



Policy for dealing with a Complaint of Sexual Misconduct made against a Member or Adherent of the Uniting Church in Australia

Status of this document:

The definitions at the commencement of the Regulations of the Uniting Church in Australia (“the Church”), refer to “Policies for the Prevention of Sexual Misconduct”, which are those approved by the Assembly or its Standing Committee. The policies deal with allegations of *sexual misconduct* made against lay staff, *members* and volunteers and against *members* in positions of leadership or responsibility. Regulation 7.2.7 refers to allegations of *sexual misconduct* against *adherents* as well as *members*.

This policy is approved by the Assembly Standing Committee as a Policy for the Prevention of Sexual Misconduct by both *members* and *adherents*.

In addition, Regulations 7.2.1 – 7.2.6 and 7.3.1 outline the disciplinary process for dealing with complaints made against *members* and officers of the *Church* in cases where the complaint is not a complaint of *sexual misconduct*.

SECTION ONE: PRINCIPAL VALUES

1.1 Vision Statement

The *Church* believes that all people are made in the image of God, and as such we accept every individual regardless of race, age, creed or gender. As a Christian community we believe that God reaches out to us in love and acceptance, and that our relationships with each other should express love and respect and not be abused. As a community of faith we are committed to providing a place in society where human beings can explore what it means to be made in the image of God. As an expression of this commitment, the *Church* recognises its responsibility to provide worshipping and pastoral communities and community services that are free from abuse; and that provide a safe environment for all people to explore and express their faith in Jesus Christ.

1.2 Value Statements

The *Church* is committed to:

- (a) modelling behaviour that values each individual as made in the image of God;
- (b) ensuring that its worship, pastoral care, services and structures are free from *sexual misconduct*;
- (c) ensuring that the boundaries of *relationships of responsibility* are maintained;
- (d) recognising *sexual misconduct* when it occurs and dealing with it;
- (e) enabling all Congregations, Councils and agencies of the *Church* to implement the policies and practices in place for dealing with complaints of *sexual misconduct*;
- (f) assisting *members* and *adherents* to be aware of the *Church's* Policies for the Prevention of Sexual Misconduct and of their rights and responsibilities;
- (g) working towards making the policies and practices accessible to migrant ethnic and aboriginal groups who experience language and cultural barriers;
- (h) encouraging reporting of any wrongful behaviour;
- (i) encouraging and promoting the use of legal process when appropriate;

- (j) the principles of justice-making.¹

1.3 Other forms of, and complaints of abuse

Sadly, there are many forms of abuse where power is used to exploit another person. Abuse can be experienced in any setting or circumstance. While this policy focuses on how to respond to complaints of *sexual misconduct*, the *Church* acknowledges that *sexual misconduct* is not the only type of abuse or misconduct that may be experienced within the community of faith or community services.

In establishing this Policy to deal with complaints of *sexual misconduct*, the *Church* does not deny that other forms of abuse take place. However, should allegations of other forms of abuse be made, this Policy may provide a basic framework for a response. Advice may be sought from other agencies or professions on dealing with such allegations.

1.4 Prevention

The *Church* is committed to the prevention of *sexual misconduct* within its Congregations and Councils and will endeavour to ensure that:

- (a) each Church Council has a copy of the Policy available; and
- (b) leaders are aware of their responsibilities.

1.5 Definitions

In this Policy, unless the context or subject matter otherwise indicates or requires:

Adherent means a person who is not a baptised or confirmed member or a member-in-association but is recognised as sharing in the life of a Congregation of the *Church* and within the pastoral responsibility of the *Church*.

Adviser means a person appointed to assist the *complainant* or the *respondent* during the *complaint* process. This person shall be adequately trained, and shall offer support and assistance to either the *complainant* or the *respondent*.

Church (capital ‘C’) refers to the Uniting Church in Australia.

church (small ‘c’) refers to the Christian church generally.

Complainant means the person making a complaint of *sexual misconduct* against a *member* or *adherent*.

Complaint means an allegation of *sexual misconduct* against a *member* or *adherent* by a *complainant*, which is made in writing and signed by the *complainant*.

Complaint Committee means the appointed committee which is responsible for investigating and responding to a complaint of *sexual misconduct* made against a *member* or *adherent*.

Confidentiality is not about secrecy, but is an assurance that written and spoken information is protected from being shared with unauthorised persons, or used for a purpose other than that for which it was collected.

