

40/10 Implementation of the Grievance Policy and Procedure

(A report from the Standing Committee.)

Key points

- At the request of the Synod, a review was undertaken of its existing policy for dealing with allegations of unacceptable behaviour by clergy and church workers.
- The review concluded that while the existing policy has not been widely used, it remains important to have in place a uniform policy across all parishes to deal with such allegations.
- A new policy is proposed which retains the basic elements agreed by the Synod in 2010 but in a substantially rewritten and restructured form to increase accessibility.
- The main changes under the proposed policy include providing that any conciliation process at the local level should be informal and requiring the Regional Bishop to review the available options for dealing with an allegation, if the matter is referred to him. This may or may not involve a process of diocesan conciliation.
- The proposed policy also provides that unacceptable behaviour is any conduct which falls short of behaviour expected of clergy and church workers in the Diocese.

Purpose

1. The purpose of this report is –
 - (a) to inform the Synod of the outcome of a review of its existing Grievance Policy and Procedure requested by the Synod in resolution 40/10, and
 - (b) to propose that the Synod adopt a revised policy for dealing with allegations of unacceptable behaviour by clergy and church workers in parishes as a consequence of that review.

Recommendations

2. That the Synod receive this report.
3. That the Synod pass as a policy of the Synod the *Diocesan Policy for dealing with allegations of unacceptable behaviour* as attached to this report (the “proposed policy”).
4. That, if the Synod passes the proposed policy, the Synod pass forthwith the following motion to be moved “by request of the Standing Committee” –

‘Synod –

 - (a) determines that the *Diocesan Policy for dealing with allegations of unacceptable behaviour* (the “policy”) commences on 1 January 2016 and that the existing *Grievance Policy and Procedure for dealing with allegations of unacceptable behaviour by clergy and church workers in parishes* ceases on that date, and
 - (b) requests that a copy of the policy be circulated to all rectors and parish councils for their attention and that parishioners be made aware of the policy, and
 - (c) requests that the Regional Bishops be offered training to undertake their responsibilities under the policy, and
 - (d) requests that the Regional Bishops report annually to Standing Committee on such training received for their policy responsibilities and on their use (or otherwise) of the policy and model procedures, and
 - (e) authorises the Standing Committee to make amendments to the policy provided any amendments are reported to the next ordinary session of the Synod, and
 - (f) requests the Standing Committee to undertake a review of the policy after a period of 5 years from its commencement, and
 - (g) requests the committee appointed to review the *Discipline Ordinance 2006* to consider whether the *Offences Ordinance 1962* should be amended to include as an additional offence for clergy and other church workers “repeated and unreasonable behaviour

directed towards a staff member or volunteer worker in a parish that creates a risk to the health or safety of that person”.’

Background

5. The Synod passed the *Grievance Policy and Procedure for dealing with allegations of unacceptable behaviour by clergy and church workers in parishes* (the “existing policy”) on 19 October 2010.

6. By resolution 40/10, the Synod, among other things, requested the Standing Committee to undertake a review of the existing policy after a period of 3 years from its commencement on 1 July 2011.

7. On 23 June 2014, the Standing Committee appointed a committee comprising Canon Sandy Grant (chair), Mr Michael Easton, Bishop Chris Edwards, Ms Michelle England and Ms Stephanie Cole (as the appointee of the Safe Ministry Board chair) to review the policy. Due to other work undertaken by the committee (ie. preparing a revised definition of “bullying” under *Faithfulness in Service* which was adopted by the Synod at its session in 2014), the Standing Committee agreed to defer the review of the existing policy until the Synod session in 2015.

Feedback on operation of the Grievance Policy

8. For the purpose of undertaking its review, the committee obtained feedback on the operation of the existing policy from the Regional Bishops (being the effective gate-keepers of the existing policy at a diocesan level) and from persons appointed to the pool of Diocesan Conciliators under the existing policy.

9. Feedback from the Regional Bishops can be summarised as follows –

- 3 of the 5 Regional Bishops indicated they had not formally used the existing policy with the other 2 Regional Bishops indicating they had.
- While no numbers concerning the frequency of using the existing policy are available, the frequency of use is likely to be low.
- The reasons offered by the Regional Bishops for the infrequent use of the existing policy included –
 - the processes are too bureaucratic and difficult to use,
 - a perception that the processes are weighted in favour of rectors,
 - the risk that persons who make a complaint will be re-traumatised,
 - the perception that it is often easier (or perhaps more godly) just to give in, to endure, or to leave the parish rather than engage with the processes of the existing policy,
 - a preference for many Christians (including Bishops) to handle things more relationally even though in formal terms the existing policy offers a non-legal process, and
 - Regional Bishops will often attempt to do the conciliating job themselves on a more informal basis.

