

Amendments to *Faithfulness in Service* approved by the General Synod Standing Committee

(A report from the Standing Committee.)

Key Points

- In 2016, the General Synod Standing Committee (the “GSSC”) approved certain amendments to *Faithfulness in Service: A national code of personal behaviour and the practice of pastoral ministry by clergy and church workers*.
- One of these amendments concerned a new definition of “bullying”. Our Standing Committee (the “SC”) considered the definition to be problematic in a number of respects and raised concerns with the GSSC.
- The GSSC subsequently approved an amended definition of “bullying” addressing these concerns, other than in one minor respect.
- Other amendments concern the definitions of “grooming”, “sexual abuse of a child”, “sexual assault” and “sexual harassment”. These are helpful improvements of the meaning of these terms in *Faithfulness in Service* and take into account feedback provided by our Safe Ministry Board.
- These amendments to *Faithfulness in Service* do not have force and effect in the Diocese of Sydney unless they are adopted by the Synod.

Purpose

1. The purpose of this report is to make recommendations to the Synod in respect to amendments to *Faithfulness in Service* that have been approved by the General Synod Standing Committee.

Recommendation

2. The Synod receive this report,
 3. The Synod consider the following motion to be moved at the forthcoming session of the Synod “by request of the Standing Committee” –

‘Synod, noting the report “Amendments to Faithfulness in Service approved by the General Synod Standing Committee” adopts the amendments to *Faithfulness in Service* set out in Attachments 2 and 4 to the report.’

Background

4. On 13-14 May 2016, the General Synod Standing Committee (the “GSSC”) approved amendments to the definition of “bullying” in the national form of *Faithfulness in Service*.

5. In September 2016, the Standing Committee of the Diocese of Sydney (the “Standing Committee”) received a report from Bishop Chris Edwards, as Chair of the Subcommittee that had been appointed by Standing Committee to consider the amendments. The Subcommittee identified a number of concerns with the new definition and recommended that the amendments not be referred to the Synod. The GSSC was notified of these concerns and encouraged to give further consideration to the definition.

6. On 18-19 November 2016, the GSSC determined to revise its amendments to the definition of “bullying” in the model form of *Faithfulness in Service*. The GSSC also approved further amendments to *Faithfulness in Service* at that meeting. These principally involve inserting new definitions for “grooming”, “sexual abuse of a child”, “sexual assault” and “sexual harassment”.

Definition of “bullying” in *Faithfulness in Service*

7. The full text of the current definition of “bullying” in force in the Diocese of Sydney and the definition approved by the GSSC on 18-19 November is set out in Attachments 1 and 2 respectively.

8. The Standing Committee’s primary concerns with the amendments to the definition of “bullying” in *Faithfulness in Service* approved by the GSSC on 13-14 May 2016 and the GSSC’s response to those concerns in the revised definition are shown in the table below.

Standing Committee's Concern	GSSC's Response
Omission of the word "inappropriately" as a qualification to "ignoring or excluding" someone.	The word "inappropriately" has been reinserted in the fifth bullet point under "Bullying can include".
Excluded conduct appeared under the description "reasonable management action" and did not sufficiently account for <i>Faithfulness in Service</i> having application in non-workplace contexts, in particular it would mean the exclusions could not be applied to allegations of peer-to-peer bullying and other pastoral contexts.	The term "reasonable management action" has been removed and replaced with "Bullying does not include lawful conduct of clergy or church workers carried out in a reasonable manner, such as".
The use of subjective terms such as "fair" in the descriptions of excluded conduct undermines the reliability of the exclusions.	The term "fair" has been removed from the first and fourth bullet points of excluded conduct.
Inserting a new exclusion for "giving information about inappropriate behaviour in an objective and confidential way" will arguably make it harder for a person to assert that their behaviour was reasonable if the disclosure is not kept confidential. There are times in pastoral ministry when information about inappropriate behaviour needs to be made public, or at least disclosed to other office holders in a parish.	The requirement for confidentiality has been removed.
The qualification that "disagreement or criticism" be "honest" (1st and 4th bullet points describing behaviour that does not constitute bullying) has some merit, but the word "truthful" is preferable to make clear that this does not require that the basis for criticism or disagreement must be disclosed.	The amended definition of "bullying" retains the word "honest".

