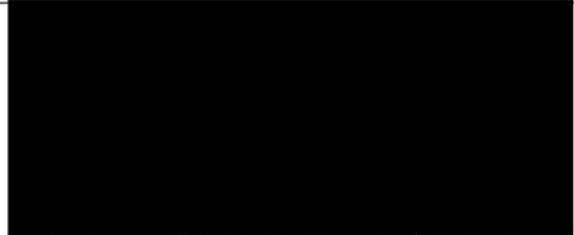


**IN THE MATTER OF THE ROYAL COMMISSION
INTO FAMILY VIOLENCE**

**ATTACHMENT DM-11 TO STATEMENT OF ASSISTANT COMMISSIONER DEAN
MCWHIRTER**

Date of document: 27 July 2015
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This is the attachment marked '**DM-11**' produced and shown to **DEAN MCWHIRTER** at the time of signing his Statement on 27 July 2015.

Before me: 



An Australian legal practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)

Attachment DM-11

Victoria Police Manual – Procedures and Guidelines

Family violence

Source Policy

These Procedures and Guidelines support and must be read in conjunction with the following:

- VPMP Family violence
- Family Violence Protection Act 2008
- Code of Practice for the Investigation of Family Violence

Application

Procedures and Guidelines are provided to support the interpretation and application of rules and responsibilities. They include recommended **good practices** and **assessment tools** to help employees make **lawful, ethical and professional decisions**. Employees should use the **Professional and ethical standards** to inform the decisions they make to support interpretation of Procedures and Guidelines.

Procedures and Guidelines are **not** mandatory requirements on their own. However, where rules and responsibilities state that employees must have regard to Procedures and Guidelines, the Procedures and Guidelines must be used to help make decisions in support of the rules.

These Procedures and Guidelines apply to:

- Police employees
- Operational members
- Work Unit Managers
- Supervising Sergeants
- Local Area Commanders

Procedures and Guidelines

1. Accountabilities

As required by **VPMP Family Violence**, supervising sergeants are to monitor family violence incidents attended by police and provide assistance to those responding to ensure safety, welfare and an appropriate level of investigation

and timeliness of police response. If required, seek further advice from local Family Violence Advisers (refer to Regional web page for contact details).

2. Responding to family violence

2.1 *Prior to attending the scene*

On the way to the scene members should consider the following:

- request a location check via police communications to ascertain the following
 - whether there are any intervention orders in place between the parties
 - history of family violence
 - whether the parties are affected by drugs or alcohol or have a history of drug or alcohol issues
 - mental illness issues
 - presence or access to firearms or weapons.
 - presence of any children at the address
- operational safety principles
- the need for back up and/ or the attendance of a sub officer and specialist services including the Critical Incident Response Team
- the need to meet at an appropriate location to formulate a planned response using incident management principles, i.e. isolate, contain, evacuate, negotiate, conclude, investigate and rehabilitate
- the need for medical attention of all parties.

2.2 *Attending the scene*

When attending at a family violence incident members should:

- be aware there is a specific power of entry according to s.157(3) *Family Violence Protection Act 2008 (FVPA)*
- comply with **VPMP Search of properties** when conducting a forced entry
- make an assessment of the scene and identify all people, including children and young people who may be present at the time
- separate the parties and speak to them privately to ascertain what has occurred
- take charge and manage the incident in accordance with the operational safety principles and crime scene management policy, refer to **VPMP Scene management**

- investigate all offences by gathering background information and physical evidence, including photographs, clothing and statements from all available witnesses. Members are to investigate regardless of whether the Affected Family Member (AFM) makes a complaint or a written statement
- consider the medical needs of all parties involved
- notify the Crime Investigation Unit, Sex Offences and Child Abuse Investigation Team, Forensic Services Department and /or Crime Scene Office where appropriate. For further information have regard to the Major Crime Management Model and **VPMP Crime Reporting and Investigations**.
- consider the level of immediate threat to members, the AFM and their children
- notify Fugitive Task Force via Field Contact Report [Form L19] if the respondent is on parole.

2.3 Risk assessment and risk management

When investigating a family violence incident members are to:

- complete a Family Violence Risk Assessment and Management Report [Form L17] for every reported incident of family violence, regardless of who made the report. This includes incidents where there are other issues present such as mental health
- record the details of all persons present using Other Names [Form L8] and their relationship to the parties involved in the incident
- ascertain whether the respondent is in possession of or has access to firearms or weapons. Members are to make specific inquiries with the AFM to elicit any information they may hold regarding the respondent's access to or possession of firearms or weapons
- inquire into the history of violence in the relationship and any patterns taking into consideration AFM and other party relationship:
 - previous incidents (regardless of whether they were reported to police)
 - intervals between incidents of violence,
 - escalation of violence,
 - describing the current incident,
 - most serious incident and previous incidents,
 - including whether children were present,
 - threats of suicide or murder,
 - assessment of risk and vulnerability factors such as pregnancy or recent separation.
- identify who is the predominant aggressor, and where physical violence has occurred, assess if it is likely that someone has been acting in self defence.

