

**EXPLANATORY MEMORANDUM –
NEW MASONIC SANCTIONS & PRIVILEGES PANEL
& IMPROVEMENTS TO COMPLAINTS COMMITTEE PROCESS**

1. The proposed reform introduces a new provision in the Book of Constitutions (Rule 354A).
2. The purpose of the proposed reform is to fill a gap in our complaints and sanctions process, namely to introduce a “mercy rule”. This is a power to commute the sanction imposed by the Complaints Committee or Complaints Review Committee (or if the Masonic Council has decided to act personally in the matter under Rule 288, then the sanction imposed by it). The proposed reform also further enshrines in our disciplinary processes those masonic values, exemplified in our ritual, which emphasise the importance of mercy, sympathy, forgiveness and justice in our conduct towards ourselves and others.
3. It is an extraordinary power of the Grand Master, based on the recommendation of a special panel, which is reserved for special cases where there has been fresh evidence or a change in circumstances which affects the appropriateness of the penalty previously imposed. At present there is no power to revisit the penalty in circumstances where members of the Craft might think that mercy should be shown. So, for example, if there is a brother under a long suspension who has become terminally ill, shows insight and contrition and makes peace with the brother with whom he was at variance, these factors may found a petition of mercy.
4. The new Rule 354A would create a new panel consisting of 3 members:
 - (i) A Past Deputy Grand Master;
 - (ii) A current Worshipful Master;
 - (iii) A Master Mason of at least 5 years membership.

which is established on an 'as required' basis.

6. The Panel's role is to make a recommendation in writing with a concise statement of reasons for the Grand Master's consideration and decision. The proposed procedure reflects the judicial and executive functions in the prerogative of mercy in our State justice system.
7. Further, as discussed at District and Statewide Forums last year reforms to the Complaints Committee procedure are proposed to improve transparency and independence. Previously the Complaints Committee was a dedicated sub-committee of the Board of General Purposes, which was also the "competent Masonic Authority within Victoria" to hear and determine Masonic offences and to impose sanctions.
8. Under the proposed reforms the Complaints Committee, and on appeal from the Complaints Review Committee, becomes a stand-alone forum, with the sole responsibility for disciplinary matters and complaints between Brethren. The Masonic Council retains its powers to govern its own procedures and deal with complaints about its own members.
9. As a pre-requisite to making a formal complaint, the matter must first have gone to Masonic Mediation.
10. Procedures for making a complaint, Masonic Mediation and the hearing of the complaint are all formalized, to improve fairness and transparency with our complaints process.

324. a) The **Masonic Council** shall at its first meeting in every Masonic year appoint a Complaints Committee, a Complaints Review Committee and an Agenda Committee and may, from time to time, appoint such other Committees as it may think necessary for specific purposes.
- b) Members of the Committees so appointed may include brethren who are not members of the **Masonic Council**.
334. a) The **Masonic Council** is the competent Masonic authority within Victoria to
- i) Recommend to Grand Lodge that a Lodge be erased, or brother be expelled.
- ii) Hear and determine matters of internal discipline concerning the conduct of its members where the matter relates, in substance, to the conduct of a member or members in their capacity as a member of the Masonic Council.
- b) Should, after hearing a matter of internal discipline under Rule 334(a)(ii), the Masonic Council determine that a member or members have engaged in serious misconduct, the Masonic Council may suspend the offending member or members until such time that a motion is brought before Grand Lodge to remove the member from the Masonic Council in accordance with the procedure in Rule 307 (a)(viii).
- c) At any stage when hearing matters of internal discipline under Rule 334(a)(ii), the majority of the Masonic Council may refer the matter to the Complaints Committee for determination in accordance with the procedure set out in Rules 343 to 356.
- d) Upon receipt or complaint, in accordance with Rule 343, from a Lodge, an individual Freemason, a member of the community, a non-Masonic organisation or of its own initiative the **Masonic Council** must refer the matter to the Complaints Committee unless the matter relates to one of internal discipline concerning members of the Masonic Council wherein the matter must be dealt with in accordance with Rule 334(a)(ii).
335. a) When the Complaints Committee or Complaints Review Committee decides that an offence is proved, or the Masonic Council makes a determination under Rule 334(a)(ii)&(b), a record shall be made in the minutes of the **Masonic Council** and the member's Masonic record stating the nature of the offence and the sanction imposed. Any such sanction shall take force immediately.
338. a) The Complaints Committee or Complaints Review Committee, may summon the officers of any Lodge or any individual brother to attend it. Failure, without due cause, of a Lodge or brother to comply with this Rule may be construed as a Masonic offence.
339. a) In the case of any brother who has been expelled, if at any time whether or not he has appealed against his expulsion, he adduces before the **Masonic Council** fresh evidence which the **Masonic Council** is satisfied could not by the exercise of reasonable diligence have been discovered by such Brother prior to expulsion, and the fresh evidence so adduced is in the opinion of the **Masonic Council** such that if it had been adduced at the original hearing, or any appeal therefrom, the brother would have been found innocent of the offence in respect of which he was expelled, the **Masonic Council** shall so report the same to Grand Lodge; whereupon Grand Lodge may by resolution rescind the resolution confirming the expulsion, and annul the same, and may also order that such brother shall, either forthwith, or as from such future date as Grand Lodge may determine, be restored to his Masonic rights and privileges, including membership of the Lodge or Lodges of which he was a member at the time of his expulsion and the continuity of such membership or memberships.

