

Victoria Police Manual – Procedures and Guidelines

Civil Proceedings

Source Policy

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

- VPM Court processes

Application

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

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

Procedures and Guidelines

1. Employees providing evidence for civil matters

- As required by the **VPM Court processes**, where an employee has been requested to supply evidence in a civil matter, authorisation of the Local Area Commander must be obtained. To obtain approval, a report should be forwarded to the Local Area Commander including:
 - details of the request
 - evidence to be provided
 - see **VPMG Release of accident and property records** if the request relates to an accident or collision.
- Any conduct money provided with the subpoena needs to be deposited into the Central Banking System (CBS).
- Where an affidavit is to be used, the applicant should prepare the affidavit and provide this to the member who will be giving evidence. The member should then:

- check the contents for completeness and accuracy
 - ensure that the affidavit is based on the member's records of the incident or accident and does not provide opinion
 - make any necessary changes prior to swearing the affidavit
 - charge the fee specified in r.7, *Police Regulations 2003*.
- When giving evidence in civil actions in any court police members should:
 - not answer questions involving matters of opinion unless that opinion would be admissible at court, except under direction from the presiding Judge or Magistrate
 - be able to provide the court with the hourly amount for their rank as provided by CBS (this is not directly connected with the member's salary).

2. Civil proceedings involving Victoria Police

2.1 *Counter summonses*

An employee receiving a counter summons needs to:

- telephone the Staff Officer, Legal Services Department and fax a copy of the process and where practicable, relevant documents relating to the subject of the process
- forward to the Staff Officer, through their Department Head:
 - the original of any process and hard copies of required documents or reports
 - a report, detailing the circumstances, and request for legal representation.
- notify their Department Head within 48 hours, who then notifies Assistant Commissioner (Professional Standards Command).

2.2 *Brief of evidence*

If the matter relates to an existing police prosecution, following notification of Staff Officer to Director Legal Services, the brief of evidence must be forwarded to the Manager, Prosecutions Division with a report containing details of the counter summons. If the brief is already at the prosecutor's office, only the report is required.

2.3 *Conduct of matter*

The counter summons will be heard as a separate matter unless the court decides otherwise.

2.4 **Legal representation**

Legal Services Department will consider requests for legal representation on a case by case basis and advise employees if representation will be provided, or alternately that they will need to seek their own representation.

2.5 **Employees receiving civil process**

Employees who are named in civil process should refer to **VPMG Offences by or service of process on police employees** for instructions relating to notification requirements and relevant procedures.

3. Service of civil process by police

3.1 **Summons Issued by Supreme or County Court**

As stated in **VPM Court processes**, unless appointed as a Bailiff of the Supreme Court or County Court, a police member must not serve process issued out of the Supreme Court or County Court in civil cases, or the Federal Court (Bankruptcy Division) unless they are authorised in writing.

3.2 **Procedure when receiving civil process for service**

When receiving civil process for service in areas listed in Schedule 4, *Magistrates' Court General Regulations 2000*, refer it back to the issuing court, solicitor or applicant for service by a process server. If this is not practicable (e.g. in remote areas) discretion should be used.

3.3 **Family Court**

A summons issued under the *Family Law Act 1975* (Cwlth) should be forwarded to the AFP, except in remote areas of the State where the process should be served if there is no warrant involved. Any other process should be returned to the relevant solicitor, applicant or court.

4. Initiating civil proceedings

When considering taking civil action on behalf of Victoria Police first consult with the Manager, Civil Litigation Division, who will:

- seek approval from the Department Head, Legal Services
- update the contingent liability register.

5. Warrants of possession

5.1 **Police powers under the Residential Tenancies Act**

- Under the *Residential Tenancies Act 1997*, Residential Tenancies Division, VCAT, adjudicates on disputes between a landlord and tenant.

- Under this Act, police are empowered to take action in certain circumstances, including:
 - disputes between landlords and tenants
 - violence on managed premises
 - executing Warrants of Possession.
- Refer to **VPMG Warrants** for information relation to other warrants.

5.2 Issuing a warrant of possession

- Named person:
 - police can only accept a warrant directed to a police member
 - if the warrant is addressed to a specified police member that member must execute it, with assistance if required.
- Delivery – a Warrant of Possession will be delivered to the police in whose area the premises are.
- Additional details – obtain details of the person who will be present to accept delivery of the premises on the date of execution. This is generally the estate agent.
- Record – Warrants of Possession received at police stations in the Warrant Register or in Station Books.

5.3 Execution of a warrant of possession

- Prior to execution date – police must attend the premises and advise the occupant of the warrant and the execution date. Police should not execute the warrant without giving prior warning to the occupant unless urgent circumstances exist, such as damage being done to the premises.
- Execution day – the police role is to preserve the peace. Police must not assist with the removal of property from the premises.
- If there are concerns for the welfare of children or other residents as a result of the execution of the warrant, seek advice from one of the following prior to the execution date:
 - Sex Offence and Child Abuse Unit
 - Sex Offence and Child Investigation Team
 - local welfare agencies.

Further Advice and Information

For further advice and assistance regarding these Procedures and Guidelines, contact the Policy Manager.

Update history

Date of first issue	22/02/10	
Date updated	Summary of change	Force File number
21/01/13	Updated to reflect organisational governance and structural changes.	FF-074790
18/11/13	References to redundant instruments following IMSSD review have been updated with corresponding new instruments.	069562/11
21/10/19	Instrument names updated to reflect amended court processes policy.	FF-139297