Maddocks

School Community Safety Order Scheme Statutory Review

Department of Education

Final Report
9 October 2025

Contents

Executive Summary

The Department of Education (**the Department**) engaged Maddocks to undertake a statutory review of operation of the first two years of the School Community Safety Order (**SCSO**) Scheme (**the Scheme**). In undertaking the review, Maddocks has interviewed stakeholders across the Department, schools, and advocacy bodies representing the interests of principals, teachers and parents. Maddocks has considered the Scheme against its purpose of protecting school communities, the Department's and non-government schools' responsibilities for the safety and wellbeing of their staff, the Department's human rights obligations, and the principles of administrative law.

Positive feedback was received from stakeholders across the government, independent and Catholic education sectors. The majority of interviewees believed the Scheme is an important tool for protecting school communities and should remain in place.

However, there was limited use of the Scheme in its first two years of operation. A total of 24 orders were issued up until the end of FY 2023-24 (9 in FY 2022-23 and 15 in FY 2023-24).[1] While the Scheme was designed as a measure of last resort, it is possible that there are circumstances in which it would be appropriate for a school principal to make an order but they have chosen not to do so. Some stakeholders have had a mixed or negative experience with making an order, and believe that the Scheme is too complex, that procedural protections are weighed too heavily in favour of persons subject to SCSOs, that the workload involved in making and maintaining an order is too high, and that the enforcement mechanisms are not effective. However, some stakeholders suggested that warning a person that they could issue an order could be enough to stop their problematic behaviour, meaning that the Scheme could be effective even if they never actually issued an order. This feedback is anecdotal and has not been formally tracked or substantiated.

Concerns were raised by Parents Victoria on behalf of parents who have been subject to an order, who remain concerned about the Scheme.

This report provides recommendations to simplify the operation of the Scheme to make SCSOs more accessible and effective to utilise, while maintaining an appropriate standard of procedural fairness for persons to be subject to SCSOs.

We would like to thank the staff at the Department and other stakeholders across the government, independent and Catholic school systems who gave up their time to participate in the review. With this review, we hope that the Scheme can continue to develop as a tool to protect the safety and wellbeing of all of those who work in schools across Victoria.

Summary of Recommendations

The below table summarises our recommendations by thematic area. Refer to Section 4 of the report for detail.

[1] School Community Safety Order Scheme Annual Report 2023-24, p. 7. Note that this was originally published as 26 orders, but this number has since been corrected.

Summary of recommendations

Name	Number	Provision	Recommendation	Rationale	Risks and issues
1. General	1.1	N/A	The Department continues to educate its staff in the Scheme, give policy guidance on the use of orders, and provide direction to regional staff so they are in a position to either make orders or to support school principals who are facing a situation where an order may be necessary.	Stakeholders noted a lack of clarity and confidence among school and regional staff regarding the Scheme's scope and application.	No significant specific risks or issues noted.
	1.2	N/A	Given the length and complexity of the Ministerial Guidelines, the Department ensures that principals have access to guidance material succinctly summarising aspects of the Scheme relevant to them.	Stakeholders found the Ministerial Guidelines complex and time-consuming to navigate.	No significant specific risks or issues noted
2. Scope of the Scheme	2.1	ETR Act, s 2.1A.1 Definitions, ETR Act ss 2.1A.5(1)(a)(ii), 2.1A.17(1)(a)(ii), grounds for making orders	Consider if there should be any change to the definition of "member of the school community" in the ETRA. Consider also if there should be a distinction between parents, teachers and students on one hand and other people who may be at a school-related place for a school-related reason on the other, and if there should be any amendments to the provisions defining grounds for making immediate and ongoing orders.	There is an ambiguity in the drafting of the ETR Act.	There are various potential revisions of these provisions of the ETR Act, with potential to give rise to varying risks and issues. Allowing authorised persons to make orders to protect staff, parents and students from harm away from the school could be a significant expansion of the Scheme. However, there are also strong arguments for using orders to protect teachers from aggressive behaviour in the community away from the school, and some school principals appear to already be using orders for this purpose. This recommendation invites the

Name	Number	Provision	Recommendation	Rationale	Risks and issues
					Department to clarify its policy position.
	2.2	Ministerial Guidelines, paragraph 165	Update the Ministerial Guidelines to provide an explanation and examples of what is meant by a social media platform or channel “established in relation to” the relevant school.	Concerns raised about attacks on school staff via social media and lack of clarity on what platforms are covered.	The Department will need to balance the risk of overreach beyond the legislative power against risks to school staff from aggressive behaviour on social media.
3. Function of immediate orders	3.1	ETR Act s 2.1A.5 Grounds and other requirements for making immediate order	Modify s 2.1A.5 of the ETR Act to define “imminent” or remove the requirement for imminency and add wording to reflect the Department’s policy goals for immediate orders.	The current high threshold for "imminence" makes immediate orders difficult to use practically.	The recommendation presents a number of options. A broader definition of “imminent” may provide authorised persons with greater powers to make immediate orders, which are intended for urgent situations and do not include a right to be heard due to their emergency nature. However, the current high threshold for “imminent” limits the utility of immediate orders. The Department may wish to clarify its policy position.
	3.2	ETR Act s 2.1A.7 Matters which must be stated in an immediate order	Simplify the requirements in the ETR Act for making an oral order, for example, so that the authorised person only needs to direct the individual to leave and/or not attend the school-related place. Unless the authorised person gives another timeframe, the restriction stands for the duration of the order.	School principals found it difficult to comply with the detailed oral order requirements in high-pressure situations.	The risks associated with this recommendation are in our view low. It would not expand the power of authorised persons, nor impose further restrictions on the subjects of orders.

Name	Number	Provision	Recommendation	Rationale	Risks and issues
	3.3	ETR Act s 2.1A.9 Duration of immediate orders	If the Department does not make changes to shorten the process to make an ongoing order, amend the ETR Act to permit the authorised person to extend an immediate order by a further 7 days beyond the initial 14-day period, provided this is treated as a fresh administrative decision subject to the same justification and proportionality requirements as the original order.	The current 14-day period is often insufficient to complete the process for making an ongoing order.	The recommendation if adopted would extend immediate orders, which do not include a right to be heard due to their emergency nature. The associated risk is considered low, given the limited nature of the proposed extension (only one week).
	3.4	ETR Act s 2.1A.13 Communication and access arrangements	Clarify the Department's position on the minimum expectations for communication and access arrangements for immediate orders, and reflect them in the Guidelines and/or in Department policy.	Authorised persons may have the expectation that they need to draft detailed communication and access protocols for an immediate order.	This recommendation seeks to clarify the Department's position and communicate it to stakeholders. We consider that the risks and issues are low.
	3.5	ETR Act s 2.1A.12 Review of immediate order, Ministerial Guidelines, paragraphs 207 - 208	Add a third option to s 2.1A.12(1) of the ETR Act stating that the immediate order may be left in place until it expires. Clarify in the Ministerial Guidelines (paragraphs 207-208) that an immediate order will expire at the end of the time period if the authorised person takes no further action.	Lack of an option to review an immediate order and leave it in place, lack of clarity on whether an immediate order automatically expires without formal revocation.	This recommendation is largely procedural, and we consider that the risks and issues associated are low.
	3.6	ETR Act s 2.1A.12 Review of immediate order	Amend s 2.1A.12(3) of the ETR Act to clarify that this provision is referring to whether there are grounds to make an ongoing order, rather than grounds to make the initial immediate order.	Ambiguity in the original wording.	The risks associated with this recommendation are low. It is intended to address an ambiguity in the original wording.
4. Grounds for making	4.1	Ministerial Guidelines,	Update the Ministerial Guidelines to explain how an authorised person may determine that grounds for making a subsequent order exist where the person is already	There is ambiguity on whether an authorised person has grounds to make	This recommendation is intended to address a gap or ambiguity in the Scheme in circumstances which are

Name	Number	Provision	Recommendation	Rationale	Risks and issues
ongoing orders		paragraphs 82 – 84	subject to an order which is restraining their behaviour.	an order in these circumstances.	uncommon. As such, we consider the risks and issues associated with this to be low.
5. Process for making ongoing orders	5.1	ETR Act s 2.1A.18 Process for giving ongoing order ETR Act s 2.1A.21 Procedure before making ongoing order	Amend the ETR Act to: • allow an authorised person discretion not to seek submissions only where urgent circumstances exist, and require them to record written reasons justifying this departure from the usual process. Any such discretion must remain consistent with the principles of natural justice and be subject to judicial or external review; • state that an order is not invalid solely because the authorised person did not seek submissions; and • require the authorised person to issue a written warning before making an ongoing order.	School principals found the requirement to issue a draft order and seek submissions escalates conflict and is procedurally burdensome.	This recommendation addresses one of the largest challenges identified in evidence that is faced by authorised persons in making orders, but at the same time, presents the most significant risk from an administrative law and reputational perspective as it may limit the opportunity for a person subject to restrictions to be heard, which is a key consideration in administrative law. We have discussed these issues at length in the relevant section of the report.
	5.2	Ministerial Guidelines, paragraphs 16, 223	Amend the Ministerial Guidelines to confirm that that communication and access arrangements may be stated in either the order or a separate document.	Stakeholders noted that a separate document adds unnecessary complexity.	We consider that the risks associated with this recommendation are low. The recommendation is intended to clarify the existing law and policy for authorised persons.
6. Variation of ongoing orders	6.1	ETR Act s 2.1A.26(1)(b) Variation of ongoing orders	Remove the provision in s 2.1A.26(1)(b) of the ETR Act that states that an ongoing order may be varied on the application of the person subject to the order.	The additional step is unnecessary and creates ambiguity.	The risks associated with this recommendation are low. It does not remove any right of the person subject to

Name	Number	Provision	Recommendation	Rationale	Risks and issues
					the order to appeal for a variation.
	6.2	ETR Act s 2.1A.26(1)(b) Variation of ongoing orders	Amend the provision to allow an order to be varied either by the original person who made the order or a different authorised person.	Achieves administrative efficiency where the original person who made the order is unavailable.	This recommendation has potential to create administrative risks in internal and external review, as it may be unclear whose decision is actually being reviewed.
7. Internal review	7.1	ETR Act ss. 2.1A.29(2) and (3).	Amend the ETR Act to state that an application for internal review may be made to a school or a reviewer directly, retaining the requirement that a school must pass on any application for review to a reviewer as soon as is practicable.	Removes the need for double handling of applications.	The risks associated with this recommendation are in our view low. It brings the process in the legislation in-line with actual practice.
	7.2	Ministerial Guidelines, paragraph 262	Confirm in the Ministerial Guidelines that the internal reviewer should conduct a merits review and does not need to assess the procedural correctness of the decision to impose the order.	Reduces unnecessary procedural focus, allowing review to focus on the merits of the order.	The risks associated with this recommendation are low. The recommendation is intended to clarify the existing law and policy for internal reviewers.
	7.3	Ministerial Guidelines, paragraph 274-279	Consider whether the process for completing the evidence matrix can be simplified so that the authorised person will record enough information to justify the decision to make the order in the most efficient way possible, and reflect this position in the Ministerial Guidelines.	Reduces administrative burden on the authorised decision-maker in the internal review process by ensuring relevant information is captured at the time of decision-making.	As this recommendation deals with internal procedural matters, it is low-risk from an administrative law and reputational perspective. It has the potential to reduce the burden on the authorised person during the review process, but also has the potential to increase the work required when making the order in the first place.

Name	Number	Provision	Recommendation	Rationale	Risks and issues
	7.4	Ministerial Guidelines, paragraph 270	Amend the Ministerial Guidelines to add that the civil standard of proof may be applied in internal review, and provide guidance on the meaning of the balance of probabilities.	Ensures a consistent standard for decision-making in internal reviews.	The risks associated with this recommendation are in our view low. The recommendation is intended to clarify the existing law and policy for internal reviewers.
	7.5	ETR Act s 2.1A.30(1) Timelines for internal review	Amend the ETR Act to explicitly state that an internal reviewer may accept an application for internal review beyond 28 days if they are satisfied that there are exceptional circumstances.	Allows reviewers to provide greater natural justice to applicants.	The risks associated with this recommendation are low. Applicants generally lodge within time, and the change is in favour of applicants.
	7.6	ETR Act s 2.1A.30(2) Timelines for internal review	Extend the timeframe afforded in s 2.1A.30(2) of the ETR Act for internal review beyond 28 days, to either 6 or 8 weeks.	The current 28-day period is insufficient in complex cases requiring additional information.	This recommendation lengthens the internal review process, which has an impact on the applicant. However, the proposed extension is modest.
	7.7	ETR Act s 2.1A.29 Internal review, Ministerial Guidelines, paragraph 259	Amend the ETR Act and Ministerial Guidelines to clarify that a decision to affirm or vary an order by an internal reviewer is not reviewable in internal review.	Reduces the risk of unnecessary and repetitive review processes.	The risks associated with this recommendation are low. Applicants will still have access to an internal review process.
	7.8	Ministerial Guidelines, paragraphs 274-279	Amend the Ministerial Guidelines to add that, if an applicant does not respond to a request for information, the reviewer makes a decision on the information available.	Ensures review decisions are not delayed indefinitely due to non-responsiveness.	The risks associated with this recommendation are low. Applicants who engage with the process will not be disadvantaged, and those who do not respond will still have the order reviewed on

Name	Number	Provision	Recommendation	Rationale	Risks and issues
					its merits on the information available.
	7.9	Ministerial Guidelines, paragraphs 51, 64	Replace ”invalidated” with “revoked” to align the Ministerial Guidelines to the ETR Act.	Ensures consistency in terminology between the Guidelines and the Act.	No risks or issues noted. The change is solely in wording for consistency.
8. External review	8.1	New	Introduce a provision allowing an ongoing order to be extended once for a further period not exceeding 12 months, provided the authorised person is satisfied that the grounds for the order continue to exist, and the extension is subject to the same procedural safeguards (including rights of review) as the original order. Consider limiting the power of renewal/continuation/extension so that it may only be exercised once or twice.	Ensures that review applications in VCAT are not rendered moot due to order expiry.	There are some risks with this recommendation. For example, it increases the likelihood that an applicant will have their application heard by VCAT, and reduce the administrative burden on the authorised person by allowing them to extend an existing order rather than make an entirely new one. It is important as a risk mitigation measure that a decision to extend an order is subject to identical considerations as the decision to make a new one to ensure that the change does not allow an authorised person to impose restrictions they would not be permitted to under the Scheme as it exists now.
	8.2	N/A	Take a minimalist approach to redactions for s 49 materials. Only redact private information that is not within the applicant’s knowledge, nor reasonably able to be deduced from the content of the s 49	Ensures transparency while protecting privacy in external reviews.	This recommendation imposes some limitations on the information available to the applicant. However, it can be managed so that the

Name	Number	Provision	Recommendation	Rationale	Risks and issues
			materials and statement. Do not redact critical relevant information, or in such a way that will unreasonably impair comprehensibility of the materials. Annotate all redactions.		redactions are appropriate to protect the privacy of Department staff without denying the applicant any information relevant to their application.
	8.3	N/A	If necessary, seek restricted file orders under s 146(4)(b) when filing s 49 materials with VCAT.	Ensures sensitive information remains protected in legal proceedings.	As above.
	8.4	N/A	Where necessary to address concerns, inform witnesses that unredacted information contained within s 49 materials is still protected by the *Harman* undertaking and may be protected by a restricted file order.	Provides clarity to affected parties about confidentiality protections.	The risks associated with this recommendation are in our view low. It involves clarifying the policy position on confidentiality.
9. Enforcement	9.1	Ministerial Guidelines, paragraphs 308 – 321	In consultation with Victoria Police, clarify the position on involving Police when there has been a breach of an order. Confirm that breach of an order under the Scheme is not, in and of itself, a criminal offence. However, where conduct also constitutes independent criminal behaviour (e.g., assault, threats), police involvement is appropriate. The Guidelines should clearly distinguish civil enforcement options from criminal referral pathways. It may also be appropriate in some circumstances for a school principal who has made an order to notify Police of the order, and to advise the person subject to the order that the Police have been notified.	Inconsistent Police responses to breaches have created uncertainty.	This is a sensitive topic within the operation of the Scheme, but the actual risks in clarifying the position are in our view low given that it involves describing the law as it operates in practice now.

