



SAFE PLACE ADJUDICATION PANEL

TERMS OF REFERENCE

For use by local Conferences throughout Australia & New Zealand.

SAFE PLACE ADJUDICATION PANEL TERMS OF REFERENCE

1 DULY APPOINTED TRIBUNALS OF THE CHURCH

Under the Creating A Safe Place Policy, complaints that fit within definitions contained in that Policy, but which fall outside the scope of an investigation by Safe Place Services, “will be referred to the relevant Conference, Church Body or Affiliated Entity for their response” (5.2, p. 12). Examples include allegations of sexual abuse, assault, exploitation, harassment, and sexually inappropriate behaviour by a Church Worker (employee) against an adult (a person over 18-years of age). Such conduct is covered under the ‘umbrella’ definition, for the purpose of the Policy, of “Sexual Misconduct.” In addition to sexual misconduct a “Conference-led” (p. 13) investigation, being employment-based, may canvas not only other allegations that fit definitions contained in the Policy, but which are contained in other applicable and relevant sources to the work-site such as the Church Manual and any relevant workplace standards outlined in documents such as job descriptions and worksite-specific policies and procedures.

When a Conference-led investigation is undertaken, a duly appointed Tribunal must be appointed to Adjudicate.

A *Safe Place Committee*, or a sub-committee of that committee, may act as a duly-appointed Tribunal of the Church. However, under Policy, the Safe Place Committee is an *example* of a duly-appointed Tribunal, and a Conference may appoint another adjudicating body OR a once-off panel for a particular case in situations where:

- A specialist Adjudication Panel is preferred
- There is a real or perceived conflict of interest between a PSOA, Complainant, or Witnesses in a case, and members of the Safe Place Committee
- The Safe Place Committee elects to defer adjudication of a case, for example due to its complexity
- The Church Body, Authority, or Employing Entity elects to contain the matter ‘internally’, rather than send it to the Safe Place Committee
- Other factors considered relevant by the Church Body, Authority, or Affiliated Entity that stem from the workplace setting

All duly appointed Tribunals of the Church, or ‘Adjudication Panels’, will operate in accord with adjudication principles outlined in the *Creating A Safe Place Policy*, the document *Framework for Investigations*, and the *Safe Place Adjudication Committee – Terms of Reference*.

2 MEMBERSHIP OF AN ADJUDICATION PANEL

- 2.1 Three people, representative of both genders, should be appointed to form an Adjudication Panel.
- 2.2 If an Adjudication Panel does not contain an 'Experienced Lawyer', one may be appointed as a non-voting member to chair the panel.
- 2.3 The three members will elect a chairperson, by consensus, or if a fourth non-voting Experienced Lawyer has been appointed, the Experienced Lawyer will be the chairperson.
- 2.4 The Adjudication Panel can contain members who are: Church members or employees within the Conference; Church employees by other entities of the Church, such as the Union or Division; Church members within another Conference territory; or non-members of the Church who are regarded for their specialist skills, such as an Experienced Lawyer. Where there is no conflict of interest identified or likely to arise, members of the Safe Place Adjudication Committee may be appointed to an Adjudication Panel.

3 QUORUM

- 3.1 All members of the Adjudication Panel must be present to comprise a quorum. A member may be present via teleconference, video-link, or other 'live' method.

4 LINE OF ACCOUNTABILITY

- 4.1 The Adjudication Panel is accountable to the applicable Conference, and, by extension, the Conference's Church Body, Authority, or Affiliate Entity.

5 TERMS OF REFERENCE

- 5.1 The Adjudication Panel is a duly appointed tribunal of the Church to make findings on complaints or allegations alleging:

The following conduct as defined in *Creating A Safe Place Policy*, against anyone:

- a. Sexual abuse
- b. Sexual assault
- c. Sexual exploitation
- d. Sexual harassment
- e. Sexually inappropriate behaviour
- f. Spiritual abuse

The following conduct as defined in the local Conference *Safe Place Policy*, against anyone:

g. Ministerial misconduct

Other forms of conduct outlined in documents such as, against anyone:

- h. Letters of appointment
- i. Position profiles or job descriptions
- j. Any applicable code of ethics or code of conduct
- k. Any applicable workplace manual or document signed by the PSOA indicating their awareness of workplace standards and expectations or Church Workers
- l. The Church Manual

5.2 The Adjudication Panel shall consider all witness statements and evidence gathered for the case before making a finding.

5.3 The Adjudication Panel will consider the preliminary findings of the Investigation Report, if one has been undertaken, and request that the Investigator undertake additional inquiries and provide an updated Report, if considered necessary in the view of the Adjudication Panel.

5.4 The Adjudication Panel will assess the evidence for the complaint in accordance with the principles of natural justice by:

- a. Ensuring that the Investigator has provided the person subject of allegation (PSOA) with the details of each allegation.
- b. Ensuring that the Investigator has provided the PSOA with the opportunity to respond to each allegation.
- c. Interviewing the PSOA, complainant, victim or any person relevant to the case to further clarify, gather or assess evidence, if considered necessary in the view of the Adjudication Panel.
- d. Providing the PSOA with the preliminary findings of the investigation and inviting them to make any further comment or submission to the Adjudication Panel, within 7 days.
- e. Consider all the material gathered, before making a final finding.
- f. Ensuring that the Adjudication Panel's decision (finding) is free from actual or apparent bias.
- g. Determining, on the balance of probabilities, the final findings from the following:
 - False.
 - Vexatious.
 - Misconceived.
 - Not sustained.
 - Sustained.

