

Book of Order & Judicial Reference Group

Executive Summary

- The report contains a number of amendments to the Book of Order which the Group has been requested to draft. These relate to discipline, sexual misconduct, safety of children and young persons, supervisions of ministers, sexual relations outside marriage, powers of the Council of Assembly, annual leave of ministers, duty of disclosure of complaints by ministers.
- We have also proposed the wording of a resolution to enable amendments to the Book of Order passed by the 2006 Assembly to be included in the new Book of Order assuming it is approved by the Assembly.

Recommendations

1. That the amendments to the Book of Order contained in this report be approved:

- a) amend regulation 473 [para 2.1]
- b) amend regulation 474 [para 2.2]
- c) amend regulation 595 [para 2.3]
- d) amend regulation 586 [para 2.4]
- e) amend regulation 473A [para 2.5]
- f) amend appendix E-9 [para 2.6]
- g) new regulation 490C [para 2.7]
- h) new regulation 88A [para 2.8]
- i) new regulation 88B [para 2.9]
- j) new regulation 172 [para 2.10]
- k) amend appendix E-17 [para 2.11]
- l) amend appendix E-20 [para 2.12]
- m) amend appendix D-8 [para 2.13]
- n) amend appendix E-20 [para 4]
- o) new regulation 492A [para 7]

2. That any amendments to the Book of Order passed by the 2006 General Assembly shall be included in the new Book of Order or Supplementary Provisions or other Assembly document in a form and in a place to be determined by the Book of Order and Judicial Reference Group.

Report

- 1 The Group has continued to provide advice to the Church on a wide variety of matters over the past two years.
- 2 At the 2004 General Assembly the Book of Order and Judicial Reference Group was directed to draft a number of amendments to the Book of Order to implement decisions of the Assembly. In accordance with that direction the following amendments have been drafted.

2.1 New Regulation 473 as follows:

“473 Subjects

The subjects of discipline are “*Church Workers*” who include any of the following persons who are or were acting in the name of, or on behalf of, the Church at the material time or times, namely ministers, Pastors, Elders, Pastoral Counsellors, Licentiates, students for the ministry, lay workers, youth workers, and other people in positions of leadership.”

2.2 Amend Regulation 474 as follows:

“474 Causes

The ground of discipline is a sin or offence of the nature either of doctrinal error or of grave impropriety of conduct, *whenever the error or event or events occurred*, especially when, on account of its publicity, the sin or offence is a scandal, and is calculated to bring a reproach on religion. In the case of an offence which has not created scandal, brought under the notice of a Church Court, the ends of discipline may frequently be attained by private admonition, counsel, and reproof.”

2.3 Amend Regulation 595 and its heading as follows:

“(c) Sexual Misconduct**595 Sexual Misconduct Complaints**

Notwithstanding any provisions to the contrary in the *Book of Order*, complaints of sexual misconduct shall be dealt with in accordance with Appendix E-9 in the *Book of Order*.

Appendix E-9 applies, irrespective of when the event or events giving rise to the complaint of sexual misconduct are alleged to have occurred. For the purposes of this regulation, “*sexual misconduct*” has the meaning given to it in the definition clause 2.1 to Appendix E-9, which definition is to be read and deemed part of this regulation.”

2.4 Amend Regulation 586 as follows:

“586 Authority

The Presbytery has power of discipline over its own members, over the Congregations upon its roll, over the ministers without charges, over Licentiates, and over Church Workers, recognised as labouring or resident within its bounds. For the purposes of this regulation “Church Workers” has the meaning given to it in regulation 473. For the avoidance of doubt, for the purposes of this regulation, reference to members, congregations, ministers licentiates, and church workers includes a reference to former members, former congregations, former ministers, former licentiates, and former church workers who were members, congregations, ministers, licentiates, or church workers at the time of the alleged events.”

