



VICTORIA POLICE

CODE OF PRACTICE
FOR THE

INVESTIGATION OF FAMILY VIOLENCE

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3rd EDITION

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FOREWORD

As we approach the 10th anniversary since the release of the Code of Practice for the Investigation of Family Violence it is pertinent that we reflect upon how significant this code has been in shaping the integrated family violence sectors response to this insidious crime.

Victoria Police, together with our partners, are working collaboratively to ensure all victims of family violence are treated with respect and dignity and are fully supported when they so courageously choose to ask for help or when we must intervene on their behalf. We are empowering all victims, giving them a voice and supporting them to stay safely in their homes and communities.

We are using our options and holding perpetrators to account, laying charges against them, bringing them before the courts, sending a clear message that family violence is a crime and will not be tolerated.

We are using our powers under the Family Violence Protection Act 2008 and affording victims protection through the application for family violence intervention orders and family violence safety notices. We are taking a stance against contraventions of these orders and notices, applying new legislation with harsher penalties.

Family Violence is and will remain my priority. I am proud of what we have achieved over the last decade; however, we must strengthen our commitment to further improvement. We will continue to use research and intelligence to improve our response to this crime and I implore you to continue to fight against this scourge on our community.

We need to apply our compassion and position to make this all too often private matter public, to take a stand against violence against women and children and to drive cultural change within the community.

As we move forward it is imperative that we keep up the momentum and continue to work with our partners to tackle recidivism and develop strategies to allow women, children, men and the more vulnerable people in our community to live a life free from violence.

**Ken LAY, APM
Chief Commissioner of Victoria Police**

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INTRODUCTION



1

1.1 ABOUT THIS DOCUMENT

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

Victoria Police initially developed this *Code of Practice* as part of the Victorian Government's initiatives to reduce family violence and in response to the recommendations of the Victoria Police Violence Against Women Review, and launched the Code of Practice in August 2004. This second edition of the Code of Practice reflects the significant changes in the Victorian integrated family violence system, including legislative change through the *Family Violence Protection Act 2008* (FVPA) and more particularly, the strengthening of police responses through the learnings of the last six years.

It continues to complement and support Victoria's family violence reform focused on an integrated system response to family violence by detailing the options available to police and how those options are implemented to assist in breaking the cycle of family violence.

It also embraces the ideals of the Victoria Police *Blue Print 2012-15*. People have the right to feel safe and be safe in their personal environments. Family violence can have a devastating effect on all family members, especially children.

Police members reading and using this document should do so in conjunction and compliance with applicable legislation, Chief Commissioners Instructions and the VPM. If any advice in this document conflicts with legislation, the VPM or Chief Commissioner Instructions, then members are advised to comply with legislation and the VPM, and then seek immediate advice from their supervisors.

1.2 AIMS OF THE CODE OF PRACTICE

Victoria Police regards family violence as extremely serious and often it is criminal behaviour. The nature of violence in family relationships is seen as particularly insidious because it is an abuse of trust. There is often a continuing threat to the victim's safety or to their life, or the lives of their children and sometimes to extended family members.

When police are responding to calls for assistance in family violence matters they acknowledge that it is complex by nature and undertake to treat all victims with dignity and respect, in accordance with the Victims' Charter.

The aims of this 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 perpetrators of family violence accountable for their behaviours by laying criminal charges where appropriate, including for contraventions of family violence intervention orders (FVIO) and family violence safety notices (FVSN); and by increasing successful prosecutions
- > Minimise trauma experienced by families during the process of police intervention
- > Support Affected Family Members (AFMs) 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.

1.3 FUNCTIONS OF POLICE IN FAMILY VIOLENCE

Police have three main functions in responding to family violence:

- > Maximise the 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.

1.4 OUTCOMES

To fulfil the aims of this Code of Practice, attending police and their supervisors must consider if the action they have taken has resulted in:

- > Safety of the AFM and others affected by the family violence
- > Needs of children being considered and addressed independently
- > Sensitivity to the complexities of our diverse communities
- > Appropriate referral/s being made
- > Perpetrator accountability through investigation and prosecution where appropriate
- > Disruption to the cycle of family violence.

1.5 WHAT IS FAMILY VIOLENCE?

Family violence is any behaviour that in any way controls or dominates a family member and causes them to feel fear for their own, or other family member's safety or well-being. It can include physical, sexual, psychological, emotional or economic abuse and any behaviour that causes a child to hear, witness, or otherwise be exposed to the effects of that behaviour. – FVPA¹

While only certain behaviours and actions defined as family violence are criminal offences, the approach, as enshrined through the FVPA, is guided by the tenet that any form of family violence is unacceptable.

In Victoria, this means we understand family violence to include violent, threatening, often repeated use of coercive or controlling behaviour that occurs in current or past family, domestic or intimate partner relationships. This can include not only physical assaults but an array of power and control tactics used along a continuum with one another, direct or indirect threats, sexual assault, emotional and psychological torment, economic control, property damage, social isolation and behaviour which causes a person to live in fear.

We also understand family violence to include violence between people in a range of family and family-like relationships. As well as violence between current and separated intimate partners, abuse and violence in our community also occurs amongst family members and those in family-like relationships. It can include violence by young people against their parents or other family members, abuse of elderly people by family members, abuse in same sex relationships and abuse of men.

The FVPA ensures that the diverse nature of traditional and contemporary families are recognised and that all victims are provided with protection. The preamble to the Act also clearly recognises and articulates that family violence is a fundamental violation of human rights and is unacceptable in any form. The preamble also recognises the evidence-base that shows family violence is predominantly committed by men against women and children.

Police must remain patient during their response and investigation and not make assumptions when assessing evidence and determining who the likely primary aggressor is. It is also important for police to be cautious of undue influence, power imbalances and/or possible manipulation by the alleged perpetrator. Additionally, violence may be so normalised and alternative options seem so limited that some AFMs may appear to 'choose' to remain in a violent relationship. It is critical that police, and others, do not in effect endorse these attitudes by a failure to intervene effectively to protect the AFM from ongoing violence.

We recognise that some groups of women in our community experience significantly higher rates of violence than others, such as Aboriginal women, women with disabilities, and women who are pregnant or have recently given birth. Some women are especially vulnerable due to isolation, whether by language, geography, disability, mental health issues, or if they are concerned about their residency rights in Australia.

At its core family violence is a violation of human rights and is unacceptable in any community or culture. Central to this violence are gendered issues of power and control fixed in cultural and community norms and societal structures that perpetuate unequal relationships between women and men.

The key determinants and contributing factors to the perpetration of violence against women have been determined as:

- > **unequal power relations between women and men**
- > **adherence to rigid gender stereotypes**
- > **broader cultures of violence.**

1. VicHealth (2007) Preventing Violence Before it Occurs, A framework and background paper to guide the primary prevention of violence against women in Victoria.

1.6 POLICE PARTNERSHIPS WITH OTHER AGENCIES

Consistent with the direction of *The Victoria Police Blueprint 2013-2015* Victoria Police's focus is on delivering a safe, secure and orderly society, incorporating the development of partnerships and a community capacity that empowers individuals and organisations to build a safer Victoria.

Victoria Police is part of the Victorian Integrated Family Violence Service System and works with other government bodies as well as non-government organisations to improve the safety of all victims of family violence. Working in partnership with other agencies is the most effective way to deal with family violence.

The Victoria Common Risk Assessment and Risk Management Framework (CRAF) guides integrated and consistent practice for risk assessment and management. The police risk assessment and risk management process is consistent with conducting a CRAF preliminary assessment.

TERMS USED

Affected family member (AFM) – defined in s.4 FVPA and means the family member whose person or property is the subject of an application for an order. For the purposes of this Code of Practice, it is an interchangeable word with victim (of crime), as a family violence intervention order may not always be sought or granted, and includes children who witness violence.

CALD – culturally and linguistically diverse

CDEB – Central Data Entry Bureau (the area within Victoria Police responsible for electronically recording information)

Child (or young person) - means a person who is under the age of 18 years

CIU – Criminal Investigation Unit, Victoria Police

Civil advocate – a lawyer employed by Victoria Police to appear in intervention order applications

CRAF – Common Risk Assessment Framework (Family Violence Risk Assessment and Risk Management framework: supporting an integrated family violence services sector 2007) (Victoria)

CYFA – *Children, Youth and Families Act 2005*

DHS – Department of Human Services, Victoria

Directed person – defined in s.12 of the FVPA and means the person directed to remain at a place or detained by a member of Victoria Police to protect a family member or property while the member obtains a FVIO or FVSN

Directing officer – means the member of Victoria Police giving or who gave the direction

Family member – defined in s.8 FVPA and in relation to a person means:

- > a person who is, or has been, the spouse or domestic partner of that person
- > a person who has, or has had, an intimate personal relationship with that person
- > a person who is, or has been, a relative of that person. This includes brothers, sisters, aunts, uncles, cousins, nephews, nieces, and in-laws
- > a child who normally or regularly resides with that person or has previously resided with that person on a normal or regular basis
- > a child of whom that person is a guardian
- > a child of a person who has, or has had, an intimate personal relationship with that person
- > Any other person who the person regards as being like a family member having regard to the circumstances of the relationship as outlined in s.8 (3) of the FVPA.

FVA – Family Violence Advisor, Victoria Police

FVCLO – Family Violence Court Liaison Officer

FVCU – Family Violence Coordination Unit

FVIO – Family Violence Intervention Order

FVIO – Family Violence Interim Intervention Order

FVLO – Family Violence Liaison Officer, Victoria Police

FVPA – *Family Violence Protection Act 2008*

FVSN – Family Violence Safety Notice

LEAP – Law Enforcement Assistance Program (the Victoria Police system of electronically recording police records, such as criminal histories and incidents attended)

Officer in Charge – Officer in Charge of a Police Station

Options Model – Criminal, civil and referral actions to be considered by police after conducting a risk assessment

Primary Aggressor – the party to the family violence incident who, by his or her actions in the incident and through known history and actions, has caused the most physical harm, fear and intimidation against the other

Protected person – a person who is protected by a family violence intervention order or a family violence safety notice

Respondent – defined in s.4 of the FVPA and means the person against whom an application for an intervention order has been made, an intervention order has been made against or a family violence safety notice has been

issued.

SOCIT – Sexual Offences and Child Abuse Investigation Teams, Victoria Police

VARE – Video and Audio Recorded Evidence according to the *Criminal Procedure Act 2009*

VAWC – Violence Against Women and Children

VCAT – Victorian Civil and Administrative Tribunal

Victims' Charter – the Victims' Charter sets out principles for victims of crime to be treated with respect, courtesy and dignity by investigatory, prosecutory and victim support agencies. It is contained within the *Victims' Charter Act 2006*

VP Form L17 – Victoria Police Risk Assessment and Risk Management Report

VPMP – Victoria Police Manual and Procedures



INITIAL POLICE ACTION



2

2.1 HOW FAMILY VIOLENCE IS REPORTED TO POLICE

Police may receive reports of family violence direct from the AFM or member of their family, including children, or from a friend, neighbour or anonymous person or from another agency. The report may be made by telephone, in person at a police station or by some other means. Police may also detect family violence in the course of their normal duties.

2.2 OPERATIONAL CONSIDERATIONS

When responding to any incident, police take charge and manage the incident in order to investigate and prevent offences, preserve life and property and prevent a breach of the peace. The police response is subject to the operational safety principles and crime-scene management policy.

Police must consider the following during management of the incident:

- > Operational safety principles
 - > Incident management principles, i.e. isolate, contain, evacuate, negotiate, conclude, investigate and rehabilitate
 - > Level of the immediate threat
 - > Medical needs
 - > Resources available
 - > Crime-scene management and evidence gathering
-

2.3 COMPULSORY POLICE ACTION

Police will respond to and take action on any family violence incident reported to them, regardless of who made the report and how it was made. The action taken is based on risk assessment and risk management, regardless of whether the AFM makes a verbal complaint or written statement. In meeting this policy of compulsory action, police will:

- > Take immediate action to protect and support AFMs and their children
 - > Be aware and sensitive to the individual circumstances of each incident
 - > Undertake a family violence risk assessment which incorporates but is not limited to the background and identification of the recent pattern of violence, recognition of risk and vulnerability factors and the victim's own assessment of their level of fear.
 - > Identify who is the primary aggressor, and where physical violence has occurred, assess if it is likely that someone has been acting in self defence
 - > Using professional judgement, assess the likelihood of future risk to determine the most appropriate risk management strategy (Options Model)
 - > Investigate all family violence incidents coming to their notice by gathering background information and physical evidence, including photographs, clothing and statements from direct and indirect witnesses
 - > Make perpetrators accountable by pursuing criminal and/or civil options where there is sufficient evidence to do so and regardless of whether an arrest has been made and/or whether the AFM is reluctant
 - > Refer all parties involved to appropriate services
 - > Comply with obligations pursuant to the Victims' Charter Act 2006 for victims of crime.
-

2.3.1 Safety and welfare

To ensure the safety and welfare of all persons present, police must:

- > Make an immediate assessment of the scene and identify all people, including children and young people, who may be present at the time
- > Obtain urgent medical assistance if required
- > Separate all parties where possible
- > Seek an interpreter as soon as possible if required
- > Speak to all parties in private where possible, including children and young people, to identify AFMs, victims, witnesses and perpetrators or accused persons; and obtain individual accounts of the incident
- > Request and record the details of all persons present, including their full name, age, sex, address and relationship to the parties involved in the family violence incident
- > Seek specialist police assistance as required.

2.3.1.1 *Timeliness of the police response*

Police respond to family violence as a priority unless it is clear that the report relates to a past incident and there is no risk of imminent danger or the person is seeking advice only. Police must respond and take action in accordance with this Code of Practice.

2.3.1.2 *Entry to premises*

Police may, without warrant, enter and search any premises with force if necessary, where they reasonably believe a person to be, if they also reasonably believe that person:

- > Has assaulted or threatened to assault a family member
- > Is on the premises in contravention of a FVIO or FVSN
- > Is a directed person who is refusing or failing, or has refused or failed, to comply with a lawful direction

Police are able to enter and search any premises with the express or implied consent of the occupier of the premises.

This does not limit any other power that a police officer may have to enter premises under this or any other Act or at common law. Circumstances dictate the police response; however, on most occasions police will attempt a peaceful entry before resorting to the use of force. Any forced entry is subject to the Victoria Police Manual searches of properties.

2.4 RECORDING INCIDENTS OF FAMILY VIOLENCE

2.4.1 Making a report

The manner in which police handle the report is crucial, particularly when the victim has sought help. The first contact a person has with police can influence their experiences and impressions of the justice system and their future decisions. Police must adopt an understanding and reassuring manner. The initial primary concern is to determine that the AFM, including any children or young people, are safe and whether medical assistance is required for any person. If the victim attends at a police station to make the report, police should offer them the opportunity to speak in private where practical.

Police must assess the need to visit the scene of any family violence incident. It is not appropriate for Victoria Police telephone reporting to be used to take reports of family violence incidents even if they appear to involve only property damage.

2.4.2 Children and Young People

“The presence of violence has a highly detrimental impact on the developing child and a growing body of evidence has documented the particular vulnerability of infants. Alongside the act of physical violence, an additional element of intra-familial toxicity is emotional violence - humiliation, coercion, degradation, and the threat of abandonment or physical assault.”¹

Victoria Police recognises that children and young people are particularly vulnerable to the negative impact of family violence and for this reason they are likely to require additional assistance and support. The needs of children and young people are quite different from those of their parent/s. Therefore, it is essential that police assess the interests of children independently from those of a parent when seeking an intervention order and determining the appropriate risk management strategy.

Members should take account of the age, level of maturity and emotional state of any children present. In some cases it will be clear that a parent is acting protectively and, in these cases, it may not be necessary for police to interview or question children directly. When children and young people experience family violence their best interests will be the paramount consideration.

The ‘best interests’ principle of the CYFA requires that consideration must be given to the effects of cumulative patterns of harm on a child’s safety, stability and development. This includes circumstances of persistent or entrenched family violence. The extent to which children are affected by family violence must be assessed in the context of the cumulative effects that ongoing exposure to family violence has on a child’s safety and wellbeing.

Exposure to family violence has long-term psychological, emotional and behavioural consequences for children and young people including anger, trauma, sadness, shame, guilt, confusion, helplessness and despair. Children do not need to be physically present when violence occurs to suffer negative consequences. Living in an environment

¹ Cumulative Harm Guide, Department of Human Services (Perry 2001)
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where violence is the norm is extremely damaging, and whether or not they 'see' the violence is not critical.²

Children and young people may also be perpetrators of violence and this can be largely due to issues such as being a previous victim of family violence or having witnessed violence in their home, mental health issues, bullying or alcohol and drug abuse. Police need to consider these issues when responding to children or young people who are aggressors of family violence.

2.4.2.1. *Safety and welfare of children and young people*

Upon receiving a report of any family violence incident, police must:

- Check if there are children or young people present, affected by or exposed to family violence
- Account for the whereabouts of all children or young people from the family who usually reside at the address
- Check on the safety and wellbeing of all children and young people
- Acknowledge to the children and young people that something has happened which may affect them
- Consider contacting SOCIT regarding a VARE interview if children or young people have witnessed violence
- Consider the safety needs of children and young people separately and where appropriate include them in an application for an intervention order to protect the AFM, or consider the need for a separate application with the child or young person as the AFM
- Consider the mandatory reporting obligations in s.184 of the CYFA where the child or young person has suffered or is likely to suffer significant harm as a result of physical injury or sexual abuse and the parents have not or are unlikely to protect the child
- Consider making a referral to Child FIRST where there are significant concerns for the wellbeing of a child, unborn child or young person
- Establish if there are any court orders or conditions in effect, including Family Law Act orders or child protection orders that may be inconsistent with the proposed terms of the FVIO or FVSN. If this is the case, FVSN is not an option, and an application for a FVIO should be made to the Magistrates' Court. If a Family Law Act order is inconsistent with the safety needs of a child, police may ask the Magistrates' Court to exercise its jurisdiction to revive, vary, discharge or suspend the operation of the Family Law Act order. See s68R of the FLA or s90 of the FVPA
- Make mention of children and young people present in any referral made on behalf of the AFM.
- Consider the referral or reporting needs of the child. If the child or young person has suffered or is likely to suffer significant harm as a result of physical injury or sexual abuse and the parents have not or are unlikely to protect the child, police must make a mandatory report to Child Protection in accordance with s.184 of the CYFA.

2.4.3 **Before leaving the scene**

Before leaving the scene, police must conduct a family violence risk assessment to ensure that all issues have been considered in relation to the safety and welfare of all persons.

They must also collect all the information needed to complete the Family Violence Risk Assessment and Risk Management Report (VP Form L17).

