

NSW response to Royal Commission Issues Paper 9 – Addressing the risk of child sexual abuse in primary and secondary schools

EXECUTIVE SUMMARY

1. The Royal Commission into Institutional Responses to Child Sexual Abuse has called for submissions on the risk of child sexual abuse in schools and whether there are effective mechanisms in place for schools to report and respond.
2. The NSW Government's response has been coordinated by the NSW Department of Education and contributed to by a range of NSW government agencies.
3. Submissions were sought by the Royal Commission on five general topics:
 - a. **General Questions** (paragraphs 1 to 56);
 - b. **Governance and Leadership** (paragraphs 57 to 73);
 - c. **Protection and Support Services for Children and Specific Student Populations** (paragraphs 74 to 119);
 - d. **Registration of non-Government Schools, not for profit and Corporate Entities** (paragraphs 120 to 126);
 - e. **Education, Training, Professional Support and Primary Prevention** (paragraphs 127-157); and
 - f. **Reporting, Information Sharing, Complaints and Investigations** (paragraphs 158 to 198).
4. While each of the five general topics in Issues Paper 9 have been dealt with, the NSW Government's response has focussed on the NSW government school system and the role of the Board of Studies, Teaching and Educational Standards in regulating non-government schools.
5. The NSW Department of Education has a clear policy framework for preventing, reporting and responding to risks and instances of child sexual abuse in NSW government schools.
6. Identified strengths in the NSW government school system include:
 - a. **mandated child protection education** applying to government and registered non-government schools from kindergarten to Year 10 (see in particular paragraphs 2 to 3, 76(e), 115 and 150 to 155,);
 - b. **mandated centralised procedures for reporting child sexual abuse** and strategies to support mandatory reporters (see in particular paragraphs 4 to 7, 61 to 66, and 70 to 73);
 - c. **strategies and services supporting the full diversity of students attending government schools** including the Wellbeing Framework for Schools and the

School Excellence Framework, networked specialist centres, the school counselling service (see in particular paragraphs 54, 74 to 82, 101 to 103,);

- d. **clear policies and procedures which provide guidance to staff about their professional and ethical responsibilities** in the area of child protection including reports of significant risk of harm, ethical decision making and reporting allegations against employees (see in particular paragraphs 15 to 17, 28 to 30, 40 to 41, 56, 71 and 109);
 - e. **mandated child protection training for departmental staff** (see in particular paragraphs 11 to 14, 27, 120 to 133; 138 to 147 and 164);
 - f. **the Department's Child Wellbeing Unit** that advises, supports and educates mandatory reporters and identifies potential responses from other agencies (see in particular paragraphs 8-10, 52, 65, 76, 80 and 104-105) ;
 - g. **a specialist internal investigation unit** (the Employee Performance and Conduct Directorate) into allegations against employees of reportable conduct (see in particular paragraphs 19 to 20, 22, 109 and 175);
 - h. **oversight of investigations of reportable conduct** by the NSW Ombudsman (see paragraphs 15);
 - i. **oversight of the safety arrangements, incidents and decision making and promoting child safety** by the Department's Steering Committee: Protection of Children and Young People (see paragraph 57-59)
 - j. **specialist units providing school staff with support** such as the Department's Safety and Security Directorate (see paragraphs 59 and 67);
 - k. **the capacity to exchange information with other NSW organisations working with children** (see paragraphs 178 to 188);
 - l. **the regulation of registered non-government schools by the Board of Studies, Teaching and Educational Standards** (see in particular paragraphs 23 to 25, 33, 44 to 45, 55 to 56, 60, 83, 119, 122 to 126 and 132 to 133), its role in **teacher accreditation** (paragraphs 134-135) and its role in **providing advice to the Minister about government schools** (see paragraphs 26 and 92)
7. There are **potential barriers impacting on the discharge of child protection responsibilities** in NSW government schools. Barriers and **strategies to overcome those barriers** are dealt with in paragraphs 158 to 161, 177 and 193-198).

ROYAL COMMISSION - ISSUES PAPER 9

ADDRESSING THE RISK OF CHILD SEXUAL ABUSE IN PRIMARY AND SECONDARY SCHOOLS

TOPIC A – GENERAL QUESTIONS

Question 1.

How effective are the policies, procedures and/or practices schools have adopted to minimise or prevent, report and respond to risks and instances of child sexual abuse?

1. The NSW Department of Education (the Department) has a clear policy framework for preventing, reporting and responding to risks and instances of child sexual abuse in government schools.

Government Schools

Curriculum

2. Schools contribute to the prevention and reporting of child sexual assault by implementing child protection education. This is mandatory for students from Kindergarten to Year 10. The Department's Child Protection Curriculum materials ([K-6, 7-10](#)), assist schools to do this and provides staged learning activities which enhance the safety of students and has prompted disclosures by students of sexual abuse.
3. Additionally [Crossroads](#), which is a mandatory program for students in Years 11 and/or 12 in NSW government schools, helps senior students address issues of health, safety and wellbeing at a time when they face significant changes and challenges to their lives.

Reporting of Risk of Significant Harm/Risk of Harm to Appropriate Authorities

4. [Procedures](#) for reporting child sexual abuse have been in place in government schools since 1984 and incorporate centralised reporting through a central officer (usually the principal). This practice enables a more comprehensive initial report to be made through the coordination of information available in schools. It also enables schools to play a more active role in the support provided to the child and family.
5. The Department's [child protection policy](#) also requires reporting concerns about 'risk of harm' to the central officer, a requirement supplementing the legal threshold for mandatory reporting to the Department of Family and Community Services (FACS) of 'risk of significant harm' imposed by section 27 of the [Children and Young Persons \(Care and Protection\) Act 1998](#) (the Care Act).
6. While it is not mandatory to report risk of significant harm concerns about young people aged 16 and 17 under the [Care Act](#), concerns about young people aged 16 and 17 are reported to FACS as a matter of Education policy. NSW Health advises this approach is consistent with its own Child Wellbeing and Child Protection Policies and Procedures.

7. The Department promotes robust practices to enable the effective implementation of legislation and policies. These include:
 - a) using electronic reporting of non-urgent matters to FACS since February 2008. This has assisted in reducing the Helpline's average report processing time and reduced the time taken for reporters to report non-urgent matters; and
 - b) providing an alternative reporting arrangement (as set out under Sect 27A of the [Care Act](#)) promoting contact with the Child Wellbeing Unit when there are concerns that do not meet the threshold of significant harm but are not trivial.

Child Wellbeing Units

8. The Child Wellbeing Units commenced operation in 2010 in response to recommendations made by the Honourable James Wood AO QC as a result of the Special Commission of Inquiry into Child Protection Services in NSW. The role of the Child Wellbeing Units is to act as change agents, reshaping agency responses to child protection by:
 - a) advising, supporting and educating mandatory reporters as to whether there is a risk of significant harm, and report matters to the Family and Community Services Child Protection Helpline,
 - b) in other cases, identifying potential responses by agency or other services to assist the child or family, and
 - c) over time drive better alignment and coordination of agency service systems.

Effectiveness of the Child Wellbeing Units

9. Ernst & Young completed an external evaluation of the Child Wellbeing Units in July 2014 and found they have successfully achieved all of their intended objectives.
10. The evaluation found three key conclusions:
 - a) **The CWUs have significantly advised, supported and educated mandatory reporters.**
'The CWUs have acted to refine the identification and quality of risk reporting. In doing this they have substantially improved the understanding and awareness of mandatory reporters of their agency responsibilities, as well as the responsibilities of others in the broader child protection and wellbeing system'. (E&Y final report, page 5),
 - b) **The CWUs have identified potential responses by the agency or other services to assist the child or family for cases that did not meet the ROSH [risk of significant harm] threshold.**

'...the CWUs have increased direct referrals by 14 percent in three years from 2011 to 2013... They have increased recorded cases of advice by 26 percent over this period. Advice typically concerned responses including intervention and referral advice (largely made by the Health and Education CWUs)...It is therefore reasonable to assume that, in conjunction with the heightened reporting threshold [to Family and Community Services], more vulnerable children (and their families) received a response because of the active facilitation of the CWUs.' (E&Y final report, page 6)

c) **The CWUs have been driving better alignment and coordination of agency service systems.**

'The CWUs have increased awareness and cooperation between their agencies that prior to 2009 only existed on an ad hoc basis. For example, they negotiated information sharing protocols supported by the use of Chapter 16A of the Children and Young Persons (Care and Protection) Act 1998 and have been among the principal agents for facilitating the Wood Commission's recommendations for information exchange between agencies regarding identification of risk. This has contributed to better cumulative risk assessments and a better understanding of child wellbeing and risk issues within their respective agencies.' (E&Y final report, page 6)

'Through their actions..., the CWUs have helped to educate, support and galvanize mandatory reporters around the identification and reporting of child wellbeing and risk issues.' (E&Y final report, page 7).

