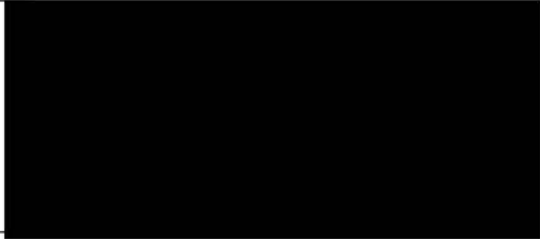


**IN THE MATTER OF THE ROYAL COMMISSION
INTO FAMILY VIOLENCE**

ATTACHMENT SW-30 TO STATEMENT OF SCOTT JAMES WIDMER

Date of document: 31 July 2015
Filed on behalf of: State of Victoria
Prepared by:
Victorian Government Solicitor's Office
Level 33
80 Collins Street
Melbourne VIC 3000



This is the attachment marked '**SW-30**' produced and shown to **SCOTT JAMES WIDMER** at the time of signing his Statement on 31 July 2015.



Before me:



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

SW-30

PROTECTING CHILDREN

Protocol between Department of Human Services -
Child Protection and Victoria Police

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FOREWORD AND ENDORSEMENT

The Department of Human Services Child Protection and Victoria Police play a pivotal role in the protection of Victoria's vulnerable children. Every year a significant number of children come to the attention of our two organisations for a joint response to protecting them from serious abuse and neglect.

The purpose of this protocol is to ensure the delivery of a high quality response through effective partnerships to this group of children. Victoria Police and Child Protection are committed to effective working relationships with one another to promote best possible outcomes for vulnerable children.

The protocol articulates the statutory and non-statutory responsibilities of Child Protection and Victoria Police. The use of this protocol is expected to provide strengthened operating requirements for both organisations when working together.

In accordance with the principles underlying this protocol, we the undersigned, on behalf of our respective organisations, authorise adherence to this protocol by our staff for the safety and protection of Victoria's children.



Ken Lay
Chief Commissioner
Victoria Police



Gill Callister
Secretary
Department of Human Services

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1. INTRODUCTION

Children who have suffered significant harm due to physical abuse, sexual abuse and serious neglect require a multidisciplinary response from both Child Protection and Victoria Police.

The purpose of this protocol is to provide guidance for Child Protection and Victoria Police to ensure that an effective response to child abuse and neglect is provided by both services for children who have suffered, or are likely to suffer, significant harm due to physical, sexual, emotional or psychological abuse and/or neglect.

The protocol articulates the statutory and non-statutory responsibilities of both Child Protection and Victoria Police and how they will interact with each other. The protocol does not replace the requirements for an open and collaborative relationship between Child Protection and Victoria Police at the central, regional and local level. Working together will ensure continued professional, sensitive and well targeted responses to those children requiring the intervention of both services.

Child Protection and Victoria Police are committed to the continued development of high quality services to vulnerable children and their families. Child Protection and Victoria Police will do this through a continued commitment to developing an understanding of each other's roles and responsibilities and commit to the ongoing development and refinement of quality service enhancements.

In addition to the protocol, the 'Overarching Relationship Principles – Memorandum of Understanding' between Department of Human Services, Department of Health and Victoria Police – (June 2010), describes and guides conduct and management of the joint relationship. The Memorandum of Understanding is based on the organisations' shared recognition that:

- there are matters in which the organisations have a mutual interest and, in those matters of mutual interest, the public interest must always take precedence;
- all individuals within the organisations will work in a cooperative, collaborative, professional and expeditious manner in the performance of their respective duties.

A copy of the Memorandum of Understanding may be found on the intranet of the respective agencies.

2. DEVELOPING SHARED PRACTICE

Victoria Police and Child Protection will continue to develop increased understanding and linkages that will contribute to the development and refinement of quality service enhancements. Liaison between Child Protection and Victoria Police is an ongoing and critical aspect of the professional relationship between both organisations. Liaison activities must occur on a regional/local level and centrally.

Developing shared understandings between Child Protection and Victoria Police requires an ongoing commitment to joint opportunities for professional development. Victoria Police and Child Protection agree to cooperate in relation to training so that both services gain a mutual understanding of their philosophies, policies and methods of operation.

Cooperation between the organisations may involve:

- Members of the Sexual Offences and Child Abuse Investigation Teams (SOCITs) spending time participating in the work of Child Protection in their district.
- Child protection practitioners spending time participating in the work of the Sexual Offences and Child Abuse Investigation Team (SOCIT) in their region.
- Participating in and developing joint training initiatives.
- Presentations by Victoria Police and Child Protection at their respective training forums.

Details of such exchanges and other relevant mutual training sessions will be negotiated at the local level between the Sexual Offences and Child Abuse Investigation Team (SOCIT) officer-in-charge and child protection manager.

2.1 Note on the text

In this document:

- The Department of Human Services, Child Protection program or child protection practitioners will be referred to as Child Protection.
- The Secretary of the Department of Human Services will be referred to as the Secretary.
- Victoria Police will be referred to as Victoria Police.
- Children and young people will generally be referred to as children.
- A child, for the purposes of Child Protection is aged between 0–17 years, or if subject to a protection order, under the age of 18 years.
- For the purpose of criminal matters, a child is a person who at the time of the alleged offence was aged between 10–18 years but does not include any person who is aged 19 years or older when a proceeding commences in court.
- A parent is defined by the *Children, Youth and Families Act 2005* as a father, mother, spouse or domestic partner of the father or mother, a person who has custody of the child, a person whose name is entered as the father of the child in the register of births in the Register maintained by the Register of Births, Deaths and Marriages, a person who acknowledges that he is the father of a child subject to the *Status of Children Act 1974* section 8(2), a person in respect of whom the court has made a declaration of finding or order that the person is the father of the child.

3. GUIDING PRINCIPLES

3.1 Protecting children is everyone's business

Under the National Framework for Protecting Australia's Children (2009), protecting children is everyone's responsibility: parents, communities, governments and business all have a role to play. The National Framework represents an unprecedented level of collaboration between Australian state and territory governments and non-government organisations to protect children. The National Framework provides the foundation for improving the safety and wellbeing of vulnerable children.

Child Protection policy is based on the principles of partnership and shared responsibility across a broad range of human service professionals, including schools and licensed children's services. Most children are best protected and cared for within their own family, however, when parents, carers or guardians are unwilling or unable to protect their children from significant harm, the protection of the child becomes the responsibility of the wider community and, at times, requires statutory Child Protection intervention.

3.2 Child's best interests

For the purpose of this protocol, it is agreed by Child Protection and Victoria Police that acting in the best interests of the child includes:

- reporting to Child Protection all allegations or disclosures of physical abuse, sexual abuse, emotional abuse and neglect
- reporting to Child Protection when a belief is formed that a child has been harmed or is at risk of being harmed
- reporting to Victoria Police all allegations of physical and sexual abuse or severe neglect of a child
- making the child's ongoing safety and wellbeing the primary focus of decision-making
- sharing all appropriate information, expertise and resources to support the child
- ensuring culturally appropriate responses to children and their families and protecting and promoting their cultural and spiritual identity
- supporting the child and the child's family to access appropriate services to reduce the effects of abuse or neglect
- ensure matters are resolved as expediently as possible
- professional conduct that is thoughtful and respectful to the child and family's experiences.

3.3 Early identification and effective intervention

Early identification and effective intervention by Child Protection and Victoria Police can lessen the effects of child abuse and neglect, and promote recovery of the children and families concerned. Intervention is most effective when there is open and respectful communication, clearly identified procedures and prioritisation of the child's needs.

3.4 High quality services to vulnerable children and their families

Child Protection and Victoria Police are committed to the development of high quality services to vulnerable children and young people in their communities. Child Protection and Victoria Police will engage in actions that support the continued strengthening of their partnership.

3.5 Aboriginal and Torres Strait Islander children

Culturally respectful approaches and considerations are to be adopted when working with Aboriginal and Torres Strait Islander children and families.

The protocol between the Department of Human Services Child Protection and the Victorian Aboriginal Child Care Agency inclusive of the agreement between the Child Protection Service and the Mildura Aboriginal Corporation establishes the consultation process necessary for ensuring a culturally informed effective response to the protection of Aboriginal and Torres Strait Islander children from harm.

The Aboriginal Specialist Advice and Support Service was established under the auspice of the Victorian Aboriginal Child Care Agency and the Mildura Aboriginal Corporation, to undertake the role described in the protocol. Child Protection will consult with the Aboriginal Specialist Advice and Support Service throughout all phases of Child Protection involvement. Aboriginal Specialist Advice and Support Service is authorised to have access to the record of investigation of a protective intervention report (Children, Youth and Families Act section 206(2)(f)).

4. LEGISLATIVE CONTEXT

Child Protection and Victoria Police have statutory responsibilities pursuant to the Children, Youth and Families Act. Child Protection and Victoria Police are classified as protective interveners and have the legal mandate to intervene when a child is in need of protection.

Child Protection has responsibility for the care and protection of children. Child Protection is required to assess the child or young person's safety, stability and development, and will exercise its legal mandate to intervene where a child is in need of protection, pursuant to their responsibilities under the Children, Youth and Families Act.

Victoria Police has responsibility for criminal investigations. Victoria Police is required to assess whether a violation of a child's rights has occurred and a crime has been committed. Victoria Police is responsible for the criminal investigation of alleged physical or sexual abuse of a child by a parent or carer, serious neglect of a child and sexual offences committed by children. Victoria Police has a central role in family violence matters, and is often the applicant for intervention orders sought pursuant to the Family Violence Protection Act 2008. Victoria Police is also responsible for investigating missing person reports and executing of warrants obtained under the Children, Youth and Families Act.

Victoria Police also provides support and assistance to Child Protection where worker safety issues are present.

The Child Protection investigation and the criminal investigation of offences are integral parts of the Child Protection and criminal justice systems.

Victoria Police and Child Protection must consult with one another to ensure the best interests of the child are met.

This protocol is underpinned by the following legislation:

- *Children Youth and Families Act 2005*
- *Charter of Human Rights and Responsibilities Act 2006*
- *Health Records Act 2001*
- *Information Privacy Act 2000*
- *Sex Offenders Registration Act 2004*
- *Family Violence Protection Act 2008.*

5. ROLES AND RESPONSIBILITIES OF VICTORIA POLICE AND CHILD PROTECTION (INCLUDING CHILD FIRST)

5.1 Victoria Police

Victoria Police is the organisation responsible for dealing with alleged criminal offences in child abuse and neglect cases. Not all cases of child abuse and neglect lead to a criminal investigation by Victoria Police, however in all cases of physical abuse, sexual abuse and serious neglect where Child Protection is investigating, Victoria Police must work with Child Protection for the duration of the Child Protection investigation. This means that Victoria Police and Child Protection will conduct joint interviews with the child, alleged non-offending and offending parents and any other persons relevant to the investigation to determine whether criminal charges will be laid.

5.1.1 Sexual Offences and Child Abuse Investigation Team (SOCIT)

The Sexual Offences and Child Abuse Investigation Team (SOCIT) model has involved the creation of specialist detectives who are highly trained to investigate sexual offences and child abuse professionally, and also respond to victims with the appropriate dignity and respect.

The key roles of the Sexual Offences and Child Abuse Investigation Team (SOCIT) is to investigate crime, apprehend offenders and work in partnership with other services to ensure an empathetic, professional and comprehensive response to victims of sexual assault and child abuse and initiate prevention and reduction strategies.

The Sexual Offences and Child Abuse Investigation Team (SOCIT) model acknowledges that these crimes are complex and seeks to undertake the investigation from initial response (including interviewing the victim, the offender and any other witness) through to trial. This comprehensive approach will ensure continuity for victims and seeks to minimise the number of service providers, reducing re-traumatisation of victims through minimising the number of times they are required to repeat their statements.

Sexual Offences and Child Abuse Investigation Teams (SOCITs) will provide investigation primarily for all Category 2 and 3¹ sexual assault and child abuse offences including:

- rapes of children (suspect known), rapes of adults (strangers/known persons) and indecent acts (including sexual penetrations) upon children, elderly and disabled persons that involves high level of violence or unusual modus operandi
- rape/attempt/assault with intent to rape by a stranger
- all allegations of child abuse where the offending occurs in intrafamilial environment (family violence)
- joint investigations with Child Protection and other stakeholders in respect to child abuse.

Sexual Offences and Child Abuse Investigation Teams (SOCITs) will also provide resource and investigative support to the Sexual Crimes Squad, Crime Department for all Category 1 offences² if required and be expected to initiate prevention and reduction strategies in partnership with other service providers.

Sexual Offences and Child Abuse Investigation Team (SOCIT) units will also provide regional support regarding visual and audio recorded evidence statements.

If a Sexual Offences and Child Abuse Investigation Team (SOCIT) unit is not available, contact should be made with the local Victoria Police station for assistance, or if the matter is urgent and immediate assistance is required, contact Victoria Police Communications on **000**.

1. Category 2 and 3 offences are defined in the Victoria Police Accountability and Resource Model and include:

- Rape of child (under 16 years) - suspect known
- Rape/attempt/assault with intent to rape by a stranger
- Indecent acts committed upon a child, elderly or disabled person that involves a high level of violence or unusual modus operandi
- attempted abduction for purpose of sexual penetration by a stranger.

2. Category 1 offences are defined in the Victoria Police Accountability and Resource Model and include:

- Rape involving home invasion; life threatening and/or significant serious injuries; or multiple offenders
- Rape of child (under 16 years) by a stranger
- Abduction for purpose of sexual penetration by a stranger.

5.1.2 Criminal Investigation Unit

In some regional areas, Criminal Investigation Units may have a complementary role in investigating sexual assault and child abuse with the local Sexual Offences and Child Abuse Investigation Team (SOCIT). Where this is the case, relevant Criminal Investigation Unit members have received the same training as Sexual Offences and Child Abuse Investigation Team (SOCIT) members.

