Court processes

Context

The purpose of this policy is to provide instructions to employees so that they may meet the security requirements of the court and perform their role as informant, prosecutor or witness.

This policy includes:

- informants' responsibilities at different hearing types regarding attendance and evidentiary requirements
- considerations for employees as witnesses/providing evidence including responding to subpoena or disclosure requests
- risk assessment considerations when providing references for parties other than the Crown
- responsibilities regarding witnesses including getting them to court and communication throughout the court process
- process for paying and claiming costs and compensation.

Contents

Definitions

There are no specific definitions for this policy. Refer to the general VPM Dictionary for definitions and acronyms.

Scope and application

This policy applies to:

- investigating members
- work unit managers
- police prosecutors
- protective services officers
- police custody officers (PCOs)
- custody staff.

Responsibilities and procedures

1. Court system

1.1 *Mention court*

Under the mention court system, police cases for determination at a Magistrates' or Children's Court must be set for hearing on a 'mention date'. This includes all indictable offences triable summarily and summary offences.

On that day, the court registrar will establish if the accused intends to plead guilty or contest the matter.

1.2 *Contest mention court*

Matters will normally be adjourned to a contest mention court when an accused pleads not guilty. However, matters may be adjourned to a specific contested hearing date when:

- the accused requests a contested hearing
- there is no possibility of a resolution if the matters were to be adjourned to a contest mention court and the issues are not complex
- the contest would be of a short duration that the court can accommodate.

1.3 *Contested hearings*

Contested hearings are held where the accused has entered a plea of not guilty and the court must try the matter.

1.4 Ex-parte hearings

- Where the accused fails to appear at the mention date hearing, the court coordinator may adjourn a case for an ex-parte hearing. An ex-parte hearing is the hearing of a summary offence in the absence of the accused and their legal representative. Such an adjournment is made where the issue of a warrant to arrest is not considered appropriate.
- Prosecutors are to forward an Adjournment Notice to notify informants of a pending ex-parte hearing.

1.5 Committal proceedings

- A committal hearing is heard as required by chapter 4, Part 4.7 of the *Criminal Procedure Act 2009*.
- Where evidence has been taken after the accused has been committed for trial, refer to the requirements of Chapter 4, Part 4.8 of the *Criminal Procedure Act*.
- Upon committal, summary offences may be filed to a higher court and be heard with related indictable offences. The informant is to ensure that all related summary offences are filed with indictable offences.

1.6 Group conferences – Youth Justice Group Conferencing

- Youth Justice Group Conferencing is a pre-sentence diversionary intervention process which can be recommended by the Children's Court in accordance with s.415, *Children, Youth and Families Act 2005*.
- The *Children, Youth and Families Act* allows the court to defer sentencing the young person if they attend this conference and the conference convenor provides the court with a report.
- Where the informant is unable to attend, the corroborator is to attend in their place.

2. Informant's responsibilities relating to attending court

2.1 Legislative methods for getting an accused to court

The informant must ensure that an accused is brought before a Magistrates' Court or Children's Court by one of the following means:

- remand or bail
- summons
- warrant.

Refer to **VPM Disposition** for these processes.

2.2 Bringing a person in custody before the court

- The informant is responsible for managing the accused's appearance at:
  - the Magistrates' Court
  - the Children's Court
  - a committal hearing.
- Seek advice from Custody Operations and Logistics regarding transport availability when transporting a person in custody to court.

- The informant is responsible for determining whether a Bail and Remand Court hearing can be conducted via Audio Visual Link (AVL). This is determined by:
  - eligibility (AVL is not suitable for children, vulnerable adults (as defined by s.3AAAA, *Bail Act 1977*) and Aboriginal people)
  - gaining consent from the accused, unless exceptional circumstances exist (e.g. a state of emergency is in place)
  - availability of AVL facilities within a police station
  - availability of a Magistrate.

  Refer to **VPM Bail and remand** and **Audio Visual Link for Bail and Remand Court hearings via Audio Visual Link Practice Guide** for further instruction on the AVL process.
- Where possible, members should ensure the use of AVL for the appearance of an accused person in custody before the court. This avoids the unnecessary transfer of detainees through Victoria Police detention facilities. Members should seek advice from their prosecutions office and the court in relation to AVL options.
- Where possible, a person in custody should be taken into court via the custody entrance.
- When the informant is managing the accused at the Magistrates' or Children's Court or during a committal hearing, this includes being responsible for:
  - the security of the accused in court
  - lodging the accused in the watch-house or releasing them on bail at the completion of each sitting of the court.
- To bring a person in custody before a court, for matters other than those where a remand warrant is applicable, comply with the following:
  - Prison (Corrections facility) – use an Order to Bring a Person Before a Court or Coroner [Form 476]
  - Remand Centre/Youth Training Centre/Youth Residential Centre – use an Order to Bring a Person before a Court or Coroner's Inquest [Form 725].
- Service of Form 476:
  - without a summons – fax Form 476 to Central Records, Office of Correctional Services Commissioner or Department of Families, Fairness and Housing facility. For further advice contact Custody Operations and Logistics
  - with a summons, send the summons to the local police station for service. In the case of a child, a Form 725 must be used in conjunction with the summons.
- Where a member becomes aware that a person in custody will not be required at court, in accordance with a Form 476, including through contacting the relevant court in advance, they should notify Custody Operations and Logistics to cancel the transport of the person via email to CMD-CUSTODY-OPERATIONS-LOGISTICS.
- Ensure the security of the person in custody as required by **VPM Management of people in police care or custody**.
- When a person in custody under sentence is taken out of gaol on a Form 476, an indent is attached to the order. The indent and order should remain with the person at all times and be handed to gaol authorities or the watch-house keeper.
- To bring a remanded person in custody to court at an earlier date, apply to a Magistrate and complete a Case Abridgement Application which can be obtained from the Magistrates' Court of Victoria website.

- It is the responsibility of the informant, or in their absence, court security, to ensure warrants are collected from court and returned to the watch-house.
- The work unit manager where the person in custody is lodged is to ensure that necessary documents accompany the detainee on their return to prison.
- The informant or arresting member should be able to inform the court on oath regarding the period of time the accused has been in custody.
- A person in custody who is undergoing a sentence when brought to court or other judicial inquiries may only be visited by legal representatives engaged in the matter.

2.3 *Extradition*

- Extraditions must be approved as follows:
  - interstate and New Zealand – relevant financial delegate authorised to incur costs as listed in the financial delegation, FIN 2.1, Schedule D
  - all other overseas extraditions – Deputy Commissioner, Public Safety and Security.
- Comply with the process detailed in **VPM Extradition** when applying for approval to extradite.

2.4 *Obtaining an interpreter*

The informant is to arrange an interpreter in the following instances:

- indictable offences – for the accused or any victims and prosecution witnesses involved
- summary offences:
  - arrest cases – for the accused
  - summons cases – for the accused or any victims and witnesses, only after consultation with the court registrar
  - adjournments – only after consultation with the court registrar.