2.5 New Regulation 473A as follows:

“473A Resignation of subject while disciplinary action pending

No resignation of any person who is the subject of disciplinary action within the Church shall affect or prevent the Church from continuing its processes to the point of the final determination of such disciplinary action, nor shall any such resignation deprive the Church of jurisdiction to complete its disciplinary action.”

2.6 Amend Appendix E-9 as follows:

- “(a) The reference to “(4.4)” in paragraph 5.6 be replaced by “(5.5)”;
- (b) The reference to “(5.8)” in paragraph 6.7 be replaced by “(6.4 and 6.8)”.

2.7 New Regulation 490C as follows:

“490C Powers of Church Courts (including complaints hearing committees)

Any Church Court hearing any disciplinary action in respect of a Church Worker shall, in addition to any powers specifically provided for in these regulations, have the power and discretion to exercise one or more of the powers contained in sections 9, 10 & 11 of Appendix E-9 irrespective of whether or not the matter before it concerns sexual misconduct, and notwithstanding the provisions of regulation 490B of these regulations. For the avoidance of doubt, because of the importance the Church places on seeking, where appropriate, to ensure restorative justice, this regulation applies irrespective of whenever the event or events giving rise to the matter before the Court occurred.”

2.8 New Regulation 88A as follows:

“88A

In order to ensure that children and young persons in the Congregation are kept safe, Sessions or Parish Councils shall develop and implement a Safety and Protection policy in respect of children and young persons who are under their care. This policy may include checks, including police vetting checks, as appropriate, on all persons who are involved in the care or supervision or religious education of children and young persons to ensure that they are responsible and of good character, and suitable to be involved in positions of responsibility with children and young persons.

2.9 New Regulation 88B as follows:

“88B

- (i) All persons, who are engaged, in a paid capacity, by Sessions or Parish Councils, in positions involving ministry with children and young persons, and families, shall, as a minimum requirement:
 - (a) participate in a course of training relating to safety and protection issues which is approved by the Sessions or Parish Councils concerned;
 - (b) accept, and have professional supervision of their work from a suitably qualified person who is not a member of the parish concerned.

- (c) be subject to a police vetting check.
- (ii) Where the appointee for a position involving ministry with children and young persons, and families, does not in the opinion of the Session or Parish Council have a relevant qualification, or previous experience working with children, young persons and families, such person shall be encouraged to undertake a suitable course involving the following areas:
 - (a) vision and goals for ministry with children;
 - (b) biblical foundations;
 - (c) understanding children;
 - (d) models and strategies for ministry with children;
 - (e) safety and protection issues;
 - (f) developing skills for ministry with children;
 - (g) resources and guidelines.”

2.10 New Regulation 172 as follows:

“172

- (s) When employing any person, in a paid capacity, in a position involving ministry with children and young persons, and families, Presbyteries shall follow the requirements of Regulations 88A and 88B, as if, in place of the words “*Sessions and Parish Councils*”, the word “*Presbyteries*”, was inserted.”

2.11 Amend Appendix E-17 as follows:

Delete 2.6.2 and 2.6.3 of Appendix E-17 and replace them with the following:

- “2.6.2 In respect of all ministry appointments made after 25 September 2004 ministers are required to be supervised on an ongoing basis. Subject to Presbytery’s approval of the supervisor, ministers are responsible for arranging their own supervision.
- 2.6.3 Presbyteries shall maintain lists of suitable supervisors and shall arrange training courses for supervisors.
- 2.6.4 Boards of Nomination are to include in their discussion the importance of supervision for the minister they may nominate.”

2.12 Add to Appendix E-20 on page 239 of the Book of Order under the heading “Assembly Employees” and the subheading “Appointments” as a new list item (11) as follows:

- “(11) When employing any person in a paid capacity in a position involving ministry with children and young persons, and families, the Council, the Assembly Executive Secretary, or the Service Team Leader shall follow the requirements of Regulations 88A and 88B, as if, in place of the

words “*Session and Parish Councils*”, the words “*the Council, the Assembly Executive Secretary, or Service Team Leader*” were inserted.”

