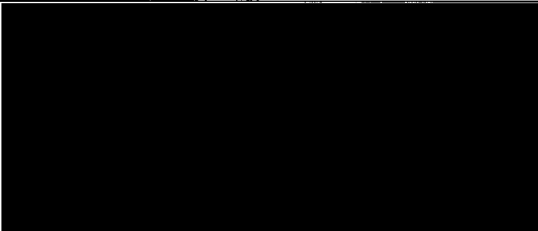


**IN THE MATTER OF THE ROYAL COMMISSION  
INTO FAMILY VIOLENCE**

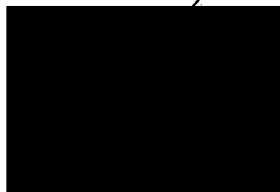
**ATTACHMENT PR-6 TO STATEMENT OF SENIOR SERGEANT PAUL RUDD**

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-6**' 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 – Procedures and Guidelines

### Court processes

#### Source Policy

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

- Magistrates' Court Act 1989
- Magistrates' Court (Committal) Rules 2009
- Evidence Act 2008
- Evidence (Crown Witnesses Allowances and Expenses) Regulations 2004
- Evidence (Crown Witnesses Allowances) Regulations 1992
- Corrections Act 1986
- VPMP Court processes

#### 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.

#### Procedures and Guidelines

### 1. Court System

#### 1.1 Mention court

The Mention Court System requires police cases for determination at a Magistrates' or Children's Court be set for hearing on a 'mention date' (this includes all indictable offences triable summarily and summary offences). On that day the Registrar will establish if the accused intends to plead guilty or contest the matter.

## 1.2 Contest mention court

Matters will normally be adjourned to a Contest Mention Court when an accused pleads not guilty. However, matters may be adjourned to a specific contest date when:

- the accused requests a contested hearing
- there is no possibility of resolution if the matters were adjourned to a Contest Mention Court and the issues are not complex
- the contest would be of a short duration that the Court can accommodate.

## 1.3 Ex-parte hearings

- Where the accused fails to appear at the mention date hearing the Court Coordinator may adjourn a case for an ex-parte hearing. An ex-parte hearing is the hearing of a summary offence in the absence of the accused and their legal representative. Such an adjournment is made where the issue of a warrant to arrest is not considered appropriate.
- Prosecutors will forward an Adjournment Notice to notify informants of a pending ex-parte hearing.

## 1.4 Contested hearings

Contested hearings are held where the accused has entered a plea of not guilty and the court must try the matter.

## 1.5 Committal proceedings

- A committal hearing is heard as required by chapter 4, Part 4.7 of the *Criminal Procedure Act 2009*
- Where evidence has been taken after the accused has been committed for trial, refer to the requirements of chapter 4, Part 4.11 of the *Criminal Procedure Act 2009*
- Upon committal, summary offences may be filed to a higher court and be heard with related indictable offences. The informant is to ensure that all related summary offences are filed with indictable offences.

## 1.6 Group Conferences – Youth Justice Group Conferencing

- Youth Justice Group Conferencing is a pre-sentence diversionary intervention process which can be recommended by the Children's Court in accordance with s.414, *Children, Youth and Families Act 2005*. The Act allows the court to defer sentencing the young person if they attend this conference and a report is provided to the court by the conference convenor.

- As stated in the **VPMP Court processes**, the informant must attend the Youth Justice Group Conferencing. Where the informant is unable to attend the corroborator is to attend in their place.
- Prior to the group conference, the member is required to contact the victim and advise them of their right to attend and obtain the victim's consent to provide their details to the youth justice convenor.
- At the conference the member is required to provide information to assist the young person and their family to understand the nature of the offence, including:
  - a summary of the offence
  - the nature and seriousness of the offence
  - the circumstances of the offender's apprehension
  - the offender's response, reason for and attitude to the crime
  - the impact of the crime on the victim.

## 2. Evidentiary requirements

### 2.1 Notification

When preparing for a hearing, members are required to comply with evidentiary notification requirements of the *Evidence Act 2008*. Notification requirements apply to:

- Informant Statements (s.33)
  - Members must provide a copy of any statement they intend to read or be led through at court a reasonable time before the hearing of prosecution evidence
  - A statement for these purposes can include an informant's statement, Patrol Duty Return [Form 501], Initial Action Pad [Form 502], diary entry or other contemporaneous notes, see **VPMG Recording of operational duties**.
- Documents in Foreign Countries (s.49)
  - Members must provide a copy to the accused not less than 28 days before the evidence is to be adduced.
- Document summary as proof of voluminous or complex documents (s.50)
  - Members must serve a copy of the summary on the accused, that includes the name and address of the person who prepared the summary; and
  - Must ensure that reasonable opportunity to examine or copy the documents has been provided.
- Hearsay evidence (s. 67)
  - If intending to adduce hearsay evidence where the maker of the representation is not available, members must provide reasonable

notice of that intention by completing a Notice of Intention to Adduce Hearsay Evidence Form [Form 1366] and serving it on the accused.

- Tendency evidence (s.97)
  - If intending to adduce tendency evidence, members must provide reasonable notice of that intention by completing a Notice of Tendency Evidence Form [Form 1367] and serving it on the accused.
- Coincidence evidence (s.98)
  - If intending to adduce coincidence evidence, members must provide reasonable notice of that intention by completing a Notice of Coincidence Evidence Form [Form 1368] and serving it on the accused.
- Certificates of expert evidence (s.177)
  - A copy of the expert witness certificate and a Notice of Expert Evidence Form [Form 1369] must be served on the accused no later than 21 days prior to the hearing

## 2.2 Original Document Rule

Section 51 of the *Evidence Act* abolishes the common law original document rule. The contents of documents can now be proved by tendering:

- the document;
- a copy of the document;
- a transcript;
- a business record;
- an extract or summary; or
- if it is a public document, a copy printed by an authorised person.