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	9.2	Ministerial Guidelines, paragraphs 308 – 321	Consider if the threshold for enforcement should be lowered, so that there is an expectation that deliberate breaches of orders will lead to enforcement action and authorised persons are not expected to engage in dialogue with individuals who deliberately breach an order.	School principals perceive the Scheme as "toothless" due to weak enforcement.	There are risks and issues in any enforcement process which will require careful consideration. A low threshold for enforcement will mean that the Scheme becomes more punitive and will require more resources to take enforcement action. Conversely, a high threshold will leave the administrative requirement of dealing with individuals who breach an order to school principals and regional staff, and may mean that the Scheme is not effective for these individuals.
	9.3	Ministerial Guidelines, paragraph 314	Remove the requirement for consultation with a person if there has been a suspected breach.	The requirement does not appear to add any practical benefit and is administratively burdensome.	There are few risks with this change, as it appears that few orders will proceed to enforcement under the Scheme as it operates now. It is unclear if this requirement may add any practical benefit. Any changes to the enforcement provisions will need to be considered collectively.
	9.3	N/A	Within the Department, clarify the policy position on: • when the Department will commence an action in the Magistrates' Court; and	Lack of clarity on enforcement process within the Department.	As above, there are risks and issues with a more and less active approach to enforcement which the

Name	Number	Provision	Recommendation	Rationale	Risks and issues
			• what action the Department will take in response to a breach where it does not commence proceedings.		Department will need to consider.
10. Other matters	10.1	Ministerial Guidelines, paragraphs 297-307	The Department understands that some school principals have found the requirements for monitoring compliance with orders in the Ministerial Guidelines to be lengthy and complex. The Department may wish to consider what the minimum expectations are and clarify them.	School principals found compliance monitoring requirements to be overly complex.	The risks associated with this recommendation are in our view low. It involves clarifying the Department's policy.
	10.2	Ministerial Guidelines, paragraph 264	Independent schools may struggle to find an internal reviewer who is "unbiased and sufficiently independent of the original decision maker who made the order" where the members of the school board have a close working relationship with the principal, and could benefit from guidance on how to manage this situation.	Ensures independent internal review in smaller independent schools.	The risks associated with this recommendation are in our view low. It involves clarifying the Department's policy.
	10.3	N/A	The Department should consider expanding delegations, provided that any reviewer (e.g., a regional director) is not materially involved in the original decision and is demonstrably independent. Reviewers must be able to exercise discretion free from actual or perceived conflict of interest, in accordance with public law principles. For example, individual campus principals of multi-campus schools could issue ongoing orders, and regional directors could review orders issued by principals.	Expanding delegation could improve access to the Scheme.	There is some risk associated with this recommendation, as expanding the number of individuals empowered to review orders increases the risk that reviewers will not be objective. For example, a regional director may have been closely involved in making the original order. Authorised reviewers would need to exercise some discretion to ensure objectivity (e.g., referring a case to another reviewer).

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	10.4	N/A	Principals may find it easier to make an order if they could work through the evidence matrix or equivalent document in a meeting or Teams call with the Department rather than through back-and-forth emails.	Streamlining the decision-making process for principals.	The risks associated with this recommendation are in our view low. It is aimed at achieving administrative efficiency.

1. Introduction

1.1 Background

Teachers are at significant risk of violence and aggression in the workplace. Of the 5,497 Australian teachers who responded to the 2022 Monash University Teachers' Perception of their Work Survey, 24.5% reported feeling unsafe at work, up from 18.9% in the 2019 survey.[2] Parental behaviour was identified as a contributing factor, with the survey noting that "issues that related to parents and families were noted in approximately a quarter of the comments, with these teachers mentioning issues including 'verbal abuse', 'hostility', 'threatening behaviour' and 'aggression'".

The SCSO Scheme is designed to protect school staff and other members of the school community from harmful, threatening, abusive or disruptive behaviour by adults who are not staff or students at the school. Under the Scheme, an authorised person may create an order restricting an adult who is not a student or staff member from attending the school or a school-related place or from contacting school staff. The Scheme was established by Part 2.1A of the *Education and Training Reform Act 2006* (Vic) (**ETR Act**), which was introduced by the *Education and Training Reform Amendment (Protection of School Communities) Act 2021* (Vic), and applies to all government and non-government schools in Victoria. In addition to the ETR Act, further provisions for the Scheme are found in:

- the *Education and Training Reform Regulations 2017* (Vic) (**ETR Regulations**); and
- School Community Safety Order Scheme Ministerial Guidelines (**Ministerial Guidelines**) made under s 2.1A.37 of the ETR Act.

In developing the SCSO Scheme, the Government needed to balance a range of policy objectives. On one hand, unreasonable, abusive or aggressive behaviour from parents and carers, while rare, can be extremely disruptive for schools, divert the time of teachers away from teaching, and present a risk to the safety and wellbeing of school staff. On the other hand, parents and guardians need to communicate with the school their child is attending, some people who exhibit challenging behaviour are vulnerable and have complex needs, and any restrictions on human rights need to be carefully considered and managed. In developing the Scheme, the Department received extensive feedback from a range of stakeholders on how to balance these objectives.

The Scheme commenced on 28 June 2022. Under s 2.1A.44 of the ETR Act, a review of the operation of the Scheme must begin within two years of the Scheme's commencement. The Minister for Education formally commenced the review in April 2024.

The Scheme was developed over 2020 and 2021, during which the Victorian education system was undergoing significant changes to accommodate remote learning during the COVID-19 pandemic. While Victorian students are back in the classroom, the school environment is different to the one prior to which the Scheme was developed. In undertaking this review, we have taken these changes into account when considering the Scheme and any potential amendments.

[2] Dr Fiona Longmuir, Dr Beatriz Gallo Cordoba, Associate Professor Michael Phillips, Associate Professor Kelly-Ann Allen & Dr Mehdi Moharami, *Australian Teachers' Perceptions of their Work in 2022*, Monash University, October 2022, p. 35.

1.2 Scope of Work

The Department engaged Maddocks to undertake the statutory review of the operation of Part 2.1A – Protection of School Communities under the ETR Act.

The objective of the statutory review was to identify whether any legislative amendments are required to Part 2.1A of the ETR Act or to the Ministerial Guidelines to improve the operation of the Scheme.

The review considered whether the scheme is meeting its intended purpose by examining the operation of Part 2.1A (including the Ministerial Guidelines) in Victorian government and non-government schools.

Refer to **Schedule 1** for the detailed scope of work.

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2. Methodology

In undertaking this review, Maddocks has:

- held a preliminary meeting with Department stakeholders to finalise the scope, methodology and focus of the review;
- reviewed the ETR Act, ETR Regulations, and Ministerial Guidelines;
- interviewed stakeholders from the Department and from a range of organisations representing teachers and principals at government, independent and Catholic schools, parents, and members of the community. These included:
    - (a) school principals who have used the Scheme;
    - (b) Legal Division;
    - (c) Employee Safety Wellbeing and Inclusion Division (ESWID);
    - (d) senior department staff responsible for deciding the outcome of internal reviews;
    - (e) representatives of Independent Schools Victoria (ISV) and the Victorian Catholic Education Authority (VCEA);
    - (f) representatives of professional associations representing school teachers and principals - Australian Education Union (AEU), Victorian Principals Association (VPA), Victorian Association of State Secondary Principals (VASSP), and Australian Principals Federation (APF); and
    - (g) representatives of Parents Victoria;

  (Interviewees are listed at **Schedule 2)**
- reviewed the documentation provided by the Department, in particular:
    - (a) policy informing the original bill;
    - (b) the outcomes of stakeholder consultation on the development of the Scheme;

(c) data from the EduSafe plus system on orders and internal reviews;

(d) data from the Australian principal occupational health and wellbeing survey 2023 relating to the use of the scheme and attitudes towards the Scheme; and

(e) the 2022/23 and 2023/24 annual reports on the operation of the Scheme;

(The full list of documents reviewed is set out in **Schedule 3**)

- considered learnings from external review proceedings on foot at the time of drafting;
- discussed emerging themes with Department stakeholders; and
- prepared a draft report for review and consultation.

We note that stakeholder feedback and individual names of interviewees has been anonymised in this report, and where possible, presented in aggregate to protect the privacy of participants.

3. The Scheme

3.1 Overview of the scheme

The Scheme allows an authorised person to issue an order to prohibit or restrict a person from attending or approaching a school or a school-related place or from contacting or communicating with school staff. Only an adult who is not a staff member or student at the school may be the subject of an order.[3]

The Ministerial Guidelines explain the process for making an order in terms of good administrative decision-making. They describe the principles of procedural fairness, which must be afforded to people to be subject to an SCSO, and the obligation on decision-makers to consider all relevant considerations and disregard irrelevant considerations.[4]

3.2 Authorised persons

Authorised persons include school principals, the Secretary of the Department (**the Secretary**) for a government school, a person authorised by the Secretary, or the proprietor of a non-government school.[5] Under Instrument of Authorisation No. 2024/A17, the Secretary has authorised the following individuals to make orders:

- the Deputy Secretary, Schools and Regional Services;
- Regional directors;
- campus principals of multi-campus schools (immediate orders only);
- certain senior employees for some Catholic diocesan education corporations; and
- heads of campus for the three Wesley College campuses (immediate orders only).

[3] *Education and Training Reform Act 2006* (Vic), s 2.1A.15(2).
[4] Ministerial Guidelines, paragraphs 137-153.
[5] *Education and Training Reform Act 2006* (Vic), s 2.1A.2(1) & (2).

In Instrument of Delegation 2024/D10, the Secretary delegated their powers to authorise a person to make an order to the Deputy Secretary, Schools and Regional Services.

3.3 Immediate and ongoing orders

An authorised person may make one of two types of SCSOs:

- An immediate school community safety order (**immediate order**), where a person poses an "unacceptable and imminent risk of harm".[6] The order can be made for a maximum of 14 days, and the authorised person must review the order as soon as is practicable and either revoke it or make an ongoing order.[7]

- An ongoing school community safety order (**ongoing order**), which is for a defined period of not more than 12 months.[8] The authorised person must notify the person that they intend to make the order and give them the opportunity to respond.[9] Ongoing orders may be made to address a wider range of behaviours than immediate orders, and may impose a wider range of restrictions on the person.

The two types of orders allow the Scheme to meet two policy objectives. As a principle of administrative law, a person should be put on notice and given an opportunity to be heard in relation to a decision that will adversely impact them. However, circumstances may justify more responsive action. As the Hon. Tim Pallas stated in the second reading speech for the Education and Training Reform Amendment (Protection of School Communities) Bill 2021:

> *The provisions for an Immediate School Community Safety Order allows schools to take swift and immediate action to remove a person from school grounds or places where school activities are taking place. For example, because the person is threatening harm towards a teacher, and where there may not be adequate time for the school to undertake the show cause and procedural fairness procedures required before a School Community Safety Order is issued.*[10]

The definition of "imminent risk" for the purpose of an immediate order has been the subject of discussion with the Department. School principals and the Department initially took a broad view of when the risk of harm was imminent. In 2022-23, seven of the ten orders issued were immediate orders.[11]

In April 2023, the Department adjusted its policy, taking the position that the risk of harm must be urgent, immediate, and capable of materialising at any moment. Authorised persons now only issue immediate orders in limited circumstances. Of the orders issued in 2023-24, three were immediate and 12 were ongoing. While the change in the interpretation of "imminent risk" is unlikely to have been the only cause in the decline in the number of immediate orders issued, it appears to have been a significant factor.

3.4 Grounds for making orders

An authorised person may make either an immediate or ongoing order if they reasonably believe that one or more grounds for making the order exist. The grounds are listed in s 2.1A.5 (for immediate orders) and s 2.1A.17 (for ongoing orders). The first three grounds are that the person poses an unacceptable risk of:

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[6] *Education and Training Reform Act 2006* (Vic), s 2.1A.5(1)(a).
[7] *Education and Training Reform Act 2006* (Vic), ss 2.1A.9(1), 2.1A.12(1).
[8] *Education and Training Reform Act 2006* (Vic), s 2.1A.27.
[9] *Education and Training Reform Act 2006* (Vic), s 2.1A.21.
[10] *Education and Training Reform Amendment (Protection of School Communities) Bill 2021*, second reading speech, Legislative Assembly Hansard, 5 May 2021.
[11] School Community Safety Order Scheme Annual Report 2022-23, p. 2.

a) harm to members of the school community and other persons at certain school-related places;

b) causing significant disruption to the school or school activities; or

c) interfering with the wellbeing, safety or educational opportunities of students.