Confidentiality is of utmost importance in dealing with an allegation of *sexual misconduct*. It is not about keeping the incident secret, but it is about ensuring that only those people “who need to know” know. *Confidentiality* is about protecting the rights and interests of all parties.

¹ The seven elements of justice-making, developed by the Rev Dr Marie Fortune from the Center for Prevention of Sexual and Domestic Violence, USA are included in the UCA's training material for the Prevention of Sexual Misconduct. This training material has been provided to each synod. Justice Making includes truth-telling, acknowledging the violation, compassion, protecting the vulnerable, accountability, restitution and vindication.

Contact Person is a person appointed by the *Presbytery designated person* to provide assistance to a particular person concerned about *sexual misconduct* before a *complaint* is made. The *contact person* will have similar responsibilities in relation to this Policy to the responsibilities of a *contact person* under Regulation 7.7.7.

Investigation is the process of inquiring into the *complaint* which has been made. It will normally involve speaking with the *respondent* and the *complainant*, as well as others who can provide information about the events in question, or who may have observed or participated in the alleged incident. It may also involve the collection of other information relevant to the allegation. The *investigation* should enable the *complaint committee* to make a determination in response to the *complaint*.

Member includes any baptised member, confirmed member and member-in-association of the *Church*.

Natural Justice refers to a specific group of common law principles that are designed to ensure that a person is given a fair hearing before a decision is made that might adversely affect their livelihood or status.

In general *natural justice* refers to two broad principles:

1. An adequate opportunity must be given to a person to present their case to the *complaint committee* before a decision is reached that might adversely affect them. This includes providing reasonable notice and time to prepare and sufficient information about the matter to be decided to enable the person to prepare their case.
2. The *complaint committee* must be free from bias or the appearance of bias. This requirement means that a person who has a close personal or family relationship with any of the parties is precluded from being a member of the *complaint committee*. It also precludes a person who might have a pecuniary interest in the outcome of the decision from being involved in the decision.

Pastoral Strategy is the strategy established by the *Presbytery designated person* and the chairperson of the Presbytery Pastoral Relations Committee after the receipt of a complaint of *sexual misconduct*.

Presbytery Designated Person means a trusted and appropriately trained person who is appointed by the Presbytery or by another Presbytery to whom the Presbytery has delegated the responsibility of the appointment.

Relationship of Responsibility is a relationship of a *member* or *adherent* with another individual in any circumstance where the *member* or *adherent* is in a position of leadership, providing pastoral care or other responsibility in the *Church* with associated or perceived power in relation to that individual.

Respondent is a *member* or *adherent* of the *Church* against whom a complaint of *sexual misconduct* is made and who is not a Minister of the Word, Deacon, Youth Worker or Lay Pastor or a lay staff person or voluntary worker for the purpose of the Guidelines (Policy) of the *Church* for dealing with a complaint of *sexual misconduct* against a lay staff person or voluntary worker.

Sexual Misconduct includes:

- (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 feel threatened or afraid.
- (c) **sexual conduct prohibited by criminal law;** or
- (d) **sexualisation of a *relationship of responsibility*:** any interaction, consensual or otherwise, in which the *member* or *adherent* engages in sexualised behaviour with or towards a person with whom he or she is in a *relationship of responsibility*.

Support person is a person chosen by the *complainant* or a *respondent* to provide personal assistance and support during the investigation and determination of an allegation of *sexual misconduct*. This person is for support only and has no official role within the process.

Synod Resource Person/s means a person appointed by the Synod and adequately trained to assist and support Presbyteries in dealing with allegations of *sexual misconduct* made against *members* or *adherents*.

1.6 Legislation to be considered

In responding to a complaint of *sexual misconduct* the *Church* should endeavour to ensure that it does not interfere with due legal process. This includes ensuring that any *investigation* does not interfere with criminal investigations. Similarly the *Church* has a right to ensure that it is able to fully investigate matters which impact on *members* or *adherents* or those individuals within its care. It is therefore important that each Synod or Agency takes into consideration the relevant State Crimes Act, the commitment of that State to the Commonwealth Criminal Code, State care and protection legislation and anti-discrimination legislation in dealing with an allegation of *sexual misconduct*. Advice on such requirements can be sought from statutory bodies, police, or the *Church's* legal advisers.

