IN THE MATTER OF THE ROYAL COMMISSION INTO FAMILY VIOLENCE

STATEMENT OF ACTING INSPECTOR PAUL DANIEL RUDD

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[redacted]

I, PAUL DANIEL RUDD, Acting Inspector, Victoria Police, SAY:

1. I am an Acting Inspector of Victoria Police and have held this position since 25 June 2015.

2. I am the Officer in Charge for the Victoria Police Melbourne Prosecutions Unit and have held this position since August 2013.

3. I have been a member of Victoria Police since 3 November 2000. I have extensive policing experience, having held a variety of operational roles (2000-2004) and corporate roles (2004 to current) over my 14-year career.

4. I joined the Prosecutions Division of Victoria Police in 2004 and have worked as a Police Prosecutor for approximately 11 years. I was located at the Dandenong Prosecutions Unit from 2004 to 2008, managed the Prosecutor Training Course from 2008 until 2011 and was the Officer in Charge of the Frankston Prosecutions Unit from 2011 to August 2013. During this time, I have also held the Officer in Charge role at the Subpoena Management Unit, the Research & Training Unit, the Moorabbin Prosecutions Unit and the State Coroner's Assistants' Unit.

5. As the Officer in Charge at the Melbourne Prosecutions Unit, I am responsible for managing prosecutions undertaken by the unit. I also undertake a range of prosecution work, including family violence Intervention Order (**IVO**) applications initiated by Victoria Police members. Between 2004 and 2008, I appeared regularly in family violence matters as a Prosecutor.

6. Over the course of my career, I have gained considerable experience in prosecuting applications and breaches of IVOs. I was the Family Violence Portfolio holder at Dandenong Prosecutions Unit from 2005 to 2009. In the period between June 2009 and March 2012 and in October 2014, as the Manager of the Prosecutor Training Course, I was responsible for training prosecutors, during which time I oversaw the Family Violence Prosecutor Training Package as part of the course.

7. Between 2010 to 2012, I assisted with the implementation of the Civil Advocacy Unit (**CAU**) of the Victoria Police Prosecutions Division and managed CAU resources at the Dandenong, Melbourne and Frankston Prosecutions Units and the Moorabbin Justice Centre.

SCOPE OF STATEMENT

8. I make this statement in response to a notice from the Royal Commission into Family Violence requesting me to attend to give evidence and to provide a written statement regarding matters the subject of Module 12: Intervention Orders - application and order making phase and Module 13: Intervention Orders - monitoring and enforcement.

9. I understand that a number of statements have been filed or will be filed by other members of Victoria Police in relation to Modules 12 and 13. This statement should be read together with those statements and other statements filed by Victoria Police members in so far as they may overlap.

10. In light of the fact that my recent experience in family violence matters has focused on the prosecution of breaches of IVOs rather than the applications for IVOs, my statement will focus more upon the enforcement of IVOs through the prosecution of reported breaches than applications.

TRAINING OF PROSECUTORS IN FAMILY VIOLENCE MATTERS

11. As I have stated above, in the period between June 2009 to March 2012 and in October 2014, I was the Manager of the Prosecutor Training Course and oversaw the Family Violence Prosecutor Training Package as part of that course.

12. The Family Violence Prosecutor Training Package is delivered over two days of the Prosecutor Training Course. The package is dedicated to training about the prosecution of IVO applications and criminal charges arising from IVO breaches. All prosecutors receive the same training. Copies of two relevant session plans from the

Prosecutor Training Course are attached. The session plan in relation to family violence is attached as (**Attachment PR-1**). The session plan in relation to briefs of evidence and the prosecution guidelines is attached as (**Attachment PR-2**).

13. The training covers both the theoretical and practical application of the *Family Violence Protection Act 2008* (Vic). Theory is tested by way of written examination. The instructor guides members through the relevant legislation as well as requiring them to satisfy the instructing staff of the ability to prosecute such applications through a practical demonstration of the different types of hearings in a moot court environment. This training is provided to sworn prosecutors and to Civil Advocates.

THE ROLE OF POLICE PROSECUTORS IN APPLICATIONS FOR IVOs

14. The overarching document relevant to the investigation and prosecution of family violence matters by Victoria Police is the *Code of Practice for the Investigation of Family Violence* (**Code of Practice**) (**Attachment PR-3**).

