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Department of Education and Training

By email: [REDACTED]

Dear [REDACTED]

School Community Safety Order Scheme Ministerial Guidelines

Thank you for continuing to consult with the Commission for Children and Young People (the Commission) on the Ministerial Guidelines for the School Community Safety Order Scheme, and giving the Commission the opportunity to provide feedback on the draft Guidelines.

The Commission is pleased to note that the draft Guidelines incorporate several of the Commission's previous recommendations, including the addition of guidance relating to the Reportable Conduct Scheme and Child Safe Standards.

As stated in our previous feedback,¹ the Commission has particular concerns about the potential for the Scheme to:

- cause further disadvantage to already marginalised children and young people
- contribute to some children and young people disengaging from education and the disruption of their right to education
- create additional risks for children and young people at home.

We have considered the current guidance relating to these issues and provide the enclosed feedback to further mitigate these risks.

We have also identified opportunities to:

- strengthen the current guidance for minimising negative impacts on children and young people's wellbeing, drawing on some of our previous suggestions
- add further clarity to the guidance relating to the Reportable Conduct Scheme
- improve some language relating to 'vulnerabilities'.

We trust this feedback assists. If the Commission can assist further, please contact [REDACTED].

Yours sincerely

Liana Buchanan
Principal Commissioner

2 May 2022

Meena Singh
Commissioner for Aboriginal
Children and Young People

2 May 2022

Feedback on draft Ministerial Guidelines for School Community Safety Order Scheme

Protecting children and young people from increased safety risks at home

The draft Guidelines appropriately recognise the risk that making an order may ‘exacerbate existing safety risks’ for a child at home,² and advise authorised persons that ‘[t]hese risks must be appropriately considered’.

The Commission is concerned that the current guidance does not clearly advise authorised persons to refrain from making an order if they consider that doing so could increase a risk of a child being harmed at home. Rather, the current guidance is to manage the risk ‘when making an order, for example, reporting concerns to relevant police and child protection and otherwise taking steps to fulfil duty of care obligations to the student’.

The Commission’s strong view is that, if an authorised person is concerned that making an order might exacerbate a safety risk to a child at home, an order should not be made.

The Ministerial Guidelines should direct authorised persons to strongly consider and take alternative actions (in line with the current guidance about deciding the ‘least restrictive means’ available),³ as well as taking any necessary steps, as stated in the draft Guidelines, to protect a child and meet child safety obligations. Protecting a child from harm must be paramount, and this should be clearly embedded in the Ministerial Guidelines.

The above advice should be included in the guidance on ‘matters that must be considered before making an order’, for example the guidance on:

- ‘mandatory considerations when making ongoing and immediate orders’, which requires that ‘when an authorised person is deciding whether to make an order they [must] consider the impact of the order on the safety, wellbeing and educational opportunities of an individual child or children, including the children of a person against whom an order is being considered’,⁴ and
- the requirement to consider whether an order is the least restrictive means available, which includes considering ‘the potential impact of an order on a child’s wellbeing and educational opportunities’.⁵

We note that this latter statement should identify that a child’s *safety* must also be considered, in addition to wellbeing and educational opportunities.

Strengthening guidance for considering the potential impact of an order on a child

The Commission recommends that the Ministerial Guidelines provide further guidance about how to *meaningfully* consider the potential impact of an order on a child’s safety, wellbeing or educational opportunities, and how to apply this consideration in practice, when an authorised person is deciding whether to make an order, and its terms and conditions.⁶

The current advice⁷ refers the authorised person to the guidance for considering the ground for making an order relating to interference with students’ wellbeing, safety or educational opportunities.⁸

While this guidance would likely assist an authorised person in understanding how an order could protect a child or young person from this interference, it would not necessarily draw their attention to the potential negative impacts of making an order on a child’s safety, wellbeing or

educational opportunities, including a child of a person against whom an order is being considered.

Currently, potential negative impacts on a child are only recognised as matters to be considered after an order is issued.⁹ As highlighted above (and recognised in the draft Guidelines), the impact of making an order could be harmful to a child's safety, and this should be considered carefully before an order is made.¹⁰

It is essential that potential impacts on a child's safety, wellbeing and educational opportunities are properly considered when an authorised person is determining whether to make an order, and an order's terms and conditions.

