

Victoria Police Manual

The Victoria Police Manual is issued under the authority of the Chief Commissioner in s.60, Victoria Police Act 2013. Non-compliance with or a departure from the Victoria Police Manual may be subject to management or disciplinary action. Employees must use the Code of Conduct – Professional and Ethical Standards to inform the decisions they make to support compliance.

Witness protection

Context

Witness protection is a critical tool for law enforcement when meeting the challenge of serious and organised crime. The ability of a witness to give testimony in a judicial setting or to cooperate with police investigations without fear of intimidation or reprisal is essential to maintaining the rule of law. Legislation and policies are necessary to protect witnesses whose cooperation with police or testimony in a court of law would endanger their lives or those of their families.

The Victorian Witness Protection Program (WPP) and Alternate Protection Arrangements (APA) are two separate mechanisms of protection, established by the *Witness Protection Act 1991* (the Act), which are administered by the Chief Commissioner of Police.

The purpose of the Act is to facilitate the security of persons who are, or have been, witnesses in criminal proceedings in Victoria or elsewhere in Australia.

Fundamental principles that apply to the provision of witness assistance and protection are:

- witness protection and assistance is intended to remove or reduce barriers to cooperation in criminal investigations and prosecutions. It should not be provided as a reward or inducement
- as far as practicable, there should be a clear separation of the investigation and the protective functions of Victoria Police.
- the decision to protect a witness should be determined primarily by reference to the risk incurred by the person as a consequence of the person's participation in, or cooperation with, the criminal justice system
- protection and assistance provided to a witness under the Act should be tailored to the individual circumstances and risk faced by the witness and the community
- the safety of the witness should take priority over the successful conduct of a prosecution
- the interest of children involved in, or affected by, the provision of witness protection and assistance should be separately considered and their welfare should be a determining factor in decision making
- there should be public accountability for the operation of the witness protection and assistance provided under the Act, subject to the need to safeguard:
 - the health and safety of any person
 - the effective conduct of any investigation or intelligence-gathering in relation to criminal activity
 - the overall integrity of the Victorian witness protection program and the provision of alternative protection arrangements under the Act.

This Policy outlines Victoria's approach to witness protection, in line with legislative provisions.

Contents

Context	1
Contents	2
Scope and application	2
Responsibilities and procedures	2
1. Initial action and response	2
2. Witness Protection Unit (WPU)	3
3. Witness Protection Evaluation Committee (WPEC)	4
4. Witness Protection Oversight Committee (WPOC)	5
5. Interim protection	5
6. Witness Protection Program (WPP) or Alternate Protection Arrangements (APA)	7
7. Court proceedings	9
8. Investigation of offences against the Witness Protection Act	9
9. Governance responsibilities and roles	10
10. Information management and disclosure requirements	11
11. Information disclosure and handling	11
12. Oversight	12
13. Media	13
Related documents	13
Further advice and information	13
Update history	13

Scope and application

This Policy applies to:

- Officer in Charge and members, Witness Protection Unit (WPU)
- Superintendent, State Intelligence Division (SID)
- Detective Inspectors and Investigation and Response (I&R) Inspectors
- Operational members

Responsibilities and procedures

1. Initial action and response

- Members are to provide immediate assistance and protection, where they identify a threat of death, serious injury or serious intimidation toward a person who has:
 - given evidence in court proceedings
 - agreed to give evidence in court proceedings
 - provided information to assist with the judicial process.
- An 'at risk' person in respect to witness protection may include a:
 - victim witness
 - material witness
 - co-operating co-accused
 - registered human source
 - witness dependant
 - police officer

