

THE UNITING CHURCH IN AUSTRALIA

REGULATIONS

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DEFINITIONS

Unless the context or subject matter otherwise indicates, the definitions in Paragraph 3 of the Constitution shall apply to words when used in the Regulations and —

Beneficiary Fund means the Beneficiary Fund established pursuant to Regulation 3.1.6(d);

Code of Ethics means the Code of Ethics for Candidates, Community Ministers, Deacons, Deaconesses, Interns, Lay Pastors, Ministers of the Word, Pastors, Youth Workers and Ministers from another denomination serving in an approved placement relating to their professional and pastoral responsibilities, as approved by the Assembly or the Assembly Standing Committee from time to time;

Policies for the Prevention of Sexual Misconduct means those policies approved by the Assembly or the Assembly Standing Committee from time to time to deal with allegations of sexual misconduct against lay staff of the Church and its agencies, against members, adherents and volunteers, and against members in positions of leadership or responsibility;

Professional Supervision means the relationship a Minister has with another professional whereby the Minister is assisted to maintain the boundaries of the pastoral relationship and the quality of their ministry;

Responsible body means any body of the Church to which specific responsibilities are assigned by the Constitution or by any Regulation, by-law or rule;

Youth Worker means a person accredited by the Church to the specified ministry of Youth Worker.

Words in the singular shall include the plural and vice versa. Reference to a **Congregation** may thus refer to more than one Congregation where those Congregations are linked together for particular purposes.

[NOTE:

– the word “Korean” in brackets after a Regulation indicates that there is an approved alternative Regulation for Korean congregations. The alternative Regulations are found elsewhere in this publication.]

accordance with Regulations 4.11.10(a),(b), (c) and (d); and

- (ii) The appeal shall be heard by an appeal panel constituted under Part 6 of these Regulations.

4.11.11 The Assembly determines that the body corporate allowed for in paragraph 56 of the Constitution shall be UCA Assembly Ltd.

5. CHURCH DISCIPLINE

5.1 DEFINITIONS

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

Complainant means the person who is making a complaint;

Complaint means a complaint about the conduct, teaching or ministry of a Minister;

Minister means a Minister as defined in Paragraph 3 of the Constitution, and also includes a Community Minister, Lay Pastor, Youth Worker, Pastor, Synod Secretary, Moderator, Assembly General Secretary, President, Presbytery Minister and a minister of another denomination serving in a placement;

Pastoral Relations Committee means the Pastoral Relations Committee of the Presbytery;

Respondent means a Minister against whom a complaint has been made;

Standing Committee means the Standing Committee of the Synod.

DISCIPLINE IN THE CHURCH

5.1.2 Discipline in the Church is the exercise of spiritual authority with a view to honouring Christ the Head of the Church and ensuring the spiritual well-being of its members.

BY WHOM EXERCISED

~~5.1.3 Discipline is to be exercised by the Church Council on behalf of the Congregation in the case of members, except in the case of allegations of sexual misconduct, and by the Presbytery and Synod in the case of Ministers.~~

5.1.3 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 allegations of sexual misconduct;
- (b) The Presbytery when a Presbytery determines a Church Council has not adequately dealt with a discipline matter in relation to a member or adherent of the Congregation;
- (c) The Presbytery upon a request of a Church Council if the Church Council considers it is not able to deal with a concern due to a member's or adherent's involvement in the Congregation;
- (d) The Presbytery and Synod in the case of Ministers.

5.2 THE DISCIPLINE OF MEMBERS

PASTORAL CARE OF MEMBERS

- 5.2.1 (a) In cases where:
- (i) in the opinion of the Church Council, any member of the Church appears to disregard the privileges and obligations of membership or to disregard the discipline of the Church; or
 - (ii) a formal complaint has been received about a member by a member of the Church Council;

the Council shall endeavour by visitation and pastoral counsel to restore the relationship of the member to the life of the Church.

- (b) Any member who declines to renew a satisfactory relationship with the life of the Church shall be advised of the possibility that the name of that member may be removed from the membership roll and shall be given opportunity either in person or in writing to make a submission on the matter to the Church Council.
- (c) Should that member be a member of the Church Council, and that member declines to renew a satisfactory

relationship with the life of the Church subsequent to visitation and pastoral counsel in accordance with Regulation 5.2.1 (a) that member may be requested by the Church Council to resign his or her position to that body and cease all responsibilities associated with that position prior to a decision being made regarding removal of the name of that member from the membership roll.

SUSPENSION OR TERMINATION OF MEMBERSHIP

5.2.2 Where the Church Council has determined that the member has failed to respond to the pastoral care and invitation to renew a satisfactory relationship with the life of the Church, the Church Council may:

- (a) suspend the rights and privileges of membership; or
- (b) remove the name of the member from the membership roll.

