



[REDACTED]
Mental Health and Wellbeing Division
Department of Health

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Dear [REDACTED]

Victoria's strategy towards elimination of seclusion and restraint

The Commission for Children and Young People (the Commission) welcomes the opportunity to provide this short submission to the consultation on Victoria's strategy towards elimination of seclusion and restraint in certain mental health settings (the strategy).

The Commission is an independent statutory body that promotes improvement in policies and practices affecting the safety and wellbeing of Victorian children and young people. Our statutory functions include:

- providing oversight of Victoria's out-of-home care including secure welfare settings and youth justice centres – this includes monitoring reports of serious incidents, which often involve use of force and isolations
- conducting individual, group and systemic inquiries into services provided to children and young people in out-of-home care and youth justice centres
- overseeing two child safety regulatory schemes, the Child Safe Standards and the Reportable Conduct Scheme, and supporting organisations that work with children and young people to prevent abuse, respond appropriately to allegations of child abuse and make sure organisations have child-safe practices.

The Commission strongly supports legislative, policy and practice efforts to minimise and eliminate restraint and seclusion of children and young people in all settings, including mental health settings.

The Commission has previously raised concerns about seclusion and restraint of children and young people in education settings and made recommendations on these issues.¹ Through our out-of-home care oversight functions, we have seen concerning instances of restrictive interventions being used in emergency departments on children and young people experiencing episodes of severe mental ill-health.

This brief submission identifies a series of considerations to help ensure the strategy includes a clear focus on children and young people and embeds a developmentally appropriate approach.

Children and young people's rights

The Commission supports the discussion paper's focus on human rights and reference to relevant international human rights conventions. It is important to recognise that children have their own specific rights under the Convention on the Rights of the Child, including 'to the highest attainable standard of health'.² In Victoria, children also have a right to protection that is in their best interests under the *Charter of Human Rights and Responsibilities*.³

The Commission is pleased that the discussion paper makes reference to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. We have strongly recommended to government previously that the entity (or entities) designated as Victoria's National Preventative Mechanism has expertise in working with children and young people.

Supporting 'safety for all' – Child Safe Standards and Reportable Conduct Scheme

We encourage the department to consider Victoria's Child Safe Standards (the Standards) and Reportable Conduct Scheme (the Scheme) in the development of the strategy.⁴ These regulatory schemes are designed to keep children and young people safe in a range of settings, including designated mental health services⁵ (or in the case of the Scheme, those that provide in-patient beds).⁶ Both have an important role in supporting acute mental health services to deliver the strategy's 'safety for all' approach and work towards elimination of seclusion and restraint.

Child Safe Standards

The Standards support organisations to take steps to promote the safety of children and young people and prevent child abuse. They are designed to drive cultural change and embed a focus on child safety by placing children and young people's rights and wellbeing at the forefront of everything done within an organisation.

Since 1 July 2022, the 11 Standards that certain organisations are required to comply with, include:

- establish a culturally safe environment in which the diverse and unique identities and experiences of Aboriginal children and young people are respected and valued
- children and young people are empowered about their rights, participate in decisions affecting them and are taken seriously
- child safety and wellbeing is embedded in organisational leadership, governance and culture.⁷

As of January 2023, the Department of Health is the regulator enforcing the Standards in health services.⁸

Reportable Conduct Scheme

The Scheme seeks to improve organisations' responses to allegations of child abuse and neglect by their workers and volunteers. It requires heads of organisations to:

- have systems in place to prevent child abuse and, if child abuse is alleged, to ensure allegations can be brought to the attention of appropriate persons for investigation and response
- ensure that the Commission is notified of allegations and that each allegation is investigated.⁹

The five types of reportable conduct include physical violence against, with or in the presence of a child, behaviour that causes significant emotional or psychological harm to a child, and significant neglect of a child.¹⁰ In settings such as early childhood, schools, disability services and youth justice, instances of seclusion or restraint have resulted in reportable conduct notifications.

During the strategy's implementation, relevant reportable conduct notifications relating to acute mental health settings could potentially provide important information about where targeted efforts are needed to support elimination of seclusion and restraint.

The proposed vision, principles and pillars

The Commission supports the broad direction of the strategy outlined in the discussion paper, and makes the following suggestions:

- The Commission supports prioritising and centring people with lived experience in all efforts to eliminate seclusion and restraint. We encourage the department to ensure that children and young people’s lived experience is also specifically incorporated, through sensitive, safe, child-centred, trauma-informed engagement.
- We suggest including the terms ‘*age and stage of development*’ in the ‘Equity and responsiveness to diversity’ principle,¹¹ and ‘*developmentally appropriate*’ in:
 - the draft vision’s ‘How statement’
 - the ‘Evidence-based practice’ principle
 - the ‘Best practice’ pillar.

These additions would reflect the ‘wellbeing of young people principle’ in the *Mental Health and Wellbeing Act 2022*,¹² and emphasise the importance of developmentally appropriate approaches that recognise the particular risks that restraint and seclusion pose to children and young people, due to their stage of development.