1.7 The Complaint Committee

- (a) The *Presbytery designated person* in consultation with the *Synod resource person* shall appoint a committee to investigate a complaint of *sexual misconduct* upon receipt of the *complaint*.
- (b) The *Presbytery designated person* shall not appoint himself or herself to the committee but may be appointed in a case where he or she is not acting as the *Presbytery designated person*.
- (c) The *complaint committee* shall consist of a minimum of three persons and a maximum of five to comprise:
 - (i) two persons nominated by Presbytery who have been trained in the principles, policies and procedures of the *Church* in a matter of *sexual misconduct*. These persons need not be members of the Presbytery;
 - (ii) one person from the local Church Council, if available;
 - (iii) additional persons at the discretion of the *Presbytery designated person* to provide additional expertise to the *complaint committee*.

No more than two members of the *complaint committee* shall be from the local Church Council of the Congregation where the *respondent* is a *member* or *adherent*.
- (d) The *Presbytery designated person* shall appoint a chairperson of the *complaint committee* at the time of its appointment, taking into consideration the skills and experience of the *complaint committee* members.

1.8 Legal Representation

This Policy does not prescribe a formal legal process. Neither the *complainant* nor the *respondent* has a right to legal representation during the *investigation* or determination process.

1.9 Advisers

- (a) Each Presbytery shall ensure that a number of persons are trained by the Synod as *advisers*. *Advisers* from any Presbytery may be accessed through the Synod Convener of Contact Persons and Advisers.
- (b) An *adviser* will seek to:
 - (i) assist the *complainant* in processing the *complaint*; or the *respondent* in facing a *complaint* through the process of *investigation* and determination of the *complaint*;
 - (ii) encourage the *complainant* or *respondent* to enquire and become aware of available legal and community resources as appropriate;
 - (iii) ensure that the *complainant* or *respondent* is adequately informed regarding the process at all stages of the progress of the *complaint*;
 - (iv) be available, if the *complainant* or *respondent* so wishes, to speak at any meeting regarding the *complaint* that the *complainant* or the *respondent* is required to attend.

1.10 Synod Resource Person/s

- (a) The Synod Standing Committee shall appoint a person or persons as *resource persons*. The Synod shall provide for their training.
- (b) The Synod Standing Committee shall appoint as many persons as they believe are necessary to fulfil the demand on this role.
- (c) The *Synod resource person* shall, but is not limited to:
 - (i) assist a Presbytery in processing a *complaint*;
 - (ii) assist in the appointment of the *complaint committee*;
 - (iii) be aware of persons available and trained to be members of *complaint committees* within each Presbytery;
 - (iv) ensure that the *complaint committee* and Presbytery are adequately aware of resources and information available to them;
 - (v) endeavour to ensure that a *pastoral strategy* is developed in accordance with this Policy;
 - (vi) inform the Moderator and Synod Secretary when additional support is required by the Presbytery.
- (d) A Synod, in consultation with another Synod, may delegate the responsibility of this appointment to another Synod and shall ensure that adequate resources are provided.

