

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

Organisation: Gymnastics NSW

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Gymnastics
New South Wales

Thursday, 31 May 2018

The Hon Natalie Ward MLC

Chair

STANDING COMMITTEE ON LAW AND JUSTICE

Inquiry into the adequacy and scope of special care offences

Dear Ms Ward

Gymnastics NSW is pleased to submit the following response to your request for comment on the amendments to Section 73 of the *Crimes Act 1900*.

Section 73 specifically relates to sexual intercourse with a child between 16 and 18 under Special Care.

(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,
- (ii) whether the offences should apply where the school worker is a recent ex-student of the school,
- (iii) whether the offences should apply where the school worker no longer works at the student's school

Children, especially school students, under special care entitled to be safe and protected.

There is no reason why volunteers, ex-students or ex-employees should be exempt.

There is a power imbalance between the "school" person and the student by virtue of the fact the "school" person is seen as having the "authority" of the school.

School employees and volunteers are required to have a valid Working With Children Check. Any sexual activity would be in breach of Office of the Children's Guardian Child Protection (Working With Children) Act 2012 and Child Protection (Working With Children) Regulation 2013.

However, for (ii) if the school worker is also Under 18 consideration should be given to the age and level of understanding of the consequences of the action when deciding on punishment.

(b) whether the offences should apply where a special care relationship existed but is no longer in effect, If there is no special care relationship then any illegal act of sexual intercourse should be dealt with in the same way that applies to any member of the community.

(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 people to whom they provide services,

Youth workers and workers in residential care setting are employed in a care role and have a stated or implied authority over the child. These workers are required to have a valid Working With Children Check. Any sexual activity would be in breach of Office of the Children's Guardian Child Protection (Working With Children) Act 2012 and Child Protection (Working With Children) Regulation 2013.

(d) whether the offences should be expanded to recognise adoptive parents and adopted children as a special care relationship

The current legislation includes the step-parent, guardian or foster parents and de-facto partners, there is no reason to exclude adoptive parents. Adoptive parents are expected to provide the same level of care for children as parents or significant others in the same role.

(e) whether any additional safeguards, including but not limited to Director of Public Prosecutions sanction of prosecutions, are required in any of the circumstances in paragraphs (a) - (d) above,

The additional safeguard of DPP sanction of prosecutions should be implemented to ensure procedural fairness and justice are served.

(f) whether the incest offence in section 78A of the Crimes Act 1900 should be expanded to include adoptive relationships

Yes, for the sake of consistency and removing loopholes.

Point (d) above refers to step-parent, guardian or foster parents and de-facto partners and to also include adoptive parents. It would be an anomaly to exclude parent from the same strictures and punishments applied to others in the same role.

Yours sincerely

Richard Turnbull

Compliance 'Child Safe & Child Friendly' Officer Gymnastics NSW