15. Police prosecutors in family violence matters must also comply with a number of relevant Victoria Police Manual Policy Rules (**VPMP**), Victoria Police Manual Procedures and Guidelines (**VPMG**) and Standard Operating Procedures, namely:

    15.1 the Victoria Police Prosecutions Division Standard Operating Procedures (**the Standard Operating Procedures**) (**Attachment PR-4**); and

    15.2 the VPMP – Court Processes (**Attachment PR-5**);

    15.3 the VPMG – Court Processes (**Attachment PR-6);**

    15.4 the VPMP – Family Violence (**Attachment PR-7**); and

    15.5 the VPMG – Family Violence **(Attachment PR-8**).

16. Police prosecutors are appointed or assigned to the Prosecutions Division (rather than individual work locations) and may be assigned to the performance of duties within the Division at various locations throughout metropolitan Melbourne and rural Victoria.

17. It is the duty of police prosecutors to assist the court by being fair and objective in presenting all evidence that is relevant and admissible for the determination of an IVO application.

18. Police prosecutors and civil advocates may only prosecute IVO applications where a police member is named as the applicant and the application is made on behalf of an Affected Family Member (**AFM**).

19. At metropolitan Magistrates' Courts other than the Moorabbin Justice Centre, prosecutors are assisted by civil advocates from the CAU. Civil advocates are lawyers employed by Victoria Police to appear in IVO applications. There are no formal policies or procedures in place for the allocation of applications between civil advocates and prosecutors. Generally, however:

    19.1 if the respondent has associated criminal charges, and particularly if the respondent is also in custody, the application is prosecuted by a police prosecutor; and

    19.2 otherwise, a civil advocate will normally prosecute the application, subject to capacity.

IVO APPLICATION PROCESS

20. In summary, the IVO application process is as follows.

21. An application for an IVO may be commenced by the issuing of a Family Violence Safety Notice (**FVSN**), an application and summons or an application and warrant.

22. FVSNs are issued by operational members to provide immediate protection for an AFM by placing temporary conditions on a respondent. The conditions are completed by the attending police member and apply on an interim basis until the expiry of the FVSN. The FVSN operates as an application for an IVO and a summons to the respondent to appear at the first mention date for the application stated in the FVSN. It expires when the AFM appears at court or after 120 hours has lapsed, whichever is the earlier. The application must therefore be listed at court within 120 hours of being prepared and served on the respective parties.

23. An application for an IVO must be made at the 'proper venue' of the Magistrates' Court or the Children's Court of Victoria. On filing of the IVO application, the application is listed by the Court Registry for the next appropriate date.

First mention hearings

24. Prior to the first hearing, the prosecutor / civil advocate would receive the brief of evidence from the police applicant. The brief would generally include, amongst other documents, a copy of:

    24.1 the application (VP Form 422) or FVSN filed with the Court;

    24.2 a copy of the Family Violence Risk Assessment and Management Report (VP Form L17); and

    24.3 LEAP reports of past family violence incidents (if any).

25. The prosecutor / civil advocate would then liaise with the police applicant prior to the hearing to confirm the relevant issues, including whether the AFM will be attending the court, whether the police applicant is required to attend the hearing and what arrangements for support services have been made for the AFM (if any). Where the IVO application is made by a police member, the Code of Practice (**Attachment PR-3** above at section 5.12.3) requires that any welfare support services and safety planning needs are appropriately addressed.

26. At Melbourne Magistrates' Court, IVO applications are heard every day. Before court, the prosecutor / civil advocate would speak to the Family Violence Coordinator at the Court Registry about whether the parties are present and ready to proceed. The Family Violence Coordinator has an important role in the process.

27. At the first mention of the matter the prosecutor / civil advocate will negotiate with the respondent and attempt to resolve the matter by consent. Often the respondent will consent to an IVO being made against him or her, without making admissions as to the allegations contained in the application. The court will then make an order on that basis.

28. Where the AFM indicates that they are not supportive of an order, the prosecutor determines on a case-by-case basis whether an order is necessary. Where an AFM is not supportive of an IVO but the prosecutor determines that an IVO is needed, the prosecutor can only apply for a limited IVO. A limited IVO is one that does not prevent the respondent contacting the AFM, but does prevent family violence (s 75 of the *Family Violence Protection Act*). I deal with the circumstances in which an application may be withdrawn below.

