

**Submission  
No 133**

**INQUIRY INTO STUDENTS WITH A DISABILITY OR  
SPECIAL NEEDS IN NEW SOUTH WALES SCHOOLS**

**Organisation:** Catholic Education Commission NSW

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Catholic Education  
Commission NSW

# NSW Legislative Council Inquiry into students with disability or special needs in New South Wales schools

CECNSW Submission

February 2017

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## Executive Summary

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On behalf of the Catholic bishops of NSW/ACT, the Catholic Education Commission NSW (CECNSW) is the agent and advocate for 591 NSW Catholic schools, which enrol 258,775 students and employ 19,810 teachers together with 8,305 support staff. Catholic schools constitute twenty percent of the schooling enterprise in NSW and are major contributors to its development. One in five NSW students attend a Catholic school. Twenty six percent of all NSW HSC candidates attend NSW Catholic schools.

Catholic school sector disability support services for students include:

- i. Catholic Regular Schools integrating students with disabilities.
- ii. Catholic Special Schools and Special assistance schools
- iii. Collaboration with Autism Spectrum Australia (ASPECT)
- iv. Collaboration with the NSW Centre for Effective reading

The Catholic Education Commission NSW (CECNSW) has the following disability support functions:

- i. Management of Government grants.
- ii. DDA compliance guidance.
- iii. NCCD implementation co-ordination.
- iv. NSW special student transport advice.
- v. Capital grants access advice.
- vi. Access to teacher training in specialist fields, such as behavior management.
- vii. NDIS implementation advice.
- viii. Privacy compliance advice.
- ix. NSW Education Act Part 5A implementation advice with respect to the “Management of health and safety risks posed in schools by student’s violent behaviour.”

In this context CECNSW coordinates Student Identification in NSW involving:

- i. The historic requirement of the Australian Government Department of Education for the recognition of a NSW student as eligible for Commonwealth funding as a student with a disability applying the requirements of the New South Wales Department of Education.(<http://www.schools.nsw.edu.au/studentsupport/programs/disability.php>)
- ii. Schools collecting data to show how they meet adjustment requirements under the Disability Discrimination Act (DDA) and Disability Standards for Education (DSE) through the National Comparable Collection of Data ( NCCD).
- iii. Schools and families engaging with changes consequent upon the introduction of the National Disability Insurance Scheme.

Current Initiatives in prevention and early intervention for students displaying complex behavioural needs supported by CECNSW include:

- i. Nonviolent Crisis Intervention Training
- ii. Positive behaviour support
- iii. Online training

- iv. Team-Teach
- v. Restorative Justice

With respect to funding for students with disabilities, as already referred to, CECNSW coordinates the application of State criteria for funding purposes consistent with Australian Education Act and Regulation requirements, refer Australian Education Regulation 16(2).

In this context:

- Since 2010, the proportion of students identified as SWD has shown a small increase but remains relatively static. The change from 4.5% of total enrolments in 2010, to 5.2% in 2016 is a modest increase of less than 1% in six years.
- In contrast, in the year from 2015 (the first year of full participation) to 2016, students identified under the NCCD definition have increased from 14.3% to 17.7%. This 3.4% increase is triple that of the SWD growth.

CECNSW advises that the above cited data suggests that the minimum proportion of the school age population requiring disability support is 5% of all students. Application of the cited SWD data has resulted in the following SWD funding increases applying the National Funding Model as established by the Australian Education Act 2013

<b>Year</b>	<b>Extra funding spent on SWD (in addition to base funding for all students)</b>
2014	\$31m
2015	\$90m

Relevant to concerns of this Inquiry, all NSW Catholic Schools have complaint processing policies and procedures consistent with the legal and ethical imperatives of:

1. NSW Education Act 1990 and NESA School Registration requirements, refer School Registration requirements at <http://rego.bostes.nsw.edu.au/>.
2. Commonwealth Disability Standards for Education 2004 and Disability Standards for Education 2005 obligations, refer <https://www.education.gov.au/disability-standards-education>.
3. Australian Education Act and Regulations 2013

In the context of DDA compliance requirements CECNSW submits that the current DDA Standards and Guidance Notes fail to provide sufficient direction as to how the Education Standards should be applied in circumstances where there are complex behavioural issues that may arise from disability. In particular, how to determine reasonable adjustments from unreasonable adjustments, consistent with DDA Education Standard 3.4 and Guidance Note 4.2, needs to be clarified for school decision makers and parents.

## 1. Context of NSW Catholic Schooling

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### 1.1. The Community of NSW Catholic Schools

On behalf of the Catholic bishops of NSW/ACT, the Catholic Education Commission NSW (CECNSW) is the agent and advocate for 591 NSW Catholic schools, which enrol 258,775 students and employ 19,810 teachers together with 8,305 support staff. Catholic schools constitute twenty percent of the schooling enterprise in NSW and are major contributors to its development. One in five NSW students attend a Catholic school. Twenty-six percent of all NSW HSC candidates attend NSW Catholic schools.

### 1.2. NSW Catholic systemic schools

- a. 542 NSW Catholic schools are operated by 11 Diocesan offices, being either a Catholic Education Office (CEO) or Catholic Schools Office (CSO). There are 11 Catholic Systemic School Authorities in NSW and they each administer the schools located within their respective diocesan boundaries, as shown in *Figure 1*. Although CECNSW acts as the Approved Authority for Government funding purposes, the local CEO/CSOs act for the Diocesan-based owners of Catholic systemic schools with respect to local school administration, thereby effectively creating 11 systems of Catholic school management across NSW. Each diocesan system of schools proprietor is the relevant Diocesan Trust created by the *NSW Church Trust Property Act 1936* which owns and operates each particular system of Catholic schools.
- b. Collectively, Catholic “systemic” schools are responsible for 125,287 primary students and 92,995 secondary students. 16,373 teachers educate these students.

### 1.3. NSW Catholic congregational schools

- a. 46 NSW Catholic schools, including special schools, either operate independently or are managed by a religious institute or their agent. These schools are concentrated in the metropolitan areas around Sydney and Wollongong. Some of these schools have company limited by guarantee status under the *Commonwealth Corporations Act*. Others are “Trust Corporations” under the *NSW Church Communities Lands Act, 1942*.
- b. Collectively, NSW congregational Catholic schools are responsible for 5,003 primary students and 32,492 secondary students. 3,437 teachers educate these students.
- c. Nine of the eleven NSW Catholic schools recognised as “special / special assistance schools” (catering specifically for students with complex physical sensory and/or emotional/behavioural needs) are congregational schools.