5.1.3 Sexual Crimes Squad

The Sexual Crimes Squad will provide investigation primarily for all Category 1 sexual offences including³:

- rape involving home invasion, life threatening and/or significant serious injuries, or multiple offenders
- rape of a child (under 16 years) by a stranger
- abduction for purpose of sexual penetration by a stranger.

The Sexual Crimes Squad will provide support to the Sexual Offences and Child Abuse Investigation Teams (SOCITs) (and in some cases, regional Criminal Investigation Units) for:

- rape of child (under 16 years) – suspect known
- rape/attempt/assault with intent to rape by a stranger
- indecent acts committed upon a child, elderly or person with a disability that involve a high level of violence or unusual modus operandi
- attempted abduction for purpose of sexual penetration by a stranger.

5.1.4 Sex offender registry and compliance management

The Victoria Police Sex Offenders Registry supports the application of the *Sex Offenders Registration Act 2004*. The aim of the register is to ensure that people convicted of sexual offences against children after 2003 (and other serious sexual offences) are able to be monitored by Victoria Police once they have served their sentence. The term 'sentence' is broadly defined to include custodial and non-custodial sentences.

Victoria Police compliance managers undertake offender risk assessments to determine appropriate monitoring plans.

All Victoria Police members, as a matter of priority, must report to Child Protection any contact between a registered sex offender and a child. To make a report to Child Protection, Victoria Police is to call the relevant Child Protection regional intake phone number and provide the child's name, date of birth, cultural identity, address and primary caregiver's details.

Victoria Police is to provide the offender's name, date of birth, address and the detail of the contact the offender is alleged to be having with the child and the offender's relationship to that child. Victoria Police is to document the details of the report (for example, name of intake worker, information disclosed) and forward the information to the Victoria Police Sex Offenders Registry. In instances where contact with children was reported outside of an initial/annual interview, a receipt should also be issued under section 25 of the Sex Offenders Registration Act.

If Child Protection requires more information about a non-urgent report (such as a Summary of Charges relating to a person's registrable offending) they should be directed to submit their request in writing to the Registrar via the Australian National Child Offender Register (ANCOR) position-based email account: ancor.registrar@police.vic.gov.au

The Victoria Police Sex Offenders Registry is the point of contact for Victoria Police related queries on registered sex offender management. For the Registry's direct phone numbers, child protection practitioners should refer to Advice number 1584, Child Protection Practice Manual.

Note: The Registry's direct phone numbers are not be given out to registered sex offenders. If offenders wish to call the Registry they will need to call the dedicated reporting line: 1800 235 733.

³ Victoria Police members should consult the Accountability Resource Model to ensure that they are familiar with the most current responsibilities of the Sexual Crimes Squad.

5.1.5 Child Protection

Child Protection services are based on the legal framework set out in the Children, Youth and Families Act. The underpinning principle of the Children, Youth and Families Act is that the best interests of the child must always be the paramount consideration. In determining whether any decision or action is in the best interests of the child, the need to protect the child from harm, to protect the child's rights, and to promote the child's development must always be considered.

Child Protection intervention is child centred and family focussed, and is limited to that necessary to secure the safety and wellbeing of the child.

Child Protection has a statutory responsibility under the Children, Youth and Families Act to provide Child Protection services for identified at risk children in Victoria under the age of 17 years or, when a protection order is in place, children under the age of 18 years. Child Protection also accepts reports on unborn children who may be at risk upon birth.

Child Protection intervention occurs when it is assessed that the child has suffered or is likely to suffer from significant harm and that the parent is unable or unwilling to protect the child from that harm. The harm may be a single incident or cumulative in nature.

Where a child is assessed as being at risk within the family, Child Protection will, in the first instance and in accordance with the law, take every reasonable step to enable the child to remain in the care of the family by strengthening the family's capacity to protect that child from harm. In some cases, this may lead to the removal of the offender.

Where, even with support, a child is not safe within the family, Child Protection will exercise its legal mandate and bring the matter before the Children's Court for determination.

Determination by the Children's Court can relate to whether Child Protection has a role in the family, the placement of a child in an alternate living arrangements and/or issuing of a protection order that will determine the legal role Child Protection will have with that child.

Where a child has been placed outside of the care of the parents, Child Protection will work in accordance with the best interests principles to support the child to return to the family when it is assessed it is safe to do so. Where it has been determined that it is no longer in the best interests of the child to pursue the child's return to their family, Child Protection will work towards

an alternative permanent care arrangement or independent living arrangement.

5.1.6 Regional Child Protection service delivery

Child Protection service delivery is organised via a regional structure that covers metropolitan and rural Victoria.

Each region has a regional intake team situated at a designated office to accept reports and act upon them accordingly during 8.45 am to 5.00 pm Monday to Friday for regional intake contact details refer to Appendix 1.

5.1.7 After-Hours Child Protection Emergency Service

The Department of Human Services After-Hours Child Protection Emergency Service operates outside of the core hours given above. After-Hours Child Protection Emergency Service is a crisis service that responds to urgent matters that cannot wait until the next working day. It is not an extension of the daytime activities of Child Protection for children provided in normal office hours.

Victoria Police will notify the After-Hours Child Protection Emergency Service outside normal office hours where a child is considered to be at significant and immediate risk of harm. The After-Hours Child Protection Emergency Service and Victoria Police will discuss the presenting issues and plan a response that may include direct intervention from the After-Hours Child Protection Emergency Service, coordination of a response from other welfare agencies or consultation will occur over the telephone.

Where it is determined by the After-Hours Child Protection Emergency Service that the child is at significant and immediate risk of harm, Child Protection will attend as soon as practicable and assume responsibility for the Child Protection aspects of the situation. If the After-Hours Child Protection Emergency Service decides that an urgent response is not required, it is responsible for forwarding information to the appropriate regional office by the next working day.

**After-Hours Child Protection Emergency Service between 5.00 pm and 8.45 am weekdays
24 hours on weekends and all public holidays.
Phone: 13 12 87**

Note: A priority access telephone line has been established for Victoria Police and hospital emergency departments only, Victoria Police members should refer to their local station for this information.

5.1.8 Placement and Support

Placement and Support is a component of the Child Protection system and works with Department of Human Services funded Community Service Organisations to provide quality support programs for vulnerable families and formal out-of-home care services such as foster care and residential care services.

5.1.9 Child and Family Information, Referral and Support Teams (Child FIRST)

The Department of Human Services funds a range of services in the community designed to strengthen families so that children can develop within a safe physical and emotional environment. Services are based on the principle that normally, the best protection for children is within the family.

Child FIRST is one such service and has been established in every region across Victoria to accept referrals regarding concerns for a child's wellbeing. Child FIRST is an early intervention service that provides support to vulnerable children and their families.

Child FIRST is a clearly visible and accessible community-based intake point into an integrated local service network of family services within a catchment. The primary purpose of Child FIRST is to ensure that vulnerable children and their families are linked effectively into relevant services, thereby reducing the risk of the child requiring a statutory Child Protection response.

Referrals to Child FIRST can be made when there are concerns for a child's wellbeing. Child FIRST offers:

- advice and referral to services in the area
- short-term interventions for families
- the ability to report to Child Protection should concerns regarding safety be assessed.
- provision of information and advice for parents, professionals and community services
- initial needs identification and assessment of underlying risk in consultation with Child Protection and other services
- identification of different service responses for families related to the assessment of needs and underlying risks
- active engagement with the child, and the child's family involving short-term work with children and families prior to allocation to family services
- determination of the priority of a response, and allocation of families to family services, for comprehensive case management to address complex needs.

Child FIRST and Child Protection work closely together to ensure vulnerable children receive the most appropriate service.

Where Victoria Police has a significant concern for the wellbeing of a child, they may refer the matter to Child FIRST. If a Victoria Police member is unsure about a situation, they should discuss the concerns with a supervisor or Child FIRST.

6. MULTIDISCIPLINARY CENTRES

Multidisciplinary centres have been developed to improve responses to sexual offences and child abuse. Child Protection, sexual assault counsellor/advocates and Victoria Police are co-located

within a single site to facilitate a collaborative approach to investigating these allegations and to promote immediate access to sexual assault support services.

7. RESPONDING TO REPORTS ABOUT VULNERABLE CHILDREN

7.1 Protective interveners

For the purposes of the Children, Youth and Families Act, protective interveners are:

- the Secretary
- all members of the police force

(Children, Youth and Families Act s. 181).

A protective intervener must, as soon as practicable after receiving a protective intervention report, investigate, or cause another protective intervener to investigate, the subject-matter of the report in a way that will be in the best interests of the child (s. 205 of the Act).

Under the Children, Youth and Families Act, a protective intervener must not disclose any information contained in the protective intervention report to any person other than another protective intervener who is investigating the subject matter of that report.

7.2 Reporting protective concerns to Child Protection

Section 162 of the Children, Youth and Families Act defines when a child is in need of protection. Where Victoria Police is notified or becomes aware that a child is in need of protection either through a community member or in the course of their duties, Victoria Police must make a report to Child Protection as soon as possible.

The report to Child Protection is to be made prior to Victoria Police commencing their investigation.

7.3 Reporting criminal offences to Victoria Police

Where Child Protection receives a report under section 183 or 184 of the Children, Youth and Families Act, from a source other than Victoria Police, regarding a child in need of protection due to sexual abuse, physical abuse or serious neglect, Child Protection must notify Victoria Police at the point of intake in order to facilitate joint planning of an appropriate response. Victoria Police must be notified prior to Child Protection visiting any parties or directly commencing their investigation.

Victoria Police is responsible for determining an appropriate response to an alleged criminal offence. In all cases, Victoria Police must ensure compliance with the *Victims' Charter Act 2006*.

In instances where the extent of the abuse is unclear, and where Child Protection is intending to visit a residence and has concerns in relation to the safety of a child, they must inform local police of the details of the visit. A Victoria Police supervisor (Sergeant or above) must consider whether Victoria Police attendance is required.

Child Protection and Victoria Police must take care to ensure that they do not make commitments, agreements or arrangements about the likely actions or role of the other agency.

8. MANDATORY REPORTING SECTION 182(1) CHILDREN YOUTH AND FAMILIES ACT

A range of professional groups are listed in the Children, Youth and Families Act section 182(1) as mandatory reporters, however at this time, the only gazetted professionals required to report are:

- all Victoria Police members
- primary and secondary school teachers and principals
- registered medical practitioners (including psychiatrists)
- nurses (including school nurses).

Mandatory reporters must make a report to Child Protection as soon as practicable after forming a belief on reasonable grounds that a child has suffered or is likely to suffer significant harm as a result of physical injury or sexual abuse, and the child's parents are unable or unwilling to protect the child.

Reasonable grounds may exist where:

- a child or young person states that they have been physically or sexually abused
- a child or young person states they know someone who has been physically or sexually abused (sometimes the child may be talking about themselves)
- someone who knows the child or young person such as a relative, friend, acquaintance, or sibling of the child states that the child or young person has been physically or sexually abused
- a child shows signs of being physically or sexually abused, such as a physical injury where there is concern the origin of the injury was non-accidental or insufficiently explained

- you become aware of persistent family violence or parental substance misuse, psychiatric illness or intellectual disability that is impacting on the child or young person's safety, stability or development
- a person whose criminal history leads you to reasonably assume that the child may be placed at risk of physical or sexual abuse through contact with this person.

If any doubt exists about whether a mandatory report should be made to Child Protection, Victoria Police members should contact Child Protection intake and seek advice.

8.1 Failure to report

Failure by mandatory reporters to report a reasonable belief that a child is in need of protection due to physical injury or sexual abuse, is an offence punishable under section 184(1) of the Children, Youth and Families Act and may lead to a conviction and a fine being imposed by a court.

8.2 Non-mandated abuse types

In all situations where Victoria Police members form a belief on reasonable grounds that a child is at risk and in need of protection due to abandonment, parental incapacitation, emotional or physiological harm or risk to their physical development or health and the child's parents are unable or unwilling to protect the child, Victoria Police must consider making a report to Child Protection.

A report to Child Protection should be considered in any of the following circumstances:

- Emotional abuse and ill treatment of a child impacting on the child's stability and healthy development.
- Persistent neglect, poor care, or lack of appropriate supervision, where there is a likelihood of significant harm to the child, or the child's stability and development.
- Persistent family violence or parental substance misuse, psychiatric illness or intellectual disability - where there is a likelihood of significant harm to the child or the child's stability and development.
- Where a child's actions or behaviour may place them at risk of significant harm and the parents are unwilling or unable to protect the child.
- Where a child appears to have been abandoned, or where the child's parents are dead or incapacitated, and no other person is caring properly for the child.

This may include situations where a primary carer of dependent children is in custody and incapable of caring for their child during this period and there is no other suitable person willing or able to care for the child.

If any doubt exists about whether a report should be made to Child Protection, Victoria Police members should contact Child Protection intake and seek advice.

9. REPORT REGARDING A CHILD IN NEED OF THERAPEUTIC TREATMENT

9.1 Report regarding a child in need of therapeutic treatment (section 185 Children, Youth and Families Act)

Where Victoria Police receives information about a child aged between 10 and 14 years (inclusive), Victoria Police may make a report under section 185 of the Children, Youth and Families Act to Child Protection. A child is deemed to be in need of therapeutic treatment if:

- the child is aged between 10 and 14 years (inclusive) and
- the child has exhibited sexually abusive behaviour*.

*As a guide, a child has exhibited sexually abusive behaviour when they have used their power, authority or status to engage another party in sexual activity that is either unwanted or where, due to the nature of the situation, the other party is not capable of giving informed consent (for example: children who are younger or who have a cognitive impairment).