- judicial official.
- In the case of a threat against a police officer, a referral can be considered from the Threats Against Serving Members (THASM) Review Panel.
- The member who identifies the threat is to notify a Detective Inspector or I&R Inspector who must assess the risk. If deemed suitable for Witness Protection Unit (WPU) assessment and/or referral, the WPU must be immediately notified. The WPU will then undertake an assessment of the circumstances and provide further information and advice.
- Outside business hours, the WPU response is facilitated through Police Communications, with the approval of the Crime Duty Officer or a Regional Duty Inspector.
- The Detective Inspector or I&R Inspector can authorise temporary emergency accommodation for the witness to address immediate risk, at the cost of the Region or Command, while WPU are processing the application. This must only occur after initial advice has been provided by the WPU.
- The Detective Inspector or I&R Inspector is to ensure that the threat against the witness is assigned for appropriate police investigation.
- It is important that no undertaking is made to a witness which impacts their ability to provide witness testimony. In addition, no commitment is to be made about witness assistance or protection until a WPU assessment has been conducted and a response strategy authorised.

2. Witness Protection Unit (WPU)

2.1 Responsibilities

- The WPU, State Intelligence Division (SID), Intelligence and Covert Support Command (ICSC) is responsible for the administration of WPP and APA arrangements.
- The Officer in Charge of the WPU must:
 - oversee the preparation of a threat-risk assessment for all cases under assessment
 - maintain a Register of Protected Witnesses under Interim Protection Declaration (IPD), WPP or APA
 - coordinate the operation of the WPP and APA
 - respond to requests for assistance from police members and other police jurisdictions
 - ensure offences against the Act are investigated
 - provide secretariat support to the Witness Protection Evaluation Committee (WPEC) and the Witness Protection Oversight Committee (WPOC)
 - prepare a report to the Minister as per Section 20R of the Act
 - assist the IBAC in regards to inspections conducted under 20B of the Act.
- The Officer in Charge, is to ensure:
 - requests for police assistance are responded to in a timely manner
 - threat-risk assessments are compiled and presented to WPEC as part of the overall case consideration and evaluation process in a timely manner
 - all witness protection policies and guidelines (VPM and WPU local operating procedures) are complied with

- information shared between agencies is appropriate and authorised in accordance with the Victorian Protective Data Security Standards as set out by the Commissioner for Privacy and Data Protection
- the integrity and privacy of that information is protected
- information is used correctly and for the purposes for which it was intended.

2.2 *Threat-risk assessment*

- The WPU will perform a witness protection threat-risk assessment to evaluate the level of threat-risk to a witness. The assessment features two components that rate the threat to the witness and its intensity:
 - threat assessment, which determines the overall threat level. There are two levels; high or low
 - risk assessment, which informs an appropriate response strategy.
- The threat-risk assessment tool is dynamic and designed to be periodically re-applied to review the case. It is imperative that this assessment is reconsidered when there is any change to the circumstances of the case or if new intelligence is received about the threat. Timely review should assist in identifying if the level of threat-risk has escalated or reduced.
- If the threat-risk is assessed as high, the WPU will engage with the witness and if they agree, retain responsibility for taking action in respect of witness assistance and protection. The WPU Inspector:
 - may, if the circumstances require immediate action, consider contacting the Superintendent, SID to discuss the issuing of an IPD for entry into the WPP or APA, which provides access to some treatments
 - will seek approval from the Superintendent, SID to provide temporary WPU accommodation and assistance whilst preparing an application for entry into the WPP or APA, with ongoing management retained by the WPU
 - will seek approval from the Superintendent, SID to provide temporary WPU accommodation and assistance while WPU members assist the witness with relocation (Ministry of Housing for example) and a change of name certificate (Deed Pole) with ongoing management returned to investigators.
- If assessed as low, local police are responsible for providing assistance to the witness. The authorising Detective Inspector or I&R Inspector is to be informed of the outcome and is to ensure that reasonable assistance is provided.

3. **Witness Protection Evaluation Committee (WPEC)**

3.1 *Purpose*

The WPEC will:

- examine all cases where a witness' level of risk is assessed as high
- consider all applications for admission, suspension or termination from the WPP or APA. See section 6.2 for WPEC admission considerations
- recommend approval or other action, including making a relevant decision concerning WPP or APA inclusion
- provide advice or direction, as deemed necessary, in regard to higher risk cases not deemed suitable for the WPP or APA (Category C)

- consider biannual reports from the WPOC regarding the integrity and activity status of the program.