Refer to the Human Resources Command intranet page for details of current contracted language service providers.

2.5 *Providing information and support to victims*

Members must comply with **VPM Victim support**.

2.6 *All other attendance requirements*

- Where the court requests a Youth Justice Group Conference in accordance with s.415, *Children, Youth and Families Act*, the informant must attend. Where the informant is unable to attend, the corroborator is to attend in their place.
- Prior to the conference, the member must contact the victim, advise them of their right to attend and obtain the victim's consent to provide their details to the youth justice convenor.
- At the conference, the member must provide information to assist the young person and their family to understand the nature of the offence, including:
  - a summary of the offence
  - the nature and seriousness of the offence
  - the circumstances of the accused's apprehension

- the accused's response, reason for and attitude to the crime
- the impact of the crime on the victim(s).

- Depending on the type of hearing, the informant is responsible for attending the hearing and ensuring other relevant parties and exhibits are available to the court.
- The table below specifies where the informant must ensure that:
  - they attend
  - relevant witnesses attend
  - evidence and exhibits are submitted.

Table: The informant's responsibilities for attending court

Type of hearing	**Attendance at court**		**Evidence/exhibits requirements**
	Informant	**Witness**	
Remand hearing where application for bail and/or conditions are to be opposed	Informant or corroborator must attend unless excused by the court	As nominated by the prosecutor	• Completed Remand/Bail Application [Form 286] • Sufficient exhibits and evidence to successfully contest the application • Consult prosecutor/Office of Public Prosecutions (OPP)
Contest mention	Informant or corroborator must attend unless otherwise directed by the prosecutor	Not required	Discs and transcriptions upon request of the prosecutor
Ex-parte hearing	Must attend unless their evidence is not required	As nominated by the prosecutor	Sufficient exhibits and evidence to prove the case are required. Consult the prosecutor
Contested hearing	Must attend	Required to give oral evidence	All relevant exhibits and evidence to prove the case. Transcripts must be provided
Contested preliminary hearing (interlocutory proceedings)	Must attend, unless excused by the court or not required by the defence	Must attend, unless excused by the court or not required by the defence	Must be produced, unless excused by the court or not required by the defence
Filing hearing	Informant must attend unless excused by the court	Not required	Not required
Committal mention	Informant or corroborator must attend unless excused by the court	The defence may request the attendance of witnesses. Consult the OPP	The defence may request the production of items. Consult the OPP

Committal	Must attend	Only witnesses ordered to attend by the court in response to a defence application are called to give evidence	Exhibits must be produced. Statements of any witness not called are accepted into evidence unless the court orders otherwise
Special committal mention	Informant or corroborator must attend unless excused by the court	Not required unless otherwise directed by the OPP	Not required unless otherwise directed by the OPP
Trial	As directed by the OPP prosecutor or the Crown prosecutor		

3. Evidentiary requirements

3.1 *Notification*

When preparing for a hearing, employees are required to comply with evidentiary notification requirements of the *Evidence Act 2008*. Notification requirements apply to:

Type of document	Requirements
Informant statements (s.33)	• Members must provide a copy of any statement they intend to read or be led through at court a reasonable time before the hearing of prosecution evidence • A statement for these purposes can include an informant's statement, Patrol Duty Return [Form 501], Initial Action Pad [Form 502], diary entry or other contemporaneous notes. See **VPM Operational duties and responsibilities**
Documents in foreign countries (s.49)	Members must provide a copy to the accused not less than 28 days before the evidence is to be adduced
Document summary as proof of voluminous or complex documents (s.50)	• Members must serve a copy of the summary on the accused that includes the name and address of the person who prepared the summary • Members must ensure that reasonable opportunity to examine or copy the documents has been provided
Hearsay evidence (s.65)	If intending to adduce hearsay evidence where the maker of the representation is not available, members must provide reasonable notice of that intention by completing a Notice of Intention to Adduce Hearsay Evidence [Form 1366] and serving it on the accused
Tendency evidence (s.97)	If intending to adduce tendency evidence, members must provide reasonable notice of that intention by completing a Notice of Tendency Evidence [Form 1367] and serving it on the accused
Coincidence evidence (s.98)	If intending to adduce coincidence evidence, members must provide reasonable notice of that intention by completing a Notice of Coincidence Evidence [Form 1368] and serving it on the accused
Certificates of expert evidence (s.177)	A copy of the expert witness certificate and a Notice of Expert Evidence [Form 1369] must be served on the accused no later than 21 days prior to the hearing

3.2 *Original document rule*

Section 51, *Evidence Act* abolishes the common law original document rule. The contents of documents can now be proved by tendering:

- the document
- a copy of the document
- a transcript
- a business record
- an extract or summary
- a copy printed by an authorised person (only for public documents).

4. Court security

4.1 *Court Security Act 1980*

- The *Court Security Act 1980* provides members, PSOs and PCOs with specific powers to manage the security of the court.
- For information about the carriage of operational safety equipment while undertaking court security, refer to **VPM Operational safety equipment**.

4.2 *Additional security and secure courts*

- Where there is a security concern in relation to a hearing, obtain advice from the magistrate or judge, via the court registrar, and advise the prosecutor.
- Where additional security measures are required, request a secure court through the Manager, Protective Services Unit (PSU). The request needs to:
  - contain a recommendation by a local area commander (LAC)
  - be supported by intelligence concerning the situation or threat
  - be in writing, unless in urgent cases where it may be made verbally with written confirmation to follow.
- Guidance as to the format of the request and other court security advice can be obtained from the Senior Sergeant, Law Courts, PSU.
- Policy regarding the use of handcuffs can be found in **VPM Operational safety equipment**. However, under s.6F(2), *Corrections Act 1986*, the Magistrate has ultimate authority in relation to the proceedings in the courtroom, including the removal of handcuffs during proceedings.

4.3 *Family Court*

- Victoria Police is responsible for providing assistance outside of the Family Court premises and inside the regional Family Courts on request from the Australian Federal Police (AFP).
- If there is a threat or concern that a party to the hearing will commit or be subject to an act of violence, the AFP at the Family Court will advise the local work unit manager. The work unit manager should:
  - assess the validity of the threat, consider any offences disclosed, record the offences on LEAP as an incident and initiate an investigation
  - advise the relevant supervising sergeant of the details to ensure a prompt response if police are contacted regarding the threat.
- If an incident occurs on the day of the hearing, Family Court staff will advise the local work unit manager or Police Communications. The attending members will be advised of relevant details.

- If no offences are detected or identified, attending members should ensure that there is no breach of the peace.