Physical force and/or threats are sometimes involved in sexual abuse. Sexual activity includes exposure, peeping, fondling, masturbation, oral sex, penetration of a vagina or anus using a penis, finger or object, or exposure to pornography.

Whether or not a related criminal prosecution is being considered or conducted should not have any bearing on the making of a section 185 report by Victoria Police.

When Victoria Police makes a section 185 report, a written report outlining the circumstances, together with any relevant material (ie: brief of evidence) should be provided to Child Protection. This will assist Child Protection and the Therapeutic Treatment Board to assess the sexually abusive behaviour to reduce the risk that other children will be victimised and to make certain that the child engaged in the behaviours is afforded treatment via either a voluntary or statutory pathway to treatment.

Child Protection and Victoria Police must at all times be acting in the best interest of the child who has engaged in the behaviours and a therapeutic treatment order assessment by Child Protection can occur regardless of the stage of a criminal investigation. A delay in the provision of

treatment for the child is not in the best interest of that child, and it is clearly preferable that the child commences therapeutic treatment as quickly as possible.

Referrals by Victoria Police direct to a Sexually Abusive Behaviour Treatment Service provider for voluntary treatment of a child should not be made.

9.2 Therapeutic treatment report to Child Protection from a source other than Victoria Police

Where Child Protection receives a report under section 185 of the Children Youth and Families Act regarding a child in need of therapeutic treatment from a source other than Victoria Police, Child Protection must notify Victoria Police at the point of intake in order for Victoria Police to consider a criminal investigation. Child Protection should still proceed with their assessment regarding the child's sexually abusive behaviour to determine the most appropriate therapeutic pathway for treatment and prevent further harm to children.

Where notified, Victoria Police must advise Child Protection within three working days of receipt of the report whether a criminal investigation will commence. If Victoria Police determines that a criminal investigation is required, Child Protection should still proceed with their protective assessment. While each investigation is distinct it is important that both Child Protection and Victoria Police have a clear understanding of each other's roles and actions, this should be done through a joint planning meeting.

9.3 Therapeutic Treatment Board

The Therapeutic Treatment Board (the Board), comprises representatives from the Department of Human Services, Victoria Police, Office of Public Prosecutions and health services. The Board provides advice to Child Protection regarding application for a therapeutic treatment order.

Where Child Protection receives a report under section 185 of the Children, Youth and Families Act from Victoria Police, or a referral from the Children's Court under section 349(2), Child Protection must refer the matter to the Board for

advice prior to any application for a therapeutic treatment order being made.

In all other cases where Child Protection receives a report under section 185 from a source other than Victoria Police, Child Protection may refer the matter to the Board for advice.

Child Protection must consider the advice of the Board in determining what action to take in applying for a therapeutic treatment order.

9.4 A child subject to a therapeutic treatment order re-offends

If Victoria Police receives a report about a child known to be subject to a therapeutic treatment order, Victoria Police must advise Child Protection. In some case this may result in the therapeutic treatment order being revoked.

10. REPORT WHEN A CHILD IS AN ALLEGED OFFENDER

Where Victoria Police becomes aware that an alleged offender of physical and/or sexual abuse is a Child Protection client, they must notify Child Protection without delay so that appropriate action can be taken.

The standard planning and investigation principles will apply in these matters. Issues for investigation include:

- possible physical/sexual abuse of alleged offender
- custody and guardianship responsibilities for young people in departmental care.

11. REPORT WHEN THE CHILD IS AN EXISTING CHILD PROTECTION CLIENT

Victoria Police must advise Child Protection at any time if they are interviewing a child involved with

Child Protection or require the child to appear in court as a victim or witness.

12. REPORT OF QUALITY OF CARE CONCERNS IN OUT-OF-HOME CARE

Out-of-home care is provided to children subject to Child Protection intervention who are unable to reside with their immediate family. Out-of-home care includes kinship care (placement with extended family and/or significant others), home-based care (foster care, therapeutic foster care and adolescent community placement) and residential care (facility based care with paid staff).

Home-based care and residential care are delivered by community service organisations funded by the Department of Human Services.

Quality of care coordinators are employed in each of the Department of Human Services regions to coordinate quality of care investigations. Where

allegations of possible physical abuse, sexual abuse or serious neglect have been made Victoria Police will be advised. A quality of care screening meeting will be arranged by the Department of Human Services with all parties (community service organisation, Child Protection and Victoria Police) to determine the outcome of the report and what actions, and by whom, will be required.

Child Protection, community service organisation staff and Victoria Police are advised to refer to the *Guidelines for responding to quality of care concerns in out-of-home care* for a full description of responsibilities and procedures relating to allegations of possible abuse in care.

13. WHERE A REPORT IS RECEIVED RELATING TO A CHILD PROTECTION EMPLOYEE OR A VICTORIA POLICE MEMBER

In circumstances where Victoria Police receives information that a child is likely to or has been placed at risk due to abuse or neglect and the alleged offender is an employee of the Child Protection, Victoria Police must report the matter to the Office of the Principal Practitioner, Department of Human Services. The Office of the Principal Practitioner can be contacted at Level 9, 50 Lonsdale Street Melbourne 3000 or by telephoning **(03) 9096 9999**.

In circumstances in which Child Protection receives information that a child is likely to or has been placed at risk due to abuse or neglect and the alleged offender is an employee of Victoria Police, the matter must be reported to the Ethical Standards Department of Victoria Police. The Ethical Standards Department can be contacted at Level 2, Tower 4, 637 Flinders Street Docklands 3008, or by telephoning 1300 363 101, or facsimile 9247 3498 or by email at ethical.standards@police.vic.gov.au.

In circumstances in which a Victoria Police member receives information or believes on reasonable grounds that a child has been sexually or physically abused, and that an employee of Victoria Police has engaged in improper conduct or misconduct in relation to the abuse, they must report that activity directly to a sub-officer and ensure that the matter is referred to the Victoria Police Conduct Unit, Ethical Standards Department, Victoria Police.

14. JOINT INVESTIGATIONS

Child Protection and Victoria Police must work together cooperatively and flexibly at all times to manage the protection and safety of vulnerable children. A joint investigation occurs when Victoria Police and Child Protection are engaged simultaneously in discharging their respective responsibilities.

Timelines for conducting criminal investigations and protective investigations are often lengthy due to the complexity involved in undertaking such investigations. However, Child Protection and Victoria Police will endeavour to conduct their respective investigations in a timely manner, taking into consideration the safety and wellbeing of the child and the parents' right to a timely resolution of the matter.

14.1 Investigation planning

Child protection and Victoria Police must have contact with each other to plan the joint investigation. Such planning ensures a quality criminal and protective response that takes into account the best interests of the child and the collection and presentation of the best available evidence.

The effectiveness of the joint response between Child Protection and Victoria Police is critical in ensuring that the best interests of the child are met. The importance of co-ordinating, planning and information sharing in relation to a joint investigation cannot be understated and should occur promptly.

Planning between Child Protection and Victoria Police for the investigation and interviewing of the child should be based on the principles of:

- Maximising the child's safety and wellbeing.
- Maximising the opportunities for collection of evidence.
- Minimising the number of times a child is interviewed.

Planning should occur throughout the investigative process. Planning requires flexibility to meet the changing developments during the investigation. It can be undertaken over the phone or via a meeting, depending on the urgency and complexity of the situation. It is important for both agencies to take into account relevant protocols with other agencies when planning an investigation. As part of joint investigation planning, Victoria Police and Child Protection must give consideration to any third parties and relevant service agencies (including schools and child care agencies) that may need to be interviewed.

A record of the outcome of the planning process and decisions made must be recorded on the relevant case file and/or investigation management systems of Child Protection and Victoria Police.

14.2 Planning considerations for Child Protection and Victoria Police

The following guide provides a list of matters that should be considered in the joint investigation plan.

14.2.1 Interview

- Who will be interviewed and in what order.
- Who will lead the interviews.
- Person(s) to be interviewed.
- When the alleged offending parent /non-offending parent should be interviewed.
- Whether parents or caregivers will be interviewed separately – for example where family violence is an issue.
- Whether the non-offending parent will be informed prior to the interview of the child or after the interview of the child.
- Who will take the record of interview.
- Agreement at termination of interview (to prevent either party jeopardising the other's role).
- Appropriateness of uniform or plain clothes for Victoria Police.

14.2.2 Reported concerns

- Nature of abuse/maltreatment reported (including the effects of cumulative harm*).
- Previous Child Protection or Victoria Police involvement with the family as it relates to the reported concerns and cumulative harm considerations.
- What information is required and from whom can it be obtained.

14.2.3 Child

- The child's chronological age and developmental stage the child has reached, taking into account the child's cognitive, linguistic, emotional, social, sexual, physical and other development. Whether the child has a disability or mental health need and what this means in context of an interview and support during or post the interview by other professionals.
- Child's current state of mind.
- Presence of special factors arising from the child's cultural, religious background or non-English speaking background (a child should be interviewed in his or her first language except in the most exceptional circumstances with an independent interpreter).
- Support person for the child during the interview.

14.2.4 Venue

- Interviews may occur in the family home, or other location, as necessary. When interviewing on premises of Department of Education and Early Childhood Development/Children's Services, relevant protocols must be adhered to.

14.2.5 Timing

- The time of day that will promote the best outcome, taking into account the child's normal routine and length of interviews (i.e. a number of parties requiring interview may lead you to decide that the interviews need to occur early in the morning).

14.2.6 Further evidence gathering

- Availability of visual and audio recorded evidence facilities (if applicable).
- Visual and audio recorded evidence interview.
- Possibility of recording visual and audio recorded evidence at a later date.
- Assessment of need and timing of a forensic medical examination or medical examination.
- For Child Protection there is a requirement to conduct a visual examination of the child if injuries are apparent.

*The grounds for statutory intervention when a child is in need of protection outlined in section 162(1)(c)-(f) of the Children, Youth and Families Act do not change. Cumulative harm may be a factor in any one ground (such as failure to provide basic care) or a combination of different grounds (such as physical injury and emotional harm) where the prolonged and repeated experience of these circumstances or events have or are likely to cause the child significant harm. The focus on identifying and responding to cumulative harm is likely to have a greater impact in responses to cases of 'omission' (neglect) that may have previously have been considered as low risk when considered episodically.

NOTE: This list does not necessarily cover every aspect that may arise with an investigation and investigators should not limit themselves only to the matters on this list. Child protection practitioners should familiarise themselves with the practice and policy advice relating to "planning and investigation", Child Protection Practice Manual.

14.3 Commencement and timing of investigations

Negotiation between Child Protection and Victoria Police regarding the commencement of the investigation should be based on the principle that the child's safety is paramount. Appropriate planning is necessary to reflect this objective. When a time frame and investigation plan have been jointly agreed to, neither agency should deviate from this without consultation with the other agency.

If the case is urgent and one agency is unable to attend the available agency may attend alone. Consultation must always occur prior to either agency attending alone. Liaison between the services must occur following any visit undertaken by one agency without the other to determine whether the other agency is required to attend to address matters of child safety and wellbeing or criminal matters.

14.4 Communication throughout the investigation

Ongoing liaison between Child Protection and Victoria Police must occur throughout the investigative process. Each organisation must keep each other informed of their current and proposed future actions in relation to the Child Protection and criminal matters.

If after a joint investigation criminal issues are not indicated, Victoria Police involvement will ordinarily come to an end. In some cases, the particular circumstances of an investigation may necessitate Victoria Police remaining involved in some capacity, even if only advisory.

Sexual Offences and Child Abuse Investigation Team (SOCIT) members must always endeavour to be involved in any joint investigation in the first instance. If a Sexual Offences and Child Abuse Investigation Team (SOCIT) member is not available and the matter is urgent, Victoria Police general duties members may be involved in a joint investigation.

14.5 Attendance throughout the investigation process

If at any point during the investigation process Victoria Police decides not to proceed with further enquires/interviews this intent must be communicated to Child Protection and the decision recorded by both parties.

14.6 Stages of an effective investigation

14.6.1 Interview of non-offending parent(s) or caregiver(s)

It is important not to make pre-emptive assumptions about a non-offending parent. Where a parent is not subject to investigation by Victoria Police an assessment of their capacity to protect and support the child is required. Their role should be the subject of discussion between Victoria Police and Child Protection as part of the joint investigation plan to determine whether they should be advised prior to the interview of their child, attend the interview with their child or advised following the interview of their child.

Prior to interviewing the child, the non-offending parent should be informed of the proposed interview except in circumstances where:

- it is not possible to identify a non-offending parent
- there are reasonable grounds for believing that the non-offending parent may notify or collude with the alleged offender and thereby compromise the interview process
- it would be detrimental to the criminal or protective investigation.

If the parent has not been present for the interview with their child and a joint investigation is to continue, Child Protection and Victoria Police should both interview the non-offending parent where practicable. The interview should be recorded by Victoria Police as a signed statement, if appropriate.

If Victoria Police is not present during this interview Child Protection should brief Victoria Police on the outcome. Additional information subsequently obtained by Child Protection concerning alleged abuse of a criminal nature is to be immediately reported to Victoria Police and documented. A signed statement by the relevant child protection practitioner is to be provided within seven days, if requested by Victoria Police.

Additional information subsequently obtained by Victoria Police concerning the child's safety or wellbeing is to be immediately reported to Child Protection and documented.

14.6.2 Interviewing the child

To reduce the need for a child to be subject to multiple interviews, interviews should involve one Victoria Police officer and one child protection practitioner where possible. The investigation plan should determine whether the child protection practitioner or the Victoria Police member will lead the interview. The decision of lead interviewer should be based on the best interests of the child, circumstances of the particular case and the experience, knowledge and skill level (including any specialist training) of the interviewer.

