

Victoria Police Manual – Procedures and Guidelines

Coercive powers

Source Policy

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

- **VPMP Crime reporting and investigations;**
- **VPMP Security classified information;**
- ***Major Crime (Investigative Powers) Act 2004 (Vic).***

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. Coercive powers orders

1.1 ***Organised crime offence***

- The *Major Crime (Investigative Powers) Act 2004* (the Act) empowers a member to apply for a coercive powers order (CPO) where it is suspected on reasonable grounds that an organised crime offence has been, is being, or is likely to be committed.
- An organised crime offence is an indictable offence against the law of Victoria that is punishable by level five imprisonment (10 years maximum) or more, involves two or more offenders and:

Either:

- involves substantial planning and organisation;
- forms part of systemic and continuing criminal activity; and
- has a purpose of obtaining profit, gain, power or influence or of sexual gratification where the victim is a child;

Or:

- Two or more of those offenders are, at any time, either 'declared individuals' or 'declared organisation members' within the meaning of the Criminal Organisations Control Act 2012.

1.2 Application

- Before the application process is commenced, a member wishing to apply for a CPO must first contact the Office of Chief Examiner (OCE). The OCE will:
 - provide advice on whether the relevant offence(s) satisfy the definition of organised crime offence;
 - provide information about the application process, including the investigative material required and the documentation to be drafted in support of the application; and
 - detail the OCE's requirements in respect of the conduct of examination hearings.
- An application for a CPO may only be made to the Supreme Court and with the approval of the Chief Commissioner or their delegate. The application is made by the OCE on behalf of the relevant member.
- It is an offence to fail to disclose all matters, both favourable and adverse, which are relevant to the application.

1.3 Duration, extension and variation

- A CPO may only be issued for a maximum of 12 months. However an application may be made to extend a CPO for an additional period of up to 12 months.
- An application may also be made for a variation of any of the other terms of a CPO.
- An application for an extension or variation of a CPO may only be made to the Supreme Court and with the approval of the Chief Commissioner or their delegate. These applications are also made by the OCE on behalf of the relevant member.

1.4 Revocation

- If the Chief Commissioner or the delegate who approved the application is satisfied that the powers under a CPO are no longer required for the purposes for which the order was made, they must immediately notify the Supreme Court.
- The Supreme Court may also revoke a CPO at any time before the expiry of the order.

1.5 Public Interest Monitor

- The Public Interest Monitor (PIM) is responsible for testing the content and sufficiency of the information relied on and the circumstances of an application for a CPO.
- The PIM must be provided with a copy of the application for a CPO and the supporting affidavit, and may appear at any hearing of the application. The PIM also has a right to appear at any hearing of an application for an extension, variation or revocation of a CPO.

2. Witness Summonses and Custody Orders

- Whilst a CPO is in force, an application may be made to the Supreme Court or the Chief Examiner for the issue of a witness summons or a custody order requiring a witness residing/imprisoned in Victoria to:
 - attend an examination before the Chief Examiner to give evidence; and/or
 - attend at a specific time and place to produce specified documents or other things to the Chief Examiner.
- If a witness resides interstate, an application may be made to the Supreme Court for the issue of a witness summons which may be served interstate pursuant to the Service and Execution of Process Act 1992.
- An application for a witness summons or custody order is made by the OCE on behalf of the relevant member.

3. Examination of witnesses and production of documents or other things

- The Chief Examiner or an Examiner, with the assistance of OCE staff and the relevant member(s), is responsible for examining witnesses and facilitating the productions of documents or other things.
- The Chief Examiner or an Examiner is also responsible for:
 - directing who may be present during an examination hearing;-
 - determining whether to make a direction that any information relating to or derived under a witness summons or custody order must not be published or communicated. Such a direction must be made if failure to

- do so might prejudice the safety of a person or prejudice the fair trial of a person who has been, or may be, charged with an offence; and
- charging a witness, or recommending that a witness be charged, with an offence against the Act.
- If a document or other thing has been produced, the Chief Examiner or an Examiner may inspect the document/thing and then authorise in writing a member to inspect, copy, photograph and/or record (audio or visual) the document/thing.
- The Chief Examiner or an Examiner may also authorise the member to retain the document/thing for up to seven days. However if a document/thing is retained for a period exceeding seven days, the member must bring the document/thing before the Magistrates' Court to be dealt with according to law.

4. Use and communication of information

- It is an offence for a member to:
 - publish a report or information regarding an application for a CPO;
 - publish or communicate information where a non-publication direction has been made by the Chief Examiner or an Examiner; and
 - make a record or communicate any information acquired under the Act except when related to duties under the Act or for investigating or prosecuting an offence.
- The Chief Commissioner or their delegate may give information acquired under a CPO to other law enforcement agencies or other prescribed bodies/agencies, which includes the Australian Coroners Courts and Directors of Public Prosecutions, where related to that agency's activities. The Officer in Charge, OCE can provide details of the process to be followed in providing this information.
- If information relating to a CPO and subject to a non-publication direction is given to another agency or body that agency must be made aware of the terms of the non-publication direction.
- Where information subject to a non-publication direction is required in a prosecution brief of evidence, contact the OCE for procedures.

5. Victorian Inspectorate

- The Victorian Inspectorate (Inspectorate) is responsible for ensuring that the OCE exercises its powers appropriately, proportionally and in accordance with the law.
- The Inspectorate has various investigative powers, including the power to issue witness summonses and the power of entry and seizure.

- A person in respect of whom a witness summons or custody order has been issued may make a complaint to the Inspectorate about the conduct of the Chief Examiner or an Examiner in respect of the exercise, or purported exercise, of coercive powers in relation to any matter or compliance with the Act.

Further Advice and Information

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

Update history

Date of first issue	22/02/10	
Date updated	Summary of change	Force File number
18/11/13	References to redundant instruments following IMSSD review have been updated with corresponding new instruments.	069562/11
05/01/15	Updated following amendments to the Act by the Criminal Organisations Control and Other Acts Amendment Act 2014 and the Public Interest Monitor Act 2011.	FF-89951