Child Protection Induction and Annual Update Training

11. Child protection induction and annual update training is mandatory for school staff. Principals must maintain records of staff participation in training including new staff and casual teachers. Further information about the information provided to prospective and casual staff is at paragraphs 127 to 129 of this response.
12. Most principals schedule child protection induction or annual update training on MyPL (the Department's on-line professional learning management system which amongst other things manages the delivery of professional learning courses and programs).
13. MyPL provides a central record of schools/ workplaces and individual staff members who have participated in the training. Registration on MyPL was required for the 2015 child protection update. To date, 1,738 schools/workplaces (with 58,175 staff members) have scheduled the 2015 update. Staff must participate in the update before the end of 2015.
14. The mandatory component of the 2016 child protection update will be an online module, hosted on the Learning and Business Systems Moodle platform. Staff will be required to use their departmental 'log in' to access the module. A central record of all staff who have completed the training will be created. Learning and Business Systems and People and Services are looking at future options to reconcile completion of training with staff records.

Reporting and investigating allegations relating to the Department's employees

15. [The NSW Ombudsman Act 1974](#) provides the statutory framework for responding to allegations of reportable conduct (child abuse) against all school staff in NSW.
16. The Department's [Code of Conduct](#) outlines the expectations of employees and specifically refers to sexual misconduct. The [Code](#) reflects the [Ombudsman's definitions of sexual misconduct](#).
17. The Department's [Responding to Allegations Against Employees in the Area of Child Protection](#), outlines the process to be followed in response to allegations made against school staff.
18. Criminal matters allegedly involving staff are reported to the Police and or FACS depending on the nature of the allegation.

The Department's Employee Performance and Conduct Directorate

19. The Department's Employee Performance and Conduct Directorate (EPAC) conducts investigations into allegations of reportable conduct by staff including allegations of sexual abuse not being investigated by Joint Investigation Response Teams (JIRT) or where criminal charges are not laid against a staff member or resulted in a conviction (e.g. because the matters alleged could not be proven beyond reasonable doubt).
20. EPAC investigators are specifically trained to conduct investigations including investigative interviews with children and staff and completing risk assessments. The centralisation of this critical function ensures investigations are managed consistently by trained investigators and are not undertaken by school staff who do not have the necessary investigative skills.

Effectiveness of the Department's Child Protection Policy Framework

21. There is no clear evidence about the effectiveness of this framework beyond noting very few government school principals are found not to have reported instances of child sexual abuse to appropriate authorities.
22. Feedback from the NSW Ombudsman during audits is that EPAC investigative processes and systems are sound. EPAC's systems were audited last year by the Department's Audit Directorate and were found to be robust with only minor recommendations which have been addressed.

Regulation/Monitoring of Non-Government Schools

23. [The Education Act 1990 \(NSW\)](#) (the Education Act) regulates the requirements for the registration of non-government schools in NSW.
24. The Board of Studies, Teaching and Educational Standards NSW (the BOSTES) monitors registered non-government schools and their systems to ensure they have and implement child protection policies and procedures in accordance with NSW legislative and registration requirements.
25. The BOSTES has advised that since the 2005 amendments to the [Education Act](#), the registration requirements mandate non-government schools provide a safe and supportive environment for students. They must also implement policies and procedures to inform staff of their legal responsibilities in relation to child protection and mandatory reporting, to respond to reportable matters and to meet employment screening and notification requirements.
26. Section 27(3) of the [Education Act](#) provides the BOSTES is, with the assistance of the Department, to provide advice to the Minister on the compliance by government schools with similar requirements to those required for the registration of non-government schools.

Question 2.

How can compliance with legislative obligations and child protection policy requirements by schools and their staff be encouraged? Should there be penalties for non-compliance, and if so, in what form?

Government Schools

27. There are requirements for training all staff in government schools to maximise compliance with legislative obligations and child protection policy requirements. Principals and

Workplace Managers are required to ensure staff have participated in induction and annual update training and are required to keep a register of staff participation.

28. All departmental staff are required to report all concerns regarding suspected risk of harm and risk of significant harm to students in accordance with the relevant policies (for example the [Code of Conduct](#), [Defining Reportable Conduct – Ombudsman NSW](#), [Protecting and Supporting Children and Young People Policy](#), [Protecting and Supporting Children and Young People Procedures](#), [Questions About Reporting – Family and Community Services](#)). Staff are reminded of this obligation in mandated annual update training.
29. The [Code of Conduct](#) provides guidance in areas where staff need to make professional judgements, personal and ethical decisions. Staff are expected to read the [Code of Conduct](#) during their induction period. Principals provide specific [Code of Conduct](#) training to staff, usually on the first day of Term 1 (new school year) or during Term 1.
30. Staff in schools must report concerns about the inappropriate actions of any other employee that involves children or young people to their supervisor or principal, or directly to EPAC. EPAC will manage this information in line with the policy [Responding to Allegations against Employees in the Area of Child Protection](#).
31. Allegations are received at EPAC in instances where staff ‘fail to report’ risk of harm and risk of significant harm issues, according to what is required pursuant to the legislation, policies and guidelines.
32. When an investigation is conducted regarding an employee’s failure to report a matter, if there is sufficient evidence an employee has not complied with reporting obligations, remedial or disciplinary action may be taken.

What can happen if a non-government school demonstrates non-compliance with registration requirements?

33. The BOSTES has advised a non-government school demonstrates non-compliance with the requirements for registration, the BOSTES can recommend that the period of the school’s registration be reduced until the deficiency is remedied or the school’s registration be cancelled.

Should there be penalties for non-compliance with legislative obligations?

34. The previously existing penalties for non-compliance with mandatory reporting requirements were removed from the [Care Act](#) as a recommendation of the Special Commission of Inquiry into Child Protection.¹ That Commission considered disciplinary consequences and found that professional obligations would provide adequate enforcement of the obligation.
35. Unless it can be established that removing this penalty has resulted in mandatory reports not being made the restoration of criminal penalties for a failure to make a mandatory report is not supported.

Question 3.

What are the particular strengths, protective factors, risks or vulnerabilities and challenges faced by schools within different education systems in preventing, identifying, reporting and responding to child sexual abuse? Is there any rationale for having different legislative

¹ *Report of the Special Commission of Inquiry into Child Protection Services in NSW*, The Hon. James Wood, AO QC, November 2008, recommendation 6.2 (d) – see paragraphs 6.139 to 6.142.

obligations and policy requirements relating to child protection for government and non-government schools?

