

**Submission
No 67**

INQUIRY INTO CHILD PROTECTION

Organisation: Catholic Education Commission NSW

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Catholic Education
Commission NSW

Submission to the NSW Legislative Council Inquiry into Child Protection

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(amended)

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Executive Summary

- » On behalf of the Catholic bishops of NSW/ACT, the CECNSW is the agent and advocate for 588 NSW Catholic Schools which enrol 255,397 students and employ 19,580 teachers with 8,000 support staff. In 2016 Catholic schools constitute a significant proportion of the schooling enterprise in NSW and are major contributors to its development. Twenty percent of students in NSW attend a Catholic school. Their interests can intersect significantly with the role of FACS.

Despite differences in governance structures all 588 Catholic schools in NSW are members of the Catholic Education Commission which, amongst other services, represents all of these schools in negotiations with Governments State and Commonwealth as well as with Government Departments such as FACS.

- » NSW Catholic schools are inclusive institutions and include students from the full range of socio-economic backgrounds.
- » Access to appropriate child protection services is a particular issue for all schools but particularly so for schools located outside the major metropolitan and inner regional areas.
- » Some groups of students can present particular complexity in relation to child protection, regardless of a school's socio-economic resources or location. These include students with a disability (SWD), Aboriginal and Torres Strait Islander (ATSI) children, and children with English as a second language (ESL).
- » Given the profile of NSW Catholic schools as elaborated in Section 1 of this Submission, the CECNSW approaches this Inquiry into FACS service delivery issues with a particular interest in how FACS addresses the needs of both Equity Group (SWD, ATSI and ESL) children as well as children who live in regional and remote areas of NSW.
- » Since 2009 CECNSW has focused its child protection efforts through the complementary lenses of both the National Framework for Child Protection and NSW Keep Them Safe policy.
- » In the advice that follows CECNSW will document the reality that the potential of many of the 2009 reforms have not been realised for the benefit of students at risk, at least with respect to their impact on those service delivery strategies available to NSW Catholic schools and the communities they serve.
- » All Catholic schools take their responsibility to protect children most seriously. All staff members are required to promote child safety by having a clear understanding of their child protection responsibilities, both legal and ethical, and they are required to act in accordance with these responsibilities.
- » Catholic schools have a centralised reporting system in place with respect to reporting risk of significant harm concerns to FACS. This means that if a mandatory reporter such as a teacher has a concern that a child or young person is at risk of significant harm then that teacher must take their concern to the Principal and the Principal then makes the report to the FACS Child Protection Helpline as required. This action pathway is in accordance with the joint CECNSW, AISNSW and FACS 'MOU for Centralised Mandatory Reporting' which is provided as Appendix One to this Submission.
- » In order to better respond to inappropriate sexual behaviour between children and young persons the CECNSW has developed a set of responder/reporter guidelines being the publication: *'Responding to Children and Young People with Sexual Behaviour Problems: Support Manual for Catholic Schools and Catholic Welfare Agencies'* (September 2010).

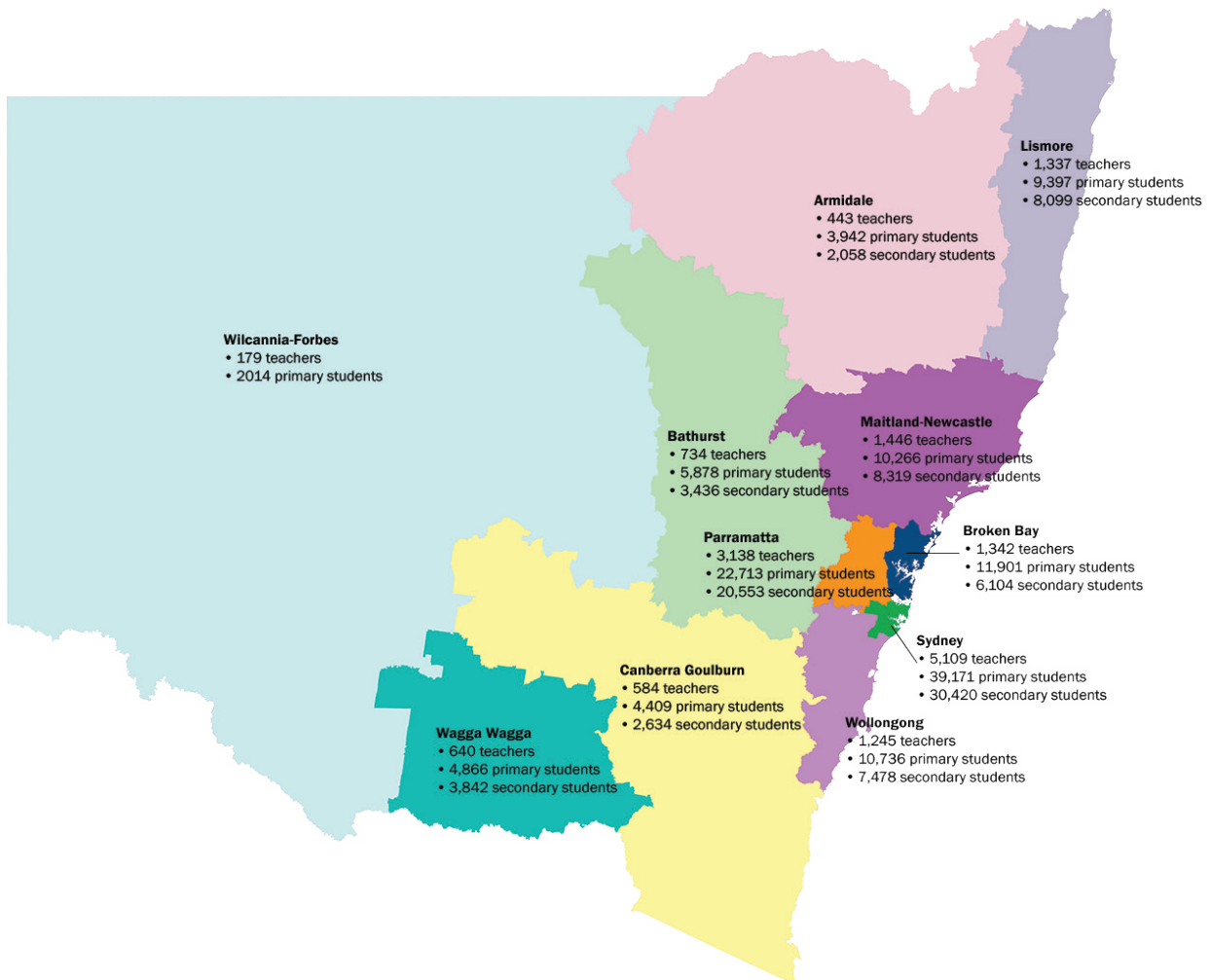
- » In responding to the overall effectiveness of the Department of Family and Community Services (FACS) in terms of delivering useful and worthwhile child protection systems, these key concerns, as elaborated in this Submission, of NSW Catholic schools are now cited below:
 - Time taken to make reports to the Child Protection Helpline
 - Lack of communication between the Helpline, CSC and reporter
 - FACS Closing cases due to competing priorities
 - FACS slow response to matters
 - FACS inappropriately relying on schools to do statutory casework: Inappropriate use of Section 245A of the *NSW Children and Young Persons Care and Protection Act 1998*
 - Lack of FACS response to particular matters
 - Lack of cohesion between government agencies including FACS, Police, Housing, Disabilities, Health – Inconsistent multi-agency response
 - FACS not understanding that non-government schools are different to government schools
 - Regional schools not effectively supported
- » Documented in this Submission are nine case studies which illustrate the issues and concerns identified above.
- » Catholic school authorities are of the view that the Mandatory Reporter Guide (MRG) can appropriately identify students at risk of significant harm. However, the capacity for any education provider to assess and investigate specific cases is limited due to their core function being education. Further, education systems do not have the statutory authority to investigate ROSH issues.
- » Recently CECNSW assisted the NSW Ombudsman to conduct a Roundtable on information sharing and disclosure for the purpose of child protection. This Roundtable was held Friday 24 June 2016. This Roundtable specifically addressed:
 - Public release of personal information relating to child abuse investigations.
 - Disclosure of information about reportable conduct.

