



[REDACTED]
[REDACTED]
Department of Health

via email: [REDACTED]@health.vic.gov.au

Dear [REDACTED]

Feedback on the development of a new pandemic-specific part in *the Public Health and Wellbeing Act 2008*

Thank you for the opportunity for the Commission for Children and Young People to contribute to the development of this important legislation.

The Commission is an independent statutory body 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. We have a range of statutory functions; functions relevant to this feedback include:

- providing advice to government about policies, practices and the provision of services relating to the safety and wellbeing of vulnerable children and young people
- monitoring Victoria's child protection, out-of-home care and youth justice systems including monitoring reports of serious incidents
- a monitoring function associated with the preventative detention of children aged 14–16 under the *Terrorism (Community Protection) Act 2003*
- conducting inquiries into services provided to any child who has died and who was involved with child protection in the 12 months prior to their death.

During the pandemic, the Commission monitored COVID-19-driven policy and practice changes in the child protection, out-of-home care, youth justice and education systems. We also built and shared knowledge about the impacts of COVID-19 on children and young people, including through a series of targeted engagements with children and young people and the services who work with them.

The evidence gathered across the Commission's functions, together with a growing body of research, demonstrates that the pandemic has had major impacts, both immediate and longer-term, on children and young people across the various domains of their lives. The significant extent to which COVID-19 restrictions have impacted on children and young people suggests that particular attention must be paid to the impact on their rights, safety and wellbeing in the exercise of emergency powers in future.

Our feedback is enclosed as **Attachment 1** and outlines:

- the extent of impacts of health directions and service system adaptations on children and young people
- the need to build consideration of children and young people into the exercise of emergency powers
- legislative changes to include mechanisms that account for the impact of the exercise of emergency powers on children and young people.

Drawing on issues we identified through our COVID-19 work, we have also included feedback regarding penalties for non-compliance with directions and the provision of targeted information for children and young people.

Please contact [REDACTED] at the Commission on telephone [REDACTED] or via email at [REDACTED]@ccyp.vic.gov.au if you have any further queries.

Yours sincerely



Liana Buchanan
Principal Commissioner

7 July 2021

Enclosed: Attachment 1 – Commission feedback on the development of a new pandemic-specific part in the *Public Health and Wellbeing Act 2008*



Attachment 1: Commission feedback on the development of a new pandemic-specific part in the *Public Health and Wellbeing Act 2008*

1. Impacts of COVID-19 restrictions on children and young people

Impacts of COVID-19 restrictions on children and young people during 2020

COVID-19 restrictions have had unprecedented and major impacts on the lives of children and young people in Victoria. In September 2020, the Commission published a series of snapshots on the extensive impacts of the pandemic on children and young people's safety¹, mental health² and education³ based on engagement with 644 children and young people and 172 workers.

For many vulnerable children and young people, disadvantage was exacerbated during the pandemic. While existing disparities were highlighted, major health, social and economic impacts were also wide-reaching, with some families and children experiencing hardship for the first time.

Risk factors for child abuse and neglect, including exposure to stress, social isolation, family conflict, mental health problems and lack of access to social support were increased during the pandemic. Within this context of heightened risk, children and young people reported that their usual strategies for seeking safety, such as leaving the house, seeking relief at school, or staying with friends and extended family, had been cut off. Compounding these risks, Victoria's physical restriction measures diminished the line of sight in various domains of children's lives, including extended family, schools, services and communities.

Service system adaptations following health directions during 2020

During the initial period of the pandemic, many of the major concerns we identified related to implementation of health directions into service delivery guidance and practice. In these cases, the alignment with health directions resulted in diminished service system oversight of high levels of risk faced by vulnerable children and young people.

For example, during the initial Stage 3 restrictions we held significant concerns that Child Protection services were not immediately positioned as an essential service and the resulting shift to deliver most services remotely. To align with health directions, the Department of Health and Human Services issued guidance around prioritising Child Protection cases only where 'children are at imminent risk who require a statutory or emergency response'. This resulted in a significant reduction in the visibility of vulnerable children and young people in need of support or intervention.