The member shall be notified in writing of any such action.

RIGHT OF APPEAL

5.2.3 (a) A person whose membership rights and privileges have been suspended, or whose name has been removed from the membership roll, may within one month after receipt of the notification in writing require reconsideration by the Church Council. If not satisfied with the outcome of such reconsideration as notified in writing, the person may within one month after receipt of the notification, appeal to the Presbytery by notice in writing. The Presbytery, either itself or by a committee appointed for the purpose, shall determine the matter.

There shall be no right of further appeal.

The person concerned may make a submission personally or in writing to the body considering the matter.

- (b) In the event of an appeal of a member being sustained the member's name shall be returned to the roll of members and the suspension removed forthwith.

RESTORATION OF MEMBERSHIP

- 5.2.4** (a) A person whose name has been removed from the roll of a Congregation pursuant to Regulations may have it reinstated by a decision of the Church Council.
- (b) A person whose name has been removed from a membership roll of a Congregation for disciplinary reasons shall not be enrolled as a member of any other Congregation without the prior knowledge of and advice from the council which is responsible for the maintenance of the roll from which the person's name was removed.

ALLEGATIONS OF SEXUAL MISCONDUCT AGAINST MEMBERS OR ADHERENTS

- 5.2.5** (a) Where a complaint of sexual misconduct is made against a member or adherent the Policies for the Prevention of Sexual Misconduct shall apply, to the exclusion of the process outlined in Regulation 5.2.1.
- (b) The Policies for the Prevention of Sexual Misconduct are binding documents of the Church and require 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 Presbytery and the Church Council shall ensure that the relevant policy is adhered to.

5.3 THE DISCIPLINE OF OFFICERS

RESPONSIBILITY OF OFFICERS

- 5.3** Any person appointed to hold office within the Church shall, unless otherwise provided, be responsible to the body making the appointment as to the manner in which the duties of that office are performed.

5.4 THE COUNSELLING AND DISCIPLINING OF MINISTERS

COMPLAINTS

- 5.4.1** A complaint may be made:

- (a) to the chairperson of the Presbytery:
 - (i) by any member of the Church, provided that in the case of a complaint regarding the chairperson of the Presbytery (being a Minister) it shall be made to the secretary of the Presbytery who shall refer the complaint to the Synod Committee for Counselling and report the referral to the Pastoral Relations Committee; or
 - (ii) by the secretary of a Presbytery when so directed by the Presbytery; or
- (b) to the Synod Committee for Counselling by the Secretary of the Synod if so directed by the Moderator, the Synod or its Standing Committee.

RESPONSIBILITIES OF THE PRESBYTERY

5.4.2 Subject to these Regulations, the counselling and discipline of Ministers shall be the responsibility of the Presbytery and in the exercise of such responsibility it shall:

- (a) help them to discern and fulfil their vocations;
- (b) assist them in the nurturing of their gifts;
- (c) provide encouragement and counsel for the enrichment of their ministry;
- (d) advise, admonish, correct and assist them where they appear to require guidance and support;
- (e) assist and encourage observance of the Code of Ethics;
- (f) advise and discipline Ministers in relation to breaches of the Code of Ethics; and
- (g) deal with complaints made against them.

RESPONSIBILITIES OF PASTORAL RELATIONS COMMITTEE

5.4.3 (a) The Pastoral Relations Committee shall, at such intervals as the Presbytery may determine, counsel each Minister under its oversight.

- (b) If the Pastoral Relations Committee be concerned that a Minister does not continue to hold to the affirmations and undertakings made at ordination or setting apart, it shall report to the Presbytery, which may take such further action by way of counselling or otherwise as it thinks fit.
- (c) The chairperson of the Presbytery shall refer to the Pastoral Relations Committee any complaint
 - (i) with which the chairperson is unable to deal with adequately by counselling; or
 - (ii) which in the chairperson's opinion, warrants no further action.
- (d) The Pastoral Relations Committee shall:
 - (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; and
 - (iii) report to the Presbytery.
- (e) At any stage after a complaint is referred to it, the Pastoral Relations Committee may determine that the complaint warrants no further action.
- (f) When requested by the respondent or by the complainant or where it considers it is necessary to do so, the Pastoral Relations Committee shall refer the complaint to the Synod Committee for Counselling.

5.5 SYNOD COMMITTEE FOR COUNSELLING

- 5.5** (a) The Synod shall appoint a committee to be known as the Committee for Counselling and shall appoint its chairperson.
- (b) The Moderator and the Secretary of the Synod shall not be eligible for membership of the Committee.
- (c) Members of the Committee shall hold office for a term of three years and shall be eligible for reappointment.

