Digital Electronic Recording of Interviews and Evidence Manual

DERIE Issue 36
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Queensland Police Service

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Introduction

The Digital Electronic Recording of Interviews and Evidence Manual is issued pursuant to the provisions of s. 4.9: 'Commissioner's directions' of the *Police Service Administration Act*.

The aim of this Manual is to provide members with guidance and instruction for the recording and management of digital evidence. It provides links to associated Service policies, Manuals, instructions and resources and requires local procedures to be developed at regional, district and station or establishment level.

Members are to comply with the contents of this Manual so that their duties are discharged lawfully, ethically and efficiently and failure to comply with the contents may constitute grounds for disciplinary action.

However, it is recognised in policing, many decisions must be made quickly having regard to diverse circumstances and it is not possible to instruct members on every possible scenario. Therefore, in accordance with the section titled 'Use of Manual' of this Manual, the general policies and procedures may, where justified, be adapted to circumstances as they arise.

The contents of this Manual will be continually reviewed and updated to ensure currency and consistency with the law and community expectations.

Members are to make themselves familiar with the contents of this Manual in order to carry out the Service's functions and deliver an effective level of policing to the community.

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Use of Manual

The Digital Electronic Recording of Interviews and Evidence Manual (DERIE) contains Service policies and unless otherwise stated, the words and terms defined within the Service Manuals Definitions (SMD) apply to the contents of this Manual.

Policy in this Manual that uses the terms:

(i) **are to**, **are not**, **is to** and **is not**, requires compliance with and may only be departed from where exceptional circumstances exist; and

(ii) **should**, requires compliance with under ordinary circumstances but may be departed from if there is sufficient reason(s) for doing so. Members may be required to justify their decision to depart from the policy.

Where the term **ORDER** appears as a heading in this Manual, it is used to bring to a member's attention a specific requirement within that section.

The heading **ORDER** and the terms **are to, are not, is to** and **is not** require compliance with. Orders **are not** to be departed from, unless exceptional circumstances exist. Members will be required to explain and justify their decision to depart from such policy in subsequent investigations and/or court proceedings.

The DERIE Manual has been designed as a Service wide document and as such does not generally prescribe instructions unless applicable in all areas of the Service. In order to recognise the needs of local communities and policing requirements, it will be necessary for officers in charge of regions, districts, and stations/establishments to develop regional, district and station/establishment Instructions to give effect to the DERIE Manual at a local level.

Regional, district and station/establishment instructions are ancillary to and are not to conflict with this Manual which will have precedence over any instructions developed at the local level.

Each chapter in this Manual has an individual table of contents. The contents of this Manual are to be read in conjunction with other Service Manuals and relevant legislation.

Common abbreviations

Common abbreviations that may be used in this Manual:

Legislation

CC means the Criminal Code

CP(OROPO)A means the *Child Protection (Offender Reporting and Offender Prohibition Order) Act*

DFVPA means the *Domestic and Family Violence Protection Act*

PPRA means the *Police Powers and Responsibilities Act*

PSAA means the *Police Service Administration Act*

TO(RUM)A means the *Transport Operations (Road Use Management) Act*

YJA means *Youth Justice Act*

Manuals

DERIE means the Digital Electronic Recording of Interviews and Evidence Manual

MSM means the Management Support Manual

OPM means the Operational Procedures Manual

SMCD means Service Manuals Contact Directory

SMD means Service Manual Definitions

TM means the Traffic Manual

Appointments

DDO means district duty officer

OIC means officer in charge

RCC means regional crime coordinator

RDO means regional duty officer

Command/Division names

ERCC means Emergency Response and Coordination Command

ESC means Ethical Standards Command

OGC means General Counsel, Office of the General Counsel

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OSD means State Discipline

RDC means Recruiting and Development Command

SCTFSC means Security, Counter-Terrorism and Forensic Services Command

Unit names

CIB means criminal investigation branch

CPIU means child protection and investigation unit

FCU means forensic crash unit

ODPP means Office of the Director of Public Prosecutions

PSRT means Public Safety Response Team

SERT means Special Emergency Response Team

Requesting changes to this Manual

The Service strongly values and recognises its members and actively seeks input relevant to any problems or suggested changes within this Manual's content. The Inspector, Operational Policy and Improvement (OPI) is responsible for the development and publication of Service Manuals. Advice relevant to its contents, perceived problems or suggested changes should be forwarded to the Inspector, OPI.

On receipt of a proposal to develop or amend a policy, OPI will research the proposal and, if viable, develop Service policy. In researching the matter, all major stakeholders are consulted to ensure the proposal is congruent with present Government and Service policy and relevant legislation.

The Manual is subject to regular update by OPI and the latest amendments will be highlighted throughout. It remains the responsibility of the member of the Service accessing the Manual via other means (e.g. local copies) to ensure currency when viewing.

Interpretation information for this Manual

New or amended content in this amendment issue is highlighted in grey.

When reading this Manual, members should be aware that some content is located in other Service holdings:

Contact Directory: Contact details for:

(i) external organisations and agencies are contained within the Service Manuals Contact Directory (SMCD).

(ii) units within the Service are contained within the Staff and Work Unit Contact System on the Service Intranet.

Definitions: Definitions are contained within the Service Manuals Definitions (SMD).

Delegations and Authorities: Service delegations and authorities are published in the Delegations and Authorities Library SharePoint page.

Forms: Unless otherwise specified within this Manual, Service forms are available on QPS Forms Select. Where a form is available in QPRIME, a back-up version of the form is available in QPS Forms Select.

QPRIME: Assistance and further information in relation to QPRIME is available from the QPRIME User Guide.

QPS internet: Reference to QPS internet means the Queensland Police Service Corporate Internet.

Service intranet: Reference to Service intranet means the QPS Corporate Intranet (Bulletin Board).

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Section 1: Recording of interviews and other matters

1.1 Recording the questioning of relevant persons

POLICY

For the purposes of these procedures a relevant person is a person who is in the company of a police officer for the purpose of being questioned as a suspect about his or her involvement in the commission of an indictable offence.

ORDER

Subject to the following exceptions, officers will record all questioning of relevant persons for indictable offences by means of combined audio and video electronic recording equipment (see s. 436: 'Recording of questioning etc.' of the *Police Powers and Responsibilities Act*).

1.2 Exceptions to video recording

POLICY

The electronic recording of interviews with relevant persons will be undertaken by means of combined audio and video electronic recording equipment unless;

(i) the particular location is not equipped for these purposes; or

(ii) the particular location is equipped for these purposes, but the equipment is unavailable for any reason including a breakdown of equipment; or

(iii) the equipment is currently being used for the purpose of an electronic recording of interview with another person. However, the electronic recording of interview should be delayed for a reasonable time until the equipment becomes available.

In these circumstances, all reasonable attempts should be made to record the interview by means of combined audio and video recording equipment. However, if for any reason circumstances prevent both audio and video recording, the interview may be audio recorded (see also ss. 3.27: 'Malfunction of equipment' and 3.31: 'Certification of the unavailability of equipment' of this Manual).

1.3 Exceptions to audio recording

Where an interview is required to be made on an audio recorder in the context of s. 1.2: 'Exceptions to video recording' and the equipment is unavailable for any reason, the interview will be recorded by means of other electronic recording equipment e.g. a portable recording device (PRD).

If other recording equipment is not available, the interview will be recorded by means of a typed record of interview or in an official police notebook or by some other method of contemporaneously recording the interview, provided that the instructions contained in s. 3.31: 'Certification of the unavailability of equipment' of this Manual are complied with in addition to the requirements in s. 437: 'Requirements for written record of confession or admission' of the PPRA, and s. 34: 'Procedure for reading back a written record' of the Responsibilities Code.

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1.4 Field interviews

Any admissions or confessional statements made in the field by a relevant person should be recorded by means of a portable recording device (PRD) or adopted in any subsequent electronically recorded interview concerning the particular matter. The admissions should be relayed to the relevant person and the relevant person's agreement or otherwise concerning those prior matters should be obtained (see also Chapter 15: 'Powers and responsibilities relating to investigations and questioning for indictable offences' of the *Police Powers and Responsibilities Act*).

1.5 Interstate and international investigations

POLICY

Where an officer is conducting an investigation either interstate or internationally and the investigation is likely to lead to an interview with a relevant person, it will be incumbent upon the officer to take all reasonable steps to have such interview electronically recorded. All interviews are to be conducted in accordance with the legislative requirements that exist if the interview was conducted in Queensland.

Officers should familiarise themselves with the legislative provisions regarding interviews that exist in the state, territory or country where the interview is to be conducted and comply with such provisions.

Some international jurisdictions have severe penalties for failing to obtain approval before conducting investigations. Officers should contact the Australian Federal Police or Interpol for further information.

1.6 Investigations of Commonwealth offences or on behalf of interstate jurisdictions

POLICY

Where an officer is conducting an investigation in relation to offences against Commonwealth legislation or on behalf of an interstate jurisdiction and an interview of a relevant person is required, the officer is to make inquiries regarding interstate or Commonwealth legislation that may apply to the conduct of the interview, prior to the interview taking place. Where such legislation applies the officer is to ensure compliance with the relevant legislation.

1.7 Recording of non-indictable offences and other matters

POLICY

Where an officer records the questioning of a person in relation to a non-indictable offence or records any other matter in the course of their duty, the officer is to:

(i) ensure that the recording is maintained in accordance with QPS Records Retention and Disposal Handbook; and

(ii) where the recording is of evidential value, record details of equipment used and the methodologies employed where it is necessary to copy or convert the recording to another storage medium.

See also s. 3.2: 'Interviews' of this Manual where interviews for non-indictable offences later result in indictable charges.

The recording of persons by means of electronic recording devices may under certain circumstances contravene Commonwealth and State legislation i.e. *Telecommunications (Interception and Access) Act* (Cwlth), *Telecommunications Interception Act 2009*, *Invasion of Privacy Act 1971*. Officers are to ensure that electronic recording devices are always operated in accordance with Commonwealth and State legislation (see also s. 2.5.10: 'Telecommunications interception' of the Operational Procedures Manual).

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Section 2: Recording equipment

This section provides advice about equipment used in conjunction with the questioning or recording of interviews with persons for indictable offences, non-indictable offences, and other matters. The section encompasses interview room equipment including portable DERIE equipment, field recording equipment, specification guidelines for portable recording devices (PRD) (regardless of whether the device is Service or privately owned), and management of equipment.

2.1 Interview room equipment (DERIE system)

The QPS has purpose built interview rooms with instructions and guidelines for the operation of the recording equipment can be found in the Operating Instructions for DERIE (available from the Radio and Electronics Section 'Equipment support' webpage on the Service internet).

The QPS digital electronic recording of interviews and evidence (DERIE) system records both audio and video information, resulting in two CDs (MP3 audio format) and two video DVDs of the interview. The process comprises of:

(i) initialising the equipment;

(ii) entering interview and occurrence data via the text keyboard;

(iii) loading discs into the recording system;

(iv) initiating the recording and conducting the interview;

(v) concluding the interview and terminating the recording; and

(vi) finalising the recorded discs.

At the conclusion of an interview session the equipment creates:

(i) one master DVD (red) for archival and verification purposes;

(ii) one interviewing officer DVD (blue) for presentation in court;

(iii) one interviewing officer CD (black with audio only) for transcription; and

(iv) one client CD (black with audio only) for the interviewee.

The DERIE system has a maximum continuous recording time of two hours. Upon finalisation, the metadata of each disc contains time, date, location and interview information. Both the DVD and CD can be replayed on QPS desktop and laptop computers and most commercial DVD or MP3 compatible CD players.

The DERIE/QPRIME interface (DERIE Plug-in) allows officers to upload metadata about the interview directly into QPRIME. The plug-in automatically populates relevant fields within a QPRIME Interview Report by extracting data entered onto DERIE discs at the commencement of an interview (see also 'DERIE Plug-in' Quick Reference Guide available on the QPRIME Online Gateway 'Quick Reference Guides' webpage on the Service Intranet).

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POLICY

Whenever possible, only DERIE recording media should be used in conjunction with the DERIE system. In particular, the uniquely bar-coded red master disc is necessary for integration with QPRIME purposes.

The labelling and distribution of DERIE recordings is addressed in s. 5: 'Management of Recordings' of this Manual.

2.2 Field recording equipment

Field recordings are generally made by means of a portable recording device (PRD) (see SMD). The term PRD refers to any portable battery operated analogue or digital media recorder primarily used to record audio and/or video information.

Analogue formats refer to magnetic recordings where the recorded signal varies continuously and is analogous to the source acoustic or video signal waveforms. Typical analogue PRD formats include VHS-C, SVHS-C, Hi8 (video) and compact cassette or micro cassette (audio).

