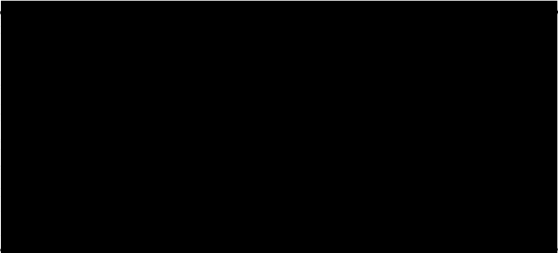


**IN THE MATTER OF THE ROYAL COMMISSION
INTO FAMILY VIOLENCE**

**ATTACHMENT DM-13 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



This is the attachment marked 'DM-13' produced and shown to **DEAN MCWHIRTER** at the time of signing his Statement on 27 July 2015.

Before me: 

A handwritten signature in black ink, appearing to read 'Danilo', with a long horizontal flourish extending to the right.

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

Attachment DM-13

Victoria Police Manual – Procedures and Guidelines

Family violence safety notices

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:

- Operational members
- Work Unit Managers

Procedures and Guidelines

1. Overview

The Family Violence Protection Act 2008 (the FVPA), includes provision for members to issue a Family Violence Safety Notice (FVSN). The FVSN system has been introduced to provide immediate civil protection to the Affected Family Member (AFM) of family violence, outside of court operating hours. By issuing a FVSN members are addressing any urgent safety requirements of the protected person, whilst at the same time initiating application for an Intervention Order.

2. Purpose of a FVSN

- A FVSN is:
 - a means of placing temporary conditions on the respondent to protect the protected person and their property, so would normally include a condition to remove or exclude the respondent
 - an application by a member for a family Violence Intervention Order (FVIO) for the protected person against the respondent
 - a summons for the respondent to appear at the first mention date for the applications stated in the notice
- Holding powers may be used for the purpose of issuing a FVSN. For further guidance on these powers, have regard to **VPMG Family violence holding powers**.
- A FVSN cannot be used to vary an existing FVIO. For further guidance on varying conditions of an Order (e.g. exclusion clause) consult **VPMG Family violence holding powers**.

3. Criteria for a FVSN

3.1 General

- An application for a FVSN can only be made in the following circumstances:
 - after completion of a Family Violence Risk Assessment and Management Report [Form L17]
 - the respondent is aged 18 years or over
 - the respondent is not cognitively impaired
 - after making reasonable inquiries of the respondent, the affected family member and any other adults at the scene of the incident there is a 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 FVIO
- In all other cases, refer to **VPMG Family violence**, for alternative options.
- Both the member responding to the incident (applicant) and the issuing Officer (sergeant or above) believe on reasonable grounds that, until an application for a FVIO can be decided by the court, a FVSN is necessary to:
 - ensure the safety of the AFM;
 - preserve any property of the AFM; or
 - protect a child who has been subjected to family violence committed by the respondent
- The respondent is not required to be present at the time a FVSN is applied for or issued providing the member applying for the FVSN believes they will

be able to serve the FVSN on the respondent as soon as reasonably possible and without unnecessary delay.

3.2 Member responding to the incident

The member responding to the family violence incident is required to:

- complete a Form L17
- when applying to an Issuing Officer, be able to substantiate that there are sufficient grounds for a FVSN to be issued in accordance with s.24, FVPA
- ensure service of the FVSN and notification of service is effected in accordance with s.35
- the member making the application to an Issuing Officer is required to believe on reasonable grounds:
 - the respondent is an adult
 - the respondent has no cognitive impairment
 - there are no *Family Law Act 1975 (Cwlth)* orders or child protection orders in force that may be inconsistent with the proposed terms of the FVSN, after making reasonable enquiries of the respondent, the AFM and any other adults present at the scene
 - there are no FVIOs in place between the AFM and the respondent

3.3 Issuing Officer

- When an issuing Officer considers application for a FVSN, they are required to be satisfied on reasonable grounds:
 - that the issue of a FVSN is necessary and in accordance with the provision of s.26, FVPA
 - there are no FVIOs in place between the AFM and respondent
- Before making a decision, the Issuing Officer:
 - is required to discuss the circumstances with the member responding to the family violence incident
 - is required to be satisfied that the member has formed an opinion on reasonable grounds to meet the criteria listed at section 2, above
 - may, if practicable, hear from the AFM or respondent.

3.4 Checking officer

Where a FVSN has been issued as part of the remote application process, the Checking Officer (sergeant or above) is required to check the Authorisation Form against the corresponding FVSN for material discrepancies in accordance with s.28. This is not limited to the Issuing Officer.