- (d) A Synod may appoint members of the Church who are members of a Congregation beyond the bounds of the Synod as members of its Committee for Counselling.
- (e) The chairperson or the chairperson's nominee shall chair the Committee and convene its meetings.
- (f) Three members of the Committee shall constitute a quorum. The members of the Committee who shall constitute the Committee for the purposes of dealing with a particular complaint shall be determined by the chairperson.
- (g)
 - (i) Where at any stage a member of the Committee, who is one of the Committee dealing with a complaint, withdraws, the remaining members of the Committee may continue to act, so long as at least three members are present and participating.
 - (ii) A person shall be taken to have withdrawn for the purposes of this Regulation, if that person, for any reason, be unwilling or unable to continue to participate.
 - (iii) Where the term of office of a member of the Committee expires and is not renewed, such member may, notwithstanding that membership of the Committee has ceased, continue to act as a member of the Committee dealing with a particular complaint with which the Committee had been dealing prior to that cessation but which had not been finalised prior thereto.
- (h) In dealing with any complaint referred or made to it the Committee shall counsel and confer with the Respondent, the Complainant and such other persons as it considers desirable with a view to resolving the matter amicably, and make reports to the Synod, the Presbytery and other bodies as it thinks appropriate.
- (i) At any stage after a complaint is referred to it, the Committee may determine that the complaint warrants no further action.

- (j) If the Committee be satisfied that the matter cannot be dealt with adequately by counselling and that the complaint warrants further action it shall refer the matter to the Committee for Discipline.

5.6 SYNOD SEXUAL MISCONDUCT COMPLAINTS COMMITTEE

INTRODUCTION

- 5.6.1** The Church addresses allegations of sexual misconduct through two distinct processes.

The first process is undertaken by Sexual Misconduct Complaints Committee (SSMCC). It engages with the Complainant, the person against whom the complaint is made and, where necessary, affected persons and Church officers, by investigating the complaint 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, mediation and collaborative resolution. Legal representation is not permitted before the SSMCC.

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 similar to the process a court undertakes. The person against whom the complaint is made may be represented by a lawyer or by a member of the Church before the Committee for Discipline. The Committee for Discipline makes findings of fact and may determine disciplinary outcomes affecting the person against whom the complaint is made.

DEFINITIONS

- 5.6.2** 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 and the Respondent and any other affected person who joins in the agreement at the invitation of the Committee 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 person acting as Chairperson;

Committee means the Synod Sexual Misconduct Complaints Committee appointed by the Synod pursuant to Regulation 5.6.4;

Complaint means a written, signed complaint of sexual misconduct against a Minister which includes a request that the matter be investigated. 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 Candidate (as that term is defined in Regulation 2.1.1) involved in field education;

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 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 the management of the complaints process, including the care for the Congregation or faith community and how matters of confidentiality shall be addressed;

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

Procedural Fairness refers to the matters set out in Regulation 5.6.11(a);

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 makes a person 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, which is in breach of the Code of Ethics.;

Support person means the 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 the Presbytery, in which the Minister is enrolled, falls.

COMPLAINTS OF SEXUAL MISCONDUCT

- 5.6.3** (a) Where a complaint of sexual misconduct is made against a Minister the procedures in Regulations 5.6.3 to 5.6.18 inclusive shall apply to the exclusion of the procedures contained in Regulations 5.4.1 to 5.5.1 inclusive.

- (b) The Chairperson shall determine whether any allegations contained in a complaint amount to a complaint of sexual misconduct against a Minister. The Chairperson shall give written notice of the determination to the Complainant and the Respondent within 14 days of the determination being made.
- (c) When a complaint which is determined by the Chairperson to be a complaint of sexual misconduct includes other matters of complaint of a non sexual nature, the Chairperson may determine that the whole complaint shall be dealt with by the Committee.

COMMITTEE

- 5.6.4** (a) The Standing Committee shall appoint a Committee to be known as the Synod Sexual Misconduct Complaints Committee and shall appoint its Chairperson. The Standing Committee may also appoint a Deputy Chairperson. Appointments shall be for a term of up to three years.

Other persons may be co-opted to membership of the Committee 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 three (3) years or for the purpose of serving on a panel to deal with a particular complaint.

- (b) A Synod may delegate these appointments to another Synod by written agreements between the Synods.
- (c) The Committee shall consist of not fewer than three persons and shall include:
 - (i) at least one member with expertise in sexual abuse issues;
 - (ii) at least one member who is considered skilled in mediation and conciliation.