3.2 *Relevant decision*

A relevant decision is:

- a decision made by the WPEC whether to:
 - include or not to include a witness in WPP, or
 - provide APA to a witness
- a decision to suspend or terminate WPP or APA if the Public Interest Monitor (PIM) decides to exercise their function under sec. 20(J) of the Act.

3.3 *Members*

- Deputy Commissioner – Specialist Operations (Chairperson)
- Assistant Commissioner – ICSC
- Assistant Commissioner – (as nominated by Chairperson)
- Public Interest Monitor representative – nominated by PIM.

4. **Witness Protection Oversight Committee (WPOC)**

4.1 *Purpose*

The WPOC will:

- undertake a periodic review of all participants within the WPP or APA
- consider resourcing issues and facilitate any priority requests on a case by case basis for additional human or physical resources for witness protection to State Tasking & Coordination
- facilitate interagency cooperation, particularly via the Interdepartmental Custodial Witness Protection Committee, High Risk Management Advisory Panel and the THASM Review Panel
- provide a biannual report to the WPEC on the integrity and active status of the WPP and APA
- identify and recommend any amendment to witness protection practice or procedure in the VPM or approve amendments to WPU local operating procedures.

4.2 *Members*

- Assistant Commissioner – ICSC
- Superintendent – SID
- Superintendent or VPS 6 (as nominated by Chairperson)
- Superintendent – Crime Command.

5. **Interim protection**

5.1 *Interim Protection Declaration (IPD)*

The Superintendent, SID is the authorised delegate to issue an IPD under s.9C, of the Act.

- To issue an IPD, the delegate must believe that:
 - further time is required to consider whether to include the witness in the WPP or APA, and
 - the witness or member of the family of the witness, is in urgent need of protection.
- The delegate may make an IPD with the written consent of the witness to whom the declaration relates. If the witness is under 18 years of age, a parent or guardian of the witness is required to provide the consent.
- Whilst an IPD is in force, police can provide assistance through necessary and reasonable action to protect the safety and welfare of a witness or the member of a family of the witness. This does not include a permanent change of identity.
- An IPD:
 - takes effect on the day it is made and remains in force for a specified period, not exceeding 3 months
 - may be extended by giving written notice to the witness, before the original declaration ceases
 - that extension may be for a period not exceeding a further 3 months, with the approval of the Superintendent SID, who may consult the Assistant Commissioner, ICSC.
- An IPD ceases to be in force when:
 - 3 months expires and no extension is granted
 - the witness signs a Memorandum of Understanding (MOU) to enter the WPP or APA
 - the witness is notified of a decision not to be admitted to the WPP or APA.

5.2 *Interim Witness Protection Plan*

- In seeking an application for an IPD, the WPU Case Manager will present an Interim Witness Protection Plan which addresses the immediate risk at that time.
- The plan is a relevant consideration underpinning the necessity for the IPD. It is to be endorsed by the authorised delegate.

5.3 *Temporary assumed identity*

- The Superintendent SID, as the authorised delegate, may approve the issue of a temporary assumed identity under s.9G, of the Act.
- A WPU Case Officer may make application for a temporary assumed identity for a witness who is the subject of an IPD.
- The authorised delegate is to be satisfied that the temporary assumed identity is needed urgently to protect the safety or welfare of the witness.
- The authority for a witness to use a temporary assumed identity is to be in writing and:
 - may be provided unconditionally or subject to conditions
 - may be varied or cancelled at anytime

- must be cancelled if the use of the authority is no longer necessary.
- A WPU member of the rank of Sergeant or above, is to be appointed to supervise the acquisition and use of the assumed identity.
- A temporary assumed identity authority:
 - takes effect on the day it is made and remains in force for a specified period, not exceeding 3 months
 - may be extended for a period not exceeding a further 3 months, by seeking approval from the Superintendent SID, who may consult the Assistant Commissioner, ICSC
 - may be extended by giving written notice to the witness and their supervisor before the original authority ceases.
- The Act ensures that the agency who provides the identification is protected from criminal liability if the identity is misused.
- An offence under s.9N of the Act is committed by any person who intentionally, knowingly or recklessly acquires evidence of, or uses an assumed identity other than in accordance with the authority or directions of their supervisor.