It is preferable to support the AFM and any dependent children to remain in the home. However if no legal power exists to remove the perpetrator or accused person from the premises, police must act to ensure the safety and welfare of victims and other family members. This may be through referral to an agency that can arrange emergency accommodation. Police should assist with the safe removal of persons from the premises by ensuring there are no breaches of the peace, and that those leaving the premises have sufficient clothing and personal items for themselves and for their children, along with identification such as passports, drivers licence, Medicare and health cards. If necessary, police will remain at the scene until the victim and other family members are safely removed from risk.

2.5 **RESPONDING TO DIVERSE COMMUNITY NEEDS**

Some people and groups within our community are likely to need specific consideration by police. All Victorians are subject to the same laws and regulations and this Code of Practice is designed to apply equally to all. However, the dynamics of family violence may affect some people in particular ways when they are Aboriginal, from culturally and linguistically diverse (CALD) communities, newly arrived or refugee communities, a person with a disability an older person, an adolescent perpetrator, women living in a rural community and/or a person in a same sex relationship.

In response to the 2016 Royal Commission into Family Violence (RCFV) Recommendation 186 a practice note has been added to the Code of Practice to include specific consideration of the experiences of people who work in the sex industry. It highlights the difficulties experienced by people who work in the sex industry in reporting incidences of

² Family Violence Common Risk Assessment and Risk Management Framework (2007)
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family violence to police and advises police on how to consider these difficulties when investigating family violence perpetrated against these victims.

Members are to read this practice note, section 9.1, as additional guidance to section 2.5: *Responding to diverse community needs*.

Additionally a practice note has been added as an addendum to section 2.5.2.1 *Obtaining an interpreter for CALD and the hearing impaired* due to RCFV Recommendation 159.

Members are to read this practice note, section 9.1.1, as it provides further guidance to police on the use of interpreters for culturally and linguistically diverse (CALD) communities. It emphasises the risks associated with using children and family members as interpreters, and using the same interpreter for both perpetrator and victim.

2.5.1 Aboriginal communities

Aboriginal definitions of the nature and forms of family violence are broader than those used in non-Aboriginal communities. *Victorian Indigenous Family Violence Task Force has defined family violence as:*

“ An issue focused around a wide range of physical, emotional, sexual, social, spiritual, cultural, psychological and economic abuses that occur within families, intimate relationships, extended families, kinship networks and communities. It extends to one-on-one fighting, abuse of Indigenous community workers as well as self-harm, injury and suicide.”³

Aboriginal family violence encompasses a range of acts that are criminal, such as physical and sexual assault, and non-criminal, such as emotional and spiritual abuse. Community violence, or violence within Aboriginal communities (often between Aboriginal families), is also an emerging concern for local areas in Victoria. This violence contributes to overall levels of violence reported by Aboriginal people and the trauma experienced within families and kinship networks.

Family violence includes intergenerational violence and abuse, and affects extended families and kinship networks. Aboriginal women, men and children are living with the trauma of race-based oppression, alienation and intergenerational trauma, which affects the level of access to support they receive, as well as the type of services that are appropriate for them and in which they choose to participate.

As *Strong Culture, Strong Peoples, Strong Families* states, factors that contribute to Aboriginal family violence are located in the history and impacts of white settlement and structural violence of race relations since then including:

- > Dispossession of land and traditional culture
- > Breakdown of community kinship systems and Indigenous law
- > Racism and vilification
- > Economic exclusion and entrenched poverty
- > Alcohol and other drug abuse
- > Effects of institutionalisation and child removal policies
- > Inherited grief and trauma
- > Loss of traditional roles and status.

These factors are seen to contribute to high levels of distress within Aboriginal communities, as often demonstrated through destructive behaviours such as substance abuse, self-harm and violence. The Indigenous Family Violence Strategy also highlights that family violence affects extended families and networks and, given the complexity of issues outlined above, in this context, individuals can be both a perpetrator and a victim of family violence.

Current information on the incidence of family violence against Aboriginal women and their children is limited but estimated to be significantly higher than the general population. Some studies suggest that Aboriginal people (mainly women) are eight times more likely to experience family violence than non-Aboriginal people. Aboriginal children are ten times more likely than non-Aboriginal children to be the victims of substantiated child abuse.⁴

To ensure the safety of AFMs and children in Aboriginal communities, police need to provide a culturally appropriate response by:

- > Asking if a person or their children, if any, is Aboriginal or identifies as Aboriginal or Torres Strait Islander.
- > Acknowledging the diversity within and between Aboriginal communities.
- > Offer parties support from an Aboriginal Community Liaison Officer if available in the local area

³ As referenced in Department of Planning and Community Development (2008) *Strong Peoples, Strong Families: Towards a safer future for Indigenous families and communities 10 Year Plan*

- > Be guided by Koori Family Violence Police Protocols if they are in place.

2.5.2 Culturally and Linguistically Diverse (CALD) communities

The police response to CALD communities needs to be sensitive to their diverse needs. Critical considerations for police include:

- > Interpreters being used at the earliest opportunity and at every stage while providing assistance.
- > Clear and culturally sensitive communication with all parties
- > Not making assumptions based on one's own belief system or practices

In some CALD communities, police may be perceived as agents for persecution; corruption and/or that they do not possess the skills or sensitivities to handle family matters. In these cases, police will need to spend extra time establishing rapport and gaining the affected family member's trust and cooperation. Some issues that might be relevant include:

- > Explaining that family violence behaviour is against Victorian and Australian law
- > Emphasising that women and child victims have access to financial and other support such as housing through the government
- > Explaining to victims, prior to making a report, the role of DHS Child Protection if relevant (i.e. the aim of this agency is to strengthen and support families, not break up families)
- > Assisting women to gather important documents, such as residential status papers, temporary protection visa and/or passports
- > Reassuring victims residing on valid temporary protection visas or spousal visas that reporting family violence to police should not affect their current residency status.⁵

2.5.2.1 Obtaining an interpreter for CALD and the hearing impaired

Police will obtain the assistance of an interpreter of the same sex as the AFM if possible, at the earliest opportunity, and at every stage of the investigation. This includes during initial crisis intervention, evidence gathering and statement taking, and when explaining the conditions and purpose of a family violence safety notice and/or intervention order to the AFM and the respondent. Interpreters to assist in court should be booked in advance.

In emergency situations, police may seek immediate interpreter assistance from neighbours or persons present. The assistance of an independent interpreter should be sought as soon as practicable following the incident. If ongoing interpreting is required or the matter is likely to proceed to court, police must engage an interpreter service.

2.5.3 People with disabilities

People with disabilities, especially women and girls, are a particularly vulnerable group in the community. Those who do report violence are more likely to be disbelieved and the impact of the violence is more likely to be underestimated. It is important that the police approach to a person with a disability is not informed by negative stereotypes; but that police take the time to listen, acknowledge and respect even if there is insufficient evidence to prosecute.

A person with a disability may have an intellectual, psychiatric, sensory or physical impairment, or a combination of these that is permanent or likely to be permanent. This includes those with a cognitive impairment, which can be an acquired brain injury, dementia, intellectual disability and illnesses such as schizophrenia. Police should be mindful of undiagnosed disabilities or a victim not accepting or wishing to disclose they have a disability. The effect of impairments on each individual will vary. For example, a physical disability may restrict the capacity to move freely and /or impair communication, and an intellectual disability or acquired brain injury may impede understanding and communication. However, do not assume that every person with a disability will have problems remembering information.

Investigating cases involving a person with a disability may take extra time. To ensure they meet the victim's needs, police should engage the services of a support person or independent third person as soon as possible. Where possible use a trained Independent Third Person or Guardian / Advocate from the Office of the Public Advocate. Allow people with a disability to communicate in their preferred way; for example, using AUSLAN, Braille, pictograms or by using a communication assistant.

Even if the capacity of a person to participate in police and court processes appears limited, neither the deterrent effect of police intervention, nor the victim's safety, should ever be underestimated or compromised.

Police must remain patient during their investigation and not make assumptions when assessing evidence. It is also

⁵ 6 Australian Government, Department of Immigration and Citizenship, Fact Sheet 38, Family Violence Provisions <http://www.immi.gov.au/media/fact-sheets/38domestic.htm>

important for police to be cautious of undue influence, power imbalances and/or possible manipulation by the alleged perpetrator. The alleged perpetrator may restrict movement, access to support and information, or try to create a perception of a lack of credibility or capacity.

Controlling behaviour may include:

- > Withholding food, water, aid equipment such as hearing aids, wheelchairs, walking sticks, or readers, medication or transport
- > If also a carer, withholding assistance with toileting, showering, dressing or eating
- > Being rough with intimate body parts or engaging in inappropriate and unwanted handling
- > Demanding or expecting sexual activity in return for helping; taking advantage of physical weakness or inaccessible environment
- > Threatening to punish, abandon or institutionalise the person with the disability
- > Threatening that the person will not be believed by police because of their condition
- > Controlling income such as disability support payments.

Additionally, violence may be so normalised and alternative options seem so limited for people with disabilities, that some victims may appear to 'choose' to remain in a violent relationship. It is critical that police, and others, do not in effect endorse these attitudes by a failure to intervene effectively and protect the victim from ongoing violence.

A FVSN cannot be issued against a perpetrator who police believe has a cognitive impairment. Police should be aware that many disabilities are invisible, and to establish if a person has a disability you should ask direct questions such as:

- > Do you have a disability?
- > Do you have particular needs that we should be aware of in order to assist you?

If the perpetrator has a disability and despite best efforts, an intervention order and/or criminal prosecution is not possible, police still have a responsibility to help ensure the victim's safety. This can be facilitated through appropriate referrals and working with family/friends, support workers and/or advocates/guardians.

A paid or unpaid carer may, on a case by case basis, be regarded as being like a family member. However, where the carer is providing domestic support and personal care on behalf of another person or an organisation (whether government or not), a remedy may be covered by other legislation. In those cases contact the carer's organisation for assistance.

Where appropriate, police will consider taking a statement via Video Audio Recording of Evidence (VARE). Seek advice from SOCIT.

2.5.4 Older People

The increasing risk of abuse to older people is unfortunately a reality in our ageing society. The abuse is insidious and easily concealed. Abuse of older persons can occur in a range of relationships and environments but research has found that close relatives, often sons and daughters, are most likely to be perpetrators.

Indicators of what might present as abuse of older people vary, and in some instances physical injuries may be due to other causes e.g. falls. However Police take all reports of elder abuse seriously and will investigate all matters and make referrals where required. An assessment involving input from a geriatric medical specialist wherever possible is highly recommended. Additionally, some older people with cognitive impairment may have a guardian. Where limited evidence is apparent, police need to continue to search for other indicators to substantiate what has occurred. Behaviours being exhibited by an older person that is being abused may include continual withdrawal, depression and/or other hints of helplessness. It is emphasised that people with dementia or neurological disease are particularly vulnerable groups.

Accordingly to s.8(3) of the FVPA a paid or unpaid carer may, on a case by case basis, be regarded as being like a family member. If this carer is also a guardian (either appointed through VCAT or by an enduring power of guardianship) police should ensure that a reassessment of the guardianship order is facilitated through VCAT in accordance with Part 6 of the *Guardianship and Administration Act 1986*. However, where the carer is providing domestic support and personal care on behalf of another person or organisation (whether government or not), a remedy may be available through respective organisational protocols and/or other legislation. In these cases contact the carer's organisation for assistance.

2.5.5 Adolescents as Perpetrators of Family Violence

Adolescent perpetration of family violence refers to the use of violence by adolescents against family members, including parents, siblings or other relatives or carers. Behaviours are similar to adult family violence, although not within an intimate partner context and include physical, emotional and psychological violence, coercion and threats, verbal, social, financial and spiritual abuse.

Adolescent perpetration of family violence is mostly a gendered act with males more frequently the perpetrators of violence and victims more likely mothers or step-mothers.

Working with adolescents who use family violence is complex because they are still minors and their parents have responsibility for their care and protection. There are limited options for police due to the young age of perpetrators. An integrated response is required to intervene early and address adolescent perpetration of family violence; greater emphasis needs to be given to understanding the adolescents' feelings, history and use of violence.

Adolescent perpetration of family violence can be influenced by changes in family structure, parenting practices, consumerism, marketing, youth entitlement and less community cohesion. These changes combined with parents' and children's experience of family violence, grief and loss, trauma, mental health and substance abuse and poverty, may have supported an emergence of this form of family violence. Respectful relationships programs integrated in education settings are seeking to reduce adolescent violence in any relationships.

2.5.6 Women in rural communities

Women living in rural communities often face considerable disadvantage in terms of social and geographic isolation, access to appropriate services (because of fewer services or fewer service options or support networks), lack of useful transport or alternative accommodation, difficulties in maintaining confidentiality and safety (especially in smaller communities) where the perpetrator may be a valued member of the community. The accessibility of guns in rural communities can also increase women's vulnerability to violence.

2.5.7 Gay, Lesbian, Bisexual, Transgender and Intersex (GLBTI) communities

Police are responsible for helping to reduce violence in all relationships. Violence within GLBTI relationships is a topic not often discussed by members of these communities. There are many factors which can inhibit a person in such a relationship from involving police or the courts.

Violence occurs in gay and lesbian relationships at similar levels to heterosexual relationships. Some forms of abuse are unique for people who identify as gay, lesbian, bisexual, transgender or intersex.

When attending a family violence incident, tact must be used in establishing the nature of the relationship.

To provide advocacy and support for the victim and accountability and rehabilitation for the perpetrator, it is important to ensure that appropriate referrals are made. Further support and/or information can be obtained from local Gay and Lesbian Liaison Officers or the State Co-ordinator Gay and Lesbian Liaison.

Same sex partner abuse may involve controlling behaviours such as:

- > Threatening to 'out' (expose), or actually 'outing', their partner to friends, family, employer, police, church or others in the wider community
- > Telling a partner that no-one will help them because 'the police and the justice system are homophobic'
- > Telling a partner that they will not be believed because 'homosexuals do not rape or abuse their lovers'
- > Telling a partner that they deserve it because they are homosexual
- > Telling a partner that they are not a 'real' homosexual because they used to relate to men or women, have male or female friends, or prefer certain sexual practices or behaviours
- > Portraying the violence as mutual or consensual combat
- > Telling a partner that the behaviour is not domestic violence but an expression of masculinity or femininity (depending on the nature of the same sex relationship)
- > Relying on sexist stereotypes to hide abuse and increase power and control over their partner
- > Threatening that if they separate, the GLBTI community may not accept them any longer

Young people who may be exploring their sexuality or gender identity may come into conflict at home with parents, siblings or other family members. This can place them at greater risk of homelessness, self harm and misuse of alcohol or other drugs as a coping mechanism.

Transgender people may face threats by partners or other family members to expose their gender status. Those who are in the process of transitioning from one gender to the other may be threatened with withholding related medication, or withholding access to medical or support services.

2.5.8 Police Employees and Family Violence

The police response to a family violence incident involving a police employee is the same as the response for any other family violence incident.

Responding police must conduct a thorough investigation to identify any criminal offences and pursue, where

appropriate, criminal and/or civil options, and in all cases provide appropriate referrals. Regardless of whatever action is taken, the safety and welfare of the AFM is paramount, and the primary aggressor should be identified.

In addition to this, responding police must also notify a supervisor who must attend. This action is to remove any perceived conflict of interest or feelings of guilt on behalf of the responding police and in order to maintain the integrity and professional standards of Victoria Police. Where a criminal offence is involved, including contravention of a FVIO or FVSN, the Professional Standards Command must be notified.

There are further reporting requirements outlined in the Victoria Police Manual for Victoria Police employees serving an FVIO on another employee and for an employee being served with a FVIO.



RISK ASSESSMENT AND RISK MANAGEMENT – THE POLICE OPTIONS MODEL



3

3.1 RISK ASSESSMENT AND IDENTIFYING THE PRIMARY AGGRESSOR

Police action is based on a combination of risk assessment and risk management. The family violence risk assessment and risk management process has become an integral part of informing decisions on how best to assist AFMs. A Family Violence Risk Assessment and Management Report (VP Form L17) is completed for every family violence incident and interfamilial-related sexual offence and child abuse reported to police.

Essentially, the action police take is informed by the risk assessment which helps establish the most appropriate risk management strategy to assist the AFM at that point in time. **Investigation and risk assessment must always precede risk management.**

Police have a duty of care to protect vulnerable people from ongoing abuse.

First identify the primary aggressor. Key indicators to identify the primary aggressor include:

- > Respective injuries
- > Likelihood or capacity of each party to inflict future injury
- > Whether either party has defensive injuries
- > Which party is more fearful
- > Patterns of coercion, intimidation and/ or violence by either party

Only one primary aggressor should be identified. Do not make cross applications for intervention orders.

If it is unclear who the primary aggressor is, the AFM should be nominated on the basis of which party appears to be most fearful and in most need of protection. Record reasoning as appropriate in the Case Progress Narrative.

The primary purpose of the L17 is to help guide police through a complex risk assessment and risk management process which includes:

- > Identifying and recording the most relevant evidence-based risk factors and indicators
- > Ensuring that decisions by police or others regarding the safety and welfare of AFMs are well informed
- > Making a structured assessment on the likelihood of future family violence
- > Determining the most appropriate risk management strategy.

Using this process can also help the AFM feel safer and enhance their confidence in police intervention. It can subsequently lead to the AFM disclosing more about the abuse and participating more fully in the investigation. There is no set order on how the required information needs to be gathered. Much of it should become apparent during the course of listening to AFMs and making further enquires.

Some useful trigger questions could include but are not limited to –

“Has anyone in the household:

- > made you afraid?
- > put you down, humiliated you, or tried to control you?
- > pushed, hit, punched, kicked, hurt or threatened to hurt you?
- > made you concerned for the safety of children, other family member or pets?”

If the AFM answers yes to any of these questions then family violence may be present. Positive early impressions of police will assist in building rapport and increase the AFM's willingness to disclose family violence, support any criminal prosecutions or civil applications, and to engage with referrals to support services.

Police use risk assessment as the first step in identifying the most appropriate option to take. The risk assessment process is designed to help identify the most relevant facts and behaviours which relate to the nature and scope of family violence.

A combination of the following elements is taken into account and recorded in the L17 when police use their professional judgement to help determine the level of future risk:

- > History of violence
- > Evidence-based risk and vulnerability indicators
- > AFM's description of their level of fear and vulnerability.