For example, if by reason of an ongoing relationship or some other factor, a child protection practitioner is deemed to have a better chance of engaging with a child and eliciting a disclosure, then they should be afforded every opportunity to do so and lead the interview process if necessary. If a disclosure is to lead to a visual and audio recorded evidence, then Victoria Police members must be introduced into the

relationship with the child. It is preferable to have a disclosure that can be investigated by Victoria Police, regardless of who obtains it, rather than no disclosure at all.

There are three main stages when interviewing a child:

- Introduction and rapport building.
- Free narrative opportunity and questioning.
- Termination and closure.

The interview should be accurately and fully recorded in writing by one party and the accuracy of record confirmed by both parties. The notes are then considered common and will be made available to both Victoria Police and Child Protection and can be used, by either party, in any subsequent legal proceedings.

In some circumstances a child may not wish to be the subject of a Victoria Police interview and investigation. Information obtained by a reporter, who may be the child, may provide compelling information to support that the child has been the subject of abuse. Child protection must report this information to Victoria Police as soon as possible and Victoria Police must undertake further investigation, despite the lack of a formal statement by the child.

14.6.3 Interview of siblings and other children in the household

As part of joint investigation planning, consideration must be given to other children who reside or regularly stay in the household where the abuse is alleged to have occurred. This may include siblings or other children in the care of either parent or caregiver. Consideration must also be given to other children in the care of the alleged offender or to whom the offender has contact.

Where a child makes a disclosure to Victoria Police, the same processes apply to the role of Victoria Police and Child Protection in taking a statement of complaint and visual and audio recorded evidence procedures.

14.6.4 Interviewing other parties- witnesses/ evidence

An investigation may identify other information holders relevant to the alleged abuse.

Discussion needs to occur between Child Protection and Victoria Police regarding who will take the lead in pursuing further information. For example, if the investigation indicates that a third party may have witnessed the assault or have evidence of the assault (eg: photos), it would be appropriate for Victoria Police to pursue this. If the investigation indicates that a third party may have information on a parent's behaviours such as consumption of alcohol which relates to the reported concerns, it would be appropriate for Child Protection to pursue this.

14.6.5 Interview of the alleged offender

Child Protection will have contact with the alleged offender as part of the protective investigation.

Contact with the alleged offender should be included in the joint investigation plan. Discussions with Victoria Police must occur regarding how contact by Child Protection with the alleged offender can be managed without jeopardising the criminal investigation and with consideration to worker safety.

When Victoria Police is interviewing the alleged offender as part of a criminal investigation, this will not ordinarily involve Child Protection.

Victoria Police must keep Child Protection informed regarding the progress of the criminal investigation, including compliance with bail conditions where this has an impact on the protective investigation.

14.6.6 Forensic and medical evaluations

The welfare of the child or young person is paramount when planning either a medical or forensic examination. Child Protection and Victoria Police must agree on the type of assessment required to ensure that the examination undertaken is appropriate and to avoid multiple examinations of the child.

There is a difference between a forensic examination and a medical examination.

Medical assessment

A medical examination is performed to identify and meet the general medical requirements of the child. Most doctors are able to perform medical examinations. The medical assessment is arranged by Child Protection.

Forensic assessment

A forensic examination is performed to gather information and evidence for criminal or other court proceedings, including a protection application in the Children's Court. Most paediatricians and doctors who are trained and skilled in evaluating child abuse are able to perform combined forensic and medical examinations. All Victorian Forensic Paediatric Medical Service doctors can provide forensic medical evaluations. The forensic assessment is arranged by Victoria Police.

A forensic examination may assist in identifying type and nature of injury, medical opinion as to whether the injury is accidental or non accidental, possible cause of injury and evidence collection. The timing and the need for a forensic examination needs to consider a range of factors including:

- child's age, stage of development
- the alleged abuse
- disclosure by the child, or other party
- any observable injury to the child of unknown or questionable origin
- frequency and recentness of the abuse.
- the likelihood of an injury (not observable) or evidence being present based on the investigation process
- role of the parent(s).

It is important to ensure that the absence of a disclosure or visible injury does not preclude a forensic assessment being required. This is of particular consideration for concerns regarding sexual abuse and physical abuse where injury and or evidence may be unable to be observed.

Cases where the type of assessment is unclear

Both Child Protection and Victoria Police should consult with the Victorian Forensic Paediatric Medical Service to assist in determining the type of assessment required and arrangements for a forensic assessment. In cases where there are no clear criminal concerns present, but protective concerns exist, Child Protection following consultation with the Victorian Forensic Paediatric Medical Service may still pursue a forensic assessment.

Child Protection should inform Victoria Police of the outcome of any consultation, and any information arising from the forensic or medical assessment.

14.6.7 Victorian Forensic Paediatric Medical Service

The Victorian Forensic Paediatric Medical Service is a state-wide coordinated medical service providing assessments and care for abused, assaulted and neglected children.

The service provides:

- 24 hour access to medical expertise for the evaluation of all types of suspected child abuse including physical injuries, neglect, child sexual abuse and paediatric evaluation of children at risk of child abuse and neglect
- 24 hour telephone advice and consultation.

Where Victoria Police or Child Protection require a forensic medical examination between Monday and Friday during business hours, requests for service must be directed to the Victorian Forensic Paediatric Medical Service in **Metropolitan Melbourne** on **1300 66 11 42** or in **regional** areas to a local doctor who is authorised to provide a service to the Victorian Forensic Paediatric Medical Service.

Alternatively, direct contact may be made with the nurse unit managers at:

Royal Children's Hospital: (03) 9345 4299

Monash Medical Centre: (03) 9594 2155

The **1300 66 11 42** number is available to Victoria Police members and Child Protection staff from all regions, for advice and guidance as to the timing, location and need for a forensic examination.

The Victorian Forensic Paediatric Medical Service' after hours service occurs through the Melbourne Magistrates' After Hours Service. The **1300 66 11 42** number diverts to this service outside business hours.

The direct contact number for this service is **(03) 9628 7899**.

This service covers the following periods:

- weekdays from 6 pm to 8 am
- weekends from Saturday at 8 am until 8 am on Monday (48 hours)
- public holidays from 8 am until 8 am (24 hours).

Where a Victorian Forensic Paediatric Medical Service medical practitioner is not available for a service, the Victorian Forensic Paediatric Medical Service will arrange for advice to be given by an appropriate medical practitioner and recommend a suitable local practitioner to provide the service required.

Additional information about the services offered by the Victorian Forensic Paediatric Medical Service is available at www.vfpms.org.au.

Requests for copies of photographs may be made via this site.

14.6.8 Consent for an examination

Prior to a medical or forensic examination of a child being conducted, consent should be provided by the child's parents wherever possible. If the child is of an age and level of maturity to do so, the consent may be provided by the child. All decisions and actions being made for children must be made with the child's best interests in mind. Whenever a child requires a medical examination, treatment, surgery or admission to hospital, parents will in most instances be informed, consulted and involved as appropriate and required by the law.

Consent for a medical or forensic examination of a child who has been taken into safe custody, or is subject to an interim accommodation order placing him or her out of parental care, a custody to Secretary order, a guardianship to Secretary order, a long-term guardianship to Secretary order, or a therapeutic treatment (placement) order, can be provided by a child protection case planning officer.

The child's doctor will obtain legal and informed consent by discussing the procedure with, and obtaining consent directly from, the child's parent or guardian, or from Child Protection.

The medical examination report must be made available to both Victoria Police and Child Protection.

14.6.9 Statement of complaint

As part of the criminal investigation, Victoria Police will obtain a formal statement of complaint from the child. This may be in writing or by way of visual and audio recorded evidence. This may occur during the initial joint interview or separately at another time. If a written statement of complaint is being taken and the child protection practitioner is present, they should not question the child or initiate discussion with the child while the statement of complaint is being taken, unless requested to do so by Victoria Police. While counselling and support should be offered to the child, disruption to the flow of the interview should be avoided.

In some circumstances a child may not wish to be the subject of a Victoria Police interview and investigation. Information obtained by a reporter, or other witness may provide compelling information to support that the child has been the subject of abuse. Child Protection must report this information to Victoria Police as soon as possible and Victoria Police must undertake further investigation, despite the lack of a formal statement by the child.

14.6.10 Visual and audio recorded evidence

Visual and audio recorded evidence recordings are made pursuant to Division 5, Part 8.2 of the Criminal Procedure Act 2009.

In arranging the timing of the visual and audio recorded evidence interview the safety and wellbeing of the child should be given due consideration by both parties.

Child protection practitioners should be present to view the interview and take notes from the monitoring room. Under current legislation, child protection practitioners are not permitted to view the visual and audio recorded evidence after the interview is completed. A subpoena would be necessary to obtain a copy of the visual and audio recorded evidence for the purpose of a protection application or related purpose. The legislation does not allow a child protection practitioner to ask any questions during the recording of a visual and audio recorded evidence statement.

Any questions put to the witness by a child protection practitioner must be at the conclusion of the formal interview and off camera. These questions should be fully documented.

If Victoria Police charges a person, a transcript of the recording will be made. Child Protection may request a copy of the transcript for the purpose of the Child Protection investigation and any subsequent court proceedings. Where Child Protection establishes a need for such information, Victoria Police may provide Child Protection with a copy of any transcript made for criminal proceedings.

If the interview is conducted under visual and audio recorded evidence procedures, the child protection practitioner should be encouraged to raise any matters with the interviewing Victoria Police members during breaks in the interview.

15. ACTIONS ARISING FROM A CRIMINAL AND PROTECTIVE INVESTIGATION

Child Protection and Victoria Police must consult following the completion of a criminal and protective investigation to ensure that any actions and responses by both organisations are fully understood and are considered in future planning for the child. If any concerns are held regarding an organisation regarding the actions taken or not taken by the other, normal dispute resolution mechanisms apply (refer to section 22. Dispute Resolution).

15.1 Removal of offender

The most important consideration at every stage of any joint investigation must be the safety of the child. Decisions regarding the protection of the child are the responsibility of Child Protection, but must be made in consultation with Victoria Police. Action by Victoria Police in relation to criminal matters, particularly bail hearings, will be relevant to the protection of the child. A collaborative approach to the protection of the child is therefore essential.

Where it is alleged that abuse has occurred within a family and separation is needed to ensure safety, every effort should be made to remove the alleged offender from the home rather than the child (please refer to Family Violence Guidelines in the Victoria Police Manual). This may be achieved by:

- an intervention order
- bail conditions
- an interim accommodation order with conditions.

In circumstances where Victoria Police does not have grounds for removing the offender from the home, the safety of the child must be considered. Removal of the child from the home may be appropriate in these circumstances to ensure ongoing safety.

15.2 Issuing a protection application

Child Protection and Victoria Police are authorised by legislation to issue a protection application and take a child into safe custody.

In practice, this is the primary responsibility of Child Protection. Victoria Police will only take this action when there is an emergency response required or the child is at imminent risk of significant harm.

Under section 241 and 242 of the Children, Youth and Families Act, if a protective intervener takes a child in need of protection into safe custody, with or without warrant, then a protective intervener must as soon as practicable and in any event within one working day bring the matter before the Children's Court for hearing of the application. The child must remain in the custody of a protective intervener until the hearing of the application.

15.3 Bail justice hearing

When a child is taken into safe custody by a protective intervener and the matter is unable to be brought before the Children's Court within 24 hours, an out of sessions court hearing before a bail justice must occur (s. 242(3) Children, Youth and Families Act). Families must be informed of their right to appear before a bail justice for an interim accommodation order hearing if their child is removed.

An interim accommodation order hearing must be held when the intention is to place a child in a secure welfare service following the issuing of a protection application or breach of a protection order.

If Victoria Police is involved in relation to criminal matters, there is a need for coordination between Child Protection and Victoria Police to ensure sufficient evidence for interim accommodation order hearings.

Child Protection will make every attempt not to release information in an interim accommodation order hearing that will detrimentally affect Victoria Police proceedings while taking into account the Children, Youth and Families Act that directs that certain information about the protection application must be provided to parents and children and the requirement that questions asked of them whilst they are giving evidence must be answered.

Evidence given at an interim accommodation order hearing must be directed at securing the safest outcome for the child.

15.4 Decisions arising from Victoria Police investigation

The following shall apply in relation to decisions arising from a Victoria Police investigation:

- The decision to lay criminal charges is determined by Victoria Police and will depend on the outcome of the criminal investigation.
- Victoria Police will inform the parties of the outcome of the Victoria Police investigation (in compliance with the *Victims' Charter Act 2006*) in consultation with Child Protection. This will be done in the presence of the child's parent, guardian or independent third person (carer).
- Irrespective of the outcome of any criminal investigation by Victoria Police, Child Protection will undertake its own protective investigation to determine any further action required.

15.5 Offences under the Children, Youth and Families Act

- Offence to fail to protect a child from harm (s. 493(1))
- Offence to leave a child unattended (s. 494(1))
- Offence to counsel or induce child to be absent without lawful authority etc. (s. 496).

Under the above sections of the Children, Youth and Families Act, before proceeding with charges against parents for child abuse and neglect, Victoria Police is required to consult with the Secretary of the Department of Human Services (Child Protection).

Accordingly, the Secretary's function under sections 493, 494 and 496(3), has been delegated to the manager, Child Protection in the regions. Procedures to be followed are:

- When making a charge under sections 493, 494 or 496, Victoria Police will forward a brief report of the circumstances to the appropriate manager, Child Protection.
- The manager, Child Protection will conduct an investigation of the ramifications for the child and family of the charge, and reply in writing to Victoria Police within 14 days indicating their opinion regarding the prosecution. The Victoria Police report is to remain confidential and is not to be copied or reproduced.

The decision to prosecute rests with Victoria Police.

16. FAMILY VIOLENCE

The Victoria Police response to an investigation of family violence is governed by the *Code of Practice for the Investigation of Family Violence* [the Code of Practice], applicable legislation and the Victoria Police Manual. Victoria Police action will be consistent with the Victoria Police Code of Ethics and Code of Conduct.

