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5. CHURCH DISCIPLINE

Examples and notes are inserted in Part 5 for illustrative purposes only. They do not affect the meaning of the Regulations. If there is an inconsistency between a Regulation and a example or note, the Regulation prevails.

5.1 DEFINITIONS

In this Part 5 of the Regulations unless the context or subject matter otherwise indicates:

Adherent has the meaning defined in clause 3 of The Uniting Church in Australia Constitution.

Alternative dispute resolution includes mediation, conciliation, collaborative resolution or other restorative justice processes conducted by an independent, professional facilitator.

Appointment, when used in reference to a person being appointed to an office, includes electing a person to an office.

Code of Ethics has the meaning defined at the commencement of the Regulations of the Church – DEFINITIONS (Part 1).

Complainant means a member, adherent or Minister who is making a complaint.

Complaint means a written complaint made by a Complainant:

(a) against a member or adherent;

(b) against an office holder; or

(c) against a Minister

describing, in each case, the conduct complained of.

CFD complaint is a complaint against a Minister

(a) that is being dealt with under Part 5.3, 5.4, 5.5 or 5.6 and that alleges conduct as referred to in Regulation 5.7.2(a) to (e); and

(b) in respect of which a responsible entity at any time while dealing with the complaint under this Part 5 forms an opinion that the allegations, if they were to be substantiated in any future proceedings of the Committee for Discipline under Part 5.7, may warrant the Committee for Discipline determining that the Minister's recognition as a Minister of the Church be withdrawn.

Note: CFD refers to "Committee for Discipline".

Entity includes an individual, Church Council, Task Group, Congregation, Presbytery, Synod, Assembly or other body.

Focused supervision means a particular process of supervision arising out of a disciplinary process of the church, which may include any of the following as appropriate — mandating a particular form of supervision; naming particular issues to be addressed in the supervision; requiring the use of a specified supervisor, or a supervisor with particular expertise; or requiring a report from the supervisor to the entity requiring the supervision.

Member means a baptised member, confirmed member, and a member-in-association.

Minister means a Minister as referred to in the Code of Ethics, and includes a Synod Secretary, Moderator, Assembly General Secretary, President, and Presbytery Minister.

Office holder, for the purposes of Part 5.3, means:

(a) an Elder who is not a member of the Church Council;

(b) a member of Presbytery who holds the office of Chairperson, Secretary or Treasurer (Regulation 3.6.2);

(c) the Moderator (Regulation 3.6.3.1);

(d) the Secretary of the Synod (Regulation 3.6.3.3);

(e) the President of the Assembly (Regulation 3.6.4.1);

(f) the General Secretary of the Assembly (Regulation 3.6.4.4); and

(g) any person appointed to any other body as referred to in Part 3.7;

but does not include a member of a Church Council.

Pastoral Relations Committee means the Pastoral Relations Committee of the Presbytery.

Procedural Fairness includes ensuring:

(a) the Respondent is given sufficient information regarding the complaint to know what is being alleged;

(b) the Respondent is given the opportunity and sufficient time to prepare and present a response;

(c) no person who is closely associated with the Complainant or Respondent deals with the complaint; and

(d) the entity that deals with the complaint remains impartial.

Respondent means the member, adherent, office holder or Minister against whom a complaint has been made.

Standing Committee means the Standing Committee of the Synod.

Support person means a person not otherwise involved in the complaint process who only provides emotional support to a Complainant, Respondent, or a witness.

Note: A support person does not have a right to be heard in the complaint and disciplinary process, and is not permitted to represent a party.

5.1.2 DISCIPLINE IN THE CHURCH

Discipline in the Church is the exercise of spiritual authority with a view to honouring Christ the Head of the Church, expressing God's gracious love for all people while achieving justice and ensuring the spiritual well-being of its members, adherents and Ministers.

5.1.3 ENTITY RESPONSIBLE FOR DISCIPLINE

Generally, discipline is to be exercised by:

(a) the Church Council on behalf of the Congregation—in the case of members or adherents, except in the case of:

(i) allegations of sexual misconduct; or

(ii) a complaint against, or that includes, a Church Council member.

(b) a Presbytery, where—

(i) the Presbytery determines that a Church Council has not adequately dealt with a complaint in relation to a member or adherent; or

Example: The complaint is against members who have a close friendship with members of the Church Council such as to give rise to an actual, apparent or perceived conflict of interest or an actual or reasonably apprehended bias on the part of the Church Council. The Church Council determines to proceed to deal with the complaint despite these issues which impinge on the impartiality of the process. Presbytery may determine that complaint is to be dealt with by the Chairperson of the Presbytery.

(ii) the complaint is against, or includes, a member of a Church Council within its bounds;

Example: The complaint may involve allegations against a member of the Church Council, a member-in-association and an adherent, the latter two not being members of the Church Council. The complaint is generally to be dealt with by the Presbytery.

(c) a Presbytery on a request of a Church Council within its bounds—where the Church Council considers it is not able to deal with a complaint due to a member's or adherent's involvement in the Congregation or for any other reason considered sufficient by the Church Council;

Example: The complaint may involve allegations raising systemic or process issues (e.g. the process of recommending the sale of property) which the Church Council considers would be better dealt with by Presbytery.

(d) the Presbytery and Synod—in the case of Ministers, as the Presbytery and the Synod consider appropriate in the particular circumstances;

(e) the entity responsible for appointing an office holder—in the case of office holders;

(f) the Chairperson of Presbytery and the Moderator—according to their specific responsibilities under Part 5.

5.1.4 WHAT COMPLAINTS WILL BE DEALT WITH UNDER PARTS 5.2. 5.3, 5.4, 5.5, AND 5.6?

5.1.4.1

A complaint:

(a) can only be made against an individual and cannot be made against a body; and

(b) need not identify any Regulation, by-law, rule, Code of Conduct for Lay Leaders or Code of Ethics provision, allegedly breached by the conduct complained about.

Example : A member feels aggrieved by the decision of a Church Council to remove their name from the roll of members and is of the belief the Council members acted in breach of the Code of Conduct for Lay Leaders. Part 5 does not permit a complaint to be lodged against the group of individuals who make up the Church Council. A complaint can only be made against a specific individual(s). In this case, a complaint could be made against each individual Council member.

5.1.4.2

The following complaints are dealt with under Parts 5.2, 5.3, 5.4, 5.5 and 5.6:

(a) A complaint against a member or adherent—where the responsible entity is of the opinion that the Respondent may have disregarded or be disregarding the privileges and obligations of a member or adherent, or the discipline of the Church.
(b) A complaint against an office holder—where the responsible entity is of the opinion that the Respondent may not have fulfilled or be fulfilling the responsibilities of their office.

(c) A complaint against a Minister—where the responsible entity is of the opinion that the Respondent may have engaged in sexual misconduct or breached the Regulations, by-laws, or rules, or the Code of Ethics.

5.1.4.3

If a responsible entity does not form, or ceases at any time to hold, the opinion referred to in Regulation 5.1.4.2 (a), (b) or (c), it must notify the Complainant, Respondent and the persons specified in Regulation 5.1.8, and the complaint must cease to be dealt with under this Part 5.

5.1.4.4

The responsible entity need not explain or give reasons for forming, or not forming, or ceasing to hold, an opinion referred to in Regulation 5.1.4.2.

GENERAL PROVISIONS

5.1.5 GENERAL PROCESSES

The entity responsible for dealing with a complaint:

(a) must deal with the complaint in accordance with the principles of procedural fairness, and with reasonable expedition in any case where there is not a specific provision relating to timeliness; and

Note: The disciplinary processes under Part 5 are not akin to a civil court action and a Complainant is not regarded as 'party' to any disciplinary process.

(b) must, on receiving a complaint, assess its substance (including making enquiries to ascertain the facts, if necessary) and determine, as is applicable:

(i) how the complaint will be dealt with, including having regard to the operation of other policies, procedures and process regulating the affairs of the Church (see Regulation 5.8.1);

Example: The Church is obliged to comply with laws relating to many matters, such as employment; work, health & safety; & privacy. It has in place policies, procedures and processes to deal with those matters. The substance of a particular complaint may also enliven an obligation to deal with that matter under one of those laws. Where that occurs, then as far as is possible, a complaint under this Part should be dealt with in a manner that avoids duplicating the efforts undertaken as part of that other process and may be deferred pending the outcome of that other process.

(ii) the issues, if any, to be sent to the Respondent;

(iii) whether the complaint, as received, will or will not be sent to the Respondent;

Example 1: A Presbytery receives a written complaint against a Minister that contains allegations of spiritual abuse and use of obscene and offensive language. The written complaint also contains numerous inflammatory comments which do not allege any form of misconduct or wrongdoing. The Presbytery can determine to only send the allegations to the Minister and refuse to send the entire complaint as received, because sending the entire complaint may be considered counterproductive.

Example 2: A Presbytery receives a second written complaint against a Minister that contains the same allegations made by the same Complainant after that Complainant's first complaint was finalised, but not to the Complainant's satisfaction. The Presbytery can determine to dismiss the complaint and take no further action, including not even advising the Minister that it has received the second complaint.

(c) may determine whether it will seek the assistance of a subject-matter expert to help it understand a matter relevant to the complaint.

5.1.6 SYNOD PROCESSES

The Synod determines the complaint-making process, including the form of the complaint. However, all complaints must be in writing.

5.1.7 SUPPORT

The entity responsible for dealing with a complaint must consider making whatever arrangements it considers reasonably necessary and that are within its available resources, for the pastoral, spiritual and financial support of those directly involved with the complaint. The arrangements can include referring the affected party to another service provider that may be able to provide the support.

This provision does not impose any duty on the entity to make such arrangements.

Example 1: A Church Council receives a complaint against a member of its Congregation. The Congregation lacks the financial resources to financially assist a party directly involved in the complaint. The Church Council may determine to refer the affected party to the Synod's employee assistance program for relevant professional assistance or an external agency which may be able to provide support, while the Minister provides pastoral and spiritual support.

Example 2: A Church Council receives a report from a complainant that they have been the subject of conduct they consider to be a reprisal for making the original complaint. The Church Council should make whatever arrangements are reasonably necessary to protect the complainant from further reprisals and to deal with the original alleged reprisal.

5.1.8 REASONS FOR DECISIONS AND REPORTING OBLIGATIONS

(a) When an entity makes a decision under these Regulations, it has a discretion whether or not to provide reasons for its decision in the interests of transparency and accountability.

(b) Without detracting from the other provisions in Part 5 dealing with reporting obligations, the entity responsible for dealing with a complaint must notify all complaints against:

(i) members (other than Church Councillors) and adherents—to the relevant Presbytery and Synod;

(ii) Church Councillors, Ministers and office holders—to the Synod; and

(iii) a Minister—to the Placements Committee. The notice must advise of the fact of the complaint and the Minister's identity (but not the substance of the complaint, the Complainant's identity, the progress of the complaint, or the final disposition of the complaint).

The notifications referred to in 5.1.8(b) should not disclose the substance of the complaint, the Complainant's identity, the progress of the complaint or the final disposition of the complaint.