3.1.1 History of Violence

Members will determine the history of violence in the relationship and any patterns. Many family violence incidents attended by police are occurring within a context of ongoing violence which may or may not include physical violence. The history adds context to the current incident. Police are required to consider a range of evidence based considerations that include, but are not limited to:

- > Who first notified police
- > Relationship between the AFM and the primary aggressor
- > Previous incidents of violence in the relationship (whether police attended or not)
- > Intervals between incidents of violence, describing the current incident, most serious incident and previous incidents, including whether children were present or who were not present but usually reside at the current incident address
- > Relating the most serious incident of violence in the relationship to the current pattern of violence
- > History of violence to others in the family (whether police were involved or not).

3.1.2 Evidence-based Risk and Vulnerability indicators

It is imperative that police have a good knowledge and understand the significance of each indicator, so that they will be readily recognised at incidents. The following indicators have been shown by research to indicate high potential for family violence, especially in combination. The Risk Assessment and Risk Management record on VPForm L17 reflects this evidence.

AFM

- > Is pregnant or has recently given birth
- > Has depression / mental health issue
- > Misuses/abuses drugs and/or alcohol
- > Has ever verbalised or had suicidal ideas or tried to commit suicide
- > Is isolated physically and/or socially
- > Has a disability

Perpetrator

- > Used a weapon in most recent event
- > Has access to weapons
- > Has ever harmed or threatened to harm the AFM
- > Has ever tried to choke the AFM
- > Has ever threatened to kill AFM
- > Has ever harmed or threatened to harm or kill children, and/or other family members
- > Has ever harmed or threatened to harm or kill pets or other animals
- > Has ever threatened or tried to commit suicide
- > Has ever stalked AFM,
- > Has ever sexually assaulted AFM
- > Previous or current breach of Intervention Order
- > Has depression / mental health issue
- > Misuses/abuses drugs and/or alcohol
- > Controlling behaviours
- > Unemployed
- > History of violent behaviour outside the family
- > Has a disability

Relationship

- > Separation
- > Escalation of violence – increase in severity and/or frequency
- > Financial difficulties

3.1.3 AFM's description of their level of fear and vulnerability

The current fear level of each AFM is a critical factor in police gauging the current risk of future violence and is categorised as:

- > Very Fearful
- > Fearful
- > Not Fearful.

Often the AFM will be able to assess their own fear level however, there will be times when a person will be at risk, but may not due to circumstances be able recognise this risk themselves. In such instances a woman may be unable to accurately describe her level of fear. Police must exercise caution in interpreting such situations and apply professional judgement and assessment of evidence-based risk factors.

3.1.3.1 Assessment of Future Risk as "Likely" or "Unlikely"

The likelihood of future violence is not necessarily dependant on the number of risk factors, indicators and vulnerabilities applying to a particular incident but rather what the vulnerabilities are and how they apply in the overall context of the current situation.

The following steps are intended to guide police professional judgement:

- > Consider each piece of information obtained, including all the abuse that occurred not just the most serious incident, and anything else known
- > Examine the risk and vulnerability factors combined with the AFM's own assessment of their level of fear in conjunction with your understandings about the continuum of family violence
- > Use professional judgement as to whether there is a likelihood of future family violence

Civil action should be taken if future family violence is assessed as likely. If the AFM is fearful or very fearful, factor this in to your decision as to whether civil action is required.

3.1.4 Firearms

3.1.4.1 Searching for and seizing firearms and other weapons

Police must investigate the respondent's possession of, or access to, firearms when attending any family violence incident.

Where a FVIO or FVSN has been issued or where police believe on the balance of probabilities that there are grounds for the issue of a FVIO or FVSN and they are aware or have reasonable grounds to suspect the person is in possession of a firearm, a firearms authority, ammunition or a weapon; they may enter, without warrant and using reasonable force, any premises where the respondent resides or has resided; premises where it is alleged the respondent committed family violence; or a vehicle registered in the respondent's name, to search for firearms, firearms authority, ammunition or a weapon.

Where a police officer intends to serve, or has served, on a person an interstate order or an application for an interstate order made against the person, or an interstate protection notice issued against the person the police officer must not give a direction under section 158(2) or enter and search premises or a vehicle under section 159(2) unless

- > The police officer is satisfied, on the balance of probabilities, that the person has committed family violence against a person sought to be protected by the order and is likely to do so again; or
- > The police officer believes on reasonable grounds that the direction is, or entry and search are, necessary to ensure the safety of a person sought to be protected by the order pending final determination of the application.

3.1.4.2 Warrant to search other premises or other vehicles.

If police intend to apply for a FVSN or FVIO, or such notice or order has been issued and police believe on reasonable grounds the respondent is committing or is about to commit an offence against the Act (e.g. fail to surrender firearm), or the respondent is in possession of a firearm, firearms authority, ammunition or a weapon, police may apply to a magistrate for a search warrant (VP Form 1355). This applies when police need to search other premises or other vehicle(s) where:

- > The respondent has **not** resided;
- > Where the family violence was **not** committed or allegedly committed
- > Vehicle(s) **not** registered in the respondent's name at the other premises or in a public place.

If a police officer intends to serve, or has served, on a person an interstate order or an application for an interstate order made against the person, or an interstate protection notice issued against the person and the police officer believes on reasonable grounds that the person is in possession of a firearm, a firearms authority, ammunition or a weapon at premises or in a vehicle, other than premises at which the person resides or has resided at or which the person committed or allegedly committed family violence or a vehicle registered in the person's name, police may apply to a magistrate for a search warrant.

3.1.4.3 *Police will seize any firearms or other weapons*

If police are conducting a search or give a direction under the FVPA to surrender a firearm, firearms authority, ammunition or weapon which is not complied with, police will seize the firearms or other weapons.

3.2 RISK MANAGEMENT (POLICE OPTIONS MODEL)

The risk management strategy (Police Options Model) taken by police must be based directly on the most current risk assessment.

This action must address not only the immediate and on-going risks but also any identified criminal behaviour. The risk management process is incorporated as part of the Family Violence Risk Assessment and Management Report, VP Form L17.

Risk Management focuses on criminal, civil and referral options that are aimed at:

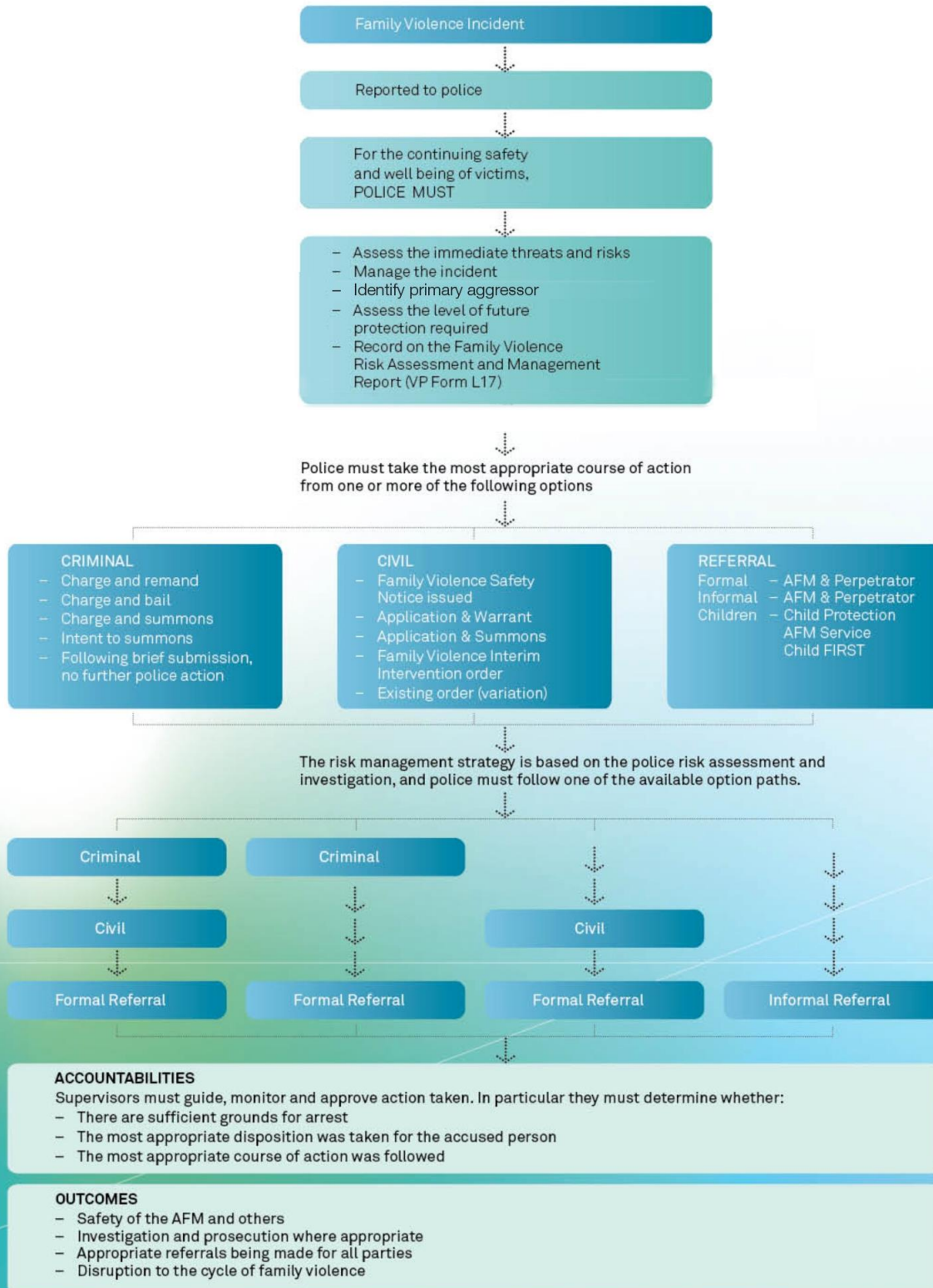
- > Protecting the AFMs from future harm, including children of the family
- > Holding the perpetrator accountable
- > Providing support and advocacy for AFMs
- > Providing a response and rehabilitation for perpetrators

3.2.1 How police decide which option pathway to follow

The risk management strategy is not only aimed at making AFMs safe and supporting their wellbeing, but also should assist with breaking the cycle of violence and hence reduce the risk of repeat incidents.

For the continued safety and wellbeing of AFMs and their children, police must choose the most appropriate process to initiate actions from one or more of the option pathways.

VICTORIA POLICE OPTIONS MODEL





CRIMINAL OPTIONS



4

4.1 ABOUT THE CRIMINAL OPTIONS

4.1.1 What are the criminal options?

A key responsibility of police in reports of family violence is the pursuit of criminal charges where appropriate. If criminal charges are considered, police have five options:

- > Charge and remand;
- > Charge and bail;
- > Charge and summons;
- > Intent to summons;
- > No further police action (NFPA) following submission of a brief for authorisation.

Criminal options do not replace the need to pursue civil options. If there are sufficient grounds to make application for a FVIO, then police must pursue that course of action in conjunction with criminal and referral options.

4.2 THE INVESTIGATION OF FAMILY VIOLENCE

4.2.1 Stages of the police investigation

All criminal incidents reported to police must be recorded as criminal offences unless there is credible evidence available at the time of reporting to suggest that a crime has not occurred. Police are to conduct a thorough investigation of all reported family violence incidents. The investigation occurs regardless of whether the AFM makes a complaint or a written statement. The stages of the police investigation are:

- > Identify the primary aggressor;
 - > At the scene or on receiving the report – establish whether there are sufficient grounds to make an arrest;
 - > After investigation and interview – determine whether there is sufficient evidence to charge an accused person or whether another disposition is required;
 - > Authorisation of the police brief of evidence – establish whether there is sufficient evidence to justify a prosecution;
-

4.2.2 Information police might record

It is standard practice for police to take notes of all observations and conversations to be used as part of the investigation and in deciding a course of action. Police also record detailed information that helps them to complete a Family Violence Risk Assessment and Management Report (VP Form L17).

Police should be mindful of Initial Action and general investigation principles, they should also consider options such as taking photographs, seizing and preserving evidence relevant to the investigation.

4.2.3 Search of persons

If police give a person a direction, or apprehend and detain a person, in compliance with legislation and the VPM they may search that person and any vehicle, package or thing in that person's possession if they believe on reasonable grounds that person has any object which may cause injury or damage or be used to escape.

4.2.4 Preserving the crime scene

It is sometimes necessary for police to seal off and preserve the scene of a family violence incident. In such instances, they should follow standard investigative techniques to preserve any physical evidence that the scene may contain (e.g. fingerprints, blood marks, weapons and items of clothing). Police may photograph the scene and obtain fingerprints, make sketches and video recordings and collect other evidence to be used as court exhibits or for forensic analysis.

After a crime scene has been identified, the CIU, Forensic Service Department and/or a designated Crime Scene Officer may be called to attend and provide specialist forensic assistance.

4.2.5 Specialised Investigative Response

Depending on the circumstances, attending police may request the local Criminal Investigation Unit, SOCIT, Taskforce or a Crime Squad to assist. Circumstances that may require specialised investigative assistance include, but are not limited to, incidents involving serious criminal offences. However, the CIU must either take responsibility for, or actively oversee, an investigation involving any of the following:

- > Stalking, including by technology
- > Threats to inflict serious injury or death
- > Sex offences
- > An assault on a child or adult involving injury, including strangulation or attempted strangulation, or involving a weapon, and regardless of whether medical attention is sought or required
- > Significant property damage
- > Historical offences not previously reported

In addition to criminal investigation responsibilities, the informant is accountable for ensuring that all applicable Option Model outcomes have been actioned in accordance with this Code of Practice.

4.3 PERPETRATOR PROCESSES

4.3.1 Pro-arrest and pro-charge

Police will investigate all family violence incidents reported to them, ensuring that appropriate use is made of criminal and civil powers and responsibilities.

Arrest and charge of an accused person is based on the evidence available. The decision to arrest is the responsibility of the police, not the victim. Police may use an arrest power for criminal offences or holding powers for civil matters to provide immediate safety for the AFM.

Victoria Police will support any employee who makes an arrest or implements the holding powers in line with this Code of Practice, provided the arrest, direction or detention was lawful and the police involved acted in good faith and also in accordance with the *Victoria Police Code of Conduct*, *Code of Ethics* and the *Victoria Police Manual*.

4.3.2 Interview

Interviews with the accused person are in accordance with the *Crimes Act 1958* and *Victoria Police Manual*. Interviews for an indictable offence must be digitally recorded. An accused person cannot be interviewed for criminal matters if they are being held using holding powers. Police must use their arrest powers and conduct their interviews first. At the conclusion of any interview or questioning the accused person must be released in accordance with section 464 Crimes Act 1958. Police may then use holding powers and commence civil proceedings against the accused.

4.3.3 Gathering forensic evidence

Depending on the circumstances of the investigation, police might seize clothing or other items that might be subject to forensic examination. Forensic evidence from the accused person must be obtained in accordance with the *Crimes Act 1958*.

4.3.4 Charge and bail

Bail does not replace the need to seek a FVIO. In any situations where the accused person is to be charged and bailed and a FVIO is also to be sought, bail conditions should seek to protect AFMs and witnesses, as with any other serious criminal offence. Bail conditions are to ensure the attendance of the respondent at court and to protect AFMs and witnesses so should include any condition/s sought in the FVIO relevant to (non) contact with the AFM.

Pursuant to the Victims' Charter Act 2006, police must advise the victim if the accused person is bailed or dealt with by one of the other criminal options.

4.3.4.1 *Charge and Remand*

Where the accused has been charged with an offence of contravening a family violence intervention order or a family violence safety notice, contrary to section 37, 37A, 123, 123a or 125A of the Family Violence Protection Act 2008 **and**;

- > Has used or threatened to use violence during the contravention, and
- > Within the last ten years been found guilty of an offence where the accused used or threatened to use violence against any person, or
- > On a separate occasion committed or threatened an act of violence against the person who is the subject of the order/notice, whether or not they have been charged, then the accused must show cause as to why he or she should not be remanded in relation to this offence.

Where the accused has been charged with an offence of stalking contrary to section 21A (1) Crimes Act 1958 **and**;

- > Has been charged or found guilty of an offence of violence within the last ten years against any person, or
- > On a separate occasion committed or threatened an act of violence against this same victim of stalking, whether or not they have been charged

then the accused must show cause as to why he or she should not be remanded in relation to this offence.

Remand must be considered whenever the above criteria are met. Remanding the respondent is beneficial as it increases the safety of the AFM and any children, allows the AFM time to make decisions without the presence or influence of the respondent and allows time for support services to engage with the AFM. It also sends a clear message to the respondent that they will be held accountable for their behaviour.

When an application for an FVIO is also made, it should be heard simultaneously with the bail/remand application; information recorded in the intervention order application should be consistent with and support the bail /remand application.

4.3.5 **Brief of evidence**

Police will investigate all criminal offences alleged at a family violence incident. If an offence is found to have been committed, then a brief of evidence must be prepared. Only a supervisor can decide if authorisation or non-authorisation of the brief will occur.

4.4 **ROLE OF THE AFFECTED FAMILY MEMBER IN THE PURSUIT OF CRIMINAL OPTIONS**

4.4.1 **Obtaining evidence**

4.4.1.1 *Forensic and clinical evidence*

Police will require consent of a victim to obtain medical evidence. If the victim attends an Accident and Emergency Department or their local doctor, police will invite the victim to sign a Medical Release in order to obtain relevant information for the police brief of evidence. If medical treatment is not urgent and forensic or criminal evidence is or might be required, police obtain the services of a Forensic Medical Officer.

If a sexual offence is alleged, any action taken must comply with the *Code of Practice for the Investigation of Sexual Assault* and the relevant SOCIT is to be contacted immediately. After discussion with the SOCIT and if necessary, police should take possession of any clothing and obtain other physical evidence or forensic samples. They might also take photographs and note any injuries.

4.4.1.2 *Statements*

Police are to obtain statements from AFMs as soon as possible. In some instances where parties do not speak English, police may need to seek interpreting assistance from other parties present in order to secure the immediate safety of the AFM and any children. The assistance of an independent interpreter should be sought as soon as practicable following the incident.

When taking a statement from a child, a parent/guardian or independent third person should be present. This person must not be the accused person or primary aggressor. Police must obtain an interpreter if needed.

Video Audio Recording of Evidence (VARE) statements may be taken according to s.366 of the *Criminal Procedure Act 2009*. This applies to victims or witnesses of a sexual offence or an indictable offence that involves an assault or injury or threat of injury. The person making the statement must be under 18 years of age or have a cognitive impairment. Only qualified police, such as SOCIT investigators can conduct a VARE.

AFMs have the right to make a Victim Impact Statement. Police can make a referral to or provide information about the local Victims' Assistance Counselling Program to assist with this process.

