

APPEALS REGULATIONS**SYNOD STANDING APPEAL PANEL**

8.1

- (a) The Synod shall appoint a panel of persons to be known as the Synod Standing Appeal Panel and shall appoint its convenor (“the Convenor”). Appointments shall be for a term of 3 years, unless the Synod determines otherwise.
- (b) A Synod may delegate these appointments to another Synod by written agreements between the Synods involved.
- (c) The Synod Standing Appeal Panel shall normally consist of 5-15 members at least one third of whom shall have legal expertise.
- (d) The members of the Synod Standing Appeal Panel shall be members of the Church or the church catholic recognised by the Church for the purposes of this Regulation.
- (e) At least one third of the Synod Standing Appeal Panel shall be women, and at least one third shall be men.
- (f) No person shall serve as a member of the Synod Standing Appeal Panel for more than 9 years consecutively.
- (g) Neither the Moderator nor the Synod Secretary shall be a member of the Synod Standing Appeal Panel.
- (h) A Synod Standing Appeal Panel may include members who reside within the bounds of another Synod provided written agreement has been reached between the Synods.
- (i) Where the Convenor decides it is warranted he or she may apply to the Synod for payment to be made to any person or persons for serving on an Appeal Panel or for payment of any other costs or expenses incurred in the course of the Appeal or alternatively the Synod may decide to remunerate members of an Appeal Panel on such terms as the Synod sees fit.

TIME FOR APPEALS TO WHICH THIS PART 8 APPLIES

8.2

- (a) A person having the right under these Regulations to appeal under this Part 8 (Regulation 8.1-8.7) shall, within 21 days of receiving the Original Decision, deliver to the Synod Secretary a written request for an appeal to be heard. The Synod Secretary shall promptly deliver the request to the Convenor.
- (b) The request for appeal shall contain details of the particular grounds of appeal, including any procedural or factual bases, and to the extent possible, all material upon which that party intends to rely. The date the request for appeal is received is the Lodgment Date.
- (c) “Original Decision” means the decision which is being appealed pursuant to this Part 8.
- (d) An appeal commenced pursuant to this Part 8, is referred in these Regulations as “the Appeal” and the person who requests the Appeal is referred to in the Regulations as “the Appellant”.

APPOINTMENT OF APPEAL PANEL

8.3

- (a) Within 21 days of the Lodgement Date the Convenor shall appoint a panel of 3 members to deal with the Appeal (“the Appeal Panel”), select a chairperson of the Appeal Panel (“the Chairperson”) and provide members of the Appeal Panel with copies of the documents delivered to the Synod Secretary pursuant to Regulation 8.2 (a) (“the Appeal Papers”).
- (b) At least one member of each Appeal Panel shall have legal expertise, and as far as possible each Appeal Panel shall have members of both genders.
- (c) In addition to the members of the Synod Standing Appeal Panel, the Moderator may, on the application of the Convenor, appoint a person or persons from outside the Synod Standing Appeal Panel and/or outside the Church to serve as a member of an Appeal Panel where that person or persons’ expertise would assist.
- (d) Except as provided in paragraph (c), the members of an Appeal Panel shall be members of the Synod Standing Appeal Panel.
- (e) An Appeal Panel shall not include any member of the body which made the Original Decision or any member who the Convenor determines is closely associated with the Appellant or persons directly affected by the Original Decision.

NATURE OF APPEALS

8.4

- (a) The Appeal Panel shall act expeditiously whilst
 - (i) giving the Appellant sufficient information to know on what basis the Original Decision was reached;
 - (ii) giving the Appellant, and, in its discretion, parties directly affected by the Original Decision, the opportunity and sufficient time to prepare and present a response.
- (b) The Appeal Panel shall be guided by equity and good conscience and may inform itself in such manner as it sees fit in the circumstances.
- (c) Where the Appeal Panel receives new information not provided to the Original Decision-maker it may include, exclude or give a degree of weight to that information based on what it considers is equitable and in good conscience in the particular circumstances before it.