All of the above matters are now elaborated in the full Submission which follows.

1. The Context of Catholic Schooling in NSW

- 1.1. On behalf of the Catholic bishops of NSW/ACT, the CECNSW is the agent and advocate for 588 NSW Catholic Schools which enrol 255,397 students and employ 19,580 teachers with 8,000 support staff. In 2016 Catholic schools constitute a significant proportion of the schooling enterprise in NSW and are major contributors to its development. Twenty percent of students in NSW attend a Catholic school. Their interests can intersect significantly with the role of FACS.
- 1.2. Of the 587 NSW Catholic Schools, 543 are owned and operated by Diocesan offices which are referred to as either a Catholic Education Office (CEO) or Catholic Schools Office (CSO) CEO/CSOs. These school authorities administer schools according to the 11 Diocesan boundaries within NSW, as shown in Figure 1. Although the Catholic Education Commission acts as the Approved Authority for Government funding purposes, these CEO/CSOs act for the Diocesan based owners of Catholic systemic schools, with respect to local decision-making thereby effectively creating 11 systems of Catholic school administration in NSW. Collectively, Catholic “systemic” schools are responsible for 125,293 primary students and 92,943 secondary students. These students are educated by 16,917 teachers, all potential mandatory reporters.

Figure 1: Diocesan boundaries of NSW Catholic systemic schools.



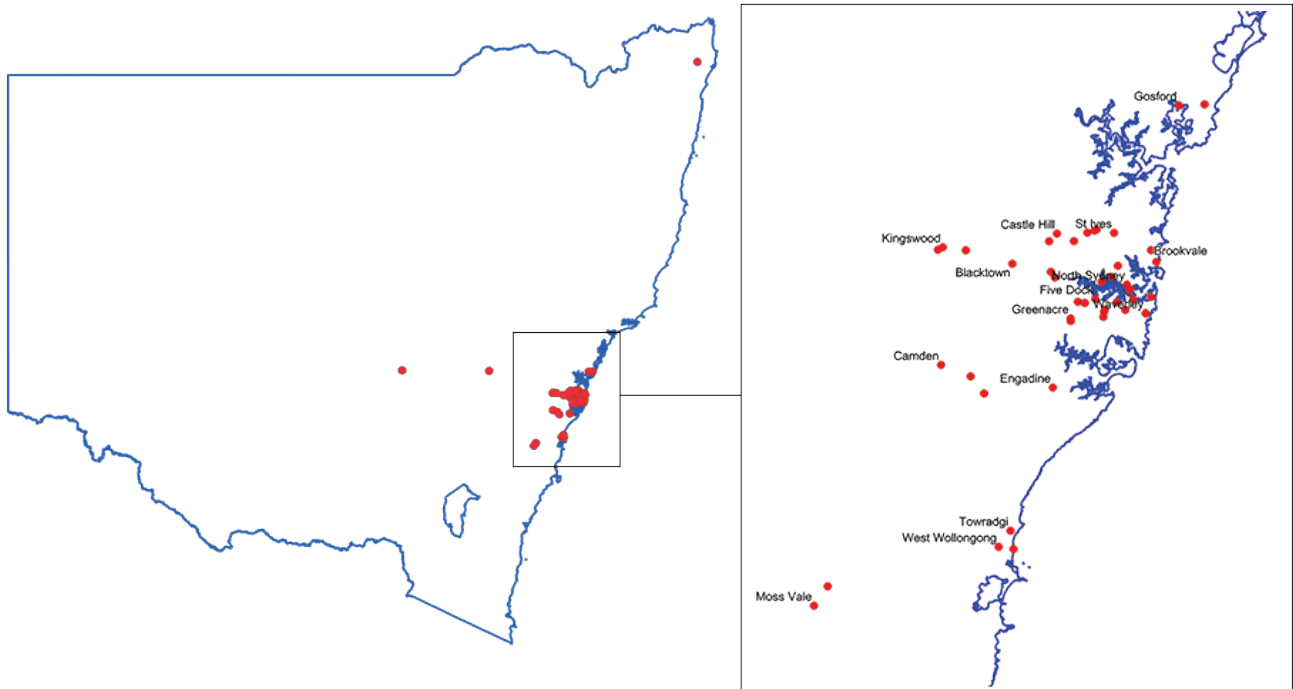


Figure 2: Self-governing NSW Catholic schools

- 1.3. The remaining 45 NSW Catholic schools are self-governing, operating either independently or managed by a religious institute or their agent. These schools are concentrated in the metropolitan areas around Sydney, as shown in Figure 2. Schools of this “non-systemic” type account for 4,941 primary students, 32,220 secondary students and 3,383 teachers being mandatory reports. It is also worth noting that five of the six NSW Catholic schools recognised as “special schools” (catering specifically for students with disabilities) are non-systemic schools.
- 1.4. Despite the difference in governance structures all 588 Catholic schools in NSW are members of the Catholic Education Commission which, amongst other services, represents all of these schools in negotiations with Governments State and Commonwealth as well as with Government Departments such as FACS.

