



REVIEW OF THE REGULATIONS REPORT

Delegation of Authority to Amend Part 5 of the Regulations

In 2019, the Assembly Standing Committee (ASC) appointed the Regulations Review Task Group (Rev Heather den Houting, Colleen Geyer and David Hay)(TG) 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 ASC.

The 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 magnitude. During this process, two issues were identified which brought clarity to the work of the Task Group, namely:

1. the significant work of the Act2 Project which could have impacts on the Regulations for the future of the UCA; and
2. the clear view that the Discipline Regulations and processes presented the greatest challenge to the current context of the Church (see **Attachment 1**).

In relation to the latter, 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 are not matching the Church's and community's expectations around accountability. **Attachment 1** outlines some of the specific issues that were raised during the initial consultation phase.

Following that survey, a discussion paper was prepared on the feedback received and that paper was considered by the ASC at its meeting on 12-14 November 2021. That paper proposed a way forward for the TG's work, namely, to bring a 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.

That proposal was considered by the ASC at its meeting on 12-13 March 2022. The ASC resolved to bring the following proposed resolutions to the Assembly.

PROPOSALS AND RATIONALE

That the Assembly resolve 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:
 - (a) those Regulations complying with the Framework of Principles; and
 - (b) the approval of those Regulations by the Assembly Standing Committee on the advice of the Assembly Legal Reference Committee.

Rationale

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.

Why is this important for the Church at this time?

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 Assembly make the proposed resolutions set out above.

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 the 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

The regulations expect that matters of a sexual nature are dealt with by the Sexual Misconduct Complaints Committee (SSMCC). However, the definition of sexual misconduct which provides the jurisdictional power to the SSMCC is narrow and it is proposed that the jurisdiction of the SSMCC be expanded to include any misconduct of a sexualized nature.

For example, 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 examples is covered 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

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; and**
- (ii) the approval of those Regulations by the Assembly Standing Committee on the advice of the Assembly Legal Reference Committee.**

Framework of Principles

1. 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 whistle-blower policies and procedures.

2. General Principles

2.1 Only members, adherents and Ministers are eligible to make a complaint.

2.2 The process of how to make a complaint, including the form of the complaint, to be determined by the Synod.

2.3 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.

2.4 The continuation of the disciplinary process where the Respondent has resigned is to be at the discretion of the decision maker.

3. Complaints against Members

3.1 Complaints against members of the Church are:

- (a) 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*.
- (b) 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.
- (c) to be dealt with by visitation, pastoral counselling and/or guidance with a view to restoration of the effected relationships.
- (d) to be dealt with in such manner as to avoid actual, potential or perceived conflicts of interest.
- (e) Council to have the power to suspend or terminate membership and remove Councillor from Council.

3.2 Members to have right of appeal to Presbytery only where membership terminated. Appeal on the papers and Presbytery's decision is final.

4. Complaints against Ministers

4.1 Complaints against Ministers:

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

4.2 Complaints alleging sexual misconduct will be dealt with by Synod Sexual Misconduct Complaints Committee

4.3 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.

5. 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.

6. Complaints against Office Holders

6.1 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.

6.2 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.

6.3 Complaints alleging sexual misconduct by a Minister to be dealt with by Synod Sexual Misconduct Complaints Committee.

7. Committee for Counselling

7.1 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)).

7.2 Members to have appropriate skills and knowledge and undertake professional development.

7.3 Provisions allowing complaints to be resolved through mediation.

8. Committee for Discipline

8.1 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.

8.2 Members to have appropriate skills and knowledge and undertake professional development.

8.3 Provisions allowing complaints to be resolved through mediation.

9. Synod Sexual Misconduct Complaints Committee

9.1 The jurisdiction of the SMCC be broadened by expanding the definition of sexual misconduct to include "any other conduct involving a component of sexual misbehaviour in the complaint."

9.2 Will have a discretion to determine if an independent investigation is warranted.

9.3 Members to have appropriate skills and knowledge and undertake professional development.

9.4 Provisions allowing complaints to be resolved through mediation.

10. 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).

11. Conflicts of Interest

Provisions dealing with conflicts of interest.

12. Alignment with External Obligations

12.1 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.

12.2 Subject to any contrary legal or Church requirement, disciplinary proceedings need not be held in abeyance pending determinations by external agencies (such as Police).

13. Rights of Appeal

13.1 Rights of appeal are to be limited generally to matters of substance that could have materially altered the outcome of the disciplinary process.

13.2 Any right of appeal is to be exercised within a defined time.

13.3 Appeals are to be heard on the papers, unless the decision maker determines otherwise.

14. Confidentiality

14.1 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).

14.2 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.

15. Competency

Requirements for any Committee members involved in discipline committees to undertake training in complaint and disciplinary process.

16. Pastoral, Financial and other Support

16.1 Provisions providing for pastoral, spiritual and financial support for those involved in the disciplinary process and the duration of such support.

16.2 Right to legal representation to be limited to proceedings before the Committee for Discipline.

17. Role of Moderator

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