Without clear guidance about this consideration in the Ministerial Guidelines, there is a risk that its importance will be overlooked and it will not be applied adequately. It may be useful to include a case study that illustrates how to apply this consideration.

Considering impact on Aboriginal children and young people's wellbeing and educational opportunities

As indicated in the Commission's previous submission, it is essential that authorised persons understand, identify and properly consider the particular impacts that an order could have on Aboriginal children and young people. The Ministerial Guidelines should include specific guidance about these potential impacts.

Our previous feedback emphasised several important considerations relevant to Aboriginal children and young people's wellbeing and educational opportunities, including:

- the important role that families have in the lives of Aboriginal children and young people, and the need to minimise any negative impact an order may have on relationships between Aboriginal children and young people and their families
- the risk that excluding family and community members from engaging with their children's education could lead to disengagement of Aboriginal students
- the importance of strong relationships between schools and Aboriginal families and communities, to improve educational engagement outcomes for Aboriginal children and young people.

It is important that the Ministerial Guidelines advise authorised persons to carefully consider these matters when considering the potential impact of an order on an Aboriginal child or young person and deciding whether to make an order, and the conditions of an order, to ensure that potential impacts are properly identified, considered and mitigated.

The Ministerial Guidelines should also recognise the broader concept of social and emotional wellbeing for Aboriginal children and young people – in addition to the current reference to the definition of 'wellbeing' in the Framework for Improving Student Outcomes (FISO 2.0)¹¹ – and note that connection to family and kinship is vital to social and emotional wellbeing.¹²

Keeping Aboriginal children and families connected to education

The importance of a school's relationship with Aboriginal families and communities should also be emphasised in the guidance aimed at mitigating the risk of Aboriginal children and young people disengaging from education.¹³

The Commission remains strongly of the view that it is essential that authorised persons understand that partnerships with families and communities are a strong protective factor against Aboriginal children and young people disconnecting from education.

This understanding will help to reduce the risk that orders will have a disproportionate impact on Aboriginal children and young people, and assist in efforts to rebuild relationships with parents after an order has been in place, should this be necessary.

Efforts to rebuild relationships with Aboriginal parents must be undertaken in a culturally safe way. The relevant guidance¹⁴ should reflect this, and could suggest that schools seek the advice of the Koorie Outcomes Division of DET, or an Aboriginal Elder or community member, as suggested in another part of the draft Guidelines.¹⁵

The Ministerial Guidelines should also note that where an Aboriginal parent or carer has an order against them, it may be likely that an additional relative or community member 'steps up' to provide supports such as drop off at and pick up from school. Schools should be advised to prioritise facilitating that additional person to 'step up' effectively, to ensure impacts on the child are minimised.

This would be a strengths-based approach for the child, to acknowledge the network of people they may be able to draw upon for support – recognising that Aboriginal culture and community is a protective factor for Aboriginal children and young people to ensure they stay connected with school.

Informing and supporting a child or young person affected by an order

Our previous feedback noted the importance of informing a child or young person affected by an order about the order being made and what this means, confidentially and in a developmentally-appropriate way.¹⁶ This is currently reflected in the draft Guidelines in the:

- advice to authorised persons and school staff to 'provid[e] accurate information about school community safety orders' to a child of a parent subject to an order¹⁷
- recommendation that a staff member with a pre-existing relationship with the student provide information and support to them in a discrete manner, '*[i]f the authorised person determines that the child should be provided with direct support*'.¹⁸

This latter guidance suggests that authorised persons 'consider whether they should first seek permission from the parent who has been the subject of an order to contact the child directly to offer information or support, as the parent may not have disclosed the existence of an order to their child'.¹⁹

Seeking a parent's permission to inform and offer support to a child could be problematic, if the parent refuses to give permission (noting that a parent issued with an order may not be agreeable towards an authorised person) and does not wish to inform their child.

