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Department of Education and Training

By email: [REDACTED]

Dear [REDACTED]

### **School Community Safety Order Scheme Ministerial Guidelines**

Thank you for giving the Commission the opportunity to provide feedback to inform the development of the Ministerial Guidelines for the School Community Safety Order Scheme (the Ministerial Guidelines).

The Commission is concerned about the potential for the Scheme to have negative impacts on children and young people, particularly children and young people who are already marginalised and those facing safety risks at home.

Enclosed is a summary of the Commission's feedback, which aims to:

- strengthen guidance for how to minimise negative impacts on children and young people, including safety issues
- mitigate risks that Aboriginal children and young people and their families will be disproportionately affected by School Community Safety Orders
- preserve the proper operation of the Reportable Conduct Scheme and Child Safe Standards
- encourage the Department of Education and Training (DET) to collect and publicly report data on children affected by Orders, and ensure that, to the extent possible, all Authorised Persons receive appropriate training in the Scheme.

We would be pleased to discuss this feedback further.

For matters relating to the Reportable Conduct Scheme and Child Safe Standards, please contact [REDACTED]

[REDACTED]. For other matters addressed in this submission, please contact [REDACTED].

Yours sincerely

Liana Buchanan  
**Principal Commissioner**

2 February 2022

# Feedback for Ministerial Guidelines for School Community Safety Order Scheme

## Minimising negative impacts on children and young people

The Commission is concerned about the potential for the School Community Safety Order Scheme (the Scheme) to negatively impact children and young people whose parents or carers may be subject to an Order. We are particularly concerned about the potential of the Scheme to:

- cause further disadvantage and marginalisation of 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, noting that at least some parents or carers who are aggressive to adults in an empowered position at school may pose risks to their children.

We ask that these risks be taken into account and mitigated in the development of the Ministerial Guidelines and implementation of the Scheme.

The Commission notes that, in various parts, the Issues Paper contemplates considerations for children of parents and carers subject to an Order, and risks to their safety, wellbeing and educational opportunities. We welcome the recognition of these issues and suggest further attention in certain areas to ensure adequate safeguards are in place for vulnerable or marginalised children when making these significant decisions.

The Commission highlights the following issues for the DET's consideration, to minimise negative impacts on a child.

### Consideration of impact on safety, wellbeing and educational opportunities

The Ministerial Guidelines may include guidelines with respect to matters to be considered in determining whether or not to make a School Community Safety Order.<sup>1</sup>

The impact of a proposed Order on the safety, wellbeing and educational opportunities on a child should be a *primary consideration* when deciding whether to make an Order and determining the conditions of an Order, as well as after an Order is made.

#### Deciding whether to make an Order

It is currently proposed that the impact of an Order on a child's wellbeing and educational opportunities will be one factor taken into account when considering whether issuing an Order is the least restrictive means available,<sup>2</sup> which must be considered in deciding whether to make an Order. The Commission considers that this factor should be elevated to a primary consideration in the Ministerial Guidelines.

The Ministerial Guidelines should provide detail about relevant considerations, such as whether an Order may create barriers for a child to attend school (similar to the *Personal Safety Intervention Orders Act 2010*<sup>3</sup>) and the risk of a child experiencing stigma or bullying as a result of an Order being made against a parent.

#### Deciding conditions of an Order

The Issues Paper does not state that the Ministerial Guidelines will include a requirement that an Authorised Person consider the impact of a proposed Order on a child's safety, wellbeing and educational opportunities when deciding the conditions of an Order. Rather, the Issues

Paper proposes that the Ministerial Guidelines will require the Authorised person to take into account vulnerabilities of a child who may be impacted by the conditions.<sup>4</sup>

The Commission agrees that this requirement is essential, but also considers that the impact of a proposed Order's conditions on a child's safety, wellbeing and educational opportunities must be considered for all children, regardless of whether they come within the definition of 'vulnerable'.

**Recommendation 1:** That the Ministerial Guidelines expressly include a requirement that the Authorised Person consider the impact of an 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, as a primary consideration in determining whether to make an Order and conditions of an Order.

