the jury and set out in the trial judge's reasons for sentence, which is evidence before the Board of the conduct constituting abuse

pursuant to s 92 of the 2009 Act and adopted by the Board in accordance with s 89(c):

- (1) The complainant was a young, vulnerable woman, over whom the respondent had care, supervision, and/or authority. The respondent showed a lack of insight and remorse which highlighted the risk of repetition of such conduct. Protection of the public is central to the role of this process.
- (2) The respondent is not capable of being trusted to act with integrity and to exercise proper judgment in his dealings with children and young persons. These are fundamental qualities which lie at the heart of the role of clergy and ministry generally.
- (3) The Board recommends that the respondent be deposed from Holy Orders in accordance with s 62(m) of the 2009 Act.

APPEARANCES:

Counsel

Solicitors

For the PSC

Ms A. Robertson of Counsel

Director of Professional Standards

For the respondent

Mr Allan McMonnies, Solicitor

Allan McMonnies,
Barristers and Solicitors

Referral by the Professional Standards Committee under s 56 of the *Professional Standards Act 2009* of a complaint against the respondent raising a question of fitness for office.

The Board: Reasons for determination and recommendations

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(1) The proceeding

1. This proceeding relates to a referral from the Committee to the Board under s 56 of the 2009 Act.
2. Section 56 of the 2009 Act is relevantly as follows:

“After investigation in accordance with Part 8 of this Act...where the PSC has

formed the opinion that:

- (a) the conduct the subject of the complaint if established would call into question whether –
 - (i) the Church worker is unfit, whether temporarily or permanently, then or in the future to hold a particular or any role, office, licence or position in the Church or to be or remain in Holy Orders or in the employment of a Church body; or
 - (ii) in the exercise of a church worker’s role, office, licence or position or in the performance of any function, the Church worker should be subject to certain conditions or restrictions...
- (b) the PSC shall refer the matter, and an equivalent body may refer the matter, to the Board or if it is more appropriate, to an equivalent body which has jurisdiction.”

3. On 10 October 2018, the Committee “formed an opinion that the conduct forming the subject of the conviction of the respondent calls into question whether the respondent as a Church worker is fit to hold any future licence or position of responsibility within this Diocese or to be or remain in Holy Orders”.¹

4. At its meeting on 10 October 2018, the Committee resolved pursuant to s 56 of the 2009 Act to refer the matter to the Board.²

(2) *Background*

5. On the evening of 27 February 2015 an incident occurred between the respondent and a young woman (the complainant) at the respondent’s home.

6. The circumstances of the incident formed the basis of charges against the respondent laid on indictment on 8 August 2017. In summary, Charge 1 alleged that the respondent committed an indecent act with the complainant who was under his care, supervision or authority. As an alternative to Charge 1, Charge 2 alleged that the respondent assaulted the complainant in indecent circumstances while being aware that she was not consenting or might not be consenting or while not giving any thought to whether she was consenting or might not be consenting (indecent assault).

7. The circumstances of the offending are set out in the reasons for sentence of Her

¹ Letter of referral from Daryl Williams QC, Chair of the Committee dated 8 November 2019 (**the 8 November 2018 referral**) Committee Book of Materials (**CB**) p.1

² Ibid p.1.

Honour Judge Gaynor dated 11 October 2017.³ In summary:

- (a) On 27 February 2015, the respondent collected the complainant and her mother in order to attend the [...] Anglican Church youth Bible studies class in [...]. They were the first persons there. Soon after, the respondent's wife and children arrived.
 - (b) The complainant set up the respondent's laptop and projector, then went with him to a shed behind the church to get some equipment.
 - (c) When the complainant and the respondent returned he told the complainant's mother and his wife that he would take the complainant with him to the shops to get some snacks for the children.
 - (d) It was thought that they would go to [...] Shopping Centre which was just down the road and only a few minutes away from the church. However, the respondent drove to his home, a 15-20 minute drive away.
 - (e) The complainant, who was in the car, at the respondent's behest did not question the respondent because he was a priest at the church.
 - (f) The respondent got out of the car, but the complainant remained in the car. The respondent started to walk into the house, but went back to the car and told the complainant to come inside. She followed him and stood inside the door and the respondent told her to go into his son's bedroom and sit on the bed.
 - (g) The complainant sat on the bed for a couple of minutes and then the respondent returned, having changed into casual clothes.
 - (h) The respondent removed some clothing off the bed and laid down a towel behind the complainant on the bed. He then started rubbing her back (the offending conduct). She felt uncomfortable and moved away.
 - (i) The respondent moved closer until his legs were touching and then the complainant jumped up and said she wanted to go home. The respondent said to her [...], "Is it a mistake I brought you here?"
 - (j) The complainant then ran from the house screaming where she was seen by neighbours who took her in, and police were called.
8. The respondent denied and contested the charges. The jury found the respondent guilty of indecent assault (Charge 2). On 11 October 2017, the respondent was convicted and placed on an 18-month Community Corrections Order by Her

³ Reasons for Sentence paras 2 – 12 CB 8-9. Pursuant to s 89(c) of the 2009 Act, the Board may inform itself from the record of any Court and may adopt any findings as its own.

Honour Judge Gaynor in the County Court of Victoria.

9. In sentencing the respondent, Her Honour found that the jury clearly rejected the respondent's version of events.⁴ Her Honour rejected the submission that his offending fell at the lowest end of the scale for offences of this kind, "...it was quite clear that the prosecution fact scenario was one where your action against the complainant, the rubbing of her back, was simply the start of an intended more serious sexual contact with her."⁵

(3) *Relevant procedural history*

10. On 5 March 2015, a complaint of misconduct against the respondent was made to the Committee under Part 7, s 23(1) of the 2009 Act,⁶ which entitles any person including the Director to make such a complaint.
11. On 6 March 2015, the Committee determined that there was an immediate unacceptable risk to another person or persons if the respondent remained in his position. The Committee recommended to the Church's authority that the respondent be suspended pending the outcome of the complaint.⁷ The recommendation was accepted by the Vicar General, Diocese of Melbourne on the same day.⁸
12. On 24 April 2015, the Chair of the Committee wrote to the President of the Board noting that at its meeting on 8 April 2015, the Committee resolved, pursuant to s 43 of the 2009 Act to refer the matter of the suspension in regard to the respondent to the Board.⁹
13. On 15 April 2015, Mr W. Peacock wrote to the respondent confirming that he had been stood down from all ministry roles on the recommendation of the Committee and that the Committee's recommendation was made to and accepted by the Vicar General. Further, that in accordance with s 42 of the 2009 Act, the Committee was referring the matter to the Board.¹⁰
14. On 24 April 2015, the Chair of the Committee wrote to the President of the Board referring the matter of the suspension enacted by the Committee under s 42 of the 2009 Act to the Board.

⁴ Reasons for Sentence para 15 CB p.9

⁵ Reasons for Sentence para 30 p.11.

⁶ Letter dated 5 March 2015 from Mr Warren Peacock to the Chair of the Committee reporting a formal complaint of potential misconduct against the respondent under Part 7 s23 (1) of the 2009 Act. CB p.55.

⁷ Letter dated 6 March 2015 from Chair of the Committee to the Archbishop of Melbourne and the Vic General, Anglican Diocese of Melbourne CB p.46.

⁸ Letter from the Vicar General to the respondent dated 6 March 2015 CB p.44.

⁹ CB p.33.

¹⁰ CB p.37.