### 1.4. Catholic Special Schools and Special assistance schools

- a. A Special school means a school that is, or is likely to be, recognised by the State or Territory Minister as a Special school, and provides education under special programmes, or special activities, designed specifically for students with disabilities.
- b. A Special assistance school means a school that is, or is likely to be, recognised by the State or Territory minister as a Special assistance school, and primarily caters for students with social, emotional or behavioural difficulties.

- c. CECNSW is of the view that the most critical aspect of DDA Standards for Education engagement that requires both further understanding and advocacy is the management of those disabilities that manifest themselves in extreme student behaviour.

#### **NSW Catholic Special/Special Assistance School**

<b>Name of School/location</b>	<b>Enrolment (NCCD numbers)</b>	<b>SWD</b>
St Dominic's Centre, Mayfield	27	27
Mater Dei School, Camden	143	142
St Edmund's College, Wahroonga	128	128
St Gabriel's School for Hearing Impaired Children, Castle Hill	74	74
St Lucy's School, Wahroonga	136	136
The John Berne School, Lewisham	37	23
Dunlea Centre, Australia's Original Boys' Town, Engadine	38	20
Jarjum College, Redfern	17	13
Wollongong Flexible Learning Centre, Towradgi	80	7
St Mary's Flexible Learning Centre, St Marys	62	0
Eileen O'Connor Catholic College, Lewisham	20	20
Pete's Place, Blacktown	17	9

- d. From the above data it can be seen for example that all of the St Mary's Flexible Learning Centre students are students with behavioural difficulties, not recognised as students with disability under State SWD criteria. This illustrates the difference between "recognised" and funded students with disability (Refer Section 4 below).

#### **1.5. Collaboration with Autism Spectrum Australia (ASPECT)**

- There are currently 87 satellite classes located in 40 Catholic schools across NSW. A satellite class is an autism-specific class operated by one of eight Aspect Schools but located in a Catholic Regular school.
- Students who attend these classes are enrolled in ASPECT schools, which receive recurrent funding though their base ASPECT school, however the classrooms are on Catholic school sites.
- These classes are managed by application of the relevant Catholic school authority and ASPECT Memorandum of Understanding (MOU). An example MOU is attached.

#### **1.6. Collaboration with the NSW Centre for Effective reading**

- CECNSW supports the NSW Centre for Effective Reading (The Centre) through collaboration and direct support being the equivalent of one (1) FTE teacher grant to the Centre. This grant has been

made available by CECNSW over the past 30 years (having previously contributed directly to Palm Ave Special School as operated by the NSW Department of Education)

- b. The Centre is a specialist service providing:
  - i. information about how to teach reading; it supports students with complex reading difficulties through its dedicated website
  - ii. direct support for rural and remote primary school aged students with complex reading difficulties and their teachers across all three education sectors, Government, Catholic and Independent: the Catholic sector financial contribution enables the provision of this support.
  - iii. direct assessment and intervention services for eligible students in four hubs located at Dubbo, Wagga Wagga, Manly and Westmead.
- c. Students eligible to access the assessment and intervention services available through the Centre are those students who:
  - i. have not responded to reading intervention provided at the student's home school; and
  - ii. live and attend a school over 100km from the greater Sydney metropolitan area.
- d. Referrals from government and non-government schools are forwarded to Disability, Learning and Support, NSW Department of Education for placement assessment.
- e. A State placement panel with representation from senior officers from the NSW Department of Education, CECNSW, the Association of Independent Schools of NSW and NSW Health assesses all referrals to the Centre.
- f. Referrals made to the Centre are prioritised according to:
  - i. student's age and level of reading difficulty;
  - ii. student's history of previous interventions; and
  - iii. school proximity to other services.
- g. Aboriginal students experiencing difficulties with reading are further prioritised for the service.

### 1.7. Role of the Catholic Education Commission NSW (CECNSW)

- a. Regardless of their governance model all 591 Catholic schools in NSW are members of the Catholic Education Commission NSW (CECNSW), which, amongst other services, represents all of these schools in negotiations with Governments, State and Commonwealth, as well as with Government Departments and Statutory Authorities such as ACARA and NESAs.
- b. With respect to students with disabilities, CECNSW provides the following support services to NSW Catholic school authorities:
  - i. Management of Government grants.
  - ii. DDA compliance guidance.
  - iii. NCCD implementation co-ordination.
  - iv. NSW special student transport advice.
  - v. Capital grants access advice.
  - vi. Access to teacher training in specialist fields, such as behavior management.
  - vii. NDIS implementation advice.



- viii. Privacy compliance advice.
- ix. NSW Education Act Part 5A implementation advice with respect to the “Management of health and safety risks posed in schools by student’s violent behaviour.”

### 1.8. Enrolled Disability Students

Set out below are those two statistical collections managed by CECNSW that identified disability students enrolled by NSW Catholic schools attending both Catholic Systemic and Congregational schools across NSW.

Dataset	Definition	Total students	% of Total Enrolments
<b>Students with Disabilities (SWD)</b>	SWD definition requires the application of the NSW State criteria which is a subset of the Disability Discrimination Act (DDA) criteria		
	2016 SWD students	13,422	5.2%
	2010 SWD students	10,915	4.5%
<b>Nationally Consistent Collection of Data on School Students with a Disability (NCCD)</b>	NCCD requires the application of the broad definition under the Disability Discrimination Act (DDA)		
	2016 NCCD students*	44,680	17.7%
	NCCD not in existence in 2010	NIL	NIL

\* Due to progressive implementation, NCCD data is only available for all schools since 2015

Figure 1: Diocesan boundaries of NSW Catholic systemic schools with percentages of SWD & NCCD students, 2016 census