### **Guidance relating to family violence, and calling the police**

The Issues Paper appropriately acknowledges that:

'[a]n Order may exacerbate existing risks that a person poses to their family. For example, children might suffer retaliatory or retributive action from the parent who is the subject of the Order. It is proposed that the Guidelines will set out specific guidance for authorised persons *where they know the person to whom an Order will apply is also subject to an FVIO*' (emphasis added).<sup>5</sup>

The Ministerial Guidelines should make clear that Authorised Persons must consider possible increased family violence risks to a child when considering making an Order, regardless of whether the school is aware that a Family Violence Intervention Order is in place or being sought.

It may also be useful for the Ministerial Guidelines to reference DET's Family Violence Support Policy, to ensure that schools respond appropriately to family violence risks.

The Commission also considers that, to ensure that a child's safety is prioritised when an Order is being made, the proposed guidance on when a school should call police should be clearer and easier to navigate, including:

- clearer guidance in the risk matrix set out in the Issues Paper<sup>6</sup>
- more detail about other types of harm, beyond physical violence, that would also warrant calling police – for example, a person threatening to kill themselves in front of children.

**Recommendation 2:** That the Ministerial Guidelines require Authorised Persons to consider possible increased family violence risks to a child when considering making an Order, regardless of whether the school is aware that a Family Violence Intervention Order is in place or being sought.

**Recommendation 3:** That the Ministerial Guidelines contain clear guidance about when a school should call the police.

### **Family law and child protection orders**

The Ministerial Guidelines should include guidance about the need for Authorised Persons to have regard to the impact of Orders on existing family law and child protection orders, in addition to the legislative schemes noted in the Issues Paper: Family Violence Intervention Orders, Personal Safety Intervention Orders and Trespass Warning Notice Scheme.<sup>7</sup>

**Recommendation 4:** That the Ministerial Guidelines require Authorised Persons to consider the impact of a proposed Order on any family law or child protection orders in place.

## Ensuring Orders are made appropriately

The Issues Paper proposes that ‘the Guidelines will recommend a decision maker take positive steps to provide a person with the opportunity to raise vulnerabilities that are relevant to the proposed decision to issue an Order, while ensuring that the person is not treated unfavourably because of those vulnerabilities (some of which may be protected attributes under equal opportunity legislation)’.<sup>8</sup>

To ensure Orders are not made inappropriately and to a child’s detriment, it is important that schools have clear processes for ensuring that a parent, guardian, carer, or child, has a fair opportunity to raise a ‘vulnerability’ with an Authorised Person before or after an Order is issued.

The Commission notes that many experiences of ‘vulnerability’ are, in fact, experiences that result from discriminatory social attitudes or structures. As a result many people who experience discrimination or marginalisation, including indirect discrimination on the basis of disability, are not and do not see themselves as inherently ‘vulnerable’, although they may have particular experiences, characteristics or needs that the Authorised Person should be advised and aware of before making an Order.

The Commission suggests that alternate wording be considered for use in the Ministerial Guidelines, for example so that people have the opportunity to raise, and Authorised Persons are required to consider, any ‘vulnerabilities or relevant experiences of discrimination’.

The Commission also considers that the Ministerial Guidelines should prevent or seriously limit the potential for Orders being issued to parents, guardians or carers with intellectual disabilities (who may struggle to understand the terms or the implications of a breach), due to the potential impact on an affected child.

**Recommendation 5:** That the Ministerial Guidelines require schools to include clear processes for ensuring that a parent, guardian, carer, or child, has a fair opportunity to raise a ‘vulnerability’ with an Authorised Person before or after an Order is issued, and to prevent Orders being issued to parents, guardians or carers with intellectual disabilities.

## Avoiding exposure to conflict

While the Commission believes it is important for children to be involved in decision-making that affects them, we are concerned that children may be inappropriately or unnecessarily exposed to conflict in the process of an Order being made.

The Ministerial Guidelines should include guidance for schools on how to strike the right balance between ensuring a child’s wishes are heard and protecting them from exposure to conflict. For example, children should not:

- be involved in discussions between a parent and the school about Orders, unless unavoidable (i.e. issuing an Immediate Order to remove parent from the grounds, where the child is also present)
- act as an interpreter for a parent or be asked to serve Orders on parents.

