

# VICTORIA POLICE INVESTIGATIONS

## Guidance to assist carers on what to expect when Victoria Police conduct an investigation in response to allegations of abuse in their care

### Why is Victoria Police contacted about child safety concerns in a care placement?

The great majority of children and young people in out-of-home care receive high-quality care from dedicated carers who have made a commitment to making a difference in the lives of these children and young people. From time to time, allegations may be raised about carers by the child or young person they are caring for, the child or young person's family, or members of the community.

All children and young people in out-of-home care have come from a history of abuse and/or trauma. This history can heavily influence their behaviour and their trust and view of adults and the world. Therefore, it is not surprising that carers, like teachers and others who are placed in a position of trust with children and young people, are especially vulnerable to complaints and allegations

at some time during their involvement in the out-of-home care system.

As the safety and wellbeing of children and young people in out-of-home care is paramount, every concern must be taken seriously and thoroughly explored to ensure the safety of the child or young person.

When an allegation is raised, it can be unsettling and stressful for a carer. It is important that processes are in place that, while ensuring the safety of the child or young person, also ensure that carers are treated in a fair and just manner and are informed and supported throughout the process.<sup>1</sup>

### What is Victoria Police's role in protecting children and investigating allegations?

When an incident involves an allegation of criminal conduct such as physical or sexual assault, the matter must be reported to Victoria Police. The incident reported will be assessed by Victoria Police who will then determine whether a criminal investigation will occur. Usually the police will ask for the service provider (the agency supporting the placement or the department) to put the incident investigation on hold until the police investigation is complete.

Where the police decide that an investigation is warranted, they will interview the carer as soon as possible after all relevant evidence is obtained. The police will endeavour to conduct an investigation in a timely manner, taking into account the safety and wellbeing of the child and the carer's rights. However, some police investigations may be lengthy due to the complexity of gathering evidence for a criminal investigation.<sup>2</sup>

## What can you expect from Victoria Police during a criminal investigation?

Victoria Police are obliged to ensure that all parties involved in a police investigation are treated with courtesy, respect and dignity, and police must check in with individuals about what they need or ask if they require additional assistance.<sup>3</sup>

### INVESTIGATIONS

During an investigation of allegations of criminal conduct against an individual, police can do the following:

- Record interviews (interviews can occur multiple times)
- Before asking questions, give a caution that anything said may be used as evidence
- Make the individual aware of their legal rights<sup>4</sup>
- Allow the individual to record a written statement to police that is their version of events if they wish. Alternatively, the police must use the evidence from their records of the interview.<sup>5</sup>

In addition to the above, police can do the following:

- Talk to other people that the individual knows about the alleged incident
- Keep the evidence that they find.

### ARRESTS

Victoria Police can arrest someone and hold them in custody when they think a law has been broken.<sup>6</sup> A police officer can arrest someone when they:

- reasonably believe a law has been broken
- have a warrant for their arrest
- know they are a risk to a family member.

If someone is arrested, the police officer must advise them they are under arrest<sup>7</sup>, what they are under arrest for, and the reason why they are

under arrest. After the arrest, the police will take the person into custody. This means the police officer will take the individual to a police station, custody centre or the police cells at court. The person who is arrested may have to travel in a police vehicle to get there and the police officer may handcuff them.

While in custody, the police will:

- ask for a name and address
- ask for a statement
- interview the individual
- take fingerprints and may ask for a DNA sample
- search individuals
- photograph individuals.<sup>8</sup>

### CHARGED WITH AN OFFENCE

If the police charge someone with a criminal offence, the person will have to go to court. The police will either issue a charge and place a person on bail or serve a summons and charge sheet. These documents describe the offence the police believe an individual has committed. These documents also state when the person who is charged has to go to court.

Legal Aid recommends that as soon as someone is charged and bailed, or charged and summonsed, that person should receive legal advice. They recommend it is always a good idea to speak to a lawyer before going to court for a criminal charge.<sup>9</sup>

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Authorised and published by the Victorian Government, 1 Treasury Place, Melbourne.

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## What are your rights when you are with Victoria Police?

Legal Aid's website provides detailed information about people's rights when interacting with Victoria Police. Key information has been summarised below, but we recommend you review these links in order to understand the detail:

- [police powers and my rights](https://www.legalaid.vic.gov.au/police-powers-and-my-rights) <<https://www.legalaid.vic.gov.au/police-powers-and-my-rights>>
- [speaking to the police](https://www.legalaid.vic.gov.au/speaking-police) <<https://www.legalaid.vic.gov.au/speaking-police>>
- [being arrested](https://www.legalaid.vic.gov.au/being-arrested) <<https://www.legalaid.vic.gov.au/being-arrested>>
- [fingerprints and body samples](https://www.legalaid.vic.gov.au/fingerprints-and-body-samples) <<https://www.legalaid.vic.gov.au/fingerprints-and-body-samples>>.