Digital PRD record audio and video signals as numerical values, saved as digital data in a variety of file formats. Typical digital PRD recordings produce AV formats such as Mini DV (digital tape), WMV, MP4, AVI and DVD, and audio only formats such as MP3, WAV and WMA.

Due to the obsolescence of the analogue format, digital PRD are the preferred option for recording field interviews and other matters.

2.3 Portable recording device specification guidelines

It is recognised portable recording devices (PRD) are used for a variety of purposes.

The following specification guidelines should be considered prior to approval and operational use of a PRD:

(i) the PRD unit should be capable of recording in a format, or being converted to a format, compatible with Service and other government department replay systems. Recommended recording formats include:

(a) video (digital)—Video DVD or QPS compatible file formats (e.g. WMV, MP4);

(b) video (analogue)—VHS;

(c) audio (digital)—MP3, CDA or WMA formats; and

(d) audio (analogue)—micro/compact cassette; and

(ii) where format conversion is necessary, it must be capable of being performed on regional computer equipment without the need for ongoing technical support;

(iii) the image resolution for PRD with video capability should be a minimum of 720p or 720i (1280 x 720 pixels);

(iv) the unit should be capable of recording audio in stereo mode and have a minimum quality setting of 128kbps and sample rate of 22 KHz;

(v) to simplify downloads, the unit should be capable of connecting with other devices via a digital link (e.g. USB/SD Card).

See also s. 4.2: 'Responsibilities of officers in charge of stations and establishments' of this Manual.

2.4 Responsibility for equipment

POLICY

The officer in charge of a station or establishment is responsible for the management of any electronic recording equipment and unused Service-issued recording media. Members are responsible for the security, care and condition of recording equipment issued to them or under their control and the reporting of any loss, damage or defect to the equipment (see s. 14.22: 'Responsibility for Service Equipment' of the Operational Procedures Manual).

Officers responsible for conducting station inspections are to ensure station security arrangements for the storage of equipment and recording media are adequate.

2.5 Equipment maintenance

Any equipment faults identified in a DERIE recording device must be reported to the relevant Radio and Electronics Section who are responsible for all repairs and maintenance to the system.

POLICY

A member or any other person will not carry out repairs or make adjustments to Service electronic recording equipment unless:

(i) the member or other person is qualified to perform such work; and

(ii) is authorised to perform such work by the Commissioner.

All electronic recording equipment should be maintained in accordance with the manufacturer's specifications and recommendations. All maintenance should be documented and performed by authorised technicians.

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Section 3: Interview room recordings

3.1 Deleted

3.2 Interviews

This section outlines the method to be adopted when conducting an interview. Refer also to Chapter 3: 'Prosecution Process' of the Operational Procedures Manual relating to the obligation of officers when compiling briefs of evidence.

The *Police Powers and Responsibilities Act* and Responsibilities Code place a number of obligations on officers questioning and interviewing suspects for indictable offences. The provisions of this section are in addition to those statutory obligations.

Requirements for interviewing a person in relation to an indictable offence are stipulated within ss. 414 to 441: 'Safeguards ensuring rights of and fairness to persons questioned for indictable offences' of the PPRA, and Part 4, Division 1: 'Investigating and questioning persons about indictable offences' of the Responsibilities Code.

Whenever officers intend to interview a person in relation to a non-indictable offence which may result in the person being charged with an indictable offence, officers should comply with the above mentioned safeguards and responsibilities from the outset.

Officers should utilise the 'Interviewing' resources on the Operational Assistance Kit (OAK) SharePoint page when interviewing relevant persons (a relevant person) for indictable offences, and for interview room recordings relating to serious non-indictable offences.

3.3 Interview preparation

PROCEDURE

Prior to commencing an interview with a suspect, officers should where possible:

(i) gather, record and understand the facts and circumstances of the matter under investigation;

(ii) read and understand the context of witnesses statements;

(iii) gather available physical evidence;

(iv) gather statements, interviews or other evidence available from co-offenders;

(v) gather available photographs of the scene or victim;

(vi) gather as many facts about the suspect as possible, including criminal history;

(vii) identify any relationship between the suspect and any witnesses;

(viii) consult with previous arresting officers of the suspect;

(ix) note the suspect's dress, appearance and demeanour; and

(x) plan the interview format in terms of information needed to prove or disprove an offence and to negate alibis.

In addition, an officer conducting an investigation should ensure that the interview room is:

(i) clear of unnecessary files or equipment not pertinent to the investigation;

(ii) clear of any material or object which may be used as a weapon;

(iii) private and free from distractions; and

(iv) properly equipped for interviewing purposes.

3.4 Conducting the interview

PROCEDURE

The interview should be commenced with an introduction of all persons involved in the interview and conducted in a professional manner. Officers conducting the interview should clearly:

(i) state the particulars of members present;

(ii) identify the person who will conduct the interview; and

(iii) outline the matter under investigation.

Questions should be asked clearly and should be:

(i) objective;

(ii) not in the form of cross-examination or leading questions; and

(iii) in common terms, avoiding the use of police jargon.

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POLICY

It is not appropriate for an officer to ask suspects leading questions or to cross-examine suspects. Nevertheless, in order to competently interview a suspect, officers may put questions in direct terms and ask further questions designed to clarify any ambiguous answers. Questions should be included to negate possible defences and alibi evidence.

3.5 Interviews using the DERIE system

POLICY

Interviews of relevant persons should, wherever possible, be conducted using the DERIE system.

Officers are to operate the DERIE system in accordance with the Operating Instructions for DERIE.

Where desirable, the DERIE recording system may be used for other departmental purposes, such as the recording of interviews for non-indictable offences or statements from complainants and witnesses.

Prior to the use of the DERIE system, officers should be familiar with the operation and limitations of the equipment.

Upon finalisation of the DERIE interview process, all recordings should be checked by replaying a portion of the DVD recording near the start and conclusion of the interview.

3.6 Electronic recording of interviews—use of external monitoring equipment

External monitoring of interviews conducted in DERIE interview rooms provides a range of benefits to members of the Service. These include:

(i) enhanced safety of staff and other persons involved in the interview process;

(ii) reduced incidence of and limiting of any damage to interview room recording equipment;

(iii) training and monitoring of officers; and

(iv) allowing matters raised during an interview to be checked by a third party without interrupting the interview process.

POLICY

The requirement for external monitoring of interview rooms is to be addressed as part of a station or establishment's risk management strategies.

All DERIE interview room recording equipment is capable of being fitted with external monitoring equipment. The purchase and installation of external monitoring equipment is the responsibility of individual regions and commands.

Regional Radio and Electronics Section members are to consult with the Officer in Charge, Radio and Electronics Section, Brisbane to determine suitable types and availability of external monitoring equipment.

When determining an appropriate site for external monitors, consideration is to be given to the safety, training and operational benefit the monitor will provide, as well as the security of the monitoring equipment.

When an interviewee requests a private conversation (as defined in the *Invasion of Privacy Act*) with:

(i) a legal representative;

(ii) a person acting for an organisation whose primary purpose is to provide legal services; or

(iii) another suitable independent person,

where possible, arrangements are to be made for that conversation to be held in a room where the speech content of the conversation cannot be externally monitored.

Officers are to familiarise themselves with the provisions of s. 3.21: 'Legal representatives at interviews' of this Manual and ss. 42: 'Reference to listening devices and private conversations' and 43: 'Prohibition on use of listening devices' of the *Invasion of Privacy Act*.

Officers in charge of stations and establishments wishing to install external monitoring equipment in DERIE interview rooms are to make application to their assistant commissioner.

ORDER

Officers conducting DERIE interviews are to ensure that a private conversation between the interviewee and another person is not overheard, recorded, or its speech content externally monitored without prior consent of at least one of the parties to the conversation.

3.7 Testing of equipment used to obtain statements under s. 93A of the Evidence Act

POLICY

Officers in charge of stations and establishments who have recording equipment under their control which is used to obtain statements under s. 93A: 'Statement made before proceeding by child or person with an impairment of the mind' of the *Evidence Act* are to ensure such equipment is tested monthly.

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Testing may be completed by recording samples and checking the recorded sounds and images for volume and distortion.

Officers in charge of stations and establishments are to ensure, where relevant, an entry titled 'Malfunction of s. 93A recording equipment' is in the station's or establishment's risk management plan. The date the equipment was tested is to be recorded under the 'Risk monitoring and review process' column.

Where recording equipment is identified to be producing substandard audio and/or visual recordings, officers in charge of stations and establishments are to ensure that a request for repairs/maintenance is made to the appropriate Radio and Electronic Section as soon as possible.

3.8 Support persons

ORDER

If an officer reasonably suspects a person is:

(i) an adult Aboriginal or Torres Strait Islander peoples, and that person has not by a written or electronically recorded waiver, expressly and voluntarily waived their right to have a support person present;

(ii) a child; or

(iii) a person with impaired capacity;

the officer must not question the person about their involvement in the commission of an indictable offence unless:

(i) a support person is present while the person is being questioned; and

(ii) before questioning starts, the officer has, if practicable, allowed the person to speak to the support person in circumstances in which the conversation will not be overheard.

See ss. 420: 'Questioning of Aboriginal peoples and Torres Strait Islander peoples'; 421: 'Questioning of children' and 422: 'Questioning of persons with impaired capacity' of the PPRA; and s. 27: 'Questioning Aboriginal and Torres Strait Islander peoples' of the Responsibilities Code.

See also s. 3.19: 'The Anunga Guidelines—Aboriginal Peoples and Torres Strait Islander Peoples' of this Manual and ss. 5.9.1: 'Persons to be present for an interview with a child who is suspected of committing an indictable offence (admissibility of child's statement)' and 6.3: 'General Policy' of the OPM.

3.9 Ensuring support persons understand their role

ORDER

Before an officer questions a relevant person in the presence of a support person, the officer is to inform the support person of the identity of the relevant person and why the person is being questioned. The officer will provide the support person with a copy of a Form 36: 'Information for support persons about their role' (available on QPS Forms Select). The officer will ensure the support person understands the nature of the support person's role and upon request by the support person provide an explanation of anything relevant to the person's role as a support person (see s. 35: 'Ensuring support persons understand role' of the Responsibilities Code).

3.10 Excluding support persons from questioning

ORDER

If an officer reasonably considers a support person present during questioning of a relevant person is unable to properly perform the role of a support person and in the particular circumstances it would be in the interests of the relevant person to exclude the person and arrange for another support person, the officer must exclude the support person from being present during questioning (see ss. 427: 'Application of div 5' and 429: 'Police officer may exclude support person from questioning' of the PPRA).

Several examples of circumstances in which a person may be unable to properly perform the role of a support person for a relevant person are outlined in s. 428(3): 'When is a person unable to properly perform the role of a support person' of the PPRA.

If an officer excludes a support person from being present during questioning for being unable to properly perform the role, the officer must:

(i) explain to the support person the reasons for the person's exclusion and the explanation must be written or electronically recorded (see s. 429: 'Police officer may exclude support person from questioning' of the PPRA);

(ii) comply with the relevant provisions of ss. 426: 'If police officer excludes person from questioning' and 430: 'If police officer excludes support person from questioning of relevant person' of the PPRA; and

(iii) ensure the particular information required in s. 59: 'Excluding relatives, friends or support persons from questioning' of the Responsibilities Code is recorded in the relevant QPRIME Custody Report or Custody Report (Full) and Interview Report (see s. 2.1.2: 'Registers required to be kept' of the OPM).

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A support person can also be excluded from being present during questioning of a relevant person if an officer considers the support person is unreasonably interfering with the questioning (see ss. 420 and 421 of the PPRA). However, before excluding the support person in such circumstances, the officer must:

(i) warn the support person not to interfere with the questioning;

(ii) give the support person one further opportunity to stop unreasonably interfering with the questioning; and

(iii) tell the support person they may be excluded from being present during the questioning if they continue to interfere unreasonably (see s. 425: 'Requirements before excluding persons unreasonably interfering with questioning' of the PPRA).

If an officer excludes a support person from being present because of unreasonable interference during questioning, the officer must:

(i) comply with the relevant provisions of s. 426: 'If police officer excludes person from questioning' of the PPRA; and

(ii) ensure as far as practicable the information required under s. 59: 'Excluding relatives, friends or support persons from questioning' of the Responsibilities Code is recorded in the relevant QPRIME Custody Report or Custody Report (Full) and Interview Report (see also s. 2.1.2: 'Registers required to be kept' of the OPM).

