

**Anglican Church Diocese of Sydney
Rules of the Tribunal
Made under cl. 72 Discipline Ordinance 2006**

Pleadings

1. When the Promoter lodges a charge with the Registrar (Cl. 47) the Promoter shall also lodge –
 - (a) A schedule specifying the identity of all witnesses who it is then intended to call in support of the charge, together with a signed statement, statutory declaration or affidavit setting out each witness's evidence in full; and
 - (b) Copies of all documents which it is then intended to tender in support of the charge.

2. When the Registrar serves a copy of the charge on the Respondent (Cl. 50) the Respondent shall also be served with all material provided by the Promoter in accordance with Rule 1.

3. When the Respondent lodges an answer to the charge (Cl. 52) the Respondent shall also lodge –
 - (a) A schedule specifying the identity of all witnesses who it is then intended to call in answer to the charge, together with a signed statement, statutory declaration or affidavit setting out each witness's evidence in full; and
 - (b) Copies of all documents which it is then intended to tender in answer to the charge.

4. If the Promoter intends to lodge any reply or call any additional evidence in reply to the Respondent's answer the Promoter shall lodge with the Tribunal and serve on the Respondent by the first procedural hearing –
 - (a) A schedule specifying the identity of all witnesses who it is then intended to call in reply to the answer to the charge, together with a signed statement, statutory declaration or affidavit setting out each witness's evidence in full; and
 - (b) Copies of all documents which it is then intended to tender in reply to the answer to the charge.

Pre-hearing Procedure

5. When the Registrar serves a copy of the charge on the Respondent (Cl. 50) the Registrar shall notify the Tribunal and all parties of a date for a procedural hearing before the President, Deputy President or Tribunal member with legal qualifications, which shall be not more than 35 days after the service of the charges.

6. At the procedural hearing a date shall be set for hearing of the charges which is not more than 42 days after the procedural hearing and such other orders shall be made as will ensure that the hearing is conducted expeditiously.

Evidence

7. All evidence in chief and evidence in reply is to be received by the Tribunal in written or documentary form unless the tribunal otherwise orders.

Conduct of Parties and Representatives

8. A party or representative must, when exercising the forensic judgments called for throughout the hearing, take care to ensure that decisions by the party or representative to invoke the coercive powers of a Tribunal or to make allegations or suggestions under privilege against any person –
 - (a) are reasonably justified by the material already available to the party or representative;
 - (b) are appropriate for the robust advancement of the case on its merits;
 - (c) are not made principally in order to harass or embarrass the person; and
 - (d) are not made principally in order to gain some collateral advantage for the party or representative out of Tribunal.
9. Without limiting the generality of Rule 8 –
 - (a) A party or representative must not ask a witness a question or pursue a line of questioning of a witness which in the opinion of the Tribunal is likely to –
 - (i) mislead or confuse the witness; or
 - (ii) be unduly annoying, harassing, intimidating, offensive, oppressive, humiliating or repetitive; or
 - (iii) reasonably be considered by the witness to be offensive, distasteful, or unnecessarily intrusive.
 - (b) A party or representative must take into account any particular vulnerability of a witness in the manner and tone of the questions he or she asks.
10. A party or representative will not infringe Rule 9 merely because the question or questioning challenges the truthfulness of the witness or the consistency or accuracy of any statements made by the witness.
11. Evidence shall not be tendered and questions shall not be asked which –
 - (a) relate to the sexual reputation of a Complainant;
 - (b) discloses or implies –
 - (i) that the Complainant has or may have had sexual experience or a lack of sexual experience, or

- (ii) has or may have taken part or not taken part in any sexual activity.