4.4 *Witness protection*

- Approval for witness protection must first be obtained before a commitment is made to the witness. Seek advice from the Witness Protection Unit (WPU) having regard to **VPM Witness protection**.
- Contact with protected witnesses must be through the WPU. Where a witness contacts a member directly, the member must immediately advise the WPU.
- If protection is required urgently, the Superintendent, State Intelligence Division, Intelligence and Covert Support Command may approve the issue of an Interim Protection Declaration. Refer to **VPM Witness protection**.
- WPU is responsible for costs incurred once the witness has been accepted into the program. Regions/commands are responsible for costs incurred prior to obtaining the approval for program entry.
- Human sources entering the witness protection program must be deregistered as a source. Refer to **VPM Human sources**.

5. Employees as witnesses and/or providing evidentiary material

5.1 *General*

Informants who require an employee to attend court as a witness must forward a report to the employee's work unit manager. A Witness Summons [Form 553] is not required.

Employees should advise their direct supervisor of the requirement to give evidence for rostering and recording purposes.

5.2 *Responding to requests for documents*

- The Subpoena Co-Ordination Unit (SCU) is responsible for the coordination and allocation of subpoenas, summons, court orders and notices to produce (issued documents) for Victoria Police and its employees. Note: any notice to produce issued by the Australian Health Practitioner Regulation Agency should be forwarded to the Privacy Unit.
- If the request for documents is in response to a Royal Commission or formal Inquiry, refer to **VPM Commissions and inquiries**.
- Employees must immediately advise their work unit manager when they have been allocated an issued document for recording and compliance.
- Employees must immediately advise the SCU, the informant and prosecution when they receive an issued document to give evidence and/or produce documents. This may be in the following circumstances:
    - from the defence in any criminal proceeding
    - on behalf of any party involved in civil or administrative proceedings
    - to appear before any tribunal
    - to appear before any inquiry
    - to appear before any Board of Professional Registration.

- The SCU may give direction or guidance and where appropriate, refer the issue to the Disclosure Management Unit (DMU) or the Victorian Government Solicitor's Office.
- Subpoenas addressed to the Chief Commissioner of Police (CCP) or 'proper officer' be forwarded to the SCU.
- Subpoenas relating to inquests should be directed to the Coronial Support Unit. Note: where an issued document also requires the production of material that was not included in the inquest brief, the subpoena must be forwarded to the SCU.
- When requested to provide documents or give evidence to a court in response to an issued document, before the evidence is given or the documents are released to the accused, or their legal representative the SCU must be consulted and the following should be considered:
  - particular attention should be given to identifying material that, if publicly released, may place people assisting police at risk. Seek advice from SCU if such material is identified and notify the relevant prosecutor
  - where required to provide evidence on Victoria Police policy, consult the Assistant Director Organisational Policy, Capability Department, for direction
  - requests regarding correspondence/advice from the OPP and/or VGSO
  - requests regarding internal investigations
  - requests regarding Victoria Police training
  - an employee may claim public interest immunity for cases that involve the disclosure of confidential or privileged information. Seek advice from the SCU or DMU. Also see **VPMP Information sharing** regarding disclosure of confidential information relating to employees
  - where an issued document does not provide sufficient time to respond, seeks a substantial amount of documentation or is oppressive in nature
  - documents disclosed under an issued document must be provided directly to the court, not the issuing party. Do not permit these documents to be examined by the issuing party until they are released by the court or until called to give evidence. Examination is as directed by the court.
- In addition to the above, consider obligations where no objection is to be taken with documents and things the subject of an issued document and the documents and things are to be produced to the court, the prosecutor should be advised of the nature of the documents and things before they are produced to the court.
- When considering cost issues consult the SCU.
- Members must also comply with obligations under the *Victims Charter Act 2006* and the *Privacy and Data Protection Act 2014*.
- See **VPMP Information sharing** regarding responsibilities about record management and information release.

5.3 *Responding to disclosure requests*

- The DMU is responsible for providing advice and support to members with general disclosure obligations.
- When responding to a request for disclosure in criminal proceedings, the informant is responsible for ensuring material is disclosed as soon as reasonably practicable and in accordance with the relevant provisions of the *Criminal Procedure Act*. Refer

to **VPM Disclosure in criminal proceedings** for more information. The DMU may provide further guidance or advice regarding disclosure.

5.4 *Responding to requests to give evidence for a party other than the Crown or prosecution*

An employee giving evidence or producing documents on behalf of a party other than the Crown or prosecution must:

- immediately notify the informant, prosecution, Crown and SCU (as applicable)
- provide them with a statement of the evidence to be given and a copy of any documents to be produced as soon as practicable, but at least two working days prior to the commencement of the hearing.

5.5 *Responding to requests to provide a reference for a party other than the Crown or prosecution*

- An employee providing a reference for another person; including a current, suspended, or former employee in relation to criminal or other court/tribunal proceedings may pose a reputational risk for the employees involved and Victoria Police.
- In determining if it is appropriate to provide a reference on behalf of a party other than the Crown or prosecution, employees should consider the reputational risk to themselves and Victoria Police and if there is any conflict of interest (for example, is the reference for a high-risk person as defined in **VPM Conflict of interest**) that would prevent them from providing the reference.
- Where an employee feels it is appropriate (or they are unsure) to provide a reference on behalf of a party other than the Crown or prosecution they must receive approval (via a General Report [Form 47], Issue Cover Sheet [Form 1028] or similar) progressed through line management to an approver as follows:

Employee	**Approvers (in progression order)**
Recruits/residential training phase, pre-graduation	1. OIC Foundation Welfare Unit 2. Foundation student manager
Department heads/assistant commissioners	1. Deputy commissioner/deputy secretary 2. Chief Commissioner of Police
All other employees (including DTWs post-graduation and suspended employees)	1. Work unit manager 2. Divisional manager

- Approvers must assess the risk (including any conflicts of interest) and appropriately consider the full account of the facts and circumstances for each charge or claim (by obtaining the Statement of Alleged Facts or Summary of Offending for criminal matters) in deciding whether to approve the request. Considerations for a risk assessment include:
  - is the person requesting the reference a high-risk person? (having regard to the definitions in **VPM Conflict of interest**)
  - is there an existing declarable association or a need to report a declarable association?
  - what is the type of relationship? (having regard to the definitions in **VPM Conflict of interest**).

- If there is any doubt, the reference must not be given as an employee of Victoria Police.
- Line managers must keep appropriate records of any requests for references whether approval is granted or not.
- The approver must notify the investigator of any requests for a reference for a suspended employee. The approver should seek advice from the relevant Ethics and Professional Standards Officer, as required.
- If approval is granted, an employee producing a reference on behalf of a party other than the Crown or prosecution must:
  - provide the line manager, the prosecutor for criminal proceedings, the Crown or police lawyer for other court/tribunal proceedings with a copy of the reference as soon as practicable after producing the reference, but at least two working days prior to the commencement of the hearing
  - clearly state that the reference (whether given in written or oral form) is provided in a personal capacity and not as a representative of Victoria Police
  - not include the Victoria Police logo or other words or images identifying Victoria Police
  - not appear in uniform if the reference is given in person.
- Employees must also comply with **VPM Conflict of interest**.