The ETR Act defines harm to mean "harm of any kind, including physical or mental harm".[12] The grounds are the same for immediate and ongoing orders, except for immediate orders the risk must be imminent as well as unacceptable. There are also two additional grounds which only apply to ongoing orders, being that the person:

d) has behaved and is likely to behave in a disorderly, offensive, intimidating or threatening manner to members of the school community at certain school-related places; or

e) has engaged in and is likely to engage in vexatious communications with, or regarding, a staff member at the relevant school.

These two grounds both use the wording "has…and is likely to", meaning that the person must have engaged in the conduct in the past and given the authorised person reasonable grounds to believe that they will do so in future.

Grounds (a) and (d) are flexible. The specific wording for each in s 2.1A.17 of the Act, which lists the grounds for ongoing orders, is that the person:

(a) poses an unacceptable risk of harm—

(i) to anybody at any school-related place of the relevant school to which paragraph (a) of the definition of school-related place applies; or

(ii) to a member of the school community at any school-related place of the relevant school to which paragraph (b), (c) or (d) of the definition of school-related place applies, if the member of the school community is at that place for a reason that is connected with the school.

As mentioned above, the wording in s 2.1A.5, listing the grounds for making immediate orders, is identical except that the risk of harm is both "unacceptable and imminent":

(d) 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—

(i) at any school-related place of the relevant school to which paragraph (a) of the definition of school-related place applies; or

(ii) at any school-related place of the relevant school to which paragraph (b), (c) or (d) of the definition of school-related place applies, if the member of the school community is at that place for a reason that is connected with the school.

There is no equivalent wording for s 2.1A.5, as this ground is only available for making ongoing orders.

For the purpose of these grounds, the definition of "school-related place" is:

a) any premises of the school and an area that is within 25 metres of the boundary of those premises;

[12] *Education and Training Reform Act 2006* (Vic), s. 1.1.3.

b) any premises (other than a premises described in paragraph (a)) on which there is an activity conducted by or in connection with the school and an area that is within 25 metres of the boundary of those premises;

c) for an activity conducted by or in connection with a school, if the activity or part of the activity is not conducted at a place described in paragraph (a) or (b), any place where the activity is conducted and an area that is within 25 metres of the boundary of that place;

d) any prescribed place.[13]

The definition of "member of the school community" is:

a) a student enrolled at the school;

b) a parent of a student enrolled at the school;

c) a staff member of the school;

d) a person other than a person referred to in paragraphs (a), (b) or (c) who is present at a school-related place of the school for a reason connected with the school.

The Ministerial Guidelines provide more guidance to authorised persons, explaining that:

- 'harm' is defined broadly to include harm from verbal abuse, threats and vexatious communications causing stress (meaning that a single incident may sometimes meet more than one ground for an order);
- harm is to be defined with consideration to the circumstances and vulnerabilities of the person who is subject to the behaviour; and
- when deciding if the risk of harm is unacceptable, the authorised person is to consider likelihood and consequence.[14]

The grounds were drafted in this way to fill a gap in the existing legislative regimes available to school principals to address threatening or disruptive behaviour.[15] These are:

- the Trespass Warning Notice (**TWN**) scheme under the *Summary Offences Act 1966* (Vic), which allows principals to ban individuals from school premises but gives them no power to address conduct taking place away from the school, nor deal with conduct or harm that occurs through inappropriate and vexatious communications; and
- the Personal Safety Intervention Order (**PSIO**) regime under the *Personal Safety Intervention Orders Act 2010* (Vic), which allows school staff to apply for a PSIO for protection against individuals engaging in threatening or violent behaviour, but gives them no ability to manage serious but lower-level conduct such as constant vexatious communications and abusive language.

Orders may be, and commonly are, issued on multiple grounds. According to the department's internal data, 15 orders were issued in 2023-24 on the following grounds:

- Harm to another person on school premises (11)

[13] No places are currently prescribed under (d).
[14] Ministerial Guidelines, paragraphs 68-76.
[15] Refer to the Second Reading Speech.

- Significant disruption to the school or its activities (8)
- Disorderly, offensive, intimidating or threatening conduct (7)
- Interference with the wellbeing, safety or educational opportunities of students (4)
- Harm to a member of the school community at a school-related place (5)
- Vexatious communications (5)

3.5 Mandatory considerations

For both immediate and ongoing orders, in addition to being satisfied of grounds for making the order, the authorised person must turn their mind to mandatory considerations before they can make the order, which include:[16]

- any vulnerability of the other person of which the authorised person is aware;
- whether the order is the least restrictive means available to address the grounds on which the order is proposed to be made; and
- whether the order is reasonably necessary to address the grounds on which the order is proposed to be made.

These mandatory considerations are built into the Scheme as safeguards. As the Minister stated in the second reading speech, "the Bill properly balances the need to provide protection to school staff and other members of the school community from risks of harm with the need to acknowledge any relevant circumstances that may have caused or contributed to the behaviour or conduct causing the harm."[17] These safeguards, the Minister noted, are not available in other mechanisms, such as TWNs and PSIOs.

The Ministerial Guidelines detail relevant vulnerabilities and how they should be considered, provide examples of alternative less-restrictive means of managing behaviour, and outline the standard for reasonable necessity.[18]

3.6 Procedures for making orders

An authorised person can make an immediate order either orally or in writing. If they make an oral order, they must give the person to whom the order applies written notice of the order as soon as is practicable, if possible.[19]

Before making an ongoing order, an authorised person must give notice to the person to whom they intend to make the order and provide 7 days in which the person may make submissions in response.[20] These submissions may be in writing or, if the authorised person approves, may be verbal. With the permission of the authorised person, the person who would be subject to the order may also nominate someone else to make submissions on their behalf. The authorised person must consider the submissions in making their decision. The order must be served in writing, and the Ministerial Guidelines provide guidance on service.[21]

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[16] Section 2.1A.5(2) and (3), for immediate orders; s 2.1A.17(2) and (3) for ongoing orders
[17] *Education and Training Reform Amendment (Protection of School Communities) Bill 2021*, second reading speech, Legislative Assembly Hansard, 5 May 2021.
[18] Ministerial Guidelines, paragraphs 110-126.
[19] *Education and Training Reform Act 2006* (Vic), s 2.1A.4.
[20] *Education and Training Reform Act 2006* (Vic), s 2.1A.21.
[21] Ministerial Guidelines, paragraphs 214-220.

The ETR Act is not explicit on whether the person has the right to make one set of submissions within the 7-day period or multiple sets of submissions over the 7-day period. In the examples we have reviewed, people subject to orders have provided a single response, although it is possible that a person could respond with multiple letters or emails objecting to the order, all of which the authorised person would need to consider.

This procedure applies both when an authorised person is making an ongoing order where there is no order already in place, and when they have already issued an immediate order and are reviewing it to decide whether to issue an ongoing order in its place. The Act includes a procedure for ongoing orders to be varied.[22]

3.7 Content and effect of orders

The Act and Regulations list the matters which must be stated in both immediate and ongoing orders, including the reasons for the order, what the order restricts the person from doing, any conditions attached, and, for ongoing orders, how the person may have the order reviewed.[23]

An immediate order may only prohibit the person from entering or remaining on any school-related place of the relevant school specified in the order.[24] In practice, this means the order prohibits the person from coming within 25 metres of the school. An ongoing order may also prohibit the person from:

- approaching a staff member or class of staff members, whether or not they are at a school-related place, or causing a third party to do so;
- contacting a staff member; or
- using a school communication platform or channel.

This approach is consistent with the policy behind having two types of orders, where immediate orders are designed only to address behaviours imposing an immediate risk.

Both immediate and ongoing orders may include conditions, for example, only permitting a person to attend the school at certain times and places. They may also include conditions which the person can meet to have the order revoked.[25]

When determining the conditions and restrictions of an order, the authorised person must continue to consider reasonable necessity, vulnerability, and less-restrictive alternatives. As the Ministerial Guidelines explain, “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”, and “[w]hen 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”.[26]

3.8 Communication and access protocols

In many cases, an authorised person will need to make an order to manage behaviour from the parent of a child at the school. This presents significant challenges, as the Scheme

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[22] *Education and Training Reform Act 2006* (Vic), s 2.1A.23.
[23] *Education and Training Reform Act 2006* (Vic), ss. 2.1A.7, 2.1A.20; *Education and Training Reform Regulations 2017* (Vic), rr. 11A, 11B.
[24] *Education and Training Reform Act 2006* (Vic), s 2.1A.3.
[25] *Education and Training Reform Act 2006* (Vic), ss. 2.1A.8, 2.1A.24.
[26] Ministerial Guidelines, paragraphs 147, 166.

needs to protect the school community while having as little impact as possible on the child's education.

To address this, the ETR Act requires an authorised person to prepare a communication and access protocol when they make either an immediate or ongoing order to the parent of a child at the school.[27] The protocols must set out arrangements for the parent to continue to communicate with the school about their child's education, and arrangements to ensure that their child continues to have safe access to the school and school activities. In the second reading speech, the Minister noted that the protocol was designed "to ensure that the parent can continue to be informed of and participate in their child's education".[28] The Ministerial Guidelines provide examples of these protocols, such as allowing a parent to attend a specific event, or allowing a parent to communicate with the school through online channels.[29]

3.9 Internal review

A person who is subject to an order may apply to the school in writing for an internal review of the decision to make, vary, refuse to vary, or refuse to revoke an order, and the school must refer this application to a reviewer as soon as practicable.[30] For a government school, the reviewer is the Secretary, and for a non-government school, it is a person nominated by the principal or the proprietor of the school.[31] In Instrument of Delegation 2024/D10, the Secretary delegated their review powers to the Deputy Secretary, Schools and Regional Services and Assistant Deputy Secretary, Schools and Regional Services.

The reviewer must make a decision within 28 days of the original application.[32] If the reviewer does not make a decision in 28 days, the order is revoked.[33] The Ministerial Guidelines make it clear that the review is a merits review:

> *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.*[34]

The reviewer therefore needs to consider the same matters as the original decision-maker, including whether there are grounds for making the order, whether the order is reasonably necessary, and whether there are less-restrictive options available, taking into account any vulnerability which the person may have:

> *…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.*[35]

The person must have the opportunity to make submissions, and may be represented, accompanied or assisted through the process by another person. The Ministerial Guidelines

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[27] *Education and Training Reform Act 2006* (Vic), ss. 2.1A.13, 2.1A.23.
[28] *Education and Training Reform Amendment (Protection of School Communities) Bill 2021*, second reading speech, Legislative Assembly Hansard, 5 May 2021.
[29] Ministerial Guidelines, paragraphs 227-230.
[30] *Education and Training Reform Act 2006* (Vic), s 2.1A.29(1).
[31] *Education and Training Reform Act 2006* (Vic), s 2.1A.1, definition of "reviewer".
[32] *Education and Training Reform Act 2006* (Vic), s 2.1A.29(2).
[33] *Education and Training Reform Act 2006* (Vic), s 2.1A.30(5).
[34] Ministerial Guidelines, paragraph 262.
[35] Ministerial Guidelines, ibid.

require the reviewer to adhere to the same principles of procedural fairness as they require of the original decision-maker.[36]

In 2023-24, six applications were lodged for internal review, leading to four orders being affirmed, including two with minor variations to clarify the requirements.[37] One application was withdrawn, and one was unresolved before the commencement of this review. In 2022-23, one application was lodged, but the internal review did not proceed as the order was revoked due to procedural issues.[38]

At the time of this review, the Department is considering options to simplify the review process without compromising compliance with the ETRA, Guidelines, and principles of good administrative decision-making and natural justice, and making changes to its process. It is important to note that much of the feedback on the internal review process will relate to the earlier and unmodified process.

3.10 External review

Following internal review, there is an avenue of external review to VCAT.[39] In the event that an application proceeds to external review, the Ministerial Guidelines confirm that the Department must follow the Model Litigant Guidelines.[40] At the time of writing, two orders have progressed to external review, both of which have not yet been heard.

3.11 Monitoring and enforcement

The Ministerial Guidelines require schools to actively monitor compliance with the order, for example, by informing relevant staff and directing them to contact the principal if they become aware of a breach.[41] If the person does breach the order, then the Secretary, school nominee or school proprietor may apply to the Magistrates' Court to enforce the order.[42] The Court may order the person to pay a civil penalty of up to 60 penalty units, or may make an order to compel the person to comply with the order, an order to compel the person to take specified action to comply with the order, or any other orders the Court considers appropriate.[43]

The Scheme is deliberately designed such that only civil penalties can be incurred in response to a breach of an order. As the Minister said in the second reading speech, the civil penalty mechanism "ensures that School Community Safety Orders are not enforced through the criminal justice system, which is not considered appropriate in the circumstances".[44] Given the broad powers available under the Scheme, having criminal penalties would allow school principals to criminalise an extremely wide range of conduct, beyond what is covered by TWNs and PSIOs which are already available to principals in certain circumstances.

The Ministerial Guidelines do not envision that the Department or school proprietors would seek an enforcement order for all breaches of an order. Rather, the Guidelines envision enforcement orders are sought as a last resort, directing the Department or school proprietors to consider the number and severity of breaches and any available alternatives, such as reminding the person of the terms of their order.[45]

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[36] Ministerial Guidelines, paragraph 263.
[37] School Community Safety Order Scheme Annual Report 2023-24, p. 6.
[38] School Community Safety Order Scheme Annual Report 2022-23, p. 5.
[39] *Education and Training Reform Act 2006* (Vic), s 2.1A.33.
[40] Ministerial Guidelines, paragraph 291-292.
[41] Ministerial Guidelines, paragraphs 297-307.
[42] *Education and Training Reform Act 2006* (Vic), s 2.1A.40.
[43] *Education and Training Reform Act 2006* (Vic), ss. 2.1A.41-43.
[44] *Education and Training Reform Amendment (Protection of School Communities) Bill 2021*, second reading speech, Legislative Assembly Hansard, 5 May 2021.
[45] Ministerial Guidelines, paragraphs 308-316.

