



**Uniting Church in Australia**  
**ASSEMBLY**  
Assembly Standing Committee

12-14 November 2021

**DOCUMENT**

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| <b>Title</b>                            | <b>Regulations Review Task Group Report</b>  |
| Type of Paper<br>(Information/Decision) | For information  |
| Assembly or ASC<br>Minute               | Not applicable   |
| Consultation                            | Regulations Review Task Group<br>Respondents to survey   |
| Purpose                                 | To provide an update to ASC on the work of the Regulations Review Task Group to date, and the proposed way forward for its work. |
| Rationale & Findings<br>Summary         | See the report   |
| Attachments                             | Attachment A: Regulations Review Discussion Paper 2021   |
| Proposal/s                              | That the Assembly Standing Committee:<br>1. Receive the report of the Regulations Review Task Group                              |
| Submitted by                            | Heather den Houting<br>Chair, Regulations Review Task Group<br>heather.denhouting@ucaqld.com.au                                  |

# REGULATIONS REVIEW TASK GROUP REPORT

The Regulations Review Task Group sought to inform its work through a short survey that was distributed across the Church in September 2020. The survey was undertaken to understand what the challenges, gaps and inconsistencies are, in the current Regulations. The Task Group has met three times following the survey, and a Discussion Paper was prepared on the feedback from the survey. (see **Attachment A**)

Two issues brought clarity to the work of the Task Group:

1. The significant work of the Act2 Project which could have impacts on the Regulations for the future of the UCA
2. The clear view that the Discipline Regulations and processes presented the greatest challenge to the current context of the Church (see on following page, **Issues raised in the survey regarding discipline**)

Considering these two issues, the Task Group is intending to bring a proposal to the March 2022 ASC meeting for the 16th Assembly reconvened meeting regarding the Discipline Regulations. Further work on the Regulations following any decisions out of the Act2 Project will be brought to the 17th Assembly.

### Issues raised in the survey regarding discipline:

1. Complaints and Discipline
  - People “forum shopping”
  - Process to escalate complaints – what is the role of the Committee for counselling in investigating serious allegations
  - Should there be an extra step between committee for counselling and the C4D – which is investigative?
  - Inappropriate use of complaints process/vexatious litigants
  - Managing bullying/abuse quickly – by lay and ministry
  - No consequences if people don’t fulfil their roles – where is the accountability ethos in the current structure?
  - What if a person has been charged or convicted of a criminal offence or fraud? Consistency of practice across the different councils
  - Managing entrenched conflict
  - Appeals process – managing “appeals on a technicality”
  - Natural justice – guidance for councils
  
2. Presbyteries overseeing congregations
  - What if the church council refuses to negotiate and work with the Presbytery. Is the only option dissolution? Should a Presbytery be able to set aside a church council?
  - The referral by the Presbytery is quite limited – should they have the option to refer to C4D?
  
3. Jurisdiction
  - The Regs are written on the assumption that a Minister will fall under the jurisdiction of either a Presbytery or Synod: Reg 5.1.3.(d). This is a reflection of para.15 of the Constitution which provides that “Ministers ... will be responsible to a Presbytery and Synod in matters of faith and discipline and to the Presbytery or other appointing body for the exercise of their ministry.” Unfortunately, the Regulations do not specifically address the situation where a Minister, whilst belonging to a particular Presbytery or Synod is acting in their capacity as a member of a Committee, Commission or Board.
  
4. Sexual misconduct

A question needs to be asked if the Regulation too narrowly proscribe what constitutes sexual misconduct, for a church (and a vocation as ministry agent) where certain standards of sexual behaviour should be expected? Would it be wise to include reference to more general sexual misconduct? Two of the most common categories of sexual behaviour (misconduct) in society are

  - Married people having affairs. Media reports and general conversation around the church suggest this is not uncommon for ministers.
  - Sexual relationships between unmarried people – in our situation, this would be an unmarried ministry agent being in serial or simultaneous sexualised relationships.

Neither of these is covered or sanctioned within the Code of Ethics and Ministry Practice or current SSMCC guidelines.
  