- 340.
- a) At its first meeting in each Masonic year, the Masonic Council shall, as stipulated in Rule 324, appoint a Complaints Committee and a Complaints Review Committee.
 - b) Each Committee shall have a membership of six brethren who shall rank, at least, as Master Masons.
 - c) The Grand Registrar and Grand Secretary shall jointly nominate to the Masonic Council:
 - i) six candidates for appointment to the Complaints Committee; and
 - ii) six candidates for appointment to the Complaints Review Committee.
 - d) The Masonic Council shall consider and approve or reject nominations received in accordance with Rule 340(c) by majority vote.
 - e) Should the Masonic Council approve the nominees, those nominees shall assume their appointment until the end of the Masonic year (unless they die, resign, cease to be a member of a warranted lodge under the United Grand Lodge of Victoria or otherwise vacate their appointment).
 - f) Should the Masonic Council reject any or all of the nominees, the Grand Registrar and Grand Secretary shall jointly present further nominations (not including those nominees previously rejected) to the Masonic Council for consideration, as soon as practicable. Such nominees will be determined in accordance with Rule 340(c)-(e)
 - g) Should a complaint or matter come before the Complaints Committee or the Complaints Review Committee and either:
 - i) The Grand Registrar rules, in writing, that a conflict of interest (actual or perceived) arises such that it be inappropriate for an appointed member of either committee to hear and determine the particular matter and where such a ruling is confirmed by the majority of the Masonic Council; or
 - ii) a member or members of the either committee determine that a conflict of interest (actual or perceived) arises such that it be inappropriate for the member to hear and determine the particular matter;
 the Masonic Council, on receipt of a nomination from the Grand Registrar and Grand Secretary jointly, shall appoint a brother, consistent with Rule 341, to the panel to hear and determine the particular matter (“**Temporary Member**”).

The Temporary Member shall cease to be a member of the committee to which he is appointed once the particular complaint or matter has been heard and determined.

341. The following brethren are ineligible for appointment to either the Complaints Committee or the Complaints Review Committee –
- a) the Grand Master;
 - b) the Pro Grand Master;
 - c) the Deputy Grand Master;
 - d) the Grand Chaplains;
 - e) the Grand Registrar;
 - f) the Grand Secretary;
 - g) the members of the Masonic Council and Commercial Council;
 - h) a member of any other of the committees of the Masonic Council;
 - i) an active office holder of the United Grand Lodge of Victoria (other than in the capacity of past grand officer who is not at the same time the holder of active grand office) as referred to in Rule 11.

No brother may serve on both the Complaints Committee and the Complaints Review Committee.

