



Uniting Church in Australia
ASSEMBLY
Assembly Standing Committee

11-13 March 2022

DOCUMENT 11

Title	Regulations Review Task Group Report
Type of Paper (Information/Decision)	For decision
Assembly or ASC Minute	Not applicable
Consultation	Regulations Review Task Group
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 Summary	See the report
Attachments	Attachment 1: Complaints and Discipline issues raised in first consultation round. Attachment 2: Framework of principles governing the making of Regulations under Part 5 (Church Discipline). Attachment 3: Proposal for project worker to support Regulations Review Task Group - Complaints and Discipline review only.
Proposal/s	That the Assembly Standing Committee: Resolve to bring a proposal to the reconvened 16 th Assembly meeting in May 2022, seeking the Assembly to: 1. defer any review of the Regulations that are associated with, or ancillary to, the broad strategic work done as part of the Act2 process, other than Part 5 – Church Discipline – to ensure that any proposals as part of the review are aligned to the strategic direction of the Assembly. 2. delegate, pursuant to Regulation 3.10.2(a)(ii), to the Assembly Standing Committee the authority to make Regulations under Part 5 of the Regulations (Church Discipline), subject to: (i) those Regulations complying with the framework of principles articulated in Attachment 2 ; (ii) the approval of those Regulations by the Assembly Standing

	<p>Committee on the advice of the Assembly Legal Reference Committee; and</p> <p>(iii) if details of any proposed amendments have been published in the agenda of the Assembly Standing Committee or stated in a notice of proposal and which specifically states or necessarily implies that any such proposal involves an amendment to the Regulations.</p>
Submitted by	Heather den Houting Chair, Regulations Review Task Group heather.denhouting@ucaqld.com.au

REGULATIONS REVIEW TASK GROUP REPORT

General Background

The Assembly appointed the Regulations Review Task Group (Rev Heather den Houting, Colleen Geyer, Andrew Johnson (now stepped aside) and David Hay) to undertake a review of the Regulations. This review process has taken some time as the circumstances of COVID and other matters meant this process has been somewhat deprioritised by the Assembly Standing Committee (**ASC**).

Nevertheless, consultation occurred throughout 2020 and the primary issues of frustration identified were in managing the complaints and discipline processes within the Church. These issues continue to be highlighted as the expectations around volunteer resourcing of our various committees do not match Church and community expectations around accountability. **Attachment 1** outlines some of the specific issues that have been raised.

Progress of this matter was the subject of an information paper to the ASC meeting on 12-14 November 2021. That paper proposed a way forward for the Task Group's (TG) work, namely, to bring this current proposal to the March 2022 ASC meeting for the 16th Assembly reconvened meeting regarding the review of the Discipline Regulations, with further work on the Regulations following any decisions out of the Act2 Project being brought to the 17th Assembly.

Proposed Resolutions

The TG recommends the Assembly Standing Committee resolve to bring a proposal to the reconvened 16th Assembly meeting in May 2022, seeking the Assembly to:

1. defer any review of the Regulations that are associated with, or ancillary to, the broad strategic work done as part of the Act2 process, other than Part 5 – Church Discipline – in order to ensure that any proposals as part of the review are aligned to the strategic direction of the Assembly.
2. delegate, pursuant to Regulation 3.10.2(a)(ii), to the Assembly Standing Committee the authority to make Regulations under Part 5 of the Regulations (Church Discipline), subject to:
 - (i) those Regulations complying with the framework of principles articulated in **Attachment 2**;
 - (ii) the approval of those Regulations by the Assembly Legal Reference Committee; and
 - (iii) if details of any proposed amendments have been published in the agenda of the Assembly Standing Committee or stated in a notice of proposal and which specifically states or necessarily implies that any such proposal involves an amendment to the Regulations.

Rationale for Proposed Resolutions

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.

As identified above, the consultation conducted throughout 2020 revealed the primary issues of frustration identified with the Regulations were in managing the complaints and discipline process within the Church. Further, that consultation revealed a strong sentiment the current disciplinary process was not fit-for-purpose and in need of immediate overhaul. That sentiment has been reinforced by contemporary experiences in attempting to deal with current complaints being dealt with by Church Councils, Presbyteries, Pastoral Relations Committees, the Committee for Counselling and Committee for Discipline.

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.

In order to address the need to immediately review the Regulations relating to complaints and discipline, it is recommended the ASC make the proposed resolutions set out above.

