**School Community Safety Order Scheme**

Ministerial Guidelines

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# Overview

## Purpose of the Guidelines

1. The School Community Safety Order Scheme (Scheme) is established under Part 2.1A of the *Education and Training Reform Act 2006* (Act). The Scheme is part of a broader strategy to manage the risks to the safety of school staff and students and the broader school community resulting from the behaviours of a small minority of parents (which includes carers and guardians as defined in the Act) and other adults who interact with schools.
2. The Scheme enables authorised persons to issue school community safety orders (orders) to parents, carers and other people who engage in harmful, threatening or abusive behaviour. These orders take the form of either ongoing school community safety orders (ongoing orders) or immediate school community safety orders (immediate orders) and prohibit or restrain certain behaviours from occurring on school premises and school-related places, or in relation to school staff.
3. The Scheme aims to prevent and mitigate the risk of harm to school staff and students and other members of the school community resulting from behaviours of parents, carers and other adults who interact with schools. From an occupational health and safety (OHS) perspective, is the Scheme provides an important risk control to respond to work-related violence hazards and risks when other less restrictive measures have failed. Orders may be used as an alternative to, or in conjunction with, existing measures such as personal safety intervention orders under the *Personal Safety Intervention Orders Act 2010* and trespass warning notices under the *Summary Offences Act 1966*.
4. The *Ministerial Guidelines for the School Community Safety Order Scheme* (Guidelines) address a range of matters in relation to the Scheme, including:[[1]](#footnote-2)
5. matters to be considered in determining whether to make an order, including:
	1. a person’s vulnerabilities;
	2. the least restrictive means to address a risk; and
	3. the potential harm or impact an order may have on a child of the person to whom an order is given.
6. examples that illustrate how the requirements of this Scheme might apply;
7. the processes for making submissions and reviewing decisions to make orders;
8. alternative arrangements in relation to access to and communications with schools that may be made for persons subject to, or students affected by, an order;
9. circumstances in which orders should be subject to conditions and the nature of those conditions;
10. circumstances in which ongoing orders should be varied and the nature of those variations;
11. circumstances in which the grounds for making immediate orders or ongoing orders apply;
12. the length of time for which orders should remain in force;
13. the circumstances in which orders should be revoked;
14. the enforcement of orders;
15. persons or classes of persons who may be authorised by the Secretary to the Department of Education and Training (Secretary) to make orders (authorised persons);
16. the training that authorised persons or reviewers are required to undertake (generally or in particular circumstances);
17. the keeping of records relating to orders, including the form, retention period and security measures required for such records;
18. the requirements for reporting, including reporting requirements for authorised persons, reviewers, schools or the Secretary, and the form, frequency and content of such reports;
19. matters that must be specified in communication and access protocols;
20. the interaction between the Scheme and other legislative schemes; and
21. considerations and actions for authorised persons and schools after an order has been made.

## Status and compliance with the Guidelines

1. The Guidelines are made under section 2.1A.37 of the Act, and Part 2A of the Education and Training Reform Regulations 2017, and should always be read together with the relevant provisions of the Act and Regulations. The Act governs the process for making, reviewing, varying and revoking orders.A failure to act in accordance with the requirements of the Act will be unlawful and may result in any purported orders being invalid.
2. In general, the Guidelines provide information about the interpretation and application of the relevant provisions of the Act and details of administrative policies, practices and procedures that should be adopted or considered by authorised persons and reviewers when administering and making decisions under the Scheme.
3. More specifically, the Guidelines can be categorised as falling into one of the following categories:
4. ***mandatory requirements*** that decision makers must follow, as these requirements form part of the Scheme that governs the process for making, reviewing, varying and revoking orders.[[2]](#footnote-3) Where the Guidelines set out matters for or with respect to these mandatory requirements, a failure to comply with the Guidelines may be taken into account when determining the lawfulness and validity of the decision on internal or external review;[[3]](#footnote-4)
5. ***guidance material*** that is not mandatory but aims to assist decision makers to properly administer, and make sound decisions under, the Scheme; and
6. ***examples*** to illustrate how the Scheme and orders operate in practice.
7. Authorised persons and reviewers must give effect to the Guidelines when making, varying or revoking a school community safety order.[[4]](#footnote-5) Although a decision made by an authorised person or a reviewer is not invalid merely because the authorised person or reviewer has not complied with the Guidelines, a failure to comply with the Guidelines may be considered if the decision is the subject of internal or external review.
8. While a guideline may describe the way in which a discretionary power of an authorised person or reviewer may be exercised, it cannot operate to improperly fetter the decision maker’s duty to consider and deal with individual cases on their merits. That is, authorised persons and reviewers make decisions based on all the relevant facts and circumstances of the case, having regard to relevant policies and these Guidelines. When an authorised person or reviewer exercises their discretionary powers, they should take into consideration any applicable policy, guideline and legislative requirement

# Overview of the Scheme

1. A school community safety order is an order that an “authorised person" (as defined in the Act and discussed further in these Guidelines) may make that prohibits the person subject to the order from engaging in certain conduct. An order may be either:
2. an ongoing order;[[5]](#footnote-6) or
3. an immediate order.[[6]](#footnote-7)

## Ongoing orders

1. Ongoing orders may be made for any period up to a maximum of 12 months.[[7]](#footnote-8) Ongoing orders must be made in writing[[8]](#footnote-9) and may prohibit a broader range of activity than immediate orders, such as:
2. entering or remaining on any school-related place of the relevant school;
3. approaching, or causing another person to approach, within 25 metres of any staff member for class of staff members within or outside of any school-related place of the relevant school;
4. contacting any staff member or class of staff members;
5. using or communicating on a communication platform owned, controlled by, or established in relation to the relevant school; or
6. any other prescribed conduct.[[9]](#footnote-10)
7. Authorised persons must comply with the processes and procedures set out in the Act before an ongoing order is made, including by taking into account mandatory considerations, such as whether the order is the least restrictive means and any known vulnerabilities of the person,[[10]](#footnote-11) and affording the person procedural fairness by providing them an opportunity to make submissions on the proposed order, including in relation to why the order should not be made or the proposed content or effect of the order.[[11]](#footnote-12)

## Immediate orders

1. Immediate orders prohibit a person from entering or remaining on any school-related place of the relevant school specified in the order and remain in effect for a maximum of 14 days. Immediate orders may be made orally or in writing where the person who is subject to the order poses an unacceptable and imminent risk of:[[12]](#footnote-13)
2. harm to another person on school premises or to a member of the school community at a school-related place;
3. causing significant disruption to school activities; or
4. interfering with the wellbeing, safety or educational opportunities of students.

Immediate orders are to be used in circumstances where the risk needs to be dealt with swiftly and there is no or limited time to undertake the normal processes and procedures for making an ongoing order, including affording procedural fairness to the person proposed to be subject to the order, due to the imminent nature of the risk, for example, where there is a risk of an imminent assault on a staff member.[[13]](#footnote-14)

Because the Scheme permits immediate orders to be made without needing to undertake the processes and procedures for making ongoing orders, the Scheme imposes a strict 14 day limit on the duration of the order[[14]](#footnote-15) and requires the authorised person to immediately review the order as soon as practicable after it is made by considering whether to make an ongoing order[[15]](#footnote-16) and, in so considering, requires the authorised person to ensure that procedural fairness is afforded to the person in accordance with the normal process for making an ongoing order.[[16]](#footnote-17)

## After an order is made

1. There are a range of matters to consider after an order is made. For both immediate and ongoing orders, a communication and access protocol must be prepared if the person to whom the order applies is the parent of a child at the relevant school.[[17]](#footnote-18) In particular, a communication and access protocol is required to set out arrangements to ensure the child’s continued attendance at and safe access to the school and school activities and measures to be taken to ensure that the parent may continue to communicate with the school and be informed about the child's education.
2. Other matters that authorised persons must consider after an order is made include matters that relate to ensuring that appropriate wellbeing supports are in place for a student if their parent is subject to an order.

## Reviews of orders

1. The Scheme requires all immediate orders to be reviewed as soon as practicable after they are made. The scheme also provides for internal and external reviews of ongoing orders.
2. All immediate orders must be reviewed by the authorised person who made the order as soon as practicable after being made. During the review process, the person to whom the order applies has the right to make submissions.[[18]](#footnote-19) In conducting the review, the authorised person must decide whether to revoke the immediate order or make an ongoing order.[[19]](#footnote-20) Further, if on review the authorised person decides that the grounds for making the order do not exist, it must be revoked.[[20]](#footnote-21)
3. A person to whom an ongoing order applies may apply in writing to the relevant school for an internal review of the decision to make an order.[[21]](#footnote-22) An application must be referred to a reviewer as soon as is practicable, who may affirm, vary or revoke the relevant decision.[[22]](#footnote-23) After the internal review process is complete, a person to whom an order still applies may apply to the Victorian Civil and Administrative Tribunal (VCAT) for an external review of the decision made on internal review.[[23]](#footnote-24)

## Enforcement

1. Where a person contravenes an order, the Secretary (for government schools) or a nominee of the proprietor of a registered school (for non-government schools) may apply to the Magistrate’s Court for an order in relation to that person.[[24]](#footnote-25) If the Magistrate’s Court is satisfied that the person has contravened an order, it may make one or more of the following orders:[[25]](#footnote-26)
2. an order compelling the person to comply with the order;
3. an order compelling the person to take specified action to comply with the order;
4. an order that the person pay a civil penalty of up to 60 penalty units;[[26]](#footnote-27) and
5. any other order that the Court considers appropriate.
6. This ensures that orders are not enforced through the criminal justice system, which is not considered appropriate for the Scheme. That is, the Scheme has been deliberately designed to establish a civil penalty (rather than a criminal penalty) for failing to comply with an order because criminalising the type of behaviour the Scheme is intended to deal with may result in unintended or damaging consequences for many families and students.

# Persons that may be subject to an order

1. The Act specifies that orders may only be made in respect of certain persons. Those persons:[[27]](#footnote-28)
	1. must be adults (i.e. 18 years old or over); and
	2. must not be a student or staff member of the relevant school.
2. If an authorised person purports to issue an order to someone under the age of 18 years old or someone who is a student or staff member of the relevant school, the order will be invalid and fail to have any force. If an authorised person becomes aware that they have issued an order to someone who is not capable of being subject to an order, the authorised person must, as soon as practicable after they become aware of the error, inform the person to whom the order was purportedly issued that the order is invalid and that they are not required to comply with it.

## Age and students at the school

1. Under the Act, orders cannot be made in respect of persons under the age of 18 or who are students at the relevant school. Given the compulsory school age requirements under Part 2.1 of the Act, the rights of children to attend government schools under Part 2.2 of the Act, and the right to children to be protected by virtue of being children under the *Charter of Human Rights and Responsibilities Act 2006*, it would be inappropriate for the Scheme to apply to students and other children.
2. If there is doubt as to whether a person is under the age of 18, an authorised person must take reasonable steps to ascertain the age of the person, which may include making enquiries directly with the person or with other people who may know the person. If, however, the person is in fact under 18 years old, then any purported order will be of no force despite any reasonable belief of the authorised person that the person is an adult.
3. While an order cannot be made in respect of current students at a school (including students who are suspended or otherwise absent), orders are capable of being made against former students at the school, including expelled students, if they are 18 years old or older. Orders are also capable of being made against students 18 years of age and older where they are enrolled in a school other than the school in relation to which the order is made.

## Staff members of the school

1. Staff members of the relevant school cannot be the subject of an order. Staff members are those persons employed to perform work for or at the school. This includes staff who are on leave or suspended from duties and staff members who are also parents at the school.
2. However, staff members from other schools, former staff members and third party contractors engaged by the school may be the subject of an order.
3. The Scheme has not been designed to apply to staff members of the relevant school as there are other mechanisms that compel appropriate standards of behaviour by employees and allow action to be taken for inappropriate behaviour or misconduct. Schools who are employers of staff are, by virtue of their employment relationship, able to take disciplinary action against those staff. If there are behavioural issues with a staff member at a school, this should be handled in accordance with the school’s existing approach to dealing with inappropriate conduct by employees.

# Authorised persons

1. “Authorised persons” are empowered to make, vary or revoke school community safety orders. Some people are automatically authorised persons under the Act by virtue of the position they hold. The Secretary has the power to authorise additional persons or classes of persons to be authorised persons.

## Positions automatically authorised under the Act

1. The positions that are automatically authorised persons under the Act are:[[28]](#footnote-29)
2. the principal of a registered school;
3. for a government school, the Secretary; and
4. for a non-government school, the proprietor of the school if the proprietor is an individual.[[29]](#footnote-30)
5. When someone is formally acting in the role of a principal of a registered school, they are automatically an authorised person for the period during which they are acting principal. It is recommended that any acting arrangements are recorded in writing prior to the arrangements commencing to avoid any disputes as to whether the person was acting in the position. The written record clearly set out the particular period or circumstances in which the acting arrangement is in place, for example, the record could state that where the principal is on leave or otherwise absent, the assistant principal is automatically the acting principal for the period of leave or absence.

## Additional authorised persons

1. The Secretary may in writing authorise any person or member of a class of person to be an authorised person if:[[30]](#footnote-31)
2. the Secretary considers that the person or members of the class of person has the necessary skills, qualifications and experience; and
3. the person or member of the class of person is associated with, or involved in, the administration or management of one or more schools.
4. To be authorised as an authorised person for a school, the person does not necessarily need to have a direct relationship with, or be working at or for, the school.[[31]](#footnote-32)
5. When authorising individual persons, the Secretary will generally do so by reference to the person’s position at the school, rather than authorising the person by name. This will have the benefit of enabling persons acting in the role to exercise the powers of an authorised person when the substantive position holder is unavailable.
6. The Secretary must give effect to the Guidelines when authorising a person.[[32]](#footnote-33)
7. Examples of classes of persons that the Secretary may consider appropriate to be authorised persons for:
	1. government schools include:
		1. campus principals or heads of campus for multicampus schools;
		2. principals’ direct line managers in regional offices; and
		3. other senior positions within the Department of Education and Training that are involved with government school administration.
	2. non-government schools include:
		1. campus principals or heads of campus for multicampus schools;
		2. senior members of the school administration’s hierarchy including the Chair of the relevant school’s board or regional general managers;
		3. the head of a boarding facility; or
		4. other similar equivalent positions.

### Prerequisites and relevant matters for authorisation of authorised persons

1. The Secretary may authorise persons or a class of persons to be authorised persons either on their own initiative or on application by a school or person involved in the administration of a school.
2. When considering whether to authorise a person or class of persons, the Secretary must consider the following:
	1. in relation to both individual persons or a classes of persons, whether the person or class of persons:
		1. have, or are expected to have, sufficient relevant experience in school administration and decision-making that impacts individuals, including the number of years of relevant experience;
		2. are employed or engaged by schools to perform appropriate duties and at the appropriate level of seniority;
		3. have, or are expected to have, suitable qualifications and training in school administration and management, including in relation to conflict resolution and other relevant matters; and
		4. have, or are expected to have, knowledge of applicable and relevant policies, for example, policies that relate to complaints management or dispute resolution.
3. in relation to individual persons:
4. whether the person has completed any required or recommended training; and
5. any known issues relating to the individual which may adversely impact the person’s suitability to be an authorised person under the Scheme, for example, findings or allegations of misconduct.
6. When considering the matters above in relation to a class of persons, the Secretary will consider the knowledge, qualifications and experience that someone in that class of persons would normally be expected to possess.
7. Schools may apply to the Secretary to authorise one or more authorised persons, so long as they are able to satisfy the Secretary of the criteria above.
8. Where a person is seeking authorisation either for themselves as an individual or for a class of persons, they must satisfy the Secretary that they meet the criteria and that measures are in place to support those persons to meet their obligations under the Scheme if they are authorised. This includes the person’s ability to meet the requirements set out in the Act and Guidelines.
9. For example, if an independent school proposes that certain positions within their governance structure be authorised persons, before the Secretary authorises those positions, the Secretary must be satisfied that the school has demonstrated that any persons appointed to those positions will meet the above requirements, such as by presenting a position description reflecting the experience and qualifications required to be appointed to the role as evidence. Independent schools may seek this authorisation through the Department and will need to follow the process for authorisation detailed below.

### Process for authorisation

1. Persons seeking authorisation should complete the relevant form made available by the Department along with any supporting information required to be submitted to the Secretary.
2. Where the Secretary has been requested to authorise an individual as an authorised person, the Department will inform the applicant and proposed authorised person of the Secretary’s decision to authorise (or not authorise) the person, the date on which any authorisation takes effect, and any conditions or limitations placed on the authorisation.
3. Where the Secretary has been requested to approve a class of persons as authorised persons, the Department will inform schools of the Secretary’s decision through appropriate communication channels, including through any peak and representative bodies and by publishing the classes of persons who have been authorised on the Department of Education and Training website.

## Referring matters to an alternative authorised person

1. There are a range of circumstances in which it may be more appropriate for an authorised person other than a school principal to make an order. Examples of where it may be appropriate for an authorised person other than the principal to make an order include circumstances where:
2. the principal wishes to maintain an effective working relationship with the relevant person to promote the interests of the school or a student at the school and making an order could potentially damage that relationship;
3. it is anticipated that the making of an order by a principal will escalate the relevant behaviour or conduct that satisfies the grounds for making the order;
4. a principal has a potential, real or perceived conflict of interest in the matter, including instances where they were the subject of the conduct or behaviour that satisfies the grounds for making an order;
5. there are any other issues with impartiality or objectivity in decision-making, whether actual or perceived, for example, where the principal had previous disputes or conflicts with the relevant person;
6. there is an acting principal or an inexperienced principal;
7. there are concerns for the health and safety of the principal, for example, where the principal may become the victim of harmful behaviour because of issuing an order;
8. the facts of the matter are particularly complex, which may include where there is a legal representative or other advocate involved on behalf of the parent; or
9. the person is not responding to communications from the principal or school.
10. If an authorised person is of the view that they are not the appropriate person to consider whether to make an order, they should discuss this with their direct line manager, or another senior position involved in the administration of the school. It is strongly recommended that school administration have clear procedures in place to support principals in engaging an alternative authorised person to make an order.

## Training for authorised persons

1. Authorised persons are required to complete any training as required by the Secretary from time to time before making an order or using the Scheme.[[33]](#footnote-34) Authorised Persons who have completed the required training must retain evidence of completion and produce such evidence upon request by the Secretary or the Department.
2. Making an order without having completed the required training carries risks that the requirements of the Act and Guidelines are not fully understood and complied with, thereby increasing the risk of an order being invalidated on internal or external review.
3. A failure to complete the training before making an order may result in the Secretary deciding to revoke the individual authorised person’s authorisation if the authorised person has been authorised by the Secretary. A person who is automatically an authorised person under the Act (ie the Secretary, principals and registered proprietors of schools who are individuals) cannot have their authorisation revoked by the Secretary.
4. Furthermore, a failure to complete the training may be taken into account during an internal or external review of a decision and may result in the order being revoked or changed if the reviewer considers that the failure to complete the training materially affected the decision to issue the order in the particular circumstances of the case.

## Revocation of authorised person’s power

1. If the Secretary has authorised a person or class of persons to be authorised persons under Part 2.1A of the Act, the Secretary may revoke that authorisation so that the relevant authorised persons no longer have the power to make orders under the Scheme.[[34]](#footnote-35) An authorisation may be revoked on request or on the Secretary’s own motion.

### When the Secretary may revoke an authorisation

1. The Secretary may revoke an authorisation on request by a school. Requests should be made in writing to the Department.
2. Schools must request the Secretary revoke a person’s authorisation as soon as practicable after becoming aware that the person is no longer required to be authorised or is no longer suitable to be an authorised person. This may, for example, occur if a person leaves a position or the school, the person’s duties no longer involve exercising the powers given to authorised persons under the Scheme or the person has engaged in conduct (or misconduct) that results in them no longer being suitable to be an authorised person.
3. The Secretary may also revoke an authorisation on their own motion where they consider that an authorisation is no longer required or appropriate. This may include, for instance, where:
4. a person has not exercised the powers under this Scheme consistently with the requirements under the Act or the Guidelines, and the Secretary holds a reasonable belief that the authorised person may continue to use their power in this improper way;
5. there are allegations of misconduct that give rise to a reasonable apprehension that the authorised person is no longer suitable to be an authorised person or will otherwise use their powers in a way inconsistent with the Act or Guidelines or otherwise improperly; or
6. the Secretary becomes aware of information that leads them to form the view that the authorised person does not meet, or no longer meets, the requirements for authorisation, for example, because the person has not completed the required training (where that has resulted in the Scheme being used improperly or in way that is inconsistent with the Act and the Guidelines) or the person does not have sufficient relevant experience.
7. The Secretary may suspend an authorisation where it may be necessary to allow the Department to undertake enquiries as to whether the authorisation continues to be appropriate.