9. The GSSC has adopted each of the amendments recommended by Standing Committee, except that the word "honest" has been retained in the first and fourth bullet points of excluded conduct instead of the word "truthful". As indicated in the table, the Standing Committee was concerned that the word "honest" may require openness about the basis for the disagreement or criticism to be disclosed. Such disclosure may not be appropriate or helpful in some circumstances. However the word "honest" can be read as having a similar meaning to "truthful" in the context and does not necessary require disclosure of the basis for criticism or disagreement. The intention would appear to be that there must be a genuine reason for the disagreement or criticism and that it not be undertaken for an improper purpose.

Other definitions

10. The Safe Ministry Board of the Diocese (the "SMB") has considered the proposed new definitions of "grooming", "sexual abuse of a child", "sexual assault" and "sexual harassment" and supports them. The SMB provided some drafting comments to the Professional Standards Commission of the General Synod which were incorporated into the amendments that were considered by the GSSC.

11. The proposed new definition of "grooming" places emphasis on the intentional influencing of a person for a sexual purpose, whereas the current definition focuses on the manipulation of a relationship. The proposed definition also includes adults as potential recipients of grooming behaviour in addition to children. Further commentary is also proposed to be included in section 5 of *Faithfulness in Service* to provide further detail about the nature of grooming.

12. The proposed new definition of “sexual abuse of a child” does not change the headline definition, but the list of matters that it may include is expanded to include sexual advances made using any form of communication and the giving of goods, money, attention or affection as inducements for sexual activities.

13. The proposed new definition of “sexual assault” is identical to the current definition, except that it also includes attempting to commit a sexual assault.

14. The proposed new definition of “sexual harassment” reflects the definition in the *Sex Discrimination Act 1984 (Cth)*. The current definition in *Faithfulness in Services* is based on whether it is reasonable in the circumstances for a person to feel offended, belittled or threatened by unwelcome conduct of a sexual nature. The new test is whether a reasonable person would have anticipated that the other person would be offended, humiliated or intimidated by their sexual advance or conduct of a sexual nature.

For and on behalf of the Standing Committee

BISHOP CHRIS EDWARDS

4 August 2017

The definition of “bullying” in *Faithfulness in Service* currently in force in the Diocese of Sydney

“**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 instructions, feedback or assessments of someone’s conduct;
- taking legitimate disciplinary action.

The amended definition of “bullying” in *Faithfulness in Service* approved by the GSSC on 18-19 November 2016

“**bullying** means behaviour directed to a person or persons which:

- is repeated;
- is unreasonable (being behaviour that a reasonable person, having considered the circumstances, would see as unreasonable, including behaviour that is victimising, humiliating, intimidating or threatening); and
- creates a risk to their health and safety.

Bullying 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 someone, or playing pranks or practical jokes on someone;
- displaying or distributing written or visual material that degrades or offends.

Bullying does not include lawful conduct of clergy or church workers carried out in a reasonable manner, such as:

- disagreeing with or criticising someone’s belief or opinions or actions in an honest and respectful way;
- giving information about inappropriate behaviour in an objective way to the person or persons concerned and to any other person with a proper reason for having that information;
- setting reasonable performance goals, standards or deadlines;
- giving information about unsatisfactory performance in an honest and constructive way;
- taking legitimate disciplinary action.

Cyberbullying is a form of bullying which involves the use of information and communication technologies.