5. Alignment with External regulation and expectations of complaints management
  - Workplace reforms/OHS etc.
  - Fairwork/employment
  - Whistle-blower reporting

# Uniting Church in Australia

## Regulation Review - Discussion Paper 2021

### Introduction

The Regulations act as a guide for the Church as it seeks to order its life to respond to God's call "to be a fellowship of reconciliation, a body within which the diverse gifts of its members are used for the building up of the whole, an instrument through which Christ may work and bear witness to himself" (Basis of Union, paragraph 3).

We also recognise in the Basis of Union that the Church lives and endures through the changes of history (paragraph 4), and that our journey as a Pilgrim People reminds us of our need to be open to that renewal and change. In this respect, the Uniting Church "will keep its law under constant review so that its life may increasingly be directed to the service of God and humanity, and its worship to a true and faithful setting forth of, and response to, the Gospel of Christ" (paragraph 17).

Regulations are a tool that are designed to give operational guidance to the church. Regulations can only reflect heads of power that are found in the Constitution and Basis of Union and any policies (conforming to the Constitution and Basis Of Union) that have been agreed by the Assembly. Well drafted regulations should allow each part of the church to understand and operate under its particular function and fully understand the responsibilities associated with that function.

The Assembly has determining authority in matters of governance of the church, and as a result only the Assembly may make and amend the Regulations (c.62 Constitution). While the Assembly Standing Committee is empowered to act on behalf of the Assembly between meetings in respect of any of the responsibilities of the Assembly, the power to amend Regulations is limited by Regulation 3.10.2. This outlines the process for amending regulations. As a result the Assembly Standing Committee can only act to amend the regulations where the Assembly in session has resolved to delegate that power to it.

### Background

Regulations should be reviewed regularly to assess whether they are accurately reflecting the expectations of the church and the community in which it operates, and, since the Second Assembly have been amended at each triennial Assembly.

Sometimes amendments were to incorporate an important addition to how the Church operated, eg the addition of Complaints of Sexual Abuse at the Seventh Assembly, or the move away from Parishes and the new structure for Church Councils at the Eighth Assembly. Other times, amendments reflected what we hold as important as the Uniting Church, for example amendments re inclusive language at the Third Assembly. Others sought to clarify how we defined things as happened regarding the definition of members at the Ninth Assembly. Other amendments added clarity, or reflected decisions made by the Church.

The Twelfth Assembly agreed to revise the Regulations to simplify and standardise them, removing redundant provisions and paying attention to numbering, so that “they are prescriptive only where it is deemed to be essential, and simplified to enhance the capacity of Councils to be adaptive and missional in their particular contexts; and consistently reflects the theology and polity of the Uniting Church”.

This review is intended to be more comprehensive in nature by assessing whether the regulatory framework is suitable for the Uniting Church as it is today. It is not intended to amend the Constitution or Basis of Union.

The review seeks to use best principles in drafting to ensure the respective roles, responsibilities, authorities and governing principles are clearly set out to support the church of the future. To give effect to this work a small Task Group was established in July 2019 to review and guide this process.

Their mandate was to undertake a comprehensive review of the Regulations so that they may:

- i. Enshrine the principles, ideals and ethos of the Basis of Union and the Constitution, ensuring consistency with those founding documents;
- ii. Ensure consistent and comprehensive guidance in the exercise of the roles, powers and responsibilities across the different councils of the church;
- iii. Recognise and manage the interconnectedness of the different councils of the church in relation to those roles, powers and responsibilities;
- iv. Clarify and make consistent the expectations around lay and ordained ministry and membership of the councils of the church;
- v. Provide contemporary governance expectations for non-congregational ministries of the church;
- vi. Offer clarity and reflect contemporary expectations in relation to discipline, misconduct and appeal processes;
- vii. Be consistent with best practice drafting principles allowing for simplicity, searchability, flexibility and review;
- viii. Any other matters as approved by the Assembly Standing Committee.

In September 2020 a short survey was sent out across the church to assess the issues that needed to be addressed when undertaking a review of this sort. This discussion paper includes the responses to that survey.

## The approach taken

The review process, including the responses to the initial survey can be summarised under three headings

1. **Broad principles around our approach to change**
2. **Matters raised which require resolution**
3. **Specific or technical matters which require clarification**

This discussion paper is divided into these three parts to allow for adequate assessment around each issue. Each issue begins with the relevant head of power and then explains the current regulation, raises the issue identified and then asks for guidance around the appropriate direction to take.

