

## Safe Community Framework Appendix

### A. Definitions- Safe Community Framework Terminology

This set of definitions and terminology relates to words as they appear as legislated terms, or in common use, or as specifically used in the context of this Safe Community Framework document. Acknowledgement: Some of the definitions herein are those found in the National Anglican Code of Conduct: Faithfulness in Service denoted by ('FIS').

#### **abuse**

All forms of physical and/or emotional ill-treatment, sexual abuse, neglect or negligent treatment, or commercial or other exploitation resulting in harm to health, survival, development or dignity, often in the context of a relationship of responsibility, trust or power (adapted from the World Health Organisation definition).

#### **boundaries**

Socially, culturally and morally determined expectations of acceptable behaviour in human relationships. Boundaries can be spiritual, financial, physical, emotional, language, sexual and other inter-relational matters.

#### **bullying (FIS)**

Repeated behaviour directed toward a person or persons which a reasonable person, having regard to all the circumstances, would regard as victimisation, humiliation, or undermining or threatening to 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:

- 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;
- 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;
- setting reasonable performance goals, standards or deadlines;
- giving reasonable directives, feedback or assessments of performance or behaviour;
- taking legitimate disciplinary action

### **case manager**

The person responsible for the implementation of the organisation's workplace investigation procedure. The case manager will present a report to the case response group (see definition below) with findings of the investigation and include recommendations in relation to possible outcomes for all parties, i.e. person(s) making the allegation(s), and the person(s) subject of the allegation(s).

### **case response group (CRG)**

A group of two or more persons who can make binding decisions in an investigation into serious misconduct of a worker (paid or volunteer).

### **child (children)**

A child is a person under the age of 18 years. In some jurisdictions a person who is 16 or 17 years of age is referred to as a young person for certain purposes.

**child abuse**

Conduct in relation to a child as defined in the definition of abuse, above.

**child exploitation material/child abuse material**

(Previously often referred to as child pornography). Material that describes or depicts a person who is, or who appears to be, a child – (a) engaged in sexual activity; or (b) in a sexual context; or (c) as the subject of torture, cruelty or abuse (whether or not in a sexual context) in a way that a reasonable person would regard as being, in all the circumstances, offensive. Child exploitation material can include any film, printed matter, electronic data, computer image and any other depiction.

**civil authorities**

The police and the relevant state or territory government child protection authority.

**consensual sexual activity**

Free and voluntary agreement to the act

**code of conduct**

A set of clearly defined behavioural boundaries or behavioural expectations of the organisation.

**discrimination (FIS)**

It is unlawful to discriminate against or harass a person in employment (or in the provision of goods and services) on the basis of a protected attribute. Protected attributes in Australia include; age, disability or impairment (physical, intellectual, mental or psychiatric – visible or invisible, temporary or permanent), race, colour, descent or national or ethnic origin,

religious belief or activity, (except where such activities are directly in contradiction to the values of the organisation), gender identity, lawful sexual activity/sexual orientation, family, marital, parental or carer status, physical features, political opinion, belief or activity, industrial activity or membership of an industrial association, pregnancy or potential pregnancy, breastfeeding, medical record – (except where health and/or fitness

would render a person incapable of safely undertaking a duty), irrelevant criminal record, employment activity, or personal association with a person who is identified by reference to any of the above attributes.

Discrimination is treating a person with an identified attribute or personal characteristic less favourably than a person who does not have the attribute or characteristic. Discrimination can be either direct or indirect.

### **duty of care**

To do no intentional harm. To do all that is reasonably practicable to protect from harm, and to prevent harm. Duty of care is a legal responsibility to ensure the safety and wellbeing of all who participate in programs or activities of the organisation.

### **emotional abuse (FIS)**

Acts or omissions that have caused, or could cause, emotional harm or lead to serious behavioural or cognitive disorders. Includes:

- subjecting a person to excessive and repeated personal criticism;
- ridiculing a person, including the use of insulting or derogatory terms to refer to them;
- threatening or intimidating a person;
- ignoring a person openly and pointedly; and
- behaving in a hostile manner or in any way that could reasonably result in another person feeling isolated or rejected

### **governance board**

The group appointed or elected by the organisation to carry out oversight of the organisation, including primary duty of care, the delegation of roles, oversight of good governance and adoption and review of company documentation. Where work health & safety legislation applies, this group is also known as the persons conducting the business or undertaking (PCBU).

### **harassment (FIS)**

Unwelcome conduct, whether intended or not, in relation to another person where the person feels, with good reason in all the circumstances, offended, belittled, or threatened.

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

Includes:

- making unwelcome physical contact with a person;
- making gestures or using language that could reasonably give offence, including continual and unwarranted shouting;
- making unjustified or unnecessary comments about a person's capacities or attributes;
- putting on open display pictures, posters, graffiti or written materials that could reasonably cause offence;
- making unwelcome communication with a person in any form (for example, phone calls, email, text messages); and
- stalking a person

### **hazards**

A source of danger that could result in harm if due care is not exercised.