The aims of the Code of Practice are to:

- increase the level of safety for all victims of family violence, particularly women and children
- provide early intervention and disruption to break the cycle of family violence
- hold offenders of family violence accountable for their offending by laying criminal charges where appropriate, including for contraventions of family violence intervention orders and family violence safety notices; and by increasing successful prosecutions
- minimise trauma experienced by families during the process of Victoria Police intervention
- support affected family members to stay safely in their own homes where it is their wish to do so
- encourage reporting of incidents of family violence
- achieve good practice through an appropriate, consistent, transparent and accountable response to and investigation of family violence
- in partnership with other agencies, government and non-government, support an integrated response to family violence.

Victoria Police has three main functions in responding to family violence:

- Provide safety and support to those involved.
- Identify and investigate incidents of family violence and prosecute persons accused of criminal offences arising from family violence.
- Assist in the prevention and deterrence of family violence in the community by responding to family violence appropriately.

Victoria Police members will make an assessment of risk for any child or young person who is present, has witnessed or has been affected by an incident of family violence. Action taken may include laying criminal charges, applying for a family violence intervention orders, or making formal referrals to specialised family violence services.

16.1 Intervention orders

Children's needs may be quite different from those of their parent. Therefore, Victoria Police will assess the best interests of children independently of those of a parent seeking an intervention order.

When a child has been physically or sexually abused by a family member, Child Protection will be responsible and may make an application for a protection order under the Children, Youth and Families Act. This application will form part of the overall case management of the child and the family.

Victoria Police may consider the need to apply for an intervention order on behalf of the child and this decision should be made in consultation with Child Protection.

In family violence cases, where the non-offending parent is acting protectively, Child Protection may not consider it necessary to apply for a protection order under the Children, Youth and Families Act. However, in these cases, Victoria Police should still conduct a risk assessment and consider applying for an intervention order on behalf of children if the children are unable to be included on the application for the parent and there are concerns for their safety and welfare. In this case, Victoria Police members should consult with Child Protection to ensure that these actions are incorporated in the overall case management of the child and/or family and where appropriate, request that Child Protection support the Victoria Police application. Members should refer to the appropriate sections in the most recent edition of the *Code of Practice for the Investigation of Family Violence*.

16.2 Report/referral where the child is the alleged offender of family violence

Under the Family Violence Protection Act the court has the ability to make a family violence intervention order against a respondent who is a child. The court may exclude a child from the family residence, or other place, as a condition of the family violence intervention order if it is satisfied that the child respondent will have appropriate alternative accommodation and care and supervision.

It is likely that Child Protection may have relevant information required by Victoria Police to assist in the process of identifying suitable accommodation and care for the child. In order to facilitate the most appropriate response to a child respondent, Victoria Police and Child Protection should liaise to ascertain the suitability of alternative accommodation, care and supervision for the child prior to a Victoria Police member applying for a family violence intervention order. Should the family violence incident involve both an adult offender and a child offender, Victoria Police members will need to consider the best interests principles of the Children, Youth and Families Act when deciding if one, or both, of the offenders should be excluded from the home.

16.2.1 Guidelines for exclusion process

Applying for a family violence intervention order

Victoria Police determines that it is necessary to apply for a family violence intervention order against a child respondent, with an exclusion condition, to protect an affected family member and/or other family member(s).

Victoria Police will consult with Child Protection who will inform Victoria Police whether the child is known to, or is a current client of, Child Protection, and discuss the suitability of proposed alternative accommodation, care and supervision options.

Victoria Police will make enquiries with the respondent's family and friends about suitable accommodation options.

Victoria Police will advise the court of the outcomes of any consultation with Child Protection about proposed accommodation, care and supervision options.

Victoria Police will provide the court with contact details of the child protection practitioner with whom they have consulted, to enable the magistrate to seek further information and/or advice if required.

Contacting Child Protection

During business hours, Victoria Police will phone the local Child Protection intake unit. After-hours, Victoria Police will phone the After Hours Child Protection Emergency Service priority access line.

Victoria Police responsibilities

Victoria Police will contact Child Protection by phone for all applications for a family violence intervention order with an exclusion clause against a child respondent. Victoria Police will fax or email a Family Violence Risk Assessment and Management Report (VP Form L17) to the regional Child Protection intake service.

All decisions to apply for a family violence intervention order against a child including any request for an exclusion condition will rest with Victoria Police.

If agreement cannot be reached between Victoria Police and Child Protection in relation to the suitability of excluding a child respondent from a family residence, then each party has the right to represent their view to the magistrate who will hear the application.

Child Protection responsibilities

The information provided by Victoria Police by phone will be treated as a report under the Children, Youth and Families Act unless it relates to an existing Child Protection case, in which case it will be recorded on the client file as a case note or a new report.

Child Protection will assist Victoria Police by providing all relevant information to aid the identification of suitable arrangements for the care, supervision and accommodation of the child respondent.

Child Protection will inform Victoria Police of any existing Children's Court order and/or placement, so that Victoria Police can consider this as part of their risk assessment.

Child Protection will identify any risk and protective factors and decide if the child respondent or any other child in the residence is in need of protection or whether other intervention is required to ensure the child's wellbeing.

If the child respondent is a current client of Child Protection, Child Protection will review the status of any protection orders and/or court ordered placements. Child Protection will be responsible for any subsequent legal action, including the possibility of having to vary or breach a protection order if it is inconsistent with the exclusion condition.

Child Protection will inform Victoria Police of the outcome of the report.

16.3 Family violence safety notices

A family violence safety notice cannot be used when the respondent is a child.

The Family Violence Protection Act empowers Victoria Police to issue family violence safety notices. These notices are for use outside court hours (between 5 pm and 9 am on weekdays, and on Saturdays, Sundays and public holidays) and provides Victoria Police with an additional tool to ensure that immediate protection is available when Victoria Police respond to an incident. A family violence safety notice may include similar conditions to an interim family violence intervention order. Section 24(b) of the Family Violence Protection Act allows Victoria Police to apply for a family violence safety notice if they have reasonable grounds to suspect that the respondent is an adult who is not cognitively impaired. The family violence safety notice is valid for 72 hours.

The application may be made by the Victoria Police officer who responded in person to the family violence incident, to another Victoria Police officer who is of the rank of a sergeant or higher. The Victoria Police officer who receives the application may issue a family violence safety notice if they believe on reasonable grounds that there is no family violence intervention order in place and that the notice is necessary to ensure the safety of the affected family member or his or her children, or to preserve any property of the affected family member.

The family violence safety notice is taken to be the application for a family violence intervention order by Victoria Police for the affected family member against the respondent. Where children are present at the family violence incident, it is likely that they will be included on the family violence safety notice and, as such, on the application for the family violence intervention order. The notice will begin when it is served on the respondent and will end when either the 72 hours expires, the court refuses to make a family violence intervention order or, if the court makes a family violence intervention order, when the family violence intervention order is served on the respondent.

Child protection practitioners should refer to Practice Advice number 1578 – 'Family Violence Intervention Orders and Personal Safety Exclusion Orders – child respondent exclusion condition' for further guidance regarding Department of Human Services' practice standards.

17. SEARCH WARRANTS

A search warrant is to be sought when a child is:

- at risk of significant harm
- removal by Victoria Police is the only viable option to ensure the child's safety.

Child Protection should ensure that their local Sexual Offences and Child Abuse Investigation Team (SOCIT) unit or uniform Victoria Police are updated as soon as practicable as to the status of a case that may require an application for a search warrant. This will ensure that both agencies are able to better plan for the issue and execution of such a warrant including: risk assessment, timing, resources, threat level and transportation.

Child Protection should give Victoria Police as much notice as possible of the execution of a search warrant, to enable effective planning of the Victoria Police response.

17.1 Children's Court search warrants

A magistrate may issue a Family Division Children's Court search warrant under the following sections of the Children, Youth and Families Act:

- 237(1), relating to a temporary assessment order application
- 241(1)(b), relating to taking a child into safe custody for the purpose of a protection application
- 243(3), relating to the issue of a protection application by notice
- 247(1), relating to a therapeutic treatment order application
- 261(1), relating to an irreconcilable difference application
- 268(5)(b), relating to variation of an interim accommodation order
- 269(3)(b), relating to the breach of an interim accommodation order
- 270(5)(b), relating to an application for a new interim accommodation order
- 291(4)(b), relating to a interim protection order hearing
- 313(b), relating to the breach of a protection order

- 314(2), relating to the breach of a protection order without notice
- 598(1), relating to circumstances where a child may be taken into safe custody.

A Family Division Children's Court search warrant authorises all members of Victoria Police:

- to break, enter and search any place where the person named or described in the warrant is suspected to be
- to take the person into safe custody
- to bring the person before a bail justice or the court as soon as practicable to be dealt with according to the law
- to release the person on an interim accommodation order in accordance with the endorsement on the warrant.

In most instances, the child or young person taken into safe custody via a warrant will be taken for a hearing before a bail justice or magistrate. Section 598 warrants require the executing member of Victoria Police to take the child to the place specified in the warrant or, if no place is specified, to the place nominated by Child Protection.

It is Child Protection policy that an appropriate address be specified in section 598 warrants whenever possible to enable Victoria Police to return the young person to that address upon execution of the warrant. Child protection practitioners may refer to Advice number 1358 – Children's Court search warrants.

17.2 Temporary assessment orders

If Child Protection assess that a child is, or is likely to be, in need of protection, and have assessed that an investigation of the protective concerns cannot properly proceed for reasons including a lack of parental obstruction, Child Protection may seek a temporary assessment order under sections 228 or 229. A temporary assessment order should only be considered as a last resort, when the information sought cannot be obtained without an order being made.

Applications may be made with notice, or without notice, if there are concerns that a family could abscond, or there is information that evidence could be lost if notice were given.

Under section 237 Child Protection may apply for a warrant authorising Victoria Police to use reasonable force to enter any premises where a child to whom the temporary assessment order relates is believed to be located. They are authorised to search for and apprehend the child, and bring the child to the Secretary to enable the Secretary to exercise their powers under the temporary assessment order.

NOTE: The search warrant is executed only when the member of Victoria Police enters the premises where the child is actually located. On executing a search warrant, the member of Victoria Police executing the warrant must announce that they are authorised by the warrant to enter the place, and if the member of Victoria Police has been unable to obtain unforced entry, the member of Victoria Police must give any person at the place an opportunity to allow entry to the place before using force.

A member of Victoria Police need not comply with the above if they believe, on reasonable grounds, that immediate entry to the place is required to ensure the safety of any person or that the effective execution of the search warrant is not frustrated.

Unless executed earlier, a search warrant issued under this section remains in force for the duration of the temporary assessment order.

17.3 Interstate warrants

The *Service and Execution of Process Act 1992* is a Commonwealth Act which enables, amongst other things, warrants from one state to be executed in another state. If a warrant is executed interstate, it must be executed in accordance with the *Service and Execution of Process Act*. The *Service and Execution of Process Act* addresses issues such as who can execute the warrant, taking the apprehended person before the court, and advice on the orders that the court can then make.

Warrant is defined in section 3 of the *Service and Execution of Process Act* to include 'a process issued by a court ... in accordance with a law of a State ... that authorises the apprehension of a person.'

A person who is named in a Child Protection warrant issued in a state may be apprehended in another state, if that person is not in prison (s. 82 *Children, Youth and Families Act*).

17.4 Issuing of a warrant

All Family Division Children's Court search warrants that are issued will be forwarded via facsimile by the court to the Victoria Police Record Services Division for information and recording.

When the warrant is required to be executed, the Victoria Police member responsible will contact the Record Services Division who will send the warrant to the Victoria Police member via facsimile.

17.5 Warrant execution planning

The priority in the planning and execution of warrants prioritises the safety, wellbeing and best interests of the child.

To facilitate planning, Child Protection will contact the local Sexual Offences and Child Abuse Investigation Team (SOCIT) or the Victoria Police station nearest the location where the warrant is to be executed.

Child Protection will discuss with the respective Victoria Police member the execution of the warrant including:

- procedures to be followed in executing the warrant
- the most appropriate time to execute the warrant
- location to meet with Child Protection after execution of the warrant
- arrangements for court hearing or out of sessions court (bail justice) hearing
- any special requirements regarding placement (s. 241 *Children, Youth and Families Act*).

Where possible, Child Protection and Victoria Police are to reach agreement in relation to the aspects outlined above.

Responsibility for execution of the warrant lies with Victoria Police. All searches conducted by Victoria Police must be approved by an officer, and must be documented, planned and recorded as per the Victoria Police Manual. The power of entry granted to Victoria Police under the warrant authorises Victoria Police to enter a property, it does not authorise them to invite the child protection practitioner to enter without the permission of the occupier.

When the whereabouts of a child is unknown by Child Protection (usually in the case of section 241 warrants, Children, Youth and Families Act) and Victoria Police come into contact with or apprehend the child and execute the warrant, they must contact Child Protection to arrange return of the child to placement.

17.6 Procedure following execution

The executed warrant will be endorsed by the Victoria Police member who will be responsible for returning the warrant to the court of issue. The Victoria Police member will also be responsible for advising the Record Services Division, in writing, that the warrant has been executed.

17.7 Unexecuted warrants

If a warrant is not executed, the Victoria Police member in possession of the warrant must comply with current Victoria Police operating procedures.

The Record Services Division will only hold unexecuted warrants until either the warrant is executed or the Record Services Division are advised by Child Protection that the warrant is cancelled.

If a child subject to a section 598 warrant returns to his or her placement voluntarily, Child Protection must advise the Record Services Division in writing as soon as possible to arrange for the warrant to be returned to the court of issue for cancellation.