10. When asked what improvements might be made to the existing policy, the Regional Bishops offered the following suggestions –

- increase the role of the support person to include the possibility of their offering advice to the person they are supporting,
- remove the requirement for Regional Bishops selecting Diocesan Conciliators only from a Standing Committee-appointed pool,
- provide in-service training for Diocesan Conciliators and Bishops in relation to the existing policy,
- reinforce the existence and availability of the existing policy,
- a general simplification of the existing policy would be helpful (although an alternative view was that it needs to remain at the current level so as to retain a sense of seriousness for what is going on), and
- remove the more neutral language of “allegation of unacceptable behaviour” and replacing it directly with terms used in *Faithfulness in Service*, particularly bullying, harassment, emotional abuse etc.

11. From the brief survey of those appointed to the pool of Diocesan Conciliators under the existing policy, it would appear that none who responded to the survey had been asked to act as a conciliator by a Regional Bishop. Comments made by Diocesan Conciliators include –

- The existing policy is good in principle but perhaps not in practice. There are parish issues where it could perhaps have been applied but some Regional Bishops may prefer to handle these issues themselves “pastorally” rather than instigate a formal procedure.

- The existing policy is not well known within churches but perhaps this is because people access these options when the need arises as opposed to being given more general prominence.

Threshold questions for the committee

12. In light of this feedback, the committee considered the following threshold questions –
- (a) Is it necessary to retain any policy for the purposes of dealing with allegations of unacceptable behaviour in parishes?
 - (b) If such a policy is to be retained, how much time and effort should be put into reviewing the document?

13. The committee concluded that it remains important to have in place a uniform policy across all parishes in the Diocese as a statement of our on-going and collective commitment to treating allegations of unacceptable behaviour seriously and dealing with them in a manner which reflects biblical principles of care and fairness. Such a policy also assists parishes meet their responsibilities under Work Health and Safety legislation. The alternative is to repeal the existing policy and to ask parishes to develop their own procedures. Given our shared reputational risk in this area, the committee does not think this is a helpful alternative.

14. The committee also concluded that, in light of our experience of the existing policy to date, a fairly extensive review was necessary to demonstrate we have taken reasonable steps to improve the way we handle allegations of unacceptable behaviour in parishes. A “light-touch” review would not suffice.

Proposed policy

15. The proposed policy retains the basic elements agreed by the Synod in 2010. However given the extensive redrafting and restructuring required to make the document more accessible, the committee considers that the Synod should adopt a new policy rather than attempt to amend the existing policy.

16. The committee also wants to acknowledge feedback provided by the Director of Professional Standards which resulted in efforts to use plainer English in the proposed policy and to reduce the concentration of legalistic-sounding language. The Director also drew the committee’s attention to the *Protocol for Addressing Grievances* used by the Diocese of Canberra and Goulburn. The committee found a number of the features of this document helpful in preparing the proposed policy.

17. The following comments explain the main changes included in the proposed policy.

Scope of policy

18. The proposed policy provides that “unacceptable behaviour” means any conduct which falls short of the standard of behaviour expected of clergy and church workers. This includes, but is not limited to, bullying behaviour. At present “unacceptable behaviour” is defined only by reference to certain discrete categories of behaviour, namely bullying, emotional abuse, harassment, physical abuse and spiritual abuse. In proposing this change, the committee is seeking to address a real problem which emerged during its review, namely what to do with genuine concerns about behaviour which do not neatly fit into any of the current categories.

19. This change is likely to give greater significance to the statement (included in a similar form in the existing policy) that the proposed policy should be understood in light of the standards, guidelines and terms used in *Faithfulness in Service*, being the code of conduct for clergy and church workers in the Diocese.

Structure and content

20. In response to feedback that the existing policy is too bureaucratic and difficult to use, the proposed policy has been significantly restructured under the following main headings –

- Purpose of this policy
- Application of this policy
- Relationship to *Faithfulness in Service*
- Our commitment
- Policy principles
- Model procedures.