4.4.2 What happens if the victim does not want police to charge the accused person?

Sometimes victims do not want to pursue criminal charges. The reasons for this are varied but are often because of fear of retribution or not having any place to go. Victims are often protective of the aggressor, say clearly that they love them and just want the violence to stop. It is the responsibility of Victoria Police to decide whether an accused person should be charged and a brief of evidence must be prepared, even if the victim is reluctant for charges to be pursued. A supervisor will then decide if there is enough evidence, with or without the victim's agreement, and will weigh up the likelihood of a successful prosecution.

It is the duty of the court to ascertain the guilt or otherwise of the accused person and not the attending police.

Should a victim request that police not charge the accused person, police will follow the current policy and procedure. In summary:

- > Police are not permitted to encourage victims to request no further action or to sign a statement of no complaint
- > A full statement should be obtained detailing all details of the incident. The AFM's request for no further action is recorded at the end of the statement or in a further statement.
- > Even if the AFM does not wish to proceed in these circumstances, this does not preclude police from pursuing criminal charges.
- > A brief must be compiled and submitted for consideration of authorisation.
- > In these circumstances police should still conduct a thorough risk assessment and risk management plan and ensure the safety of the AFM by making a civil application where required.
- > A case review should be convened (see 4.6).

4.5 WITHDRAWAL OF COMPLAINT – CRIMINAL

Where a victim wants to withdraw a complaint the investigating member must:

- > Submit a report outlining the reasons for the requested withdrawal of the complaint, any independent corroborative evidence available, a brief head, a copy of any statements and a copy of any other corroborative evidence, for consideration to a member authorised to approve briefs.
- > Inform the victim that their request will be considered, but may be rejected and that the investigation may continue.

4.5.1 What details are to be included when taking a statement to withdraw the complaint

- > That the victim reported a particular offence to police and now desires no further police action.
- > The reasons why the victim does not desire any further police action.
- > That the statement has been made in the exercise of the victim's free will and not under any duress or intimidation.

4.5.1.1 *What is required in the police report which accompanies the statement of withdrawal*

- > Details of the offence
- > Details of the witnesses available
- > Evidence available to identify and prosecute the accused person/s in the absence of assistance from the victim.

4.5.1.2 *What must the authorised member consider before deciding whether the investigation is to continue or cease*

- > The seriousness and the nature of the offence
- > The public interest in continuing the investigation
- > Whether the offence is one of a series of offences
- > The solvability of the offence, particularly in view of the attitude of the victim
- > The allocation of investigative resources.

4.5.2 Proceeding with criminal charges when a victim does not wish to proceed

Investigators should consider the possibility of utilising available legal provisions (including the *Evidence Act 2008*) in situations where the victim does not wish to proceed with criminal charges, but where the police have serious concerns for the victim's safety and/or the police believe on reasonable grounds that it is likely that further offences will be committed against this victim by the same offender.

4.6 CASE REVIEW

A case review will be called in the following situations.

1. Police can convene a case review if a brief of evidence prepared after a family violence incident has been authorised, but the AFM states they do not wish to proceed with charges. A case review can be convened if an AFM requests no further action in either of the following circumstances:
 - > There is sufficient evidence to proceed but criminal charges have not been laid and the victim is reluctant to proceed.
 - > Criminal charges have been laid but the victim is reluctant to proceed.

The purpose of the review would be to assess the case, and to decide whether to proceed or not to proceed with a prosecution. This decision is made regardless of whether or not the victim wanted the matter investigated or the accused person charged.

2. An AFM can also request a case review if a brief is not authorised but the AFM still wants the respondent to be charged. If a police supervisor decides not to authorise a brief of evidence resulting from a family violence incident, the informant must contact the victim and advise them of the non-authorisation. The initial notification can be done via the phone and follow up written notification must contain the reasons for the non-authorisation, and advise that the victim can request a case review if they wish to discuss the matter further (VP Form 1236).

The AFM will write to the OIC of the informant, detailing their reasons for requesting a review. Within one month the relevant FVLO will conduct the review at a time convenient for all parties.

4.6.1. Victim involvement in a case review where charges have been laid

A case review in the context of family violence offers an opportunity by which a victim can be further supported and involved in decision making on whether or not to continue with criminal proceedings, when they are unsure, fearful, reluctant or do not want to proceed. Part of its purpose should be to identify the reasons for the victim's concerns, discuss the prosecution and court process and to allay any concerns or fears the victim may have in relation to the legal proceedings.

4.6.2 Victim involvement in a case review where charges have not been laid

Attendees for the case review may consist of, but is not be limited to, the following:

- > Police informant's (OIC) or their representative
- > Police informant
- > Police prosecutor / civil advocate
- > Affected family member / victim
- > Family violence support worker or advocate
- > Friend / family or support person for the AFM
- > FVLO / Family Violence Advisor/Manger FVT

Outcomes from the case review may be any of the following:

- > To proceed with criminal charges / prosecution, with the consent of the victim
- > Agreement by the victim to proceed and provide the required evidence
- > To proceed with criminal charges / prosecution, without the victim's consent due to the seriousness of the offences and/or sufficiency of evidence
- > A decision by police not to proceed with criminal charges / prosecution.

4.7 WHAT HAPPENS AT COURT

Court attendance and procedures follow the requirements of the *Magistrates' Court Act* 1989, the CYFA and the FVPA.

The police informant must keep the AFM and witnesses advised of the procedures and all relevant information in relation to their case. This includes, but is not limited to, updates on the progress of the police investigation, in particular where there are significant developments such as outcomes of a court hearing, adjournments, updates and/or outcomes of an investigation.

AFMs' have a right to make a Victim Impact Statement. Police can make a referral to or provide information about the local Victims' Assistance Counselling Program to assist with this process.

4.8 CONTRAVENTION OF A FVIO OR FVSN

A FVIO is an order of a Magistrate and any behaviour that contravenes the Magistrate's Order is a criminal offence (including an interstate or New Zealand order registered in Victoria). An interstate or NZ order must be registered in Victoria at the Melbourne Magistrate's Court. A FVSN is an order made by police and is an application for a FVIO. A contravention of the FVSN is also a criminal offence.

FVIOs and FVSNs must be strictly interpreted and enforced. There is no such lawful term as a 'technical' contravention and police must lay charges for any contravention.

A contravention should not be ignored; the family could be unsafe and lack of attention conveys to the respondent and the AFM that the order is not taken seriously. It could lead to continued abuse, further police involvement in subsequent contraventions, and possible harm to the AFM and / or their children.

Contravention offences are against statute not the victim. Summary contraventions of FVSN and FVIO are strict liability offences, i.e. the prosecution does not have to prove intent. As such, investigators do not require the consent of the AFM to pursue a charge of contravene a FVSN or FVIO.

In 2013 the Family Violence Protection Act 2008 was amended to include the introduction of three indictable offences for contravention of a FVSN or FVIO. These offences are designed to work alongside the existing summary contraventions.

The offences are designed to hold perpetrators to account who:

- > repeatedly show disregard for the FVSN or FVIO; or
 - > commit contraventions with an intention, or knowledge, that their conduct will probably cause physical or mental harm to the protected person or apprehension or fear in the protected person for their own safety or that of any other person.
-

4.8.1 Reporting the contravention

Police should advise AFMs that if they are at immediate risk or in need of urgent police assistance, they should call '000', or if they are not in immediate danger, they should call the local police station to make an appointment.

4.8.1.1 How an AFM can collect evidence if an order is contravened

AFMs should only be advised to gather evidence like taking photographs or video if it does not put them or their family at risk as it is always better to prevent harm than to collect evidence.

Police should advise AFMs how to collect evidence to prove when an order is contravened by:

- > Making written notes ie. keeping a diary of individual breaches whether the AFM reports them to police or not. Basic details should include dates/times, location, actions of people involved, conversations, threats, assaults and injuries, car registration numbers and/or description; and how the contravention made them feel
 - > Keeping emails, or photographing the screen if they are not able to be kept
 - > Keeping all SMS messages so police can download them, or photograph the screen for evidence. If safe, AFMs can record photograph/video face to face conversations using their mobile phone. Note that phone conversations can only be recorded if you are a party to the conversation
 - > Date stamping photographs.
-

4.8.2 What police do if a contravention is reported

4.8.2.1 If the accused person is at the scene

Police have a responsibility to ensure the safety and wellbeing of all persons. The FVPA provides a power of arrest

for a contravention of a FVIO or FVSN and, where it is appropriate, police will use this power. Appropriate circumstances might include where other criminal charges are involved or where police have assessed that immediate action is required to ensure the safety of the AFM or to protect property. Regardless of the perceived seriousness of the alleged contravention and whether the respondent is at the scene, police will conduct a thorough investigation.

4.8.2.2 *Investigation*

A contravention of a FVIO or FVSN is a family violence incident and a criminal offence. Even if there are no other additional criminal charges, police must still conduct a risk assessment and compile and submit an L17 identifying an appropriate risk management strategy to address any safety concerns. In all cases, the safety and welfare of the AFM and children is paramount.

When preparing witness statement/s police will ask protected persons about the impact of the contravention on them. This information should be included in the statement that forms part of the brief of evidence and in the police summary, and will assist Magistrates in assessing the seriousness of the offence by placing the contravention in context.

An investigation and interview for a contravention offence should occur within 24 hours. If unable to locate the suspect, submit a Person Whereabouts Desired VP Form L12.

4.8.2.3 *Continuing protection of AFMs*

During the process of investigating a contravention of a FVIO the police informant responsible for the investigation must consider the ongoing safety needs of the AFM and/or any children. This includes considering the status of the original FVIO and any needs for further applications to:

- > Extend the existing FVIO
- > Apply for a variation to the conditions of an existing FVIO
- > Ensure children are included on the FVIO if not already
- > Make application for a further FVIO.

4.8.2.4 *Contravention of a FVIO with property clause*

A FVIO may include a condition directing the respondent to return personal property belonging to the protected person or the protected person's family; or the protected person and respondent jointly if the property will enable the protected person's everyday life to continue with as little disruption as possible. This may apply to basic personal property such as clothes, cooking equipment, medicine or children's possessions.

Prosecutors / civil advocates should request the court to specify 'essential' property items when including a personal property condition in a FVIO, and a reasonable timeframe within which the items should be collected. Prosecutors / civil advocates should also ask that another specified person assist with the collection of property rather than police.

Police assistance may be required for some property retrieval, especially those matters where there is an escalated concern for the safety of the AFM. Police are not to arbitrate disputes over property exchange but may be required to maintain the peace when both parties are in attendance.

Failure to return the property specified in a FVIO can constitute a contravention of the order. Police are to investigate the contravention of the FVIO relating to property and consider using s.160 of the FVPA to apply for a search warrant.

4.8.2.5 *Contravention of FVIO from within prison*

Respondents held in prisons may contravene the conditions of their FVIO by phoning the AFM from prison. Police may make application for a warrant under Section 160 FVPA 2008 to seize records of phone calls to be used as evidence of a summary contravention of a FVIO, provided that the member of police force believes on reasonable grounds that the respondent is likely to make further phone calls or send emails to the AFM i.e a pattern of behaviour is established.

4.8.3 **The decision to prosecute a contravention**

Decisions to prosecute are based on the evidence gathered and should not be a subjective assessment by the responding police as to the seriousness of the contravention. If evidence of the contravention exists then police need to consider prosecution. The decision regarding the outcome of an investigation of an alleged contravention must not be pre-empted. In all cases the matter must be investigated and a brief of evidence submitted.

Conditions in the order may need to be varied to afford protection that is more appropriate.

4.8.3.1 *Consent is not a defence*

Consent can never be a defence to a contravention of a FVIO. No person protected by an order can authorise a contravention of a Magistrate's Order. Where a contravention of a FVIO appears to be with agreement of the protected person, police will advise the protected person of the procedures to vary or revoke the order.

An AFM cannot be charged with contravening a FVIO (s125 FVPA).



CIVIL OPTIONS



5

5.1 CIVIL OPTIONS AVAILABLE FOR PROTECTION OF AFFECTED FAMILY MEMBERS (AFMS)

Civil options involve making application for a FVIO under the FVPA. There are several options available and the appropriate course of action is dependant upon an assessment of present and future risks and circumstances of the case. The options available are:

- > Family Violence Safety Notice (FVSN)
- > Application and Warrant (A & W)
- > Application and Summons (A & S)
- > Application for a Family Violence Interim Intervention Order (FVIO)
- > Vary an existing order

Police decide on the most appropriate response depending upon the individual circumstances.

5.2 WHO CAN APPLY FOR AN INTERVENTION ORDER?

Persons who may apply for a FVIO are listed in s.45 of the FVPA. These include:

- > The AFM
- > A police officer
- > A person with written consent of an adult AFM.

If the AFM is a child:

- > A parent of the child
- > Any other person with the written consent of a parent of the child or with leave of the court
- > The AFM with leave of the court if the AFM is of or above the age of 14 years.
- > If the AFM has a guardian, the guardian or any other person with the leave of the court.

It is not necessary for police to act as the applicant in all cases. However, on many occasions police will take appropriate action on behalf of the AFM.

5.2.1 Where can an application for a FVIO to be made?

An application for a FVIO must be made at the proper venue of the Magistrates' Court, or Children's Court.

An application for a FVIO where at least one party is a child can be filed in the Magistrates' or the Children's Court. However, if the respondent is a child the application should, if practicable, be dealt with in the Children's Court jurisdiction.

5.2.2 When should police make application for a FVIO or FVSN?

Police should make an application for a FVIO or FVSN wherever the safety, welfare or property of a family member appears to be endangered by another family member.

This may mean making an application without the agreement of the AFM who may be fearful of the consequences of initiating such action. In these circumstances, unless the AFM is a child or there is an intention to include a children on the order, or the AFM is cognitively impaired or has a guardian consent on their behalf, the order can only include limited conditions.

Where children are to be included on an order their interests are paramount, and a full order may be made regardless of the wishes of the AFM. Where a member considers this course appropriate they should ensure that this is communicated to the FVCLO or police prosecutor /civil advocate

5.2.3 What must police consider before taking any civil action?

The member must make reasonable enquiries of the respondent, the AFM and any other potential witnesses to the family violence incident.

Police will consider the needs and wants of the AFM, and tailor the conditions of any civil option to their specific circumstances to ensure the family's safety.

5.2.4 Intervention Order conditions

Intervention Order conditions may prohibit the respondent from:

- > Committing family violence towards the protected person(s)
- > Intentionally damaging any property of the protected person(s) or threatens to do so
- > Attempting to locate, follow the protected person(s) or keep him / her / them under surveillance
- > Publishing on the internet, by email or other electronic communication any material about the protected person(s)
- > Contacting or communicating with a protected person by any means
- > Approaching or remaining within 5 metres of a protected person(s)
- > Going to or remaining within 200 metres of (Victoria) or any other place where a protected person lives, works or attends school / childcare
- > Getting another person to do anything the respondent must not do under this order.

In addition to FVIO conditions, the court may also order that:

- > The respondent must arrange to return personal property belonging to the protected person(s) within 2 days of the service of this order
- > The respondent must arrange to return jointly-owned property within 2 days of the service of this order
- > Until further order, any firearms authority held by the respondent is suspended. The respondent must hand any firearms in his / her possession to police immediately.
- > Until further order, any weapons approval or exemption held by the respondent is suspended. The respondent must hand any weapons in his/her possession to police immediately.

The court may grant exemptions such as - If the respondent does not commit family violence while doing so, he / she will not contravene the order by:

- > Doing anything that is permitted by a *Family Law Act 1975* order, a child protection order or a written agreement about child arrangements
- > Negotiating child arrangements by letter, email or text message
- > Communication with a protected person through a lawyer or mediator
- > Arranging and / or participating in counselling or mediation
- > Going to the home of a protected person, in the company of a police officer or a person nominated by the applicant, to collect personal property.

In response to the RCFV Recommendation 115, a practice note has been added as additional guidance to section 5.2.4 *Intervention Order conditions* and section 5.3.5.1 *Property Retrieval for Exclusion Conditions*. The practice note provides further guidance to police supporting the use of personal property conditions in family violence intervention orders (FVIOs). It focuses on personal property conditions that direct the respondent to return essential property to the protected person. It also notes exclusion conditions that enable the respondent to return to the residence to collect personal belongings in the presence of police

Members are to read this practice note at section 9.1.2.

5.3 FAMILY VIOLENCE SAFETY NOTICE

5.3.1 What is the purpose of a FVSN?

Where immediate civil protection for the AFM is required after hours (before 9am and after 5pm on a weekday or on a weekend or public holiday), any police member may make application for a FVSN to an issuing police officer, who is of the rank of Sergeant or above. A FVSN is valid for 120 hours.

A FVSN is a means of placing temporary conditions on the respondent where a police member responding to a family violence incident believes on reasonable grounds that until an application for a FVIO can be decided before the court, a FVSN is necessary:

- > To ensure the safety of the AFM
- > To preserve any property of the AFM

- > To protect a child who has been subjected to family violence committed by the respondent.

5.3.2 *When can an application for a FVSN be made?*

An application for a FVSN can only be made after court hours (before 9am and after 5pm on a weekday or on a weekend or public holiday), where:

The member applying for the FVSN believes they will be able to serve the FVSN on the respondent as soon as reasonably possible and without unnecessary delay *and*

- > The respondent is aged 18 years or over
- > The police officer has no reasonable grounds for suspecting that the respondent has a cognitive impairment
- > The police officer has no reasonable grounds for suspecting there is a Family Law Act order or child protection order in force that may be inconsistent with the proposed terms of the FVSN.
 - * If this is the case, rather than issuing a FVSN an application should be made to the Magistrates' Court of Victoria After Hours Service.
- > The police officer believes on reasonable grounds there is no FVIO in place between the AFM and the respondent
- > Until an application for a FVIO can be decided by the court, police determine a FVSN is necessary.

5.3.3 **How can an application for a FVSN be made?**

An application for a FVSN can be made in person or by way of remote application which includes by fax, telephone or other electronic communication.

- > A FVSN is to be returned to the court for the first mention date stated in the notice. The first mention date for the application of a FVIO is to be:
 - At a proper venue, ie. a Magistrates' Court or Children's Court as defined at s.4 FVPA
 - Within 120 hours after the FVSN is served on the respondent
 - If a public holiday prevents the first mention date occurring within 120 hours, the first working day after a public holiday (FVPA S.31).

The Registrar in the Magistrates' Court After hours Service can assist in determining the proper venue for the first mention of a FVSN.

5.3.4 **Service of the FVSN**

As soon as practicable once the FVSN is certified, a member is required to serve both the respondent and the protected person with a copy by way of personal service. The details of service (Part G) of the FVSN must then be completed by the serving member.

The complete FVSN, including the details of the service (Part G) is then faxed to:

- > The Magistrates' Court of Victoria After Hours Service for listing (03) 9628 7899
- > The Victoria Police Central Data Entry Bureau (CDEB).