Government schools

36. The public education system's strengths are:
 - a) clear policies and procedures for reporting concerns and investigating allegations against employees;
 - b) a centralised reporting and investigative process into allegations against employees, enabling a consistent approach by trained staff;
 - c) specialist investigative officers who can provide appropriate advice;
 - d) ongoing training and advice to schools about how to deal with child protection matters; and
 - e) teachers are often well placed to know students and to recognise when they are at risk of significant harm.
37. Vulnerabilities include that education staff in schools are not child protection specialists.
38. There is a risk that because of their ongoing contact with students, other agencies may over-rely on school staff to identify students at risk of significant harm or being harmed and then to take protective action.
39. While there are clear reporting guidelines including how to consult where concerns arise, staff perception, individual judgments and decisions made about their observations of child protection concerns can vary according to their academic training and experience.
40. Support provided to children and young people in schools who are subject to child abuse investigations is provided on a case by case basis from a number of sources. Resources to support students interviewed by police or FACS in schools [include the Department's Legal Issues Bulletin 13 \(2012\) Interviews of students and staff by police and officers from DOCS in schools and TAFE NSW Institutes](#).
41. Principals are advised in this Bulletin to confirm children and young people are informed of:
 - a. their right to be treated fairly;
 - b. their right to choose not to be interviewed or give a statement;
 - c. their entitlement to support; and
 - d. the support available to them.
42. Children and young people can request assistance from FACS or from private practitioners. Support for children and young people will be arranged in close consultation with them and wherever possible, their parents or caregivers.
43. The current child protection legislative framework and existing policies ensure that child protection allegations against school personnel are investigated and that information is exchanged between jurisdictions. However the investigations are not conducted by school personnel and should not be conducted by school personnel.

Non-Government Schools

44. The BOSTES has advised non-government schools operate under a similar policy framework but have different practices depending on their structures and resourcing.
45. The [BOSTES registration requirements](#) apply to all non-government schools in NSW. The risks may be better mitigated by greater information sharing among school authorities and regulatory agencies that span the government and non-government school sectors.

Question 4.

Do the nine elements of the 2009 National Safe Schools Framework effectively make schools safer for students? Are there any additional elements schools should adopt?

Government schools

National Safe Schools Framework

46. The nine elements of the [National Safe Schools Framework](#) assist schools to create teaching and learning communities that are safe from harassment, aggression, violence and bullying.
47. All Education Ministers endorsed the [National Safe Schools Framework](#) in December 2010 although implementation in schools was not mandated. Government schools were informed of the framework and available support materials in October 2011.
48. The [National Safe Schools Framework](#) supports schools to be safer places for students, in addition to other related policies and practices schools use to minimise or prevent, report and respond to child sexual abuse.
49. It is not recommended the [National Safe Schools Framework](#) include additional elements about responding to child sexual abuse. Schools do not usually provide direct interventions in this area but work under advice from, and in collaboration with, statutory agencies and specialist services.

National Framework for Protecting Australia's Children

50. The [National Framework for Protecting Australia's Children](#) provides a broader multi agency framework for school actions in responding to child sexual assault and for working collaboratively with government and non-government sectors. It was endorsed by the Council of Australian Governments in April 2009.
51. All governments agreed to work towards achieving six supporting outcomes in the plan. NSW has been reporting progress against the outcomes with FACS coordinating the reporting.
52. Actions under outcomes included expanding and or targeting State and Territory family support programs for vulnerable families and children at-risk such as NSW's [Keep Them Safe](#) initiatives including new Child Wellbeing Units and expanding Brighter Futures.

Question 5.

What regulatory, oversight or governance mechanisms are needed to ensure schools have adopted 'safe school' elements? How has their effectiveness been evaluated?

Government Schools

53. Many of the focus areas of the National Safe Schools Framework are addressed in other ways in the [Public Schools NSW Strategic Directions – Creating Futures Together 2015 – 2017](#) through initiatives such as [Every Student Every School](#), [The Wellbeing Framework](#), and the [Rural and Remote Strategy](#).
54. NSW initiatives include:
 - a) The recently released [Wellbeing Framework for Schools](#) which provides structure for schools to monitor their progress and make further improvements in the area of student safety, including child protection;
 - b) The new [School Excellence Framework](#) supports schools to identify their strategic directions, decide on improvement measures and assess their progress against the domains of learning, teaching and leading. Included in the Framework is the element of well-being to ensure schools have a planned approach to support the well-being of all students; and
 - c) Schools will undertake their first self-assessment against the [School Excellence Framework](#) in 2015 and in 2016 schools will have their self-assessment validated by an external panel within a five year cycle.

Monitoring of Non-Government Schools

55. The BOSTES has advised that as part of its monitoring processes of individual non-government schools and non-government school systems compliance with registration requirements, schools are required to provide documentary evidence in relation to the good character of the school's responsible persons. There is also a requirement to have in place and implement policies and procedures for the provision of a safe and supportive environment for students.
56. Where the BOSTES becomes aware of concerns regarding a school's compliance with registration requirements, the school will be required to implement the necessary measures to demonstrate compliance. The BOSTES undertakes formal evaluation of its regulatory processes for monitoring the compliance of non-government schools and non-government school systems on an annual basis.

TOPIC B – GOVERNANCE & LEADERSHIP

Question 1.

How could school governance arrangements be strengthened to provide better protection for children? What should be the role of: students, staff, principals, school councils or boards, governing bodies and education departments in reviewing current safety arrangements, incidents, decision-making and promoting child safety within individual schools?

Government schools

57. The Department's Steering Committee: Protection of Children and Young People oversees its child protection provisions and has a key role in strategically reviewing safety arrangements, incidents, decision-making and promoting child safety at a high level.
58. Established in 1997, it comprises of senior officer representatives from all areas across the Department that have child related responsibilities. The Committee:
 - a) oversees the Department's legislative responsibilities concerning the safety, welfare and wellbeing of children and young people;
 - b) identifies and responds to current and emerging policy related issues and incidents and makes recommendations to the Secretary; and
 - c) oversees the development and review of relevant policy and procedures and the annual development of child protection training for all staff.
59. The Department's School Safety and Response Unit (part of the Department's Safety and Security Directorate), staffed by departmental and NSW Police officers, works directly with schools to manage incidents, review security arrangements and promote safety. An Incident Reporting Policy and Incident Reporting Procedures provide advice and support to departmental staff when reporting incidents to appropriate authorities (intranet only).

Registration requirements for Non-Government Schools

60. The BOSTES advises since the 2013 amendments to the [Education Act](#) registration requirements for non-government schools requires schools to have implemented policies and procedures for proper governance.

Question 2.

What governance arrangements should be in place to ensure that teaching and non-teaching staff and other members of school communities have the support and confidence to identify and report suspected child sexual abuse without fear of negative repercussions for themselves or their careers?

Reporting matters generally

61. The following governance arrangements support the identification and reporting of suspected child sexual abuse by staff of government schools.
62. The Department's Protecting and Supporting Children and Young People [Policy](#) and related [procedures](#) requires principals to make all staff aware of the indicators of abuse and neglect and of their obligation to advise the principal of concerns. Recognising indicators of sexual

abuse has been included regularly in mandatory annual update training for staff, and in every year since 2012.

63. The process of centralised reporting to the principal provides staff with support as required. Centralised reporting includes school counsellors, home school liaison officers and Aboriginal student liaison officers.
64. If a staff member has a reason to not convey risk of significant harm concerns to the principal, he or she is to make a report directly to FACS and must notify the director public schools NSW at the same time. If a staff member has reason to doubt that the report about suspected risk of significant harm has been made to FACS by the principal the staff member then makes the report and notifies the director public schools.
65. The Child Wellbeing Unit can provide an alternative arrangement for reporting concerns and can report directly to FACS on behalf of staff.
66. NSW legislation contains protections for the identity of mandatory reporters (see Sect 29(1)(f) of the [Care Act](#)). This is articulated in the Department's child procedures. However, if the source of reports is assumed, there can be negative repercussions for school staff.
67. If staff working in schools are the subject of threats of violence these should be reported to a School Response Officer in the Department's Safety and Security Directorate who provide staff with a 24 hour, seven days a week hotline and can provide a rapid advice as required.
68. When a principal or director receives a report of threats being made against a staff member, they must facilitate the initial response to the threat, including contacting NSW Police and organising counselling and support for the person, as required.
69. The Department of Education's [Legal Issues Bulletin 44](#) deals with the support given to departmental staff to obtain an Apprehended Violence Order (AVO). [Legal Issues Bulletin 54](#) provides advice on using the [Inclosed Lands Protection Act 1901](#) as appropriate to exclude a person from entering a school site.