### Process for revoking authorisation

1. Before revoking an authorisation, the Secretary must provide the authorised person whose authorisation they propose to revoke with written notice of the proposed revocation. The notice must state the reasons for the proposed revocation and state that the authorised person may make submissions to the Secretary in relation to the proposed revocation.
2. The authorised person whose authorisation is to be revoked may make submissions in writing to the Secretary in relation to the proposed revocation, which the Secretary must take into account.
3. The Secretary should give written notice to the person whose authorisation is revoked of that decision and the reasons for the decision.

# Grounds and other matters that must be considered before making an order

## General guidance

1. When considering whether to make an order, an authorised person must be satisfied that:
	1. one or more grounds set out in the Act exist, as an order must not be made if a ground or grounds for issuing the order do not exist. The grounds differ for ongoing and immediate orders; and
	2. the order is reasonably necessary to address the grounds on which it is proposed to be made.
2. In addition to considering whether the grounds for making an order have been met, an authorised person must also consider the following matters, as specified in the Act:
	1. any vulnerability (of which the authorised person is aware) of the person in relation to whom the order is proposed to be made; and
	2. whether the order is the least restrictive means available to address the grounds on which the order is proposed to be made.
3. These considerations are referred to as “mandatory considerations” throughout the Guidelines because a failure to consider them is inconsistent with the Act and may result in an order being invalidated on internal or external review.
4. This chapter provides guidance on the grounds for making an order, the requirement that the order be reasonably necessary to address the grounds, and the mandatory considerations required to be considered when an authorised person is weighing up whether to exercise their discretion to make an order. The chapter has been structured to provide an overview of the grounds and mandatory considerations for both ongoing and immediate orders, and subsequently to provide more detailed guidance on the key terms and tests to be applied under the Act.

The grounds on which an order may be made align with the Scheme’s aim of addressing occupational violence and aggression towards school staff or inappropriate disruption to school operations. They also support schools to meet their obligations as employers under the *Occupational Health and Safety Act 2004* (OHS Act) to provide and maintain a working environment that is safe and without risks to health and to ensure, as far as is reasonably practicable, that persons other than employees are not exposed to risks to their health and safety. Importantly, schools, as employers, continue to have obligations and duties under the OHS Act that are separate to their obligations under the Act and these Guidelines and should therefore be aware of and turn their mind to those obligations when issuing an order.

### Reasonably believe

1. Under the Act, in deciding whether to make an ongoing or immediate order, an authorised person must *reasonably believe* that one or more grounds for making the order exist.[[35]](#footnote-36) A reasonable belief is an objective test which requires the existence of facts which are sufficient to induce the belief in a reasonable person standing in the shoes of the decision maker.
2. If an authorised person believes that the grounds for making an order have been met, and this belief is one a reasonable person would hold based on available or ascertainable facts (rather than on suspicion or assumption), they are likely to hold the necessary reasonable belief that the grounds for an order exist.

### Harm

1. Some of the grounds for making an ongoing order or immediate order require the authorised person to consider whether there is a risk of harm occurring. The Act defines harm as “harm of any kind, including physical or mental harm”.[[36]](#footnote-37)
2. For the purposes of the Scheme, harm may be caused by:
	1. physical conduct towards a student, staff member, or parent, such as hitting, kicking, shoving, physical restraint of, and using weapons or objects to injure, a person;
	2. verbal abuse towards a student, staff member, parent or carer, for instance, using obscene or derogatory language to communicate; and
	3. threats of harm, where they have the potential to cause fear or distress; and
	4. vexatious communications that causes unreasonable stress or anxiety in the workplace and the staff member’s personal life.
3. Harm can be experienced differently from person to person depending on their individual circumstances and vulnerabilities, which should be factored into the authorised person’s assessment of harm directed at staff or other members of the school community.
4. Mental harm may be experienced by an individual immediately following the incident or may manifest sometime in the future. For example, trauma can often unexpectedly affect individuals some time after the incident that caused the trauma occurred.

### Unacceptable risk

1. Several grounds for making an ongoing order and immediate order require the person proposed to be the subject of the order to pose an unacceptable risk for the ground to be satisfied, for example, an unacceptable risk of harm, of significant disruption to the school or school activities or of interference with the wellbeing, safety or educational opportunities of students. The term ‘unacceptable risk’ requires consideration of both the likelihood of the relevant risk eventuating and the seriousness of the consequences if the risk eventuates. In considering whether a risk is unacceptable, authorised persons should apply the following two-limb test:
	1. Consider the likelihood of the risk eventuating; and
	2. Consider the gravity or seriousness of the consequences if the risk eventuates.
2. This unacceptable risk test requires an authorised person to balance competing considerations, including those that weigh in favour of the person who is proposed to be the subject of an order. For example, if the likelihood of the relevant risk occurring is high but the seriousness of the consequence of the risk eventuating is low, there may be insufficient grounds to make an order. On the other hand, where a risk eventuating may result in more serious consequences, an authorised person may still consider the risk to be unacceptable and satisfy one of the grounds for issuing an order, even if the likelihood of it occurring is low.

### Imminent and unacceptable risk

1. When considering whether to make an immediate order, in addition to a risk being unacceptable, an authorised person must reasonably believe that the risk is also imminent. ‘Imminent’ is not defined in the Act, but its ordinary meaning is something that is likely to occur, is impending or may eventuate at any moment.
2. To make an immediate order, an authorised person will need to assess whether a situation poses both an imminent and an unacceptable risk by considering the following 3 limb test:
	1. the likelihood of the risk of harm, significant disruption or interference eventuating; and
	2. the consequences and seriousness of the risk if it eventuates; and
	3. whether the risk is likely to occur at any moment.
3. Examples of circumstances which may pose an imminent and unacceptable risk of harm include:
	1. where a person on school grounds has verbally abused a teacher, is refusing to leave the school grounds and continues to verbally abuse other teachers and persons; and
	2. where a person on school grounds has made a threat to punch a teacher, and the behaviour and actions of the person indicate that the threat could be carried out at any moment.

### Mandatory considerations

1. In addition to assessing whether the grounds exist to make an ongoing order or immediate order, the authorised person must, before making the order, also consider:[[37]](#footnote-38)
	1. any vulnerability of the person who may be subject to an order that the authorised person is aware of; and
	2. whether the order would be the least restrictive means available to address the grounds on which the order is proposed to be made.
2. Refer to “Mandatory considerations when making ongoing and immediate orders” in these Guidelines for more information.

### Reasonably necessary requirement

1. An authorised person can only make an ongoing order or immediate order if that order is reasonably necessary to address the grounds on which the order is proposed to be made.[[38]](#footnote-39)
2. That is, after an authorised person has formed a reasonable belief that grounds for an order exist, and considered the mandatory considerations required to be considered under the Act, they must then determine whether the proposed order (including the terms and conditions included in the order) is reasonably necessary to address the grounds.
3. Refer to “Requirement that orders are reasonably necessary” in these Guidelines for more information.

## Grounds for ongoing orders

1. This section includes an overview of and additional guidance on the grounds, relevant considerations and other requirements related to making ongoing orders.
2. To make an ongoing order, an authorised person must reasonably believe that one or more of the following grounds exist with respect to the person who is proposed to be subject to the order:[[39]](#footnote-40)
	1. the person poses an unacceptable risk of harm to:
		1. any person (regardless of whether they are a member of the school community) at any premises of the school or an area that is within 25 metres of the boundary of those premises; or
		2. a member of the school community at any other place or premises on which there is an activity conducted by or in connection with the school or an area that is within 25 metres of the boundary of that place or those premises, if the member of the school community is at that place for a reason that is connected with the school;[[40]](#footnote-41) or
	2. the person poses an unacceptable risk of causing significant disruption to the relevant school or activities carried on by the relevant school; or
	3. the person poses an unacceptable risk of interfering with the wellbeing, safety or educational opportunities of students enrolled at the relevant school; or
	4. the person has behaved and is likely to behave in a disorderly, offensive, intimidating or threatening manner to a member of the school community of the relevant school, either:
		1. at any premises of the school or an area that is within 25 metres of the boundary of those premises; or
		2. at any other place or premises on which there is an activity conducted by or in connection with the school or an area that is within 25 metres of the boundary of that place or those premises; or
	5. the person has engaged in and is likely to engage in vexatious communications with, or regarding, a staff member at the relevant school.
3. The following guidance is aimed at assisting authorised persons to consider whether grounds for making an order exist.

### Vexatious communications

1. Another ground for making an ongoing order is that a person has engaged and is likely to engage in vexatious communication with, or regarding, a staff member of the relevant school. The Act states that, in relation to a staff member of a school, vexatious communication means communication that a reasonable person would consider unreasonable, having regard to the circumstances in one or more of the following forms of communication:[[41]](#footnote-42)
	1. a person approaching, telephoning, sending messages to or otherwise contacting (whether by electronic means or otherwise) the staff member;
	2. a person publishing (whether on the internet, by email or by any other form of written communication) material about the staff member; and
	3. a person causing someone else to engage in a behaviour set out in paragraph (a) or (b) on the person's behalf.
2. Under the Scheme, vexatious communications may include:
	1. communications that are of an unreasonably high frequency;
	2. communications that repeatedly and deliberately ignore reasonable requests to use a specified complaints, dispute resolution or other related process;
	3. communications that unreasonably divert resources away from other reasonable complaints and school operations;
	4. communications that, for example, owing to their unreasonable frequency or content, are a source of stress for staff members and affect their physical or mental health and wellbeing and work performance; and
	5. communications that intend to cause or have the effect of causing distress or harassment to staff, for example, comments that are offensive or disparaging of a staff member posted on the school’s social media page.
3. The person who has engaged in vexatious communications must also be likely to engage in vexatious communication in the future in order for this ground to be satisfied. A single vexatious communication may not be enough to justify a reasonable belief that the person will continue to engage in vexatious communications (unless, of course, that communication indicates that they will continue to do so).

### CASE STUDY – Vexatious communications

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| Anita is a parent whose child informed her that their teacher spoke to them in an unacceptable way and complains to the principal. The principal investigates the matter and decides that the teacher behaved appropriately and sends a letter to Anita confirming the outcome of the investigation. Anita posts the letter on the school’s Facebook page, posting offensive comments about the teacher and the principal. The offensive posts continue over the next few weeks despite the principal requesting that they stop and causes significant distress for the teacher and the principal. The principal could issue an ongoing order to prevent Anita from further posting offensive comments on social media, as the comments are posted on a school operated social media platform and Anita’s actions have demonstrated that she will continue to engage in vexatious communications in the future despite several requests for her to stop.   |

Vexatious communications ­­- consideration of vulnerability and background

1. An authorised person should be aware that what they consider to be a reasonable or unreasonable communication can be influenced by a range of factors, such as cultural background, limited English proficiency, an intellectual or cognitive disability, a communication or language disability or disorder or mental illness.
2. An authorised person should be aware of vulnerabilities that some parents and/or children may be facing when making ongoing and immediate orders. Please see the section on Relevant vulnerabilities.
3. Although some parents may communicate in a direct or curt manner that may be considered rude or mildly aggressive by school staff, this may be due to the person’s limited English proficiency or be a common way to communicate in their cultural or social group. While this does not excuse unacceptable behaviour, authorised persons should consider whether these factors have influenced the behaviour of a parent or carer when determining whether the communication is vexatious.
4. It is important to distinguish vexatious communications and communications from reasonable and respectful communications from people who bring genuine concerns to the school’s attention about school and community issues that are reasonable under the circumstances. For example, parents or advocates of students with disability may be particularly concerned advocates for the child’s needs and may make regular contact with the school or a member of school staff in relation to the child’s health, safety, wellbeing and educational opportunities.

Communication that is not vexatious

1. Under the Scheme, vexatious communications do not include complaints or other communications, made in relation to a staff member or otherwise, that are reasonable in the circumstances.
2. The following are examples of reasonable communications:
	1. raising reportable allegations, as defined in the *Child Wellbeing and Safety Act 2005*, or any other child safety concerns with:
		1. the relevant school;
		2. the Victorian Registration and Qualification Authority;
		3. the Victorian Institute of Teaching;
		4. the Commission for Children and Young People;
		5. the Victorian Disability Worker Commission;
		6. any other regulator or oversight body;
		7. in the case of government schools, the Department of Education and Training;
	2. reporting potentially criminal conduct to Victoria Police or any other law enforcement body;
	3. reporting to Child Protection, in the Department of Fairness, Families and Housing, by any person who has formed a reasonable belief that a child has suffered or is likely to suffer significant harm because of abuse or neglect, whose parent has not protected or is unlikely to protect the child from harm of that type.

### Disorderly, offensive, intimidating or threatening conduct

1. An authorised person may have grounds to make an ongoing order if a person has behaved and is likely to behave in a disorderly, offensive, intimidating or threatening manner to a member of the school community at a school related place.[[42]](#footnote-43) The following are examples of disorderly, offensive, intimidating or threatening conduct:
	1. **disorderly** conduct may include disrupting a class, staff meeting or other event;
	2. **offensive** conduct may include behaviour that may be perceived as insulting or derogatory;
	3. **intimidating** conduct may include making someone feel fearful, nervous or timid; and
	4. **threatening** conduct may include making a person fear for their safety.
2. Importantly, the Scheme requires that the person has both previously behaved in such a manner and is also likely to do so again before an order can be issued.
3. Under the Act, the grounds for making an ongoing order may be met if a person has behaved and is likely to behave in a disorderly, offensive, intimidating or threatening manner to a member of the school community at a school-related place. A single or isolated instance of such conduct may not be enough to justify a reasonable belief that the person will continue to behave in such a manner, as the authorised person must reasonably believe the person is likely to behave in this way in future.
4. Authorised persons should be aware that their assessment of whether a person’s conduct is ‘disorderly, offensive, intimidating or threatening’ may be influenced by unconscious bias due to the parent’s gender, cultural background, disability, physical attributes or age, and should be mindful to avoid negative stereotyping and discrimination in making assessments of whether grounds for making the order exist. (See the discussion below on the requirement that a person’s vulnerabilities must be considered before subjecting them to an order).
5. The case study below on disorderly, offensive, intimidating or threatening conduct further demonstrates how this ground could be assessed in practice.

### CASE STUDY - Disorderly, offensive, intimidating of threatening conduct

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| During lunch time, a member of the public walks along the footpath that runs along the fence line at the front of the school. He swears at the students present, using foul and inappropriate language. The students report the behaviour to nearby staff, and the police are called. The police arrive and speak to the students. From the information given, police were able to identify the man as a nearby neighbour of the school and interviewed him. The man confirmed that he walked past the school and spoke to the students across the fence but denied using foul language. The police advised the school principal that they do not have enough information to take action against the person. This is the first instance the principal is aware of where the neighbour has used offensive language towards students.Making an ongoing order in this instance may not constitute grounds for issuing an order. While the neighbour may have acted in a disorderly, offensive, intimidating or threatening manner, an authorised person should also be satisfied that the neighbour is likely to behave in this manner again before they can issue an order. If the neighbour continues to use offensive language and impact the wellbeing and safety of the student/s then the authorised person could consider issuing an ongoing order. |

### Causing significant disruption

1. Beyond preventing unacceptable risks of harm to school staff or other members of the school community, the Scheme also aims to mitigate the impact that disruptions to the school or its activities can have on a child’s learning and wellbeing needs.
2. An example of a significant disruption to a school or the activities carried on by it includes where a person refuses to leave a classroom or place where a school activity is taking place or otherwise interferes with a teacher’s ability to instruct a class.

### Interfering with the wellbeing, safety or educational opportunities of students

1. Behaviour from parents or members of the school community can have detrimental impacts on the whole school community, including by infringing upon a child’s right to a safe learning environment. For this reason, the grounds for issuing an ongoing order include where a person poses an unacceptable risk of interfering with the wellbeing, safety or educational opportunities of students.[[43]](#footnote-44) When considering whether there are grounds for making an ongoing order under this ground, it is recommended that authorised persons consider the definition of wellbeing in the Framework for Improving Student Outcomes (FISO 2.0), which is ‘the development of the capabilities necessary to thrive, contribute and respond positively to the challenges and opportunities of life.’[[44]](#footnote-45)
2. An example of behavior that could interfere with the wellbeing, safety or educational opportunities of students includes where physical violence or abuse occurs in the presence of students.
3. The case study below further demonstrates how this ground could be assessed in practice.

### CASE STUDY – interfering with the wellbeing, safety and educational opportunities of students

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| Brad is a separated parent of a secondary school aged student who has approached the school principal requesting that the school assist him to communicate and spend more time with the student. While there are no court orders in place in relation to Brad’s proximity to the student, the principal is aware that there has been an acrimonious separation between the student’s parents. The student has expressed to school wellbeing staff that they do not wish to have any contact with Brad. The student is anxious and uncomfortable about seeing their parent. The principal has formally advised Brad in writing that the school is unable to assist with his request, however, Brad continues to enter school grounds seeking contact with the student. The student is becoming distressed at seeing Brad come onto school grounds. Despite several attempts at asking Brad to not enter school grounds and repeating that the school is unable to assist him to communicate and spend time with the student, Brad continues to ignore the principal’s requests. In this instance, the principal notifies Brad of her intention to make an ongoing order. Based on this information, the principal determines that the grounds for making have been met and an ongoing order is reasonably necessary to address the unacceptable risk of interfering with the wellbeing of the student. The ongoing order is also the least restrictive means of addressing this as the principal previously made several attempts to clearly communicate the schools’ position and to de-escalate Brad’s behaviours. The principal will need to consider any submissions from Brad prior to issuing an order, including any vulnerabilities (for example, if Brad has an intellectual impairment that hindered his understanding of the earlier requests) that may give rise to other less restrictive options or that may inform the types of conditions and exceptions that the order needs to include.  |

## Grounds for making immediate orders

1. This section includes an overview of and additional guidance on the grounds, relevant considerations and other requirements related to making immediate orders. To make an immediate order, an authorised person must reasonably believe that at least one of the following grounds exist with respect to the person who is proposed to be subject to the order:[[45]](#footnote-46)
	1. the person poses an unacceptable and imminent risk of harm either to:
		1. another person (regardless of whether they are a member of the school community) at any premises of the school or an area that is within 25 metres of the boundary of those premises; or
		2. a member of the school community who is at any other place or premises on which there is an activity conducted by or in connection with the school, or an area that is within 25 metres of the boundary of that place or those premises, if the member of the school community is at that place for a reason that is connected with the school; or
	2. the person poses an unacceptable and imminent risk of causing significant disruption to the relevant school or activities carried on by the relevant school; or
	3. the person poses an unacceptable and imminent risk of interfering with the wellbeing, safety or educational opportunities of students enrolled at the relevant school.
2. The case study below on grounds for making immediate orders further demonstrates how assessing the grounds for immediate order can be done in practice.

### CASE STUDY – grounds for making an immediate order

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| Ethan is a parent who arrives at the school and angrily confronts the front office staff demanding to see his child’s teacher. His voice is raised, and his body language is threatening. Staff call for the principal and attempt to de-escalate the situation until the principal arrives. As the principal arrives, he overhears Ethan shout that he is about to punch someone if he does not see his child’s teacher. The principal asks Ethan to calm down, but the behaviour continues. The principal warns Ethan that if he is unable to calm down, he may need to call the police and make an immediate school community safety order. Ethan’s behaviour does not improve, and the principal asks the front office staff to call the police.The principal had warned the parent and gave them an opportunity to calm down. Ethan’s continued threatening behaviour posed an unacceptable and imminent risk of harm to school staff and was causing significant disruption in a school-related place. There exist grounds for the principal to give an oral immediate order to require Ethan to immediately leave school grounds.  |

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## Mandatory considerations when making ongoing and immediate orders

1. Under the Act, when considering whether to issue an ongoing or immediate order, an authorised person must consider:[[46]](#footnote-47)
	1. any vulnerability of the person who may be subject to the order that the authorised person is aware of; and
	2. whether the order would be the least restrictive means available to address the grounds on which the order is proposed to be made.
2. This means that an authorised person must take these matters into account in considering whether to exercise their discretion to make an order and weigh up those matters against other relevant considerations before making their decision.
3. While an authorised person must consider these matters, the weight they place on them will be at the discretion of the authorised person after taking into account all relevant information and the particular circumstances of the matter. For example, an authorised officer may be aware of a vulnerability but determine that it is not relevant to their decision to make an order, or should be given little weight, because it did not contribute to or cause the behaviour that satisfied the relevant ground.
4. If an authorised person fails to take these matters into account, this could lead to an ordered being overturned on internal or external review of the decision.

