

Section 7: Court presentation

7.1 Edited recordings

At all stages of court proceedings (committal hearing, summary hearing, superior court hearings), copies of both the unedited and edited recordings are to be made available on request for the relevant prosecuting authority, defence and for production in court.

7.2 Summary hearings

POLICY

Where an investigating officer, brief checker or other officer is concerned about a recording, they must bring the matter to the notice of the prosecutor. In consultation with the prosecutor, arrangements may be made to edit the recording, if required.

7.3 Committal proceedings

POLICY

Generally, editing will not be carried out on recordings to be produced at committal proceedings. However, if the officer in charge of the case or another person has knowledge or a belief that there is material in the recording which may not be admissible or be objected to, that member will bring the matter to the notice of the prosecutor. In consultation with the prosecutor, arrangements may be made to edit the recording, if required.

7.4 Prior to and during trial in Superior Courts

POLICY

Prior to the commencement of a trial, negotiations between the Crown and the defence may be required to reach an agreement about the editing of recordings. If agreement cannot be reached, editing decisions will be left to the relevant court. Subsequently, delays may occur where editing facilities are not immediately available (see s. 7.1: 'Edited recordings' of this Manual).

7.5 Court play-back procedures

POLICY

The Department of Justice and Attorney-General supply compatible play-back equipment at court venues throughout the State. Generally it will not be necessary for members to arrange for this equipment to be available. In some cases, members may be required to ensure suitable replay equipment is available. If there is any doubt, inquiries should be made with the relevant prosecutor in sufficient time to allow alternative arrangements to be made.

When using DERIE equipment, the investigating officer's copy of the audio-only CD is provided as a working copy and for transcription by the Department of Justice and Attorney-General if required. The format of the recording is compatible with computer based systems for replay and transcription but may not replay on all court's replay systems. For this reason the audio only CD should not be tendered as an exhibit.

7.6 Presentation of PRD recordings in evidence

POLICY

The following rules apply specifically to preparation of PRD recordings for presentation in court:

- (i) where the investigating officer intends to present evidence recorded by a PRD, the investigating officer is to make arrangements to ensure the format of the media to be presented is capable of being replayed in the relevant court (see also s. 3.8.15: 'Checking briefs of evidence' of the Operational Procedures Manual);
- (ii) if an interview or other matter has initially been recorded in a suitable court replay format, e.g. audio CD, video DVD or a format capable of being replayed using standard Service computer, an original recording (working copy) should be created and this disc tendered into evidence. If there is any doubt the officer should make arrangements to test the replay ability prior to the requirement to present it in evidence. A primary or master recording should not be tendered in evidence;
- (iii) the recording created for court presentation is to be marked in accordance with s. 5.10: 'Naming protocols' of this Manual; and
- (iv) if the format is not able to be replayed using court equipment, the investigating officer is to:
 - (a) convert a copy of the primary/original recording into a playable format. The converted working copy is used for court reproduction whilst the primary recording is retained in its original format as the master. Assistance may be sought from the ERS if required; or
 - (b) make suitable replay equipment available at the court. Replay via the internal speaker or screen of a PRD is not acceptable.

It is essential that continuity in relation to the primary recording and working copies produced from such media be maintained. The primary/original recording must be maintained in its original format and a record kept of the times, dates and conversion/copying method used to create additional recordings.

7.7 Transcription

As a general rule transcription of an electronically recorded interview or s. 93A: 'Statement made before proceeding by child or person with an impairment of the mind' of the *Evidence Act* (EA) statement will not be carried out unless there is a justifiable need. For recorded statements taken under Part 6A: 'Recorded statements' of the EA, officers are to refer to s. 9.4.11: Recorded statements – Gold Coast and Ipswich districts only' of the OPM.

If a transcription is deemed necessary authorisation should be sought from the OIC. A transcription will not be authorised unless the OIC deems it necessary taking into consideration all relevant factors including the seriousness or complexity of the matter under investigation, and the reasonableness of the request. Examples where transcription may be necessary include major crime investigations and complicated fraud cases.

The investigating officer is responsible for arranging transcription if authorised.

Generally, transcription is arranged locally using Service resources. The investigating officer is to ensure that the relevant recording(s) are copied and forwarded to the relevant centre when transcription is to occur external to the Service.

Upon receipt of the transcription the investigating officers will ensure that it is accurate prior to using the transcription for any further purpose.

The Department of Justice and Attorney-General, Office of the Director of Public Prosecutions (ODPP), provides transcription for the Service for matters that are prosecuted by the ODPP, with costs charged to the requesting officer's establishment.

Where a request for transcription originates from any police prosecutor, a superior officer or from any person representing the Crown in an official capacity, investigating officers will comply with these instructions provided that the transcription is authorised by the OIC.

Requests for transcription to be carried out on behalf of other agencies, including the courts, the prosecution and the defence, are not to be agreed to unless a transcript has already been produced by the Service in line with these instructions.

Should a court order the production of a transcript, the member concerned should refer the matter immediately to their OIC.

In instances where a transcript has been produced in accordance with this section, a copy of the relevant transcript should be supplied upon receipt of a request from the prosecution or the defence.

The Service will not bear the cost of producing a transcript requested/demanded by an external organisation, agency or person.

Transcripts of electronically recorded interviews may be prepared when requested/demanded by an external organisation, agency or person who is lawfully entitled to a copy of the original recording. This will be at the discretion of the relevant district officer or equivalent, on a user pays basis.

Any transcript prepared by the Service for an internal need should form part of the brief of evidence in accordance with the rules of evidence and court practice, at no cost, if the actual recording is to be used as evidence.

7.8 Transcription of electronically recorded interviews by the Office of the Director of Public Prosecutions

POLICY

At committal proceedings, investigating officers are to supply police prosecutors with both the audio and video recordings in those matters where an interview has been electronically recorded and an audio and video recording has been made.

Police prosecutors conducting committal proceedings must produce (not tender) the audio recordings to the court at the finalisation of committal proceedings with a request that the audio recordings be forwarded by the Clerk of the Court to the ODPP with the court depositions for transcription. The Court will forward the depositions, transcriptions, exhibits and other relevant material to the ODPP. The video recordings will be tendered in the normal manner as an exhibit.

Where an interview is recorded and audio recordings only are produced, an audio recording is to be tendered at the committal proceedings. The tendered audio recording will be forwarded by the court to the ODPP.

Where an investigating officer requires a working copy of the audio recording, they may make an additional copy prior to the committal proceedings.

Enhancement of the investigating officers' audio recording as set out in this policy is to be carried out prior to the committal proceedings. The enhanced copy of the audio recording and the investigating officers' recording are then to be produced at the committal proceedings.

7.9 Certification

POLICY

Section 95(4) of the *Evidence Act* refers to 'Admissibility of statements produced by computers'. As some digital recording equipment utilises a computer to produce the recording the provisions of this section may apply.

Where a record of interview is produced using a computer-based digital interview recording unit, the investigating officer may be required to attach a certificate to the recording for inclusion in the brief of evidence (see QP 0880: 'Statements produced by computers,' available on QPS Forms Select).

DERIE Issue 29.1
Public Edition