**Recommendation 6:** That the Ministerial Guidelines provide guidance to schools on how to strike the right balance between ensuring a child’s wishes are heard and protecting them from exposure to conflict.

## Informing and supporting children affected by an Order

After an Order is made, it is essential that schools:

- inform a child affected by an Order about the Order being made and what this means, confidentially and in a developmentally-appropriate way

- provide a child with supports from within the school, whether that be the wellbeing officer or a teacher or another staff member with whom the child has a positive engagement. Ensuring that a trusted person checks in with the child regularly about how the situation is impacting them is essential.
- take a child-centred, trauma-informed and culturally safe approach to supporting children affected by Orders. This should include ensuring that there are avenues for a child to communicate any concerns they have about the making of an Order or the terms of an Order.
- protect a child's privacy, by not disclosing that Orders are in place to anyone that is not directly affected by the Order, to prevent stigmatisation of the child (i.e. a teacher making reference to the existence of an Order in a classroom setting).

These matters should be reflected in the Ministerial Guidelines and addressed in the implementation of the Scheme. It is also important that, during implementation, accessible information about the Scheme including the Ministerial Guidelines is made available to children.

**Recommendation 7:** That the Ministerial Guidelines include guidance to ensure that children affected by Orders:

- are informed about the Order confidentially and in a developmentally-appropriate way
- are provided with additional school supports, and supported in child-centred, trauma-informed and culturally appropriate ways
- are not subject to stigmatisation as a result of unnecessary disclosure of the fact that an Order is in place.

**Recommendation 8:** That DET develops and distributes accessible, child-friendly information about the Scheme for children and young people.

### Preventing disengagement from education

The Issues Paper notes that '[a] possible unintended consequence of an Order that prohibits a parent from attending a school or school related place could be that the child disengages with or increasingly fails to attend school'.<sup>9</sup>

It is clearly vital to ensure the Scheme does not operate in a way that disrupts children and young people's right to education<sup>10</sup> and the well-established benefits that all children and young people derive from education.

The Ministerial Guidelines should set out very clearly the specific supports and services that must be activated if an Order is made and the child or children of the person subject to the Order stops attending school. This should include information about what additional supports schools will receive from DET to this end.

As the Issues Paper notes, some children and young people are already at higher risk of absenteeism and ultimately of disengaging from education,<sup>11</sup> including Aboriginal children and young people, and children and young people in out-of-home care.

The Commission's recent systemic inquiry, *Our youth, our way*, details how Aboriginal children and young people:

- have lower rates of school attendance, are more likely to be suspended or expelled from school and have lower levels of educational attainment than non-Aboriginal students
- experience unacceptable rates of racialised bullying, which contributes to their disengagement from education.<sup>12</sup>

*Our youth, our way* also found that there is a clear link between exclusion from school and contact with the youth justice system (as also noted in the Issues Paper).<sup>13</sup>

Excluding family and community members from engaging with their children's education could risk further disengagement of Aboriginal students.<sup>14</sup> It is essential that the Ministerial Guidelines emphasise that, when Orders are used, every effort be made to keep children and young people connected to their education and school community.

It would be useful for the Ministerial Guidelines to reference priority areas and actions relating to building family and community engagement in the *Marrung Aboriginal Education Plan 2016 – 2026*, and to include reference to DET's policies for supporting the education of children in out-of-home care (such as Supporting Students in Out-of-Home Care and Individual Education Plans).

**Recommendation 9:** That the Ministerial Guidelines:

- clearly set out the specific supports and services that must be activated if an Order is made and a child stops attending school, and what additional supports a school will receive from DET to this end
- emphasise that every effort must be made to keep students connected to their education and school community
- reference priority areas and actions relating to building family and community engagement in the *Marrung Aboriginal Education Plan 2016 – 2026*
- reference relevant DET policies for supporting the education of children in out-of-home care, including Supporting Students in Out-of-Home Care and Individual Education Plans.