The definitions of “grooming”, “sexual abuse of a child”, “sexual assault” and “sexual harassment” in *Faithfulness in Service* currently in force in the Diocese of Sydney

grooming is the manipulative cultivation of a relationship in order to initiate or cloak sexual abuse of an adult or a child. In the case of child sexual abuse, an offender may groom not only the child, but also those who exercise authority over the child, including the child’s parents or guardians, and clergy and church workers.

sexual abuse of a child means the use of a child by another person for his or her own sexual stimulation or gratification or for that of others. It includes:

- exposing oneself indecently to a child;
- having vaginal or anal intercourse with a child;
- penetrating a child’s vagina or anus with an object or any bodily part;
- sexually touching or fondling a child;
- kissing, touching, holding or fondling a child in a sexual manner;
- staring at or secretly watching a child for the purpose of sexual stimulation or gratification;
- making any gesture or action of a sexual nature in a child’s presence;
- making sexual references or innuendo in a child’s presence using any form of communication;
- discussing or inquiring about personal matters of a sexual nature with a child;
- exposing a child to any form of sexually explicit or suggestive material;
- forcing a child to sexually touch or fondle another person;
- forcing a child to perform oral sex;
- forcing a child either to masturbate self or others, or to watch others masturbate; and
- forcing a child to engage in or watch any other sexual activity.

Sexual abuse of a child does not include:

- sex education with the prior consent of a parent or guardian;
- age appropriate consensual sexual behaviour between peers (i.e. the same or a similar age); or
- inquiries by clergy and church workers with pastoral responsibility for a child or investigation responsibility into complaints that may involve sexual abuse.

Sexual assault means any intentional or reckless act, use of force or threat to use force involving some form of sexual activity against an adult without their consent. It includes:

- having vaginal or anal intercourse with a person without their consent;
- penetrating another person’s vagina or anus with an object or any bodily part without that person’s consent;
- sexually touching and fondling a person without their consent;
- kissing another person without their consent;
- holding another person in a sexual manner without their consent;
- forcing a person to sexually touch or fondle another person; and
- forcing a person to perform oral sex.

Sexual harassment means unwelcome conduct of a sexual nature, whether intended or not, in relation to an adult where the person reasonably feels in all circumstances offended, belittled or threatened. Such behaviour may consist of a single incident or several incidents over a period of time. It includes:

- asking a person for sex;
- giving a person to understand that you would like sexual favours from them;
- making any gesture, action or comment of a sexual nature to a person directly or
- making a comment of a sexual nature about them in their presence;
- making jokes containing sexual references or innuendo using any form of
- communication;
- exposing a person to any form of sexually explicit or suggestive material;
- making unwelcome physical contact such as touching, pinching, or patting;
- making unwelcome or unnecessary inquiries about or attempts to discuss personal
- matters of a sexual nature;
- deliberately intruding on an individual's personal space;

The amended definitions of “grooming”, “sexual abuse of a child”, “sexual assault” and “sexual harassment” in *Faithfulness in Service* approved by the GSSC on 18-19 November 2016, and other amendments consequential or incidental thereto.

1. The following amendment be made in section 1 “About this Code”:
 - (a) delete the number “3” and substitute the number “5” in the last sentence of the section with the heading “Format and presentation”

2. The following amendment be made in section 2 “Key Terms”:
 - (a) delete the definition of “grooming” and substitute the following definition:

“**grooming** refers to actions deliberately undertaken with the aim of engaging and influencing an adult or a child for the purpose of sexual activity.

In the case of sexual abuse of a child, an offender may groom not only the child, but also those close to the child, including the child’s parents or guardians, other family members, clergy and church workers. Grooming can include providing gifts or favours to the child or their family.