## 3. The informant's responsibilities during committal proceedings

### 3.1 Managing the accused

The informant is to arrange (as required by the Office of Public Prosecutions OPP) for the accused to be kept in custody until lodged at a Watch-house or released on bail.

### 3.2 Notifying the court and OPP of a filing hearing

- Where a matter will be proceeding to a committal it must first be listed for a filing hearing as follows:
  - arrest matter: listed at the Magistrates' Court within seven days of the filing of charges

- summons matter: listed at the Magistrates' Court within 28 days of issue of the summons
- The informant is to notify the court and the OPP of the commencement of committal proceedings using the Notification to OPP and court of the commencement of committal charges [Form 1015].

### 3.3 Obtaining an interpreter

The informant is to arrange (as required by the OPP) for an interpreter via the On-Call language Services, as follows:

- indictable offences – for the accused or any prosecution witnesses involved
- summary offences –
  - arrest cases - for the accused
  - summons cases - for the accused or any witnesses only after consultation with the Registrar
  - adjournments – make a further booking with On-call Language Services on behalf of the Department of Justice
- The Department of Justice will meet the costs of the interpreter service. Refer the interpreter to the Registrar for the signing of the claim form and other payment inquiries.

### 3.4 Managing evidence and exhibits

- The informant is to arrange (as required by the OPP) for one of the following to occur where the Registrar has requested evidence or exhibits:
  - deliver these exhibits to the OPP and obtain a detailed receipt
  - if the exhibit should remain in police possession, record it and forward a report to the OPP.
- For additional evidence, exhibits or other information to be forwarded to the OPP to make note in the Register of Briefs and Property Book.

## 4. Adjournment processes

- Where a matter is adjourned for contested hearing, upon receipt of an Adjournment Notice, the informant should complete an Order for Transcription [Form 254]. Provide a transcript only when advised to do so by the prosecutor.
- The informant should contact the prosecutions office as soon as they become aware that an adjournment is necessary, so that the appropriate application may be made to the court prior to the hearing date.

- Where an adjournment is required by the prosecution in a contested hearing, the informant needs to serve a Notice to the Accused [Form 416] in sufficient time to avoid costs being awarded.

## 5. Attendance at court – the accused

### 5.1 Bringing a person in custody before the court

- Seek advice from the Prisoner Management Unit regarding transport availability when transporting persons in custody to court
- Where possible members should ensure the use of telecourt for the appearance of accused persons in custody before the court. This avoids the unnecessary transfer of prisoners through Victoria Police detention facilities. Members should seek advice from their prosecutions office and the Court in relation to telecourt options.
- Persons in custody should not be taken into court via the public entrance. Where possible, Custody entrances should be used.
- When the informant is managing the accused at the Magistrates'/Children's Court or during a committal hearing, this includes being responsible for:
  - the security of the accused in court
  - lodging the accused in the Watch house or releasing them on bail at the completion of each sitting of the court.
- To bring a person in custody before a court, for matters other than those where a Remand Warrant is applicable, comply with the following:
  - Prison (Corrections facility) – use an Order to Bring a Person Before a Court or Coroner [Form 476]
  - Remand Centre/Youth Training Centre/Youth Residential Centre – use an Order to Bring a Person before a Court or Coroner's Inquest [Form 725].
- Service of Form 476:
  - without a summons – fax Form 476 to Central Records, Office of Correctional Services Commissioner or DHS facility. For further advice contact Prisoner Management Unit
  - with a summons – where a summons is to be used to bring a person in custody to court, send the summons to the local police for service. In the case of a child a Form 725 must be used in conjunction with the summons.
- Where a member becomes aware that a person in custody will not be required at Court, in accordance with a Form 476, including through contacting the relevant Court in advance, they should notify the Prisoner Management Unit to cancel the transport of the person via fax on 9247 5235 or email to PRISONER MANAGEMENT UNIT-OIC.

- Ensure security of person in custody as required by **VPMP Persons in police care or custody**.
- When a person in custody under sentence is taken out of gaol on a Form 476, an indent is attached to the order. The indent and order should remain with the person at all times and be handed to gaol authorities or the WHK.
- To bring remanded persons in custody to court at an earlier date apply to a Magistrate and complete a Case Abridgement Notice which can be obtained from the appropriate Court website.
- It is the responsibility of the informant, or in their absence court security, to ensure warrants are collected from Court and returned to the Watch-house.
- The Work Unit Manager where the person in custody is lodged is to ensure that necessary documents accompany the prisoner on their return to prison.
- The informant or arresting member should be in a position to inform the Court on oath, the period of time the accused has been in custody.
- Persons in custody undergoing sentence when brought to Courts or other judicial inquiries, may only be visited by legal representatives engaged in the matter.

## 6. Attending court - Witnesses

### 6.1 Legislative methods of getting a witness to court

- Witnesses may be brought before a Magistrates' or Children's court by either a:
  - Witness summons [Form 553] – served in accordance with the *Magistrates' Court Act 1989*
  - Bench warrant – informant to apply by presenting evidence to the court
- In all cases, where an unlawful non-citizen is required to remain in or return to Australia to be a witness, the investigator must obtain a Criminal Justice Certificate. Refer to **VPMG Extradition** for the relevant process.