342. Each of the Committees shall, on the first occasion on which it convenes, elect a Chairman and Deputy Chairman.

343. a) A brother or an individual warranted Lodge having a difference or complaint that

cannot be accommodated privately may have direct access to the Complaints Committee if:

- i) The complaint is delivered to the Grand Secretary in writing, in the approved form; and
 - ii) The brother or individual warranted Lodge has participated in compulsory mediation prescribed under Rule 343A; and
 - iii) The brother or individual warranted Lodge has delivered to the Grand Secretary a copy of a certificate from the Grand Registrar evidencing their participation in compulsory mediation prescribed under Rule 343A.
- b) A brother or Lodge having such difference or complaint (“**Complainant**”) must express the difference or complaint in writing, in the approved form, and deliver that document to the Grand Secretary, together with any supporting material.
- c) In the case of a complaint alleging that a brother has committed a masonic offence (“**Respondent**”), the Complainant has the burden of proving:
- i) on the balance of probabilities; and
 - ii) by reference to relevant, reliable and objective evidence and/or materials; that the Respondent committed the alleged masonic offence.

343A

- a) The object of this Rule is to ensure that all persons who have a dispute about a matter that may be dealt with by the Complaints Committee must first make a genuine effort to resolve that dispute by way of participation in a process of compulsory mediation.
- b) Before a Complainant may validly access the Complaints Committee, the Complainant and the Respondent must participate in a process of mediation as prescribed by the Masonic Council, unless the Grand Registrar determines that, having regard to the matters in dispute, it would be inappropriate for the parties to participate in compulsory mediation.
- c) Parties to the mediation process are to regard it as strictly confidential and the mediation process must be conducted on a without prejudice basis. Further, all communications that are made by either party during the compulsory mediation process cannot be adduced or relied upon (without the written consent of both parties) in proceedings before the Complaints Committee or Complaints Review Committee.
- d) The Grand Registrar or his delegate:
- i) upon being satisfied of the Complainant’s participation in the prescribed mediation process; or
 - ii) after having made a ruling that it would be inappropriate for the parties to participate in compulsory mediation under Rule 343A(b) or (c)
- must issue a certificate to the Complainant evidencing their participation in the compulsory mediation so that it may be produced to the Grand Secretary in accordance with Rule 343(a)(iii).
- e) The failure of a Respondent to make a genuine effort to participate, in good faith, in the prescribed mediation process, without due cause, will constitute a masonic offence, unless the Grand Registrar determines that, having regard to the matters in dispute, it would be inappropriate for the parties to participate in compulsory mediation.

344.

- a) Should a matter or complaint be validly made under Rule 343, the Grand Secretary shall promptly and confidentially deliver the material supplied by the Complainant to the Chairman of the Complaints Committee, and shall advise the Chairman of the Masonic Council and the Grand Registrar that the complaint has been made.
- b) The Grand Secretary shall promptly and confidentially deliver the materials supplied by the Complainant to the Respondent as soon as practicable after complying with Rule 344(a).

345. If the complaint derives from a non-Masonic source and the Grand Secretary is unable to resolve the complaint, he shall follow all procedures set out in Rule 344 and inform the Complainant of the steps that he has taken.
346. Each of the Complaints Committee and the Complaints Review Committee may
- a) inform itself by any means it chooses;
 - b) call brethren or the officers Grand Lodge (but not the Grand Master) and of Lodges to appear before it;
 - c) Require brethren or officers of Grand Lodge (but not the Grand Master) and warranted lodges to respond to information requests issued by the relevant committee, within the reasonably prescribed time specified by the committee;
 - d) have regard to anything that it considers relevant to the matter before it;
 - e) regulate its own procedures, provided that they do not infringe the principles of natural justice or any Masonic rule or regulation, including affording the opportunity for the Respondent and the Complainant, or their representatives, to make oral and written submissions to the relevant committee.
347. Whenever a matter is brought forward for consideration by either Committee, the Chairman shall nominate a panel of three to adjudicate the matter. The panel shall always include either the Chairman or the Deputy Chairman, who shall chair the panel.
348. A member of the Complaints Committee or the Complaints Review Committee shall declare himself unable to be nominated to a panel if he is a member of a Lodge, or other Masonic body other than Grand Lodge, to which the Complainant or the Respondent belongs or belonged. He shall likewise declare himself unable to be nominated if he has a family or business relationship or close friendship with any of the parties to the matter or if he has previously participated in the events which have brought the matter before the Committee.
- 350.
- a) The Grand Registrar and the Grand Secretary may attend any or all meetings of panels established under Rule 347. They shall attend in their official capacities and give advice, but shall not participate in the making of decisions.
 - b) The Grand Secretary shall make all necessary arrangements to ensure the proceedings of the panels established under Rule 347 are recorded and that such recordings are transcribed and provided to both the Complainant and the Respondent as soon as practicable after the close of proceedings.
- 351.
- a) A brother or a Lodge being dissatisfied with a determination of the Complaints Committee may appeal to the Complaints Review Committee in the approved form.
 - b) A brother or Lodge may only appeal (“**Appellant**”) against a decision of the Complaints Committee on the following basis:
 - i) The sanction imposed in accordance with Rule 352 was either manifestly inadequate or manifestly excessive (“**Sentence Appeal**”); and/or
 - ii) The determination was unreasonable and could not be supported having regard to the whole of the evidence before the Complaints Committee (“**Determination Appeal**”).
 - c) If the Appellant chooses to appeal, he must state the grounds of his appeal in writing and deliver this document, with any supporting material, to the Grand Secretary, in the approved form, within twenty-eight days, or within any such additional time that the Grand Secretary in his discretion may allow, of the making of the determination against which he is appealing.
 - d) The Appellant has the burden of proving:
 - i) on the balance of probabilities; and
 - ii) by reference to relevant, reliable and objective evidence and/or materials;