5.1.9 MODERATOR'S DUTY AND POWERS

The provisions of Part 5 are subject to and do not derogate from the duty and power of the Moderator set out in Regulation 3.6.3.2(j).

5.2 THE DISCIPLINE OF MEMBERS AND ADHERENTS

5.2.1 PASTORAL CARE AND DISCIPLINE

5.2.1.1 Complaint against member or adherent

A complaint about a member or adherent, other than a complaint against, or which includes, a member who is on the Church Council, must be made to the Church Council.

The complaint can be made to any member of the Church Council, who must then refer the complaint to the Church Council.

5.2.1.2 Complaint against member of Church Council

A complaint against, or which includes, a member who is on the Church Council, must be made to the Presbytery. The Presbytery must provide a copy of the complaint to the Church Council to enable the Church Council to decide whether to take any action under Regulation 5.2.1.5(a) or (b).

Example: A complaint is made against a member who has been elected by the Congregation to the Church Council, an Elder who is on the Church Council, 2 ordinary members and an adherent. The complaint must be made to the relevant Presbytery, despite the fact the complaint includes 2 ordinary members and an adherent of the Congregation. If the complaint was made to the Church Council, the Church Council must refer that complaint to the Presbytery under Regulation 5.2.1.5(b).

5.2.1.3 Church Council to deal with Conduct of, or Complaint against Member or Adherent

In cases where:

(a) in the opinion of the Church Council, any member or adherent of the congregation, other than a member who is on the Church Council, appears to disregard the privileges and obligations of members or adherents or to disregard the discipline of the Church; or

(b) a member of the Church Council has received a complaint about a member or adherent, other than a complaint against, or which includes, a member who is on the Church Council;

the Church Council must deal with the matter or complaint and, where relevant, endeavour by visitation, pastoral care or guidance to restore the relationship of the member or adherent to the life of the Church.

The Church Council must advise a member or adherent who declines to renew a satisfactory relationship with the life of the Church of the possibility that their name may be removed from the relevant roll, and must give the member or adherent the opportunity to make a

submission on the matter to the Church Council. The submission may be either in person or in writing, at the discretion of the Church Council.

5.2.1.4 Termination or Suspension of Member or Adherent by Church Council

Where the Church Council determines that the member or adherent has failed to respond to the visitation, pastoral care or guidance and invitation to renew a satisfactory relationship with the life of the Church, the Church Council may:

(a) suspend the rights and privileges of the member or adherent on whatever terms and conditions and for whatever time it sees fit; or

(b) remove the name of the member or adherent from the relevant roll.

The Church Council must notify the member or adherent in writing of any its action, and must provide a copy of the notification to the Presbytery and Synod.

5.2.1.5 Presbytery to deal with Complaint against member of Church Council – Role of Church Council

Where the Church Council receives a complaint against, or which includes, a member who is on the Church Council, the Church Council must refer the complaint to the Presbytery. Pending a Presbytery determination that finally disposes of the complaint, the Church Council may do either or both of the following as it considers appropriate in the circumstances:

(a) suspend that member's membership on whatever terms and conditions and for whatever time the Council sees fit; or
(b) suspend that member from their office as a Councillor.

The Church Council must notify the Complainant, member, and Chairperson of the Presbytery in writing of any action it has taken under (a) or (b).

5.2.1.6 Termination or Suspension of Church Councillor or Member or Adherent by Presbytery

The Presbytery must deal with a complaint made to it under Regulation 5.2.1.2 or referred to it under Regulation 5.2.1.5. If the Presbytery is of the opinion that the member or adherent or Church Council member has declined to renew a satisfactory relationship with the life of the Church subsequent to visitation, pastoral care or guidance by the Presbytery, the Presbytery may, after affording that person the opportunity to make a submission on the matter (either in person or in writing, at the Presbytery's discretion), determine to do all or any of the following, as it considers appropriate in the circumstances:

(a) remove the member from the Church Council;

(b) suspend the member's recognition as a member, or the adherent's recognition as an adherent, on whatever terms and conditions and for whatever time the Presbytery sees fit;

(c) require the member or adherent to cease all responsibilities associated with that position; and

(d) direct the Church Council to remove the member's or adherent's name from the relevant roll.

The Presbytery must notify the Church Council, the Complainant, and the member or adherent in writing of any its action. The Church Council must give effect to Presbytery's determinations.

5.2.2 RIGHTS OF APPEAL

5.2.2.1 Decision of Church Council to remove from roll– Appeal to Presbytery

(a) A person whose name has been removed from a roll under Regulation 5.2.1.4(b), may within one month after receiving the notification in writing, appeal to the Presbytery by notice in writing. The Presbytery, or an appeal committee appointed by the Presbytery for the purpose, must determine the matter afresh, based on the documents before it. The person concerned may make a submission (either in person or in writing, at the discretion of the Chairperson of Presbytery or the appeal committee).

Note: There is no right of appeal against a determination by a Church Council to suspend the rights and privileges of membership or the adherent under Regulations 5.2.1.4(a) or 5.2.1(c) or suspend that member from their office of Councillor under Regulation 5.2.1.5(d).

(b) There is no right of further appeal.

(c) The Presbytery must give written notice of the outcome of the appeal to the Complainant, the member, and Synod.

(a) If an appeal of a member or adherent is sustained, the person's name must be returned to the relevant roll in accordance with the terms of the Presbytery's decision.

5.2.2.2 Decision of Presbytery to Terminate or Suspend – Appeal to Moderator (Appeal Committee)

(a) A member or adherent against whom a determination has been made as set out in Regulation 5.2.1.6(a), (c) or (d), may, within one month after receiving the notification in writing, appeal to the Moderator by notice in writing. The Moderator must then appoint an appeal committee of three persons to consider the appeal. The appeal committee must determine the matter afresh, based on

the documents before it. The Appellant may make a submission to the appeal committee (either in person or in writing, at the Committee's discretion).

Note: There is no right of appeal against a determination under Regulation 5.2.1.6(b) by a Presbytery to suspend the rights and privileges of a member or adherent.

(b) There is no right of further appeal.

(c) The "notice in writing" referred to in (a) must succinctly set out:

(i) the decision to be appealed;

(ii) the grounds of the appeal; and

(iii) brief reasons in support of each ground of appeal.

(d) The appeal committee must give written notice of the outcome of the appeal to the Presbytery, the Complainant, the appellant, and Synod.

5.2.3 RESTORATION OF MEMBERSHIP

(a) A person whose name has been removed from the roll of a Congregation under these Regulations may request the Church Council, Presbytery, or appeal committee which determined to remove that person's name from the roll, to authorise its reinstatement.

(b) A person whose name has been removed from a membership or adherent's roll of a Congregation (the original Congregation) under Part 5.2 must not be enrolled as a member or adherent of any other Congregation (the new Congregation) without the prior knowledge of and advice from the council which is responsible for maintaining the roll of the original Congregation. If the person applies to be enrolled with the new Congregation, they must disclose to the new Congregation that their name has been removed from the roll of the original Congregation.

(c) The advice referred to in (b) may disclose whatever information that council considers relevant to the other council's decision whether to admit that person to its membership or adherents roll.

5.2.4 ALLEGATIONS OF SEXUAL MISCONDUCT AGAINST MEMBERS OR ADHERENTS

(a) Where a complaint of sexual misconduct is made against a member or adherent, the Assembly's *Member or Adherent Sexual Abuse and Sexual Misconduct Complaints Policy,* for the time being, applies to the exclusion of the process outlined in Regulation 5.2.1.

(b) The Assembly's *Member or Adherent Sexual Abuse and Sexual Misconduct Complaints Policy,* is a binding document of the Church and requires that allegations of sexual

misconduct against members and adherents of the Church be dealt with as sensitively and expeditiously as possible. When an allegation is made in the manner prescribed in the relevant Policy, the Chairperson of the Presbytery and the Church Council must ensure adherence to the relevant policy.

(c) **Sexual Misconduct** has the meaning as set out in the Assembly's *Member or Adherent Sexual Abuse and Sexual Misconduct Complaints Policy*.

5.2.5 RELATIONSHIP BETWEEN PART 5.2 AND REGULATION 3.3.3

(a) The processes set out in Regulation 3.3.3 concerning the termination of office of Elder and Church Councillor are separate to and operate independently from the processes set out in Part 5.2.

(b) The provisions set out in Part 5.2 relating to the removal of a member of a Church Council do not derogate from the operation of Regulation 3.3.3.

5.3 THE DISCIPLINE OF OFFICE HOLDERS

5.3.1 GENERAL ACCOUNTABILITY PROVISION

Any person appointed to hold office (an office holder) within the Church is generally accountable to the body making the appointment (the 'appointing body') for their conduct as the office holder.

5.3.2 TO WHOM COMPLAINT IS TO BE MADE

(a) A complaint against an office holder must generally be made to the appointing body, depending on the circumstances of the particular case (see paragraphs (b) and (c) below).

Example 1: *A complaint is made against certain members of a task group established by a Church Council under Regulation 3.7.1, but that complaint is not against a member of the Church Council. As the Church Council is the appointing body, the complaint is generally to be dealt with by the Church Council.*

Example 2: *A complaint is made against certain members of a Presbytery's Property Committee. As Presbytery is the appointing body (Regulation 4.3.1(a)), the complaint is generally to be dealt with by the Presbytery.*

Example 3: *A complaint is made against certain members of a Pastoral Relations Committee. As Presbytery is the appointing body (Regulations 3.7.3(a) & 3.7.4.2(a)(iii)), the complaint is generally to be dealt with by the Presbytery.*

(b) A complaint against a number of officer holders (for whom there is more than one appointing body) is to be made to the entity best placed to deal with the complaint.

Example 4: *A complaint is made against certain members of the Synod Standing Committee, namely, the Moderator, the Secretary, Synod elected members and co-opted members appointed by the Standing Committee. The complaint relates to those persons' conduct in their capacity as members of the Synod Standing Committee. The Moderator and Secretary are, by force of Regulation 3.7.4.1(a)(i), ex-officio members of the SSC. The co-opted members are appointed by the SSC. As Synod elects the Moderator (Regulation 3.6.3.1), appoints the Secretary (Regulation 3.6.3.3(a)), and elected the members to the Standing Committee (Regulation 3.7.4.1(a)(iii)), then, even though the Synod Standing Committee appointed the co-opted members, the complaint should be dealt with by the Synod.*

(c) The Moderator, ex-Moderator, Moderator-Elect or Secretary may, for the purpose of paragraph (b), receive the complaint at first instance and determine which entity is best placed to deal with the complaint and refer that complaint to that entity. That entity has jurisdiction to deal with the complaint in accordance with these Regulations.

(d) As soon as is practicable after receiving a complaint, the appointing body must advise the Synod of the complaint.

5.3.3 JURISDICTION TO DEAL WITH COMPLAINT

(a) The appointing body has jurisdiction to deal with the complaint in accordance with these Regulations, regardless of whether the person complained about:

(i) is a Minister or lay person; or

(ii) still holds the office.