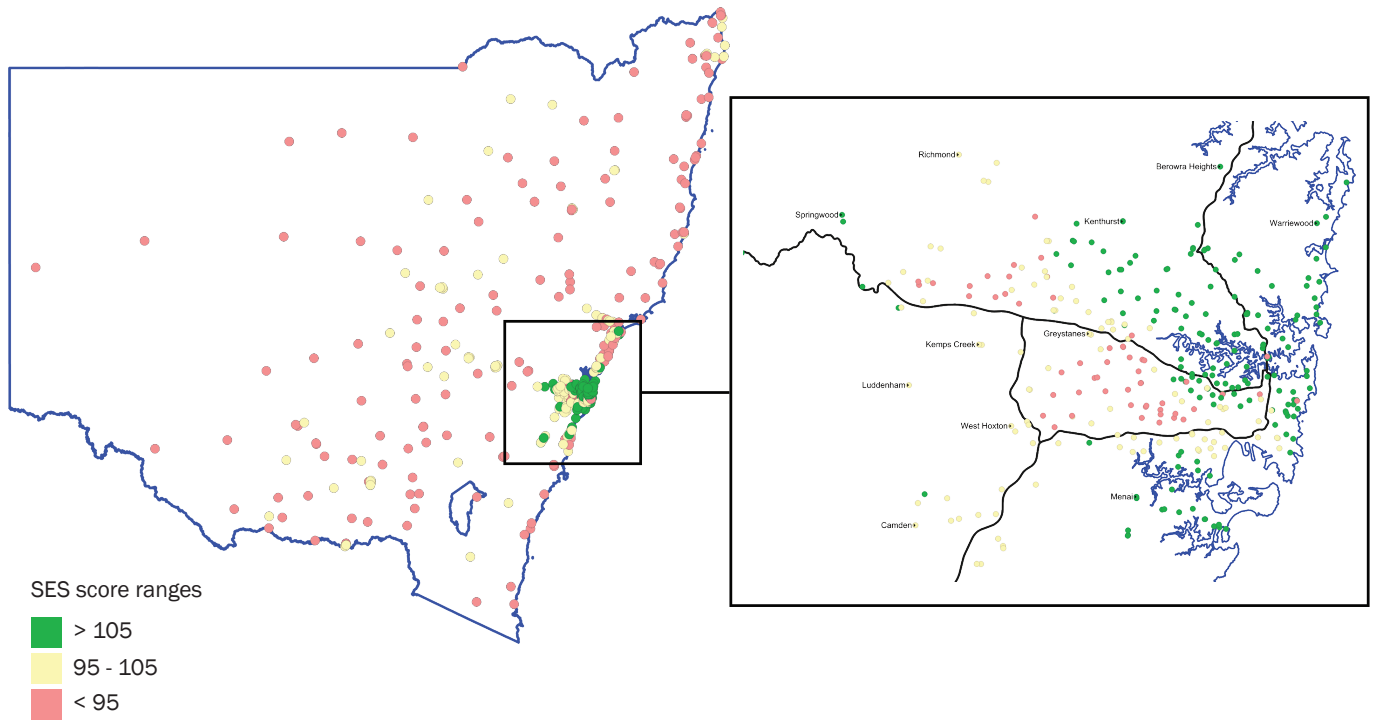


Figure 3: NSW Catholic Schools by SES

- 1.5. NSW Catholic schools are inclusive institutions and include students from the full range of socio-economic backgrounds. The *Australian Education Act 2013* determines a Socio-Economic Status (SES) Score for each school based on the parental community's ability to financially support the school. Thirty Two percent of NSW Catholic schools have an SES Score of 93 or lower, recognised as schools with the greatest disadvantage and social vulnerability. These lower socio-economic schools are distributed across NSW, as shown in Figure 3. Further, many NSW Catholic schools have policies for enrolling non-fee paying students to ensure that students from even the most vulnerable socio-economic backgrounds have access to Catholic education.

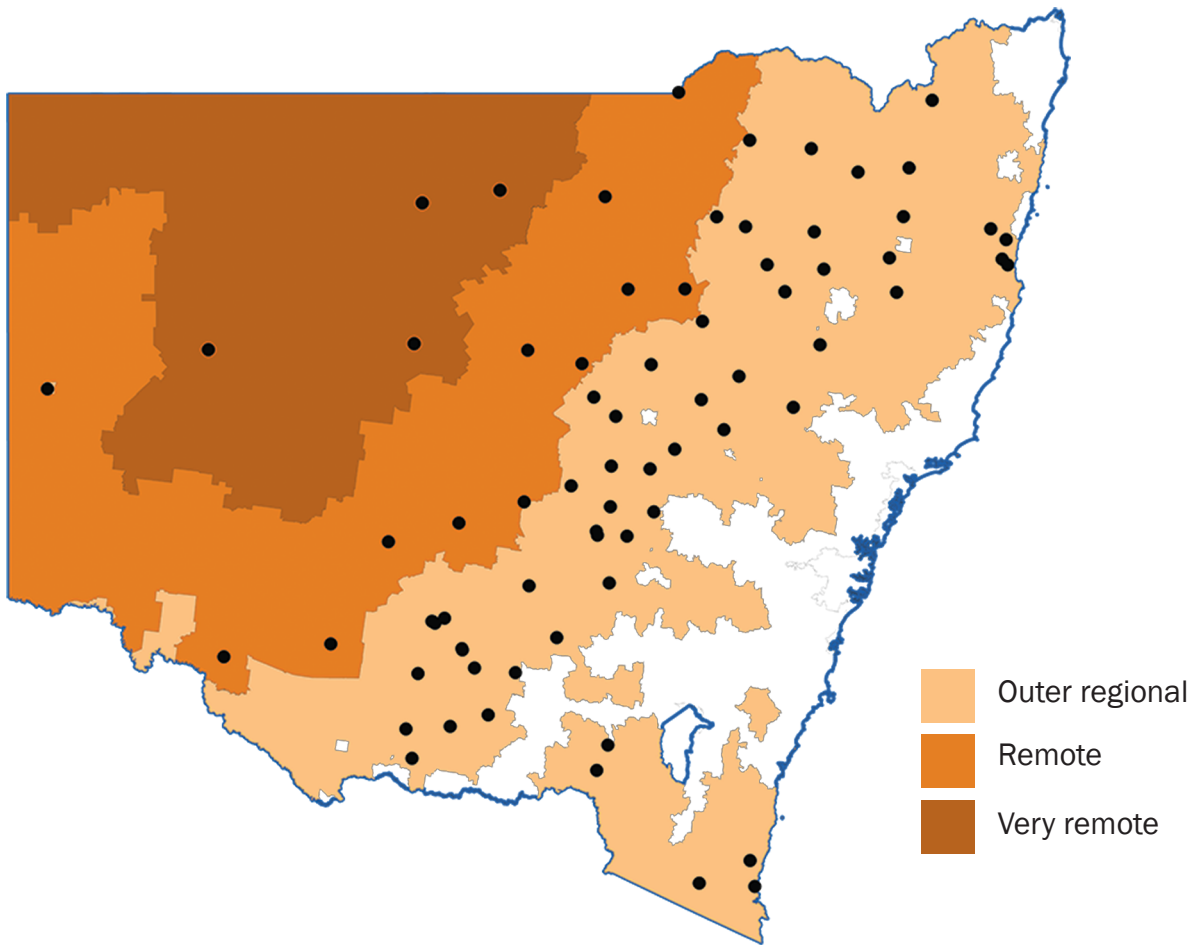


Figure 4: NSW Catholic Schools by ABS Remoteness categories

- 1.6. Access to appropriate child protection services is a particular issue for all schools located outside the major metropolitan and inner regional areas. Eighty four or 13% of all NSW Catholic schools are categorised by the Australian Bureau of Statistics (ABS) as being located in very remote or outer regional areas of the State (Figure 4). Nine hundred and seventy teachers educate 8,029 primary students and 2,662 secondary students at these Catholic schools.

1.7. Some types of students may present particular complexity in relation to child protection, regardless of a school's socio-economic resources or location. These include students with a disability (SWD), Aboriginal and Torres Strait Islander (ATSI) children, and children with English as a second language (ESL). Table 1 shows the student counts for these categories and proportions compared to total Catholic enrolments. Note that a single student could be represented in more than one category.

SWD		ATSI		ESL	
13,358	5.2%	7,211	3%	14,030	5%

1.8. Given the above outlined profile of NSW Catholic schools the CECNSW approaches this Inquiry into FACS service delivery issues with a particular interest in how FACS addresses the needs of both Equity Group (SWD, ATSI and ESL) children as well as children who live in regional and remote areas of NSW.