At the time of writing, the Department is yet to take enforcement action in the Magistrates' Court for the breach of an order. In 2023-24, there were three separate recorded breaches, and the Department issued warning letters. However, in each case, it decided that the breach was not serious enough to warrant enforcement action.[46]

3.12 Alternatives to the Scheme

As noted at 3.4, the Scheme was developed to fill a gap which was not covered by the existing legal mechanisms available to school principals, the TWN and PSIO regimes. However, the TWN and PSIO schemes are still available, and the Ministerial Guidelines outline circumstances in which a school principal, a school proprietor or the Department may prefer to use one of these measures in the place of or in addition to an order under the Scheme.[47] For example:

- Where a school principal or teacher has been subjected to criminal behaviour, such as assault, then it may be necessary for the principal to apply for a PSIO and also issue an order under the Scheme. A PSIO allows the Police to become involved to protect the person who is the subject of the behaviour, and a breach of the PSIO attracts criminal penalties.

- Where a person who is not in any way connected to the school continues to come onto school premises but does not cause any disruption, then there are no grounds to make an order under the Scheme. However, a school principal may still wish to issue a TWN to prevent the person from trespassing.

The Ministerial Guidelines also note that the Scheme may overlap with Family Violence Intervention Orders (**FVIOs**) made under the *Family Violence Protection Act 2008* (Vic) and the Reportable Conduct Scheme and Child Safe Standards made under the *Child Wellbeing and Safety Act 2005* (Vic).[48] FVIOs did not come up in this review.

3.13 Interstate and overseas comparisons

In the course of the review, we considered if there are any equivalent regimes to the Scheme in other Australian jurisdictions, New Zealand, the United Kingdom, and Canada. In general, school principals in these jurisdictions will rely either on specific legislative provisions in their local education acts to allow them to ban a person from school premises, or trespass notices under local trespass acts. We do not believe that there are significant lessons from these jurisdictions, but we have summarised the results of our research below.

a) Other Australian jurisdictions

The Victorian Scheme gives school principals broader powers to manage challenging behaviour from parents than their interstate counterparts. In other Australian states and territories, school principals have the power to order people to leave school premises and ban them from returning, either under school-specific legislation or general trespass laws. However, no regime gives them the power to make orders banning people from communicating with the school in certain ways or approaching school staff away from the school grounds. However, in other states, disobeying an order to leave or not enter the school grounds may be a criminal offence. The below table summarises the interstate regimes.

[46] School Community Safety Order Scheme Annual Report 2023-24, p. 6.
[47] Ministerial Guidelines, paragraphs 348-350, 353.
[48] Ministerial Guidelines, paragraphs 340-344, 353.

Jurisdiction	Mechanism	Legislative basis
NSW	General trespass provisions. Failing to comply attracts criminal penalties.	*Inclosed Lands Protection Act 1901* (NSW).
QLD	If a person is disruptive, abusive, insulting, threatening, or violent, or does not have a lawful reason to be on the school grounds, then the principal may direct them to leave and not re-enter the premises. There are three types of orders: • An order to leave may be given verbally by a principal. • An order to stay away from the school for up to 60 days may be given by the principal in writing, and has certain safeguards and review mechanisms. • An order to stay away from the school for up to one year may be given by the Department, and also has certain safeguards and review mechanisms. Failing to comply with the orders without a reasonable excuse attracts criminal penalties of 20 to 40 penalty units.	*Education (General Provisions) Act 2006* (QLD), ss 337-341.
WA	If a person is disruptive, or uses abusive, threatening or insulting language towards a teacher, an authorised person can direct them to state their name and address and leave the school. Failing to comply attracts a $5,000 fine.	*School Education Act 1999* (WA), s 120.
SA	A designated person may issue a barring notice prohibiting a person from a school if they are abusive, threatening, or insulting, trespassed on the school grounds, or committed or threatened to commit an offence at the school. If the order is for more than two weeks, the person may apply to the Department for a review. There are additional provisions dealing with directing people to leave school premises. The maximum penalty for failing to comply is a $2,500 fine.	*Education and Children's Services Act 2019* (SA), ss 93-95.
TAS	If an adult person is behaving unacceptably within the meaning of the behaviour management policy, a school principal may direct them to leave and not re-enter. The principal may then take whatever action is necessary to remove the person from the premises, and must provide them with an order in writing confirming that they may not return to the school. Failing to comply attracts a penalty of 10 penalty units.	*Education Act 2016* (TAS), s 136.
NT	General trespass provisions. Failing to comply attracts criminal penalties.	*Trespass Act 2023* (NT).
ACT	It is an offence to trespass on school premises, act in an offensive or disorderly way on school premises, or refuse to leave school premises if directed to leave by a police officer, school principal, or person authorised by the principal. Failing to comply attracts a penalty of between 5 and 10 penalty units.	*Education Act 2004* (ACT), s 147.

Since we began this review, South Australia has begun undertaking significant amendments to the barring notice scheme through the *Education and Children's Services (Barring Notices and Other Protections) Amendment Bill 2024*. The changes, if passed, will add more detail to the legislation, extend the notice area to 25 metres beyond the boundary of the school, increase the maximum period of the notice from 3 to 6 months, increase the maximum penalty from $2,500 to $7,500, and add additional defences. The process of legislative change is ongoing at the time of delivering this report.

a) New Zealand

School principals may issue a trespass notice under the *Trespass Act 1980* (NZ) to direct a person to leave the school grounds if they are disruptive, dangerous, or have no reason to be there. A person may be charged with an offence if they do not comply with the notice. As a school principal issuing the notice is making a public law decision, their decision may be reviewed by the Ombudsman or challenged in court.

b) United Kingdom

Education in the United Kingdom is devolved, with the national government responsible for English schools, and the governments of Scotland, Wales and Northern Ireland responsible for schools in those countries. Schools are managed by local authorities under national legislative frameworks. Section 547 of the *Education Act 1996* (UK) makes it an offence for a person to cause a nuisance or disturbance on school grounds and allows the police or an authorised person to remove them. Individual local school authorities commonly use the section as a basis to establish policies allowing schools to issue either warning letters or banning letters to disruptive parents, which withdraw their implied legal right to attend the school.

c) Canada

Similarly to Australia, public schools in Canada are the responsibility of provincial and territorial governments. However, unlike in Australia, they are managed by local school boards. Canadian school principals have a range of options for banning a disruptive or threatening person from school grounds based on provincial or territorial law and the policies of their own school district. For example, Ontario Education Regulation 474, s 3(1), allows for a principal or another person authorised by the school board to direct a person to leave: “A person is not permitted to remain on school premises if his or her presence is detrimental to the safety or well–being of a person on the premises, in the judgment of the principal, a vice–principal or another person authorised by the board to make such a determination”, and individual school boards may make policies around the use of this power. In other provinces and territories, principals will use trespass laws, potentially supported by school board policy.

4. Findings and Recommendations

4.1 Summary

a) Strengths of the Scheme

Department staff, school principals and external stakeholders provided consistent feedback on the key strengths of the Scheme. These include:

- The Scheme sets a clear expectation around behaviour, and can provide a deterrent to aggressive or threatening behaviour even when not actually used. As one principal wrote in the response to the Australian Catholic University (ACU) survey:

  It [the Scheme] clearly outlines to anyone that aggressive behaviour will not be tolerated. It supported the parent issue that I was experiencing last year and the threat of it being issued was enough for them to back down.

- The Scheme does allow principals to manage behaviour which could not be addressed through a PSIO or TWN, such as an unreasonably high volume of communications, aggressive behaviour at off-site events such as graduations, aggression directed at staff or students from a person just outside the school fence, and aggressive behaviour directed at staff outside of school. This final power has been useful in small towns, where parents and staff commonly interact in the community.

- Immediate orders can provide a "circuit breaker", removing an aggressive or threatening person from the school and giving the principal time to seek advice and consider their options. As one principal wrote in the ACU survey, an order is "a good way to provide some space and time quickly to assist in ensuring a safe environment".

- Allowing regional directors to issue orders means that regional staff can take over the management of very challenging individuals, easing some of the pressure on school principals and allowing the school principal to focus on maintaining or rebuilding the relationship with the parent. While some of the school principals we spoke to emphasised the importance of having the authority to issue an order themselves, all principals and school staff representative bodies agreed that allowing regional directors to issue an order was an important part of the Scheme.

- That the majority of school principals who issue an order required no further departmental support including in enforcement.

- Some stakeholders from the independent and Catholic education sectors noted that the Scheme provides a means to manage troubling parent behaviour without terminating the student's enrolment.

- Non-government schools appreciated having the templates and documents relating to the Scheme available on the Department's external website.

School staff generally supported the Scheme and wanted it to continue. As one principal who made an order reported in stakeholder consultation, "I hope the Scheme is here to stay, it has real value."

b) Opportunities for improvement

Stakeholders proposed a range of opportunities to improve the Scheme. Some of these were consistent across a wide number of stakeholders, some specific to one. The Department noted that the Scheme has not been widely used in its first two years of operation, with 24 orders issued up to the end of FY 2024, 9 of these in FY 2022-23 and 15 in FY 2023-24.[49] The Department wishes to understand if there are any barriers to the use of the Scheme that may be contributing to the limited number of orders being issued in its first two years of operation.

The Scheme provides school principals and other Department staff with powers to manage behaviours which go beyond the school premises and fall below the threshold for a PSIO.

[49] School Community Safety Order Scheme Annual Report 2023-24, p. 7.

These are broader powers than are currently available to school principals in other Australian states and many comparable overseas jurisdictions, and they accordingly come with significant procedural safeguards.

School principals and Department staff generally appreciated the range of powers available, and some suggested that the Scheme could be further expanded to include restrictions on posting on personal social media. We have considered expanding the scope of the Scheme against the risks of legislative overreach.

The most consistent theme in the feedback from stakeholders who make orders themselves or advise school principals and Department staff on making orders is that the safeguards are excessively restrictive, and are a barrier to making orders. Many reported a preference for issuing TWNs, even where they had grounds for making an order, as there are fewer procedural steps in a TWN. These stakeholders pointed to the low number of orders made as evidence that making an order was often not worth the time and effort. We have broken this feedback down in detail in this section of this report, and considered the benefits and risks with simplifying different parts of the Scheme and removing certain provisions in the ETR Act.

Parents Victoria provided the perspective of parents who may be the subject of an order. In some cases, their feedback was similar to school staff. For example, they also raised concerns about the complexity of the process to make and appeal an order, and reported that parents subject to an order could feel that they were being subjected to a form of prosecution. However, they continued to have concerns about the Scheme overall, as well as other restrictive measures which schools may impose on parents, including TWNs and PSIOs. We have acknowledged their criticism of the Scheme, but also balanced this with the demands faced by school staff who experience demanding, aggressive or threatening behaviour from parents and other members of the school community.

The role and function of immediate orders, the internal review process, and the Scheme's enforcement mechanisms were the subjects of particular focus. We have described this feedback and options for amending these below. In some cases, the Department will need to clarify its policy position between different options.

Additionally, we identified through both our desktop review and from stakeholder feedback straightforward enhancements to the ETR Act and Ministerial Guidelines to improve aspects of the Scheme which are already working well. We have listed these recommendations as appropriate.

The effectiveness of the Scheme goes beyond the ETR Act and Ministerial Guidelines, and also depends on school and regional staff having knowledge of the Scheme and confidence to make orders. Given that the Scheme is new, both knowledge and confidence in the Scheme are still growing. However, it will be important for the Scheme to be effective that school and regional staff are clear on the Scheme's scope and purpose, and regional staff give a consistent and positive message to school principals who come to them for advice on making orders.

#	Provision	Recommendation
1.1	N/A	The Department continues to educate its staff in the Scheme, give policy guidance on the use of orders, and provide direction to regional staff so they are in a position to either make orders or to support school principals who are facing a situation where an order may be necessary.
1.2	N/A	Given the length and complexity of the Ministerial Guidelines, the Department ensures that principals have access to guidance

		material succinctly summarising aspects of the Scheme relevant to them.

4.2 Scope of the scheme

a) Members of the school community

Some school staff who had a favourable view of the Scheme wanted to see it expanded to provide a broader range of protections to a broader range of people. For example, one primary school had been dealing with challenging behaviour directed by a member of the community towards school staff and also members of the school council. It is straightforward to expand the protections of the Scheme to include school councillors, members of any other school governing body as applicable to independent schools, and potentially other members of the community supporting schools in a volunteer capacity.

However, it is unclear what affect this change would have in practice. An authorised person may only make an order to protect a member of the school community from unacceptable risk of harm if they are at a school-related place.[50] The legislation appears to be drafted to draw a distinction between teachers, students and parents on one hand and other people who may be at a school-related place for a school-related reason on the other, but this distinction does not seem to have practical effect with regards to the grounds for making orders.

#	Provision	Recommendation
2.1	ETR Act, s 2.1A.1 Definitions, ETR Act, 2.1A.5(1)(a)(ii), 2.1A.17(1)(a)(ii), grounds for making orders	Consider if there is a policy basis upon which there should be a change to the definition of "member of the school community" in the ETRA. Consider also if there should be a distinction between parents, teachers and students on one hand and other people who may be at a school-related place for a school-related reason on the other, and if there should be any amendments to the provisions defining grounds for making immediate and ongoing orders.

b) Social media

Several interviewees raised concerns about attacks being made against school staff on social media. It is important for there to be clarity around how an SCSO may apply to a social media platform.

The Scheme allows an authorised person to make an ongoing order to restrict a person from 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.[51]

This would appear to contemplate social media pages or applications used for the school and parents to communicate. Arguably, however, the breadth of the words "established in relation to" could refer to privately-established social media pages, or 'group chats' of parents. It could potentially extend to Google reviews and community Facebook pages where the local school is a significant topic of conversation. We consider there would be complexity and risk in seeking to extend an SCSO to prohibit communications on private channels. These issues include:

[50] *Education and Training Reform Act 2006* (Vic), ss 2.1A.5(1)(a)(ii), 2.1A.17(1)(a)(ii).
[51] *Education and Training Reform Act 2006* (Vic), s 2.1A.15(1)(e).

- ensuring that any infringement on the right to freedom of expression in the Victorian Charter of Human Rights and Responsibilities (**Charter**) is not disproportionate;

- ensuring that powers provided for in the ETR Act are used for the purposes of that Act, namely to reform the law relating to education and training in Victoria by providing for a high standard of education and training for all Victorians, rather than for a broader purpose of regulating offensive conduct on social media;

- ensuring that there is consistency between the restrictions imposed on members of the public to protect teachers and measures to protect other essential workers exposed to abuse, for example, healthcare workers and social workers;

- drawing a boundary between social media platforms captured by the SCSO Scheme and those which are purely private; and

- at a very high level, raising Constitutional issues, noting that the power to regulate social media in general is exercised by the Commonwealth under the Telecommunications Power in s 51(v) of the Constitution.