Example: *The appointing body may determine, under Regulation 5.1.5, to seek the assistance of a subject-matter expert to help it understand a particular subject-matter relevant to the complaint.*

(b) Where the complaint is against a Minister and is not in the opinion of the appointing body a CFD complaint as defined in Regulation 5.1, the appointing body:

(i) must refer the complaint to the Synod Committee for Counselling when requested by the Respondent or Complainant; and

(ii) may, if it considers it appropriate, refer the complaint to the Respondent's Presbytery, addressed to the Chairperson, or the Committee for Counselling.

(c) Where the complaint is against a Minister and is in the opinion of the appointing body a CFD complaint as defined in Regulation 5.1, the appointing body must refer the complaint to the Moderator.

Example: A member makes a complaint about the conduct of a Minister that is allegedly in breach of a process set out in the Manual of Meetings. The alleged conduct does not breach the Regulations, Synod by-laws, Presbytery rules or Code of Ethics. The complaint would not meet the criteria of a "complaint" for the purposes of Part 5 of the Regulations. It would need to be addressed through informal means.

(d) Where the complaint alleges sexual misconduct:

(i) against an office holder who is not a Minister—the complaint is to be dealt with by the appointing body in accordance with the Assembly's *Member or Adherent – Sexual Abuse and Sexual Misconduct Complaints Policy;*

(ii) against a Minister—the complaint is to be dealt by the Synod Sexual Misconduct Complaints Committee under Part 5.6.

(e) Where the appointing body refers a complaint to the Respondent's Presbytery under Regulation 5.3.3(b)(ii), the Presbytery has jurisdiction to deal with the complaint under Regulations 5.1.5 and 5.4.2.

(f) Where the appointing body refers a complaint to the Committee for Counselling under Regulation 5.3.3(b)(i) or (ii), the Committee for Counselling has jurisdiction to deal with the complaint under Parts 5.1 and 5.5.

(g) The appointing body may continue, at its discretion, to deal with a complaint that is not in its opinion a CFD complaint as defined in Regulation 5.1 despite the conclusion or termination of the placement, the Respondent's resignation from the ministry or membership, the Respondent's retirement, or the Respondent's grant of leave of absence.

5.3.4 HOW COMPLAINTS SHOULD BE DEALT WITH

(a) A complaint should primarily be dealt with by visitation, pastoral counselling or guidance by the appointing body with a view to restoring the affected relationships and amicably resolving the complaint.

(b) Subject to these Regulations, all parties involved in the process of dealing with a complaint under Part 5.3 must observe confidentiality.

5.3.5 DETERMINATION OF COMPLAINTS

Without limiting the objective of restoring the affected relationships and amicably resolving the complaint referred to in Regulation 5.3.4(a), the appointing body may do any one or more of the following in resolving the complaint:

(a) help the Respondent to discern and fulfil their office;

(b) help the Respondent to nurture their gifts;

(c) provide encouragement and guidance to enrich their office;

(d) refer the matter to alternative dispute resolution;

(e) advise, guide, and support the Respondent where they appear to require advice, guidance, and support;

(f) encourage observance of any applicable Code of Ethics;

(g) remove or suspend the office holder from office on whatever terms and conditions and for whatever time the appointing body considers appropriate;

(h) impose whatever terms and conditions on the performance of the office by the Respondent, and for whatever time, the appointing body considers appropriate;

(i) make a written comment on any aspect of the matter in a report to, in the case of a Minister, the relevant Presbytery, or, in the case of a lay person, the relevant Church Council.

5.3.6 NOTIFICATION OF ACTION

The appointing body must notify the following in writing of any action taken: the Complainant, the Respondent, any relevant Presbytery, Church Council, the Placements Committee in the case of Ministers, and Synod.

5.3.7 DEFINITIONS

Appointing body includes the entity referred to in Regulation 5.3.2(b) and (c).

5.3.8 APPEAL

(a) The Complainant or the Respondent may lodge an appeal by notice in writing against a determination by the appointing body made pursuant this Part only on the grounds that the appointing body has acted contrary to procedural fairness.

(b) The appeal must be lodged no later than 14 days after receiving notification of the appointing body's decision under Regulation 5.3.6, and the "notice in writing" referred to in (a) must succinctly set out:

(i) the decision to be appealed;

(ii) the grounds of the appeal; and

(iii) brief reasons in support of each ground of appeal.

(c) The appeal is made to the Moderator, who must appoint an appeal committee of three persons to consider it.

(d) The appeal committee must either dismiss the appeal or, if it upholds the appeal, remit the complaint to the appointing body for its reconsideration.

(e) On receiving an appeal, the Moderator must inform the Complainant, the Respondent, and the appointing body of the pending appeal, each of whom becomes a party to the appeal.

(f) The parties to the appeal must deal with the appeal expeditiously. Where a party does not deal with the appeal expeditiously, the appeal committee may:

(i) in case of an Appellant—strike out the appeal; or

(ii) in the case of one of the other parties—proceed to determine the appeal on the material before it.

(g) Legal representation before the appeal committee is permitted only by leave of the appeal committee.

(h) There is no right to appeal against the appeal committee's determination to dismiss the appeal.

5.4 THE COUNSELLING AND DISCIPLINING OF MINISTERS

5.4.1 COMPLAINTS

(a) A complaint against a Minister may be made to the Minister's Presbytery, addressed to the Presbytery Chairperson, by:

(i) a member, adherent or Minister ; or

(ii) by the secretary of a Presbytery when so directed by the Presbytery.

(b) A complaint against a Minister is dealt with by the Presbytery or its Pastoral Relations Committee unless paragraph (c) or (g) of this Regulation is applicable.

(c) Where the Presbytery Chairperson is of the opinion that the complaint is a CFD complaint as defined in Regulation 5.1, the Presbytery Chairperson must refer the complaint to the Moderator.

Note: A complaint about a Minister who holds the office of Chairperson, Secretary or Treasurer of a Presbytery is to be dealt with under Part 5.3 if the complaint relates to the conduct of the Minister in their capacity as the office holder.

(d) A complaint against a Minister may be made to the Synod Committee for Counselling by:

(i) the Secretary of the Synod—if so directed by the Moderator, the Synod, or its Standing Committee; or

(ii) the Chairperson of the Presbytery—if requested by the Respondent, or by the Complainant, or if the Presbytery considers it appropriate, provided that it is not a CFD complaint (as defined in Regulation 5.1).

(e) Where a complaint against a Minister is to the effect mentioned in Regulation 5.7.2, it may be made to the Synod Committee for Discipline by the Secretary of the Synod if so directed by the Moderator, or by the Synod, or by its Standing Committee.

Note: The Moderator, the Synod or its Standing Committee may decide that a complaint about a Minister that alleges wilful or grave conduct unworthy of a Minister should be dealt with by the Committee for Discipline.

(f) A complaint against a Minister may be referred to the Presbytery by an appointing body under Regulation 5.3.3(b).

(g) Where the complaint is against the Chairperson of the Presbytery who is a Minister, but not in their capacity as the Chairperson, the complaint is to be made to the secretary of the Presbytery, who must refer the complaint to the Synod Committee for Counselling and report the referral to the Pastoral Relations Committee and Synod.

Note: A complaint against a Presbytery Chairperson for conduct as the Presbytery Chairperson is to be made and dealt with under Part 5.3.

(h) For the purposes of (c), (d) and (e), none of the:

(i) Chairperson of the Presbytery;
(ii) the Moderator;
(iii) the Synod or its Standing Committee; and
(iv) the Committee for Counselling;

is required to enquire into the alleged conduct. The initial assessment is to be undertaken upon the conduct as alleged in the complaint.

(i) Subject to these Regulations, all parties involved in the process of dealing with a complaint under Part 5.4.must observe confidentiality

5.4.2 RESPONSIBILITIES OF THE PRESBYTERY

5.4.2.1 Responsibility for Oversight, Counselling and Discipline

Subject to these Regulations, the Presbytery is primarily responsible for the pastoral oversight, counselling and discipline of Ministers. In exercising its responsibility, Presbytery may:

(a) help them to discern and fulfil their vocations;

(b) help them nurture their gifts;

(c) provide encouragement and guidance to enrich their ministry;

(d) advise, guide, and support them where they appear to require advice, guidance, and support;

(e) encourage observance of the Code of Ethics;

(f) discipline a Minister in relation to any matter reported to it under Regulation 5.4.4.1(b) or any breach of the Regulations, by-laws, rules, or Code of Conduct, that it considers warrants discipline; and

(g) deal with complaints made against Ministers as provided in this Part 5 and report any action it takes to the Pastoral Relations Committee.

5.4.2.2 Dealing with Complaints and Disciplinary Matters

Complaints and disciplinary matters should be primarily dealt with by visitation, pastoral care or guidance with a view to restoring the affected relationships and amicably resolving

the complaint. In the exercise of that responsibility, the Presbytery may do any one or more of the actions listed in Regulation 5.4.2.1, as well as any of the following actions:

(a) refer the complaint or matter to alternative dispute resolution:

(b) make a written comment on any aspect of the matter in a report to the Synod;

(c) discipline a Minister in relation to any breaches of a Regulation, by-law, rule, or Code of Ethics, including by:
  (i) admonishing or correcting the Minister; or
  (ii) requiring the Minister to undergo therapeutic or pastoral care; or
  (iii) requiring the Minister to undergo focused supervision (as defined in Regulation 5.1); or
  (iv) requiring the Minister to participate in courses of training;

(d) enquire into the complaint or seek assistance from subject-matter experts and finalise the complaint in the way the Presbytery determines; or

(e) continue, at the Presbytery's discretion, to deal with a complaint that has not been referred to the Moderator or is not being dealt with by the Committee for Discipline despite the conclusion or termination of the placement, the Respondent's resignation from the ministry, the Respondent's retirement, or the Respondent's grant of leave of absence.

5.4.3 NOTIFICATON

The Presbytery must give written notification of any action it takes under Regulation 5.4.2 to the Complainant, the Respondent, the Placements Committee, and the Synod.

5.4.4 RESPONSIBILITIES OF PASTORAL RELATIONS COMMITTEE

5.4.4.1 General Responsibility

(a) The Pastoral Relations Committee must, at whatever intervals the Presbytery may determine, counsel each Minister under its oversight. The power to counsel does not depend on the existence of any complaint.

(b) If the Pastoral Relations Committee is concerned that a Minister does not continue to hold to the affirmations and undertakings made at ordination or setting apart, the Committee may report its concerns to the Presbytery, which may take, or request the Pastoral Relations Committee to take, whatever further action by way of discipline, counselling or otherwise it thinks fit.

5.4.4.2 Referral of Complaints and Disciplinary Matters to the Pastoral Relations Committee

(a) The Pastoral Relations Committee is to deal with any complaint or complaints that the Presbytery refers to it.

(b) Complaints should be primarily dealt with by visitation, pastoral care or guidance, with a view to restoring the affected relationships and amicably resolving the complaint. In exercising this responsibility, the Pastoral Relations Committee may take any one or more of the following actions:

(i) confer with the Respondent and with the Complainant with a view to resolving the matter amicably;

(ii) if it thinks fit, enquire into the complaint;

(iii) refer the matter for alternative dispute resolution;

(iv) make written comment on any aspect of the matter in a report to the Presbytery.