We also looked at schools in their critical role supporting vulnerable children and young people, and as key notifiers to Child Protection. While on-site learning was available to vulnerable students during Term 2 of 2020, and the Department of Education and Training provided guidance on identifying vulnerable students, low on-site attendance numbers suggested very few were attending on-site. Our consultations revealed cases where highly vulnerable children and young people, including those living with violence at home, were turned away from attending on-site.

Regrettably, our concern about the risks these service adaptations created have been reflected in some of our child death inquiries conducted into services provided to children known to Child Protection who died during the pandemic. In at least two cases, it is clear that the implementation of health directions in various service systems, including the child protection, child and families service and health service systems, left highly vulnerable children without the face-to-face service engagement that was critical for adequate risk assessment and intervention.

Longer-term and compounded impacts of COVID-19 restrictions on children and young people

In addition to the impact of COVID-related restrictions during 2020, it is becoming clearer from both the Commission's work, and emerging evidence, that children and young people in Victoria are experiencing longer-term impacts from the pandemic as well as recurring or compounding impacts from additional lockdowns.

We have continued to hear from children and young people about their experiences during the pandemic to inform our ongoing advocacy. Since our 2020 snapshots, we have heard from an additional 580 children and young people through our online survey. We will soon be publishing snapshots based on responses received during the summer school holidays and following the recent circuit breaker lockdown. The Commission will provide you with a copy of the published documents once finalised.

Through our preliminary analysis we identified some similar themes to our previous snapshots including that:

- A high proportion of children and young people continue to struggle with poor mental health, feel isolated and disconnected, and find it hard to get the help they need due to long wait times or because it is too expensive.
- Children and young people are feeling the impacts of the pandemic on their parents or carers, who are themselves struggling with poor mental health or as a result of lost jobs or income. In some cases this is affecting children's feelings of safety at home and in the community.
- Many young people are worried about their future including about job prospects and the impact of disruptions on their schooling.

However, responses during the recent circuit breaker lockdown period in June highlighted even stronger themes about the mental health and educational effects of remote learning:

- Many children urged for in-person learning to continue, even under lockdowns, describing the devastating effect of remote learning on their mental health, social connection, learning and engagement with school.

A growing body of evidence is confirming many of these findings about the impact of the pandemic on children and young people, including the increase in child abuse and neglect risk factors during COVID, negative impacts of the pandemic on mental health and concerns regarding educational disengagement.⁴

2. The need to account for children and young people in pandemic decision-making

The significant extent to which COVID-19 restrictions have impacted on children and young people suggests particular attention must be paid to the impact on their rights, safety and wellbeing in the exercise of emergency powers in future.

Children and young people make up a significant proportion of the population. The 2016 Census identified that children aged 0-14 years made up 18.2 per cent of Victoria's population, and young people aged 15-19 comprised a further six per cent of our community.⁵

Children and young people's needs and experiences are different to adults and these differences have been acutely felt during the state's response to COVID-19.

While the COVID-19 pandemic has required governments to take unprecedented steps to implement protection measures, including through the limitation of particular rights, we have observed resulting service system adaptations have had a disproportionately negative impact on children and young people and many service system adaptations as a result of health directions did not adequately respond to the heightened risks that vulnerable children and young people faced due to COVID.

The Commission notes and welcomes the Victorian Government's significant investment into the service system including in relation to child and family services, mental health and education. However, given the increased level of need as a result of the pandemic, this funding may not adequately achieve the Victorian Government goals of early intervention and reducing demand of tertiary supports on the service system. We propose that strengthened decision-making, informed by the specific impacts on the rights, safety and wellbeing of children and young people, is important to prevent vulnerable children, young people and families from requiring more intensive and crisis-driven supports.