An SCSO should only prohibit use of a communication platform or channel that is sufficiently public in nature and connected with the School. We note that there may be ambiguity in this scope.

The Ministerial Guidelines could be updated to improve clarity in relation to this aspect of the Scheme, by elaborating on what types of communication platform or channel is contemplated.

#	Provision	Recommendation
2.2	Ministerial Guidelines, paragraph 165	Update the Ministerial Guidelines to provide an explanation and examples of what is meant by a social media platform or channel "established in relation to" the relevant school.

4.3 Function of immediate orders

An authorised person may make an immediate order if a person poses an "unacceptable and imminent risk of harm". The word "imminent" distinguishes the grounds for making an immediate order from the grounds for making an ongoing order.

The definition of "harm" in the ETR Act extends beyond physical harm, so an authorised person may make an immediate order where an individual poses an imminent risk of causing either or both physical and psychological harm.

Several interviewees from schools and from the Department found this threshold to be too high to be practical. Stakeholders from both ESWID and Legal Division pointed out that if a person poses a risk of harm which is capable of materialising at any moment and may constitute criminal conduct, then the school staff would be expected to call the Police. The person would either leave the school of their own accord or be taken into custody. In either case, they would no longer pose a risk of harm capable of materialising at any moment and so there would be no grounds for making an immediate order. There are circumstances where an immediate order could still have a function when police are involved. For example, this may be the case in a regional area where police may take a while to arrive, or when a person cannot be taken into custody immediately. In such cases, an immediate order may still be needed in the interim until the there is no longer an unacceptable and imminent risk of

harm. However, if a person does not leave the school if threatened with police involvement and arrest, they may not comply with an immediate order.

The declining use of immediate orders does not necessarily present a problem for the Department, as school principals have the ability to make TWNs and involve the Police to deal with individuals posing an immediate threat to the school. It is ultimately a policy matter for the Department how it would like immediate orders used. Options to modify the requirement of immediacy include:

- adding a definition of "imminent" in the ETR Act to confirm that the risk of harm is imminent if there is significant time pressure but the risk of harm does not need to be capable of manifesting at any moment;

- removing the word "imminent" from the provision but adding that the risk of harm can only be managed by putting an order in place as quickly as practicable; or

- removing the word "imminent" from the provision but adding wording to state that it must not be practical in the circumstances to make an ongoing order.

Removing the word "imminent" means that the grounds for making an immediate order will be less certain and open to a wider range of interpretations. For example, if the provision was amended to state that an immediate order can be made where it is impractical to make an ongoing order, two school principals could come to very different conclusions on whether making an ongoing order is practical. This raises the risk that the power to make immediate orders could be used inconsistently.

Interviewees gave additional reasons why they found immediate orders to be impractical:

- A person who makes an immediate order orally must state the school in respect to which the order is made, the grounds on which the order is made, and the period for which the order remains in force.[52] Interviewees advised us that school principals could struggle to remember these requirements in high-pressure situations.

- An immediate order must be reviewed within 14 days, after which time it must be removed or replaced with an ongoing order.[53] This may not provide sufficient time to complete the process to make an ongoing order. The legislation could be amended to either extend this time automatically or give the authorised person the power to extend the time by another week. While this increases the power of an authorised decision-maker to impose restrictions on a person without providing them with the opportunity for a hearing, in our view, extending the timeframe by a week would not be disproportionate to the goal of providing authorised persons with sufficient time to follow the process to make an ongoing order.

- An authorised person who makes an immediate order must establish communications and access arrangements for the duration of the order.[54] This is less relevant for an immediate than an ongoing order, as an immediate order may only restrict a person from physically attending a school-related place rather than impose restrictions on their communication with the school as an ongoing order may do. The person making the order would still need to ensure that a parent or guardian can drop off or pick up their child from the school for the duration of the order, and this should be considered in the specific restrictions and conditions in the order. We note that communication and access arrangements can be dealt with briefly in the order itself, so the reservations of authorised persons on this point may be addressed with clearer direction on what is expected for communication and access arrangements for an immediate order.

[52] *Education and Training Reform Act 2006* (Vic), s 2.1A.7.
[53] *Education and Training Reform Act 2006* (Vic), s 2.1A.9.
[54] *Education and Training Reform Act 2006* (Vic), ss. 2.1A.12, 2.1A.13.

- The ETR Act states that, at the end of the 14 days, the authorised person review the order and either make an ongoing order or revoke the immediate order. Some stakeholders were not clear if the immediate order will simply lapse if it is not revoked, and so revoking the order is an extra step for the principal. Section 2.1A.12(1) provides for only two outcomes for the review of an immediate order – make an ongoing order or revoke the immediate order. This means that, if an authorised person completes a review of an immediate order and decides not to make an ongoing order, the legislation directs them to revoke the immediate order. In some cases, they may choose not to make an ongoing order (for example, they are in dialogue with the person on ways to manage their problematic behaviour) but would like the immediate order to remain in place for its full duration while they complete this process. It would be ideal to have a third option, to allow the immediate order to continue if it expires. It is important to consider the policy rationale for requiring an authorised person to review the order as soon as possible to ensure that an order is not left in place for longer than it needs to be, and so the Department may also consider updating the Ministerial Guidelines to ensure that authorised persons do not see allowing an immediate order to lapse as the default option.

#	Provision	Recommendation
3.1	ETR Act s 2.1A.5 Grounds and other requirements for making immediate order	Modify s 2.1A.5 of the ETR Act to define “imminent” or remove the requirement for imminency and add wording to reflect the Department’s policy goals for immediate orders.
3.2	ETR Act s 2.1A.7 Matters which must be stated in an immediate order	Simplify the requirements in the ETR Act for making an oral order, for example, so that the authorised person only needs to direct the individual to leave and/or not attend the school-related place. Unless the authorised person gives another timeframe, the restriction stands for the duration of the order.
3.3	ETR Act s 2.1A.9 Duration of immediate orders	If the Department does not make changes to shorten the process to make an ongoing order, amend the ETR Act to permit the authorised person to extend an immediate order by a further 7 days beyond the initial 14-day period, provided this is treated as a fresh administrative decision subject to the same justification and proportionality requirements as the original order.
3.4	ETR Act s 2.1A.13 Communication and access arrangements	Clarify the Department’s position on the minimum expectations for communication and access arrangements for immediate orders, and reflect them in the Guidelines and/or in Department policy.
3.5	ETR Act 2.1A.12 Review of immediate order, Ministerial Guidelines, paragraphs 207 - 208	Add a third option to s 2.1A.12(1) of the ETR Act stating that the immediate order may be left in place until it expires. Clarify in the Ministerial Guidelines (paragraphs 207-208) that an immediate order will expire at the end of the time period if the authorised person takes no further action.
3.6	ETR Act 2.1A.12 Review of immediate order	Amend s 2.1A.12(3) of the ETR Act to clarify that this provision is referring to whether there are grounds to make an ongoing order, rather than grounds to make the initial immediate order.

4.4 Grounds for making ongoing orders

In some circumstances, an order may be effective in restraining a person's problematic behaviour, but the authorised person who made the order will have reasons to believe that the person will resume their behaviour once the order expires. For example, the person loiters near the school outside of the 25-metre boundary. In this case, the authorised person will likely form the view that a new ongoing order is needed, but they may not have the confidence that the grounds exist.

The ETR Act states, relevantly, and with emphasis added:

> ***2.1A.17 Grounds and other requirements for making ongoing orders***
>
> *(1) An authorised person may make an ongoing school community safety order in respect of another person if the authorised person reasonably believes that the other person—*
>
> *(a)* ***poses an unacceptable risk*** *of harm…*
>
> *(b)* ***poses an unacceptable risk*** *of causing significant disruption…*
>
> *(c)* ***poses an unacceptable risk*** *of interfering with the wellbeing, safety or educational opportunities of students…*
>
> *(d)* ***has behaved and is likely to behave*** *in a disorderly, offensive, intimidating or threatening manner…*
>
> *(e)* ***has engaged in and is likely to engage*** *in vexatious communications…*

On a literal reading of the legislation, grounds (a), (b) and (c) require the authorised person to make an assessment based on the present situation. Grounds (d) and (e), by contrast, require the authorised person to consider the person's past and likely future behaviour. In practice, when deciding if a person poses an unacceptable risk, the Department's position is that the authorised person should consider their past and future behaviour.[55] And in all cases, the authorised person would still have grounds to make an order if they reasonably came to the view that the person's behaviour was only restrained by the order, as in the absence of an order, they would pose an unacceptable risk as per grounds (a), (b) and (c), and would have engaged in the conduct described in grounds (d) and (e) and would be likely to do so again. This could be explained in the Ministerial Guidelines.

#	Provision	Recommendation
4.1	Ministerial Guidelines, paragraphs 82 – 84	Update the Ministerial Guidelines to explain how an authorised person may determine that grounds for making a subsequent order exist where the person is already subject to an order which is restraining their behaviour.

4.5 Process for making ongoing orders

School and Department stakeholders consistently raised concerns about the procedural requirements for making an order. The main cause of this concern appeared to be the requirement, prior to imposing an ongoing order, to provide a draft ongoing order to the

[55] Refer to *Nigro v Secretary to the Department of Justice* [2013] VSCA 213.

person to make submissions on.[56] This requirement is intended to ensure the person to be subject to the order is given procedural fairness. However, from the stakeholder feedback, it is unclear how effective it is in practice:

- School principals advised that providing the person with an opportunity to respond encouraged high-conflict people to enter into a type of legal process with the principal, escalating their behaviour.

- School principals were forced to engage multiple times with individuals who could be hostile or even violent.

- Parents Victoria advised that parents who were presented with a draft order could feel that they were being prosecuted by the school, and the relationship with the school had usually already broken down by this point. As such, the additional step did not seem to provide assurance to individuals subject to the order.

We gave consideration to whether there is flexibility to provide 'less' procedural fairness to a person to be subject to an ongoing order while still complying with the statutory procedure. However, the right to receive notice and make submissions on a proposed ongoing order is expressly guaranteed in the ETR Act. There is little flexibility for authorised persons to do any less; compliance with this requirement will constitute minimum compliance with procedural fairness in any circumstance. The only scope for minimising the procedural fairness burden on authorised persons would be to interpret s 2.1A.21 to allow only a singular set of submissions, rather than multiple sets of submissions. This might present minimal benefit in practice and come with unintended consequences, such as removing the ability to clarify or correct submissions. As such, this is not a useful mechanism for minimising the procedural fairness burden.

If authorised persons are to be permitted to do less in relation to their procedural fairness obligations in making an ongoing order, then legislative change would be required. In considering any proposed legislative changes to the notice requirement to address the above concerns, it is necessary to consider what requirements are imposed by common law principles of procedural fairness.

a) Principles of procedural fairness

The principles of procedural fairness arise by way of an accepted common law presumption that Parliament, when it confers powers on administrative decision-makers capable of impacting individual interests, intends that those powers be exercised consistently with natural justice.[57]

The presumption of procedural fairness only arises in relation to powers that are capable of impacting an individual's interests. An SCSO imposes limitations on a person's rights, such as freedom of movement and communication, the right to privacy and equality, and the rights of families and children, with the threat of penalties. While relatively innocuous in the context of other types of intervention orders, it is a coercive instrument that is sufficiently capable of impacting a person's interests to invoke the presumption of procedural fairness. Therefore, we have considered if any proposed changes to the Scheme provide sufficient procedural fairness to justify the limitations of an individual's Charter rights.

The content of the requirements of procedural fairness will depend on the circumstances of the case, but two essential rules invariably underpin the requirements:

- The person impacted should have a reasonable opportunity to present their case before the decision is made (**hearing rule**); and

[56] *Education and Training Reform Act 2006* (Vic), ss 2.1A.18, 2.1A.21.
[57] *Plaintiff S10/2011 v Minister for Immigration and Citizenship* (2012) 246 CLR 636, 666.

- The person impacted is entitled to an unbiased decision-maker (**bias rule**).

Given common law principles of procedural fairness apply by way of implication in the terms of the statute, they can be displaced by suitably clear terms to the contrary.

What role the common law plays in determining the content of procedural fairness is complicated in circumstances where the power in question is given an express statutory procedure. Normally, where a statute is express in relation to a matter, it excludes the possibility that Parliament can be presumed to intend, or taken to have impliedly intended, anything in relation to that matter. However, even where procedural fairness is provided for expressly in a statute, clear words are required to manifest an intention to displace any scope for the common law principles of procedural fairness to apply.[58] It remains a question of interpretation of the relevant statute whether it intends to provide an exhaustive code of procedural fairness, or rather that the common law may supplement the express provisions.

These principles were articulated by Brennan J in *Kioa v West*:

> *To ascertain what must be done to comply with the principles of natural justice in a particular case, the starting point is the statute creating the power. By construing the statute, one ascertains not only whether the power is conditioned on observance of the principles of natural justice but also whether there are any special procedural steps which, being prescribed by statute, extend or restrict what the principles of natural justice would otherwise require.*[59]

and in *Annetts v McCann*:

> *The relevant law must be found in the statutory provisions which create the power and confer it on the repository, though the terms of the statute may be expanded by the implication of conditions supplied by the common law.*[60]

Part 2.1A of the ETR Act contains no express statement to the effect that the procedural requirements for imposing an SCSO are intended to be an exhaustive code of procedural fairness, or that any common law rules of natural justice are not to apply. While Part 2.1A is a statutory expression of procedural fairness requirements, common law principles of procedural fairness may expand, or give content to, the statutory provisions, in different cases. Therefore, in considering legislative change, it is necessary to maintain awareness of how common law procedural fairness may play a role, and adapt drafting accordingly.

If the requirement to give notice and invite submissions were simply removed, then it is likely that common law procedural fairness would substitute the requirement. Statutory drafting would be required to effectively remove the requirement. A number of options are available, each of which may carry different reputational or strategic implications that inform the Department's preference.