It may be preferable to, instead, advise a parent that the school will inform and provide support to the child discreetly, and give the parent the opportunity to inform their child and discuss the matter with them first. We note that a communication and access protocol must be provided to a parent as soon as reasonably practicable after the order is issued and include matters that the school would need to discuss with the child directly:

- 'arrangements to ensure the child's continued attendance at and safe access to the school and school activities, if because of the order the parent cannot escort the child to or from school or school activities'
- 'processes that ensure that mental health and wellbeing support are considered and in place for the student'.²⁰

The Commission expects that schools should directly provide a child with appropriate information and support in most, if not all, cases. This should not be conditional on a parent providing permission.

The guidance for minimising negative impacts on children and young people²¹ would be strengthened by emphasising the importance of a trusted staff member checking in regularly with the child or young person about how the situation is affecting them (as noted in our previous feedback), and ensuring that they have opportunities to express any concerns about the arrangements made to support them.

The Ministerial Guidelines should also include guidance on supporting a child at school activities, such as sport events or school plays, if their parent or carer is prohibited from attending. A child is likely to face stigma and questions from other students in these situations.

Responding to a child or young person's disengagement from school

The Commission welcomes the clear requirement that all efforts must be made to minimise disruption to a student's educational opportunities,²² and notes that the draft Guidelines include guidance for mitigating risks of students disengaging from education.²³

We reiterate the importance of also including explicit guidance on the steps to be taken *if a child stops attending school*,²⁴ including the support from the department that will be available, to ensure that any disruption to a child or young person's right to education is minimised, and avoid further disadvantage of already marginalised children and young people.

Preventing stigmatisation of a child or young person affected by an order

The Commission is pleased that the draft Guidelines require that schools limit disclosure of an order being in place to only those staff who need to know this information.²⁵ This guidance notes the importance of minimising 'the impact an order has on the person subject to the order'.²⁶

It is also important that (as previously suggested) this guidance expressly state the need to prevent stigmatisation of a student affected by an order, and that for this reason staff must not disclose the existence of an order to any other students.²⁷ This is important to minimise negative effects on the wellbeing of a child affected by an order.

Ensuring children and young people do not serve notices on parents

We note the guidance that '[a]uthorised persons can arrange for and rely on other persons to send or hand the notice [of an order] to the person to whom the order applies'.²⁸

This guidance should expressly state that a child of a parent to whom the order applies must not be asked to serve the notice on their parent (as suggested in our previous feedback).²⁹

Guidance relating to the Reportable Conduct Scheme and Child Safe Standards

The Commission welcomes the inclusion of guidance relating to the Reportable Conduct Scheme and Child Safe Standards,³⁰ and suggests the following amendments, to ensure the obligation to appropriately investigate reportable allegations and support the proper operation of the Reportable Conduct Scheme is reflected clearly:

331. Schools must continue to comply with their obligations in relation to, and the proper operation of, the Reportable Conduct Scheme and the Child Safe Standards. The Scheme does not abrogate schools' responsibilities with respect to notifying and appropriately investigating reportable allegations ~~reportable conduct~~ or the Child Safe Standards.
332. Authorised persons must ensure that conditions in orders do not impair the ability of the relevant school to appropriately investigate reportable allegations and maintain compliance with the Reportable Conduct Scheme or the Child Safe Standards, including Standards relating to the inclusion of families.

We welcome the inclusion of the clear guidance about matters that do not constitute vexatious communications.³¹ For further clarity, the Ministerial Guidelines could also make clear that conditions in School Community Safety Orders should not preclude the person subject to the order from raising those matters set out in paragraph 71.³²

Language relating to vulnerabilities

We acknowledge the inclusion of LGBTIQ+ people in the examples of people who may be experiencing 'vulnerability'.³³ However, more appropriate language should replace the current reference to persons from an LGBTIQ+ 'background', which is inaccurate and potentially offensive to some people in this community. It may be more appropriate to refer to people who identify as LGBTIQ+.

We also acknowledge that while it may be necessary, because of the terms of the legislation, to refer to a person's Aboriginal background as a potential 'vulnerability' that an authorised person should consider, we note that describing Aboriginality as a vulnerability is deficit-based language.

The Commission acknowledges that the draft Guidelines include language clarifying that an Aboriginal person may be vulnerable 'because of because of racism, discrimination and systemic disadvantage',³⁴ and suggest that the Ministerial Guidelines could also recognise that connection to culture and community is a protective strength, which should be drawn on when (for example) considering tailored supports to mitigate the impact of orders on children.

