Melbourne Archdiocese Catholic Schools

St Bernard's Parish Primary School Community Safety Order Review Process

St Bernard's Parish Primary School is a school which operates with the consent of the Catholic Archbishop of Melbourne and is owned, operated and governed by Melbourne Archdiocese Catholic Schools Ltd (MACS).

Introduction

This document applies in circumstances where the St Bernard's Parish Primary School has issued an immediate or ongoing community safety order (Order) under the School Community Safety Order Scheme (Scheme) which is established under Part 2.1A of the *Education and Training Reform Act 2006* (Act).

St Bernard's Parish Primary School will utilise the Scheme to respond to work-related safety hazards and risks when other less restrictive measures have failed. The Scheme allows St Bernard's Parish Primary School to issue Orders in relation to parents, carers and other people who engage in harmful, threatening or abusive behaviour. These orders take the form of either ongoing school community safety orders (Ongoing Orders) or immediate school community safety orders (Immediate Orders) and prohibit or restrain certain behaviours from occurring on school premises and school-related places, or in relation to school staff.

The Scheme aims to prevent and mitigate the risk of harm to school staff, students and other members of the school community.

Context

The Scheme requires all decisions to make an Immediate Order to be reviewed as soon as practicable after an Immediate Order is made. The Scheme also provides for internal and external reviews of decisions to make Ongoing Orders.

This document outlines relevant procedures for both Immediate and Ongoing Orders, in line with the Act and the Ministerial Guidelines for the School Community Safety Order Scheme (the Guidelines).

After the internal review process is complete, a person to whom an Order applies may apply to the Victorian Civil and Administrative Tribunal (VCAT) for an external review of the decision made on internal review.[1]

Review Processes

Immediate Orders

As soon as practicable after making an Immediate Order, the authorised person in St Bernard's Parish Primary School must review the order.

Process for conducting an internal review

In reviewing the Immediate Order, the authorised person who made the immediate order must consider:

[1] s 2.1A.33 of the Act.

a) if there are grounds to make an Ongoing Order in accordance with the procedures under Division 3 of Part 2.1A of the Act; and

b) if there are no grounds, revoke the Immediate Order.

If the authorised person considers there are grounds for making an Ongoing Order, the authorised person must undertake the processes and procedures for making an Ongoing Order as required by the Act and Ministerial Guidelines before deciding to make the Ongoing Order.

When reviewing an Immediate Order, the authorised person can seek advice, including from another authorised person or someone with specialist knowledge relevant to the decision.

The decision to either make an Ongoing Order or revoke the Immediate Order must be made by the authorised person who made the initial decision, and any advice received should be assessed by the authorised person.

Submissions

A person to whom an Immediate Order applies may, at any time after the Order is made, make submissions to the authorised person regarding whether the Order should remain in force.[2] These submissions may be made in writing or, with the written permission of the authorised person, orally.[3] These submissions must be considered by the authorised person when conducting a review of an Immediate Order.[4] Requests to make submissions are to be made to the authorised person as soon as practicable after the order is made.

Where a reviewer permits oral submissions, a meeting will be organised in order for the subject to be heard. Any additional oral submissions from St Bernard's Parish Primary School staff members, or other persons, will be heard in individual meetings with the Reviewer.

The Reviewer may seek the consent of the Subject (or other persons) to be audio recorded to assist the Reviewer in properly and fully considering the oral submissions when making their decision (if applicable, consent will also be obtained from the person assisting the applicant). A recording will not be made of another person unless they have consented. Persons subject to an Order will be informed that they can record their oral submission.

Timeframe to make an internal review decision

St Bernard's Parish Primary School will review an Immediate Order as soon as practicable and no later than the date on which the order expires. An Immediate Order is in force for the period specified in the order or for a maximum of 14 days.

Ongoing orders

Process for conducting an internal review

The subject of an Ongoing Order (the Subject) may apply in writing to St Bernard's Parish Primary School for an internal review of a decision to:

a) make the Order;

b) vary the Order on the authorised person's own motion;

c) refuse an application by the Subject for a variation to the Order; or

[2] s 2.1A.11(1) of the Act.
[3] s 2.1A.11(2) of the Act.
[4] s 2.1A.12(4) of the Act.

d) refuse to revoke the Order.[5]

To commence an internal review of an Ongoing Order, the Subject is to submit a completed St Bernard's Parish Primary School **School Community Safety Order Review Form** (Review Form; Appendix A) to the Regional General Manager. The Review Form must be received by the Regional General Manager as soon as practicable after receiving the Order.

Example matters to be considered via an internal review include the following:

a) there have not been sufficient interventions and strategies utilised prior to issuing the Order;

b) the grounds on which the Order has been issued are unfair; and/or

c) other extenuating circumstances.

The Reviewer will conduct the review of a decision in relation to an Ongoing Order as a 'merits review'. This will reconsider the relevant facts and law to determine the correct and preferable decision.