Update on Resourcing of the Task Group – for ASC information only

Attachment 3 is a *Proposal for project worker to support the Regulations Review Task Group – Complaints and Discipline review only*, which sets out a simple Project Outline together with projected costs. As the Chair of the task group, it became clear that a paid professional resource was required to properly oversee and draft the suggested amendments. To this end, the Queensland Synod Standing Committee wrote to all other Standing Committees asking for contributions to the project cost. NSW/ACT, VicTas and WA Synods have all agreed to contribute to the costs of a Project Officer which will be managed at the Queensland Synod office. NS is unable to provide funds and SA has not yet responded.

Attachment 1

Complaints and Discipline issues raised in first consultation round

Acting swiftly - barriers

- People “forum shopping”
- Inappropriate use of complaints process/vexatious litigants
- 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 Committee for Discipline (C4D) – which is investigative?
- 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

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?

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.

Sexual misconduct

A question needs to be asked if the regs too narrowly proscribes 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.

Alignment with External regulation and expectations of complaints management

- Workplace reforms/OHS etc.
- Fairwork/employment
- Whistle-blower reporting

Attachment 2

Framework of principles governing the making of Regulations under Part 5 (Church Discipline)

In the event the Assembly delegates, pursuant to Regulation 3.10.2(a)(ii), to the Assembly Standing Committee the authority to amend Part 5 of the Regulations (Church Discipline), such delegation will be subject to:

- (i) those Regulations complying with the principles articulated below;
- (ii) the approval of those Regulations by the Assembly Legal Reference Committee; and
- (iii) provided that details of any proposed amendment has been published in the agenda of the Assembly Standing Committee or stated in a notice of proposal which has been duly given in accordance with standing orders and which specifically states or necessarily implies that any such proposal involves an amendment to the Regulations.

Principles

Overarching Principles

The Regulations are to:

- (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) offer clarity and reflect contemporary expectations in relation to discipline, misconduct and appeal processes.
- (v) Complement and dovetail with contemporary HR, WHS, industrial, privacy, safe ministry, and whistleblower policies and procedures.

General Principles

- Only members, adherents and Ministers are eligible to make a complaint.
- The process of how to make a complaint, including the form of the complaint, to be determined by the Synod.

- The entity tasked with dealing with a complaint is empowered to engage an independent investigator when considered appropriate, though that entity remains responsible for determining the matter.
- The continuation of the disciplinary process where the Respondent has resigned is to be at the discretion of the decision maker.

Complaints against Members

- Complaints against members of the Church are:
 - primarily to be dealt with by the relevant Church Council, excluding complaints of sexual misconduct (the province of Presbytery – cl.10(c) of the Constitution) which are to be dealt with in accordance with Assembly's *Member or Adherent – Sexual Abuse and Sexual Misconduct Complaints Policy*.
 - Presbytery to have general oversight of Church Council's dealing with complaints and the power to deal with complaints not adequately dealt with by a Church Council or as referred by Church Council.
 - to be dealt with by visitation, pastoral counselling and/or guidance with a view to restoration of the effected relationships.
 - to be dealt with in such manner as to avoid actual, potential or perceived conflicts of interest.
- Council to have the power to suspend or terminate membership and remove Councillor from Council.
- Members to have right of appeal to Presbytery only where membership terminated. Appeal on the papers and Presbytery's decision is final.

Complaints against Ministers

- Complaints against Ministers:
 - are primarily to be dealt with by the relevant Presbytery Chairperson or PRC, excluding:
 - (a) complaints of sexual misconduct; or
 - (b) complaints alleging wilful or grave conduct unworthy of a Minister (as per Regulation 5.7.2(a)-(e)).
 - are primarily to be dealt with by visitation, pastoral counselling and/or guidance with a view to restoration of the effected relationships.
 - are to be dealt with in such manner as to avoid actual, potential or perceived conflicts of interest.

- may be referred, at the discretion of Chairperson/PRC, to the Committee for Counselling or Committee for Discipline, depending upon the seriousness of the alleged conduct.
- Complaints alleging sexual misconduct to be dealt with by Synod Sexual Misconduct Complaints Committee?
- The Moderator, Synod or its Standing Committee to have the power to direct a complaint against a Minister to be made direct to Committee for Counselling or Committee for Discipline, depending upon the seriousness of the alleged misconduct.

Discipline of Ministers

- The counselling and discipline of Ministers to primarily be the responsibility of Presbytery Chairperson/PRC or, for office holders, the appointing body, for conduct not worthy of referral to the Committee for Counselling or Committee for Discipline.

