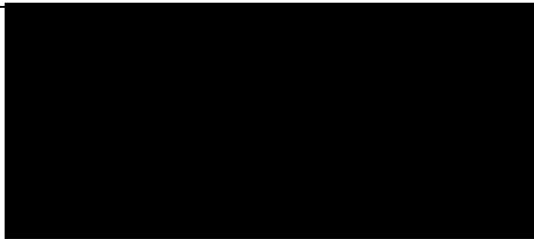


**IN THE MATTER OF THE ROYAL COMMISSION
INTO FAMILY VIOLENCE**

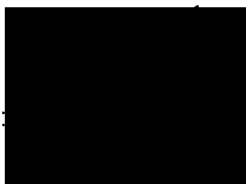
ATTACHMENT PR-5 TO STATEMENT OF SENIOR SERGEANT PAUL RUDD

Date of document: 27 July 2015
Filed on behalf of: State of Victoria
Prepared by:
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This is the attachment marked '**PR-5**' produced and shown to **PAUL RUDD** at the time of signing his Statement on 27 July 2015.

Before me:



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

Victoria Police Manual – Policy Rules

Court Processes

Context

Police members have various responsibilities within the court system and make an important contribution to the effectiveness of the criminal justice system.

The purpose of these Policy Rules is to provide instructions to members so that they may meet the security requirements of the court and perform their role as informant, prosecutor or witness.

Application

Policy Rules are mandatory and provide the minimum standards that employees must apply. Non-compliance with or a departure from a Policy Rule may be subject to management or disciplinary action. Employees must use the **Professional and ethical standards** to inform the decisions they make to support compliance with Policy Rules.

These Policy Rules apply to:

- Investigating members
- Work Unit Managers
- Police Prosecutors
- Protective Security Officers

Rules and Responsibilities

1. Informant's responsibilities relating to attending court

1.1 *Legislative methods for getting an accused to court*

The informant must ensure that the accused is brought before a Magistrates' Court or Children's Court by one of the following means:

- Remand or bail
- Summons
- Warrant

Refer to **VPMP Disposition of offenders** for these processes.

1.2 Bringing persons in custody before the court

- The informant is responsible for managing the accused's appearance at:
 - the Magistrates' Court
 - the Children's Court
 - at a committal hearing.
- Refer to **VPMG Court Processes** for procedures for bringing persons in custody before the court.

1.3 Extradition

- Extraditions must be approved as follows:
 - interstate and New Zealand - relevant financial delegate authorised to incur costs as list in the financial delegation, FIN 2.1, Schedule D
 - all other overseas extraditions - Deputy Commissioner (Specialist Operations).
- Comply with the process detailed in **VPMG Extradition** when applying for approval to extradite.

1.4 All other attendance requirements

- Where the court requests a Youth Justice Group Conference in accordance with s.415, *Children, Youth and Families Act 2005*, the informant must attend. Refer to the **VPMG Court processes** for the Group Conference procedures.
- Depending on the type of hearing, the informant is responsible for attending the hearing and ensuring other relevant parties and exhibits are available to the court.
- The table below specifies where the informant must ensure that:
 - the informant attends
 - relevant witnesses attend
 - evidence and exhibits are submitted.
- Have regard to the processes contained in **VPMG Court processes** when meeting the requirements contained in the table below.

Table: The informant's responsibilities for attending court

| Type of hearing | Attendance at court | | Evidence/Exhibits requirements (also refer to VPMG Exhibits) |
|---|---|--|---|
| | Informant | Witness | |
| Remand hearing where application for bail and/or conditions are to be opposed | Informant or corroborator must attend unless excused by the court | As nominated by the prosecutor | Completed bail/remand application [Form 286]. Sufficient exhibits and evidence to successfully contest the application. Consult prosecutor/OPP. |
| Contest mention | Informant or corroborator must attend unless otherwise directed by the prosecutor | Not required | Discs and transcriptions upon request of prosecutor |
| Ex-parte hearing | Must attend unless their evidence is not required | As nominated by the prosecutor | Sufficient exhibits and evidence to prove the case are required. Consult prosecutor |
| Contested hearing | Must attend | Required to give oral evidence | All relevant exhibits and evidence to prove the case. Transcripts must be provided |
| Contested preliminary hearing (interlocutory proceedings) | Must attend, unless excused by the court or not required by the defence | Must attend, unless excused by the court or not required by the defence | Must be produced, unless excused by the court or not required by the defence |
| Filing hearing | Informant must attend unless excused by the court | Not required | Not required |
| Committal mention | Informants or corroborator must attend unless excused by the court | Not required | The defence may request the attendance of witnesses or production of items. Consult the OPP |
| Committal | Must attend | Only witnesses ordered to attend by the court in response to a defence application are called to give evidence | Exhibits must be produced. Statements of any witness not called are accepted into evidence unless the court orders otherwise |
| Special committal mention | Informants or corroborator must attend unless excused by the court | Not required unless otherwise directed by the OPP | Not required unless otherwise directed by the OPP |
| Trial | As directed by the OPP prosecutor or the Crown prosecutor | | |

2. Victoria Police employees as witnesses and/or providing evidentiary material

2.1 General

Informants who require a Victoria Police employee to attend court as a witness

must forward a report to the employee's Work Unit Manager. Witness summonses are not required. Refer to **VPMG Court processes** for the procedure for paying associated costs.