- take immediate action to protect and support AFMs
- Files relating to contraventions where there is an immediate risk of safety to the AFM should not be sent by mail to the PSA where the accused resides. Use electronic communications such as scanned PDF files, faxes or emails so that timely arrests and interviews can be conducted by the nominated PSA. The file is to be forwarded directly to the relevant Station Commander and a briefing provided to a station sub officer so that timely action can be monitored.

2.4 Removal of persons and property:

- Where separation of family members is needed to ensure safety, effort should be made to support the AFM to stay in their home.
- If no legal power exists to remove an offender from the premises, police must make a referral to the AFM, to an agency that is able to provide emergency accommodation.
- Police should assist with the safe removal of persons from the premises, ensuring there are no breaches of the peace and that those leaving the premises for their safety have sufficient clothing and personal items.

2.5 Women's Refuges

- In high risk situations it may be appropriate for women and children to be placed within women's refuges. The refuges maintain confidential addresses and a corresponding level of medium or high security which is intended to preserve the safety of clients and workers alike.
- To seek secure accommodation for an AFM 24/7 police are required to contact the Women's Domestic Violence Crisis Service (WDVCS). An intake staff member from WDVCS will assess the eligibility of the woman and any children. Eligibility usually applies to women and children escaping an immediate threat of family violence.
- Under no circumstance is the address or location of a women's refuge to be divulged to the respondent.
- Members are not permitted to contact WDVCS directly regarding the whereabouts or welfare of an AFM who has been placed in a women's refuge, or to visit an AFM whilst at a refuge.
- To facilitate police contact and ongoing family violence case management with an AFM who has been placed in a refuge members are to consider obtaining alternative means of contacting the AFM such as via email or mobile phone at the time of taking the report.

3. Taking action – Options Model

3.1 Overview

The Options Model provides three options of intervention to break the cycle of violence: Criminal, Civil and Referral. Based on their risk assessment, investigation and all relevant information, police are to choose the most appropriate method of intervention from the available combination of the options:

- Referral
- Referral and Criminal
- Referral and Civil
- Referral, Civil and Criminal.

3.2 Criminal Options

If a criminal offence has occurred members are to investigate and pursue criminal offences as they would any criminal investigation:

- Pro arrest and pro charge - members will investigate all family violence incidents reported to them, ensuring that appropriate action is taken
- Members are to determine if there are any existing orders, including those made under the *Family Law Act (Cwlth) 1975*
- Where a criminal offence is identified, police will conduct an investigation, pursue criminal options and prepare a brief of evidence, see **VPMP Briefs of evidence**
- A supervisor will authorise any charges based on the available evidence, and may do this with or without consent of the AFM. Consider conducting a case review if the AFM is reluctant to support charges
- Bail does not replace the need to seek an intervention order where circumstances require
- For further guidance on requirements for criminal action, refer to **VPMP Crime reporting and investigation** and **VPMP Disposition of offenders**.

Contravention of a Family Violence Interim Intervention Order (FVIO), Family Violence Intervention Order (FVIO) or Family Violence Safety Notice (FVSN):

- A contravention of a FVIO, FVIO (including interstate or New Zealand order registered in Victoria) or FVSN is a criminal offence
- Both summary and indictable contravention offences exist in the FVPA

- The offence of a contravention is against statute not the victim
- FVIO, FVIOs and FVSNs are to be strictly interpreted and enforced. There is no such thing as a 'technical' breach
- A protected person is not liable for a charge of aiding, abetting, counselling or procuring the commission of any contravention offence (s.222(2)(b)).

3.3 Summary offences for contraventions of FVSN, FVIO and FVIO

- These offences carry up to two years imprisonment and are heard and determined in the Magistrates Court.
- Summary contraventions of a FVSN, FVIO or FVIO are strict liability offences, i.e the prosecution does not have to prove intent.

3.4 Indictable offences for contraventions of FVSN, FVIO and FVIO

These offences carry up to five years imprisonment and can be heard summarily

Contravention of notice/order intending to cause harm or fear for safety (s.37A & s.123A)

These offences apply to situations where the accused intends to cause, or know that his or her conduct will probably cause-

- physical or mental harm to the person protected by the FVSN/FVIO/FVIO, including self harm; or
- apprehension or fear in the person protected by the FVSN/FVIO/FVIO for his or her own safety or that of any other person.

They are aimed at contraventions which while not necessarily constituting an offence other than contravention – are particularly harmful to the victim. The power of arrest is S.459 Crimes Act 1958.

For the purposes of this offence, 'Mental harm' includes psychological harm and suicidal thoughts.

Persistent Contravention of Notices and Orders (s125A)

Section 125A FVPA makes it an indictable offence to persistently contravene a FVSN/FVIO/FVIO

- Liability for this offence occurs where the offender commits a summary contravention of FVSN, FVIO or a FVIO (the 'trigger' offence), and within the preceding 28 days has committed at least two other summary

contraventions. When laying this charge there must be at least three summary contravention charges accompanying the indictable charge.

