



The Hon James Merlino MP

Deputy Premier
Minister for Education

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Mr Michael Perry
Acting Chair
Victorian Registration and Qualifications Authority
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Dear Mr Perry

Ministerial Order No. 870 – Child Safe Standards - Managing the risk of child abuse in schools

I enclose a copy of Ministerial Order No 870, which I have made for the purpose of section 4.3.1(6)(d) of the *Education and Training Reform Act 2006*. The Ministerial Order is a key part of the Government's response to the recommendations of the Victorian Parliamentary Inquiry into the Handling of Child Abuse by Religious and other Non-Government Organisations.

The Inquiry's *Betrayal of Trust* report made a number of recommendations aimed at protecting children from all forms of abuse and neglect. In particular, Recommendation 12.1 of the *Betrayal of Trust* report recommended that the government implement minimum standards for maintaining 'child-safe environments' for all organisations with direct and regular contact with children.

The Government has commenced a program of policy initiatives and legislative changes to implement the *Betrayal of Trust* recommendations. In September 2015, the Government released new minimum Child Safe Standards which aim to create child safe cultures and environments in organisations that work with children. These standards will be implemented and enforced in Victorian schools through the school registration framework. As a minimum standard for school registration under the *Education and Training Reform Act 2006*, schools must take action, in accordance with the enclosed Ministerial Order, to manage and reduce the risk of child abuse. The Ministerial Order spells out what the Child Safe Standards mean in a school environment, and demonstrates the Government's "zero tolerance" for child abuse in Victorian schools.

As the regulator for Victorian schools, the Victorian Registration and Qualifications Authority (the **VRQA**) will play a key role in monitoring and enforcing compliance with the new standard. During 2016 I would ask the VRQA to assist and support schools to prepare to achieve compliance with the new standard, when it comes into force from 1 August 2016. The VRQA will play an important leadership role in informing and educating school system owners and school leaders to understand and implement what is required. While the VRQA may develop supporting materials as it considers

necessary, I wish to identify four key areas in which schools may benefit from particular support and guidance.

First, schools may benefit from information and education regarding the scope and effect of key definitions used in the Ministerial Order, including the definitions of “child abuse” and “child connected work”. The Ministerial Order defines these concepts broadly in order to capture the many types of activities and locations where schools have contact with children, and the variety of conduct that constitutes child abuse. It is important that schools understand that the definition of “child connected work” used in the Ministerial Order is broader than the definition of “child-related work” used in the *Working with Children Act 2005*. Similarly, the definition of “child abuse” used in the *Education and Training Reform Act 2006* (as recently amended) and the Ministerial Order goes beyond child sexual abuse, which has been the primary focus of the *Betrayal of Trust* inquiry and the current Royal Commission into Institutional Responses to Child Sexual Abuse. This expansive approach is deliberate. My intention is for the new Child Safe Standards to make schools consider and address child abuse situations and risks in an integrated and proactive fashion.

Second, the Ministerial Order places accountability for managing the risk of child abuse with school governing authorities. The intent of the Ministerial Order is not to require the school governing authorities to make every decision that relates to every matter specified in the Ministerial Order. Rather, the intention is for schools – through their school governing authorities – to have appropriate arrangements (including clear and comprehensive policies, procedures and accountability mechanisms) to regulate the conduct and decisions of school staff for the benefit of its students. The objective is for both the school governing authority and the wider community to be confident in the school’s capacity to make and implement appropriate decisions, with child safety front of mind.

Third, the Ministerial Order in several places requires schools to take ‘appropriate’ actions regarding certain matters. This is intended to allow schools flexibility in the manner in which they respond to meet the standards. The VRQA is well placed to provide some additional guidance to schools on the essential elements of an appropriate response, although my Department will also support schools in this regard. Further, the Department will provide advice on ways schools can continue to improve their approach to child safety to exceed the minimum standards set by the Ministerial Order.

Finally, in developing strategies to minimise or prevent the risk of child abuse, schools need to be mindful of the diversity of students and school communities. Schools may benefit from additional guidance about ways in which their strategies, policies, procedures, and practices can be inclusive of the needs of all children, particularly students who are vulnerable due to age, family circumstances, abilities, or Indigenous, cultural, or linguistic background. While the Department will provide guidance on these matters, I anticipate that the VRQA will also play an important role in assisting schools to consider the circumstances of their students.

