

## Victoria Police Manual – Procedures and Guidelines

### Interviews with vulnerable persons

#### Source Policy

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

- [Crimes Act 1958](#)
- VPMP Interviews and statements

#### 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. General

Any person interviewed or providing a statement should be given appropriate support. Police have a duty to use a human rights approach which ensures a fair, accessible and respectful process. This safeguards the rights and dignity of vulnerable people and ensures communication needs are met. These Procedures and Guidelines will provide the necessary information to enable members to meet this obligation when interviewing or obtaining a statement from persons who are:

- children
- affected by a cognitive impairment
- alcohol or drug affected
- deaf or hard of hearing

- non-English speaking

## 2. Children and young people

### 2.1 *Legislation relating to indictable offences*

- Section 464E(1), *Crimes Act 1958* requires that if a person in custody is under 18, a parent/guardian or independent person must be present before any interview is conducted and that they must be given an opportunity to speak in private with the child before the interview.
- Exceptions to these requirements are:
  - as provided in s. 464E, *Crimes Act* (*investigating official believes on reasonable grounds that the communication would result in the escape of an accomplice or the fabrication or destruction of evidence; or the questioning or investigation is so urgent, having regard to the safety of other people, that it should not be delayed*).
  - drink driving offences under s.49(1) *Road Safety Act 1986*
  - where the accused is not in custody and immediate action is being taken to investigate an alleged offence. However to ensure that any admissions are not excluded at court as unfairly obtained, investigating members should, whenever possible, comply with the requirements.

### 2.2 *Visual Audio Recorded Evidence*

As stated in **VPMP Interviews and statements**, consider using Visual Audio Recorded Evidence (VARE) when taking statements from children or young people who are victims or witnesses to certain offences; see **VPMG Visual audio recorded evidence**.

### 2.3 *Identifying DHS clients*

If it is identified, or suspected, the child or young person is subject to a guardianship order made by the Children's Court, it is necessary to contact DHS who will supply or verify details of the lawful guardian. The day-to-day caregiver is not necessarily the lawful guardian. If outside business hours, contact the After-hours Child Protection Unit.

### 2.4 *Accessing an independent person for interviews where a child or young person is a victim or witness and a parent or guardian is not available*

- An independent person is to be obtained if:
  - the parent/guardian cannot attend and does not nominate another person to attend for them
  - a parent/guardian cannot be located within a reasonable period of time
  - it is undesirable for a parent/guardian to be present.

- The presence of the parent/guardian or independent person is required to:
  - provide emotional support to the child or young person
  - ensure the child's or young person's evidence is accurately recorded
  - be able to present an independent account of the interview at any court proceedings (in the case of an independent person, a person who may be considered to have a real or perceived conflict of interest should generally not be used, such as a parent of a co-accused).

### **2.5 Accessing an independent person for interviews where a child or young person is a suspect, the accused or an offender and a parent or guardian is not available**

- Where the child or young person is a suspect, the accused or an offender, and the parent or guardian is not available, an independent person from the Youth Referral and Independent Person Program (YRIPP) is required to attend the interview.
- Contact YRIPP on 1300 79 11 89 to determine if your location is supported, and if so, request an independent person attend.
- For more information about the services provided and a list of police stations YRIPP attends go to [www.yripp.org.au](http://www.yripp.org.au).
- Police stations not within a YRIPP service area, or where the child or young person is a victim or witness, refer to local instructions for obtaining an independent person.

### **2.6 Interviewing a child or young person with a cognitive impairment**

If the child or young person has a cognitive impairment, a trained Independent Third Person is to be present instead of the independent person as required by section 3.2. A YRIPP IP must not be used.

### **2.7 Interviews of students at school**

- Interviews at schools should only take place as a matter of absolute necessity. In all cases, make a request to the principal or person in charge, and advise them of the reason for the interview.
- The interview can only be conducted if the parent/guardian or independent person is present unless the principal believes that the interview may assist to avert a possible physical injury to any person or further damage to property.
- Also see *Protecting Children: Protocol between DHS-Child protection and Victoria Police (Joint Investigations)* and Protocol between Department of Education and Early Childhood Development and Victoria Police

## 2.8 Referrals to the Child Witness Service

- The Child Witness Service (CWS) is a state-wide support service for child and young persons who are witnesses and victims in criminal proceedings involving sexual assault and serious violence where the matter is to be heard in the Magistrates, Children's, County or Supreme Court. Refer to the Crime Command Resources intranet page for further details.
- At the time charges are laid, members should inform the child or young person witness and their principal carer of the option for referral to the CWS and the services it provides. Principal carer means the legal guardian of the child witness; or if no legal guardian exists the person who has full care of the child or young person.
- Members are to obtain the consent of the principal carer of the child or young person witness prior to making a referral to the CWS by completing a Child Witness Referral [Form 1394]. Where consent is not granted, members should record this outcome in their Police Diary [PB 34] or the Patrol Duty Return [Form 501].