APPEAL PROCESS

8.5

- (a) The Chairperson shall manage the time-table for the Appeal process and have the discretion to vary it. Unless the Chairperson shall decide otherwise, the time-table shall be as follows:
 - (i) Within 14 days of the Chairperson’s appointment the Chairperson shall, under cover of a letter, provide the person or body which made the Original Decision with a copy of the Appeal Papers and give that person or body an opportunity to provide further written comment. The Chairperson shall also request copies of all documents on which the Original Decision was based, as well as any written reasons given for the Original Decision. The time allowed for this response shall be 14 days from the date of the Chairperson’s letter;
 - (ii) Also within 14 days of the Lodgment Date any respondent or any other person who, or body which, in the opinion of the Chairperson is directly affected by the Original Decision, will be provided with a copy of the Appeal Papers and given an

opportunity to provide further written comment. The time for doing so will be 14 days from the date of the Chairperson's covering letter;

- (iii) Copies of the documents and responses received under Regulation 8.5 (a) (i) and (ii) shall be provided to the Appellant within 7 days of the time expiring under Regulation 8.5 (a) (i) and (ii) above, together with a letter from the Chairperson notifying the Appellant of an opportunity to reply in writing to any matters raised by the documents. The time allowed for the reply shall be 14 days from the date of the Chairperson's covering letter giving this right of reply;
 - (iv) Having received the Appellant's written reply, if any, the Appeal Panel will set a hearing date to allow the parties a right to be heard ("the Hearing"), where possible within 28 days from the expiry date for the Appellant's reply under para (iii) above. The Appeal Panel at its discretion may invite any person to attend and address the Appeal Panel, and if so, all parties will be notified of this;
 - (v) The Appeal Panel shall give to the Appellant and Original Decision maker a copy of its written decision, including its reasons, within 14 days of the Hearing.
- (b)
 - (i) A party to the Appeal shall be entitled to have a support person with them during the proceedings of the Appeal Panel. The support person must be a person not otherwise involved in the Appeal or the Original Decision;
 - (ii) The person providing support shall not have the right to speak during the proceedings of the Appeal Panel unless invited to do so by the Chairperson.
- (c)
 - (i) The Appeal Panel shall determine the Appeal by substituting its own decision for the Original Decision or affirming or varying the Original Decision;
 - (ii) The Appeal Panel shall endeavour to reach its decision by consensus. Failing consensus the Appeal Panel may make a decision by simple majority;
 - (iii) The decision of the Appeal Panel shall be final, and there shall be no further right of appeal.

SPECIAL PROVISIONS RELATING TO ASSEMBLY DECISIONS

8.6

- (a) Where the request for an appeal arises from a decision of the Assembly or a body responsible to the Assembly this Regulation 8.6 shall apply.
- (b) Any request for an appeal shall be delivered to the General Secretary of the Assembly within the timeframe set out in Regulation 8.2.
- (c) Within 21 days of a request for an appeal having been delivered, the President shall appoint an Appeal Panel of three persons from among the membership of the Synod Standing Appeal Panels to hear the Appeal, and shall appoint a Chairperson of that Appeal Panel. The President shall provide members of the Appeal Panel with copies of the documents delivered to the General Secretary of the Assembly ("the Appeal Papers").
- (d) Where the President decides it is warranted he or she may apply to the Assembly for payment to be made to any person or persons for serving on an Appeal Panel or for payment of any other costs or expenses incurred in the course of the Appeal or alternatively the Assembly may decide to remunerate members of an Appeal Panel on such terms as the Assembly sees fit.
- (e) In addition to the members of the Synod Standing Appeal Panels, the President may appoint a person or persons from outside the Synod Standing Appeal Panels and/or outside the Church to serve as a member of an Appeal Panel where that person or persons' expertise would assist.
- (f) Except as provided in paragraph (e), the members of an Appeal Panel shall be members of a Synod Standing Appeal Panel.