- The prerequisite contraventions must have occurred on or after 17 April 2013 to be included in the sequence of an indictable persistent contravention offence charge.
- Where a preceding incident has not been reported to police but falls within the preceding 28 day period, reports can be taken and used to contribute towards the indictable charge. In this case submit one L17 with multiple sub-incidents.
- For the purposes of this offence, the prosecution must demonstrate that the accused knew or ought to have known that the conduct constituted a contravention of the FVSN/FVIO/FVIO.
- If the charge against section 125A is dismissed then the Magistrate can still find the accused guilty of the offences against either sections 37A and 123A or sections 37 and 123 as alternatives.

3.5 ***Taking the alleged offender into custody***

- Where the alleged offender is at the scene:
 - section 38, *Family Violence Protection Act 2008* provides a power of arrest where police believe on reasonable grounds that a person has contravened a FVSN
 - section 124, *Family Violence Protection Act 2008* provides a power of arrest where police believe on reasonable grounds that a person has contravened a FVIO/FVIO
 - section 459 *Crimes Act 1958* provides a power of arrest for indictable contraventions (s.37A, 123A & 125A).
- Where the alleged offender is not at the scene:
 - members are to conduct an investigation in order to locate and interview the alleged offender within 24 hours, in line with the Advancing Investigation Management accountabilities (Project AIM)
 - If unable to locate within 24 hours members are to submit a Person Whereabouts Desired [Form L12] and consider a Person Warning Flag [Form 292]
 - once located, arrest and interview the alleged offender.

3.6 ***Interviews***

- Members are to conduct all interviews as required by **VPMP Interviews and statements**.
- When interviewing an alleged offender for persistent contravention, members are not to re-interview for the pre-requisite summary

contraventions. It is advisable to confirm the respondent's knowledge of the preceding summary contraventions only.

3.7 Brief preparation for persistent contravention offences

Where one member responds to all of the pre-requisite contraventions that comprise the persistent contravention charge, that member is to compile one brief of evidence which includes all summary contravention offences and the persistent offence. Where the summary contraventions that make up a charge of persistent contravention have been responded to by multiple members a charge coordinator is to be allocated. Refer section 2.1 **VPMG Brief preparation and management**.

Allocation of Charge Coordinator:

- The Charge Coordinator role is allocated by the supervisor of the member who identifies the 'trigger' indictable offence
- The informant who responds to the trigger offence should be the Charge Coordinator unless extenuating circumstances exist, eg Family Violence Team member better placed to investigate, member going on leave.

Responsibilities of Charge Coordinator:

- Coordinating all charges pertaining to each pre-requisite summary contravention offence in order to lay the indictable persistent contravention offence
- Compiling and attaching a Family Violence Contravention Coversheet [Form 1430] to the brief of evidence containing indictable persistent offence
- Coordinating and facilitating the collation of the relevant briefs and aligning all court matters to the same venue and same date. This will maximise the likelihood of a successful prosecution of the indictable persistent charge.

Where a Charge Coordinator is allocated:

- Members who have issued process are to provide an authorised copy of the brief to the Charge Coordinator
- Members who have not issued process are to forward the brief (prior to authorisation); or all statements, evidentiary material and interviews to the Charge Coordinator for brief compilation and authorisation.

3.8 **Civil Options**

Police applications

Members are to make and sign an application for a FVIO, FVIO or FVSN whenever the safety, welfare or property of a family member appears to be endangered by another family member. It is not always necessary to have the agreement of the AFM to proceed as they may be fearful of the consequences. Members are to make an assessment of the present and future risks of violence to determine the most appropriate course of action when applying for a FVIO by one of the following:

- FVSN
- Application and Warrant (A&W)
- Application and Summons (A&S)
- FVIO.

Family Violence Safety Notice

Utilise a FVSN:

- after completion of a risk assessment [Form L17]
- weekdays before 9.00am or after 5.00pm or weekends or public holidays
- respondent is 18 years and over
- the respondent is not cognitively impaired
- there is reasonable belief that no active Family Law or Child Protection Orders exist that may be inconsistent with the proposed terms of the FVSN
- no family violence intervention order is in place
- when police will act as an applicant for a family violence intervention order.

For further instruction on FVSNs, have regard to **VPMG Family violence safety notice**.

Application and Warrant

Police may make application to a Registrar of the Magistrates' Court or the Childrens' court for the issue of a warrant for the arrest of an adult respondent if it is necessary:

- To ensure the safety of an AFM
- To preserve any property of the AFM

- To protect a child who has been subjected to family violence committed by the respondent
- To ensure a respondent attends court on a mention date for the application.

An application and warrant may also be sought through the Magistrates' Court of Victoria After Hours Service where it is not feasible to use a FVSN.

Making the A&W application:

- Seek approval from a Supervising Sergeant
- During court hours, contact the registrar to determine the most practical way of making the application
- If making the application at the court:
 - a member will be the complainant
 - advise the police prosecutor/ civil advocate of the application
- If after court hours, contact the after-hours court registrar via telephone. All documents detailed above are to be ready before contacting the Registrar.