### 6.2 Serving a witness summons

- Witness summons must be served a reasonable time before the court date. Manner of service is the same as a summons to answer a charge (s.43(5) *Magistrates' Court Act 1989*).
- At the time of serving the summons, witnesses should also be provided:
  - a copy of their witness statement, and



- conduct money or alternative arrangements should be made to enable their attendance at the hearing, also see section 7.7 for further reference to conduct money.
- An Affidavit or Declaration must be completed and witnessed as required by the *Evidence Act 2008* to prove service of a summons.
- Work Unit Managers are responsible for recording the service of witness summons.
- Service of a further summons is not required where the case is adjourned.

### **6.3 Serving a witness summons in specific circumstances**

- Where a summons is being served on a prisoner, the summons should be sent to local police for service and needs to arrive in time to enable valid service to be effected. In addition to the summons:
  - a Form 476 should be included if the recipient is in prison
  - an Order to Bring a Person before a Court or Coroner's Inquest [Form 725] should be included if the recipient is in a Remand Centre/Youth Training Centre/Youth Residential Centre
- Serve summonses on Defence Services personnel in the normal manner. If service is to be effected personally, consult an Officer in the service concerned.
- If personal service is to be effected on a person living interstate, forward the summons to the police station nearest the address of the witness/accused.
- Where the OPP forwards a summons and conduct money to local police stations for service, members should serve the summons or Notice to Warn Witnesses and advise witnesses not to attend court until notified by the OPP of the day that they are required to give evidence.

### **6.4 Police communication with witnesses**

- Regular contact should be maintained with the witness from the date of the incident to the contested hearing date.
- Witnesses should be adequately prepared for the court process, including court procedures and court formalities.
- Other than prosecutors, members are not to confer with the witness prior to the hearing to clarify or expand on matters about which the witness is going to give evidence.
- The prosecutor is responsible for facilitating witness conferencing and is to:

- confer with the witness prior to the hearing to clarify or expand on matters about which the witness is going to give evidence
- explain court formalities and procedures.

### 6.5 Communicating with witnesses at court

Where a person wishes to approach or speak with a witness, they should give prior notice to the person calling the witness as follows:

- defence – lawyer representing the accused or accused
- prosecution:
  - Magistrates' Court – informant or prosecutor
  - Supreme or County Court – prosecutor.

### 6.6 Costs in getting witnesses to court

- Financial assistance may be given to witnesses in accordance with the *Criminal Procedure Regulations 2009*. Payments are only for the purposes of meeting the costs associated with the witness appearing in court and are not to be directly linked to the witness providing evidence. The OPP may also be responsible for some of the costs such as Supreme and County Court matters (see below). Victoria Police will meet the following costs in getting a witness to a Magistrate's court:
  - conduct money
  - travel costs for interstate or overseas witnesses or, where travel costs cannot be paid from petty cash, obtain approval for costs from the Chief Commissioner, except where the informant is located in a Region, Road Policing Command, Transit and Public Safety Command, Crime Command or Professional Standards Command where approval can be obtained from the relevant Department Head
  - accommodation.
- Where there are special or additional costs required or incurred getting a witness to court, seek advice from the Business Service Centre (BSC).
- Record the funds provided on the affidavit or declaration of service.
- The OPP is to be briefed of all payments to witnesses.
- The following costs will not be met by Victoria Police, however the witness may lodge a claim for reimbursement from the Court Registrar:
  - meals and other incidental costs
  - additional expenses a witness may choose to incur, e.g. entertainment.
- Where the witness wishes to claim for loss of income or other associated cost of attending court, they should be directed to the Court Registrar. Claims for restitution or other matters will be for determination at any subsequent trial.

**Victoria Police Manual - Guidelines – Court processes**

- Forward all claims for an interpreter service at court to the relevant court.
- Conduct money may be given to a witness when the summons is served to enable their appearance at court. Do not send conduct money through the DX mail system.
- When determining whether the circumstances are appropriate, the following should be given consideration:
  - it is not necessary to give a witness conduct money if they will not reasonably incur expenses in complying with the summons
  - obtain conduct money from petty cash
  - show amount of conduct money given in the declaration of service.
- Departments responsible for costs:
  - Costs for the first five cumulative days in relation to the same matter – Department where the informant is stationed at the time of the hearing.
  - Costs beyond five cumulative days in relation to the same matter – Department where the investigation commenced.
  - Department Heads may transfer the above responsibilities by agreement.
  - The State/Territory police service requiring a witness to attend court is responsible for travelling arrangements and costs of the witness.
- The OPP is responsible for all reasonable travel and accommodation expenses for interstate or overseas witnesses subpoenaed to attend the Supreme and County Courts. Upon notification from the OPP, the relevant Department will make the arrangements for the witness to attend. Where the witness is an interstate police member, the OPP will pay for economy class airfares and Victoria Police pays for accommodation and incidental costs.
- Payment from petty cash – where conduct money is paid from petty cash, the member obtaining the money signs the Petty Cash Reimbursement [Form 134] as claimant. In the case of multiple summonses, attach a list of names and individual amounts to the Form 134 and make one entry on the Form.
- Repayment to petty cash – conduct money accompanying a summons that cannot be served:
  - repay petty cash by recording a red entry on the Form 134
  - stations without petty cash must return the money to the issuing office
  - endorse original record of summons with "Conduct money returned on (date)".
- Conduct money due to employees – issue a receipt and pay into the Central Banking System.