- (g) The Appeal Panel convened pursuant to this Regulation 8.6. shall otherwise operate in accordance with the provisions of Regulations 8.2(b), (c) and (d), 8.3(b) and (e), 8.4, 8.5 and 8.7.

CONFIDENTIALITY

8.7

- (a) After the Appeal Panel has determined the Appeal it may make a written comment on any aspect of the proceedings to the Moderator or with respect to an Appeal arising under Regulation 8.6, to the President.
- (b) After consulting with the Appellant, the Chairperson and any person the Chairperson advises is directly affected by the determination of the Appeal, the Moderator (or with respect to an Appeal under Regulation 8.6, the President)
 - (i) may make such public statement concerning the Appeal as the Moderator (or with respect to an Appeal under Regulation 8.6, the President) considers appropriate
 - (ii) may make a statement to a congregation and/or relevant bodies about the Appeal as the Moderator (or with respect to an Appeal under Regulation 8.6, the President) considers appropriate and ensure appropriate pastoral support for such congregations and/or bodies.
- (c) Except as provided in Regulations 8.7(a) and 8.7(b), all matters concerning the Appeal including the Appeal proceedings shall be confidential. Unless otherwise determined by the Appeal Panel, no member of the Appeal Panel nor any other person who has been involved in the proceedings shall divulge any information about it – except to the extent compellable by law.

CONSEQUENTIAL AMMENDMENTS TO OTHER REGULATIONS

A. Areas affecting rights that do not warrant coming under the new Part 8 Appeal Framework

1. Membership issues- Appeals under Regs 1.1.15(c), 3.1.17
Leave Reg 7.2.4 as is.
2. Removals from church office – Under reg 3.1.17
Add to Reg 3.1.17(b): “The decision of the Presbytery to dismiss the appeal or re-instate the Elder or Church Councillor shall be final”.
3. Candidates for ministry- application for -Regs 2.2.7, 2.2.12(b), (c) or (d)
Leave Reg 2.2.14 as is.
4. Lay Preachers- withdrawal of recognition
Leave Reg 2.8.10 as is.
5. Ministers from other Denominations- reg 2.3.5(c)
Leave Reg 2.3.5(d) as is.
6. Community Ministers- reg 2.12.18-termination of placement
- no right of appeal given - only a right of address- leave as is .
7. Ministers - complaints under reg 7.6 - going through the counselling process are not appealable and should be left as is.
8. Ministers - sexual misconduct - reg 7.7.4 - leave as a discrete section.
9. Regulation 2.7.9A in the Alternative Regulations for Korean Congregations

B. Areas that will be brought into Part 8 Right of Appeal

The rationale operating for selecting matters that should have the appeals dealt with under this new section is that the rights affected here are serious enough to give rise to a Regulation 8 right of appeal.

1. Candidates for ministry- termination of-reg 2.2.27 candidature

Delete the current Regulation 2.2.27 and replace it with:

2.2.27 Any candidate for ministry whose candidature has been terminated by the Presbytery under Regulation 2.2.26 (b) or (c) may appeal to the Synod which shall refer the matter to the Convenor of the Standing Appeal Panel to be dealt with under Part 8 of these Regulations.

2. Lay Pastors- reg 2.13.7 and 2.13.8 - termination of candidature-

Delete the existing wording of reg 2.13.8 and replace with:

2.13.8 Any candidate for lay pastor whose candidature has been terminated by the Presbytery may appeal to the Synod which shall refer the matter to the Convenor of the Standing Appeal Panel to be dealt with under Part 8 of these Regulations.