The First Referral

15. On 12 May 2015, the President of the Board wrote to the respondent referring to the First Referral, confirming that he may provide submissions to the Board and advising that the Board had fixed a Directions Hearing, which took place on 3 June 2015.
16. On 14 May 2015, the Secretary of the Board wrote to the respondent regarding “The reference of your suspension without notice to the Professional Standard Board” and advising the respondent that:
 - (a) “Your suspension from office and positions of responsibility on 6 March 2015, without notice, was referred by the Chair of the Professional Standards Committee (**PSC**) to the Professional Standards Board (**the Board**) by letter dated 24 April 2015 (**the reference**). You were previously notified of the reference by letter dated 15th April 2015 from the Acting Director of Professional Standards.”¹¹
17. The matter did not, however, proceed at that time and was stayed pending the police investigation, charges and later trial.
18. On 12 February 2016, the respondent’s licence expired.
19. On 6 December 2017, the Chair of the Committee wrote to the Board noting that at its meeting on 11 October 2017, the Committee resolved pursuant to s 69 of the *Professional Standards Uniform Act 2016 (Vic)* (**the 2016 Act**), to refer the complaint against the respondent to the Board.¹²
20. On 10 April 2018, the Director of Professional Standards (**the Director**) wrote to Mr McMonnies, the solicitor for the respondent, confirming that the Committee had decided to conduct an investigation in accordance with Part 8 of the 2009 Act and seeking a formal written response from the respondent.¹³
21. On 15 May 2018, the Director wrote to Mr McMonnies referring to his letter of 10 April 2018 noting that he had not yet received a response and advising that the matter would be put back before the Committee at its next meeting.¹⁴
22. On 25 May 2018, Mr McMonnies wrote to the Director advising that the letter of 10 April had been misplaced in the office and had now been sent to the respondent. Mr McMonnies sought an extension of time in which to make submissions.¹⁵

¹¹ CB p.30.

¹² Letter dated 6 December 2017 from Chair of the Committee to Chair of the Board.

¹³ CB p.20

¹⁴ CB p.23.

¹⁵ CB p.24.

23. On 7 June 2018, the Director wrote to Mr McMonnies granting an extension of time.¹⁶
24. On 29 June 2018, Mr McMonnies sent submissions on behalf of the respondent to the Director. The respondent denied the allegations.¹⁷
25. On 26 September 2018, the Chair of the Committee wrote to the Board again noting that at its meeting on 11 October 2017 the Committee resolved pursuant to the 2016 Act to refer a recommendation made by the then Director of Professional Standard that the respondent be assessed for future fitness for ministry, should a clearance application be received, as well as the appropriateness of his retention of Holy Orders, to the Board.¹⁸
26. However, at its meeting on 10 October 2018, the Committee resolved pursuant to the 2009 Act to refer the matter to the Board and wrote to the Board on 8 November 2018 referring the conduct of the respondent to the Board under the 2009 Act.¹⁹ The Committee advised the Board that:

- (a) For the sake of completeness, the Committee advises that its previous letters to the Board dated 6th December 2017 and 26 September 2018 are withdrawn as, inter alia, they refer to the incorrect Act and do not form part of this reference. (the 8 November 2018 referral).

(4) *The hearing*

27. A hearing was held on 21 November 2018 at Lifeworks, Bourke Street Melbourne.
28. The Committee was represented by Ms A. Robertson of counsel. The respondent was represented by Mr A. McMonnies.
29. Ms Robertson made submissions on behalf of the Committee. Mr McMonnies made submissions on behalf of the respondent. The respondent did not give evidence.

Preliminary Questions

The 8 November 2018 referral

30. The Board raised a preliminary query regarding the 8 November 2018 referral,

¹⁶ CB p.25.

¹⁷ CB p.26.

¹⁸ Letter dated 26 September 2018 from Chair Professional Standard Committee to President of the Board.

¹⁹ Letter dated 8 November 2018 from Chair of the Professional Standards Committee to the Board CB

which referral was under the 2009 Act. The Board sought clarification from Ms Robertson on behalf of the Committee that the referral arises properly pursuant to the 2009 Act and not the 2016 Act which commenced on 1 July 2017.