If the court issues a warrant:

- Arrest the respondent and take directly before the court or
- Arrest the respondent and bail them to appear at the Magistrate's Court or Children's court within five working days
- Notify the AFM, as soon as possible, that the warrant has been executed and that they should attend the hearing for the FVIO application
- Forward the warrant endorsed with execution details, and bail bonds to the court where the application is listed for hearing
- Complete LEAP forms including [Form L22] Bail Form immediately.

Application and Summons

- This course of action is appropriate when there is no immediate danger to person or property, but action is required
- Apply for an application and summons in accordance with the Family Violence Protection Act 2008.

Making the Application and Summons application:

- Complete the Application and Summons [Form 422]

- Arrange for a summons, including court return date, to be issued by a registrar (the court will usually list the complaint for hearing within seven days)
- Serve a copy on the respondent and explain the conditions of the Summons
- Give a copy of Form 422 to the AFM and advise them that they should attend court.

Family Violence Interim Intervention Order

Seek a FVIO when immediate action is required to protect the AFM and their children, for example where the respondent is not present at the scene:

- When an application and warrant or FVSN is inappropriate in the circumstances, or the court has not granted an application for a complaint and warrant and welfare concerns still exist
- Where the respondent is 17 years or younger, a FVIO is the only available mechanism for applying for an intervention order, see Children section below
- Making the FVIO application:
 - Make application for a FVIO in accordance with s.43 of the Family Violence Protection Act 2008
 - During court hours, contact the registrar to notify same of the application and to arrange a time for the application. After contacting the registrar fax the Form 422 application and summons with "interim order" ticked. For the matter to be heard the same day the application needs to be received by the registrar before 3pm.
- The FVIO s are valid until:
 - a final order is made; or
 - the matter returns for a final hearing and is struck out; or
 - the interim order is revoked; or
 - the FVIO application is withdrawn.

Where a FVIO returns to court for a final hearing and the matter is adjourned, the protection of the FVIO continues.

If the court does not grant an application for a FVIO, the checking supervisor is to ensure that:

- details are recorded on LEAP case narrative
- ensure the AFM has received appropriate referral and advice
- a copy is sent to the Family Violence Liaison Officer for recording and follow up as required.

Appeal

- Any party to a FVIO may lodge an appeal against the granting or refusal of the court to make an order.
- Members who are a party to an application are also a party to an appeal and will be required to attend the County Court for the hearing of the appeal. Members will need to contact the Staff Officer to the Director, Legal Services Department for representation at the County Court.

3.9 Family Law Act and Interstate Orders

- When considering an application for a FVIO, ascertain whether a *Family Law Act* Order is in existence as this may impact on the conditions being sought by the FVIO - *Family Law Act 1975 (Cwlth.)* Orders prevail where there is an inconsistency with a FVIO under s.65, *Family Violence Protection Act*.
- Interstate or New Zealand protection orders are enforceable in Victoria if they have been registered with the principal registrar of the Magistrates' Court of Victoria. Refer persons enquiring about registering an order to the Melbourne Magistrates' Court.

Arrests under the Family Law Act

- Refer any breaches of a *Family Law Act* order to the Australian Federal Police (AFP) for investigation or further information, unless they are incidental to a Victorian offence.
- However:
 - there is a power of arrest for an injunction, but only where the injunction is for personal protection, injury and where threats have occurred
 - the court may also send police a warrant for arrest
 - any person arrested is to be dealt with according to any respective warrant or brought before the Family Law Court (the Magistrates' Court may sit as a Family Law Court)
 - members are to notify the other parties of the injunction of the arrest.

3.10 Referral

- Referral is in addition to and does not replace pursuing criminal charges or the seeking of a FVIO under the *Family Violence Protection Act 2008*.
- There are two referral options

Formal Referral

Police are to make a formal referral:

- Where they intend to lay criminal charges or are investigating an alleged crime relating to a family violence incident
- Where the safety, welfare or property of a family member appears to be endangered by another family member and police intend to apply for or to have sought a FVSN, Application and Warrant, Application and Summons or FVIO
- Where the likelihood of future violence is assessed as ‘likely’
- To address recidivism
- To enable co case management
- In any other circumstances where police assess a formal referral is required.

Informal Referral

Police will make an informal referral in all other cases. An informal referral occurs when police respond to a family violence incident and provide the parties involved information regarding external agencies that have functions to assist those experiencing family violence.

Formal contact between police and an external agency

- When making a formal referral, police can share the risk assessment, risk management and referral details for either the AFM or perpetrator to the referral agency. Always refer to the parties as perpetrator and AFM in the narrative to avoid either party being identified.
- Members may also wish to confer with other agencies regarding the particulars of the family violence incident e.g. during a multi agency co case conference.
- For further guidance on information sharing consult **VPMP Information sharing** regarding the routine sharing and release of information to third party organisations.
- In addition to the above referral options, members are to notify the following areas when appropriate:
 - CIU where serious crime is committed. For further information have regard to the Major Crime Management Model and **VPMP Crime reporting and investigations**.

- SOCIT where sexual assault or child abuse is committed. For further information have regard to **VPMP Protecting Children** and **VPMP Crime reporting and investigations**.