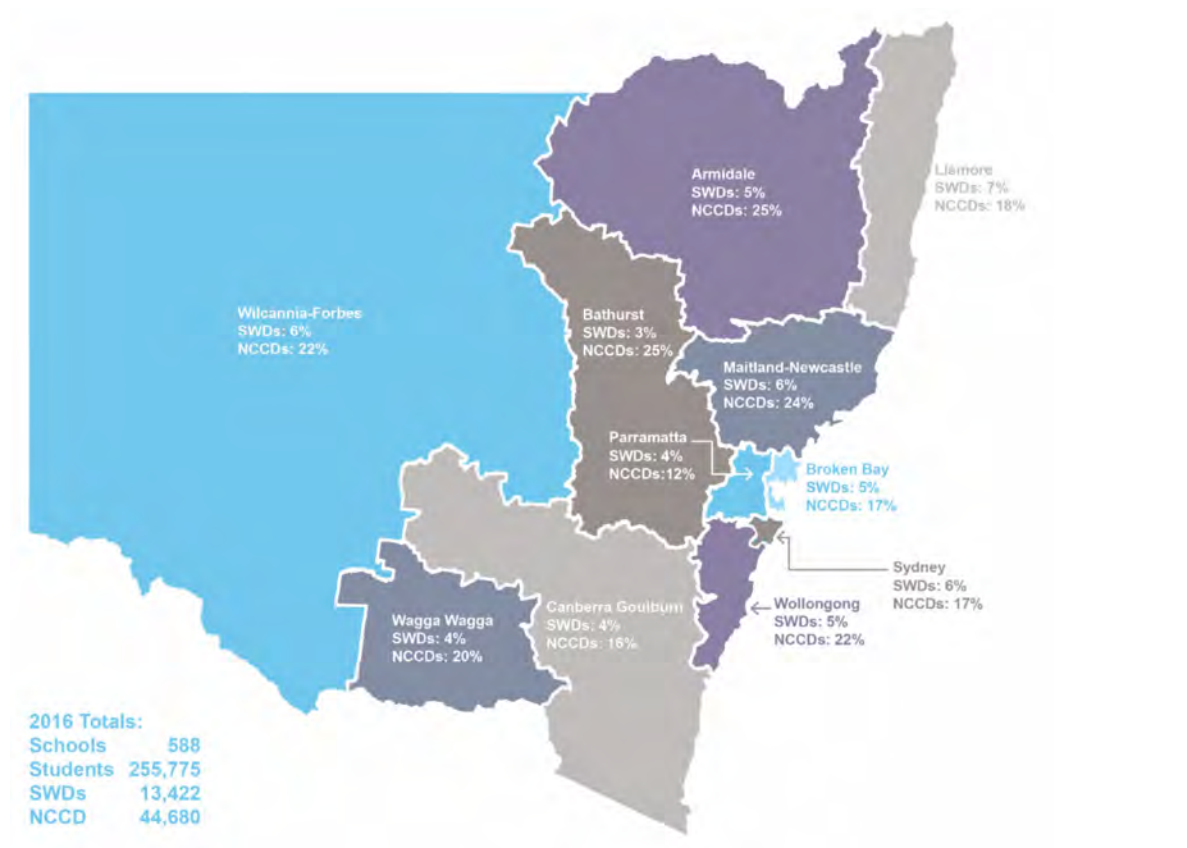


Table 1: NSW Catholic diocesan schools, enrolments, SWD students and NCCD students, 2016 Census

Diocese	Schools	Total enrolments	SWD students	SWD %	NCCD students	NCCD %
Armidale	24	5,953	314	5%	1,512	25%
Bathurst	34	9,773	308	3%	2,464	25%
Broken Bay	53	25,708	1,360	5%	4,436	17%
Canberra Goulburn	27	6,942	265	4%	1,103	16%
Lismore	46	18,579	1,266	7%	3,284	18%
Maitland-Newcastle	54	18,786	1,138	6%	4,485	24%
Parramatta	85	47,894	2,048	4%	5,602	12%
Sydney	169	86,867	4,883	6%	15,171	17%
Wagga Wagga	32	8,640	386	4%	1,751	20%
Wilcannia Forbes	19	2,719	170	6%	588	22%
Wollongong	45	23,915	1,286	5%	4,283	18%

The above cited data sets are further explored in section 4 of this paper.

## 2. Developments since the 2010 Upper House inquiry into the provision of education to students with a disability or special needs and the implementation of its recommendations

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In March 2010, the Catholic Education Commission NSW provided the following advice to the Legislative Council. This 2010 CECNSW advice is now annotated in the context of 2016 policy and practice.

CECNSW Recommendation	2010	Current status
<b>Student Recognition and Resourcing Needs</b>		
Recommendation 1	The resourcing implications for all schools arising from the Australian Government’s recent adoption of the UN Convention on the Rights of Persons with Disabilities (2006) need to be addressed in the context of modern cooperative Federalism as managed through COAG	<p>CECNSW notes that the Australian Government has not yet finalised a nationally consistent methodology for the determination of the student with disability loading for the Australian Education Act funding model.</p> <p>As documented through the data set out in Figure 1 above the State-based SWD data set is only a sub-set of the total students identified through the National Consistent Collection of Data (NCCD) process. This is the “gap” between recognised and funded students.</p>
Recommendation 2	The NSW definitions of Students with Disabilities should be reviewed in the light of the forthcoming national definition so as to render them consistent with the requirements of the Standards for Education under the Commonwealth’s Disability Discrimination Act.	<p>Although all Sectors have continued to participate in the NCCD for SWD, definitions are still not Nationally consistent.</p> <p>The requirement of the Australian Government Department of Education for the recognition of a NSW student as eligible for funding as a student with a disability continues to be based on the requirements of the New South Wales Department of Education (<a href="http://www.schools.nsw.edu.au/studentsupport/programs/disability.php">http://www.schools.nsw.edu.au/studentsupport/programs/disability.php</a> refer <i>Guide to the Australian Education Act at B.2.1.1</i>)</p> <p>The NCCD applies the definition found in the <b>Disability Discrimination Act 1992</b>, which is a broader definition of disability, and can include people with mild medical impairments learning and behavioural difficulties.</p> <p>As noted in Figure one above the NCCD student group is at least three times the size of the SWD student group.</p>

Recommendation 3	The resourcing needs of all Students with Disabilities and Special Learning Needs, irrespective of School sector, need to be addressed so as to ensure that each student can achieve the agreed National Goals for Schooling as expressed in the Melbourne Declaration on Educational Goals for Young Australians.	Refer to comments at 1 and 2 above
Recommendation 4	The existing NSW Supervisor Subsidy Grant should be made available to all students with moderate to severe disability, whether attending a special or regular school.	The existing NSW Supervisor Subsidy Grant is still only available to students with Autism or a moderate to profound intellectual disability who are enrolled in a recognised special school. This Grant should be applied to all students, regardless of their school of attendance, who require substantial and extensive adjustments as identified through the NCCD process. That is, funding eligibility should be based on assessed student need only, rather on both student need and the type of school a student attends.