Reporting allegations about departmental staff to the Department

70. All necessary and reasonable steps are taken to ensure the identities of the persons who make the allegations, or who are the subject of the allegations, are treated confidentially.
71. However, no guarantees of confidentiality are given because the identity of those people who are involved in, or witnessed, the alleged conduct may need to be revealed to the employee who is the subject of the allegation. This is to enable procedural fairness during later disciplinary or legal proceedings and accordingly is not a breach of privacy law. However there are protections if detrimental action is taken against an employee.
72. Employees reporting matters of suspected corrupt conduct may receive the protections offered by [the Public Interest Disclosures Act 1994](#). The Department's [Public Interest Disclosures Management Guidelines](#) explain that if an employee is aware that such a report has been made, it is essential that they do not take detrimental action against the complainant in reprisal for reporting it.
73. In certain instances of serious child sexual abuse, reports made by staff will be assessed against the criteria for public interest disclosures.

TOPIC C: PROTECTION AND SUPPORT SERVICES FOR CHILDREN AND SPECIFIC STUDENT POPULATIONS

Question 1.

What needs to be taken into account to ensure that the full diversity of students are equally protected and equipped to voice concerns? Are the needs of children with particular vulnerabilities, such as children with disability, adequately addressed?

Students Generally

74. The need to consider child protection issues when providing learning and support to the diverse range of students who attend government schools is embedded in a wide range of departmental resources including for example Legal Issues Bulletins:
- a) [52 – Legal Rights and Responsibilities to a student at risk of anaphylaxis](#);
 - b) [53 – Students under 18 years living independently of their parents](#);
 - c) [54 - Unauthorised entry onto departmental premises \(in relation to when the behaviour of parents or carers may give rise to child protection concerns\)](#);
 - d) [55 – Transgender students in schools – legal rights and responsibilities](#);
 - e) [56 – Confiscation of School Property \(in relation to an item confiscated from a student\)](#).

Students with Disability

75. Factors that enable the needs of students with disability to be effectively addressed include:
- a) support for school staff with child protection concerns about students with disability;
 - b) training for school staff to understand their obligations to students with disability and to understand, recognise and respond to child protection concerns for students with disability, and
 - c) education opportunities for students with disabilities in relation to their own safety and wellbeing.

Strategies to support students with particular vulnerabilities

76. The Department responds to the needs of students with particular vulnerabilities in the following way:
- a) The Child Wellbeing Unit supports the diverse range of students and provides tailored advice and assistance to school staff. The Unit has three Aboriginal Assessment Officer positions who support mandatory reports and Unit staff with cultural advice.
 - b) Mandatory child protection training addresses cultural issues and issues for other vulnerable students. The training focusses on the need to understand and respond to the circumstances of each individual student.
 - c) Accredited professional learning is available for all education staff to support them to understand and meet obligations under the [Disability Discrimination Act 1992](#) (Cth) and

the associated [Disability Standards for Education 2005](#). More than 50,000 school teachers have completed this training since its introduction in Term 3, 2013. This professional learning complements other teacher professional learning including mandatory child protection training.

- d) Accredited professional learning is available for all education staff to support them to understand and meet obligations under the [Disability Discrimination Act 1992 \(Cth\)](#) and associated [Disability Standards for Educations 2005](#). More than 50,000 school teachers have completed this training since its introduction in Term 3, 2013. This professional learning complements other teacher professional learning including mandatory child protection training.
 - e) Schools provide personalised learning and support to enable each student with disability to access the [Child Protection Education curriculum](#) on the same basis as other students and additional child protection materials have been developed for students with high support needs.
 - f) Multicultural Education includes resources and services to support the needs of specific groups of students, including new arrivals, refugees and those from culturally and linguistically diverse backgrounds. Focus areas include cultural diversity and community relations, refugee support programs and interpreting and translations.
 - g) Across the state, a network of 24 out of home care teachers and 10 out of home coordinators assist school staff to meet the safety, welfare and wellbeing needs of students in out of home care.
77. Information about other relevant strategies to enable the full diversity of students to be equally protected, including the role of Networked Specialist Centre facilitators and Educational Services teams, is found in paragraphs 101 to 103 of this response.

Question 2.

What support services should schools provide for victims and others affected by child sexual abuse, either directly or through referral to external providers? Are schools able to ensure these services are provided and, if not, why not?

Government schools

- 78. School counsellors support students who are affected by child sexual abuse and provide a counselling, consultancy and system intervention skills. Sexual abuse therapy is not provided by the school counsellor as they are not specialists in child sexual abuse.
- 79. In addition to providing support for the student who is the subject of concern, school counsellors may also be involved in providing support and advice for the teacher/s of the student and other school staff about how to most effectively provide the student with learning and support. Schools have learning support teams which can assist in appropriately planning for the learning and engagement needs of a student affected by child sexual abuse.
- 80. Schools may also access the Child Wellbeing Unit for advice. Schools have an important role in maintaining normality and consistency during a time when there may be many changes and challenges for a student in the follow up of a child sexual abuse allegation. Schools also provide supportive environments for further disclosures and follow up.

81. School counsellors and other school staff participate in interagency case planning and management coordinated by FACS. School counsellors also liaise with agencies to link students and their families to support services. They may also liaise with Networked Specialist Centres facilitators and Educational Services Teams to respond to the specific needs of students.
82. On 8 March 2015, the New South Wales Government announced it would provide a total of \$167.2 million over five years for the [Supported Students, Successful Students](#) initiative. This will provide additional wellbeing and counselling services to public schools across NSW, for all students, including those who may be impacted by child sexual abuse.

Non-Government Schools

83. In relation to non-government schools, the BOSTES monitors schools' implementation of required policies and procedures that provide for student welfare specifically through the provision of pastoral care, including access to counselling within or beyond the school.

Question 3.

What measures should boarding schools take to ensure that students are and feel safe? Are particular measures needed for boarding schools catering to specific populations such as Aboriginal and Torres Strait Islander students, international students, or students in regional and remote areas? Will the draft National Boarding Standards for Australian Schools provide boarding students with stronger protection against child sexual abuse?

84. There are three government boarding schools in NSW – Farrer Memorial Agricultural High School, Hurlstone Agricultural High School and Yanco Agricultural High School.
85. The Department does not have a specific policy for Boarding Services in NSW public schools. Its boarding schools are expected to adhere to and implement all departmental policies and procedures applicable to all schools.
86. A copy of the Standards Australia - Boarding Standard for Australian Schools and Residences has been obtained and a mapping of the Standards against existing policy documents has been undertaken by the Department.
87. The mapping indicates that there are Departmental policies to address child protection for all students in NSW Government boarding schools.
88. The Department was represented on the Standards Australia Committee ED-001 Education Facilities and Services Management, which developed the Standard.
89. The Standards Australia - Boarding Standard for Australian Schools and Residences “provides a common framework across all jurisdictions and is intended to be of benefit to service providers and users”. It acknowledges that “many sections of the Standard may align with policies and procedures that already exist and are documented”. It is not intended to duplicate policies and procedures that already exist within the Department.
90. The Department’s representative on the Committee has advised the Department should continue to focus on its own policies and that the Standard was just by way of additional information. It is not mandatory and includes but is not specifically focused on child protection.
91. In relation to non-government schools, the 2005 amendments to the [Education Act](#) introduced an additional registration requirement in relation to the safety and welfare of

boarders. The BOSTES monitors implementation of policies and procedures that provide for the safety and welfare of boarders in non-government schools. These additional policies and procedures have particular regard to the standard, safety and security of student accommodation, the physical and emotional well-being and development of boarders and a boarding school's 24 hour duty of care in relation to child protection.

92. Section 27(3) of the [Education Act](#) states the BOSTES is, with the assistance of the Department, to provide advice to the Minister on the compliance by government schools with similar requirements to those required for the registration of non-government schools.

Question 4.

Do factors such as geographical isolation distance from policy makers, and staff and student retention affect regional and remote schools' abilities to prevent and respond to child sexual abuse? If so, how might they be addressed?