3. Accountability mechanisms for the impact of the exercise of emergency powers on children and young people

In exercising emergency powers under the PHWA, there should be a requirement to specifically consider the rights, safety and wellbeing of children and young people both to inform decisions before they are made and to review and assess the quality of those decisions.

Mechanisms to inform decision-making under emergency powers

The Commission strongly encourages the government to require that all decisions made about public health directions consider the impact on children and young people.

The Commission notes that section 112 of the PHWA requires that '[i]f in giving effect to this Division alternative measures are available which are equally effective in minimising the risk that a person poses to public health, the measure which is the least restrictive of the rights of the person should be chosen.'

Considerations of impacts on the rights of children and young people would align with Victoria's child rights responsibilities. Victoria's Charter of Human Rights and Responsibilities Act 2005, at section 17(2), identifies that 'every child has the right, without discrimination, to

such protection as is in his or her best interests and is needed by him or her by reason of being a child.’ To the same effect, the United Nation’s Committee on the Rights of the Child’s COVID-19 statement released in April 2020 stated that:

States should ensure that responses to the pandemic, including restrictions and decisions on allocation of resources, reflect the principle of the best interests of the child..[and]

[states should] protect children whose vulnerability is further increased by the exceptional circumstances caused by the pandemic.⁶

In New Zealand and Scotland, governments consider the impact of proposed legislation and policies on children and young people’s rights and wellbeing.⁷ In Scotland, these child rights impact statements were used to consider COVID-related government decisions. We urge the Victorian Government to consider these models for the new legislation, given the significant impact public health order directions have had on Victoria’s children and young people, as outlined above.

Mechanisms for review of decisions and implementation

The Commission also encourages regular review relating to public health order directions, with specific consideration given to the efficacy of the orders, compared with the impact on children and young people’s psychological and physical safety. Any review methodology must include direct consultation with children and young people.

New legislation should include a specific provision for an independent oversight body to be fully briefed and enabled to monitor the safety and wellbeing of particular cohorts of children and young people such as:

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

The Commission suggests that such a body would need to have experience and expertise engaging with children and young people and advocating for their best interests. The oversight body could be the Commission, or another agency with appropriate expertise. If the Commission was to be selected, specific legislative functions similar to those already sitting with the Commission⁸ could be enacted as a safeguard for the most restrictive public health activities involving children and young people.

4. Adjusting approaches to non-compliance for children

The Commission also suggests any new provisions should facilitate the setting of child-specific approaches to non-compliance with public health order directions.

Compliance with ‘stay at home’ directions and curfews is particularly difficult for children in out-of-home care, those experiencing family violence at home and some other particularly marginalised groups. During our consultations in 2020, we heard of children in residential care, including Aboriginal young people, receiving fines of more than \$1,600 for breaching physical distancing laws. Other children and young people told us that they felt targeted and harassed by police in the enforcement of restrictions.

The past 18 months of unprecedented restrictions have presented unique challenges for children and young people, whose brain development mean capacity for impulse control,

consequential thinking and emotional regulation remain limited until age 25. The Department of Justice and Community Safety's *Youth Justice Strategic Plan 2020–2030* clearly describes the developing capacity of young people:

Research shows that young people's brains are still developing well into their twenties and that adolescents and very young adults are more vulnerable to poor decision-making and risk-taking behaviour. This, combined with an increased susceptibility to peer influence, means that 'they have less capacity to understand the consequences of their decisions, and less ability to regulate their emotions'.⁹

Wherever possible, alternate responses to non-compliance among children and young people should be implemented. Fines should only be considered as a last resort and children should only be subject to fines at levels commensurate with the Children's Court.

'Under the Children, Youth and Families Act 2005 (Vic), the Children's Court can impose a monetary penalty on a child who has been found guilty of an offence. If the offender is under 15 years of age, the maximum fine is one penalty unit for one offence (\$181.74 in 2021–22) and two penalty units for multiple offences (\$363.48 in 2021–22). If the offender is 15 years of age or over, the maximum fine is five penalty units for one offence (\$908.70 in 2021–22) and up to 10 penalty units for multiple offences (\$1,817.40 in 2021).'¹⁰

5. Requiring information about public health order directions to also be tailored for child and young people

The Commission recommends mechanisms to ensure that information about public health directions and associated restrictions is developed specifically for, and widely distributed to, children and young people.