The Pastoral Relations Committee must give written notice of the action it takes to the Complainant, the Respondent, the Presbytery, the Placements Committee, and the Synod.

(c) At any stage after a complaint is referred to it, the Pastoral Relations Committee may determine that the complaint warrants no further action. If it so determines, the Committee must give written notice to the Complainant, the Respondent, the Presbytery, the Placement Committee, and the Synod.

(d) Where the complaint is not a CFD complaint as defined in Regulation 5.1, the Pastoral Relations Committee:

(i) if requested by the Respondent or by the Complainant—must refer the complaint to the Synod Committee for Counselling; or

(ii) where it considers it is necessary to do so for any reason at any stage after a complaint is referred to it—may refer the complaint to the Synod Committee for Counselling.

Example: The Pastoral Relations Committee simply may not have the capacity to deal with a particular complaint in a timely manner and, for that reason, may consider it is necessary to refer that complaint to the Synod Committee for Counselling.

(e) Where the complaint is a CFD complaint as defined in Regulation 5.1, the Pastoral Relations Committee must refer the complaint to the Moderator.

(f) The Pastoral Relations Committee may continue, at its discretion, to deal with the complaint that is not a CFD complaint as defined in Regulation 5.1, despite the

conclusion or termination of the placement, the Respondent's resignation from the ministry, the Respondent's retirement, or the Respondent's grant of leave of absence.

5.4.5 APPEALS

(a) The Complainant or the Respondent may lodge an appeal by notice in writing against a determination by the Presbytery under Regulation 5.4.2.2 (c) on the grounds the Presbytery acted contrary to procedural fairness.

(b) The appeal must be lodged no later than 14 days after receiving notice of a decision of the Presbytery under Regulation 5.4.3; and the "notice in writing" referred to in (a) must succinctly set out:

(i) the decision to be appealed;

(ii) the grounds of the appeal; and

(iii) brief reasons in support of each ground of appeal.

(c) The appeal is made to the Moderator, who must appoint an appeal committee of three persons to consider it.

(d) The appeal committee has jurisdiction to deal with the appeal and may determine its procedures for dealing with the appeal.

(e) The appeal committee must either dismiss or uphold the appeal. If it upholds the appeal, it must remit the complaint to the Presbytery for its reconsideration.

(f) On receiving an appeal the Moderator must inform the Complainant, the Respondent, and the Presbytery, of the pending appeal, each of whom becomes a party to the appeal.

(g) The parties to the appeal must deal with it expeditiously. If a party does not deal with the appeal expeditiously, the appeal committee may:

(i) in case of an Appellant—strike out the appeal; or

(ii) in the case of one or more of the other parties—proceed to determine the matter on the material before it.

(h) Legal representation before the appeal committee is permitted only by leave of the appeal committee.

(i) There is no right to appeal against the appeal committee's determination to dismiss the appeal.

5.5 SYNOD COMMITTEE FOR COUNSELLING

5.5.1 The Committee for Counselling

5.5.1.1 Establishment, Composition & Term

(a) The Synod must establish a Committee for Counselling and appoint the members of this Committee and its chairperson.

The persons appointed to the Committee must possess the appropriate skills and knowledge, as determined by Synod, to fulfill the Committee's functions.

Without derogating from the foregoing, the Synod may appoint one or more persons temporarily to the Committee if considered necessary or desirable.

The Moderator and the Secretary of the Synod are ineligible for membership.

(b) Each Committee member holds office for a term of three years unless:

(i) the member is appointed for a shorter term;

(ii) the member resigns; or

(iii) if the chairperson makes a declaration that in the chairperson's opinion the member is no longer able or willing to fulfil the responsibilities of membership—in which case, the person's membership thereupon ceases.

A member whose term of appointment expires is eligible for reappointment.

(c) A Synod may appoint, as members of the Committee, members of the Church who are members of a Congregation beyond the bounds of the Synod.

(d) The chairperson or the chairperson's nominee must chair the Committee, convene its meetings and appoint a panel of members of the Committee to act as and for the Committee in dealing with any complaint referred to the Committee. When a panel is dealing with a complaint, references to the Committee for Counselling in these Regulations includes references to the panel in respect of that complaint.

5.5.1.2 Quorum

(a) A quorum for a panel is three members.

(b) (i) Despite (a), if a member withdraws from the panel dealing with a complaint, the remaining members may continue to act, so long as at least two members are present and participating.

(ii) The chairperson may declare that a panel member is taken to have withdrawn if, in the chairperson's opinion, the member is unwilling or unable to continue to participate.

(iii) A panel member whose term of office has expired and is not renewed may continue to act as a panel member dealing with a particular complaint.

5.5.1.3 Jurisdiction

The Committee for Counselling's jurisdiction does not extend to dealing with complaints alleging:

(a) sexual misconduct; or

(b) a CFD complaint (as defined in Regulation 5.1), unless the complaint has been referred to the Committee for Counselling by the Moderator under Regulation 5.12.1(c).

5.5.1.4 Dealing with Complaints

(a) Complaints should be primarily dealt with by visitation, pastoral care or guidance with a view to restoring the affected relationships and amicably resolving the complaint. In exercising this responsibility, the Committee for Counselling may take any one or more of the following actions:

(i) confer with the Respondent and with the Complainant with a view to resolving the matter;

(ii) if it thinks fit, enquire into the complaint

(iii) refer the matter for alternative dispute resolution;

(iv) make written comment on any aspect of the matter in a report to the Presbytery.

The Committee must give written notice of the action it takes to the Presbytery, the Complainant, the Respondent, the Placements Committee, and the Synod.

Note: This Regulation does not derogate from the provisions in Part 5.1.

(b) At any stage after a complaint is referred to it, the Committee may determine that the complaint warrants no further action. The Committee must give written notice of the determination to the Complainant, the Respondent, the Presbytery, the Placements

Committee, and the Synod.

Example: The Committee may form the view no further action is warranted on the grounds the complaint is frivolous, vexatious, misconceived, unable to be substantiated or resolved by counselling.

(c) If, at any stage after a complaint is referred to it, the Committee is satisfied that the matter cannot be dealt with adequately and that the complaint warrants further action because it raises any of the matters referred to in Regulation 5.7.2(a) to (e), it must refer the matter to the Committee for Discipline. The referral must set out:

(i) the complaint;

(ii) the steps taken by the Committee to deal with the complaint;

(iii) the reasons why the Committee is of the view it cannot adequately deal with the complaint;

(iv) a copy of the information that was before the Committee and, where information was given verbally, a summary of the verbal information; and

(v) the names and contact details of all persons who provided information to that Committee.

The Committee must notify the Complainant, the Respondent, the Presbytery, the Placement Committee, and the Synod of the referral. The notification need not set out the material set out in (i)-(v) above.

(d) The Committee may determine to make written comment on any aspect of the matter in a report to the Standing Committee and/or the Presbytery exercising oversight of the Respondent. If so, the Committee must give written notice of its action to the Complainant, the Respondent, the Presbytery, the Placements Committee, and the Synod.

(e) The Committee may continue, at its discretion, to deal with a complaint that is not a CFD complaint (as defined in Regulation 5.1), despite the conclusion or termination of the placement, the Respondent's resignation from the ministry, the Respondent's retirement, or the Respondent's grant of leave of absence.

5.5.2 Training and Professional Development

Synod must ensure that members of the Committee for Counselling undertake annual professional development of 10 hours, relevant to the discharge of the Committee's functions. Members who undertake professional development outside of the Church that is relevant to the discharge of the Committee's functions may credit it towards these 10 hours.

5.5.3 Appeals

(a) The Complainant or the Respondent may lodge an appeal by notice in writing against a determination by the Committee for Counselling under Regulation 5.5.1.4(b) on the grounds the Committee acted contrary to the principles of procedural fairness.

Note: No appeal may be made in relation to determinations under Regulations 5.5.1.4(a)(i)-(iv), 5.5.1.4(c) or 5.5.1.4(d).

(b) The appeal must be lodged no later than 14 days after the party receives notice of the decision. The "notice in writing" referred to in (a) must succinctly set out:

(i) the decision to be appealed;

(ii) the grounds of the appeal; and

(iii) brief reasons in support of each ground of appeal.

(c) The appeal is made to the Moderator, who must appoint an appeal committee of three persons to consider it.

(d) The appeal committee has jurisdiction to deal with the appeal and may determine its procedures for dealing with the appeal.

(e) The appeal committee must either dismiss or uphold the appeal. If it upholds the appeal, it must remit the complaint to the Committee for Counselling for its reconsideration.

(f) On receiving an appeal, the Moderator must inform the Complainant, the Respondent and the Chairperson, Committee for Counselling of the pending appeal, each of whom becomes a party to the appeal.

(g) The parties to the appeal must deal with it expeditiously. If a party does not deal with the appeal expeditiously, the appeal committee may:

(i) in case of an Appellant—strike out the appeal; or

(ii) in the case of one or more of the other parties—proceed to determine the matter on the material before it.

(h) Legal representation before the appeal committee is permitted only by leave of the Committee.

(i) There is no right to appeal against the determination of the appeal committee to dismiss the appeal.

5.6 SYNOD SEXUAL MISCONDUCT COMPLAINTS COMMITTEE

5.6.1 INTRODUCTION

(a) The Church addresses allegations of sexual misconduct through two distinct processes.

(b) The first process is undertaken by Sexual Misconduct Complaints Committee (SSMCC). It engages with the Complainant, the Minister against whom the complaint is made (the Respondent) and, where necessary, affected persons and Church officers, by investigating the complaint (where considered necessary) and seeking an agreed outcome that encourages healing and maintains the integrity of ministry within the Church. Where possible, the SSMCC acts pastorally. The SSMCC is able to form opinions on issues of fact for the purpose of deciding on action which the Regulations authorise it to take. Its tools include conversation, inquiry, and appropriate, non-adversarial, dispute resolution processes.

(c) Legal representation is not permitted before the SSMCC.

(d) The second process is undertaken by the Committee for Discipline. The SSMCC may refer a complaint to the Committee for Discipline. The process undertaken by the Committee for Discipline is set out in Regulation 5.7.4.

5.6.2 DEFINITIONS

In Regulations 5.6.1 to 5.6.18, unless the context or subject matter otherwise indicates or requires:

Adviser means the person designated by the Convenor, to assist the Complainant in processing a complaint or the Respondent in facing a complaint through Church procedures.

Agreed Outcome is the document signed by the chairperson of the panel selected to deal with the complaint, the Complainant, the Respondent, and any other affected person who joins in the agreement at the Committee's invitation, and which includes the actions undertaken or agreed to be undertaken by the parties to the document.

Chairperson means the chairperson of the Committee and whenever the Chairperson is unavailable, includes the Deputy Chairperson or other Committee member acting as Chairperson.

Committee means the Synod Sexual Misconduct Complaints Committee appointed by the Synod under Regulation 5.6.4.

