

## **6/13 Faithfulness in Service: Amendments to the definition of “bullying”**

(A report from the Standing Committee.)

### **Purpose**

1. The purpose of this report is to comment on, and make recommendations about, the definition of “bullying” in *Faithfulness in Service* (“*FIS*”) proposed by the General Synod Standing Committee (the “proposed definition”).

### **Recommendations**

2. The Standing Committee recommends that the Synod –
  - (a) receive this report,
  - (b) adopt, as an amendment to *FIS*, the General Synod Standing Committee’s proposed definition of “bullying” incorporating the amendments marked up on Annexure 1 to this report, and
  - (c) recommends that the General Synod Standing Committee adopt these additional amendments to the *FIS* definition of “bullying”.

### **Background**

3. The General Synod Professional Standards Commission has recommended changes to *FIS*. In April 2011, the changes (including a new definition of “bullying”) were adopted by the General Synod Standing Committee.

4. The changes to *FIS* do not take effect in this Diocese unless they are ratified by a resolution of the Synod. The amendments were ratified by Synod at its 2012 session, except for the proposed definition of “bullying”. At the 2013 session of Synod, consideration of the proposed definition was deferred because –

- (a) Safe Work Australia was consulting about a model code on workplace bullying, and
- (b) a review of the Diocesan Grievance Policy and Procedure was due to start in July 2014.

5. In late 2013 Safe Work Australia declined to issue a model code on workplace bullying. Instead, it issued a guide titled *Preventing and Responding to Workplace Bullying*. Relevant extracts from the Guide are included in Annexure 2.

6. On 23 June 2014, the Standing Committee appointed Bishop Chris Edwards, Canon Sandy Grant, Ms Michelle England, Mr Michael Easton and Ms Stephanie Cole (as the appointee of the Safe Ministry Board’s chairman) to a subcommittee to review and make recommendations on –

- (a) the *FIS* definition of “bullying” adopted by the General Synod Standing Committee, and
- (b) the Diocesan Grievance Policy and Procedure.

7. The Subcommittee appointed Canon Sandy Grant as its chairman.

8. The Subcommittee anticipates completing its review of the Diocesan Grievance Policy and Procedure in time for the Standing Committee to make recommendations to Synod for consideration at its 2015 session. The Subcommittee considers that the *FIS* definition of “bullying” can be considered independently.

### **Definition of “bullying”**

#### *Current definition*

9. The current definition of “bullying” in *FIS* (as in force in our Diocese) is –

*Bullying means the repeated seeking out or targeting of a person to cause them distress and humiliation or to exploit them. It includes –*

- *exclusion from a peer group;*
- *intimidation; and*
- *extortion.*

10. This definition is very narrow. It has a number of limitations. First, it gives little indication of the conduct that may constitute bullying. Second, it also gives little indication of the forms of legitimate conduct that are not bullying. Third, the definition requires an intention on the part of the bully to cause distress, humiliation or exploitation (in contrast to the model definition of “bullying”, where the emphasis is on the unreasonableness of the conduct and its likely effect on the victim).

*The proposed definition*

11. The proposed definition incorporates a ‘reasonable person’ test as to whether behaviour would be expected to victimise, humiliate, undermine or threaten the person or persons to whom the behaviour is directed. It also requires consideration of the context in which the behaviour occurred.

12. The proposed definition has regard to risk to the health and safety of the person or persons to whom the behaviour is directed. ‘Cyberbullying’, which would include bullying through the use of social media, is specifically mentioned in the proposed definition. The proposed definition also contains an inclusive list of conduct that is not bullying.

*Subcommittee comments*

13. The Subcommittee’s view is that the proposed definition does not have any fundamental flaws. However, the Subcommittee considers that the marked up changes in Annexure 1 would improve the definition by –

- (a) Shifting the emphasis from the *effect* of the conduct to the *nature* of the conduct (that is, by making the definition more objective). This follows from the Subcommittee’s proposed reference to ‘unreasonable behaviour’ rather than a ‘reasonable person’ test, and would be more consistent with the definition of “bullying” in the Safe Work Australia bullying guidelines. In this way, reasonable behaviour – which may be perceived to be victimising, humiliating, undermining or threatening a person – is excluded from the definition;
- (b) Expanding the exclusions at the end of the definition, to give the exclusions less of a workplace emphasis. The expanded exclusions would also capture instructions, and so forth, that may be given in the course of regular ministry activities (such as rebuking a person for aspects of their lifestyle).

14. The Subcommittee considered at length whether the definition proposed by the General Synod Standing Committee could have the effect of causing any regular ministry activities to be construed as bullying (such as rebuking a person for aspects of their lifestyle, excluding an unrepentant sinner or preaching on matters of human sexuality).

15. The Subcommittee’s view is that the proposed definition does not prevent a workplace or community from setting boundaries about acceptable personal conduct for that workplace or community. Although bullying could still arise in the way disagreements are resolved, the key question will be whether the behaviour was unreasonable having regard to all of the circumstances (and subject to consideration of the exclusions at the end of the definition).