93. Child protection policy provisions apply across all NSW government schools. While factors such as geographical isolation and distance from policy makers, and staff and student retention do not impact on the Department's ability to identify and respond appropriately to child sexual abuse, providing support services in remote areas is challenging. In some locations, the school is the only public service available.

Distance Education

94. As set out in the [Distance Education Enrolment Procedures](#) (p.4), all applications for full-time enrolment in a distance education school must include a confirmation from the parent/carer that the home learning environment is safe and suitable for effective distance education provision.
95. On a case by case basis, it may be necessary to obtain further information in assessing an application for enrolment in a distance education school. This can include obtaining more information from parent/carers as to the child's circumstances, conducting home visits to the child's home and interviews with parent/carers. If there are safety, welfare or wellbeing concerns, the Child Wellbeing Unit is contacted for advice about the child's circumstances and history, and advice about requesting further assessments in relation to the child, such as medical assessments.
96. Each student and family must undergo a thorough assessment of their circumstances in order to qualify for enrolment.
97. Following enrolment, the Department conducts a home visit or other comprehensive meeting (phone or face-to-face) with the student and their family wherever possible.
98. The purpose of the meetings is to carefully assess the suitability of the home and learning environment and to better understand family circumstances and the child's progress. These meetings are not always possible with students enrolled in particular categories such as travelling. In all cases, distance education schools maintain a register of interactions that take place between teachers and students and their families.
99. All distance education principals and teachers are mandatory reporters. Staff are trained in the use of the [mandatory reporters guide](#) to inform decisions as to whether a report should be made concerning a student's welfare.

Access to School Counselling Service

100. Every student in a NSW public school has access to a school counsellor. There are currently 790 counsellor positions in NSW public schools. Additionally, the Department's [Supported Students, Successful Students](#) package includes \$80.7 million for an additional 236 school counsellors state wide.

Networked Specialist Centres

101. The [Supported Students, Successful Students](#) resources are in addition to the Department's [Rural and Remote](#) key reform. Under this reform, 20 networked specialist centres are being established state wide between 2014 and 2016 and aim to bring together coordinated interagency health and wellbeing services through the expertise of specialist departmental and across-agency staff.
102. The centres are designed to respond to the 5% of students impacted by personal circumstances who require specialised, wrap-around services to remain engaged in school.
103. In 2014 four demonstration sites were established in Broken Hill, Wagga Wagga, Dubbo and Tamworth. In 2015, 11 further Centres are in the process of being established at: Lismore, Wollongong/Illawarra, Nowra/Shoalhaven, Central Coast, Mid North Coast, Hunter, Barwon, Bega/Queanbeyan, Wollondilly/Macarthur, Deniliquin/Griffith, and Central West. The final five will be established for operation in 2016 in metropolitan Sydney.

Child Wellbeing Unit

104. The Child Wellbeing Unit can assist staff, including principals, school counsellors or Networked Specialist Centre facilitators by providing advice and support. The unit can help to facilitate a collaborative response to concerns raised. Assessment officers use their networks and data bases, including the Human Services Net, to help identify appropriate services including in areas where there are fewer services.
105. The Child Wellbeing Unit can also assist in obtaining current information regarding previous services which have worked with a child or young person and their families. This may inform future referrals that are made to address a particular need of a student.

Attraction and retention of staff in rural and remote schools

106. The importance of attracting and retaining highly skilled and experienced teachers and school leaders in rural and remote schools is recognised. Under the [Rural and Remote reform](#), the NSW Government is offering further incentives to achieve this. In 2014, 57 classroom teachers, 17 executive staff and five principals were appointed through incentive transfers. In 2015, the first teaching Rural scholarships were awarded to talented prospective teachers prepared to teach in rural and remote schools.

Compulsory schooling

107. The Department acknowledges that educational neglect, including leaving school early, can place children and young people at higher risk of sexual abuse. Failure to receive an education may result in significant harm when combined with other risks. When children and young people are habitually absent they are more likely to be socially isolated. They may be exposed to risk of harm during times of absence and it is less likely to be detected by school staff. The Department is implementing strategies to improve student attendance and retention, particularly in geographically isolated areas.

108. In February 2015 the [School Attendance Policy](#) and related implementation documents, were further revised to strengthen understandings about attendance as a child protection issue. There are 110 Home School Liaison Officers and 26 Aboriginal Student Liaison Officers strategically situated across NSW. They work collaboratively with students, parents, schools and other agencies in addressing unsatisfactory attendance.

EPAC

109. EPAC staff work collaboratively with directors public schools and principals in regional and remote areas to ensure effective policies are consistently implemented and that staff are appropriately trained in reporting and responding to child protection concerns. The confidential management of investigations of sexual abuse allegations against staff and appropriate risk management in schools and communities is of particular relevance in rural and remote areas given their geographical isolation, community networks and limited support resources.

Question 5.

What sorts of measures are needed to help protect younger children from the risk of sexual abuse by older children?

Reporting to FACS/ contacting the CWU

110. Mandatory reporters must report concerns about a child or young person who has initiated sexually abusive behaviour that meet the suspected risk of significant harm threshold to the Family and Community Services Child Protection Helpline.
111. Where the concerns do not meet the risk of significant harm threshold but are not trivial, Education mandatory reporters must contact the Department's Child Wellbeing Unit.
112. Mandatory reporters are encouraged to use [the Mandatory Reporter Guide](#) decision tree 'sexual abuse: problematic sexual behaviour towards others' in these instances.
113. This tree advises mandatory reporters to consider whether the child/young person displaying sexually abusive behaviour has him/herself experienced sexual abuse or been exposed to inappropriate sexual practices, images or other materials within or outside his/her family care or environment and to use the sexual abuse of a child or young person decision tree for victimisation.

Raising Awareness

114. Raising awareness and providing training for school staff in identifying sexually abusive behaviour by children and young people is a key measure as it can be a sensitive area for public discussion. Training should include requirements and procedures for responding and reporting. Support documents such as the Department of Education's [Legal Issues Bulletin 5 – Student Discipline](#) remind staff of the need to consider reporting incidents between students to FACS or the Child Wellbeing Unit
115. Child protection education, that includes discussion of risks that may be posed by peers and older children and provides strategies for protection, minimises risks for children.
116. The [New Street Adolescent services](#) is an early intervention therapeutic service for families of children or young people aged 10-17 years who have engaged in sexually harmful behaviour towards others. New Street Services work in partnership with government and non-government agencies to ensure a holistic and coordinated approach for children,

young people and their families. A secondary role of New Street is to provide specialist training and consultation to external groups and organisations. Both Health and Education consider more of these services would be of benefit.

117. Exchange of information can also strengthen the protection of children in schools. Principals are authorised under [Part 5A of the Education Act](#) to request information from the NSW Police Force and certain other organisations including non-government schools that assists them to assess whether the enrolment of a particular student at a school is likely to constitute a risk to the health or safety of a person. Information can also be requested from prescribed bodies under [Chapter 16A of the Care Act](#) to manage any risk to a child or young person or a class of children or young persons. A [Memorandum of Understanding for Information Exchange between Schools and NSW Police](#) further clarifies these provisions.

Syllabus in Government and Non-Government Schools

118. Sequential and age-appropriate education in regard to child protection, personal safety and rights and responsibilities in relationships is currently included in the BOSTES mandatory Personal Development, Health and Physical Education (PDHPE) syllabuses for [Kindergarten to Year 6](#) and [Year 7 to Year 10](#).

Registration requirements for non-government schools

119. Since the 2005 amendments to the [Education Act](#), the registration requirements for non-government schools have required schools to provide a safe and supportive environment for students. The BOSTES monitors implementation of policies and procedures that provide for student welfare and safety. These include policies and procedures in regard to student security, codes of conduct, pastoral care, access to counselling and rights and responsibilities of students.

TOPIC D: REGISTRATION OF NON-GOVERNMENT SCHOOLS, NOT-FOR-PROFIT AND CORPORATE ENTITIES

Question 1.