5.5 Make recommendations about appropriate action that stem from the findings.

The Adjudication Panel may make one or more recommendations from the following to a relevant Church Body, Authority, or Affiliated Entity:

- a. That the PSOA undertake a specified period and type of counselling.
- b. That the PSOA be suspended from office or employment or from performing the function as the case may be for such period determined by the relevant Church authority.
- c. That the authority of the PSOA be revoked or annulled.
- d. That the PSOA's contract of employment (if any) be terminated.
- e. That the PSOA cease to hold any office then held.
- f. That the PSOA's holding of office or employment or performance of the function as the case may be, shall be subject to such conditions or restrictions as the relevant Church Body, Authority, or Affiliated Entity may specify.
- g. That the operation of a determination shall be suspended for such period and upon such conditions as the relevant Church Body, Authority or Affiliated Entity shall specify.
- h. That the PSOA participate in a conciliation or mediation process with a specified person or persons.
- i. That the PSOA make an apology to a specified person or persons.
- j. That the PSOA be admonished.
- k. That the PSOA undergo retraining of a specified nature.
- l. That the PSOA make reparation of a specified nature to a specified person or persons.
- m. Any other recommendation as it sees fit.

5.6 Recommendations of a risk-management nature, made by the Adjudication Panel, *may* expire after a 10-year period subject to a review by a Conference Body, Authority, or Affiliated Entity, based on advice and review by a Safe Place Committee in consultation with Safe Place Services. Recommendations *may* be reviewed earlier at the agreement of all relevant parties.

Recommendations regarding the future employment of a PSOA or other party may be effective indefinitely or as described in the recommendation itself.

The obligation of the Church to manage potential risk and maintain a safe environment is paramount in relation to the longevity of recommendations.

- 5.7 Refer matters that may arise regarding implications for: Church systems, policies and procedures to the relevant Church Body, Authority, or Affiliated Entity.
- 5.8 Communicate the findings and recommendations to the Investigation Coordinator, Safe Place Services, at the Australian Union Conference.
- 5.9 Communicate the findings to the PSOA and, where applicable, the victim or relevant witnesses. The communication to the PSOA should include notice that a Review of the Adjudication Panel's findings may be lodged within 21 days if it is believed that any of the following apply:

- a. The rules of "natural justice" were not adhered to.
- b. The policies and procedures of the Church were not observed, where they ought to have applied.
- c. The Adjudication Panel did not have jurisdiction to hear the case.

- 5.10 A request for a Review of the Adjudication Panel's finding, as outlined in 5.9, is to be sent to the General Secretary of the relevant Conference. The General Secretary may seek advice from Safe Place Services or any other necessary source, in determining if a Review will proceed.

The Investigation and Complaints Coordinator, Safe Place Services, will ensure that the Reviewer is provided with all materials related to the case to enable the Review to be undertaken.

The Review of the Adjudication Panel's finding will consider only the written documents, submissions and transcripts of the case. The Review will consider the grounds for review, but will not consider any fresh oral evidence from any party.

- 5.11 The Review will be carried out by an Experienced Lawyer, or other authority or body considered relevant and skilled for the purpose at hand.
- 5.12 A review of the Adjudication Panel's findings is the final avenue of review available within the Church's investigative process. The outcome of the Review will be the Church's final finding.
- 5.13 In line with Church Policy, relevant findings from an Adjudication Panel will be included on the National Church-Safe Database run by Safe Place Services. The PSOA will be advised of this by Safe Place Services.

- 5.14 If a PSOA resigns from employment during the Church's investigation, or has ceased to be employed by the Church since the alleged abuse occurred and the complaint was lodged, the Church is committed to making a finding on the allegation. In such cases, the Adjudication Panel may decide to make a recommendation, if the allegation is sustained, about the Church's future employment of the person or their appointment to a child-related role, should they apply or otherwise be considered for such role in the future.
- 5.15 The Adjudication Panel will not be liable for a failure of the Church-at-large, or specifically, to implement a recommendation, if a claim for negligence or damages arises.
- 5.16 The Conference will archive all records and documents from the case, including by the Adjudication Panel, in accord with the Policy of Record Keeping. A copy may also be kept in secure storage at Safe Place Services, upon request. All requests to access such documents should be directed to the Conference.

It is necessary to keep these files in case they are subpoenaed by a Court or required for an examination of the Church's handling of an allegation or complaint.

6 APPOINTMENT

- 6.1 Candidates for membership on the Adjudication Panel may be appointed by the Conference Body, Authority, or Affiliated Entity, as relevant.
- 6.2 Candidates may be appointed to a 'standing' Adjudication Panel, or to a specially convened Adjudication Panel to deal with a specific or once-off case.
- 6.3 Candidates who are appointed are bound by confidentiality due to the sensitive and private information they will have access to.
- 6.4 Candidates who are appointed are responsible for disclosing, and abstaining, in the event that a conflict of interest arises in a particular case. In such situations a replacement member will be appointed, and the member will take no further part in the case.

7 TERM OF APPOINTMENT

- 7.1 Appointment to the Adjudication Panel may be for a specified period of time or on a once-off basis. If appointed for a specified term, that term shall include the time that it takes for the appointment or reappointment of an Adjudication Panel to occur. Members may be reappointed to serve for consecutive periods. A term of appointment shall not expire mid-way through a case.

8 SUPPORTING DOCUMENTATION

- Australian Union Conference, *Creating A Safe Place Policy* (v 2012.01)
- Australian Union Conference, *Framework for Investigations* (v 2011.01)
- Australian Union Conference, *Terms of Reference for the Safe Place Adjudication Committee* (v 2012.01)
- Local Conference, *Safe Place Policy* (v 2008.12)
- Seventh-day Adventist Church Manual (latest applicable edition, namely 18th Edition 2010)
- Relevant workplace documents such as job descriptions, letters of appointment, office manuals, applicable codes of conduct/ethics, and other sources of workplace standards and expectations of Church Workers (employees)