31. In summary, Ms Robertson submitted that:
- (a) as there had been the First Referral, the matter does not fall within the transitional provisions contained in s 8 of the *Professional Standard Uniform Act Adoption Act 2016 (Vic) (the Adoption Act)* and is therefore properly to be dealt with under the 2009 Act.²⁰
 - (b) Section 8 of the Adoption Act is as follows:
 - (1) This section applies to a complaint within the meaning of that expression in the *Professional Standards Uniform Act 2016 (Diocese of Melbourne)* if –
 - (i) the complaint was made before the commencement day; and
 - (ii) the complaint has not been the subject of a referral by the Professional Standards Committee to the Professional Standards Board before that day.
 - (2) On and after the commencement day the complaint is to be dealt with under the *Professional Standards Uniform Act 2016 (Diocese of Melbourne)*.
 - (c) “referral” is not defined and therefore contemplates any referral.²¹ As the matter had previously been referred to the Board in relation to the suspension of the respondent (i.e.: the First Referral), the matter does not fall within s8 of the Adoption Act and therefore proceeds under the 2009 Act.
32. Mr McMonnies at first agreed that the matter ought to be dealt with under the old Act.²² He later considered that the 8 November 2018 referral ought be considered under the 2016 Act.²³
33. Having considered the submissions, the Board accepted the submission made on behalf of the Committee that the matter ought properly proceed under the 2009 Act.²⁴

²⁰ See discussion starting at T8.

²¹ T16-17.

²² T5.25

²³ Y11.40, T12,33 T19.41 Mr McMonnies also submitted that the relevant legislation should be the better position of either the earlier legislation or the latter under the Interpretation of Legislation Act. On his reading of both Acts, Mr McMonnies contended that the respondent’s position was better under the 2009 Act.

²⁴ T21.27.

Offer to resign

34. Mr McMonnies conveyed an offer from the respondent to resign his position as curate at the Parish of [...] forthwith with a view to ‘short circuiting’ the proceedings.²⁵
35. Ms Robertson submitted that the Board nevertheless has to determine the proceeding under s 62 of the 2009 Act to ensure that there is no extant disciplinary proceeding on foot.²⁶
36. As the Committee was seeking that the respondent be deposed of Holy Orders,²⁷ Mr McMonnies sought instructions as to whether the respondent would oppose the Board making a recommendation to the Archbishop that he be deposed of Holy Orders pursuant to s 62(m) of the 2009 Act.
37. Mr McMonnies’ instructions were that the respondent would volunteer to relinquish Holy Orders, but objected to the Board making a recommendation that he be deposed of Holy Orders pursuant to s 62(m) of the 2009 Act.²⁸
38. The parties agreed that whilst the Board is empowered to make a recommendation to the Archbishop that he accept the respondent’s voluntary relinquishment of Holy Orders should it consider that to be the appropriate course to take²⁹, nevertheless the Board is required to proceed with the hearing and make a decision in accordance to s 62 of the 2009 Act at the conclusion of the hearing.³⁰

Issues in dispute*“Unfit” pursuant to s 62(a) and (b) of the 2009 Act*

39. Section 62(a) and (b) of the 2009 Act is as follows:

“If the Board is satisfied that –

- (a) the Church worker is unfit, whether temporarily or permanently, then or in the future to hold a particular or any role, office, licence or position in the Church or to be or remain in Holy Orders or in the employment of a Church body; or
- (b) in the exercise of a Church worker’s role, office licence or

²⁵ T3.25 and T23.32 – T25

²⁶ T26.34-42.

²⁷ The 8 November 2018 referral and para 1 of the Outline of Submissions on behalf of the Applicant **(the Applicant’s submissions)**.

²⁸ T28.9-21.

²⁹ Pursuant to s 62(n) of the 2009 Act. T29.32-35,

³⁰ T22.17-20. T29.24-T30.14.

position or in the performance of any function, the Church worker should be subject to certain conditions or restrictions the Board may determine accordingly and may recommend to the Archbishop or other Church authority any one or more of the following:..."