### Awareness and consideration of vulnerability

1. Before making an order, an authorised person is required to consider any vulnerability of the person who is proposed to be the subject of an order which they are aware of.
2. Awareness of a vulnerability may include, for example:
	1. knowledge based on a disclosure by the person to whom an order may apply or by another person, or official record;
	2. knowledge based on any prior relationships and interactions with the person; and
	3. a reasonable perception that the person has difficulty communicating in English.
3. Authorised person should take positive steps to provide a person to whom an order may apply 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. This can be done when inviting a person to make submissions in relation to the immediate or ongoing order (noting that this may not always be possible when issuing an immediate order due to the seriousness of the situation and the need to act without delay).
4. In considering how a vulnerability should be considered and factored into the decision to make an order, or how a vulnerability may impact the terms or conditions in an order, an authorised person should consider whether it may be appropriate to implement inclusion and access measures in relation to:
	1. identifying whether there are grounds to make an order;
	2. assessing whether the order is the least restrictive means available to respond to the behaviour;
	3. giving notice and allowing submissions, including alternative arrangements for submissions; and
	4. the content and form of an order.

### Relevant vulnerabilities

1. A vulnerability only needs to be taken into account by an authorised person where it is relevant to the decision to issue or not issue an order.
2. A range of vulnerabilities may be relevant for consideration by an authorised person. For example, a vulnerability may have been the cause or contributed to the behaviour that constitutes the grounds for a proposed order or may impact a person’s ability to effectively understand or engage in the process surrounding the issuing of an order such as making submissions, complying with conditions to an order or applying for a review of an order. A person's vulnerabilities may also mean that an order has a disproportional effect on them, operating more harshly than it would on people without that particular vulnerability.
3. Examples of vulnerabilities that an authorised person may be required to consider include:
	1. whether a person is Aboriginal or Torres Strait Islander, and, because of that, has suffered racism, discrimination and systemic disadvantage. Persons who are Aboriginal or Torres Strait Islander may be more likely to have had traumatic interactions with authorities, particularly where government agencies are intervening in their relationship with their children. This may mean that Aboriginal or Torres Strait Islander parents strongly advocate on school related issues that non-Aboriginal parents would not ordinarily regard as being significant, for example, Aboriginal parents may feel more aggrieved by attempted interventions by a school;
	2. whether a person is culturally and/or linguistically diverse, from a migrant or refugee background or seeking asylum, or who have experienced racism. Such persons may have different cultural protocols and understandings about education and the role of school staff. They may also have different understandings about appropriate communication or expression;
	3. whether a person has limited English language ability. Such persons may have difficulty communicating effectively with the school or understanding rules and policies. People experiencing these multiple and complex challenges might be perceived as confrontational when they are simply trying to understand the system and the choices available to them.
	4. whether a person is living with disability. Such persons may present with a different or lowered ability to communicate in a respectful manner than their non-disabled peers. Parents with a disability, particularly cognitive impairments such as poor impulse control, may not always interact with school authorities in a way that would be regarded as reasonable and may have issues with emotional regulation and interpretation. Disabilities that may be relevant to an authorised person’s decision to issue or not issue an order include:
		1. sensory impairment, for example, vision or hearing loss which prevents interaction with others and difficulties in accessing information;
		2. mental illness or emotional disorder, for example, episodes of mental ill health which seriously affect mood, grief and loss reactions, depression, thought disorder and difficulties with complex reasoning;
		3. intellectual, developmental and learning disabilities;
		4. communication or language disability or disorder;
		5. physical disability, for example, problems with mobility and muscle movement;
		6. neurological disorders including those caused by trauma to the head or brain.
	5. whether a person identifies as an LGBTIQ+ person. LGBTIQ+, people may, in certain circumstances, 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;
	6. whether a person has suffered a trauma in the past, including victims of physical or psychological abuse and trauma, torture, rape, slavery, slavery-like practices such as forced labour and forced marriage, human trafficking or other serious forms of psychological, physical or sexual violence. Trauma may be caused by external factors, for example, a family death, natural disasters (including bushfires and floods) or significant changes to family circumstances which may have caused historical and intergenerational trauma;
	7. whether a person is facing serious financial hardship, including people without a home or who are living in crisis or emergency accommodation or who are supported by a housing agency or family services;
	8. whether a person is experiencing family violence or dysfunction;
	9. whether a person suffers from a serious drug or alcohol dependence; and
	10. whether a person is elderly or frail, for example, where their age and condition causes or contributes to memory loss, inability to cope with complex decision-making and sensory and mobility problems which prevent the ability to access and learn new information.

### Least restrictive means

1. As part of the decision-making process, an authorised person must consider whether making an order would be the least restrictive means available to address the grounds on which a proposed order is to be issued.
2. ‘Least restrictive’ means the option that leaves the affected person with the most autonomy while addressing the order’s intended aim to protect an individual or individuals from the behaviour which satisfied the relevant ground or grounds for the proposed order. This must be determined on a case by case basis having regard to the nature of the risk that the order is seeking to mitigate and whether any reasonable and less restrictive alternatives to an order are available to address that risk. .
3. While an authorised person must consider this factor, even if an order is not the least restrictive means available, an order can still be made if it is reasonably necessary to address the grounds on which it is proposed to be made and meets the other grounds for making an order. For example, the only alternatives may already have been tried unsuccessfully, may be impracticable in the circumstances, or may be insufficient to address the extent of the particular risk.
4. Authorised persons are therefore required to consider whether there are alternative actions available that would address the behaviours and risk of harm that constitute the grounds on which the order is proposed to be made. This applies both in relation to the decision to make an order and the terms and conditions to include in the order.
5. In considering whether an order and any terms or conditions to be included in the order are the least restrictive means available, an authorised person is required to consider:
	1. whether there are any other reasonable actions that might be timely, appropriate and effective alternatives to deal with the person’s behaviour and therefore a less restrictive means is available;
	2. if the terms and conditions to be included are the least restrictive available (or whether additional conditions could be included to reduce the restrictions on the person, for example, by permitting them to enter the school for specified events or communicate with the school in specified ways);
	3. if known vulnerabilities influenced the assessment of what is the least restrictive means available;
	4. the potential impact of an order on a child’s wellbeing and educational opportunities, if relevant; and
	5. relevant policies, supports, or advice available to the authorised person and the person at risk of harm.
6. Examples of other less restrictive means and steps that may be taken before making an order include:
	1. sending a letter or email to the person referring to the incident and informing them of the seriousness of the behaviour and the impact on staff, students and the greater school community, while also putting the person on notice that an order may be made if they engage in similar conduct in the future;
	2. directing the person to comply with the school’s statement of values, school charter or policy that sets out behavioural expectations for adult members of the school community, while also putting the person on notice that an order may be made if they engage in similar conduct in the future;
	3. communicating through alternative means, for example, requesting that communications occur only in writing to mitigate verbal aggression;
	4. meeting with the person to resolve the complaint or grievance;
	5. establishing a communication plan between the school and the parent which sets out the excepted method of communication;
	6. seeking advice and support from school administration (i.e. the Department for government schools or Catholic Education Commission Victoria or Independent Schools Victoria for non-government schools) to assist with and receive support in relation to the management of relevant issues;
	7. attempting to resolve a complaint or grievance through the school’s complaints policy or process; and
	8. providing an opportunity to resolve the complaint or grievance through alternative dispute resolution or with a facilitator, mediator or arbitrator.

### Impact on the safety, wellbeing and educational opportunities of children

1. Where relevant, an authorised person in deciding whether to make an order must have regard to the impact of the 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.
2. Such risks may include impacts on the child’s:
	1. continued attendance and engagement at school, including the risk that excluding family and community members from engaging with their children’s education could lead to the disengagement of vulnerable children such as Aboriginal and Torres Strait Islander children, children in out of home care, children with disability and children experiencing family violence.

Further, students with disabilities have a legal entitlement under State and Federal disability discrimination law[[47]](#footnote-48) to make reasonable adjustments to enable them to access, and participate in, their education on the same basis as their peers without disability; or

* 1. mental health and wellbeing due either to the knowledge that their parent is subject to an order, or as a flow on effect of any detrimental impacts on parent health, wellbeing or behaviour; or
	2. physical safety and wellbeing, particularly if there is family violence involved. Making an order may have the potential to exacerbate existing safety risks that a person poses to their family in some circumstances. For example, children might suffer retaliatory or retributive action from the parent who is subject of the order. These risks must be appropriately considered and managed by the authorised person when making an order, for example, reporting concerns to relevant police and child protection and otherwise taking steps to fulfil duty of care obligations to the student.
1. The authorised persons should consider using available tools, such as the Child Information Sharing Scheme, Family Violence Information Sharing Scheme and Multi-Agency Risk Assessment and Management Framework, to obtain information which may be relevant to determining whether issuing an order may present a heightened risk to a child or another person.

### Human Rights Charter obligations for public authorities

1. Under the *Charter of Human Rights and Responsibilities Act 2006,* authorised personswho are also public authorities, including government school staff and staff of the Department of Education and Training, must also consider human rights when making a decision under the Scheme.[[48]](#footnote-49) Advice on considering human rights can be found in the School Community Safety Order Scheme Policy for government schools.

## Requirement that orders are reasonably necessary

1. To make an order, it must be reasonably necessary to address the grounds on which it is proposed to be made. Whether making the order is reasonably necessary is an objective test which involves considering whether a properly informed, reasonable person would agree that the order is necessary.
2. If an order is made where it is not reasonably necessary to address the relevant grounds, making the order will be considered an invalid exercise of power and could form the basis upon which an internal or external review of an order may be conducted. For example, if a parent has been aggressive in person and over the phone with a particular staff member but not through face-to-face communication or via email, an authorised person cannot make an order to prohibit the parent from communicating on all communication platforms with all staff at the school as an order of this nature would not be reasonably necessary to address the grounds on which the order is made.
3. The requirement of reasonable necessity means that orders must be proportionate to the behaviour and the risk of harm seeking to be addressed. In the example above, an appropriate order may, for example, instead have prohibited communications over the phone and in person with the staff member who was subjected to the behaviour but otherwise permit other kinds of communications to continue to occur, such as by email or through communications with other staff.

## Occupational health and safety considerations

1. The OHS Act applies to all Victorian workplaces, including government and non-government schools. Under the OHS Act, employers have a duty, so far as is reasonably practicable, to eliminate risks to health or, where this is not possible, reduce those risks as far as is reasonably practicable.[[49]](#footnote-50)
2. The OHS Act also requires employers to ensure, so far as is reasonably practicable, that persons other than employees of the employer are not exposed to risks to their health or safety arising from the conduct of the undertaking of the employer.[[50]](#footnote-51) As such, OHS obligations imposed on schools extend to students, parents and other non-employee members of the school community.
3. If there are grounds to make an immediate or ongoing order under the Scheme, making the order is one measure that an employer could take to meet their obligations under the OHS Act to reduce or eliminate risks to health. Importantly, however, making an order does not, in and of itself, necessarily acquit persons from their obligations and duties under the OHS Act.

# Procedures for making orders

1. Issuing an order, or reviewing a decision to make an order, is an administrative decision that involves the exercise of a discretion.[[51]](#footnote-52) Under the Scheme, the discretion will essentially involve the decision maker (i.e. the authorised person or the reviewer):
	1. considering whether grounds exist to make an order;
	2. if grounds exist, determining whether the order should be made, considering the circumstances of the specific matter and all relevant considerations and deciding whether making the order is reasonably necessary to address the grounds identified; and
	3. if an order is to be made, considering the terms and conditions of the order as permitted under the Scheme.
2. When considering whether to make an order or reviewing an order that has been made, authorised persons and reviewers must use their discretionary powers in good faith, not unreasonably or irrationally, and for a proper purpose (being one or more of the purposes of the Scheme). Authorised persons and reviewers must not act outside of their powers and, in exercising their powers, must act reasonably and impartially.
3. There are procedures that are required to be followed before and during the making of an order, which are mandated in the Act and explained in further detail in these Guidelines.
4. These Guidelines also set out standard administrative law requirements (in addition to the specific requirements set out in the Act) that must be followed by authorised persons and reviewers (particularly, the requirements to afford procedural fairness and natural justice), as well as recommended guidance to assist authorised persons and reviewers to follow good administrative decision-making practices when making or reviewing an order.

## Procedural fairness

1. The term ‘procedural fairness’ (or ‘natural justice’) generally includes giving a person affected by a decision a right to be heard before the decision is made (the hearing rule) and that the decision maker must act without bias (the rule against bias).

### The hearing rule

1. Under the hearing rule, a person affected by a proposed decision must be given an opportunity to present their case and must be provided with the information or material that is being considered by the decision maker that is adverse or prejudicial to the affected person.
2. The Scheme incorporates the hearing rule as a statutory precondition to issuing ongoing orders by establishing a procedure that is required to be followed before authorised persons may decide to make an ongoing order. In particular, the Act requires that notice be given of a proposal to make an ongoing order before it is made and allows submissions to be made on the proposal (this is also known as a ‘show cause’ process , because the person has an opportunity show why the order should not be made or should be made in a different form).[[52]](#footnote-53) Being a statutory precondition, if the show cause process is not complied with, it is extremely likely that an ongoing order will be invalid.
3. More information on the show cause process required to be undertaken, and other obligations placed on authorised persons, prior to making an ongoing order is set out under the section entitled “Procedure for making ongoing orders” below.
4. The Act does not expressly require a ‘show cause’ process to be undertaken prior to making an immediate order because, due to the imminent nature of the risk that the order is seeking to address, a show cause process would likely inhibit or limit the ability of an authorised person to deal with the behaviour swiftly and adequately.
5. However, where the circumstances permit and it is appropriate and safe to do so, there is still some scope for procedural fairness to be afforded to persons to whom an immediate order is proposed to apply. It is recommended, wherever possible before making an immediate order, an authorised person briefly state certain matters, including:
	1. that they propose to decide to make an immediate order;
	2. a brief explanation of the reasons and grounds on which their proposal to make the order is based; and
	3. that the subject of the proposed order may make a comment as to why the order should not be made.
6. This may not be possible in many (or even most) circumstances where there is an imminent and unacceptable risk that an authorised person is seeking to address by making an immediate order. However, if the opportunity presents itself and if it would not increase the risk of harm to the authorised person, it is best practice to state these matters before formally making the order.
7. More information on the process required to be undertaken, and other obligations placed on authorised persons, prior to making an immediate order is set out under the section entitled “Procedure for making immediate orders” below.

### The rule against bias

1. The rule against bias requires decision makers to make decisions free from actual bias and to not appear (to a reasonable observer) to be biased.
2. This requires the authorised person or reviewer, when making or reviewing an order respectively, to act impartially and not to have an interest in the matter, which means that to the extent possible, they should not have previously been involved in the circumstances resulting in the need to consider whether to make an order (for authorised persons) or the original decision under review (for reviewers).
3. In relation to an ongoing order, the authorised person should not, to the extent possible, be the subject, or potential subject, of the harm or conduct that the order is seeking to address. In relation to an immediate order, there may be some circumstances where the authorised person may be the subject, or potential subject, of the harm or conduct the order is seeking to address, for example, where the authorised person is the only person present or at risk of harm with the power to make an immediate order.
4. See also the ‘Authorised persons’ section of these Guidelines for more information on when an alternative authorised person should be the decision maker in certain instances, including in circumstances to avoid breaching the bias rule.

### Relevant and irrelevant considerations

1. Authorised persons and reviewers as administrative decision makers must consider relevant considerations and disregard irrelevant considerations when deciding whether to exercise their discretion in relation to an order.
2. The considerations relevant to the decision to make an order or review an order include:
	1. whether the grounds for making an order have been met (which involves consideration of the implications and impact of the person’s behaviour on other people, including people who have been harmed or are at risk of harm);
	2. any submissions made by the person to whom an order applies where those submissions contain factors that are relevant to the decision;
	3. other mandatory considerations including:
		1. awareness of any vulnerabilities of the person to whom an order applies or is proposed to apply; and
		2. whether the order is the least restrictive means available to address the grounds on which an order is proposed to be made.
	4. whether (in light of all the circumstances and relevant considerations) it is reasonably necessary to make the order to address the grounds for making the order.
3. The decision may be determined to be invalid if a decision maker fails to:
	1. establish that one or more grounds exist;
	2. consider a relevant consideration; or
	3. establish that the order is reasonably necessary to address the grounds.
4. See the ’Grounds for making an order’ section of these Guidelines for further information on the relevant considerations when deciding on an order.
5. Authorised persons and reviewers must not consider irrelevant considerations when exercising a discretion under the Act. Irrelevant considerations are those that are corrupt, personal, or otherwise unconnected from the grounds relevant to the decision. If a decision maker takes into account an irrelevant consideration, and that consideration was material to the decision, the decision may be determined to be invalid.

## Procedure for making ongoing orders

1. Before making an ongoing order, an authorised person must undertake a show cause process by giving notice of the proposal to make the order to the person to whom the order is to apply.[[53]](#footnote-54) Notice of the proposal to make an order must include a copy of the proposed order and explain that the person to whom the order is proposed to apply to is entitled to make written submissions on the proposal to make the order within 7 days of giving notice.[[54]](#footnote-55)
2. The copy of the proposed order must include all the information required to be included in the final order (if it is made), which is set out in section 2.1A.20(1) of the Act, namely:
	1. the name of the person to whom the proposed order is to apply;[[55]](#footnote-56)
	2. the school in respect of which proposed order is to be made;[[56]](#footnote-57)
	3. the terms of the proposed order, which reflect what the person is prohibited from doing in accordance with section 2.1A.15(1);
	4. the relevant school-related places to which the proposed order is to apply;
	5. the grounds on which the proposed order is to be made, which includes:
		1. the applicable grounds as described in the legislation;[[57]](#footnote-58) and
		2. a plain English description of the behaviour that satisfies the grounds, including dates, times, location the behaviour occurred, and the people involved de-identified, where possible;
	6. the reasons for making the proposed order;
	7. the period for which the proposed order is to be in force;
	8. any conditions that are to be imposed on the proposed order;
	9. any actions that the person to whom the order applies may take to have the proposed order revoked;
	10. that a person must not contravene an ongoing order and that doing so may result in a civil penalty;
	11. that an application may be made to the Magistrates' Court to enforce the ongoing order and that the Magistrates' Court may make orders requiring payment of a civil penalty of up to 60 penalty units, an order compelling the person to comply with the proposed order, an order compelling the person to take specified action to comply with the proposed order or any other order that the Court considers appropriate; and
	12. the effect of the sections regarding the avenues of internal and external review of decisions to make an ongoing order.