18. MISSING PERSONS: CHILD PROTECTION CLIENTS MISSING FROM PLACEMENT

18.1 Missing persons report

A missing persons report is the mechanism through which a Victoria Police investigation is initiated in relation to concerns for a person who is missing. Victoria Police must conduct an investigation into any report of a missing person that meets the criteria below.

A missing person is considered by Victoria Police to be:

- any person reported to Victoria Police whose whereabouts are unknown
- there are genuine fears for the safety or concern for the welfare of that person, including any person from an institution (not including a prison).

In the case of a child or young person who is missing from placement, the existence of a Children's Court search warrant does not replace the requirement for Victoria Police to accept a missing persons report where the reporting criteria are met.

A missing persons report should only be made to Victoria Police by Child Protection or a community service organisation when the missing persons criteria are met; that is, where the child's whereabouts are unknown, and there is a genuine fear for the child's safety or wellbeing. A child's age or vulnerability may put a child into this category.

Where absconding behaviours are part of a regular pattern of behaviour, for example, where a child usually absconds from his or her placement and returns to placement after a short period of time, discussion should occur by Child Protection with a Child Protection supervisor to develop an appropriate response plan for this behaviour, including consideration of when a missing persons report should be made.

The decision to report a child missing to Victoria Police is based on the risk assessment undertaken by Child Protection or the community service organisation in relation to the child concerned. Victoria Police must take a missing persons report in respect of every child reported as missing.

18.2 Action by Child Protection or a community service organisation

Where a child for whom Child Protection has responsibility is missing, and the child's whereabouts are unknown, and Child Protection holds a genuine concern for the child's safety or wellbeing, it is the responsibility of Child Protection to ensure that a missing persons report is made to Victoria Police. If the missing child is residing in out-of-home-care, it is the responsibility of the community service organisation to ensure that the missing persons report is made in person to Victoria Police. Community service organisations must confirm with Child Protection when the missing persons report has been made.

The decision to make a missing persons report to Victoria Police must be based on a contemporaneous risk assessment of the circumstances of the particular case. The responsibility for conducting the risk assessment lies with Child Protection.

A concurrent Children's Court search warrant may also be required if it is assessed that Victoria Police intervention will be required to ensure the security of the child once the child's whereabouts are established.

When a missing persons report is taken and a child is located and/or returns without Victoria Police involvement, Child Protection or the community service organisation must immediately notify the local Victoria Police station where the report was made or, if unattended, the nearest 24-hour Victoria Police station.

18.3 Voluntary placement or protection order with child residing at home

Where a child is in a voluntary placement or is the subject of a protection order and residing with his or her parent(s) (other than a guardianship to Secretary order), it is the responsibility of the parents to make a missing persons report when there is a concern regarding the safety and wellbeing of the child. Child Protection will provide information to assist Victoria Police in the search for the child.

18.4 Breach of court order

Where a child is missing from a placement in breach of a court order, but does not meet the missing persons criteria, Child Protection may provide the following to Victoria Police:

- a warrant empowering Victoria Police to apprehend the child
- a copy of the court order and other relevant documents
- a statement relating to the breach of the order.

19. VICTORIA POLICE ASSISTANCE

19.1 Requesting assistance

Where there is a risk of physical violence, or other circumstances that dictate the need for Victoria Police presence, Child Protection may request that Victoria Police accompany them. The timing and level of Victoria Police assistance required will be assessed by a supervisor (sergeant or above) and provided where appropriate.

To request police assistance for a planned home visit, practitioners should first contact their local Sexual Offences and Child Abuse Investigation Team (SOCIT) or general duties members of Victoria Police, unless otherwise arranged by Victoria Police. Requests via 000 should only be made for matters that are urgent or have the potential to escalate and require an immediate response.

Where transporting a child to or from a secure welfare service Child Protection may require the assistance of Victoria Police to ensure:

- the child's safety when there is concern the child may abscond
- the worker's safety.

Child Protection should consult with the local Victoria Police to discuss transport arrangements and any possible assistance. Early notification is imperative to allow Victoria Police to arrange transportation.

The Children, Youth and Families Act provides that:

- When a child is removed from a remand centre or secure welfare service to be brought before the court ... in compliance with an order under section 530(5) Children, Youth and Families Act, the child is, during the time of removal, deemed to be in the legal custody of the member of the police force, protective services officer, or other officer having custody of the child (s.530(7) Children, Youth and Families Act).
- When a person is removed from or to a remand centre, youth residential centre or youth justice centre, the person is deemed to be in the legal custody of the officer having the custody of the person and acting under the warrant (s. 484(3) Children, Youth and Families Act).

- The officer acting under the warrant must in due course deliver or return the person into the custody of the officer in charge of the remand centre, youth residential centre or youth justice centre in accordance with the terms of the warrant (s. 484(4) Children, Youth and Families Act).
- A member of Victoria Police, if requested to do so by the Secretary, assist the officer referred to in sections 484(3)-(4) of the Children, Youth and Families Act in the discharge of his or her duties under those subsections and, in that case, the person being removed is deemed to be in the legal custody of the member of Victoria Police (s. 484(5) Children, Youth and Families Act).

Complaints regarding this issue are to be resolved via the resolution model section 22.

20. INFORMATION EXCHANGE BETWEEN VICTORIA POLICE, CHILD FIRST, AND CHILD PROTECTION

20.1 Information exchange - general procedures

Exchange of information will occur regularly between Victoria Police and Child Protection, at different levels of formality. For example, if a joint interview has occurred and notes were recorded by one party, then the notes must be considered the property of both.

Similarly, one agency may contact the other to ascertain if there has been any prior contact by that agency, which then informs their decision making processes.

It is desirable for Child Protection and Victoria Police to work flexibly and cooperatively in respect of the exchange of information at a local level while taking into account:

- the best interests of the child
- the privacy of clients
- security issues regarding the transmission of confidential documents
- that beyond issues of physical and sexual abuse, the responsibilities of Child Protection are the same as those of the general public in respect of reporting of offences to Victoria Police.

The Information Privacy Principles contained in Schedule 1 of the Information Privacy Act outline a range of circumstances in which an organisation may use or disclose information about a person for a purpose other than the primary purpose of collection. These circumstances include where:

- The organisation reasonably believes that the use or disclosure is necessary to lessen or prevent:
 - a serious and imminent threat to an individual's life, health, safety or welfare
 - a serious threat to public health, public safety, or public welfare.

- The organisation has reason to suspect that unlawful activity has been, is being or may be engaged in, and uses or discloses the personal information as a necessary part of its investigation of the matter or in reporting its concerns to relevant persons or authorities.
- The use or disclosure is required or authorised by or under law.
- The organisation reasonably believes that the use or disclosure is reasonably necessary for one or more of the following by or on behalf of a law enforcement agency:
 - the prevention, detection, investigation, prosecution or punishment of criminal offences or breaches of a law imposing a penalty or sanction
 - the enforcement of laws relating to the confiscation of the proceeds of crime
 - the protection of the public revenue
 - the prevention, detection, investigation or remedying of seriously improper conduct
 - the preparation for, or conduct of, proceedings before any court or tribunal, or implementation of the orders of a court or tribunal.

With this in mind, there will be very few occasions when Child Protection and Victoria Police, acting in their capacity as protective interveners, will not be able to share information when, either unilaterally or jointly, they are investigating a report or making a determination under section 162 of the Children, Youth and Families Act as to whether or not a child is in need of protection.

In addition to the Information Privacy Act the provisions of the Children, Youth and Families Act authorise collection, use and disclosure of personal information for the reporting of concerns about a child's welfare or need for protection, for the investigation of reports, for risk assessment and associated purposes.

20.2 Disclosure by Victoria Police

The information and data released under this protocol by Victoria Police is 'law enforcement data' for the purposes of the *Commissioner for Law Enforcement Data Security Act 2005*. When disclosing or releasing law enforcement data, Victoria Police is required to meet the obligations and requirements outlined under the Commissioner for Law Enforcement Data Security Act and the 'Standards for Victoria Police Law Enforcement Data Security' (the Standards) established thereunder.

As a condition of receiving law enforcement data, Victoria Police requires Child Protection to comply with the security obligations set out below and any other security measures that may be notified to it by Victoria Police from time to time:

1. not to release Law enforcement data to any other party or individual unless authorised by Victoria Police or by applicable law
2. not to disclose or allow access to the law enforcement data to any staff other than persons who have a need to know
3. to store documents containing the law enforcement data only in a secure facility that is physically protected against unauthorised access, including the use of lockable containers, cabinets, and restricted access rooms
4. to electronically store the law enforcement data only on a computer and/or system which is appropriately protected against unauthorised access, including the use of passwords, encryption, firewalls and other appropriate protections
5. to ensure that transmission of the law enforcement data via electronic messaging (including email) is subject to appropriate routing, encryption and auditing in order to protect the data from being viewed or altered by anyone other than the intended recipient
6. not to transmit the law enforcement data via insecure consumer applications, such as file sharing and instant messaging
7. to implement strict security measures to protect the law enforcement data during storage, handling and transport, particularly information contained on portable computing devices or portable data storage devices
8. unless otherwise agreed, to securely destroy all physical copies of the law enforcement data in its possession or control and to ensure that the law enforcement data in the possession or control of any other authorised party is securely destroyed, when no longer required
9. unless otherwise agreed, to delete all electronic copies of the law enforcement data in its possession or control and sanitise the storage device such that no law enforcement data can be recovered and to ensure that law enforcement data in the possession or control of any other authorised party is deleted and storage device sanitised, when no longer required
10. to implement procedures for managing and reporting law enforcement data security incidents to Victoria Police and provide security awareness training to all staff involved with law enforcement data
11. to report law enforcement data security breaches or incidents to Victoria Police.

20.3 When Victoria Police makes a referral or report to Child FIRST/Child Protection

Making a referral to Child FIRST or a report to Child Protection is important in protecting a child from harm and promoting their best interests. Victoria Police may disclose information without informing the child or their family when making a referral to Child FIRST (Children, Youth and Families Act ss. 31, 32) or report to Child Protection (Children, Youth and Families Act ss. 28, 29, 184). However, it is often preferable – where possible, and where informing the family does not place the child or another person at risk – to tell the child and/or their family that a report or referral has been or will be made.

The decision to refer or to report remains that of the reporter and families should not be asked to consent, nor led to believe that their objection to a report would prevent it from being made.

Information about the identity of the Victoria Police member making a report to Child Protection or a referral to Child FIRST cannot be disclosed under the Children, Youth and Families Act unless the member consents in writing to its disclosure.

20.4 When Child FIRST/Child Protection consult Victoria Police

Under the Children, Youth and Families Act Child Protection (Children, Youth and Families Act s. 35) or Child FIRST (Children, Youth and Families Act s. 36) may consult a Victoria Police member when they are assessing risk to a child. Child Protection may also consult Victoria Police (Children, Youth and Families Act s. 35) when deciding how best to respond to a referral or report. Victoria Police may disclose any information that is relevant to the safety, stability and development of a child. This may include information about the child and their family.

20.5 When Child Protection has received a protective intervention report

Child Protection may request information from registered community services and 'information holders', including Victoria Police, when they are investigating a protective intervention report (Children, Youth and Families Act s. 192). Registered community services and 'information holders' may respond by providing the information requested by Child Protection.

In any of the above situations, Victoria Police is protected from negative legal or professional consequences when they disclose information in good faith to Child FIRST or Child Protection. Any other people who provide information in good faith to Child FIRST or Child Protection are also protected from any negative legal or professional consequences (ss. 37, 40, 208).

20.6 Disclosure by Child Protection

Victoria Police may seek information from Child Protection when they form a concern for a child's welfare in the course of their duties. Under Children, Youth and Families Act section 206(2)(d), Child Protection is authorised to disclose information from the record of investigation to Victoria Police.

In certain circumstances, after consultation with Child Protection, Victoria Police may consider it appropriate to notify the employer or regulatory authority of a person who has come to their notice. In accordance with Information Privacy Principle 2.1(d) and (e) of the Information Privacy Act, Victoria Police may disclose personal information if it:

- reasonably believes that the disclosure is necessary to lessen or prevent a serious and imminent threat to an individual's life, health, safety or welfare, or a serious threat to public health, public safety, or public welfare
- suspects that unlawful activity has been, is being or may be engaged in, and discloses personal information as a necessary part of its investigation or in reporting its concerns to relevant persons or authorities.

It is only in exceptional circumstances that consideration should be given to notifying a person's employer or regulatory authority where the person has not been charged.

Child Protection must consult with Victoria Police in determining whether to inform the person's employer of the Victoria Police investigation, within 24 hours of Victoria Police becoming involved.

21. REQUESTS FOR INFORMATION

In the ordinary course of events, information sharing between Victoria Police and Child Protection should occur by encrypted email. Information provided and received must be recorded by both Child Protection and Victoria Police on their respective databases (CRIS and Interpose). The Information Privacy Act also requires that if information is used or disclosed for law enforcement purposes, a written note of the use or disclosure must be made. Recording the disclosure of the information on the relevant databases complies with this provision.

If the urgency or other particular circumstances of the case (such as the best interests of a child) require that information be provided over the telephone, it should occur only in circumstances where the parties are known to each other, or their identities are able to be established. A note should be made of the fact that information has been shared in this manner and, as soon as practicable, the details of the information provided or shared must be recorded on both the relevant Child Protection and Victoria Police databases.

Any requests for information outside the parameters of the Children, Youth and Families Act or the Information Privacy Act should only be made by a search warrant or subpoena. The party holding the information will ensure that the requesting party is informed of the existence of relevant documents prior to the requesting party seeking a search warrant or subpoena, to ensure that any delay in obtaining the information is minimised.

21.1 Public interest immunity

If a member of Victoria Police informs Child Protection, or Child Protection believes, that any document provided by Victoria Police to Child Protection may be subject to public interest immunity, Child Protection must not refer to or disclose the document or any of its contents in any court proceeding or to any party, witness or legal representative to the proceeding without the express approval of the Victoria Police informant.