4. Children

4.1 Civil

- Where there is no Department of Human Services (DHS) involvement and members are proceeding as the complainant in an application for a FVIO:
 - consider including the child on the application for the AFM, where appropriate
 - If the AFM is a child then make application on behalf of the child at the Children's Court.
- Where a FVIO application involves a respondent who is a child, police are to liaise with DHS, prior to applying for the order. Have regard to **VPMP Protecting children**.

4.2 Reporting and referral

There are three types of child reporting/referral:

- Mandatory Reporting to Child Protection
- Referral to Child FIRST
- Referral to a specialist Family Violence Service with the AFM.

4.3 Mandatory reporting:

- Police are mandated to make a report to Child Protection, DHS when they believe that a child is in need of protection or at risk of significant harm as a result of physical or sexual abuse. When a report to Child Protection is made, the relevant box on the Form L17 is to be ticked.
- A mandatory report to Child Protection is to be made in any of the following circumstances:
 - Physical abuse of, or non accidental or unexplained injury to, a child
 - A disclosure of sexual abuse by a child or witness, or a combination of factors suggesting the likelihood of sexual abuse – the child exhibiting concerning behaviours.
- Where police members form a belief on reasonable grounds that a child is at risk of harm and in need of protection (emotional harm or neglect), and the child's parents are unable or unwilling to protect the child police **may** make a report to child protection but are not mandated to do so.
- If making a mandatory report police should also notify the local SOCIT.

4.4 Child FIRST

Where children are present and a formal referral to a specialised family violence service or a report to Child Protection is not made, but where police have significant concerns for the well being of a child or young person, police may refer the matter to the relevant Child FIRST intake [VP Form 1302]. This includes in the case of an unborn child where there is a significant concern for the wellbeing of the child after his or her birth.

4.5 Referral to a specialist Family Violence Service with the AFM.

- When police make a formal referral for an AFM to a specialised family violence service they will state if any children were present at this incident. The children will be considered as part of the formal referral, and the specialist family violence service will undertake a risk and needs assessment of each child as part of the referral process.
- For further guidance refer to **VPMP Protecting Children** as required.

5. Service of Family Violence Intervention Orders

5.1 Court service

- Court service takes place when a copy of the order is served on the respondent by court staff following the making of the order.
- If the AFM is present, the register will also provide them with a copy.
- If the respondent is not present at court when the order is made the registrar will send a copy of the order and information sheets to the police station closest to the respondent's address for police to arrange service.

5.2 Police service

Prior to Police Service

- Members should conduct a risk assessment prior to serving an intervention order.
- Members are to conduct a LEAP check (including national check) of the respondent to establish any prior convictions or known history of violence, access to weapons or firearms, any history of mental illness or suicide attempts or other warning flags.
- Members should where appropriate and safe to do so contact the AFM to determine the whereabouts of the respondent and possible reaction to the FVIO.

- Members should consider the need for back up when serving intervention orders.

At the point of service

- Service of an intervention order must be made in person, except where the court has made an order for substituted service.
- Members are to provide a copy of the FVIO and information sheet to the respondent
- The provisions of the order are to be explained to the respondent.

Post Service

Members are to complete the following:

- A certificate of service and return to the court of issue on the same day as service
- Notify the AFM that the FVIO has been served
- Fax a notification of service of an intervention order [Form L31] to CDEB.

5.3 Special requirements

Service of some FVIOs may need special requirements, for example, where:

- there is a lack of understanding of English, obtain an interpreter to explain the conditions of the order
- the person is subject to the *Mental Health Act 2014* - advise the court of issue and seek further advice.

5.4 If the order cannot be served

- Members are to make reasonable attempts to serve the order and record these attempts on Action Advice Cover Sheet for Service of Intervention Orders [Form 958] and LEAP.
- If the order cannot be served e.g. the respondent is evading service, return the order to the court of issue, with a certificate of inability to serve and consider making application for substituted service.

5.5 Substituted service

If seeking substituted service under s.202, Family Violence Protection Act 2008:

- Notify the AFM and forward to the court of issue the following applicable documents:

- certificate of inability of service
- written application.
- Members will be informed by the court whether they are required to give sworn evidence in court
- The registrar will also notify the AFM and coordinate any further action.
- The court may issue an order for substituted service which, if granted, will be forwarded to police for service
- After substituted service has taken place police are to file with the court the certificate of service
- An order for substituted service cannot be made with respect to the service of a FVSN.

On occasions a Magistrate may order substituted service be made electronically such as by posting the order on social media sites or via email. In these circumstances members are requested to contact the Media and Corporate Communications Department, On Line Communications Unit for assistance.

6. Revocation, variation, extension or appeal of a FVIO or FVIO

- A party to the proceedings including police may apply to have a FVIO extended or its conditions, varied or revoked under s.108, *Family Violence Protection Act 2008*.
- Police can vary an existing FVIO after-hours by applying for a FVIO 'Variation' and an 'Application and Summons'. Complete Form 422 and tick both the 'Application and Summons' and 'Variation' boxes.
- If police are the complainant and variation is required in relation to an adult AFM, ensure appropriate action is taken to ensure any children continues to be protected under the FVIO.
- Notice is to be served on the parties who are the subject of the order when amendments are sought.
- Where police are the complainant and the notice has been served on them, they or their delegate are to notify the AFM of the application and encourage them to attend court.
- Consideration is to be given to the impact of any variations on the AFM's safety.

