

MEMORANDUM OF UNDERSTANDING

between

DEPARTMENT OF FAMILY AND COMMUNITY SERVICES

and

CATHOLIC EDUCATION COMMISSION NSW

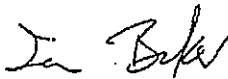
and

THE ASSOCIATION OF INDEPENDENT SCHOOLS OF NSW

on

CENTRALISED MANDATORY REPORTING

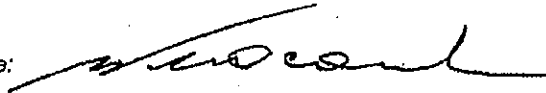
Signature:



Ian Baker
Acting Executive Director

Catholic Education Commission NSW

Signature:



Dr Geoff Newcombe
Executive Director

The Association of Independent Schools of NSW

Signature:



Michael Coutts-Trotter

Secretary, Department of Family and Community Services

PART 1 Rationale

This Memorandum of Understanding (MoU) relates to the reporting requirements of Section 27 of the *Children and Young Persons (Care and Protection) Act 1998* ("the Act") and the endorsement of the continuation of centralised reporting for Risk of Significant Harm (ROSH) reports.

Section 27 of the Act in summary requires a person who in the course of their professional work delivers education to children and has reasonable grounds to suspect that a child is at risk of significant harm and those grounds arise during the course or from the person's work, to report certain things to the Secretary of the Department of Family and Community Services ("FACS").

Section 27 of the Act is more fully set out in Annexure A hereto.

Centralised reporting pursuant to section 27A of the Act in summary involves an assessment officer reporting to the Secretary of FACS, those matters required to be reported pursuant to section 27 of the Act. The assessment officer will be designated to be the Principal of the relevant educational institution. The section applies to relevant agencies as defined in the sections and does not include the Catholic Education Commission NSW (CECNSW) or the Association of Independent Schools of NSW (AISNSW).

Section 27A of the Act is more fully set out in Annexure A hereto.

For the child who is the focus of the report, centralised reporting ensures that education personnel consider their knowledge of the child's background and behaviour within the education context and family circumstances when making a report to FACS via the Principal. This process can assist personnel in supporting the child as well as providing a more detailed report to FACS.

If there is more than one child in the family attending a school and there are child protection concerns about any of the siblings, reporting via the Principal assists the school and FACS to coordinate their responses and effort to the family. This has the potential to reduce duplicate reports.

The endorsement of centralised reporting across non-government schools will bring about a consistent approach to reporting within schools across NSW and bring about greater collaboration between FACS and non government schools, whilst still meeting the requirement of mandatory reporting under Section 27 of the Act.

PART 2 Joint Principles

2.1 Joint Principles

The parties agree that:

- This MoU relates to centralised reporting in relation to children who are under the age of 16 years as per the definition of child in the *Children and Young Persons (Care and Protection) Act 1998*. It may be applied to young people under 18 years of age, referred to in this Memorandum as “young persons”.
- Nothing in this MoU precludes any personnel employed within an education setting co-ordinated and represented by CECNSW or the AISNSW from reporting directly to FACS.
- Where the Principal acts as a conduit for reports from members of staff, the Principal should provide feedback to those staff members that a report has been made.
- Where a risk of significant harm report relates to the actions of a Principal, the report should be made through the supervisor of the Principal or in the case of independent schools, through the Chair of the Board of Directors. The supervisor or Chair will act as the conduit for the report and undertake further responsibilities related to allegations of a child protection nature against an employee.

PART 3 Scope of the MoU

3.1 This MoU applies to:

Mandatory reporters within an education setting that is co-ordinated and represented by:

- CECNSW or AISNSW; or
- Any preschool or out of school hours service which is under the auspice of a School Principal and is within a school co-ordinated and represented by CECNSW or AISNSW

3.2 Objective of the MoU

To establish a protocol between FACS and CECNSW and AISNSW that endorses the procedure of centralised mandatory reporting to FACS via the Principal.