40. Mr McMonnies conceded that it is open to the Board to be satisfied of the requirements of s 62(a) and (b) of the 2009 Act.³¹
41. Two issues remained in dispute:
 - (a) which of the dispositions available under s 62 is the appropriate disposition; and
 - (b) whether the Board ought to impose a time limit on any disposition.

Submissions³²

Summary of submissions on behalf of the Committee

42. Ms Robertson submitted that the respondent ought to be deposed of Holy Orders.³³ Ms Robertson emphasised that:
 - (a) in any case of this type, the nature of the role being performed by the Board is clearly to protect the public, as well as the reputation of the Church as a whole;
 - (b) the recipient of a licence must be capable of being trusted to act with integrity and to exercise proper judgment in their dealings with children and young persons. These are fundamental qualities which lie at the heart of the role of clergy and ministry generally. Conduct which casts doubt on a person's trustworthiness challenges their fitness to occupy a position of trust.³⁴
43. Relevant matters for the Board to consider in determining what course to take

³¹ T43.23-43. T44.36-39.

³² The Board considered and took into account all of the submissions made on behalf of the Committee and the respondent, and summarised the submissions in these reasons to the extent necessary to understand the decision of the Board.

³³ T54.2-4.

³⁴ Reliance was placed on the *Faithfulness in Service*, in particular clause 4.3, clause 6.2- 6.5, clause 7.5 and the *Code of Good Practice for Clergy*, in particular pages 4,5 and 8. Counsel for the Committee also relied on *Hughes and Vale Pty Ltd and Anor v State of New South Wales and Ors* [No 2] (1995) 93 127 at p.156 for an expression of the meaning of 'fit and proper person'. The words 'fit and proper' takes their meaning from their context; from the activity in which the person is or will be engaged. *Australian Broadcasting Tribunal v Bond* [1990] 170 CLR 321 at 380 and *Maxwell v Dixon* (1965) WAR 167 at 169. *Nursing and Midwifery Board of Australia v Buckley* [2010] QCAT 392 for an example of a finding that the offence in that case (child pornography) went to the offender's character and as such, was relevant to his fitness to practise and further had the potential to reflect adversely on the standing of the profession in the eyes of patients and the public.

under s 62 of the 2009 Act include that:³⁵

- (a) Judge Gaynor did not regard the offending as falling at the lowest end of the scale;
 - (b) The complainant was a young person who was a vulnerable member of the respondent's community;
 - (c) Judge Gaynor described the actions of the respondent as "a predatory act" and as an "exploitative action" by a man given particular power by his community;
 - (d) There was at the time of the criminal sentence no evidence of remorse;
 - (e) The respondent committed various breaches of the *Faithfulness in Service Code* and *Code of Good Practice for Clergy*;
 - (f) the respondent has continued to deny the offending conduct which is relevant to the question of what insight he has in relation to the offending conduct, but also his current fitness to hold Holy Orders; and
 - (g) The potential risk of repetition and the disastrous consequences this could have for other vulnerable young people, noting that the complainant in this case, being of South Sudanese descent, experienced enormous emotional distress.
44. The lack of insight into his offending conduct together with the risk, in light of the respondent's lack of insight, that the offending conduct might reoccur, makes the recommendation that the respondent be deposed from Holy Orders the appropriate disposition.³⁶
45. The nature of the conduct – sexual assault – is itself sufficient to warrant a finding that the respondent is unfit to hold any future licence or position of responsibility or to retain a right to exercise Holy Orders.³⁷

Submissions on behalf of the respondent

46. Mr McMonnies submitted that the Board ought not recommend that the respondent be deposed of Holy Orders, rather that a "fixed period of time off the road"³⁸ after which the respondent could re-apply for a licence³⁹ is more

³⁵ The Applicant's Submissions para 43.

³⁶ T41.

³⁷ The Applicant's submissions para 46.

³⁸ T47.14-21.