3.11 Suspension of interview

Where practicable, all suspensions of or interruptions to interviews will be preceded by an announcement of the time and purpose of the suspension or interruption. On resumption of the interview, an announcement is to be made of the time and that the interview is resumed. In accordance with s. 29: 'Cautioning relevant persons about the right to remain silent—Act, s. 431' of the Responsibilities Code, the interviewer must again caution the person when questioning resumes. The interviewer should also include questions to cover what occurred during the suspension of the interview. Where applicable, these questions should indicate any conversation which occurred concerning the particular investigation.

It is strongly recommended that a PRD be used to record any conversations that take place during the suspension of an interview and adopted at the recommencement of the interview as a true and accurate record of conversations conducted during the suspension.

When a time is being referred to during the course of an interview, the person being interviewed should be asked if the time as stated is correct.

Where an interview is suspended for a lengthy period of time, e.g., to travel some distance to a scene of a crime, the suspended interview recording is to be finalised by stopping, finalising and removing the discs. On return to the office situation, the interview should be resumed using new recording media.

Where an interview is suspended for a short period of time, e.g., refreshments, toilet break, the suspended interview should recommence using the recording media used at the time of the suspension.

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3.12 Suspension for replay of interview

POLICY

When conducting a DERIE interview, suspension of the interview for either play-back or partial play-back of any portion of the interview should be avoided where possible.

Where investigating officers deem the play-back to be necessary either following a request by the person being interviewed or for the investigating officers' own purposes, the following procedure is to be adopted:

(i) the investigating officers will suspend the interview recording and then finalise and remove the DVD and CD discs after making a suitable announcement as to the reason for suspension of the interview;

(ii) a fresh set of discs are to be inserted into the interview recorder to enable the playback to be recorded. The recording equipment is to be activated;

(iii) the investigating officers are to utilise the police copy of the recording for play-back purposes. e.g. DVD players or Service computers or laptops;

(iv) the interview, including the playback, will be recorded on the fresh set of discs; and

(v) any comments made by the relevant person with respect to the playback will subsequently be recorded.

3.13 Written records of interview

Section 437: 'Requirements for written record of confession or admission' of the PPRA and s. 33: 'Written records when information cannot be electronically recorded' of the Police Responsibilities Code, contain specific provisions relating to written records of interview for indictable offences. The following provisions apply to written records of interview for offences other than indictable offences. Courts may not accept a written record of interview as adopted if the relevant person does not:

(i) read the interview, whether aloud or not, then sign it;

(ii) read it aloud or have it read aloud to them, then state that it is a correct record;

(iii) appear to read it to themselves then state that it is correct; or

(iv) adopt the interview in one of the ways mentioned above through an interpreter.

ORDER

When an officer interviews a relevant person using a written method of recording, that officer is to request that the relevant person adopt the record of interview at the termination of questioning.

Where a record of interview has been adopted, officers are to then ask the following questions, and record those questions and the answers provided as a continuation of the record of interview:

(i) Have you read this record of interview?

(ii) Is it an accurate record of our conversation?

(iii) Was any threat, promise or inducement held out to you to get you to take part in this interview?

(iv) Is there anything else that you wish to add, alter or delete?

Where a relevant person indicates that the record is inaccurate, the original question is to be re-written and the defendant's answer recorded in full.

ORDER

Officers are to ask the relevant person to sign a written record of interview at the end of the record and endorse the record with the date and time. Officers are to ensure that suspects are warned prior to signing that they need not do so and ask that each page be initialled.

A copy of any adopted written record of interview may be attached to the relevant QPRIME entry.

3.14 Obtaining a receipt for a written record of interview

ORDER

At the conclusion of a written record of interview, the interviewing officer is to give a copy of the record of interview to the relevant person. On doing so, the interviewing officer is to attempt to have the suspect sign a receipt for the copy, regardless of whether the record of interview has been adopted. The receipt is to be typed at the end of the written record of interview on all copies and is to follow a format similar to the following:

'I, (full name of relevant person) received a full and correct copy of this record of interview on (date).'

Officers are to ensure the relevant person is asked to sign the receipt noting their name and the date and time. A copy of the record is to be given to the relevant person regardless of whether or not they have signed the receipt made by the interviewing officer. When the relevant person declines to sign the receipt, the interviewing officer is to make a notation to that effect on the original record.

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3.15 Replay of previous interviews and adoption of written interview

POLICY

Where the contents of a previously recorded or written interview is required to clarify or identify points raised in a current interview, the investigating officer/s may replay the previous recording using suitable equipment for that format e.g. PRD, laptop or Service computer, or by way of reading back an adopted written record. Alternatively, the investigating officer/s may verbally advise the relevant person of the points raised in the preceding interview. The playback or verbal advice of the contents of the previous interview should be included within the recording of the current interview.

3.16 Confessions

Refer to s. 437: 'Requirements for written record of confession or admission' of the PPRA and s. 33: 'Written records when information cannot be electronically recorded' of the Responsibilities Code (RC) for specific provisions relating to written records of interview for indictable offences.

Any confession (written or oral) by a defendant is a significant and influential piece of evidence to be presented before the court. Consequently, any confession must be shown by the prosecution to have been made voluntarily by the defendant. Voluntary means more than 'volunteered', and means the defendant made it of their own free will. If the court is of the opinion that the confession was made as a result of threat, promise or inducement, the confessional evidence will likely be excluded. The courts can rule such evidence is unfair to the defendant.

This is particularly important when dealing with children or other people with vulnerability, disability or cultural needs (refer Chapters 5: 'Children' and 6: 'Persons who are vulnerable, disabled or have cultural needs' of the OPM and ss. 420: 'Questioning of Aboriginal peoples and Torres Strait Islander peoples', 421: 'Questioning of children', 422: 'Questioning of persons with impaired capacity' and 423: 'Questioning of intoxicated persons' of the PPRA).

In determining whether the defendant exercised their free choice in making the confession, courts will apply the provisions of the PPRA, the RC and the Judges Rules to the case. Where these provisions have been shown to have been breached, the evidence is likely to be excluded.

When officers are deciding when it is an appropriate time to warn an offender, they should err on the side of caution and give warnings early, specifically when interviewing children or other disadvantaged groups.

Oral confessions which are not recorded by means of video or audio should be recorded in an official police notebook as soon as practicable. The suspect should be invited to read the record and if satisfied it is correct, to adopt it by signing the entry. For indictable offences, officers should also comply with s. 437 of the PPRA.

3.17 Handwritten confessions

Officers who obtain a confession written by a suspect are to type or write at the end of the confession the following questions:

(i) Did you write this statement of your own free will?

(ii) Is this statement true and correct?

(iii) Were you warned prior to making this statement that you did not have to make it?

(iv) Was any threat, promise or inducement held out to you to get you to write this statement?

Officers will request the suspect to answer the questions in writing by placing each of their answers immediately after the question to which it relates, then to sign their name immediately under the last question. Officers are to warn the suspect prior to answering questions that they need not do so.

The suspect will be asked to endorse confessions with the date and time at which it was made.

Handwritten confessions for an indictable offence (made by a person in custody) are to be obtained in compliance with s. 437: 'Requirements for written record of confession or admission' of the PPRA and s. 33: 'Written records when information cannot be electronically recorded' of the Responsibilities Code.

A copy of any handwritten confessions should be scanned and attached to the relevant QPRIME entry.

3.18 Judges' Rules

The Judges' Rules were a set of guidelines developed in England to regulate how police officers should conduct interviews and obtain evidence from suspects. They were first introduced in 1912 and revised several times, with the most notable revision occurring in 1964. The purpose of the Judges' Rules was to ensure that evidence, particularly confessions, was obtained fairly and voluntarily, without coercion or oppression, and to protect the rights of individuals during police questioning. The rules are set out in (1930) 24 Q.J.P. 150.

Although the Judges' Rules are not legally binding, they were highly influential and were often referred to by courts when determining the admissibility of evidence. They have since been replaced in many jurisdictions, within Queensland, the *Police Powers and Responsibilities Act* and the Police Powers and Responsibilities Regulation have incorporated many of the Judges' Rules into legislation. In Queensland, the rules have limited application in relation to indictable offences.

In relation to regulatory or simple offences, the standards of fairness provided by the rules still have general application and these standards of fairness should be considered by officers when questioning suspects.

Judges' Rules

Rule One

When a police officer is endeavouring to discover the author of a crime, there is no objection to his putting questions in respect thereof to any person or persons, whether suspected or not, from whom he thinks that useful information can be obtained.

Rule Two

When a police officer has made up his mind to charge a person with a crime, he should first caution such person before asking him any questions, or any further questions, as the case may be.

Rule Three

Persons in custody should not be questioned without the usual caution being first administered.

Rule Four

If the prisoner wishes to volunteer any statement, the usual caution should be administered. It is desirable that the last two words ('against you') of such caution should be omitted, and that the caution should end with the words 'be given in evidence'.

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Rule Five

The caution to be administered to a prisoner when he is formally charged should therefore be in the following words:

> 'Do you wish to say anything in answer to the charge? You are not obliged to say anything unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence.'

Care should be taken to avoid any suggestion that his answers can only be used in evidence against him, as this may prevent an innocent person making a statement which might assist to clear him of the charge.

Rule Six

A statement made by a prisoner before there is time to caution him is not rendered inadmissible in evidence merely by reason of no caution having been given, but in such a case he should be cautioned as soon as possible.

Rule Seven

A prisoner making a voluntary statement must not be cross-examined, and no questions should be put to him about it except for the purpose of removing ambiguity in what he has actually said. For instance, if he has mentioned an hour without saying whether it was morning or evening, or has given a day of the week and a day of the month which do not agree, or has not made it clear to what individual or what place he intended to refer in some part of his statement, he may be questioned sufficiently to clear up the point.

Rule Eight

When two or more persons are charged with the same offence and statements are taken separately from the persons charged, the police should not read these statements to the other person charged, but each of such persons should be furnished by the police with a copy of such statements, and nothing should be said or done by the police to invite a reply. If the person charged desires to make a statement in reply, the usual caution should be administered.

Rule Nine

Any statement made in accordance with the above rules should, whenever possible, be taken down in writing and signed by the person making it after it has been read to him and he has been invited to make any corrections he may wish.

3.19 The Anunga Guidelines—Aboriginal Peoples and Torres Strait Islander Peoples

The Anunga Guidelines, emanated from the decision of the Supreme Court of the Northern Territory in 1975 in *R v Anunga and others*; *R v Wheeler and another* (1976) 11 ALR 412. While the guidelines are not formally legislated in Queensland, their principles are embedded in the Police Powers and Responsibilities Act. The Anunga guidelines aim to ensure that Aboriginal peoples and Torres Strait Islander peoples, as well as other vulnerable individuals, are treated fairly and respectfully during police interactions.

The following summarises the guidelines set out by the court and application of the PPRA and RC:

(i) when Aboriginal and Torres Strait Islander peoples are being questioned as a suspect and the person is not fluent in English, an appropriate interpreter should be present to ensure complete and mutual understanding (see s. 433: 'Right to interpreter' of the PPRA and s. 31: 'Right to interpreter' of the RC);

(ii) when Aboriginal and Torres Strait Islander peoples are being questioned as a suspect, wherever practicable, a support person should be present. The support person should be someone in whom the person has confidence (see s. 418: 'Right to communicate with friend, relative or lawyer' of the PPRA and s. 26: 'Informing relevant persons of right to communicate with friend, relative or lawyer—Act, s 418' of the RC);

(iii) great care should be taken when administering a caution to Aboriginal and Torres Strait Islander peoples. It is not adequate to simply administer it in the usual terms. The caution should be explained in simple terms and the person should be asked to explain the caution in the person's own words. The questioning should not continue until it is clear the person has an apparent understanding of their right to remain silent. The presence of a support person or interpreter may assist (see ss. 431: 'Cautioning of persons' and 433: 'Right to interpreter' of the PPRA, and s. 29: 'Cautioning relevant persons about the right to remain silent—Act, s 431' of the RC);

(iv) great care should be taken in formulating the questions to be put to Aboriginal and Torres Strait Islander peoples who are suspected of being involved in the commission of an offence. The answer to a question, which is wanted or expected, should not be suggested in any way. The person should not be cross-examined, as the answers to questions of that nature hold no probative value. Officers should also avoid using a suggestive manner and tone of voice;

(v) even when an apparently frank and free confession has been obtained from an Aboriginal or Torres Strait Islander peoples, officers should continue to investigate the matter in an endeavour to obtain independent evidence of the person's involvement in the commission of the offence;

(vi) Aboriginal peoples or Torres Strait Islander peoples are often nervous in the presence of authority figures, such as police officers. Steps should be taken to make them feel at ease, e.g. the offering of food or refreshments;

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(vii) questioning of Aboriginal and Torres Strait Islander peoples should not occur when the person is affected by illness or intoxication, or the person is tired. Also, questioning should not continue for an unreasonable period of time (see s. 423: 'Questioning of intoxicated persons' of the PPRA);

(viii) if an Aboriginal or Torres Strait Islander person seeks legal assistance, all reasonable steps should be taken to obtain such assistance. Questioning should not continue after the person has indicated that he/she does not wish to answer questions or continue answering questions (see s. 420: 'Questioning of Aboriginal peoples and Torres Strait Islander peoples' of the PPRA and s. 25: 'Questioning Aboriginal and Torres Strait Islander peoples' of the RC); and

(ix) when the removal of clothing from Aboriginal and Torres Strait Islander peoples is required for forensic or medical reasons, steps must be taken forthwith to provide substitute clothing (see s. 630: 'Protecting the dignity of persons during search' of the PPRA).