12. Rule 11 does not apply if the evidence or question –

- (a) is of the Complainant's sexual experience or lack of sexual experience, or of sexual activity or lack of sexual activity taken part in by the Complainant, at or about the time of the commission of the alleged abuse or unchastity offence, and is of events that are alleged to form part of a connected set of circumstances in which the alleged abuse or unchastity offence was committed,
- (b) relates to a relationship that was existing or recent at the time of the commission of the alleged abuse or unchastity, being a relationship between the Respondent and the Complainant,
- (c) if –
 - (i) the Respondent is alleged to have had sexual intercourse (as defined in section 61H (1) of the Crimes Act 1900) with the Complainant, and the Respondent does not concede the sexual intercourse so alleged, and
 - (ii) the evidence is relevant to whether the presence of semen, pregnancy, disease or injury is attributable to the sexual intercourse alleged to have been had by the Respondent,
- (d) if the evidence or question is relevant to –
 - (i) whether at the time of the commission of the alleged abuse or unchastity there was present in the Complainant a disease that, at any relevant time, was absent in the Respondent, or
 - (ii) whether at any relevant time there was absent in the Complainant a disease that, at the time of the commission of the alleged prescribed sexual offence, was present in the Respondent,
- (e) if the evidence or question is relevant to whether the allegation that the abuse or unchastity was committed by the Respondent was first made following a realisation or discovery of the presence of pregnancy or disease in the Complainant (being a realisation or discovery that took place after the commission of the alleged abuse or unchastity),
- (f) if the evidence or question has arisen from evidence given by the Complainant in cross-examination by or on behalf of the Respondent, being evidence given in answer to a question that may, pursuant to Rule 14, be asked,

and if in the opinion of the Tribunal the probative value of the evidence outweighs any distress, humiliation or embarrassment that the Complainant might suffer as a result of its admission.

13. A witness must not be asked –

- (a) to give evidence that is inadmissible under Rule 11, or

- (b) by or on behalf of the Respondent, to give evidence that is or may be admissible under Rule 12 unless the Tribunal has previously decided that the evidence would, if given, be admissible.

14. If the Tribunal is satisfied –

- (a) that it has been disclosed or implied in the Promoter's case against the Respondent that the Complainant has or may have, during a specified period or without reference to any period:
 - (i) had sexual experience, or a lack of sexual experience, of a general or specified nature, or
 - (ii) had taken part in, or not taken part in, sexual activity of a general or specified nature, and
- (b) the Respondent might be unfairly prejudiced if the Complainant could not be cross-examined by or on behalf of the Respondent in relation to the disclosure or implication,

the Complainant may be so cross-examined, but only in relation to the experience or activity of the nature (if any) so specified during the period (if any) so specified.

15. If the Tribunal decides that evidence or a question is admissible under Rule 12, the Tribunal must, before the evidence is given, record or cause to be recorded in writing the nature and scope of the evidence that is so admissible and the reasons for that decision.

16. A party or representative must not allege any matter of fact in –

- (a) any Tribunal document settled by the party or representative;
- (b) any submission during any hearing;
- (c) the course of an opening address or submission; or
- (d) the course of a closing address or submission on the evidence;

unless the party or representative believes on reasonable grounds that the factual material already available provides a proper basis to do so.

17. A party or representative must not allege any matter of fact amounting to criminality, fraud, an offence or other serious misconduct against any person unless the party or representative believes on reasonable grounds that available material by which the allegation could be supported provides a proper basis for it.

18. A party or representative must not make a suggestion in cross-examination on credit unless the party or representative believes on reasonable grounds that acceptance of the suggestion would diminish the witness's credibility.

19. A party or representative may only cross-examine each witness for a maximum of two hours in total unless given leave by the Tribunal to cross-examine for a further specified period of time.
20. A witness shall be entitled to have a support person, who is approved by the Tribunal and who is not a Representative, in the Tribunal hearing with them at all times unless otherwise ordered by the Tribunal. The support person shall be entitled to address the Tribunal or a member of the Tribunal in the hearing or privately, but only regarding any concerns they have for the well-being of the witness.
21. Where a Respondent does not undertake paid employment in the Church and is not a member of the clergy, cross-examination shall be put by way of one set of written questions to each witness and shall be answered in writing unless the Tribunal gives leave for the questions to be put and answered verbally. All such written questions shall be provided to the witness, the person calling the witness and the Tribunal at least two weeks before the first day of hearing and the witness's written answers shall be provided to the questioner, the questioner's representative and the Tribunal on or before the first day of hearing.
22. If a witness in the hearing of an abuse or unchastity charge so requests and the Tribunal agrees, they may be cross-examined in the absence of the Respondent or by a video link from another location. If the Respondent is absent then arrangements shall be made for him or her to hear the cross-examination at another location and to communicate with the Respondent's Representative.
23. If the Respondent is unrepresented and the Tribunal considers that the interests of justice require, it shall appoint a Representative for the purposes of cross-examination and not permit the Respondent to ask questions of the witness in question. If the Respondent declines to give instructions to permit cross examination by the Representative, then no cross examination will occur.
24. Matters which are stated in evidence shall not be presumed by the Tribunal to be not true only because they were not the subject of cross examination.
25. Matters which are challenged in evidence shall not be presumed by the Tribunal to be not challenged only because they were not the subject of cross examination.

