

Victoria Police Manual – Procedures and Guidelines

Protecting children

Source Policy

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

- Children Youth and Families Act 2005 (CYFA)
- VPMP Protecting children
- Protecting Children: Protocol between Department of Human Services and Victoria Police 1998 ('the Protecting Children Protocols')

Application

Procedures and Guidelines are provided to support the interpretation and application of rules and responsibilities. They include recommended good practices and assessment tools to help employees make lawful, ethical and professional decisions. Employees should use the **Professional and ethical standards** to inform the decisions they make to support interpretation of Procedures and Guidelines.

Procedures and Guidelines are not mandatory requirements on their own. However, where rules and responsibilities state that employees must have regard to Procedures and Guidelines, the Procedures and Guidelines must be used to help make decisions in support of the rules.

Procedures and Guidelines

1. Report regarding a child in need of protection

1.1 *Child in need of protection*

VPMP Protecting Children sets out the requirements for members to report children in need of protection to Child Protection, Department of Human Services (DHS). A child is deemed to be in need of protection if any of the following grounds exist (s.162(1), CYFA):

- (a) the child has been abandoned by his or her parents and after reasonable inquiries—
 - the parents cannot be found; and
 - no other suitable person can be found who is willing and able to care for the child;

- (b) the child's parents are dead or incapacitated and there is no other suitable person willing and able to care for the child;
- (c) the child has suffered, or is likely to suffer, significant harm as a result of physical injury and the child's parents have not protected, or are unlikely to protect, the child from harm of that type;
- (d) the child has suffered, or is likely to suffer, significant harm as a result of sexual abuse and the child's parents have not protected, or are unlikely to protect, the child from harm of that type;
- (e) the child has suffered, or is likely to suffer, emotional or psychological harm of such a kind that the child's emotional or intellectual development is, or is likely to be, significantly damaged and the child's parents have not protected, or are unlikely to protect, the child from harm of that type;
- (f) the child's physical development or health has been, or is likely to be, significantly harmed and the child's parents have not provided, arranged or allowed the provision of, or are unlikely to provide, arrange or allow the provision of, basic care or effective medical, surgical or other remedial care.

Section 162(2), CYFA states that for the purposes of sub-sections (1)(c) to (1)(f), the harm may be constituted by a single act, omission or circumstance or accumulate through a series of continuing acts, omissions or circumstances.

1.2 Focus on cumulative harm

As well as focusing on immediate safety, the CYFA focuses on cumulative harm and asks professionals to consider whether a child is developing well and whether there are any longer-term risks to a child's development and wellbeing.

2. Mandatory Reporting

2.1 Mandated reporters

A broad range of professional groups are identified in the CYFA as mandatory reporters (s.182(1), CYFA). At this time only the following professional groups have been gazetted:

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

2.2 *What is 'a belief on reasonable grounds'?*

- **VPMP Protecting children** and the CFYA identify that members must report to Child Protection when, during the course of carrying out their duties, they form a belief on reasonable grounds that a child has suffered or is likely to suffer significant harm as a result of:
 - physical injury and/or
 - sexual abuse

and the parents have not protected or are unlikely to protect the child from harm of that type.

- A belief is a belief on reasonable grounds if a reasonable person practising the profession or carrying out the duties of the office, position or employment, would have formed the belief on those grounds (s.184(4), CYFA).
- Reasonable grounds may exist where:
 - a disclosure is made to the professional by the child that she/he has been physically or sexually abused
 - someone else, such as a relative, friend or acquaintance, sibling, or a friend of the child tells the professional that the child has been abused
 - the professional's observations of the child's behaviour, or knowledge of children generally leads him or her to believe that the child has been abused
 - the professional observes signs or indicators of the abuse.

2.3 *Failure to report*

Failure by police to report a reasonable belief that a child is in need of protection, due to the presence of sexual or physical abuse, may lead to pecuniary penalties being imposed by a Court (s184 (1) CYFA).

3. Report regarding the wellbeing of a child or unborn child

3.1 *Deciding whether to report to Child Protection or ChildFirst*

The **Protecting Children Protocols** provide members with some basic guidance on how to decide whether to refer a matter to ChildFIRST or make a report to Child Protection. In summary, the Protocols state:

- A referral to ChildFIRST should be considered if, after consideration of the available information you are, on balance, more inclined to form a view that both of the following apply:
 - the concerns currently have a low to moderate impact on the child
 - where the immediate safety of the child is not compromised.