- (d) Not less than 25 percent of the members of the Committee shall be Ministers, and not less than 25 percent shall be lay persons.
- (e) The members of the Committee 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.
- (f) The majority of the Committee shall be women.
- (g) The Chairperson shall be a member of the Church and shall preferably be a woman.
- (h) If a Deputy Chairperson is appointed, the Deputy Chairperson shall fulfil the responsibilities of the Chairperson when the Chairperson is unavailable, unable or unwilling to act.
- (i) The quorum of a panel selected by the Chairperson from amongst the members of the Committee to deal with a particular complaint shall, subject to paragraph (j) of this Regulation, be three, of whom the majority shall be members of the Church and normally the majority shall be women.
- (j) Where any member withdraws the remaining members of the panel may continue to act provided that the number of remaining members is not less than two (2).
- (k) Unless the Standing Committee considers that there are special circumstances no member shall serve for more than nine years consecutively.
- (l) Neither the Moderator, the Synod Secretary nor any member of the Committee for Discipline shall be a member of the Committee.
- (m) The Chairperson or the Chairperson's nominee shall chair the panel selected to deal with a complaint and convene its meetings.
- (n) The Synod shall arrange training for the members of the Committee.

- (o) Members of the Committee may be drawn from any Synod provided written agreement has been reached between the Synods.
- (p) A panel selected to deal with a complaint shall be, and have the powers of, the Committee for the purpose of dealing with that complaint, and may agree to deal jointly with more than one complaint against the same Respondent including a separate complaint made pursuant to Regulation 5.6.10 (e) (iii) or a composite complaint made pursuant to Regulation 5.6.10 (e) (iii) in such manner as it shall decide.

ADVISERS

- 5.6.5**
- (a) The Standing Committee shall appoint advisers. In cases of urgency the Synod Secretary, on the advice of the Convenor, may appoint advisers. The Synod shall arrange training for the advisers.
 - (b) To be eligible for appointment an adviser shall 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 shall have expertise in the area of child sexual abuse and at least one contact person or adviser shall have expertise in working with male victims.
 - (d) The Convenor may designate an adviser to provide assistance to a person concerned about conduct which may amount to sexual misconduct before a complaint has been made.
 - (e) An adviser, depending upon the assistance required, will 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 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) assist a person to make a complaint.
- (f) An adviser shall not be responsible for investigating or seeking to resolve a complaint.
- (g) An adviser who is designated to a Complainant or a Respondent, will seek to:
- (i) assist the Complainant in processing a complaint or the Respondent in facing a complaint through Church procedures;
 - (ii) ensure that 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 the appointment of any adviser.

CONVENOR OF ADVISERS

- 5.6.6** (a) The Synod shall appoint the Convenor.
- (b) When a complaint is made, the Convenor shall offer to designate an adviser to each of the Complainant and the Respondent. The designation shall be made if the Complainant or Respondent concurs with the designation.

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

MAKING A COMPLAINT

- 5.6.7**
- (a) Anyone who wishes to make a complaint may do so to the chairperson of the Presbytery, the Presbytery Minister, the Moderator, the Synod Secretary, or the Chairperson of the Committee.
 - (b) A complaint must be put in writing and signed and include a request that the matter be investigated.
 - (c) A complaint shall be referred to the Chairperson as soon as possible.
 - (d) Nothing in these Regulations shall prevent a person from making an informal approach, orally or in writing, to any of the persons referred to in (a) for advice or information with respect to sexual misconduct. Such an approach cannot become a complaint unless it is put in writing with a request that the complaint be investigated.
 - (e) Where a complaint relates to a Respondent's prior service within the bounds of another Synod the complaint shall 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 shall deal with the complaint.

RECEIVING A COMPLAINT

- 5.6.8**
- (a) As soon as possible after receiving the complaint, the Chairperson shall inform the Respondent of the complaint; initially in person or by telephone, followed by a letter giving details of the complaint.

- (b) The Chairperson shall give prompt confidential notice of the complaint together with relevant information to the Synod Secretary, the Moderator, the chairperson of the Presbytery of the Respondent, the Convenor and where appropriate the chairperson of the Presbytery of the Complainant.
- (c) Upon receipt of 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 will arrange for the development of a Pastoral Strategy to assist in managing pastoral issues in relation to the Congregation or faith community.

ATTENDANCE AT MEETINGS

- 5.6.9**
- (a) Each of the Complainant and the Respondent, attending any meeting of or arranged by the Committee, may be accompanied by their adviser and by a person providing emotional support.
 - (b) The person providing emotional support shall not have the right to speak at any meeting unless at the request or with the consent of the person supported, and invited to do so by the chairperson of the panel of the Committee that is dealing with the complaint.
 - (c) The Complainant and the Respondent shall not be legally represented before the Committee.