Any other issues relating to the regulation review that may not already be identified in this paper are also welcomed at this time.

Finally, there are some proposed next steps, including draft proposals to bring to the 16<sup>th</sup> Assembly. This includes the timeline for responses to this paper.

## Broad Principles around approach to change

1. How do we hold the tension between the uniqueness of the body of Christ and external regulatory procedures?

A great example of this is our placements processes. There is significant regulation around this area that manages the unique place of lay and ordained ministry in the church. However, more and more, the standards and expectations around workers controls the nature of the relationship. Workplace Health and Safety, portable superannuation and leave etc.

The Regulations can be a way of supporting the unique identity of ministry in the UCA, while acknowledging the constraints of contemporary legislative expectation.

2. Are we over-governed considering the size of the church?

This is a question arising from the decline of formal members within the church. Most associations reliant on voluntary membership have encountered the same issue. This is a key question that does need to be addressed and is captured in the Act2 strategic review of the national church that is currently being undertaken. It is likely there will be regulatory implications from this review.

3. Should we wait for a governance review to be settled before we undertake a regulation review?

This question comes from a series of suggestions around recognising that what we are doing in some areas of the church is stretching the governance assumptions inherent in the regulations. Some examples of this are:

- the assumption that there will be one Synod and multiple presbyteries;
- the assumption that the UAICC has its own legal form independent of the regulations;
- that assumption that the majority of church ministry is congregationally based;
- the assumption that each council must have a set of individual formal office bearers in order to meet its responsibilities.

4. Can the framework of the regulations be designed to empower each council of the church to operate independently as far as possible in line with the Constitution and BOU?

This suggestion recognises that in some cases the regulations have been designed to limit the inherent power of each council. The regulations do contain a lot of procedural detail which limits the capacity of councils to act. This is unusual for contemporary governance.

Some would argue that this approach was designed to ensure consistency of practice across the national church. Others would suggest that consistency of practice can be achieved through policies and procedures as opposed to a regulated constraint of power.

5. Can we draft the Regulations to distinguish between regulation and procedures?

Regulations can be drafted to ensure guidance around a head of power, but without providing procedural detail. Considering that the Regulations can only be changed at an Assembly in session

(unless otherwise delegated) is it desirable to have procedural matters included in the regulatory structure?

An example of this can be found in the accounting and auditing regulations. A regulation could state that each responsible body responsible for funds must keep proper books of account, in accordance with contemporary accounting standards. Procedures could then be updated from time to time dependent on external legislative expectations as they arose.

6. Should we review the way the Regulations acknowledge First People and CALD communities?

Notably the UAICC and Korean Congregations have separate sections devoted to managing the relationship between the Constitution and these communities. Should other CALD community activities be acknowledged and regulated? Alternatively should the regulations seek to distinguish any specific community at all?

7. Can the regulations be simplified to ensure consistency of language and approach?

The approach to regulation review over the last forty years has meant that some practices and expectations have been assumed. A measure of success in the drafting of any new regulation would be to ensure that wherever possible there was consistency of language and approach across the document. Some of these matters are raised in the next section.



## Specific Matters which require attention

Several suggestions have been made drawing attention to issues that require some form of policy review and resolution. These are summarised below.

### 8. Life and witness

#### *8.1 Membership*

This issue of membership has again been raised as a matter to be addressed. While significant work has been done around this previously, the nature of membership of a national unincorporated association is poorly understood. Could the review be used to clarify the nature and purpose of membership (as opposed to attendees or employees) of the church?

#### *8.2 Nature and role/responsibilities of Elders*

While the role and purpose of elders is clearly stated in c.19 of the Constitution, there is some concern that there is no elucidation of the role and responsibility in the Regulations. Is this sufficient?

#### *8.3 Non-physical gatherings*

The experience of COVID has alerted to the reality that ministry may involve non-physical gatherings. Should the regulations recognise this as an inherent part of future ministry?

#### *8.4 Clusters of church activities*

Should the regulations be more explicit and understand that the clustering of parts of the church may require different forms of governance to allow for greater pooling of resources, or clustering?