Submissions

26. Opening and closing submissions to the Tribunal by a party or representative shall be in writing unless otherwise ordered by the Tribunal.

Efficient Administration of Tribunal Proceedings

27. A party or representative must seek to ensure that the party or representative does work in sufficient time to enable compliance with orders, directions or Rules of the Tribunal.
28. A party or representative must use their best endeavours to ensure that work in relation to a case is done so as to –
 - (a) confine the case to identified issues which are genuinely in dispute;
 - (b) have the case ready to be heard in accordance with Rule 5;
 - (c) present the identified issues in dispute clearly and succinctly;
 - (d) limit evidence, including cross examination, to that which is reasonably necessary to advance and protect the party's interests which are at stake in the case; and
 - (e) occupy as short a time in the Tribunal as is reasonably necessary to advance and protect the party's interests which are at stake in the case.
29. When a party or representative has reasonable grounds to believe that there will be an application to adjourn any hearing that party or representative must inform the other party or representative and the Tribunal as soon as practically possible that it is intended to make such an application.
30. If there are more than five similar charges involving the same Complainant, the parties or their representatives shall agree upon the five most serious charges to be the subject of cross examination. Unless the Tribunal otherwise orders all other similar charges shall be decided on consideration of the written evidence only. If the parties cannot agree which five similar charges shall be the subject of cross examination then the Tribunal shall determine the matter.
31. The parties or their representatives shall attempt to agree on a written compromise as to some or all of the facts, findings or recommendations on each of the charges before the Tribunal to be tendered to the Tribunal. If any such compromise is tendered, the Tribunal shall consider whether the compromise should be approved by the Tribunal as their findings or recommendations.
32. In determining whether a compromise should be approved the Tribunal shall consider all the circumstances of the case, including but not limited to –
 - (a) the interests of any victim,
 - (b) the interests of the parties,
 - (c) the protection of the public,
 - (d) the reputation of the Church, and

- (e) any other relevant matter.

Integrity of evidence

33. A party or representative must not at any stage in the proceedings except during cross examination suggest or condone another person suggesting in any way to any prospective witness (including a party) the content of any particular evidence which the witness should give.
34. A party or representative will not have breached Rule 33 by expressing a general admonition to tell the truth, or by questioning and testing in conference the version of evidence to be given by a prospective witness, including drawing the witness's attention to inconsistencies or other difficulties with the evidence, but must not coach or encourage the witness to give evidence different from the evidence which the witness believes to be true.
35. A party or representative must not confer with more than one lay witness (including a party) at the same time, about any issue –
- (a) as to which there are reasonable grounds for the party or representative to believe it may be contentious at a hearing;
 - (b) which could be affected by, or could affect, evidence to be given by any of those witnesses;
- unless the party or representative believes on reasonable grounds that special circumstances require such a conference.
36. A party or representative will not have breached Rule 35 by conferring with, more than one party or lay witness about undertakings to a Tribunal, admissions or concessions of fact, amendments of pleadings or compromise.

Costs

37. Subject to Rules 38, 39 and 40, the costs of a party shall be paid in accordance with Cl. 69 upon order of the Tribunal as set out in the Costs Schedule.
38. If the recommendations of the Tribunal are the same, substantially the same or more onerous than the recommendations made by the Professional Standards Committee under Cl. 34 then –
- (a) Where a Respondent does not undertake paid employment in the Church and is not a member of the clergy, the Tribunal shall make no order that the costs of a party be paid;
 - (b) In all other cases and subject to Rule 40 the Tribunal shall only make orders that the costs of a party be paid up to the Basic scale in the Costs Schedule.

39. Subject to Rule 40, if the recommendations of the Tribunal are adverse to the Respondent then the Tribunal shall only order that costs be paid up to the Basic scale in the Costs Schedule.
40. The Tribunal shall consider whether any act or failure to act by the Respondent or the Respondent's representative in the conduct of the matter or otherwise has –
- (a) Been unreasonable in all the circumstances;
 - (b) Unnecessarily prolonged the matter;
 - (c) Resulted in the incurring of unnecessary legal costs;
 - (d) Been otherwise so egregious as to disentitle the Respondent to reimbursement of some or all of their legal costs; or
 - (e) Apparently not considered the recommendations of the Professional Standards Committee or the effect of the findings of a court or any other competent authority.