5.3.4.1 *What needs to be explained to the Respondent and the Protected Person upon serving the FVSN?*

The police officer serving the FVSN must explain to both the respondent and the protected person:

- > The purpose, duration and conditions of the FVSN
- > The consequences of the respondent contravening the notice
- > That the AFM cannot consent to the respondent contravening the notice
- > That the FVSN is a summons to attend court on the first mention date specified in the notice and the consequences for failing to attend court at that time on that date
- > The right of the respondent or protected person to obtain legal advice before the first mention date
- > Take reasonable steps to ensure that the respondent and the protected person understand the nature and consequences of the notice
- > If the respondent or protected person is unable to sufficiently understand the English language, engage a competent interpreter to assist in the explanation.

Failure to comply with this section does not invalidate a FVSN but every effort should be made to ensure that the AFM and respondent are fully informed as to the purpose and conditions of the FVSN.

5.3.4.2 *Exclusion condition against respondent on FVSN*

If a police officer serves a FVSN on a respondent that includes an exclusion condition, the officer must:

- > Consider the accommodation needs of the respondent and any dependant children of the respondent

- > Take any reasonable steps necessary to ensure the respondent and any dependant children have access to temporary accommodation.

5.3.5 Other Exclusion Conditions

5.3.5.1 *Property Retrieval for exclusion condition*

Police are encouraged to support the respondent to gather basic belongings or any relevant documentation at the time of exclusion from a property.

This includes items that are of an essential need to the respondent, but still enable the protected person's everyday life to continue with as little disruption as possible. Examples of such items include clothing, toiletries, medication; identification such as drivers licence, Medicare and health care cards; or tools of trade.

However where property retrieval is later necessary, police attendance may be required to maintain the peace when both parties are in attendance. Police are not to arbitrate disputes over individual items for retrieval.

5.3.5.2 *No exclusion condition against a respondent*

If a police officer serves a FVSN on a respondent that does not include an exclusion condition, the officer must:

- > Consider the accommodation needs of the AFM and any dependant children
- > Take any reasonable steps necessary to ensure the AFM and any dependant children have access to temporary accommodation (FVPA 36 (2)).

5.4 APPLICATION AND WARRANT

Police may make application to a Registrar of the Magistrates' Court or the Children's Court for the issue of a warrant for the arrest of an adult respondent if it is necessary:

- > To ensure the safety of an AFM
- > To preserve any property of the AFM
- > To protect a child who has been subjected to family violence committed by the respondent
- > To ensure a respondent attends court on a mention date for the application.

An application and warrant may also be sought through the Magistrates' Court of Victoria After Hours Service where it is not feasible to use a FVSN.

5.4.1 How police make an application and seek a warrant

After seeking approval from a supervisor police may make application to the Court.

During court hours:

Contact the Registrar to determine the most practical way of making the application. This could be by bringing the AFM straight to the court with the prepared application. If making application at the court the police member must be the applicant and advise the police prosecutor of the application.

After hours:

Police must contact the after-hours Registrar in the Magistrates' Court After Hours Service via telephone. All relevant documents should be ready before contacting the Registrar.

5.4.2 How the application and warrant is executed

If the court issues a warrant, the Registrar gives or faxes to police the 'execution copy' of the warrant. Police take immediate steps to have it executed as soon as possible. Police may execute the warrant even if it is not in their possession as they only need to be aware of its existence.

If police arrest the respondent, they:

- > Bring the respondent directly before the court, or bail them to appear at the proper venue of the Magistrates' Court or Children's Court for the first return date of the application for a FVIO within five working days, to hear the application for the FVIO
- > If conducted at a police station, advise the AFM of the outcome of any application for bail, or if at court the Registrar has the obligation to advise the AFM of the outcome
- > If bailed, request conditions which ensure the safety of the AFM. Provide a copy of the bail conditions to the AFM and advise them of any special conditions to ensure their safety

- > Notify the AFM, as soon as possible, that the warrant has been executed and that they must attend the hearing for the FVIO unless they are physically incapable
- > Forward the warrant endorsed with execution details, and bail bonds to the court where the application is listed for hearing as soon as possible
- > Forward details of service to CDEB for recording on LEAP.

5.4.3 What happens if the warrant cannot be executed?

Police must make every effort to ensure a warrant is executed in a timely manner. If it cannot be executed within 24 hours or police become aware that the respondent is avoiding arrest, the police member who applied for the warrant must ensure its existence is recorded on LEAP.

Although a warrant lasts indefinitely, if it cannot be executed within fourteen days, police may return it to the court specified on the application for withdrawal with a report (VP Form 47) outlining the circumstances preventing the execution of the warrant endorsed by a supervisor:

- > To enable the warrant to be formally withdrawn (struck out)
- > Police must notify the AFM and discuss alternate safety strategies, and assist if the AFM wants to make application for an interim intervention order. Police may make a further referral to enable support of the AFM through this process.

5.4.4 Obtaining information when a respondent is avoiding service

Under the FVPA, a member of Victoria Police can seek information from state agencies which are covered under the *Information Privacy Act 2000* for the purpose of locating the respondent for service of a FVIO (VP Form 1349). This does not include federal agencies such as Centrelink, the Child Support Agency and the Australian Taxation Office.

5.5 APPLICATION AND SUMMONS

Police should seek an application and summons where the AFM is in no immediate danger but action is required to protect them from certain behaviours by a respondent. The court usually lists the application for hearing within seven to fourteen days.

5.5.1 How police seek an application and summons

In making application for an application and summons, police:

- > Complete the Application and Summons
- > Arrange for the summons, including the court return date, to be issued by a Registrar
- > Give a copy to the AFM and advise them that they must attend court unless physically incapable
- > Arrange for service of the summons. The serving member must explain the conditions of the summons to the respondent
- > Gather all available evidence before the court hearing
- > Ensure that an intervention order brief is compiled and lodged with the prosecutor.

5.5.2 Service of the application and summons

5.5.2.1 Police Service

The court forwards to police an application and summons for service on the respondent, whether the application is initiated by police or another person. Police record any summons served and take steps to have it served in accordance with s.48 of the FVPA. Police ensure the summons is served as soon as possible after it is issued.

When executed, police return the summons with the completed affidavit of service or certificate of service to the court on the same day as service. It is imperative that proof of service is received by the court before the next hearing date.

A copy must be:

- > Forwarded to CDEB
- > Kept by the station Officer in Charge (OIC) for three months as proof of service.

If the respondent is an involuntary patient at a mental health service or the subject of a community treatment order under the *Mental Health Act 1986*, police must contact the court of issue and seek advice on service of the

summons.

5.5.2.2 Court Service

If the respondent is present in court the Registrar will serve the order. If the respondent is not present the Registrar will notify CDEB of the existence of the order and send to police for service.

The AFM also receives a copy at the time if they are present, or if not present the court posts a copy to them.

5.5.3 What happens if the application and summons cannot be served?

An Application and Summons must be served at least two days prior to the return date.

Police must make every effort to serve the application and summons. If, after reasonable inquiries police cannot serve the application and summons, they must complete a certificate of inability to serve, specifying each document that was to be served and including the following particulars:

- > The member's name, rank and station
- > The reasons it has not been possible to serve the document, including details of attempts to locate or serve the person
- > The means that the member believes could be used to bring the document to be served to the person's attention and the reasons for that belief.

If a member believes that there is a means by which the documents to be served may be brought to the attention of the person to be served without personal service, the member should make an application for substituted service.

Police must assess the risks of the application and summons not being served and what alternative action can be taken in order to protect the safety and welfare of the AFM concerned. This may require a further referral for the AFM.

5.6 FAMILY VIOLENCE INTERIM INTERVENTION ORDER (FVIO)

An interim intervention order may be sought in accordance with the FVPA where police are required to take immediate action to protect the AFM and their children. Police generally seek an interim intervention order where the respondent is not present and an application and warrant or FVSN is inappropriate in the circumstances, or the court has not granted an application for a warrant and welfare concerns still exist.

When the respondent is under 18 years of age the only civil option available to police is to apply for an application and summons, with the further option of applying for an interim intervention order.

5.6.1 How do police make the FVIO application?

Under s.53 of the FVPA a court may make an interim order in accordance with s.43 of the FVPA. If police are making the application during court hours, they must first contact the Registrar to identify what documents are needed and the most appropriate time to make the application. Police may make an application for an interim intervention order after-hours by contacting the after-hours Registrar.

5.6.2 When does the FVIO expire?

Family Violence Interim Intervention Orders are valid until:

- > A final order is made and served; or
- > The matter returns for a final hearing and is struck out; or
- > The interim order is revoked; or
- > The FVIO application is withdrawn.

Where a FVIO returns to court for a final hearing and the matter is adjourned, the protection of the FVIO continues.

5.7 SERVICE OF INTERVENTION ORDERS

In response to the RCFV Recommendation 55, a practice note has been added as an addendum to section 5.7 (*Service of Intervention Orders*) to assist members/supervisors in the delivery of Family Violence Intervention Orders (FVIO) by providing clearer guidance within the Code of Practice.

Members are to read this practice note at section 9.1.3.

5.7.1 What police do when they serve the intervention order

Police must record each action taken and update LEAP as required. Sometimes they need to plan service of the order, for example where:

- > An interpreter is required to explain the conditions of the order
- > The respondent is an involuntary patient at a mental health service or subject of a community treatment order under the *Mental Health Act 1986* and the court of issue is to be advised

After serving the order, police must:

- > Complete the affidavit of service and return it to the court of issue on the same day as service
- > Notify Central Data Entry Bureau (CDEB)
- > Notify the AFM.

5.7.2 What police do if they cannot serve the intervention order

If police cannot serve the FVIO, they forward to the court of issue:

- > Interim intervention orders (at least two days before the return date)
- > Final intervention orders (after five days from the date of issue) along with:
 - A Certificate of Inability to Serve
 - Action Advice Cover Sheet
 - Any application for substituted service.

If police believe there is a means by which the documents to be served could be brought the attention of the person to be served without personal service, they should make an application for substituted service. In some cases substituted service will be effected by police.

Police must notify the AFM and discuss alternate safety strategies, and assist if the AFM wants to make application for an interim intervention order. Police may make a further referral to enable support of the AFM through this process.

5.8 WHAT HAPPENS IF POLICE DO NOT MAKE APPLICATION FOR AN INTERVENTION ORDER?

Where police do not make application for a FVIO (e.g. there is no apparent threat to the safety, welfare or property of a family member) they may provide the AFM with information about services available.

Where a family violence incident is reported, police must investigate, conduct a FV risk assessment, then record the information on the Risk Assessment and Management Report (VP Form L17). Completing the risk assessment informs the course of action to be taken and whether police should apply for a family violence intervention order on behalf of the AFM.

Under no circumstances are police to advise an AFM to “go to court to get an intervention order” when the safety, welfare or property of a family member appears to be endangered.

5.9 CONSIDERATIONS WHEN A CHILD IS INVOLVED

Children’s needs may be quite different from those of their parents. Their particular vulnerability requires police to ensure that their best interests are considered as a matter of paramount importance. Therefore, police assess the interests of children independently compared to those of a parent seeking a FVIO. Children do not need to be present at the incident to be affected by, or vulnerable to, family violence so it is important to enquire about any children in the family who may be elsewhere.

Where there is no DHS involvement and police are proceeding as applicant in an application for a FVIO, they should consider including the child on the application for the AFM, where the need arises out of the same or similar circumstances. Alternatively, where unique conditions apply and they are not able to be covered in the parent’s application, a separate application on behalf of the child can be made in the Children’s Court.

5.9.1 Child respondents

When the respondent is under 18 years of age the only civil option available to police is to apply for an application and summons, with the further option of applying for an Interim Intervention Order. Prior to making an application police should liaise with Child Protection.

5.10 HOLDING POWERS

Holding powers exist to assist police when applying for civil protection for AFMs. They are used to enable police to maintain contact with the adult respondent while they pursue civil options to ensure the safety of the AFM, protection of children or to preserve any property.

5.10.1 How police use holding powers

Holding powers are to be used to ensure the safety of the AFM and their children or preserve property of the AFM while an application is made for civil protection.

Members are able to use holding powers orally or in writing to:

- > Direct a respondent
- > Detain the respondent if necessary.
- > Police may direct a person over the age of 18 years to go to a place, remain with them or another person (non police - consent required). Police will usually direct the person to remain with and accompany them to the police station whilst they make an application for a FVIO, to vary a FVIO, or to issue a FVSN.
- > If the person directed refuses or fails to comply with a direction, police may apprehend and detain the person at a police station or other place, and may be detained in a police gaol if the police officer considers it necessary to ensure safety of all persons or property, or to prevent the person from escaping from detention. If they fail or refuse to comply police may use reasonable force to apprehend and/or detain the directed person. It is an offence to escape or attempt to escape once detained.

Police must provide a person directed to remain at, or go to and remain at a police station; or a detained person, with prescribed written information about their legal rights (VP Form 1266).

5.10.1.1 How long can a person be directed or detained for?

A person who has been directed or detained can be held for up to 6 hours after the direction. If required, a further period of up to 4 hours can be applied for at the Magistrates' Court, or Magistrates' Court After Hours Service.

5.10.1.2 What are the rights of the directed / detained person?

Police must inform the directed person at a police station; or detained person that they can:

- > Communicate with a friend or relative to advise them of their whereabouts unless police believe that doing so will jeopardise safety and/or property of AFM
- > Communicate with a legal practitioner
- > Must afford reasonable facilities and privacy dependent upon circumstance
- > Give notice in the prescribed form (VP Form 1266)
- > When the direction ends, immediately notify the directed person.

5.10.1.3 When do the direction / detention powers cease?

The direction or detention powers cease as soon as:

- > The FVIO or FVSN is served unless there is an urgent need to continue the direction/detention to protect the AFM as long as it is within the original 6 hours or within 10 hours if an extension has been granted
- > The directed person is arrested under warrant
- > An application for a FVIO or FVSN is not made, or is withdrawn
- > An application for a FVIO or FVSN or warrant is refused
- > An application for a FVSN or warrant is refused but if the application for a FVIO has not been withdrawn and the court has not determined whether an interim order is necessary
- > An application for a FVIO has not been made but is intended to be made by police, the holding powers continue until time expires or the court makes a decision.

5.10.1.4 Do police have a power to search a directed person?

If police suspect on reasonable grounds that the directed person is in possession of any object which may cause injury or damage or may be used to escape police may search any vehicle, package or thing in the directed person's possession. However, there is no power to search for evidence.

5.10.1.5 *No questioning during Holding Period*

A directed / detained person must not be questioned or interviewed for any offence or alleged offence. Police must use their arrest powers and conduct their interview first. At the conclusion of any interview or questioning the accused person must be released in accordance with section 464 Crimes Act 1958. Police may then use holding powers and commence civil proceedings against the accused.

5.11 COURT RESPONSE

5.11.1 When may the court grant an intervention order?

If after receiving evidence the court is satisfied on the balance of probabilities that a person has committed family violence against a family member and is likely to continue to do so or do so again, the court may grant a FVIO. The court will include conditions tailored to the specific circumstances of the parties.

5.11.2 What the court does

If the respondent is present in court, the Registrar will serve the order. If the AFM is present, the Registrar will also give them a copy, or if not present the court will post a copy to them.

If the respondent is not present, the Registrar notifies CDEB of the existence of the order and, before close of business on the day the order is made, faxes the order and associated documents to police for service.

If the respondent is not in court, police give priority to the serving of a FVIO. If the FVIO is contravened, police must be able to prove that the respondent has been served with a copy of the order or had the order explained to him.

To record the existence of a FVIO, on the day it is issued the court faxes a copy to the CDEB for recording. Police have local instructions for the handling of orders which must be served as soon as practicable to ensure the safety of the protected person.

5.12 WHO HAS TO GO TO COURT?

5.12.1 If police make the application

The police applicant must make contact with the police prosecutor / civil advocate prior to the hearing to discuss all relevant issues about the FVIO application, particularly if it is known whether the AFM will be attending court or not and what arrangements for support have been made. They must also discuss the need or otherwise for that member (or a representative of that member) to attend the hearing. If the prosecutor requires the member to be in attendance, the member (or representative) is to attend.

Where a police member is not required to attend court, or is unavailable, they should ensure that the following steps have occurred before the hearing of the application:

- > Explain their role to the AFM
- > Advise the AFM of the court process and procedures
- > Ensure the AFM is aware of available services and advised of how to access services
- > Discuss with the AFM their particular circumstances and needs to ensure any conditions requested in a FVIO are tailored to suit the individual circumstances
- > Identify if there are any safety concerns or support services requirements for the AFM, and seek additional assistance if required.
- > Explain that in certain circumstances, particularly if there are safety concerns, the prosecutor / civil advocate may ask the court to make a FVIO without the consent of the AFM.

5.12.2 Role of the police prosecutor / civil advocate in the civil options

One of the prosecutor's roles is to assist the court by being fair and objective in presenting all relevant and admissible evidence. In relation to family violence, the police prosecutor / civil advocate prosecutes all FVIO applications initiated by police. The prosecutor / civil advocate must ensure that all relevant evidence is led to help inform the court in the determination of the application.

The police member initiating a FVIO application must liaise with the prosecutor/civil advocate/court liaison officer to ensure they are aware of any matters listed for hearing and are provided with a FVIO Brief. They should discuss with the prosecutor/ civil advocate/court liaison officer the option of arranging court support for the AFM.

5.12.3 Police application – full hearing for an intervention order

The following people should attend court for any police-initiated application:

- > Police prosecutor / civil advocate
- > Police Court Orderly or Protective Services Officer – as required by the court
- > Police member initiating application or police Family Violence Court Liaison officer
- > AFM – it is essential that they attend court unless physically incapable. If they do not, it is unlikely that an order will be made, even when police have initiated the application. If police attend court with the AFM, they must notify the Registrar, prosecutor and court co-ordinator (if there is one) of their arrival
- > Witnesses – should be available on stand-by if required by the court or some other party. Police and the court may consider witness attendance by remote court
- > Respondent – if the respondent does not attend an interim order may still be made [FVPA s. 54(b)]; or if having been served with a copy of the application the respondent does not attend, a final order may be made [FVPA s. 61(2)(b)].

If police are making the application, they must also ensure any welfare support services and safety planning needs have been addressed.

5.12.3.1 *What happens if the Affected Family Member does not go to court?*

If the AFM does not attend court where police are named as the applicant in the intervention order application:

- > The police prosecutor / civil advocate must ask for an adjournment to allow for sufficient time to enable inquiries to be made with the AFM and notify the police member who initiated the application to make the inquiries
- > The notified police member must inquire with the AFM and make suitable arrangements for them to attend the court at the next hearing of the application. If it is established that the AFM cannot attend court, the police member must consult with the prosecutor. The police member may be able to give evidence for a FVIO or FVIO application.