6. Witness Protection Program (WPP) or Alternate Protection Arrangements (APA)

6.1 *Assessment for witness protection*

- The WPU will prepare an application for a subject witness that will include:
 - a recent threat-risk assessment
 - witness profile
 - threat profile
 - medical and/or psychological assessment (if necessary)
 - the Witness Management Plan outlining the treatments for longer term risk reduction.
- A witness who wishes to be included in the WPP or APA is required by s.4, of the Act, to supply all information necessary for a decision to be made in respect to admission to the WPP or APA, including undergoing medical tests or examinations, and/or psychological or psychiatric examination.
- Any other inquiry or investigation can be made that is considered necessary to assess whether the witness should be included in the WPP or APA.
- Once an application is completed it is submitted to the WPEC for a relevant decision. The committee will consider:
 - if the case is assessed at high level of threat-risk, decide what action is to be taken
 - if the case is assessed as low level of threat-risk, refer the matter to local police through a Detective Inspector or I&R Inspector.

6.2 *Admission to WPP or APA*

- In making a relevant decision whether to admit a witness to the WPP or APA, the WPEC will have regard to:

- whether the witness has a criminal record, particularly in respect to crimes of violence, and whether that record indicates a risk to the public if the witness is included in the program
 - any psychological or psychiatric examination or evaluation of the witness (if conducted) as to the witness' suitability for inclusion in the WPP or APA
 - the seriousness of the offence to which the relevant evidence relates
 - whether there are viable alternative methods of protecting the witness
 - the nature of the perceived danger to the witness
 - the nature of the witness's relationship to other witnesses being assessed for inclusion in the WPP or APA
 - any other matters that are considered to be relevant as provided by s.4, of the Act.
- If there is insufficient information to assess the witness, the witness must not be admitted to the WPP or APA.
 - The WPEC may decide to authorise witness assistance and protection in the following manner:

Protection options	Conditions
WPP	• If the witness is found to be suitable and signs an MOU with police outlining the obligations of each party, including a Supreme Court name change.
APA	• If the witness is unsuitable or refused WPP, they must be considered for an APA and sign an MOU with police outlining the obligations of each party with a level of flexibility to support the witness. • Does not include a Supreme Court name change. • If APA refused, the reason for decline must be recorded.
Category C	• If the witness is unsuitable for the WPP, APA or has declined APA, limited assistance may be provided by the WPU, subject to an indemnity and acknowledgement signed by the witness. • On some occasions WPU will manage Category C cases; however most will be managed by the relevant investigators.

6.3 *Suspension from the WPP or APA*

- S. 15A, of the Act provides for suspension of assistance and protection to a participant or member of their family through written notice to the program participant.
- The WPU is to notify the WPEC where a program participant may need to be considered for suspension from the WPP or APA.
- In determining whether a program participant should be suspended, the authorised delegate needs to be satisfied that the participant has done or intends to do something that limits the ability of police to provide adequate protection to the participant or family member. This may include a program participant undergoing a custodial sentence or travelling to a place where there is a risk of harm to the participant.
- Where a suspended participant is undergoing a custodial sentence, the WPU will liaise with the responsible correctional authority to facilitate the internal protection of the suspended participant as a high risk prisoner.