This process is intended to ensure that Victoria Police investigations are not compromised and that information that is subject to public interest immunity is properly protected. If necessary for a protection application, the Victoria Police informant can make arrangements for documents

or information subject to public interest immunity to be submitted to the court under cover of a confidential affidavit for viewing only by the court. In such cases, Child Protection must not refer to or disclose the confidential affidavit, or any of its contents, in any court proceeding or to any party, witness or legal representative to the proceeding, without express approval by the Victoria Police informant.

21.2 Criminal records checks

In the course of performing Child Protection core business, specified officers in Child Protection regional centres and head office are authorised to request and receive information regarding relevant criminal records from the Victoria Police Record Services Division. This is to ensure appropriate planning in respect of the investigation of reported concerns, worker and child safety issues, and the suitability of carers regarding the placement of children and young people. The request can be made via the telephone for urgent situations. Sexual Offences and Child Abuse Investigation Team (SOCIT) units and the Sexual Offences and Child Abuse Investigation Team (SOCIT) Project Team must not be contacted to perform criminal record checks.

Child Protection should refer to the Child Protection Practice Manual for further advice.

21.3 Subpoena process

To assist in a partnership approach with Child Protection, the Victoria Police Subpoena Management Unit provides a central management point for all subpoenas directed towards the Chief Commissioner of Victoria Police and Victoria Police members. Subpoenas are not to be sent directly to the Victoria Police member involved.

21.4 Urgent matters

An urgent matter is defined as a court hearing returnable within seven days. In such cases, Child Protection must immediately contact the Subpoena Management Unit to make arrangements in relation to witness availability and service of subpoenas. The Subpoena Management Unit will assist Child Protection by facilitating the attendance of Victoria Police members and the production of information.

21.5 Other matters

As soon as practicable after Child Protection is made aware of a court hearing date where witnesses will be called, Child Protection must make a preliminary assessment as to whether or not a Victoria Police witness will be required. Where it is assessed that a Victoria Police member is likely to be required to give evidence or to produce documents, the Subpoena Management Unit should be notified as soon as possible by telephone or email, in order that necessary arrangements can be made. Even if Victoria Police witnesses are not ultimately called, such arrangements will minimise disruption to policing services.

Once a subpoena has been issued, Child Protection must forward the subpoena to the Subpoena Management Unit as soon as possible for service on Victoria Police members.

21.6 Production of information

Any Child Protection subpoena that involves the production of documents must be brought to the attention of the Subpoena Management Unit. Where Child Protection requires assistance regarding the wording of subpoena schedules to identify specific documents, the Subpoena Management Unit will assist.

21.7 Costs

Victoria Police reserves the right to claim costs for travel, accommodation and incidental costs that result from a Child Protection subpoena. Any issue related to costs must be negotiated through the Subpoena Management Unit.

21.8 Contact details

All subpoenas for the Chief Commissioner of Victoria Police, or other Victoria Police members, regardless of whether the subpoena is directed to an individual member, specialist unit, task force or department should be forwarded to:

**Subpoena Management Unit
Customer Service Centre
637 Flinders Street, Melbourne 3000**

Any queries or complaints should be directed to the Subpoena Management Unit by telephone on **(03) 9247 6954, (03) 9247 5254** or **(03) 9247 5959**.

All other correspondence should be sent to:

**Subpoena Management Unit
PO Box 415
Melbourne 3005
DX 210075
Facsimile (03) 9247 5528
Email: subpoenamangement.rsd@police.vic.gov.au**

22. DISPUTE RESOLUTION

22.1 Resolution model

It is essential that differences are addressed promptly. Differences may relate to roles, professional and organisational philosophies or priorities, systems issues, status and perceived power, and communication difficulties. These factors have the potential to damage the joint working relationship and negatively impact on the client concerned.

The resolution of difference should be addressed at an individual and agency level. Professional conduct is critical in dispute resolution. A model for resolving differences is:

- clear identification by both parties of the problem or issue
- acknowledgment of relevant goals and interests
- generation of practical options to address the problem
- seeking agreement on a preferred option
- negotiation when the preferred option is not agreed
- agreement on an outcome and its implementation.

22.2 Complaints procedure

Where the issue of concern cannot be resolved between the individual parties, the procedures for the handling of complaints are as follows.

22.2.1 Level 1

- In the first instance, the concern should be dealt with at the district/regional level between the child protection practitioner and the Victoria Police staff involved and their respective supervisors. This may involve a senior child protection practitioner and Sexual Offences and Child Abuse Investigation Team (SOCIT) supervisor and/or manager.
- The aim of the contact will be resolution of the case-specific problems.
- If the problem cannot be resolved at this level, it should be referred to level 2.

22.2.2 Level 2

The complaint should be addressed and resolved by the child protection or children youth and families manager and the Victoria Police local area commander.

22.3 Policy and practice implications

Any issues arising that impact on policy or have state-wide significance shall be directed to the Manager, Child Protection, Policy and Practice, Child Protection and Family Services Branch, and/or the OIC Sexual Offences and Child Abuse Investigation Team (SOCIT) Project Team. Joint discussions will be held between these parties to address policy differences or deficits.

LIST OF APPENDICES

Appendix 1: Definitions of child abuse

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Appendix 1: Definitions of child abuse

Child abuse is any action, or lack of action, that significantly harms the child's physical, psychological or emotional health and development. Although the abuse types are described separately below, in reality many of the following forms of harm occur concurrently. By definition child abuse is not an accident, but neither is it always the intention of the person to inflict harm or injury.

The harm may be constituted by a single act, omission or circumstance, or accumulated through a series of continuing acts, omissions, or circumstances...' (Children, Youth and Families Act s. 162(2))

The following definitions are not all-inclusive and are meant as a guide to inform practice.

Physical abuse

Physical abuse consists of any non-accidental form of injury or serious physical harm inflicted on a child by any person. Physical abuse does not mean reasonable discipline though it may result from excessive or inappropriate discipline. Physical abuse can include beating, shaking, burning and assault with weapons. Physical injury and significant harm to a child may also result from neglect by a parent or caregiver. The failure of a parent or caregiver to adequately ensure the safety of a child may expose the child to extremely dangerous or life threatening situations, which result in physical injury and significant harm to the child. Exposure to extremely dangerous situations can exist where family violence is present. Physical abuse also includes Fabricated Illness Syndrome (previously known as Munchausen's Syndrome by Proxy) and Female Genital Mutilation (FGM). FGM comprises all procedures that involve partial or total removal of the female external genitalia and/or injury to the female organs for cultural or any non-therapeutic reasons.

Sexual abuse

A child is sexually abused when any person uses their authority or power over the child to engage in sexual activity. Child sexual abuse involves a wide range of sexual activity and may include fondling genitals, masturbation, oral sex, vaginal or anal penetration by finger, penis or any other object, voyeurism and exhibitionism. It can also include exploitation through pornography or prostitution. Failure to protect a child from sexual abuse may occur from a parent's lack of sufficient capacity to protect the child from such abuse.

Emotional abuse

Emotional abuse occurs when a child is repeatedly rejected, isolated or frightened by threats or the witnessing of family violence. It also includes hostility, derogatory name calling and put-downs, or persistent coldness from a person, to the extent where the behaviour of the child is disturbed or their emotional development is at serious risk of being impaired.

Neglect

Neglect includes a failure to provide the child with an adequate standard of nutrition, medical care, clothing, shelter or supervision to the extent where the health or development of the child is significantly impaired or placed at serious risk. A child is neglected if they are left uncared for over long periods of time or abandoned.

Serious neglect

Under protocols between Child Protection and Victoria Police, Child Protection is required to inform Victoria Police where a child has been sexually or physically abused or is suffering serious neglect. The definition for serious neglect is provided below. Serious neglect includes situations where a parent has consistently failed to meet the child's basic needs for food, shelter, hygiene or adequate supervision to the extent that the consequences for the child are severe.

For example:

The child's home environment is filthy or hazardous in the extreme and poses a threat to the child's immediate safety or development and is characterised by the presence of animal or human faeces or urine, decomposing food, syringes or other dangerous drug paraphernalia; or where the child is provided with consistently insufficient or inadequate food or nourishment for the child's healthy development; or where a child has a serious medical condition for which the parent has consistently failed to obtain treatment or dispense prescribed medication; or where a parent consistently leaves a child unattended, exposed to or in the care of strangers who may harm the child.

Medical neglect

Neglect of medical care refers to a situation where a parent's refusal of, or failure to seek treatment or agree to a certain medical procedure leads to an unacceptable deprivation of the child's basic rights to life or health.

Family violence

Where there are strong indicators that incidents of family violence are placing children at significant risk or danger, Child Protection must be informed. Family violence is also criminal in nature and liable to prosecution. These forms of violence include assault, aggravated assault, trespass, rape and other offences against the person including offences involving the use of firearms.

Risk taking behaviour

While risk taking behaviour in adolescence is a normal aspect of healthy development, some behaviours demand attention from Child Protection when they carry potentially severe or life-threatening consequences. Examples include severe alcohol or drug use (opiates, amphetamines or benzodiazepines, any intravenous drug use), unsafe sexual activity including prostitution, solvent abuse and chroming, and violent or dangerous peer group activity (eg. train surfing).

The impact of abuse and neglect

The sustained abuse or neglect of a child physically, emotionally or sexually can have major long-term effects on all aspects of a child's health, development and wellbeing. When threatened by overwhelming events a child's 'freeze, flight, fight' response is activated; biochemical changes occur and they can remain stuck in a dysregulated and hypervigilant state, which in turn impacts on their brain development and future behaviour.

Research into the lasting effects of child maltreatment indicates that neglect is as harmful as abuse and has a cumulative and negative effect on a child's development. Importantly, neglect co-occurring with other forms of maltreatment increases the impact on children exponentially.

Sustained abuse or neglect is likely to have a deep impact on a child's self-image and self-esteem and on his or her future life. Childhood trauma is directly linked to adult physical and mental health problems. The experience of long-term abuse and neglect may lead to difficulties in forming or sustaining close relationships, establishing oneself in the workforce and to extra difficulties in developing the attitudes and skills needed to be an effective parent.

It is not only the stressful events of abuse that have an impact, but also the context in which they take place. A child's experience of traumatic events is influenced by many factors, including their individual characteristics and the level of stability and support following the traumatic events, which is why experiences differ between children in response to apparently similar types of events. Relevant factors include the individual child's means of coping and adapting, support from a family and social network and the impact of any interventions. The effects on a child are also influenced by the quality of the family environment at the time of abuse and subsequent life events. Importantly, the way in which professionals respond has a significant bearing on subsequent outcomes for a child.

Physical abuse

Physical abuse can lead directly to neurological damage, physical injuries, disability or – at the extreme – death. Harm can be caused to children both by the abuse itself and by the abuse taking place in a wider family context of conflict and aggression. Physical abuse has been linked to aggressive behaviour in children, emotional and behavioural problems and educational difficulties.

Sexual abuse

Sexual abuse has been linked to disturbed behaviour including self-harm, inappropriate sexualised behaviour, sadness, depression and a loss of self-esteem. The severity of impact on a child is believed to increase the longer the abuse continues. A child's ability to cope with the experience of sexual abuse, once recognised or disclosed, is strengthened by the support of a non-abusive adult carer who believes the child, helps them to understand the abuse and is able to offer help and protection.

A proportion of adults who sexually abuse children have themselves been sexually abused as children. They may also have been exposed as children to domestic violence and instability of care. However it does not follow that most children who are abused will inevitably go on to become abusers themselves.

Emotional abuse

There is increasing evidence of the long-term consequences for children's development where they have been subject to sustained emotional abuse. Emotional abuse has an important impact on a developing child's mental health, behaviour and self-esteem. It can be especially damaging in infancy. Family violence, adult mental health problems and parental substance misuse may be features in families where children are exposed to such abuse.

Neglect

Children's responses can differ significantly to different forms of abuse and neglect. For example, physically abused infants commonly show high levels of negative affect, while neglected infants demonstrate flattened affect.

The impacts of neglect are again particularly profound in early childhood. Neglect negatively impacts upon the attachment process between parent and child. It leads quickly to an infant being unable to signal basic needs to a parent and a parent's inability to read or respond to the child's signals. Severe neglect of young children is associated with major impairment of growth, and emotional and cognitive development.

The more pervasive the neglect the more harmful it is viewed as being. Cumulatively harmful experiences whether or not they are ongoing in a child's life, mean maltreated and traumatised children continue to exhibit developmental and learning delays and problems even after the abuse and neglect have ceased and their placements are stable.

Pre-natal and post-natal exposure to psychoactive drugs and alcohol affects the child's brain and body and causes future learning, behavioural, physiological and developmental problems. Specifically, foetal alcohol syndrome causes growth deficits, central nervous system dysfunction, specific facial characteristics and body malformation. Learning and behavioural disorders that result can include attention deficit disorder, speech and language disorders, poor short term memory, lack of cause and effect thinking, poor personal boundaries, anger management difficulties, poor judgment and no connection to societal rules (McCreight 1998).

Appendix 2: Definitions of criminal offences

A criminal prosecution is required by law to meet a higher standard of proof than protection applications and must be proven 'beyond reasonable doubt' rather than 'on the balance of probabilities'.

The admissibility of evidence to support the prosecution of criminal offences is also bound by more stringent legal guidelines than for protection applications. These guidelines determine the manner in which evidence is to be obtained, handled and finally presented to the court.

The age of the victim and their inability to give evidence often means that corroborating evidence is important to support a criminal prosecution. Victoria Police involvement is crucial at the earliest stage of protective intervention reports of sexual abuse, physical abuse and serious neglect.

