



VCOSS feedback to the School Community Safety Order – Ministerial Guidelines Issues Paper

January 2022

The Victorian Council of Social Service is the peak body of the social and community sector in Victoria.

VCOSS members reflect the diversity of the sector and include large charities, peak organisations, small community services, advocacy groups and individuals interested in social policy.

In addition to supporting the sector, VCOSS represents the interests of Victorians experiencing poverty and disadvantage, and advocates for the development of a sustainable, fair and equitable society.

 /vcoss
 @vcoss
 ChannelVCOSS
 vcoss.org.au

This submission was prepared by Talisha Ohanessian and authorised by VCOSS CEO Emma King.

For enquiries please Deborah Fewster at deborah.fewster@vcoss.org.au

A fully accessible version is available online at vcoss.org.au/policy/



VCOSS acknowledges the traditional owners of country and pays respect to past, present and emerging Elders.

This document was prepared on the lands of the Kulin Nation.



Contents

Contents.....	3
Overarching feedback	5
<i>Restorative or therapeutic approach</i>	6
Authorised persons feedback	7
Grounds feedback	8
<i>Grounds and other requirements for issuing an Order</i>	8
<i>Oversight and accountability</i>	8
<i>Definitions</i>	9
Universal requirement to consider vulnerability feedback	12
<i>Defining vulnerability</i>	12
Procedures for issuing Orders feedback.....	13
<i>The rule against bias</i>	13
<i>Issuing an Order</i>	13
Variation and revocation feedback.....	15
Internal and external review feedback	16
<i>Mandatory review panel</i>	16
<i>Member of school staff submissions</i>	16

Parent/carer assistance..... 17

Other feedback..... 18

Minimising impacts on a child feedback..... 18

Matters that must be stated in written notice of an Immediate Order/form of Ongoing Order feedback 18

Rebuilding relationships feedback..... 18

Monitoring compliance and enforcement feedback..... 19

Interaction with other schemes feedback..... 19

Reporting and record keeping feedback..... 19

Overarching feedback

The Victorian Council of Social Service (VCOSS) welcomes the opportunity to provide feedback on the *School Community Safety Order – Ministerial Guidelines Issues Paper*.

VCOSS supports measures that promote safe working environments for school staff, students and the school community.

Safety is non-negotiable.

However, it is crucial that the reform encompasses **safeguards** that ensure members of the community who experience systemic disadvantage, marginalisation or other vulnerabilities do not experience discrimination or disproportionate harm as a result of the Scheme.

In addition to specific feedback we detail in the sections below, VCOSS members provided feedback on three areas that apply to the Scheme as a whole:

- The Ministerial Guidelines would benefit from inclusion of a section on preventative measures. This complements feedback we provide in the body of this submission about the value and impact of embedding a restorative approach in the Scheme. This would support the requirement that Orders be issued only as the least restrictive means.
- Many of the definitions and terminology use judicial and legal language, however, authorised persons are not judges or lawyers. The use of legally technical language may make it difficult for them to apply the Ministerial Guidelines as intended, without legal counsel. In addition, the legal terminology will be confusing for many parents/carers, impeding their understanding of the process. References to court proceedings will also create barriers – some parents/carers will feel they are unable to independently navigate the process and seek legal assistance to make their case. Accessibility must be intentionally designed into the Scheme. Parents/carers should not require assistance from already-stretched community legal services and disability advocacy services to understand the Guidelines and engage with the process.
- The Issues Paper refers to examples and details that will be provided as part of the Ministerial Guidelines but does not detail them. VCOSS members would appreciate an opportunity to collaborate with the Department on the development of these examples – particularly the accompany guidance notes – to alleviate risks/adverse unintended consequences of the Scheme on vulnerable parents/carers and students. VCOSS would be pleased to facilitate this engagement.

Restorative or therapeutic approach

There is a single reference to (unspecified) “*restorative actions and strategies*” in the Issues Paper. It is our view that the Ministerial Guidelines should centre a restorative and therapeutic approach. This would strengthen relationships, create a culture of safety, provide opportunities for prevention and early intervention (as an alternative to issuing an Order) and reduce re-offending.

To support this approach, the Ministerial Guidelines should include guidance on undertaking a restorative approach. This would clarify how schools can provide support to the family before an Order is considered or issued. For example, it could include a menu of existing Departmental resources that schools can leverage to support a restorative approach.