2. Catholic Sector Engagement with both the COAG National Framework for Child Protection and NSW Keep Them Safe Policy and Procedures since 2009

- 2.1. Since 2009 CECNSW has focused its child protection efforts through the complementary lenses of both the National Framework for Child Protection and NSW Keep Them Safe policy.
- 2.2. The Council of Australian Government's *National Framework for Protecting Australia's Children 2009-2020*¹ was endorsed by the Council of Australian Governments in April 2009, and is described as 'an ambitious, long-term approach to ensuring the safety and wellbeing of Australia's children and aims to deliver a substantial and sustained reduction in levels of child abuse and neglect over time.
- 2.3. Its stated aim is to reduce child mistreatment and improve child protection responses for all Australian children. The framework takes a public health approach to improving outcomes for children at risk through addressing issues of disadvantage, recognising and promoting family, community and cultural strengths and highlighting the need for community-wide strategies to address specific risk factors like alcohol or substance abuse and/or domestic violence.
- 2.4. Key agencies including the Australian Human Rights Commission, the Australian Institute of Family Studies, the Australian Institute of Health and Welfare and the Steering Committee of the Review of Government Services, all report the over-representation of equity groups in child protection statistics and in requiring access to out-of-home care services, when compared to children of families of higher socio-economic background status.
- 2.5. At the State level the focus of Child Protection interventions since 2009 has been driven by the Keep Them Safe imperatives of:
 - increasing the role of NGOs in delivering services;
 - establishing Child Wellbeing Units in the major government agencies;
 - establishing a network of Family Referral Services to provide support for those families who fall below the threshold;
 - enhancing service provision, focusing on prevention and early intervention, including comprehensive universal and acute services;
 - improving outcomes for children in out-of-home care (OOHC) through system changes, including the appointment of OOHC Health and Education Coordinators to improve health and educational outcomes for children and young people;
 - simplifying and streamlining Children's Court processes, making them more user-friendly;
 - providing greater participation and better services to Aboriginal children and young people, to reduce their over-representation in the child protection system.
- 2.6. As seven years have now passed since the adoption of both the COAG National Framework for Child Protection and the NSW Keep Them Safe policy, CECNSW agrees with the Legislative Council that it is now time for a stocktake of Child Protection policy outcomes to be undertaken.
- 2.7. In the advice that follows CECNSW will document that the potential of many of the 2009 reforms have not been realised for the benefit of students at risk, at least with respect to their impact on those service delivery strategies available to NSW Catholic schools and the communities they serve.

1 <https://www.dss.gov.au/our-responsibilities/families-and-children/publications-articles/protecting-children-is-everyones-business>

3. Child Protection and Catholic Schools

- 3.1. All Catholic schools take their responsibility to protect children most seriously. All staff members are required to promote child safety by having a clear understanding of their child protection responsibilities, both legal and ethical, and they are required to act in accordance these responsibilities.
- 3.2. Catholic systemic schools (refer 1.1 above) have a centralised reporting system in place with respect to reporting risk of significant harm concerns to FACS. This means that if a mandatory reporter such as a teacher has a concern that a child or young person is at risk of significant harm then that teacher must take their concern to the Principal and the Principal then makes the report to the FACS Child Protection Helpline as required. This action pathway is in accordance with the joint CECNSW, AISNSW and FACS 'MOU for Centralised Mandatory Reporting' refer Appendix One.
- 3.3. As Catholic schools do not have access to a Child Wellbeing Unit, all staff members are trained in the use of the FACS Mandatory Reporter Guide to assist them in making decisions as to when a report to FACS is required. Metropolitan and larger regional dioceses in NSW also have specialised child protection teams or pastoral care and wellbeing teams which Principals consult to determine whether or not a risk of significant harm report needs to be made to FACS.
- 3.4. Additionally, the Catholic Systemic Schools Child Protection Practitioners Group [CSSCPPG] has been established by the Conference of Diocesan Directors of Education NSW & ACT (CDD) and is responsible to the Catholic Education Commission NSW (CECNSW), under the auspices of the Catholic Education and Social Services Co-ordinating Committee (CESSCC), to:
 - i. provide advice on policy and operational matters pertaining to child protection matters
 - ii. enable networking and support for the eleven teams of CEO/CSO Child Protection Officers.

- 3.5. The CSSCPPG engages with both National and State Child Protection public policy initiatives by applying the following principles with specific focus on children at risk of harm by reason of suspected sexual abuse:

a. *The Dignity of the Human Person and Child Sexual Abuse*

- i. *All children and young people are created in the image of God and have an inherent and inalienable dignity as human persons.*
- ii. *Sexual activity is an expression of love and properly reserved to marriage.*
- iii. *The safety, welfare and wellbeing of children and young people is the paramount principle which must guide any intervention.*
- iv. *All children and young people are to be respected and their views taken into account when decisions are being made about them.*
- v. *The development of healthy and appropriate sexuality is necessary for the holistic development of personality. This holistic development of human sexuality and the learning stages that accompany the growth of children and adolescents emerge as strong themes in a number of Church documents (e.g. The Truth and Meaning of Human Sexuality, 'VI, Learning Stages', nn.64-144).*
- vi. *Inappropriate sexual behaviour cannot be accepted by any Catholic school or agency. Schools and agencies will act to protect children and young people from inappropriate sexual behaviour.*
- vii. *The nature of inappropriate sexual behaviour and its impact on others will determine how all persons involved are responded to, including any need for statutory interventions and/or restorative practices, both spiritual and psychological.*
- viii. *A balance must be sought to ensure that the Christian principles of justice and forgiveness are applied in an appropriate way which is fair and reasonable to all parties.*
- ix. *All applicable legal requirements and duties must be complied with e.g. mandatory reporting to the NSW Community Services Child Protection Helpline.*

b. The Family and Responding to Suspected Sexual Abuse

- i. Consistent with the principle of the 'best interests of the child', the role of parents and care-givers should be respected at all times. 'Parents should be aware of their own education role and defend and carry out this primary right and duty' (*The Truth and Meaning of Human Sexuality*, nn.113-116).
- ii. Consideration must be given both to whether parents and care-givers should be informed of inappropriate sexual behaviour involving their children and to the extent to which their cooperation will be sought in any pastoral and protective response in relation to matters regarding their child. An exception to this general principle may be justified in some cases where disclosure to the parent/s will result in further risk of harm to the child or young person or will pose a significant risk to other involved persons. The circumstances of each case will require careful consideration.
- iii. In cases where separated parents continue to share the parenting responsibilities for the child, both parents are to be informed unless the school/agency is aware of Court Orders or other compelling information that requires the exclusion of a parent from participation in intervention processes.

c. Catholic Schools, Catholic Welfare Agencies and the Parish Communities Responding to Suspected Sexual Abuse

- i. Catholic organisations are conducted in accordance with the moral teachings of the Catholic Church. This moral teaching constitutes the norms by which every act is to be judged in terms of both its seriousness and appropriate pastoral and protective response(s).
- ii. The pastoral application of these moral norms may require a refined pastoral sensitivity, and principals/managers often need to seek expert advice and specific guidance depending on the nature of each case.
- iii. Where Catholic schools/agencies become aware of children and young people who exhibit inappropriate sexual behaviour that causes concern adequate protective strategies must be implemented to minimise the risk of further harm occurring.
- iv. When special conditions are deemed necessary for the

child or young person's ongoing participation in the education and/or welfare setting such conditions should be the least intrusive of those interventions necessary to prevent any further harm occurring.