3. Youth Workers - termination of placement by Synod or Presbytery

Amend Regulation 2.11.7(a) to read:

2.11.7 (a) A Youth Worker whose placement has been terminated by a Presbytery or a Synod shall have a right of appeal to the Synod. The Synod shall refer the matter to the Convenor of the Standing Appeal Panel to be dealt with under Part 8 of these Regulations. ~~The Synod Standing Committee shall appoint a committee which is empowered to determine the matter. The membership of~~

~~the committee shall not include any member of the body which made the termination decision.~~

2.11.7 (b) - termination of a Placement by the Assembly

2.11.7 (b) A Youth Worker whose placement has been terminated by the Assembly shall have a right of appeal to the Assembly, under the provisions of Part 8 of these Regulations. The Appeal Panel shall be appointed under the provisions of Regulation 8.6. ~~The Assembly Standing Committee shall appoint a committee which is empowered to determine the matter. Membership of the committee shall not include any member of the body which made the termination decision.~~

~~(e) Any such appeals must be lodged in writing within one month of the date of the written notice given to the Youth Worker of the decision to terminate. There is no further right of appeal.~~

5. Lay Pastors - termination of placement - Regulation 2.13.20

2.13.20 A Lay Pastor whose placement has been terminated by the Presbytery shall have a right of appeal to the Synod. The Synod shall refer the matter to the Chairperson of the Standing Appeals Panel to be dealt with under Part 8 of these Regulations. The Synod Standing Committee shall appoint an appeal committee of not fewer than three persons to determine the matter. No person who is a member of the Presbytery which terminated the placement shall be a member of the appeal committee. The appeal must be lodged in writing within one month of the date of written notice given to the Lay Pastor of the decision to terminate. There is no further right of appeal.

6. Ministers - Committee for Discipline Review - under Reg 7.11.1 (a) matters can be referred back to the Committee for Discipline by the Standing Committee. Amend Regulation 7.11.1 as follows:

7.11.1 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 Regulation 8 of these Regulations.

~~7.11.1 (a) The advocate, complainant or respondent may seek a review of the proceedings of the Committee for Discipline by application to the Standing Committee on the grounds that:~~

~~(i) material which might reasonably be expected to have affected the findings, decisions or action of the Committee for Discipline under Regulations 7.8.16 or 7.8.17 was not placed before it; or~~

~~(ii) the circumstances are exceptional.~~

~~(b) Except by leave of the Standing Committee, an application for review shall be made no later than 21 days after the copy of the report of the proceedings presented pursuant to Regulation 7.8.18 has been received by the person seeking the review.~~

~~(c) Where the Standing Committee forms the opinion that either of the grounds set out in clause (a) have been met it may require the Committee for Discipline to review any or all of:~~

~~(i) its findings of fact and conclusions;~~

~~(ii) its decision whether or not the complaint has been made out;~~

~~(iii) its action taken under Regulations 7.8.16 or 7.8.17.~~

- ~~(d) In a review made pursuant to this Regulation the Committee for Discipline shall hear the advocate, the complainant and the respondent and shall consider such material and further oral or written evidence as the Committee for Discipline considers relevant to the review. The Committee for Discipline may affirm all or any of its original findings, decisions or actions or may set aside any finding, decision or action and substitute new findings, decisions or actions.~~
- ~~(e) The provisions of Regulation 7.8.18 shall apply to any review proceedings undertaken pursuant to this Regulation.~~

C Appeals against the termination of a Placement - Regulation 2.7.9A.