29. The Code of Practice (**Attachment PR-3** above at section 5.12.3.1) and the Standard Operating Procedures (**Attachment PR-4** above at section 6.18 and section 8) set out what is to happen in the event that the AFM does not appear at court:

    29.1 The prosecutor / civil advocate must seek an adjournment to allow the police applicant sufficient time to enable inquiries to be made with the AFM.

    29.2 The police applicant must inquire with the AFM and make suitable arrangements for them to attend the court at the next hearing of the application. If it is established that the AFM cannot attend court, the police applicant must consult with the prosecutor / civil advocate.

    29.3 The police applicant may be able to give evidence in support of the application. The prosecutor / civil advocate may then apply for an interim IVO (on the same terms as the FVSN, if applicable) and adjourn the matter.

    29.4 If the police applicant considers an application should be made without the agreement of the AFM for a limited order, the police applicant should ensure that this is communicated to the police prosecutor / civil advocate.

30. Where a respondent has been served with a FVSN or application for an IVO, and they fail to attend court, prosecutors will generally make an application for a final IVO in the absence of the respondent.

31. At courts where Family Violence Court Liaison Officers are stationed, these officers assist the police prosecutors / civil advocates in liaising with police applicants and other parties involved in the application process at court on the day.

Directions hearings

32. When a matter does not resolve at the first mention, it is normally adjourned to a directions hearing. Further attempts are made to resolve the matter at the directions hearing, similar to the procedure I have outlined above.

33. If a matter does not resolve at the directions hearing, the court makes orders for the preparation of the matter, such as the provision of witness lists and further and better particulars, and sets a date for a contested hearing.

34. As the respondent is not allowed to personally cross-examine the AFM (s 70(3) of the *Family Violence Protection Act*), if the respondent does not have a lawyer the Magistrate will usually order that Legal Aid provide representation for the purpose of

cross-examining the AFM. The Magistrate will also consider the need for remote witness facilities or witness screens.

Contested hearings

35. If a police initiated IVO application reaches the contested hearing stage, it is often resolved on the day of the hearing. If the matter does not resolve, the hearing proceeds and the prosecutor / civil advocate leads all available evidence, including from the AFM.

Applications involving police members

36. Family violence incidents involving Victoria Police employees have the potential to place police prosecutors in situations of conflict of interests and perceived bias. In accordance with the Standard Operating Procedures (**Attachment PR-4** above at section 6.19), the services of independent counsel are sought in the following circumstances:

    36.1 where a police member is involved in an application for an IVO or FVSN as either a respondent, AFM, or material witness;

    36.2 where applications are initiated by an affected Victoria Police member under the *Firearms Act 1996* (Vic), to be deemed not to be a prohibited person; and

    36.3 where the family violence incident involves criminal charges against an employee.

37. In practice, a senior prosecutor or civil advocate will prosecute matters where a police member is involved as either an AFM or a respondent up to and including directions hearings. If the matter does not resolve, the services of independent counsel are sought for the contested hearing.

Magistrates' Court's powers regarding Family Law Act orders

38. An order under the *Family Law Act 1975* (Cth) allowing access to a child does not prevent an IVO being granted. It may be possible for the two orders to operate at the same time.

39. When granting an IVO in situations where there are children involved, the court can include an exception to the conditions of the IVO allowing for contact to occur between the AFM and the respondent in order to:

39.1 determine arrangements for contact with the children; or

39.2 to do anything that is permitted by a *Family Law Act* order, a child protection order, or written agreement about child arrangements,

but only if the respondent does not commit family violence while doing so.

40. If an IVO and a *Family Law Act* order are inconsistent, s 90 of the *Family Violence Protection Act* provides that the Magistrate must revive, vary, discharge or suspend the *Family Law Act* order to the extent that it is inconsistent with the IVO.

41. Under s 92 of the *Family Violence Protection Act,* where there is no *Family Law Act* order in place regarding contact with the children, and the court decides that the protected person's or child's safety will not be jeopardised by the child having contact with the respondent, the court must include conditions in the IVO relating to child contact, how handover of the child is to occur, and how these arrangements are to be negotiated in order to maximise the safety of the AFM.

Tracking of IVO applications and related criminal proceedings

42. Where there is a related IVO application and a criminal proceeding, the police applicant will notify the prosecutor and will identify whether the respondent is being dealt with by way of remand or bail and the next court date.

43. Generally where there is an IVO application listed with a criminal matter, the IVO application will be heard after the criminal matter. Police prosecutors are able to appear in both the criminal and IVO matter.