- v. *Some inappropriate sexual behaviour between children and young people that is encountered may be unlawful and may involve child protection issues. These cases must be reported to the appropriate legal authority in a timely manner and school/agency authorities must cooperate with any ensuing investigation.*

3.6. Consistent with the above advice, NSW Catholic schools approach Child Protection as a partnership involving families, church agencies and secular agencies. In doing so, the Catholic sector endorses the Child Protection interagency operational principle stated in *NSW Children and Young Persons (Care and Protection Act 1998)*, the CYPCP Act, at Section 245A. (2) (b) that:

'agencies should work collaboratively in a way that respects each other's functions and expertise.'

3.7. In order to better respond to inappropriate sexual behaviour between children and young persons the CECNSW has developed a set of responder/reporter guidelines being the publication: *'Responding to Children and Young People with Sexual Behaviour Problems: Support Manual for Catholic Schools and Catholic Welfare Agencies'* (September 2010).

4. Child Protection and Catholic Schools

a. The capacity and effectiveness of systems, procedures and practices to notify, investigate and assess reports of children and young people at risk of harm

In responding to the overall effectiveness of the Department of Family and Community Services (FACS) in terms of delivering useful and worthwhile child protection systems, procedures and practices, there are a number of general comments which illustrate issues of concern shared by Catholic schools. These key concerns are now cited below:

- i. Time taken to make reports to the Child Protection Helpline
It is not uncommon for principals at schools to be waiting on hold for significant lengths of time when attempting to make Risk of Significant Harm (ROSH) reports or consult FACS for updates over the phone. As mandatory reporters, some principals are required to make numerous ROSH reports or seek updates on a weekly basis. Given the length of time it takes to get through to a FACS caseworker, this adversely impacts on the potential effect on the report as well as on their other schooling duties.
- ii. Lack of communication between the Helpline, CSC and reporter
Once a report has been made, there can be a lapse in time in receiving feedback from the Helpline about how the case has been assessed and then a general lack of communication between the school and the Community Service Centre (CSC) on how the

matter will be followed up. It is important for the school to be informed about any statutory response so they are aware of how they can support the family involved at the school level. The level of service provided by the various FACS Community Service Centres (CSC) is inconsistent and although there can be very positive relationships with particular CSCs others are more problematic. In summary FACS support and intervention is seen to be inconsistent when assessed on a state-wide basis.

- iii. Closing cases due to competing priorities
Having consulted the FACS Mandatory Reporting Guide (MRG), principals are often directed to make a ROSH report since on application of the MGR the level of concern reaches the required threshold of risk of significant harm. ROSH reports are made, but regularly these are closed after FACS assessment due to 'competing priorities'. Moreover even when FACS has accepted and allocated a matter, this often results in the matter being closed because non-enforceable FACS referrals are frequently ignored by the involved family. This approach does not address the actual risk and schools are left to manage the case without the requisite skills required to deal with very complex family matters.
- iv. Slow responses to matters
A large number of ROSH reports made to FACS relate to pressing and escalating matters within the school community. To effectively assist the management of these matters a timely FACS response is essential if there is to be a positive outcome for the at risk student. Due to the time it takes for FACS to allocate and then respond to matters, schools are often not able to implement interventions in a timely and effective manner.

- v. Relying on the school to do statutory casework
As noted at 3.6 above, CECNSW supports the Statutory principle that ‘agencies should work collaboratively in a way that respects each other’s functions and expertise.’ There is, however, a growing FACS expectation that schools must undertake complex casework that would traditionally be considered the responsibility of FACS as the Statutory authority. There is a lack of awareness by FACS as to how these expectations impact on the relationship between the school and the family involved. Also there appears to be no appreciation by FACS that the primary role of each school is to deliver educational services, not welfare services. Whilst most schools are well placed to provide some level of pastoral and wellbeing support to children at risk, the increasing expectation being placed on schools to respond to complex child protection cases, where there has been a child or young person assessed as at risk of significant harm, constitutes an unrealistic public policy expectation.
- vi. FACS lack of response to particular matters
The experience of many schools is that the likelihood of FACS responding to matters involving young people 15 years of age or over is very low. This is especially true in respect of matters involving Educational Neglect, mental health concerns and homelessness. It is acknowledged that this may be due to internal resource constraints within the Department, however, it does not help schools and their staff who are left to manage complex situations alone. The related assumption that an adolescent always has the capacity to “self-protect” as a rationale for not activating a Statutory response is not appropriate in the vast majority of cases and can lead to young people both remaining at risk of significant harm and being unsupported.
- vii. Lack of cohesion between government agencies including FACS, Police, Housing, Disabilities, Health – Inconsistent multi-agency response
Despite the Statutory imperative of Section 245A of the *Children and Young Persons (Care and Protection) Act* there appears to be a lack of interagency alignment between the various government departments that should assist a family requiring the support. When government departments are not aligned with each other the school is often left to manage the situation instead of the matter being referred by FACS to either another appropriate government department or NGO provider. Put another way, the UK public policy concept of ‘joined up services’ needs to be applied to the delivery of Family Support Services in NSW.
- viii. FACS doesn’t understand that non-government schools are different to government schools
On many occasions FACS workers will suggest that Catholic schools access a Departmental Child Wellbeing Unit or the Home School Liaison service thereby displaying a complete lack of knowledge about the different school sectors and the social policy context within which they operate. When FACS is informed that non-government schools cannot access these services in the same way that government schools do, there is then no alternative support option identified to deal with the particular situation.
- ix. Regional schools not effectively supported
The multifaceted roles of community support personnel in smaller, and especially remote,

communities can mean that a school Principal may make a confidential report and then other members of the school's community become aware of the report due to interconnected relationships. Interrelationships in smaller remote communities actually add complexity to any child protection matter for school principals, as well as other school support staff such as the Aboriginal Education workers. As a consequence, special consideration needs to be given by FACS to the management of those child protection services that support small and remote communities.

Case examples

Presented below are nine case studies which illustrate the issues and concerns identified above.

Case Study 1: Female Student 14 years old

- iii) Case closed due to competing priorities
- v) Relying on school to do casework
- vii) Lack of cohesion between government agencies

Background

- RoSH reports made to FACS – four (4) reports in 2016 – all closed without investigation.
- Risk issues being; 14 year old female student in cyber contact with adults involving the exchange of nude pictures of herself and others; also other contact including messaging with the same people she is exchanging pictures with.
- Also younger siblings living in the home and a history of Domestic Violence within the family.
- Reported to Police who remain concerned and surprised that FACS has closed the case.

- Police have made their own ROSH reports regarding this young person.
- Police do not wish to charge the student but are also not acting swiftly to forensically review her laptop computer (up to a six month delay to review the computer due to a backlog of cases).
- Significant risks remain as student is not accessing any support services and no statutory response is in place.

Concerns

- The child protection system has been ineffective in responding to this high risk situation.
- Police and FACS appear to have worked in isolation.
- FACS believe that referrals to voluntary non-government support agencies are sufficient, even when the parent does not engage and avoids taking action to support and protect her own child.
- Voluntary interventions are often ignored. Previously FACS had the capacity to undertake mandated family interventions but this is no longer the situation.
- In this instance the mother requires translating services as English is not her first language.
- There has been no clear communication as to why this situation does not meet the threshold of risk of significant harm. It is not clear why this case is being repeatedly closed by FACS.
- The advice that the matter is closed due to competing priorities does not in itself provide any direction as to how this matter can be managed by the school going forward.
- The school is left managing all the risks in this situation while attempting to locate

and arrange support services for the child when this is not within scope of the training and skills of school staff. This is an abuse of the *CYPCP Act* Section 245A 'agencies collaboration' principle cited at 3.6 above.