While Anunga dealt with the questioning of Aboriginal peoples, the guidelines apply equally to the questioning of all suspects who may not have a comprehensive understanding of the English language. Officers should become familiar with these guidelines to ensure fairness prevails at all times, when dealing with suspects who may be disadvantaged by virtue of their heritage and/or cultural background (see also Chapter 6: 'Persons who are vulnerable, disabled or have cultural needs' of the OPM).

3.20 Whereabouts of persons being interviewed to be disclosed

ORDER

Members are not to withhold or conceal the whereabouts of persons being interviewed from those who have a legitimate interest in the welfare of that person. People who may be considered as having legitimate interests include family, bona fide friends and solicitors who have been retained to represent the relevant person.

Members who receive an inquiry from a person with a legitimate interest in the welfare of the relevant person as to the whereabouts of that person are to make inquiries and give reasonable assistance to the inquirer in order to locate the person.

Reasonable assistance may include:

(i) inquiries via the Service communications network;

(ii) telephone inquiries;

(iii) personal inquiries; and/or

(iv) QPRIME inquiries.

ORDER

When responding to inquiries about the whereabouts of a person detained for an indictable offence, members are to adhere to the following provisions:

(i) s. 432: 'Provision of information relating to a relevant person' of the PPRA;

(ii) s. 30: 'Verifying identify of persons requesting information relating to relevant persons' of the Responsibilities Code; and

(iii) s. 16.8.6: 'Inquiries as to the location of a person suspected of being in custody' of the OPM.

3.21 Legal representatives at interviews

Officers are to comply with the following provisions when dealing with persons being questioned or arrested for questioning or investigation in relation to an indictable offence:

(i) s. 418: 'Right to communicate with friend, relative or lawyer' of the PPRA; and

(ii) s. 26: 'Informing relevant persons of right to communicate with friend, relative or lawyer—Act, s 418' of the Responsibilities Code (RC).

See also s. 2.5.14: 'Investigative Interviewing' and Chapter 6: 'Persons who are vulnerable, disabled or have cultural needs' (in particular ss. 6.3 to 6.3.11) of the OPM.

Officers must, without unreasonable delay, allow suspects being interviewed to contact a legal representative upon request. Access to a telephone is to be provided, and, if necessary a regional lawyer list or telephone directory (see s. 26(4): 'Informing relevant persons of right to communicate with friend, relative or lawyer—Act, s 418' of the RC).

When a legal representative, whether qualified or not, attends at a station or establishment for the purpose of obtaining access to a suspect who is being interviewed, the member who is approached by the legal representative should:

(i) request proof of the legal representative's identity;

(ii) request the name of the person who asked the legal representative to attend;

(iii) establish whether the relevant suspect is being interviewed and that suspect's location;

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(iv) where the legal representative is at the station or establishment where the suspect is being interviewed, immediately advise the officer who is responsible for interviewing the suspect that the legal representative is in attendance; and

(v) where the legal representative is in attendance at a place other than the station or establishment where the suspect is being interviewed, advise the legal representative of the suspect's location.

Interviewing officers who are advised of the presence of a legal representative, should ensure the legal representative is immediately located and accompanied to the suspect. Officers should confirm the suspect desires the services of the legal representative concerned and the specific conversation to this effect should be recorded, preferably electronically. If the suspect does not desire the services of the legal representative, a request should be made for that legal representative to leave.

Members should ensure the legal representative and the suspect are afforded the opportunity to consult with each other. During any such consultation, members should position themselves so as to be able to observe both the legal representative and the suspect, but not to overhear any conversation, see s. 419: 'Speaking to and presence of friend, relative or lawyer' of the PPRA.

ORDER

Officers are not to record, or cause to be recorded, privileged conversations between suspects and their legal representatives.

3.22 Investigations and questioning (accountability)

The *Police Powers and Responsibilities Act* and the Responsibilities Code provide officers with arrest/detention powers and guidelines to assist them in investigations and questioning of persons in relation to indictable offences. These legislative provisions require officers to strictly adhere to processes to ensure that persons' liberties are not interfered with; their needs are met; and their rights are protected.

Relevant provisions contained in the *Police Powers and Responsibilities Act* include:

(i) Chapter 15 (ss. 396 to 441): 'Powers and responsibilities relating to investigations and questioning';

(ii) Chapter 16 (ss. 442 to 444): 'Search powers for persons in custody';

(iii) Chapter 17 (ss. 445 to 536): 'Forensic procedures'; and

(iv) Chapter 18 (ss. 537 to 548): 'Blood and urine testing of persons suspected of committing sexual or other serious assault offences'.

Relevant provisions contained in the Responsibilities Code include:

(i) Part 4, Division 1: 'Investigating and questioning persons about indictable offences'; and

(ii) Part 6: 'Identification procedures'.

Chapter 15, Part 2: 'Investigations and questioning' of the PPRA applies to a person who:

(i) is lawfully arrested for an indictable offence; or

(ii) is in lawful custody for an offence that has not been decided; or

(iii) is in lawful custody under a sentence for a term of imprisonment or, for a child, a detention order.

For these provisions to apply, at the time of affecting the arrest, the person is to be advised by the arresting officer of the reason for the arrest (namely the indictable offence for which the arrest is made). Not that the person is 'under arrest for the purpose of questioning or investigation'.

In Clarke v Bristow (Brisbane District Court No. 37 of 2000, 17 November 2000) it was found that the arrest of Clarke was unlawful as the arrest was made 'for the purposes of questioning' not for the indictable offence (of robbery).

Where a person is in the company of an officer for the purpose of being questioned as a suspect about their involvement in the commission of an indictable offence, in addition to complying with the applicable provisions of the *Police Powers and Responsibilities Act*, Responsibilities Code, the Operational Procedures Manual and this Manual, the officer who has custody of the person is to advise:

(i) the officer's supervisor where available; or

(ii) where the supervisor is not available at the place where the person in custody is taken to, the officer for the time being in charge of that place who is then there present;

as soon as reasonably practicable following the start of the detention period (for when the detention period starts see s. 403(5): 'Initial period of detention for investigation or questioning' of the PPRA).

The information provided to the supervisor is to include:

(i) the identity and nationality of the person in custody if known;

(ii) whether the person in custody identifies as an Aboriginal or Torres Strait Islander peoples;

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(iii) whether the person in custody is a child;

(iv) whether the officer has reasonable grounds to suspect that the person in custody is unable to communicate with reasonable fluency in English due to limited language proficiency or a physical disability; and

(v) the offence(s) for which the person in custody is to be interviewed.

A supervisor or OIC who has been advised in compliance with this policy is to ensure that the provisions of the *Police Powers and Responsibilities Act*, Responsibilities Code, the Operational Procedures Manual and this Manual are complied with.

Wherever practicable, the supervisor or officer in charge is to personally speak with the person in custody and ensure that the provisions of the following sections of the *Police Powers and Responsibilities Act*, as applicable, are complied with:

(i) s. 403: 'Initial period of detention for investigating or questioning';

(ii) s. 405: 'Application for extension of detention period';

(iii) s. 418: 'Right to communicate with friend, relative or lawyer';

(iv) s. 420: 'Questioning of Aboriginal peoples and Torres Strait Islander peoples';

(v) s. 421: 'Questioning of children';

(vi) s. 422: 'Questioning of persons with impaired capacity';

(vii) s. 423: 'Questioning of intoxicated persons';

(viii) s. 431: 'Cautioning of persons';

(ix) s. 433: 'Right to interpreter';

(x) s. 434: 'Right of visiting foreign national to communicate with embassy etc.';

(xi) s. 435: 'Rights of a person to be electronically recorded'; and

(xii) s. 436: 'Recording of questioning etc.'.

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3.23 Questioning persons voluntarily 'in custody'

Chapter 15, Part 2 (ss. 398–413): 'Investigations and Questioning' of the PPRA does not apply to persons other than those mentioned in s. 398: 'Application of pt 2' of the PPRA.

However, the provisions of Chapter 15, Part 3 (ss. 414–441): 'Safeguards Ensuring Rights of and Fairness to Persons Questioned for Indictable Offences' of the PPRA and Part 4, Division 1: 'Investigating and questioning persons about indictable offences' apply.

Consequently there is no statutory limit imposed on the length of time a person may be questioned who is voluntarily in the company of an officer for the purpose of questioning as a suspect for an indictable offence.

3.24 Changing of discs

POLICY

The QPS interview equipment is programmed to record for two hours. After this time period all discs are finalised and new discs must be inserted into each drive to continue the interview. The equipment provides an audible double beep when recording has commenced and the word 'Recording' is displayed on the screen together with microphone VU meters.

An announcement should be made by the investigating officer indicating that the discs have almost expired and that it is necessary to change them. The announcement should include the time and date. On resumption of the interview with new media, a brief announcement should be made by the investigator indicating the interview is a continuation of the interview between both the named investigating officers and the named relevant person.

The announcement should include the sequence number of the disc, e.g., "this is disc number two", and the date and time of the resumption of that portion of the interview. Conversation relevant to the interview should not take place during the changing of media. Investigating officers should include appropriate questioning to confirm this position upon the resumption of the interview.

3.25 Multiple offences

POLICY

Investigating officers should use one disc or a series of discs, for each interview relating to each separate offence subject to the following exception.

Where a relevant person is being interviewed in relation to a series of offences and the investigating officers intend joining the resultant charges, the investigating officers may include those interviews in a continuing sequence on the discs.

Investigating officers are reminded that fresh warnings should be given before questioning commences in relation to separate offences.

3.26 Relevant person agrees to be interviewed but not electronically recorded

POLICY

Every interview should commence with the electronic recording equipment operating. If the relevant person declares a willingness to be further interviewed, but not electronically recorded, the investigating officers will explain to the relevant person that interviews must, if practicable, be electronically recorded. If the relevant person persists in refusing to have the interview electronically recorded, the investigating officers will endeavour to obtain the relevant person's reasons for the refusal on the electronic recording.

If the relevant person is adamant in insisting the interview not be electronically recorded, the investigating officer will proceed with the interview by means of a typed record of interview or by some other means of contemporaneously recording the interview. For a typed or handwritten interview, the relevant person should adopt each page with his/her signature, time and date. The investigating officers should attempt to electronically record the relevant person's agreement that the interview was recorded other than electronically and include questioning confirming the relevant person does not want the interview to be electronically recorded. If possible the adoption of the interview should be electronically recorded.

3.27 Malfunction of equipment

A malfunction of the recording system may occur prior, during, or be detected subsequent to the interview process.

POLICY

When DERIE equipment malfunctions either prior to the commencement of any interview with a relevant person, the interview should be conducted as soon as practicable using other electronic recording equipment. If other electronic recording equipment is not available (or subsequently also fails), the interview should be recorded by way of a typed record of interview or by other means of contemporaneously recording the interview. An explanation of the malfunction should be included in the recommenced interview. At the conclusion of the interview, the relevant person or any other person(s) involved should be invited to endorse the recording (see also s. 3.31: 'Certification of the unavailability of equipment' of this Manual).

Any damaged recordings are to be retained.

PROCEDURE

When DERIE equipment malfunctions during the course of interview, an audible warning is provided indicating a fault in the recorder. A screen prompt will advise of the nature of the fault e.g. 'video failure' or 'microphone failure'.

Upon identifying a malfunction with the recording device during the course of the interview, the investigating officer should:

(i) follow the DERIE system screen prompts e.g. 'insert another set of discs'; or

(ii) recommence the interview on other equipment explaining what has happened during the subsequent interview.

If at the conclusion of the interview, all recordings have failed, recommence the interview on other equipment explaining what has happened during the subsequent interview. If it is not possible to re-interview, the failed recording may be able to be recovered from the system hard drive. Under these circumstances or if any recorder faults occur, contact should be made with the local Radio and Electronics workshop. In all instances the original failed media is to be retained.