**Additional issues relating to Aboriginal children and young people**

The Commission notes the strong concerns within the Aboriginal community about the potential for the Scheme to have a harmful impact on the education and cultural safety of Aboriginal students,<sup>15</sup> and the importance of DET working closely with the Aboriginal community to ensure that the Ministerial Guidelines mitigate those concerns and risks.

As the Commission's recent systemic inquiry *Our youth, our way* highlighted, Aboriginal children and young people are subject to systemic racism, discrimination and exclusionary practices in some schools.<sup>16</sup> The Commission is concerned that Aboriginal children and young people may be disproportionately impacted by Orders, and has particular concerns about the following risks.

Use of Orders instead of engagement

The Commission notes that strong partnerships between schools, families and communities can improve educational engagement outcomes for Aboriginal children and young people, which in turn can act as a strong protective factor from contact with the youth justice system. The Commission has noted efforts by Government schools and DET to tackle racism and racialised bullying and violence in some schools where progress has been made through committed engagement over time with the Aboriginal community, including Aboriginal parents, families and Elders.

The Commission is concerned that Orders may be used, in place of engagement, to resolve a situation in a way that negatively impacts outcomes for children and young people. The Ministerial Guidelines should emphasise the importance of partnerships between schools, families and communities and addressing racism to improve educational outcomes for Aboriginal children and young people.

Inadequate recognition of connection to family

The *Charter of Human Rights and Responsibilities Act 2006 (Vic)* outlines Aboriginal cultural rights that are distinct and must not be denied to Aboriginal people. Public authorities must observe these rights. They include the right for Aboriginal people to:

- enjoy their identity and culture

- maintain their kinship ties.<sup>17</sup>

The positive acknowledgement of the particular role that families have in the lives of Aboriginal children and young people and their place as our First Nations People needs to be properly reflected in the Ministerial Guidelines to reduce the risk that Orders will have a disproportionate impact on Aboriginal children and young people.

Families of Aboriginal children and young people who raise issues, including alleged racism in schools, may be subject to these Orders when strongly advocating for changes to schools or the educational system to unwind the impacts of colonisation. Consideration needs to be given to expanding protection for the rights of the families of Aboriginal children and young people to advocate for their children.

The current treatment in the draft Guidelines as set out in the Issues Paper identifies such families of Aboriginal children and young people as having a 'vulnerability', however this does not sufficiently reflect the nature of this issue.

**Recommendation 10:** That the Ministerial Guidelines:

- emphasise that strong partnerships between schools, families and communities can improve educational engagement outcomes for Aboriginal children and young people, and the importance of addressing racism and racialised bullying and violence
- require Authorised Persons to consider, prior to making an Order, the particular role that families have in the lives of Aboriginal children and young people, and the right of all families including families of Aboriginal children and young people to advocate for their children
- require Authorised Persons to minimise any negative impact an Order may have on relationships between Aboriginal children and young people and their families.

## Reportable Conduct Scheme and Child Safe Standards

Under section 2.1A 37(1)(k) and (l), the Minister may make Guidelines for, or with respect to, related or prescribed matters. This could include guidance on how the Scheme will interact with other relevant schemes. The Issues Paper notes it is intended that the Scheme operate side by side with Family Violence Intervention Orders, Personal Safety Intervention Orders and Trespass warning notices.<sup>18</sup> It does not, however, refer to the Reportable Conduct Scheme (RCS) or the Child Safe Standards (CSS). The Commission requests that attention be given to preserving the proper operation of the RCS and CSS in preparing the Ministerial Guidelines.

### Reportable Conduct Scheme

Aspects of the Ministerial Guidelines as proposed in the Issues Paper create some risk that Orders may interfere with the proper functioning of the RCS and be contrary to appropriate complaints handling practice with respect to child abuse and harm. The Commission asks that specific guidance be issued to ensure that Orders do not have this impact.

#### Obligations under the RCS

Heads of an organisation subject to the RCS (including the Secretary to DET in relation to government schools) have an obligation to notify the Commission if they become aware of a reportable allegation pursuant to s 16M of the *Child Wellbeing and Safety Act 2005* (CWS Act).