2.2 Responding to subpoena or request to give evidence for a party other than Crown or prosecution

- The Subpoena Management Unit (SMU) is responsible for managing and coordinating subpoena compliance for Victoria Police and its employees.
- Employees must advise the SMU when they receive a request or subpoena to give evidence and/or produce documents. Comply with **VPMG Court processes** for the circumstances where an employee may receive such a request and the factors which must be considered when giving evidence or producing documents.

2.3 Counter summons

When an employee receives a counter summons they must notify the Staff officer for the Director Legal Services and their Department Head. Refer to **VPMG Civil proceedings** for the procedure.

2.4 Providing evidence for civil matters

- Before being interviewed by an outside body for civil purposes, employees must obtain authorisation from a Local Area Commander.
- Where possible, use an affidavit to provide evidence in civil matters. See **VPMG Civil proceedings** for the authorisation procedure and guidance in affidavit preparation.

3. Court security

3.1 Court Security Act 1980

- The *Court Security Act 1980* provides police members and Protective Services Officers (PSO) with specific powers to manage the security of the court.
- For information about the carriage of operational safety equipment while undertaking court security, refer to **VPMG Operational safety and equipment**.

3.2 Additional security and secure courts

- When there is a security concern in relation to a hearing, obtain advice from the Magistrate or judge, via the Court Registrar, and advise the prosecutor.

- Where additional security measures are required, request a secure court through the Manager, Protective Services Unit (PSU) and have regard to **VPMG Court processes** for the approval process.

3.3 *Witness protection*

- Approval for witness protection must first be obtained before a commitment is made to the witness. Seek advice from the Witness Protection Unit having regard to **VPMP/VPMG Witness protection**.
- Contact with protected witnesses must be through the Witness Protection Unit. Where a witness contacts a member directly, the member must immediately advise the Witness Protection Unit.

3.4 *Family Court incidents*

- Victoria Police is responsible for providing assistance outside of the Family Court premises and inside the regional Family Courts on request from the AFP.
- Work Unit Managers must have regard to **VPMG Court processes** when contacted by the AFP or Family Court staff in relation to an incident at a Family Court.

4. Exhibits

- Retain exhibits if they are likely to be required as evidence and use secondary evidence where necessary. Obtain a receipt from the OPP or court for any exhibits handed into their custody.
- As soon as the exhibit ceases to have evidentiary value, it must be disposed of according to appropriate legislation and/or policy. Refer to **VPMP Property management** for instructions for property disposal.
- Take high risk exhibits to court only when they will be required or the court has requested their production. Have regard to **VPMG Court processes** when required to produce high risk items (such as firearms and drugs) at court.

5. Affidavits

Affidavits for court process must be sworn or affirmed in the correct manner. Refer **VPMG Affidavits** for procedures.

6. Disposal or forfeiture orders

- An Application for Forfeiture/Disposal [Form 745] must be included on the brief. Refer to **VPMG Court processes** for the application process.

- Once the court order has been issued, the Work Unit Manager must ensure that disposal occurs.

7. Withdrawal of charges

- The member authorising the brief may recommend to the prosecutor the withdrawal of charges to be heard before the Magistrates' and Children's Court. Where withdrawal is recommended, only the prosecutor is permitted to make the withdrawal.
- Once authorised, substantive charges can only be withdrawn after the prosecutor, considers one or both of the following is applicable:
 - there is no reasonable prospect of a conviction being secured
 - continuation with the prosecution is not in the public interest (see **VPMG Brief preparation and management**).
- Prosecutors have authority to conduct negotiations with defence. They are authorised to withdraw substantive and alternative charges and recommend the laying of further charges, where deemed appropriate. Consultation with informants, authorising officers or the Work Unit Manager at the station where the brief was authorised, may still occur, however that consultation must not delay the progress of the matter.
- If further charges are laid, the CDEB copy of the charges must be faxed to CDEB.
- **VPMG Court processes** provides direction where:
 - indemnity may be applicable
 - a complaint against a member is made.

8. Appeals and re-hearings

8.1 Appeals

Any party to any matter determined in the Magistrates' or Children's Court may appeal to the Supreme Court on a question of law under s.92, *Magistrates' Court Act 1989* and s.329, *Children Youth & Families Act 2005*. Strict time lines apply for the lodging of applications for appeal. Refer to **VPMG Court processes** for the requirements of specific appeal processes.