[58] *Annetts v McCann* (1990) 170 CLR 596, 598.
[59] (1985) 159 CLR 500, 614.
[60] (1990) 170 CLR 596, 604; See also *Re Minister for Immigration and Multicultural Affairs; Ex parte Miah* (2001) CLR 57.

b) *Options to amend process*

We have considered the advantages and disadvantages of removing the requirement for the authorised person to seek submissions from an individual before making an order in respect to them. The advantages are:

- the wellbeing of staff would be better protected; and
- the process for making an ongoing order would be consistent with the process for making a TWN, meaning that authorised persons would be less likely to default to making a TWN over an ongoing order purely for administrative simplicity.

The disadvantages are:

- the Department would take on legal and reputational risk, as the right to a hearing would be removed altogether; and
- there would be a greater risk of orders being overturned in internal or external review, as people subject to orders may argue that they were not given any warning or a chance to respond.

In order to better-manage the risks with removing the right to make submissions entirely, we propose these two measures:

- The authorised person has the option to seek submissions before making the order.
- If they choose not to seek submissions, then they need to justify their decision based on the circumstances. For example, the aggressive or threatening behaviour from the person. The ETR Act would need to be amended to confirm that an order is not invalid solely because the authorised person did not seek submissions.

We have noted from interviews that it seems to be common practice for school principals to issue a warning letter to the person before issuing an order. This is not mandated by the ETR Act or the Ministerial Guidelines, however, the ETR Act requires an authorised person to consider less-restrictive ways to manage a person's behaviour before issuing an order, and the Ministerial Guidelines suggest that a warning letter or email can be one of these methods.[61] A formal written warning could provide an additional safeguard, and make the decision to issue an order without seeking submissions more defensible. It could also provide a person with information on how to escalate their concerns with the Department, for example, to the dispute resolution function. This could remove some of the pressure placed on authorised persons. The Department would need to be prepared to deal with escalation from the warning letter.

Additionally, the requirement to seek submissions could be retained but restricted. For example, by providing the person who is the subject of the order with fewer than 7 days to make submissions, or provide them with a "reasonable opportunity" to challenge the order after it is made. These are alternative options to recommendation 5.1.

c) Communication and access arrangements

For procedural simplicity, it may also be possible to include communication and access arrangements in the order itself, removing the need for a separate plan or protocol. Some stakeholders advised that they were unclear if this needed to be a separate document, although the legislation does not state that they must be separate from the order.

[61] Ministerial Guidelines, paragraph 122(a).

#	Provision	Recommendation
5.1	ETR Act s 2.1A.18 Process for giving ongoing order ETR Act s 2.1A.21 Procedure before making ongoing order	Amend the ETR Act to: • allow an authorised person discretion not to seek submissions only where urgent circumstances exist, and require them to record written reasons justifying this departure from the usual process. Any such discretion must remain consistent with the principles of natural justice and be subject to judicial or external review • state that an order is not invalid solely because the authorised person did not seek submissions; and • require the authorised person to issue a written warning before making an ongoing order.
5.2	Ministerial Guidelines, paragraphs 16, 223	Amend the Ministerial Guidelines to confirm that communication and access arrangements may be stated in either the order or a separate document.

4.6 Variation of ongoing orders

Section 2.1A.26(1) of the ETR Act allows an authorised person to vary an order either on their own motion or on the application of the person subject to the order (sub-sections (a) and (b) respectively). Given that there is already an internal review process in the ETR Act, the additional step of allowing a person to apply first to the original decision-maker for variation is unnecessary. A decision-maker may still vary an order on their own motion for any reason, including a request from the person subject to the order.

Removing s 2.1A.26(1)(b) of the ETR Act would also resolve some ambiguities:

- The ETR Act allows an ongoing order to be varied by the authorised person who made the order. There are circumstances in which it is practical for another authorised person to vary the order, for example, the school principal who made the order is on leave. However, allowing another authorised person to vary the original order is potentially problematic. For example, it is unclear whose decision is being reviewed in internal review, and the amendment may not be approved of or supported by the original decision-maker. Recognising that this change would provide significant administrative efficiencies, we have included it as a recommendation.

- The ETR Act requires an authorised person to follow the process for making a new order in ss 2.1A.15 to 2.1A.24 when varying an order, unless the variation is the same as the variation requested by the person subject to the order or is otherwise in their favour.

> ***2.1A.26 Variation of ongoing orders***
> *(3) If an authorised person varies an ongoing school community safety order—*
> *(a) subject to subsection (4), the authorised person must comply with sections 2.1A.15 to 2.1A.24 as if the application of those sections to the making of an ongoing school community safety order were to the varying of an ongoing school community safety order; and*
> *(b) the authorised person must give a written copy of the order as varied to the person to whom the order applies.*
> *(4) An authorised person is not required to comply with sections 2.1A.15 to 2.1A.24 in relation to a variation if the proposed variation—*

(a) is the same as the variation that has been requested by the person to whom the order applies; or
(b) is otherwise in favour of the person to whom the order applies.

The ETR Act does not state that they need to follow the process if they decide not to vary the order. Removing s 2.1A.26(1)(b) would remove this point of ambiguity.

#	Provision	Recommendation
6.1	ETR Act s 2.1A.26(1)(b) Variation of ongoing orders	Remove the provision in s 2.1A.26(1)(b) of the ETR Act that states that an ongoing order may be varied on the application of the person subject to the order.
6.2	ETR Act s 2.1A.26(1)(b) Variation of ongoing orders	Amend the provision to allow an order to be varied either by the original person who made the order or a different authorised person.

4.7 Internal review

The internal review process was the subject of extensive discussion with stakeholders during consultation. The majority of orders do not proceed to internal review, but when a person does seek an internal review of an order, the process can be demanding on both the applicant and the authorised person. In particular, school principals whose orders have been subject to an internal review have described the review process as "re-traumatising", forcing them to work through the events leading up to the decision to make the order in detail and respond to extensive questioning from Department staff. The threat of the internal review process can be a factor in principals deciding to make a TWN rather than order, as there is no review or appeals process for a TWN.

As we have previously advised the Department, our view is that the Department can simplify the internal review process without needing to amend either the ETR Act or the Ministerial Guidelines through updating the evidence matrix and EduSafe Plus to allow the internal reviewer to make a robust decision using information captured at the time of making the order. There are, however, some additional points relating to the ETR Act and Ministerial Guidelines which have been considered in this review.

a) Application for internal review

The ETR Act outlines a process for internal review where a person subject to an order makes an application to the school, which must then pass it onto an internal reviewer as soon as practicable.[62] However, applicants commonly apply to the internal reviewer directly. The provisions of the ETR Act could be amended to state that an application for internal review may be made to a school or a reviewer directly, while retaining the requirement that a school must pass on any application for review to a reviewer as soon as is practicable.

#	Provision	Recommendation
7.1	ETR Act ss. 2.1A.29(2) and (3).	Amend the ETR Act to state that an application for internal review may be made to a school or a reviewer directly, retaining the requirement that a school must pass on any application for review to a reviewer as soon as is practicable.

[62] *Education and Training Reform Act 2006* (Vic), ss. 2.1A.29(2) and (3).

b) Merits review or process review

The first point we have considered is the nature of internal review. The ETR Act is silent on this point, but the Ministerial Guidelines make clear the Department's position that the internal review is a merits review.[63] 'Merits review' in this context refers to a process where the internal reviewer revisits the decision to impose an ongoing order by 'stepping into the shoes' of the authorised person, and revisiting the decision afresh with regard to all up-to-date evidence. Some interviewees believed that the review process should exclusively be limited to consideration of whether the correct procedure was followed by the authorised person. Our position is that it is preferable to treat internal review as a merits review because:

- this interpretation is consistent with a plain reading of the internal review provisions in the ETR Act;
- it ensures that the order is considered in its entirety by a second and independent person;
- an application for external review may not reach the conference or hearing stage at VCAT before the order expires, so the internal review may be the only review actually available to an applicant; and
- completing an internal merits review will also put the Department on a better footing should it need to defend the decision to make an order in VCAT, as it will have had to consolidate and reconsider all the evidence.

#	Provision	Recommendation
7.2	Ministerial Guidelines, paragraph 262	Confirm in the Ministerial Guidelines that the internal reviewer should conduct a merits review and does not need to assess the procedural correctness of the decision to impose the order under review.

c) Reducing the burden of internal review

In conducting internal review under the Scheme, the internal reviewer may require further information from the authorised person or other witnesses. Feedback from the Department was that there is some uncertainty in relation to the circumstances in which the internal review secretariat should seek further input from the authorised person or other witnesses. The Department is undertaking measures to reduce the need for this to occur during the internal review process.

Ideally, the internal review secretariat should have all the relevant information at the start of the process, and should not need to seek any further information from the authorised person. However, it is also ideal that the authorised person should not need to write a lengthy document to justify their decision to make the order. Currently, the information is captured in an evidence matrix completed between the internal review secretariat and the authorised person, and the Department may consider how this process can be simplified so that the authorised person will record enough information to justify the decision to make the order in the most efficient way possible.

Internal reviewers may also be assisted by clarity on the standard of proof to be applied on internal review. This would assist in the forensic decision regarding whether to seek further evidence by providing a clearer framework for when an internal reviewer can be satisfied of the existence of a fact. It would be open to use the Ministerial Guidelines to direct internal

[63] Ministerial Guidelines, paragraph 262.

reviewers to apply the civil standard of proof in internal review, meaning an internal reviewer may make a factual finding that it is more probable than not that it is correct.

#	Provision	Recommendation
7.3	Ministerial Guidelines, paragraph 274-279	Consider whether the process for completing the evidence matrix can be simplified so that the authorised person will record enough information to justify the decision to make the order in the most efficient way possible, and reflect this position in the Ministerial Guidelines.
7.4	Ministerial Guidelines, paragraph 270	Amend the Ministerial Guidelines to add that the civil standard of proof may be applied in internal review, and provide guidance on the meaning of the balance of probabilities.

d) Timelines for internal review

Some interviewees provided feedback on the timeframes for the internal review process. Under the ETR Act, an applicant must apply for internal review within 28 days of the authorised person's decision, and the internal reviewer must complete the review as soon as practicable and no later than 28 days after the decision.[64] The reviewer has the option to extend the review period for a further 28 days.[65] Stakeholders within ESWID and Legal Division, the areas in the Department responsible for the internal review process, have found some challenges with these timeframes:

- In one case, an applicant applied for an internal review outside of the 28-day timeframe due to confusion over whether the order was eligible for internal review or external review at the time. Due to these exceptional circumstances, the internal reviewer accepted the application out of time. However, on a strict reading of the ETR Act, it is not clear whether an application may be accepted out of time. The ETR Act could be amended to expressly give the reviewer the power to accept an internal review application outside of the 28-day window in exceptional circumstances.

- The 28-day timeframe, and even the extended 56-day timeframe, to complete a review can be too short in cases where additional documents and evidence are needed:

    - The Ministerial Guidelines state that an internal reviewer may seek expert advice.[66] In practice, no internal reviewers at the time of writing have done so. One reason for this is because they have not had time.

    - The reviewer may seek further information from the person subject to the order, and the timer stops until the person responds.[67] In most cases, reviewers also seek further information from other witnesses, such as school staff, which takes further time, but which does not stop the timer.

The problem could be addressed by either extending the time limit for internal review or by stopping the timer when an internal reviewer seeks expert advice. Stopping the timer would completely resolve the issue, however, it theoretically allows for the review to continue indefinitely outside of the control of the applicant. If an expert did not respond to the request,

[64] *Education and Training Reform Act 2006* (Vic), ss. 2.1A.30(1) & (2).
[65] *Education and Training Reform Act 2006* (Vic), ss. 2.1A.30(4).
[66] Ministerial Guidelines, paragraph 272.
[67] *Education and Training Reform Act 2006* (Vic), s 2.1A.29(5), 2.1A.30(3).

or responded very slowly, the review would stop and the applicant would have no grounds to demand that it be finalised. This risk could be addressed by placing a maximum timeframe on the review, but this creates the risk that reviewers will treat the maximum timeframe as the time available to them in all cases. As such, we consider extending the timeframe to be simplest option, providing procedural certainty to the applicant and time to make the correct decision to the reviewer.

#	Provision	Recommendation
7.5	ETR Act s 2.1A.30(1)	Amend the ETR Act to explicitly state that an internal reviewer may accept an application for internal review beyond 28 days if they are satisfied that there are exceptional circumstances.
7.6	ETR Act s 2.1A.30(2)	Extend the timeframe afforded in s 2.1A.30(2) of the ETR Act for internal review beyond 28 days, to either 6 or 8 weeks.

e) Outcomes of internal review

In principle, an internal review should end with the order being affirmed, varied or revoked on its merits. There are some irregularities or gaps which can be addressed to make this outcome more likely:

- The ETR Act lists the decisions which are reviewable by internal review:

  2.1A.29 Internal review
  (1) A person to whom an ongoing school community safety order applies may apply in writing to the school in respect of which the order was made for internal review of a decision—
  (a) to make the order; or
  (b) to vary the order on the authorised person's own motion; or
  (c) to refuse an application for variation of the order by the person to whom the order applies under section 2.1A.26(1)(b); or
  (d) to refuse to revoke an order under section 2.1A.25(a).

  In some cases, internal reviewers have affirmed orders with minor variations. Under this provision, this could be read as a decision to vary the order by an authorised person on their own motion, which is in itself reviewable. While the risk is minor, it could be ideal to remove this ambiguity by confirming that a decision to vary an order made by an internal reviewer is not in itself reviewable by internal review.

- If a decision is not made within the period required by this section (including, if applicable, the period as extended) the ongoing school community safety order is revoked.[68] An internal review may be for variation, not just revocation, and we received feedback that revocation may not be appropriate in this case. We did not identify this as a concern in our stakeholder consultations, although it is possible to envision a situation where an order was revoked inappropriately because the authorised decision-maker did not consider a proposed variation in time. It would be possible to amend the ETR Act to make the decision requested by the applicant to be the deemed decision in the event that the internal reviewer did not make a decision in time. There are some complexities with this option which would need to be managed, for example, the decision would not be reflected in the written version of the order, the applicant may have made a request for variation not permitted by the ETR Act (for example, requesting that the order be extended to other persons), or the applicant may have made several conflicting applications.

[68] *Education and Training Reform Act 2006* (Vic), s 2.1A.30(5).

The Department may pursue this change if it considers it worthwhile and if these complexities can be managed.