21. Appended to the main policy document is a flow diagram showing the model procedures and accompanying notes for the procedures.

Policy principles

22. Despite feedback which suggests that intentional use of the existing policy and its procedures is fairly infrequent, the committee considers that the principles in the existing policy are generally sound. These have therefore been essentially reproduced in the proposed policy with two main changes.

23. Firstly, in response to feedback from the Bishops, the committee agrees there would be benefit in increasing the role of the support person in any conciliation process under the policy (principle 10). One challenge in making any conciliation process under the policy more effective is minimising the potential for a power imbalance between the parties during the process. Giving support persons an increased role in speaking on behalf of the person they are supporting should go some way to addressing this issue.

24. Secondly, the principles have been modified to better reflect the reality that in some cases it is not appropriate to deal with an allegation using a process of conciliation (principle 12). In this case the policy indicates that other more appropriate options for dealing with the allegation should be considered. Principle 12 has no counterpart in the existing policy.

Model procedures

25. The approach taken in the proposed policy is to set out the model procedures as a flow diagram in one appendix with accompanying notes referenced in the flow diagram. This compares with the much lengthier written procedures for dealing with allegations of unacceptable behaviour under the existing policy set out in Appendix 3 and a diagrammatic summary of these written procedures in Appendix 2.

26. The proposed policy provides that the local conciliation process should be informal. This enables some of the detail previously contained in the procedures for local resolution of a matter to be omitted from the proposed policy. The intention under the proposed policy is that if the senior minister is unable to reach a mutually acceptable outcome through an informal process of local conciliation, he should discontinue the process. This then opens the possibility of the matter being referred to the Regional Bishop for consideration.

27. Under the proposed policy, if a matter is referred to the Regional Bishop, he must –

- (a) satisfy himself that direct and local resolution of the matter has been adequately considered, and
- (b) if satisfied, review the available options for appropriately dealing with the allegation.

28. The available options include those set out in item 5 of the notes which accompany the procedures.

29. The formal pool of persons approved to be appointed as diocesan conciliators by the Standing Committee under the existing policy is disbanded under the proposed policy. This permits the Regional Bishop to appoint any person competent in conflict resolution and conciliation to undertake a diocesan conciliation. However the Regional Bishop retains the ability to conciliate the matter himself with the agreement of both parties.

Dealing with serious bullying allegations

30. If an allegation of serious bullying is made against a church worker in a parish, it is likely that the processes of conciliation under the proposed policy will be an inappropriate means of dealing with the allegation.

31. The committee is aware of the difficulties in escalating the resolution of complaints too quickly. However the need to avoid escalating a matter too quickly needs to be balanced with the ability to take appropriate and decisive action in response to bullying behaviour which risks the health and safety of those in a parish workplace. A failure to respond appropriately to such behaviour is taken seriously by the courts and others responsible for administering work, health and safety laws.

32. The committee has attempted to address this issue in part by including in the notes which accompany the model procedures a number of graduated options for dealing with allegations which are not appropriately dealt with under a conciliation processes. In particular, one option is that the allegation be dealt with by the relevant employers in the parish workplace (ie. the senior minister and wardens) as a work, health and safety matter. Another option is to make a complaint (presumably of disgraceful conduct) under the *Discipline Ordinance 2006*. The choice between these two options is likely to depend on a number of factors. These include the willingness/ability of the senior minister and wardens to deal with the allegation (for example, if the allegation is made against a member of the clergy, the senior minister and wardens may not have the ability to remove or even suspend such a person from office). Other factors would be the seriousness of the allegation and whether it is likely that the conduct alleged constitutes “disgraceful conduct” for the purposes of the *Discipline Ordinance 2006*.

33. Because of the uncertain scope of the offence of “disgraceful conduct”, the committee considers that it may be desirable to provide a more explicit path for dealing with allegations of the most serious bullying under the *Discipline Ordinance 2006*. To this end it is suggested that the committee appointed to review the *Discipline Ordinance 2006* be asked to consider whether the *Offences Ordinance 1962* should be amended to include as an additional offence for clergy and other church workers “repeated and unreasonable behaviour directed towards a staff member or volunteer worker in a parish that creates a risk to the health or safety of that person”. This reflects the definition of bullying used in Safe Work Australia guidelines.

For and on behalf of the Standing Committee.

SANDY GRANT

Subcommittee Chair

15 September 2015