The limited availability of specific, tailored information for children and young people was a theme across our consultations in 2020. Children and young people expressed uncertainty about changes and impacts during the immediate crisis response as well as their futures.

It is vital that children and young people receive tailored information and communications about changes affecting them, as well as information about where to go if they have concerns about their school, home, health, safety or wellbeing.

There have been some good examples of services and organisations releasing information, news and updates for children and young people. However, there remains a significant need for key departments and agencies to fully acknowledge children and young people as core stakeholders deserving of clear and targeted information about changes affecting them.

Ideally, messaging about public health order directions should be worded simply, use graphics and illustrations where possible and be distributed widely. The development of specifically tailored information could also benefit Victorians with lower levels of literacy and those with little English.

Ensuring clear and accessible information would align with the Committee on the Rights of the Child's COVID statement in April 2020 called on States to:

[d]isseminate accurate information about COVID-19 and how to prevent infection in languages and formats that are child-friendly and accessible to all children including children with disabilities, migrant children and children with limited access to the Internet.¹¹

¹ See the Commission's Safety snapshot at: <https://ccyp.vic.gov.au/assets/COVID-Engagement/CCYP-Safety-Snapshot-web.pdf> 4 September 2020

² See the Commission's Mental Health snapshot at: <https://ccyp.vic.gov.au/assets/COVID-Engagement/CCYP-Mental-Health-Snapshot-web.pdf> 4 September 2020

³ See the Commission's Education snapshot at: <https://ccyp.vic.gov.au/assets/COVID-Engagement/CCYP-Education-Snapshot-web.pdf> 4 September 2020

⁴ See for example, Australian Institute of Health and Welfare, 2021, Child protection in the time of COVID-19, available at: <https://www.aihw.gov.au/getmedia/720b3a97-d76d-4122-80ca-6c1818285baa/aihw-cws-76-child-protection-in-the-time-of-covid19.pdf.aspx?inline=true>; Australian Human Rights Commission, 2020, Impacts of COVID-19 on children and young people who contact Kids Helpline, available at: https://humanrights.gov.au/sites/default/files/document/publication/ahrc_khl_covid-19_2020.pdf, Murdoch Children's Research Institute Back to school COVID-19 research program, information at: <https://www.mcric.edu.au/covid-19/research/back-to-school>.

⁵ Australian Bureau of Statistics, 2016 Census QuickStats, https://quickstats.censusdata.abs.gov.au/census_services/getproduct/census/2016/quickstat/2?opendocument#:~:text=The%20median%20age%20of%20people.up%2015.6%25%20of%20the%20population

⁶ https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT/CRC/STA/9095&Lang=en

⁷ Scottish Government, Children's rights and wellbeing impact assessments: guidance <https://www.gov.scot/collections/childrens-rights-and-wellbeing-impact-assessments-guidance/>; New Zealand Government, Ministry of Social Development, Improving the wellbeing of children and young people in New Zealand – Child Impact Assessment Guide July 2018 <https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/resources/child-impact-assessment-guide-jul18.pdf>

⁸ Since 2018, the Commission has had a legislated monitoring function of Victoria Police relating to the preventative detention of children aged 14-16 under the *Terrorism (Community Protection) Act 2003*.

⁹ May 2020 <https://www.justice.vic.gov.au/youth-justice-strategy>

¹⁰ <https://www.sentencingcouncil.vic.gov.au/about-sentencing/fines-for-young-people#:~:text=If%20the%20offender%20is%2015,1%2C817.40%20in%202021%E2%80%93322>.

¹¹ https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT/CRC/STA/9095&Lang=en