#### *8.5 Media representation – be explicit about who speaks for the church*

#### *8.6 Explicit Role of Presbytery Ministers?*

#### *8.7 Explicit role of Presbytery Standing Committee*

#### *8.8 Explicit Role of PRC*

### 9. Ministry

#### *9.2 The distinction between lay and ordained ministry*

While this is a matter that has also been dealt with in different ways over the years, the assumption that it is primarily an ordained person who will hold a ministry position within the church is built into the regulatory framework. We now experience that lay and ordained people hold paid and unpaid positions across the life of the church. How might the Regulations properly acknowledge this?

#### *9.3 Baptism when there is no congregation*

How does this work where there is not necessarily a congregation to be attached to? Who functions as the "church council" to approve the baptism?

#### *9.4 Retired ministers and Ministers in association*

Should there be more explicit assumptions about the role and responsibility of these ordained ministers. The regulation does address them in terms of constraints on their ministry role. Is this the best way to manage their responsibilities?

### *9.5 Placements*

A few Synods have found ways around the placements process articulated in the regulations to avoid some of the strictures around the placements process. Is there a more elegant way to manage the expectations around placements of part time, ordained and lay, paid and non-paid ministry roles?

### *9.6 Conclusion of roles*

Currently the Regulations capture the early conclusion of a role as part of a termination process. It is drafted in a manner that assumes all placements are in a congregational setting. Sometimes roles must come to an end as a result of unforeseen circumstances including role redundancy or incapacity to maintain a fulltime role. Can this section be reviewed to include a process of conclusion?

### *9.7 Consistency of practice across Australia on issues such effective oversight, standards of supervision, "good standing" and withdrawal of recognition etc*

Should we mandate consistency of expectation around standards of behaviour. Codes of conduct, expectations around supervision and consistent practice around a minister's good standing could be regulated. The withdrawal of recognition process should be codified into this section.

### *9.8 Vitality of call processes*

The vitality of call process is a recommended process but is not mandatory. Can this be made more explicit?

### *9.9 10 year limit – non congregational placements*

There is inconsistency in the approach to congregational and non-congregational settings. Why?

## 10. Non congregational forms of church

There is an assumption within the regulations that the primary form of the church is to be found in congregational form. There is deep wisdom and understanding that holds that in place.

However, do the regulations adequately address and manage non congregational forms of church where a congregation cannot and or should not manage the governance expectations around those activities?

Examples given are fresh expressions, online church presence, faith communities, Parish missions, National Conferences, Institutions, schools, social and welfare services.

## 11. Discipline

- Complaints
- Inappropriate use of complaints process/vexatious litigants
- Managing bullying/abuse – by lay and ministry
- No consequences if people don't fulfil their roles
- Managing entrenched conflict
- Appeals process
- Natural justice – guidance
- Should there be an extra step between Committee for Counselling and the Committee for Discipline?
- The Regulations are written on the assumption that a Minister will fall under the jurisdiction of either a Presbytery or Synod: Reg 5.1.3.(d). This is a reflection of para.15 of the Constitution

which provides that “Ministers ... will be responsible to a Presbytery and Synod in matters of faith and discipline and to the Presbytery or other appointing body for the exercise of their ministry.” Unfortunately, the Regulations do not specifically address the situation where a Minister, whilst belonging to a particular Presbytery or Synod is acting in their capacity as a member of a Committee, Commission or Board.

## 12. Sexual Misconduct

A question needs to be asked if the Regulations too narrowly proscribe what constitutes sexual misconduct, for a church (and a vocation as ministry agent) where certain standards of sexual behaviour should be expected? Would it be wise to include reference to more general sexual misconduct? Two of the most common categories of sexual behaviour (misconduct) in society are

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## Alignment with External regulation

13. Workplace reforms/OHS etc.

14. Fairwork/employment

## Resourcing and risk

15. Financial standards/applications

16. Compliance/regulatory burden on small congregations

17. Flexibility to generate income

18. Inappropriate delegations (ie. who can authorise legal action?)

19. Annual Property Reviews - relevant Synods should be able to request copies of said reports, in the same manner as Audited Financial Statements.

20. What happens when the original purpose of the responsible body no longer exists?

21. Benefactions and bequests

22. Removal of the reference to Registered Company Auditor

## Next Steps

Next steps will consider the following questions:

- What needs changing now?
- What needs to wait?
- What proposals should be brought to the 16<sup>th</sup> Assembly?