3.28 Replies or statements made by relevant person following receipt of a copy of the interview recording or on being charged

POLICY

Any comments or statements made by the relevant person on receipt of a copy of a recording, or on being charged should be noted and subsequently given in evidence.

Where a comment or statement made by the relevant person is of sufficient importance to give rise to further questioning, the investigating officer will decide, considering the particular circumstances, whether or not a further electronically recorded interview should be conducted.

3.29 Receipt by relevant person of copy of the interview recording

POLICY

There is no requirement to have the relevant person sign a receipt for a copy of an electronically recorded interview.

The investigating officer may have the relevant person sign or initial the labels of the discs or tapes.

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At the investigating officers' discretion, the relevant person may sign a notation in the officer's notebook or elsewhere acknowledging receipt of the relevant person's copy of the electronically recorded interview.

In cases where the relevant person is arrested and charged, the relevant person's copy of any interview recording will be recorded with other personal property, which will support receipt of the interview recording.

3.30 Where equipment does not immediately produce a copy for an interview with a relevant person

ORDER

When an interview with a relevant person occurs and the recording equipment does not immediately produce a copy of the recording for the relevant person, the investigating officer must make arrangements for delivery of a copy of the recording to the relevant person within seven days. It will be necessary for the investigating officer to copy the original recording for this purpose (see also s. 438: 'Access to electronic recordings of questioning etc.' of the *Police Powers and Responsibilities Act*).

3.31 Certification of the unavailability of equipment

POLICY

Where an interview with a relevant person is unable to be electronically recorded because of the unavailability of equipment, a QPB 47: 'Interview unable to be electronically recorded' (available in QPRIME) must be issued by a commissioned officer as to the unavailability of the equipment.

Prior to issuing the certificate, the commissioned officer must be satisfied as to the unavailability of the equipment.

Where a certificate is required as to the unavailability of equipment, the interviewing officer should obtain the certificate at the time of the unavailability and prior to the commencement of the interview.

Where circumstances exclude the obtaining of a QPB 47, the circumstances will be outlined and explained in the relevant record of interview with the QPB 47 obtained as soon as practicable thereafter.

The QPB 47 should be completed by the interviewing officer and entered against the relevant occurrence.

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Section 4: Field audio and video recordings

4.1 Use of portable recording devices

Portable recording devices (PRD) (see SMD) allow officers to collect audio and video recordings away from police stations or establishments. For the purposes of this policy, items such as mobile telephones, laptop computers, tablet computers etc. which include a video and audio functionality are not a portable recording device.

User-accessible recorder settings impact the quality of a recording and the capacity for enhancement of the recording. When using a PRD officers should:

(i) when using audio only recorders:

(a) use the highest audio quality setting available;

(b) prior to the commencement of an interview, confirm the recording quality by conducting and replaying a brief test recording at the interview location; and

(c) consider the use of an external (lapel) microphone to improve the audio quality of a recording; and

(ii) when making video recordings, including using a body worn camera (BWC) or in-vehicle camera:

(a) record with a minimum setting of 720p or 720i. Officers should consider data transfer and data storage requirements where higher image resolution capture settings are available; and

(b) where available, use advanced video features such as automatic exposure or image stabilisation.

Whenever practicable, other than conducting initial interviews at an incident, PRD should not be used to conduct formal records of interview for indictable offences. Such recordings should only be made by officers who have the appropriate training and professional level equipment to perform this task (e.g. scenes of crime officers).

Officers should ensure whenever a PRD is used to record a field record of interview or other matter, the PRD is of sufficient quality to provide a true and accurate record of the event and an intelligible record of all conversations conducted.

Prior to the use of any recording device, officers should be familiar with the operation and limitations of the equipment. Prior to submitting any audio and/or video material as evidence, the investigating officer should check the quality of the recorded material and ensure the recording format used is suitable for court reproduction. The investigating officer should contact the relevant prosecution agency if required (see also s. 3.8.15: ‘Checking briefs of evidence’ of the OPM).

Use of privately-owned PRD

ORDER

Where Service-issued PRD, including BWC, are available, officers are to use those devices in preference to privately owned devices.

Where an officer does not have access to a Service-issued PRD and wishes to use a PRD while on duty, the officer is to:

(i) ensure the device has been set-up using all available security options, including encryption and password protection to minimise the risk of unauthorised access to recordings on the device;

(ii) ensure the recording format is compatible with:

(a) court recording playback equipment;

(b) Service computer equipment; and

(c) Service-approved storage facilities;

(iii) ensure any recordings are:

(a) where practicable, downloaded daily; and

(b) deleted from the device as soon as it has been transferred to a Service-approved storage facility; and

(iv) ensure there is no unauthorised access to, or viewing of, recordings made on the device.

Where privately owned PRD are used, the equipment is to be operated in accordance with the provisions of this Manual. Unless exceptional circumstances exist, equipment which does not conform to Service policy or procedures should not be used for recording evidence (e.g. poor-quality PRD).

Where officers have privately owned Axon BWC, the device is to be operated in ‘on-line’ mode with all data ingested into Evidence.com either by a BWC docking station or using Evidence SYNC desktop software.

Where a PRD has been privately purchased by an officer for operational duties, the device should:

(i) when the device is not in use, be securely stored to protect any residual data that may be on the device;

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(ii) whenever practicable, not be used for personal activities. As a minimum, a separate data storage device (e.g. SD card, should be used for personal activities); and

(iii) be destroyed or cleansed of all data when the device has reached the end of its useful life, no longer for operational use, is sold or is otherwise disposed of.

4.2 Responsibilities of OICs of stations and establishments

Where digital portable recording devices (PRD) are used by officers in the performance of their duties, the retention of digital recordings is to be identified as a risk for that work unit's risk management plan (see also s. 3.5: 'Business continuity planning' of the MSM).

Officers should only use privately owned PRD in the performance of their official duties if:

(i) the officer does not have access to Service-issued PRD;

(ii) the device is of sufficient quality for its intended purpose;

(iii) the device conforms with s. 2.3: 'Portable recording device specification guidelines' of this Manual; and

(iv) any third-party software associated with the device has been approved in accordance with s. 4.17.1: 'Prevention of computer virus infection' of the Information Management Manual.

An officer may contact the Electronic Recording Section, Forensic Services Group for assistance in determining the suitability of a privately owned PRD.

4.3 Storage, retention and production of portable recording device recordings

The Service-approved storage facility for portable recording device (PRD) recordings is provided by Evidence.com.

PRD recordings, including body worn camera (BWC) (see s. 4.4: 'Body worn cameras' of this Manual) and in-vehicle camera (see s. 4.5: 'In-vehicle cameras' of this Manual) recordings should be uploaded to Evidence.com and deleted from the device on a daily basis. Where evidential recordings cannot be removed from a PRD by the end of shift, the device should be securely stored until the recordings can be uploaded into Evidence.com.

PRD recordings should be uploaded into a Evidence.com in accordance with the:

(i) BWC Good Practice Guide; and

(ii) Support Materials and Reference Guides,

published on the BWC SharePoint page.

Officers should use the correct file naming protocols for the approved storage facility and in accordance with s. 5.10: 'Naming protocols' of this Manual.

Where PRD digital evidence has been recorded at an incident which is recorded in QPRIME, the officer who made the recording should make a relevant notation within the relevant QPRIME occurrence of the fact a PRD recording is available, including any reference numbers or file name.

ORDER

PRD recordings are to be uploaded:

(i) into Evidence.com at the termination of the officer's shift, unless exceptional circumstances exist; and

(ii) saved in full. No editing of the recording is to be made on the PRD prior to saving.

PRD recordings are not to be saved onto privately owned storage facilities e.g. portable hard-drives.

Retention and production of portable recording device recordings

The Service is bound by the provisions of the *Right to Information Act* and the *Information Privacy Act* (IPA). PRD recordings are a 'document' containing 'personal information' under the IPA and the Service, as an agency for the purposes of the Act, must comply with Queensland Privacy Principle 11: 'Security of personal information'. Any request to access or view a PRD recording is to be dealt with in accordance with:

(i) s. 5.7: 'Right to information and privacy' of the Management Support Manual (MSM); or

(ii) s. 3.14: 'Disclosure of information to defence (relevant proceeding)' of the Operational Procedures Manual.

PRD evidential recordings are to be retained in accordance with s. 5.5: 'Records retention and disposal' of the MSM.

Officers are to comply with:

(i) s. 5: 'Management of recordings';

(ii) s. 6: 'Processing and copying of media';

(iii) s. 7: 'Court presentation'; and

(iv) s. 8: 'Disposal of recordings',

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of this Manual, as appropriate with respect to PRD evidential recordings.

When saved PRD recordings are required for investigation, court production or other lawful purposes, members should comply with the published procedures for retrieving the relevant file/s from Evidence.com (see the BWC 'Support materials and Reference Guides' SharePoint page).

ORDER

PRD recordings made by an officer whilst on duty are the property of the Service, irrespective of whether a Service-issued or privately-owned PRD is used.

Access to Service-approved storage facility

To lodge, view or retrieve recordings within Evidence.com, members are granted a user role and access type, which are detailed in the:

(i) BWC Good Practice Guide; and

(ii) Support Materials and Reference Guides,

published on the BWC SharePoint page.

OIC of police stations or establishments are responsible for managing members' access to the Service-approved storage facility.

To receive access to Evidence.com, members are to make application via the ICT Customer Portal.

4.4 Body worn cameras

For the purpose of this section, officer means:

(i) police officers, protective service officers and watch-house officers; and

(ii) other staff members who have been approved to use, and issued with a Service body worn camera (BWC).

The use of BWC (see SMD) provides audio-visual evidence of officer's interactions with members of the community and can reduce the incidence of violent confrontations, use of force and false or malicious complaints against officers.

Other staff members who are approved to use and issued a service BWC are to utilise the device when performing a function of the Service (i.e. checking on and interacting with prisoners).

A BWC provides audio-visual evidence of an event, however officers are to be aware BWC may not capture the full details of an incident and wherever practicable officers should seek other evidence such as witness statements or independent video recordings.

This section should be read in conjunction with the Good Practice Guide available on the BWC SharePoint page.

Private conversations and BWC

Private conversation means any words spoken by one person to another person in circumstances that indicate that those persons desire the words to be heard or listened to only by themselves or that indicate that either of those persons desires the words to be heard or listened to only by themselves and by some other person, but does not include words spoken by one person to another person in circumstances in which either of those persons ought reasonably to expect the words may be overheard, recorded, monitored or listened to by some other person, not being a person who has the consent, express or implied, of either of those persons to do so.

Police officers, protective service officers and watch-house officers should make attempts to avoid recording interactions the private conversations of another person; however, inadvertent, unexpected, and incidental conversations may be protected under s. 609A: 'Use of body-worn cameras' of the PPRA and s. 43: 'Prohibition on use of listening devices' of the *Invasion of Privacy Act* (IPA).

Staff members should make attempts to avoid recording interactions which may record the private conversations of another person, as staff members are not excepted from inadvertent, unexpected, and incidental conversations under s. 609A of the PPRA and s. 43 of the IPA.

Carriage of BWC

Officers are authorised to use a BWC in the performance of their duties (see s. 609A: 'Use of body-worn cameras' of the PPRA).

OICs are to assign Service-issued devices on a 'single user' basis. A Service-issued BWC is not to be swapped between officers without the BWC being reassigned by an OIC or supervisor. Where a Service-issued BWC has been allocated to an officer, they are to wear and use the device whilst 'on rostered duty' (as defined in s. 14.4: 'Service-issued weapons' of the OPM), to remove any doubt, this includes officers performing plain clothes duties, except for approved covert or surveillance operations and activities.

Where a Service-issued BWC is not available, OICs are to send an email to the BWC business email requesting a Service-issued BWC for any shortfall.

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The Service no longer supports the use of privately owned BWC.

ORDER

Officers are to ensure their BWC is operational (buffering) at the commencement of their shift.

Placement and handling of BWC to ensure unobscured recording of video and audio

Wherever practicable, officers should place a BWC in a location that optimises the capture of video and audio recordings, unless it is being used to record an unclothed search, where the video is obscured to ensure that an intimate area is not captured (see s. 16.10.2: 'Unclothed searches of persons' of the OPM).

ORDER

Officers are to take reasonable steps to ensure the BWC lens and microphone remain unobstructed when a recording is being made (see 'When to use a BWC' of this section), unless a BWC is being used to make an audio recording (see 'When not to use a BWC' of this section).

Officers wearing an integrated load bearing vest (ILBV) are to comply with s. 14.20.3: 'Integrated load bearing vests' of the OPM regarding the attachment and placement of a BWC on an ILBV.

Overt use of BWC

ORDER

A BWC is only to be used as an overt recording device, except for approved covert use (see below).