Additionally, the guidance resources could highlight opportunities to leverage relationships with community sector organisations (CSOs) and access non-school programs and services that provide wrap-around support to families. The guidance resources would draw attention to the opportunity for schools to leverage community-based supports, as well as those that are school-based (e.g. co-located community services and visiting services). The provision of this guidance would align with the Department’s *Framework for Improving Students Outcomes (‘FISO 2.0’)*, State Government investment in the Our Place model, and current child and family services reforms, which include a trial to embed family services in universal settings such as schools.

A restorative and therapeutic approach could also include:

- explicit mention of the *Code of Conduct for Victorian Public Sector Employees* as a framework and guidance for preventing any matters from escalating where possible
- engaging in therapeutic dispute resolution between the parent/carer and school via an independent body.

Authorised persons feedback

The Ministerial Guidelines should require all authorised persons, including principals, to undertake mandatory training to strengthen conflict resolution skills and support trauma informed approaches, disability awareness, cultural understanding and safety training. This will equip authorised persons with the knowledge and skills to make informed decisions about the least restrictive means when considering issuing an Order, particularly in relation to people who may be experiencing vulnerability. This is particularly important given the impacts of unconscious bias on terms defined in the Act and/or Guidelines. For example, studies have shown that black men are seen as larger and more threatening than their white counterparts,¹ which could have implications for how the term 'reasonably believe' is applied.

In addition, authorised persons would benefit from training to build awareness, understanding and identification of family violence. VCROSS members raised concerns that undisclosed experiences of violence may impact the way in which a parent/carer is engaging with the school as a result of high levels of anxiety, distress or coercion. It is vital that school leaders and staff are appropriately trained to reduce the risk of an Order exacerbating existing violence and/or trauma and to ensure there is not misidentification of the perpetrator, especially where there may be Child Protection orders. This training could be rolled out with training for the Family Violence Multi-Agency Risk Assessment and Management Framework (MARAM) or be provided as an additional piece of professional development for those who have already completed their required MARAM training.

¹ American Psychological Association, *People see black men as larger, more threatening than same-sized white men*, 13 March 2017, <<https://www.apa.org/news/press/releases/2017/03/black-men-threatening>>, accessed 20 January 2022.

Grounds feedback

The Ministerial Guidelines and supporting materials should include examples of scenarios where parent/carer behaviour relates to the welfare of their child and provide prompts for the school to pursue alternate pathways – where safe and appropriate – before issuing an Order.

Grounds and other requirements for issuing an Order

The Issues Paper states that,

“... the authorised person must:

- consider any **vulnerability** of the person of which they are **aware**
- consider whether the Order is the **least restrictive means** available to address the grounds.” (p.10)

The authorised person should be required to consider any vulnerability of the person of which they are aware, and any vulnerability of the student of the parent/carer of which they are aware. Having this stated clearly under the requirements for making an Order will provide additional context for the authorised person and any other decision makers.

Oversight and accountability

VCOSS members have raised concerns that, in certain circumstances, the Scheme creates an imbalance of power between the school/authorised person and the parent/carer. These circumstances include where the parent/carer is experiencing vulnerability or the student is experiencing vulnerability and the parent/carer is advocating for the student.

The Ministerial Guidelines should require an additional oversight and accountability mechanism to support the authorised person in making Orders. An oversight and accountability mechanism would:

- support the authorised person in using the Risk Matrix, including interpretation of nuanced definitions such as ‘reasonably necessary’
- provide oversight and improve confidence that Orders are being applied consistently and with appropriate consideration of the parent/carer or student vulnerability.

The oversight and accountability mechanism should require:

- a review panel be convened for all Orders, including for variation requests. The panel should be convened as soon as practicably possible for Immediate Orders, and as soon as an Ongoing Order is being considered. VCOSS members provided feedback that their preference is that such a review panel be independent of the school
- that the review panel reflect the diversity of the school community and where appropriate include representation from a person with relevant expertise in the area of any known vulnerability that the subject of an Order or their child may have
- that the review panel and/or Secretary of the Department can revoke or prevent an Order from being made where insufficient weight has been given to a person's circumstances (including consideration of vulnerability, or where there is insufficient evidence that less restrictive avenues have been explored).

These additional measures would encourage authorised persons to explore preventative or therapeutic approaches before an Order can be issued - Ongoing Orders in particular - while strengthening protections for vulnerable members of the community.

VCOSS notes under 2.1A.12 of the legislation 'Review of immediate order,' that an authorised person is required, as soon as practicable after making an Immediate Order to make a subsequent Ongoing Order or revoke the Immediate Order. The Immediate Order is revoked if the authorised person decides that grounds do not exist for making an Immediate Order.

Requiring a review panel be convened under the Ministerial Guidelines when an Order is issued will remove the likelihood of Orders being made without sufficient grounds, and mitigate concerns that the process is missing appropriate safeguards, noting that the person who makes the Immediate Order is the very person who reviews that same Order.