And shall make any finding which they consider in all the circumstances should result in a reduction in the payment of the Respondent's costs. If such a finding is made the Tribunal shall make a direction as to what extent the payment of the Respondent's costs should be reduced.

Definitions

41. In these Rules the following words have the meaning described –
- (a) **Abuse charge:** A charge for the offences of child abuse, sexual abuse.
 - (b) **Cl.:** A clause of the Discipline Ordinance 2006.
 - (c) **Complainant:** A person who it is alleged was the subject of conduct constituting an abuse charge or a participant in sexual intercourse which is the basis for an unchastity charge.
 - (d) **Documents:** Includes audio and video tapes.
 - (e) **Lay witness:** A witness who is not an expert witness.
 - (f) **Party:** A Respondent or Promoter.
 - (g) **Representative:** A legal practitioner instructed to appear for a party.
 - (h) **Respondent:** A person who has been charged with an offence.
 - (i) **Similar charges:** More than one abuse or unchastity charge against the same Respondent.

Costs Schedule

Basic Reimbursement Scale of Costs: Acting for Respondents under Discipline Ordinance 2006 before Tribunal (2008 rates)

Subject to Rules 38 to 40, this **basic scale** applies for all respondents regardless of the findings or outcome of the hearing, provided the Tribunal so orders under cl. 69. Reimbursement will be paid to the Respondent. Any additional legal costs incurred will be at the Respondent's expense.

Solicitor Fees

Hearings	
Mention/not reached: per hour in Tribunal	\$140.00
Interlocutory Application: preparation	\$260.00
Per hour in Tribunal	\$140.00
Instructing Counsel in Tribunal: preparation fee	\$260.00
first day	\$660.00
Thereafter per hour	\$140.00
Maximum per day	\$660.00
Prepare Witness Statement	
Per respondent/witness	\$260.00
Conferences	
Per respondent/witness	\$120.00
Visit to external location per journey	\$107.00
With respondent where hearing exceeds 1 week (up to 2 per week during hearing)	\$120.00
“Sentence” Matters	
Preparation fee	\$260.00
Appearance in Tribunal:	
Per hour	\$140.00
Per day maximum	\$660.00
Travel Allowance	
A travel allowance is paid where the total distance travelled from the solicitor's office to Tribunal and return exceeds 70 kilometres. Prior approval must be obtained from the Director PSU.	0.70¢ per km
Notice of Motion (where prior approval has been obtained): per hour	\$140.00
View: per hour	\$140.00
Clerks	Clerk instructing Counsel will be paid up to 70% of Solicitor fee
Solicitors Conducting Tribunal hearing without Counsel	Solicitor Advocate

Counsel Fees – Tribunal

Conference with respondent (client) at external location other than on a hearing day		\$141.00
Travel to external location	per journey	\$118.00
Conference with respondent (client), other than on a hearing day		\$141.00
Conference with respondent (client), where hearing exceeds one week {up to Two (2) per week where held during the hearing}		\$141.00
Conference with witnesses	One (1) each	\$141.00
Appearance in Tribunal	First day of hearing thereafter, per day of hearing	\$1003.00 \$868.00
Appearance on admission of culpability or hearing on recommendations	per day	\$546.00
Mention	1 Hour 2 Hours 3 Hours All day	\$176.00 \$251.00 \$341.00 \$576.00
View	Fee as for a mention, depending on the time involved, plus necessary travel expenses if held in the country	
Travel allowance (where prior approval has been obtained).	Where journey from chambers to Tribunal and return exceeds 70 kilometres	0.70¢ per km

1. Solicitor Advocate/Uninstructed Counsel Fees

Hearing preparation fee and first day of hearing (Note: Pre hearing conference fee is included in preparation fee)	\$1,533.00
Subsequent days of hearing: Per hour Maximum per day Per co-respondent represented per day	\$200.00 \$1,000.00 \$279.00
Conference with client or witness	\$141.00
Mention: Per hour in Tribunal	\$141.00
Appearance on “Sentence”: Per day	\$620.00
Travel Expenses A travel allowance is paid where the total distance travelled from the solicitor's office/counsel's chambers to tribunal and return exceeds 70 kilometers. Prior approval for travel must be obtained from the Director PSU.	0.70¢ per km
Additional Approvals No other payments will be made unless prior approval is obtained.	

