

MEMORANDUM

Date: 15 May

To: Bishops, Chancellors and Legal Advisers

TITLE D REFORM

INTRODUCTION

1. A small group has been working on reform of Title D. A draft new Title D which is **attached** to this memorandum.
2. The purpose of this memorandum is to explain the structure of Title D.
3. In terms of process from here it is asked that Bishops and Chancellors arrange for the proposal to be discussed at their Synods. Feedback from Synods and Bishops and chancellors is then sought. A meeting of Chancellors to discuss a final draft will then be convened and the draft submitted as a Bill for General Synod/Te Hinota Whānui in 2020.
4. This memorandum covers:
 - a. the overall approach to the canon; and
 - b. an explanation of how the process works.

OVERALL APPROACH TO THE CANON

5. The number of complaints within this Church have been increasing in recent years. That has placed additional pressures on the resources of the episcopal units of the Church and also on the Primates.
6. Recent cases have also highlighted some issues with the current canonical process including:
 - a. the risk of inconsistent approaches to disciplinary issues across episcopal units which is unfair on clergy and Bishops; and
 - b. a lack of clarity on certain principles such as:
 - i. the effect of appeal tribunal decisions;
 - ii. the appropriateness of publication and what principles are to be considered in deciding on publication;
 - iii. the standard of proof required; and
 - iv. when complaints are too dated to be dealt with or where they have been dealt with before;
 - c. that our processes can retraumatise victims including by making them prosecutors of their own case.
7. There are also concerns around the extent to which our bishops expose themselves to risk given their central role to the process.

8. As a result a small group have examined our canons, as well as equivalent ones in other jurisdictions such as Australia, England and the United States, in order to assess what changes could be made to improve them.
9. What is proposed is a replacement of large parts of Title D. The current list of ministry standards (found in Part A) are to be retained however the other provisions dealing with the disciplinary process are proposed to be repealed and replaced.
10. The new Title D envisages a co-operative and co-ordinated approach between episcopal units through the creation of a Ministry Standards Commission (with tikanga representation) which will be provincially resourced to assist with the handling of complaints. In particular it will:
 - a. appoint a Registrar who will initially assess complaints and categorise them;
 - b. maintain a list of Church Lawyers who will prosecute any complaint of misconduct;
 - c. maintain a list of possible tribunal members for appointment to tribunals hearing any complaint of misconduct;
 - d. create procedures for the conduct of tribunal hearings;
 - e. create guidelines and other material to assist Bishops and tribunals in handling complaints.
11. The role of the Registrar will be a full-time role dedicated to receiving and triaging complaints. The Ministry Standards Commission will fund the Registrar and the costs of tribunals.
12. The overall approach to Title D has been informed by the following principles (as well as those of natural justice, protection and so on listed in the current canon).
13. The first is a distinction between unsatisfactory conduct and misconduct with the two separately defined and to be treated separately with unsatisfactory conduct complaints handled by the relevant Licensing Bishop/Archbishop and misconduct complaints proceeding to a tribunal. That means there can no longer be any informal resolution of credible complaints of misconduct.
14. The definition of misconduct is the same as in the current canon.
15. Second, the role of the Licensing Bishop will alter while still respecting the role of the Licensing Bishop as the supervisors of those who carry their licenses. In particular:
 - a. Licensing Bishops handle allegations of unsatisfactory conduct on their own;
 - b. all actions are undertaken by the Licensing Bishop but on the recommendation of the Registrar or Tribunal except in relation to outcomes;
 - c. the Licensing Bishop must implement the outcome recommended by a tribunal unless satisfied that another outcome would be better for the good order and governance of this Church; and
 - d. the Licensing Bishop may opt to be a member of a tribunal covering a minister under his or her jurisdiction.
16. Third tikanga is an important consideration with the current acknowledgment of it retained and further acknowledgments in relation to dealing with unsatisfactory complaints and also when deciding on outcomes in relation to misconduct complaints.

17. Fourth when a complaint proceeds this Church becomes the prosecutor of the complaint with the complainant becoming a witness. As a result a Church Lawyer will be appointed to prosecute complaints.
18. Fifth that suspension may be necessary immediately on receipt of a complaint (which may be decided on by the Registrar) and it may also be applied for by the Church Lawyer. The grounds are risk to others or harm to the reputation of this Church from continuation in ministry and/or office.
19. Sixth there will no longer be a separate canon relating to Bishops. They will be dealt with under the same process except with the retention of the current protection that any complaint of unsatisfactory conduct must be made by six baptised Church members.
20. Seventh the concept of redemption is recognised by:
 - a. it being taken into account in the handling of complaints of unsatisfactory conduct; and
 - b. clean-slate provisions where the findings of misconduct may be removed if remorse is shown and the impact on the victim is taken into account.
21. Finally new provisions have been inserted that deal with a number of currently unclear issues including:
 - a. when complaints may be dismissed on receipt because they are time-barred, have already been dealt with, are unsubstantiated or vexatious;
 - b. the standard of proof for tribunal decisions (which is the balance of probabilities – is it more likely than not); and
 - c. the nature of appeal tribunal decisions (these are binding on ‘normal tribunals’).