5.6 *Counter summons*

When an employee receives a counter summons they must notify the Staff Officer, LSD and their region/command/department head. Refer to **VPMG Civil proceedings** for the procedure.

5.7 *Providing evidence for civil matters*

- Before being interviewed by an outside body for civil purposes, employees must obtain authorisation from a LAC.
- Where possible, use an affidavit to provide evidence in civil matters. See **VPMG Civil proceedings** for the authorisation procedure and guidance in affidavit preparation.

5.8 *Appearance at court costs*

Where the witness is an employee, the following apply when determining which region/command/department is responsible for costs:

- where payment of incidentals under the *Victoria Police (Police Officers, Protective Services Officers, Police Reservists and Police Recruits) Enterprise Agreement 2019* may be required, approval should be obtained from the informant's LAC for payment of expenses
- for the first five cumulative days in relation to the same matter, the region/command/department where the informant is stationed at the time of the hearing is responsible for costs
- for costs beyond five cumulative days in relation to the same matter, the region/command/department where the investigation commenced is responsible

- the state/territory police service requiring a witness to attend court is responsible for travel arrangements and costs of the witness. The home jurisdiction is responsible for incidentals and accommodation.

6. Informant's responsibilities during committal proceedings

6.1 *Notifying the court and Office of Public Prosecutions of a filing hearing*

- Where a matter will be proceeding to a committal, it must first be listed for a filing hearing as follows:
  - an arrest matter must be listed at the Magistrates' Court within seven days of the filing of charges
  - a summons matter must be listed at the Magistrates' Court within 28 days of issue of the summons.
- The informant is to notify the court and the OPP of the commencement of committal proceedings using the Notification to OPP and Court of the Commencement of Committal Charges [Form 1015].

6.2 *Managing the accused*

As required by the OPP, the informant is to arrange for the accused to be kept in custody until lodged at a watch-house or released on bail.

6.3 *Managing evidence and exhibits*

- As required by the OPP, where the court registrar has requested evidence or exhibits, the informant is to arrange to deliver the exhibits to the OPP and obtain a detailed receipt.
- If the exhibit should remain in police possession, this should be recorded and a report forwarded to the OPP.
- Additional evidence, exhibits or other information is to be forwarded to the OPP to make note in the Register of Briefs and PALM.

7. Adjournment processes

- Where a matter is adjourned for contested hearing, upon receipt of an Adjournment Notice, the informant should complete an Order for Transcription [Form 254]. Provide a transcript only when advised to do so by the prosecutor.
- The informant should contact the prosecutions office as soon as they become aware that an adjournment is necessary, so that the appropriate application may be made to the court prior to the hearing date.
- Where an adjournment is required by the prosecution in a contested hearing, the informant needs to serve a Notice to Accused re Adjournment/Notice of Intention to Proceed [Form 416] in sufficient time to avoid costs being awarded.

8. Responsibilities relating to witnesses

8.1 *Legislative methods of getting a witness to court*

- Witnesses may be brought before a Magistrates' or Children's Court by either a:
  - Witness summons [Form 553] – served in accordance with the *Magistrates' Court Act 1989*

  - Bench warrant – informant to apply by presenting evidence to the court.
- In all cases, where an unlawful non-citizen is required to remain in or return to Australia to be a witness, the informant must obtain a Criminal Justice Certificate. Refer to **VPM Extradition** for the relevant process.

8.2 *Serving a witness summons*

- A Form 553 must be served a reasonable time before the court date. Manner of service is the same as a summons to answer a charge (s.43(5A), *Magistrates' Court Act*).
- At the time of serving the summons, witnesses should also be provided with:
  - a copy of their witness statement
  - conduct money or alternative arrangements to enable their attendance at the hearing. See section 8.6 of this policy for further reference to conduct money.
- An affidavit or declaration must be completed and witnessed as required by the *Oaths and Affirmations Act 2018* to prove service of a summons.
- Work unit managers are responsible for recording the service of a Form 553.
- Service of a further summons is not required where the case is adjourned.

8.3 *Serving a witness summons in specific circumstances*

- Where a summons is being served on a detainee, the summons should be sent to local police for service and needs to arrive in time to enable valid service to be effected. In addition to the summons:
  - Form 476 should be included if the recipient is in prison
  - Form 725 should be included if the recipient is in a Remand Centre, Youth Training Centre or Youth Residential Centre.
- A summons should be served on Defence Services personnel in the normal manner. If service is to be effected personally, consult an officer in the service concerned.
- If personal service is to be effected on a person living interstate, forward the summons to the police station nearest the address of the witness/accused.
- Where the OPP forwards a summons and conduct money to local police stations for service, members should serve the summons or Notice to Warn Witnesses and advise witnesses not to attend court until notified by the OPP of the day that they are required to give evidence.

8.4 *Police communication with witnesses*

- The informant should maintain regular contact with the witness from the date of the incident to the contested hearing date.
- Only prosecutors are to confer with the witness prior to the hearing to clarify or expand on matters about which the witness is going to give evidence.
- The prosecutor is responsible for facilitating witness conferencing and is to explain the court process, formalities and procedures.

8.5 *Communicating with witnesses at court*

Where any person in attendance at court wishes to approach or speak with a witness, they should give prior notice to the party calling the witness as follows:

- defence – lawyer representing the accused or accused if self-represented
- prosecution:
  - Magistrates' Court – informant or prosecutor
  - Supreme or County Court – prosecutor.

8.6 *Costs in getting witnesses to court*

- Financial assistance may be given to witnesses in accordance with the *Magistrates' Court Act and the Criminal Procedure Regulations 2020*. Payments are only for the purposes of meeting the costs associated with the witness appearing in court and are not to be directly linked to the witness providing evidence. The OPP may also be responsible for some costs involved in Supreme and County Court matters (see below).
- Victoria Police meets the following costs in getting a witness to a Magistrate's Court:
  - conduct money
  - travel costs for interstate or overseas witnesses
  - accommodation.
- Where travel costs mentioned above cannot be paid from petty cash, approval must be obtained for costs from the CCP, except where the informant is located in a region, Road Policing Command, Transit and Public Safety Command, Crime Command or PSC. In these circumstances, approval can be obtained from the relevant region/command head.
- Where there are special or additional costs required or incurred in getting a witness to court, seek advice from the regional Business Services Division (BSD).
- Any funds provided are to be recorded on the affidavit or declaration of service.
- The OPP is to be briefed on all payments to witnesses.
- The following costs are not met by Victoria Police, however the witness may lodge a claim for reimbursement from the court registrar:
  - meals and other incidental costs
  - additional expenses a witness may choose to incur, e.g. entertainment.
- Where the witness wishes to claim for loss of income or other associated costs of attending court, they should be directed to the court registrar. Claims for restitution or other matters will be for determination at any subsequent trial.
- All claims for an interpreter service at court are to be forwarded to the relevant court.
- Conduct money may be given to a witness when the summons is served to enable their appearance at court. Conduct money is not to be sent through the mail system.
- When determining whether the circumstances are appropriate regarding conduct money, the following should be given consideration:
  - it is not necessary to give a witness conduct money if they will not reasonably incur expenses in complying with the summons
  - conduct money is to be obtained from petty cash
  - the amount of conduct money given should be shown in the declaration of service.