### Accessible Curriculum and Assessment

Recommendation 5	The Australian Curriculum Assessment and Reporting Authority (ACARA) should be strongly advised to adopt the Board of Studies approach to Life Skills Courses and special provisions.	ACARA promotes excellence and equity in education on the basis that all students are entitled to access rigorous, relevant and engaging learning programs drawn from a challenging curriculum that addresses each individual's learning needs. The Australian Curriculum allows flexibility of delivery by schools depending on local supports and requirements.  In this context it is now timely for NESA to ensure that any new developments in NSW Life skills syllabus outcomes align with the Australian curriculum and are consistent with current "Universal Design for Learning" principles.
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### Early Childhood

Recommendation 6	Responsibility for early childhood services needs to be integrated into the State Education Portfolio to achieve both better early intervention strategies	The National Disability Insurance Scheme (NDIS) is rolling out across NSW. A trial of the NDIS commenced in the Hunter region in July 2013. An accelerated transition commenced in the Nepean-Blue Mountains region on 1 July 2015 for children and young people aged between 0 and 17.  Whilst early intervention is a priority in the roll out (particularly in the Nepean Blue Mountains region), it is too early to evaluate
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	<p>and better transition to school for Students with Disabilities and special learning needs. In this context Primary schools need to be linked to the implementation of the National Partnership on Achieving Universal Access to Early Childhood Education.</p>	<p>whether early intervention will improve as a result of NDIS processes.</p> <p>Providers, whose therapy services are accessed through an NDIS plan, may seek to deliver their services to students during school time or on school premises. Schools are beginning to report requests from external providers that impact on school timetabling and involving interventions that may not be appropriate in a school context. Schools may choose to facilitate this delivery where it integrates with the delivery of curriculum and educational supports consistent with reasonable adjustments for each student, taking account of the operational requirements and educational objectives of the school.</p> <p>It remains at each principal’s discretion to determine which services are delivered in school or on school grounds, taking into consideration the educational needs and priorities of all students of the school. Schools are not eligible to receive NDIS funding.</p>
<p>Recommendation 7</p>	<p>The Australian Early Development Index (AEDI) process needs to be employed to target those school communities requiring early intervention services, in order to mitigate student alienation and associated behavioural problems.</p>	<p>Governments at all levels and community organisations have been using the AEDI, now the Australian Early Development Census (AEDC), data to inform early childhood development policy and practice since the first national collection in 2009.</p> <p>Improving early childhood development underpins a range of school related initiatives, strategies and programmes across the health, mental health, early childhood, community services, family services, disability services, Indigenous and housing sectors.</p> <p>AEDC data is particularly useful for schools when assessing how enrolled children are achieving in relation to early development indicators by the time they commence their first year of full-time school. Schools are able to identify how the AEDC results for children in their community compare to state and national results, helping each school establish programs and initiatives that target the needs of kindergarten children with learning vulnerabilities.</p>
<p><b>Teacher Quality and Learning Support</b></p>		
<p>Recommendation 8</p>	<p>The National Partnership on Teacher Quality should be expanded to address teacher skilling and re-skilling necessary to address the needs of Students with Disabilities and learning needs in a regular classroom.</p>	<p>The More Support for Students with Disabilities (MSSD) Australian Government Program was a short-term injection of Commonwealth funding over three school years, 2012 to 2014 inclusive. The MSSD aimed to build the sustainable capacity of schools to improve the quality of education for students with disability and to enable a more inclusive school culture. The initiative helped raise awareness and understanding of educators with respect to their DDA obligations to students with disability under the Disability Standards for Education. It also greatly assisted initial NCCD implementation.</p> <p>A similar program would be of immense value with regard to the upskilling of school staff to enable them to design adjustments for</p>

		students who require support in order to access education on the same basis as students without disability.
Recommendation 9	The NSW Institute of Teachers should further develop its teaching standards relevant to the needs of special needs children.	The NSW Education Standards Authority (NESA), applying Australian Institute of Teaching and School Leadership (AITSL) professional development Standards, identifies professional development that can support understanding and management of complex behaviours by teachers.  Teachers who complete endorsed on line training in language, dyslexia, managing behaviour, autism, hearing or vision can achieve accreditation through NESA (the former NSW Institute of Teachers).
Recommendation 10	The upgrading of the qualifications and skills of Teacher Aides Special/Learning Support Officers needs to be identified as a priority under the NSW State Plan.	The 11 Diocesan school authorities across NSW continue to support Learning Support Officers (Teacher Aides) to undertake either a Certificate 3 or 4 in Teacher Aide Special training through TAFE or a private provider.
<b>Access to VET Courses</b>		
Recommendation 11	Costing and funding arrangements for the delivery of TAFE courses to NSW school Students with Disabilities should be reformed so as to eliminate unnecessary access barriers.	In 2015, CECNSW in collaboration with NSW DoE and AISNSW negotiated the development of a new TAFE pricing model for NSW schools. CECNSW supported negotiations for the removal of extra TAFE costs for school students with disabilities, requiring adjustments, who undertake external vocational education and training through TAFE.  This TAFE costing reform has resulted in more equitable access to VET courses for school students with disabilities across all NSW Government, Catholic and Independent schools.

### 3. What has changed since 2010 in terms of policy imperatives for CECNSW?

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#### 3.1. Student Identification in NSW: NSW Students with Disabilities (SWD)

- a. As in 2010 the requirement of the Australian Government Department of Education for the recognition of a NSW student as eligible for funding as a student with a disability continues to be based on the requirements of the New South Wales Department of Education (<http://www.schools.nsw.edu.au/studentsupport/programs/disability.php>)
- b. Since 2014 schools now also collect data to show how they meet adjustment requirements under the Disability Discrimination Act (DDA) and Disability Standards for Education (DSE) through the National Comparable Collection of Data (NCCD)
- c. Since 2013 schools and families have been engaging with changes consequent upon the introduction of the National Disability Insurance Scheme.