44. If a criminal charge is found not proven, the civil standard of proof remains applicable to the IVO application. The IVO application will not generally be heard until the criminal charges are resolved. In this situation, there will usually be an interim IVO in place.

Information sharing between relevant stakeholders

45. There is no formal mechanism for information sharing between the court, prosecutor and support workers. However, information is usually shared verbally on an ad hoc basis. Victoria Police has a 'pro-disclosure' approach where appropriate, and will generally disclose relevant documents to the court and support workers.

Cross applications

46. The Code of Practice (**Attachment PR-3** above at section 3.1) instructs police not to make cross applications for IVOs. If it is unclear who the primary aggressor is in a family violence incident, police members should nominate the AFM on the basis of which party appears to be most fearful and in most need of protection. The police member must record the reasoning in support of his or her determination.

Culturally and linguistically diverse communities

47. Where needed, police will obtain an interpreter at the earliest opportunity and at every subsequent stage. Where possible, police will obtain the assistance of an interpreter of the same sex as the AFM.

48. At first mention hearings, we would normally obtain instructions from a non-English speaking AFM through an English-speaking family member or a friend who attends with the AFM, or use a telephone interpreter.

49. Where an interpreter is required to assist in court, this must be booked in advance. It is the responsibility of the informant to advise the Court that an interpreter is required ahead of a hearing. Generally this is done and the Court is able to secure an interpreter on fairly short notice to appear and assist.

50. Police are sensitive to cultural issues. However, the test for whether an IVO application should be made, or whether an IVO has been breached, is not dependent on cultural issues and police will intervene where required and authorised to do so by law.

51. IVO conditions may sometimes need to be tailored to accommodate/assist with these cultural issues (for example, where parties need to be in the same setting for cultural activities). In these circumstances, police would have a conversation with the AFM to tailor conditions that are culturally appropriate but which also provide sufficient protection to the AFM.

Economic abuse

52. Economic abuse is recognised as a form of family violence under the *Family Violence Protection Act* (s 5 and s 6). In my experience, where economic abuse is a ground for applying for an IVO, it is usually coupled with another form of family violence. I have not come across a situation where economic abuse has been argued as a specific issue at a contest, nor have I seen it as the overall focus of an IVO

application. When economic abuse is identified, this usually occurs after the victim and/or perpetrator have come to the attention of police in relation to an incident of physical violence. I have not personally made an application for an IVO solely on the ground of economic abuse, nor have I seen economic abuse as a ground for a breach of an IVO.

PROSECUTIONS FOR BREACH OF AN IVO

53. The Prosecutions Division does not have specialist family violence prosecutors, but prosecutions for breaches of IVOs are generally allocated to experienced prosecutors. Such matters are a lot more common than they were when I started as a prosecutor. I would estimate that, at Melbourne, prosecutions for IVO breaches might constitute 10-25% of the work of an individual prosecutor. However, at courts that are not currently serviced by the CAU, family violence matters are more likely to constitute about 50-60% of the work of an individual prosecutor because they are dealing with both the civil applications for IVOs and the criminal prosecutions for breaches.

The decision to prosecute

54. In order for a charge to be laid, a brief of evidence will be prepared by an operational police member and a supervising police member (usually a Sergeant or above) must authorise the brief. Section 4.8.3 of the Code of Practice (**Attachment PR-3** above) provides that there should not be a subjective assessment by the responding police as to the seriousness of the contravention. If evidence of the contravention exists then police need to consider prosecution. Section 3.2 of the VPMG – Family Violence (**Attachment PR-8** above) provides that IVOs "are to be strictly interpreted and enforced. There is no such thing as a 'technical' breach".

55. Upon receipt of the brief of evidence from the informant, police prosecutors undertake a further independent review the brief while bearing in mind that the charges have been authorised at the local level. Prosecutors apply the guidelines as set out in the *Director of Public Prosecutions Victoria - Prosecutorial Discretion* (**the DPP Prosecutorial Discretion Policy**) (**Attachment PR-9**).

56. Pursuant to the DPP Prosecutorial Discretion Policy, prosecution may only proceed if:

    56.1 there is a reasonable prospect of a conviction; and

    56.2 a prosecution is required in the public interest.