- Responsibility for costs should be determined as follows:
  - for the first five cumulative days in relation to the same matter, the region/command/department where the informant is stationed at the time of the hearing
  - beyond five cumulative days in relation to the same matter, the region/command where the investigation commenced
  - region/command/department heads may transfer the above responsibilities by agreement
  - the state/territory police service requiring a witness to attend court is responsible for travelling arrangements and costs of the witness.
- The OPP is responsible for all reasonable travel and accommodation expenses for interstate or overseas witnesses subpoenaed to attend the Supreme and County Courts. Upon notification from the OPP, the relevant region/command should make arrangements for the witness to attend. Where the witness is an interstate police member, the OPP will pay for economy class airfares and Victoria Police will pay for accommodation and incidental costs.
- Where conduct money is paid from petty cash, the member obtaining the money signs the Petty Cash Reimbursement [Form 134] as the claimant. In the case of multiple summonses, a list of names and individual amounts should be attached to the Form 134 and made as one entry on the form.
- Where conduct money accompanies a summons that cannot be served, a member should:
  - repay the money as petty cash by recording a red entry on the Form 134
  - stations without petty cash must return the money to the issuing office
  - endorse the original record of summons with "Conduct money returned on [date]".
- For conduct money that is due to employees, a receipt should be issued and the amount paid into the Victoria Police Revenue Bank Account.
- Where conduct money received by members is refunded and a work unit manager approves the refund, a Request for refund or Transfer of Monies form is to be completed and forwarded to Financial Services Department (FSD) with:
  - a letter requesting a refund
  - the work unit manager's approval for a refund.
- The successful prosecution can make a claim against the accused for costs. Use and adapt the Witness Cost/Restitution/Compensation Sheet [Form 950].

8.7 *Child Witness Service referrals*

DJCS provides a state-wide Child Witness Service to support child witnesses in criminal proceedings involving sexual assault and serious violence. Refer to **VPM Interviews and statements** for details of the service and referral process.

8.8 *Video conferencing*

- As an alternative to attending court in person, witnesses may give evidence by video conference. Where a witness is reluctant to give evidence by video conference, informants may apply to the court for an order directing the witness to appear by video conference.

- DJCS uses a video conferencing desktop application called Web Ex which is the IT platform to facilitate online courts. Refer to the Online Courts – Web Ex Intranet page for more information.

9. Exhibits

- Retain exhibits if they are likely to be required as evidence and use secondary evidence where necessary. Obtain a receipt from the OPP or court for any exhibits handed into their custody.
- As soon as the exhibit ceases to have evidentiary value, it must be disposed of according to appropriate legislation and/or policy. Refer to **VPM Property and exhibit management** for instructions regarding property disposal.
- Take high risk exhibits to court only when they will be required or where the court has requested their production. Consult the prosecutor regarding any concerns.
- Due to the risks associated with handling certain items, the following guidelines should be followed:

Type of exhibit	**Guidelines**
Firearms	Exhibit firearms are only to be taken to court when ordered by the court. Once ordered, the informant must ensure that all ammunition is removed and the firearm and ammunition are labelled
Explosive or hazardous material	When ordered to produce these substances at court, seek advice from the Special Operations Group Duty Officer and only take a minimum quantity
Drugs	• Do not take drugs to court unless specifically requested by the court. For health and safety reasons, under no circumstances should items from illicit drug laboratories be introduced into court • Where drugs are held at Victoria Police Forensic Services Centre (VPFSC), a specific request must be made by the court. The informant must seek approval, in writing, from an inspector or above requesting removal of the drugs from the VPFSC and this approved request must be delivered to the VPFSC • Any movement is to be recorded in PALM • When the property is no longer required by the court, return it to VPFSC. On return, the property may be subject to re-analysis and weighing

10. Affidavits

Affidavits for court must be sworn or affirmed in the correct manner. Refer to **VPM Affidavits and statutory declarations** for procedures.

11. Disposal and forfeiture

If court forfeiture or disposal is required:

- the informant is to include a Forfeiture/Disposal Order [Form 745] in the brief
- the prosecutor is then to seek an appropriate order in accordance with the specific legislation and forward the court order to the relevant work unit manager or complete details of why the order was not granted. The Brief Head [Form 208A] should be endorsed accordingly

- once the court order has been issued, the work unit manager must ensure that disposal occurs.

12. Review of charges, withdrawal of charges or laying of alternative charges

12.1 *General*

- The member authorising the brief may recommend to the prosecutor the withdrawal of charges to be heard before the Magistrates' or Children's Court. Where withdrawal is recommended, only the prosecutor is permitted to make the withdrawal.
- Once authorised, substantive charges can only be withdrawn after the prosecutor considers that either:
  - there is no reasonable prospect of securing a conviction
  - continuation of the prosecution is not in the public interest.
- Prosecutors have authority to conduct negotiations with defence. They are authorised to withdraw substantive and alternative charges and recommend the laying of further charges, where deemed appropriate.
- The informant or prosecutor must consult the victim before:
  - accepting a guilty plea to a lesser charge
  - laying alternative charges
  - downgrading charges
  - deciding to withdraw charges.
- If further charges are laid, the Central Data Entry Bureau (CDEB)/ Police Brief copy of the charges must be faxed to CDEB.

12.2 *Impact on informants*

- Consultation with informants, authorising members or the work unit manager at the station where the brief was authorised may still occur, however that consultation must not delay the progress of the matter.
- Informants should not consult with the accused or their representative in relation to charge withdrawal without first speaking with the prosecutor. Any discussions with the defence counsel should be conducted by a prosecutor.
- Following the initial consultation, the informant should (where applicable) notify the victim when a charge in which they are listed as a victim is withdrawn. Their opinion should be communicated to the prosecutor for inclusion on the withdrawal report.