The Commission is pleased that the draft Guidelines recognise, and direct authorised persons to consider, that Aboriginal parents may advocate strongly to schools, and react strongly to 'attempted interventions by schools', because they may have experienced 'traumatic interactions with authorities, particularly where government agencies are intervening in their relationship with their children'.³⁵

Other matters the Commission is interested in understanding

In addition to the above feedback, the Commission is interested in understanding:

- How DET will monitor the impacts of orders on children's educational attendance, and review whether the Scheme is negatively impacting children's safety or wellbeing.³⁶ It is not currently clear if the information authorised persons are required to keep and report will enable this monitoring and evaluation.³⁷
- Whether child-friendly information about the Scheme will be provided to children and young people (as previously recommended),³⁸ noting the advice that schools 'provid[e] accurate information about school community safety orders to counteract any inaccurate information circulating within the student population that may cause anxiety'.³⁹

Endnotes

¹ Commission submission dated 2 February 2022.

² Paragraph 325, in the chapter on 'Interaction with other schemes'. This risk is also noted at paragraph 342, in the chapter on 'Considerations and actions after issuing an order'.

³ Paragraphs 113-117.

⁴ Paragraph 103. We note that this is largely in line with the Commission's previous recommendation: pages 2-3, Recommendation 1.

⁵ Paragraph 116.

⁶ The current guidance is at paragraphs 103 and 116.

⁷ Paragraph 103.

⁸ At paragraphs 79-80.

⁹ From paragraph 340, and at paragraph 342 in particular.

¹⁰ Noting that the Minister may make guidelines for or with respect to matters to be considered in determining whether or not to make an order: *Education and Training Reform Amendment (Protection of School Communities) Act 2021*, section 2.1A.37.

¹¹ Paragraph 79, which notes that the definition of wellbeing in the Framework for Improving Student Outcomes (FISO 2.0) is 'the development of the capabilities necessary to thrive, contribute and respond positively to challenges and opportunities of life'.

¹² See, for example, the Commission's 2021 report, *Our youth, our way: Inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system*, pages 29, 333, 336; the Victorian Government's 2017, *Balit Murrup: Aboriginal social and emotional wellbeing framework 2017-2027*, pages 10, 24; and Volume 3 of the Final Report of the Royal Commission into Victoria's Mental Health System, *Promoting inclusion and addressing inequities*, pages 146-147.

¹³ We acknowledge the guidance aimed at mitigating the risk of Aboriginal children and young people disengaging from education, including the suggestion that schools seek assistance from specialists in Koorie education or social workers, at paragraphs 336, 345, 351.

¹⁴ From paragraph 354.

¹⁵ Paragraph 263.

¹⁶ Commission submission dated 2 February 2022, pages 4-5.

¹⁷ Paragraph 344 c).

¹⁸ Paragraph 346.

¹⁹ Paragraph 346.

²⁰ Paragraph 350.

²¹ Paragraphs 343-346.

²² Paragraph 341.

²³ Paragraph 353.

²⁴ Commission submission dated 2 February 2022, pages 5-6.

²⁵ Paragraphs 281-284.

²⁶ Paragraph 283.

²⁷ Commission submission dated 2 February 2022, pages 4-5.

²⁸ Paragraph 203.

²⁹ Commission submission dated 2 February 2022, page 4. We note that the draft Guidelines reflect our suggestion that a child should not act as an interpreter for a parent, at footnote 89.

³⁰ Paragraphs 331-332.

³¹ Paragraph 71.

³² It may be appropriate to include this in the guidance relating to the Child Safe Standards and Reportable Conduct Scheme, paragraphs 331-332.

³³ Paragraph 112.

³⁴ Paragraph 112 a).

³⁵ This reflects feedback in the Commission's previous submission, at page 7.

³⁶ See Commission submission dated 2 February 2022, page 11.

³⁷ Paragraphs 313-319. We note that a stated objective of the record keeping and reporting requirements is 'identifying any trends in the types of schools, students, families or situations where orders are being used to inform potential system improvements or targeted supports': paragraph 306.

³⁸ Commission submission dated 2 February 2022, page 5.

³⁹ Paragraph 344.