I look forward to hearing from the VRQA about its activities to support the implementation of this Ministerial Order. If you have questions about the enclosed Ministerial Order, please do not hesitate to contact Kathryn Johnson, A/Executive Director, Legal Division, Department of Education and Training, on 9637 3713 or by email johnson.kathryn.k@edumail.vic.gov.au.

Yours sincerely

The Hon James Merlino MP
Deputy Premier
Minister for Education

EDUCATION AND TRAINING REFORM ACT 2006

CHILD SAFE STANDARDS – MANAGING THE RISK OF CHILD ABUSE IN SCHOOLS

Ministerial Order No. 870

The Minister for Education makes the following Order.

Dated 22 December 2015

James Merlino, M.P.
MINISTER FOR EDUCATION

Part 1 - Preliminary

1. Objective

The objective of this Order is to specify the matters regarding which:

- (a) a person or body applying for registration of a school; and
- (b) registered schools;

must take action for the purposes of:

- (c) embedding a culture in Victoria's schools of 'no tolerance' for child abuse; and
- (d) complying with the prescribed minimum standard for the registration of schools in section 4.3.1(6)(d) of the *Education and Training Reform Act 2006*.

2. Commencement

This Order comes into operation on 1 August 2016.

3. Authorising provisions

This Order is made under section 5.10.4 of the *Education and Training Reform Act 2006*, and section 13 of the *Interpretation of Legislation Act 1984*.

4. Definitions

(1) In this Order:

ETR Act means the *Education and Training Reform Act 2006* as amended from time to time.

child means a child enrolled as a student at the school.

child-connected work means work authorised by the school governing authority and performed by an adult in a school environment while children are present or reasonably expected to be present.

child abuse includes—

- (a) any act committed against a child involving—
 - (i) a sexual offence; or
 - (ii) an offence under section 49B(2) of the *Crimes Act 1958* (grooming); and
- (b) the infliction, on a child, of—
 - (i) physical violence; or
 - (ii) serious emotional or psychological harm; and
- (c) serious neglect of a child.

child safety encompasses matters related to protecting all children from child abuse, managing the risk of child abuse, providing support to a child at risk of child abuse, and responding to incidents or allegations of child abuse.

minister of religion has the same meaning as in the *Working with Children Act 2005*.

proprietor, in relation to a school, means the person who is ultimately responsible for the way the school is managed and conducted:

- (a) in the case of a Government school, the Secretary;
- (b) in the case of a non-Government school, the proprietor of the school.

school environment means any physical or virtual place made available or authorised by the school governing authority for use by a child during or outside school hours, including:

- (a) a campus of the school;
- (b) online school environments (including email and intranet systems); and
- (c) other locations provided by the school for a child's use (including, without limitation, locations used for school camps, sporting events, excursions, competitions, and other events).

school governing authority means:

- (a) the proprietor of a school, including a person authorised to act for or on behalf of the proprietor; or
- (b) the governing body for a school (however described), as authorised by the proprietor of a school or the ETR Act; or
- (c) the principal, as authorised by the proprietor of a school, the school governing body, or the ETR Act.

Explanatory note: There is a wide variety of school governance arrangements. Depending on the way a school is constituted and operated, the governing body for a school may be the school board, the school council, or some other person or entity. The school governing authorities may share or assign responsibility for discharging the requirements imposed by this Order, in accordance with the school's internal governance arrangements.

school staff means:

- (a) in a Government school, an individual working in a school environment who is:
 - (i) employed under Part 2.4 of the ETR Act in the government teaching service; or
 - (ii) employed under a contract of service by the council of the school under Part 2.3 of the ETR Act; or
 - (iii) a volunteer or a contracted service provider (whether or not a body corporate or any other person is an intermediary).
- (b) in a non-Government school, an individual working in a school environment who is:
 - (i) directly engaged or employed by a school governing authority;
 - (ii) a volunteer or a contracted service provider (whether or not a body corporate or any other person is an intermediary); or

(iii) a minister of religion.

(2) The following terms have the same meaning as in the ETR Act (as amended from time to time):

- (i) child abuse;¹
- (ii) government school;
- (iii) government teaching service;
- (iv) non-Government school;
- (v) parent;
- (vi) principal;
- (vii) registered school;
- (viii) school; and
- (ix) the Secretary.