12.3 *Prosecution review of doli incapax*

- The legal principle of *doli incapax* refers to the presumption a child is not capable of committing an offence. This presumption applies to a child aged 12 or 13 years at the time of the alleged offence.
- This presumption may be only by rebutted if the prosecution proves beyond reasonable doubt that the child knew at the time of committing an alleged offence that their conduct was seriously wrong.
- Where a summary proceeding is commenced against a child aged 12 or 13, the prosecutor must review the brief and consider whether there is:

  - sufficient admissible evidence to prove beyond reasonable doubt the child knew at the time of offending that their conduct was seriously wrong
  - sufficient admissible evidence establishing each element of the offence and
  - a reasonable prospect of the child being found guilty of the alleged offence

- The review must be completed as soon as possible after criminal proceedings have commenced and, if practicable, no later than 21 working days after proceedings have commenced.
- The prosecutor must take reasonable steps to give the child or their legal representative written notice that the review has been completed and whether the prosecutor is satisfied there is sufficient admissible evidence to proceed.
- The prosecutor must consider whether it would be appropriate to withdraw the charge if:
  - it appears there is insufficient admissible evidence available to prove beyond reasonable doubt the child knew at the time of the alleged offence that their conduct was seriously wrong or
  - it appears there is insufficient admissible evidence available to prove beyond reasonable doubt each element of the alleged offence or
  - there is no reasonable prospect of the child being found guilty.

12.4 *Indemnity*

- When charges are to be withdrawn due to a lack of evidence, and the accused or their legal practitioner gives an undertaking not to seek costs, the prosecutor should consider obtaining the indemnity in writing.
- The indemnity should not include reference to the withdrawal of or the intention not to proceed with a complaint against police.

12.5 *Complaints against members*

- When the accused in a matter has made a complaint against police, the informant or investigating member should notify the relevant prosecutions unit and attach a report to the brief of evidence. For further detail on managing a complaint, also see **VPM Complaints** and **VPM Discipline**.
- Where a complaint is made against a member involved in the matter, any decision to withdraw charges needs to include consultation with an inspector or above and be subject to the following:
  - where there is a withdrawal of all charges, refer the matter to the Manager, Prosecutions inspector or above, for approval
  - where there is a withdrawal of one or more (but not all) charges, notify the Manager, Prosecutions Court Branch.

13. Appeals

13.1 *General*

Any party to any matter determined in the Magistrates' or Children's Court may appeal to the Supreme Court on a question of law under s.272, *Criminal Procedure Act* and s.329, *Children, Youth & Families Act*. Strict timelines apply for the lodging of applications for appeal.

13.2 *Application for appeal initiated by informant in Magistrates' Court matters*

- Informant responsibilities – informants aggrieved by a Magistrate's decision should consult the prosecutor as to whether an appeal is appropriate, within one day of the decision.
- Prosecutor responsibilities:
  - obtain the original brief of evidence and all supporting documents
  - consult the Research and Training Unit (RTU), Prosecutions Division regarding the appropriateness of an appeal
  - forward a report to the RTU including the brief, details of the charges, what occurred during the hearing and the reason for seeking consideration of appeal (see the LSD Intranet page for further information).
- The RTU assesses the application for an appeal and if supported, the file will be forwarded to the Executive Director, LSD. If the application is not supported, the file will be returned to the prosecutor explaining the reasons for not proceeding. The prosecutor will then discuss the outcome with the informant.
- If approved, the Executive Director, LSD will forward the file to the OPP for consideration. Members must not contact the OPP directly in relation to appeals.

13.3 *Prosecution appeals against sentence*

- A police member who wishes to request the OPP to appeal against sentence should follow the same procedures and time frames for appeals as detailed in section 13.2 of this policy.
- Do not contact the OPP directly, instead all correspondence regarding appeals must be forwarded via line management to the Executive Director, LSD.

13.4 *Appeals by accused*

- Magistrates' and Children's Court – within seven days of being served with a copy of a Notice of Appeal, an informant must forward the original brief to the OPP County Court Appeals Section, including:
  - Notice of Appeal
  - Report of Notice to Appeal [Form 204]. Their workplace must retain a copy and record it in the Register of Briefs.
- Supreme and County Court – are conducted by the OPP who notify informants if required.
- Informants who receive a Notice of Appeal need to notify the relevant prosecutor so that any other relevant material can be forwarded to the OPP.
- Family violence – where police are a party to an appeal lodged by another party, the informant should contact the Staff Officer, LSD, within seven days of being served a copy of a Notice of Appeal.

13.5 *Notification of VicRoads*

When served with a copy of a Supreme Court order that stays an order of a lower court affecting the appellant's driving licence, the informant is to:

- forward or fax both of the following to Driver Records Section, VicRoads:
  - short report requesting amendment of the appellant's driver record

- copy of Supreme Court order.

- forward a copy of the Supreme Court order and an explanatory report to the Appeals Section, OPP.

13.6 *Commonwealth appeals*

- Where an appeal is lodged, forward a report to the Commonwealth Director of Public Prosecutions. Notices of Appeal against convictions under commonwealth law are to be dealt with in a similar manner to offences under state law.
- Members may be held personally liable for costs in cases where there is clear negligence or when a disciplinary or criminal offence is likely because of the member's actions.

14. Re-hearings

- An accused person, or in exceptional circumstances, the informant on their behalf, can make applications for re-hearing of cases under s.88, *Criminal Procedure Act*.
- Where the informant makes the application, they should serve a copy on the accused.
- Where a member receives an Application for Re-hearing, they are to notify the informant and make a record of receipt.
- The informant is to forward the original brief to the prosecutor including:
  - Application for Re-hearing
  - a new LEAP Charge Sequence and Result of Charge Report
  - a revised list of unsuitable/suitable court dates
  - material upon which an objection to the re-hearing could be made.
- The informant does not need to attend the initial day on which the application for re-hearing is considered unless they intend to object or are requested by the prosecutor.
- Where a court grants a re-hearing and sets aside the original conviction:
  - the prosecutor is to advise the informant of the date of the re-hearing and complete a LEAP Charge Sequence and Result of Charge Report
  - the informant is to attend the re-hearing and ensure that all required witnesses attend as for a contested hearing.
- At the conclusion of the re-hearing, the prosecutor is to complete copies of the Result of Charge Report and return the brief to the informant.

15. Breaches of sentencing orders

- Informants have specific responsibilities when they identify a breach of a sentencing order. Have regard to **VPMG Sentencing orders** for the procedures which apply to specific orders.
- Members must notify the relevant body when they:
  - become aware that a person charged with an offence is on a correctional order
  - detect a breach of bond by a child
  - detect a breach of parole.

16. Proceedings involving Victoria Police

16.1 *Civil proceedings involving police*

- An employee who receives civil process involving Victoria Police must immediately notify Civil Law Division.
- Have regard to **VPMG Civil proceedings** when considering whether to initiate civil action on behalf of Victoria Police.
- Where civil process is served on an employee for a private matter, refer to **VPMG Offences by or service of process on police employees**.

16.2 *Civil process for service by police*

- Members are only to serve civil process issued out of the Supreme or County Court where police are specifically appointed as a Bailiff by the Supreme or County Court.
- Have regard to **VPMG Civil proceedings** when requested to serve civil process in any other circumstance.