that the Sentence Appeal or the Determination Appeal should be allowed.

- e) The Grand Secretary shall promptly and confidentially deliver the material supplied by the Appellant to the Chairman of the Complaints Review Committee, and shall advise the Chairman of the Masonic Council that the appeal has been lodged.
- f) The Grand Secretary shall promptly and confidentially deliver the materials supplied by the Appellant to the respondent to the appeal as soon as practicable after complying with Rule 351(e).
- g) The Grand Secretary shall promptly and confidentially deliver to the Complaints Review Committee a copy of the recording and transcript of the proceedings of the Complaints Committee created in accordance with Rule 350(b).
- h) A brother who has been sanctioned by the Complaints Committee shall not attend his own Lodge or any other Masonic meeting until the matter the subject of the appeal has been resolved.

352.

Each of the Complaints Committee and the Complaints Review Committee may:

- a) dismiss a complaint, or
- b) admonish a brother or a Lodge, or
- c) alter or reverse a decision or ruling of a brother exercising authority or of a Lodge, or
- d) fine a brother or a Lodge, or
- e) suspend or exclude a brother for a specified period, or remove a suspension or an exclusion, or
- f) recommend to Grand Lodge (via the Masonic Council) that a brother be expelled, or recommend to Grand Lodge (via the Masonic Council) that a Lodge be erased, or
- g) recommend to the Masonic Council another course of action which to the committee seems appropriate in the circumstances, or
- h) combine any of the above.

If a fine is imposed, it shall be according to a scale determined from time to time by the Masonic Council. Any fines so imposed shall be paid into the Benevolent Fund of Grand Lodge.

353.

The Complaints Review Committee may also:

- a) confirm a determination of the Complaints Committee, or
- b) set aside a determination of the Complaints Committee, or substitute its own determination.

354.

A determination of the Complaints Committee is final and binding on all parties unless altered or reversed by the Complaints Review Committee, and a determination of the Complaints Review Committee is final and binding on all parties.

355.

Determinations of the Complaints Committee and the Complaints Review Committee shall be committed to writing and transmitted promptly by the Grand Secretary to the Chairman of the Masonic Council.

The Grand Secretary shall likewise cause any recommendation for expulsion of a brother or erasure of a Lodge (unless overturned on appeal) to be placed on the agenda of the next scheduled Quarterly Communication of Grand Lodge.

356.

No determination of either the Complaints Committee or the Complaints Review Committee may infringe

- a) the exercise of a traditional or inherent power by the Grand Master himself, or
- b) a resolution of Grand Lodge.

MASONIC SANCTIONS AND PRIVILEGES PANEL

354A

Constitution of the Masonic Sanctions and Privileges Panel

- a) The Masonic Sanctions and Privileges Panel shall consist of three persons:
 - i) A Past Deputy Grand Master of the United Grand Lodge of Victoria;
 - ii) A Worshipful Master of a warranted lodge under the United Grand Lodge of Victoria;
and
 - iii) A Master Mason who is, and has for at least 5 years been, a subscribing member of a warranted lodge under the United Grand Lodge of Victoria.