### **mandatory reporting**

The legal requirement to report allegations of child abuse and neglect. The people mandated to report, and the criteria for when it is mandatory to report, differs in each Australian state and territory (see below)

### **misconduct**

The unacceptable (violation) crossing of professional boundaries. Boundaries can be crossed unintentionally, negligently, or deliberately. There is a continuum of misconduct in ministry that extends from conduct that is generally considered minor through to abuse that is also criminal. This broad definition takes into account the failure to respect, to esteem or to value a person. Misconduct incorporates disrespectful thinking and actions towards another person.

### **negligence**

Failure to act prudently by not applying the standard of care, that a "reasonable person" would exercise in the situation, or under the same circumstances.

**neglect**

Failure to provide the basic necessities of life where a child's health and development are placed at risk of harm. It includes being deprived of: food, clothing, shelter, hygiene, education, supervision and safety, attachment to and affection from adults; and medical care.

**person associated with the organisation**

A person who is involved with the governance, the management, the provision of services, is employed by, is a volunteer, is a member, uses the programs or attends the events of our organisation.

**person making an allegation**

A person who makes an allegation of misconduct, reportable employee conduct, or abuse.

**person subject of allegation (PSOA)**

A person or group of people against whom allegation(s) of misconduct, reportable employee conduct, or abuse have been made.

**procedural fairness (also known as natural justice)**

A process characterised by the following principles:

- without undue delay: i.e. Acting as quickly as possible shall be a genuine recognition of the seriousness of the allegation. Care should be taken to avoid delays;
- clear communication: i.e. All parties should be fully and speedily informed regarding decisions made, the reasons for the decisions and what processes are being used at all stages, particularly where there is any delay;
- no bias: i.e. The case will be managed, assessed, conciliated, and facilitated by persons who have no relationship (biological or other) with any party. They shall not have a negative or biased view of the case matter, e.g. Persons who have experienced past sexual abuse should not manage a sexual abuse claim.
- no conflict of interest: i.e. The case will be managed, assessed, conciliated, and

facilitated by persons who have no personal benefit or interest in the outcome of the case.

- decisions made on evidence-based outcomes: i.e. Assessment of disputed facts to be conducted by a suitably qualified assessor

(NSW Ombudsman: child protection in the workplace 2004).

### **prohibited material (FIS)**

- publications, films and computer games that have been classified by the office of film and literature classification as being unsuitable for a child to read, see or play;
- any other images or sounds not subject to classification by the office of film and literature classification that are considered with good reason within the organisation to be unsuitable for a child to see or hear; and
- any substance or product whose supply to, or use by, children is prohibited by law, such as alcohol, tobacco products, illegal drugs and gambling products.
- prohibited substance means any substance banned or prohibited by law for use or consumption by adults.

### **reasonable standard of care**

Level of care that a user may reasonably expect that office holders will take in providing any program, activity, service, or facility.

### **reasonable foresight**

A responsibility that office holders need to take when planning activities for children and young people, to identify any reasonably foreseen danger/risk and take reasonable steps to prevent or avert such risk.

### **reportable incident**

A single event or set of events where injury, harm, abuse or loss occurs. A critical incident is an event or set of circumstances resulting in significant physical or psychological outcomes or fatality for one or more people.

### **reportable employee conduct**

A term that is relevant only in some jurisdictions. In jurisdictions where reportable employee conduct schemes exist, e.g. NSW ACT VIC, this term refers to allegations or reports of behaviours by workers deemed as being harmful to children and therefore reportable to the relevant government agency, e.g. In NSW the Office of the Children's Guardian, Victoria the Children's Guardian, and in ACT the Ombudsman.

### **risk**

Exposure to the possibility of such things as economic or financial loss or gain, physical damage, injury or delay, as a consequence of pursuing or not pursuing a particular course of action. The concept of risk includes: perception that something could happen, likelihood of it occurring, and consequences if it does occur.

### **risk management**

The process of managing your organisation's exposure to potential hazards. It does this by identifying risks in order to prevent them or reduce them, and by providing funds to meet any liability if it occurs. Risk assessment looks at what might happen, whereas hazard identification looks at what is present at the venue at a specific time.

### **safe environment**

Safe refers to an abuse-free and harm-free environment. Such an environment is also a friendly environment, i.e. Values and respects the rights of individuals. This includes the physical, emotional and spiritual environments. It assumes that foreseeable risks have been managed so as to ensure the safety of all people.