- Refunding of conduct money received by members – where a Work Unit Manager approves the refund of previously received and banked conduct money, complete a Request/Transfer of Monies [Form 59] and forward it to Financial Services Division with:
  - the letter requesting a refund
  - Work Unit Manager's approval for refund.
- The successful prosecution can make a claim against the accused for costs. Use and adapt the Witness Cost/Restitution/Compensation Sheet [Form 950]. Where there are any claims for restitution, compensation, loss of wages, professional witness fees, etc, see section 17 below.

### 6.7 Child Witness Service Referrals

The Department of Justice provides a state-wide Child Witness Services to support child witnesses in criminal proceedings involving sexual assault and serious violence. Refer to **VPMG Interviews with vulnerable persons** for details of the service and referral process.

### 6.8 Video Conferencing

- As an alternative to attending at court in person, persons may give evidence by video conference. Police will generally use it for witnesses.
- Where the facilities are available, informants should give consideration to using video conferencing when an employee from Forensic Services Department is required to give evidence. The informant should also advise the prosecutor where this has been arranged so an application can be made to the court.
- Victoria Police is responsible for arranging and paying for video conferencing used to bring a prosecution witness to court for police prosecutions of Children's and Magistrates' Court hearings, including Committal Hearings. The informant's Department is responsible for video conferencing costs.
- The informant should submit an application to the Local Area Commander detailing the availability of facilities and an estimate of costs. A list of video conferencing facilities is available on the intranet and BSCs can assist with cost details.
- If the Local Area Commander approves the request, the informant can liaise with the prosecutor and provide the proposed booking arrangements to the court. The court makes the final decision as to whether video conferencing will be permitted.
- Where a witness is reluctant to give evidence by video conference, informants may apply to the court for an order directing the witness to appear by video conference.

- The OPP are responsible for video conferencing costs required to bring a witness to the Supreme or County Courts for a trial and appeal.
- The successful prosecution can allow a claim against the accused for costs. Use and adapt the Form 950 for this purpose.

## 7. Victoria Police employees as witnesses – Appearance at court costs

Where the witness is an employee, the following apply for which Department is responsible for costs:

- Where payment of incidentals under the *Victoria Police Force Enterprise Agreement 2011* may be required, approval should be obtained from the informant's Local Area Commander for payment of the expenses.
- Costs for the first five cumulative days in relation to the same matter – Department where the informant is stationed at the time of the hearing.
- Costs beyond five cumulative days in relation to the same matter – Department where the investigation commenced.
- The State/Territory police service requiring a witness to attend court is responsible for travelling arrangements and costs of the witness. The home jurisdiction is responsible for incidentals and accommodation.

## 8. Victoria Police employees responding to requests to give evidence for a party other than Crown or prosecution or employees receiving any subpoenas or disclosure requests

- Subpoenas addressed to the Chief Commissioner should be forwarded to the Subpoena management Unit (SMU). Where a counter summons is received, refer to **VPMG Civil proceedings**.
- As stated in **VPMP Court processes**, employees must advise the SMU after receiving a request or subpoena to give evidence and/or produce documents. This may be in the following circumstances:
  - from the defence in any criminal proceeding
  - on behalf of any party involved in civil or administrative proceedings
  - to appear before any Tribunal
  - to appear before any Board of Professional Registration.
- The SMU may give direction or guidance and where appropriate, refer the issue to the Legal Advisors' Office.
- Employee should advise their direct supervisor of the requirement to give evidence for rostering and recording purposes.

- An employee giving evidence or producing documents on behalf of a party other than the Crown or prosecution is to:
  - notify the prosecution or the SMU; and
  - provide them with a statement of the evidence to be given and a copy of any documents to be produced, a minimum of two working days prior to the commencement of the hearing, unless exceptional circumstances exist.
- When providing documents or giving evidence to a court, the accused or their legal representative in compliance with a subpoena the following should be considered:
  - Particular attention should be given to identifying material that, if publicly released, may place persons assisting police at risk. Seek advice from Subpoena Management Unit if such material is identified and notify the relevant prosecutor
  - Victoria Police policy matters – where required to provide evidence on Victoria Police policy, consult the Manager, Corporate Policy, CSGD, for direction
  - Public interest immunity – an employee may claim public interest immunity for cases that involve the disclosure of confidential or privileged information. Seek advice from the SMU or Legal Adviser's Office. Also see **VPMP Information sharing** regarding disclosure of confidential information relating to Victoria Police employees
  - Short notice and issues of oppression – where a subpoena does not provide sufficient time to respond or it seeks a substantial amount of documentation or is oppressive in nature, the SMU should be consulted immediately
  - Documents disclosed under a subpoena must be provided directly to the court not the issuing party. Do not permit subpoenaed documents to be examined by the issuing party until they are released by the court or until called to give evidence. Examination is as directed by the court.
- In addition to the above, consider actions where:
  - documents or things are required to be produced in criminal proceedings.
  - the prosecutor handling the case should be advised of the existence of a subpoena
  - If no objection is to be taken with documents and things the subject of a subpoena and the documents and things are to be produced to the court, the prosecutor should be advised of the nature of the documents and things before they are produced to the court.
- When considering cost issues consult the SMU.
- Release of documents – see **VPMP Information sharing** regarding responsibilities about record management and information release.