## 3. Persons affected by a cognitive impairment

### 3.1 Pre-interview

- Members may identify that a person may have a cognitive impairment by their words or actions, by asking the person directly, by checking police records of any previous interactions, or by contacting their nearest Mental Health Triage or Disability Services Intake to check whether the person is, or has been, a client of a mental health or disability service. For further guidance on assessing whether a person may be cognitively impaired, refer to the *Ready Reckoner - Responding to a person who may have a cognitive impairment*
- Where an interview is to be conducted, but there is doubt as to the person's mental state or capacity, seek advice from the Forensic Medical Officer (FMO) as to the fitness of the person for interview.
- Also have regard to **VPMG Safe management of persons in police care or custody** when managing a person affected by a cognitive impairment.

### 3.2 Independent third persons

- An independent third person (ITP) is to be present at the interview of any person with an impaired mental state or capacity who is fit to be interviewed as a suspect, the accused, an offender, a victim or a witness.
- The ITP will either be a parent, guardian, relative or close friend, or a trained volunteer from the Office of the Public Advocate.

### **3.3 Considerations in obtaining an independent third person**

- A trained ITP must be used where a relative or close friend:
  - cannot be contacted
  - is unsuitable
  - may impede the interview process.
- When considering whether to use a relative or close friend with or without a trained ITP, the following guidelines apply:
  - as objectivity of these interviews is of paramount importance to their success, consider the appropriateness of having a relative or close friend to fulfil the function of the ITP. It may be beneficial to have a parent, relative or close friend present for support, and a trained ITP to ensure the objectivity of the interview
  - investigators should not discourage parents or relatives wishing to be present or suggest they are not as suitable as ITP. Indicate that a trained ITP may remain more objective, because of their independence
  - in the event of a parent, relative or close friend being present with a trained ITP, the role of the trained ITP and the support person must be explained by the investigating member.

### **3.4 Obtaining an independent third person**

- If a relative or close friend is contacted, allow a reasonable time for them to attend before commencing the interview. If the delay would be unreasonable, seek a trained ITP.
- To obtain a trained ITP 24hrs / 7 days call the central phone number 1300 79 11 89. For information on the trained ITP program, contact the Office of the Public Advocate on 9603-9500.

### **3.5 Role of the independent third person**

- The role of the ITP, regardless of who performs the role, is to:
  - facilitate communication between police and the impaired person during the interview
  - provide emotional support and ensure that the person understands their rights and the caution.
- They are not the person's legal counsel or advocate and should not make decisions on behalf of the person.

### **3.6 Conduct of the interview where the person affected by a cognitive impairment is the suspect or accused**

- Allow an ITP to consult privately with the suspect before the interview commences.

- Conduct interviews within a reasonable time (s. 464A, *Crimes Act*) after an incident, once allowance has been made for the attendance of an ITP.
- Ensure that any person being interviewed understands the purpose of the interview. Where the person is a suspect ensure that they clearly understand their rights prior to an interview commencing. Ask the suspect to explain in their own words what the caution means and what their rights are. Advise the ITP if you have any concerns about the suspect's understanding of the caution and their rights.
- Take particular care to ask questions which are understood by the person being interviewed.
- Take care to verify the facts presented and to obtain corroboration of admissions or statements made.

### **3.7 Acknowledgment of persons present**

- When recording any interview or statement have all participants, including the ITP, identify themselves on the recording at the commencement and conclusion of the interview or statement. The ITP should not be included in the visual recording.
- When a person affected by a cognitive impairment makes a written statement, the independent person present should also be invited to read and sign the statement to indicate that it is a true and correct account of the interview. The ITP cannot vouch for the content of the statement.

### **3.8 Visual Audio Recorded Evidence**

As stated in **VPMP Interviews and statements**, consider using VARE when taking statements from people who may have a cognitive impairment (refer to the *Criminal Procedure Act 2009*) who are victims or witnesses to certain offences; see **VPMG Visual audio recorded evidence**.

### **3.9 Further information**

For further information regarding persons with mental disorders see **VPMG Safe management of persons in police care or custody** and **VPMG Apprehending persons under the *Mental Health Act***.