Covert use of BWC

ORDER

A BWC is not to be used covertly unless authorised by a commissioned officer or as part of an approved investigative or intelligence practice.

When to use a BWC

ORDER

Officers allocated a BWC are to:

(i) turn the BWC on (buffering mode) at the commencement of their shift;

(ii) commence a recording as soon as practicable after an officer reasonably believes they may:

(a) exercise a power under legislation (some exceptions apply to unclothed searches, see 'When not to use a BWC' below);

(b) apply a use of force (see s. 14.3.2: 'Situational Use of Force Model (2016)' of the OPM); or

(c) have any interaction with a prisoner, including:

- the issuing of medication;
- searching; and
- conducting cell checks;

(iii) make BWC recordings when the:

(a) recording might assist in providing a record of evidence which assists in the investigation of an offence or suspected offence; or

(b) officer believes the interaction should be recorded;

(iv) only make BWC recordings in a court precinct, when authorised through a practice direction issued by the Chief Justice, Chief Judge or Chief Magistrate which includes:

(a) during a confrontation where use of force is imminent;

(b) whilst effecting an urgent arrest; or

(c) where the officer reasonably believes they may exercise a power under legislation; and

(v) make BWC recordings when at the scene of a significant event that may be reasonably expected to be subject of later external review (e.g. fatal traffic incident, arson, terrorist event etc.) irrespective of whether they are investigating the incident. Such recordings may assist in identifying witnesses and other persons of interest; provide evidence or may assist in giving an appreciation of the event. Officers recording in these circumstances are to advise the investigator or incident commander of the BWC recording as soon as practicable after the event.

In regard to recording an exercise of power or use of force it would be considered impractical, where an incident has commenced or escalated at such a pace an officer has been unable to commence a recording prior to responding (e.g. an officer is assaulted without warning and is required to immediately defend themselves or apply a use of force). In these circumstances, a BWC recording should be made as soon as practicable thereafter.

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When an officer commences a BWC recording, the officer should continue recording irrespective of whether the area is covered by a CCTV system including Service owned and operated CCTV until:

(i) the incident is finalised;

(ii) the need to record the incident is no longer required, (e.g. guarding a crime scene overnight);

(iii) a senior officer or incident commander directs that a BWC recording can be ceased; or

(iv) an officer starts taking a 'recorded statement' from a complainant for an alleged domestic violence offence (see s. 9.3.17: 'Recorded statements' of the OPM).

Prior to ending a recording, the officer should clearly state the recording will be stopped and the reasons for doing so.

When not to use a BWC

Officers should not make BWC recordings:

(i) during routine contact with members of the community (e.g. casual conversations); or

(ii) when the officer reasonably believes it is inappropriate to make a video recording.

There is no obligation for an officer to stop recording because a person does not wish to have a BWC operating unless taking a 'recorded statement' of a complainant for a domestic violence offence. The complainant must consent to the making of the 'recorded statement'. If consent is withdrawn by the complainant during the making of a 'recorded statement', the officer is to stop the recording and obtain a written statement instead.

ORDER

A BWC video recording is not to be made of an unclothed search, unless justified under s. 16.10.2: 'Unclothed searches of persons' of the OPM (see s. 632: 'If video cameras monitor place where person is searched' of the PPRA).

Where a video recording of an unclothed search is not justifiable, an audio recording only should be made by obscuring or turning the BWC lens away for the duration of the search so that there is no chance of any video footage or image captured of the person's:

(i) genital, anal or buttocks area for any purpose whatsoever; and

(ii) breasts/chest area, if the person does not give their informed consent.

Officers activating a BWC for an unclothed search are to:

(i) comply with section 'Recording of unclothed searches made on BWC' of s. 16.10.2: 'Unclothed searches of persons' of the OPM; and

(ii) categorise the recording as an 'Unclothed Search' or 'Unclothed Search – Audio only', as applicable, within 2 shifts of the search being conducted and deleted after 6 months unless required as evidence.

When a recording is not made whilst exercising a power or applying a use of force, including for legal or operational reasons, the officer is to make a written record of the circumstances in their official police notebook or other Service record (e.g. QPRIME).

A BWC is not to be used:

(i) in places where a reasonable expectation of privacy exists (e.g. changing rooms, toilets etc.);

(ii) on Australian Defence Force facilities;

(iii) within the precincts of a court, except when authorised by a Court Practice Direction (see above);

(iv) when a medical procedure may be recorded at a medical facility;

(v) in a correctional facility where CCTV is operational; or

(vi) in police stations, police establishments or Service vehicles,

unless the recording is made in the performance of the officer's official duties.

Also, a BWC is not to be used:

(i) when dealing with human sources, see the Human Source Management Policy available on the Specialist Operations site;

(ii) to capture video of an unclothed search unless in compliance with ss. 16.10.1: 'General requirements concerning searches of persons' and 16.10.2: 'Unclothed searches of persons' of the OPM; and

(iii) for non-policing activities.

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BWC use should not replace written witness statements

Whilst initial statements at the time of an incident can be recorded on a BWC, wherever possible, written statements should also be obtained from witnesses in preparation for court proceedings unless being used to take a recorded statement for a relevant domestic violence offence in accordance with s. 9.3.17 of the OPM.

BWC categorisation

ORDER

To ensure appropriate retention, officers are to categorise BWC recordings as either 'Evidential' or 'Non-Evidential' as soon as practicable after the event.

Where a QPRIME record relating to a BWC recording exists, the investigating officer is to ensure the relevant QP or QI number is entered into the ID field of the Evidence.com file.

To ensure compliance, OICs or supervisors are to conduct monthly audits of Evidence.com to ensure officers are categorising and identifying their BWC recordings accurately. Where non-compliance is identified OICs or supervisors are to take steps to rectify it.

Reviewing BWC recordings

Unless directed not to review BWC recordings, (e.g. critical incident investigations conducted by ESC) officers may review BWC recordings to assist their recollection of events and identify further evidence.

A BWC recording should be relied upon to better understand the evidence presented in an officer's statement and should be used to corroborate, not replace, evidence from other sources such as officers and witnesses. The use of a BWC does not remove the necessity for officers to make written notes or conduct other investigations at an incident scene (e.g. request scenes of crime attendance).

Where a BWC recording is required for production in court, any irrelevant part of the recording is to be redacted prior to being downloaded and included in the brief of evidence (see ss. 6.2: 'ERS case file acceptance criteria' and 7.1: 'Edited recordings' of this Manual).

Where a BWC recording is a recorded statement of a complainant for a domestic violence offence and is required for production in court, officers are only to edit or redact the video file in accordance with ss. 103O(1): 'Editing or otherwise altering recorded statements' of the *Evidence Act* and 9.3.17: 'Recorded statements' of the OPM.

Responsibility of Officers in Charge to ensure review of BWC recordings of domestic and family violence related occurrences

ORDER

OICs are to ensure all officers under their control who attend domestic and family violence occurrences meet with a designated senior officer to receive feedback in relation to a sample of their BWC recordings of those occurrences. The review is to occur at a minimum of at least once every six-month period.

The review is to be conducted and recorded in accordance with the provisions of the 'Review of Domestic and Family Violence Body Worn Camera Footage User Guide' available on the DFV BWC Review SharePoint page.

Restricting evidence in Evidence.com

ORDER

Evidence in Evidence.com is not to be restricted unless there is a corresponding QPRIME ACL restriction applied to the associated occurrence. The only exception to this is where an ESC restriction is applied (see 'Quick Reference Guide—Confidential/Restricted') available on the BWC SharePoint page.

Requesting access to a confidential/restricted file

Only users with the relevant level of access can see confidential/restricted files.

Where a member is seeking access to a confidential/restricted file in Evidence.com, the officer is to contact the Evidence.com item owner or the investigating officer. If the evidence owner is the subject of a complaint and they were not aware, contact may compromise the investigation.

Use of Axon Respond

A Body 3 camera has a livestream capability (Respond) which allows any member with an Evidence.com account to remotely access an officer's live recording.

Before a member uses Respond, the member is to:

(i) ensure there is a lawful purpose to access the recording (see s. 4.13.4: 'System access principles' of the Information Management Manual);

(ii) ensure they are accessing the correct recording; and

(iii) if practicable, contact the officer and request access.

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A member is to be mindful that unlawfully accessing a recording will be considered misconduct and will make the member liable to criminal prosecution.

Where a member has accessed the livestream from a BWC, the member is to record the reason for access in their daily ITAS activity log or the corresponding notes section in Evidence.com.

Issue and storage of BWC

The OIC of a station or establishment is responsible for the allocation of Service-issued BWC to individual officers (see Support materials and reference guides on the BWC SharePoint page).

The OIC or shift supervisor should ensure BWC devices are downloaded, fully charged and the memory erased if the device is to be reissued to another officer.

At the conclusion of duty an officer is to disconnect and place the BWC in the ETM (dock).

A BWC is to be securely stored when not in use or docked.

Handling and storage of BWC recordings

In accordance with the *Information Privacy Act*, video and audio recordings made in the execution of an officer's duty are a 'document' and are to be retained by the Service.

A BWC evidential recording should be downloaded to a Service-approved storage facility and deleted from the device daily, in accordance with s. 4.3: 'Storage, retention and production of portable recording device recordings' of this chapter.

Faulty BWC

If a BWC experiences a fault, the officer allocated the BWC is responsible for:

(i) initial troubleshooting (see 'Faulty cameras (etc.) handling' link on the Body Worn Camera SharePoint page);

(ii) approaching a super user to attempt further troubleshooting;

(iii) if troubleshooting does not successfully resolve the problem, submitting a fully completed BWC Report Fault/Request Replacement form on the ICT Customer Portal; and

(iv) advising their OIC to check the ICT Customer Portal for an approval task for the BWC Report Fault/Request Replacement form.

Once approved by an OIC, the BWC Report Fault/Request Replacement form will be emailed to Axon who will send a replacement BWC or BWC controller to the relevant station or establishment. The OIC will then allocate the replacement to the officer. See the BWC SharePoint page for instructions on the return of the camera.

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4.5 In-vehicle cameras

In-vehicle cameras (IVC) (also known as dash-cams, but may also include manufacturer or purpose built systems) are recording devices (see SMD) generally fitted to the dash or windscreen of a vehicle. Power is supplied using the vehicle's existing power outlets and recorded footage is stored onto a removable secure digital (SD) card. IVC record:

(i) activity forward of the fitted vehicle from a driver and front passenger perspective;

(ii) the fitted vehicle's directional and dynamic responses to driver inputs; and

(iii) when programmed, the estimated Global Positioning System (GPS) coordinates and speed of the fitted vehicle as well as internal and external audio.

Service in-vehicle camera requirements

Service use of IVC assists in the investigation of offences and incidents involving Service vehicles. The minimum technical specifications for the purchase of IVC are to comply with:

(i) ability to record GPS coordinates;

(ii) ability to record the fitted vehicle's speed;

(iii) ability to disable audio recording;

(iv) a video recording quality of Full High Definition or higher compatible with service replay software e.g. Windows Media Player or VLC media player; and

(v) quality night recording capability.

To ensure consistent recording qualities and the ability to record for extended periods, SD cards are to have a minimum of 128GB storage capacity and speed class of U3 or better. To maintain quality recordings, SD cards are to be reformatted every 4 weeks using the internal IVC format SD card option.

Regions or commands may:

(i) exceed the minimum specifications listed; or

(ii) use previously purchased IVC that do not comply with the minimum specifications, however, are to ensure replacement units comply with this policy.

Where a member has concerns regarding the compatibility or effectiveness of an IVC media player, the assistance of the Electronic Recording Section should be sought.

The technical specifications do not apply to IVC that are purpose built or supplied by the manufacturer e.g. SERT specialist vehicles.

Use of in-vehicle cameras

Where an OIC has vehicles fitted with IVC, the OIC is to publish station instructions for the care and operation of IVC in accordance with this section and the manufacturers guidelines.

The driver of a Service vehicle is to ensure the IVC does not obstruct their vision whilst driving and is positioned as close as possible to the centreline of the vehicle.

The senior officer in a Service vehicle is to ensure the IVC:

(i) operates and records when the ignition is turned on;

(ii) time and date are correct;

(iii) records for the duration of the shift;

(iv) audio is turned off; and

(v) speed and GPS coordinates are activated.

Where an IVC has a parking surveillance mode capability, this may be activated to enable recording whilst the vehicle is switched off. This may assist at incidents where damage to a Service vehicle may occur or where body worn cameras (BWC) may not be able to capture images when officers are away from their vehicle e.g. out of control parties.