Part 2 – Minimum Standards for a Child Safe Environment

5. Schools to meet minimum child safety standards

(1) The school must implement the following minimum child safety standards:

- (a) strategies to embed an organisational culture of child safety in accordance with clause 7;
- (b) a child safety policy or a statement of commitment to child safety in accordance with clause 8;
- (c) a child safety code of conduct in accordance with clause 9;
- (d) screening, supervision, training, and other human resources practices that reduce the risk of child abuse in accordance with clause 10;
- (e) procedures for responding to and reporting suspected child abuse in accordance with clause 11;
- (f) strategies to identify and reduce or remove risks of child abuse in accordance with clause 12; and
- (g) strategies to promote child participation and empowerment in accordance with clause 13.

6. Principle of inclusion

(1) In implementing the minimum child safety standards in accordance with this Order, school governing authorities must:

- (a) take account of the diversity of all children, including (but not limited to) the needs of Aboriginal and Torres Strait Islander children, children from culturally and linguistically diverse backgrounds, children with disabilities, and children who are vulnerable; and
- (b) make reasonable efforts to accommodate the matters referred to in clause 6(a).

7. Strategies to embed an organisational culture of child safety

(1) The school governing authority must:

- (a) develop strategies to embed a culture of child safety at the school;
- (b) allocate roles and responsibilities for achieving the strategies;
- (c) inform the school community about the strategies, and allocated roles and responsibilities;
- (d) put the strategies into practice, and inform the school community about these practices; and
- (e) periodically review the effectiveness of the strategies put into practice and, if considered appropriate, revise those strategies.

¹ For ease of reference, the text of the ETR Act definition of *child abuse* is included in the definitions clause of this Order.

8. A child safety policy or a statement of commitment to child safety

- (1) The school governing authority must ensure that the school has a child safety policy or statement of commitment to child safety that details:
 - (a) the values and principles that will guide the school in developing policies and procedures to create and maintain a child safe school environment; and
 - (b) the actions the school proposes to take to:
 - (i) demonstrate its commitment to child safety and monitor the school's adherence to its child safety policy or statement of commitment;
 - (ii) support, encourage and enable school staff, parents, and children to understand, identify, discuss and report child safety matters; and
 - (iii) support or assist children who disclose child abuse, or are otherwise linked to suspected child abuse.
- (2) The school governing authority must inform the school community about the policy or statement, and make the policy or statement publicly available.

9. A child safety code of conduct

- (1) The school governing authority must develop, endorse, and make publicly available a code of conduct that:
 - (a) has the objective of promoting child safety in the school environment;
 - (b) sets standards about the ways in which school staff are expected to behave with children;
 - (c) takes into account the interests of school staff (including other professional or occupational codes of conduct that regulate particular school staff), and the needs of all children; and
 - (d) is consistent with the school's child safety strategies, policies and procedures as revised from time to time.

10. School staff selection, supervision and management practices for a child-safe environment

- (1) Subject to the requirements of the ETR Act, the school governing authority must ensure that the school implements practices for a child-safe environment in accordance with this clause.
- (2) Each job or category of jobs for school staff that involves child-connected work must have a clear statement that sets out:
 - (a) the job's requirements, duties and responsibilities regarding child safety; and
 - (b) the job occupant's essential or relevant qualifications, experience and attributes in relation to child safety.
- (3) All applicants for jobs that involve child-connected work for the school must be informed about the school's child safety practices (including the code of conduct).
- (4) In accordance with any applicable legal requirement² or school policy, the school must make reasonable efforts to gather, verify and record the following information about a person whom it proposes to engage to perform child-connected work:
 - (a) Working with Children Check status, or similar check;
 - (b) proof of personal identity and any professional or other qualifications;
 - (c) the person's history of work involving children; and
 - (d) references that address the person's suitability for the job and working with children.

² Please refer to the *Working With Children Act 2005* which establishes a process to screen persons engaging or intending to engage in child-related work through a working with children check, and also sets out exemptions from that requirement for volunteers, parents and others.

