

NATIONAL COMMITTEE FOR PROFESSIONAL STANDARDS

A Committee of the Australian Catholic Bishops & the
Australian Leaders of Religious Institutes

ACBC VOL4/26

TO: REV BRIAN FINNIGAN, SECRETARY ACBC

FROM: REV DAVID CAPPO, EXECUTIVE OFFICER NCPS

RE: INTEGRITY IN MINISTRY DOCUMENT DRAFT 2d

DATE: 15 MARCH 1999

Dear Brian

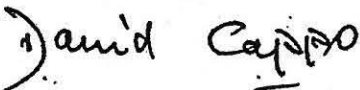
Please find enclosed a copy of draft document **INTEGRITY IN MINISTRY 2d** for distribution to all bishops in preparation for the Bishops Conference in April 1999. The document will also be presented to the ACLRI annual meeting in May 1999.

The document is the result of the 12 month consultation period in 1998 and is approved by the Advisory Committee chaired by Bishop Power and the National Committee for Professional Standards jointly chaired by Bishop Robinson and Sr Margaret Cassidy CSB.

The forward to **INTEGRITY IN MINISTRY DRAFT 2d** indicates the proposed plan for the document.

The final section of the document '**WHEN COMMUNION IS BROKEN**' will be addressed by the Bishops Committee for Professional Standards at the Conference.

With kind regards



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COMMENTS ON THE PROCEDURE

There is no procedure in canon law that exactly fits the needs of *Integrity in Ministry*, so a procedure has had to be specially written. The legal basis of this procedure will be the acceptance of it by the clergy and religious of Australia. The alternative would be to have it imposed by the Bishops Conference, but this would be less in harmony with the spirit of the document. If individual clergy and religious refuse to accept it in their own case, it may one day come to a procedure imposed from above, but this would be a pity. Is it too naive and idealistic to hope that the binding force of a procedure such as this could come from below?

The procedure has sought to use the provisions of canon law wherever this is possible. It is felt that it will be more acceptable to clergy and religious if it keeps close to canon law. In this way it also provides all the protections of canon law.

There is a special difficulty in relation to bishops and leaders of religious institutes. They have willingly submitted themselves to the procedures and realise that this must be so if the document is to be credible. On the other hand, the only superior of a diocesan bishop is the Pope and the only superior of a provincial religious leader is the superior general or the Pope, and appeals to these sources would not always be seen as credible. The procedure has sought a way around these problems, while still keeping to the requirements of canon law.

1. This provision is taken from canon 1742 in the procedure for the removal of a parish priest. The number four has been specified as a minimum, while larger dioceses and institutes may need a larger number.

The requirement of a civil lawyer has been added for the sake of credibility. If the only two persons giving advice were two peers, the procedure would be seen as "in-house" and lacking in rigour and objectivity. Canon 1714 provides the basis for the introduction of a civil lawyer. Both the peers and the lawyers should be people who would judge without fear or favour.

2. For both bishops and religious leaders, the president of their respective conference is constituted as the "Church authority" for the purposes nn.3 and 6 of these procedures. The legal basis for this is once again the acceptance of it by bishops and religious leaders.

3. There should, of course, be a letter of appointment.

5. If this procedure is to be effective, it is important that it handle only cases appropriate to it.

The police are adamant that other groups not contaminate evidence by carrying out investigations into matters that constitute crimes. If a person wishes to accuse another of a crime, he/she must do this to the police.

Complaints of sexual abuse under *Towards Healing* belong there and not before the panel spoken of in this procedure.

A case has been brought before a Resource Group under *Towards Healing* accusing a parish priest of a long list of acts of psychological abuse. It was felt by all concerned that the case did not belong there and would be better handled as a process to see whether the priest should or should not be removed from the parish.

Deciding when cases are "not serious" will be difficult and will involve subjective judgements, but the panel must obviously have this power.

6. Number 6 deals solely and exclusively with the cases that might lead to either advice and counselling or a request that a person undertake special training or seek specialised assistance. No penalty greater than this can be imposed on the basis of the procedure outlined in no.6.

It is a general rule of law that the procedure varies accordingly to the seriousness of a matter. It is well known that there are different kinds of courts in civil law, in addition to provisions for arbitration etc. It is a mistake to allow smaller matters to have all the majesty of judge and jury and opposing barristers etc. Since the only penalties that can be imposed under no.6 are "advice" or a "request", it is not opportune to have too complex a procedure. The panel must be given the power to determine what is appropriate for the particular case, always respecting natural justice.

It is also a general rule of law that the degree of certainty required varies according to the importance of the matter and the penalty that might be imposed. Less important matters can be decided on the basis of the balance of probabilities, more important ones require moral certainty, while criminal matters require proof beyond reasonable doubt. Once again, the only penalties possible under this no.6 are advice or a request, and the Church authority can vary the advice and/or request according to the degree of certainty attained as well as the importance of the matter.

6.1.5 says that the panel "may" question other persons. This again gives the panel the power to determine what is appropriate to the particular case.

Number 6.2 does not allow of a formal appeal. This does not seem appropriate where the only penalties are advice or a request, both of which would take place within the context of a meeting and conversation between the two people concerned. In canons such as 1341 the code itself does not appear to envisage appeals in such circumstances. These procedures are a serious change from the situation where Church authorities have traditionally presented advice, requests and more without any form of procedure.

The president of either the bishops' or religious leaders' conference would be the Church authority in giving this advice or making this request. The legal basis is once again the acceptance of this by those concerned.

7. Where more serious penalties under the code of canon law might be involved, the procedure returns to the provisions of that code and hence provides all the safeguards and protections that code offers. In these cases the president of the conference of either the bishops or the religious leaders has no jurisdiction and cannot act. They must approach the proper canonical authority, i.e. either the Pope or the Superior General. They would explain this procedure and "request" nomination as the "suitable person". It would then be up to the canonical authority to decide what action to take.