Assault

Under section 31(2) of the *Crimes Act 1958*, assault means the direct or indirect application of force by a person to the body of, or to clothing or equipment worn by, another person where the application of force is:

- without lawful excuse
- with intent to inflict or being reckless as to the infliction of bodily injury, pain, discomfort, damage, insult or deprivation of liberty
- results in the infliction of any such consequence (whether or not the consequence inflicted is the consequence intended or foreseen).

Injury

Under section 15 of the *Crimes Act 1958* injury includes unconsciousness, hysteria, pain and any substantial impairment of bodily function. 'Serious injury' includes a combination of injuries.

Assault causing injury

Any person who, without lawful excuse, intentionally or recklessly causes injury to another person is guilty of an offence.

Sexual penetration

Under section 35 of the *Crimes Act 1958* sexual penetration means:

- the introduction (to any extent) by a person of his penis into the vagina, anus or mouth of another person, whether or not there is emission of semen
- the introduction (to any extent) by a person of an object or a part of his or her body (other than the penis) into the vagina or anus of another person, other than in the course of a procedure carried out in good faith for medical or hygienic purposes.

'Vagina' includes:

- the external genitalia
- a surgically constructed vagina.

Appendix 3: Overview of the Child Protection process

Child Protection services are based on the legal framework set out in the Children, Youth and Families Act. The main principle underpinning the Children, Youth and Families Act is that the best interests of the child must always be the paramount consideration. In determining whether any decision or action is in the best interests of the child, the need to protect the child from harm, to protect the child's rights, and to promote the child's development must always be considered.

Child Protection intervention is child-centred and family-focussed, and is limited to that necessary to secure the safety and wellbeing of the child.

Current assessment

Analysis and assessment, along with case planning, is a core process within all Child Protection interventions. This is the process through which a determination is made that a particular child, once reported to Child Protection, is a child 'in need of protection' as articulated in s. 162 of the Children, Youth and Families Act, or other intervention to ensure their wellbeing.

Child protection practitioners use a professional judgement model, the Best Interests Case Practice Model, which involves the gathering of information, analysis and planning, action and review. Consideration is given to the vulnerability of the child, the likelihood of future harm if nothing changes and what is needed to ensure the safety, stability and healthy development of the child. Assessment of cumulative harm is critical to the overall analysis and planning in relation to the child's safety, stability and development.

Best interests planning process

Decision making is defined in the Children, Youth and Families Act as '...the process of decision making by the Secretary concerning a child, beginning when the Secretary receives a report under section 28, 33(2), 183, 184 or 185...' This happens through best interests planning which is underpinned by a set of principles articulated in ss.10–14 of the Children, Youth and Families Act, stating that any decision or action must be made with the best interests of the child being the paramount consideration.

Analysis leading to assessment informs the best interests planning process throughout the life of a Child Protection intervention. Where a formal case plan is developed, this is referred to as a Best Interests Plan.

Stages in protective intervention

There are a number of stages in protective intervention that require different courses of action. These stages are described as follows:

Intake

The function of Child Protection intake is to receive reports and other statutory requests under the Children, Youth and Families Act, and to make a determination, using the Best Interests Assessment and Case Practice Framework and case planning process, to determine what action is required to be taken.

In general Child Protection intake receives reports related to a concern that '... a child is in need of protection...'. For example, reports under sections 183 and 184 (mandatory reporting) of the Children, Youth and Families Act.

Child Protection may also receive a report under section 28 Children, Youth and Families Act relating to a significant concern for the wellbeing of a child.

When a report is received, Child Protection makes an initial assessment as to the type of report, for example, a wellbeing report under section 28 Children, Youth and Families Act or a protective intervention report under sections 183 or 184 Children, Youth and Families Act. For a report to be assessed as a protective intervention report, Child Protection must establish whether the child or young person's described circumstances fall within the legal definition of a child in need of protection. This process requires a detailed examination of the information and a realistic appraisal of the potential consequences of intervention and non-intervention. Primary responsibility is to assess the risks to the child or young person and the level of urgency.

During this process Child Protection may contact Victoria Police as the 'information holder' under the Children, Youth and Families Act to gain information to assist with the assessment process. Victoria Police is authorised to provide information in such circumstances (see Chapter 8 Information exchange for details).

Other types of report or statutory request made to Child Protection intake include:

- report regarding a child in need of therapeutic treatment
- interstate request
- Hague convention request
- conciliation counselling request
- court report request
- irreconcilable differences application
- revocation or variation of a permanent care order or custody to third party order
- protection application taken by Victoria Police
- referral from criminal division of the Children's Court
- need for a protection application
- need for a therapeutic treatment order.

Investigation and assessment

In relation to the investigation of abuse and neglect, the Children, Youth and Families Act directs that:

'A protective intervener must as soon as practicable after receiving a protective intervention report, investigate... the subject matter of the report in a way that will be in the best interests of the child' section 205(1) Children, Youth and Families Act.

The decision as to whether a direct visit is required is dependent on a risk assessment—that is, do a child's prescribed circumstances mean that a child is in need of protection as defined in section 162 Children, Youth and Families Act, and that Child Protection concerns cannot be adequately determined or addressed without direct Child Protection involvement.

The purpose of a direct visit is to assess the child's safety, ascertain the validity of the allegations, assess the child's needs and make a decision as to the appropriate course of action to promote the child's safety and wellbeing.

Where a protective intervention report relates to concerns that a child has been physically or sexually abused, a joint investigation involving Child Protection and Victoria Police must be considered.

Temporary assessment order

Where, during the course of an investigation into a Child Protection report, Child Protection holds:

'... a reasonable suspicion that a child is, or is likely to be, in need of protection; and, is of the opinion that further investigation and assessment of the (child's situation) is warranted; and, is of the opinion that the investigation and assessment cannot properly proceed unless a temporary assessment order is made...' (Children, Youth and Families Act ss. 228-229)

Child Protection may make an application for a temporary assessment order.

A temporary assessment order will allow Child Protection to investigate reports more thoroughly where a child's parents are unwilling to cooperate. section 232 Children, Youth and Families Act lists the following things which a temporary assessment order may provide for:

- authorising the Secretary to enter premises where the child is living
- requiring the parent or any person with whom the child is living to permit the Secretary to enter the premises where the child is living
- requiring the parent of the child or any person with whom the child is living to permit the Secretary to interview the child and to take the child to a place determined by the Secretary for that interview
- authorising the medical examination of the child by a registered medical practitioner or registered psychologist (Note that s. 233 Children, Youth and Families Act states that the registered general practitioner or psychologist must not examine a child if the child is of sufficient understanding to refuse consent to the examination despite a temporary assessment order being in place.)
- directing the parent or any person with whom the child is living to permit the Secretary to take the child for that examination
- authorising the provision of the results of the medical examination to be given to the Secretary
- requiring the parent of the child or any person with whom the child is living to attend an interview with the Secretary and answer questions put to them (Note that s. 234 Children, Youth and Families Act states that despite a temporary assessment order a person may refuse to answer a question in an interview authorised by the order on the grounds that to answer could incriminate the person or that the information is privileged on the grounds of professional legal privilege. The Secretary must advise the person authorised by the temporary assessment order before the interview begins of their rights under this section.)
- giving any other directions or imposing any other conditions that the court considers to be in the best interests of the child.

An application for a temporary assessment order can only be made to the Children's Court and may be made by notice under section 228 Children, Youth and Families Act for a period not exceeding 21 days, or without notice under section 229 Children, Youth and Families Act for a period not exceeding 10 days.

An application for a temporary assessment order without notice can be made if satisfied that the giving of the notice is inappropriate as would be the case when there is evidence that the family or child may abscond if notice were given or where there is information that if the child is not immediately assessed evidence could be lost.

The Children's Court may make a temporary assessment order in conjunction with a warrant authorising Victoria Police to enter and search section 237 Children, Youth and Families Act.

Child Protection must provide a written report to the Children's Court by the date specified on the temporary assessment order setting out details of the action taken under the temporary assessment order, the results of the investigation, and assessment and any other information the Secretary considers ought to be provided to the court or that the court directs to be included.

Substantiation

At the completion of the investigation process, the child protection practitioner, in consultation with their supervisor, must make a determination as to whether or not the subject child is a child '... in need of protection...' as defined in section 162 Children, Youth and Families Act.

The substantiation decision is a case planning decision made on the basis of an assessment process that gathers case information and facts, analyses this information and ultimately makes a judgement about the risk to the child. The substantiation decision links the reasons for report and investigation with the further decisions about how to ensure safety and wellbeing of the child, and to address the impact of abuse on the child.

In considering the substantiation decision, there are four basic outcomes:

No significant concern

This outcome is applicable to a case that is not substantiated and where it is assessed that:

- the child has **not experienced significant harm** as defined in the Children, Youth and Families Act
- the child is **not in need of protection**.

Significant concern for wellbeing

This outcome is also applicable to a case that is not substantiated, but where it is assessed that:

- the child is **not in need of protection**, as defined in the Children, Youth and Families Act
- there are **significant concerns for the wellbeing of the child**.

This type of outcome would result in a referral to Child FIRST.

No further risk of significant harm

This outcome is applicable to a substantiated case where it is assessed that:

- **harm has been experienced** by the child that meets the threshold of harm as defined in the Children, Youth and Families Act
- there is a **parent now willing, and now with the capacity to protect the child**.

Significant risk of harm – child in need of protection

This outcome is also applicable to a substantiated case, but where it is assessed that:

- **harm has been experienced** by the child that meets the threshold of harm as defined in the Children, Youth and Families Act
- there is an **unacceptable risk of harm**, and the child **does not have a parent (or other suitable person) able and willing to protect them**

or

- no actual harm has occurred but there is an **unacceptable likelihood of harm and the child does not have a parent (or other suitable person) able and willing to protect them**.

This type of outcome would result in Child Protection issuing a protection application in order to ensure the safety and wellbeing of the child.

Court action

If, during Child Protection intervention, it is assessed that there is an unacceptable level of risk to a child, Child Protection may issue a protection application in order to ensure the child's safety. A protection application may be issued:

- by notice
- by immediately taking the child into safe custody without a warrant
- by immediately taking the child into safe custody, with a warrant.

Protection order

The Children, Youth and Families Act stipulates a number of restrictions on the making of a protection order, these include:

- Section 276(1)(b) 'The court...is satisfied that all reasonable steps have been taken by the Secretary to provide the services necessary in the best interests of the child'.
- Section 276(2)(b) 'The court is satisfied ...that...all reasonable steps have been taken by the Secretary to provide the services necessary to enable the child to remain in the custody of his or her parent.'

It is only when, despite all the above, the child continues to be at 'significant risk of harm' that a protection order through the Children's Court is warranted. Such intervention is an option of last resort. If the Children's Court is satisfied that the child is in need of protection, it may make one of the following orders:

- interim protection order
- undertaking
- supervision order
- custody to third party order
- supervised custody order
- custody to Secretary order
- guardianship to Secretary order
- long-term guardianship to Secretary order.

On all orders, except guardianship, parents retain guardianship responsibility.

The type of order made will be related to the severity of the Child Protection concerns and whether there is a need for ongoing statutory intervention to protect the child.

In addition to protection orders, the Children's Court may also issue on application:

- temporary assessment order section 231(Children, Youth and Families Act)
- permanent care order section 321 (Children, Youth and Families Act)
- intervention order, under the Family Violence Protection
- therapeutic treatment order under section 249 (Children, Youth and Families Act)
- therapeutic treatment (placement) order under section 253 Children, Youth and Families Act.

Case planning

A case plan is a record of decisions made about risk, health and welfare issues relevant to Child Protection's involvement with a child. In essence, a best interests plan makes a statement about the overall plan for the child, lists the goals that need to be reached in order to achieve the overall plan, as well as the tasks, timelines and people responsible for undertaking them. A best interests plan must be based upon a comprehensive assessment.

The case is initially developed where a case is substantiated. At this point in the Child Protection process, the focus of the best interests plan would generally be on short term work to reduce the identified risk of harm to a child.

The case plan would be reviewed and updated on a regular basis throughout the life of a case.

The responsibility for preparing a case plan rests with Child Protection. There will be occasions where investigating Victoria Police officers will be invited to attend case planning meetings, due to their ongoing involvement in a family's situation.

Section 167 Children, Youth and Families Act, states that a case plan must be prepared for every child on a supervision order, a supervised custody order, a custody to the Secretary order, a guardianship order, a long-term guardianship order, or a therapeutic treatment (placement) order.

In practice the case plan that was developed pre court will be reviewed and updated to meet the legislative requirement of section 167 Children, Youth and Families Act. The best interests plan must be made within six weeks of the court making the order, and a copy must be given to the child and his/her parent within 14 days of its preparation.

Stability plan / cultural plan

A stability plan and cultural plan are types of statutory case plans:

- A stability plan focuses on planning for stable long-term out-of-home care for a child. A stability plan must be prepared within the specified time frame detailed in section 170(3) Children, Youth and Families Act, for any child in out-of-home care as a result of a protection order or an interim accommodation order.
- A cultural plan focuses on the best interests of an Aboriginal child placed in out-of-home care under a guardianship to Secretary order or a long-term guardianship to Secretary order, as detailed in section 176 Children, Youth and Families Act.

In practice the case plan will be reviewed and updated as required to meet the legislative requirement of section 170 and/or section 176 Children, Youth and Families Act

Case closure

Child Protection case closure occurs when:

- an initial investigation risk of harm is not substantiated
- a case plan has been developed and put in place and ongoing Child Protection involvement is not required
- a protection order expires or is discharged, and no alternative order is made
- the young person turns 17 years of age (or 18 years where a protection order exists)
- where Child Protection intervention is no longer applicable, for example where a family moves interstate.

During the closure phase, Child Protection works to actively link the child and/or the child's family to appropriate support services as required.