Reasonable prospect of conviction

57. The prosecutor will first consider if there is a reasonable prospect of conviction. The DPP Prosecutorial Discretion Policy (**Attachment PR-9** above at page 3) sets out a number of factors to which regard should be had in making this assessment. In my experience, factors that can be particularly relevant to the prospect of a conviction when prosecuting breaches of IVOs include:

57.1 The quality of the evidence.

(a) Family violence matters are often 'word against word' situations with no corroborating witnesses or forensic evidence. In my experience, having a forensic surgeon at the Dandenong Multi Disciplinary Centre who is available to assist police to obtain evidence has improved the quality of forensic evidence and the prospects of convictions in sexual assault and child abuse cases in this area.

(b) The quality of evidence can also be affected by the delay between the incident and the hearing of the charges. For this reason, I am a strong supporter of programs like the Accelerated Justice Program at the Dandenong Magistrates' Court. I understand that evidence regarding the Accelerated Justice Program will be given by other members of Victoria Police at the hearing for Module 13.

57.2 The compellability of witnesses.

Often family members are reluctant to give evidence against the respondent. Under s 18 of the *Evidence Act 2008* (Vic), a witness who is the spouse, de facto partner, parent or child of an accused may object to giving evidence. That witness will not be required to give evidence if the court finds that there is a likelihood that harm would or might be caused to the witness, or to the relationship between the witness and the accused, if the person gives the evidence and that the nature and extent of that harm outweighs the desirability of the having the evidence given. Where an objection made under s 18 application is successful, the prosecution may still be able to tender the statement of that witness on the basis that the witness is unavailable to give evidence, following *DPP v Nicholls* [2010] VSC 397. However, in my experience, Magistrates often give the statement little weight.

57.3 Potential lines of defence.

Respondents sometime raise self-defence. This defence is difficult to disprove without corroboration of the victim's evidence by other witnesses or evidence of injuries.

57.4 The credibility of witnesses.

For example, intoxication is sometimes a factor in family violence incidents and may affect a witness' ability to recall and give evidence of an incident and the credibility of their evidence.

57.5 Whether the victim will give evidence.

(a) In my experience, the provision of remote witness facilities for victims increases the willingness of victims to give evidence at all and the quality of the evidence they give. The remote witness facility is located in the same court building where the application for an IVO or breach of an IVO is being heard. Given this, I am of the view that the benefit in having remote witness facilities would be even greater if victims could give evidence from a place other than the court, for instance at a Multi Disciplinary Centre. This would avoid the potential for victims to come into contact with the offender at the court, especially at smaller courts.

(b) The prohibition on cross-examination of a victim by an unrepresented offender is also an important safeguard that increases the willingness of victims to give evidence.

57.6 There is a reluctance to call children as witnesses in family violence matters, particularly to give evidence against their parents. This is usually done only as a last resort after consultation with the child and remote witness facilities are almost always used.

57.7 Whether there is a motive for not telling the whole truth.

This is sometimes a factor in family violence matters when there are *Family Law Act* matters pending at same time. If a prosecutor considers that this may be a factor, the prosecutor would have a conference with the witness and make a judgement about the witness' credibility before proceeding with the prosecution.

57.8 Interaction between IVOs and *Family Law Act* orders.

Occasionally there is the complicating factor of the interaction of IVOs and *Family Law Act* orders regarding child arrangements. If the IVO did not contain conditions varying or suspending the *Family Law Act* order, it can be difficult to establish which order prevails.

Public interest

58. Once satisfied that there is a reasonable prospect of conviction, the prosecutor must consider whether a prosecution is required in the public interest. The factors to be taken into account in determining the public interest are outlined in the DPP Prosecutorial Discretion Policy at paragraphs 4 to 7 (**Attachment PR-9** above). In my experience, the factors which are particularly strong considerations in family violence prosecutions are as follows:

58.1 The seriousness of the offence.

(a) The Prosecutions Division treats all IVO breaches as very serious offences and the public interest generally favours the prosecution of these offences.

(b) Some breaches may be relatively minor and may be a result, for example, of the respondent not understanding the terms of an IVO. For instance, a respondent might send a text to the AFM asking to see their child or send their child a birthday card not realising that this is in breach of an IVO. In almost all such cases, consistent with the direction in the section 3.2 of the VPMG – Family Violence that IVOs are to be strictly interpreted and enforced and that there is "no such thing as a 'technical' breach", we will still prosecute these matters. Conduct of this nature can often be the thin end of the wedge, leading to more serious contraventions later on if the initial contravention is not enforced.