Complaints against Office Holders

- Where a person (Minister of Lay) is appointed to an office within the Church, then any complaint against that person acting in that capacity is to be made to, and dealt with by, the appointing body.
- Complaints of sexual misconduct against lay person to be dealt with by appointing body in accordance with Assembly's *Member or Adherent – Sexual Abuse and Sexual Misconduct Complaints Policy*.
- Complaints alleging sexual misconduct by a Minister to be dealt with by Synod Sexual Misconduct Complaints Committee.

Committee for Counselling

- Jurisdiction to deal with complaints against Ministers but not to deal with complaints alleging:
 - (a) sexual misconduct, or
 - (b) wilful or grave conduct unworthy of a Minister (as per Regulation 5.7.2(a)-(e)).
- Members to have appropriate skills and knowledge and undertake professional development.
- Provisions allowing complaints to be resolved through mediation.

Committee for Discipline

- Threshold for matters to be dealt with by the Committee for Discipline will be wilful or grave conduct unworthy of a Minister (as per Regulation 5.7.2(a)-(e)), including a refusal to participate in the disciplinary process.
- Members to have appropriate skills and knowledge and undertake professional development.
- Provisions allowing complaints to be resolved through mediation.

Synod Sexual Misconduct Complaints Committee

- The definition of 'sexual misconduct' to be broadened to include extra-marital affairs and sexual behaviour by an unmarried ministry agent and to exclude the requirement the complaint be investigated?
- Will have a discretion to determine if an independent investigation is warranted.
- Members to have appropriate skills and knowledge and undertake professional development.
- Provisions allowing complaints to be resolved through mediation.

Delegations

- Provisions that facilitate delegation of responsibility for complaints and discipline from one Church entity to another, including cross-jurisdictional delegations in appropriate circumstances (e.g. a complaint against a General Secretary or Moderator of one Synod being dealt with by another Synod).

Conflicts of Interest

- Provisions dealing with conflicts of interest.

Alignment with External Obligations

- The Regulations to align with external obligations (e.g. matters reported to the Police, Fair Work proceedings, WHS, etc.) and provide for the provision of information to external agencies that have obligations concerning the alleged misconduct.
- Subject to any contrary legal or Church requirement, disciplinary proceedings need not be held in abeyance pending determinations by external agencies (such as Police).

Rights of Appeal

- Rights of appeal are to be limited generally to matters of substance that could have materially altered the outcome of the disciplinary process.
- Any right of appeal is to be exercised within a defined time.
- Appeals are to be heard on the papers, unless the decision maker determines otherwise.

Confidentiality

- Provisions concerning the confidentiality of the entire disciplinary and complaint process and information gained during the process, including authorisations for release of information in appropriate circumstances (e.g. a Congregation being informed of disciplinary proceedings against their Minister).
- Where a Minister is the Respondent to a complaint or a disciplinary process, the Placements Committee is to be advised of that fact, but not the substance of the proceedings.

Competency

- Requirements for Committee members to undertake training in complaint and disciplinary process.

Pastoral, Financial and other Support

- Provisions providing for pastoral, spiritual and financial support for those involved in the disciplinary process and the duration of such support.
- Right to legal representation to be limited to proceedings before the Committee for Discipline

Standing Aside of Minister

- Role of Moderator is to be aligned to disciplinary process with retention of the Moderator's power to stand aside a Minister.

Attachment 3

Proposal for project worker to support the Regulations Review Task Group Complaints and Discipline_ review only

1. Background

1. The Assembly office does not have the capacity to fund or manage this work.
2. The work is urgent.
3. The Queensland Synod is willing to fund this work and is inviting other Synods to consider a financial contribution to assist.

2. Simple Project outline

Year 1	Year 2	Year 3	Year 4
Collate and present material to ASC in March 2022	Prepare any consultation document for circulation	Draft changes - consultation	Implementation and training
Prepare material for Assembly in May 2022	Bring proposals to ASC as required	Final draft - Decisions to appropriate councils	
Resource any ongoing documentation arising from Assembly meeting	Start drafting regulatory changes with notes (a legislative drafting exercise)	Implementation and Training	

3. Project worker costs

Level 6 Project-officer

FTE Base Salary (excludes leave loading and super)

Minimum	\$91,000
Medium	\$104,000
Maximum	\$117,400

Total Employment Cost (includes leave loading and super)

Minimum	\$106,100
Medium	\$121,300
Maximum	\$136,500

4. Anticipated FTE

-**Year 1** Nov 21-May 2022 - PT 2 days per week

Year 2 - PT 2 days per week

Year 3 - PT 3 days per week until national training required then FTE

-**Year 4** FTE until project close

Prepared by Rev H den Houting, Chair, Assembly Reg Review Task Group 16/11/21