Ministers - Termination of Placement - Regs 2.7.7, 2.7.8(c) or 2.7.9(a) - by a presbytery or PRC, Synod or Synod or Standing Committee or Placements Committee, Assembly or body responsible to it. Amend as follows-

2.7.9A A Minister whose placement has been terminated shall have a right of appeal, subject to the following provisions:

- ~~(a) An appeal shall be made in writing.~~
- ~~(b) Unless an appeal is submitted within one month of the date of the written notice given to the Minister of the decision to terminate, the right to appeal shall lapse.~~
- ~~(c) (a) An appeal against a termination decision:~~
- ~~(i) by a Presbytery or its Pastoral Relations Committee pursuant to Regulation 2.7.7 or 2.7.8(c) shall be directed to the Synod Secretary and shall be dealt with in accordance with Regulation 8 of these Regulations; or its Standing Committee. The Synod or its Standing Committee shall appoint a committee to determine the matter. The committee shall not include any member of the Presbytery or its Pastoral Relations Committee;~~
 - ~~(ii) by a Synod or a body responsible to a Synod pursuant to Regulation 2.7.8(c) or 2.7.9(a) or to a by-law of a Synod shall be directed to the General Secretary of the Assembly and shall be dealt with in accordance with Regulation 8.6; President of the Assembly who shall appoint a committee to determine the matter. The committee shall not include any member of the body which made the termination decision;~~
 - ~~(iii) by the Assembly or a body responsible to the Assembly pursuant to Regulation 2.7.8(c) shall be directed to the General Secretary of the Assembly and shall be dealt with in accordance with Regulation 8.6 and the Appeal Panel appointed shall not include any members of the Standing Committee of the Assembly. President of the Assembly who shall without delay refer the appeal to the Moderators of two Synods. Such Moderators shall appoint a committee to determine the matter. The committee shall not include any members of the Standing Committee of the Assembly or any body which made the termination decision.~~
- ~~(d) Any committee appointed shall consist of at least five persons.~~
- ~~(e) Before making a decision any committee shall consult with the Minister, the terminating body and any other body or person it considers appropriate.~~
- ~~(f) The decision of the committee shall be final and there shall be no further right of appeal.~~

**INFORMATION MEMORANDUM IN RELATION
TO PROPOSED NEW PART 8**

In general Regulation 8 is the “place” where all relevant Appeals are sent. It is styled to be similar in approach to the SSMCC framework.

For those matters where it was considered unnecessary to grant any further rights than already exist in the Regulations, those rights end within the existing Regulations.

For those matters where there should be access to an Appeals system, the referral is made in the part of the Regulations where that matter is dealt with.

The general approach has been to try to be explanatory and clear, but at the same time allow discretion where possible.

Taking the approach that in such matters “justice delayed is justice denied”, fairly tight timetables, have been included.

Particular mention is made as to the following-

1. “LINE BALL” DECISIONS

There was some debate as to do with complaints of Lay Preachers, Ministers from other denominations and Community Ministers. At this stage they are “out” of the Appeals process.

2. REVIEW OF COMMITTEE FOR DISCIPLINE

The structure of Regulation 8 means that the process previously set out in 7.11.1 has changed significantly.

This is drawn to your attention because it does make the possibility of Appeals from decisions of the Committee for Discipline perhaps more likely than under the current situation, where there are fairly narrow grounds.

3. COSTS AND EXPENSES

At this point the Chairperson has a general discretion. It should be noted that there is the ability for Panel members to be remunerated, which may assist in developing a professional and consistent approach.

4. LEGAL REPRESENTATIONS

There is no specific provision for legal representation. If thought necessary a provision could easily be included.

5. “ALL PARTIES DIRECTLY AFFECTED” – 8.5(b)

Whilst there are some obvious parties to proceedings, there are also “parties” who are more peripheral.

For example, it is not uncommon for proceedings against a Minister to be brought to the Committee for Discipline by the Advocate, at the direction of a Church body. The original complainant (eg. before the SSMCC) in such circumstances is not a “party” to the Committee for Discipline proceedings, though they are affected by them.

6. INTER – SYNOD CO-OPERATION

It is possible under this Regulation for Cross-Synod bodies to be established, which may lead to a smaller, Australian – wide body being available for the service of the Church.

7. ASSEMBLY REFERRALS

8.6 allows Assembly decisions to be referred to this group, which could again cut down on duplication, and allow the development of expertise.