INVESTIGATION AND RESPONSE TO COMPLAINTS

- 5.6.10**
- (a) Where the Chairperson determines that allegations contained in a complaint amount to a complaint of sexual misconduct against a Minister, the complaint shall be investigated and dealt with by the Committee 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 Chairperson may appoint a person or persons to investigate matters connected with the complaint and report to the Committee.

- (b) In exercising its responsibilities under these Regulations, the Committee shall have regard to the following guidelines:-
- (i) it shall endeavour to act pastorally in its dealings with the Complainant, the Respondent and other affected persons;
 - (ii) it shall seek an Agreed Outcome that encourages healing and maintains the integrity of ministry of the Church;
 - (iii) it shall make use of the tools of conversation, enquiry, mediation and collaborative resolution in seeking an Agreed Outcome; and
 - (iv) it shall not act as an adjudicative body but shall only form opinions on issues of fact when necessary for the purpose of deciding on action to be taken pursuant to paragraph (e) of this Regulation.
- (c) The nature of the investigation shall be by inquiry and not be adversarial and the Committee may inform itself in such manner as it sees fit. The investigation may proceed without both parties being present as the Committee sees fit.
- (d) The Committee shall 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 its investigation the Committee may:
- (i) determine that the complaint warrants no further action on the ground that it is frivolous, vexatious, misconceived or unable to be substantiated and the Committee must give written notice of such determination to the Complainant and the Respondent within 14 days of the determination being made;
 - (ii) consider allegations of, or information regarding, other conduct of the Respondent of which the Committee becomes aware and which it considers should be dealt with in conjunction with the complaint;

- (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 Committee has become aware, or to cause a composite complaint to be made including the allegations which were made in the initial complaint and additional allegations or information from other persons or complainants;
 - (iv) refer the complaint or a matter which has arisen from or during the Committee's process for conciliation or mediation;
 - (v) refer the complaint or a matter which has arisen from or during the Committee's process to the Synod Committee for Discipline to be dealt with as a complaint under Regulation 5.7.2;
 - (vi) refer a matter arising out of the complaint or which has arisen from or during the Committee's process to the Pastoral Relations Committee or the Moderator; the referral may contain recommendations by the Committee concerning counselling, professional supervision, training or other appropriate responses arising out of the complaint and investigation; and may require reporting back to the Committee for further consideration and action by the Committee; and enter into an Agreed Outcome.
- (f) An Agreed Outcome:
- (i) shall be entered into as a result of negotiations or following a mediation or conciliation;
 - (ii) shall bind the parties to it;
 - (iii) may include, but is not limited to, undertakings by the Respondent to:
 - accept the validity of the complaint, and apologise;
 - provide financial restitution;
 - undergo therapeutic or pastoral counselling;
 - accept supervision; and
 - participate in courses of training; and
 - (iv) shall not preclude the Committee from referring the complaint to the Synod Committee for Discipline under paragraph (e) (v) of this Regulation.

- (g) Where the Committee determines to refer the complaint or a matter which has arisen from or during the Committee process for conciliation or mediation, the Committee shall provide the report of its investigation, including any relevant documents, to the conciliator or mediator.
- (h) Where any of the terms of an Agreed Outcome are not fulfilled, the Committee shall determine what further action shall 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 of the Church.
- (i) Where the Committee makes a referral to the Synod Committee for Discipline, the Committee shall provide a report of its investigation, including any relevant document received or created in the course of the investigation, including but not limited to a signed statement from any witness, to the Synod Committee for Discipline.
- (j) A copy of any Agreed Outcome and any other decisions will be provided to the Complainant and the Respondent.

PROCEDURAL FAIRNESS

- 5.6.11** (a) The Committee will ensure that:
- (i) the Respondent is given sufficient information regarding the complaint to know what is being alleged;
 - (ii) the Respondent is given the opportunity and sufficient time to prepare and present a response;
 - (iii) no person who is closely associated with the Complainant or Respondent shall participate as a member of the Committee in relation to that complaint.
- (b) Nothing which is said in the course of discussions with any person appointed to conciliate with any party, shall 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 shall be part of the Committee's records and may be given in evidence or used in any proceedings before the Synod Committee for Discipline.

RESIGNATION

5.6.12 (a) A Respondent, whose placement has been concluded, shall normally remain under the pastoral and administrative oversight of the Presbytery in which the Respondent was enrolled at the time of the complaint and, subject to these Regulations, that Presbytery shall be responsible for the counselling and discipline of the Respondent with reference to the complaint and for the processing thereof.

- (a) A Presbytery shall not accept the resignation from the ministry by a Respondent before the conclusion of all processes relating to a complaint under Regulations 5.5.1ff and, in the case of a complaint referred under Regulation 5.6.10(e)(v), the conclusion of all processes relating to the complaint under Regulations 5.7.1ff, unless the Presbytery determines that there are special circumstances which are approved by the Chairperson.