Complaint means a written complaint of sexual misconduct against a Minister. The complaint may be of a single incident or a series of incidents.

Convenor means the person appointed to be the Synod Convenor of Advisers.

Minister means a Minister (as that term is defined in Regulation 5.1.1), or a Candidate (as that term is defined in Regulation 2.1.1) involved in field education.

Panel means the group of Committee members selected by the Chairperson to deal with a particular complaint under Regulation 5.6.3(b).

Pastoral Relationship means the relationship between a Minister and another person:

(a) in which the Minister is providing spiritual care for the person; or

(b) where the person looks to, or has looked to the Minister for guidance, protection or care; or

(c) where the person has made contact with the Minister in their responsibility or function as Minister.

Pastoral Strategy means the plan for managing the effect of the complaint and discipline process upon the Complainant and Respondent, any affected Congregation or faith community, and any other affected person who is acknowledged to be within a Congregation's pastoral responsibility, and how matters of confidentiality are to be addressed.

Presbytery Minister means the Presbytery Minister in placement and includes any other person appointed to act in that capacity by whatever name known.

Sexual misconduct means one or more of the following:

(a) sexual harassment: any unwelcome sexual advance, or unwelcome request for sexual favours to a person, or engagement in other unwelcome conduct of a sexual nature in relation to that person, in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated the person complaining would be offended, humiliated or intimidated;

(b) sexual assault: any unwelcome sexual behaviour that may occur along a continuum from verbal insult to sexual intercourse, that would make a reasonable person feel threatened or afraid;

(c) sexual conduct prohibited by criminal law;

(d) sexualisation of a pastoral relationship: any interaction, consensual or otherwise, in which the Minister engages in sexualised behaviour with or towards a person with

whom he or she is in a pastoral relationship, and which is in breach of the Code of Ethics.

Support person means a person not otherwise involved in the complaint process who provides emotional support for either the Complainant or the Respondent.

Synod means the Synod of the Church, within the bounds of which falls the Presbytery in which the Minister is enrolled.

5.6.3 COMPLAINTS OF SEXUAL MISCONDUCT

(a) Where a complaint of sexual misconduct is made against a Minister, the procedures in Regulations 5.6.3 to 5.6.18 inclusive apply to the exclusion of the procedures contained elsewhere in Part 5 of the Regulations.

(b) The Chairperson should endeavour to appoint a panel within 7 days of receiving a complaint.
Note: see para (e) also.

(c) The panel must deal with the complaint in accordance with Regulations 5.6.8–5.6.13.

(d) Where a complaint which the panel determines to be a complaint of sexual misconduct includes other matters of complaint of a non-sexual nature, the panel may deal with the entire complaint.

(e) The timeframe in (b) is only a guide, the objective being to deal with complaints as expeditiously as possible in the prevailing circumstances. Failure to comply with the timeframe does not give rise to any right, action, remedy, or liability.

5.6.4 COMMITTEE

(a) The Standing Committee must establish a Committee to be known as the Synod Sexual Misconduct Complaints Committee and must appoint its Chairperson. The Standing Committee may also appoint a Deputy Chairperson.

(b) Each Committee member holds office for a term of three years, unless:

(i) the member is appointed for a shorter term;

(ii) the member resigns; or

(iii) the chairperson makes a declaration that in the chairperson's opinion the member is no longer able or willing to fulfil the responsibilities of membership—in which case, the person's membership thereupon ceases.

A member whose term of appointment expires is eligible for reappointment, but subject to paragraph (n).

(c) Other persons may be co-opted to Committee membership from time to time by the Chairperson with the prior consent of the Synod Secretary where particular skills or experience are required (for example, experience in indigenous or migrant ethnic issues). They may be co-opted for a specific period not exceeding 3 years or for the purpose of serving on a panel to deal with a particular complaint.

(d) A Synod may transfer its power to make these appointments to another Synod ,by written agreements between the Synods.

(e) The Committee must consist of not fewer than three persons and must include:

(i) at least one member with expertise in, or significant experience in dealing with, sexual abuse issues;

(ii) at least one member who is considered skilled in alternative dispute resolution processes.

The one member may satisfy both requirements.

(f) At least one Committee member must be a Minister, and at least one member must be a lay person.

(g) The Committee members need not be members of the Church, but the number of non-Church members must be fewer than the number of members of the Church.

(h) Not less than half of the Committee must be women.

(i)The persons appointed to the Committee are to possess the appropriate skills and knowledge, as determined by Synod, to fulfill the Committee's functions.

(j) Synod must ensure that Committee members undertake annual professional development of 10 hours, relevant to discharging the Committee's functions. Members who undertake professional development outside of the Church that is relevant to discharging the Committee's functions may credit it towards these 10 hours.

(k) The Chairperson must be a member of the Church and should preferably be a woman.

(l) If a Deputy Chairperson is appointed, the Deputy Chairperson must fulfil the responsibilities of the Chairperson when the Chairperson is unavailable, unable or unwilling to act.

(m)The quorum of a panel selected by the Chairperson from amongst the Committee members to deal with a particular complaint is, subject to paragraph (n), three, of whom the majority must be members of the Church and normally the majority must be women.

(n) Where any member withdraws, the remaining panel members may continue to act, provided that the number of remaining members is not less than 2.

(o) Unless the Standing Committee considers that there are special circumstances, a member is not eligible to serve for more than 9 years consecutively.

(p) Neither the Moderator, the Synod Secretary, nor any member of the Committee for Discipline, may be a Committee member.

(q) The Chairperson or the Chairperson's nominee must chair the panel appointed to deal with a complaint, and must convene its meetings.

(r) Members of the Committee may be drawn from any Synod provided written agreement has been reached between the Synods.

(s) A panel appointed to deal with a complaint is, and has the powers of, the Committee for the purpose of dealing with that complaint. It may agree to deal jointly with more than one complaint against the same Respondent, including a separate complaint made under Regulation 5.6.10(e)(iii) or a composite complaint made under Regulation 5.6.10(e)(iv) in whatever manner it may decide.

5.6.5 ADVISERS

(a) The Standing Committee must appoint advisers. In urgent cases the Synod Secretary, on the advice of the Convenor, may appoint advisers. The Synod must arrange training for the advisers.

(b) To be eligible for appointment, an adviser must have appropriate skills and/or knowledge, such as:

(i) counselling and support skills;

(ii) advocacy skills;

(iii) knowledge of sexual misconduct issues;

(iv) knowledge of the processes and structures of the Church;

(v) knowledge of the options available to Complainants including legal and community resources.

(c) Preferably at least one adviser must have expertise in the area of child sexual abuse, and at least one adviser must have expertise in working with male victims.

(d) The Convenor may, before a complaint has been made, designate an adviser to provide assistance to a person concerned about conduct which may amount to sexual misconduct.

(e) An adviser, depending on the assistance required, must seek to:

(i) listen to the person who is concerned about conduct which may amount to sexual misconduct;

(ii) discuss with that person whether the conduct complained of would, if substantiated, appear to be sexual misconduct as defined in these Regulations;

(iii) inform the person of entities they may approach for advice about their rights and responsibilities;

(iv) provide information about the Church's complaints and disciplinary processes and other options available to the person;

(v) help the person to consider and choose the appropriate option for dealing with the conduct; and

(vi) help a person to make a complaint.

(f) An adviser's responsibilities do not extend to investigating or seeking to resolve a complaint.

(g) An adviser who is designated to a Complainant or a Respondent, must seek to:

(i) help the Complainant in processing a complaint, or the Respondent in facing a complaint through Church procedures;

(ii) ensure the Complainant or Respondent is adequately informed at all stages of the progress of the complaint; and

(iii) be available, if the Complainant or Respondent so wishes, to speak at any meeting regarding the complaint that the Complainant or Respondent is required to attend.

(h) The Standing Committee may withdraw an adviser's appointment at any time without providing reasons for its determination. The withdrawal is effective immediately the adviser is notified.

5.6.6 CONVENOR OF ADVISERS

(a) The Synod must appoint the Convenor.

(b) When a complaint is made, the Convenor must offer to designate an adviser to each of the Complainant and the Respondent. If the Complainant or Respondent concurs, the Convenor must make the designation.

(c) If the Convenor deems it appropriate or if requested, the Convenor must endeavour to designate an adviser to any other person affected by the alleged misconduct.

5.6.7 MAKING A COMPLAINT

(a) A complaint under this Part 5.6 must be made to the chairperson of the Presbytery, the Presbytery Minister, the Moderator, the Synod Secretary, or the Chairperson of the Committee.

(b) The complaint must be put in writing.

(c) The complaint must be referred to the Chairperson of the Committee as soon as possible.

(d) Nothing in these Regulations prevents a person from making an informal approach, orally or in writing, to the Convenor for the purpose designated in Regulation 5.6.5(d) or to any of the persons in (a) for advice or information with respect to sexual misconduct. The approach does not become a complaint unless it is put in writing by the person making the complaint.

(e) Where a complaint relates to a Respondent's prior service within the bounds of another Synod, the complaint must be dealt with within the Synod in which the Respondent is currently serving, except where:

(i) the Complainant and Respondent agree that it be dealt with within the other Synod, or

(ii) the Synod in which the Respondent is currently serving determines to transfer to the other Synod all its powers and responsibilities in relation to discipline of the Respondent concerning the Respondent's period of service in the other Synod (refer Constitution paragraph 70(d)), in which case the other Synod must deal with the complaint.

5.6.8 RECEIVING A COMPLAINT

(a) As soon as possible after receiving the complaint, the panel must assess its substance and:

(i) determine the issues, if any, to be published to the Respondent including, for example, whether the complaint as received will or will not be published to the Respondent;

(ii) inform the Respondent that it has received the complaint and the issues that the panel will deal with; and

(iii) inform the Complainant of the action taken.

(b) The Chairperson must give prompt confidential notice of the complaint together with a copy of the complaint and any other relevant information to the Synod Secretary, the Moderator, the chairperson of the Presbytery of the Respondent, the Convenor of Advisors and, where the Chairperson considers it appropriate, the chairperson of the Presbytery of the Complainant.

(c) On receiving the notice, the Presbytery Chairperson(s) (of both the Complainant and Respondent if necessary), in consultation with the Chairperson of the Committee and others as appropriate, must arrange for the development of a Pastoral Strategy to help manage pastoral issues in relation to the Congregation or faith community.

5.6.9 ATTENDANCE AT MEETINGS

(a) Each of the Complainant and the Respondent, attending any meeting of or arranged by the panel, may be accompanied by their adviser and by a support person.

(b) The support person does not have the right to speak at any meeting unless at the request and with the consent of the person supported and invited to do so by the chairperson of the panel that is dealing with the complaint.

Note: the adviser may speak at the meeting: see Reg 5.6.5(g)(iii).

5.6.10 INVESTIGATION AND RESPONSE TO COMPLAINTS

(a) Where the panel determines that allegations contained in a complaint amount to a complaint of sexual misconduct against a Minister, the panel may deal with the complaint with a view to facilitating a response that takes into account the interests of the Complainant and the Respondent and the values by which the Church lives. To that end the panel may appoint a person or persons to investigate matters connected with the complaint and report to the panel.