Pre-Tribunal costs

\$1500 to obtain advice and prepare response to Director under cl. 17(2)(b)

plus

\$7000 to obtain advice whilst responding to an investigator under cl. 23 and to obtain advice and prepare a response to the Professional Standards Committee under cl. 32

Maximum reimbursements which will be considered:

Pre-Tribunal costs \$8500 (See Pre-Tribunal scale above)

plus

Tribunal costs

\$10,000 to prepare for and to instruct and appear at first day of Tribunal hearing (including Counsel)

plus

\$2,500 for each additional day of hearing (including Counsel) up to a maximum of **\$31,500**

Total re-imbusement maximum allowable under Basic Scale

\$40,000 maximum in total including both pre-Tribunal costs and Tribunal costs

**Higher Reimbursement Scale of Costs:
Acting for Respondents under Discipline Ordinance 2006
before Tribunal (2008 rates)**

Subject to Rules 38 to 40 this **higher scale** applies where a Respondent has no adverse findings or minimal findings made against him or her and the Tribunal orders that the higher scale be the basis for reimbursement. Any order will include the provision “as agreed between the parties or assessed”. If there is no agreement between the parties the assessment will be conducted by a person or persons appointed by Synod Standing Committee. Reimbursement will be to the Respondent. Any additional legal costs incurred will be at the Respondent’s expense.

Solicitor Fees

Hearings	
Mention/not reached: per hour in Tribunal	\$300.00
Interlocutory Application: preparation	\$600.00
Per hour in Tribunal	\$300.00
Instructing Counsel in Tribunal: preparation fee	\$500.00
first day	\$1500.00
Thereafter per hour	\$300.00
Maximum per day	\$1500.00
Prepare Witness Statement	
Per respondent/witness	\$600.00
Conferences	
Per respondent/witness	\$300.00
Visit to external location per journey	\$300.00
With respondent where hearing exceeds 1 week (up to 2 per week during hearing)	\$300.00

“Sentence” Matters	
Preparation fee	\$600.00
Appearance in Tribunal:	
Per hour	\$300.00
Per day maximum	\$1500.00
Travel Allowance	
A travel allowance is paid where the total distance travelled from the solicitor's office to Tribunal and return exceeds 70 kilometres. Prior approval must be obtained from the Director PSU.	0.70¢ per km
Notice of Motion (where prior approval has been obtained): per hour	\$300.00
View: per hour	\$300.00
Clerks	Clerk instructing Counsel will be paid up to 70% of Solicitor fee
Solicitors Conducting Tribunal hearing without Counsel	Solicitor Advocate

Counsel Fees – Tribunal

Conference with respondent (client) at external location other than on a hearing day		\$300.00
Travel to /	per journey	\$200.00
Conference with respondent (client), not in custody, other than on a hearing day		\$300.00
Conference with respondent (client), where hearing exceeds one week { <i>up to Two (2) per week where held during the hearing</i> }		\$300.00
Conference with witnesses	One (1) each	\$300.00
Appearance in Tribunal	First day of hearing thereafter, per day of hearing	\$2000.00 \$1500.00
Appearance on admission of culpability or sentence	per day	\$1000.00
Mention	1 Hour 2 Hours 3 Hours All day	\$300.00 \$500.00 \$700.00 \$1000.00
View	Fee as for a mention, depending on the time involved, plus necessary travel expenses if held in the country	
Travel allowance (where prior approval has been obtained).	Where journey from chambers to Tribunal and return exceeds 70 kilometres	0.70¢ per km

1. Solicitor Advocate/Uninstructed Counsel Fees

Hearing preparation fee and first day of hearing (Note: Pre hearing conference fee is included in preparation fee)	\$3000.00
Subsequent days of hearing:	
Per hour	\$300.00
Maximum per day	\$1,500.00
Per co-respondent represented per day	\$500.00
Conference with client or witness	\$300.00
Mention: Per hour in Tribunal	\$300.00
Appearance on "Sentence": Per day	\$1000.00
Travel Expenses A travel allowance is paid where the total distance travelled from the solicitor's office/counsel's chambers to tribunal and return exceeds 70 kilometers. Prior approval for travel must be obtained from the Director PSU.	0.70¢ per km
Additional Approvals No other payments will be made unless prior approval is obtained.	

At the **higher** scale no maximums are set. However, if the Tribunal makes an order at the higher scale it will also order that the re-imbusement be as agreed between the parties or assessed. If there is no agreement between the parties the assessment will be conducted by a person or persons appointed by Synod Standing Committee.