Definitions

VCOSS members noted some definitions would benefit from further clarification to avoid confusion and better reflect that the intent of the Scheme is to use Orders only in circumstances where there is an unacceptable or imminent risk, and only as the least restrictive means.

For example, there is concern the definition of 'harm' is too broad. The Ministerial Guidelines state:

It is proposed that the Guidelines will include the following as examples of circumstances that pose an unacceptable risk of harm:

- ...
- verbal abuse towards a staff member, parent or carer at a school or school related place, for instance, **raising their voice** and **using obscene or derogatory language** to communicate (VCOSS's bold)." p.12

VCOSS members noted that people who may 'swear as a matter of course' could be disproportionately impacted by this proposal without further clarification. As one VCOSS member noted, 'there is a difference between someone saying, "what's the f***ing point" and "f*** you"'.

Meaning of 'disorderly, offensive, intimidating or threatening' conduct

Consideration should be given to strengthening the meaning of disorderly, offensive, intimidating or threatening conduct to provide sufficient protections for parents/carers. VCOSS members stressed that while they want school staff to feel safe at work, that the current definition includes circumstances that are subjective, could have happened on one occasion only and without any witnesses, and has the potential to be misused.

VCOSS members provided two examples:

- circumstances where a parent/carers is criticising the treatment of their child at the school in a firm but calm and considered manner and is subsequently accused of being intimidating and threatening, and;
- circumstances where a member of school staff is 'made to feel nervous' but this is influenced by unconscious bias because of the age, gender, physical attributes or cultural background of the parent/carers, or other characteristics.

The Department should give consideration as to how these definitions could be strengthened, including whether there is a more appropriate definition, or if adding clarification that a third party 'reasonably believes' a behaviour would result in 'making someone feel... nervous' given the circumstances, would provide an additional safeguard for parents/carers.

Meaning of 'vexatious communications'

To remove any confusion, the Ministerial Guidelines should clearly state that a parent/carer or advocate of a student with disability who makes regular contact with the school or member of school staff in relation to the student's health, safety, wellbeing and education opportunities is not engaging in vexatious communication. This should include where there is disagreement between the school and parent/carer or advocate about whether the issue remains unresolved or where the parent/carer or advocate is making regular contact in short time frames due to the refusal or failure by the school to respond or to respond in a timely manner.

VCOSS members have provided examples of schools not responding to parent/carer or advocate communications in a timely manner, even in circumstances where repeated restraints are being used on the student with disability. Parents/carers are often 'beside themselves' in these scenarios. Explicitly stating parents/carers or advocates are not engaging in vexatious communication in these circumstances is needed as a crucial safeguard for the wellbeing of students with disability.

VCOSS acknowledges the Issues Paper refers to students with disability under '*consideration of vulnerability*' (VCOSS's italics) but believes this should instead be explicitly stated in guidance under 'vexatious communication'.

Universal requirement to consider vulnerability feedback

The Issues Paper considers whether the Ministerial Guidelines should refer to guidance included in the *Disability Standards for Education 2005* around reasonable adjustments.

Many concerns have been raised by peak bodies, self-advocates and independent advocates in regard to the effectiveness and scope of the *Disability Standards for Education 2005* – these concerns remain unaddressed despite five-yearly reviews.² Our members have indicated it may be more appropriate to refer to the *UN Convention on the Rights of Persons with Disabilities* in place of the *Disability Standards*.

Defining vulnerability

VCOSS supports the requirement to consider the vulnerability of the person subject to an Order and any vulnerability of the student. In particular, VCOSS welcomes the acknowledgement that “persons... in certain circumstances, may be vulnerable due to discrimination and barriers to their participation, systemic disadvantage, risks to their safety, or the status of their mental or physical health and wellbeing...” (p.15).

VCOSS recommends the Ministerial Guidelines refer to mitigating factors that contribute to a person’s vulnerability due to their circumstances rather than reference to cohort characteristics that do not by their nature inherently deem a person vulnerable. This would reduce the risk of compounding stigma and make visible the circumstances that should be under consideration by the authorised person.

These factors could include:

- communication difficulties and barriers, including language fluency
- financial hardship and/or housing crisis
- cultural differences in protocols or forms of expression
- the impact of family violence and dysfunction
- experience of racism or other form of discrimination
- the impact of trauma (including historical and intergenerational trauma)
- the impact of acute or chronic health issues (including mental health) and/or disability
- ongoing severe parenting challenging associated with the child being cared for.

² For example, see: VCOSS, *The right standards for change*, September 2020.