The head of the organisation also has a legal obligation to conduct an investigation into reportable allegations. Notification to the Commission of a reportable allegation and an investigation is required where the head of an organisation becomes aware that a person has formed a reasonable belief that there is a reportable allegation. Any person can form a reasonable belief, and the obligation to notify the Commission and investigate arises regardless of whether the head of the organisation shares that belief.

Section 16K of the CWS Act requires heads of organisations to ensure they have in place:

- a system for enabling any person to notify the head of the organisation of a reportable allegation of which the person becomes aware, and
- a system for enabling any person to notify the Commission of a reportable allegation involving the head of the organisation of which the person becomes aware.

Further, section 16L of the CWS Act provides that any person may disclose a reportable allegation to the Commission. Section 16Y provides certain protections for the disclosure of information and documents to the Commission.

The Commission has seen a number of situations since the commencement of the RCS where a parent or other member of the community, including a victim/survivor of abuse, has a reasonable belief of a reportable allegation, but the head of the organisation does not share this view. This may occur in circumstances where the complainant is also in some form of dispute with the organisation.

The Commission has observed instances where heads of organisations in such circumstances have not complied with their obligations to notify the Commission of reportable allegations, potentially in breach of the requirements of s 16M of the CWS Act.

The Commission has also observed concerning behaviour within some organisations, including organisation heads or representatives pre-judging allegations and not notifying the Commission of, or investigating, reportable allegations raised by people who are perceived to be 'vexatious'.

The RCS does not contain any exemptions from requirements to notify the Commission or conduct an investigation where an organisation perceives a complainant to be vexatious.

There are good policy reasons for this when considering the level of abuse in institutions identified by the Royal Commission into Institutional Child Sexual Abuse, the number of allegations of child abuse identified by the Royal Commission which were not properly investigated due to complainants not being believed, and the clear power disparity between complainants and the heads of organisations.

#### Vexatious communications

The Commission is concerned that the proposed treatment of 'vexatious communications' could interfere with the proper operation of the RCS.

The Commission acknowledges that there can be situations where staff can be subjected to concerning, stressful and inappropriate conduct from parents and other community members, and that measures to address the impact on school professionals are important. However, any response to this issue must maintain, and not undermine, a focus on child safeguarding.

Any suggestion that an Authorised Person can interfere with the operation of the RCS, for example by specifying which complaint avenues may be followed, must be removed. Orders cannot and should not override the ability for community members to make a reportable allegation under the CWS Act or a community member's capacity to report potential criminal conduct to Victoria Police.

The Commission is also concerned by the proposal that it may be considered 'vexatious' for a person to raise a reportable allegation (or other child safety concern) if doing so diverts resources from other complaints and functions. The CWS Act requires that reportable conduct allegations, being allegations of child abuse and harm to children, must be investigated. This requirement applies irrespective of the Scheme.

The Issues Paper acknowledges that there is a risk in crafting these provisions that 'genuine concerns' will be suppressed. The Ministerial Guidelines will need to be drafted to ensure that



does not occur, particularly when those ‘genuine concerns’ relate to conduct that is harmful to children.

### Notification and investigation of reportable allegations

The Commission is also concerned that an Order, if issued, may interfere with the proper handling and investigation of a reportable allegation in certain circumstances.

As discussed above, the Guidelines must be clear that an Order cannot be made in such a way that it prevents the person subject to the Order from raising a reportable allegation under the RCS.

Allegations of harmful or abusive conduct to children must be able to be raised and investigated. To allow otherwise would, arguably, empower schools to act in a way that prevents parents or community members from disclosing child abuse. This would be a retrograde step, given it is less than five years since the Royal Commission documented widespread evidence of organisations acting to conceal abuse complaints and prioritising adults’ interests or organisational reputation over child safety.

Conditions of an Order may mean that witnesses, including parents and carers, who may have relevant and probative evidence, are precluded from involvement in the investigation. Children and young people who are alleged victims may also be negatively impacted in that parents or carers who have an Order issued to them may not be kept informed about an investigation so they can support their child. This could also impact procedural fairness for some subjects of allegation.

There may also be circumstances in which an Authorised Person issues an Order against a person for behaviour that is also reportable conduct. Although the Scheme is not intended to apply to existing staff of a school, scenarios may arise where the obligations of the RCS and the Scheme must be satisfied.