The review process will reference all relevant records to determine if principles of procedural fairness were followed in the decision-making process. Accordingly, it will be open to the Reviewer to seek and consider the views and advice of a person with specialist or expert knowledge that may be relevant to the decision and from other persons who have knowledge of the factual circumstances relevant to the decision. Where a Reviewer permits oral submissions, a meeting will be organised for the Subject to be heard (discussed in further detail below). Once all relevant material is reviewed, the Reviewer will advise the Subject in writing of their decision.

Where an application for a review has been submitted, the Order continues in force in accordance with the period specified in the order until the review is completed.[6]

Reviewer

If the Internal Review Form is received by St Bernard's Parish Primary School, it will refer this as soon as practicable to the Regional General Manager or other designated Reviewer in relevant circumstances.

St Bernard's Parish Primary School will ensure that the Reviewer will be unbiased and sufficiently independent of the original decision maker who made the order. This will involve consideration of factors such as the relationship or past dealings the Reviewer has had with the person the subject of the order being reviewed.

The Reviewer may make a decision that affirms, varies or revokes the decision that is the subject of the review.[7] The designated Reviewer will appoint an Order Review Panel (Review Panel) to review the Authorised Person's decision to issue an Ongoing Order (this is outlined in further detail below).

Submissions

[5] s 2.1A.29(1) of the Act.
[6] s 2.1A.31 of the Act.
[7] s 2.1A.32 of the Act.

The Reviewer may request the person to whom an Ongoing Order applies to provide further relevant information.[8] The Subject of an Order may make written or oral submissions to the Reviewer during the internal review process. Permission of the Reviewer is required to make an oral submission.

In deciding whether to allow an oral submission from the Subject of the Order, the Reviewer will consider relevant matters, including (but not limited to): whether the Subject is linguistically diverse (and wishes to use an interpreter to communicate), has low literacy or has a disability that poses challenges for communicating in a written format. Subjects of Orders are to advise the Reviewer of any issues in communicating submissions orally or in writing.

If a Subject has a known vulnerability that has been communicated through their submission in response to the Ongoing Order being made or through other means, the Reviewer will consider whether it is appropriate to seek specialist expertise in understanding how a subject's vulnerability can impact their behaviour and take this into account when reviewing the decision.

St Bernard's Parish Primary School staff members, or other persons who were the subject of the conduct which led to the ongoing order, or whom the order seeks to protect, can partake in the internal review process to:

a) provide submissions of the person's conduct and other matters that are relevant to the decision;

b) explain the impact of the subject's behavior on them and the impact that a decision to revoke the Order would have on them; or

c) provide any other information that may be relevant to the review decision.

St Bernard's Parish Primary School staff members and other persons must not make submissions unless they are relevant to the decision. A staff member or another person may make submissions by:

a) being represented, accompanied, or assisted by another person; or

b) by providing a written submission.

The authorised person who made the Order will also be provided an opportunity to make a submission explaining why the Order was made. Reviewers will consider any submissions which are relevant to the decision and disregard irrelevant submissions.

Representation, accompaniment or assistance from another person

St Bernard's Parish Primary School will allow the Subject of the Order to be represented, accompanied or assisted by another person. The people who, for example, a person may request to accompany or assist them include:

a) family members or friends;

b) a carer;

c) an interpreter, including an Auslan interpreter;

d) a disability support worker;

e) a lawyer, including from Victoria Legal Aid or a community legal centre; and

f) other advocates for vulnerable persons.

[8] s 2.1A.29(5) of the Act.

Internal Review Meetings

Where a reviewer permits oral submissions, a meeting will be organised in order for the subject to be heard. Any additional oral submissions from St Bernard's Parish Primary School staff members, or other persons, will be heard in individual meetings with the Reviewer and/or Order Review Panel.

The Reviewer may seek the consent of the Subject (or other persons) to be audio recorded to assist the Reviewer in properly and fully considering the oral submissions when making their decision (if applicable, consent will also be obtained from the person assisting the applicant). A recording will not be made of another person unless they have consented. Persons subject to an Order will be informed that they can record their oral submission.

Review Panel

When determining the merits of an application, the Reviewer will engage an independent Review Panel for advice. The Review Panel will gather relevant information and put forward recommendations in relation to the correct and preferable decision based on the relevant information available. The Reviewer will still personally exercise their discretion and decision-making power by turning their own mind to the relevant information and must not automatically accept the recommended decision without any independent consideration of the relevant matters.

The Review Panel will:

a) comprise at least two persons who are independent and not associated with St Bernard's Parish Primary School and have no knowledge or other connection to the circumstances of the subject or issuing the order.

b) Will include one MACS staff member from Legal Services Unit and one MACS staff member from Employee Relations.

c) not include a person who participated in the issuing of the order.

As part of the information gathering process, the Review Panel will:

a) provide an opportunity for the subject to be heard

b) provide an opportunity for the authorised person or other relevant persons to be heard – either in person or by some other means considered appropriate by the panel

c) provide a Protection Order Review Panel Report to the reviewer outlining the relevant facts and considerations, and recommendation regarding the order.