**Written submissions**

1. The authorised person must then allow the person at least 7 days (from the date on which the notice of the proposal to make an order is given) to make submissions on the proposed order.[[58]](#footnote-59) Submissions could, for example, be made on why the order should not be made by the authorised person or if it should be made in a different, less restrictive form.
2. Importantly, the authorised person must consider any submissions received from the person before exercising their discretion to make the order.[[59]](#footnote-60) Adhering to the show cause process set out in the Act is necessary for authorised persons to comply with the Act and with the hearing rule.
3. Submissions must be made in writing unless the person has written permission from the authorised person to make oral submissions.[[60]](#footnote-61) The authorised person should accommodate these requests unless there is a good reason not to do so, such as if a parent has been issued with an order because they have been verbally abusive towards staff. Allowing such a person to provide an oral submission may present a risk that the authorised person will be subjected to such verbal abuse.
4. The person to whom the order is to apply may also, with the written permission of the authorised person, nominate another person to make a submission or submissions on their behalf.[[61]](#footnote-62) A written submission can take the form of a letter or email or any other written format.
5. At any time before an order is made, the person to whom the order is proposed to apply may request an extension of time to make submissions and the authorised person may extend the time in response.[[62]](#footnote-63) If an authorised person decides to extend the time, they must give the person written notice of the extension, which is to set out the new time within which submissions must be made.[[63]](#footnote-64) If the proposed ongoing order is being considered as a result of an automatic review of an immediate order, and an extension of time to provide submissions is granted, the written notice of the extension must also set out the date on which the immediate order expires, as determined under sections 2.1A.9(1) and (2) of the Act.[[64]](#footnote-65)
6. It is recommended that, when giving a person written notice of the proposal to make an order and inviting submissions to be made under section 2.1A.21(1) of the Act, the authorised person also informs the person that their submissions may set out any or all the following:
	1. any information pertaining to whether the grounds for issuing an order exists;
	2. their account of the relevant incident, conduct or behaviour, and the circumstances surrounding the incident, conduct or behaviour, including an explanation of why the incident, conduct or behaviour occurred;
	3. any vulnerability they may have that influenced or led to the relevant incident, conduct or behaviour;
	4. how an order would impact upon their ability to care for their child and continue to be engaged in their education, which may be relevant to the terms and conditions of the order;
	5. any less restrictive measure that they wish to be considered instead of the order or a term or condition of the order;
	6. reasons why they will no longer behave in the manner resulting in the order; and
	7. any other relevant factors they wish to be considered.
7. The content of submissions is not limited to these topics, but they may assist the person subject to an order to provide relevant information.
8. In inviting a person subject to an order or proposed to be subject to an order to disclose personal, sensitive or health information, such as information related to a disability or vulnerability, the authorised person should inform them of the following:
9. that disclosure of any vulnerability (relating to the person subject to an order or their child) is optional and not mandatory;
10. that such information will be handled in accordance with any applicable privacy and state record keeping legislation, such as the *Privacy and Data Protection Act 2014* , the *Health Records Act 2001* , the *Privacy Act 1988* (Cth) and the *Public Records Act 1973*;
11. who the information will be provided to and if it will be provided to third parties;
12. the purpose for which this information is proposed to be used, such as to inform the decision of whether to issue, vary or revoke an order; and
13. contact information if the person wishes to have access to, or correct, their information.

### Content and effect of an ongoing order

1. Ongoing orders can prohibit a person from engaging in a wider range of behaviours than immediate orders, which can only prohibit a person from entering, remaining on or being within a range of up to 25 metres of a school premises or being at any place where there is a school activity taking place.
2. An ongoing order may prohibit a person from one or more of the following:
	1. entering or remaining on any school-related place of the relevant school specified in the order;
	2. approaching any staff member, or class of staff members specified in the order to a distance of less than 25 metres, whether within any school-related place of the relevant school specified in the order or causing a third person to engage in this behaviour on the person’s behalf. For example, an ongoing order could prohibit a person from approaching a particular teacher or causing a third person to approach a teacher at any location;
	3. telephoning, sending a message to or otherwise contacting any staff member, or class of staff members, specified in the order; and
	4. using or communicating on a communication platform or channel specified in the order that is owned or controlled by, or established in relation to, the relevant school specified in the order. Examples of school-based platforms include Compass and Sentral, social media platforms such as Facebook and Twitter, messaging platforms such as WhatsApp, school or community media such as newsletters, forums and noticeboards, and other platforms that enable communication or dissemination of information, if they are owned or controlled by, or established in relation to, the relevant school.
3. An authorised person can only make an order if it is reasonably necessary to address the grounds on which the order is proposed to be made.[[65]](#footnote-66) This means that, while ongoing orders can prohibit a person from engaging in a wide range of behaviours, the content and effect of an order must be proportionate to the behaviour the order seeks to address. See 'Grounds for ongoing orders' under the topic 'Grounds and other matters that must be considered before making an order' above.

### Conditions and other matters related to an ongoing order

##### School-related place

1. When making an ongoing order, an authorised person must ensure that the order makes clear which school-related place (or places) of the relevant school it applies to. School-related place is a defined term which means:[[66]](#footnote-67)
	1. any premises of the school, which may include an area that is within 25 metres of the boundary of those premises;
	2. in addition to the school premises, any other place or premises on which there is an activity conducted by or in connection with the school, which may include an area that is within 25 metres of the boundary of that place or those premises.
2. The protections afforded to the school community under the scheme are extended to school-related places beyond school premises where students and school staff are at for the purposes of participating in an activity that has been arranged for or in relation to their school. However, orders cannot be made in relation to behaviour or conduct occurring at other places that are not connected to the school, or to members of the public who are not connected to the school.
3. An activity being conducted ‘in connection with the school’ recognises that not all activities are strictly conducted by the school. For example, a school may engage a third party, such as an outdoor education provider of a camp or a tour operator at a museum, to conduct the relevant activity.
4. Furthermore, while not strictly necessary, orders may limit or regulate the behaviour or conduct of the person subject to the order within up to 25 metres of the school or other places at which school activities are taking place. This is to avoid persons subject to the order circumventing its requirements on the basis that the person is not technically on or at the school or other place to which the order applies.
5. Where an order seeks to regulate behaviour at a school-related place, and the place relates to more than one school (such as an inter-school carnival or a school bus or bus stop that services multiple schools), it is possible that authorised persons from the various schools for which the place is a school related place may want to issue orders in relation to the same behaviour. In these circumstances it is recommended that, if the person proposed to be the subject of the order:
	1. is a parent of a child at one of the schools, an authorised person from that school makes the order; or
	2. is not a parent of a child at one of the schools, the authorised persons from the relevant schools consult each other about the need to make an ongoing order, and which authorised person is best placed to make that decision.

##### Duration

1. Authorised persons must also determine the period for which the order is to remain in force.[[67]](#footnote-68) Importantly, the duration of an order must be determined based on the grounds on which the order is seeking to address and, in any event, may only be in force for a maximum of 12 months.[[68]](#footnote-69) More information on determining an appropriate duration of an order is contained below under the “Duration of ongoing orders” heading. This is particularly relevant to considerations of whether the order (including its terms and conditions) is the least restrictive means available to the decision-maker to address the grounds on which it is made, and to ensure that the order is reasonably necessary to address those grounds.

##### Other conditions

1. Authorised persons may also determine conditions to be attached to the order, including but not limited to times when, or areas where, the order does not apply.[[69]](#footnote-70) The ability to impose conditions gives the authorised person some flexibility to design and tailor the order to meet, and to clarify the operation of the order according to, the circumstances that have led to the making of the order.
2. The Act specifies the following examples of conditions that an authorised person may decide to attach to an ongoing order:[[70]](#footnote-71)
	1. an order may prohibit the person to whom the order applies from entering school premises, subject to a condition that the person may enter the premises in particular circumstances, such as for a particular school event; and
	2. an order may prohibit communication with staff members, subject to a condition that staff members identified in the order may be communicated with.
3. More detailed examples of conditions that authorised persons may decide to impose on an ongoing order include conditions that are:
	1. place-based, for example, an order may be subject to the condition that a person may, or may not, access only specific parts of the school or school-related place;
	2. event-based, for example, an order may be subject to the condition that, despite being prohibited from accessing a school or school-related place, the person the subject of the order may still access those places for the purposes of attending a particular event such as a parent teacher meeting or to watch a school play or sport event that their child is participating in;
	3. time-based, for example, an order may be subject to the condition that it only applies during particular hours;
	4. person(s)-specific, for example, an order may be subject to the condition that, despite being prohibited from communicating with certain members of staff at the school, the person subject to the order may still approach or communicate with certain other staff members;
	5. harm-specific, for example, an order may be subject to the condition that a person may not use offensive or discriminatory language in any communication to staff members; and
	6. communication specific, for example, an order may be subject to the condition that certain specified types of communication are, or are not, appropriate, including verbal, written, electronic and via certain IT or social media systems or platforms.
4. Conditions imposed by authorised person may also specify any reasonable and appropriate actions that the person to whom an order applies may take to have the order revoked.[[71]](#footnote-72) Such actions include participating in a nominated alternative dispute resolution process or assessment by an independent expert or retracting a statement.
5. Conditions must not include positive obligations or requirements on the person the subject of the order to do certain things that would result in a specific penalty if not met, or be considered to be non-compliance with the order, as this would inappropriately give authorised persons the ability to impose additional requirements and rules beyond the scope of what is permitted or intended by the Scheme. Rather, where an order specifies an action that may be taken by the subject of the order (such as making an apology or attending a mediation), it must be expressed to provide an incentive to the person to undertake the action by having the order reviewed or revoked.

### Conditions to ensure ongoing orders are designed to address the behaviour

1. When deciding whether to impose conditions on an order, and what those conditions may be, authorised persons must ensure these are the least restrictive conditions possible to address the grounds of the order, for example, by restricting the scope of an order to the staff members or parts of the school that are likely to be impacted by the harm or disruption that the order is seeking to address.

### Conditions to ensure ongoing orders are appropriate for any known vulnerabilities

1. Where an authorised person has become aware of a vulnerability of the person to whom the order applies, in deciding which conditions to include, they must consider:
	1. the vulnerabilities of the person to whom the order applies, which may, for example:
		1. require a reduction in the prohibited distance of 25 metres[[72]](#footnote-73) if a staff member, or class of staff members are in the vicinity for the purposes of pick-up and drop-off for a person who has physical/intellectual disabilities or a mental health condition or if their child has physical/intellectual disabilities or a mental health condition; or
		2. include that the person can nominate a support person to be present in any communication between the school and the person (for example, by being copied into all email correspondence) to assist a person whose vulnerability affects their ability to understand and comply with the terms and conditions of an order;
	2. the vulnerabilities of any child of the person enrolled at the school to which the order relates, who may be impacted by the conditions; and
	3. any evidence provided by a qualified medical or allied health practitioner or case worker about the impact of an order on the parent or the child.

### Form of ongoing orders

1. The Act requires that an ongoing order be made by giving the person notice in writing of the order.[[73]](#footnote-74) The order takes effect from the time it is given to the person to whom it applies.[[74]](#footnote-75) The written notice must state all the following information:[[75]](#footnote-76)
	1. the name of the person to whom the order applies;[[76]](#footnote-77)
	2. the school in respect of which the order is made;[[77]](#footnote-78)
	3. the terms of the order, which reflect what the person is prohibited from doing in accordance with section 2.1A.15(1);
	4. the relevant school-related places to which the order applies;
	5. the grounds on which the order is made, which includes:
		1. the applicable grounds as described in the legislation; and
		2. a plain English description of the behaviour that satisfies the grounds, including dates, times, location the behaviour occurred, and the people involved (de-identified) wherever possible);
	6. the period for which the order is in force;
	7. any conditions that are attached to the order;
	8. any actions that the person to whom the order applies may take to have the order reviewed or revoked;
	9. that contravention of the order can result in enforcement action at the Magistrate's Court and may result in a civil penalty or other court orders;
	10. the Magistrate’s Court may make orders requiring payment of a civil penalty of up to 60 penalty units, an order compelling the person to comply with the order, an order compelling the person to take specified action to comply with the order or any other order that the Court considers appropriate;
	11. reasons, including reasons that address any submissions made by or on behalf of the person the subject of the order; and
	12. the internal and external review avenues of decisions to make an ongoing order, including that they have the right to apply for an internal review of the decision and make written submissions and to request to make oral submissions and have an advocate or translator present.
2. These Guidelines recommend that, where possible, authorised persons avoid the use of names or identifying features of persons (other than the person to whom the order applies) when describing behaviours or incidents involving others, unless this information is critical to the person to whom the order applies understanding the alleged grounds, or where the identify of that person in that context would already be known (for example, where the conduct relates to assaulting a particular teacher or sending threatening communications to particular staff members). An authorised person should instead only describe the factual scenario that satisfied the grounds on which the order is proposed to be made, for example the number of staff, students, parents or others present and impacted. A person may be named if the order specifically seeks to protect that person (for example, by prohibiting contact or communication with that person) or where the order contains conditions that apply specifically in relation to that person.

### Duration of ongoing orders

1. Unless revoked earlier, an ongoing order continues in force for the period specified in the order, up to a maximum of 12 months from the day on which the order was given to the person to whom it applies.[[78]](#footnote-79) However, as an order must be reasonably necessary to address the grounds on which it is made, it’s duration should not be longer than necessary. The authorised person is therefore required to determine an appropriate and proportionate length of time during which the order is to be in force.
2. The appropriate duration of an order must be assessed by reference to the risk posed by the behaviours and the circumstances surrounding the behaviours, having regard to the requirement that an order be the least restrictive means available and reasonably necessary to address the behaviour that led to the order being made. This may include considering:
3. whether there is a risk that the behaviour will occur again, and how long this risk may persist for; and
4. whether the circumstances that gave rise to the behaviour will change in the future.
5. whether the proposed duration may be sufficient to deter the person from engaging in similar conduct again in the future.
6. An order should be in place for the shortest possible duration to address the grounds of the order.
7. An ongoing order of 12 months’ duration is unlikely to be appropriate for most situations, unless there is a demonstrated long-term pattern of behaviour that gives rise to the grounds for an order. For example, if an order is made halfway through a school year in relation to only one teacher who does not teach the next year level, it would not be appropriate to make an order for 12 months.

**EXAMPLES – scenarios for differing durations of ongoing orders**

* **Example 1:** Over a period of 6 months a parent has been sending abusive emails and making offensive phone calls to the school. The school has attempted various strategies for managing the communication. This behaviour has now escalated and there have been two occasions when the parent has behaved in a threatening way towards staff on school grounds. A 12-month order could be considered. Relevant factors in the decision on duration will include the length of time over which the behaviour has occurred, the failed attempts by the school at de-escalation, the lack of any factors indicating a change may occur in the parent's behaviour, and the increasing risk of harm indicated by the increasingly threatening behaviour.
* **Example 2:** A parent has been abusive and threatening towards the school’s assistant principal over the phone for several months. The parent’s child is due to finish with the school in 6 months’ time. A 6-month SCSO preventing contact with the assistant principal may be appropriate, as this duration reflects the likely period during which the risk may persist.
* **Example 3:** A parent has arrived on school grounds and has begun yelling and swearing at the school principal and other staff member in the school reception area. This is the first time the parent has behaved in this manner. If it is determined that the conduct is sufficiently serious to justify an ongoing order as a proportionate response, considering the mandatory considerations regarding vulnerability and least restrictive means, and considering the likelihood that the behaviour may occur again, then a period of one month may be an appropriate duration for the order.

## Procedure for making immediate orders

1. An immediate order may be made either orally or by written notice given to the person to whom it applies.[[79]](#footnote-80) Immediate orders may be made orally because they are intended to deal with situations where there is an imminent risk of harm and swift action is needed to de-escalate a situation by removing the person from the school grounds.
2. If an authorised person makes an immediate order orally, they must give written notice to the person to whom it applies as soon as practicable after making the oral order.[[80]](#footnote-81) Written notice includes notice that is personally handed to the person to whom it applies or sent to the postal or email address of that person.[[81]](#footnote-82) This better ensures that the person the subject of the order is aware that they are subject to an immediate order, the effect and duration of the order and next steps in relation to the order (i.e. the automatic review of the immediate order and consideration by the authorised person of whether to make an ongoing order). More information on service and serving and order is contained below in “Service of written notice of an order”.
3. When considering whether to make an immediate order verbally or by written notice, an authorised person may need to implement inclusion and access measures, see “Inclusion and access measures” for more information.
4. If the authorised person is not able to follow up to give written notice to the person to whom an immediate order has been made orally, for example, because the person is unknown to the authorised person and refused to provide their name or contact details, the authorised person must keep a written record of:[[82]](#footnote-83)
5. the order that was made; and
6. the reason a written notice was not able to be given to the person to whom it applies; and
7. a description of the person to whom the order applies.
8. An immediate order takes effect from the time it is given to the person to whom it applies and is in effect for a maximum of 14 days.[[83]](#footnote-84) The reason for the 14 day maximum is because the Scheme requires the authorised person to consider, within that period, whether grounds exist to make an ongoing order and undertake the procedure, including the show cause process, required in the Act before an ongoing order is made. More information on the appropriate duration of an immediate order is contained below under “Duration of immediate orders”.
9. A person to whom an immediate order applies may make submissions to the authorised person at any time regarding the continuation of the immediate order.[[84]](#footnote-85)
10. If an authorised person has made an immediate order, the authorised person must, as soon as is practicable but no later than 14 days after an immediate order has been made, review the immediate order and consider whether grounds for an ongoing order exist. Where grounds do not exist, the immediate order must be revoked.[[85]](#footnote-86) When reviewing an immediate order the authorised person must consider any submissions made by the person to whom an order applies.[[86]](#footnote-87)
11. These Guidelines recommend that when informing a person who is the subject of an order that they have the option to provide submissions, the authorised person informs them that the submissions may set out any or all the following:
	1. provide their account of the incident and explain why the behaviour occurred;
	2. any vulnerability they may have that influenced their behaviour;
	3. any vulnerability that is relevant to understanding and complying with the order, including the terms and conditions of the order, and engaging with the process for reviewing the immediate order and the need to request support;
	4. how an order would impact upon their ability to care for their child and be engaged in their education;
	5. any less restrictive measure that they wish to be considered instead of the order;
	6. reasons why they will no longer behave in the manner resulting in the order; and
	7. any other factors they wish to be considered.
12. The content of submissions is not limited to these topics, but they may assist the person subject to an order to provide relevant information.

### Speaking points for issuing an immediate order verbally

1. Where an immediate order is made verbally, in appropriate circumstances and where it will not result in an escalation of the situation, it is recommended that authorised persons notify the person to whom the order is to apply:
2. that an immediate order is now being made;
3. that the order means that the person is prohibited from entering and remaining on the school or school-related place to which the order applies;
4. how long they have to remove themselves from the school or school related place, which should be a reasonable amount of time in the circumstances;
5. that written notice will be provided to them as soon as practicable;
6. that they have the right to make written submission within 14 days in relation to the order and to request to make oral submissions and have an advocate or translator present; and
7. what the duration of the immediate order is, within the maximum 14-day duration.

### Verbal notice of proposal to make an immediate order where possible

1. Although there is no requirement to give notice of a proposal to make an immediate order, where it is reasonable and safe to do so, it is recommended that, before making an immediate order, an authorised person still attempts to provide the person proposed to be subject to the order an opportunity to be heard as to why the order should not be made (i.e. to provide the person with natural justice). This may not be appropriate or practical in all circumstances, for example, where it may further escalate the situation, in which case the authorised person may decide to proceed to issue the order immediately. If it is appropriate and the circumstances permit, natural justice may be afforded to the individual by the authorised person doing one or more of the following:
2. briefly stating that they propose to make an immediate order;
3. stating the grounds on which they are proposing to make the order;
4. asking if the subject of the proposed order wants to make a comment including whether they wish to disclose any information regarding the reasons for their behaviour including any vulnerabilities that should be considered in assessing the impact of an order on them;
5. seeking confirmation that the person understands what they are being told;
6. considering any readily available access and inclusion measures if the person does not, or does not appear to, understand what they are being told, for example, using a support person or professionally trained interpreter;[[87]](#footnote-88) and
7. considering any comments before determining whether to proceed to issue the order.
8. Examples of when it will not be reasonable or safe to give a person verbal notice of a proposal to make an immediate order include the following:
9. where the potential harm is judged to be so imminent that there is no opportunity to provide notice; and
10. where it may escalate the situation causing safety concerns.

### Content and effect of an immediate order

1. Unlike an ongoing order, an immediate order is limited to prohibiting a person from entering or remaining on any school-related place of the relevant school specified in the order.[[88]](#footnote-89)
2. If an authorised person wishes to make an order prohibiting other behaviour, they must consider whether there are any grounds to make an ongoing order.

### Conditions and other matters for immediate orders

1. When making an immediate order, an authorised person:[[89]](#footnote-90)
2. must determine the school-related places of the relevant school to which the order applies (see “Conditions and other matters related to an ongoing order” for the definition of a school-related place);
3. must determine the period for which the order is to remain in force, which is subject to any provisions of Part 2.1A of the Act as to the duration, revocation or expiry of interim orders; and
4. may determine conditions to be attached to the order, including but not limited to times when the order does not apply or areas where the order does not apply. For example, an immediate order may prohibit a person from entering on school premises, subject to a condition that the person may enter in particular circumstances, such as for a particular school event.
5. The ability to impose conditions on an immediate order is particularly relevant to considerations of whether the order (including its conditions) is the least restrictive means available to the decision-maker to address the grounds on which it is made, and to ensure that the order is reasonably necessary to address those grounds.
6. Conditions may also specify any reasonable and appropriate actions that the person to whom an order applies may take to have the order revoked.
7. These actions must not include positive obligations or requirements on the person the subject of the order to do certain things (such as making an apology or attending a mediation) that would result in a specific penalty if not met, or be considered to be non-compliance with the order, as this would inappropriately give authorised persons the ability to impose additional requirements and rules beyond the scope of what is permitted or intended by the Scheme. Rather, where an order specifies an action that may be taken by the subject of the order, it must be expressed to provide an incentive to the person to undertake the action by having the order reviewed or revoked.