4. Method of application

The method of application for a FVSN should be based on operational needs, but can only be made either:

- in person; or
- remotely, by fax or telephone or other electronic communication

4.1 In-person procedure

- The member is required to contact an Issuing Officer and determine whether they can attend at the scene of the family violence incident or, an alternative location (e.g. the police station). Where this is not practical, a remote application for a FVSN is to be made, refer to Remote procedures below
- When applying to an Issuing Officer, the member is required to be able to substantiate that there are sufficient grounds for a FVSN to be issued.
- Once the Issuing Officer is satisfied the requirements to issue a FVSN have been met, the Issuing Officer is required to tick the In-person Application box on each page of the FVSN and complete Parts A, B, C and D.

4.2 Remote procedure

- When a member attends a family violence incident and the circumstances meet the requirements to issue a FVSN, but an Issuing Officer is not able to attend, the member may use a telephone, fax or other electronic device to communicate the circumstances of the incident to the Issuing Officer.
- Once the Issuing Officer decides to issue a FVSN, the following will occur:
 - the Issuing Officer is required to tick the Authorisation Form box on each page and complete Parts A, B and C of their FVSN. This becomes the Authorisation Form; and then
 - the member is required to tick the Remote Application box of the safety Notice on each page of a separate FVSN and complete Parts A, B, D, E and G as directed by the Issuing Officer. This becomes the Safety Notice Form.
- Particular attention should be given to the information provided in Part A of each form. The reasons outlined in the attending member's statement is required to accurately reflect the reasoning of the Issuing Officer recorded on the Authorisation Form.

5. Serving the FVSN

- As soon as practicable once the FVSN is certified, a member is required to serve the Respondent's Copy and Protected Person's Copy by personal service and complete the Details of Service (Part G). The complete FVSN, including Part G, is then to be faxed to:

- the Magistrates' Court of Victoria After-Hours Service for listing; and
- Central Data Entry Bureau (CDEB)
- When serving the Respondent's Copy and the Protected Person's Copy, the member is required to explain (s.35, FVPA):
 - the FVSN to the respondent or protected person and take reasonable steps to ensure that they understand the nature and consequences of the notice
 - the purpose, duration and conditions of the notice
 - the consequences of contravening the notice
 - that the protected person cannot consent to the respondent breaching the notice
 - that the notice is a summons to court for the first mention date which is specified on the notice
 - the consequences for the respondent for not attending the court date specified on the notice
 - the right of the respondent or protected person to obtain legal advice before the court date.
- The member is to then fax the Safety Notice Form, including Part G, to:
 - the Magistrates' Court Victoria After-Hours Service for listing; and
 - CDEB
- Where the member determines that the respondent or protected person may not sufficiently understand English to comprehend the information the member is providing, the member is required to arrange for an interpreter to facilitate the communication as per s.35(3), FVPA.
- The member is to provide referral advice to the respondent and protected person. For further guidance on referral, consult **VPMG Family violence**.
- In addition to above, where remote application has been made, the member is required to arrange with the Issuing Officer for the Safety Notice Form and Authorisation Form to be checked, see section 6. The Checking Officer is to be a sergeant or above and is not limited to the Issuing Officer.

6. Checking the Authorisation Form against the Safety Notice Form

- As soon as practicable after the service of the FVSN, the Checking Officer is required to compare the Safety Notice Form to the Authorisation Form and identify whether there are material discrepancies between the two documents. Material discrepancies are:
 - the Safety Notice Form omits/includes a condition which is inconsistent with the Authorisation Form

- the Safety Notice form changes the scope of the condition in the Authorisation Form
- the names of the respondent or protected person on the Safety Notice Form is not the same as the Authorisation Form.
- Where there is a material discrepancy, the safety Notice Form is only invalidated to the extent of the discrepancy and until the corrected Safety Notice Form can be served on the respondent and protected person
- Where there are no material discrepancies, the Checking Officer is required to complete part F of Safety Notice Form and fax this and the Authorisation Form to the Magistrates' Court of Victoria After-Hours Service. The certified safety Notice Form and corresponding Authorisation Form should be filed at the Checking Officer's station
- Where there are material discrepancies, the Checking Officer will:
 - tick the Supplementary Notice box at the top of each page of the safety notice Form
 - correct and initial the Safety Notice Form to ensure it accurately reflects the Authorisation Form.
- Once corrected, the Checking Officer is to complete Part F of the Safety Notice Form.
- The Checking Officer is to then fax or forward a copy of the corrected Safety Notice Form to the member to arrange service. In the absence of the member, their Work Unit Manager is to arrange for it to be re-served on the respondent and protected person.
- Service requirements stated above also apply to the second service
- The member who served the corrected Safety Notice Form is required to complete a new Part G and tick the Supplementary Notice box at the top of the page. They then fax this and the corrected Safety Notice Form to the Magistrates' Court of Victoria After-Hours Service and CDEB.
- The corrected Safety Notice Form and Authorisation Form should be filed at the Checking Officer's station.
- The serving member is required to provide a copy of the amended Safety Notice Form and service details to the member preparing the family violence intervention order brief.