Appointment & Membership of the Masonic Sanctions and Privileges Panel

- b) If a valid petition is made to the Grand Secretary, the Grand Registrar shall nominate to the Masonic Council one brother of each rank specified in Rule 354A(a) for appointment to the Masonic Sanctions and Privileges Panel.
- c) The Masonic Council shall consider and approve or reject nominations received by the Grand Registrar by majority vote.
- d) Should the Masonic Council reject any or all of the Grand Registrar's nominees, the Grand Registrar shall present further nominations (not including those nominees previously rejected) to the Masonic Council for consideration, as soon as practicable. Such nominees will be determined in accordance with Rule 354A(c).
- e) Brethren are not eligible for nomination by the Grand Registrar to be appointed by the Masonic Council to the Masonic Sanctions and Privileges Panel include:
 - i) members of the Masonic or Commercial Council;
 - ii) members of the Complaints or Complaints Review Committee; or
 - iii) an active office holder of the United Grand Lodge of Victoria (other than in the capacity of past grand officer who is not at the same time the holder of active grand office) as referred to in Rule 11.

Appointment of Substitute Member where Conflict of Interest Arises

- f) Should a petition of mercy or matter come before the Masonic Sanctions and Privileges Panel and either:
 - i) the Grand Registrar rules, in writing, that a conflict of interest (actual or perceived) arises such that it be inappropriate for an appointed member to hear and determine the particular matter and where such a ruling is confirmed by the majority of the Masonic Council; or
 - ii) a member or the other members of the Masonic Sanctions and Privileges Panel determine that a conflict of interest (actual or perceived) arises such that it be inappropriate for the member to hear and determine the particular matter;

the Masonic Council, on receipt of a nomination from the Grand Registrar, shall appoint a brother of equivalent rank to the conflicted member to the panel to hear and determine the particular matter (“Substitute Member”).

Jurisdiction of the Masonic Sanctions & Privileges Panel

- g) The Masonic Sanctions and Privileges Panel (“**Panel**”) is charged with the limited and extraordinary power to hear and make recommendations to the Grand Master on petitions of mercy made by those persons or brethren that have been and continue to be subject to penalty imposed by either the Masonic Council (under Rules 334-339), Complaints or Complaints Review Committee (under Rules 340-356) (“**Petitioner**”).
- h) Any decision or disposition of the Panel does not constitute a rehearing or retesting of the basis for the imposition of a sanction imposed by the Masonic Council (under Rules 334-339), Complaints or Complaints Review Committee (under Rules 340-356). Neither does the Panel have the power to confirm, set aside or substitute a determination of the Masonic Council, Complaints or Complaints Review Committee. Rather, the Panel only has the power to recommend the commuting (in whole or in part), or excusing of the Petitioner from being subject to, the sanction imposed by the Masonic Council, Complaints or Complaints Review Committee in accordance with the terms of Rule 354A(o).
- i) The Panel may hear and consider petitions of mercy made by or on behalf of a Petitioner, only if satisfied that the following conditions have been reasonably satisfied:
 - i) the form and substance of the matter forming the basis for the petition of mercy relates to matters not currently before or capable of being brought before the Masonic Council (under Rules 334-339), Complaints or Complaints Review Committee (under Rules 340-356);
 - ii) that the Petitioner has exhausted (either through conduct or omission) his right to have any sanction imposed by the Masonic Council (under Rules 334-339) or Complaints Committee (under Rules 340-356) reviewed by the Complaints Review Committee (under Rules 340-356);
 - iii) that the sanction imposed by the Masonic Council (under Rules 334-339), Complaints or Complaints Review Committee (under Rules 340-356) that is the subject of the petition of mercy includes a suspension of the privileges of the Petitioner for a period not less than 6 months;
 - iv) the form and substance of the matter forming the basis of the petition for mercy has not been referred for consideration and determination by Grand Lodge (under either Rule 4 or as a result of the Grand Master’s exercise of the right of veto under Rule 19A).
- j) No petition of mercy may be presented to or heard by the Panel unless:
 - i) The petition of mercy is made in the prescribed form set by the Masonic Council from time to time;
 - ii) The petition of mercy is filed with the Grand Secretary, in the prescribed form, by the Petitioner or on behalf of the Petitioner no earlier:
 - A. 6 months after the commencement of the imposed suspension; or
 - B. After 25% of the period of the imposed suspension has been served by the Petitioner. (whichever is the greater). If the Grand Secretary is satisfied that exceptional circumstances apply, then the petition of mercy may be received and presented to the Panel notwithstanding that the above mentioned time periods have expired.