### **serious misconduct**

Conduct which, if proven to be more likely to have occurred than not (on the balance of probabilities), or admitted to, would lead to: restrictions being placed on a worker's role, or dismissal from a role or removal from a position (volunteer or paid). Includes: allegations of child abuse and neglect, sexual abuse, sexual misconduct, sexually

inappropriate behaviour, financial impropriety, bullying behaviours, allegations of domestic and family violence and criminal activity.

### **sexual abuse of a child**

The use of a child by another person for his or her own sexual stimulation or gratification or for that of others. 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 [or manipulating] a child to sexually touch or fondle another person;
- forcing [or manipulating] a child to perform oral sex;
- forcing [or manipulating] a child either to masturbate self or others, or to watch others masturbate;
- forcing [or manipulating] 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);
- inquiries by workers with responsibility for a child or investigation responsibility into complaints that may involve sexual abuse (FIS).

### **sexual grooming (FIS)**

Manipulative cultivation of a relationship in order to initiate or hide 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 the child's parents or guardians, and workers. The term may also be referred to as conditioning and is considered as part of the tactics a person uses in their choice to abuse.

### **sexual exploitation (FIS)**

Refers to any form of sexual contact, or invitation to sexual contact with an adult, with whom there is a care or supervisory relationship, whether or not there is consent and regardless of who initiated the contact or invitation. It does not include such contact or invitation within a marriage.

### **sexual misconduct**

Sexual misconduct is any conduct which sexualises a relationship where that sexualisation is either disgraceful, lacking in integrity or which would be regarded by right thinking members of the organisation as inappropriate or inconsistent with the standards expected of a worker or member of the organisation.

Sexual misconduct includes but is not limited to:

- Sexual assault;
- Crossing of professional boundaries;
- Using a position of power or an organisational role to obtain sexual advantage;
- Engaging in behaviour involving an inappropriate and overly personal or intimate relationship with, conduct towards or focus on a child or young person or a group of children of young persons;
- Whilst a person in an organisational leadership role, engaging in a sexualised relationship with a child (under 18) without the knowledge of the organisation;
- Engaging in sexual harassment i.e. unwelcome conduct of a sexual nature or with a sexual inference, whether intended or not, in relation to another person where the person feels with good reason in all the circumstances offended, belittled or threatened. Such behaviour may consist of a single incident or several incidents over a period of time.

**vulnerable person**

The susceptibility to harm which results from an interaction between the resources available to individuals and communities and the life challenges they face. Vulnerability can result from age, gender, prior abuse experience, developmental problems, personal incapacities, disadvantaged social status, inadequacy of interpersonal networks and supports, degraded neighbourhoods and environments, and the complex interactions of these factors over the life course. (health affairs 2007).

**vicarious liability**

Liability that an organisation or person may be determined to have for the conduct of those who act on its behalf, whether the conduct is authorised or not e.g. Workers.

**Work, Health & Safety (WHS)**

Refers to the framework enshrined in Commonwealth and State Legislation by which employers and employees are to ensure safe work environments (including paid & volunteer workers). This legislation applies in all Australian jurisdictions apart from Victoria and Western Australia, who have specific occupational health & safety requirements.

**workers**

All paid and unpaid persons in organisational roles. Includes staff, management roles, leaders, team members, volunteers, and casual helpers.

## **B. Australian and ACT Safe Community related laws**

The Safe Community Framework has been written to assist compliance with Australian state and federal legislation, and the Royal Commission into Institutional Responses to Child Sexual Abuse's recommendations.

This Implementation Information provides a list of, and references to, relevant Australian child protection legislation and state government websites, current as of March 2020.

Whilst not an exhaustive list, local organisations need to be aware of and comply with

In general:

- fosters people's health as well as developmental and spiritual needs (e.g. self-respect and dignity) as related to civil litigation claims and WHS & ACNC governance standards; and
- processes that uphold principles of natural justice when responding to workplace misconduct allegations of abuse and misconduct (including child protection and sexual harassment).

More specifically compliance with:

- Work Health and Safety and/or other safety legislation;
- criminal codes (e.g. concealment of crime, consent, sexual harassment);
- child protection legislation;
- elder abuse legislation;
- Working With Children Checks;
- Australian Standards (e.g. building);
- ACNC
- copyright and music playing licences such as APRA, CCLI, CAL licences; and
- local government food preparation and storage guidelines.

## **HELPFUL WEBLINKS to Current legislation:**

For the current official version of legislation go to: <https://legify.com.au>.

For child protection legislation see the Commonwealth Government's Australian Institute of Family Studies. <https://aifs.gov.au/cfca/publications/australian-child-protection-legislation>

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Safe Community Resources can also provide customisation services to your organisation in the area of implementation of the **Safe Community Framework** for your organisation.

**Disclaimer:** This publication is not legal advice. The ideas and procedures herein are based on nationally recognised good practice advice and have been written with due regard to Australian legislation March 2020.

Legal advice may need to be sought when responding to individual incidents.

