



COMMISSION FOR CHILDREN
AND YOUNG PEOPLE

CCYPD/21/20331

The Hon. Martin Foley MP
Minister for Health

via email: minister.health@dhhs.vic.gov.au

Dear Minister Foley

Public Health and Wellbeing Amendment (Pandemic Management) Bill 2021

As you will know, the Commission for Children and Young People (the Commission) is an independent statutory body responsible for protecting and promoting the rights, safety and wellbeing of children and young people in Victoria, with a particular focus on vulnerable children and young people.

Our work since March 2020 has included a focus on how children and young people have been impacted by the COVID-19 pandemic and the various measures implemented in response to the pandemic.

The Commission had the opportunity to attend a high level consultation workshop and make a written submission to the Department of Health (your department) in relation to pandemic-related legislative reform in July 2021. A copy of that submission is attached for your information. As you know, subsequent consultation opportunities were deferred until after the Public Health and Wellbeing Amendment (Pandemic Management) Bill 2021 (the Bill) had been introduced into Parliament and passed the Legislative Assembly.

I recognise that the truncated consultation process means there may now be limited opportunity to influence the provisions of the Bill itself. However, I write to raise a number of outstanding issues raised in our former submission, and to ask that you and your department give consideration to how these issues might be addressed during implementation of the legislation.

Concerns about disproportionate and avoidable impact on vulnerable children

The Commission's interest in the Bill is based on our assessment that the pandemic and associated measures have had a serious and often disproportionate impact on vulnerable children and young people. This assessment has been informed through the performance of a number of our functions, including our monitoring of education and child protection services, our direct engagement with children and young people, and our various inquiries including inquiries reviewing circumstances of children who have died following Child Protection involvement. Some discussion of these impacts is included in the attached submission.

Our concerns have included the significant impact on the mental health of children and young people throughout the pandemic. We have also been concerned that lockdowns inevitably resulted in heightened risks of pressure, conflict and violence in the home and reduced visibility of children outside the home. When combined with significant restrictions to

service provision, including the provision of child protection services, these factors resulted in an unacceptable risk of harm to vulnerable children.

Transparency and accountability

The Commission welcomes the transparency and accountability measures in the Bill and the recognition of the potential impact of restrictions on rights, particularly on vulnerable people.

However, we remain concerned that there is no express requirement to consider, or publish consideration regarding, the impact of pandemic orders on the safety and wellbeing of children and young people. The Commission reiterates the importance of ensuring consideration is given to the impact of public health order decisions on children and young people. As we have previously suggested, this could be achieved through the application of a child rights, safety and wellbeing impact assessment process, as is done in some other jurisdictions.

In addition, we strongly suggest that membership of the Independent Pandemic Management Advisory Committee include persons able to represent the rights, safety and wellbeing of children and young people. Such a requirement should be specified in relevant documentation and implemented in practice.

Recommendation 1: That the Minister for Health implement a child rights, safety and wellbeing impact assessment process when considering making (or varying, extending or revoking) pandemic orders and include these considerations when publishing reasons for pandemic orders.

Recommendation 2: That the Minister for Health appoints members with specialised skills, knowledge and experience that enables them to represent the rights, safety and wellbeing of children and young people on the Independent Pandemic Management Advisory Committee.

Graduated approach to enforcement

The Commission notes that the bill retains the tiered approach to infringements, with lower fines for children, and introduces a concessional infringement scheme and changes to the 'special circumstances' test under the *Infringements Act 2006*.

We reiterate that many children and teenagers do not have the capacity, due to their age and stage of development, to fully understand the restrictions and the potential consequences of non-compliance. Child-specific approaches to non-compliance with public health orders are critical.

In addition, for some children and young people their personal situation has made it difficult to comply with the restrictions. Some children and young people feel unsafe in their home environment, which will have contributed to them breaching 'stay at home' restrictions.

The Commission is particularly concerned about the impact of COVID-related fines on children and young people in the out-of-home care system. These children and young people often have extensive backgrounds of trauma which affect their understanding of behavioural norms and their capacity to control behaviour. Children and young people in out-of-home care also often feel unsafe or unsettled in their care settings and, in response, seek company and support from others or abscond from care. This is a particular issue for children in residential care.

The imposition of COVID-related fines on children in out-of-home care is unfair and ineffective; these children are in the care and guardianship of the state and have no means to pay the infringement.

Wherever possible, alternate responses to non-compliance among children and young people should be implemented. In the case that fines are issued to children and young people, the Commission is concerned that current settings in the bill do not account for the circumstances of children and young people, particularly those at risk of harm at home (excluding family violence) and those engaged in the out-of-home care system.

We note the Bill introduces a new aggravated offence, which carries a maximum penalty of two years' imprisonment. For the reasons outlined above, the Commission strongly opposes children and young people being subject to the new aggravated offence.

The Commission notes that the Secretary must make and publish a compliance and enforcement policy to which anyone exercising relevant powers, including Victoria Police, must have regard. We emphasise the need for this policy to include specific considerations for the approach to children and young people and we would welcome the opportunity to contribute to its development.

While we believe fines are not an appropriate enforcement measure for children and young people, particularly younger children and those in out-of-home care, we stress the importance of children and young people being included in the concessional infringement scheme for any circumstances where fines have been issued to a child or young person.

Recommendation 3: That the compliance and enforcement policy include specific guidance relating to children and young people that accounts for their vulnerabilities and prioritises educative and other alternative responses to fines for non-compliance. The policy should include specific guidance for children in out-of-home care and expressly state that children and young people should not be charged with the new aggravated offence.

Recommendation 4: That the regulations ensure that the concessional infringement scheme is available to children and young people and that children and young people are included in any prescribed classes of eligible persons.

Detention

The Commission reiterates the need for an independent oversight body to be fully briefed and empowered to monitor the safety and wellbeing of particular cohorts of children and young people who have been detained such as:

- any child under the age of 18 issued a detention notice
- any unaccompanied minor in hotel quarantine.

The Commission notes that the Bill will, if passed, enable the Minister to publish detention guidelines and standards in relation to the welfare of people detained. It is essential, in our view, that guidelines and standards are published and that these include particular guidance about how to ensure the safety and wellbeing of detained children and young people. The Commission would be pleased to assist in the development of such guidelines and standards, drawing on our experience monitoring the safety and wellbeing of detained children and young people in other contexts.

Recommendation 5: That the Minister publish guidelines and standards in relation to ensuring the safety and wellbeing of detained children and young people.

Next steps

I trust you and your department will consider these issues and recommendations. The Commission would welcome the opportunity to contribute further to the development of measures to mitigate harmful consequences for children and young people to the greatest extent possible.

Please contact [REDACTED] if your office has any further queries.

Your sincerely



Liana Buchanan
Principal Commissioner

12 November 2021

Encl. *Letter from the Commission to the Department of Health, 7 July 2021, Feedback on the development of a new pandemic-specific part in the Public Health and Wellbeing Act 2008*

CC: [REDACTED]
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