One example is where a parent or carer of a child who also volunteers (and is therefore covered by the RCS) with the school is alleged to have committed reportable conduct and an Order is issued against them due to the conduct. The Ministerial Guidelines or accompanying materials must be clear that even if an Order is issued, notification to the Commission of the reportable allegation and a full investigation under the RCS is also required.

#### **Recommendation 11:** That the Ministerial Guidelines:

- clarify that the School Community Safety Order Scheme is not to interfere with the operation of the RCS
- require Authorised Persons to ensure that the making of an Order and the conditions of an Order do not interfere with the operation of the RCS
- require that a standard condition be included in every Order to the effect that nothing in the Order is intended to interfere with the operation of the RCS, the making of a reportable allegation by any person or an investigation into a reportable allegation.

#### **Recommendation 12:** That the following are expressly excluded from the definition of ‘vexatious communications’ in the Ministerial Guidelines:

- raising reportable allegations as defined in the *Child Wellbeing and Safety Act 2005*, or any other child safety concerns, with a school, DET in the case of government schools, the Commission for Children and Young People, the Victorian Institute of Teaching, the Victorian Disability Worker Commission, the Victorian Registration and Qualification Authority or any other regulator
- reporting potentially criminal conduct to Victoria Police or any other law enforcement body

- reporting to Child Protection by any person who has formed a reasonable belief that a child has suffered or is likely to suffer significant harm as a result of abuse or neglect, and that their parent has not protected or is unlikely to protect the child from harm of that type.

## **Child Safe Standards**

New Child Safe Standards come into effect on 1 July 2022. The Commission notes that the Minister for Education will likely issue an order under the *Education and Training Reform Act 2006* setting out the new Child Safe Standards as they apply to schools.

This order is yet to be made, and accordingly, the Commission's comments below are based on an analysis of the Child Safe Standards as gazetted by the Minister for Child Protection.

In preparing these comments, we have considered elements of the proposed Ministerial Order shared in confidence by DET with the Commission.

### Families and communities

The new Child Safe Standard 4 places new obligations on organisations to make sure that families and communities are informed and involved in promoting child safety and wellbeing. Orders have potential to disrupt the process of engaging, informing and communicating with families as envisaged in Standard 4. There is also an obligation placed on organisations for them to ensure that families participate in decisions affecting their child.

It will be important to minimise the impact Orders have on the ability for schools to meet their obligations under Standard 4.

### Aboriginal children, young people and families

The new Child Safe Standard 1 places a new obligation on organisations to establish a culturally safe environment in which the diverse and unique identities and experiences of Aboriginal children and young people are respected and valued.

Organisations must ensure that they actively support and facilitate participation and inclusion within it by the families of Aboriginal children and young people. Further, all of an organisation's policies, procedures, systems and processes together must create a culturally safe and inclusive environment and meet the needs of the families of Aboriginal children and young people.

This new Child Safe Standard recognises that connection to family can be an important element of identity for Aboriginal children and young people, and positive actions are required of organisations to maintain this connection in organisations. This supports children and young people to feel culturally safe in organisations, and therefore improves their protection from child abuse and inappropriate and harmful conduct.

It will be important to minimise the impact that Orders have on the ability for schools to meet their obligations under Standard 1 and Standard 4.

### Child focused complaints

The new Child Safe Standard 7 requires that processes for complaints and concerns are child focused.

There may be circumstances where an Order is issued to family members of a child who is an alleged victim in relation to a child safety incident. There is a risk an Order will negatively impact the ability of family members to perform a necessary supportive role for child alleged victims.

Consideration should be given to content being inserted into the Ministerial Guidelines to ensure child alleged victims can still be appropriately supported where a family member is subject to an Order.

## Definitions

The Commission notes that LGBTIQ parents and children are missing from the proposed definition of ‘vulnerable’ in the Issues Paper.<sup>19</sup> For consistency, we encourage DET to align the definition of ‘vulnerable’ in the Ministerial Guidelines with the definition in the draft Ministerial Order on the new Child Safe Standards, noting that we have also suggested (at page 4 above) that the Ministerial Guidelines use more expansive wording in place of ‘vulnerability’.