PART 4 The Roles and Responsibilities of FACS and CECNSW and AISNSW

4.1 The role of the Department of Family and Community Services

- 4.1.1 FACS will receive centralised reports of risk of significant harm from Principals of schools co-ordinated and represented by CECNSW and AISNSW.
- 4.1.2 In the event that a mandatory reporter complies with the procedures for centralised reporting pursuant to this MoU and has no knowledge of any failure to relay the risk of

significant harm report to FACS, then FACS will not in these circumstances initiate any action in respect of the mandatory reporter, unless required to do so by law..

4.1.3 Principals will relay a report of risk of significant harm to FACS as soon as practicable after being advised by a mandatory reporter of that risk of significant harm to a child. Should a Principal fail to relay the risk of significant harm report as soon as practicable upon being advised thereof, then FACS may take action as it deems appropriate against the Principal in accordance with the Act.

4.2 Role of the Catholic Education Commission NSW (CECNSW) and the Association of Independent Schools of NSW (AISNSW).

4.2.1 To ensure as far as is reasonably practicable that personnel employed in CECNSW education settings and independent schools understand their responsibility as mandatory reporters.

4.2.2 To ensure that there are documented procedures in relation to centralised reporting that permit the accurate and timely relay of information of a risk of significant harm from a mandatory reporter by means of centralised reporting to FACS.

4.2.3 To ensure that personnel employed within CECNSW education settings and in independent schools are informed that centralised reporting does not preclude them, as mandatory reporters from reporting risk of significant harm directly to FACS.

PART 5 Review and Alteration of the MoU

5.1 Review of the MoU

This MoU will be reviewed two years after the signing of the document. The operation of the MoU will be reviewed by FACS in conjunction with CECNSW and AISNSW.

5.2 Alteration of this MoU

Any party to the Memorandum may seek its alteration by notifying the other parties to this effect. Alterations must be agreed to by the Deputy Secretary, Western Cluster, Operations of the Department of Family and Community Services and the Executive Director of CECNSW and the Executive Director of AISNSW.

PART 6 Definitions

6.1 Mandatory Reporter

A person who as part of their professional or paid work or as the supervisor/manager of a person who as part of their professional or paid work, delivers health care, welfare, education, children's services, residential services or law enforcement wholly or partly, to children. Mandatory reporters are required to make a report to FACS under section 27 of the Act if they suspect that a child is at risk of significant harm as detailed in section 23 of the Act more fully set out in Annexure A. For the purposes of the Memorandum, the mandatory reporting obligations are extended to young persons as set out in 2.1.

6.2 Risk of Significant Harm

Risk of significant harm is defined in section 23 of the Act, as set out in the Annexure to the Act, Risk of significant harm, in summary, is present if there are current concerns that a child or young person may suffer physical, sexual, psychological and/or emotional harm as a result of what is being done or not done by another person.

6.3 Report of Risk of Significant Harm

A report made to FACS, usually via the Helpline the details of which are set out in Annexure A, where a mandatory reporter has reasonable grounds to suspect that a child (or for the purposes of this Memorandum a young person) who may be at risk of significant harm due to the circumstances outlined in sections 23, 24, 25, 27, 120, 121 and 122 of the Act which are also more fully set out in Annexure A.

6.4 Making a Report to the Secretary

Making a Report to the Secretary of FACS will be satisfied if the report is made to the FACS Helpline.

6.5 Principal

School Principal or College Principal, Director, Rector or other person with duties and responsibilities normally associated with the position of a Principal.

6.6 Education Setting

School, college, preschool under the auspice of a School Principal, out of school hours care under the auspice of a School Principal.