6.4 *Termination of Protection and Assistance*

- A participant within the WPP or APA may have protection and assistance terminated by:
 - **Voluntary Termination** - withdrawal request by the program participant (s.16(1), of the Act) (without involvement of the WPEC)
 - **Involuntary Termination** – WPEC terminates the provision of protection (s.16(2), of the Act). A decision to involuntarily terminate a WPP or APA becomes a relevant decision, if the PIM decides to exercise their function
- The grounds for involuntary termination as provided by s.16(3), of the Act include where the:
 - participant commits an offence in Victoria or elsewhere
 - participant refuses or fails to sign the MOU under section 5(5)
 - participant breaches a term of the MOU, or a requirement or undertaking relating to the program, including an undertaking to give evidence in a Victorian, Commonwealth or another State or Territory jurisdiction
 - participant provided false or misleading information to police as part of their assessment for the WPP or APA
 - participant behaves in a manner that is likely to threaten the security or compromise the integrity of the WPP or APA
 - circumstances that required the protection cease to exist
 - WPEC forms the opinion there is no reasonable justification for the person to remain in the WPP or APA.
- The WPU is to notify the WPEC of any instance where a participant may need to be considered for termination from the WPP or APA.
- Reasonable steps are to be taken to notify the program participant of the decision to terminate them from the program. The participant can apply for a review of the decision.

6.5 *Review of active WPP and APA cases*

- The Officer in Charge, WPU will ensure that all active WPP and APA are the subject of review and updated threat-risk assessment. This is to occur regularly, at least every 6 months.
- A schedule detailing the status of all active WPP and APA cases is to be referred biannually to the WPOC for consideration.

7. Court proceedings

- As provided by s.10A, of the Act, a court may make an order prohibiting or restricting the publication of evidence given before it, or make any other order considered appropriate to protect the identity or former identity of a witness, including whether they are a WPP or APA participant, past participant or undergoing assessment for inclusion.
- Under s.10A(2), of the Act a court, tribunal or commission must, unless it considers that it is not in the interests of justice to do so, hold the part of the proceedings that relate to a protected witness (WPP or APA) in private.

8. Investigation of offences against the Witness Protection Act

- When any information is ascertained that identifies a breach committed against the Act by a participant of the WPA or APA, it is to be referred to the OIC WPU for consideration for investigation.
- Any LEAP form completed in relation to the matter is not to contain details that could identify the offender as a WPP or APA participant or past participant.

9. Governance responsibilities and roles

9.1 *Deputy Commissioner – Specialist Operations (SO)*

The Deputy Commissioner, Specialist Operations is:

- accountable for the efficiency and effectiveness of the relevant policies, implementation delivery and strategic engagement with Government
- the Chief Commissioner's delegate to approve admission, suspension or termination from the WPP or APA
- the Chairperson of the WPEC.

9.2 *Assistant Commissioner – Intelligence and Covert Support Command (ICSC)*

The Assistant Commissioner, Intelligence and Covert Support Command is:

- the owner of the relevant policies and accountable for the administration of the WPP and APA
- the Chairperson of the WPOC
- a member of WPEC.

9.3 *Superintendent – State Intelligence Division (SID)*

The Superintendent, State Intelligence Division is:

- the Chief Commissioner's delegate to issue or extend an IPD or temporary assumed identity in writing for a witness in accordance with the Act
- responsible for ensuring the integrity of the interim process that precedes consideration of whether to accept a person in the WPP or APA
- a member of the:
 - WPOC
 - Interdepartmental Custodial Witness Committee
 - High Risk Management Advisory Panel.

9.4 *Detective Inspectors / I&R Inspectors*

A Detective inspector or I&R Inspector must:

- review cases where it has been identified that a threat of death, serious injury or serious intimidation has been made to a witness
- identify cases where a witness may be at risk of being threatened, intimidated or at risk of being killed or seriously harmed and adopt a prevention first, harm reduction strategy, rather than waiting for a material threat
- ensure appropriate action is taken to remove the subject witness from any immediate harm

- ensure that serious threats against a witness are appropriately assigned for investigation
- refer cases as required to the WPU for assessment.

9.5 *Operational Members*

Operational members must:

- identify cases where a witness may be at risk of being threatened, intimidated or at risk of being killed or seriously harmed and adopt a prevention first, harm reduction strategy, rather than waiting for a material threat
- notify a Detective Inspector or I&R Inspector where a threat of death, serious injury or serious intimidation has been made toward a person, who has given, or agreed to give evidence in court proceedings, and their safety and well-being requires assistance or protection
- where the matter has been referred to the WPU, ensure the WPU is regularly advised of developments in the investigation that may impact upon the safety and well-being of the witness
- provide reasonable assistance to a witness where the threat-risk is assessed at low.