How does it work?

22. This part of the memo sets out in broad terms the way the canon will practically operate.
23. When a complaint is received by a Bishop, Minister of Office-Bearer then it must be referred to the Registrar. The Registrar must then assess the complaint and within 30 working days (or longer if necessary) form a view and provide a written report (which goes to the Licensing Bishop) as to:
 - a. whether the complaint should proceed or be dismissed (on grounds that it is unsubstantiated or vexatious, for example); and
 - b. whether if proven it constitutes unsatisfactory conduct or misconduct.
24. The Licensing Bishop must accept the recommendation of the Registrar. Either the complainant or the respondent may ask the Chair of the Ministry Standards Commission to review the decision at this point.
25. If the complaint is found to be one of unsatisfactory conduct then the complaint goes to the Licensing Bishop to deal with who may undertake whatever steps he or she likes including:
 - a. a process of reconciliation carried out in accordance with the principles of the relevant Tikanga;
 - b. a full investigation, following inquiry principles, into the complaint by the Registrar; or

- c. requiring the respondent to undertake further training or counselling.
26. A complaint of unsatisfactory conduct cannot affect a safe to receive letter.
27. If the complaint is one of misconduct then the Registrar must recommend, and the Licensing Bishop must accept, the institution of a tribunal process. That involves:
 - a. the Registrar appointing a Church Lawyer to prosecute the complaint;
 - b. the Registrar appointing a tribunal from the central list (there are requirements such as one lawyer, an ordained person from the episcopal unit of the Licensing Bishop) – the Licensing Bishop may join the tribunal at his or her election;
 - c. the filing of a Points of Complaint by the Church Lawyer and a Points of Response by the respondent in accordance with guidelines issues by the Ministry Standards Commission.; and
 - d. the tribunal conducting the proceeding in accordance with guidelines issued by the Ministry Standards Commission.
28. Suspension of the respondent may occur at two points. The Registrar may suspend immediately on receipt of a complaint if satisfied as to the risk of harm to others. In such a case the respondent may then institute proceedings and seek the lifting of the suspension by a tribunal.
29. The Church Lawyer may also apply for suspension on the institution of proceedings. The tribunal may suspend on the basis of risk to harm to others or risk to the reputation of this Church.
30. The tribunal may only conclude there has been misconduct if satisfied there is on the basis of the balance of probabilities (ie it is more likely than not). In making decisions on points of law and outcomes it must follow earlier appeal tribunal decisions and have regard to the decisions of other tribunals.
31. If misconduct is found the tribunal then recommends outcomes which remain the same (admonition, suspension, deprivation and deposition). The Licensing Bishop must accept the recommendation unless satisfied on reasonable grounds that another outcome would be preferable for the good governance and order of the Church.
32. At the end of the tribunal a written determination must be given to, amongst others, the Licensing Bishop, the Registrar, the complainant and the respondent. Compulsory publication occurs unless the tribunal orders otherwise. The grounds for suppression are related to the risk of harm to others and so on.
33. Publication occurs as follows:
 - a. the findings and outcomes of either the tribunal will be notified in the official newsletter of the Episcopal Unit of the Licensing Bishop;
 - b. the findings and outcomes of either the tribunal will be notified in the official newsletter of this Church;
 - c. the Registrar will maintain a database containing the written record of the findings and recommendations of any tribunal which must:
 - i. be accessible to the public on written request to the Registrar;
 - ii. be available for access by any tribunal for the purposes of considering any question of law or what outcome it is appropriate to recommend in light of the misconduct found; and

- iii. be accessible on the official website of this Church (as determined by the General Synod Standing Committee) to the effect that each written record will be available to view on a dedicated section of that website for whatever period of time is decided by the tribunal in its decision or, failing any such decision, for the period of time decided by the Registrar.
34. There are rights to Appeal the tribunal findings on the part of the respondent only. The Church Lawyer and the respondent may both appeal on outcomes. Where there is an appeal then publication does not occur until the appeal is dealt with. At the end of the appeal the same publication provisions apply. Apart from that the provisions relating to appeals are substantively the same as currently.
35. Finally if seven years or more has passed since the date of the tribunal determination then the respondent may apply to have the record 'cleaned'. The application is to the Registrar who may order it where it is appropriate in the circumstances for an order to be made having particular regard to:
- a. whether the respondent acknowledges and accepts the conduct as found;
 - b. whether the respondent has demonstrated remorse; and
 - c. the impact on the victim.

ENDS