### Conditions to ensure immediate orders are appropriate for any known vulnerabilities

1. Where an authorised person has become aware of a vulnerability of the person to whom the order applies, in deciding which conditions to include, they must consider:
	1. the vulnerabilities of the person to whom the order applies, which may, for example, require a reduction in the prohibited distance of 25 metres of a school related place if a staff member, or class of staff members are in the vicinity for the purposes of pick-up and drop-off for a person who has physical/intellectual disabilities or a mental health condition or if their child has physical/intellectual disabilities or a mental health condition;
	2. the vulnerabilities of any child of the person enrolled at the school to which the order relates, who may be impacted by the conditions; and
	3. any evidence provided by a qualified medical or allied health practitioner or case worker about the impact of an order on the parent or the child.

### Form of immediate orders

1. An immediate order may be made either orally or by written notice given to the person to whom the order applies.[[90]](#footnote-91) If a written notice of an immediate order is given, it must state the following information:[[91]](#footnote-92)
2. the name of the person to whom the order applies;[[92]](#footnote-93)
3. the school in respect of which the order is made;[[93]](#footnote-94)
4. the terms of the order, including that the person is prohibited from entering or remaining on any school-related place of the relevant school specified in the order;
5. the school-related places of the relevant school to which the order applies;
6. the grounds on which the order is made, which includes:
	* 1. the applicable grounds as described in the legislation; and
		2. a plain English description of the behaviour that satisfies the grounds, including dates, times, location the behaviour occurred, and the people involved (de-identified) wherever possible);
7. the period for which the order remains in force;
8. any conditions attached to the order;
9. any actions that are specified that the person to whom the order applies may take to have the order revoked;
10. that contravention of an immediate order can result in enforcement action at the Magistrate's Court and may result in a civil penalty or other court orders;
11. that the Magistrate’s Court may make orders requiring payment of a civil penalty up to 60 penalty units, an order compelling the person to comply with the order, an order compelling the person to take specified action to comply with the order or any other order that the Court considers appropriate;
12. that the authorised person must review the order within 14 days and decide whether to revoke the order or issue an ongoing order; and
13. that they have the right to make written submissions and to request to make oral submissions and have an advocate or translator present.
14. These Guidelines recommend that authorised persons avoid the use of names or identifying features of persons (other than the person to whom the order applies) when describing behaviours or incidents involving others, unless this information is critical to the person to whom the order applies understanding the alleged grounds, or where the identify of that person in that context would already be known (for example, where the conduct relates to assaulting a particular teacher or sending threatening communications to particular staff members). An authorised person should instead only describe the factual scenario that satisfied the grounds on which the order is proposed to be made, for example, the number and nature of staff, students, parents or others present and impacted. This does not prevent a person being named if there are conditions that apply specifically in relation to that person.

### Duration of immediate orders

1. Since authorised persons are not required to undertake a lengthy and detailed show cause process before making an immediate order, the Act limits their duration to a maximum of 14 days. An immediate order continues in force until the earlier of:[[94]](#footnote-95)
2. the end of the period specified in the order;
3. 14 days after the day on which the order is made;
4. because of a review under section 2.1A.12 of the Act:
	1. the coming into force of an ongoing order;
	2. the revocation of the immediate order.
5. If an application for an extension of time to make a submission under section 2.1A.22 of the Act is approved, any time taken by the applicant within the extension of time to make submissions is not counted towards the period specified in the order or the 14 days after the day on which the order is made.[[95]](#footnote-96)

## Submissions from persons who are the subject of an order

1. The Act allows for persons to whom an ongoing order is proposed to apply to request to make submissions orally (rather than in writing).[[96]](#footnote-97) Similarly, a person who is subject to an immediate order may request to make submissions orally (rather than in writing) to the authorised person who is reviewing the immediate order and considering whether to make an ongoing order.[[97]](#footnote-98)
2. A request to an authorised person to allow a person the subject of an order to provide submissions orally must not be unreasonably refused. An authorised person should accommodate a request where there is no good reason to not permit written submissions.
3. In determining what is a reasonable basis to accept or refuse a request to provide submissions orally, authorised persons must consider human rights and any known vulnerabilities. For example, where a person is linguistically diverse and wishes to use an interpreter to communicate, has low literacy or has a disability that poses challenges for communicating in a written format.
4. A request to provide submissions orally may be reasonably refused where it would compromise the safety of the person receiving the oral submission or it is reasonably believed that it will escalate the situation.
5. An authorised person must not unreasonably refuse a request from the subject of an order to nominate another person to make a submission on their behalf. In determining what is a reasonable basis to accept or refuse such a request, the same considerations that apply to a request to provide submissions orally should be considered.

## Service of written notice of an order

1. This guidance applies to the service of written notices of both ongoing orders and immediate orders. Under the Act written notice is given to the person to whom an order applies if the notice is personally handed to the person or sent to the postal or email address of the person.[[98]](#footnote-99)
2. Authorised persons can arrange for and rely on other persons to send or hand the notice to the person to whom the order applies, without invalidating the order.
3. Where possible, these Guidelines recommend that an authorised person give notice both electronically by email as well as by registered post, to allow for a person from a linguistically diverse background to translate the material using online translation software, or to allow a person who is blind or has low vision to use a screen reader to understand the information.
4. It may not be possible to send written notice to the person by post or email, for example, where the person may not have a postal address or access to a device to access emails. In these circumstances the authorised person should ensure that the order is personally hand the notice to the person to whom the order applies.
5. For immediate orders, if it is not possible for the written notice to be either personally handed to the person to whom the order applies or sent to the postal or email address of the person, the authorised person must keep a written record of the following:[[99]](#footnote-100)
6. the order that was made;
7. the reason a written notice was not able to be given to the person to whom the order applies; and
8. a description of the person to whom the order applies.
9. When preparing written notice of orders, it is recommended that an authorised person use plain English and avoid using language that is overly complex or jargonistic. A good level to aim for is Grade 8 readability on the [Hemingway Editor](https://hemingwayapp.com/).[[100]](#footnote-101) This will ensure that people with low literacy or otherwise who do not have an advanced understanding of English can understand the terms of the order, helping to avert situations where they inadvertently breach those terms.
10. The department has made available a number of templates, including for an ongoing order and an immediate order. An authorised person may wish to use such templates to assist with issuing an order.

## Inclusion and access measures

1. When providing written or verbal notice of an order, an authorised person may need to consider whether any inclusion and access arrangements are necessary, such as:
	1. ensuring that alternative arrangements are made so that people with low literacy or from linguistically diverse backgrounds understand the effect of an order and how it applies to them. For example, advising the person subject to an order who is deaf or hard of hearing that they can provide submissions via video where the school will use an accredited Auslan interpreter to translate;
	2. allowing the person subject to an order more time to make a submission or a request for a review if their vulnerability impacts on timeliness.
2. There may be circumstances where it is apparent that the person does not understand what they are being told, but it is not possible to implement inclusion and access measures at that time. In such circumstances, the authorised person should identify adjustments at subsequent points, for example providing a translated or plain English version of an order.

## Communication and access arrangements

1. The Scheme requires communication and access protocols to be established where an immediate and ongoing order has been made to a parent of a child at the relevant school to minimise the impact on parents’ involvement in their child’s education as well as on the child’s ability to access school. For this reason, the scheme imposes additional requirements on authorised persons where an order is made about a person who is a parent of a student at the school.
2. If an immediate or ongoing order is made in respect of a person who is a parent of a child at the school, the authorised person must prepare a communication and access protocol as soon as is reasonably practicable following the issuing of an order.[[101]](#footnote-102) The protocol must set out:
	1. the measures to be taken to ensure that the parent may continue to communicate with the school and be informed about the child's education.

For example, exploring alternative meeting arrangements for parent teacher interviews like video conferencing, asking a family member of the student to attend meetings, replacing the staff member(s) affected by the parent’s behaviour with another staff member or if this is not possible, limiting the parent’s interactions to receiving and giving updates on the student’s progress via email; and

* 1. arrangements to ensure the child’s continued attendance at and safe access to the school and school activities, if because of the order the parent cannot escort the child to or from the school or school activities.

For example, access to school drop off and pick up services and any available subsidies, and notifying the parent of unexplained absences, as soon as practicable on the same day of the absence; and

* 1. processes that ensure that mental health and wellbeing support are considered and in place for the student.
1. "Parent” has the same meaning as in the Act.[[102]](#footnote-103)
2. The authorised person must advise the parent of the communication and access protocol as soon as reasonably practicable after the order is given to the parent.[[103]](#footnote-104)

**Example 1: Measures to ensure parents continued engagement in child’s education**

1. Tanya has been issued with an Immediate Order that states she is not to be on school grounds or within 25 metres of the school for the next 14 days unless there is an emergency involving her child. There is a parent teacher meeting coming up within this period where Tanya wishes to be kept informed of her child’s progress. Tanya makes a submission to the principal requesting that she be able to attend the meeting.
2. The principal can vary the Immediate Order as the parent has the right to be involved in their child’s education. Depending on the reason the Immediate Order was issued, the principal can vary the communication and access protocol by either making an exception and allow Tanya to attend the parent teacher meeting onsite or they can set up online appointments for Tanya and her child’s teachers.

**Example 2: Arrangements to ensure the child's continued attendance at and safe access to the school and school activities**

1. Josh is the guardian of a primary-aged student who requires the use of a wheelchair. Josh has been issued with an Ongoing Order due to his repeated aggressive and threatening behaviours made to school staff. The Ongoing Order prohibits Josh from being on school related premises, which does not impede the student’s safe access to school grounds as they travel to and from school on the bus service subsidised by the school. However, the student is taking part in the school’s swimming carnival and will need Josh to transport them.
2. The principal can vary the Ongoing Order to allow an exception for the swimming carnival so that Josh can provide the student with safe access to and from the event.

# Variation to and revocation of orders

## Variation to ongoing orders

1. An authorised person who made an ongoing order may vary the order, either on their own motion or on request of the person to whom the ongoing order applies.[[104]](#footnote-105) A variation to an ongoing order may:[[105]](#footnote-106)
	1. vary or revoke existing conditions on or exceptions to the order;
	2. impose new conditions on the order;
	3. provide for new exceptions to the order.
2. Variations cannot be made to immediate orders as those orders are limited in their scope and operation. Immediate orders may, however, be revoked (see the section entitled “Revocation of immediate orders” below for more detail on revoking an immediate order). Immediate orders may also be replaced with an ongoing order, where the Act's requirements for making an ongoing order are met.
3. In addition to the matters set out in section 2.1A.26(2) of the Act, authorised persons may also vary an ongoing order in the following circumstances:
	1. to make an ongoing order more practicable or workable, for example, where an ongoing order prohibits a parent from entering school grounds and an area within 25 metres of school grounds, however, the only safe and appropriate location for dropping off and picking up their child is within 25 metres from the school entrance, an authorised person may vary the order to enable the parent to be able to safely drop off and pick up their child;
	2. to tailor or nuance an ongoing order to better meet the needs of a student, parent or school, without undermining safety, for example:
4. where a parent requests the inclusion of an exception to an ongoing order so that they may attend a school performance or awards ceremony, and this can be done safely;
5. where additional vulnerabilities of or impacts on the person subject to the order are made known to the authorised person; and
6. where the duration of an order needs to be lengthened or shortened in appropriate circumstances, but cannot exceed 12 months.
	1. to expand the operation of the order to better protect school staff or students, for example, where the subject of an order engages in additional harmful, threatening behaviours towards other school staff members, or on other communication channels that are not captured by the order;
	2. in response to positive actions or improvements to behaviours, for example, where the subject of an ongoing order completes or partially completes the actions specified in the order, or otherwise acknowledges their past conduct and takes steps to improve their behaviours and relationships with school staff, an authorised person may vary the order to make it less restrictive or revoke the order entirely (see the section entitled “Revocation of ongoing orders” below for more detail on when it may be appropriate to revoke an order).

### Procedure for varying ongoing orders

1. If an authorised person varies an ongoing order in a way that disadvantages or is unfavourable to the person to whom the order applies (for example, the variation imposes additional restrictions or prohibitions on the person such as not entering an additional school related place which, or approaching an additional staff member who, has not been included in the order), or declines a request by the subject of an ongoing order to vary the order, the authorised person must comply with the requirements and processes that apply to the making of an ongoing order under sections 2.1A.15 to 2.1A.24 of the Act.[[106]](#footnote-107) In particular:
2. a variation may only be made if the authorised person continues to reasonably believe that a ground or grounds under section 2.1A.17(1) of the Act are met (see the ’Grounds and other matters that must be considered before making an order’ chapter of these Guidelines for more information on the grounds for making an ongoing order);
3. a variation to change the type of behaviour that the order seeks to prohibit must still be consistent with one or more of the prohibitions listed under section 2.1A.15(1) of the Act (see the ‘Procedures for making orders’ chapter of these Guidelines for more information on the types of prohibitions that may be included in an ongoing order);
4. the authorised person must consider the mandatory considerations as required by the Act, including any known vulnerability of the person and whether the order, as varied, is the least restrictive means available to address the grounds on which the variation is proposed to be made;[[107]](#footnote-108)
5. the authorised person must not vary an ongoing order unless they are satisfied that the order, as varied, continues to be reasonably necessary to address the ground or grounds on which the order continues to be based on;[[108]](#footnote-109)
6. the authorised person must comply with the rules of procedural fairness and natural justice, including the bias rule and hearing rule, and taking into account all relevant considerations and disregarding irrelevant considerations, as set out in the ‘Procedures for making orders’ chapter of these Guidelines), for example, any positive action that a person to whom an order applies has undertaken to address the behaviour that led to an order would usually be a relevant consideration and an authorised person must take this into account when making a decision on whether to vary an order (e.g. to relax the restrictions or prohibitions in the order);
7. the authorised person must not vary an ongoing order unless the authorised person has complied with the procedure, including the show cause process, set out in section 2.1A.21 of the Act, which requires the authorised person to (see the “Procedures for making orders” chapter of these Guidelines for more information on the procedure and show cause process for making ongoing orders):[[109]](#footnote-110)
	1. give notice of the proposal to vary the order to the person to whom the order applies;
	2. allow the person at least 7 days from the notice in which to make submissions on the proposal to vary the order; and
	3. consider any submissions received prior to deciding whether to vary the order.
8. an authorised person may extend the time within which submissions may be made, on application by the person to whom the order applies (see the “Procedures for making orders” chapter of these Guidelines for more information on when it would be appropriate to provide a person more time to make submissions);[[110]](#footnote-111)
9. in making a variation to an ongoing order, the authorised person must determine and specify in the varied order (see the “Procedures for making orders” chapter of these Guidelines for more information on what must be included and specified in ongoing orders):
	1. the school-related places of the relevant school to which the order, as varied, applies;
	2. the period for which the order, as varied, is to remain in force; and
	3. the conditions or exceptions attached to the order as varied; and[[111]](#footnote-112)
	4. any reasonable and appropriate actions that the person to whom the order, as varied, applies may take to have the order revoked.[[112]](#footnote-113)
10. the variation must be made by giving a written copy of the order, as varied, to the person to whom the order applies (see the “Procedures for making orders” chapter of these Guidelines for more information on the requirements to give notice of, or serve, an ongoing order to or on a person);[[113]](#footnote-114)
11. the variation comes into effect when the order, as varied, is given to the person to whom the order applies;[[114]](#footnote-115)
12. the form of the ongoing order, as varied, must comply with the requirements under section 2.1A.20(1) of the Act (see the “Procedures for making orders” chapter of these Guidelines for more information on the form and content of ongoing orders); and
13. if the ongoing order that is varied applies to a person who is a parent of a student enrolled at the school, the authorised person must prepare a communication and access protocol, as required under section 2.1A.23 of the Act, and advise the parent of the communication and access protocol as soon as is reasonably practicable after the variation is given to the parent (see the “Procedures for making orders” chapter of these Guidelines for more information on the circumstances in which a communication and access protocol is required and the content of those protocols).[[115]](#footnote-116)
14. If an authorised person proposed to vary an ongoing order as requested by the person to whom the order applies, or in a way that favours the subject of the order, the authorised person does not to need follow the steps required to be taken when initially making an ongoing order, however, a written copy of the order as varied must still be given to the person to whom the order applies.[[116]](#footnote-117)
15. A variation will be in favour of the subject of the order if it removes some of the restrictions in the order, for example, if the order as varied no longer prohibits the person from sending emails to a certain staff member but continues the prohibition on contacting the staff member by telephone.

### Variations that must not be made

1. Certain variations will not be appropriate as they are not permitted by the Act. In these circumstances, a new ongoing order may need to be made (in which case the “Grounds for making an order” and “Procedures for making an order” chapters of these Guidelines should be followed).
2. The following types of variations to ongoing orders are not permitted by the Scheme:
3. **Variation to reflect change of enrolment:** ongoing orders must not prospectively cover any school that a parent might enrol their child into. If a parent subject to an ongoing order withdraws their child from the school to which the ongoing order applies and re-enrols the child in a different school, the ongoing order cannot be amended to name that new school as covered by the ongoing order. If the behaviours of concern continue at a new school and satisfy the grounds for making an order under the Scheme, an authorised person at that new school will need to make an order tailored to that school and the new circumstances, in line with the requirements of the Scheme and Guidelines.
4. **Variation to add names of other people to whom the order applies**: each ongoing order may only apply to one person. An order must not be varied to apply to other persons, even if those persons may be from the same family or involved with the conduct or behaviour that led to the making of the order.
5. **Variations to the duration of an ongoing order beyond 12 months**: an ongoing order cannot have the length of its duration extended beyond 12 months, which is the maximum length of time an order can be in force.[[117]](#footnote-118) If an ongoing order is needed for a longer period than 12 months, then a fresh order must be made in accordance with the process set out in the Act and Guidelines, including a fresh assessment of whether grounds continue to exist.
6. **Variation to** **correct inaccurate or erroneous information in the order**, for example, incorrect names or dates. If an ongoing order is based on erroneous or incorrect information, it must be revoked. An authorised officer may decide to make a fresh order in accordance with the process set out in the Act and Guidelines, including a fresh assessment of whether grounds continue to exist.
7. Furthermore, if the authorised person who made the ongoing order is not available to vary an order, another authorised officer is not able to do so in their place. Instead, where there are good reasons to consider a variation to an ongoing order, schools should consider asking another authorised person to agree to considering whether the order should be revoked and replaced with more appropriate terms and conditions.

## Revocation of ongoing orders

1. An authorised person can revoke an ongoing order, at any time, if the person the subject of the order undertakes any actions to address their behaviour, as specified in the order, or for any other reason that is acceptable to the authorised person in the circumstances.[[118]](#footnote-119) The revocation of an order must be communicated to the person subjected to the order either verbally or in writing.
2. If an order is revoked, it is no longer in force and the person to whom the order applied is no longer required to comply with it.
3. Examples of when an ongoing order may be revoked include:
4. where the person who is subject to the order has undertaken any actions specified in the order to address their behaviour (please see the section below on “Actions that may be undertaken to have an order revoked” for more detail on the types of actions an order may specify, which if undertaken, may lead to an order being revoked);
5. where the person who is subject to the order has complied with the order, demonstrated that they understand the consequences of their previous conduct and have taken steps to ensure that that conduct will not be repeated in the future; and
6. where the person who is subject to the order no longer has reason or cause to interact with the staff member or members subject to the past inappropriate conduct, for example, if the staff member changes role or moves to a new school, or if the order is made halfway through a school year and continues across into the new school year and the conduct does not continue with their child’s new teacher or teachers.