1.11 Presbytery Designated Person

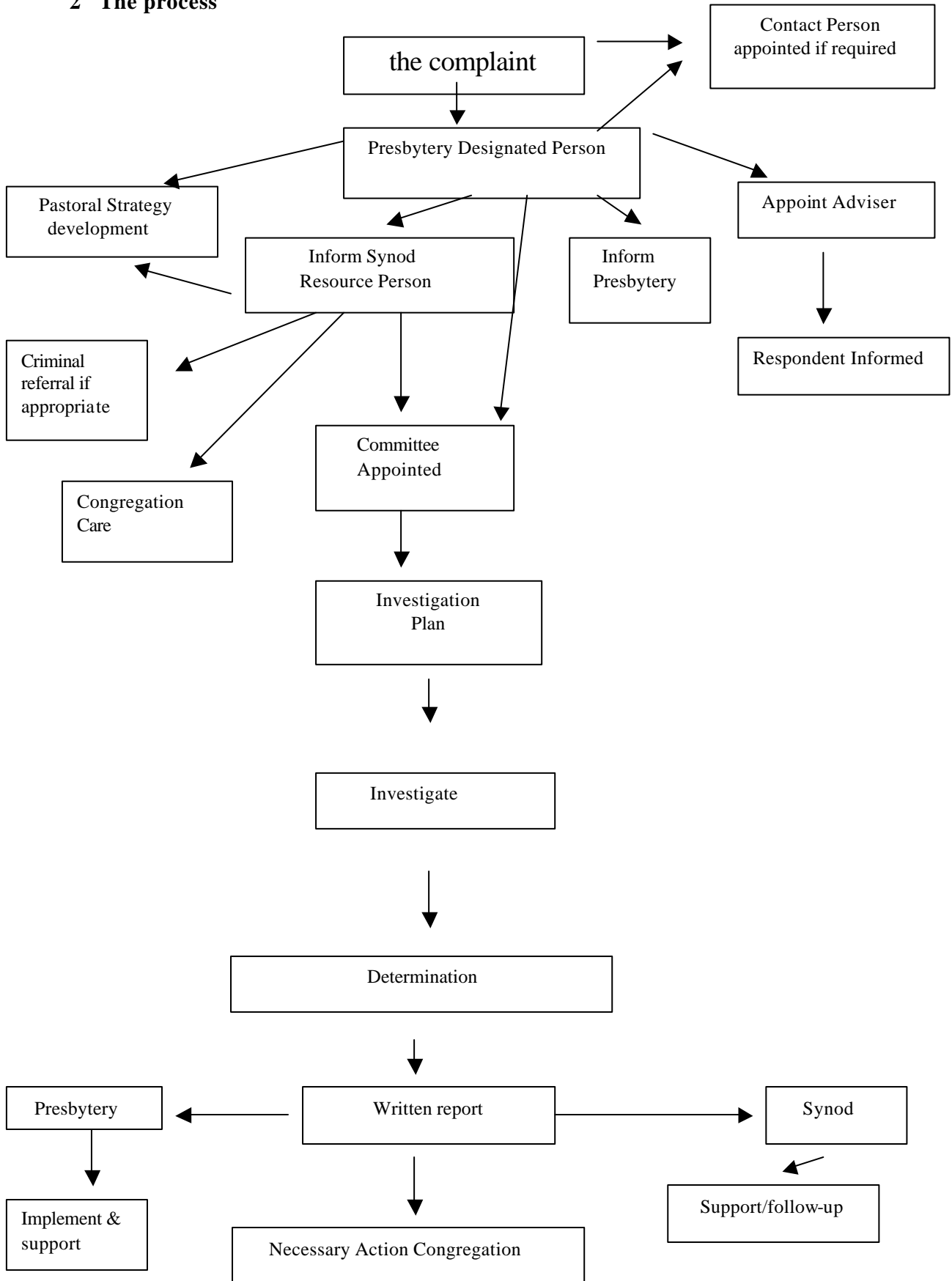
- (a) The Pastoral Relations Committee shall appoint a person or persons as *Presbytery designated persons*. The Synod shall provide for the training of such persons. No more than three persons shall be appointed.
- (b) The *Presbytery designated person* shall be a person who has been trained for the exercise of the responsibilities of the *Presbytery designated person* under this Policy. The appointing Presbytery and the Presbyteries of the *respondent* and *complainant*, if either of them is a different Presbytery, shall support the *Presbytery designated person* in the exercise of his or her responsibilities.
- (c) The *Presbytery designated person* shall:
 - (i) appoint *contact persons* when appropriate;
 - (ii) act on behalf of the Presbytery in processing the *complaint*;
 - (iii) appoint the *complaint committee* in consultation with the *Synod resource person*;
 - (iv) be aware of persons available and trained to be members of the *complaint committee* within the Presbytery;
 - (v) inform the *respondent*;
 - (vi) appoint *advisers* in consultation with the Synod Convener of Contact Persons and Advisers; and

- (vii) develop a *pastoral strategy* in conjunction with the chairperson of the Presbytery Pastoral Relations Committee.
- (d) A Presbytery, in consultation with another Presbytery, may delegate the responsibility of this appointment to another Presbytery.

1.12 Pastoral Strategy

- (a) Upon receipt of a *complaint*, the *Presbytery designated person* shall establish a *pastoral strategy* in conjunction with the Chairperson of the Presbytery Pastoral Relations Committee. The purpose of the *pastoral strategy* is to plan for the pastoral care, *confidentiality* and management of the *complaint* process and the impact upon the Congregation or faith community.
- (b) A *pastoral strategy* should be developed within two weeks of notification of the *complaint*.
- (c) The *pastoral strategy* shall address, but is not limited to:
 - (i) issues of *confidentiality*, as related to *natural justice*;
 - (ii) consultation with the Minister(s) in placement(s) in any Congregation which may be affected by the *complaint* and, where appropriate, Ministers-in-association;
 - (iii) what *members* of the Congregation are told and when;
 - (iv) issues of safety for the *complainant*, *respondent*, and *members* of the Congregation;
 - (v) education required relating to the matter within the Congregation;
 - (vi) strategy for pastoral care, healing, counselling within the Congregation;
 - (vii) strategy for pastoral care of the individuals affected, ie. *complainant*, *respondent*, their family members and friends;
 - (viii) critical incident response if a number of people involved;
 - (ix) legal advice;
 - (x) consultation where appropriate (including the Church Council for the Congregation in which the respondent is a member or adherent) required with other Councils of the Church;
 - (xi) management and care of the Congregation during the investigation;
 - (xii) overall management strategy;
 - (xiii) the keeping of appropriate records.