- In some cases, an internal reviewer seeks more information from an applicant, and they do not respond. Where this has happened, the internal reviewer has proceeded on the information available. This could be clarified in the Ministerial Guidelines.

The Ministerial Guidelines refer to orders being "invalidated" on internal or external review.[69] This should be changed to 'revoked' to align to the ETR Act.

#	Provision	Recommendation
7.7	ETR Act s 2.1A.29 Internal review, Ministerial Guidelines, paragraph 259	Amend the ETR Act and Ministerial Guidelines to clarify that a decision to affirm or vary an order by an internal reviewer is not reviewable in internal review.
7.8	Ministerial Guidelines, paragraphs 269	Amend the Ministerial Guidelines to add that, if an applicant does not respond to a request for information, the reviewer makes a decision on the information available.
7.9	Ministerial Guidelines, paragraphs 51, 64	Replace "invalidated" with "revoked" to align the Ministerial Guidelines to the ETR Act.

4.8 External review

At the time of writing, only two ongoing orders have progressed to external review. As such, the Department has limited experience with the external review process. However, two issues have arisen for consideration as part of this review:

- **External review timing**: due to VCAT's waiting periods, external review proceedings will generally not be heard before the order under review expires.
- **Privacy**: in an external review proceeding, the Department is required to file with VCAT and serve on the applicant all relevant documents. This raises the possibility that the sensitive personal information of individuals who have been affected by the behaviour leading to the order is made available to the person subject to the order.

a) External review timing

Part 2.1A of the ETR Act provides clear timeframes for internal review of an SCSO. An application for internal review of an SCSO can be made within 28 days of the making of the SCSO. The internal review decision must be made within 28 days. This period may be extended once. An external review application to VCAT must be made within 28 days of the internal review decision. An SCSO can be made for a maximum of 12 months.

There is no fixed timeframe for a proceeding in VCAT's review and regulation list. The following points have been gleaned from the SCSO proceedings before VCAT at the time of the drafting of this report:

- A proceeding will be listed for a directions hearing that occurs approximately 3 months after the application is lodged.

[69] Ministerial Guidelines, paragraph 51, 64.

- There is no mechanism to alert VCAT to an impending SCSO expiry date after an application is made. This was attempted for a proceeding lodged in September 2024, by emailing and calling VCAT's registry, but a directions hearing was still listed 3 months later.

- VCAT will not allocate a hearing date until the proceeding is at a point where an accurate hearing estimate can be given. Accordingly, exchange of evidence and preparation of a Tribunal Book must occur before VCAT will list a hearing date.

- The hearing date must be listed to allow sufficient time for exchange of submissions.

- VCAT indicated in December 2024 that it was listing hearings in June 2025. This indicates a wait period of at least six months.

- Depending on the complexity of the proceeding, a VCAT member will likely need to reserve their decision following the hearing. This would add further time before an external review decision is made.

From the time of the filing of an application for external review to a final decision by VCAT, more than 12 months are likely to have passed. If timetabling is agreed on a more expedited basis, this could be reduced to approximately 9 months, though this will vary from case to case depending on complexity and the nature and volume of the evidence. The below table shows an indicative timeline for review of an SCSO:

Time	Stage in process
0 months	Order is made for maximum duration of 12 months
1 month	Internal review application is made
2 months	Internal review decision is made (this may be extended by 28 days, and this time may be more delayed if further information is sought by the internal reviewer)
3 months	External review application is made
6 months	VCAT directions hearing
8 months	VCAT hearing date listed
12 months	Order expires (VCAT is likely to dismiss the proceeding at this point)
14 months	VCAT hearing (assuming VCAT did not dismiss the proceeding)
15 months	VCAT orders (if not made *ex tempore*)

b) Effect of expiry of order on external review

If an SCSO expires before VCAT makes its decision, there is a strong basis to conclude that VCAT's review proceeding has no utility and should be dismissed.[70] As VCAT has pointed out previously:

> *… the review jurisdiction of VCAT is to conduct a review on the merits of decisions which affect a person's interests; and there is no utility in reviewing decisions that no longer have any force or effect, or those that*

[70] See *QQQ v The Department of Families, Fairness and Housing (Review and Regulation)* [2021] VCAT 372; *FOI v The Secretary to the Department of Families, Fairness and Housing (Review and Regulation)* [2021] VCAT 1438; *INP v Secretary Department of Families Fairness and Housing (Review and Regulation)* [2023] VCAT 626;

have been overtaken by subsequent events, and such an application is lacking in substance.[71]

Given the above timeframes, there will be few to no circumstances where external review will have utility in the 12-month period of an SCSO.

An external review could continue to have utility where the order under review, after its expiry, is replaced with a new order on the same terms. However, the only way this can currently occur is by creating a new order. This 'restarts' the process, which requires internal review as a precondition before external review can be sought. This occurred in a proceeding before VCAT at the time of drafting this report. VCAT dismissed the external review application, with a right of reinstatement if the applicant sought internal review of the new order and was dissatisfied with the result.

Currently, there is no provision that provides for renewal or continuation of an ongoing SCSO after it expires. There are also no provisions that deal with the status of a VCAT proceeding when an ongoing SCSO expires and is replaced with a new order.

c) Options

The issue of external review timeframes could be addressed by including a provision in Part 2.1A that allows for continuation of an ongoing SCSO after 12 months. Assuming the provision is drafted to make it clear that the continued order is the same order, any external review application will be undisturbed. An amendment of this nature would also provide a useful mechanism for authorised persons to use if they wish to extend or continue ongoing SCSOs, which is currently done by making a new SCSO. It may be appropriate to limit the continuation or extension of an ongoing SCSO to be used only once or twice before a fresh order should be made. Additionally, if the Department pursued this option, it would need to consider the grounds for making ongoing orders (Section 4.4) and Recommendation 4.1 on making subsequent orders. If extending an order is an option, then Recommendation 4.1 may not be necessary.

It is important that the provision be for the continuation, renewal or extension, of the ongoing SCSO. If provision was rather made for the replacement of an ongoing SCSO, then an issue would arise in relation to whether it is the same decision for the purpose of VCAT's review. This could raise jurisdictional complexities that should be avoided. It would raise the question of whether internal review would first be required for the new order, which would disrupt the VCAT proceeding. It would also be necessary to include a provision that internal review is not required for the new order, if an external review proceeding is already afoot. For these reasons, this option is slightly more artificial and carries more complexity.

It is important that this change be purely administrative, and does not permit an authorised person to further curtail the freedoms of a person subject to an order. As such, an authorised person who extended the order would need to consider the same grounds and considerations that they would in making a new order, to ensure that the change did not lead to restrictions which the authorised person could not already impose by making a new order.

[71] *DPT v The Secretary, Department of Families, Fairness and Housing (Review and Regulation)* [2024] VCAT 950.

#	Provision	Recommendation
8.1	New	Introduce a provision allowing an ongoing order to be extended once for a further period not exceeding 12 months, provided the authorised person is satisfied that the grounds for the order continue to exist, and the extension is subject to the same procedural safeguards (including rights of review) as the original order. Consider limiting the power of renewal/continuation/extension so that it may only be exercised once or twice.

d) Privacy

Given the nature of SCSO proceedings, there will often be a concern to protect the privacy of personal information of school members and department staff in review proceedings. This raises a tension with s 49 of the VCAT Act, which applies when an application is made in VCAT's review jurisdiction. Section 49 requires a decision-maker responding to the application to file and serve a statement of reasons, and every other document in the decision-maker's possession that they consider is relevant to the review of the decision. Section 49 applies despite any rule of law relating to privilege or the public interest in relation to the production of documents. VCAT has held that legal privilege does not protect information from production under s 49.[72]

A number of issues arise if the Department seeks to redact names of school members or department staff in the s 49 materials, including:

- the names are likely relevant to the review, and are required to be produced under s 49;
- the applicant will have a strong argument that they are entitled to know the identities of anyone who might reasonably be a witness to the proceeding; and
- redacting names of individuals will reduce the comprehensibility of the s 49 materials for both the applicant and VCAT.

The *Open Courts Act 2013* (Vic) provides for the making of suppression orders to prohibit or limit the disclosure of information derived from a proceeding. Suppression orders may only be made on specific grounds (e.g. to protect the safety of a person or where it is otherwise in the interests of justice). The Tribunal would need to be satisfied, on evidence or other credible information, that a suppression order was 'necessary' to achieve the grounds relied on. A high threshold applies in making a suppression order, particularly where it extends to restricting disclosure to a party to the proceeding, like the applicant.

In VCAT proceedings pending at the time of drafting this report, the Department's practice has been to redact information that identifies school members or department staff, though in many instances individuals have been nonetheless identifiable by reference to context and the entirety of the materials. No issue has yet been taken by VCAT with this practice, though neither of the proceedings have yet reached a stage where the s 49 materials have received substantial scrutiny from VCAT. It would appear open to the Department to continue with this practice, though there is a risk that a VCAT member takes issue with the practice in the future.

If redactions are to be made to personal information within s 49 materials for protection from the applicant's knowledge then:

[72] *Hamilton v Transport Accident Commissio*n [2001] VCAT 2027.

- Redactions should be kept to a minimum. The greater the amount of redactions the likelier a VCAT member will take issue with the redactions as a whole, which may impact the Department's ability to rely on its current approach to redactions in the future.

- Redactions should be limited to information that is not within the applicant's knowledge, and not reasonably deducible from the content of the s 49 statement and materials.

- Redactions should not be applied to critically relevant information, or unreasonably hinder the comprehensibility of the s 49 statement or materials.

- Redactions should not unreasonably impair the ability of the applicant to have a fair hearing.

- Annotations should be applied to any redactions to identify the redacted information (e.g. 'school student').

In any event, information within s 49 materials is protected by the *Harman* undertaking, which prohibits a party to litigation from using information provided by another party under compulsion from using that information for any purpose other than the litigation.[73] If an applicant were to intentionally publish or otherwise disclose confidential information provided pursuant to s 49, they could be held in contempt of VCAT.

In order to protect information from disclosure to the public, a restricted file order can also be sought pursuant to s 146(4)(b) of the VCAT Act, to limit any public right of inspection of the proceeding file to parties to the proceeding.

#	Provision	Recommendation
8.2	N/A	Take a minimalist approach to redactions for s 49 materials. Only redact private information that is not within the applicant's knowledge, nor reasonably able to be deduced from the content of the s 49 materials and accompanying statement. Do not redact critically relevant information, or in such a way that will unreasonably impair comprehensibility of the materials. Annotate all redactions.
8.3	N/A	If necessary, seek restricted file orders under s 146(4)(b) when filing s 49 materials with VCAT.
8.4	N/A	Where necessary to address concerns, inform witnesses that unredacted information contained within s 49 materials is still protected by the *Harman* undertaking and may be protected by a restricted file order.

4.9 Enforcement

Enforcement remains a grey area for the Scheme in practice. Most people who have been subject to an order have complied with it, making enforcement unnecessary. In some cases, though, individuals have breached an order, even repeatedly. The Department is yet to initiate the formal enforcement process in the ETR Act, and so there is no example of an

[73] From *Harman v Secretary of State for Home Department* [1983] 1 AC 280; *Hearne v Street* (2008) 235 CLR 125.

order being enforced in practice. Interviewees raised some concerns with the current enforcement process, including:

- If a person does breach the order, the first response is usually a letter from the regional director. A person subject to an order has usually already received a warning letter from the regional director before the order is made, so this may not be meaningful or effective.

- The only enforcement process in the ETR Act is civil action in the Magistrates Court, and the Ministerial Guidelines describe this as an action of last resort to be taken for repeated breaches or breaches causing actual harm.[74] The Ministerial Guidelines do include a section on enforcement action other than applying to the Magistrate's Court for an order, but this is limited to warning the person to stop contravening the order or requiring them to explain why they have contravened the order.[75] In practice, this leaves authorised persons without a means of actually enforcing the order in most cases.

- A regional director advised us that, in one case, a school principal opted not to take enforcement action against a person who breached an order as they did not want to give them further opportunities to engage with the Department and air their grievances through the enforcement process.

- Given the ambiguities in enforcing the order, school principals who have made an order have sometimes sought advice from the Police, and have had different experiences. In some cases, local Police have told authorised persons that they will not become involved in the Scheme as it is purely civil. In others, however, Police have promised to intervene if the person continues with aggressive or disruptive behaviour in breach of the order. The ACU survey also showed that some principals were unclear on the role of the Police within the Scheme.

Additionally, paragraph 314 of the Ministerial Guidelines requires authorised persons to consult with the person subject to an order if there has been a suspected breach to determine if there was an actual breach. It is unclear what benefit this requirement would provide, and we have not found a case where any such consultation actually occurred.

Collectively, concerns with enforcement have led to some school principals to conclude that the Scheme is "toothless". These concerns are reflected in the ACU survey responses. Given that it is an important policy principle of the Scheme that breaches of orders are not criminalised, the Scheme will require an effective civil enforcement regime. Creating such a regime is challenging. In our view, there is unlikely to be an alternative to enforcement through the Magistrates' Court, and so we do not recommend any change to the ETR Act. Instead, we have looked at the Ministerial Guidelines and Department policy. We have also noted that, while the Scheme is civil, a person may breach the order in such a way that is violent, threatening, harassing or otherwise involves behaviour which may be a criminal offence, meaning that Police will become involved in managing the person subject to the order.

#	Provision	Recommendation
9.1	Ministerial Guidelines, paragraphs 308 – 321	In consultation with Victoria Police, clarify the position on involving Police when there has been a breach of an order. Confirm that breach of an order under the Scheme is not, in and of itself, a criminal offence. However, where conduct also constitutes independent criminal behaviour (e.g., assault,

[74] Ministerial Guidelines, paragraph 316.
[75] Ministerial Guidelines, paragraphs 312-315.

#	Provision	Recommendation
		threats), police involvement is appropriate. The Guidelines should clearly distinguish civil enforcement options from criminal referral pathways. It may also be appropriate in some circumstances for a school principal who has made an order to notify Police of the order, and to advise the person subject to the order that the Police have been notified.
9.2	Ministerial Guidelines, paragraphs 308 – 321	Consider if the threshold for enforcement should be lowered, so that there is an expectation that deliberate breaches of orders will lead to enforcement action and authorised persons are not expected to engage in dialogue with individuals who deliberately breach an order.
9.3	Ministerial Guidelines, paragraph 314	Remove the requirement for consultation with a person if there has been a suspected breach.
9.4	N/A	Within the Department, clarify the policy position on: • when the Department will commence an action in the Magistrates' Court; and • what action the Department will take in response to a breach where it does not commence proceedings.