Procedures for issuing Orders feedback

The rule against bias

Members have raised concerns that where an Order is issued because it has been deemed necessary to protect a member of school staff, a school principal or employee of the Department cannot be objective. This may be particularly the case where:

- a parent/carer has had a strained relationship with the school for some time before an Order is issued
- there may be issues with school management or a culture of unhappiness or unrest at that school at that particular time
- the behaviour of school staff has contributed to the escalation of an incident.

The creation of an oversight and accountability mechanism that requires a review panel be convened could address some of these concerns.

Issuing an Order

The Guidelines note the subject of an Order is able to use a family member to interpret via phone if there are difficulties in comprehension when an Order is issued orally (p.17).

VCOSS's position is that the Guidelines should require authorised persons to arrange and pay for an accredited interpreter as a reasonable adjustment where the subject does not, or appears to not, understand what they are being told. Only in circumstances where the subject of an Order refuses an accredited interpreter due to personal sensitivities should the school relinquish their responsibility to engage an interpreter and instead rely on an agreed, trusted source of the subject (e.g. a family member or friend). The child of the person to whom the Order is to be made is not an appropriate person to interpret for the parent/carer. We recognise that this is rife with complexities, but note the importance of the rights of the child and child safety.

The Guidelines propose written Orders be sent via email and registered post to enable the subject to translate the material, for example via Google Translate. If the school is aware that the person to whom the Order is made does not speak or read English, the school should be required to provide a translated copy as soon as reasonably possible. Google Translate is not a reliable source of translation, particularly where they may be judicial language or nuanced conditions as part of an Order.

Additional guidance in the Ministerial Guidelines should include:

- enabling people who are deaf or hard of hearing to provide submissions via video that the school is required to translate where Auslan is used
- the authorised person cannot reasonably refuse the subject of an Ongoing Order permission to nominate another person to make a submission on their behalf as stated under section 2.1A.21(5) of the legislation
- due consideration to whether there is known family violence, or the possibility of family violence in considering whether to share information with third parties (including another parent/carer). Identifying family violence and engaging in non-collusive behaviour training for authorised persons will support them in identifying any associated risks with information sharing.

Variation and revocation feedback

VCOSS welcomes the proposal that revocation conditions should not be intrusive or onerous. Additional consideration should be made:

- to ensure any conditions in an Order do not re-traumatise a parent/carer. This risk can be mitigated by requiring the authorised person to liaise with relevant specialists or specialist organisations where there is a known vulnerability.

For example, where it is known a parent/carer has experienced family violence, seeking specialist advice will support the authorised person to avoid including conditions in an Order that may compound perpetrator violence (e.g. any kind of training for behavioural change must be family violence informed). This advice could be provided through existing channels such as the Respectful Relationships workforce or regional Health and Wellbeing teams, or via a specialist family violence organisation

- where there has been unsafe behaviour from both a parent/carer and a member of school staff that resulted in an Ongoing Order being issued. Orders should specify conditions and other relevant information for both parties – not just the conditions and undertakings that apply to the parent/carer. Transparency could help the relationship between parent/carer and school and help to create the conditions for mediation or issuing an apology (though, this is also subject to both parties perceiving there has been procedural fairness).
- to recognise existing barriers in accessing programs that may be included in an Ongoing Order as a revocation condition. For example, if a condition states the parent/carer undergo a specific program there may be barriers in identifying a provider, particularly if families have no experience in accessing these types of services, long wait times to access programs, and affordability. Consideration of these barriers are vital to ensure families experiencing disadvantage are not at risk of being provided conditions they cannot reasonably meet.

The Guidelines should require the authorised person to provide information on locally available supports or programs and establish a referral pathway where there is no existing relationship. In addition, the Guidelines should stipulate a process for addressing affordability where this is an issue without requiring the parent/carer to accrue debt.

Internal and external review feedback

Mandatory review panel

Earlier in this submission, VCOSS noted that safety is not negotiable, but emphasised the importance of accountability and oversight in a robust Scheme. We made the case for mandatory review panels for all Orders to be incorporated in the Ministerial Guidelines, including variation requests. It is vital that all parties have confidence in the Scheme and an assurance of procedural fairness. This process would also maximise support for authorised persons who, in applying the Risk Matrix, will be required to interpret very nuanced definitions.

At a minimum, we would advocate for some refinements to the internal review process that is described in the draft Guidelines. Procedural fairness – and perceptions of procedural fairness – would be strengthened by requiring a review panel to be convened, rather than enabling the reviewer to have the *option* to convene a review panel. The review panel should reflect the diversity of the school community and have relevant specialist expertise and/or be required to consult with specialists or specialist organisations. This would support consideration of any known vulnerability, whether the Order should be upheld as the least restrictive means, and ensure any related conditions minimise the risk of potential harm to the parent/carer.