## 9. Court Security

### 9.1 Secure court

- As noted in **VPMP Court processes**, where it is necessary to have additional security measures in place at a court hearing, request a 'secure court' through the Manager, Protective Services Unit (PSU). The request needs to:
  - contain a recommendation by a Local Area Commander
  - be supported by intelligence concerning the situation or threat
  - be in writing, except it may be made verbally in urgent cases with written confirmation to follow.
- Guidance as to the format of the request and other Court Security advice can be obtained from the Senior Sergeant, Law Courts, PSU.
- Policy in regard to use of handcuffs can be found in **VMPG Safe management of persons in police care or custody**. However under s.6F(2), *Corrections Act 1986* every person in legal custody who is brought before the court is subject to any lawful order and direction of the court. Legal advice is that the magistrate has ultimate authority in relation to the proceedings in the courtroom, including the removal of handcuffs during proceedings.

### 9.2 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**.
- If protection is required urgently, the Superintendent, State Intelligence Division, Intelligence and Covert Support Command may approve the issue of an Interim Protection Declaration. Refer to **VPMG Witness Protection**.
- Witness Protection Unit is responsible for costs incurred once the witness has been accepted into the program. Departments are responsible for costs incurred prior to obtaining the approval for program entry.
- Human sources entering the witness protection program must be deregistered as a source. Refer to **VPMG Human sources**.

### 9.3 Family Court Incidents

- If there is a threat or concern that violence will occur on or by one of the parties to a hearing, the AFP at the Family Court will advise the local Station Manager. The Work Unit Manager should:
  - assess the validity of the threat, consider any offences disclosed, record the offences on LEAP as an incident and initiate an investigation
  - advise the relevant supervising Sergeant of the details to ensure a prompt response if police are contacted regarding the threat.

- If an incident occurs on the day of the hearing, Family Court staff will advise the local Work Unit Manager or the Police Communications. The attending members will be advised of relevant details.
- If no offences are detected or identified, attending members should ensure that there is no breach of the peace.

## 10. Exhibits

- The court may order exhibits which require particular handling to be produced at court. Consult the prosecutor where there are concerns.
- Due to the risks associated with handling certain items, the following should be followed:

Type of exhibit	Guidelines
<b>Firearms</b>	Exhibit firearms are only to be taken to court when ordered by the court. Once ordered, the informant must ensure that all ammunition is removed and the firearm and ammunition are labelled
<b>Explosives or hazardous material</b>	When ordered to produce these substances at court, seek advice from the SOG Duty Officer and only take a minimum quantity
<b>Drugs</b>	<ul style="list-style-type: none"> <li>• Do not take drugs to court unless specifically requested by the court. For health and safety reasons, under no circumstances should items from illicit drug laboratories be introduced into court</li> <li>• Where drugs are held at VPFSC a specific request must be made by the court. The informant must seek approval, in writing, from an Officer requesting removal of the drugs from the VPFSC and this approved request must be delivered to the VPFSC. Record any movement in the Property Book. Return the property to the VPFSC when it is no longer required by the court. On return to the VPFSC, the property may be subject to re-analysis and weighing</li> </ul>

## 11. Disposal, forfeiture or costs orders

### 11.1 Disposal or forfeiture

If court forfeiture or disposal is required:

- the informant is to include a Forfeiture/Disposal Order [Form 745] in the brief
- the prosecutor is then to seek appropriate order in accordance with the specific legislation and forward the court order to the relevant Work Unit Manager or complete details of why the order was not granted. The brief head should be endorsed accordingly.

### 11.2 Costs awarded

- Where costs are to be awarded against the Chief Commissioner, the prosecutor is to ensure that a three month stay has been requested and



forward the documents to the Work unit Manager, Prosecutions.

- See below section on paying costs for further instruction on management of cost files.

## 12. Withdrawal of charges

- As stated in **VPMP Court processes**, the prosecutor, has 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.
- Informants should not consult with the accused or their representative in relation to charge withdrawal without first speaking with the prosecutor. Any discussions with the defence counsel should be conducted by a prosecutor.
- The informant should (where applicable) notify the victim when a charge, in which they are listed as a victim is withdrawn. Their opinion should be communicated to the prosecutor for inclusion on the withdrawal report.
- When charges are to be withdrawn due to a lack of evidence and the accused or their legal practitioner gives an undertaking not to seek costs, the prosecutor should consider obtaining the indemnity in writing. The indemnity should not include reference to the withdrawal of or the intention not to proceed with a complaint against police.
- When the accused in the matter has made a complaint against police, the informant or investigating member should notify the relevant Prosecutions Unit and attach a report to the brief of evidence. For further detail on managing a complaint, also see: **VPMP Complaints and discipline**.
- Where a complaint is made against a member involved in the matter, any decision to withdraw charges needs to include consultation with an Officer and be subject to the following:
  - withdrawal of all charges – refer the matter to the Manager, Prosecutions Division, for approval.
  - withdrawal of one or more (but not all) charges – notify the Manager, Prosecutions Division.

## 13. Appeals

### 13.1 Application for appeal initiated by informant in Magistrates' Court matters

- Informant responsibilities – informants aggrieved by a Magistrate's decision should consult the prosecutor as to whether an appeal is appropriate, within a day of the decision.
- Prosecutor responsibilities –
  - obtain the original brief of evidence and all supporting documents
  - consult Research, and Training, Unit (R&T Unit), Prosecutions Division regarding the appropriateness of an appeal
  - forward a report to R&T Unit including; the brief, details of the charges, what occurred during the hearing and the reason for seeking consideration of appeal (also see the Legal Services Department intranet page for further information).
- R&T Unit assesses the application for an appeal:
  - if supported – file will be forwarded to Department Head, Legal Services Department
  - if not supported – the file will be returned to the prosecutor explaining the reasons for not proceeding. The prosecutor will then discuss the outcome with the informant.
- If approved, the Department Head, Legal Services Department will forward the file to the OPP for consideration. Members can not contact the OPP directly in relation to appeals.