#### 3.2. The National Collection of Comparable Data for Students with Disability (NCCD)

- a. NCCD implementation is an Australian Education Act (2013) and Regulation requirement. The NCCD applies the disability definition found in the Disability Discrimination Act 1992, which is a broad definition of disability, and can include students with mild medical impairments, as well as learning and impulsive behavioural difficulties. As already noted above at Figure 1, on average only one third of students identified by the application of NCCD criteria are also identified applying State SWD criteria.
- b. The NCCD process requires both an understanding of DDA requirements and an analysis of each student's adjustments for learning. For NSW Catholic schools this is recorded through the CECNSW website in the form of a Personalised Plan. With respect to the NCCD Data, this process began in a number of NSW Catholic schools in October 2013. Diocesan Disability Advisers are skilled in this process and the compliance requirements arising for all NSW Catholic Schools.
- c. The following NCCD student information is collected for each child/student:
  - i. The level of adjustment provided;
  - ii. Number of students receiving each level of adjustment to participate in education on the same basis as other students; and
  - iii. The student's type(s) of disability

The NCCD data collection itself triggers a range of Privacy compliance responsibilities for schools.

#### 3.3. The National Disability Insurance Scheme (NDIS)

- a. The NDIS commenced in NSW in July 2013 in a trial area centred in the Hunter region. The trial has since expanded from the Newcastle Local Government Area (LGA) to the Lake Macquarie LGA in July 2014 and the Maitland LGA in July 2015. Local Catholic schools have been engaging with this trial.
- b. On 1 July 2015, rollout of the NDIS started for children aged 0 to 17 years living in the Penrith, Blue Mountains, Lithgow and Hawkesbury LGAs (the Nepean Blue Mountains District). Local Catholic schools have been engaging with this trial.
- c. The implementation of the NDIS across the rest of the State was commenced on 1 July 2016. NSW is committed to completing transition to the full scheme of the NDIS by July 2018. This policy objective has direct and indirect implications for schools.

- d. School leaders are becoming aware that the NDIS will be responsible for the functional disability supports that children need in non school settings. Schools, however, will continue to be responsible for a student's learning and any adjustments a student with disability may require to access education. For example, equipment that supports mobility, communication aids and specialist therapy for disability may be supported by the NDIS but classroom specific adjustments will not be funded.
- e. It is recognised that both the NSW and Commonwealth Governments are working together to determine how this intersection of separate but related responsibilities is to be managed. CECNSW is appreciative of the ongoing collaboration with the NSW Department of Education since this promotes a shared understanding of the implications of the roll-out of NDIS for all NSW schools. However, the Catholic sector requires full representation at State planning meetings which involve DET, NDIA and other NSW government departments. NESA should also be involved. Currently non-government schools are not directly represented on these committee structures.

### 3.4. Current Initiatives in prevention and early intervention for students displaying complex behavioural needs

The following information outlines those support activities commonly undertaken by Catholic schools across NSW. It should be noted that this list is not exhaustive, as it does not include school-based professional development or other programs undertaken at a local level– not involving CECNSW coordination or support. Relevant state-wide activities include:

- i. **Nonviolent Crisis Intervention Training (NCIS)**—Schools undertake NCIS training on request. NCIS has a focus on prevention so that training assists in equipping staff with proven strategies for safely defusing anxious, hostile, or potentially violent behaviour at the earliest possible stage.
- ii. **Positive behaviour support (PBS)**—PBS is a decision-making framework that guides those student selection and integration practices that need to be put in place to support student learning and social behaviour. Many schools have undertaken intensive PBS professional training prior to implementing PBS strategies. Diocesan officers have participated in training provided by local Department of Education NSW specialists and Education Queensland.
- iii. **Online training (OLT)** —Many schools have completed OLT in “Understanding and Supporting Behaviour” which is a 20 hour accredited blended course which aims to: explore definitions of difficult behaviour; identify individual learning needs that can lead to inappropriate behaviour; describe a range of assessment tools; and provide proactive and consistent classroom practice to support teachers. The Department of Education NSW has assisted in the training of tutors and initial teacher cohorts in support of Catholic schools that have requested this training.
- iv. **Team-Teach**—Some Catholic schools have undertaken this training that provides skills training in positive handling strategies (including minimal physical restraint) for responding to and managing challenging behaviours. This program develops a holistic, whole school setting approach to behaviour management and working with school leadership. Team-Teach strategies focus on minimising risk and reducing restraint. Team-Teach also provides training for groups of parents and offers a consultancy service.



- v. **Restorative Justice** - As well as behaviour support programs many schools use Restorative Practices programs, which offer an alternative behaviour management approach, for example through Marist Youth Care professional support.

The focus of this program is on relationships and repairing the harm done to relationships through wrongdoing. The principles of Restorative Practice can be effectively applied to a variety of settings, including both school-based environments and community organisations.

The aim of Restorative Practice is to create an ethos of respect, inclusion, accountability and responsibility. This intervention seeks to build positive relationships in each school community, while at the same time, encouraging individual self-efficacy, resilience and personal accountability for behaviour.

Key skills include active listening, problem solving, listening to and expressing emotion, and empowering others to take ownership of problems and learn from their experiences.

There are several courses offered to schools that develop a whole school approach to building a Restorative Culture. Implementation workshops build on key learnings and skills. This training provides each school staff with strategies to manage students with challenging behaviours while maintaining the respect and dignity of all involved persons.

## 4. Equitable access to resources for students with a disability or special needs across regional and metropolitan areas

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### 4.1. Context

- a. Examining equitable access to resources requires a prior understanding of those resources commonly available to schools and importantly how students with a disability are defined and then identified as eligible for access to those resources.
- b. Although the Disability Discrimination Act applies a broad definition of disability that includes physical, intellectual, medical, psychiatric, sensory, neurological and learning disabilities, for the purposes of funding a narrower set of NSW State Disability identification criteria are applied. This application of State criteria for funding purposes is consistent with Australian Education Act and Regulation requirements, refer Australian Education Regulation 16(2)

### 4.2. Relevant Data Collections: State and Commonwealth

According to the Australian Government's Non-Government Schools Census Definition (Schools Census) a Student with a Disability (SWD) is a student who:

1. has been assessed by a person with relevant qualifications as having intellectual, sensory, physical, social/emotional or multiple impairments; and
2. satisfies the criteria for financial assistance in special education services or programs provided by the State or Territory in which the school is located.