To what extent should a non-government school's registration be conditional on it having strong child safe principles, policies or procedures (for example, concerning student health and wellbeing and complaints management)? How can the adequacy of individual schools' approaches be assessed?

120. Since the 2005 amendments to the [Education Act](#), the responsible persons of a non-government school are required to be of good character and schools are required to provide a safe and supportive environment for students by having in place and implementing policies and procedures that provide for student welfare and safety and also complaints and grievances from students and/or parents. The [Child Protection \(Working with Children\) Act 2012](#) applies to non-government schools.
121. Since the 2013 amendments to the [Education Act](#), non-government schools are required to have policies and procedures for the proper governance of the school in place.
122. The BOSTES' regulatory role in regard to non-government schools is defined in the [Education Act](#) and described in the Registered and Accredited Non-government Schools (NSW) Manual ("the Manual"). The Manual is available on the BOSTES' website at the following link: <<http://rego.boardofstudies.nsw.edu.au/>>.
123. As part of the BOSTES monitoring processes, non-government schools are required to provide documentary evidence they meet these requirements.
124. Where the BOSTES becomes aware of concerns regarding a school's compliance with registration requirements, the school will be required, within a set time period, to implement the necessary measures to demonstrate compliance. Where a non-government school fails to rectify identified areas of non-compliance, the BOSTES can recommend the period of the school's registration be reduced or that the school's registration be cancelled.

Question 2.

What role could or should insurance, organisational or directors' liability, as well as regulation by the Australian Charities and Not-for-profits Commission and Australian Securities and Investments Commission, play where a registered school or corporate body fails to prevent, identify, report or respond to child sexual abuse?

125. Where a non-government school demonstrates non-compliance with the requirements for registration the BOSTES can recommend the period of the school's registration be reduced until the deficiency is remedied or that the school's registration be cancelled.
126. Where the BOSTES becomes aware of a breach of the law outside of the BOSTES' regulatory functions, this information is passed on the relevant regulatory authorities. The risks may be better mitigated by greater information sharing among school authorities and regulatory agencies that span the government and non-government school sectors.

TOPIC E: EDUCATION, TRAINING, PROFESSIONAL SUPPORT AND PRIMARY PREVENTION

Question 1.

What obligations should schools have to ensure that their teaching and non-teaching staff are aware of and comply with applicable codes of conduct, professional standards or child protection policies?

Government Public schools

127. All teachers seeking approval to work with the Department undertake a personal suitability interview. At the interview they are provided with an information sheet that draws their attention to professional standards, the Code of Conduct and child protection responsibilities.
128. The casual teacher induction webpage (<http://www.dec.nsw.gov.au/about-us/careers-centre/school-careers/teaching/your-teaching-career/approved-teachers/casual-teacher-induction>) contains information on professional responsibilities (<http://www.dec.nsw.gov.au/about-us/careers-centre/school-careers/teaching/your-teaching-career/approved-teachers/casual-teacher-induction/professional-responsibilities>). In order to be approved to teach within NSW Public Schools, all casual teachers must have a Working With Children Check (WWCC) clearance. It is also a requirement that Principals ensure all staff have participated in an initial child protection induction and annual update training.
129. There is also key information on child protection (<http://www.dec.nsw.gov.au/about-us/careers-centre/school-careers/teaching/your-teaching-career/approved-teachers/casual-teacher-induction/key-information>) with a link to awareness training and the Code of Conduct.
130. Mandatory Child Protection Training is undertaken in all NSW public schools and involves all staff. Induction procedures include familiarisation with the Code of Conduct and Professional Standards.
131. Principals are required to check staff are familiar with relevant policies and procedures. Principals provide annual training about the Code of Conduct and deliver child protection update training to all staff. Staff are made aware of the Code of Conduct and of the importance of ensuring their conduct adheres to this when they are inducted in schools.

What relevant registration requirements are placed on Non-Government Schools?

132. The BOSTES advises that since the 2005 amendments to the Education Act the registration requirements require non-government schools to have in place and implement policies and procedures for child protection that specifically require them to inform all staff in child-related employment of their legal obligations in regard to child protection and mandatory reporting.
133. Non-government schools are also required to have in place codes of conduct, with specific reference to the rights and responsibilities of students and staff.

Question 2.

What role does teacher education, training and professional support (including university study, pre and in-service training, and mentoring/support), play in equipping individual teachers with skills and confidence to identify behaviours indicative of, and to appropriately

respond to risks or incidents of, child sexual abuse, and to children displaying problem sexual behaviour?

134. The BOSTES advises initial teacher education provides beginning teachers with foundation knowledge of the legal, policy and procedural requirements in relation to child protection, as well as of some student behaviours that may be indicators of sexual abuse. This is contextualised, refined and deepened as teachers engage in further in-service training and mentoring during employment.
135. The BOSTES also advises ongoing Teacher Accreditation requires teachers to demonstrate they have engaged in continuing professional learning in each of the areas covered by the Professional Standards. This includes standards relating to ensuring student wellbeing and safety within school by implementing legislative requirements and to teachers' maintenance of professional conduct.

Government Schools

136. Teacher training and professional support in this area is considered to be very important given the high numbers of reports made by schools of sexual abuse and "child inappropriate sexual behaviour" ([Community Services Quarterly Report to Partner Agencies – June 2014](#)).
137. The Department has developed a professional experience agreement with relevant NSW universities in order to develop better strategic alliances with those institutions.
138. The Department requires staff to participate in annual child protection updates to ensure they have current knowledge and skills required to identify and respond to child protection concerns.
139. As part of the personal suitability interview for prospective employee's questions that address student welfare are included.
140. Student teachers are not able to commence a placement within a government school until they have undertaken child protection training modules and signed off their attendance.
141. Identifying and responding to sexually harmful and sexually abusive behaviours in students has been included specifically in staff annual update training in 2015 with a 45 minute training module.
142. Teacher training and professional support to ensure the appropriate follow up is also important given the extended contact that school staff have with students and their duty of care responsibilities.
143. Schools have a role in supporting children and young people with problematic sexual behaviour and/or who have experienced sexual abuse, and ensuring their ongoing access to educational programs. They also have a responsibility for ensuring the safety of other students.
144. Principals are responsible for risk management within schools and are supported by the Department's Risk Management Policy, procedures, guidance and tools for all staff for student related risk management.
145. The Child Wellbeing Unit also delivers training to new Home School Liaison Officers, school counsellors and principals to educate them on child protection issues including sexual abuse and problematic sexual behaviour.

Question 3.

What should school systems do to ensure their schools consistently deliver effective sexual abuse prevention education? Do such programs address barriers to children disclosing abuse, including the specific needs of children with disability, with English as a second language or with other particular vulnerabilities?

146. Principals are accountable for syllabus implementation consistent with the requirements of the BOSTES for all government and registered non-government schools and the Department's [Curriculum Planning, Programming, Assessing and Reporting to Parents K-12](#) policy.
147. The [BOSTES mandatory Personal Development Health and Physical Education \(PDHPE\) syllabuses for Kindergarten to Year 6](#) and [Years 7 - 10](#) currently includes a sequential and age appropriate curriculum to students in child protection and safety, including in students preventing, identifying and reporting forms of abuse.
148. The [BOSTES PDHPE Life Skills syllabus](#) provides similar learning opportunities for students with an intellectual disability.
149. Child protection education must be taught within the PDHPE syllabus in every stage from kindergarten to year 10 in NSW government and registered non-government schools. It is mandatory for all students in government schools in years 11 and/or 12 to complete the [Crossroads program](#). Through the program students learn about relationships, abuse of power and rights and responsibilities.
150. Child protection education curriculum materials have been provided to NSW government schools since 1989. The Department introduced the requirement to teach students about child protection issues at the same time the PDHPE syllabus was introduced in 1999. The requirement for parents to give permission for their children to participate in the sensitive components of child protection education was withdrawn for high schools in 1998 and 2004 for primary schools
151. [Child protection education curriculum materials](#) provide support for schools to implement effective programs. They provide staged, age appropriate activities that build on essential concepts and build understanding and skills in a comprehensive and sequenced manner.
152. The Department supports teachers to create a supportive learning environment in which students feel safe to learn and ask questions.
153. To help overcome barriers to children disclosing abuse, the materials contain an ongoing section on 'power in relationships'. This area looks at imbalances of power in relationships and explores the dynamics of coercion, bribes, threats and secrecy. The protective strategies section recognises the difficulties children may have in disclosing abuse and teaches skills of assertiveness and persistence.
154. The materials acknowledge cultural differences in expectations around children's assertiveness with adults and explore different ways to express assertion. Students are encouraged to form a diverse network of trusted adults to go to for help, particularly outside the family.
155. Child protection education materials for students with an intellectual disability were introduced in 1989. Additional materials - Child Protection Education: Support materials to assist teachers of students with high support needs - were distributed to schools in 2002 to

address child protection needs of students with an intellectual disability including severe or complex disabilities. They have a dual purpose of developing protective strategies and communication skills for assertiveness and disclosure, as well as assisting staff to develop whole school approaches to protecting students with high support needs and in the detection of abuse.