In the case of sexual abuse of an adult, an offender may groom not only the adult, but also those close to them, including their children, clergy and church workers.”
 - (b) delete the definition of “sexual abuse of a child” and substitute the following definition:

“**sexual abuse of a child** means the use of a child by another person for his or her own sexual stimulation or gratification or for that of others. It includes:

 - making sexual advances to a child using any form of communication;
 - exposing oneself indecently to a child;
 - having or attempting to have vaginal or anal intercourse with a child;
 - penetrating or attempting to penetrate a child’s vagina or anus with an object or any bodily part;
 - kissing, touching, holding or fondling or attempting to kiss, touch, hold or fondle a child in a sexual manner;
 - staring at or secretly watching a child for the purpose of sexual stimulation or gratification;
 - making any gesture or action of a sexual nature in a child’s presence;
 - making sexual references or innuendo in a child’s presence using any form of communication;
 - discussing or inquiring about personal matters of a sexual nature with a child;
 - possessing, creating or exposing children to child exploitation material of a sexual nature;
 - exposing a child to any form of sexually explicit or suggestive material including clothing with sexually explicit images or messages;
 - giving goods, money, attention or affection in exchange for sexual activities with a child
 - giving goods, money, attention or affection in exchange for images of a child for the purpose of sexual gratification of themselves or others; and
 - encouraging, or forcing or attempting to encourage or force a child:
 - to sexually touch or fondle another person;
 - to perform oral sex;
 - either to masturbate self or others, or to watch others masturbate; and
 - to engage in or watch any other sexual activity.

Sexual abuse of a child does not include:

- sex education with the prior consent of a parent or guardian; or
- age appropriate consensual sexual behaviour between peers (i.e. the same or a similar age).”

(c) delete the definition of “sexual assault” and substitute the following definition:

“**sexual assault** means any intentional or reckless act, use of force or threat to use force involving some form of sexual activity against an adult without their consent. It includes:

- having or attempting to have vaginal or anal intercourse with a person without their consent;
- penetrating or attempting to penetrate another person’s vagina or anus with an object or any bodily part without that person’s consent;
- sexually touching and fondling or attempting to sexually touch or fondle a person without their consent;
- kissing or attempting to kiss another person without their consent;
- holding or attempting to hold another person in a sexual manner without their consent;
- forcing or attempting to force a person to sexually touch or fondle another person; and
- forcing or attempting to force a person to perform oral sex.”

(d) delete the definition of “sexual harassment” and substitute the following definition:

“**sexual harassment** means:

- an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person, or
- other unwelcome conduct of a sexual nature in relation to the other person,

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated.

Such behaviour may consist of a single incident or several incidents over a period of time. It includes:

- asking a person for sex;
- giving a person to understand that you would like sexual favours from them;
- making any gesture, action or comment of a sexual nature to a person directly or making a comment of a sexual nature about them in their presence;
- making jokes containing sexual references or innuendo using any form of communication;
- exposing a person to any form of sexually explicit or suggestive material;
- making unwelcome physical contact such as touching, pinching, or patting;
- making unwelcome or unnecessary inquiries about or attempts to discuss personal matters of a sexual nature;
- deliberately intruding on an individual’s personal space;
- staring at or secretly watching a person for the purpose of sexual stimulation or gratification; and
- stalking a person.”

3. The following amendments be made in section 5 “Children”:

(a) add the following paragraph after of the first paragraph of the educational material with the heading “Characteristics and effects of child abuse” under paragraph 5.16:

“Grooming actions are designed to establish an emotional connection to lower the child’s inhibitions through the development of a relationship with the child, and increased opportunity to see the child. Grooming involves psychological manipulation that is usually very subtle, drawn out, calculated, controlling and premeditated. Typically, grooming occurs incrementally: accessing the victim, initiating and maintaining the abuse, and concealing the abuse.

All Australian jurisdictions have grooming offences, which vary in scope and application. Grooming offences may target online or other electronic communications, subjecting children to child exploitation material, and/or using intoxicating substances to engage children for the purpose of sexual activity.”

4. The following amendments be made in section 6 “Personal behaviour”:
 - (a) add the following sentence at the end of paragraph 6.3:

“Abuse in a family or domestic context is commonly known as “family and domestic violence”.