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

5.12.4 If someone other than police make the application or cause the application to be made

5.12.4.1 *Police attendance*

Usually police do not attend court for non-police initiated applications unless they have specific evidence to present. The Registrar coordinates applications and will advise if police presence is necessary.

If required, a police Court Orderly or Protective Services Officer may be requested to attend the hearing. Otherwise, police involvement should be necessary only where criminal charges are involved.

5.12.4.2 *Prosecution of hearings*

A police prosecutor / civil advocate can only prosecute hearings where police are named as the applicant in the FVIO application. In other cases, the AFM represents the application, or may engage the assistance of the court duty lawyer or other legal practitioner.

5.12.5 The court process for firearms, weapons or other articles

At the granting of an interim intervention order, the court may suspend any applicable authority held by the respondent. Police must hold any seized firearms or act to seize any firearms according to the FVPA, pending the final hearing of the FVIO.

5.12.5.1 *At the hearing of an intervention order*

At the granting of a final FVIO the court may revoke any firearm's licence, permit or authority and direct what is to occur to any seized firearms. Police may act to seize any firearms not previously seized and may dispose of any seized firearms as directed by the court.

The respondent may be declared a prohibited person according to the *Firearms Act* 1996 for the duration of the intervention order and five years after its cessation. They are responsible for taking any action to be declared a non-prohibited person.

5.12.5.2 *If no final intervention order is made*

- > The firearm, weapon or other article may be forfeited or disposed of under the Firearms Act 1996, Control of Weapons Act 1990 or other Act, or otherwise returned to the person
- > The respondent is responsible for making application to the court to have their licence restored.

> Police may take alternative action under the Firearms Act 1996 to have the person's licence revoked.

5.12.5.3 Further requirements if a person is not the holder of a firearms licence, permit or other authority

If a person from whom firearms are seized is not the holder of an appropriate licence, permit or other authority, police must lay relevant charges under the *Firearms Act 1996* in addition to any action taken under the FVPA.

5.13 REVOKING, VARYING, EXTENDING OR APPEALING AN INTERVENTION ORDER

5.13.1 Need for clear and appropriate conditions

Before seeking any revised conditions of a FVIO, police must consider their relevance to the parties. Conditions sought should be consistent with conditions used by the court and tailored to the specific circumstances of each case to provide the appropriate level of protection necessary.

Before the final hearing of a FVIO, police should review any original conditions and refer the AFM to appropriate agencies who can assist in seeking comprehensive and workable conditions appropriate to individual circumstances. Any order should be clear to all and in particular to the respondent who has to abide by the conditions.

5.13.2 Appealing an intervention order

A respondent may appeal against the making of an order and an applicant, including police, may appeal against the refusal to make an order (FVPA s. 114). Police will refer parties to appropriate agencies who can provide assistance and advice on making the respective appeal. Where police are a party to an application they are also a party to the appeal and will be required to attend the County Court for the hearing of the appeal.

The Notice of Appeal will not be served directly on the police applicant, but via the Victoria Police Director of Legal Services. Representation is through the Victorian Government Solicitors' Office, not the Office of Public Prosecutions.

5.13.3 Extending, varying or revoking an intervention order

5.13.3.1 Legislation

Any party to a FVIO may apply to have a FVIO or its conditions extended, varied or revoked. The court must be satisfied that there has been a change in circumstances since the FVIO was made to hear an application for variation or revocation. The respondent may only apply if the court has given leave for them to make the application.

Notice must be served on the other party and any police applicant before the hearing. The court Registrar will notify the police applicant of the application.

This process is not to be used to replace the making of an appeal.

5.13.3.2 What police do

Where police are the applicant and notice has been served on them they must contact the AFM. Police and the AFM must attend court. Any agreement to extend, vary or revoke the FVIO must be appropriate in the circumstances, based on an assessment of the present and future risks. Where children are involved police must ensure that they are still protected and appropriate services are in place.

When police wish to make application to have the conditions extended, varied or revoked on any FVIO they should contact the Registrar at the relevant court to initiate this process. Police can vary an existing FVIO after-hours by applying for a FVIO variation and an application and summons. This can be done by completing VP Form 422 and ticking the boxes 'Application and Summons' and 'Variation', and submitting to the After-Hours registry by fax, email or any other electronic means.

5.14 FAMILY LAW ACT 1975 AND INTERSTATE ORDERS

5.14.1 Interstate order

Interstate or New Zealand protection orders are enforceable in Victoria if they have been registered with the principal registrar of the Magistrates' Court of Victoria.

Police can refer any inquiries about registering an order to the Melbourne Magistrates' Court.

In response to the RCFV Recommendation 130, a practice note has been added as an addendum to Section 5.14.2.3 *Family Law Act and Interstate Orders* to highlight Victoria Police's ability to make an arrest due to a contravention of a Family Law order.

Members are to read this practice note at section 9.1.3, as it supersedes section 5.14.2.3.

5.14.2 Family Law Act contact orders

An AFM in the following circumstances should consult a lawyer with expertise in family law.

5.14.2.1 *If there is a Family Law Act contact order*

An order allowing child access under the *Family Law Act 1975* (Commonwealth) does not prevent a FVIO being granted and it may be possible for two orders to operate at the same time. However, the FVIO, while allowing a child contact visit, must also maintain a level of protection against family violence.

An AFM should provide a copy of any Family Law Act order or Child Protection order to the court.

A Magistrate may do any of the following:

- > Suspend, vary or revoke the *Family Law Act 1975* (Cwth) order for up to 21 days if a child has been exposed or is likely to be exposed to family violence during a contact visit
- > Grant an interim intervention order, irrespective of the parties' wishes
- > On making the final FVIO, revoke the *Family Law Act 1975* (Cwth) order.

5.14.2.2 *Use of Family Law Act injunction or restraining orders*

If there are proceedings under way in the Family Court, the AFM may seek an injunction or restraining order under ss.68B or 114 of the *Family Law Act 1975*. However, due to jurisdictional boundaries between State and Commonwealth legislation and the complications in investigating Commonwealth offences, the preferred course of action is the seeking of an order under the *FVPA*.

5.14.2.3 *What police do if there is a contravention of a Family Law Act order*

Victoria Police can only investigate Commonwealth offences that are incidental to State offences. Therefore when any contravention of a *Family Law Act 1975* order occurs, Victoria Police refer the contravention to the Australian Federal Police. The Australian Federal Police do not enforce Family Law Act orders without process by the Family Court or the Federal Magistrates' Court.

5.14.2.4 *Parenting Plans (attached to FVIO)*

A parenting plan is an agreement, signed and dated that sets out the parenting arrangements for children. A parenting plan must be made without duress. Unlike parenting orders that are made in Commonwealth Law Courts, a parenting plan is not legally enforceable. Parents cannot be found to be in contravention of a parenting plan under the Family Law Act. Parties may enter a parenting plan while negotiating an intervention order, however it does not form part of the intervention order; so breaching a term of the parenting plan is not a criminal breach of an intervention order, even if the plan is attached to the court file.

Where it is alleged that a person has not returned a child in accordance with court orders or a parenting plan, the reporting parent should be advised to seek immediate family law advice.

When a FVIO is granted, it overrides any parenting plan or parenting order for a period of 21 days.

5.14.2.5 *Recovery Order for Children*

A recovery order is made by a court exercising Commonwealth jurisdiction under the Family Law Act 1975 that can require that a child be returned to a parent, a person with parental responsibility for a child or a person who has a parenting order that says a child is meant to live, communicate or spend time with them.

Even if there are no court orders a person can still apply to the Family Court or Federal Circuit Court to have a child returned.

A recovery order can authorise or direct federal or state police officers to find, recover, or deliver a child to the parent, a person with parental responsibility for a child or a person who has a parenting order that says a child is meant to live, communicate or spend time with them.

Where it is alleged that a person has not returned a child in accordance with court orders or a parenting plan, they should be advised to seek immediate specialist family law advice.



REFERRAL



6

6.1 THE ROLE OF REFERRAL IN BREAKING THE CYCLE OF FAMILY VIOLENCE

The referral component of the Options Model is in addition to any other action taken and does not replace pursuing criminal charges or the seeking of civil protection under the *FVPA*.

6.1.1 Referring to specialist services

Victoria Police recognises that the best way of providing a comprehensive service to AFMs and perpetrators of family violence is to develop and maintain effective partnerships with specialist services. The role of police is to identify and investigate criminal offences and ensure the safety of AFMs and their children using their powers and responsibilities under criminal and civil legislation. However, AFMs and perpetrators of family violence often have other needs and therefore police will facilitate access to specialist services for additional and ongoing assistance.

6.1.2 What if a person does not want assistance?

Police must refer all persons involved in family violence to appropriate agencies. It is acknowledged that at the time of the police response, the persons involved may not engage with the support service due to their present state of mind or circumstances, however this may alter over time, and is about ensuring that people are enabled to access the support system.

Police are not responsible for ensuring a person follows up with any referral. However, the FVLO should follow-up ongoing, recidivist or high risk cases to ensure that the parties concerned are provided with appropriate support services.

6.1.3 What types of referral are there?

There are two types of referral:

- > Formal – when police forward information concerning the parties involved to appropriate agencies. Children or young people are formally referred when police make a report to DHS Child Protection; a child specific referral to Child FIRST; or where children are referred with an AFM formal referral.
 - > Informal – when police give the parties involved the contact details of appropriate agencies.
-

6.2 FORMAL REFERRAL

A formal referral occurs when police attend a family violence incident and then relay information about the incident recorded in the Risk Assessment and Risk Management Report (VP Form L17) to an external service funded to assist people affected by family violence.

The information provided to specialised family violence services is subject to the *Information Privacy Act 2000*, the *Health Records Act 2001*, and protocols between police and DHS. Police may forward the entire risk assessment, excluding the details of the other party, to the nominated referral agencies for both the AFM and perpetrator.

Police should not use names of parties in the narrative.

Although consent is not required, police must inform all parties that the referral is being made to the nominated referral agency. The L17 should not be forwarded to the nominated agency until the party has been informed of the referral.

A person can be referred at anytime with consent.

6.2.1 Criteria for a formal referral

- > Where police intend to lay criminal charges or are investigating an alleged crime relating to a family violence incident
- > Where the safety, welfare or property of a family member appears to be endangered by another family member and police intend to apply for or have sought a FVSN, Application and Warrant, Application and Summons or FVIO
- > Where the risk of future violence is assessed as 'likely'
- > To address recidivism
- > To enable co-case management
- > In any circumstances where police assess a formal referral is required

Police do not need consent to make the formal referral, but must inform the party that they are being referred. Police

are not to share information about referrals with the other party.

6.2.2 Immediate formal referral for an AFM

If police assess that an AFM is in need of immediate assistance, such as needing to relocate to a refuge or alternative accommodation or requires assistance with security measures e.g. changing of locks etc, then police will make a formal referral via a direct telephone call and provision of the police Risk Assessment and Risk Management Report (VP Form L17).

6.2.3 Non-immediate formal referral for an AFM

Where a formal referral for an AFM to a specialised family violence service is appropriate but police assess that non-urgent assistance is required, police will forward a Family Violence Risk Assessment and Management Report (VP Form L17) to a local specialised family violence service for a timely response.

6.2.4 Support for families of victims of family violence-related homicide

If the family violence incident has resulted in death, investigating police must notify the Victoria Police Victim Advisory Unit which assists with providing advice and appropriate referrals. This is in addition to any other referral required by this Code of Practice.

6.3 INFORMAL REFERRAL

An informal referral occurs when police give the parties involved in a family violence incident the contact details of appropriate external services. Provision of this information in these circumstances does not violate the *Information Privacy Act 2000* or the *Health Records Act 2001*.

Police will make an informal referral when:

- > No evidence is available for a FVIO application or for charges to be laid
 - > There are no immediate concerns for the AFM or children's safety and welfare; or wellbeing of children or young people
 - > An informal referral occurs in all family violence incidents responded to by police where a formal referral has not been made.
-

6.4 CHILDREN

Police members will make an independent 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 FVIO, or making formal referrals or reports.

When police make a formal referral for an AFM to a specialised family violence service they will state if any children were present at this incident. The children will be considered as part of the formal referral.

Police 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. When a report to Child Protection is made, the relevant box should be ticked on the L17.

If police have significant concerns for the wellbeing of an unborn child, child or young person they may refer the matter to Child Protection or the relevant Child FIRST intake.

Referral pathways for children should not be duplicated. If children are formally referred with an AFM to a specialised family violence service or a report is made to Child Protection, a duplicate referral should not be made to Child FIRST.

Further information sharing guidelines are detailed in the DHS – Victoria Police 'Protecting Children' protocols.

6.4.1 Referral of children with an AFM

When police make a formal referral for an AFM to a specialised family violence service they will state if any children were present at this incident. The children will be considered as part of the formal referral, and the specialised family violence service will undertake a risk and needs assessment of each child involved as part of the referral process.

6.4.2 Child Protection reporting

Grounds for a child in need of protection are outlined under section 162 of the CYFA, and include significant harm (which may be cumulative) resulting from physical abuse, sexual abuse, emotional abuse or neglect.

6.4.2.1 *Mandatory Reporting*

Mandated professionals, including police, must make a report to Child Protection as soon as practicable after forming a belief on reasonable grounds that a child or young person is in need of protection from significant harm as a result of physical injury or sexual abuse, and the child's parents are unable or unwilling to protect the child.

A mandatory report to Child Protection must be made in any of the following circumstances:

- > Physical abuse of, or non-accidental or unexplained injury to, a child (mandatory reporters must report).
- > A disclosure of sexual abuse by a child or witness, or a combination of factors suggesting the likelihood of sexual abuse - the child exhibiting concerning behaviours.

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, police should contact Child Protection intake and seek advice.

Where police make a mandatory report to child protection, they must also notify SOCIT of the incident.

6.4.2.2 *The roles of police and DHS in mandatory reporting*

Once a mandatory report for physical or sexual abuse is made the DHS and SOCIT wherever possible, or other police, will conduct a joint investigation. Police are responsible for the investigation of criminal offences and DHS is responsible for the safety and protection of the child.

Where DHS is actively involved, it will take responsibility for the overall case management of the protective issues. DHS may protect the child by taking action according to the CYFA.

6.4.2.3 *Sexual Offence and Child Abuse Investigation Teams (SOCIT)*

When there is any disclosure of a sexual assault of a child police will immediately notify SOCIT. Where there is a disclosure of child abuse or a physical assault of a child and there are no other adults assaulted as part of the incident, then police will immediately notify SOCIT.

The SOCIT will respond in accordance with their standard operating procedures. Children and mentally impaired persons who meet the legislated criteria may be interviewed by Video and Audio Recording of Evidence (VARE).

6.4.2.4 *Urgent Cases*

Where immediate intervention is necessary to keep children safe police are required to phone the DHS intake service and then forward VP forms L17 and L8. During business hours police should phone the appropriate DHS Child Protection Regional intake; and after hours, phone the After-Hours Child Protection Emergency Service.

6.4.2.5 *Non-urgent Cases*

Police are to forward the VP Forms L17 and L8 to the DHS Child Protection Regional intake for a response.

6.4.2.6 *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, police must consider making a report to Child Protection.

This will include situations where a primary carer of dependent children is:

- > in custody,
- > arrested, or
- > remanded,

and thereby incapable of caring for their child during this period and there is no other suitable person willing or able to care for the child.

A non-mandatory 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 behavior 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.

6.4.3 What happens when Child Protection does not take any action?

Where Child Protection determines circumstances do not warrant its involvement, police must reassess the circumstances to determine whether the level of future protection requires them to apply for a FVIO on behalf of the child or children.

6.4.4 Child FIRST referral – significant concern for the wellbeing of a child, unborn child or young person

In all other cases where children are present and a formal referral to a specialised family violence service or a report to Child Protection is not made, but where police have significant concerns for the wellbeing of a child or young person, police may refer the matter to the relevant Child FIRST intake (use LVP Form L17 for all family violence-related matters and VP Form 1302 for all other matters). This includes in the case of an unborn child where there is a significant concern for the wellbeing of the child after his or her birth.

A referral to Child FIRST should not be duplicated in circumstances where the child is included as part of a formal referral of an AFM to a specialised family violence service, or where a report has been made to Child Protection.

6.4.5 What police must tell the parents when making a child referral

Police must advise the parent/s or guardian of any child whenever a referral is going to be made and the circumstances of the referral.

A young person must be independently informed of the referral. Advising of the referral does not apply if the notification could be to the detriment of either a criminal investigation or a protective investigation under the CYFA, eg. where there is a possibility that evidence might be destroyed or the child could be further endangered.

6.5 INFORMATION SHARING

6.5.1 Formal Referrals

Victoria Police is able to share information with specialised family violence services relating to family violence incidents attended. Information can be shared for the primary purpose for which it was collected, regardless of whether informed consent has been obtained from the AFM or the perpetrator. In addition, information can be disclosed for a purpose related to the primary purpose where the individual would reasonably expect the disclosure.

This means that agencies working with AFMs and perpetrators of family violence, including Victoria Police, that collect information for the purposes of support, protection, prevention of violence and/or accountability for violence can disclose the information for these purposes.

On this basis, Victoria Police do not require consent to make a referral and provide case specific information as long as it is relevant and needed by a specialist family violence service, but must inform the AFM and/or their children or the perpetrator that a referral is being made.

Relevant information includes information contained on the L17 including the narrative. It does not include providing the identifying details of the other party when referring an AFM or perpetrator. Therefore police are not to include the names of parties within the narrative so that the narrative can be shared.

Additionally, if a specialised family violence service seeks further information where a formal referral has not in the

first instance been made by police, a copy of the risk assessment will be provided.

6.5.2 Child Protection Reports

Police are authorised to disclose information to Child Protection where a child is subject to a protective intervention report and where this information is relevant to the protection or development of the child. This may occur during a Child Protection investigation, ongoing Child Protection involvement or where a child is subject to a Children's Court Protection Order.

Further information sharing guidelines are detailed in the DHS – Victoria Police 'Protecting Children' Protocol.

6.5.3 Child First Referrals

When police make a referral to Child FIRST because they have a significant concern for the wellbeing of a child, unborn child or young person, Child FIRST may for the purpose of assessing risk to the child, consult with police. For this purpose, Child FIRST may receive or disclose relevant information about the child or the child's family to police.