- (5) The school need not comply with the requirements in clause 10(4) if it has already made reasonable efforts to gather, verify and record the information set out in clauses 10(4)(a) to 10(4)(d) about a particular individual within the previous 12 months.
- (6) The school must ensure that appropriate supervision or support arrangements are in place in relation to:
 - (a) the induction of new school staff into the school's policies, codes, practices, and procedures governing child safety and child-connected work; and
 - (b) monitoring and assessing a job occupant's continuing suitability for child-connected work.
- (7) The school must implement practices that enable the school governing authority to be satisfied that people engaged in child-connected work perform appropriately in relation to child safety.

Explanatory note: To be "satisfied", it is not necessary that the school governing authority make each decision about the selection and supervision of school staff engaged in child-connected work. The school governing authority needs to be satisfied about the appropriateness of the school's arrangements that would regulate or guide other people who make such decisions for or on behalf of the school about child safety matters and child-connected work.

11. Procedures for responding to and reporting allegations of suspected child abuse

- (1) The school governing authority must have a clear procedure or set of procedures for responding to allegations of suspected child abuse in accordance with this clause and other legal obligations.
- (2) The school governing authority must ensure that the procedure is:
 - (a) sensitive to the diversity characteristics of the school community;
 - (b) made publicly available; and
 - (c) accessible to children, school staff, and the wider community.
- (3) The procedure must:
 - (a) cover all forms of 'child abuse' as defined in the ETR Act;
 - (b) apply to allegations or disclosures of child abuse made by or in relation to a child, school staff, visitors, or other persons while connected to a school environment;
 - (c) identify the positions of the person or people who are responsible for:
 - (i) promptly managing the school's response to an allegation or disclosure of child abuse, and ensuring that the allegation or disclosure is taken seriously;
 - (ii) responding appropriately to a child who makes or is affected by an allegation of child abuse;
 - (iii) monitoring overall school compliance with this procedure; and
 - (iv) managing an alternative procedure for responding to an allegation or disclosure if the person allocated responsibility under clause 11(3)(c)(i) cannot perform his or her role;
 - (d) include a statement that fulfilling the roles and responsibilities contained in the procedure does not displace or discharge any other obligations that arise if a person reasonably believes that a child is at risk of child abuse;
 - (e) clearly describe the actions the school will take to respond to an allegation of child abuse, including actions to:
 - (i) inform appropriate authorities about the allegation (including but not limited to mandatory reporting);
 - (ii) protect any child connected to the alleged child abuse until the allegation is resolved; and
 - (iii) make, secure, and retain records of the allegation of child abuse and the school's response to it.

- (4) The procedure must not:
- (a) prohibit or discourage school staff from reporting an allegation of child abuse to a person external to the school;
 - (b) state or imply that it is the victim's responsibility to inform the police or other authorities of the allegation;
 - (c) require staff to make a judgment about the truth of the allegation of child abuse; or
 - (d) prohibit staff from making records in relation to an allegation or disclosure of child abuse.

12. Strategies to identify and reduce or remove risks of child abuse

- (1) The school governing authority must develop and implement risk management strategies regarding child safety in school environments.
- (2) The school's risk management strategies regarding child safety must identify and mitigate the risk(s) of child abuse in school environments by taking into account the nature of each school environment, the activities expected to be conducted in that environment (including the provision of services by contractors or outside organisations), and the characteristics and needs of all children expected to be present in that environment.
- (3) If the school governing authority identifies risks of child abuse occurring in one or more school environments the authority must make a record of those risks and specify the action(s) the school will take to reduce or remove the risks (**risk controls**).

Explanatory note: Different risk controls may be necessary for particular groups of children depending on the nature of the risk and the diversity characteristics of children affected by the risk.

- (4) As part of its risk management strategy and practices, the school governing authority must monitor and evaluate the effectiveness of the implementation of its risk controls.
- (5) At least annually, the school governing authority must ensure that appropriate guidance and training is provided to the individual members of the school governing authority and school staff about:
 - (a) individual and collective obligations and responsibilities for managing the risk of child abuse;
 - (b) child abuse risks in the school environment; and
 - (c) the school's current child safety standards.

13. Strategies to promote child empowerment and participation

- (1) The school governing authority must develop strategies to deliver appropriate education about:
 - (a) standards of behaviour for students attending the school;
 - (b) healthy and respectful relationships (including sexuality);
 - (c) resilience; and
 - (d) child abuse awareness and prevention.
- (2) The school governing authority must promote the child safety standards required by this Order in ways that are readily accessible, easy to understand, and user-friendly to children.