Officers are not to use an IVC as a replacement for BWC use. Upon exiting their vehicle in relation to an incident or enforcement action, officers are to activate their BWC. Where an incident or enforcement action is being recorded by an IVC whilst driving, officers should activate their BWC to record audio events.

Officers are to be aware that IVC:

(i) do not undergo calibration and certification and officers are to use the Service vehicles calibrated speedometer or fitted Ballinger device when relying on evidence of speed for court purposes;

(ii) variations in design or set up e.g. wide-angle lens or frame rate settings may create distorted imagery;

(iii) environmental conditions may affect GPS accuracy; and

(iv) time and date accuracy are reliant upon user setting inputs.

Where an officer requires advice or analysis of an IVC recording (e.g. frame rate, resolution, presence of audio), the assistance of the Electronic Recording Section should be sought. Further information can be found on the Electronic Recording Section webpage of the Service Intranet.

Uploading footage to Evidence.com

Some IVC recordings do not have evidentiary value and are considered temporary, however all evidential recordings are to be uploaded to Evidence.com in accordance with s. 4.3: ‘Storage, retention and production of portable recording device recordings’ of this Manual.

For the purpose of this section, in addition to evidence, the uploading of IVC footage to Evidence.com is to occur:

(i) for all Service vehicles involved in a pursuit response, irrespective if not the pursuing vehicle;

(ii) in the investigation of an offence or suspected offence, e.g. evade police;

(iii) if the officer believes the interaction should be retained, e.g. animal strike;

(iv) for departmental accidents; and

(iv) when directed by a senior officer.

As IVC are set for continuous recording, footage will eventually be overwritten. Footage is to be uploaded as part of end of shift procedures to negate the loss of evidence. An officer may upload footage prior to end of shift due to the evidentiary value or when directed by a senior officer.

When footage is to be uploaded, the IVC should remain in the vehicle and the SD card only removed. A USB memory card reader should be utilised to upload to Evidence.com.

Due to cyber security issues, WIFI download is not to occur. WIFI download also risks evidence loss if the download link is broken during transmission.

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Naming conventions

When uploading to Evidence.com the following naming conventions are to apply.

(i) TITLE is to commence with Dashcam with no space followed by event e.g. Dashcam-Evade-…..; and

(ii) TAG is to include Service vehicle registration number with no space e.g. 123ABC

Replacement in-vehicle cameras and SD cards

Districts are to ensure spare IVC and SD cards are available as replacements for faulty or damaged devices or instances when seized for analysis after critical incidents.

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Section 5: Management of recordings

5.1 DERIE system and PRD recordings

The following procedures outline the management of recordings created by means of the DERIE system or a PRD. They include recordings relating to indictable offences, non-indictable offences, or any other matter recorded during the performance of an officer's duty. The following terminology has been adapted from the Australasian Guidelines for Digital Image Processes 2004: Recordings, evidentiary or otherwise, can be classified accordingly:

(i) Primary recording. The first instance in which data is recorded in memory;

(ii) Original recording. An exact binary copy of the primary recording; and

(iii) Working copy. A copy of a primary or original recording which involves applying processes that change the file format or original data.

In evidential terms there is no distinction between the content of primary or original files because they are the same and have the same evidential weight. By definition the primary and any original recording are also considered original evidence. For recording devices where it is not practical to store the primary recording i.e. hard disc recorders, the primary recording may be deleted upon the creation of an original recording.

Additionally, the term 'master recording' refers to the recording that will be used for archival purposes and must be either a primary or original recording.

Audio/Visual (AV) recordings made during the course of an officer's duty are public records and may be subject to public access under the provisions of the *Right to Information Act*.

ORDER

Regardless of whether Service or privately owned equipment is used, officers are to manage AV recordings made during the course of their duty in accordance with these procedures and Service Corporate Records Management Policy. All electronic record of interviews or any other AV recordings made during the performance of an officer's duty remains the property of the Service. Electronic recordings of interviews or events are not to be stored on privately owned computers or storage devices. The primary or original AV recording of any interview or event must not be altered, manipulated or enhanced; a working copy is to be made for such purposes.

5.2 DERIE system recording media

POLICY

Officers are to use DERIE quad pack recording media specifically designed for use with DERIE recording equipment. In particular, the bar-coded red master disc in DERIE media quad pack is required for integration with QPRIME. The DERIE quad pack consists of the following media:

(i) 1 Video DVD master (red disc with barcode);

(ii) 1 Video DVD officer copy (blue disc);

(iii) 1 CD (MP3 audio format) client (black disc); and

(iv) 1 CD (MP3 audio format) officer copy (black disc).

When using DERIE equipment the red master DVD, blue investigator's DVD and black audio CDs are exact binary copies of data initially recorded within the system (the primary recording). As such each disc is considered an original video and/or audio copy of the interview.

The interviewing officer must complete all information fields and circle the relevant block code included on the label of the interviewing officer's DVD and both audio CDs. The lettered block code indicates the following classification;

(i) M: Master recording;

(ii) P: Investigating officer's DVD recording (Police);

(iii) IVE: Relevant person's recording (Interviewee's); and

(iv) C: Copy (only used if a copy is later produced).

5.3 Storage and distribution of media

DERIE interview recordings are to be distributed as follows:

(i) the red master DVD is to be forwarded to Electronic Media, Evidence Management (EMEM) at the conclusion of the interview. The barcode number will be used as a reference for the interview within QPRIME and for ongoing storage and management of the master recording;

(ii) one CD (audio) recording and the investigating officer's DVD (video) recording will initially be retained by the investigating officer and attached to any brief of evidence. During a prosecution, the DVD recording will be tendered to the Court as evidence and the CD recording will be used by the Office of the Director of Public

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Prosecutions (ODPP) for transcription purposes. The CD recording is to be included in the brief of evidence but should not be tendered in court as an exhibit; and

(iii) one CD (audio) recording will be given to the interviewee or the interviewee's legal representative at the completion of the interview.

5.4 Distribution of recordings when interviews are audio recorded only

ORDER

Where interviews are audio recorded, simultaneously producing three audio recordings, these tapes or discs will be distributed as follows:

(i) one audio recording will be handed to the interviewee or the interviewee's legal representative at the completion of the interview;

(ii) one audio recording will be retained by the investigating officers for production to court as evidence; and

(iii) the remaining audio recording will be treated as the master and delivered to Electronic Media, Evidence Management for archival purposes.

5.5 PRD recording media

Recording media for PRD equipment may be either removal (flash card/tape), non-removable (hard disk) or a combination of both. For investigative, evidence presentation and/or archiving purposes, it may be necessary to copy the primary recording to another storage medium (see also s. 1.7: 'Recording of non-indictable offences and other matters' of this Manual).

5.6 Storage of media

Storage options for recordings made by means of PRD include;

(i) physical storage of the primary recording (removable recording media only);

(ii) duplication of the primary recording to an archival quality optical disc/s (CD/DVD); and

(iii) duplication of the primary recording to a regional or command file server.

ORDER

Due to Service retention period requirements, the storage of electronic records onto file servers should only be considered as a short-term storage option.

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5.7 Primary recording storage

Where the primary recording is retained as the master recording, it must be tagged within QPRIME and labelled in accordance with s. 5.2: 'DERIE system recording media' of this chapter. Within QPRIME, recordings relating to a specific occurrence are to be treated as per an 'Interview Tape/Disc' property item whilst non-occurrence related recordings are to be treated as per a 'Police Document' property item in accordance with the QPRIME User Guide. Once labelled and tagged within QPRIME, the master recording is to be forwarded to Electronic Media, Evidence Management for on-going management/archiving. If further copies are required they should be created prior to archiving the master recording and retained at the relevant station in accordance with local and QPS property management procedures.

Where additional copies of a recording have been made for evidential purposes they are to be retained by the investigating officer until the conclusion of any proceedings in accordance with s. 8.2: 'Disposal of police copies' of this Manual.

5.8 Optical disc storage

For optical disc storage, a master recording should be created using archival quality Service labelled CD or DVD media.

The master must be a primary or original recording and labelled in accordance with s. 5.2: 'DERIE system recording media' of this chapter and QPRIME User Guide instructions. QPRIME recordings relating to a specific occurrence are to be treated as per an 'Interview Tape/Disc' property item whilst non-occurrence related recordings are to be treated as per a 'Police Document.' Upon creation and verification of an original/master recording, the primary recording can be deleted from the PRD. The master is to be forwarded to Electronic Media, Evidence Management for on-going management/archiving. If further copies are required they should be created prior to archiving the master recording and retained at station level in accordance with local and Service property management procedures.

Where additional copies of a recording have been made for evidential purposes they are to be retained by the investigating officer until the conclusion of any proceedings in accordance with s. 8.2: 'Disposal of police copies' of this Manual.

5.9 File server storage

Where a region or command employs a file server storage system, the officer in charge of the region or command is to, in consultation with their relevant regional information resource manager, develop station/establishment instructions for the retention, retrieval and disposal of recordings held.

In such cases, it is recommended that a directory of folders be established with each officer having their own folder on their relevant server. Folders should only be accessible by the relevant officer, officer in charge and/or administration staff. See also Chapter 4: 'Information Security' of the Information Management Manual for the policy relating to the security of the Service's electronic information holdings.

Local procedures should include a maximum retention period at the conclusion of which recordings should be transferred, either singularly or in multiple, to optical disc for on-going management with Electronic Media, Evidence Management.

Where a station or establishment uses a file server storage system for digital PRD recordings, officers should ensure that such recordings are regularly downloaded, in their original recording format, and named in accordance with the naming protocols outlined in s. 5.10: 'Naming protocols' of this chapter.

5.10 Naming protocols

POLICY

Discs, file folders or individual electronic files should be labelled using the following naming protocols. Where the recording relates to:

(i) a single recording of:

(a) an incident where a QPRIME occurrence or an infringement notice is issued:

Date (yyyymmdd) employee number QPRIME/TIN/LIN/PIN No. (e.g. 20150916 4001234 QP1500112233); or

(b) is of a matter where an official record is not created:

Date (yyyymmdd) employee number subject person location (e.g. 20150916 4001234 Jane Citizen Coomera);

(ii) a single recording of multiple activities, e.g. body-worn camera recording of static RBT interception activities or a video recording of stop sign enforcement:

Date (yyyymmdd) employee number activity location (e.g. 20150916 4001234 static RBT Tarragindi); or

(iii) multiple recordings in a file server or on a compact disc relating to a single matter, the file or disc should be labelled using relevant information such as:

(a) offence date (in yyyymmdd format);

(b) QPRIME occurrence;

(c) operation name;

(d) investigating officer's employee number; and/or

(e) short descriptor,

as appropriate, to allow later filing and retrieval within the relevant computer system (e.g. QP1500112233 Op STAMPEDE CCTV).

Where multiple recordings have been recorded using a portable recording device (see SMD) and such recordings relate to different QPRIME occurrences, the recordings must be separated and filed in accordance with their respective occurrence number.

5.11 Delivery of recordings to Electronic Media, Evidence Management (EMEM)

ORDER

Recording media will not be accepted at EMEM unless they are appropriately labelled and tagged within QPRIME. All master tapes and recording media to be stored at EMEM are to be conveyed in such a manner as to prevent loss or damage.

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Section 6: Processing and copying of media

6.1 Electronic Recording Section services

The Electronic Recording Section (ERS) is an accredited forensic laboratory as specified by Australian and International Standard (AS ISO/IEC 17025). For advice on matters relating to the processing of exhibits of an audio/video nature, officers should contact ERS at the earliest possible time.

Where the assistance of ERS is required the OIC, ERS is to be contacted.

The ERS will provide the following services as required:

(i) statewide technical support through the processing and presentation of audio/video evidence in a legally acceptable manner including expert testimony in court. Processing services include;

(a) conversion of problematic replay formats;

(b) enhancement of recordings;

(c) editing of recordings (excluding Service-issued BWC recordings);

(d) analysis of recordings; and

(e) repairs to damaged media.

(ii) assistance with investigations involving the use of audio/video technology or concepts.

The processing of electronic evidence for production in court is to be conducted by accredited personnel of the ERS. Where it is impractical to forward to ERS, an officer is to obtain commissioned officer approval prior to forwarding to a commercial facility for processing.

6.2 ERS case file acceptance criteria

ORDER

Where an audio/video recording is to be processed by ERS, officers are to submit the primary or original recording.

Media related to a QPRIME occurrence is to be clearly labelled and identifiable as property within QPRIME prior to being forwarded to ERS.

A QP 127C: 'Request for forensic examination of electronic evidence' available in QPRIME, clearly outlining the details of the requested service, is to be submitted with any media.

The investigating officer is responsible for organising the delivery of any recording(s) and/or equipment. Items of an evidential nature should be submitted personally or via registered mail provided it is packaged in such a manner as to prevent damage.