6.5.4 Informal Referrals

When an informal referral has been made by police and the AFM, their children or the perpetrator has contacted a specialised family violence service, police will provide the specialised family violence service with the VP Form L17 upon request. This information is being shared for the primary purpose for which it was collected

6.5.5 Information police may share with others

The information that police record during their investigation is subject to legislative provisions and Victoria Police policy. With respect to family violence, police may disclose information in the following circumstances:

- > Referrals
 - > Family law matters
 - > Intervention Order hearings – as requested by the court however any information that may disclose the location of the AFM or respondent is not to be given to the other party or their representative unless directed by the court
 - > Statements and recorded interviews – copies of statements should be provided to the victim and witnesses as requested. A copy must be provided to the respondent as required by respective legislation. VARE statements can only be released according to legislative requirements.
-

6.5.6 Multi-Agency Case Conferencing for high risk families

Multi-agency case conferencing (eg RAMPs) is a coordinated meeting of a range of relevant services to discuss cases of AFMs that have been identified at high risk or requiring complex support to achieve safety from family violence.

The police role is to apply crisis intervention at family violence incidents, conduct risk assessments using the process in VP Form L17, share information and contribute towards risk management and safety strategies required for a safety plan.

It is critical with multi agency case conferencing to consider the history of family violence and to develop tailored actions and strategies to address specific circumstances to ensure the safety of the AFM (and the children). Agreement and development of the safety plan and ongoing support requirements may at times involve the utilisation of all the participating agencies capabilities, including an agreed policing response. Conversely there will be times when the appropriate solution may not require any policing response.

6.5.7 Recidivism

Recidivism strategies are required to ensure that interventions in family violence incidents are effective, and reduce the likelihood of the violence re-occurring. Police should refer to the Intelligence Doctrine for guidance on effectively implementing responses to recidivism. Corporate standards and reporting of numbers of recidivist offenders, repeat victims, and repeat attendance by Victoria Police; the baseline is three or more attendances at family violence incidents involving both, or either, the same victim or perpetrator, within a rolling twelve month period.

Not all family violence matters are disclosed to police so that even an AFM who has not previously reported to police may have been exposed to significant or repeated abuse, and police should factor this into the response.

Formal referrals should be made for recidivist cases to enable multi-agency case management and to strengthen risk management.



MONITORING AND ACCOUNTABILITY



7.1 HOW THE POLICE RESPONSE AND INVESTIGATION WILL BE MONITORED

7.1.1 Role and responsibilities of the police supervisor

Police supervisors have a quality assurance role in checking the appropriateness of the police response and investigation of family violence both when attending incidents or actively overseeing police attendance, and in case management.

Supervisors must regularly monitor family violence incidents via LEAP case management. The purpose is to ensure that processes in this Code of Practice and related police procedures are being followed including:

- > That a thorough investigation and a risk assessment have been conducted, risk management undertaken and the report (VP form L17) has been comprehensively and accurately completed
- > That the action taken or proposed is commensurate with the level of risk identified, (addressing not only the immediate and ongoing risks but also any identified criminal behaviour)
- > Appropriate action has been or is being taken
- > The risk management status and the criminal investigation status on LEAP remains 'active' until decided otherwise (e.g. until a FVIO is served on the respondent and a brief of evidence has been submitted or otherwise all possible inquiries or actions have been exhausted)
- > Ongoing investigation is progressing, led by a nominated investigating member
- > Briefs of evidence are submitted in a timely fashion
- > AFMs are updated of the case progress for criminal matters
- > Appropriate consideration is being given in circumstances involving: children, Aboriginal people, CALD communities, newly arrived or refugee communities, persons with a disability, older persons, adolescent perpetrators, and people in same sex relationships.

7.1.2 Family Violence Liaison Officer (FVLO)

There is a Family Violence Liaison Officer (FVLO) at every 24-hour police station in Victoria. The FVLO is a supervisor and is responsible for the following activities within their station or cluster; to:

- > Provide a consistent and coordinated approach to family violence
- > Monitor and report on family violence, including adherence by members to the Code of Practice
- > Provide a station contact point for local referral agencies
- > Maintain relationships between police and other agencies
- > Coordinate further responses for AFMs where issues of re-attendance or multiple attendances exist.

7.1.3 Family Violence Advisor (FVA)

Victoria Police has Family Violence Advisors (FVAs) across the state. Their role is to:

- > Provide a focal point for the interface between operational police, FVLOs and local agencies
- > Ensure operational police are aware of the issues and impact of family violence and violence against women upon the AFMs and the general community
- > Establish and maintain formal consultative community networks and represent Victoria Police at appropriate forums relating to family violence
- > Coordinate, develop and conduct training workshops to operational police in consultation with the Family Violence Coordination Unit and Divisional Training Officers
- > Maintain relationship with Family Violence Coordination Unit and state-wide integrated family violence service governance structures.
- > Research and identify local issues, trends and incidents of family violence in the community and develop initiatives and strategies to break the cycle of family violence
- > Report by exception on a monthly basis on issues, emerging trends, innovative projects (good practice) and community engagements
- > Provide a contact point between local agencies, and the Tasking and Coordination process/committee relating to identified trends or strategic family violence issues.

7.1.4 Role of the FV Teams (FVT)

The role of Family Violence Teams (FVTs) will vary across the state. Core roles of the FVT may include:

- >. Immediate specialist response to a family violence incident
- >. Secondary response unit in support of primary units
- >. Proactive investigations and case management of recidivist offenders, repeat AFM's and high risk clients
- >. Investigation of criminal offences, including breaches of intervention order. Investigation can include, but is not limited to:
 - Management of crime scenes;
 - Preparing and executing warrants for evidentiary purposes;
 - Obtaining statements from victims and witnesses;
 - Processing offenders
- >. Applications for intervention orders
- >. Making appropriate referrals for ALL parties involved with incidents that the FVT is managing
- >. Convening and informing Case Reviews
- >. Working jointly with Family Violence Service Providers and other referral agencies to assist persons affected by family violence
- >. Providing an expert point of reference, advice and assistance to other police with tasks or investigations resulting from a family violence incident
- >. Identifying, implementing and co-ordinating proactive strategies in consultation with the Divisional Family Violence Advisor, Family Violence Liaison Officer and Tasking and Coordination Committee
- >. Developing and maintain partnerships with external agencies and support services.

7.1.5 Family Violence Coordination Unit

The FVCU has a principal role to provide support and advice to all police employees regarding family violence.

The role of the FVCU includes:

- >. Developing and proposing increasingly effective policy and strategy to prevent, intervene and respond to high rates of FV in Victoria;
- >. Contributing to state-wide and national policy and strategy development related to FV and violence against women and children (VAWC);
- >. Progressing force-wide implementation of existing and new VP strategies to prevent and respond to VAWC and other forms of family violence;
- >. Managing high level research and projects into family violence related issues;
- >. Maintaining networks with government, academia, community and service providers, including key stakeholders in the Victorian integrated family violence system;
- >. Managing the Systemic Review of Family Violence Related Deaths and reporting to the Coroner as requested;
- >. Providing training, education and information to members & identifying emerging issues;
- >. Providing support to Executive Command by briefing, including identification of exposure to the organisation and resourcing opportunities.

7.1.6 Organisational governance of family violence response performance

Victoria Police has convened an internal Violence Against Women and Children Steering Committee (VAWCSC) and this group has responsibility for monitoring the progress of Victoria Police's responses to family violence, sexual assault and child abuse. This includes the implementation of police strategies to reduce violence against women and children and ongoing practice under the Enhanced Family Violence Service Delivery Model.

As part of ongoing monitoring of police responses, the committee monitors progress against all performance measures listed in VAWC strategies and the Enhanced Family Violence Service Delivery Model. This assists in

identifying gaps or areas of concern relating to the operation of this Code of Practice, and allows an organisational view for continuous improvement for all victims of family violence.

7.1.7 Concerns about police action from external agencies or the community

7.1.7.1 *What people can do if they are concerned about the police response*

In the first instance, issues concerning police action should be dealt with at the local level via a FVLO (who is a police supervisor) or another police supervisor or Officer in Charge of the relevant police station. Any unresolved issues can be referred to the FVA/FVT or the PSA Manager and may require advice from the FVCU.

7.1.7.2 *Complaints against police*

Issues concerning inappropriate or unethical police behaviour should be reported to a police supervisor or the Professional Standards Command. Any investigation and action is pursued as required by police internal procedures.

7.1.7.3 *What police can do if they are concerned about the response from external agencies*

Any concerns police have regarding the manner in which another agency, eg. A specialist family violence service, has acted in accordance with this Code of Practice are initially raised with the respective FVLO, FVT and/or the Family Violence Advisor. Action is taken to address the issue at a local level. However, unresolved issues may require involvement from the FVCU.

7.2 POLICE AND COURTS LIAISON AND COMPLAINTS

A Family Violence Court Liaison Officer's (FVCLO) primary role is to act on behalf of the police informant in police initiated intervention order applications; this will alleviate the need for police informants to attend court, in the first instance, when they have taken out an FVIO or FVSN. It is the responsibility of the FVCLO, with the assistance of the police prosecutor/civil advocate, to case manage and to continue to risk assess on all police applications.

In most areas Court User Group Meetings are conducted on a regular basis. The FVAs/ FVCLO or FVLOs will usually attend these regular meetings. The meetings are an appropriate avenue to discuss any issues or concerns about the practices or processes of each agency.

7.2.1 Court concerns about the Police Response

When the Court Registrar (or other officer of the Court) has immediate concerns about the police response to a family violence incident, ie, the response is not, or does not appear to be, in line with best practice as per this Code of Practice; the Registrar will contact the FVLO/ FVCLO at the member's station, or if unavailable another supervisor at the station, who will assess and investigate the situation to ensure the matter is dealt with in a timely manner. If required the FVLO/ FVCLO or supervisor will direct members to take other action.

7.2.2 Police concerns about Court responses

Where police have immediate concerns about a response by staff at the Court they should speak to their FVLO/ FVCLO or if unavailable and the matter is urgent, another supervisor, in the first instance. The matter should be brought to the attention of the Family Violence Advisor if there are broader implications.



SERVICES



REFERRAL INFORMATION

The following list of referral agencies and other services may assist in the police response to and investigation of family violence. The list is not exhaustive and local agencies may exist that provide a similar service. Police are not restricted as to which agency or how many agencies they can contact or refer people to, provided they follow this Code of Practice, specifically section 3, and the respective police procedures.

8.1 STATEWIDE SERVICES

8.1.1 Women's Domestic Violence Crisis Service of Victoria (WDVCS)

Crisis support, information, referral to safe accommodation (refuge) for women.

9322 3555 (24-hrs) 1800 015 188 (toll free for country callers only)

8.1.2 In Touch Multicultural Centre Against Family Violence

Services, programs and responses to issues of family violence in CALD (Culturally And Linguistically Diverse) communities, developing and implementing a number of culturally sensitive and holistic models for the provision of services to both victims and perpetrators of family violence.

9413 2510 (9am–5pm, Mon-Fri) Freecall 1800 755 988

8.1.3 Men's Referral Service

Telephone counselling and referral for men who use violence towards family members.

Provides initial counselling and referral for partners and advice to agencies requiring assistance.

9428 2899 (9am-9pm, Mon-Fri) Freecall 1800 065 973

8.1.4 Elizabeth Hoffman House Aboriginal Women's Family Violence Services

Crisis accommodation and support for Aboriginal women and spouses of Aboriginal men.

9482 5744 (9am-5pm, Mon-Fri)

ehh@infoxchange.net.au

8.1.5 Seniors Rights Victoria (SRV)

Seniors Rights Victoria is a free and confidential state-wide telephone and advisory service aimed to help prevent elder abuse and safeguard the rights, dignity and independence of senior Victorians.

1300 368 821b (10am-5pm, Mon-Fri)

www.seniorsrights.org.au

8.1.6 Victorian Aboriginal Child Care Agency Co-Operative Limited (VACCA)

VACCA provide assistance and support to Aboriginal children and families who are experiencing social and economic problems which may contribute to a breakdown in the family structure.

(03) 8388 1855

8.2 NATIONAL PHONE AND ONLINE SERVICE

8.2.1 1800 RESPECT

Commonwealth government funded 24/7 counselling helpline, online counselling and information and support for people experiencing sexual assault or domestic and family violence

1800 737 732

Online counselling <https://www.1800respect.org.au/get-help/>

8.3 DOMESTIC VIOLENCE OUTREACH SERVICES

8.3.1 Melbourne Metropolitan Outreach Services

Offer women and children who are enduring or escaping from a violence partner practical support and information about safe accommodation options, obtaining legal advice, accessing financial entitlements, referrals to counselling and other services.

Eastern Metropolitan Ringwood **9259 4200**

Northern Metropolitan Eaglemont **9450 4700** (10am-4pm)

Southern Metropolitan Frankston, Cranbourne, Dandenong, Narre Warren and Pakenham

9791 6111 (8am-5pm) 0400 503 338 (5pm-10pm)

Western Metropolitan Footscray **9689 9588**

8.3.2 Rural Outreach Services

| | | |
|---|---|---|
| Barwon South West Geelong 5224 2903 | Grampians Horsham 5362 1200 | Loddon Mallee Mildura 5021 2130 |
| Warrnambool 5561 1934 | Ballarat 5333 3666 | Bendigo 5443 4945 |
| Hamilton 5571 1778 | Ararat 5352 6200 | Swan Hill 5033 1899 |
| Camperdown 5561 1934 | Stawell 5358 7400 | |
| Portland 5521 7937 | | |

| | | |
|--|--|--|
| Gippsland Warragul 5622 7000 | Hume Wodonga 5722 1100 | |
| Morwell 5120 2000 | Shepparton 5821 9458 | |
| Leongatha 5662 4502 | Broadford 5784 5555 | |
| | Wangaratta 5722 1100 | |

8.4 OTHER SERVICES

8.4.1 Aboriginal Family Violence Prevention and Legal Service

1800 105 303 (toll free, 9am-5pm, Mon-Fri)

Fax 9416 0147 (Email information@fvpls.org)

www.fvpls.org

8.4.2 Child Protection Emergency Service (DHS)

8.3.2.1 After Hours Child Protection Emergency Service (DHS)

To report concerns of physical injury and/or sexual abuse of a child after hours, where the matter is urgent and cannot safely be left until the next working day. Contact **131 278** (toll free)

8.3.2.2 Child Protection (DHS) - Business Hours

To make a mandatory report where the child or young person has suffered or is likely to suffer significant harm as a result of physical injury or sexual abuse and the parents have not or are unlikely to protect the child.

To make a report where a child or young person is in need of protection and has or is likely to suffer significant harm due to emotional abuse, neglect or abandonment and the parents have not or are unlikely to protect the child.

During business hours contact the DHS Regional Intake.

<http://www.dhs.vic.gov.au/for-individuals/children,-families-and-young-people/child-protection/child-protection-contacts>

8.4.3 Child FIRST

To make a referral where there are significant concerns for the wellbeing of a child, including before the birth of the child, where there are significant concerns for the child after his or her birth.

<http://www.dhs.vic.gov.au/for-individuals/children,-families-and-young-people/family-and-parenting-support/family-services/child-first-child-and-family-information,-referral-and-support-teams>

8.4.4 Domestic Violence Resource Centre Victoria (DVRCV)

Publications, training, resources and referral to local and national services, and to Victorian Family Violence Networks. Information covers violence and women with disabilities, and older women and domestic violence.

9486 9866 (9am-5pm, Mon-Fri)

9486 9744 (fax) email dvrcv@dvrcv.org.au

www.dvrcv.org.au (central information point)

www.lovegoodbadugly.com (information for young people about respectful relationships)

www.burstingthebubble.com ('Bursting the Bubble' for teenagers living with family violence or abuse)

8.4.5 Federation of Community Legal Centres

Will refer to local Community Legal Centres who can provide legal assistance on family violence, family law and support in applying for intervention orders.

9652 1500 (9am-5pm, Mon-Fri)

www.communitylaw.org.au

Fax 9654 5204

Email administration@fclc.org.au

8.4.6 Gay and Lesbian Switchboard

Telephone counselling for lesbians and gay men, referral to face-to-face counselling and other services.

9663 2939 (6pm-10pm, Mon, Tue, Thur, 2pm-10pm Wed, 6pm-9pm Fri-Sun & public Hols)

1800 184 527 (toll free for country callers)

8.4.7 Kids Help Line

Telephone counselling for children and young people. Freecall **1800 551 800**

www.kidshelp.com.au

8.4.8 LifeLine

Telephone counselling (general). **131 114**

www.lifeline.org.au

8.4.9 Telephone Interpreter Service

131 450

8.4.10 Victorian Aboriginal Legal Service

Provides legal advice and representation to the Aboriginal community

Freecall **1800 064 865**

8.4.11 Victims Support Agency (VSA)

8684 6700 9am - 5pm Mon-Fri

Helpline 8am -11pm, 7 days a week Call **1800 819 817** Text 0427 767 891

8.4.12 Women's Information and Referral Exchange (WIRE)

Telephone information, support and referral for women incorporating Women's Information Centre.

1300 134 130 (toll free, 9am-5pm, Mon-Fri)

www.wire.org.au

8.4.13 Women's Legal Service Victoria

Legal phone advice line concerning family violence and family law.

9642 0877 (legal advice) Freecall 1800 133 302

justice@vicnet.net.au (10am-1pm, Mon, 6.30pm-8.30pm, Tue & Thu, 2pm-5pm Wed)

8.5 VICTORIA POLICE

8.5.1 The Police Association (welfare officer)

Counselling and referral advice for members of the Police Association only.

9468 2600 (office hours) 0408 943 254 (24-hrs)

8.5.2 Victoria Police

Employee Support and Welfare Services of (Police Psychology) Counselling and referral advice for police employees and their family.

9301 6900 (24-hrs)

8.5.3 Victoria Police Victim Advisory Unit

Assists victims of crime and families bereaved by homicide and culpable driving.

9247 6555 (24-hrs)

8.6 CENTRES AGAINST SEXUAL ASSAULT (CASAS)

8.6.1 Metropolitan CASA crisis line numbers

Crisis support, counselling, information for people who have been sexually assaulted.

| | | |
|--|------------------|--------------------------------------|
| CASA House – Carlton | 9635 3610 | (daytime) |
| | 9349 1766 | (after-hours crisis) |
| | 1800 806 292 | (toll free for country callers only) |
| Gatehouse Centre – Flemington (Royal Children's Hospital) | 9345 6391 | |
| Western CASA – Footscray | 9687 5811 | |
| Northern CASA – Heidelberg | 9496 2240 | |
| Eastern CASA – East Ringwood | 9870 7330 | |
| South East CASA – Moorabbin | 9594 2289 | |

8.6.2 Rural CASA crisis line numbers

| | |
|-----------------------------------|------------------|
| Ballarat CASA | 5320 3933 |
| Barwon CASA | 5222 4802 |
| Gippsland CASA – Morwell | 5134 3922 |
| Goulburn Valley CASA – Shepparton | 5831 2343 |
| Loddon Campaspe CASA | 5441 0430 |
| Wimmera CASA – Horsham | 5381 9272 |
| Upper Murray CASA – Wangaratta | 5722 2203 |
| South Western CASA – Warrnambool | 5564 4144 |
| Mallee CASA – Mildura | 5025 5400 |



PRACTICE NOTES



9

9.1 Practice Note - People who work in the sex industry

Purpose

The purpose of this practice note is to update the Victoria Police Code of Practice for the Investigation of Family Violence (CoPIFV) to include specific consideration of the experiences of people who work in the sex industry. It highlights the difficulties experienced by people who work in the sex industry in reporting incidences of family violence to police. It advises police on how to consider these difficulties when investigating family violence perpetrated against these victims.