- Children and young people should be explicitly referenced in the ‘Cohort specific responses’ pillar, as a group with specific needs that require tailored approaches. It may be appropriate to highlight that children and young people involved with Child Protection, out-of-home care and Youth Justice would benefit from specialised responses. These groups of children and young people are likely to have complex needs and prior experiences of trauma, be engaged with multiple services, and may have been subjected to seclusion or restraint in other service settings.
- We support ‘Embracing First People’s wisdom’ as an important principle guiding implementation of the strategy, and naming cultural safety as a key consideration against each pillar. For Aboriginal children and young people, seclusion and restraint present heightened risks. These may include trauma from previous experiences of restraint and seclusion, and distrust of mainstream health services based on historical and ongoing structural racism in those settings. We support prioritising actions that enable culturally safe and supportive alternatives to seclusion and restraint, as recommended in other contexts.¹³
- We encourage the department to regularly publish deidentified data to provide a more comprehensive picture of the characteristics of children and young people subjected to these practices in acute mental health settings.¹⁴ This data would support system transparency, help focus efforts to eliminate seclusion and restraint, and inform collaborative practice across systems and settings to support people with complex needs.

Next steps

If you would like to discuss this submission, please contact [REDACTED].

Yours sincerely



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Principal Commissioner

20/07/2023



Meena Singh
Commissioner for Aboriginal
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20/07/2023

¹ Commission for Children and Young People, [Annual Report 2019-20](#), p.51; Commission for Children and Young People, [Submission to Department of Education and Training: Review of the restraint and seclusion policy, guidelines and principle](#), 2018, p.4; Commission for Children and Young People, [Submission on inclusive education to Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability](#), 2019, p.1

² Article 24 of the Convention of the Rights of the Child; also see Article 23, which states that ‘a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child’s active participation in the community’.

³ *Victorian Charter of Human Rights and Responsibilities Act 2006* (Vic), s 17(2).

⁴ *Child Wellbeing and Safety Act 2005* (Vic), Part 5A (Reportable Conduct Scheme) and Part 6 (Child Safe Standards).

⁵ For the Standards, see *Child Wellbeing and Safety Act 2005* (Vic), ss 19 and 22 and Schedule 1, item 31, which states: ‘A mental health service provider within the meaning of the *Mental Health Act 2014*’. The Standards also apply to hospitals and health services listed in Schedule 1. For a summary, see <https://ccyp.vic.gov.au/child-safe-standards/who-do-the-standards-apply-to-page/>.

⁶ For the Scheme, see *Child Wellbeing and Safety Act 2005* (Vic), Schedule 3, item 6, which states: ‘A mental health service provider within the meaning of the *Mental Health Act 2014* that provides in-patient beds’. Organisations required to comply with the Scheme also include organisations that are a public or denominational hospital or operate a private hospital. See Schedule 4 and <https://ccyp.vic.gov.au/reportable-conduct-scheme/who-does-the-scheme-apply-to/>.

⁷ See <https://ccyp.vic.gov.au/child-safe-standards/the-11-child-safe-standards/#TOC-2>

⁸ See <https://ccyp.vic.gov.au/child-safe-standards/enforcing-the-standards/changes-to-who-is-regulating-the-child-safe-standards/>

⁹ Commission for Children and Young People, [Reportable Conduct Scheme Information sheet 3: Responsibilities of the head of an organisation](#)

¹⁰ *Child Wellbeing and Safety Act 2005* (Vic), s 3 definition of ‘reportable conduct’; and see Commission for Children and Young People, [Reportable Conduct Scheme Information sheet 2: What is reportable conduct under the Reportable Conduct Scheme?](#)

¹¹ The draft principle currently states: ‘Persons receiving mental health and wellbeing services have their individual needs – such as their gender, family circumstances, culture, language, religion, sexual and gender identity, age and disability – recognised and responded to in a safe and sensitive way. Intersectionality is acknowledged and addressed’ (emphasis added).

¹² *Mental Health and Wellbeing Act 2022*, s 24. The ‘Wellbeing of young people principle states’: ‘The health, wellbeing and autonomy of children and young people receiving mental health and wellbeing services are to be promoted and supported, including by providing treatment and support in age and developmentally appropriate settings and ways. It is recognised that their lived experience makes them valuable leaders and active partners in the mental health and wellbeing service system.’

¹³ See Victorian Ombudsman, 2019, [OPCAT in Victoria: A thematic investigation of practices related to solitary confinement of children and young people](#), recommendation 3: ‘Ensure that culturally supportive therapeutic spaces as an alternative to separation, isolation or seclusion rooms are established in prisons, youth justice centres and secure welfare services’, p.254; Commission for Children and Young People, 2021, [Our youth, our way](#), recommendation 70: ‘That DJCS ensure that culturally supportive therapeutic spaces as an alternative to separation, isolation or seclusion rooms are established in youth justice centres c) immediately introduce care packages for all children and young people experiencing isolation or lockdown to relieve stress, boredom and psychological damage’, p.528-529.

¹⁴ Noting the range of data that the department currently publishes and contributes to, including data produced by the Australian Institute of Health and Welfare. We suggest it would be useful to report on (for example) the proportion of children and young people who: identify as Aboriginal; identify as LGBTIQ+; come from culturally and linguistically diverse backgrounds; have been subject to compulsory treatment orders; or are in contact with the youth justice or child protection systems.