- (c) A complaint may continue to be processed under these Regulations, notwithstanding the conclusion or termination of the placement, the resignation of a Respondent from the ministry, the retirement of the Respondent or the granting to the Respondent of leave of absence.

THERAPY EXPENSES

5.6.13 (a) The Committee may at any time where it feels it is appropriate, 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) Such expenses shall be met from Synod funds.

CONFIDENTIALITY AND PRIVACY

- 5.6.14** (a) Subject to these Regulations confidentiality shall be observed by all parties.
- (b) Proceedings before the Committee shall be held in private but the Committee may permit such persons as it thinks fit to attend meetings of the Committee.
- (c) Unless otherwise authorised by the Chairperson or otherwise determined by the Committee no member of the Committee or any person attending a meeting thereof shall divulge outside the Committee any information concerning the complaint or the proceedings.
- (d) The Committee may make reports to such persons as it thinks fit, at any time, but shall consider carefully whether it is at that time appropriate in all the circumstances and in the best interests of the Church.
- (e) The Chairperson may make such public statement concerning the proceedings as the Committee considers appropriate.
- (f) Appropriate information may, with the approval of the Chairperson, be made available to a Congregation regarding the handling of any complaint.
- (g) A breach of confidentiality by the Respondent may be referred to the Committee for Discipline under Regulation 5.7.2 (b).
- (h) A breach of confidentiality by the Complainant may be taken into account by the Committee in its resolution of the Complaint.

APPEAL

- 5.6.15** (a) The Complainant or the Respondent may lodge an appeal:
- (i) against a determination by the Chairperson made pursuant to Regulation 5.6. 3(b) ;
- (ii) against a determination by the Committee made pursuant to Regulation 5.6.10(e)(i); or

- (iii) on the grounds that the Committee has acted contrary to procedural fairness.
- (b) An appeal against a decision made pursuant to Regulations 5.6.10(a) or 5.6.10(e)(i) shall be lodged within 14 days of receipt of the communication of the decision. 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 the receipt of communication of a decision of the Committee under Regulation 5.6.10.(e)(v) or (vi).
- (c) The appeal shall be made to the Moderator who shall appoint an appeal committee of three persons to consider it. At least one member of the appeal committee shall have legal expertise. In the event of an appeal against a decision made pursuant to Regulation 5.6.10(a) the appeal committee shall either dismiss the appeal or uphold the appeal and substitute its own decision for that of the Chairperson. In the event of an appeal against a decision made pursuant to Regulation 5.6.10(e)(i) or on the grounds of a breach of procedural fairness the appeal committee shall either dismiss the appeal or if it upholds the appeal remit the complaint to the Committee for its reconsideration. The appeal committee may make a recommendation to the Chairperson whether the panel that dealt with the complaint or a new panel should undertake the reconsideration.
- (d) Upon receipt of an appeal the Moderator shall inform the committees, councils and individuals involved of the pending appeal.
- (e) Appeals will be dealt with expeditiously.
- (f) Legal representation before the Appeal Committee is permitted only by leave of the Appeal Committee.

LEGAL PROCEEDINGS

- 5.6.16** (a) If criminal legal proceedings relating to the alleged sexual misconduct are commenced against the Respondent no further action regarding the Complaint shall be taken by the Committee until such time as any criminal legal

proceedings are concluded.

- (b) If civil proceedings relating to the alleged sexual misconduct are commenced against the Respondent, the Committee may defer dealing with the complaint.

PUTATIVE ABUSE

- 5.6.17** (a) Where the Moderator, the Synod Secretary, the chairperson of a Presbytery or the Chairperson receives information which provides reasonable grounds for believing that there has been sexual misconduct by a Minister but no complaint has been made, that person shall 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 shall seek to ensure that a complaint is made.
 - (c) If that person considers there are no reasonable grounds for such a belief, that person shall, after consultation with the Minister, seek to ensure that the Minister's name is cleared.

NEW PLACEMENT

- 5.6.18** Except in special circumstances approved by the Chairperson a new placement of a Respondent shall not be made nor shall a call to a Respondent be sustained, while the complaint has not been resolved or determined.

5.7 SYNOD COMMITTEE FOR DISCIPLINE

APPOINTMENT

- 5.7.1** (a) The Synod shall at least once every three years appoint a committee to be known as the Committee for Discipline.
- (b) The Committee shall consist of not less than seven persons appointed by the Synod.
 - (c) Not less than two members of the Committee shall be Ministers and not less than two shall be lay persons.