If the police ask someone to go with them to a police station, the individual can ask why they are being asked to go with police and if they are under arrest. If someone is not under arrest, they do not have to go with the police officer unless it relates to family violence. Individuals can also request the name, police station and rank of police officer. This can be requested in writing.<sup>10</sup>

When with police, anything someone says can be used as evidence, once given what is known as their 'caution and rights'. Individuals have the option to remain silent. This means that individuals do not have to answer any questions asked by the police. There is no such thing as speaking 'off the record'. Once provided with their caution and rights, anything said to a police officer may be used by them to arrest or charge individuals. The police could use the things said as evidence in court. Individuals have the option to speak with a lawyer before answering any questions.

Individuals can choose not to make a statement to police. If a statement is made, the police may base charges on what was said in the statement. Police will charge people when they believe there is evidence to show that the person committed a criminal offence. Sometimes the only evidence against an individual is what is documented in the statement or in the interview records. If a

statement is made, Legal Aid advises to ensure that legal advice is sought.<sup>11</sup>

If individuals decide to make a sworn statement, the police will ask that it is signed under oath. An oath is a promise that the statement is true. Read the statement carefully. The police can charge individuals with perjury if a person intentionally makes a statement to police that is not true. It is important that individuals ensure the statement reads correctly before signing the document.<sup>12</sup>

Arrested individuals have the right to make two phone calls, one to a lawyer and one to a friend or relative. The police must provide a private space to use the phone, where the police cannot hear the conversation.

The police can only keep individuals in custody for a reasonable time before laying charges. The law does not say what a reasonable time is. This depends on the seriousness of the offence and how long it takes the police to conduct the interview. Individuals can ask when they are going to be charged, released or that they want to contact a lawyer.<sup>13</sup>

When a First Nations person is held in custody the police must advise the Victorian Aboriginal Legal Service (VALS). A client services officer from VALS will speak to this individual directly. They will offer support and advice. Individuals can choose what advice they want to follow. The police must also contact an Aboriginal Community Justice Panel, if there is one nearby. The Aboriginal Community Justice Panel works with government agencies and police officers to make sure Aboriginal and Torres Strait Islander people are looked after properly when dealing with the police, the courts or prisons. A panel member can give First Nations people support and advice.<sup>14</sup>

The police will take an individual's things (personal property) if the police are holding them in a police cell. Police must list all property on a 'property sheet'. They will then ask the person to sign the sheet if they agree that the property listed on the sheet is a correct list of property taken from them

*(continued overleaf)*

by police. The police must give property back to individuals when they are released from custody. They do not have to do this if they have kept property as evidence or destroyed it.<sup>15</sup>

If individuals do not understand English very well, requests can be made to the police officer for an interpreter to help explain things. The interpreter must be qualified (generally a relative cannot play this role).<sup>16</sup>

The police may take fingerprints or samples from an individual's body, such as saliva or blood, to use as evidence. For all body samples, individuals can always say no. However, the police may get a

court order to obtain a body sample if an individual refuses. A senior police officer can approve a non-intimate body sample (including taking blood through a finger prick) without having to ask the court if a person is suspected of committing a serious offence. The police must destroy someone's fingerprint record if that person has not been charged with an offence within six months, or a court determined that the individual was not guilty of the offence. The police must usually destroy body samples after 12 months if they have not laid charges in that time or a court has found the individual not guilty of the offence.<sup>17</sup>

### Where can carers go to for support?

If carers or individuals need support or information during a police investigation, they can be referred to or contact:

- [Victoria Legal Aid](https://www.legalaid.vic.gov.au) <https://www.legalaid.vic.gov.au>
- [Women's Legal Service Victoria](https://www.womenslegal.org.au) <https://www.womenslegal.org.au>
- [Office of the Public Advocate](https://www.publicadvocate.vic.gov.au/) < https://www.publicadvocate.vic.gov.au/> (an independent Third Person)
- [Victorian Aboriginal Legal Service](https://www.vals.org.au/) (VALS) <https://www.vals.org.au/>
- [Aboriginal Community Justice Panel](https://www.vals.org.au/aboriginal-community-justice-panels-acjp-program/) <https://www.vals.org.au/aboriginal-community-justice-panels-acjp-program/>
- [Families and children information for foster carers](https://services.dffh.vic.gov.au/information-foster-carers) <https://services.dffh.vic.gov.au/information-foster-carers>
- [Families and children information for kinship carers](https://services.dffh.vic.gov.au/kinship-care) <https://services.dffh.vic.gov.au/kinship-care>
- [Factsheet for out-of-home carers](https://providers.dffh.vic.gov.au/factsheet-out-home-carers) <https://providers.dffh.vic.gov.au/factsheet-out-home-carers>
- [Victorian Carer Register – DFFH Service Providers](https://providers.dffh.vic.gov.au/carer-register) < https://providers.dffh.vic.gov.au/carer-register>