**Recommendation 13:** That the Ministerial Guidelines:

- provide that the intent of the Scheme is that schools continue to comply with their obligations to comply with the Child Safe Standards and that the Scheme does not abrogate schools’ responsibilities with respect to the Child Safe Standards
- require Authorised Persons to prepare conditions in Orders that support the school to maintain compliance with the Child Safe Standards, including Standards relating to the inclusion of families.

## Data and reporting

It is important that DET closely monitor the children affected by Orders and the impact on their education and wellbeing, disaggregated by characteristics such as Aboriginal status, culturally and linguistically diverse background, and disability.<sup>20</sup> This should be reflected in the reporting requirements for Authorised Persons. This data and any evaluation of impacts on children should be published.

**Recommendation 14:** That DET collect and publish data on children affected by Orders and the impact of Orders on their educational attendance, and gather information to evaluate and review whether the Scheme is negatively impacting children’s safety or wellbeing.

## Training

The Commission strongly supports all Authorised Persons being required to undertake training in the Scheme (to the extent that DET has power to require this).<sup>21</sup>

Issuing an Order will potentially have a significant impact on children and young people and it will be important that Orders are not issued when further attempts may be effective in restoring productive engagement between parties.

Some disputes can arise in circumstances where a family member has experienced trauma. Individuals with trauma experiences may struggle with emotional regulation, experience mental distress and behavioural changes. Traumatic reactions can present in different ways including aggression, anxiety, and intense emotional upset. This should be taken into account before issuing an Order and also when designing the terms of an Order, so that the Scheme does not serve to exclude those with trauma from participating in school communities.

The Commission requests that consideration be given to equipping school staff with training and information regarding de-escalation techniques to support them to deal with situations when a person becomes heightened and also to take a trauma-informed approach. This should reduce unnecessary Orders and help those with trauma to stay engaged with the school for the benefit of children and young people.

**Recommendation 15:** That, to the extent possible, all Authorised Persons be required to undertake training in the Scheme.

**Recommendation 16:** That DET consider providing training and education to school staff on de-escalation techniques and trauma-informed approaches.

## Endnotes

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- <sup>1</sup> Page 10 of the Issues Paper.
- <sup>2</sup> Page 14 of the Issues Paper.
- <sup>3</sup> *Personal Safety Intervention Orders Act 2010* (Vic), section 74.
- <sup>4</sup> Page 21 of the Issues Paper.
- <sup>5</sup> Page 33 of the Issues Paper.
- <sup>6</sup> Page 11.
- <sup>7</sup> Pages 32-34.
- <sup>8</sup> Page 15 of the Issues Paper.
- <sup>9</sup> Page 28 of the Issues Paper.
- <sup>10</sup> Convention on the Rights of the Child, Article 28.
- <sup>11</sup> Page 28 of the Issues Paper.
- <sup>12</sup> Commission for Children and Young People, *Our youth, our way: inquiry into the overrepresentation of Aboriginal children and young people in the Victorian youth justice system*, Commission for Children and Young People, Melbourne, 2021, pages 383 - 398.
- <sup>13</sup> Page 28.
- <sup>14</sup> *Our youth, our way: inquiry into the overrepresentation of Aboriginal children and young people in the Victorian youth justice system*, page 383.
- <sup>15</sup> See, for example, Victorian Aboriginal Legal Service, [VALS' position on proposed school orders misrepresented by the Andrews Government](#) [media release], Victorian Aboriginal Legal Service, 22 June 2021, accessed 13 January 2022.
- <sup>16</sup> Commission for Children and Young People, *Our youth, our way: inquiry into the overrepresentation of Aboriginal children and young people in the Victorian youth justice system*, Commission for Children and Young People, Melbourne, 2021.
- <sup>17</sup> *Victorian Charter of Human Rights and Responsibilities Act 2006* (Vic), section 19(2).
- <sup>18</sup> Pages 32-34.
- <sup>19</sup> Page 15.
- <sup>20</sup> Pages 35-37 of the Issues Paper.
- <sup>21</sup> Pages 8-9 of the Issues Paper, Feedback Question 5.