156. The Department's [Multicultural Plan](#) 2012-2015 sets out the responsibilities of schools to provide English language support for newly-arrived students. Processes used to communicate with students and parents from culturally and linguistically diverse backgrounds about child protection issues need to be culturally sensitive. Use of interpreters is encouraged in communicating with families and is provided by the Department at no cost to schools or families.
157. Following the NSW state election in March 2015, a total of \$4 million will be allocated over 4 years for a non-government organisation to develop and deliver a child protection program to schools across NSW. Further information on this initiative will be publicly available later in 2015.

TOPIC F: REPORTING, INFORMATION SHARING, COMPLAINTS AND INVESTIGATIONS

Question 1.

What barriers or fears might discourage or prevent individuals working in or with schools from reporting suspected child sexual abuse (whether the abuse is perpetrated by colleagues, volunteers, other students, other members of the school community or family members)? How could those barriers be addressed?

158. While there are clear policies in place, individual judgements and personal decisions also influence whether concerns are reported.
159. Barriers or fears which may discourage or prevent individuals working in or with schools from reporting suspected child sexual abuse include:
- a) fear of making an error of judgment in relation to their concerns;
 - b) fear of the confidential management of information and the disclosure of their identity;
 - c) fear of reprisal;
 - d) fear of negative repercussions for those responsible;
 - e) cultural issues regarding specific cultural norms and practices around disclosure and repercussions of disclosure;
 - f) communication issues including the inability to effectively communicate or articulate concerns
 - g) failure to identify behaviour that is abusive;
 - h) inability to discern sexually abusive behaviour from normal sexual behaviour
 - i) difficulties in discerning sexual behaviour that is concerning but does not require a child protection response;
 - j) staff discomfort with, and stigmatisation of, students demonstrating sexualised behaviours;
 - k) staff initially addressing sexual assault or abuse between students as a disciplinary matter and not a child protection matter.
160. These barriers are best addressed through professional learning and professional development. The Department has implemented this for staff in schools during 2015.
161. The Department's Child Wellbeing Unit also assists staff in discharging their mandatory reporting obligations.

Question 2.

How effective are mandatory reporting and reportable conduct schemes in assisting to identify and report child sexual abuse in schools? If necessary, how might these schemes be refined to better suit school environments?

162. The Department provides targeted training to staff in schools. In particular, this includes outlining mandatory reporting responsibilities; identifying risk; reporting allegations against employees; preventive issues for staff in schools; reporting requirements to principals and supervisors; consultation and decision making, and training about the [Code of Conduct](#).
163. Advice and guidance is provided to school staff, particularly principals and directors public schools, regarding reporting serious matters to FACS and Police and how best to risk manage matters involving allegations against employees in schools when FACS and Police are involved.
164. In making decisions about risk of harm, principals use the information in the school that is available to them including from those who have or have had close contact with the child or young person who is the subject of concerns. They can use the [Mandatory Reporter Guide](#), use professional judgement, consult the Child Wellbeing Unit or seek other specialist advice to inform decisions.
165. The [procedures](#) recommend reports are made with staff members who have information about the student concerned present. Reports to FACS and to the Child Wellbeing Unit are frequently made by teleconference with appropriate staff contributing to the information conveyed with the report. This is the strength of centralised reporting.
166. The Child Wellbeing Unit can assist staff when there are concerns relating to suspected sexual abuse of, or sexualised behaviours demonstrated by, children or young people. In situations where there is a suspected risk of significant harm, the Child Wellbeing Unit will direct the caller to make a report to the Family and Community Services Helpline.
167. In the 2014-2015 financial year, sexual abuse of a child or young person was the third highest risk of harm basis (of 20) reported to the Child Wellbeing Unit². It accounted for approximately 8.4% of all primary risk of harm appraisals conducted by the Unit.
168. The staff obligation to report any concerns about risk of harm, including lower level concerns to principals affords a higher level of protection to children and young people. The obligation to report concerns about 16 and 17 year olds extends this protection and can be an important protection for young people who have developmental delays, communication difficulties or disabilities.

Question 3.

What obligations should schools have to alert teachers, parents/carers, other schools (for example, where a student changes schools or progresses to secondary school) and other professionals when a child has exhibited problem sexual behaviour, or has engaged in sexually abusive behaviour?

169. When a child or young person, who has exhibited problematic sexual behaviour or has engaged in sexually abusive behaviour, leaves a school or other school program, child protection procedures obligate principals to:

² The child/young person is a danger to self/others was rated first (17% of all primary risk of harm appraisals) with reports of physical abuse ranking second (15% of all primary risk of harm appraisals).

- a) seek to clarify or confirm whether they have enrolled elsewhere;
 - b) forward related papers under a confidential file cover to the principal or senior officer at the new location if a new enrolment is established in the government sector;
 - c) forward copies of related papers, as above, to the principal or senior officer at the new location if a new enrolment is established in the non-government sector;
 - d) raise the concerns with the local manager of the attendance program for further investigation if a new enrolment cannot be established;
 - e) consider whether information should be shared with other prescribed bodies under [Chapter 16A of the Care Act](#);
 - f) where relevant, advise the Child Wellbeing Unit or FACS case manager that the child or young person has left and provides any other relevant details; and
 - g) provide information to the principal of the new interstate school when it is requested by the principal using the [Interstate Student Data Transfer Note](#).
170. Although principals should discuss problematic sexual behaviours with the parents/carers of the students involved, they are directed to seek advice from FACS, Joint Investigation Response Teams or Police regarding alerting parents/carers when there has been sexually abusive behaviour. An exception would be a duty of care obligation to inform the parents/carers of any student who has been a victim, of the incident.

Question 4.

How should investigations into allegations of child sexual abuse be undertaken within schools, and by whom? What measures should be taken to ensure that the sensitivities and vulnerabilities of children involved are considered?

171. The majority of sexual abuse allegations are investigated by and/or coordinated with FACS, Joint Investigation Response Teams (JIRT) or Police. The Department has processes to enable these matters to be coordinated and managed appropriately
172. The role of school staff is to cooperate with this process and provide appropriate and timely advice, information and supports as required. Children should be interviewed by practitioners who are trained in interviewing children. The school should not be the investigating body.
173. Child protection procedures require that interviews in schools take place only when it is not appropriate for the student to be interviewed at home. Parents/carers are generally notified and requested to attend unless JIRT advise this is not appropriate, e.g. if allegations involve a family member.
174. If there is disagreement about this, principals can contact the Department's Legal Services Directorate for advice. All students should be given the opportunity to have a suitable support person of their choice with them (although not another student) when interviewed, including if the interviewed is video or audio taped. In determining who may be the suitable support person, principals should have regard to the student's wishes, their age, maturity, developmental level and any relevant cultural issues of the student together with their own knowledge of the student's individual circumstances.

175. EPAC coordinates the investigation of criminal matters with Police involving allegations against employees. The assessment and management of risks for each matter will differ and be determined on a case by case basis.