2 The process



SECTION TWO: OPERATIONAL GUIDELINES

2.1 Making a Complaint

- (a) Anyone who wishes to make a *complaint* may do so to a *Presbytery designated person*, *Synod resource person*, or Chairperson of Presbytery.
- (b) When a *Presbytery designated person* becomes aware that a person has a concern about *sexual misconduct* and may wish to make a *complaint*, the *Presbytery designated person* may appoint a *contact person* to assist in the preparation of a *complaint*. The *Presbytery designated person* shall contact the Synod Convener of Contact Persons and Advisers regarding the making of the appointment.
- (c) A *complaint* must be made in writing and signed and include a request that the *complaint* be investigated.
- (d) The *complaint* shall be referred to the *Presbytery designated person* as soon as possible in any case where the *complaint* is made to the *Synod resource person* or Chairperson of Presbytery.

2.2 Complaint principles

- (a) Every complaint of *sexual misconduct* by a *member* or *adherent* is to be taken seriously.
- (b) The *complainant* and the *respondent* must be at all times be treated with dignity.
- (c) In the event that a *complaint* is received involving a person under the age of consent the police or the appropriate child protection agency shall be contacted.
- (d) In the event that a *complaint* alleges behaviour of a criminal nature the *complainant* shall be encouraged to consider contacting the police. The *Presbytery designated person* may seek legal advice on action to be taken by the *Church* after consulting with the *Synod resource person* or the Synod General Secretary.

2.3 Investigation and Determination

- (a) The *Presbytery designated person* shall inform the Pastoral Relations Committee that a matter is under *investigation*. *Confidentiality* will be observed during this process.
- (b) The *Presbytery designated person* shall appoint a *complaint committee*.
- (c) The *complaint committee* shall inform the *respondent* of the details of the *complaint* in a manner which enables the *respondent* to respond.
- (d) The *complainant* and the *respondent* each shall be offered an *adviser* arranged by the *Presbytery designated person* after consultation with the Synod Convener of Contact Persons and Advisers, as soon as possible after a *complaint* is made.
- (e) The process for *investigation* and determination shall be outlined to the *complainant* and the *respondent* by the *complaint committee* Chairperson.
- (f) The *complaint committee* shall investigate the *complaint* providing both the *complainant* and the *respondent* with opportunity to be heard. Determination shall be made of the appropriate action to be taken, taking into consideration the views of the *complainant*, *respondent*, and the values and responsibilities of the Church. Investigation of the *complaint* shall be as expeditious as possible.
- (g) The *complaint committee* shall develop an *investigation* plan for responding to the *complaint*.

- (h) The plan and process shall include:
 - (i) a summary of the *complainant's* issues;
 - (ii) conferring with each of the complainant and respondent, and with other persons as considered appropriate;
 - (iii) identification of other persons to be interviewed and consulted;
 - (iv) an indication of issues to be addressed in the *pastoral strategy*;
 - (v) an expected target date for completion of *investigation* and determination;
 - (vi) a management strategy to ensure that all parties are adequately informed of the process.
- (i) In making a determination:
 - (i) the *complaint* shall be dealt with by the *complaint committee* with a view to determining the appropriate response to the *complaint*;
 - (ii) the nature of the *investigation* and determination shall be by inquiry and not adversarial;
 - (iii) at any stage the *complaint committee* may determine that the *complaint* warrants no further action;
 - (iv) at any stage the *complaint committee* may refer the *complaint* to the police as a criminal matter and will not deal with the *complaint* while it is under police investigation;
 - (v) after consultation with the *complainant* and the *respondent* about possibilities for addressing the *complaint*, the *complaint committee* shall determine the action/s in relation to the *complaint*. This may include a number of strategies and agreement on how they will be implemented;
 - (vi) the final determination shall be recorded and signed. Copies shall be provided to both parties and the original shall include signed and dated statements that the copies have been received.
- (j) A written report of the *investigation* and findings shall be made to the Presbytery Pastoral Relations Committee. Full documentation shall be kept in a confidential file by the Synod.
- (k) The Chairperson of the *complaint committee* shall notify the complainant and respondent when any decision is made relating to the *complaint* and advise them of any right of appeal.
- (l) The determination shall be implemented and overseen by the relevant Presbytery.
- (m) A statement may be made by the Chairperson of the Presbytery or the Moderator to the *Church* or public if it is felt that this is appropriate, after consultation with all parties.
- (n) Appropriate healing liturgies and strategies shall be developed for the *complainant*, Congregation and others as required as outlined in the *pastoral strategy*.