If individuals consider that Victoria Police are not acting appropriately, they can contact:

- Victoria Police Conduct Unit on 1300 363 101
- [The Independent Broad-Based Anti-Corruption Commission](https://www.ibac.vic.gov.au/) (IBAC) <https://www.ibac.vic.gov.au/>
- [The Victorian Equal Opportunity and Human Rights Commission](https://www.humanrights.vic.gov.au/) <https://www.humanrights.vic.gov.au/>

## What other investigation processes could occur?

In addition to Victoria Police investigations, there are other reporting and investigation processes for allegations of abuse to children and young people. These include the Client Incident Management System (CIMS), the 'Reportable Conduct Scheme' and the 'Suitability Panel'. These investigations will generally occur post the outcome of a Victoria Police Investigation.

- Client Incident Management System (CIMS) investigations review incidents which harm clients and include witness interviews and collation of evidence. More information about CIMS investigations can be found on the [CIMS webpage](https://providers.dffh.vic.gov.au/cims) <https://providers.dffh.vic.gov.au/cims>.
- The Commission for Children and Young People (CCYP) administers the Reportable Conduct Scheme (RCS) which involves the department making reports to the CCYP about allegations of abuse and misconduct involving children in relevant organisations that exercise care, supervision and authority over children. A substantiated finding of reportable conduct may be referred to the Department of Justice and Community Safety where a Working with Children Check can be reassessed. More information about the RCS can be found at the [CCYP Reportable Conduct Scheme web page](https://ccyp.vic.gov.au/reportable-conduct-scheme/). <https://ccyp.vic.gov.au/reportable-conduct-scheme/>
- It is the role of the Suitability Panel to find out whether a carer has physically or sexually abused a child, and whether they pose an unacceptable risk of harm to children and young people and should be disqualified from caring for children and young people in out-of-home care. For further information about the Suitability Panel, please see the [Suitability Panel website](http://www.suitabilitypanel.vic.gov.au/) <http://www.suitabilitypanel.vic.gov.au/>.

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Authorised and published by the Victorian Government, 1 Treasury Place, Melbourne.  
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<sup>1</sup> Department of Families, Fairness and Housing, 2020, [A guide for out-of-home carers: Client Incident Management System \(CIMS\)](https://providers.dffh.vic.gov.au/guide-out-home-carers-cims), <https://providers.dffh.vic.gov.au/guide-out-home-carers-cims>, page 5

<sup>2</sup> Department of Families, Fairness and Housing, 2020, [A guide for out-of-home carers: Client Incident Management System \(CIMS\)](https://providers.dffh.vic.gov.au/guide-out-home-carers-cims), <https://providers.dffh.vic.gov.au/guide-out-home-carers-cims>, page 18

<sup>3</sup> Victoria Police, 2015, Reporting Crime: Your Rights, Page 17.

<sup>4</sup> [Victoria Police, Victoria Police Manual – Interviews and Statements](http://www.vicpol.lawlibrary.vic.gov.au/Interviews/VPM_Interviews), page 2 <www.vicpol.lawlibrary.vic.gov.au/Interviews/VPM\_Interviews> page 2.

<sup>5</sup> [Victoria Legal Aid website](https://www.legalaid.vic.gov.au/Speaking-to-the-police), <https://www.legalaid.vic.gov.au/Speaking-to-the-police>

<sup>6</sup> [Victoria Legal Aid website](https://www.legalaid.vic.gov.au/node/5598#c), <https://www.legalaid.vic.gov.au/node/5598#c>

<sup>7</sup> [Victoria Legal Aid website](https://www.legalaid.vic.gov.au/being-arrested#being-held-in-custody), <https://www.legalaid.vic.gov.au/being-arrested#being-held-in-custody>

<sup>8</sup> [Victoria Legal Aid website](https://www.legalaid.vic.gov.au/being-arrested), <https://www.legalaid.vic.gov.au/being-arrested>

<sup>9</sup> [Victoria Legal Aid website](https://www.legalaid.vic.gov.au/being-released-police-custody), <https://www.legalaid.vic.gov.au/being-released-police-custody>

<sup>10</sup> [Victoria Legal Aid website](https://www.legalaid.vic.gov.au/speaking-police), <https://www.legalaid.vic.gov.au/speaking-police>

<sup>11</sup> ibid

<sup>12</sup> ibid

<sup>13</sup> [Victoria Legal Aid website](https://www.legalaid.vic.gov.au/being-arrested), <https://www.legalaid.vic.gov.au/being-arrested>

<sup>14</sup> ibid

<sup>15</sup> ibid

<sup>16</sup> ibid

<sup>17</sup> ibid