### 13.2 Prosecution appeals against sentencing

A police member who wishes to request the OPP to appeal should follow the same procedures and time frames for appeals against a decision at law. Do not contact the OPP directly, instead all correspondence regarding appeals is to be forwarded via line management to the Department Head, Legal Services Department.

### 13.3 Appeal by accused

- Magistrates' and Children's Court – within seven days of being served with a copy of an Appeal Notice, an informant must forward the original brief to the OPP County Court Appeals Section, including:
  - Appeal Notice
  - Report of Notice of Appeal [Form 204]. Their workplace must retain a copy and record it in the Register of Briefs.
- Supreme and County Court – are conducted by the OPP who notify informants if required.

- Informants who receive an Appeal Notice need to notify the relevant prosecutor so that any other relevant material can be forwarded to the OPP.
- Family violence – where police are a party to an appeal lodged by another party, the informant should contact the Staff Officer, Legal Services Department, within seven days of being served a copy of an Appeal Notice.

#### 13.4 Notification of VicRoads

When served with a copy of a Supreme Court Order, that stays an order of a lower court affecting the appellant's driving licence, the informant is to:

- forward or fax both of the following to Driver Records Section, VicRoads:
  - short report requesting amendment of the appellant's driver record
  - copy of Supreme Court Order.
- forward a copy of the Order and an explanatory report to the Appeals Section, OPP.

#### 13.5 Commonwealth appeals

- Where an appeal is lodged, forward a report to the Commonwealth DPP. Notices of Appeal against convictions under Commonwealth law are to be dealt with in a similar manner to offences under State law.
- Police members will be held liable for payment in cases where there is clear negligence or when a disciplinary or criminal offence is likely because of the police member's actions.

### 14. Re-hearings

- An application for a re-hearing may be made by the accused or, in exceptional circumstances, by the informant on their behalf (*ss. 88-94 of the Criminal Procedure Act 2009*).
- Where the informant makes the application, they should serve a copy on the accused.
- Where a member received a Notice of Application for Re-hearing, they are to notify the informant and make a record of receipt.
- The informant is to forward to the prosecutor the original brief including:
  - Notice of Application for Re-hearing
  - a new LEAP Charge Sequence and Result of Charge Report
  - a revised list of unsuitable/suitable court dates
  - material upon which an objection to the re-hearing could be made.

- The informant does not need to attend the initial day on which the application for re-hearing is considered unless they intend to object or are requested by the prosecutor.
- Where a court grants a re-hearing and sets aside the original conviction:
  - the prosecutor is to advise the informant of the date of the re-hearing and complete LEAP Charge Sequence and Result of Charge Report
  - the informant is to attend the re-hearing and ensure that all required witnesses attend as for a contested hearing.
- At the conclusion of the re-hearing, the prosecutor is to complete copies of the Result of Charge Report and return the brief to the informant.

## 15. After court processes

### 15.1 Prosecutor's responsibilities – Submitting a case review report

- As required by the **VPMP Court Processes**, in specific circumstances 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).
- Where one of the above occurs the following documents should be completed by the prosecutor and submitted to their Work Unit Manager:
  - court extract
  - statement of fines and penalties
  - relevant report (Adjournment Report or Dismissal Report or Withdrawal Report).
- Where the matter has been adjourned, the brief should be filed by the prosecutor with a record or copy of the documents submitted for the case review.
- In all other cases, the brief should be submitted to the Work Unit Manager with a copy of the case review documents.

### 15.2 Case review – Work Unit Manager of the prosecutors' office responsibilities

The Work Unit Manager of the prosecutors' unit should process files that are received by way of the process explained above should:

- classify it as routine or non-routine and process it as follows:
  - routine – add a notation to the Withdrawal Report, Adjournment Report or Dismissal Report

- non-routine – attach a full report explaining the circumstances and identifying any deficiencies and forward this to the Staff Officer of the Regional Commander.
- treat any report submitted by an aggrieved informant as non-routine and include in their report any initial assessment as to whether there is a reasonable basis for the grievance
- advise PSC where the Work Unit Manager suspects that an adjournment, withdrawal or dismissal may have been due to serious misconduct by an employee
- distribute copies of the Withdrawal Report forms, or the Adjournment Report or Dismissal Report form, and any report in respect of a non-routine matter, as follows:

First (original) –

- No Appeal – where no appeal is being pursued, attach the documents to the brief of evidence (or note that the brief has been held in respect of outstanding charges, where applicable). Where no costs have been awarded and the matter is assessed as:
  - routine, forward the file to the informant's station
  - non-routine, also attach a copy of the court extract and forward the file to the Staff Officer of the Regional Commander
- Appeal – where an appeal is being pursued attach the documents to the brief of evidence, with the prosecutor's report and the court extract (and the prosecutor's memo as to costs, where applicable) and:
  - deliver the appeal documentation to the R&T Unit, within two working days of the Magistrate's decision, or
  - where at any stage it is decided that the appeal will not be pursued, or if the appeal is ultimately unsuccessful, take action required as for no appeal.

Second copy – where it is necessary to complete any of the above forms, and irrespective of whether costs have been awarded or not, forward the second copy of the form to the Manager, Prosecutions Division.

Third copy – file at relevant prosecutors' office.