(b) In exercising its responsibilities, the panel must have regard to the following guidelines:

(i) it must endeavour to act pastorally in its dealings with the Complainant, the Respondent and other affected persons;

(ii) it must seek an Agreed Outcome that encourages healing and maintains the integrity of ministry of the Church;

(iii) it may use the tools of conversation, enquiry, and alternative dispute resolution in seeking an Agreed Outcome; and

(iv) for the purpose of deciding on action to be taken under paragraph (e) of this Regulation, it may form opinions on issues of fact.

(c) The panel's processes must be investigative, not adversarial. The panel may inform itself in whatever manner it sees fit, including seeking the assistance of a subject-matter expert.

(d) The panel must inform the Complainant, the Respondent, and any potential witness that their statements may be recorded, and may form part of an investigation report which may accompany a referral to the Synod Committee for Discipline.

(e) At any stage of the process, the panel may:

(i) determine the complaint warrants no further action (including on the ground that it is frivolous, vexatious, misconceived or unable to be substantiated). If it so determines, the panel must give written notice of that determination to the Chairperson, Complainant, and the Respondent, within 14 days of making the determination;

(ii) consider allegations of, or information regarding, other conduct of the Respondent of which the panel becomes aware and which it considers should be dealt with in conjunction with the complaint, provided the panel informs the Respondent of the particulars of that conduct;

(iii) recommend to the Chairperson or to the Standing Committee that action be taken to cause a separate complaint to be made in respect of allegations or on the basis of information of which the panel has become aware;

(iv) determine to proceed to deal with the initial complaint and any additional allegations or information from other persons or Complainants that have come to the panel's attention (a composite complaint), provided the panel informs the Respondent of the particulars of the composite complaint;

(iv) refer the complaint or composite complaint for appropriate, non-adversarial dispute resolution;

(v) refer the complaint or composite complaint to the Synod Committee for Discipline to be dealt with as a complaint under Regulation 5.7.2;

(vi) refer any matter arising out of the complaint or which has arisen from or during the panel's process to the Pastoral Relations Committee or the Moderator. The referral may contain the panel's recommendations about counselling, professional or focused supervision, training or other appropriate responses arising out of the complaint and investigation; and it may require reporting back to the panel for its further consideration and action;

(vii) enter into an Agreed Outcome.

(f) An Agreed Outcome:

(i) can only be entered into as a result of negotiations or following an appropriate, non-adversarial dispute resolution process;

(ii) must be intended to bind the parties to it;

(iii) may include, but is not limited to, undertakings by the Respondent to do any one or more of the following:

- accept the validity of the complaint, and apologise;
- provide financial restitution or compensation;
- undergo therapeutic or pastoral care or counselling;
- accept focused supervision;
- participate in courses of training; and

(iv) must not preclude the panel from referring the complaint to the Synod Committee for Discipline under paragraph (e)(vi) of this Regulation.

(g) Where the panel determines to refer the complaint or composite complaint for appropriate, non-adversarial dispute resolution, the panel must provide the report of its investigation, including any relevant documents, to the conciliator, mediator or person conducting the dispute resolution process.

(h) Where any of the terms of an Agreed Outcome are not fulfilled, the panel must determine what further action must be taken, including possible referral to the Committee for Discipline to be dealt with as a complaint under Regulation 5.7.2(b) or referral to another council or entity of the Church.

(i) The panel has jurisdiction to determine whether the terms of an Agreed Outcome have not been fulfilled and, for that purpose, may enquire into the issue of its own volition or on receiving information that the terms have not been fulfilled, as it sees fit.

(j) If all or any of the original panel members are no longer members of the Committee, the Chairperson may appoint another panel to enquire into and determine whether the terms of an Agreed Outcome have not been fulfilled.

(k) Where the panel makes a referral to the Synod Committee for Discipline, the panel must provide a report to the Synod Committee for Discipline of its process, including any relevant document received or created in the course of the investigation (such as, but not limited to, statements from witnesses).

(l) The panel must provide a copy of any Agreed Outcome and any other decisions to the Complainant, the Respondent, the Respondent's Presbytery Chair, and Synod.

5.6.11 PROCEDURAL FAIRNESS

(a) The panel must ensure that its process accords with the principles of procedural fairness.

(b) Nothing said in the course of discussions with any person appointed to undertake an alternative dispute resolution with the Respondent, must be given in evidence or used in any way in any proceedings before the Synod Committee for Discipline, or before any court or other tribunal whatsoever, except to the extent compellable by law.

(c) The record of an Agreed Outcome is part of the panel's records and may be given in evidence or used in any proceedings before the Synod Committee for Discipline.

5.6.12 THERAPY EXPENSES

(a) The panel may at any time recommend to the Moderator and the Synod Secretary that the Synod meet the expenses of therapy for the Complainant and/or the Respondent which relate to the circumstances of the complaint.

(b) Synod must determine whether it will meet the expenses, either in whole or in part, or whether they should be borne by the Complainant and/or Respondent.

5.6.13 CONFIDENTIALITY AND PRIVACY

(a) Subject to these Regulations, all parties involved in the process of dealing with a complaint under Part 5.6 must observe confidentiality.

(b) Panel meetings must be held in private, but the panel may permit any persons it thinks appropriate to attend its meetings.

(c) Unless authorised by the Chairperson or determined by the panel, no panel member, and no person attending a panel meeting or otherwise involved in the process, may divulge information about the complaint or the meeting.

(d) The panel may make reports to any persons it thinks appropriate, at any time, but must consider carefully whether it is at that time appropriate in all the circumstances and in the best interests of the Church to make the report.

(e) The Chairperson may, after consulting with the Complainant, the Chairperson of the Respondent's Presbytery, and the Moderator or Secretary of Synod, make public statements about the proceedings as the Chairperson considers appropriate.

(f) Appropriate information may, with the Chairperson's approval, be made available to a Congregation regarding the handling of any complaint.

(g) A breach of this Regulation by the Respondent may be referred to the Committee for Discipline under Regulation 5.7.2 (b).

(h) In resolving the complaint, the panel may take into account any breach of this Regulation by the Complainant.

5.6.14 APPEAL

(a) The Complainant or the Respondent may lodge an appeal:

(i) against a panel's determination under Regulation 5.6.10(e)(i); or

(ii) on the grounds that the panel has acted contrary to procedural fairness.

(b) An appeal on the grounds of a breach of procedural fairness may be lodged at any time, but no later than 14 days after the signing of an Agreed Outcome or being informed of a panel's determination under Regulation 5.6.10(e)(iv).

(c) The appeal is made to the Moderator, who must appoint an appeal committee of three persons to consider it. At least one member of the appeal committee must have legal expertise.

The appeal committee must either dismiss the appeal or, if it upholds the appeal, remit the complaint to the panel for its reconsideration. The appeal committee may recommend to the Chairperson whether the reconsideration should be undertaken by the panel that dealt with the complaint or a new panel.

(d) On receiving an appeal, the Moderator must inform the committees, councils and individuals involved of the pending appeal.

(e) The parties to the appeal must deal expeditiously with the appeal. Should a party not deal with the appeal expeditiously, the appeal committee may:

(i) in case of an Appellant—strike out the appeal; or

(ii) in the case of a Respondent—proceed to determine the matter on the material before it.

(f) Legal representation before the appeal committee is permitted only by leave of the appeal committee.

(g) For the purposes of this Regulation, the parties to the appeal are the Appellant (that is, the original Complainant or Respondent) and, where the Appellant is the original Complainant, the original Respondent is the Respondent to the appeal and, where the Appellant is the original Respondent, the Respondent to the appeal is the panel.

5.6.15 SUSPECTED SEXUAL MISCONDUCT

(a) Where the Moderator, the Synod Secretary, the chairperson of a Presbytery, or the Chairperson receives information that provides reasonable grounds for suspecting sexual misconduct by a Minister but no complaint has been made, that person must seek to take whatever steps are reasonable to clarify the matter.

(b) If, thereafter, that person considers that there are reasonable grounds for believing that sexual misconduct has occurred, that person must seek to ensure that a complaint is made.

5.6.16 NEW PLACEMENT

Except in special circumstances approved by the Chairperson of the Synod Sexual Misconduct Complaints Committee, a new placement of a Respondent must not be made, nor must a call to a Respondent be sustained, while the complaint has not been resolved or determined.

5.7 SYNOD COMMITTEE FOR DISCIPLINE (CFD)

5.7.1 APPOINTMENT

(a) The Synod must establish a committee to be known as the Committee for Discipline.

(b) The Committee must consist of not less than five persons appointed by the Synod and for terms of at least 3 years. Without derogating from the foregoing, the Synod may appoint one or more persons temporarily to the Committee if considered necessary or desirable.

Example 1: The Synod may consider it necessary to appoint a person temporarily to address shortages created by other members being conflicted.

Example 2: The Synod may consider it desirable to appoint a person temporarily as that person possess certain knowledge, experience or expertise considered relevant to a particular matter before the Committee.

The persons appointed to the Committee are to possess the appropriate skills and knowledge, as determined by Synod, to fulfill the functions of the Committee.

(c) No fewer than two members of the Committee must be Ministers and no fewer than two must be lay persons and, at the Synod's discretion, one member may be a person who is not a member or adherent and who is independent of the Church (the **independent member**).

(d) From amongst the members of the Committee, the Standing Committee must appoint a chairperson, and a person to convene the Committee and act as its secretary.

(e) The chairperson of the Committee is entitled to exercise a deliberative but not a casting vote.

(f) The Moderator, Synod Secretary and any person who is a member of the Committee for Counselling or the Synod Sexual Misconduct Complaints Committee cannot be a member of the Committee for Discipline.

(g) A Synod may appoint, as members of the Committee, members of the Church who are members of a Congregation beyond the bounds of the Synod.

(h) Any casual vacancy on the Committee is to be filled by a person appointed by the Standing Committee or, where time does not permit, by the Moderator.

(i) Synod must ensure that Committee members undertake annual professional development of 10 hours, relevant to discharging the Committee's functions. Members who undertake professional development outside of the Church that is relevant to discharging the Committee's functions may credit it towards these 10 hours.

5.7.2 COMPLAINTS

The Committee must consider any complaint to the effect that a Minister has:

(a) wilfully and persistently neglected the duties of a Minister;

(b) wilfully failed to:

(i) comply with any provision of the Constitution, of any Regulation, or any rule or resolution of the Church or any body of the Church, or
(ii) comply with any terms of an outcome reached through an alternative dispute resolution process or Agreed Outcome under Regulation 5.6.10, or
(iii) comply with any lawful direction of the Moderator made under Regulation 3.6.3.2(i), or
(iv) participate in the disciplinary process;

(c) advocated doctrine contrary to that which the Church has determined essential to the faith;

(d) engaged in grave conduct unworthy of a Minister; or

(e) wilfully failed to comply with the principles contained in any Code of Ethics approved by the Assembly or the Assembly Standing Committee;

which has been:

(i) referred to it by the Committee for Counselling or the Synod Sexual Misconduct Complaints Committee; or

(ii) made to it by a member of the Church at the direction of the Standing Committee or by the Secretary of a Synod at the direction of the Moderator, the Synod or its Standing Committee.