- Police/FACS agency role confusion (there are times when the reporter gets a report from the police, but no response from FACS)
- Clarifying JIRT role/threshold (there is inconsistency with respect to matters that should be referred to JIRT)

Case Study 2: Male and female kindergarten students

ii) Poor communication between Helpline, CSC and reporter

v) Relying on school to do casework

Background

- Matter relates to serious problematic sexualised behaviour between two (2) children in Kindergarten.
- The Principal reported an initial incident where one child allegedly pulled opened the underpants of the other child and put his hand inside her underpants and touched her vagina.
- The Principal used the MRG to assess the incident and the MRG returned a result of "Document and Monitor".
- Some 2 weeks later the parent of the child who had been touched contacted the Principal in a distressed and angry state and reported that his daughter had been directed to the boy's toilet by the same child that had previously touched her.

- The girl's parent said that disclosure arose when the child was in the bath and her mother noted her vaginal area was red.
- The Principal and two other school leaders later interviewed the female student and she disclosed similar information to them, saying that the male child had rubbed soap on her bottom. The interview was discontinued at this point.
- The matter was reported to FACS and the Helpline staff initially indicated a less than 24-hour FACS response would be provided.
- The matter was then allocated to the local FACS's CSC
- The matter was allocated on 6/5/16 and the matter was responded to by the CSC on 24/5/16, that is 18 days later.
- Meanwhile the school had to manage ongoing risk issues with the children as well as seriously escalated parent concerns.
- Once FACS did respond they decided not to interview the children as too much time had elapsed to obtain reliable statements from the children.
- FACS staff determined that the children had already been interviewed by Diocesan school authority staff and that there was risk of re-traumatising the children after this extended delay.
- The FACS finding in this matter was that some inappropriate behaviour had occurred between the two children and referral to external support would be advised.
- Following this intervention FACS closed the matter.
- Upon the request of the school authority, FACS wrote to both families involved and informed each of the assessed outcomes and referrals.

Concerns

- FACS Helpline miscommunication with the school regarding response timings.
- FACS failure to respond to the matter in an appropriate time-frame, nearly 18 days later.
- FACS then declined to interview the children to determine any ongoing risks .
- The school had to manage both ongoing risks to the children and the seriously escalated parent concerns whilst awaiting a FACS response.
- FACS did not consider that the sexualised behaviour of the children may have indicated they were at risk of abuse by others, rather FACS simply assessed the incident as inappropriate child behaviour.
- The FACS response presupposed an inappropriate agency role for the school, refer CYPCP Act Section 245A.

Case Study 3: Female student 11 years old

- v) Relying on school to do casework
- vi) Lack of FACS response

Background

- A Year 7 child disclosed to her year coordinator that she told her mother that she had been sexually assaulted while also stating that “her uncle did the same thing to her”. That is, the uncle had abused both the student and the student’s mother.
- The student asked the coordinator not to tell as “my dad would kill (the Uncle) if he knew”.
- Matter reported to FACS.

- No action taken by FACS as it was not a clear “disclosure”.
- Counselling offered at the school.

Concerns

- The uncle had access to the child via the paternal grandmother whom the child saw regularly.
- FACS failure to respond.

Case Study 4: Female student 15 years old

- iii) Case closed due to competing priorities
- v) Relying on school to do casework
- vii) Lack of cohesion between government agencies

Background

- Female Student, 15years old
- School reported to FACS after student disclosed ongoing physical abuse by her mother.
- The day after the school made the report, the student arrived at school with pain and some marks/scratches to her jaw.
- Student said she argued with her mother who then hit and kicked the student about the body and face and pulled her hair.
- Student was frightened to go home.
- CSO Child Protection Officer (CPO) advised school to report to FACS again immediately.
- FACS added a new report to an earlier report received the previous day and advised that the school should:
 - Go to police and obtain an AVO

- Provide the student with the name of a police contact
- Advise the Police Youth Liaison Officer
- Advise the student to call police if needed and if she does not have access to a mobile phone to go to a neighbour or the library
- Provide the student with a safety plan with contact numbers she can use in an emergency

schools lack access to the Home School Liaison Service which is administered by the Department of Education and only provides support to public schools.

Case Study 5: Male student 9 years old

v) Inappropriately relying on school to do statutory case work

Concern

- Schools do not have the same statutory authority to address risk of significant harm issues with families as FACS does and it was therefore inappropriate for FACS to require direct intervention by the school.
- FACS did not respond to an adolescent who was expressing fears about going home and who had disclosed physical abuse, rather FACS expected the school to undertake statutory casework which is the Department’s particular responsibility, again a misapplication of CYCP Act Section 245A.
- Students in Catholic Schools are at greater risk of harm when FACS requires schools to address these significant child protection concerns with parents since while parents are mandated to send their children aged 6 to 17 years to school there is no legally enforceable duty to attend a specific Catholic school. Consequently, if a parent becomes disgruntled or unhappy with the relationship which they have with a particular Catholic School they are able to withdraw the child from the school without explanation and this can potentially result in the child being separated from any contact with Child Protection services.
- This unsatisfactory situation is exasperated by the fact that Catholic and other independent

Background

- Male Student, 9 years old
- Student’s mother reported to the school that she was concerned about the next door neighbour taking video footage through their shared fence, of the student and his siblings whilst they were swimming in the pool.
- The mother reported the matter to FACS and FACS advised that the school be asked to manage the problem.

Concern

- This was seen as an unhelpful outcome given that:
 - the concerning behaviour was not being undertaken on school premises;
 - the parents were acting protectively;
 - the neighbour did not have any children enrolled at the school; and
 - and the children were not presenting at school with any concerning behaviours.
- This case illustrates the fact that FACS have increasingly unrealistic expectations as to what schools can do: schools cannot resolve disputes with neighbours.
- This is another example of an inappropriate application of Section 245A of the CYPCP Act.

Case Study 6: Female student 11 years old

v) Inappropriately relying on school to do statutory case work

Background

- Female Student, 11years
- Student disclosed to her friend (same age) that her brother raped her. The friend thought that rape meant being slapped on the face repeatedly. The friend clarified with her own mother what rape means. The friends' mother asked why she wanted to know? The friend told her mother what the student had disclosed. The friend's mother advised the Principal of the school.
- The Principal sought advice and reported immediately to FACS.
- The Helpline assessed the matter as requiring a response within 72 hours (even though the student may have had contact with her brother over the weekend) and referred the matter to the JIRT Referral Unit (JRU) which did not receive the report until the following Monday.
- JRU made contact with the school and requested the principal interview the student to clarify the child's understanding of the term rape.