Presented below is CECNSW SWD enrolment trend data.

Figure 1: SWD enrolment trend data 1985 - 2016

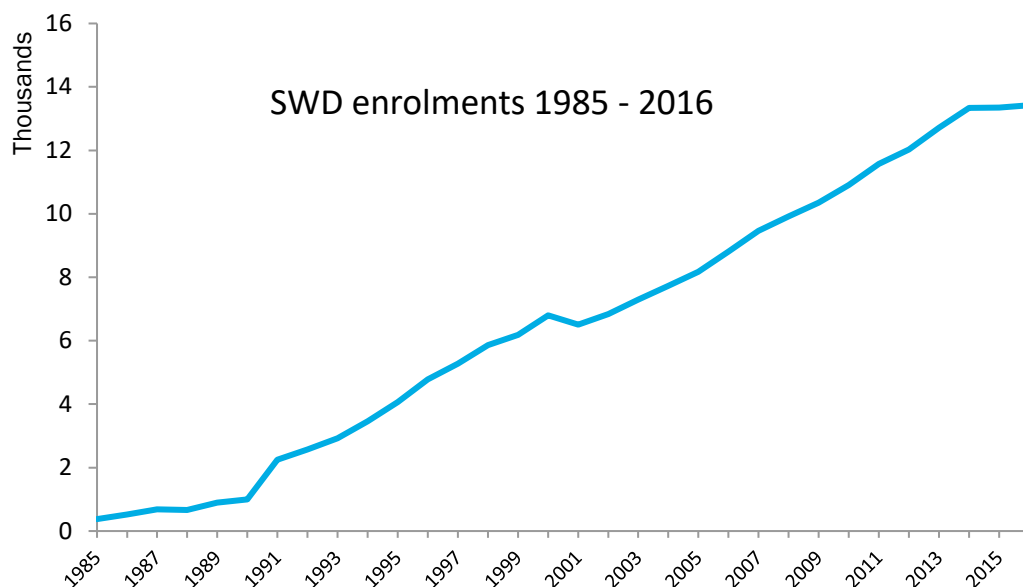
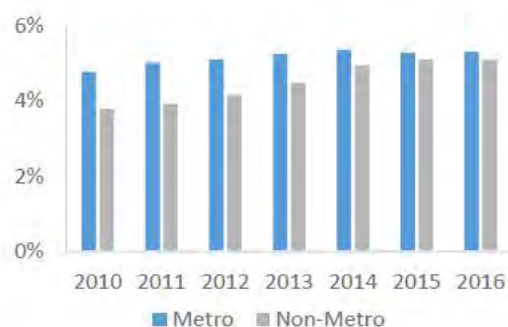


Figure 2: SWD enrolments as a percentage of total enrolments in metropolitan and non-metropolitan areas

Year	Metro <sup>1</sup>		Non-Metro		Total	
2010	4.8%	8,735	3.8%	2,180	4.5%	10,915
2011	5.0%	9,283	3.9%	2,291	4.7%	11,574
2012	5.1%	9,590	4.1%	2,438	4.9%	12,028
2013	5.2%	10,031	4.5%	2,677	5.1%	12,708
2014	5.4%	10,354	4.9%	2,978	5.3%	13,332
2015	5.3%	10,268	5.1%	3,085	5.2%	13,353
2016	5.3%	10,373	5.1%	3,049	5.2%	13,422



#### 4.3. National Consistent Collection of Data on School Students with a Disability (Commonwealth)

The Nationally Consistent Collection of Data on School Students with a Disability (NCCD) is a data collection under the following mandate (Collection of this data only commenced in 2014):

“A student is identified for counting under the NCCD guidelines, using the definition found in the *Disability Discrimination Act 1992*, which includes physical, intellectual, medical, psychiatric, sensory, neurological and learning disabilities. NCCD data includes:

- the level of adjustment provided to allow a student to participate in education on the same basis as other students;
- the number of students receiving each level of adjustment; and
- the student's type(s) of disability”

Figure 3: NCCD enrolments as a percentage of total enrolments in metropolitan and non-metropolitan areas

Year	Metro		Non-Metro		Total	
2014	13.8%	17,564	15.8%	7,128	14.3%	24,692
2015	14.9%	28,458	18.4%	11,095	15.7%	39,553
2016	17.0%	32,697	20.0%	11,982	17.7%	44,679



<sup>1</sup> Metro and Non-metro regions are geographical regions used by the NCCD data collection. They are based on the ABS Remoteness Structure. “Metro” designates a major city in Australia, “Non-metro” is all other areas.

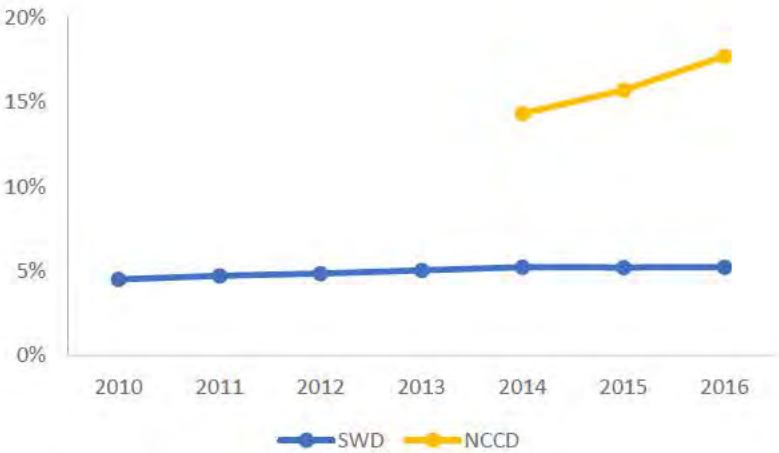
4.4. Comparing Metropolitan and Non-Metropolitan Catholic Schools’ data

There is a significant trend in the SWD and NCCD identification rates between metro and non-metro students. While metro schools report a very slightly higher proportion of SWD students than their non-metro counterparts, the reverse is the case in the NCCD dataset. Instead, schools in non-metro areas return a NCCD identification rate consistently higher than schools located in metro areas. This inconsistency may be an artefact of the smaller populations in non-metro areas. However, it may also be an indicator of lack of diagnostic services in non-metro areas and a resultant failure to recognise students as defined by the Schools Census. If this is the case, an obvious equity of access to student support issue arises. CECNSW does consider this data, though limited, to be compelling.