2.4 Support

- (a) The *complainant* and the *respondent*, attending any meeting of or arranged by the *complaint committee*, may be accompanied by their *adviser* and by a *support person*.
- (b) The *support person* shall not have the right to speak at any meeting of the *complaint committee* unless at the request or with the consent of the person supported, and invited to do so by the Chairperson.

2.5 Review of a Complaint

- (a) A *complainant* or *respondent* may appeal to the Presbytery Chairperson against a decision of the *complaint committee* within 14 days of the decision of the *complaint committee* being reached:
 - (i) against a finding that the *complaint* does/does not relate to *sexual misconduct* as defined in this Policy or that the *complaint* does not warrant *investigation*; or
 - (ii) on the ground that there has been a breach of *natural justice*.

- (b) The Presbytery Chairperson, in consultation with the *Synod resource person* or *Presbytery designated person*, shall appoint a committee of three persons to act as a Review Committee. Members of the Review Committee shall be persons who have received training relating to the Regulations or Policies of the Church for Prevention of Sexual Misconduct. When dealing with a review under 2.5(a)(i) the Review Committee may dismiss the appeal or remit the *complaint* to the *complaint committee* to reconsider the *complaint*. When dealing with a review under 2.5(a)(ii) the Review Committee may dismiss the appeal or recommend that a new *complaint committee* be established to hear the *complaint*.

2.6 Reporting Child Abuse

Child Abuse is a criminal offence which the *Church* takes seriously. Allegations of sexual abuse or misconduct involving a child under the age of consent² should be reported to the Child Care and Protection Agency in your State or Territory. Contact phone numbers for these agencies can be found in the white pages of your local telephone book. Allegations of child abuse should be made to your local child protection agency.

NOTE: In some states and territories, ministers and *church* employees are mandatory notifiers of child abuse, in other states there are no statutory obligations. The Uniting Church condemns all child abuse. Allegations of child abuse that arise within a UCA agency should be reported to the appropriate authority.

SECTIONS ONE AND TWO: EFFECTIVE 1 OCTOBER 2001

**Approved by Assembly Standing Committee
July 2001**

² The following are the ages of consent for each Australian State and Territory as at 1 June 1997.

Jurisdiction	Age of consent
New South Wales	16 years for heterosexual; 18 years for homosexual
Victoria	16 years
Queensland	16 years and 18 years dependent on the nature of the offence.
South Australia	18 years
Tasmania	17 years
Western Australia	16 years for heterosexual; 21 years for homosexual
Northern Territory	16 years for heterosexual; 18 years for homosexual
Australian Capital Territory	16 years

SECTION THREE: REFERRAL TO SYNOD

- 3.1 If a Presbytery refers all or any of its powers and responsibilities under this Policy to the Synod pursuant to paragraph 70(a) of the Constitution (either in respect of a specific matter or *complaint* or generally):-
- (a) the *Synod resource person* shall have the powers and responsibilities of the *Presbytery designated person* under this Policy;
 - (b) the *Synod resource person* shall act on behalf of the Synod in processing the *complaint*;
 - (c) the *Synod resource person* shall appoint the *complaint committee* which shall consist of a minimum of three (3) persons and a maximum of five (5) persons including at least two (2) persons who have been trained in the principles, policies and procedures of the *Church* in a matter of *sexual misconduct*;
 - (d) it is desirable that the complaint committee include at least one (1) person but not more than two (2) persons from the Church Council of the Congregation where the *respondent* is a *member* or *adherent*;
 - (e) a *complainant* or *respondent* may appeal to the Moderator against a decision of the *complaint committee* on the same basis as that described in clause 2.5, and the Moderator, in consultation with the *Synod resource person*, shall appoint a committee of three (3) persons to act as a Review Committee; and
 - (f) the provisions in Sections One and Two of this Policy shall apply, so far as practical, having regard to paragraphs (a) to (e).

**SECTION THREE: EFFECTIVE
1 JANUARY 2002**

**Approved by Assembly Standing Committee
November 2001**