(c) However, there are some cases where it is considered not in the public interest to prosecute relatively minor breaches because of other complicating factors such as offenders with cognitive impairments or where there was a *Family Law Act* order in place at the same time that allowed contact between the offender and his children. This is a common problem which can be dealt with at the time of making the IVO, as I have stated above; however, this option is not frequently exercised where there is not a specialist family violence Magistrate

making the IVO. In other cases, the *Family Law Act* order may have been made after the IVO. In my view, there is a need for legislative clarification of the interaction between *Family Law Act* orders and IVOs.

58.2 The prevalence of the offence and the need for deterrence, both personal and general.

58.3 That the offence is one of considerable public concern.

58.4 The attitude of the victim to a prosecution. However, prosecutors can proceed with a prosecution even without the support of the victim and in most cases the fact that a victim is not supportive of a prosecution will not result in it being withdrawn. As I have described above, if the court excuses the victim from giving evidence, prosecutors can tender any statement previously given by the victim as they are deemed to be an "unavailable witness". However, if this is not possible and the prosecutors are left with no evidence or insufficient evidence, this may result in withdrawal of charges.

59. The DPP Prosecutorial Discretion Policy (**Attachment PR-9** above at paragraph 8) specifically sets out considerations that a prosecutor must not be influenced by. They are:

59.1 the race, religion, sex, national origin or political associations, activities or beliefs of the offender or any other person involved;

59.2 personal feelings concerning the offence, the offender or a victim; and

59.3 possible political advantage or disadvantage to the government or any political group or party.

60. These considerations never enter into my assessment of whether to prosecute an offence.

61. In general terms, I would say that there is a reluctance not to authorise prosecution for breach of an IVO. In some cases, an AFM may have invited contact with an offender who is subject to an IVO. This is not a matter that prosecutors take into account when determining whether to prosecute. It is a matter for sentencing if the charge is proven.

What offences are charged

62. The *Family Violence Protection Act* contains the following relevant summary offences under:

62.1 contravention of FVSN (s 37); and

62.2 contravention of an IVO (which includes an interim IVO) (s 123).

63. These offences carry a penalty of up to two years imprisonment.

64. In addition, the following indictable offences were introduced into the *Family Violence Protection Act* with effect from 17 April 2013:

64.1 contravention of a FVSN intending to cause harm or fear for safety (s 37A);

64.2 contravention of an IVO intending to cause harm or fear for safety (s 123A); and

64.3 persistent contravention of a FVSN or an IVO (s 125A).

65. The indictable offences carry a penalty of up to five years imprisonment and may be tried summarily.

66. In determining the appropriate charges, prosecutors are guided by the DPP Policy on Family Violence (**Attachment PR-10**), which describes the elements of the indictable offences and is referred to in the Prosecutors Training Course. This, in conjunction with the more general DPP Prosecutorial Discretion Policy, provides strong guidance to prosecutors.

67. In my experience, the indictable offences are beneficial because they carry higher maximum penalties. This reflects the seriousness of many IVO breaches and enables the court to fix a sentence that appropriately reflects the seriousness of the offence.

68. The indictable offence of persistent contravention of a FVSN or an IVO is used more often than the offences involving an element of intention to harm or fear for safety. For this offence, the prosecution must prove that the accused engaged in conduct that would constitute a contravention of a FVSN or an IVO on three separate occasions within a 29 day period (i.e. the trigger occasion and two other occasions within the preceding 28 days).

69. The persistent breach offence will be charged even though the individual breaches may have been relatively minor. In my experience, the persistent contravention offence has been beneficial to the enforcement of IVO breaches as it removes the need for police to charge each breach in isolation, and provides a charge that reflects the seriousness of the offending. For example, where there have been tens of contraventions within a 28 day period, we would charge them all as different persistent breach offences. If the breaches were committed by the same means (for example, all by SMS contact), prosecutors charge a single persistent breach offence for the timeframes required. If, however, the breaches were committed by different means (for example, by SMS, telephone calls and physical attendances), prosecutors would lay three separate charges as each charge details a different method of offending.

70. Where the offending persists over an extended period of time, it is common for the police to lay multiple charges for persistent contravention, where each charge relates to a different 28 day period. The individual summary offences are charged as alternatives (see **Attachment PR-10** above at paragraphs 7.15-7.16).