Fourth copy – file with original court extract to the relevant authorised police member for authorisation of payment.

- Where an appeal is being considered, the file must not be forwarded for payment, unless the appeal is not pursued or until the appeal outcome is known and the costs remain payable.

## 16. Case Review - Court Liaison Officers

As required by **VPMP Court processes**, Department Heads are responsible for ensuring a case review process is established where the failure of a court case was preventable or costs were awarded against the CCP. The process may require the appointment of a Court Liaison Officer's (CLO) to coordinate the review. Their duties may include:

- liaising with court staff, managers of prosecutors' offices, Work Unit Managers and relevant Officers
- managing issues involving the responsibilities of employees in relation to the forwarding of briefs of evidence, attendance of witnesses at court and other related matters
- reviewing non-routine adjournments, withdrawals and dismissals and all matters in which costs have been awarded against the Chief Commissioner. These files should be processed as outlined below.
- initiating managerial or disciplinary action considered appropriate
- providing the Department Head with quarterly and annual reports containing -
  - statistics of adjournment, withdrawal and dismissal matters that they have dealt with
  - synopses of non-routine adjournment, withdrawal and dismissal matters that they have actioned or referred for action, and the subsequent results.

### 16.1 CLO file reviews

Where a CLO is appointed, they should review files classified as non-routine and files where costs have been awarded against the Chief Commissioner. The file should be processed as follows:

- routine matter – forward the file to the informant's Work Unit Manager for information and filing
- non-routine matter:
  - refer minor matters which may be addressed at station level to the informant's Work Unit Manager
  - investigate matters that may warrant a higher level of managerial intervention, and take appropriate action
  - refer matters that may warrant disciplinary action to either the Brief Review Panel or PSC.

Action against prosecutors – where the CLO considers managerial or disciplinary action against a Prosecutions Division employee appropriate, the matter is to be referred to either:

- Brief Review Panel for examination and recommendation
- Manager, Prosecutions Division for determination
- PSC for investigation.

Defects in policy – report to the Department Manager any:

- defect in policy or procedures identified
- information that may eliminate or reduce adverse outcomes or awards of costs in the future.

## 16.2 Regional Brief Review Panels

As stated in **VPMP Court processes**, each Region must convene a Regional Brief Review Panel. The Panel's role includes:

- Outcomes:
  - determining managerial action, or disciplinary action up to the level of admonishment. The Panel Chair starts or directs such action
  - directing that the file be forwarded to PSC for investigation
  - making such other determination, direction or recommendation.
- Prosecutor fault – where the Panel recommends managerial or disciplinary intervention against an employee of the Prosecutions Division, the Panel is to refer the matter to either:
  - Manager, Prosecutions Division
  - PSC for investigation.
- Filing of documentation – the CLO retains documentation relating to the proceedings of the Panel in accordance with **VPMP Information review, retention and disposal**.

## 17. Paying costs and compensation

- Where costs are awarded against the Chief Commissioner, Manager, Prosecutions Division will forward the documents to the Staff Officer of the relevant Regional Commander for payment.
- Delegation FIN 2.1 Schedule D lists the authorisation limits to incur or meet expenses and obligations related to costs awarded against the Chief Commissioner. The authorised member is to authorise and ensure payment of the Costs Order.
- Where the payment amount cannot be agreed upon or is of greater than \$7000, the Manager, Prosecutions Division will forward documents to the Staff Officer, Legal Services Department.
- For matters prosecuted by the OPP, Legal services will forward the cost file

to the Staff Officer of the relevant Regional Commander for payment.

- If the costs awarded are \$7,000 and above, Legal Services will refer the file to the VGSO for negotiation of quantum of costs.

## **18. Claiming costs and compensation**

### **18.1 Minimise costs**

Where possible, costs should be minimised as there is no guarantee that the costs will be recovered.

### **18.2 Criminal jurisdiction**

Witness costs are not generally sought in relation to Victoria Police employees appearing as witnesses in criminal proceedings because costs are not usually considered to be in furtherance of the administration of justice. However, it may be appropriate to seek costs against an accused who has summonsed a Victoria Police employee as a defence witness or in cases where voluminous requests are made. Advice can be sought from the SMU.

### **18.3 Intention to apply for costs**

At the earliest opportunity, the issuing party should be advised of the intention to apply for costs.

### **18.4 What to claim**

Costs incurred as a direct result of the Court attendance should be claimed, including:

- loss of earnings – this rate is set out in Victoria Police fees and charges; and
- unavoidable expenses – these must be reasonable. This could be the cost of travel, accommodation or even the non refundable cost of a plane ticket purchased before notification of the Court commitment and unable to be used because of the Court commitment.

### **18.5 Out of pocket expenses**

Employees can submit a 'Personal Expenses Claim' form [Form 46] for out of pocket expenses but should ensure that these costs are claimed from the issuing party so Victoria Police can be reimbursed.

### **18.6 Settling the costs amount**

- The amount of costs (quantum) can be settled by either:
  - determination by the Court - the Court should be advised of the costs sought at the completion of the witnesses evidence



- agreement between the parties – this should be confirmed in writing by the issuing party.
- The rate for loss of earnings is set out in Victoria Police fees and charges. SMU can be consulted to assist in cost negotiation.

### **18.7 Advice of the debt**

Completion of the Subpoena Costs and Customer Creation Form [Form 1341] advises Victoria Police of the debt so an invoice can be created and sent to the issuing party.