16.3 *Employees attending court*

Apart from specific circumstances outlined in this policy, employees on duty may only attend court or tribunal proceedings (including coronial inquests, applications for intervention orders etc.):

- at the direction of the prosecutor
- by virtue of a subpoena or summons to give evidence and/or produce documents
- with the explicit authority of their LAC or senior manager.

17. After court processes

17.1 *Informant's responsibilities*

The informant must submit a report where they believe that the granting of bail, withdrawal or dismissal of a charge was caused by the fault of a prosecutor or other employee. The report must be submitted to the prosecutor's work unit manager within three days of the court's decision.

17.2 *Prosecutor's responsibilities*

- The prosecutor must forward a case review report to the work unit manager of the local prosecutors' office within two days of:
    - an adjournment, withdrawal or dismissal which resulted in costs being awarded against the CCP
    - a case which was adjourned due to a non-routine matter
    - a major charge which was dismissed (other than as an alternative to another major charge).
- Where one of the above occurs, the following documents should be completed by the prosecutor and submitted to their work unit manager:
    - court extract
    - statement of fines and penalties
    - relevant report (Adjournment Report, Dismissal Report or Withdrawal Report).

- Where the matter has been adjourned, the brief should be filed by the prosecutor with a record or copy of the documents submitted for the case review.
- In all other cases, the brief should be submitted to the work unit manager with a copy of the case review documents.
- Where costs are awarded against the CCP, the prosecutor must request a stay of payment for three months (see section 19 of this policy for the process for paying costs). If this is not granted, the prosecutor must immediately inform their work unit manager so payment can be expedited.

17.3 *Work unit manager of the prosecutors' unit responsibilities*

When processing files that are received by way of the process above, the work unit manager of the prosecutors' unit should:

- classify it as routine or non-routine and process it as follows:
  - routine – add a notation to the Withdrawal Report, Adjournment Report or Dismissal Report
  - non-routine – attach a full report explaining the circumstances and identifying any deficiencies and forward this to the staff officer of the region/command/department head.
- treat any report submitted by an aggrieved informant as non-routine and include in their report any initial assessment as to whether there is a reasonable basis for the grievance
- advise PSC where the work unit manager suspects that an adjournment, withdrawal or dismissal may have been due to serious misconduct by an employee
- distribute copies of the Withdrawal Report forms, or the Adjournment Report or Dismissal Report form, and any report in respect of a non-routine matter following the table below:

Copy	Action
First (original)	**No appeal** • Where no appeal is being pursued, attach the documents to the brief of evidence (or note that the brief has been held in respect of outstanding charges, where applicable). • Where no costs have been awarded and the matter is assessed as: - routine, forward the file to the informant's station - non-routine, also attach a copy of the court extract and forward the file to the staff officer of the region/command/department head **Appeal** • Where an appeal is being pursued, attach the documents to the brief of evidence with the prosecutor's report and the court extract (and the prosecutor's memo as to costs, where applicable) and: - deliver the appeal documentation to the RTU, within two working days of the Magistrate's decision, or - where at any stage it is decided that the appeal will not be pursued, or if the appeal is ultimately unsuccessful, take action required as for no appeal.
Second	Where it is necessary to complete any of the above forms, and irrespective of whether costs have been awarded, forward the second copy of the form to the Manager, Prosecutions Division.

Third	File at the relevant prosecutor's office
Fourth	• File with the original court extract to the relevant authorised police employee for authorisation of payment • Where an appeal is being considered, the file must not be forwarded for payment unless the appeal is not pursued or until the appeal outcome is known and the costs remain payable.

18. Case Review - Court Liaison Officers

18.1 *Court Liaison Officer duties*

Region/command heads are responsible for ensuring a case review process is established where the failure of a court case was preventable or costs were awarded against the CCP. The process may require the appointment of a Court Liaison Officer (CLO) to coordinate the review. Their duties may include:

- liaising with court staff, managers of prosecutors' offices, work unit managers and relevant members
- managing issues involving the responsibilities of employees in relation to the forwarding of briefs of evidence, attendance of witnesses at court and other related matters
- reviewing non-routine adjournments, withdrawals and dismissals and all matters in which costs have been awarded against the CCP. These files should be processed as outlined in section 18.2 of this policy
- initiating managerial or disciplinary action considered appropriate
- providing the region/command head with quarterly and annual reports containing:
  - statistics of adjournment, withdrawal and dismissal matters that they have dealt with
  - synopses of non-routine adjournment, withdrawal and dismissal matters that they have actioned or referred for action, and the subsequent results.

18.2 *Court Liaison Officer file reviews*

Where a CLO is appointed, they should review files classified as non-routine and files where costs have been awarded against the CCP. The file should be processed as follows:

- routine matter – forward the file to the informant's work unit manager for information and filing
- non-routine matter:
  - refer minor matters which may be addressed at station level to the informant's work unit manager
  - investigate matters that may warrant a higher level of managerial intervention, and take appropriate action
  - refer matters that may warrant disciplinary action to either the Brief Review Panel or PSC.

Where the CLO considers managerial or disciplinary action against a Prosecutions Division employee appropriate, the matter is to be referred to either:

- Brief Review Panel for examination and recommendation

- Manager, Prosecutions Division for determination
- PSC for investigation.

Where defects in policy are apparent, the nature of these defects, along with information that may eliminate or reduce adverse outcomes or awards of costs in the future should be reported to the relevant area's region/command head.

18.3 *Brief Review Panels*

- Each region/command must convene a Brief Review Panel. The Panel's role includes:
  - determining managerial action, or disciplinary action up to the level of admonishment. The Panel Chair starts or directs such action
  - directing that the file be forwarded to PSC for investigation
  - making such other determination, direction or recommendation.
- Where the Panel recommends managerial or disciplinary intervention against an employee of the Prosecutions Division, the Panel is to refer the matter to either:
  - Manager, Prosecutions Division
  - PSC for investigation.
- The CLO retains documentation relating to the proceedings of the Panel in accordance with **VPMP Information review, retention and disposal**.

19. Paying costs

- Where costs are awarded against the CCP and stay of payment for three months has been granted, the prosecutor must forward the documents to the work unit manager, Prosecutions Division.
- The Manager, Prosecutions Division must forward the documents to the staff officer of the relevant region/command head for payment.
- Delegation FIN 2.1 Schedule D lists the authorisation limits to incur or meet expenses and obligations related to costs awarded against the CCP. The authorised employee must authorise and ensure payment of the Costs Order.
- For matters prosecuted by the OPP where the payment amount is:
  - $10,000 or less, the OPP will negotiate costs on behalf of the CCP
  - above $10,000, or cannot be agreed upon, the Manager, Prosecutions Division will forward documents to the Staff Officer, LSD. LSD will then forward the cost file to the staff officer of the relevant region/command head for payment when the matter is settled.
- In cases of a police prosecution, where a costs claim is estimated to be:
  - $20,000 or less, the claim will be negotiated and settled by the relevant prosecutions unit
  - above $20,000, LSD will undertake the assessment of the costs and negotiate a settlement of the amount of costs. The Manager, Prosecutions Division will forward a copy of the Costs Order and a costs report with details of who acted for the accused to the Staff Officer, LSD.