Member of school staff submissions

As part of the process for considering whether it is appropriate to issue an Ongoing Order, the authorised person should have compiled and recorded information relevant to the making of that order, including any impact the behaviour has had on a member of school staff. Where relevant, this information can be referred to as needed by the reviewer and/or panel for an internal review. It is unclear why a member of school staff may need to partake in an internal review process if information has been recorded appropriately to inform the issuing of an Order.

If the Ministerial Guidelines allow for a member of school staff to partake in an internal review process, the parameters should be clarified. The example in the Issues Paper refers to enabling the staff member to provide a submission detailing the impact of the subject's behaviour on them, but does not exclude others avenues to partake in the process. This should be clarified to prohibit inappropriate engagement with the process, for example through providing commentary on any submissions made by the person to whom the Order has been issued.

Parent/carer assistance

To avoid confusion, parents/carers affected by this Scheme should be provided information (in a format that meets their accessibility needs) about where they can seek support at the time they are issued an Order. This information should be provided again if the parent/carer subsequently makes it known they would like to request an internal review. In addition to relevant community legal centres, information should be provided about parent advocacy groups and disability advocacy organisations. Given the significant capacity constraints of these organisations, selected providers should receive a fee for service, to ensure parents/carers can be supported.

To support a restorative approach, the authorised person could provide the parent/carer additional information as to where they may be able to access generalist or specialist support (for example from a specialist family violence service).

Other feedback

Minimising impacts on a child feedback

For students experiencing social disadvantage who may be characterised as “problem students”, careful consideration and safeguards will be needed to minimise the risk of disengagement as a result of an Order being issued. For example, the Issues Paper notes in the ‘monitoring compliance and enforcement’ section that where appropriate all members of school staff will be made aware of an Order. Consideration should be given to any circumstances where a relationship already under strain between a staff member and student could deteriorate further with the knowledge that the parent/carer has been issued with an Order.

FISO 2.0, the School Mental Health Fund and the Navigator program highlight the value that the community sector offers to school communities – for example, supporting wellbeing, preventing disengagement and supporting re-engagement. This Scheme represents an opportunity to strengthen this collaboration – for example, schools could grow their connection with specialist supports, such as children’s workers and youth workers, to minimise impacts on a child.

Matters that must be stated in written notice of an Immediate Order/form of Ongoing Order feedback

The Guidelines should make clear that the parent/carer must be provided with some way to communicate with the school.

When making conditions for Ongoing Orders, the Guidelines should require consideration be given to schools or school grounds where other services are co-located or extra-curricular activities are undertaken, for example, in Our Place model schools. Orders should not prohibit the parent/carer from accessing or utilising these services or the school grounds for these purposes.

Rebuilding relationships feedback

Reparative work between the parent/carer and school once an Order has been issued needs to begin immediately. A plan to rebuild and restore the relationship between the parent/carer and school needs to happen concurrently with the consideration of issuing of an Order, particularly where there is additional time before issuing an Ongoing Order. Parents/carers

should be offered access of support by an advocate or relevant community sector organisation.

Monitoring compliance and enforcement feedback

Before deciding to enforce an Order at court, consideration should be given as to whether the school has developed and implemented a plan to repair the relationship between the parent/carer and school. Where appropriate, an offer of mediation should be made before making an application to the Magistrate's Court.

Interaction with other schemes feedback

The Ministerial Guidelines should clarify how the School Community Safety Order Scheme interacts with the Child Information Sharing Scheme, Family Violence Information Sharing Scheme, and MARAM.

Reporting and record keeping feedback

An authorised person should be required to keep a record of the following additional information:

- Preventative steps the school undertook to de-escalate the situation where applicable
- Evidence that an Order was the least restrictive means
- Any submissions made by the subject of an Order
- Demographic information of the subject of an Order and any child who attend the school, including if they identify as Aboriginal and/or Torres Strait Islander, if they have a disability, if they are from a migrant, refugee or asylum seeker background, are of low socio-economic status and if the child is known to Child Protection and/or is in out of home care
- Monitoring of any decrease in student attendance or change in student enrolment for 6-12 months following an Order being issued.

Data on Orders should be publicly available and reported on the Department of Education and Training website, as is done with expulsions data. Data should include whether there is an increase in Orders being issued compared with the number of undertakings via other options available before the introduction of the Scheme.



[/vcoss](#)



[@vcoss](#)



[ChannelVCOSS](#)



[vcoss.org.au](#)