Question 5.

Are there barriers which might prevent or limit appropriate and timely sharing of information about child sexual abuse (whether perpetrated by adults or other children) in school contexts? If so, do such barriers differ depending on which individuals, bodies or jurisdictions are involved (for example: sharing within and between schools, between schools and parents/carers, between schools and government agencies, regulators and oversight bodies, or across jurisdictions)? How could such barriers be addressed?

Potential Barriers to Information Exchange

176. While the principles of information exchange should ensure that relevant information is transferred between agencies in a timely manner, there are ongoing issues regarding this.

177. Potential barriers include:

- a) Issues regarding cross-jurisdictional (interstate) sharing and exchange of information. [Chapter 16A of the Care Act](#) does not currently support the exchange of information between education sectors about students between States and Territories as not all jurisdictions have equivalent legislation. Anecdotally there has been resistance to information being provided by other States and Territories based on their privacy laws. The result is that information sharing between States and Territories is primarily dependent on consent of the student/their carers;
- b) while the intent of Chapter 16A is laudable, the practical application by cautious agencies does not always result in the applicant agency being provided with all information required to make a fully informed risk assessment and therefore take appropriate action. Having different privacy legislation apply to the education sectors can result in confusion and inconsistency in approach;
- c) difficulties in ensuring the coordination of a multi-agency approach so that each agency is aware of who else is involved, of respective roles and responsibilities, and where to direct specific enquiries. Multi-agency involvement can also lead to delays and difficulties with the timely and accurate sharing of information;
- d) reluctance to exchange information with another agency (for example where an agency is concerned that providing information to another agency may have a negative impact on the child or young person);
- e) confusion about the impact of privacy law on information exchange can result in critical information being exempted and limited prior to being released so that information received provides little relevance to assisting an investigation;
- f) Differences between jurisdictions can mean issues regarding differences in thresholds and balance of proof – for example criminal code – beyond reasonable doubt as opposed to balance of probabilities and risk assessment;
- g) At times, schools may not be aware of the involvement of other agencies and therefore do not have the complete picture to address risk appropriately.

Information exchange within NSW

178. There are four circumstances in which information can be exchanged within the school, between NSW school sectors and between schools and agencies within NSW. These are:
- a) when the parent(or depending on their age or capacity) the student consents to information being shared;
 - b) when sharing information assists in decision making regarding the safety, welfare and wellbeing of a student or class of students under [Chapter 16A of the Care Act](#);
 - c) when sharing information about health and safety risks arising from a student's history of violent behaviour assist in the assessment and management of those risks under [Part 5A of the Education Act](#);
 - d) sharing information where an exception to privacy legislation applies.
179. Although legislation and policy recognises and prioritises the safety, welfare and wellbeing of a child or young person over an individual's right to privacy, barriers still exist which can limit appropriate and timely sharing of information about child sexual abuse within school contexts.
180. For example, a school may not be aware an investigation is taking place following a reported sexual abuse concern for a child, because they have not been involved or informed. This could mean pertinent information or observations by the school about the child may be missed and not form part of the investigation.
181. Similarly, it is not a requirement for FACS to share the outcome of their investigations with the Department. While it may not always be appropriate to share information this may result in lost opportunities for the Department to provide informed support to a child or to put mechanisms in place to support their learning and engagement. Although a principal can contact the Child Wellbeing Unit if they have concerns or suspect risk of harm, the Child Wellbeing Unit database only indicates where there is a current investigation underway. Further steps need to be taken by the Child Wellbeing Unit to obtain any further information about current or past investigations and their outcomes.

Consent

182. Parents are asked when completing an application to enrol their child at a government school to consent to the Department seeking information from previous schools, other government departments, public hospitals or other organisations that may hold information relevant to assessment of any risk the student poses at their new school.

Sharing information under [Chapter 16A of the Care Act](#)

183. Any information provided to the Department by prescribed bodies is used to make any decision, assessment or plan or conduct any investigation, or to provide any service relating to the safety, welfare or wellbeing of a child or young person or class of children or young people. This includes planning to support a child or young person who has been a victim of sexual abuse and for investigation purposes including risk management and disciplinary action.
184. While it is recognised it is best practice to seek consent to obtain information, the [Care Act](#) authorises the exchange of information under Chapter 16A without consent where concerns are held about the safety, welfare or wellbeing of a child or young person. The child, young

person or parent/carer should be informed if practicable that information about them is being disclosed to another organisation so long as this does not place them at further risk.

Sharing information under [Part 5A of the Education Act 1990](#)

185. [Part 5A of the Education Act](#) allows government and non-government schools in NSW to exchange information that is relevant to the assessment and management of health and safety risks to students or staff arising from a student's history of violent behaviour. Violent behaviour is defined as including inappropriate sexual behaviour that could cause physical or psychological harm. This supports the exchange of information between schools about a student who has sexually abused another student.

Sharing information when an exception to the privacy legislation applies

186. The NSW [Privacy and Personal Information Protection Act 1998](#) does not apply to non-government schools which are covered by the Commonwealth Privacy Act 1988. Both government and non-government schools in NSW are covered by the [Health Records and Information Privacy Act 2002](#).
187. The privacy legislation provides exceptions to the limits otherwise placed on the use and disclosure of information by agencies. For example information can be used or disclosed where non-compliance is authorised (e.g. by the exercise of the duty of care or a duty under work, health and safety law). Information or an opinion about an individual's suitability for appointment or employment as a public sector official (which includes a member of the teaching service) is excluded from the definition of personal information and can be disclosed where appropriate.
188. The Department's [Privacy Code of Practice](#) also contains a number of other exceptions to privacy law including
- a) when the use or disclosure of the information is for child protection purposes,
 - b) in the interests of a safe and disciplined learning environment,
 - c) for legal purposes or
 - d) where compliance with privacy law might detrimentally affect or prevent the proper exercise of the Department's complaint handling functions or investigative functions.

Information Exchange with Other States and Territories

189. Information can be shared with schools in other states and territories under the Interstate [Student Data Transfer Note](#) (a national system for the transfer of student data between schools). This includes information about a student's behaviour towards another student but is dependent on parental consent to information being exchanged.
190. The [Interstate Student Data Transfer Note](#) is effective in supporting the curriculum and some wellbeing needs of students moving interstate. However it has limitations in transferring information about a student's safety or support needs, including information about sexual abuse and potential risks to the safety of other students.
191. It is reliant on the receiving school requesting information from the previous school, and this school may not be aware that pertinent information is available. It is also reliant on parents providing consent.

192. The [Interstate Student Data Transfer Note](#) can flag that a school counsellor or psychologist file is held for the student, but cannot provide further information. The onus is on the receiving school to seek further information from various sources including contacting the previous school, as allowed under law.

Overcoming the barriers to information exchange

193. The three Education sectors in NSW have jointly produced a [fact sheet about Information Sharing](#) between Principals and Schools to raise awareness of the opportunities for schools to exchange information in NSW.
194. The Child Wellbeing Unit can assist in overcoming some of these barriers by providing advice and support.
195. The JIRT Local Contact Point Protocol (JIRT LCP Protocol) may also be of assistance. The JIRT LCP Protocol has been developed in alignment with existing policy and procedures governing Family and Community Services, NSW Police, NSW Health and the Department of Education.
196. The protocol includes informing Local Area Command Police (LAC), the Child Protection Helpline, Principals of schools, the Department of Education (in its capacity of regulator of early children education and care), and other relevant parties of the existence of a Local Contact Point for information and advice. The document also outlines the criteria to activate the Local Contact Point, establishment of processes, and operational functions, within which an identified service is provided to families via a local telephone support line.
197. Agencies need to forge partnerships at the local level so that agency staff are able to better understand the role they each play in supporting children, young persons and their families and the valuable contribution exchanging information can play in that process. Joint training at a local level could assist in achieving this outcome.
198. It would also be helpful if complementary information exchange processes were legislated in other states and territories, based on [Chapter 16A of the Care Act](#), to support information exchange between the various education sectors.