8.2 Re-hearings

Accused persons, or in exceptional circumstances the informant on their behalf, can make applications for re-hearing of cases under ss.93-96, *Magistrates' Court Act*. Have regard to **VPMG Court processes** for the process.

9. Breaches of sentencing orders

- Informants have specific responsibilities when they identify a breach of a

sentencing order. Have regard to **VPMG Sentencing orders** for the procedures which apply to specific orders.

- Members must notify the relevant body when they:
 - become aware that a person charged with an offence is on a correctional order
 - they detect a breach of bond by a child
 - they detect a breach of parole.

10. Proceedings involving Victoria Police

10.1 *Civil proceedings involving police*

- An employee receiving civil process involving Victoria Police must immediately notify Civil Litigation Division.
- Have regard to **VPMG Civil proceedings** when considering whether to initiate civil action on behalf of Victoria Police.
- Where civil process is served on an employee for a private matter, refer to **VPMG Offences by or service of process on police employees**.

10.2 *Employees attending court*

Apart from the circumstances detailed above (in sections 1-3), employees on duty may only attend court or tribunal proceedings (including coronial inquests, applications for intervention orders etc):

- at the direction of the prosecutor
- by virtue of a subpoena or summons
- with the explicit authority of their Local Area Commander or Senior Manager.

11. Civil process for service by police

- Members are only to serve civil process issued out of the Supreme or County Court where police are either:
 - specifically appointed as a Bailiff by the Supreme or County Court, or
 - authorised in writing.
- Have regard to **VPMG Civil proceedings** when requested to serve civil process, in any other circumstances.

12. After court processes

12.1 Case review

The file must be reviewed where the failure of a court case was preventable or costs were awarded against the Chief Commissioner. Relevant Department Heads must ensure a review process is established and give consideration to section 15-18 of **VPMG Court processes**.

12.2 Informant's responsibilities

The informant must submit a report where they believe that the granting of bail, withdrawal or dismissal of a charge was caused by the fault of a prosecutor or other employee. The report must be submitted to the prosecutor's Work Unit Manager within three days of the court's decision.

12.3 Prosecutor's responsibilities

- The prosecutor must forward a report to the Work Unit Manager of the local prosecutors' office within two days of:
 - an adjournment, withdrawal or dismissal has resulted in costs being awarded against the Chief Commissioner
 - a case was adjourned due to a non-routine matter
 - a major charge was dismissed (other than as an alternative to another major charge).
- **VPMG Court processes** provides guidance on the content of the report and the assessment process conducted by the Manager, Prosecutions Office.
- Where costs are awarded against the Chief Commissioner, the prosecutor must request a stay of payment for three months. If this is not granted, the prosecutor must immediately inform their Work Unit Manager so payment can be expedited.

12.4 Paying costs and compensation

Where an application for compensation has been granted Manager, Prosecutions Office must ensure that:

- they have regard to **VPMG Court processes** when processing the costs file
- a report is submitted to the Prosecutions Division.

Quick Links

- **VPMG Court processes**
- **VPMG Extradition**

Victoria Police Manual – Policy Rules – Court processes

- VPMG Civil proceedings
- VPMG Sentencing orders
- VPMG Affidavits
- Court Security Act 1980

Further Advice and Information

For further advice and assistance regarding these Policy Rules, contact your supervisor or local Prosecutions Unit.

Update history

| Date of first issue | 22/02/10 | |
|---------------------|---|-------------------|
| Date updated | Summary of change | Force File number |
| 21/10/10 | Inclusion of instruction relating to employee attendance on duty at court and similar proceedings (replaces and broadens instruction previously in VPMG Complaint management and investigations). | 059121/09 |
| 03/01/12 | Inclusion of instruction in table for when members act as informant/corroborator at bail/remand hearings (section 1.4) | 069813/11 |
| 30/01/12 | Amendment to include 'evidentiary material' and evidence for a party other than Crown or Prosecution (section 2) | 070500/11 |
| 08/10/12 | Amendments regarding prosecutors withdrawing substantive charges (section 6), | 072754/12 |
| 20/12/12 | Reference to affidavits added at section 5. | 069620/11 |
| 16/01/13 | Updated to reflect organisational governance and structural changes. | FF-074790 |
| 05/09/13 | Minor amendment to update incorrect section reference (section 12) | 072843/12 |
| 01/07/14 | Witness protection instructions amended to reflect new dedicated instruments | FF-085239 |
| 13/10/14 | Youth Justice Group Conferencing included (section 1) | FF-089445 |
| 09/06/15 | Withdrawal of charges consultation with Work Unit Manager of approving station included | FF-095363 |