- A report to Child Protection should be considered if, after consideration of the available information you are, on balance, more inclined toward a view that:
 - the concerns currently have a serious impact on the child's immediate safety, stability or development, or
 - the concerns are persistent and entrenched and likely to have a serious impact on the child's development.

If in doubt, discuss with the DHS regional office or After Hours Child Protection Emergency Service.

4. Report regarding a child in need of therapeutic treatment

4.1 *Sexually abusive behaviours*

- **VPMP Protecting children** and the **Protecting Children Protocols** identify that, where during the course of their duties members form a belief on reasonable grounds that a child is in need of therapeutic treatment, that is:
 - the child is aged between 10 and under 15 years
 - the child has exhibited sexually abusive behaviours
 - a directly related criminal prosecution is not being pursued
 - and the child's parent or guardian has not agreed to voluntarily engage the child in therapeutic treatment they must make a report to Child Protection.
- A child has exhibited sexually abusive behaviours when they have used their power, authority or status to engage another party in sexual activity that is either unwanted or where, due to the nature of the situation, the other party is not capable of giving informed consent (for example, children who are younger or who have a cognitive impairment). Physical force and/or threats are sometimes involved. Sexual activity may include exposure, peeping, fondling, masturbation, oral sex, penetration of a vagina or anus using a penis, finger or object, or exposure to pornography. This is not an exhaustive list.
- See ss.185 and 244, CFYA for applicable legislation.

5. Family Violence

5.1 *Family Violence Intervention Orders (FVIO)*

- When a child has been physically or sexually abused by a family member, Child Protection may make an application for a Child Protection Order under the CYFA. This application will form part of the overall case management of the child and the family. In these circumstances, police do not need to apply for an intervention order as responsibility for the child remains with Child Protection.

- However, where police are applying for a FVIO (including via a FVSN) on behalf of an Affected Family Member, police should include a child/children on the application.

5.2 Irreconcilable differences

- Special provisions apply where a child or parent believes there are irreconcilable differences between the two (s.259, CYFA). Refer parties to the DHS or a Registrar of the Children's Court.

6. Investigating allegations of child abuse

6.1 Agency roles

- Child Protection are the lead agency for the protection of children
- Police are the lead agency in all criminal matters associated with child abuse
- Child Protection and police must take care to ensure that they do not make commitments, agreements or arrangements about the likely action or role of the other agency.

6.2 A collaborative approach

In order to ensure children are protected from harm, their rights are protected and their development promoted, it is important, as outlined in the Protocols that:

- concerns in relation to a child's safety or wellbeing are reported as soon as possible to the most appropriate service (ChildFIRST/Child Protection)
- Child Protection and police plan any joint investigative response together
- Child Protection and police respect to each other
- any response considers the balance between safety, wellbeing and justice.

6.3 Notification requirements

- In order to facilitate an appropriate joint police/DHS response, Child Protection will notify police of any reports they receive that a child is in need of protection because of sexual abuse, physical abuse or serious neglect. Notification will occur at the point of intake and prior to Child Protection visiting any parties or directly commencing their investigation
- Where criminal offences are alleged, police should notify DHS prior to the commencement of any police investigation.

6.4 Recording reports to Child Protection

When making a report to Child Protection police must record this report in:

- an official diary or
- a patrol duty return or
- a Sexual Offences and Child Abuse Investigation Team (SOCIT) case entry
- the Family Violence Risk Assessment and Risk Management Report [Form L17], where a family violence incident has occurred.

6.5 Direct visit to child

- Where a child is suspected of having been abused police and DHS will generally conduct a joint visit to speak with the child and to address protective and criminal aspects of the investigation.
- A record of the joint planning process, visit and decisions made must be recorded on the relevant case file.
- In cases where the extent of the abuse is unclear, police may give consideration to Child Protection visiting the child alone to make an initial assessment. In such circumstances, Child Protection must provide advice back to the police as soon as possible.

6.6 Exchange of information

Overview

The CYFA and **Protecting Children Protocols** promote the exchange of information between police and Child Protection to ensure the best interests of the child are met.

Exchange of information

In exchanging information Child Protection and police must take into account:

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

- each agency must keep each other informed of the current and proposed future action in relation to the protection of the child and investigation of criminal matters, including any outcomes
- if the perpetrator is on bail, police must inform DHS of the perpetrator's compliance or non-compliance with bail conditions.

