IN THE MATTER OF THE ROYAL COMMISSION INTO FAMILY VIOLENCE

ATTACHMENT DM-12 TO STATEMENT OF ASSISTANT COMMISSIONER DEAN MCWHIRTER

Date of document: 27 July 2015 Filed on behalf of: State of Victoria Prepared by: Victorian Government Solicitor's Office Level 33 80 Collins Street Melbourne VIC 3000	[redacted]

This is the attachment marked **'DM-12'** produced and shown to **DEAN MCWHIRTER** at the time of signing his Statement on 27 July 2015.

Before me: [redacted] .....

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

Family violence holding powers

Source Policy

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

- VPMP Family Violence
- *Family Violence Protection Act 2008*

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:

- Members
- Work Unit Managers

Procedures and Guidelines

1. Exercising holding powers

- To ensure the safety of the Affected Family Member (AFM) and their children, while an application is made for a Family Violence Intervention Order (FVIO) or Family Violence Safety Notice (FVSN), members are able to use holding powers to direct a person to go to a place, remain with them or another person, or to detain the directed person in their custody for the duration of making the application.

- Members may utilise holding powers if they intend to make an application for one of the following against the directed person:
  - a FVIO

- an Order varying and existing FVIO
- a FVSN.

- Before exercising holding powers members are required to:
  - have reasonable grounds for suspecting that the person is above the age of 18; and
  - believe on reasonable grounds that exercising the power is necessary to ensure the safety of the AFM or to preserve their property.
  - The direction is to be given to the person orally or in writing and is to be reasonable in the circumstances.

- For further information see s.13, *Family Violence Protection Act 2008* (FVPA).

2. Power to direct a person

To ensure the safety of the AFM, to preserve their property, to enable the member to make a complaint and the subsequent service of any Order, members can use holding powers to direct a person, the directing member may direct:

- to remain at the place where the person is when the direction is given; or

- to go to and remain at a place stated by the member; or

- to remain:
  - in the company of the member; or
  - with another member stated in the direction, or
  - with another person stated by the member (this may only be done with the permission of the accompanying person)

- For further information see s.14, FVPA.

3. Power to search

Members may search a directed person and any vehicle, package or thing in the directed person's possession if the member suspects, on reasonable grounds, that the person has in their possession any object that may cause injury or damage or may be used to escape. This search power is not to be used for evidence. For further information see s.16, FVPA.

4. Failure to comply

The directed person is to be told at the time of giving the direction, that if they fail to comply with the direction, they may be apprehended and detained, and it is and offence to escape or attempt to escape once detained. For further information see s.14, FVPA.

5. Duration of holding powers

- Holding powers commence when the direction is given, the directing member is

required to record this time in their notes and on the Family Violence Risk Assessment and Management Report [Form L17] and the Case Progress Narrative Update [Form L1A] forms.

- The maximum period a direction remains in force or a directed person may be detained is:
  - six hours after the direction is given; or
  - if an extension is granted the period that the direction is extended, see below.

- If, despite a FVIO or FVSN being served on a directed person, the member believes on reasonable grounds that the direction or detention should continue to enable further measures to be taken for the protection of the AFM, the use of holding powers is authorised until sufficient measures have been taken or the period referred to in section 5, whichever occurs first.

- For further information see s.18, FVPA.

6. Extension of period

- If the court is satisfied that there are exceptional circumstances and issues an extension for a further period specified in the Order, a member is required to serve the copy of the Order to the directed person. The extension will not be greater than four hours.

- A member may apply to the court for an Order extending the standard six hour period of the direction or detention, only if they intend to make an application for a FVIO. The application is to be made within the original six hour period using the Application for Extension of Period of Direction or Detention [Form 1267] and can be made in person, by fax, telephone or via electronic means.

- To extend the Order, the member should have Form 1267 and other relevant documentation completed prior to contacting the after hours registrar.

- For further information see s.19, FVPA.

6.1 Recording an extension

The Work Unit Manager responsible for conducting a welfare check is required to record the outcome of the extension order application in the 'Welfare Check' field of the Attendance Module as either 'refused' or 'granted'.

7. Detention power

- If a directed person refuses or fails to comply with a direction, a member may use such force as is reasonably necessary, to apprehend and detain the directed person. For further information see s.15, FVPA.

- A directed person may be detained at a police station or other place. Members are to comply with security and welfare requirements as detailed in **VPMP Persons in**

police care or custody.

8. When a direction or detention ceases

- When a direction ceases to be in force, a member is required to:
  - immediately notify the directed person, orally or in writing, that the holding power (direction) has ended;
  - immediately release them from detention; and
  - take reasonable steps to notify, orally or in writing, the AFM that the direction has ended.

- Despite the prescribed time periods, a direction and/or detention ceases when:
  - a FVIO is made or a FVSN is issued, at the time the Order or notice is served on the person; or
  - when a member decides not to make an application, or withdraws an application, for a FVIO or FVSN; or
  - a warrant is issued under s.50, FVPA, at the time the person is arrested under the warrant; or
  - an application for a FVIO, FVSN or warrant is refused.

- For further information regarding ceasing of a direction see s.18, FVPA.

- For information regarding warrants see s.50, FVPA.

9. Direction to go to a police station

- To ensure the safety of the AFM and to allow the member to make the complaint and serve the Order, it may be appropriate to use holding powers to have the directed person accompany a member to the police station. Only when the directed person fails to comply with a reasonable and lawful direction can they be apprehend and detain.

- Prior to bringing a directed person into custody, members are to consider to the security arrangements in place at the appropriate station.

- If a directed person goes to a police station under direction, they are to be:
  - entered in the Attendance Module, refer to **VPMP Persons in police care or custody**. Use the specific attendance codes; DIR for direction and DET for detention.
  - informed of their rights using Information on the Holding Powers for a Temporarily Detained or Directed person form [Form 1266] and given a copy of that form.
  - told at the time the direction is given, if they are at the police station, or as soon as they arrive at the station:
    - that they may communicate or attempt to communicate with a friend or relative (besides the AFM) to inform them of their whereabouts; and

- that they may communicate or attempt to communicate with a legal practitioner in circumstances which, as far as practicable, cannot be overheard.
- given access to facilities to enable the above communication, unless there is a belief on reasonable grounds that the communication would be likely to jeopardise the safety of the AFM and their property.
- given access to independent assistance if required. For further guidance consult **VPMP Interviews and statements** and **VPMP Persons in police care or custody**

10. Interview for other offences

- Legislation does not permit members to interview the directed person for any offence or alleged offence while under direction or in detention.

- Where a power of arrest exists, any interview is to be conducted in accordance with **VPMP Interviews and statements**

- After the interview, police may use holding powers to direct the person to remain at the police station, for the purpose of making the complaint. In this circumstance, the person is to be:
  - released from custody for the initial reason for attendance, including all Attendance Module disposition
  - then re-entered in the Attendance Module. Members are to use the specific attendance codes of: DIR for direction and DET for detention. For further guidance on Attendance Module consult **VPMG Attendance and custody**.

Further Advice and Information

For further advice and assistance regarding these Procedures and Guidelines, contact your supervisor of local Family Violence Liaison Officer.

Update history

Date of first issue	22/02/2010	
Date updated	**Summary of change**	**Force File number**