Concern

- This was seen as highly problematic FACS advice since school Principals are not trained to elicit this information without contaminating evidence.
- The case illustrates an unacceptable widening of the child protection response expectations placed on school Principals by FACS.

b. The adequacy and reliability of the safety, risk and risk assessment tools used at Community Service Centres

- i. As the above cited school case studies suggest, the adequacy and reliability of the internal FACS SDM and SARA safety risk assessment tools is difficult to assess given that the only tool available to school-based mandatory reporters is the Mandatory Reporter Guide (MRG). While lacking access to these tools there does appear, given the outcomes evident in the above cited cases, to be a disjunction between how the MRG screens a child at risk compared with how the SDM and SARA tools then prioritise any particular at risk child or young person for intervention. A consequence of this is that there can be conflicting expectations as to whether a Statutory response will eventuate. For example if the MRG screens the matter as "Immediate report to the Community Services Centre", it is most likely that a reporter would expect a Departmental response. This, however, is not always the case and this leads to concerns as to why FACS is not responding. Providing schools with access to more information about how matters are assessed by the Child Protection Helpline using the SDM and SARA tools would be helpful. There is also evidence that despite a structured decision making model being in place, inconsistent screening of matters occurs. Consequently a range of concerns exist as to the effectiveness of the FACS standardised internal assessment screening tools. These concerns include: the tools are not suited to Aboriginal and Torres Strait Islander families; they are incident based and not holistic in their approach; and they do not easily accommodate each child

protection practitioner's own knowledge and experience in relation to the assessment of each particular case.

- ii. When a situation arises where a report is made with little corroborating information because of the report's sensitive nature, the FACS screening tools are less than adequate because the information available is limited. In these cases there appears to be an over-reliance on the internal FACS assessment tools. A greater use of holistic assessment models is required.

c. The capacity and effectiveness of systems, procedures and practices to notify, investigate and assess reports of children and young people at risk of harm

- i. Catholic school authorities are of the view that the Mandatory Reporter Guide (MRG) can appropriately identify students of risk of significant harm. However, the capacity for any education provider to assess and investigate is limited due to their core function being education. Further, education systems do not have the statutory authority to investigate ROSH issues. Also as noted above, the assessment at the Helpline is different to the MRG assessment with the consequence that matters that appear to warrant an immediate response applying the MRG may not reach this threshold at the Helpline and then are not forwarded to a Community Service Centre (CSC) for follow-up.
- ii. As only a small percentage of cases appear to be allocated after a Report is made to the Child Protection Helpline it can only be presumed that to FACS lacks the resources necessary to support the resulting case

load. In this context it is noted that previous frontline services such as the Cabramatta Street Team, The Kings Cross Adolescent Unit and Montrose House have all been discontinued.

- iii. Another concern of school principals is that the FACS e-Reporting interface is not always accessible, particularly by Mac users. Principals also report that there are times when contacting the Helpline by phone is difficult.

d. The amount and allocation of funding and resources to non-government organisations for the employment of casework specialists, caseworkers and other frontline personnel and all other associated costs for the provision of services for children at risk of harm, and children in out of home care

- i. Given the lengthy wait lists and lack or absence of available services to which at risk families can be referred, there appears to be insufficient funds being allocated to services capable of providing support to families and children at risk of significant harm. This is most evident in regional and remote areas. If non-government organisations are not being adequately funded and the statutory authority is not directly involved in case management then children and young people at risk simply do not obtain the support they require.
- ii. With regard to children in out of home care (OOHC) in particular, the decision to transfer children and carers from FACS to NGOs has created significant pressures. These pressures were aggravated when the timeframe for implementation was reduced from the

- recommended 5 years to 2 years.
- iii. Given the rapid growth of OOHC in the NGO sector it has been difficult for agencies to develop the infrastructure required to adequately support quality investigations of reportable conduct allegations. In addition it has been difficult to obtain support from FACS to conduct investigations of children in OOHC or even to undertake joint investigations with the relevant NGO.
 - iv. When an NGO is required to conduct investigations into Child Protection matters, there arises the potential to adversely impact the ongoing agency relationships with children and carers since most NGOs do not have the resources necessary to employ independent investigators.
 - v. Continued lack of resources for the support of frontline child protection assessments is a major concern. FACS is inadequately resourced to respond to risk assessments of RoSH. Lack of funding in the family preservation space is chronic and if public policy aims to achieve a reduction in the number of children entering the child protection and statutory OOHC system then this service area requires increased resourcing.
 - vi. There is an unrealistic expectation that NGOs will provide out of home care to support for children and families with child protection issues in the absence of adequate Departmental guidance or resources.
 - vii. Tasks that historically sat with FACS in respect of child protection, especially in regard to child protection investigations, are being transferred to NGOs. This has created a major shortage of staff with expertise in this area.
 - viii. There is a general consensus that the NGO sector is underfunded for the required workload. This has resulted in an increased occurrence of crisis-driven work, stress on staff and gaps in basic service provision. There is also a concern that child protection issues are not being addressed in a 'timely manner'
 - ix. The requirement that NGO staff conduct legal work, such as, Court reports, is not supported by current NGO funding arrangements. In this context Catholic schools, unlike NSW Department of Education schools, do not have the benefit of designated Out-of-home Care Co-ordinators who can assist with interagency management matters. The inability to access out of home care funding support hampers the OOHC child support efforts of the Catholic sector.
- e. The support, training, safety, monitoring and auditing of carers including foster carers and relative/kin carers**
- i. This is not directly applicable to the school sector. However, the following input has been provided by Diocesan CatholicCares who are close partners of Catholic education in NSW.
 - ii. Diocesan CatholicCare agencies, provide support for out of home carers through a mix of specialist staff, training and regular monitoring. Each CatholicCare has regular compulsory child protection training in place for all carers. Each CatholicCare agency has introduced child-to-child abuse training module for carers and access to FCOTA (Foster Care On-line Training Australia) which offers approximately 12 training modules for carers. CatholicCares also access the new NSW Children's Guardian Carers Register which provides additional systems to increase

safeguards in respect of the screening of carer applicants. Also available is a recently revised Step by Step Carer Assessment tool that provides a more targeted assessment of foster care applicants.

- iii. As an NGO each CatholicCare is required to comply with all other Office of the Children's Guardian requirements, whilst it is understood that FACS is still not required to be so Accredited by the Office of the Children's Guardian.

f. The structure of oversight and interaction in place between the Office of the Children's Guardian, Department of Family and Community Services, and non-government organisations regarding the provision of services for children and young people at risk of harm or in out of home care

- i. The exchange of information between the Office of the Children's Guardian, Department of Family & Community Services and non-government schools regarding children and young people at risk of harm is not always easily facilitated and could be improved.
- ii. Recently CECNSW assisted the NSW Ombudsman to conduct a Roundtable on information sharing and disclosure for the purpose of child protection. This Roundtable was held Friday 24 June 2016.
- iii. This Roundtable specifically addressed:
 - o Public release of personal information relating to child abuse investigations.
 - o Disclosure of information about reportable conduct.
- iv. It is anticipated that a report of the proceedings of this Roundtable will become

available in the near future. CECNSW looks forward to supporting the recommendations for enhancing information sharing and disclosure arising from the recent NSW Ombudsman's Roundtable.

g. Specific initiatives and outcomes for at risk Aboriginal and Torres Strait Islander children and young people

- i. Child protection authorities are required to intervene if a child has been or is at risk of significant harm. Between 1 July 2012 and 30 June 2014, for every 1,000 Aboriginal and Torres Strait Islander children in Australia, 38.3 were subject to substantiation because they had been or were at risk of being abused, neglected or otherwise harmed. This means that Aboriginal and Torres Strait Islander children were seven times more likely than non-Indigenous children to be the subject of substantiated reports of harm/risk of harm².
- ii. The reasons for this over-representation are complex and reflects past practices and policies associated with the forced removal of children, the impact of lower-socio-economic status (and access to services and income), differences in child rearing practices, and intergenerational trauma.
- iii. Responding to these complexities is itself complicated. The current Aboriginal and Torres Strait Islander Child Placement Principle was developed in recognition of the devastating effects of forced separation of Aboriginal and Torres Strait Islander children from families, communities and culture. Its fundamental goal was designed to enhance and preserve Aboriginal and Torres Strait Islander children's connection to family and community, and sense of identity and culture.
- iv. The Principle is reflected in legislation and policy in all Australian jurisdictions including

in NSW. However, implementation may not be practiced with consistency.