Timeframe to make an internal review decision

The internal review decision should be made as soon as reasonably practicable, and no later than 28 days after the application for internal review,[9] unless it has been extended:

a) on written application of the person to whom the Order applies; or
b) on the reviewer's own motion.[10]

The Reviewer may, on their own motion, extend the period in which a decision must be made for an additional period of 28 days.[11] A reviewer may only extend the period once. If the reviewer has requested

[9] s 2.1A.30(2) of the Act.
[10] s 2.1A.30(4) of the Act.
[11] s 2.1A30(4)(a) of the Act.

further information from the person the subject of the order under section 2.1A.29(5) of the Act, any time taken by the person to whom the Order applies to respond to that request is not counted towards the 28-day period.[12] If a decision is not made within the period required (including, if applicable, any extended period) the ongoing order is revoked.[13]

Outcomes

Once a Reviewer has made a decision on an internal review, a written notice will be sent to the subject, detailing the:

a) outcome of the review,

b) the reasons for the decision and

c) the person's entitlement to seek external review by applying for external review with VCAT.[14]

A review may make a decision that affirms, varies or revokes the decision that is subject of the review. The notice of outcome of review will also include information on how to access an interpreter, legal assistance (such as Victorian Legal Aid help phoneline) and mental health support (such as Parentline and Beyond Blue).

Procedural fairness and assistance for people from vulnerable backgrounds

[School name] will ensure that people from vulnerable backgrounds are provided with procedural fairness when an Order they are subject to is being reviewed, the following requirements must be followed:

- A template request form for internal review must be provided to assist potential applicants to request a review.
- The school's contact number must be provided to enable a request for internal review to be communicated verbally.
- The reviewer must consider the subject's vulnerability and its impact on their behaviour when reviewing the original decision and any submissions received during the internal review process.
- If a subject has a known vulnerability that has been communicated through their submission in response to the Ongoing Order being made or through other means, the reviewer must consider whether it is appropriate to seek specialist expertise in understanding how a subject's vulnerability can impact their behaviour and take this into account when reviewing the decision. In practice this would mean that if a parent from an Aboriginal background had applied for a review of an order, the reviewer must consider whether to seek the advice of Koorie Outcomes Division of DET (for government schools) or an Aboriginal elder or representative from an advocacy ground for the Aboriginal community (for non-government schools).
- In deciding whether to allow oral submissions from the subject of the order, the reviewer should consider whether the subject of an order is linguistically diverse (and wishes to use an interpreter to communicate), has low literacy or has a disability that poses challenges for communicating in a written format.

[12] s 2.1A.30(3) of the Act.
[13] s 2.1A.30(5) of the Act.
[14] s 2.1A.29(4)(c) of the Act states that any internal review procedures must include these requirements.

External reviews of ongoing orders

Assistance to individuals seeking external review

If a person subject to an Ongoing Order is not satisfied with the outcome of an internal review, they may seek an external review of the decision at VCAT.[15]

The information provided in the notice of the outcome of an internal review decision, will assist the person subject to the order to understand their external review rights, and provide information about supports available, such as interpreter services and legal services such as Victorian Legal Aid or Community Legal Centres.

The Victorian Model Litigant Guidelines set standards for how the state should behave as a party to legal proceedings.[16] Where an authorised person or reviewer is a party to legal proceedings under this Scheme, they are required under these Guidelines to comply with the Victorian Model Litigant Guidelines.

Record keeping

Authorised persons must keep a record of any documents associated with:

a) submissions received by the authorised person about the Order or proposed Order;

b) requests for and consideration of variations to or revocations of an Order;

c) Immediate Orders overturned on automatic review;

d) a proposal to make an Ongoing Order but where, during the show cause process, the authorised person decided not to make the Ongoing Order;

e) internal reviews lodged, including the outcome of internal review processes;

f) external reviews lodged with the Victorian Civil and Administrative Tribunal (VCAT), including documents associated with the outcome or resolution of the VCAT application; and

g) compliance or non-compliance with an Order, including documents associated with any enforcement proceedings lodged in the Magistrates' Court in respect of non-compliance with Ongoing Orders

to be created and stored securely at or within the possession of the registered school to which the order applies.

Authorised persons must ensure that records required to be created in accordance with these Guidelines are stored in safe and secure locations at or within the possession of the registered school to ensure their integrity, authenticity, security and accessibility.

Authorised persons must take all reasonable steps to ensure that records required to be created in accordance with these Guidelines are retained for the minimum periods prescribed under the 'Incidents, complaints and investigations' class of records in the School Records Retention and Disposal Authority (RDA). For the avoidance of doubt, the prescribed retention periods in the RDA apply to records created by authorised persons in non-government schools for the purposes of the Scheme record keeping requirements.

[15] s 2.1A.33 of the Act.
[16] The Victorian Model Litigant Guidelines can be found at this address: https://www.justice.vic.gov.au/justice-system/laws-and-regulation/victorian-model-litigant-guidelines

MACS Regional Office Contact Details

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Responsible director	Director, Learning and Regional Services
Policy owner	General Manager, Legal and Professional Standards
Approving body/individual	Director, Learning and Regional Services
Risk Rating	High
Approval date	14 September 2023
Date of next review	September 2026

POLICY DATABASE INFORMATION	
Assigned Framework	Complaints Handling
Related documents	School Community Safety Order Scheme Internal Review Form
Superseded documents	
New policy	New