### **18.8 Procedure when costs are awarded**

- Recording details – prosecutors need to record details of costs or compensation awarded on the Brief Head and endorse the amounts on the Form 950.
- Payment – the registrar will generally send costs direct to the witness concerned.
- Police members as witness – paid into Central Banking System (CBS).
- Witness costs – when a witness cost cheque is received from a Court:
  - issue Interim Receipt
  - bank the cheque into the Region Trust Account and cross-reference receipt numbers on the pay-in book
  - ascertain the identity and current address of the witness
  - fax details to the BSC, including identity and current address of witness, on a Return of Monies Banked into Region Trust Account Form
  - BSC will issue and post a cheque to the witness involved
  - where a witness is not located the witness costs can be paid by the BSC into Consolidated Revenue, via the CBS.

### **18.9 Procedure where costs are not awarded or the amount awarded is inadequate**

- Legislation – s.5(1), *Evidence (Crown Witnesses Allowances) Regulations 1992* prescribes allowances for Crown witnesses.
- Court responsibilities – where costs are not awarded or witnesses are dissatisfied with the amount, advise them to contact the registrar of the appropriate court.
- Police responsibilities – in exceptional circumstances, ex gratia payment may be considered. Submit a report through the Local Area Commander to the CBS.

### **18.10 Victoria Police claiming costs and compensation**

Where employees are called to give evidence, consider claiming the reimbursement of the employee's salary and the cost of any travelling allowance. The following also apply:

- Commonwealth or State Government department – costs for salary reimbursement must not be claimed. Where Victoria Police has incurred the cost of any travelling allowance, the relevant department must be invoiced for the cost. The employee must forward a detailed report of the circumstances and costs to the Revenue Branch, FSD within seven days of the hearing.
- Local Government – where an employee gives evidence in support of a Local Government prosecution, costs for attending court must not be claimed.
- VCAT or other tribunals – when a party to proceedings before VCAT or other tribunal requires the attendance of a police employee, a request should be made that a summons be issued for their attendance. An application for full costs should be made to the tribunal on the day of the proceedings.

### **18.11 Police employees called to give evidence for a party other than the Crown or Prosecution**

At Court, the employee should:

- claim the costs on the day of attending court, even if the matter is settled without the evidence being given
- request that a court order is made in respect of the costs claimed, unless a written costs agreement has been made with the issuing party.

### **18.12 Costs for damage to Victoria Police property**

- Informant responsibilities – where there is any damage or loss sustained by Victoria Police or an employee in the execution of duty, the informant is to detail this on Form 950 and attach to the brief.
- Prosecutor responsibilities – where the charge against the accused is found proven, prosecutors are to apply for an order for costs to cover any damage or loss sustained by Victoria Police or an employee in the execution of duty in accordance with the Form 950 attached to the brief.
- Employee responsibilities – if an employee suffers damage in the circumstances above they are to make a claim on a General Claim Form [Form 135]. In any other case where an order for costs has been made and the accused fails to pay such costs or where no court proceedings are

taken, an employee who has sustained loss on duty may submit a claim. Also refer to chapter 7 of the Victoria Police Accounting Manual.

### Further advice and information

For further advice and assistance regarding these Procedures and Guidelines, contact your supervisor or local prosecutions office.

The following links are referenced in these guidelines:

- [list of video conferencing facilities](#)

### Update history

Date of first issue	22/02/10	
Date updated	Summary of change	Force File number
12/07/10	Inclusion of circumstances in which Victoria Police bears the costs of bringing international witnesses to court (Section 6.5).	062157/10
02/08/10	Reference to use of handcuffs in court and inclusion of Magistrate's authority in the courtroom under Part 1(A), <i>Corrections Act 1986</i> (Section 9.1).	053191/08
14/02/11	Amendments to payment of witnesses (Section 6.5) to ensure payments are not directly linked to witness providing evidence.	061937/10
15/03/11	Incorporation of CCI 01/10 to include new Criminal Procedure Act evidence rules re notifications and original document rule	057957/09
30/01/12	Amendment to clarify that Subpoena Management Unit must be notified upon receipt of a subpoena in all circumstances (Section 9)	070500/11
30/01/12	Reference to Form 105 removed and replaced with a Case Abridgement Notice which is to be used when bringing a remanded person to court at an earlier date. (section 5.1)	066163/11
16/07/12	Amendment to section 7 regarding the Child Witness Service.	070424/11
08/10/12	Amendments to section 13 regarding prosecutors authority to withdraw substantive charges.	072754/12
14/01/13	Updated to reflect organisational governance and structural changes.	FF-074790
18/03/13	Inclusion of telecourt at section 6	073895/12

## Victoria Police Manual - Guidelines – Court processes

22/07/13	Additional detail provided on the service of witness summons and police interaction with witnesses (section 7)	060935/09
14/10/13	Updated at section 3.2 re notifying OPP of filing hearings. Minor amendment at 6.1 regarding bringing children to court.	FF-074561
14/11/13	Amendments to update reference for Research and Training Unit (RTU), and transmission accountabilities for case review and court cost files to the Staff Officer of the relevant Region/Department.	072843/12
18/11/13	References to redundant instruments following IMSSD review have been updated with corresponding new instruments.	069562/11
06/01/14	Updated at section 8 – disclosure requests	FF-083204
01/07/14	Witness protection instructions amended to reflect new dedicated instruments Minor amendments referencing interpreting services	FF-085239 FF-085268
13/10/14	Inclusion of requirements for attending Youth Justice Group Conferences (section 1).	FF-089445
09/06/15	Withdrawal of charges consultation with Work Unit Manager of approving station included	FF-095363