20. Claiming costs

20.1 *Minimise costs*

Where possible, costs should be minimised as there is no guarantee that the costs will be recovered.

20.2 *Criminal jurisdiction*

Witness costs are not generally sought in relation to employees appearing as witnesses in criminal proceedings because costs are not usually considered to be in furtherance of the administration of justice.

However, it may be appropriate to seek costs against an accused who has summonsed an employee as a defence witness or in cases where voluminous requests are made. Advice can be sought from the SCU.

20.3 *Intention to apply for costs*

At the earliest opportunity, defence should be advised by the prosecutor of Victoria Police's intention to apply for costs.

20.4 *What to claim*

Costs incurred as a direct result of court attendance should be claimed, including:

- loss of earnings – this rate is set out in Victoria Police fees and charges
- unavoidable expenses – these must be reasonable. This could be the cost of travel, accommodation or even the non-refundable cost of a plane ticket purchased before notification of the court commitment and unable to be used because of the court commitment.

20.5 *Out of pocket expenses*

Employees can submit a Personal Expenses Claim Form [Form 46] for out of pocket expenses but should ensure that these costs are claimed from the party liable to pay costs so that Victoria Police can be reimbursed.

20.6 *Settling the costs amount*

- The amount of costs can be settled by either:
  - determination by the court - the court should be advised of the costs sought at the completion of the witness' evidence
  - agreement between the parties – this should be confirmed in writing by the party liable to pay costs.
- SCU can be consulted to assist in cost negotiation.

20.7 *Advice of the debt*

Completion of the Subpoena Costs and Customer Creation Form [Form 1341] advises Victoria Police of the debt so an invoice can be created and sent to the party liable to pay costs.

20.8 *Procedure when costs are awarded*

- Prosecutors need to record details of costs, including amounts awarded by the court, on the 208A and Form 950.
- The court registrar generally sends costs direct to the witness concerned.
- Where a witness costs cheque is received from a court, station administration staff will:
  - issue an interim receipt
  - bank the cheque into the Victoria Police Revenue Bank Account and cross-reference the receipt number on the pay-in book
  - ascertain the identity, bank details and current address of the witness
  - email FSD-Accounts receivable-MGR, with the identity, bank details and current address of the witness on a Revenue Collection form
- FSD will complete an electronic transfer fund or issue and post a cheque to the witness involved. Where a witness cannot be located, FSD will pay costs into Consolidated Revenue via the Central Banking System (CBS).
- Where the witness is an employee, costs are paid into the CBS.

20.9 *Procedure where costs are not awarded or the amount awarded is inadequate*

- *Criminal Procedure Regulations* prescribes allowances for Crown witnesses.
- Informant responsibilities where costs are not awarded or witnesses are dissatisfied with the amount:
  - advise them to contact the court registrar of the appropriate court
  - in exceptional circumstances, an ex gratia payment may be considered (submit a report through the LAC to the BSD).

20.10 *Victoria Police claiming costs*

Where employees are called to give evidence, the employee in consultation with their line manager, should consider claiming the reimbursement of the employee's salary and the cost of any travelling allowance. The following also apply:

- commonwealth, state or local government department – where an employee gives evidence in support of a commonwealth, state or local government prosecution, costs for salary reimbursement must not be claimed. Where Victoria Police has incurred the cost of any travel, the relevant region/command/department must be invoiced for the cost. The employee must forward a detailed report of the circumstances and costs to the Revenue Branch, FSD within seven days of the hearing
- Victorian Civil and Administrative Tribunal (VCAT) or other tribunals – when a party to a proceeding before VCAT or other tribunal requires the attendance of an employee, a request should be made that a summons be issued for their attendance. Section 104(4) of the *Victorian Civil and Administrative Tribunal Act 1998* provides that a person who attends in answer to a summons is entitled to be paid the prescribed fees and allowances or, if no fees and allowances are prescribed, the fees and allowances (if any) determined by the Tribunal. An application for full costs should be made to the tribunal on the day of the proceeding. Note: before making an application for costs, employees must contact

the Staff Officer, LSD for advice on the appropriateness of claiming costs in the circumstances.

20.11 *Employees called to give evidence for a party other than the Crown or prosecution*

At court, the employee should:

- claim costs on the day of attending court, even if the matter is settled without the evidence being given
- request that a court order is made in respect of the costs claimed unless a written costs agreement has been made with the party liable to pay costs.

20.12 *Costs for damage to Victoria Police property*

- Informant responsibilities – where there is any damage or loss sustained by Victoria Police or an employee in the execution of duty, the informant is to detail this on Form 950 and attach it to the brief.
- Prosecutor responsibilities – where the charge against the accused is found proven, prosecutors are to apply for an order for costs to cover any damage or loss sustained by Victoria Police or an employee in the execution of duty in accordance with the Form 950 attached to the brief.
- Employee responsibilities – if an employee suffers damage in the circumstances above, they are to make a claim on a General Claim Form [Form 135]. In any other case where an order for costs has been made and the accused fails to pay such costs or where no court proceedings are taken, an employee who has sustained loss on duty may submit a claim. Also refer to chapter 7 of the Victoria Police Accounting Manual.

Related documents

- *Court Security Act 1980*
- *Criminal Procedure Act 2009*
- VPMG Civil proceedings
- VPM Disposition
- VPM Victim support

Further advice and information

For further advice and assistance regarding this policy, contact your supervisor or local prosecutions unit.

Update history

DATE UPDATED	SUMMARY OF CHANGE	FORCE FILE NUMBER
21/10/19	This document combines and consolidates **VPMG Court**	FF-139297

	processes and **VPMP Court processes**. Minor updates have been made to reflect updated legislative references.	
02/11/20	Updated to reflect the new DC Public Safety and Security.	No file
30/12/20	Updated in response to Royal Commission into the Institutional Response into Child Sexual Abuse recommendations. Includes: contact victim when changing/dropping charges	FF-154475
16/02/22	Amendments relating to the introduction of AVL technology to enable remote BaRC hearings	FF-194854 1
19/06/24	Amendments to strengthen advice for providing referee statements and evidence to defence. Updates to video conferencing and reference to the DMU and disclosure provisions	FF-200632 FF-091747/FF-136259 1
22/05/2025	Updated instrument names to reflect VPM Management of people in police care or custody.	FF-240370
30/09/2025	Updated to include changes made by the *Youth Justice Act 2024* to charging and prosecuting 12 and 13 year old children.	FF-275595
05/12/2025	Amendment to remove reference to On Call Interpreter Services	N/A