

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

Organisation: Catholic Schools NSW

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Catholic Schools NSW Submission

Inquiry Into The Adequacy And Scope Of The
Special Care Relationships

June 2018



Catholic Schools NSW (CSNSW) welcomes the opportunity to comment on the Standing Committee on Law and Justice inquiry into and report on the adequacy and scope of the special care relationships recognised in the special care offence under section 73 of the Crimes Act 1900 (NSW) (the Act).

CSNSW is fully committed to ensure the highest possible standards of care for school students in the NSW education system. We aim to work collaboratively with Government and other stakeholders to maintain this standard and seek to continuously improve, wherever possible.

Background

CSNSW is owned by the Catholic Bishops of NSW and was established by them in 2017 to represent NSW's 595 Catholic schools, which enrol approximately 256,000 students and 27,000 staff to government, media and other stakeholders.

The state's network of 549 diocesan-owned and operated schools is the largest non-government school system in Australia. These are known as 'systemic' Catholic schools. The remaining 46 schools were established by religious orders or institutes and are operated by entities (public juridic persons) on their behalf. These schools are known as 'congregational' Catholic schools.

Catholic schools educate one in five NSW school students. They are inclusive institutions and enrol students from all socio-economic backgrounds. Despite differences in governance structures, CSNSW represents all of the state's Catholic schools in negotiations with the State and Commonwealth governments and their agencies.

CSNSW acts as the Approved System Authority for recurrent government funding purposes for all diocesan schools. Each geographic diocese has a Catholic school authority to administer its local systemic schools, effectively creating 11 systems

of Catholic school administration in NSW.

Collectively at last count, the Catholic 'systemic' system is responsible for educating around 125,000 primary students and 93,000 secondary students. These students are educated by some 17,000 teachers.

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.

Adequacy and scope of the special care offences

CSNSW notes the proposed extension of the special care offences under s73 of the Act, to deal specifically with:

- (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,
- (b) whether the offences should apply where a special care relationship existed but is no longer in effect.

CSNSW fully supports increases in the protection of students in NSW education as the safety and security of those in the NSW education system is of paramount importance. We also wish to

minimise any unintended consequences while not adversely affecting any protective measures.

We note there is potential ambiguity concerning what constitutes a 'school worker'. In s73 of the Act, there is a definition of 'member of the teaching staff of the school at which the victim is a student', which includes:
'a teacher at the school', or
'the principal or a deputy principal at the school', or
'any other person employed at the school who has students at the school under his or her care or authority'.

The final bill would benefit from clarifying the point whether 'school worker' encompasses a broader definition and goes beyond all paid employees of the school. Some paid workers of the school may not have students under their direct care or authority. We note, especially for those who are not teachers or involved on a day-to-day basis in the school, this will assist to provide clarity as to their responsibilities and help to ensure that no inadvertent consequences occur due to ignorance or lack of awareness.

Recommendation:

Clarity is provided to all persons meeting the definition of 'school worker'.

This includes persons employed, engaged or authorised by the school to provide a service for students including:

- Paid employees of the school;
- Volunteers (including parents);
- Recent ex-students;
- People who recently worked at the school;

and

- Other service providers (e.g. sub contractors, youth group leaders, coaches and tutors whether on the school premises or not).

We believe 'school worker' should be defined explicitly since ambiguity may cause confusion leading to inadvertent and unintended consequences. There should be an obligation on the school that any 'school worker', who enters the property or has a student placed under their supervision, is first informed explicitly of all the related legal obligations, highlighting potential restrictions. This could be discharged by the school providing all such persons upon first entry to the premises or when a student is first placed under their supervision with a standard notice to be read and signed as required.

We would also bring to the attention of the Legislative Committee the need for a broader community education program whereby people are made aware of their responsibilities. Schools and relevant industry bodies should consider providing further training to enhance the understanding of these increased obligations.

Recommendation:

Sectorial partnerships should be considered to deliver training programs to increase their effectiveness.

Employment by local sporting club

CSNSW notes that there is potential ambiguity where, for example, people acting in the capacity of a specialist sporting coach at a clinic may later

have sexual relationships with a participant in the clinic who was still currently enrolled at school. At this clinic, the local football club may provide the coaches and there could be students from various schools. We would like to know whether these coaches are captured under the new provisions as 'school workers' or are they a form of sub-contractor as attending clinics may be part of their employment contract with the sporting club.

Recommendation:

The Committee should consider how best to make the legislative intent explicit in such circumstances as above.

Timeframe

CSNSW also believes there needs to be clarity regarding what timeframe defines 'a recent ex-student of the school' and determines when 'the school worker no longer works at the student's school'.

Other jurisdictions

We are aware of the recent developments in the Australian Capital Territory including broadening the definition of 'special care'. This extension is designed to capture various 'special care' relationships that may exist at a school. We strongly support consistency and harmonisation across the Australian

jurisdictions where possible to advance the highest possible standards of care for children and young people in schools.

Other recommendations

Recommendation: CSNSW is supportive of other provisions proposed in the Inquiry into the adequacy and scope of special care offences as the safety and security of those in the NSW education system is of paramount importance.

Recommendation:

In response to (f) of the Inquiry, CSNSW supports strongly the expansion of the incest offence in s 78A of the Act to include adoptive relationships.



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