³⁹ T48.22-27. The respondent's offer to voluntarily relinquish Holy Orders was confirmed, with the ability to apply to be re-ordained after a period of time. T30-T49.26, T50.19-33.

appropriate. He relied on “medical board cases” in support of his submission, in which suspensions “invariably seem to be for periods of time of three or five years, that sort of length, the ones that I have researched...”⁴⁰

47. This could be achieved by a disposition pursuant to s 62(h) of the 2009 Act,⁴¹ which provides:

that the Church authority make a determination that for a specified period, whether temporary or permanent -

- (i) the Church worker is unfit to hold a particular or any role, office, licence or position in the Church or to be or remain in Holy Orders or in the employment of a Church body; or
- (ii) in the exercise of a Church worker’s ministry or employment or in the performance of any function, the Church worker shall be subject to such conditions or restrictions as the Board recommends.”

48. In support of that approach, Mr McMonnies took the Board to paragraphs 41 to 43 of the Reasons for Sentence of Her Honour, Judge Gaynor:

41. However, I do have to take into account your previous good history, the fact that you have no prior or subsequent convictions. I need to take into account to some extent, the extent to which this offending went. In the circumstances, I am not satisfied as I must be, pursuant to s 5 of the *Sentencing Act*, that the only way I can deal with you is by way of a term of imprisonment.

42. I have therefore had you assessed for placement on a community corrections order for which you have been found suitable.

43. You were described as co-operative through the assessment interview process. It has been recommended that I place you on a community corrections order that is long enough for you to undertake the sex offenders program.⁴²

49. He relied on the above passage in support of a submission that the respondent is undergoing the sex offenders program which is a significant part of his rehabilitation.⁴³ However, Mr McMonnies informed the Board that whilst the respondent had completed 120 hours of unpaid work he hasn’t otherwise been

⁴⁰ T49.36-39. T50.16-33.

⁴¹ T43.23-32.

⁴² Reasons for Sentence para 41 CB p.13.

⁴³ T43.9-11.

able to complete the sex offenders program due to a waitlist for the program.⁴⁴

50. In response to questions from the Board as to the respondent's insight into his offending in light of the submissions made on behalf of the Committee, Mr McMonnies submitted that the Board could defer making a final decision until a report was obtained following completion of the sex offenders program.⁴⁵

51. Mr McMonnies further relied on the Reasons for Sentence at paragraph 60:

60. In cases of this kind, the issue of whether a person is placed on the sex offenders register is a matter of discretion for the court. The legislation make it clear that before I can place you on the sex offenders register, I must be satisfied beyond reasonable doubt that you pose some sort of threat or likelihood of reoffending in the future.

61. Given your prior history, I cannot be so satisfied and therefore will not place you on the register. I very much doubt that that opportunity will ever come your way again were you ever to commit this sort of offence again.⁴⁶

52. Mr McMonnies invited the Board to infer that Her Honour did not expect the respondent to reoffend in a sexual way again. Otherwise, she would have wanted to place him on a sex offenders register.⁴⁷ Mr McMonnies accepted, however, that the question whether the respondent would remain in ministry was not addressed by Her Honour.⁴⁸

Reply Submissions on behalf of the Committee

53. In response, Ms Robertson submitted:

- (a) there has been ample time for the respondent to have obtained an assessment of his level of insight so as better to inform the Board,⁴⁹
- (b) the respondent has chosen not to speak to the Board himself;
- (c) on the basis of the letters and submissions, including submissions by Mr McMonnies to the Board, there remains a risk of re-offending;
- (d) there is no basis on which the Board could be satisfied that after 12

⁴⁴ T47.23-45. Mr McMonnies submitted that there is a waitlist for the program, which must be completed by the respondent by April 2019.

⁴⁵ T52.27-44.

⁴⁶ Reasons for Sentence paras 60 and 61 CB p.15.

⁴⁷ T45.9-12.

⁴⁸ T46.6.