ANNEXURE A

Children and Young Persons (Care and Protection) Act 1998

Section 23

Child or young person at risk of significant harm

(1) For the purposes of this Part and Part 3, a child or young person is

"at risk of significant harm" if current concerns exist for the safety, welfare or well-being of the child or young person because of the presence, to a significant extent, of any one or more of the following circumstances:

(a) the child's or young person's basic physical or psychological needs are not being met or are at risk of not being met,

(b) the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive necessary medical care,

(b1) in the case of a child or young person who is required to attend school in accordance with the Education Act 1990 - the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive an education in accordance with that Act,

(c) the child or young person has been, or is at risk of being, physically or sexually abused or ill-treated,

(d) the child or young person is living in a household where there have been incidents of domestic violence and, as a consequence, the child or young person is at risk of serious physical or psychological harm,

(e) a parent or other caregiver has behaved in such a way towards the child or young person that the child or young person has suffered or is at risk of suffering serious psychological harm,

(f) the child was the subject of a pre-natal report under section 25 and the birth mother of the child did not engage successfully with support services to eliminate, or minimise to the lowest level reasonably practical, the risk factors that gave rise to the report.

Note : Physical or sexual abuse may include an assault and can exist despite the fact that consent has been given.

(2) Any such circumstances may relate to a single act or omission or to a series of acts or omissions.

Note : See also sections 154 (2) (a) and 156A (3) for other circumstances in which a child or young person is taken to be at risk of significant harm.

Section 24

Report concerning child or young person at risk of significant harm.

A person who has reasonable grounds to suspect that a child or young person is, or that a class of children or young persons are, at risk of significant harm may make a report to the Secretary.

Section 27

Mandatory reporting

(1) This section applies to:

(a) a person who, in the course of his or her professional work or other paid employment delivers health care, welfare, education, children's services, residential services, or law enforcement, wholly or partly, to children, and

(b) a person who holds a management position in an organisation the duties of which include direct responsibility for, or direct supervision of, the provision of health care, welfare, education, children's services, residential services, or law enforcement, wholly or partly, to children.

(2) If:

(a) a person to whom this section applies has reasonable grounds to suspect that a child is at risk of significant harm, and

(b) those grounds arise during the course of or from the person's work,

it is the duty of the person to report, as soon as practicable, to the Secretary the name, or a description, of the child and the grounds for suspecting that the child is at risk of significant harm.

(3) A person to whom this section applies satisfies his or her obligations under subsection (2) in relation to two or more children that constitute a particular class of children if the person reports that class of children to the Secretary together with:

(a) a description that is sufficient to identify all the children who constitute the class, and

(b) the grounds for suspecting that the children of that class are at risk of significant harm.

Section 27A

Alternative reporting arrangements

(1) In this section:

"assessment officer" , in relation to a relevant agency, means a person appointed or designated by the head of the agency as an assessment officer of the agency for the purposes of an arrangement under this section.

"head" of a relevant agency means:

(a) (subject to paragraph (b)) the person who is the chief executive officer, or who exercises the functions of chief executive officer, of the agency, or

(b) the person prescribed by the regulations.

"relevant agency" means any of the following:

(a) the NSW Health Service (including the Health Executive Service referred to in section 121B of the Health Services Act 1997),