## **4. Persons affected by alcohol and/or other drugs**

Before interviewing a person known or suspected to be affected by alcohol and /or other drugs (including prescription drugs and methadone) consider the possibility that the presence of the substance/s or withdrawal may have an effect on the person's mental state or ability to be interviewed. If reasonable doubt exists concerning the effect on their mental state, contact the VIFM for advice as to the fitness of the person for interview.

## 5. Persons who are deaf or hard of hearing

- If a sign language interpreter (Australian or international sign) is required:
  - obtain authority from a Sub-officer or above
  - once authority has been obtained contact one of Victoria Police's contracted language service providers –VITS Language Link, On-Call Language Services or All Graduates Interpreting and Translating.
  - invoices will be sent to the relevant Work Unit Manager for verification. Once verified, send to the Regional Business Centre for payment.
- A cancellation fee applies to bookings cancelled with less than 24 hours notice.
- When a sign language interpreter is required for a recorded interview ensure both the accused and interpreter are audio visually recorded.
- The accused must be asked if they require a written transcript of the interview.

## 6. Non-English speaking persons

### 6.1 Access to an interpreter

- Obtain an interpreter for any person who:
  - appears or claims to have difficulty understanding English
  - presents an Interpreter Card.
- In the case of children, where the parent/guardian or independent person cannot speak or understand English an interpreter must be provided.
- If a person in custody does not have a knowledge of the English language that is sufficient to enable the person to understand the questioning, an investigating official must, before any questioning or investigation commences, arrange for the presence of an interpreter and defer the questioning or investigation until the interpreter is present.

### 6.2 Telephone Interpreter Services

Contact VITS Language Link, All Graduates Interpreting and Translating or On-Call Language Services when an on-site interpreter is not required and a telephone interpreter is preferred. The service is available 24 hours a day from each of the providers and can be booked in advance if required. A fee is charged for each call regardless of the duration.

### 6.3 On-site Interpreting Services

When the requirement for an on-site interpreter has been determined, contact either VITS Language Link, All Graduates Interpreting and Translating or On-call Language Services. Each of these contracted companies provide a 24 hour

interpreting service, and should be contacted when an interpreter is required. Comply with the following:

- obtain authority from a Work Unit Manager, or Sub-officer or above
- once authority has been obtained, contact one of the nominated language service providers
- after attending, the interpreter will complete a claim form and hand it to the senior police member present for certification.
- invoices will be sent to the relevant Work Unit Manager for verification and payment authorisation.

If none of the three contracted services are able to supply an interpreter contact an alternative service provider for a National Accreditation Authority for Translators and Interpreters (NAATI) accredited interpreter. If a local interpreter is used:

- ensure that the senior police member present at the interview certifies the claim form provided by the interpreter.
- if the interpreter does not have a claim form, the senior police member must ensure a General Claim Form [Form 135] (endorsed at the top with the word 'Interpreter' and the language used) is prepared containing:
  - name of the person interviewed
  - location of the interview
  - time of commencement and completion and duration
  - rate of payment and the total amount due to the claimant
  - name, rank, number and station of the informant
  - signature of the interpreter
- Work Unit Managers are to arrange for:
  - the form to be submitted, details recorded in the correspondence register and the rear of the form endorsed with the station stamp, correspondence register number and date
  - the police member who authorised the use of the interpreter to verify the claim
  - the completed claim to be forwarded with a covering report to the Regional Business Centre for payment.
- Immediately contact the language service provider to cancel a booking if the interpreter is no longer required. Cancellation charges may be payable, dependant on the length of notice given.
- The interpreter used during an investigation cannot be used as a later court interpreter. Obtain a different interpreter.



- Where a subsequent statement, independent to the initial interpreting service is required the interpreter may charge a fee for the time. Where this occurs the investigating member should:
  - submit a General Claim Form [Form 135] for payment
  - claim the cost as any subsequent court case

## 7. Foreign nationals

- Comply with the legislative requirements regarding the right to communicate with a consular office (s.464F, *Crimes Act*).
- Allow reasonable facilities for communication.
- Where the person does not speak or understand English ensure an interpreter is present for any interview or questioning. Refer also section 6.1

### Further Advice and Information

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

### Update history

Date of first issue	01/07/2014	
Date updated	Summary of change	Force File number
01/07/2014	Replaces VPMG Interviewing specific categories of person. See <b>VPMG Interviews with vulnerable persons</b> and <b>VPMG Interactions with correctional facilities – prisons, police gaols and prisoners</b>	FF 085268
16/03/15	Changes to provision of a transcript for deaf or hard of hearing accused and change from use of the term 'hearing impaired' to 'deaf or hard of hearing'	FF – 090626