Context

In 2015 the Royal Commission into Family Violence (RCFV) was established in the wake of a series of family violence-related deaths in Victoria. The recommendations of the 2016 RCFV report proposed that a number of amendments be made to Victoria Police's CoPIFV to provide clarification and improve police responses to incidences of family violence.

Recommended practice

This section is to be read as an additional chapter to Section 2.5: *Responding to diverse community needs*.

People who work in the sex industry

The RCFV noted that women who work in the sex industry are disproportionately affected by family violence. International research suggests that these women can have higher levels of exposure to violence than others⁶. They may be victims of family violence perpetrated by an intimate partner at home and they are disproportionately likely to have experienced violence in their childhood. Often these women enter the sex industry as a consequence of family violence in order to financially support themselves or their family⁷. Males and transgender people who work in the sex industry are also affected by family violence.

Barriers to support

Despite there being such a high prevalence of family violence amongst the group, people who work in the sex industry report facing barriers to seeking the support they require as a direct result of entrenched discrimination and poor community attitudes around their job status. People who work in the sex industry have reported experiencing prejudice when seeking assistance and in obtaining necessary support which has caused them to feel disbelieved or that they are not being taken seriously. Such perceptions can result in feelings of isolation or of being 'invisible' or overlooked, as well as a loss of confidence in and disengagement with the system.

Impact of community attitudes

Police should be mindful of how community attitudes may impact on the capacity and desire of people who work in the sex industry to seek assistance in matters of family violence. A normalisation of violence in the industry may impact their understanding of what constitutes family violence making some people less likely to make a report or seek support, or to recognise intimate partner abuse as family violence⁸. Similarly, some sex workers may see themselves as unworthy of support or assistance. Police should be aware that seeking assistance for family violence may be traumatic or emotionally challenging for the AFM for these reasons, and provide the necessary consideration and support.

The concern that they may be charged with a licensing offence if they are working illegally and are assaulted is another major hurdle to sex workers reporting family violence to police. Similarly, social stigma in relation to their profession may cause some people to be distrustful of police or hesitant to report cases of family violence for fear of being judged. Police should work closely with appropriate support services in these instances.

Police response

It is crucial that people who work in the sex industry and are victims of family violence receive appropriate responses and support from police. Access to appropriate support is essential to all victims' recovery and all reports of family violence to police must be investigated.

If victims do not feel supported or respected there is the risk that they will stop seeking assistance and the family violence they are experiencing will continue and potentially escalate. The police response to reports of family violence from people who work in the sex industry should be respectful, sensitive to their needs and aim to strengthen the AFM's confidence in the system. People working in the sex industry must receive the same level of understanding and consideration as any other victim of family violence and be provided with access to the appropriate support services to ensure their safety and aid in their recovery.

⁶ RCFV, Volume V, p. 252.

⁷ Ibid.

⁸ RCFV, Volume V, p.253.

9.1.1 Practice Note – Obtaining an interpreter for members of CALD communities

Purpose

The purpose of this practice note is to provide further guidance to police on the use of interpreters for culturally and linguistically diverse (CALD) communities. It emphasises the risks associated with using children and family members as interpreters, and using the same interpreter for both perpetrator and victim.

References

This document should be read in conjunction with:
Victoria Police Code of Practice for the Investigation of Family Violence
Family Violence Protection Act 2008 - Section 48
VPMG – Family Violence

Context

In 2015 the Royal Commission into Family Violence (RCFV) was established in the wake of a series of family violence-related deaths in Victoria. The recommendations of the 2016 RCFV report proposed that a number of amendments be made to Victoria Police's Code of Practice for the Investigation of Family Violence (CoPIFV) to provide clarification and improve police responses to incidences of family violence.

Recommended practice

This section should be read as an addendum to section 2.5.2.1 *Obtaining an interpreter for CALD and the hearing impaired*.

Obtaining an interpreter for members of CALD communities

In cases where the AFM is not fluent in English, an interpreter of the same sex as the victim (if appropriate) should be arranged at the earliest opportunity and at every stage of the investigation. This includes:

- during initial crisis intervention (e.g. at the scene);
- evidence gathering and statement taking; and
- when explaining the conditions and purpose of a family violence safety notice and/or intervention order to the AFM or the respondent.

Police should not use individuals known to the AFM or perpetrator as interpreters. Importantly, family members and children should not be used. Using family members and children as interpreters puts these individuals at risk of emotional trauma caused by hearing detailed accounts of the family violence incident (i.e., 'secondary trauma'). If the individual was also involved in the incident, acting as an interpreter has the potential to intensify any psychological harm caused by the family violence incident itself. Emotional distress may particularly be caused to children, who may be fearful of police due to cultural associations.

Using family members and children also degrades the reliability of any evidence gained through a statement. They may be hesitant to relate certain information that could incriminate a family member, may omit critical information, or their interpretation may be biased. A professional interpreter service provider must be engaged whenever interpreting services are required to ensure an accurate and unbiased account is provided to police.

The assistance of an interpreter should be sought as soon as practicable following the incident. If ongoing interpreting is required or the matter proceeds to court police must engage an accredited interpreter service, as listed below.

Some victims from CALD communities may be reluctant to speak to an interpreter because they fear their privacy may be compromised and the information they provide may be passed to their local community. Police may be able to alleviate this when using an interpreter by:

- Requesting an interpreter from another state (this request will be accommodated where possible); and/or
- Not disclosing the victim's name or any identifying information to the interpreter where practicable.

When using the services of on-site interpreters, police should take all reasonable steps to ensure that the interpreter is not associated with the victim or their immediate cultural community.

Interpreter services:

Translating and Interpreting Service (TIS)

www.tisnational.gov.au

Metro 131 450

On-site 1300 655 082

VITS – Language Link

www.vits.com.au

Pin= 23456/Auth Code = Reg. no (without 'VP')

On-site/Telephone booking 03 9679 1955

All Graduates Interpreter Service

www.allgraduates.com.au

Metro 03 9605 3091

On Call Interpreting Service

www.oncall.com.au

Metro 03 8807 2300

Resources

There are resources in languages other than English (LOTE) on Family Violence Command [resource pages](#) which can help when working with interpreters:

- Information Sheet: Family Violence What Police Do; and
- Bilingual Tool: Family Violence Technical Terms

The resources are publicly available at www.police.vic.gov.au/familyviolencepublications

9.1.2 Practice Note – Personal property conditions in Family Violence Intervention Orders

Purpose

The purpose of this practice note is to provide further guidance to police supporting the use of personal property conditions in family violence intervention orders (FVIOs). It focuses on personal property conditions that direct the respondent to return essential property to the protected person. It also notes exclusion conditions that enable the respondent to return to the residence to collect personal belongings in the presence of police.

References

This practice note should be read in conjunction with:

- Victoria Police Code of Practice for the Investigation of Family Violence
- Family Violence Protection Act 2008 - Section 48
- VPMG – Family Violence

Context

In 2015 the Royal Commission into Family Violence (RCFV) was established in the wake of a series of family violence-related deaths in Victoria. The recommendations of the 2016 RCFV report proposed that a number of amendments be made to Victoria Police's Code of Practice for the Investigation of Family Violence (CoPIFV) to provide clarification and improve police responses to incidences of family violence.

This practice note also incorporates changes to practice recommended by the State Coroner in the Inquest into the death of Kelly-Ann Thompson in 2016.

Recommended practice

This section should be read as additions to section 5.2.4 *Intervention Order conditions* and section 5.3.5.1 *Property Retrieval for Exclusion Conditions*.

Personal property conditions

Personal property conditions may be stipulated as part of a FVIO. The conditions:

- Order that the respondent return personal property belonging to the AFM or belonging to a family member of the AFM;
or
- Order that the respondent return jointly-owned personal property if the property will enable the AFM's everyday life to continue with as little disruption as possible.

Personal property conditions are an important tool in minimising disruption to the protected person's life and to protect their safety. The conditions may be used both in situations where the protected person remains in the home or seeks refuge elsewhere. A respondent may use personal property as a way to continue to exert control over the protected person once the physical violence has ceased. Personal property conditions, therefore, afford the protected person safety and protection by preventing the respondent from continuing to exert control over them.

Personal property conditions may be sought by police in cases where the protected person requires essential property that is in the respondent's possession. For example:

- In cases where the respondent is living in a separate residence or has been excluded from the AFM's residence and the AFM has left essential property at the respondent's house. Essential property can include but is not limited to: bank cards, passport, Health Care Card, a computer or laptop necessary for work, clothes or toiletries; or
- Where property is jointly-owned and required by the AFM, such as cooking equipment or children's possessions.

Obtaining property conditions

The physical and emotional safety of the protected person should remain the foremost priority in responding to family violence. However, it is important that when making an application for a FVIO or FVSN police consider whether the use of personal property conditions would assist in further protecting the AFM and assist in their recovery.

Prosecutors and Police Lawyers should request the court to specify 'essential' property items when including a personal property condition in a FVIO, and a reasonable timeframe within which the items should be collected to minimise the potential for disputes. It should be noted that passports and other identifying documentation are particularly important where the protected person is from a CALD community. Failure to return the property specified in a FVIO can constitute a contravention of the order.

Exclusion conditions

Exclusion conditions may also be ordered as part of an FVIO that:

- Require that furniture or appliances necessary to the normal running of the home remain in the residence; or
- Enable the respondent to return to the residence to collect their personal belongings.

In cases where the FVIO notes an exclusion condition allowing the respondent to retrieve their property from the protected person, the protected person must be notified of the collection time and the respondent must be accompanied by a police officer or another specified person to protect the AFM's safety and minimise the potential for further distress. Property should be collected in a single attendance. The property that the respondent wishes to collect should be noted prior to collection and only noted items are to be collected.

Attending property collections

Where a property condition is included on an intervention order, police should accompany the AFM or the respondent to the property collection to ensure no further contravention of the intervention order and to keep the peace.

Police should not arbitrate disputes over individual items for retrieval. Where ownership of property is disputed, police should encourage the AFM and respondent to seek legal advice to determine ownership of individual items. The exchange of property at police stations should also be discouraged.

When attending property collections police should:

- Review all available information in relation to the parties before attending including past L17s, LEAP records, previous intervention order applications and details of any previous property exchanges;
- Actively utilise the property exchange as an opportunity for risk assessment and risk management, if indicated by the circumstances;
- Give consideration to whether completion of a L17 Risk Assessment and Management Report is required; and
- Record that a property exchange has occurred in the most recent FVR narrative and any observations of the parties on LEAP. If either party has indicated that there may be additional property to be obtained at a later date (eg. a trailer is required or the AFM/respondent could not stay for the time needed to collect all property), it should also be recorded.

9.1.3 Practice Note – Service of Intervention Orders

Purpose

The purpose of this Practice Note is to serve as an addendum to Section 5.7 (Service of Intervention Orders) to assist members/supervisors in the delivery of Family Violence Intervention Orders (FVIO) by providing clearer guidance within the Code of Practice for the Investigation of Family Violence (CoPIFV).

References

This practice note should be read in conjunction with:
Victoria Police Code of Practice for the Investigation of Family Violence
Family Violence Protection Act 2008 - Section 48
VPMG – Family Violence

Context:

In 2015, the Royal Commission into Family Violence (RCFV) was established in the wake of a series of family violence related deaths in Victoria. In March 2016, the recommendations of the Royal Commission proposed a reform agenda for improving the foundations of the current system in responding to family violence, seizing opportunities to transform the response, and building a long term reform program to deal with all aspects of this crime.⁹

This section is to be read as an amendment to Section 5.7: Service of Intervention Orders

Intervention Orders

FVIOs are required to be personally served on respondents and protected persons. Personal service allows for a high level of assurance that the respondent will be made aware of the order and promotes compliance of the respondent. This increased awareness of the order and the required compliance of the conditions within, will promote the safety of the protected person.

Personal service also provides further opportunity for educating respondents and protected persons on the seriousness of the situation and informs them that they will continue to be held accountable for their behaviour.

High Risk Respondents

Personal service is particularly important in higher-risk family violence cases due to safety concerns for all persons involved. At all times the protected person (s) safety is paramount for all police responses.

In accordance with section 123¹⁰ of the *Family Violence Protection Act 2008* ('the Act') a respondent cannot be charged with contravening an FVIO until it has been served on them or it has been explained to them in accordance with section 57 or 96 of the Act.

Therefore, service of an FVIO must be completed in order to hold the respondent accountable for their actions until the FVIO has expired. It is vital that service of a FVIO occur within the nominated timeframes to ensure the protected person's safety increases whilst also maintaining the integrity of the FVIO.

A high risk respondent is a person who poses a serious and imminent threat to the life, health, safety or welfare of AFMs. Imminence refers to the expected timing of a violent incidence, including the threat occurring if not prevented or lessened immediately. The threat may be currently occurring or almost certain to occur if action is not taken.

If the respondent has been identified as high risk, consideration of service of an FVIO upon them must be given priority by members. If required, guidance for identifying high risk respondents can be sought from Family Violence teams (FVTs)/Family Violence Advisors (FVAs) or your supervisor. Priority service of the FVIO will aid in reducing the safety needs of the protected person

FVTs, FVAs or supervisors should also be consulted when members are experiencing difficulties in locating a respondent. If required, in high risk cases, where available, FVTs should assume responsibility for the service of those FVIOs.

5.7.1 What police do when they serve the intervention order

In compliance with the VMPG - Family Violence 5.2 – 5.7, members are to make reasonable attempts to serve the order and record these attempts on Action Advice Cover Sheet for Service of Intervention Orders [Form 958] and LEAP. On occasions members will need to plan service of the order, for example where:

⁹ RCFV, page 22

¹⁰ Contravention of Family Violence Intervention Order to

(1) This section applies if a person against whom a family violence intervention order has been made -

(a) has been served with a copy of the order; or

(b) has had an explanation of the order given to the person in accordance with section 57 or 96.

(2) The person must not contravene the order. Penalty: Level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both. Therefore a protected person cannot be charged with contravening an IO until it has been served on the respondent or it has been explained to them in accordance with section 57 or 96 of the Family Violence Act 2008

- An interpreter is required to explain the conditions of the order; or
- The respondent is an involuntary patient at a mental health service or subject of a community treatment order under the *Mental Health Act 1986* and the court of issue is to be advised.

After serving the order, police must:

- complete the affidavit of service and return it to the court of issue on the same day as service;
- LEAP must be updated with the notification of service of an intervention order details.;
- notify supervising officer; and
- notify the AFM that the FVIO has been served.

5.7.2 What police do if they cannot serve the intervention order

This section **must** be read in conjunction with VPMG – Family Violence 5.4

- Members are to make reasonable attempts to serve all intervention orders.
- If the order cannot be served members are to return the order to the court of issue, with a certificate of inability to serve and make an application for substituted service.
- If required members can consult the relevant Family Violence Team Supervisor, Family Violence Advisors or Family Violence Liaison Officer for service advice.

If police believe there is a means by which the documents to be served could be brought to the attention of the person to be served without personal service, they should make an application for substituted service. In some cases substituted service will be effected by police. Police must notify the AFM and discuss alternate safety strategies. Where police were the initial applicant, they are to make an application for an interim intervention order. Police may make a further referral to enable support of the AFM through this process.

9.1.4 Practice Note – Family Law Acts and Interstate Orders

Purpose

The purpose of this Practice Note is to serve as an addendum to Section 5.14.2.3 Family Law Act and Interstate Orders to highlight Victoria Police's ability to make an arrest due to a contravention of a Family Law order.

References

This practice note should be read in conjunction with:

Victoria Police Code of Practice for the Investigation of Family Violence

VPMG – Family Violence

Section 114 of the Family Law Act 1975 (Cth) including Section 114AA of the Act - Powers of arrest.

Context

In 2015 the Royal Commission into Family Violence was established in the wake of a series of family violence-related deaths in Victoria. As part of the reform agenda, the recommendations of the Royal Commission proposed that a number of amendments be made to Victoria Police's Code of Practice for the Investigation of Family Violence to provide clarification and improve police responses to incidences of family violence.

This section is to be read as an addendum to 5.14.2.3 Family Law Acts and Interstate Orders

5.14.2.3 What police do if there is a contravention of a *Family Law Act 1975* order

As per Section 3.2 of the VPMG – Family Violence, members should already be determining if there are any existing orders, including those made under the *Family Law Act (Cwlth) 1975*, when investigating and pursuing criminal offences.

Section 114 of the Family Law Act 1975 (Cth) allows for injunctions between parties of a marriage and de facto relationship. Injunctions can be sought:

- to restrict the respondent from entering the marital/residential home;
- from entering the place of work of the applicant;
- to restrain the respondent from entering the place of work of the applicant;
- in relation to the property of the applicant; or
- in relation to the use or occupancy of the matrimonial/residential home .

Victoria Police have the **power to arrest** under the Act when an injunction is in force and a breach has occurred when the respondent has:

- caused, or threatening to cause, bodily harm to the applicant/s; or
- harassed, molested or stalked the applicant/s.

There is no associated offence with the breach of the order.

After an arrest has been made, members must refer to Subsections 114AA (3), (4), (5) and (7) of the Act for directives about their responsibilities for ensuring that the respondent/offender is brought before the court that granted the injunction, or another court having jurisdiction under the Act i.e. The Federal Court of Australia at 305 William St, Melbourne or the Federal Circuit Court of Australia which has locations across Victoria.

The Act can be viewed at http://www.austlii.edu.au/au/legis/cth/consol_act/fla1975114/

It is recognised that members may experience challenges in verifying the existence of an injunction order and its conditions. Contact should be made with The Federal Circuit Court or Family Court of Australia to verify the operation of an injunction order in this family violence circumstance.

Where members cannot readily confirm the existence of an injunction and have continuing concerns for the safety of the applicant they are to follow standard operating procedure. This may include use of the Victorian state based arrest powers, issuing a Family Violence Safety Notice, applying for an interim intervention order or applying for a complaint and warrant.

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