No other complaint may be considered by the Committee.

Note: Non-compliance with the provision immediately above does not invalidate a complaint.

The referral in (i) above must include:

(aa) a copy of the information that was before the relevant Committee and, if that information was given orally, a summary of the oral information;

(bb) the names and contact details of all persons who provided information to that Committee; and

(cc) a brief explanation of the reason for referral.

5.7.3 PROCEEDINGS BEFORE PANEL

(a) The chairperson must appoint the Committee members who will constitute the panel to deal with a particular complaint. The panel acts as and for the Committee for that purpose.

(b) The panel quorum is 3 members present during the entire proceedings, except as provided in paragraph (c). Unless the Respondent agrees, at least one member of the panel hearing the matter must be a Minister and at least one must be a lay person.

(c) If, between the time when the proceedings before the panel start and the time when the panel presents its report to the Standing Committee, a panel member engaged in considering the complaint, withdraws from the proceedings for any reason, the remaining panel members may continue to act, so long as at least two members are present and participating.

The proceedings before the panel are taken to have started on the day when the panel convened to hear the complaint receives the complaint.

(d) A panel member is taken to have withdrawn from the panel, if the member resigns or withdraws from the panel, or if the chairperson declares that the member is to be taken to have withdrawn because the chairperson is of the opinion that the member is unwilling or unable to continue to participate.

(e) Where the term of office of a Committee member expires and is not renewed, that member may continue to act as a panel member in any proceedings in which the member is participating.

5.7.4 PROCESS

(a) The Moderator must for the purposes of a proceeding before the panel appoint a person as advocate who will be responsible for presenting the case in support of the complaint. The Moderator may from time to time appoint a substitute advocate as required. The advocate must act on the instructions of the Moderator (or the Moderator's delegate) and must:

(i) deal with matters promptly and not cause unnecessary delay;

(ii) endeavour to limit the scope of proceedings wherever possible to issues of substance;

(iii) not contest matters which it accepts as correct, in particular by not requiring a party to prove a matter the Church knows to be true;

(iv) contest all spurious or vexatious assertions;

(v) claim legal professional privilege where appropriate;

(vi) claim public interest immunity to protect confidential information in appropriate cases; and

(vii) not institute and pursue appeals unless the person believes there are reasonable prospects for success, or believes that the appeal is otherwise justified in the interests of the Church.

(b) The advocate must give the Committee secretary written particulars of the complaint with which the panel is required to deal. The secretary must give a copy to the chairperson of the Committee, the Respondent, the Moderator, the Synod Secretary, and the chairperson of the Presbytery(ies) having oversight of the Respondent and of the Complainant (except where the Secretary of the Synod is the Complainant).

(c) On receiving the complaint, the Presbytery chairperson(s) of the Respondent and of the Complainant (if necessary), in consultation with others as the Presbytery chairperson(s) consider(s) appropriate, must arrange for the development of a Pastoral Strategy (as defined in Regulation 5.6.2) to help manage pastoral issues in relation to the Respondent, a Complainant who is not the Synod Secretary, and the Congregation or faith community. The Presbytery chairperson(s) must provide a copy of the Pastoral Strategy to the chairperson and secretary of the Committee.

(d) The chairperson of the panel dealing with the complaint may require the advocate to furnish fuller particulars of the complaint. Those further particulars must be distributed to the office holders in (b).

(e) The Standing Committee (or, in cases of urgency, the Moderator) must appoint or engage a legal assistant to the panel to attend proceedings and provide the panel with advice on procedure and other legal matters.

(f) The legal assistant must be a barrister or solicitor, a retired barrister or solicitor or, at the Moderator's discretion, another suitable person.

(g) The panel must act in accordance with the principles of procedural fairness and as expeditiously as possible. In its procedure and its decisions, it must be governed by equity and good conscience. It may inform itself in whatever manner it thinks fit in the circumstances (including seeking the assistance of a subject-matter expert, where considered relevant). It is not bound by the rules of evidence.

(h) Subject to paragraph (g) above, the panel may conduct the proceedings as it sees fit and may give any directions it considers appropriate as to how the proceedings will be conducted.

Example: The panel may give directions requiring the parties to: (a) provide witness statements and other documentary evidence by a specified date; (b) provide written submissions or an outline of the parties' case; or (c) provide copies of any authorities the party intends to rely upon.

(i) Without limiting the foregoing, the panel may:

(i) use electronic platforms or telephonic services to conduct its proceedings;

(ii) require the advocate to lead evidence or provide information about a particular issue;

(iii) hold preliminary meetings to:

(1) settle the issues, if any, in dispute;
(2) determine a timetable for the orderly progression of the proceedings;
(3) determine any challenges to the panel's jurisdiction to hear the complaint, or the validity of the proceedings, or any application to stay the proceedings; or
(4) determine any challenge to the sufficiency of the particulars of the complaint; and

(iv) refer the complaint or any matter that has arisen from or during the panel's process for alternative dispute resolution.

(j) The panel may make the determination it considers warranted in the circumstances.

Example: A Respondent takes issue with the alleged conduct particularised in the complaint and argues that due to inordinate and unexplained delay, the destruction of material documents and the death of the only material witness, they are so prejudiced in their defence that they cannot receive a fair hearing. The panel may determine to stay the proceedings.

(k) The panel may receive into evidence any report of the investigation by the Synod Sexual Misconduct Complaints Committee, provided that a copy of the report has been made available to the Respondent, the person who made the complaint to the Synod Sexual Misconduct Complaints Committee, and the advocate. The panel may give whatever weight as it thinks appropriate to the report's contents. The panel may receive into evidence any referral from the Synod Committee for Counselling under Regulation 5.5.1.4(c).

(l) The panel must hear the advocate and the Respondent and consider any material they desire to present, so long as the panel considers it to be sufficiently relevant to the issues in dispute. The panel must permit the advocate and the Respondent to call appropriate persons to testify before it on appropriate matters, provided the testimony is sufficiently relevant to the issues in dispute. Those persons may be cross-examined by the other party. However, unless the panel gives leave, the cross-examination must only be to clarify or amplify the persons' testimony or test their recollection.

(m) The advocate and the Respondent may appear personally before the panel or be represented legally or by another member of the Church. In addition, the Respondent may be accompanied by a support person, but that person has no right to speak or be heard, unless at the Respondent's request and with the panel's permission.

(n) If the Respondent does not appear, or fails to communicate with the panel, or fails to act in a timely manner, the panel may nevertheless proceed to determine the complaint.

(o) The proceedings before the panel must be recorded either manually or mechanically. Also:

(i) The panel may determine whether the record of evidence is to be transcribed.

(ii) The panel may determine to make the transcript available for examination by the advocate and by the Respondent (or by their representatives), and either may obtain a copy on paying the transcript cost.

(iii) If the panel determines that the record is not to be transcribed, the advocate or the Respondent may nevertheless require a transcript to be made and provided on paying the transcript cost.

(p) Proceedings before the panel must be held in private and are confidential. Unless the panel determines otherwise, no panel member and no other person who has been involved in the proceedings may divulge any information about the proceedings to any person, except:

(i) to the extent compellable by law; or

(ii) as permitted or required by these Regulations.

(q) The panel may at any time:

(i) refer all or any of the persons concerned for counselling in whatever manner it thinks fit; or

(ii) require all or any of those involved in the proceedings to attend a compulsory conference or alternative dispute resolution.

(r) The panel must consider the substantial merits of the case and record any findings of fact and other conclusions as it thinks necessary in the circumstances. The panel must then determine whether or not the complaint has been made out in full or in part. The panel need not confine its findings and conclusions to the matters set out in the complaint.

Example: Should a Respondent act in an unreasonably combative manner or deny the allegations ultimately proven, the Committee may take that conduct into account when determining the appropriate disciplinary action.

(s) The panel cannot hold a complaint to be made out, in full or in part, unless the majority of the panel members who dealt with the matter are satisfied on the balance of probabilities.

(t) Proceedings may continue, at the panel's discretion, despite the conclusion or termination of the placement, the Respondent's resignation from the ministry, the Respondent's retirement, or the Respondent's grant of leave of absence.

(u) As soon as practicable after the conclusion of the proceedings, the panel must notify the advocate, the Complainant, the Respondent, the Moderator and the Secretary of the Synod Standing Committee and, where applicable, the chairperson of the Synod Sexual Misconduct Complaints Committee or the Committee for Counselling, whether it has:

(i) dismissed the complaint;

(ii) found the complaint made out in full or in part;

(iii) finalised the proceedings due to the Respondent's resignation; or

(iv) finalised the proceedings as a result of a determination under (r);

and must supply each of them with a copy of its findings of fact and other conclusions.

(v) Where the panel finds the complaint made out in full or in part, it must, after giving the Respondent and, if it thinks fit, the advocate, an opportunity to be heard on the question of any disciplinary action to be taken, determine that:

(i) no action be taken;

(ii) the Respondent be admonished;

(iii) the Respondent be suspended from placement or candidature for the period and on the conditions it specifies;

(iv) the Respondent's placement or candidature be terminated;

(v) the Respondent be suspended from the exercise of all or any of the functions of a Minister for the period and on the conditions it determines; or

(vi) the Respondent's recognition as a Minister be withdrawn.

(w) The panel must take into account:

(i) any antecedent actions or omissions of the Respondent of which it is aware (including any prior disciplinary action) and which it considers sufficiently relevant to determining the appropriate disciplinary action. When considering what antecedent matters are sufficiently relevant, the panel may consider submissions of the Complainant, the Respondent and the advocate; and

(ii) interests of the Complainant and the Respondent and the values by which the Church lives,

and must notify the advocate, the Complainant, the Respondent, the Moderator, and the Secretary of the Synod of the disciplinary action imposed.

(x) The panel, whether it has dismissed the complaint or has found it made out in full or in part, may determine all or any of the following:

(i) to make written comment on any aspect of the proceedings in a report to the Standing Committee and/or the Presbytery exercising oversight of the Respondent;

(ii) to require the Respondent to undergo therapeutic or pastoral counselling;

(iii) to require the Respondent to undergo focused supervision;

(iv) to require the Respondent to participate in courses of training;

(v) to require the Respondent pay financial restitution; or

(vi) that the Respondent be stood aside from the exercise of all or any functions of a Minister on whatever conditions the panel determines.

The panel must notify the advocate, the Complainant, the Respondent, the Moderator, and the Secretary of the Synod, accordingly.

(y) The secretary of the Committee for Discipline must present a report of the proceedings to the Standing Committee.

(z) The report must contain the complaint and particulars, and the panel's findings and decisions, including the action taken under (v) and (x). The report must also include any other material the Committee considers appropriate.