4.5. Comparing the growth in NCCD students compared to SWD students

- a. Since 2010, the proportion of students identified as SWD has shown a small increase but remains relatively static. The change from 4.5% of total enrolments in 2010, to 5.2% in 2016 is a modest increase of less than 1% in six years.
- b. In contrast, in the year from 2015 (the first year of full participation) to 2016, students identified under the NCCD definition have increased from 14.3% to 17.7%. This 3.4% increase is triple that of the SWD growth.

Figure 4: Growth in NCCD students vs SWD students as a percentage of total enrolments



The above cited data suggests that the minimum proportion of the school age population requiring disability support is 5% of all students.

4.6. CECNSW Funding Data 2010–2016

CECNSW approved funding estimates for SWD students, including “integration”, “special needs support” and “special learning needs” for the years 2010 – 2016 are set out below.

	Regular schools	Special Schools	Per Capita SWD funding	Total
<b>2010</b>	10,900,582	3,338,101	9,216,563	<b>23,730,046</b>
<b>2011</b>	11,336,605	3,471,625	10,101,853	<b>25,195,875</b>
<b>2012</b>	11,953,377	3,659,270	11,441,048	<b>27,351,249</b>
<b>2013</b>	15,056,515	3,942,250	12,236,374	<b>31,633,239</b>

#### 4.7. Incremental SWD Funding Figures 2014-2015 under the National Funding Model

- a. The CECNSW funding to SWD support under the Australian Education Act 2013 has risen dramatically in recent years as the following table illustrates.

Year	Extra funding spent on SWD (in addition to base funding for all students)
2014	\$31m
2015	\$90m

Note: figures for 2016 are not yet available but are expected to be collected and collated for the purposes of reporting to AGDET the Financial Accountability Block Allocations by 30 June 2017.

- b. Since the introduction of recurrent grant funding under the Australian Education ACT 2013, the level of SWD funding has dramatically increased across NSW Catholic systemic schools.
- c. The extra funding for students with disability, in addition to the base entitlement for students generally, within the Commonwealth recurrent grants, commonly referred to as the SWD Loading, rose dramatically from a level in 2014 of \$31m to the much greater sum of \$90m in 2015.
- d. The corresponding amount for 2016 is expected to be higher again but the final figures will not be available until later in 2017. The amount for the SWD Loading for the 2016 calendar year will be reported to the Australian Department of Education & Training (AGDET) by 30 June 2017 as part of the Commonwealth Government's Financial Accountability (FA) process.
- e. Note that the Loading amounts reported above do not represent the total funding deployed for the benefit of students with disability for several reasons. Firstly, the Loadings as the name implies, are only incremental amounts. If the total amount of funding able to be attributed to SWD students is considered, the SWD funding amount is \$183m.
- f. Also, it should be noted that it is not practically feasible to disaggregate the costs of the time and effort directed for the benefit of SWDs from indirect costs such as Principal's or coordinators salaries. These educators rightly spend a greater proportion of their time addressing the needs of SWDs as compared to the general student populations. The costs for this time and effort are not included in the amounts quoted above as spent on SWDs.

#### 4.8. More Support for Students with Disabilities (MSSD) Program

MSSD was a targeted Australian Government program implemented in 2012–2014 and intended for the purposes of providing that professional development required by teachers in order for those teachers to identify students in accordance with the NCCD definition and hence DDA required adjustments. For the years 2012 to 2014 MSSD funding distributed by CECNSW was:

Year	More Support for Students with Disabilities
2012	\$6.8m
2013	\$4.7m
2014	\$5.8m

#### 5. Complaint and review mechanisms within the school systems in New South Wales for parents and carers

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a. Relevant to concerns of this Inquiry, all NSW Catholic Schools have complaint processing policies and procedures consistent with the legal and ethical imperatives of:

- i. NSW Education Act 1990 and NESAs School Registration requirements, refer School Registration requirements at <http://rego.bostes.nsw.edu.au/>.
- ii. Commonwealth Disability Standards for Education 2004 and Disability Standards for Education 2005 obligations, refer <https://www.education.gov.au/disability-standards-education>.
- iii. Australian Education Act and Regulations 2013 with reference to ongoing requirements for each Approved (School) Authority including:
  - ‘ensuring that (the Authority) complies, and that each of its schools complies, with the relevant disability discrimination laws of the Commonwealth and state or territory (Section 77(2)(e))’
- iv. Individual school/system enrolment agreements, enrolment contracts, that is the application of contract law.

b. Those NESAs complaint and review mechanisms which apply across all NSW Schools are:

- i. NESAs requires that each non-government school must provide a safe and supportive environment by ‘having in place policies and procedures that provide for students’ welfare; refer NESAs School Registration Manuals at “Safe and Supportive Environment”
- ii. Further pursuant to this requirement all registered non-government schools, including all NSW Catholic schools must have in place, and implement, policies and procedures in relation to:
  - ‘complaints or grievances, with specific reference to processes for raising and responding to matters of concern identified by students and/or parents.’ (refer to “NESAs Registration Systems and Member Non-Government Schools (NSW) Manual”, at 5.6.2)

- c. Also relevant is the current NSW Ombudsman Inquiry into “evidence-based behaviour management in government and non-government schools”. CECNSW has been coordinating Catholic sector input to this review. CECNSW understands that the NSW Ombudsman will report the outcomes of its inquiry to the Legislative Council