### Revocation linked to actions specified in the order

1. An order may include actions that, if met, can give rise to the revocation of the order, such as:[[119]](#footnote-120)
	1. participating in a specified course, such as a respectful behaviour course;
	2. making an apology or retracting a statement;
	3. participating in an alternative dispute resolution process, such as mediation, where an agreed outcome is achieved between the school and the parent; or
	4. abstaining from the behaviour that constituted grounds for issuing the order for a specified period.
2. Orders should only specify types of actions or undertakings that specifically relate to the person’s interaction with the relevant school.
3. That is, any actions specified in the order must be ‘reasonably necessary’ to address the behaviours that constituted the ground or grounds for issuing the order. An action, for example, the participation in a process or course, must not be unduly onerous, intrusive or unrelated to the behaviour that caused the order to be issued. Rather, the actions that an order may specify must be limited to steps related to the person’s interaction with the school. Onerous conditions can create accessibility and affordability issues. If a person subject to the order feels that a specified action is unduly onerous or intrusive, they will be able to seek internal review of the order and make submissions as to why this is the case.
4. Where a person to whom an order applies has undertaken an action specified in the order to address the behaviour that led to the order being made, the authorised person is not necessarily bound to revoke the order. Rather, the authorised person should take that action into account as a relevant consideration and give it significant weight when considering whether to revoke or vary the order as a result. There would need to be very strong and persuasive reasons to continue the order in place in circumstances where the person has proved that they have taken any reasonable and appropriate actions specified in the order. Please see the section below on “Actions that may be undertaken to have an order revoked” for more detail on the types of actions an order may specify, which if undertaken, may lead to an order being revoked.
5. If the person the subject of an order does not meet a condition included in the order, including one linked to revocation, this cannot result in a penalty or consequence other than the order continuing to be enforced.

# Reviews of orders

1. A person who is subject to an ongoing order may apply for an internal review of the decision to make the order if they are unhappy with the decision. Similarly, a person may apply for an internal review of a decision to vary, or not vary, an ongoing order if they are unhappy with that decision. Internal reviews under the Scheme are required to be conducted and finalised quickly and are done at no cost to the applicant. Timeframes will be managed on a case-by-case basis and further guidance is provided below under the section titled “Timeframe to complete an internal review”.
2. If a person who is subject to an ongoing order is unhappy with the outcome of an internal review, they may seek an external review of the review decision at the Victorian Civil and Administrative Tribunal (VCAT). This may involve paying an application fee to VCAT.[[120]](#footnote-121)
3. Immediate orders are not subject to the same internal and external review processes as ongoing orders. Instead, the authorised person who made an immediate order must immediately review the order to consider if there are grounds to issue an ongoing order and, if there are none, revoke the order.
4. Under the definition of “reviewer” in section 2.1A.1 of the Act, a reviewer, in relation to an ongoing school community safety order, means:

(a) the Secretary, if the order relates to a government school; or

(b) a person nominated by the principal or the proprietor of the school, if the order relates to a non-government school.

## Review and revocation of immediate orders

1. As soon as practicable after making an immediate order, but no later than the date on which the order expires (an immediate order is in force for the period specified in the order or for a maximum of 14 days), an authorised person must review that order and decide to either:[[121]](#footnote-122)
	1. make an ongoing order in accordance with the procedures under Division 3 of Part 2.1A of the Act;
	2. revoke the immediate order.
2. In reviewing the immediate order, the authorised person who made the immediate order must consider if there are grounds to issue an ongoing order and, if there are none, revoke the order.[[122]](#footnote-123)
3. If an order is revoked it is no longer in force and the person to whom the order applied is no longer required to comply with it the school must communicate this to the person either verbally or written as soon as the order is no longer in force.
4. In considering whether to make an ongoing order or revoke the immediate order, any action to address the behaviour, as specified in the order, undertaken by the person subject to the order, is a relevant consideration that must be considered by the authorised person.
5. If the authorised person considers there are grounds for making an ongoing order, the authorised person must undertake the processes and procedures for making an ongoing order as required by the Act and Guidelines before deciding to make the ongoing order.[[123]](#footnote-124)
6. A person to whom an immediate order applies may, at any time after the order is made, make submissions to the authorised person regarding whether the order should remain in force.[[124]](#footnote-125) These submissions may be made in writing or, with the written permission of the authorised person, orally.[[125]](#footnote-126) These submissions must be considered by the authorised person when conducting a review of an immediate order.[[126]](#footnote-127)
7. When reviewing an immediate order the authorised person can seek advice, including from another authorised person or someone with specialist knowledge relevant to the decision, however, the authorised person is not bound to follow the advice. Further, the decision to either make an ongoing order or revoke the immediate order must be made by the authorised person who made the initial decision, and any advice received should be assessed by the authorised person in accordance with the normal rules of administrative decision-making.

## Internal reviews of ongoing orders

### Process for conducting an internal review

1. The subject of an ongoing order may apply in writing to the school for an internal review of a decision to:[[127]](#footnote-128)
2. make the order;
3. vary the order on the authorised person's own motion;
4. refuse an application by the subject for a variation to the order; or
5. refuse to revoke the order.
6. The school must refer the application to a reviewer as soon as is practicable after receiving the application.[[128]](#footnote-129) The Act defines a “reviewer” to be:[[129]](#footnote-130)
	1. for government schools, the Secretary or other persons involved in the administration of government schools who the Secretary has delegated the functions and powers to conduct reviews; and
	2. for non-government schools, a person nominated by the principal or the proprietor of the school to conduct the review.
7. Where an application for a review has been submitted, the order continues in force in accordance with the period specified in the order until the review is completed.[[130]](#footnote-131)
8. The internal review of a decision in relation to an ongoing order is a ‘merits review’, which means the reviewer must reconsider the relevant facts and law (and any additional material, such as submissions made or further information that the reviewer requests be provided by the person seeking the review or other persons) to determine the correct and preferable decision. The same grounds, mandatory considerations, and requirement of reasonable necessity, discussed in detail in these Guidelines, apply to a decision by a reviewer in the same way as they apply to a decision by an authorised person. The reviewer may make a decision that affirms, varies or revokes the decision that is the subject of the review.[[131]](#footnote-132)
9. A decision on an internal review is an administrative decision, and reviewers must comply with good administrative decision-making principles when exercising their decision-making power. See the “Procedural fairness” chapter in these Guidelines for information on administrative decision-making principles which must be complied with by reviewers.
10. The internal reviewer must be unbiased and sufficiently independent of the original decision maker who made the order. This should involve consideration of factors such as the relationship or past dealings the reviewer has had with the person the subject of the order being reviewed and with the authorised person who made the original decision. At the very least, the reviewer must not have been the subject of the conduct that the order seeks to address nor have been involved in the original decision to make the order.
11. The reviewer must conduct the review in accordance with the Act, Guidelines and any procedures for internal review published on the website of the Department of Education and Training (for a government school) or the relevant school (for a non-government school).[[132]](#footnote-133) Non-government schools must therefore adopt and publish procedures for conducting internal reviews of ongoing orders (internal review procedures). Non-government schools may choose to adopt the internal review procedures for government schools published on the Department of Education and Training website and adapt and tailor them to the school’s particular context.
12. The Act requires the internal review procedures that are to be adopted and published to:[[133]](#footnote-134)
13. provide the applicant with the opportunity to make written submissions or, if permitted by the reviewer to do so, oral submissions;
14. allow the applicant to be represented, accompanied or assisted by another person (for example, a union provided representative); and
15. require a written statement of the outcome of the review, the reasons for the decision, and information on the person’s entitlement to seek external review by VCAT.
16. Where a reviewer permits an applicant to make oral submissions, it is recommended that the reviewer seek the consent of the applicant, and, if applicable, the person assisting the applicant, to be audio recorded to assist the reviewer in properly and fully considering the oral submissions when making their decision. A recording should not be made of another person unless they have consented, and should be subject to the same record keeping and retention requirements specified under Storage and retention of records.
17. Persons subject to an order should be informed that they can record their oral submission.
18. The reviewer may request the person to whom an ongoing order applies to provide further relevant information.[[134]](#footnote-135)

### Considerations and information considered during an internal review

1. As noted above, the same grounds, mandatory considerations, and requirement of reasonable necessity, discussed in detail in these Guidelines, apply to a decision by a reviewer in the same way as they apply to a decision by an authorised person. A reviewer must also consider all relevant considerations and must disregard any irrelevant considerations.
2. Accordingly, it would be open to the reviewer to seek and consider the views and advice of a person with specialist or expert knowledge that may be relevant to the decision and from other persons who have knowledge of the factual circumstances relevant to the decision.

###### Reviewer may seek expert or specialist advice

1. When deciding an internal review application, a reviewer can rely on other independent persons to conduct the information gathering stage of the review and to put forward recommendations in relation to the correct and preferable decision based on the relevant information available. However, a reviewer must personally exercise their discretion and decision-making power by turning their own mind to the relevant information and must not automatically accept the recommended decision without any independent consideration of the relevant matters.
2. Reviewers may consult persons with specialist or expert knowledge relevant to the decision, for example, experts in disability where the person the subject of the order has a disability. However, similar to where the reviewer relies on another person to conduct the review and provide them with a recommended decision, any advice received from an expert must be independently considered and assessed by the reviewer in accordance with the normal rules of administrative decision-making, and the expert or specialist advice should be considered and treated as one of a number of relevant considerations that must be considered and weighed against each other.

###### Submissions from relevant school staff and other person

1. School staff members, or other persons, who were the subject of the conduct which led to the ongoing order, or whom the order seeks to protect, may be offered an opportunity to partake in the internal review process to:
2. provide factual accounts of the person’s conduct and other matters that are relevant to the decision;
3. explain the impact of the subject’s behavior on them and the impact that a decision to revoke the order would have on them; or
4. providing any other information that may be relevant to the review decision.
5. Staff members and other persons must not make submissions unless they are relevant to the matter.
6. A staff member or another person may make submissions:
7. orally;
8. in writing; and/or
9. by being represented, accompanied, or assisted by another person.
10. For the avoidance of doubt, principals who have made an order to protect themselves from the harmful behaviour (i.e. who did not ask another authorised person to make the order) should have the same opportunities to partake in the internal review process afforded to staff for whom the order was made to protect.
11. The authorised person who made the order should also be provided an opportunity to make a submission explaining why the order was made where the person’s account is relevant, for example, because they were present when the incident took place.
12. Reviewers must consider any submissions which are relevant to the decision and disregard irrelevant submissions.

### Procedural fairness and assistance for people from vulnerable backgrounds

1. To ensure that people from vulnerable backgrounds are provided with procedural fairness when an order they are subject to is being reviewed, the following requirements must be followed:
2. A template request form for internal review should be provided to assist potential applicants to request a review together with the written notice of the ongoing order.
3. The school’s contact number must be provided to enable a the person to request more information about the internal review process.
4. The reviewer must consider the subject’s vulnerabilities and any submissions received during the internal review process in relation to their vulnerabilities, as they relate to both the original decision (including in relation to the grounds and the appropriateness of the order and its terms and conditions) but also the review decision (including whether the order should remain in force with or without variations).
5. If a subject has a known vulnerability that has been communicated through their submissions, the reviewer must consider whether it is appropriate to seek specialist expertise in understanding how a subject’s vulnerability can impact their behaviour and take this into account when reviewing the decision. In practice this would mean that if a parent from an Aboriginal background had applied for a review of an order, the reviewer must consider whether to seek the advice of Koorie Outcomes Division of DET (for government schools) or an Aboriginal elder or representative from an advocacy group for the Aboriginal community (for non-government schools).
6. Requests to reviewers to make a submission orally must not be unreasonably refused. In deciding whether to allow oral submissions from the subject of the order, the reviewer should consider whether the subject of an order is linguistically diverse (and wishes to use an interpreter to communicate), has low literacy or has a disability that poses challenges for communicating in a written format.
7. Information about the review process and the outcome of a review decision must be communicated to the subject of an ongoing order in plain English or, where appropriate and necessary, through an interpreter/translator (for information given both orally and in writing).

### Representation, accompaniment or assistance from another person

1. The Scheme requires internal review procedures to include procedures which allow the person to whom the ongoing order applies to be represented, accompanied or assisted by another person.
2. The people who, for example, a person may request to accompany or assist them include:
3. family members or friends;
4. a carer;
5. an interpreter, including an Auslan interpreter;
6. a disability support worker;
7. a lawyer, including from Victoria Legal Aid or a community legal centre; and
8. other advocates for persons with vulnerability.

### Timeframe to complete an internal review

1. The internal review decision should be made as soon as reasonably practicable, and no later than 28 days after the application for internal review,[[135]](#footnote-136) unless it has been extended:[[136]](#footnote-137)
	1. on the written application of the person to whom the order applies; or
	2. on the reviewer’s own motion.
2. The reviewer may, on their own motion, extend the period in which a decision must be made for an additional period of 28 days.[[137]](#footnote-138) A reviewer may only extend the period once.
3. If the reviewer has requested further information from the person the subject of the order under section 2.1A.29(5) of the Act, any time taken by the person to whom the order applies to respond to that request is not counted towards the 28-day period.[[138]](#footnote-139)
4. If a decision is not made within the period required (including, if applicable, any extended period) the ongoing order is revoked.[[139]](#footnote-140)

### Notice of outcome of an internal review

1. Once a reviewer has made a decision on an internal review, a written statement must be sent to the applicant setting out the outcome of the review, the reasons for the decision and the person's entitlement to seek external review by applying for external review with VCAT.[[140]](#footnote-141)
2. The statement must also include information on how to access an interpreter, legal assistance (such as Victorian Legal Aid help phoneline) and mental health support (such as Parentline and Beyond Blue).

## External reviews of ongoing orders

### Assistance to individuals seeking external review

1. If a person subject to an ongoing order is unhappy with the outcome of an internal review, they may seek an external review of the decision at VCAT.[[141]](#footnote-142)
2. The information provided in the notice of the outcome of an internal review, should assist the person subject to the order to understand their external review rights, and provide information about supports available, such as interpreter services and legal services such as Victorian Legal Aid or Community Legal Centres.

### Model Litigant guidelines

1. The Victorian Model Litigant Guidelines set standards for how the state should behave as a party to legal proceedings.[[142]](#footnote-143)
2. Where an authorised person or reviewer is a party to legal proceedings under this Scheme, they are required under these Guidelines to comply with the Victorian Model Litigant Guidelines.

# Monitoring compliance with and enforcing orders

1. A person who is subject to an order must comply with the order.[[143]](#footnote-144) A failure to do so may result in enforcement action being taken by the school.
2. To ensure the health and safety objectives of issuing an order are met, schools need to consider and put in place arrangements to monitor compliance actively and effectively. This could include developing a risk management plan to share with staff, so that they know what requirements are in place as part of the order, the protections these afford to staff, how they can support compliance with these requirements, and how to report any practical difficulties with compliance, as well as any breaches.
3. Where a person fails to comply with an order, schools should consider and take appropriate and proportionate enforcement action to deal with the non-compliance.
4. More detail on monitoring and enforcing compliance follows.

## Monitoring compliance with orders

### Disclosure of orders

1. Schools must determine which members of school staff should have a role in monitoring compliance and, therefore, should be made aware of the order.
2. Importantly, as orders constitute the personal information of the person subject to the order, it is important that schools use and disclose the existence and effect of an order in accordance with their privacy obligations under law (for example, the *Privacy and Data Protection Act 2014*) or other applicable policies (for example, a school’s privacy policy). A general rule of thumb is that only those staff members who need to know about the existence of the order should be made aware of the order.
3. The number and identity of school staff who must be made aware of an order and the terms of the order will depend on the nature and effect of the order. For example:
	1. where an order prohibits a parent of a student from entering or remaining on any school-related place of the school,[[144]](#footnote-145) the following staff members should be aware of the order to monitor the parent's compliance with the order:
		1. the principal and assistant principals;
		2. the student’s classroom teacher;
		3. front of house administrative staff who greet visitors who enter school grounds;
		4. any teachers who are scheduled to be on yard duty (particularly during drop-off and pick-up periods) during the period of the order; and
		5. any teacher who is in charge or supervising students at a school a school-related place off school grounds where an activity is being conducted by or in connection with the school.
	2. where an ongoing order prohibits a person from approaching,[[145]](#footnote-146) or communicating with,[[146]](#footnote-147) a staff member, or a class of staff members, the relevant staff member or staff members should be made aware of the existence of the order and be instructed to inform the principal if the person fails to comply with the order.
	3. where an ongoing order prohibits a person from approaching or communicating with all staff members of the school, all staff members should be made aware of the existence of the order and be instructed to inform the principal if the person fails to comply with the order.
4. Schools must not inform persons who are not staff members of the school about the existence of an order that has been made in respect of another member of the school community as:
	1. orders contain personal and sensitive information about the persons to whom they apply;
	2. persons who are not staff members of the school play no role in monitoring and enforcing compliance with an order; and
	3. it is important to minimise the impact an order has on the person subject to the order, including by avoiding rumours spreading amongst, and conflicts between members of, the school community and maintaining relationships between community members to the greatest extent possible.
5. Similarly, for the same reasons, staff members who are aware of an order must not disclose that information to other staff members or members of the school community unless it is related to the monitoring or enforcing the order.

### Actions for monitoring compliance

1. Schools must put in place appropriate arrangements to effectively monitor compliance with orders. When determining what arrangements are appropriate, schools should consider the nature and effect of the order, including the behaviour that the order seeks to prohibit, limit or regulate.
2. For example, where an immediate order or ongoing order prohibits a person from entering or remaining on any school-related place,[[147]](#footnote-148) schools should ensure that staff members who work at the school’s reception or who supervise drop-off and pick-up, are aware of the order and instruct those staff members to inform the principal of any non-compliance.
3. Depending on the behaviour which led to the issuing of the order, schools may decide that those staff members be permitted to remind the relevant person of existence of the order and request that they leave school grounds. Alternatively, if the relevant person has a history of becoming violent or aggressive with staff members, schools may instead decide to instruct those staff members to not engage with the person and immediately contact the principal.
4. Where an ongoing order prohibits a person from communicating with a staff member or class of staff member,[[148]](#footnote-149) or from using or communicating on a communication platform or channel owned or controlled by, or established in relation to, the school,[[149]](#footnote-150) a school may wish to monitor the relevant communications platform, which may include social media platforms such as the school’s Facebook page or other social messaging platforms such as WhatsApp, school-based platforms such as Compass and Sentral, media such as newsletters, forums and noticeboards, and other platforms that enable communication or dissemination of information (such as emails) depending on the content of the order itself.
5. Staff who are made aware of an order should also notify the authorised person if they observe any positive behaviours that may form the basis of revoking or amending the order.

### Record keeping

1. A school should maintain accurate records of non-compliance with an order to assist with any enforcement proceedings. More information on record keeping is contained in the section of these Guidelines entitled “Record keeping”.

## Enforcing orders

1. Where a person fails to comply with an order, the Secretary (for a government school) or a nominee of the proprietor of a registered school (for a non-government school) may decide to apply to the Magistrate’s Court for an order.[[150]](#footnote-151)
2. The decision to apply to the Magistrate’s Court is at the discretion of the Secretary or proprietor of the school. In exercising their discretion to pursue non-compliance in the Magistrate’s Court, the Secretary and proprietors should consider a number of relevant factors including:
	1. whether applying to for an order of the Magistrate’s Court is proportionate to the non-compliance; and
	2. whether there are other, more appropriate steps or actions available to the school to deal with the non-compliance.
3. Importantly, Victoria Police should not be contacted nor considered as an option for enforcing compliance with an order (unless the school reasonably suspects that a criminal offence has been committed, for example, because non-compliance involves some element of criminality, including violence or threats of violence). The Scheme has been deliberately designed to establish a civil penalty for non-compliance (rather than a criminal penalty) for failing to comply with an order because criminalising the type of behaviour the Scheme is intended to deal with may result in damaging consequences for many families and students.
4. More information on when it would be appropriate to contact Victoria Police for non-compliance with an order, or in general, is contained in the “Police involvement” section of these Guidelines.