(aa) The Secretary of the Synod must send a copy of the report to the Moderator, the Complainant, the advocate, the Respondent, and the Chairperson of the Presbytery which has oversight of the Respondent. Each recipient must keep the report confidential, not disclose it or any of its content to any other person (unless otherwise authorised or legally obliged to do so), and only use it for the purpose for which it was provided.

Note: Paragraphs (aa), 5.12.1(a) and 5.12.3(c) authorises various persons to make public statements and paragraph (bb) authorises a Presbytery Chairperson to make a statement to a Congregation or other relevant body about proceedings before the Committee for Discipline where the outcome of those proceedings affects that Congregation or other body.

(bb) After the Moderator or Secretary of the Synod has received the notice mentioned in (u), (w), or (x), or after the report mentioned in (y) has been presented to the Standing Committee, the Moderator or the Secretary of the Synod may make a public statement about the proceedings.

(cc) After the chairperson of Presbytery has received a copy of the report mentioned in (aa), the chairperson may make a statement to a Congregation or to relevant bodies about the proceedings, if the chairperson considers it appropriate. Regardless of whether the chairperson makes a statement, the chairperson must ensure appropriate pastoral support for those Congregations or bodies.

(dd) The Standing Committee must take whatever action it considers necessary to implement the decision of the panel acting as the Committee for Discipline, and must advise the Respondent and the Presbytery. The Standing Committee may determine the date on which any disciplinary or other action is to become effective, including adopting a staged approach to implementation.

(ee) The Church must pay the expenses properly incurred by the advocate. The panel may certify that it is reasonable in the circumstances that the Church pay the Respondent's expenses in whole, or in part, or to a specified amount. The Standing Committee must determine the funds from which the expenses will be paid.

5.7.5 APPEAL FROM THE PANEL

The advocate, Complainant or Respondent may appeal to the Synod from the decision of the panel acting as the Committee for Discipline. The Synod must refer the matter to the Convenor of the Standing Appeal Panel to be dealt with under Part 6 of these Regulations.

5.7.6 STAY OF PROCEEDINGS

Where the Standing Committee has referred an appeal in accordance with Regulation 5.7.5, the Standing Committee may determine that the operation of any decisions made or actions taken under Regulations 5.7.4(v) or (x) be suspended on the conditions it thinks appropriate until the appeal is determined.

5.8. ALIGNMENT WITH OTHER PROCESSES AND EXTERNAL OBLIGATIONS

5.8.1 Consideration of Available Options

Where the substance of a complaint is also being dealt with under another process, the entity responsible for dealing with the complaint may:

(a) hold the complaint in abeyance pending the outcome of that other process;

(b) have regard to the outcome of that other process, if considered relevant; or

(c) proceed to deal with the complaint, regardless of the other process or its outcome.

Example 1: The substance of the complaint may also be the subject of a HR grievance, a WHS investigation, a civil action, an application to the Fair Work Commission, or the subject of a whistle-blower investigation. If, for the purposes of this example, the substance of the complaint was also the subject of a whistle-blower investigation, the entity responsible for dealing with the complaint may determine to hold the complaint in abeyance pending the outcome of the whistle-blower investigation and any action taken against a Respondent arising out of that investigation.

Example 2: The substance of the complaint is also the subject of a complaint to the Police. The entity responsible for dealing with the complaint can ask the Police about any concerns they may have about the continuation of the Church's complaint and disciplinary process on the police investigation and any subsequent prosecution, and can take those concerns into account in determining what to do.

5.8.2 Provision of Information

The entity responsible for dealing with a complaint may provide all or part of any information that has come into its possession to an external agency that has an obligation under its governing law to deal with the substance of the alleged conduct.

Example 1: The substance of the complaint is also the subject of a complaint to the Police. The entity responsible for dealing with the complaint can provide information to the Police to help in the police investigation and any subsequent prosecution.

5.9 CONFLICTS OF INTEREST

5.9.1 Duty to Avoid

All persons who constitute the entity that has jurisdiction to deal with a complaint must take all reasonable steps to avoid any:

(a) actual, potential or perceived conflict of interest; or

(b) actual or reasonable appearance of bias.

Example: The Presbytery Chairperson should not be involved in any deliberative process or determination about a complaint the Chairperson has referred to the PRC.

5.9.2 Effect of Failure to Avoid Conflict

A failure by any person to comply with Regulation 5.9.1 vitiates the decision. The matter may be considered afresh by the entity that has jurisdiction to deal with that complaint, this time without the conflicted or biased person.

5.9.3 Notifying Entity of Conflict and Duty to Consider Notification of Conflict

(a) A Complainant or Respondent who considers that a person has an actual, potential or perceived conflict of interest, or actual or reasonable appearance of bias, may notify the entity that has jurisdiction to deal with the complaint of the alleged conflict or bias and the grounds for their view.
(b) That entity must consider the matter and determine whether the person in question has or had an actual, potential or perceived conflict of interest or actual or reasonable appearance of bias, and must inform the Complainant or Respondent of its determination and the proposed remedial action, if any.

5.10 REFFERALS, TRANSFERS AND DELEGATIONS

5.10.1 Constitutional power to refer (etc)

This Part 5.10 is based on clause 70 of the Constitution, which authorises certain bodies to refer, delegate or transfer their powers and responsibilities to certain other bodies.

Example 1: The powers and responsibilities of a Synod to deal with a complaint against its Moderator may be transferred to another Synod with the consent of the other Synod under clause 70(d) of the Constitution.

Example 2: A Presbytery responsible for dealing with a complaint may refer its powers and responsibilities to deal with the complaint to the Synod or to another Presbytery with the consent of the Synod or Presbytery concerned under clause 70(a) of the Constitution.

5.10.2 Power to Delegate

To the extent allowed under clause 70 of the Constitution, an entity ('the first entity') responsible for dealing with a complaint under this Part may refer, delegate or transfer its powers and responsibilities to deal with the complaint to another entity ('the second entity') on the terms and conditions the first entity considers appropriate. The second entity may be an entity outside of the delegator's bounds.

5.10.3 Decision of Referrer, Delegator or Transferor

The decision of the second entity is taken to be the decision of the first entity.

5.11 VEXATIOUS COMPLAINANTS

5.11.1 Vexatious Complainant Determination

The Synod or the Standing Committee may determine, on whatever terms and conditions it thinks fit, that an individual is a vexatious complainant, where it is satisfied:

(a) (i) that individual; or

(ii) someone acting on that individual's behalf;

(b) has repeatedly made complaints that have been determined by the entity responsible for dealing with the complaint, to warrant no action, or no further action, on a ground that includes the complaint was:

(i) an inappropriate use, misuse or abuse of the complaint process; or

(ii) made to harass or annoy, or to cause delay or detriment, or for another wrongful purpose; or

(iii) made without reasonable ground; or

(iv) frivolous, vexatious, or misconceived.

5.11.2 Process

The Synod or Standing Committee must:

(a) advise the individual:

(i) that it is considering whether to determine that individual is a vexatious complainant;

(ii) the ground on which it is relying; and

(iii) of the material it will be considering; and

(b) afford that individual an opportunity to make written submissions to it on the matter.

5.11.3 Effect of Determination

(a) The determination referred to in Regulation 5.11.1 has the effect, subject to its terms and conditions, that:

(i) any current or future complaint made by that individual need not be dealt with by the entity responsible for dealing with the complaint, and

(ii) that entity need not take any action, or any further action, in relation to the complaint (other than to inform the individual that it will not be taking any action, or any further action, in relation to the complaint).

(b) The determination referred to in Regulation 5.11.1 may be on whatever terms and conditions the Synod or Standing Committee considers appropriate, including (but not limited to) that its determination will only operate in one or more of the following ways:

(i) in relation to complaints in relation to a particular matter;

(ii) in relation to complaints against a particular person;

(iii) in relation to complaints made during a specified period; or

(iv) from a specified date.

5.11.5 Notice

Where a Synod or Standing Committee determines an individual to be a vexatious complainant, the Standing Committee must give a notice to the individual setting out:

(a) the determination;

(b) the ground of the determination;

(c) the findings on material questions of facts; and

(d) the date from which the determination will become operative.

5.11.6 No Appeal

No appeal lies from the decision of the Synod or Standing Committee.

5.11.7 Ambit of information that may be considered

To remove any doubt, a Synod or Standing Committee may consider all complaints made by the individual in question, or by someone acting on that individual's behalf, regardless of the jurisdiction in which the complaint was made or the subject matter of the complaint.

5.12 MISCELLANEOUS

5.12.1 MODERATOR'S POWERS AND ROLE

(a) The Moderator may, in the exercise of the Moderator's duties and responsibilities under Regulation 3.6.3.2(i), at any time after a complaint is made and on terms the Moderator considers appropriate, stand aside a Respondent from the performance of ministerial duties until all processes relating to the complaint under Part 5 of the Regulations have concluded, if the Moderator considers the action necessary for the well-being of the Church. The Moderator may inform people of the action, and the reasons for taking the action, as the Moderator considers necessary in all the circumstances.

The Moderator may terminate the standing aside at any time.

(b) The standing aside does not deprive the Respondent of stipend, allowances and the use of any residence occupied by the Respondent, who must properly assist any person responsible for carrying on in the meantime the duties attaching to the Respondent's placement.

(c) On receiving a complaint referred under Regulations 5.3.3(c), 5.4.1(c), or 5.4.4.2(e)), the Moderator may determine how the complaint should be dealt with, including, but not limited to, whether:

(i) to refer the complaint back to the Presbytery to be dealt with, including by way of further enquiry to ascertain the facts;

(ii) to refer the complaint to the Committee for Counselling to be dealt with;

(iii) to direct the Secretary to make a complaint to the Committee for Discipline.

5.12.2 RESIGNATION OF RESPONDENT

(a) A Respondent, whose placement has been concluded or been terminated, normally remains under the pastoral and administrative oversight of the Presbytery in which the Respondent was enrolled at the time of the complaint. Subject to these Regulations, that Presbytery is responsible for counselling and disciplining the Respondent about the complaint and its processing.

(b) A Presbytery must not accept a Respondent's resignation from the ministry before all processes relating to a complaint under Part 5 of the Regulations have concluded, unless the Presbytery determines that there are special circumstances and the Moderator approves the Presbytery's determination.

(c) A complaint may continue to be processed under these Regulations, despite the conclusion or termination of the placement, the Respondent's resignation from the ministry, the Respondent's retirement, or the Respondent's grant of leave of absence.

5.12.3 WITHDRAWAL OF MINISTER'S RECOGNITION

(a) If the Respondent's recognition is withdrawn, the Respondent's stipend and other allowances continue to accrue for 30 days after the Standing Committee meeting at which the report under Regulation 5.7.4(y) is presented. The Respondent must vacate any housing as soon as possible, but in any case within that 30 days**.**

(b) Payments made from other Church funds must be determined in accordance with the Regulations governing those funds. However, any period during which a Respondent is stood aside under Regulation 5.12.1(a) must not be included in the determination of the length of ministerial service.

The Moderator (or the Secretary of the Synod on the Moderator's behalf) may make a public statement about the Minister's withdrawal of recognition as the Moderator (or Secretary) considers appropriate.