16. The Subcommittee recognises that if our Synod does not adopt the proposed definition of “bullying”, or adopts it in a slightly amended form, this would be the first time we have departed from the version of *FIS* that has been recommended by the General Synod Standing Committee. The Subcommittee considers the benefits of the proposed changes to the definition to outweigh the risk to uniformity. The Subcommittee also recommends that representations be made to the General Synod Standing Committee to adopt the proposed changes to the definition, so that the possibility of a uniform improved definition of “bullying” might be pursued.

For and on behalf of the Standing Committee.

CANON SANDY GRANT  
*Subcommittee Chairman*

26 August 2014

## Amendments Summary

1. Amendments section 2 “**Key Terms**” by deleting the definition of “bullying” and substituting the following definition:

“**bullying** means repeated and unreasonable behaviour directed to a person or persons which ~~a reasonable person~~, having regard to all the circumstances, would be expected to victimise, humiliate, undermine or threaten the person or persons, and which creates a risk to their health and safety. Where it involves the use of information and communication technologies, it is often called cyberbullying. It can include:

- making derogatory, demeaning or belittling comments or jokes about someone’s appearance, lifestyle, background, or capability;
- communicating in an abusive manner;
- spreading rumours or innuendo about someone or undermining in other ways their performance or reputation;
- dismissing or minimising someone’s legitimate concerns or needs;
- inappropriately ignoring or excluding someone from information or activities;
- touching someone threateningly or inappropriately
- invading someone’s personal space or interfering with their personal property;
- teasing, or making someone the brunt of pranks or practical jokes;
- displaying or distributing written or visual material that degrades or offends.

Behaviour which is not bullying includes:

- respectfully disagreeing with or criticising someone’s beliefs or opinions or actions;
- setting reasonable performance goals, standards or deadlines;
- giving reasonable directives instructions, feedback or assessments of ~~performance or behaviour~~ someone’s conduct;
- taking legitimate disciplinary action.”

## Extracts from Safe Work Australia’s *Guide for Preventing and Responding to Workplace Bullying*

### 1.1 What is workplace bullying?

**Workplace bullying** is defined as *repeated* and *unreasonable behaviour* directed towards a worker or a group of workers that *creates a risk to health and safety*.

**Repeated behaviour** refers to the persistent nature of the behaviour and can involve a range of behaviours over time.

**Unreasonable behaviour** means behaviour that a reasonable person, having considered the circumstances, would see as unreasonable, including behaviour that is victimising, humiliating, intimidating or threatening.

Examples of behaviour, whether intentional or unintentional, that may be considered to be workplace bullying if they are **repeated, unreasonable** and **create a risk to health and safety** include but are not limited to:

- abusive, insulting or offensive language or comments
- unjustified criticism or complaints
- deliberately excluding someone from workplace activities
- withholding information that is vital for effective work performance
- setting unreasonable timelines or constantly changing deadlines
- setting tasks that are unreasonably below or beyond a person’s skill level
- denying access to information, supervision, consultation or resources to the detriment of the worker
- spreading misinformation or malicious rumours
- changing work arrangements such as rosters and leave to deliberately inconvenience a particular worker or workers.

A single incident of unreasonable behaviour is not considered to be workplace bullying, however it may have the potential to escalate and should not be ignored.

If workplace bullying behaviour involves violence, for example physical assault or the threat of physical assault, it should be reported to the police.

### 1.2 What is not considered to be workplace bullying?

#### Reasonable management action taken in a reasonable way

Persons conducting a business or undertaking may take reasonable management action to direct and control the way work is carried out. It is reasonable for managers and supervisors to allocate work and give feedback on a worker’s performance. These actions are not considered to be workplace bullying if they are carried out lawfully and in a reasonable manner, taking the particular circumstances into account. Examples of reasonable management action include but are not limited to:

- setting reasonable performance goals, standards and deadlines
- rostering and allocating working hours where the requirements are reasonable
- transferring a worker for operational reasons
- deciding not to select a worker for promotion where a reasonable process is followed
- informing a worker about unsatisfactory work performance in an honest, fair and constructive way
- informing a worker about inappropriate behaviour in an objective and confidential way
- implementing organisational changes or restructuring
- taking disciplinary action, including suspension or terminating employment.

### **Discrimination and sexual harassment**

Unreasonable behaviour may involve discrimination or sexual harassment which in isolation is not considered to be bullying.

Discrimination occurs when someone is treated less favourably than others because they have a particular characteristic or belong to a particular group of people. For example, it would be discriminatory not to hire or promote a woman because she is pregnant or may become pregnant.

Sexual harassment is associated with unwelcome sexual advances, requests for sexual favours or other unwelcome conduct of a sexual nature.

Discrimination and sexual harassment in employment is unlawful under anti-discrimination, equal employment opportunity, workplace relations and human rights laws.

The WHS Act includes specific protections against discriminatory conduct for people raising health and safety concerns or performing legitimate safety-related functions.

It is possible for a person to be bullied, sexually harassed and discriminated against at the same time.

### **Workplace conflict**

Differences of opinion and disagreements are generally not considered to be workplace bullying. People can have differences and disagreements in the workplace without engaging in repeated, unreasonable behaviour that creates a risk to health and safety. However, in some cases conflict that is not managed may escalate to the point where it meets the definition of workplace bullying.