- (d) The Committee shall elect its own chairperson and the Standing Committee shall appoint a person (not being a member of either the Committee for Counselling or the Synod Sexual Misconduct Complaints Committee) to convene the Committee and act as the secretary thereof.
- (e) The chairperson of the Committee shall be 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 shall not be a member of the Committee for Discipline.
- (g) A Synod may appoint members of the Church who are members of a Congregation beyond the bounds of the Synod as members of the Committee for Discipline.
- (h) Any casual vacancy on the Committee shall be filled by a person appointed by the Standing Committee or, where time does not permit, by the Moderator.

COMPLAINTS

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

- (a) wilfully and persistently neglected the duties of a Minister;
- (b) wilfully failed to comply with any provision of the Constitution, of any Regulation, rule or resolution of the Church or any body of the Church, or any terms of a conciliated outcome or Agreed Outcome under Regulation 5.6.10, or any lawful direction of the Moderator made pursuant to Regulation 3.6.3.2(i);
- (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.

No other complaint shall be considered by the Committee.

MEETINGS

- 5.7.3**
- (a) A quorum of the Committee shall be three members present during the whole of the proceedings.
 - (b) Where at any stage after the hearing of the proceedings before the Committee have actually commenced and before the Committee's report on the proceedings has been presented to the Standing Committee, a member of the Committee, engaged in considering the complaint, withdraws from the proceedings for any reason, the remaining members of the Committee may continue to act, so long as at least three members are present and participating. Unless the Respondent agrees, there must be at least one member of the Committee hearing the matter who is a Minister and at least one who is a lay person.
 - (c) A person shall be taken to have withdrawn for the purposes of this Regulation, if that person, for any reason, be unwilling or unable to continue to participate.
 - (d) Where the term of office of a member of the Committee expires and is not renewed, such member may, notwithstanding that membership of the Committee has ceased, continue to act as a member in any proceedings in which the member is participating and which had been commenced but not finalised before that cessation.
 - (e) The members of the Committee who shall constitute the Committee for the purposes of dealing with a particular

complaint shall be determined by the chairperson of the Committee.

PROCESS

- 5.7.4**
- (a) The Moderator shall for the purposes of a proceeding before the Committee appoint a person as advocate who shall be responsible for the presentation of the case in support of the complaint and the Moderator may from time to time appoint a substitute as required.
 - (b) The complaint with which the Committee is required to deal shall be particularised by the advocate in writing to the secretary of the Committee who shall forthwith deliver a copy to the chairperson of the Committee, the Respondent, the Moderator, the Synod Secretary and the chairperson of the Presbytery which has oversight of the Respondent.
 - (c) The chairperson of the Committee may require the advocate to furnish fuller particulars of the complaint.
 - (d) Prior to the proceedings before the Committee, the Standing Committee (or, in cases of urgency, the Moderator) shall appoint or engage a legal assistant to the Committee for the purpose of the proceedings.
 - (e) The legal assistant shall be a member of the Church and desirably a practising barrister or solicitor.
 - (f) The legal assistant shall attend the proceedings and provide the Committee with such advice on procedure and other legal matters as the Committee at any time desires.
 - (g) The Committee shall act in accordance with the rules of natural justice and as expeditiously as possible. In its procedure and its decisions it shall be governed by equity and good conscience and it may inform itself in such manner, as it thinks fit in the circumstances.
 - (h) The Committee may receive into evidence any report of the investigation of 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.

- (i) The Committee shall hear the advocate and the Respondent and shall consider such material as they desire to present so long as the Committee considers it to be relevant. The Committee may give such weight as it thinks appropriate to the contents of any report received into evidence pursuant to (h). It shall permit the advocate and the Respondent to call such persons to testify before it on such matters as are appropriate. Such persons may be cross examined by the other party but unless leave has been given by the Committee such cross-examination shall only be for the purpose of clarifying or amplifying the testimony or of testing the recollection of the person with regard to the facts concerning which testimony has been given.
- (j) The advocate and the Respondent may appear personally before the Committee or be represented legally or by another member of the Church. If the Respondent does not appear the Committee may proceed in the absence of the Respondent.
- (k) The proceedings before the Committee shall be recorded either manually or mechanically.
- (l)
 - (i) The Committee may determine that the record of evidence shall be transcribed.
 - (ii) If the Committee so determines, the transcript shall be made available for examination by the advocate and by the Respondent (or by their representatives) and either may obtain a copy upon payment of the charge therefore.
 - (iii) If the Committee determines that the record shall not be transcribed, either the advocate or the Respondent may require a transcript to be made and provided on payment of the transcript cost.
- (m) Proceedings before the Committee shall be held in private and, unless otherwise determined by it, no member of the Committee nor any other person who has been involved in the proceedings shall divulge any information concerning

the proceedings to any person except to the extent compellable by law.