2.13 Appendix D-8 to be amended by deleting section (2) and replacing it with the following:

“(2) **Procedure for election of Moderator-Designate of the General Assembly**

- (a) The Assembly invites parishes/UDC’s to submit names of suitable nominees to their Presbytery.
- (b) Each Presbytery/UDC may nominate one person and shall send that nomination to the Convener of the Nominating Committee.
- (c) The Nominating Committee seeks the nominees’ acceptance of their nomination and asks that they each prepare a 150 word statement which can be posted on the Presbyterian Church website.
- (d) The names of all candidates are forwarded to Presbyteries/UDC’s and each Presbytery/UDC votes, and recommends one person as Moderator-Designate.
- (e) The names of the four candidates who receive the most votes or recommendations from presbyteries/UDC’s are then submitted to Parishes to vote upon. In the event that more than one candidate is tied for fourth place then all such candidates’ names (i.e. including those tied for fourth place) shall be submitted to Parishes.
- (f) At the same time as the names of the top four candidates are sent to Parishes, an election pack containing candidates biographical details, personal statement, photograph and other appropriate details shall also be sent. The length and format of these details shall be determined by the Nominating Committee Executive.
- (g) Parishes are to be strongly encouraged to vote, and a reminder notice should be sent. Parishes shall have six weeks from the date the names are sent to them to cast their vote. Parishes may approach candidates for further information and ask to meet with them. Candidates may offer to meet with Parishes or provide further information.
- (h) A preferential system of voting is to be used. Parishes are to number the candidates in their order of preference. If no candidate has an absolute majority of the votes cast on the basis of the Parishes’ first preference then the second preferences of those who voted for the lowest polling candidate are counted and distributed to the remaining candidates. This process continues until one candidate has an absolute majority of the votes cast.

- (i) The counting of the votes is to be carried out by the Assembly Executive Secretary or his/her nominee and overseen by a Justice of the Peace. The result is to be advised to the Nominating Committee which will confirm the nomination and the Convener of the Nominating Committee will advise the Assembly of the result.”
- 3 Also at the 2004 General Assembly, a resolution was passed relating to sexual relations outside marriage. This resolution was sent down to Presbyteries under the Barrier Act and will now come back to the 2006 Assembly. Should that resolution be passed it should be inserted in the Book of Order as Appendix D10 as follows:

“Appendix D10 – Rule relating to Sexual Relations outside marriage

1. In accordance with the Supreme and Subordinate Standards of the Church, Sessions, Parish Councils, Presbyteries and Union District Councils shall not accept for training, license, ordain or induct anyone involved in a sexual relationship outside of a faithful marriage between a man and a woman. In relation to homosexuality, in the interests of natural justice, this ruling shall not prejudice anyone who, as at 19 September 2004, has been accepted for training, licensed, ordained, or inducted.
 2. This provision is of general application and overrides anything to the contrary in the Book of Order.”
- 4 As a result of issues which have been brought to our attention since the 2004 General Assembly it is clear that other amendments to the Book of Order are required. The powers and responsibilities of the Council of Assembly as set out in Appendix E20 require restating and, with the approval of the Council of Assembly we recommend that the existing provision in Appendix E-20, under the heading “Council of Assembly” be deleted and replaced with the following:

“Establishment, powers and responsibilities of Council of Assembly

- (1) The General Assembly must establish a Council of Assembly.
- (2) The Council has all the powers necessary for it to perform its functions and carry out its responsibilities set out in this section.
- (3) The responsibilities of the Council, in partnership with Te Aka Puaho, are
 - (a) to act in place of the General Assembly between Assemblies to consider and determine administrative issues relating to the Church. In this regard the General Assembly delegates its administrative responsibility to the Council between Assemblies;
 - (b) to recommend policy to the General Assembly;
 - (c) to implement decisions of the General Assembly, and Assembly policy;