7. Case Review

Case reviews can occur in two circumstances:

- When an assessment of a decision to proceed or not with a prosecution, as a result of a family violence incident is required or
- When a victim requests no further action in either of the following circumstances:
 - there is sufficient evidence to proceed but criminal charges have not been laid and the victim is reluctant to proceed.
 - criminal charges have been laid but the victim is reluctant to proceed.
- If a police supervisor decides to not authorise a brief of evidence resulting from a family violence incident, the informant is to contact the victim and advise them of the non authorisation. The initial notification can be done via phone and a Proforma Invitation for AFM to request case review [Form 1236] sent. The informant is to also comply with the *Victims Charter Act 2006*.
- The victim can initiate the case review by writing to the OIC of the informant, detailing their reasons for requesting a review. Within one month of the notification the relevant Family Violence Liaison Officer (FVLO) will conduct the review at a time convenient for all parties.

8. Attending Court for criminal/civil proceedings

- The initiating member must liaise with the prosecutor to ensure they are aware of any matters listed for hearing and provided with the relevant paperwork. Members should discuss with the prosecutor contacting the Court Network Service or appropriate agency, to provide court support to the AFM.
- For further guidance on attendance for criminal proceedings, have regard to **VPMP Court processes**.

9. Responsibilities of the police prosecutor / civil advocate

- The police prosecutor or civil advocate can only prosecute hearings where a police member is named as the complainant in the FVIO application.
- A civil advocate is a lawyer employed by Victoria Police to appear in intervention order applications
- Where a police member is not required to attend court or is unavailable, before the hearing of the application the police prosecutor, civil advocate or Family Violence Court Liaison Officer (FVCLO) should:

- advise the AFM of the court process and procedures
- ensure the AFM is aware of the services available and told how to access the services
- explain that if there are safety concerns the prosecutor may ask the court to make a FVIO without the consent of the AFM.

10. Family Violence incidents involving police employees

10.1 Responding to an incident

- In addition to the general response to family violence as per the *Family Violence Protection Act* there are extra requirements for incidents involving Victoria Police employees. This action is to remove any perceived conflicts of interest and to maintain the integrity and ethical standards of Victoria Police.
- Treat all incidents involving Victoria Police employees as a complaint against police.
- Where criminal offences are involved, including contravention of a FVIO, FVIO or FVSN, notify Professional Standards Command (PSC).
- For further information have regard to **VPMP Complaints and discipline**.

Responding members

- Notify a supervising Sub-officer as soon as possible. Where practicable a sub-officer should attend all incidents of family violence involving employees.
- Ensure that the Form L17 is completed and indicates that an employee was involved in the incident, as well as the registered number of the notified sub-officer.
- Ensure that the incident is investigated fully and the options model is utilised.
- Advise supervisors of the serving of a FVIO, FVIO or FVSN on a Victoria Police employee.

Sub-officer:

- Attend and take charge of the incident, unless pressing necessity prevents this action.
- Notify the Divisional Patrol or regional Response Manager.

- Ensure notification of PSC where criminal offences including contravention of a FVIO, FVIO or FVSN have been detected.
- Ensure that the welfare of the employee is taken into consideration regardless of whether the employee is the respondent or the AFM. Consider the following:
 - Peer Support
 - Police Welfare
 - Police Psychology
 - conducting welfare checks on the employee at a later time
- Ensure referrals are made.

Divisional Patrol Supervisor or Duty Officer:

- Oversee the action of the attending Sub-officer.
- Advise Staff Officer to the Director Legal Services as soon as possible of the incident.
- If either or both parties are employees notify the Local Area Commander/Senior Manager as soon as possible of the incident.
- For information regarding the suspension of OTST qualifications for members who have become classified as a prohibited person, consult **VPMG Operational safety and tactics training qualifications**.

Local Area Commander/Senior Manager:

- Notify the Regional or Departmental Head of any employee named as a respondent under the *Family Violence Protection Act*.
- Seek advice from the Director, Legal Services regarding any police employee residing in police premises, whose occupancy is affected by action taken under the *Family Violence Protection Act*.

Prohibited persons

- It is the responsibility of an employee of Victoria Police, involved in a family violence incident, to identify themselves as being an employee to the responding members.
- It is the responsibility of an employee to notify their supervisor that they are subject to a FVIO or FVSN.
- Police **may** under section 158 (1) and (2), *Family Violence Protection Act 2008* direct the employee to immediately surrender their firearms authority or serve a notice on the employee directing the employee to immediately surrender their firearm, firearms authority, ammunition or weapon if:

- A FVSN has been issued against the employee
 - A FVIO has been made against the employee
 - A police officer is satisfied on the balance of probabilities there are grounds for issuing a notice or making an order against the employee
 - Police have, or intend to, serve an interstate order or an application for an interstate order made against the employee
 - Police have, or intend, serve an interstate protection notice against the employee.
- Section 158 (1) and (2), *Family Violence Protection Act 2008* implies the decision to suspend a persons firearms authority is discretionary. However, prior to a decision being made police must conduct a thorough risk assessment. The decision should be made by the Regional Superintendent where the employee resides in consultation with the employees LAC/Senior Manager.
 - Regardless of whether police exercise their power under Section 158 (1) or (2), when an employee is the respondent for a FVSN or a FVIO or a corresponding interstate order or application the Regional Superintendent where the employee resides may suspend the members OTST qualifications.
 - Section 94, *Family Violence Protection Act 2008* states that if the court intends to make a FVIO the court must enquire as to whether the respondent holds a firearms authority. The court must be informed of the respondents status as an employee of Victoria Police.
 - Section 95(a), *Family Violence Protection Act 2008* states that if an interim order is made the court may include a condition suspending the respondents firearms authority. The employee is a prohibited person and the employees OTST qualification must be suspended.
 - In order to carry a firearm the employee is required to attend court and have the interim intervention order varied or revoked to remove the firearms clause. The decision to reinstate the employees OTST qualification, however, will still be made by the Regional Superintendent where the employee resides in consultation with the employees LAC/Senior Manager.
 - Section 95 (b), *Family Violence Protection Act 2008* states that if the court makes an intervention order that is a final order, the court **may** include a condition cancelling the respondent's firearms authority.
 - An employee subject to a final order under the *Family Violence Protection Act 2008* which **does not** contain a clause under section 95 (b) becomes a prohibited person. The Chief Commissioner of Police must suspend for three months any firearms authority held by this person. During this time the employee can make application under section 189, *Firearms Act 1996*

to be considered a non prohibited person. If the application is not made the Chief Commissioner must then cancel the firearm authority.

- If the court makes a final order which includes this condition then the respondent becomes a prohibited person under the *Firearms Act 1996* and may not apply to be deemed not to be a prohibited person under section 189, *Firearms Act 1996*. The employee may however, make an application to have their final order revoked or varied to remove the firearms clause. The application must be made to the court who decided the final order.
- Police have the power to remove the firearm authority (OTST qualification) of employees who are the respondents in respect to FVSN, FVIO or final intervention orders. The decision is made by the Regional Superintendent where the employee resides in consultation with the employees LAC /Senior Manager and the member has no right of appeal.

10.2 Service of an FVSN or FVIO on a Victoria Police member

- The subject employee and the member/s responsible for serving the application and summons, application and warrant, FVSN or Order, are required to notify their respective supervisors.
- These parties are also required to notify the Staff Officer to the Director Legal Services when serving an intervention order on a member or when named in or served with an intervention order.

10.3 Bail

- Where it is intended to bail a police employee, a Bail Justice or Magistrate should be used.
- Where there is an alleged breach of bail notify a Sub-officer, who will then notify the Divisional Patrol Supervisor or Regional Response Manager who will attend and:
 - ensure appropriate action is taken
 - advise the Local Area Commander and PSC as soon as possible.

10.4 Prosecution and costs

Family violence incidents, where a serving police employee is named in the order, as either the respondent, affected family member or material witness, will be prosecuted by a police prosecutor or Civil Advocacy Unit (CAU) lawyer, unless a conflict of interest or bias exists. For further information on conflict of interest or bias refer to VPMP Managing conflict of interest.

If the member or CAU lawyer believes that a conflict of interest or bias exists they are to notify a supervisor. The supervisor is to assess the circumstances and if supported contact the Staff Officer to the Director Legal Services for advice. The Director, Legal Services will assess the circumstances and give

consideration to engaging the services of independent counsel. The services of independent counsel are to be sought in the following circumstances:

- Where a police employee is involved in an application for a FVSN or FVIO as either a respondent, AFM or material witness (where a conflict of interest or bias exists)
- Where applications are initiated by an affected Victoria Police employee under s.189. *Firearms Act 1996*, and are to be contested
- Where the family violence incident involves criminal charges against an employee, the Office of Public Prosecutions (OPP) is to be engaged through the process. For further information, have regard to **VPMP Complaints and discipline**
- Costs are the responsibility of the Region/Department that has authorised the action.

11. Firearms

The *Family Violence Protection Act 2008* provides for the surrender, search and seizure of firearms, ammunition, weapons in certain circumstances. Police are to investigate the respondent's possession of, or access to, firearms when attending any family violence incident.

11.1 Surrender

Where members have issued a FVSN or made application for an FVIO, or believe that there are grounds for either, or have served or intend to serve an interstate order or an application for an interstate order or interstate protection notice and are aware the person has a firearm, firearm authority, ammunition or weapon in their possession, the member may (s.158, *Family Violence Protection Act*):

- Direct the person to immediately surrender the firearm, firearm authority, ammunition or weapon to the member; or
- In writing, direct the person to surrender the item to a police member at a specified place within a specified time, or where no time given within 48 hours.

Where it is impracticable for the respondent to immediately surrender the item, the member must use the Notice to Surrender [Form 1347], to direct the person to surrender the item to a 24 hour police station.