Procedure of the Masonic Sanctions & Privileges Panel when Hearing Petitions of Mercy

- k) The Panel must hear petitions of mercy filed in accordance with this Rule.

- l) In hearing a petition of mercy the Panel may:
 - i) Inform itself by any means it chooses;
 - ii) Call brethren or officers of Grand Lodge (but not the Grand Master) and warranted lodges to appear before it;
 - iii) Require brethren or officers of Grand Lodge (but not the Grand Master) and warranted lodges to respond to information requests issued by the Panel, within the reasonably prescribed time specified by the Panel;
 - iv) Have regard to anything it considers relevant to the matter before it;
 - v) Regulate its own procedures, provided that they do not infringe upon the principles of natural justice.

- m) The Panel must base its recommendation on a petition of mercy on the basis of:
 - i) Relevant, reliable and objective evidence and/or materials furnished (whether or not by the Petitioner) before it, when hearing the matter;
 - ii) It having complied with the principles of natural justice, including:
 - a. affording the opportunity for the Petitioner, or their representative, to make oral and written submissions to the Panel;
 - b. affording the opportunity for the original complaint or complainants, or their representative, to make oral and written submissions to the Panel;
 - c. affording the opportunity for the relevant sanctioning body, be it the Masonic Council, Complaints Committee or Complaints Review Committee, to file a written report on the matter determined by the relevant sanctioning body and giving the opinion of the sanctioning body on the petition or on any point arising in respect to the petition before the Panel.
 - iii) It being satisfied on the balance of probabilities of any factual matters forming the basis of its decision or disposition; and
 - iv) It being satisfied on the balance of probabilities that the Petitioner has satisfied the test and the burdens set out in Rule 354A(p).

- n) The Panel may, at its discretion and on a confidential basis, seek independent advice from either the Grand Registrar or a Practising Australian Lawyer (as defined at law) in respect to hearing and determining any petition of mercy.

Role of the Masonic Sanctions and Privileges Panel

- o) Should the Panel be satisfied, on the balance of probabilities, that the Petitioner has satisfied the test contained and the burden placed on him in Rule 354A(p), the Panel may, recommend to the Grand Master that:
 - i) the sanction imposed by the Masonic Council (under Rules 334-339), Complaints or Complaints Review Committee (under Rules 340-356) be commuted or otherwise excused;
 - ii) the Petitioner comply with a lesser sanction (not inconsistent with sanctions listed in Rule 352) than that imposed by the Masonic Council (under Rules 334-339), Complaints or Complaints Review Committee (under Rules 340-356).

Such recommendation shall be in writing and shall include a concise statement of reasons for the recommendation for the Grand Master's consideration.

The Panel may include in its recommendation any other such condition on the Petitioner as it deems appropriate (including conditions of ongoing supervision or review) so long as such conditions, neither individually or in the totality, impose a greater or more severe sanction or deprivation of privilege than the sanction imposed by the Masonic Council (under Rules 334-339), Complaints or Complaints Review Committee (under Rules 340-356).

Notwithstanding this, the Panel is not permitted to impose any condition or restriction on the Petitioner that would infringe on the Petitioner's rights and privileges otherwise provided for under this Book of Constitutions.

Petitioner's Burden When Making Petitions of Mercy

p) The Petitioner must bear the burden of proving:

- i) on the balance of probabilities; and
- ii) by reference to relevant, reliable and objective evidence and/or materials;

that compelling reasons exist justifying the Panel to exercise its discretion contained in Rule 354A(o) favourably to the Petitioner

Powers of Grand Master in respect of Petition of Mercy

q) The Grand Master may, in the exercise of his discretion and without giving any reason therefor, accept or reject, in whole or in part, the recommendation of the Panel. Such determination of the Grand Master shall then be given in writing to the Petitioner, together with the Recommendation of the Panel.