- (d) to appoint committees to carry out General Assembly functions, and to appoint the members thereof; and where appropriate to disband committees;
- (e) to receive reports from such committees and to report policy issues to the Assembly;
- (f) to delegate its functions to appropriate committees, persons or bodies;
- (g) to act as a Commission of Assembly in appointing the Assembly Executive Secretary where appointment by the General Assembly is not possible without the calling of an emergency meeting;
- (h) to oversee the Assembly Executive Secretary in managing all employees of the General Assembly, and in relation to the Assembly Executive Secretary, to act as a Commission of Assembly to concur in the acceptance of a call or resignation, or to terminate an appointment;
- (i) to adopt a budget, allocate funds raised for the work of the General Assembly, and apply untagged legacies and donations as it sees fit;
- (j) to adopt the accounts of the General Assembly, report these to the General Assembly, and appoint an auditor;
- (k) to determine staffing and resourcing requirements for the Assembly and the Council;
- (l) to nominate co-conveners of the nominating committee to the General Assembly;
- (m) prior to an Assembly and if the Council thinks it advisable to do so, to appoint a Commission to consider, before the Assembly meets, any particular matter which has been submitted to the Clerk of Assembly with the instruction to the commission that it must report to the Assembly on that matter but not determine it;
- (n) to summon a Special Assembly to determine proposals or references, after consultation with the Book of Order and Judicial Reference Group;
- (o) to refer any appeal, proposal or reference to the Assembly Judicial Commission, after taking advice from the Book of Order and Judicial Reference Group, and to appoint the Commission for the purposes of any such proceeding comprising not less than 3 nor more than 5 members from the panel of Assembly Judicial Commission members;
- (p) not more than 2 other members of the Church, being a person or persons particularly suited for appointment having regard to the subject matter of the proceeding; and

- (q) an advisor as to procedure, being a member of the Book of Order and Judicial Reference Group or its nominee;
 - (r) to consult widely within the Church where practicable;
 - (s) to do anything else which the Assembly may direct.”
- 5 We also gave advice to the Assembly Executive Secretary and the Council of Assembly concerning the duty of a minister to make disclosure to a Session or Parish Council when a complaint of sexual misconduct has been made against that minister. Council of Assembly accepted that advice, which was given in the form of a letter dated 30 August 2005 to the Assembly Executive Secretary, from whom a copy is available.
- 6 In light of that advice and with the approval of the Council of Assembly we recommend that the following new regulation be included in the Book of Order after Regulation 492, as a new Regulation 492A.

“Regulation 492A

492A

Where a complaint has been made against a minister, or Church Worker, the minister or Church Worker shall inform the Session/Parish Council that a complaint has been made, and, at the same time provide details of the circumstances and nature of the complaint.”

- 7 Given the likely approval by the 2006 Assembly of a new Book of Order it is important that any amendments to the existing Book or Order made by the Assembly are able to be included in the new Book of Order. Given the differing styles of the two documents, and the different numbering and wording it will be necessary for amendments passed by this Assembly to the existing Book of Order to be subsequently incorporated in the new Book of Order in the appropriate place. It is suggested that this Group have responsibility for doing this, in consultation, where appropriate, with the Book of Order Rewrite Group. Accordingly the following resolution is suggested:

“Any amendments to the Book of Order which are passed by the 2006 General Assembly shall be included in the new Book of Order in a form and in a place to be determined by the Book of Order and Judicial Reference Group.”

- 8 I wish to place on record the outstanding contribution which Rev Dr Kerry Enright, the outgoing Assembly Executive Secretary, has made to the work of the Group. His wisdom and experience, his sound judgement, and his wide knowledge of Church law has been of immense value to the Group. He will be greatly missed. I also wish to express the grateful thanks of the Group to Rev Maurice Brown, who retires after serving for six years on the Group. Maurice, like Kerry, has shared with us his great wisdom and his experience of a lifetime serving the Church. His calm and reasoned approach has been greatly valued.

J L Marshall
Convener