(b) the NSW Police Force,

- (c) the Teaching Service,
 - (d) the Ministry of Health,
 - (e) the Department of Education and Training,
 - (f) the TAFE Commission,
 - (g) the Department of Family and Community Services,
 - (h) any other agency or organisation prescribed by the regulations for the purposes of this section.
- (2) The Secretary and the head of a relevant agency may enter into an arrangement under which a person ("the staff member") who:
- (a) is employed in or engaged by the relevant agency, and
 - (b) is a person to whom section 27 applies, may, in accordance with the terms of the arrangement, refer to an assessment officer of the agency any matter that the staff member would otherwise be required to report to the Secretary under that section.
- (3) If the staff member refers such a matter to an assessment officer under any such arrangement, the assessment officer is, in accordance with the assessment guidelines issued by the Secretary for the purposes of this section, to assess whether the matter should be reported to the Secretary under section 27.
- (4) If, in accordance with the assessment guidelines, the matter is assessed as a matter that should be reported to the Secretary under section 27, the assessment officer or the staff member is, as soon as practicable after the assessment, to report the matter to the Secretary under that section. Any such requirement applies in relation to the assessment officer as though the officer was a person to whom section 27 applies.
- (5) If, in accordance with the assessment guidelines, the matter is assessed as a matter that should not be reported to the Secretary under section 27, the assessment officer or the staff member may, if the officer or staff member has concerns for the well-being of the child to whom the matter relates, make such referral or take such action as the officer or staff member considers necessary or appropriate (or as is reasonably available) to safeguard or promote the safety, welfare and well-being of the child.
- (6) If a matter is referred to an assessment officer in accordance with an arrangement under this section, the staff member making the referral is taken to have satisfied his or her obligations under section 27 in relation to the matter concerned.
- (7) Sections 29 and 29AA apply in relation to a referral that is made to an assessment officer under this section in the same way as they apply to a report to which those sections apply. For that purpose, a reference in section 29 or 29AA to the making of a report includes a reference to the referral of a matter to an assessment officer in accordance with an arrangement under this section.
- (8) A certificate purporting to be signed by an assessment officer that a document relating to a child is a referral that has been made to the assessment officer under this section is admissible in any proceedings and, in the absence of evidence to the contrary, is proof that the document is such a referral.
- (9) The following provisions apply in relation to the appointment or designation of assessment officers for the purposes of this section:
- (a) more than one person may be appointed or designated as an assessment officer in relation to a relevant agency,

- (b) any such appointment or designation may (without limitation) be made by reference to the holder of a specified position or to a specified class of persons,
 - (c) a person may be appointed or designated as an assessment officer in relation to a relevant agency even though the person is employed in or engaged by another agency.
- (10) The regulations may extend the operation of this section, with such exclusions and modifications as may be prescribed by the regulations, to any person (or a class of persons) who is a person (or class of persons) to whom section 27 applies but who is or are not employed in or engaged by a relevant agency.
 - (11) For avoidance of doubt, the head of the NSW Health Service or the Health Executive Service is, for the purposes of this section, the Secretary of the Ministry of Health.
 - (12) A staff member of a relevant agency may, in accordance with the terms of an arrangement under this section, refer any of the following matters to an assessment officer of the agency:
 - (a) a matter relating to a young person that the staff member would otherwise report to the Secretary under section 24,
 - (b) a matter relating to an unborn child that the staff member would otherwise report to the Secretary under section 25.

Section 120

Homelessness of children

- (1) Any person may report the homelessness of a child to the Secretary.
- (2) On receipt of a report, the Secretary must conduct such investigation and assessment concerning the child as the Secretary considers necessary.
- (3) The Secretary may provide or arrange for the provision of services, including residential accommodation, where appropriate, for a child whose homelessness has been reported to the Secretary.

Section 121

Homelessness of young persons

Any person may, with the consent of the young person, report the homelessness of a young person to the Secretary

Section 122

Mandatory reporting of child who lives away from home without parental permission

- (1) A person (other than an excluded person) who provides residential accommodation for another person who the person has reasonable grounds to suspect:
 - (a) is a child, and
 - (b) is living away from home without parental permission, must, as soon as practicable, inform the Secretary of the child's whereabouts.

Maximum penalty: 200 penalty units.

Note : The police will notify the Secretary of the details of children who have been reported to the police as missing. If the Secretary becomes aware that a child reported as missing is safe, the Secretary is required to advise the police that the child is safe but not of the whereabouts of the child. The purpose of this provision is to avoid wasting resources in having the police search for missing children whose whereabouts are known to the Secretary.

The parents should be informed that the child is safe, but nothing in this section requires any person to reveal the whereabouts of the child to a person other than the Secretary.

(2) In this section:

'excluded person' means a person who:

- (a) is a friend or relative of the child who maintains both a close personal relationship with the child through frequent personal contact and a personal interest in the child's welfare, and
- (b) does not provide support to the child wholly or substantially on a commercial basis.

FACS Child Protection Helpline telephone number: (mandatory reporters) 133 627