Joint interviews

- If a joint interview has occurred and notes were recorded by one party then the notes must be considered the property of both parties
- Notes must be made available to both police and Child Protection and can be used by either party in any subsequent legal action in either the Children's Court or criminal proceedings.

Access to Victoria Police records

- During joint police and Child Protection investigations information obtained should be made available to Child Protection upon request and recorded in compliance with current policies and procedures
- At other times, requests for access to police records and information will be decided by the police member to whom the request was made. The police member will determine whether the request for information is in accordance with the principles detailed in this section and does not contravene the information provisions within the CYFA. The Police/DHS Exchange of Information Form is to be used for requesting and supplying information. See Protecting Children Protocols for a copy of this form and further information on the exchange of information between Victoria Police and DHS.
- Requests from the Child Safety Commissioner (CSC) to interview members involved in matters where an inquiry is being conducted, are to be forwarded to the Superintendent, Sexual and Family Violence, Crime Command. The Superintendent is responsible for notifying individual members of CSC requests. Refer Part 6, Division 4, *Child Wellbeing and Safety Act 2005*, for information on CSC inquiries.
- Any requests for information outside the parameters of a Child Protection investigation or the prosecution of an alleged offender should only be provided by the necessary warrant/subpoena.
- Where documents require a subpoena to be issued to allow their release, police are to advise DHS at the earliest opportunity, to ensure minimal delays.

Criminal Record checks

- All requests by Child Protection for criminal records checks are to be directed to Record Services Division (RSD). Requests can be made to RSD via the telephone for urgent situations.
- SOCIT and the SOCIT Coordination Office should not be contacted to perform criminal record checks.

Access to DHS Records

- During joint police and Child Protection investigations information obtained should be made available to police upon request and recorded in compliance with current policies and procedures.
- At other times, SOCIT supervisors are authorised to request and receive information regarding DHS records of persons assessed as being responsible for harm in relation to a child or young person.
- The SOCIT supervisor is to make a request to a Child Protection Unit Manager (CPW 5 or above) who will determine whether the request for information is in accordance with the principles detailed in this section, does not contravene the information provisions within the CYFA, and meets with the DHS Information Privacy Principles (February 1998). The Police/DHS Exchange of Information Form is to be used for this process. See Protecting Children Protocols for a copy of this form.
- Any requests for information outside the parameters of a Child Protection investigation or the prosecution of an alleged offender should only be provided through a necessary warrant/subpoena.
- DHS will ensure police are informed of the existence of relevant documents prior to police seeking a search warrant/subpoena.

6.7 *The non-offending parent*

As part of the joint investigation the attending police and Child Protection workers will assess the protective capacity of the non-offending parent and make a decision as to when they involve this parent.

6.8 *Interviewing the child*

- Where possible interviews with children, who are alleged to have been abused, should be conducted by one police member and one Child Protection worker. This reduces the need for the child to be subjected to multiple interviews and interviewers.
- A decision as to who will lead this interview will be based on the circumstances of the case and should be made jointly by the attending Child Protection workers and police.

- The interview should be accurately and fully recorded in writing by one party. The accuracy of the record should be confirmed by both parties.
- Police must also take a formal statement of complaint from the child.
- For additional information see:
 - **VPMP Interviews and statements**
 - **VPMG Interviewing specific categories of persons**
 - **VPMG Visual audio recorded evidence**

6.9 Visual Audio Recorded Evidence interviews

- If a Visual Audio Recorded Evidence (VARE) interview is to be conducted, the safety and well being of the child must be considered in relation to the timing of this interview
- Child Protection practitioners should be encouraged to watch the VARE interview, from the monitoring room, at the time it is conducted
- Relevant legislation does not allow for the Child Protection practitioner to ask any questions during the VARE statement. However, Child Protection can ask questions of the child at the conclusion of the VARE interview (off camera). These questions should be fully documented by police to rebut any claims of contamination of the subsequent conversation.
- See also VPMG Visual Audio Recorded Evidence.

6.10 Forensic medical examinations

- Child Protection and police must liaise with each other prior to arranging a medical examination of a child to enable both protective and criminal matters to be considered and agreement on the timing of the medical examination.
- In cases where criminal concerns are apparent, police are responsible for arranging the forensic medical examination.