### Enforcement action other than applying to the Magistrate’s Court for an order

1. Depending on the circumstance surrounding non-compliance, there are other more appropriate steps that a school (i.e. the Secretary or registered proprietor) should consider taking before making the decision to apply to the Magistrate’s Court for an order.
2. For example, if the non-compliance is considered to be once-off or minor (i.e. it doesn’t result in serious consequences or does not form part of a series of failures to comply with the order which, taken together, can be said to be serious), a school may decide to simply make a written record of the non-compliance and verbally or informally warn the person that their behaviour constituted a contravention of the order and that repeated contraventions may result in the school deciding to take action (and keep a written record of doing so).
3. Where there is a reasonable belief that the person has not complied with their order and the person is warned about the non-compliance verbally or in writing, the person should be afforded an opportunity to respond or explain their behaviour. This is important to verify whether the observed behaviour actually constitutes non-compliance with the terms of the order, to avoid the school reporting an instance of non-compliance incorrectly or without context, for example, where:
	1. there is a misunderstanding about whether the person has actually contravened the order. For example, a person reports that the parent contravened an order by entering school grounds for school pick up and drop off when this is not an activity that is prohibited in the order;
	2. a person contravenes an order due to an emergency or critical situation that may explain or justify the non-compliance. For example, where the parent contravenes the order that prohibits them entering school grounds by dropping off the child at school because the alternative access arrangements (such as the usual school bus) was not accessible on that particular day.
4. Where a person repeatedly contravenes an order, but the school has formed the view that the contraventions has not resulted in any harm or significant consequences, the school may decide to write to the person to formally warn them that they have been repeatedly failing to comply with the order and that, if they continue to do so, the school (i.e. the Secretary or registered proprietor) will submit an application to the Magistrate’s Court seeking an order regarding compliance.
5. Where a person’s non-compliance with an order is considered serious, for example, because the person’s action resulted in injury or harm to a staff member or student, or because the person continued to contravene an order repeatedly and deliberately after repeated informal and formal warnings to cease, the school (i.e. the Secretary or registered proprietor) may then decide to apply to the Magistrate’s Court for an order. This should be, to the greatest extent possible, the option of last resort.

### Deciding whether to apply to the Magistrates’ Court for an order

1. The Secretary (for government schools) or a registered proprietor (for non-government schools) should only exercise their discretion to apply to the Magistrates’ Court as an option of last resort following a breach of an order.
2. In deciding whether to exercise their discretion, these Guidelines recommend that the Secretary and registered proprietors consider:
	1. the number of breaches of an order and whether the breach(es) was serious or trivial, including the severity of the impact on the health and safety of staff members and other members of the school community, particularly students;
	2. the availability and efficacy of any alternative means of encouraging compliance and whether such means have been attempted;
	3. the age, physical health, mental health or special vulnerability of the person subject to the order and, if they are a parent of a student enrolled at the school, the student;
	4. the passage of time since the alleged breach;
	5. whether applying to the Magistrates’ Court would further escalate the behaviour the order sought to address;
	6. the risk of harm to staff and students, including psychological harm;
	7. whether there is a reasonable prospect that the Magistrates’ Court would find in favour of the school;
	8. the need for specific or general deterrence; and
	9. any mitigating or aggravating circumstances.
3. Prior to and/or concurrently with making an application to the Magistrates’ Court, the Secretary or registered proprietor should notify the person to whom the order applies that:
	1. they have contravened the order; and
	2. the Secretary or registered proprietor will be making an application to the Magistrates’ Court.
4. However, such notification should not be made if notifying the person is likely to further escalate the behaviour that the enforcement proceeding seeks to address.
5. Factors that the Secretary or registered proprietor must not consider or be influenced by when considering whether to exercise their discretion to apply to the Magistrates’ Court to enforce an order include:
	1. irrelevant pressure or interference from other members or sectors of the school community;
	2. the race, religion, disability, sex, gender identity, sexual orientation, national origin, political associations, activities or beliefs of the person the subject of the order; and
	3. the personal feelings of the Secretary or registered proprietor, separate from their assessment of the facts and circumstances of the case.

### Magistrates’ Court decision and orders

1. If the Magistrates’ Court is satisfied that the person has contravened an order, the Court may make one or more of the following orders:[[151]](#footnote-152)
	1. an order compelling the person to comply with the order;
	2. an order compelling the person to take specified action to comply with the order;
	3. an order that the person pay a civil penalty of up to 60 penalty units; and
	4. any other order that the Court considers appropriate.
2. If the Magistrates’ Court orders a civil penalty, that penalty is payable to the State of Victoria, not the school.[[152]](#footnote-153)

# Reporting and record keeping

## Objectives

1. Accurate record keeping and reporting is an important element of transparency and continuous improvement under the Scheme. The record keeping and reporting requirements in these Guidelines are aimed at the following objectives:
	1. facilitating internal and external reviews;
	2. capturing data on how frequently and in what circumstances orders are made;
	3. ensuring orders are being used appropriately in line with the Act and Guidelines and only as a measure of last resort;
	4. identifying any trends in the types of schools, students, families or situations where orders are being used to inform potential system improvements or targeted supports;
	5. monitoring and identifying opportunities to improve how the Scheme is operating and interacting with other systems, for example, parent complaints and disputes functions;
	6. ensuring available administrative and operational supports are notified and deployed as soon as possible following the issuing of an immediate order; and
	7. assisting with statutory review of the scheme.
2. Compliance with the record keeping requirements in this section is required under these Guidelines.

## Requirement to cause a record of orders and related documents to be made and retained

1. Authorised persons must cause a copy of the written notice of an immediate or ongoing order to be created and stored securely at or within the possession of the registered school to which the order applies.
2. If the authorised person is not able to give the written notice to the person to whom the order applies, the authorised person must cause a written record to be created which includes the order, the reason a written notice was not able to be given to the person to whom the order applies and a description of the person to whom the order applies.[[153]](#footnote-154)
3. Authorised persons must also create a record of any documents or recordings associated with:
	1. submissions received by the authorised person about the order or proposed order;
	2. requests for and consideration of variations to or revocations of an order;
	3. immediate orders overturned on automatic review;
	4. a proposal to make an ongoing order but where, during the show cause process, the authorised person decided not to make the ongoing order;
	5. internal reviews lodged, including the outcome of internal review processes and related documents such as formal correspondence, submissions and the decision letter;
	6. external reviews lodged with the Victorian Civil and Administrative Tribunal (VCAT), including documents associated with the outcome or resolution of the VCAT application; and
	7. compliance or non-compliance with an order, including documents associated with any enforcement proceedings lodged in the Magistrates’ Court in respect of non-compliance with ongoing orders.
4. These records must be stored securely at or within the possession of the registered school to which the order applies.

## Storage and retention of records

1. Authorised persons must ensure that records required to be created in accordance with these Guidelines are stored in safe and secure locations at or within the possession of the registered school to ensure their integrity, authenticity, security and accessibility.
2. Authorised persons must take all reasonable steps to ensure that records required to be created in accordance with these Guidelines are retained for the minimum periods prescribed under the ‘Incidents, complaints and investigations’ class of records in the School Records Retention and Disposal Authority (RDA). For the avoidance of doubt, the prescribed retention periods in the RDA apply to records created by authorised persons in non-government schools for the purposes of the Scheme record keeping requirements.

## Data collection and reporting

1. Authorised persons must keep records, in an accessible form which is easily transformed into an electronic form, of the number of:
	1. orders made;
	2. immediate orders made but not followed up with an ongoing order;
	3. ongoing orders revoked;
	4. internal reviews lodged;
	5. external reviews lodged with VCAT; and
	6. ongoing orders subject to enforcement action in the Magistrates’ Court.
2. Where an order is subject to internal or external review, or where ongoing orders are subject to enforcement action in the Magistrates’ Court, the authorised person must, as far as is reasonably practicable, cause records to be created and retained which demonstrate the outcome of the review process or legal proceeding. This includes but is not limited to information about whether the review application or enforcement action was:
	1. upheld;
	2. dismissed;
	3. withdrawn or otherwise not proceeded with;
	4. resolved through negotiated resolution processes; and
	5. in the case of enforcement action, whether the Magistrate’s Court issued any orders and what those orders were, and whether a civil penalty was imposed.
3. Authorised persons must provide or cause to be provided to the Secretary a de-identified report of these matters for the preceding financial year, not more than 28 days following the conclusion of the preceding financial year. In circumstances where more than one authorised person has made orders pertaining to individuals at the registered school, an authorised person who is a principal or registered proprietor of a school must take reasonable steps to ensure that the report accurately reflects the complete data set of all orders issued in respect of that school over the preceding financial year.
4. The report must include de-identified data recording all matters required to be recorded and reported under this Chapter.
5. Authorised persons will be deemed to have met these reporting requirements if they have maintained a contemporaneous record of these matters and related documents in a system from which a de-identified report of the number of orders made in the preceding financial year can be easily produced.
6. The Secretary may request, at any time, that an authorised person provide to the Secretary the details of a particular order made in relation to any school. Authorised persons must take all reasonable steps to provide the information requested by the Secretary.
7. The Secretary must provide a report to the Minister on the number of orders issued in the preceding financial year not more than 60 days following the conclusion of the preceding financial year.

# Interaction with other schemes

1. The Scheme is intended to operate side by side with, and in some circumstances be an available option for schools to consider using in addition to or instead of, the following laws and schemes:
2. the personal safety intervention order (PSIO) scheme under the *Personal Safety Intervention Order Act 2010*;
3. the trespass warning notice (TWN) scheme under section 9 of the *Summary Offence Act 1966*; and
4. any other applicable laws.

## Intervention Order Schemes

1. The existence of an interim or final intervention order or an application for an intervention order involving a person who is proposed to be subject to an order, does not prevent an authorised person from making an order. The Scheme facilitates a risk response to certain threatening behaviours against individuals or classes of individuals in the school community, as set out in these Guidelines.
2. Orders under the Scheme can be distinguished from family violence intervention orders (FVIOs) under the *Family Violence Protection Act 2008*, which are available to protect family members of a person who is engaging in threatening behaviour, and PSIOs, which are available to protect a named person or persons.[[154]](#footnote-155) For example, a staff member could consider applying for a PSIO for their protection where they have been subjected to behaviour that includes assault, serious threats or harassment (which may have also resulted in an order being made).
3. Unlike orders under the Scheme, contraventions of intervention orders can attract criminal consequences and should be reported to police.
4. There may be circumstances in which an authorised person makes, or considers making an order in relation to a person who is concurrently subject to a FVIO and/or a PSIO, for example, where:
5. a parent who is also subject to a FVIO in respect of members of their own family (this may or may not include children enrolled at the relevant school) also behaves in a way that satisfies the grounds for making an order and the FVIO does not prohibit the parent from engaging in behaviour towards staff or others at school;
6. an authorised person makes an immediate order (and is considering making an ongoing order) in relation to a parent while a staff member at the school is considering making an application for a PSIO in relation to the parent;
7. a school staff member is seeking a FVIO in relation to a member of their own family, who is also harassing the staff member on school grounds, impacting upon the safety of the school community.
8. In most instances the existence of a FVIO or PSIO will not be relevant to a decision on whether there are grounds to make an order but may be relevant to the conditions that are required by the order.

### Use of order to address family violence experienced by students or staff in the absence of a FVIO or PSIO

1. Authorised persons must not use an order under the Scheme to manage family violence matters unrelated to the school or that do not occur on school related places in place of the FVIO scheme. Authorised persons and schools should instead encourage a family to seek advice and support to respond to family violence through appropriate family support services, including encouraging parents to consider applying for a FVIO on behalf of themselves and/or their child(ren). This may include, where appropriate, a FVIO that prohibits attendance at the school by the respondent person.
2. A school’s normal policies should be applied to determining the appropriate action to be taken in relation to family violence matters, including in relation to the applicability of the Child Information Sharing Scheme, Family Violence Information Sharing Scheme and Multi-Agency Risk Assessment and Management Framework

### Relevance of the existence of an order to decisions under FVIO Scheme and PSIO Scheme

1. The existence of an order and any enforcement proceedings in respect of a breach of an order could be relevant considerations for law enforcement and courts in deciding about an application for a FVIO or PSIO.

## Trespass Warning Notice Scheme

1. Although the Scheme will be the preferred approach in many cases, there will likely be circumstances in which a TWN will remain the preferred option to deal with certain behaviour, such as where a person trespasses on school grounds and refuses to leave, however, their conduct does not reach the threshold to satisfy the grounds for making an order.
2. Using the TWN scheme has the benefit of being a simpler approach to removing a person from school grounds without needing to satisfy the requirements of the Act or Guidelines that apply to make an order under the Scheme. However, ongoing orders provide schools with greater flexibilities and options in tailoring the contents of the order to address the inappropriate behaviour (for example, by prohibiting communication or attendance at school related places (other than school premises)) whereas a TWN may only be made to direct a person to leave and not enter school premises.
3. TWNs may also be an additional option where an order is in place, where the person is not complying with the terms of the order and further action is necessary to protect school staff is required swiftly.

## Child Safe Standards and Reportable Conduct Scheme

1. Schools must continue to comply with their obligations in relation to the Reportable Conduct Scheme[[155]](#footnote-156) and the Child Safe Standards.[[156]](#footnote-157) The Scheme does not abrogate schools’ responsibilities with respect to reportable conduct or the Child Safe Standards.
2. Authorised persons must ensure that conditions in orders do not impair the ability of the relevant school to maintain compliance with the Reportable Conduct Scheme or the Child Safe Standards, including Standards relating to the inclusion of families.

## Examples of when one scheme may be preferred over another

1. The following examples aim to assist schools and authorised persons to consider when one scheme is likely to be a more effective means of addressing inappropriate behaviour.

|  |  |
| --- | --- |
| Example | Recommended action |
| The parent emails their child’s teacher daily and the tone is often aggressive and offensive. This is despite the school providing responses to the parent’s concerns on many occasions, and attempts to warn the parent about the negative impacts of their behaviour on staff. | Consider making an ongoing order prohibiting the parent from continuing to contact the teacher about that issue |
| The parent regularly calls the school and behaves aggressively and offensively over the phone to school staff regardless of who the parent is communicating with. | Consider making an ongoing order prohibiting the parent from telephoning any staff member and requiring the parent to communicate with the school via email or other stipulated mode of alternative communication. |
| A group of people living near a school comes onto school grounds on Friday evenings to consume alcohol after all students and staff have left. They continuously leave behind rubbish that causes a nuisance to the school in needing to clean the premises every week, but their behaviour does not directly affect members of the school community.  | Consider issuing a TWN prohibiting the group of people from being on school grounds, as the behaviour does not affect any members of the school community and therefore, does not satisfy any of the grounds for issuing an order. If the individuals cause significant damage to school property or grounds, and that damage interferes with the wellbeing, safety and educational opportunities of students when they attend school the following week, there may be a case to issue an ongoing order.  |
| The parent attends on school grounds and yells and behaves in an intimidating way towards various staff members. The parent also sends aggressive and offensive emails and is abusive over the phone | Consider making an ongoing order to prohibit entry onto school grounds and communication with staff members. Consider TWN if behaviour on school grounds continues and requires police involvement.  |
| The parent is unhappy about how the school has managed their concerns about incidents involving their child. The parent telephones the principal makes threats to physically hurt the principal. | Consider applying for a PSIO protecting the principal and make an ongoing order. |

# Police involvement

1. Police and relevant emergency services should always be contacted in the case of an emergency, immediate threat, or suspected criminal behaviour.
2. Staff should be aware that police do not have the power to make or enforce on order as the Scheme has been deliberately designed to be a civil penalty scheme that does not impose any criminal liability for a failure to comply with an order.
3. The presence of police in schools may risk bringing children into contact with the criminal justice system or causing them to disengage from their schooling, which is a particular risk for Aboriginal children.

### Examples of when police should or should not be contacted

1. The following two examples demonstrate practical scenarios of when police should or should not be called in relation to an order.
2. **Example of when police should be contacted**: a parent attends the school, is abusive, shouts and makes threats towards staff. The principal asks the parent to leave school grounds, however the parent refuses to do so. Police should be called regardless of whether an order is in place.
3. **Examples of when police should not be contacted**:
	1. a parent attends school grounds in breach of an order. The parent leaves the school grounds when asked to do so. Police should not be called.
	2. a former student aged over 18 attends school grounds and does not engage in behaviours that would reach the threshold for issuing a school community safety order. Police should not be called.

# Considerations and actions after issuing an order

## Minimising impacts on a child

### Potential impacts on child

1. Students should continue to be able to access their education and attend their school even though their parent is unable to directly engage with the school community because of an order. Students whose parents have been issued an order should not be punished, treated any differently or limited from engaging and participating fully in their education and learning.
2. All efforts must be made to ensure that there is minimal disruption to the student’s educational opportunities and that their wellbeing is not negatively impacted because of an order issued against their parent.

### Mitigating impacts on children

1. Authorised persons and schools must put in place alternative arrangements to ensure a child’s education and full engagement in the school community is not affected by an order.
2. Authorised persons and school staff should minimise impacts to the children of parents subject to an order through actions including, but not limited to:
	1. ensuring access to school drop off and pick up services and providing subsidies if a parent is unable to directly support the child to access the school;
	2. establishing processes that ensure that mental health and wellbeing support are considered and in place for the student, including counselling support;
	3. providing accurate information to counteract any inaccurate information circulating within the student population that may cause anxiety
3. Specific considerations and tailored support should be provided to children with additional needs including, but not limited to:
	1. continuing to convene [Student Support Group](https://www.education.vic.gov.au/school/teachers/learningneeds/Pages/student-support-groups.aspx) or Program Support Group meetings to work with families of students with disability to identify and plan responses for areas of concern and need;
	2. updating Individual Education Plans and Behaviour Support Plans to reflect any changes to the student’s circumstances and strategies to mitigate impacts of the order on the student;
	3. providing access to help and assistance from allied health staff (such as psychologists, speech pathologists and social workers); and
	4. providing assistance from specialists in Koorie education or social workers to mitigate risks of Koorie students disengaging from education
4. Authorised persons should consider whether they should first seek permission from the parent who has been the subject of an order to contact the child directly to offer information or support, as the parent may not have disclosed the existence of an order to their child. If the authorised person determines that the child should be provided with direct support, it is recommended that a staff member with a pre-existing relationship with the student provide the above information and support to them in a discrete manner.
5. The school should remind the parent of the risks of their child disengaging from school and the negative mental wellbeing impacts of such behaviour both at the point of issuing an order and, while the order is in place, when the school becomes aware of such behaviours.
6. In instances where school staff are to be notified of the existence of an order, authorised persons are to first consider the existing relationship between the staff member(s) and the student and whether the knowledge would adversely impact their relationship.

### Communication and access protocol

1. If an order is made in respect of a person who is a parent of a child at the school, the authorised person must prepare a communications and access protocol to ensure that the parent can continue to be informed of and participate in their child’s education. Please see the section titled Communication and access measures under the chapter Procedure for making orders.

### Mitigating risks of student disengagement

1. 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. Children most at-risk of disengaging from school include children from low-income households, Aboriginal or Torres Strait Islander children, children experiencing family violence or children in out-of-home care.
2. Given education is a key protective factor in reducing the likelihood of vulnerable and at-risk children entering the criminal justice system, authorised persons should establish processes to support the child’s continued education.
3. Schools should consider the following actions to mitigate further disengagement of such students:
	1. monitoring attendance and engagement at school;
	2. re-visiting the school’s student engagement policy to ensure engagement strategies are implemented school-wide;
	3. making referrals to or proactively engage with other bodies or programs that support student engagement, where it is known that the child is at risk of disengaging from education;
	4. if the student is already in a student’s re-engagement program, contacting the provider of the program to check their attendance and level of engagement; and
	5. asking a member of staff with a pre-existing relationship with the student to monitor signs of disengagement.

## Rebuilding relationships with parents

1. It is important for the school to support the re-engagement of a parent into the school community following the expiration of an order. This will allow the school to re-establish respectful behavioural expectations and communications with the parent, with the mutual objective of supporting the child’s education.
2. Authorised persons must make reasonable efforts, in good faith, to protect, preserve and strengthen the relationship between the person subject to the order and the school.
3. As much as possible, it is important to avoid assumptions that the person will continue to engage in the harmful behaviours that resulted in an order being made and provide them with a genuine opportunity to re-establish the relationship.

### Rebuilding relationships while an order is in place

1. Authorised persons may include in an order reasonable and appropriate actions that the person subject to the order can take that can facilitate repair to the relationship while it is in force.
2. For example, an authorised person can suggest in an order that the person to whom it applies undergo mediation with the affected school staff member through an independent conflict resolution service. This may be appropriate where an affected school staff member feels safe to meet with the parent face-to-face or to otherwise participate in a process that re-instigates contact with the parent while an order is in place.
3. The nature of the mediation will depend on the situation and the parties involved, but may involve:
	1. all parties meeting (virtual or face-to-face) in a formal setting with an independent facilitator
	2. facilitated discussion between the principal (on behalf of the affected staff member) and the parent in an informal setting
	3. the principal receiving counsel.
4. It is then open to the authorised person to consider whether completion of such actions is enough to revoke the order. Failure to attempt or complete such actions does not result in any penalty to the person subject to the order.