## 6. Understanding and Advocacy: A Critical Issue – Responding to Extreme Behaviour

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- a. CECNSW is of the view that the most critical aspect of DDA Standards for Education engagement that requires both further understanding and advocacy is the management of those disabilities that manifest themselves in extreme student behaviour, refer to the definitions of disability at section 3 above.
- b. The intersection of disability provision and extreme behaviour has been a contested DDA implementation issue since the case of *Purvis v NSW HCA 62 217 CLR 92* [November 2003]
- c. Consequently, consultation to date on DDA response issues has identified the application of the DDA Standards for Education to disabilities that manifest themselves in extreme student behaviour as the most pressing issue for comment. That is, the opportunity to clarify the application of the “reasonable adjustment” test to the management of students who exhibit extreme behaviour that may be inconsistent with a school’s duty of care to other students and staff has emerged as the key Standards implementation matter for clarification.
- d. School authorities are required to navigate their way through the provisions of the DDA and Standards, assessing a range of competing factors and then making adjustment judgments. The difficulty of this task is particularly acute when the disability manifests itself in a student’s exhibiting behaviour that requires special management.
- e. For example, from time to time a school will enrol a child who has significant behavioural issues that result in the child harming themselves or other students and, sometimes, staff. If these actions arise out of a neurological or psychological disability, the school will have certain obligations under the Disability Discrimination Act and Disability Standards for Education.
- f. However, the school also has obligations to staff and students under Workplace Health and Safety legislation and under its general legal obligation to exercise a duty of care. In addition, in NSW special obligations to manage students who pose a risk of violence by reason of their behaviour arise under Part 5A of the *NSW Education Act*.
- g. In determining what action to take when managing a student with extreme behaviour the school must:
- i. determine whether the behaviour arises out of a disability or whether the child merely exhibits anti-social behaviour not related to a disability;
  - ii. if the behaviour is likely to arise from a disability, have an interview with the parent (associate) of the child to discuss the issues and obtain their views on possible course of action;
  - iii. assess whether any adjustments are necessary and identify reasonable adjustment;
  - iv. assess what adjustments would need to be made to provide a safe environment for other pupils and staff;

- v. assess what is in the best interests of the child, including whether the child's best interest would be better secured by the child moving to a school that specialises in working with children with disabilities of this nature;
  - vi. assess the impact of the likely violence consistent with the Part 5A obligations of the NSW Education Act; and
  - vii. obtain, as necessary, professional advice in relation to each assessment that needs to be made.
- h. The difficulties encountered in this process include:
- i. the need for school authorities to make difficult decisions in areas, for which they require further specific training or professional advice;
  - ii. the divergent opinions of specialist advisors, particularly where the advisor perceives their role as reflecting the views of the child's parent or guardian (associate);
  - iii. possible misunderstanding by parents of the various assessments to be made and the complicated factors involved in making decisions about the future management of their child's behaviour and functional needs;
  - iv. the views of other parents and teachers as to the proper discharge of the school's duty of care, including the *NSW Education Act Part 5, A* duties to impacted third parties and in particular other children at the school.
- i. These situations are not only complex for the school but often, understandably, very emotional and difficult for the parent/ guardians of the child. It is sometimes very hard for parents to consider the issues objectively. Also, as various decisions of tribunals and courts have shown, there is a need for open dialogue between the school and parents/guardians and for both parties to work together cooperatively in the future so that both parties can take responsibility for management of the child's behaviour. This fundamental response requirement is sometimes not recognised.
- j. CECNSW submits that the current DDA Standards and Guidance Notes fail to provide sufficient direction as to how the Education Standards should be applied in circumstances where there are complex behavioural issues that may arise from disability. In particular, how to determine reasonable adjustments from unreasonable adjustments consistent with DDA Education Standard 3.4 and Guidance Note 4.2. That is, when finalising behaviour related adjustments a school is required to assess both:
- The effect of the proposed adjustment on the student, including the student's ability to participate in courses or programmes and achieve learning outcomes; and
  - The effect of the proposed adjustment on anyone else affected, including the education provider, staff and other students (refer to DDA Education Standards at 3.4 and Guidance Notes at 4.2)
- k. CECNSW is of the view that additional and particular Guidelines for NSW schools are required that will enable both schools and parents to understand the processes that must be followed and the factors to be taken into account when determining what adjustments are required to manage behaviour and whether these adjustments are reasonable or unreasonable. These proposed NSW Guidelines should assist all parties to appreciate that a school is not required to implement unreasonable adjustments in the context of a particular school refer, "Disability Standards for Education 2004, Guidance Notes" at 4.2 – "making reasonable adjustments" and "no requirement to make unreasonable adjustments". Also, it needs to be acknowledged that an adjustment, while reasonable, may not actually be in the best interests of a particular child.



- I. The significance of the best interests of the child imperative is that school decision makers may be required to take regard of adjustment advice additional to that provided by parents. This need often means that all involved parties can find themselves participating in a complex decision making matrix. It is this complexity which suggests the desirability of the development of further independent guidance for all NSW schools with respect to how to best respond to the needs of students exhibiting extreme behaviour.

## 7. Summary Advice

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In the context of the advice set out in the body of this submission CECNSW advises that:

- i. The conduct and purpose of the separate State (SWD) and National (NCCD) data collections needs to be clarified by the Australian Education Council, refer section 3.
- ii. The non-government schools sectors need to be included in the membership of all relevant NSW NDIS planning committees, refer section 3.3.
- iii. Student identification data suggests that disability services access is still an equity issue for rural schools, refer section 4.4.
- iv. The National NCCD collection is not yet reliable or robust enough to be used as a funding tool at any level of decision making, refer section 4.
- v. The existing parent complaint processes established and oversights by NESA should be better advised to parents by NESA, refer section 5.
- vi. Existing NSW Supervisor subsidy grant eligibility should be reformed so that it is based on assessed student need only, rather than on both student need and the type of school a student attends, which are the present criteria, refer section 2 - "Recommendation 4".
- vii. CECNSW is of the view that additional and particular Guidelines for all NSW schools are required that will enable both schools and parents to understand the processes that must be followed and the factors to be taken into account when determining what reasonable adjustments are required to manage behaviour and whether these adjustments are reasonable or unreasonable. These proposed NSW Guidelines should assist all parties to appreciate that a school is not required to implement unreasonable adjustments, see "Disability Standards for Education 2004, Guidance Notes" at 4.2 – "making reasonable adjustments" and "no requirement to make unreasonable adjustments", refer section 6.

CECNSW can elaborate on the matters raised.

Attachment – Sample ASPECT MOU (Refer Section 1.5)

### **Contact Person**

**Ian Baker, Director Policy and Programs CECNSW**