71. In my opinion, it would also be beneficial if there was an indictable offence that related to a continuing breach of an IVO, where the breach may occur on one occasion but continue over a period of hours. This would reflect the greater degree of seriousness of such contraventions.

Withdrawals / resolution of matters by negotiation

72. Once substantive charges are authorised, they can only be withdrawn where the prosecutor considers that either there is no reasonable prospect of a conviction being secured or continuation with the prosecution is not in the public interest.

73. Police prosecutors have authority to conduct negotiations with defendants in an effort to resolve a matter. Matters may be resolved by a plea of guilty to appropriate charges and this may involve the withdrawal of substantive or alternative charges. In considering whether to withdraw any charge, the prosecutor must comply with the various policies and guidelines pertaining to withdrawals in the VPMP – Court Processes (**Attachment PR-5** above at section 7), the VPMG – Court Processes (**Attachment PR-6** above at section 12), the Standard Operating Procedures (**Attachment PR-4** at section 6.4) and the DPP Policy on Resolution (**Attachment PR-11**).

74. In considering withdrawal of a charge, the prosecutor:

74.1 must seek authorisation from a nominated member prior to accepting or offering a lesser charge as a resolution to the prosecution, unless to do so would unnecessarily delay the matter;

74.2 should also seek the opinion of the informant, or the informant's Sergeant or Senior Sergeant, prior to accepting or offering a lesser charge as a resolution to the prosecution, unless to do so would unnecessarily delay the matter (see VPMG - Court Processes, **Attachment PR-6** above, at section 12);

74.3 must consider any consequences, including any effect on forfeiture, compensation, disqualification or similar orders;

74.4 should liaise with the informant regarding the notification of the complainant or victim of the proposal to withdraw a charge, if appropriate, in order to ensure compliance with the *Victim's Charter Act 2006* (Vic); and

74.5 must ensure that negotiations in relation to costs have been concluded with the accused or their representative prior to withdrawing a major charge.

75. Where the conduct that constitutes breach of an IVO also constitutes another criminal offence, such as assault, the prosecutor will always prosecute both offences on the basis that they have separate and distinct charge elements. Breaches of IVOs are not considered to be "alternative charges" to other criminal offences. This is consistent with section 10 of **Attachment PR-10** above).

76. In my experience, unless the accused is ready to proceed at the first mention hearing, there is usually little or no discussion about resolution and very few prosecutions resolve at this stage. Prosecutors will attempt to resolve a matter at the Summary Case Conference. If this is not possible, prosecutors will make a further attempt at resolution at the contest mention stage. Magistrates are now very keen to give a sentencing indication under s 60 of the *Criminal Procedure Act 2009* (Vic) at all stages of a matter and this is very effective at encouraging resolution.

Evidentiary changes

77. As I have stated above, the successful prosecution of breaches of IVOs is at times hindered by witnesses objecting to provide evidence under s 18 of the *Evidence Act 2008*. Where such an objection succeeds, the prosecution may be able to tender the

statement of that witness, but Magistrates often give the evidence less weight than evidence given in person because there is no opportunity for cross-examination.

78. The evidentiary difficulties associated with family violence matters would be lessened if the ability to give evidence by way of witness statements was more widely available. Similarly, if police informants were permitted to give hearsay evidence of what they were told by a victim when attending an incident, this could provide another avenue to increase the likelihood of successfully prosecuting breaches of IVOs in circumstances where the victim is reluctant to give evidence. However, courts may still give such evidence less weight than oral evidence given in person.

79. In my experience, different approaches are taken by different Magistrates in allowing 'whole of story' evidence to be led in relation to breaches of IVOs, as is sometimes done in relation to charges of sexual offences. At present, most Magistrates will not admit such evidence and will focus instead on the incident that is the subject of the charge. However, 'whole of story' evidence can provide the context and history of related family violence, including the escalation of the seriousness of the behaviour, and illustrate the seriousness of the individual offence charged and their impact on the AFM.

Diversion

80. As a general rule, prosecutors and Magistrates do not consider diversion an appropriate outcome for breach of IVO offences. The offences are considered too serious for diversion. But there may be an opportunities to use diversion, for example, as a means of getting offenders to attend a men's behaviour change program.

Signed by)

Paul Daniel Rudd) P. D. RUDD

at Melbourne) ACTING INSPECTOR OF POLICE 32624

this 27th day of July 2015)

Before me [redacted]

[redacted]

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