

**Submission  
No 2**

## **INQUIRY INTO ADEQUACY AND SCOPE OF SPECIAL CARE OFFENCES**

**Organisation:** Independent Education Union of Australia NSW/ACT Branch  
**Date Received:** 22 May 2018

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Independent Education Union of Australia NSW/ACT Branch

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22 May 2018

The Director  
Standing Committee on Law and Justice  
Parliament House  
Macquarie Street  
**SYDNEY NSW 2000**

**By email:** [law@parliament.nsw.gov.au](mailto:law@parliament.nsw.gov.au)

Dear Director

The NSW/ACT Branch of the Independent Education Union of Australia (IEUA) appreciates the opportunity to provide a submission into the NSW Legislative Council's Standing Committee on Law and Justice (Committee) inquiry into the adequacy and scope of the 'special care' offence of 'Sexual intercourse with child between 16 and 18 under special care' under section 73 of the *Crimes Act 1900*.

The IEU is the Union which represents the industrial and professional interests of approximately 33,000 staff working in non government schools, colleges and early childhood centres in NSW and the ACT. We have over the years been engaged in reviews and provided submissions on child protection legislation in NSW and the ACT and to the Royal Commission into Institutional Responses to Child Sexual Abuse on the benefits of a nationally consistent Working With Children Check.

The IEU is committed to legislation that is focussed on the protection and safety of children as a whole, but remains mindful of protecting the welfare, reputation and careers of our members, the majority of whom work in NSW schools.

The IEU supports the recent strengthening of 'special care' legislation in NSW through the expansion of the definition of a teacher under section 73 of the *Crimes Act 1900* to include teachers at the school that are beyond the student's direct classroom teacher, such as principals and deputy principals, school counsellors, welfare officers and year advisors. We believe such amendments will further assist in protecting students against teachers and other persons employed at the school, who misuse their 'special care' authority over students at that school.

The IEU also supports additional regulation of the 'special care' offence under section 73 of the *Crimes Act 1900* to include volunteers and any other person working at the school who has care of, authority over, or who provides instruction to any student at that school.

However, the IEU does not support the applying of an offence under section 73 of the *Crimes Act 1900* where a 'special care' relationship ceases or is no longer in effect at that school eg where the person no longer works at the school at which the victim is a student.

The IEU now takes the opportunity to provide the attached submission in response to those questions outlined in the Committee's terms of reference document 'Inquiry into the adequacy and scope of special care offences' that have a particular relevance to our NSW members.

Additionally, the IEU requests to be included on any list of agency stakeholders invited to attend subsequent Committee information sessions, public hearings and targeted consultation meetings, prior to any recommendations being made by the Committee to NSW Parliament relating to the adequacy and scope of 'special care' offences.

The IEU has no objection to the attached submission being made public and would be pleased to discuss this submission further with the Committee, if contacted by telephoning Russell Schokman, Policy Advisor, or myself on

Yours sincerely

~~JOHN QUESSY~~  
Secretary

## IEU Submission May 2018

### Introduction

The NSW/ACT Branch of the Independent Education Union of Australia (IEUA) represents teachers and other employees in non government schools, colleges and early childhood centres. We have a significant interest and a strong commitment to the safety and protection of children as a whole in NSW and the ACT.

The following responses by the IEU to the questions outlined in the NSW Legislative Council's Standing Committee on Law and Justice terms of reference document 'Inquiry into the adequacy and scope of special care offences', are not only focussed on the protection and safety of school students, but also mindful of protecting the welfare, reputation and careers of our members, the majority of whom work in NSW schools.

#### **(a) The adequacy of the scope of the special care offences in ensuring the safety of school students, in relation to their application to teachers and other school workers, including**

##### **(i) Whether the offences should apply where a school worker is a volunteer**

- The IEU notes the Committee reference in (a) to the term "other school worker". We seek more guidance from the Committee in relation to a clear and precise definition of "other school worker" and submit a definition should be included in section 73 of the *Crimes Act 1900*.
- We submit that only persons working at the school who have care of, authority over, or who provides instruction to any student at that school, should be included in the definition of "other school worker" and the 'special care' offence under section 73 of the *Crimes Act 1900* should apply to these persons.
- The IEU further submits that as a volunteer working in the school would have care of, authority over, or provide instruction to students at that school, he/she should be included in the definition of "other school worker". Therefore, the 'special care' offence under section 73 of the *Crimes Act 1900* should apply to a volunteer working at that school.

##### **(ii) Whether the offences should apply where the school worker is a recent ex-student of the school**

- The IEU notes the Committee reference to the term "recent ex-student". We seek more guidance from the Committee as to what period of time applies when classing an ex-student as being "recent".
- Notwithstanding the above, we submit that the 'special care' offence under section 73 of the *Crimes Act 1900* should apply to any ex-student (recent or otherwise) of the school at which the victim is a student and who is now working in that school, as he/she would have care of, authority over, or provide instruction to students at that school.

**(iii) Whether the offences should apply where the school worker no longer works at the student's school**

- The IEU opposes the inclusion of a school worker who no longer works in the school at which the victim is a student as a person that is caught under the 'special care' offence under section 73 of the *Crimes Act 1900*.
- The IEU submits that section 73 of the *Crimes Act 1900* should not apply as, a 'special care' relationship ceases or is no longer in effect when a school worker no longer works in the school at which the victim is a student. The student would no longer be under the care or authority of the (former) school worker, who would also not be in a position to provide instruction to the student.

**(b) Whether the offences should apply where a special care relationship existed but is no longer in effect**

- We refer to our response to (iii) stating our opposition to the inclusion of a school worker, who no longer works in the school at which the victim is a student, as being a person that is caught under the 'special care' offence under section 73 of the *Crimes Act 1900*.
- The IEU submits that when a 'special care' relationship ceases or is no longer in effect, the student would no longer be under the care or authority of the school worker, nor would the school worker be in a position to provide instruction in the school at which the victim is a student. Therefore, the 'special care' offence under section 73 of the *Crimes Act 1900* should not apply.

**(c) Whether youth workers and workers in youth residential care settings, including but not limited to homelessness services, should be recognised as having special care of any 16 or 17 year old young person to whom they provide services**

**(d) Whether any additional safeguards, including but not limited to Director of Public Prosecutions sanctions of prosecutions, are required in any of the circumstances in paragraphs (a) – (c) above, and**

**(e) Any other related matter.**