It is the member's responsibility to confirm that the item was surrendered in accordance with the direction; this must be recorded on the copy of Form 1347.

11.2 Search

Without warrant

Where a FVSN or FVIO has been issued, or a member believes there are grounds for issuing either a notice or making an order, or has served or intends to serve an interstate order or an application for an interstate order or interstate protection notice and a member is aware or has reasonable grounds to suspect the person is in possession of a firearm, firearm authority, ammunition or weapon, the member may, without warrant, enter and search:

- any premises at which the person resides or has resided;
- the premises at which the person committed or allegedly committed family violence; or
- a vehicle registered in the person's name. (s.159, *Family Violence Protection Act 2008*).

Where a member intends to serve or has served an application for an interstate order on a person, the member must not give a direction under section 158(2) or enter and search premises or a vehicle under section 159(2) unless the member-

- is satisfied on the balance of probabilities that the person has committed family violence against the person sought to be protected by the order and is likely to continue to do so or do so again; or
- believes on reasonable grounds that the direction is or entry and search are necessary to ensure the safety of the person sought to be protected by the order.

With warrant

Where a FVSN or FVIO has been issued, and police believe on reasonable grounds the respondent is committing or is about to commit an offence against the Act, or the respondent is in possession of a firearm, firearms authority, ammunition or a weapon, police may apply to a magistrate for a search warrant [Form 1355].

A search warrant can also be sought if a member intends to serve or has served an interstate order, an application for an interstate order or an interstate protection notice and police believes on reasonable grounds that the respondent is in possession of a firearm, firearms authority, ammunition or a weapon.

These circumstances apply where police need to search other premises or other vehicle(s) where:

- The respondent has not resided
- Where the family violence was not committed
- Vehicle(s) not registered in the respondent's name at the other premises or in a public place.

11.3 Seizure

- Any person having their licence/permit/authority suspended in accordance with s.159, *Family Violence Protection Act*, is to surrender all firearms they own or are in their possession and the licence/permit/authority to police.
- If a person fails to comply with the direction or the member conducts a search, the member must seize any firearm or firearm authority the member is aware of being in the person's possession. The member/s may also seize any ammunition that the person possesses according to s.163, *Family Violence Protection Act 2008*.
- For further seizure provisions where members may seize any firearms or firearm authority not surrendered, have regard to s.53(2), *Firearms Act*.

11.4 Disposal of seized firearms

- Where an FVIO or a corresponding interstate order is made and an application to be made an undeclared prohibited person is not sought, any firearm seized or in their possession of the respondent, must be disposed of according to s.164(2)(b), *Family Violence Protection Act 2008*.
- Where FVIO is not made, any firearm seized must be returned to the person from whom it was seized or disposed (s.165, *Family Violence Protection Act 2008*) unless it is subject to other proceedings.

11.5 Prohibited persons

When a final intervention order has been granted the respondent is declared a prohibited person according to s.189, *Firearms Act* for the duration of the FVIO and for five years after cessation. The respondent is responsible for the taking any action to be declared a non-prohibited person.

11.6 Further Action

- Where appropriate lay applicable charges under the *Firearms Act*, in addition to any action taken under the *Family Violence Protection Act 2008*.
- Where a FVIO is not granted, consider taking alternative action under the *Firearms Act*, to have the respondents license/permit or authority revoked.

11.7 New Zealand Protection order

Police can only search for and seize firearms when either the order has been registered in Victoria according to ss.184, Family Violence Protection Act 2008 or with an appropriate warrant.

- If asked to serve New Zealand protection order members are to identify if the order has been registered in Victoria.
- If the Order is registered:
 - inquire into the respondents access to firearms; and then
 - search for and seize firearms according to ss.185-186, *Family Violence Protection Act 2008*.
- If the order is not registered:
 - advise the court of issue to have the order registered before taking any action
 - obtain an appropriate warrant to authorise the search and seizure of firearms.

Further Advice and Information

For further advice and assistance regarding these Procedures and Guidelines, contact the Family Violence Coordination Unit, your supervisor, and your local Family Violence Liaison Officer (FVLO).

Update history

Date of first issue	22/02/10	
Date updated	Summary of change	Force File number
24/05/10	Formal Referral criteria included in Section 4 after oversight was identified.	060012/09
22/11/10	Amendment to section 9 to reflect that in all family violence applications involving Victoria Police employees, consideration be given to engage independent counsel where ever practicable.	063681/10
15/03/11	Amendment to internal contact for members with FVIO appeals at the County Court from Civil Litigation Unit to Staff Officer, Legal Services Department (Section 4)	066789/11
17/12/12	Minor amendment to Part 9 additional accountabilities	063681/10
05/02/13	Updated to align with 2013 Code of Practice. Section 10 updated to include role of CAU in prosecutions	073304/12 and 074333
05/08/2013	Updated to include persistent contravention offences	076176
18/11/13	References to redundant instruments following IMSSD	069562/11

	review have been updated with corresponding new instruments.	
31/03/14	Updated to include seizure provisions for interstate orders	071508/12
01/07/2014	Minor amendment to update reference to the <i>Mental Health Act 2014</i>	FF-085694