4.10 Other matters

Interviewees suggested some other enhancements to the Scheme which do not require amendment to the ETR Act or Ministerial Guidelines. We have listed them below.

#	Provision	Recommendation
10.1	Ministerial Guidelines, paragraphs 297-307	The Department understands that school principals have found the requirements for monitoring compliance with orders in the Ministerial Guidelines to be lengthy and complex. The Department may wish to consider what the minimum expectations are and clarify them.
10.2	Ministerial Guidelines, paragraph 264	Independent schools may struggle to find an internal reviewer who is "unbiased and sufficiently independent of the original decision maker who made the order" where the members of the school board have a close working relationship with the principal. They may benefit from guidance on how to manage this situation.
10.3	N/A	The Department should consider expanding delegations, provided that any reviewer (e.g., a regional director) is not materially involved in the original decision and is demonstrably independent. Reviewers must be able to exercise discretion free from actual or perceived conflict of interest, in accordance with public law principles. For example, individual campus principals of multi-campus schools could issue ongoing orders, and regional directors could review orders issued by principals.
10.4	N/A	Principals may find it easier to make an order if they could work through the evidence matrix or equivalent document in a

#	Provision	Recommendation
		meeting or Teams call with the Department rather than through back-and-forth emails.

5. Glossary

Term	Meaning
ESWID	Employee Safety Wellbeing and Inclusion Division within the Department of Education
ETR Act	*Education and Training Reform Act 2006* (Vic)
ETR Regulations	*Education and Training Reform Regulations 2017* (Vic)
FVIO	Family Violence Intervention Order made under the *Family Violence Protection Act 2008* (Vic)
Ministerial Guidelines	The School Community Safety Order Scheme Ministerial Guidelines made under s 2.1A.37 of the *Education and Training Reform Act 2006* (Vic)
PSIO	Personal Safety Intervention Order made under the *Personal Safety Intervention Order Act 2010* (Vic)
SCSO	School Community Safety Order
the Scheme	The School Community Safety Order Scheme
the Secretary	the Secretary to the Department of Education
TWN	Trespass Warning Notice made under the *Summary Offences Act 1966* (Vic)
VCAT	Victorian Civil and Administrative Tribunal
VCAT Act	*Victorian Civil and Administrative Tribunal Act 1998* (Vic)

Schedule 1 – Detailed Scope of Work

Context

The school community safety order scheme was established by the *Education and Training Reform Amendment (Protection of School Communities) Act 2021* (**ETR (Protection of school communities) Act**), which amended the *Education and Training Reform Act 2006* (**ETR Act**) to include Part 2.1A – Protection of school communities. The scheme commenced on 28 June 2022.

Under the ETR (Protection of school communities) Act, the purpose of the scheme is to protect school staff and other members of the school community from harmful, threatening, abusive or disruptive behaviour by parents, carers, and other adults.

Section 2.1A.44 of the ETR Act requires the Minister for Education to cause a review of the operation of Part 2.1A – Protection of school communities to be conducted before the second anniversary of the commencement of that Part, being no later than 28 June 2024.

Scope

The objective of the statutory review is to identify whether any legislative amendments are required to Part 2.1A of the ETR Act or to the School Community Safety Order Scheme Ministerial Guidelines (**Ministerial Guidelines**) to improve the operation of the Scheme.

The review will consider whether the scheme is meeting its intended purpose by examining the operation of Part 2.1A (including the Ministerial Guidelines made under section 2.1A.37) in Victorian government and non-government schools.

The review will answer several key questions. The department has developed draft questions below. The supplier will work with the department to refine questions in the planning stage of this evaluation.

Key review questions

1. Are the provisions of Part 2.1A sufficiently clear for effective implementation, and do the Ministerial Guidelines support clarity and understanding for people using the scheme?
2. Are the terms of Part 2.1A of the ETR Act and the Ministerial Guidelines appropriate for the scheme's effective operation and the protection of school communities? Including:
    a. Do the terms present any challenges or barriers to the effective operation of the scheme?
    b. Are the terms of Division 4 (Review of ongoing school community safety order) of the ETR Act and the relevant parts of the Ministerial Guidelines appropriate for the effective operation of the internal review mechanism for orders issued.
    c. Does the scheme provide adequate protection across the entire school community, as defined under section 2.1A.1 of the ETR Act, including community members such as school council members, and in all relevant locations?
3. What changes could be made to the ETR Act and Ministerial Guidelines to improve the scheme's operation and ensure it meets its intended purpose?
    a. What are the risks of such changes, including risks of adverse impacts and inconsistencies with key considerations in the scheme's development?

Methodology

The review's methodology will be finalised by the reviewer, in consultation with the department. The department suggests a phased approach that includes the following:

Phase 1: Desktop research, analysis and preliminary findings

1. Review of:
    a. legislation, ministerial guidelines and documents relating to the development of the scheme
    b. examples or case studies of different circumstances to determine whether an order could be issued in those circumstances.
    c. data relating to all orders issued and internal reviews undertaken between 28 June 2022 and 28 June 2024
    d. data from the Australian principal occupational health and wellbeing survey 2023 relating to the use of the scheme and attitudes towards the scheme
    e. data from the department's principal check-in surveys relating to the scheme
    f. any other written feedback about the scheme available at the commencement of the research.
2. Analysis and preliminary findings about the possible impact of the terms of the legislation and ministerial guidelines on the effective operation of the scheme, and identification areas for further investigation through consultations with department staff and representative bodies.

Phase 2: Information collection - department staff

3. Consultation with department staff who advise on and support the use of the scheme, including the internal review process:
    a. Legal Division
    b. Internal review secretariat
    c. Interview reviewers – Deputy Secretary, Schools and Regional Services and Assistant Deputy Secretary, Schools Operations
    d. Regional Directors who are authorised to issue orders.
4. Analysis of information collected against key review questions and preliminary findings, and identification of areas for further investigation though consultations with representative bodies.

Phase 3: Information collection from representative bodies

5. Consultation with representative bodies of people who may use or are impacted by the scheme as below. However, consultations with representative bodies will be confirmed after finalisation of key review questions:
    a. Representative bodies for government school leaders and teachers:
        - Australian Education Union
        - Australian Principals Federation
        - Principals Association of Specialist Schools
        - Victorian Principals Association
        - Victorian Association of Secondary School Principals
        - Other staff representative bodies as necessary.
    b. Representative bodies for non-government schools
        - Independent Schools Victoria

        - Melbourne Archdiocese Catholic Schools / Victorian Catholic Education Authority

    c. Representative bodies for parents and carers
        - Parents Victoria

6. Analysis of information collected against key review questions and preliminary findings, and identification of any information that requires clarification with department staff.
7. The department anticipates that stakeholder consultation will occur through a flexible combination of in-person and online, or written formats. Format may be informed by the following factors:
    a. Cost effectiveness and efficiency
    b. Stakeholder preferences
    c. Maximising participation

The format of consultation will be agreed with the department and the department will assist the supplier in engaging with relevant stakeholders.

Phase 4: Reporting

8. A progress report, following phase 1, that includes status of:
    a. Desktop review analysis
    b. Preliminary findings
    c. Areas for further investigation
9. Draft report that includes draft:
    d. review findings – including answers to the key evaluation questions
    e. recommendations
    f. any additional considerations
    g. executive summary
10. Final report addressing department feedback on the draft report.

Information sources

Desktop review

- *Education and Training Reform Amendment (Protection of School Communities) Act 2021*
- *Education and Training Reform Act 2006*
- School community safety order scheme ministerial guidelines
- Explanatory memoranda and second reading speeches for the ETR Act (Protection of School Communities) Bill 2021
- Protective Schools Ministerial Taskforce Report
- ACU Principal Health and wellbeing survey 2023 - Qualitative and quantitative data on school leaders use of the scheme and attitudes towards the scheme
- Principal check-in surveys – data relating to the scheme.
- The department's online platform EduSafe Plus reports and manages OHS incidents and hazards.

- Other data captured by the department that relates to the Scheme.

Background

Parent and carer aggression

Most parents, carers and community members engage positively with the school community, however in a small minority of cases, parents and carers engage on behaviour towards school staff that is disrespectful, unsafe or otherwise unacceptable. This parent and carer aggression towards school staff is a persistent issue.

Studies on parent/carer work related violence have found:

11. the percentage of school leaders reporting physical violence (48.2%), threats of violence (53.9%), and bullying (38.2%) are at their highest point in over 10 years. Of these, 19.7% of reports physical violence, 65.6% of reports of threats of violence, and 57.9% of reports of bullying involved parents and carers (Australian Principal Occupational Health, Safety and Wellbeing Survey 2023).
12. 57.8% of teachers reported experiencing at least one incident of bullying and harassment from a parent in the preceding 12-month period (La Trobe University, 2019).
13. Parent aggression is more prevalent in primary schools, where 62.9% of teachers surveyed reported experienced bullying or harassment from a parent in the preceding 9-12 months (La Trobe University, 2019)
14. 30% of surveyed Victorian principals reported experiencing threats of violence and 21 per cent experienced physical violence. Of these, 31.5% of threats of violence and 7.4% of actual violence came from parents (Australian Occupational Health, Safety and Wellbeing Survey, 2020).

The school community safety order scheme

The school community safety order scheme was established by the *Education and Training Reform Amendment (Protection of School Communities) Act 2021*, which amended the *Education and Training Reform Act 2006* (ETR Act) to include Part 2.1A – Protection of school communities.

The Scheme commenced on 28 June 2022. It was introduced following a recommendation of the Protective Schools Ministerial Taskforce, which was established to provide expert advice to the Minister for Education on preventing and reducing violence and aggression in schools. In 2018, the Taskforce recommended that the Minister for Education consider the benefits and risks of legislative change that enables harsher penalties for threatening or aggressive conduct towards school staff (recommendation 4.2).

The Scheme gives principals and other authorised persons the power to stop or limit certain behaviours on or within 25 metres of school grounds and school-related places or in their communications with the school, or on a platform or channel controlled by or established in relation to a school.

It applies to all government and non-government schools across Victoria.

The overarching purpose of the scheme, as articulated in the *Education and Training Reform Amendment (Protection of School Communities) Act 2021*, is to protect school staff and other members of the school community from harmful, threatening, abusive or disruptive behaviour by parents, carers, and other adults.

The objectives of the scheme can be summarised as:

- control and mitigate the risk of harm to school staff and students resulting from certain behaviours of parents, carers, and other adults who interact with schools

- act as an effective risk control to respond to work-related violence hazards and risks, when other less restrictive measures have failed, and enable schools to meet their occupational health and safety obligations
- address gaps and limitations of other legislative mechanisms for protecting school staff from inappropriate behaviour by parents, carers, and other adult members of the school community
- prevent and reduce exposure of school community members to parent/carer aggressive behaviours, while not removing their ability to remain engaged with their child's education, or removing their right to make complaints, or criminalising their behaviour.

Schedule 2 – Persons interviewed

The review consulted a range of stakeholders, including:

- Staff from the Department of Education, including:
    - Legal Division
    - Employee Wellbeing, Safety and Inclusion Division
    - Regional and executive staff
- Principals and staff from Victorian government schools
- Representatives from Independent Schools Victoria
- Representatives from the Victorian Principals Association
- Representatives from Parents Victoria
- Representatives from the Australian Education Union
- Representatives from the Victorian Association of State Secondary Principals
- Representatives from the Australian Principals Federation
- Representatives from the Victorian Catholic Education Authority and Catholic Diocesan education corporations

Note: Individual names and specific roles have not been published to protect privacy. All participants contributed in their professional capacity.

Schedule 3 – Lists of documents provided

Name	Comment
Documents establishing the Scheme	
Part 2.1A - *Education and Training Reform Act 2006*	
Education and Training Reform Amendment (Protection of School Communities) Bill 2021 (ETRA (POSC) Bill)	
Explanatory Memorandum – ETRA (POSC) Bill	
Second reading speech	
Statement of compatibility	
Cabinet in Confidence documents related to the ETRA (POSC) Bill	
FW Julie Podbury on Virginia Podbury (ABC Melbourne)	Case study supporting the creation of the Scheme.
Documents relating to stakeholder consultation on the Bill and Ministerial Guidelines	
Issues paper – Ministerial Guidelines for the SCSO Scheme	To inform development of the Ministerial Guidelines.
Proposed approach to key issues	Addresses feedback received from issues paper above.
Stakeholder feedback on draft Ministerial Guidelines (collated)	
Proposed approach to key issues raised during stakeholder consultations	Addresses feedback from circulation of draft Ministerial Guidelines to stakeholders.
Documents on the use of Scheme	
EduSafe Plus data on orders issued	Records of each order issued in FY 2022-23 and FY 2023-24.
Internal review proposed decision letters and final decision briefing and letters	Examples of documents relating the internal review process.
Data from the Australian principal occupational health and wellbeing survey 2023 relating to the use of the scheme and attitudes towards the scheme	Survey results of school leaders' knowledge and experience of the scheme conducted by the Australian Catholic University.
Annual report from the Secretary to the Minister on the use of school community safety orders. - 22/23 FY - 23/24 FY	Report to the Minister of Education to acquit reporting requirements under paragraph 338 of the Ministerial Guidelines.

Name	Comment
School community safety order policy and guidance	
Delegations and authorisations	
2024-A17 Secretary's SCSO Scheme ETRA authorisations	Authorisations relating to the Scheme.
2024-D10 Instrument of Delegation - ETRA (ELV dels)	Instrument of delegation relating to the Scheme.
BRI23120771 Sec Instrument of Delegation No. 2023-D04 - ETRA	Instrument of delegation relating to the Scheme.

Schedule 4 - Summary of Legislative Provisions

Table summarising relevant legislative provisions

***Education and Training Reform Act 2006* (Vic)**	
Division 1—General provisions relating to school community safety orders	
2.1A.1	Definitions
2.1A.2	Who are authorised persons?
Division 2—Immediate school community safety orders	
2.1A.3	Authorised person may make immediate order
2.1A.4	Process for giving immediate order
2.1A.5	Grounds and other requirements for making immediate order
2.1A.6	Coming into effect of immediate order
2.1A.7	Matters that must be stated in an immediate order
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Part 2A—School community safety orders	

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