10. Information management and disclosure requirements

10.1 *Information marking and storage*

- All members of the WPU are to allocate an identifier to all files held by the WPU Registry in relation to protected witnesses.
- All related documents and files, both electronic and hard copy, are to be labelled with:
 - the protective marking of 'Sensitive: WP Act 1991'. Refer to **VPM Information categorisation, collection and recording**
 - the Registry number allocated by the WPU
- All information regarding witness protection must be stored, transmitted and managed securely in accordance with **VPMP Information use, handling and storage**.

10.2 *Information disclosure*

- Members must have regard to s.24 of the Act, concerning the type of witness protection information not subject to disclosure in accordance with the *Freedom of Information Act 1982*.
- Information about protected witnesses, including that obtained via LEAP checks must not be disclosed without appropriate authority. Refer **VPMP Information sharing for more information**.

11. Information disclosure and handling

11.1 *Information disclosure*

- The following information must not be disclosed, unless by lawful authority:
 - WPP or APA participant (including interim protection)
 - past participant

- former identity
 - current identity
 - the fact that a participant has entered into a MOU
 - a participants location
 - anything that may compromise a participants security.
- Section 10, of the Act provides for offences in respect to the unlawful disclosure of this information.
- All information exchange is to comply with the requirements of the VPM. Have regard to **VPMP Information sharing** and related guidelines and procedures for more information.

11.2 *Recording disclosure*

- Where a member discloses any information, including where they are directed to do so by the Officer in Charge, WPU, the details of the disclosure are to be recorded in the relevant WPP or APA case file.
- The details of all disclosures kept on the case file should include what has been disclosed, to whom it has been disclosed and for what purpose.

11.3 *Unlawful disclosure of information*

- In the event of an unauthorised disclosure which may contravene the Act, whether inadvertent or direct, the Officer in Charge, WPU is to be notified immediately.
- The Officer in Charge, WPU will assess all available information relating to the risk to any person and forward a report to the Professional Standards Command and Security Incident Register via line-management, for investigation.

11.4 *Freedom of Information requests*

- Any member receiving an FOI application regarding a protected witness is to forward the application to the FOI Division as well as the Officer in Charge, WPU.
- Section 24 of the Act provides specific exemption for:
 - any information that can identify a person as a present or past WPA or APA participant, including the making of entries into the Register of Births, Deaths & Marriages, or
 - disclosure of any action taken by police in respect of the Act or a complementary witness protection law.

12. Oversight

12.1 *Independent Broad-based Anti-corruption Commission (IBAC)*

- IBAC has the following functions:
 - monitor compliance by Victoria Police in relation to record keeping requirements
 - report and make recommendations arising out of their monitoring function
 - provide any information to the PIM to assist in performance of the PIM's function.
- Members must give IBAC any assistance that they reasonably require to enable IBAC to perform its function defined in the Act.

12.2 Ministerial

Victoria Police must provide an annual report to the Minister into the general operation, performance and effectiveness of the WPP and APA.

13. Media

- Members are not to disclose information concerning a protected witness to the media.
- Any request from the media relating to a protected witness, or a matter that may be under assessment, is to be directed to the Police Media Unit who will in turn consult the Officer in Charge, WPU.

Related documents

- VPMG Witness protection
- Witness Protection Unit local operating procedures (Restricted)
- VPMP Information categorisation, collection and recording
- VPMP Information use, handling and storage
- VPMP Information sharing
- *Witness Protection Act 1991*
- *Freedom of Information Act 1982*

Further advice and information

For further advice and assistance regarding these Policy Rules, contact the Witness Protection Unit or your supervisor.

Update history

DATE UPDATED	SUMMARY OF CHANGE	FORCE FILE NUMBER
04/12/17	Consolidation of separate policy and guideline documents into single policy instrument. Various amendments to address legislative change	FF 115192
08/10/2018	Amendment to after-hours contact and emergency accommodation procedure.	FF-128578