### Re-engaging a parent following the expiration of an order

1. Authorised persons should consider adopting or promoting strategies and services to support repairing relationships with parents that are appropriate to the situation.
2. Where appropriate, schools may consider asking religious or community leaders and/or senior school leaders or board members to help support and navigate communications between the school and families, including when discussing steps for re-engagement with the school.
3. In choosing the most appropriate strategy or strategies, authorised persons may wish to consider following:
	1. the severity of the harmful behaviour that resulted in an order being made;
	2. the level of comfort of the staff member(s) affected by the harmful behaviour in re-engaging with the person;
	3. the level of risk the strategy presents to the safety of the staff member(s);
	4. the benefit of the strategy to furthering the educational opportunities of the student whose parent was the subject of an order; and
	5. how successful or constructive such a strategy may be in re-engaging the parent and advancing the child’s education.

For example, if the person who was recently subject to an order physically assaulted a staff member and the staff member felt unsafe in meeting with the person face-to-face, a mediation may not be an appropriate strategy for this situation.

1. Authorised persons should then select strategies and services that are appropriate to the nature of the relationship with the parent, including:
	1. when an order is to be revoked or concluded, seeking input from the person subject to the order on how they would like to ‘reset’ the relationship moving forward;
	2. meeting with, calling or sending a letter or email to the person to re-engage them back into the school community;
	3. conflict management and dispute resolution services and supports. Staff may feel more confident about the re-integration of the person subject to an order into the school community if they are provided with training and capability building opportunities to manage conflict and challenging behaviours; and
	4. encouraging parents to seek support from community organisations or advocates and invite them along to any meetings or correspond on their behalf.
2. Re-engagement efforts are likely to be more successful if the school and the parent maintain a focus on promoting the child’s best interests and supporting the child’s learning and wellbeing. School staff may be find the following discussion topics useful in focussing discussion on the student’s best interests and learning needs:
	1. the child’s progress at school, their learning and wellbeing needs, and further support that could be provided;
	2. shared expectations for respectful behaviour, using the school’s statement of values or school philosophy as the basis for such discussions;
	3. respectful ways of communicating that would be most conducive to having a positive relationship with the school and ultimately support the needs of the child; and
	4. agree on ways for the parent to raise constructive and respectful feedback, such as through the school’s complaints policy or process.
3. In some cases, the principal and/or the authorised person may determine that directly reengaging the person who has been subject to an order may result in escalated or aggravated behaviour and therefore increase the risk to the of staff. The most appropriate option in such circumstances may be to avoid direct engagement upon expiry of an order.

## Minimising impacts on staff

1. Employers are required to monitor and review the effectiveness of current risk controls in place following an incident to improve measures to manage or eliminate the risk, in consultation with Health and Safety Representatives and relevant employees.[[157]](#footnote-158)
2. Employers, including the Department and the relevant employers of non-government school staff, should offer mental wellbeing and other support to a school when incidents occur and once an order is made to recognise the potentially serious mental health impacts of the incident that has led to an order being made.
3. Employers should consider providing proactive mental health and wellbeing support to staff affected by the behaviour that resulted in an order being issued (including witnesses), principals whose decision to issue an order is being challenged at internal and/or external review, and other affected staff.
4. Mental wellbeing and other supports that may be provided to staff include:
	1. referring the staff member(s) to counselling services such as the Employee Assistance Program, and allowing time during work hours and a private space to receive counselling;
	2. ascertaining whether the staff member(s) can return to work following an incident and, if not, making temporary arrangements to allow them to take leave;
	3. providing safe access to and from school such as by arranging another staff member to accompany them; and
	4. arranging for another staff member to report the incident on their behalf to avoid re-traumatising the affected staff member.
1. See section 2.1A.37 of the *Education and Training Reform Act 2006* (Act) and Part 2A of the Education and Training Reform Regulations 2017 (Regulations). [↑](#footnote-ref-2)
2. Sections 2.1A.35(1) and 2.1A.35(2) of the Act. [↑](#footnote-ref-3)
3. Section 2.1A.35(3) of the Act. [↑](#footnote-ref-4)
4. Section 2.1A.35(1) of the Act. [↑](#footnote-ref-5)
5. Section 2.1A.1 of the Act, definition of ‘immediate school community safety order’. [↑](#footnote-ref-6)
6. Section 2.1A.1 of the Act, definition of ‘ongoing school community safety order’. [↑](#footnote-ref-7)
7. Section 2.1A.27 of the Act. [↑](#footnote-ref-8)
8. Sections 2.1A.18(1) and 2.1A.20(1) of the Act. [↑](#footnote-ref-9)
9. Section 2.1A.15(1)(f) of the Act. [↑](#footnote-ref-10)
10. Sections 2.1A.17(2) and (3) of the Act. [↑](#footnote-ref-11)
11. Section 2.1A.21 of the Act. [↑](#footnote-ref-12)
12. Section 2.1A.5(1) of the Act. [↑](#footnote-ref-13)
13. Explanatory Memorandum to the Education and Training Reform Amendment (Protection of School Communities) Bill 2021, pp 2-3 and 7-8. [↑](#footnote-ref-14)
14. Section 2.1A.9(1)(b) of the Act. [↑](#footnote-ref-15)
15. Section 2.1A.12 of the Act. [↑](#footnote-ref-16)
16. Section 2.1A.12(4) of the Act. [↑](#footnote-ref-17)
17. Sections 2.1A.13 and 2.1A.23 of the Act. [↑](#footnote-ref-18)
18. Sections 2.1A.11 and 2.1A.12 of the Act. [↑](#footnote-ref-19)
19. Section 2.1A.12(1) of the Act. [↑](#footnote-ref-20)
20. Section 2.1A.12(3) of the Act. [↑](#footnote-ref-21)
21. Section 2.1A.29(1) of the Act. [↑](#footnote-ref-22)
22. Sections 2.1A.29(2) and 2.1A.32 of the Act. [↑](#footnote-ref-23)
23. Section 2.1A.33 of the Act. [↑](#footnote-ref-24)
24. [↑](#footnote-ref-25)
25. Section 2.1A.40 of the Act. Sections 2.1A.41 and 2.1A.43 of the Act. [↑](#footnote-ref-26)
26. Please see the Department of Justice and Community Safety website for the current value of a penalty unit: <https://www.justice.vic.gov.au/justice-system/fines-and-penalties/penalties-and-values>. [↑](#footnote-ref-27)
27. Sections 2.1A.3(2) and 2.1A.15(2) of the Act. [↑](#footnote-ref-28)
28. Section 2.1A.2(1) of the Act. [↑](#footnote-ref-29)
29. If the proprietor of the school is not an individual, other persons may be authorised by the Secretary to be an authorised person for that school under sections 2.1A.2(1)(c) and 2.1A.2(2) of the Act. [↑](#footnote-ref-30)
30. Section 2.1A.2(2) of the Act. [↑](#footnote-ref-31)
31. Explanatory Memorandum to the *Education and Training Reform Amendment (Protection of School Communities) Bill 2021* p 6. [↑](#footnote-ref-32)
32. Section 2.1A.35(2) of the Act. [↑](#footnote-ref-33)
33. The Minister has prescribed training as a matter that can be included in these Guidelines under Part 2A of the Regulations, in accordance with section 2.1A.37(1)(l) of the Act. [↑](#footnote-ref-34)
34. See sections 41(b) and 41A of the *Interpretation of Legislation Act 1984*. [↑](#footnote-ref-35)
35. Sections 2.1A.17(1) and 2.1A.5(1) of the Act. [↑](#footnote-ref-36)
36. Section 1.1.3(1) of the Act, definition of ‘harm’. [↑](#footnote-ref-37)
37. Sections 2.1A.17(2) and 2.1A.5(2) of the Act. [↑](#footnote-ref-38)
38. Sections 2.1A.17(3) and 2.1A.5(3) of the Act. [↑](#footnote-ref-39)
39. Section 2.1A.17 of the Act [↑](#footnote-ref-40)
40. The grounds for making orders require there to be a connection to the relevant school. If there is a dispute between two members of the school community but the dispute is unrelated to a school purpose or activity, this does not constitute grounds for issuing an order under the Scheme. [↑](#footnote-ref-41)
41. Section 2.1A.1, definition of ‘vexatious communication’. [↑](#footnote-ref-42)
42. Section 2.1A.17(1)(d) of the Act. [↑](#footnote-ref-43)
43. Sections 2. 2.1A.17(1)(c) of the Act. [↑](#footnote-ref-44)
44. Framework for Improving Student Outcomes (FISO 2.0), available at <https://www2.education.vic.gov.au/pal/fiso/policy>. [↑](#footnote-ref-45)
45. Section 2.1A.5(1) of the Act. [↑](#footnote-ref-46)
46. Sections 2.1A.5(2) and 2.1A.17(2) of the Act. [↑](#footnote-ref-47)
47. See *Disability Discrimination Act 1992* (Cth). [↑](#footnote-ref-48)
48. Section 38 of the *Charter of Human Rights and Responsibilities Act 2006.* [↑](#footnote-ref-49)
49. Section 20(1) of the Occupational Health and Safety Act *2004*. [↑](#footnote-ref-50)
50. Setion 23(1) of the Occupational Health and Safety Act *2004.* [↑](#footnote-ref-51)
51. Discretion exists when a decision maker has the power to make a choice about whether to act or not act. [↑](#footnote-ref-52)
52. Section 2.1A.21 of the Act. [↑](#footnote-ref-53)
53. Section 2.1A.21(1)(a) of the Act. [↑](#footnote-ref-54)
54. Section 2.1A.21(3)(a) of the Act. [↑](#footnote-ref-55)
55. Where there is some doubt as to the person’s full name, use any/all names the person is known by (for example, if they are known by one name but official records indicate another name). [↑](#footnote-ref-56)
56. For the avoidance of doubt, the order should include both the school name in common use by the school community (where applicable), and the official registered name of the school. Where there are multiple campuses of the school, the order should make clear whether the order applies to some or all campuses of the school. [↑](#footnote-ref-57)
57. Part 2A of the Regulations. [↑](#footnote-ref-58)
58. Section 2.1A.21(1)(b) of the Act. [↑](#footnote-ref-59)
59. Section 2.1A.21(2) of the Act. [↑](#footnote-ref-60)
60. Section 2.1A.21(4) of the Act. [↑](#footnote-ref-61)
61. Section 2.1A.21(5) of the Act. [↑](#footnote-ref-62)
62. Section 2.1A.22(2) of the Act. [↑](#footnote-ref-63)
63. Section 2.1A.22(3)(a) of the Act. [↑](#footnote-ref-64)
64. Section 2.1A.22(3)(b) of the Act. [↑](#footnote-ref-65)
65. Section 2.1A.17(3) of the Act. [↑](#footnote-ref-66)
66. Section 2.1A.1 of the Act, definition of ‘school-related place’. [↑](#footnote-ref-67)
67. Section 2.1A.24(1)(b) of the Act. [↑](#footnote-ref-68)
68. Sections 2.1A.17(3) and 2.1A.27 of the Act [↑](#footnote-ref-69)
69. Section 2.1A.24(1)(c) of the Act. [↑](#footnote-ref-70)
70. Examples at the foot of section 2.1A.24(1)(c) of the Act. [↑](#footnote-ref-71)
71. Section 2.1A.24(2) of the Act. [↑](#footnote-ref-72)
72. See section 2.1A.15(1)(b) of the Act. [↑](#footnote-ref-73)
73. Section 2.1A.18 of the Act. [↑](#footnote-ref-74)
74. Section 2.1A.19 of the Act. [↑](#footnote-ref-75)
75. Section 2.1A.20(1) of the Act. [↑](#footnote-ref-76)
76. Where there is some doubt as to the person’s full name, use any/all names the person is known by (for example, if they are known by one name but official records indicate another name). [↑](#footnote-ref-77)
77. For the avoidance of doubt, the order should include both the school name in common use by the school community (where applicable), and the official registered name of the school. Where there are multiple campuses of the school, the order should make clear whether the order applies to some or all campuses of the school. [↑](#footnote-ref-78)
78. Section 2.1A.27 of the Act. [↑](#footnote-ref-79)
79. Section 2.1A.4(1) of the Act. [↑](#footnote-ref-80)
80. Section 2.1A.4(2) of the Act. [↑](#footnote-ref-81)
81. Section 2.1A.4(3) of the Act. [↑](#footnote-ref-82)
82. Section 2.1A.4(4) of the Act. [↑](#footnote-ref-83)
83. Sections 2.1A.6 and 2.1A.9 of the Act. [↑](#footnote-ref-84)
84. Section 2.1A.11(1) of the Act. [↑](#footnote-ref-85)
85. Sections 2.1A.12(1) and 2.1A.12(3) of the Act. [↑](#footnote-ref-86)
86. Section 2.1A.12(4) of the Act. [↑](#footnote-ref-87)
87. In circumstances where the subject of an order refuses a professional interpreter due to personal reasons, the school and the parent can agree on a trusted source of the subject like a family member or friend to interpret. The child of the person to whom the order is to be made is generally not an appropriate person to interpret for the parent. [↑](#footnote-ref-88)
88. Section 2.1A.3(1) of the Act. [↑](#footnote-ref-89)
89. Section 2.1A.8 of the Act. [↑](#footnote-ref-90)
90. Section 2.1A.4(1) of the Act. [↑](#footnote-ref-91)
91. Section 2.1A.7(1) of the Act. [↑](#footnote-ref-92)
92. Where there is some doubt as to the person’s full name, use any/all names the person is known by (for example, if they are known by one name but official records indicate another name). [↑](#footnote-ref-93)
93. For the avoidance of doubt, the order should include both the school name in common use by the school community (where applicable), and the official registered name of the school. Where there are multiple campuses of the school, the order should make clear whether the order applies to some or all campuses of the school. [↑](#footnote-ref-94)
94. Section 2.1A.9(1) of the Act. [↑](#footnote-ref-95)
95. Section 2.1A.9(2) of the Act. [↑](#footnote-ref-96)
96. Section 2.1A.21(4) of the Act. [↑](#footnote-ref-97)
97. Section 2.1A.11(2) of the Act. [↑](#footnote-ref-98)
98. Sections 2.1A.4(3) and 2.1A.18(2) of the Act. [↑](#footnote-ref-99)
99. Section 2.1A.4(4) of the Act. [↑](#footnote-ref-100)
100. https://hemingwayapp.com/ [↑](#footnote-ref-101)
101. Section 2.1A.23(1) and (3) of the Act. [↑](#footnote-ref-102)
102. Under section 1.1.3(1) of the Act, “parent”, in relation to a child, includes a guardian and every person who has parental responsibility for the child including parental responsibility under the *Family Law Act 1975* and any person with whom a child normally or regularly resides. [↑](#footnote-ref-103)
103. Section 2.1A.23(3) of the Act. [↑](#footnote-ref-104)
104. Section 2.1A.26(1) of the Act. [↑](#footnote-ref-105)
105. Section 2.1A.26(2) of the Act. [↑](#footnote-ref-106)
106. Section 2.1A.26(3)(a) of the Act. [↑](#footnote-ref-107)
107. Section 2.1A.17(2) of the Act. [↑](#footnote-ref-108)
108. Section 2.1A.17(3) of the Act. [↑](#footnote-ref-109)
109. Section 2.1A.21 of the Act. [↑](#footnote-ref-110)
110. Section 2.1A.22(1) of the Act. [↑](#footnote-ref-111)
111. Section 2.1A.24 of the Act. [↑](#footnote-ref-112)
112. Section 2.1A.24(2) of the Act. [↑](#footnote-ref-113)
113. Sections 2.1A.18(1) and 2.1A.26(3)(b) of the Act. [↑](#footnote-ref-114)
114. Section 2.1A.19 of the Act. [↑](#footnote-ref-115)
115. Section 2.1A.23 of the Act. [↑](#footnote-ref-116)
116. Section 2.1A.26(4) of the Act. [↑](#footnote-ref-117)
117. Section 2.1A.27 of the Act. [↑](#footnote-ref-118)
118. Section 2.1A.25 of the Act. [↑](#footnote-ref-119)
119. Section 2.1A.24(2) of the Act. [↑](#footnote-ref-120)
120. Victorian Civil and Administrative Tribunal website can be found at this address: [www.vcat.vic.gov.au](http://www.vcat.vic.gov.au) [↑](#footnote-ref-121)
121. Sections 2.1A.12(1) and (2) of the Act. [↑](#footnote-ref-122)
122. Section 2.1A.12(3) of the Act. [↑](#footnote-ref-123)
123. Section 2.1A.12(1)(a) of the Act. [↑](#footnote-ref-124)
124. Section 2.1A.11(1) of the Act. [↑](#footnote-ref-125)
125. Section 2.1A.11(2) of the Act. [↑](#footnote-ref-126)
126. Section 2.1A.12(4) of the Act. [↑](#footnote-ref-127)
127. Section 2.1A.29(1) of the Act. [↑](#footnote-ref-128)
128. Section 2.1A.29(2) of the Act. [↑](#footnote-ref-129)
129. Section 2.1A.1 of the Act, definition of ‘reviewer’. [↑](#footnote-ref-130)
130. Section 2.1A.31 of the Act. [↑](#footnote-ref-131)
131. Section 2.1A.32 of the Act. [↑](#footnote-ref-132)
132. Section 2.1A.29(3) of the Act. [↑](#footnote-ref-133)
133. Section 2.1A.29(4) of the Act. [↑](#footnote-ref-134)
134. Section 2.1A.29(5) of the Act. [↑](#footnote-ref-135)
135. Section 2.1A.30(2) of the Act. [↑](#footnote-ref-136)
136. Section 2.1A.30(4) of the Act. [↑](#footnote-ref-137)
137. Section 2.1A30(4)(b) of the Act. [↑](#footnote-ref-138)
138. Section 2.1A.30(3) of the Act. [↑](#footnote-ref-139)
139. Section 2.1A.30(5) of the Act. [↑](#footnote-ref-140)
140. Section 2.1A.29(4)(c) of the Act states that any internal review procedures must include these requirements. [↑](#footnote-ref-141)
141. Section 2.1A.33 of the Act. [↑](#footnote-ref-142)
142. The Victorian Model Litigant Guidelines can be found at this address: https://www.justice.vic.gov.au/justice-system/laws-and-regulation/victorian-model-litigant-guidelines [↑](#footnote-ref-143)
143. Sections 2.1A.14(1) and 2.1A.28(1) of the Act. [↑](#footnote-ref-144)
144. Sections 2.1A.3(1) and 2.1A.15(1)(a) of the Act. [↑](#footnote-ref-145)
145. Section 2.1A.15(1)(b) of the Act. [↑](#footnote-ref-146)
146. Section 2.1A.15(1)(c) of the Act. [↑](#footnote-ref-147)
147. Sections 2.1A.3(1) and 2.1A.15(1)(a) of the Act. [↑](#footnote-ref-148)
148. Section 2.1A.15(1)(c) of the Act. [↑](#footnote-ref-149)
149. Section 2.1A.15(1)(e) of the Act. [↑](#footnote-ref-150)
150. Section 2.1A.40 of the Act. [↑](#footnote-ref-151)
151. Sections 2.1A.41 and 2.1A.43 of the Act. [↑](#footnote-ref-152)
152. Section 2.1A.42 of the Act. [↑](#footnote-ref-153)
153. Section 2.1A.4(4) of the Act. [↑](#footnote-ref-154)
154. Further information about Personal Safety Intervention Orders can be found on the Magistrates Court Victoria website at <https://www.mcv.vic.gov.au/intervention-orders/personal-safety-intervention-orders-psio> [↑](#footnote-ref-155)
155. Part 5A of the *Child Wellbeing and Safety Act 2005*. [↑](#footnote-ref-156)
156. Part 6 of the *Child Wellbeing and Safety Act 2005*. [↑](#footnote-ref-157)
157. Sections 21(1), 22(1) and 35 of the Occupational Health and Safety Act *2004*. [↑](#footnote-ref-158)