7. Duration of FVSN

- A FVSN is to be returned to the court for the first mention date stated in the notice. The first mention date for the application for a FVIO is to be:
 - at a court nominated by the member after due consideration has been given to the requirements of a proper venue (refer to Court Rules); and
 - within five business days after the FVSN is served on the respondent; or
 - if the FVSN contains an exclusion condition, as soon as practicable.
- A FVSN commences when it is served on the respondent and ends when the earlier of the following occurs:
 - the court refuses to issue a FVIO on the first mention date for the application for the order; or
 - if the court makes either a family violence interim or full intervention order on the first mention date and the order is served on the respondent.
- Where a FVSN is corrected, the amended FVSN is served on the respondent, the overall duration of the FVSN is taken to commence from the time the original FVSN was served (s.30, FVPA).

8. Preparation of the intervention order brief

- The member who applied for the FVSN then compiles the FVIO brief and faxes this to the local prosecutions unit at the earliest opportunity. The brief is to include (but is not limited to):
 - Safety Notice Form [Form 423, hard copy]
 - Intervention order brief head [Form 957]
 - Family Violence Risk Assessment and Management Report [Form L17]
- For further guidance on FVIO brief, consult **VPMG Family violence and VPMP Briefs of evidence**.

9. Court processes

- When deciding where the case will be heard, the member is to have regard to a proper venue specific to the FVSN matter. Consideration is to be given to the following before recording the courts in Part D of the FVSN:
 - the safety of the parties
 - the need to prevent disclosure of the party's whereabouts
 - the ability of the parties to attend a particular venue of the court, taking into account their places of work, residence or any childcare requirements
 - the availability of family violence support services at particular venues of the court
 - the need to manage case flow
- The Magistrates' Court Victoria After-Hours Service will prepare all court lists for FVSN and can provide advice on the most appropriate court to list

the matter. All FVSN documents are to be faxed to this service, both during and out of business hours, prior to the court hearing.

10. Specific conditions of FVSN

- Part B of the FVSN specifies the conditions which may apply to the respondent to ensure the safety of the protected person. Before including a condition which prohibits the respondent from being anywhere within a specified distance from a particular place, the Issuing Officer is required to make reasonable inquiries to ensure that the condition will be practical (s.29, FVPA).
- Where the FVSN does not contain a condition to exclude the respondent, the member who serves the FVSN is to consider the protected person and any dependent children's accommodation needs and take reasonable steps to find them access to temporary accommodation (for example a women's refuge).

11. Contravention of FVSN and arrest powers

Once a person has been served with a FVSN and been provided with the appropriate service information (s.37, FVPA), the person must not contravene the notice (s.37, FVPA). If a member believes on reasonable grounds that the respondent has committed an offence against s.37, the member may without warrant arrest and detain the person (s.38, FVPA)

12. Where an Issuing Officer cannot be contacted

If the attending member cannot contact a Sergeant or above who can issue a FVSN, or the circumstances do not permit an FVSN to be issued, then consideration should be given to applying for a complaint and warrant or interim intervention order through the Magistrates' Court Victoria After-Hours Service. For further guidance refer to **VPMG Family violence**.

13. Address for service

- A member who applies for a FVSN is required to ask the respondent to provide an address for service of documents. The respondent is not obliged to comply with this request. The member is to also advise the respondent that, should the police not be able to locate the respondent for the service of documents under the FVPA, the police can seek information from public sector organisations (s.33).
- Members should use the form request for Information – Family Violence Protection Act 2008 [Form 1349] to apply to public sector organisations for this information.

Further Advice and Information

For further information contact the local Family Violence Liaison Officer (FVLO) or Family Violence Advisor (FVA). Additional information can also be obtained from the Family Violence Coordination Unit, Crime Command.

Update history

Date of first issue	22/02/10	
Date updated	Summary of change	Force File number
14/01/13	Update to reflect organisational governance and structural changes	FF-074790
05/02/13	Amendment to extend FVSN to 120 hours	FF-076176
05/08/13	Amendments to section 3.1, respondent does not need to be present for FVSN to be issued	FF 077339
03/11/14	Removal of condition that members may issue FVSN only outside business hours. Requirement to return matter to court extended to within five business days (previously 120hours).	FF-090341