- (n) The Committee may at any time refer all or any of those concerned for counselling in such manner as it thinks fit.
- (o) The Committee shall consider the substantial merits of the case and shall record such findings of fact and other conclusions as it thinks necessary in the circumstances and decide whether or not the complaint has been made out.
- (p) The complaint shall only be held to be made out if the majority of the members of the Committee who dealt with the matter be so satisfied on the balance of probabilities.
- (q) As soon as practicable after the conclusion of the proceedings the Committee shall notify the advocate, the Complainant and the Respondent whether it has dismissed the complaint or found it made out and shall supply each of them with a copy of its findings of fact and other conclusions.
- (r) Where the Committee finds the complaint made out it shall, 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:
 - (i) that no action be taken;
 - (ii) that the Respondent be admonished;
 - (iii) that the Respondent be suspended from placement or candidature for such period and on such conditions as it specifies;
 - (iv) that the Respondent's placement or candidature be terminated;
 - (v) that the Respondent be suspended from the exercise of all or any of the functions of a Minister for such period and on such conditions as it determines;
 - (vi) that the recognition of the Respondent as a Minister be withdrawn.
- (s) The Committee, whether it has dismissed the complaint or has found it made out, may determine:

- (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 Minister;
 - (ii) that the Respondent be required to undergo therapeutic or pastoral counselling;
 - (iii) that the Respondent be subject to supervision;
 - (iv) that the Respondent participate in courses of training;
 - (v) that the Respondent pay financial restitution;
 - (vi) that the Respondent be stood aside from the exercise of all or any functions of a Minister on such conditions as it determines.
- (t) The secretary of the Committee shall present to the Standing Committee a report of the proceedings.
- (u) The report shall contain the complaint, the findings and decisions of the Committee, including the action taken under (r) and under (s). The report shall include such other material as the Committee considers appropriate.
- (v) The Secretary of the Synod shall 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.
- (w) After consulting the chairperson or secretary of the Committee for Discipline, the Complainant, and the chairperson of the Presbytery which has oversight of the Respondent, the Moderator (or the Secretary of the Synod on the Moderator's behalf) may make such public statement concerning the proceedings as the Moderator considers appropriate.
- (x) The Moderator and the chairperson of Presbytery may make a statement to a congregation and/or to relevant bodies about proceedings where appropriate, and shall ensure appropriate pastoral support for such Congregations and/or bodies.
- (y) The Standing Committee shall take such action as is necessary to implement the decision of the Committee for

Discipline and shall advise the Respondent and the Presbytery.

- (z) The expenses properly incurred by the advocate shall be paid by the Church. The Committee may certify that it is reasonable in the circumstances that the expenses of the Respondent be paid in whole, or in part, or to a specified amount, by the Church. The Standing Committee shall determine the funds from which such expenses shall be paid.

STANDING ASIDE OF A MINISTER

- 5.7.5** (a) The Moderator, in the exercise of the duties and responsibilities of the Moderator under Regulation 3.6.3.2(i) may, at any time following the making of a complaint and upon such terms as the Moderator sees fit, stand aside a Respondent from the performance of ministerial duties pending the conclusion of all process relating to the complaint under Part 5 of the Regulations if such action be considered necessary for the well-being of the Church. The Moderator may inform such people of this action as the Moderator considers necessary in all the circumstances. The Moderator may terminate the standing aside at any time.
- (b) Such standing aside shall not deprive the Respondent of stipend, allowances and the use of any residence occupied by the Respondent, who shall properly assist any person responsible for the carrying on in the meantime of the duties attaching to the Respondent's placement.

WITHDRAWAL OF RECOGNITION OF A MINISTER

- 5.7.6** (a) If the recognition of the Respondent is withdrawn the stipend and other allowances of the Respondent shall continue to accrue for 30 days after the meeting of the Standing Committee at which the report under Regulation 5.7.4(t) is presented, and any housing then occupied by the Respondent shall be vacated as soon as possible but in any case within such 30 days.
- (b) Payments made from other funds of the Church shall be determined in accordance with the Regulations governing such funds but any period during which a Respondent is

stood aside pursuant to Regulation 5.7.5(a) shall not be included in the determination of the length of ministerial service.

APPEAL FROM THE COMMITTEE FOR DISCIPLINE

5.7.7 The advocate, complainant or respondent may appeal from the decision of the Committee for Discipline to the Synod which shall refer the matter to the Convenor of the Standing Appeal Panel to be dealt with under Part 6 of these Regulations.

STAY OF PROCEEDINGS

5.7.8 Where the Standing Committee has referred an appeal in accordance with Regulation 5.7.7, the Standing Committee may determine that the operation of any decisions made or actions taken pursuant to Regulations 5.7.4(r) or (s) be suspended on such conditions as it thinks fit until the appeal is determined.