- v. At all times, the physical, emotional and cultural safety of children must be uppermost in the minds of teachers, and first responders, including caseworkers, in any decision to intervene. Ideally, those charged with working with Aboriginal and Torres Strait Islander families must receive cultural awareness training and ensure their intervention results from a rigorous approach to upholding child protection.
- vi. As with other service sectors, Catholic education have too few Aboriginal and Torres Strait Islander teachers and teacher aides (commonly referred to as Aboriginal Education Workers). In regional areas, there are shortages of Aboriginal case workers, a lack of engagement of intervention agencies with the broader Aboriginal community (their focus tends to be on those Aboriginal families impacted by the protection system), and/or a lack of culturally appropriate services to whom Aboriginal families can be referred.
- vii. Catholic teachers and AEWs work with students, their families, teachers and the broader community to support educational attainment and ensure a whole-of-life approach to education and wellbeing at school is taken.
- viii. In some areas the school works well and collaboratively with other agencies to support those families who are vulnerable, or at risk, and those most in need.
- ix. Most Catholic dioceses employ specialist Aboriginal Education Officers who assist schools in managing risk of harm concerns of Aboriginal and Torres Strait Islander children. There are no reported outcomes available of

any specific initiatives that the Department of Family & Community Services has introduced regarding at risk Aboriginal and Torres Strait Islander children.

The following two case studies are from situations not necessarily limited to Aboriginal and Torres Strait Islander contexts. Despite this, they reflect the complexity and sensitivity of child protection matters involving Aboriginal children.

Case Study 7: Male Aboriginal student 9 years old

vi) Lack of response from FACS

Background

- Aboriginal child aged 9 years, habitually absent for at least half the time at school from kindergarten and currently in year 4.
- Well established non-attendance pattern, –first with the older sister (aged 14 years at the time and also non attending).
- Child attendance was better when the child lived with the grandparents - grandmother became sick and the child then did not stay with grandparents and returned to live with mother full time.
- Neglect issues (living in a car, poor hygiene, etc.) and housing issues, also possible undiagnosed mental health issue with mother.
- Mother saw the issue as the school's problem that is the school was not getting the child to school.
- A series of reports were made to FACS

.Brighter Futures were engaged but the mother did not engage with the Brighter Futures worker and the matter was closed by the FACS CSC.

- Matter taken to court by Department of Education on behalf of CECNSW
- Mother did not attend court.
- Matter withdrawn by Department of Education as mother did not attend court on 2 occasions.
- In order to gain access to the Home School Liaison Officer, enrolment was abandoned by the Catholic School and the matter referred to the Department of Education for follow-up.

Concerns

- FACS did not act on this matter when there were clear signs of chronic neglect and non-attendance. Despite great efforts being made, the mother did not engage with services or the school.
- FACS determined that the matter would go to court (as a matter of Department of Education legal processes) and at that point FACS ceased their engagement.
- As previously noted, see Case Study 4 above, the Home School Liaison Service is restricted to students enrolled in Government schools.

Case Study 8: Female Aboriginal student 14 years old

v) FACS inappropriately relying on schools to do statutory case work

Background

- 14year-old female Student of Aboriginal background, with a developmental delay

- Student's parents are separated. Student lives with her mother and has contact with her father on weekends. The father is blind and lives with the student's paternal grandfather for support.
- Student disclosed that the paternal grandfather was:
 - peeping into the bathroom when student showered;
 - made comments about the size of her breasts and her periods; and
 - asked to wash her back when student is bathing.
- FACS advised they would not respond and that the school counsellor should meet with the father and grandfather at school and the school should assist the father to have a conversation with the paternal grandfather about the behaviours.

Concern

- The request by FACS for the school to facilitate the conversation with the father to address the grandfather's behaviour was considered pastorally problematic by the school authority because the father relies heavily on the paternal grandfather as a support to manage daily chores due to his blindness and this would place the father in a difficult position.
- Additional concerns about the proposed FACS approach relate to the school having no statutory authority to have these types of discussions with the family since schools, unlike FACS, have no legal powers to either pursue the allegation or address the concerns with an alleged perpetrator.

h. The amount and allocation of funding and resources to universal supports and to intensive, targeted prevention and early intervention programs to prevent and reduce risk of harm and children and young people

- i. There is a growing emphasis on prioritising funding to early intervention services across the child protection sector and this strategy has the capacity to make a difference for at risk families. However, the impact of early intervention services has not necessarily been achieved in terms of reducing the incidence of reports to FACS or in improving outcomes for children or young people at risk of significant harm entering the child protection system. More evidence is required of the success of early intervention strategies before further funding is allocated to these services. It is arguable that resources should be re-directed to the provision of intensive FACS family support services to complement early intervention services so that the potential for meaningful change by families at risk can be realised.

- ii. No Child Wellbeing Unit available to non-government schools

When Catholic school principals consult the Mandatory Reporter Guide (MRG) in order to determine whether a particular concern meets the threshold of risk of significant harm, a common MRG pathway is a direction to refer the matter to 'your' Child Wellbeing Unit (CWU). Following the 2008 Report of the *'Wood Special Commission of Inquiry into Child Protection Services in NSW'*, Child Wellbeing Units were established for the NSW Department of Health, NSW Police Force

and NSW Department of Education but not for NGOs. The consequence is that Catholic schools, along with the all other independent/non-government schools in NSW, are not able to refer matters to, or seek support from, any Child Wellbeing Unit. As a consequence Catholic schools do not have access to the case histories found in the Statutory KiDS database. The 'KiDS' case histories provide critical information for determining whether a mandatory report should be made to the Child Protection Helpline but they are inaccessible to non-government sector reporters.

- iii. Similarly the Family Referral Service model is ideal, but access pathways are unclear and uneven for non-government schools.

5. Conclusions

CECNSW endorses the Child Protection policy directions established in 2009 through both:

- iv. The COAG National Framework for Child Protection; and
- v. The NSW Keep Them Safe policy.

While supporting the agreed policy directions the evidence arising from the experience of NSW Catholic schools suggests that more needs to be done if the agreed policy objectives are to be achieved.

Successful Child Protection intervention requires the:

- a. Development of a realistic interagency model which fully acknowledges the particular roles and skills base of each particular agency;
- b. Provision of access for non-government schools to essential child protection support services such as a Child Wellbeing Unit, the Home School Liaison Service and Out-of-Home Care co-ordinators;
- c. Implementation of internal FACS assessment processes in respect of responses to reports of significant harm (ROSH) that are transparent and appealable; and
- d. Appropriate resourcing of post ROSH response services.

The CECNSW is available to further explore these matters with the Inquiry.

Appendix

Attached is the CECNSW, AISNSW and FACS 'MOU for Centralised Mandatory Reporting' by school Principals

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