6.11 Child Protection requirement to inform parents

Child Protection is required under ss.240(3) and 241(1), CYFA to provide a copy of the protection application and written information to parents upon taking a child/young person into safe custody. This includes the alleged offending parent. Police should be mindful of this requirement in undertaking the criminal investigation.

6.12 Child Protection interview with the alleged offender

If it is necessary for Child Protection to speak with the alleged offender, to assess them as part of the overall protective investigation regarding the safety

and wellbeing of the child, this must be planned with police to ensure the criminal investigation is not jeopardised.

6.13 Request by Child Protection for police assistance

Child Protection may request the assistance of police to accompany them where there is a threat of physical violence, or other circumstances that dictate the need for police presence. The timing and level of assistance required will be assessed by police and provided where appropriate.

6.14 Bail justice hearings

- When a child is taken into safe custody by Child Protection and the matter is unable to be brought before the Children’s Court within 24 hours, an out of sessions court hearing before a bail justice is required (s.242(3), CYFA).
- If police are involved in relation to criminal matters, close coordination must occur between Child Protection and police to ensure sufficient evidence for the bail justice hearing. Family matters should be heard first if there are criminal matters also alleged.
- Where an application to a Bail Justice to have a young person remanded in police custody is necessary, and it is out of business hours, contact the Central After Hours Assessment and Bail Placement Service (CAHABPS) (ph. 1300 139 767) prior to contacting a Bail Justice.

7. DHS employee is alleged offender

In circumstances where police come into information whereby a child has been sexually or physically abused and the alleged offender is an employee of Child Protection, a senior police member is to immediately contact the Manager, Child Protection of the relevant region. Only in the event that the allegation pertains to the regional Child Protection Manager should another region be contacted by Police.

8. Reports of abuse by out of home care clients

- Out of home care is provided to children and young people who are unable to reside with their families due to issues of abuse and neglect
- Children and young people who are placed in out of home care are subject to statutory orders or Child Protection investigations
- When a ‘quality of care concern’ is raised about a child in out of home care, the Community Service Organisation management and staff, carers, police and Child Protection must work together to ensure that the interests and safety of the child are paramount at all times in the investigation process and a swift and decisive response is achieved

- Quality of Care Coordinators are employed in each of the eight DHS regions to coordinate a timely and effective response to allegations of possible abuse or neglect in out of home care.

9. Dispute resolution

- It is essential that differences between police and Child Protection are addressed as soon as possible after they arise
- Resolving any differences needs to be addressed at an individual and agency level
- A basic model for resolving difference is:
 - clear identification by both parties of the problem or issue
 - acknowledgment of relevant goals and interests
 - generation of practical options to address the problem
 - seeking agreement on a preferred option
 - negotiation when the preferred option is not mutually shared.

10. Working with Children Act breaches

10.1 Legislation

The *Working with Children Act 2005* (the Act) provides the legislative framework to assist in protecting children from sexual and physical harm by regulating people who work or volunteer with children.

10.2 Responsibilities

- The Department of Justice (DoJ) is responsible for assessing and monitoring working with children checks and will inform Victoria Police when there is a suspected breach of the Act.
- The Police Information Liaison Office (PILO), Business Services, is responsible for:
 - forwarding all notifications of a suspected breach of the Act to the relevant PSA for investigation
 - obtaining relevant information from DoJ to assist members who are investigating a suspected breach of the Act.
- As stated in **VPMP Crime reporting and investigations**, members are to investigate all matters referred by PILO and / or identified through general policing, where they believe a suspected breach of the Act has occurred.
- For further information including investigative tools, LEAP codes and offence information refer to the PILO intranet page.

Further Advice and Information

For further advice and assistance regarding these Procedures and Guidelines, contact your supervisor or the local SOCIT Unit.

Refer to local instructions and the pamphlet 'Responding to young people up to 18 years' (available from Youth Services and Youth Justice Branch, DHS) for contact details for the following services:

- Child Protection
- Youth Justice
- Central after hours assessment and bail placement service (CAHABPS).

Update history

Date of first issue	22/02/12	
Date updated	Summary of change	Force File number
17 /06/11	First reference to 'Protecting Children' protocol amended to reflect commencement year of 1998.	068275/11
24/09/12	Inclusion of central liaison contact for requests from Child Safety Commissioner (Section 6.6)	065523/10
14/01/13	Updated to reflect organisational governance and structural changes.	FF-074790
27/05/13	Inclusion of working with children checks	072767/12