⁴⁹ The Board accepts Mr McMonnies submission that the respondent could not afford to pay for a report, and that Mr McMonnies was assisting the respondent on a pro bono basis. T55.17-20.

sessions of the sex offenders program, the position would be any different;

- (e) as such, the Board cannot be comfortably satisfied that any period of time is going to be sufficient.⁵⁰

(5) *Determination*

54. The Board, in accepting as it does, the submissions of Counsel for the Committee, is satisfied⁵¹ that the respondent is unfit, whether temporarily or permanently now or in the future to hold any role, office, licence or position in the Church or to be or remain in Holy Orders or in the employment of a Church Body.⁵²
55. The Board considers that the appropriate disposition pursuant to s 62 of the 2009 Act is that the respondent be deposed from Holy Orders in accordance with s 62(m) of the 2009 Act.
56. The Board has considered carefully Mr McMonnies' submission to the effect that a "fixed period of time off the road" ought to be specified by the Board with or without conditions. The Board does not consider it appropriate to accede to Mr McMonnies' submission. In reaching its decision, the Board is particularly mindful of the following present indications of a continuing lack of insight and remorse on the part of the respondent:
- (a) as at 29 June 2018, when given an opportunity to make a submission to the Committee, the respondent maintained his denial of the offence;⁵³
- (b) during the course of the hearing, in response to questions from the Board regarding the respondent's insight into his offending, Mr McMonnies said that they "haven't progressed at this moment" because the sex offenders program is incomplete.⁵⁴ It is premature to conclude whether he has developed insight as the "program has only really just commenced."⁵⁵
57. The Board accepts the submission on behalf of the Committee that the evidence of a lack of insight and remorse highlights the risk of repetition of such conduct.⁵⁶ Protection of the public is central to the role of this process.

⁵⁰ T53.4-35. T54.19-26.

⁵¹ In accordance with the standard of proof enshrined in the decision of *Briginshaw v Briginshaw* (1938) 60 CLR 336.

⁵² In accordance with s 62(a) of the 2009 Act.

⁵³ Letter from Mr McMonnies 29 June 2008 to the Committee.

⁵⁴ T51.35-37, T52.1-7.

⁵⁵ T52.18-19.

⁵⁶ T38.37-T39.4.

58. The Board does not consider that it is appropriate to defer the decision until the respondent has completed the sex offenders program. The Board accepts the Committee's submission that the nature of the conduct; sexual assault constituting abuse as defined in the 2009 Act,⁵⁷ is itself sufficient to warrant a finding that the respondent is unfit to hold any future licence or position of responsibility or to retain a right to exercise Holy Orders.⁵⁸
59. The Board is satisfied to the degree required that the respondent is not capable of being trusted to act with integrity and to exercise proper judgment in his dealings with children and young persons. These are fundamental qualities which lie at the heart of the role of clergy and ministry generally. The offending conduct and the circumstances in which it occurred preclude the respondent from being held out by the Church as being fit to remain in Holy Orders.
60. As such, the Board recommends to the Archbishop that the respondent be deposed from Holy Orders in accordance with s 62(m) of the 2009 Act.

NOTES:

1. These reasons are made public pursuant to s108 of the Professional Standards Act 2009 (Melb). The name of the respondent has been withheld from publication for legal reasons.⁵⁹
2. Pursuant to ss 103 and 105 of the Act, on 4 July 2019, the Vicar-General, Bishop Bradly Billings, appointed with the full powers and authorities vested in the Archbishop, executed an instrument of deposition of the respondent from Holy Orders.

⁵⁷ In the circumstances as found by the jury and set out in Her Honour's Reasons for Sentence, which is evidence before the Board of the conduct constituting abuse pursuant to s 92 of the 2009 Act and adopted by the Board in accordance with s 89(c) of the 2009 Act.

⁵⁸ The Board notes that a recommendation that the respondent be deposed from Holy Orders does not prevent an application for reordination to be made in the future.

⁵⁹ *Judicial Proceedings Reports Act 1958*, s4(1A): A person who publishes or causes to be published any matter that contains any particulars likely to lead to the identification of a person against whom a sexual offence, ... is alleged to have been committed is guilty of an offence, whether or not a proceeding in respect of the alleged offence is pending in a court.