ERS will produce a maximum of three enhanced media copies for all matters dealt by way of committal proceedings and a maximum of two copies for all other matters. Additional copies will be created where multiple offenders are identified, or suitable justification is provided.

For analysis requests, AV requests of a voluminous nature, or those which fall outside the scope of general ERS services, direct contact with the OIC or senior technical officer should be made prior to submission of any media or equipment.

General AV services such as the copying or conversion of non-problematic media, (media which can be viewed/heard on standard Service equipment in its native format and requires no forensic processing), will only be accepted in exceptional circumstances.

Media not meeting the ERS case file acceptance criteria will be returned unprocessed.

Service-issued BWC recordings

Where practicable:

(i) basic editing (**'clipping'**) of Service-issued BWC recordings should be conducted by officers; and

(ii) redaction of Service-issued BWC recordings should be conducted by a district super user,

within Evidence.com.

The ERS will provide enhancement services, or advanced editing services for Service-issued BWC recordings where:

(i) those services are not capable of being performed within Evidence.com; or

(ii) the prior approval of the OIC, ERS has been obtained.

Where a Service-issued BWC recording is to be processed by ERS, an officer is not required to download the recording from Evidence.com. The requesting officer is to:

(i) complete a QP 127C within the QPRIME occurrence; and

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(ii) send a 'General task: Process enquiry' to ERS.

The ERS will access the primary recording in Evidence.com, upload the edited recording to Evidence.com and notify the requesting officer when the task has been completed.

6.3 Copies of master recordings held at Electronic Media, Evidence Management (EMEM)

It is the responsibility of officers to appropriately manage police copies of master recordings in order to eliminate the need for additional copies to be produced.

Obtaining copies from EMEM should be limited to situations where the police copy is not able to be located or otherwise accessed. Generally, copies should be produced at the relevant establishment using the police copy or master copy prior to forwarding to EMEM for long-term storage.

Requests for copies of master recordings held by EMEM can be generated through QPRIME.

6.4 Requests for copy of electronic record of interview

POLICY

Where a copy of an interview has been provided to a relevant person under s. 438: 'Access to electronic recordings of questioning etc.' of the *Police Powers and Responsibilities Act*, and a further request is made from the relevant person, or the relevant person's legal adviser for additional copies of the audio recording, or in the case of a DERIE interview, a copy of the video recording, the request will be granted unless exceptional circumstances exist.

The relevant person, or the relevant person's legal adviser may supply the equivalent number of blank recording media and copying may be conducted free of charge at the discretion of the investigating officer's supervising commissioned officer.

Alternatively, copies may be provided only upon payment of the fee as set out in the Schedule of fees. The member receiving the request will be responsible for ensuring that the copy of the recording is provided and a QP 268: 'Application for copy of video/audio interview,' available on Forms Select, is completed.

ORDER

A decision to not supply a copy of a video or audio recording can only be authorised by a commissioned officer.

6.5 Application for copy of record of interview: QP 268

POLICY

The member receiving a request from a relevant person, or their legal representative, for a copy of their interview recording will ensure that a QP 268: 'Application for copy of record of interview' is completed.

A copy of a recording will not be supplied unless the required payment has been received and the application signed and dated by the requesting person.

In most cases the investigating officers will be the member receiving the request and supplying the copy of the recording. In instances where another member receives this request, it is to be referred to the investigating officer where practicable. If necessary the member receiving the request will complete the QP 268 as far as possible and will forward the form to the investigating officers who will be responsible for delivering a copy of the recording to the applicant.

6.6 Covert recording: supply of copies

POLICY

Where a covert interview is electronically recorded for the purposes of any investigation and that covert interview results in the prosecution of the person interviewed, the investigating officer will supply the person interviewed with a copy of that recording. If the covert interview is by way of video and audio, the copy supplied will be a copy of the audio content of that video recording.

There is no requirement to provide copies of recordings obtained covertly in other circumstances e.g. where no prosecution for an indictable offence is commenced.

Members are required to produce all relevant evidence to the court in each instance. The provision of copies of electronic recordings covertly made, other than covertly recorded interviews, will be dealt with on an individual case basis following consultation between the investigating officers, the investigating officers' supervising officer and the prosecutor involved. Where special circumstances apply in the case of an interview which has been covertly recorded, the investigating officers will bring the matter to the attention of their supervisor for determination in accordance with the provisions of this section.

ORDER

A decision to not supply a copy of a covertly recorded interview will only be authorised by a commissioned officer.

For recordings as a result of a covert operation, see s. 2.9: 'Covert operations involving law enforcement participants' of the Operational Procedures Manual.

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6.7 Requests for copies of video/audio recordings in relation to sensitive evidence or recordings of an affected child

ORDER

Where a copy or edited copy is to be made of a videoed record of interview of sensitive evidence including recordings of an affected child, officers are to refer to and comply with:

(i) s. 438: 'Access to electronic recordings of questioning etc.' of the PPRA;

(ii) s. 590AO: 'Limit on disclosure of sensitive evidence' of the CC;

(iii) s. 590AOA: 'Evidence Act section 93A device statement' of the CC;

(iv) s. 590AOB: 'Disclosure of recorded statement' of the CC;

(v) s. 3.14: 'Disclosure of information to defence (relevant proceeding)' of the OPM; and

(vi) s. 7.6.6: 'Releasing and copying video and audio recordings of an affected child' of the OPM.

Any request from a defendant or their legal adviser for a copy of a video recording of sensitive evidence, shall only be granted in accordance with the above legislation and policy. However, an audio copy of the defendant's own record of interview may be supplied upon payment of the prescribed fee as detailed in the Schedule of fees.

A request made by the Office of the Director of Public Prosecutions or any other authorised person or by a defendant or their legal adviser to view such a video recording of sensitive evidence will be allowed under the following conditions:

(i) the video recording to be viewed should be the original video recording;

(ii) the video recording will be viewed at a police station or establishment under the supervision of the investigating officer or delegate; and

(iii) if viewing facilities are not available at a police station or establishment, the viewing may take place at a location where facilities are available but only under the supervision of the investigating officer or delegate.

6.8 Return of video recording of interview with a child complainant or witness regarding sexual abuse after court proceedings

POLICY

The investigating officer must make arrangements to recover the video recording and any edited version of the video recording after proceedings in the Supreme or District Court have been finalised. The Crown Prosecutor should be requested to seek an order from the presiding Judge in this regard. A similar request must be made to the Magistrate where the matter has been dealt with summarily. See also ss. 93A: 'Statement made before proceeding by child or person with an impairment of the mind' and 93AA: 'Unauthorised possession of, or dealing in, s 93A criminal statements or section 93A transcripts' of the *Evidence Act* and s. 590AOA: 'Evidence Act section 93A device statement'.

ORDER

Police prosecutors are to make application to the court at the conclusion of committal proceedings for the return of the relevant video recording to the custody of the investigating officer pending use at the subsequent trial.

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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).

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7.5 Court play-back procedures

The Department of Justice (DJ) 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 DJ 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: 'Evidence related to domestic relationships and domestic violence' of the EA, officers are to refer to s. 9.3.17: 'Recorded statements' 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.

For a recorded statement obtained for a domestic violence offence under Part 6A of the EA (see s. 9.3.17 of the OPM), a transcript is required to be completed and accompany the recorded statement if the recorded statement is to be tendered to the court as the complainant's evidence-in-chief. The officer obtaining the recorded statement is responsible for arranging the transcript and ensuring the accuracy of the transcript. A transcript of a recorded statement may be admissible as a complainant's written statement in registry committals as defined in s. 103IA: 'Admissibility of transcripts of recorded statements in particular registry committal proceedings' of the EA.

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, 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.

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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).

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Section 8: Disposal of recordings

8.1 Disposal of Electronic Media, Evidence Management (EMEM) held master recordings

Master recordings archived at EMEM will be held for the retention period specified in the QPS Records Retention and Disposal Handbook.

8.2 Disposal of police copies

This following section only relates to the police copy of an interview or other event recording.

Digital discs

The investigating officer is responsible for the destruction of any discs for an interview or event connected to that investigation, once all avenues of appeal have been finalised. It is the responsibility of the investigating officer to verify that no appeal has been lodged, or any appeal proceedings finalised, prior to the recordings being destroyed.

For combined audio/video interview recordings the Electronic Media, Evidence Management (EMEM) held master DVD contains both video and audio data, consequently there is no need to forward any further copies. For PRD recordings a primary recording contains all the relevant data. Accordingly, once it is confirmed through the Property Management field of QPRIME that a primary recording is held by EMEM, and the appeal period for any court processes has expired, all further copies (DVD and CD) may be destroyed. For archival purposes the primary recording held at EMEM is considered the primary recording.

Analogue tapes

The investigating officer will be responsible for the destruction of any tape(s) (other than master tapes) relating to an interview or event concerning that investigation, which are in the possession of that member after the expiration of all aspects of the case being disposed of including any appeals. Copies of tapes may be destroyed once it has been confirmed through the Property Management field of QPRIME that the primary recording is held by EMEM.

Primary video tape recordings will be retained by the investigating officer until proceedings have been finalised. The primary video tape(s) will then be forwarded to EMEM and stored for the required retention period prior to destruction.

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8.3 Disposal of recordings: negative interviews

Where a relevant person has been interviewed in relation to an indictable offence and there is insufficient evidence to substantiate any charge against that relevant person, the primary or original recording is to be forwarded to Electronic Media, Evidence Management.

When it is deemed to be unnecessary to retain further copies of the recording for any other purpose, they may be disposed of.

It should be remembered that when conducting an interview with a relevant person, policy regarding the provision of an original or copy of the interview recording(s) to the interviewee or the interviewee's legal representative, also applies to negative interviews.

8.4 Method of destruction of police copies of recordings

POLICY

It is the responsibility of the officer in charge of the region or command to implement a suitable method for the destruction of police copies of interviews and events generated by that region or command, which are no longer required. The method of destruction should take into account the sensitivity of the records and, where appropriate, use methods that completely destroy the records beyond any possible reconstruction.

Where the facilities exist, the preferred method for destruction of recordings is by way of shredding. Where it is decided to destroy recordings by way of crushing, burial or other method, all details contained on the recording labels must be obliterated. Local environmental regulations should be considered.

Due to environmental concerns, destruction by means of incineration is only to be considered as a last resort.

Where any record is destroyed, steps should be undertaken to ensure all copies of the record are destroyed at the same time, including back-up copies, access copies, and copies stored near line, off-line and on physical storage devices.

Further advice on the destruction of public records, is available from the Public Records Brief on the Destruction of Public Records and the Guideline for the Implementation of Retention and Disposal Schedules, Queensland State Archives website.

8.5 Deleted

8.6 Right to information

Members are reminded recordings made by officers in the course of their duties may be accessible under the *Right to Information Act* and as such, naming and management protocols should provide for the efficient retrieval of recorded

information for this purpose. Any inquiries regarding right to information issues should be directed to the Right to Information and Subpoena Unit, Right to Information and Privacy Services.

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Appendix 1 Interview reference sheet

(s. 3 and 4)

Before interview considerations

Is the person affected by liquor or drugs? *{PPRA s. 423; OPM 6.5.4}*

If so, delay the questioning until you are satisfied the influence of the liquor or drug no longer affects the person's ability to understand his or her rights and decide whether or not to answer questions.

Is the person an Aborigine or Torres Strait Islander? *{PPRA s. 420}*

If you reasonably suspect the person is at a disadvantage in comparison with members of the Australian community generally, and the person has not arranged for another person to be present during the questioning, you must arrange for a support person to be present. *{PRC s. 27(6)); OPM 6.3.6}*

If the person in custody has indicated he or she does not wish to telephone or speak to a friend, relative or lawyer or arrange for a person to be present during questioning, you must inform the person that he or she may have a support person present during questioning. *{PRC s. 27(5), PPRA s.420}* You must substantially comply with the following:

- **Is there any reason why you don't want to telephone or speak to a friend, relative or lawyer, and arrange for a person to be present during questioning?** *{PRC s. 27(5)}*
- **Do you understand that arrangements can be made for a support person to be present during questioning?** *{PRC s. 27(5)}*
- **Do you understand that you do not have to have a support person present during questioning? Do you want to have a support person present?** *{PRC s. 27(5)}* and
- **Do you want to have a support person present?**

Is the person a child (under 18 years of age)?

Any child suspect (under the age of 18 years) cannot be questioned unless a support person is present *{Youth Justice Act s. 29}*. The child is to be provided the opportunity to speak to the support person in circumstances in which the conversation will not be overheard. The child must be happy with the presence of the nominated support person. *{PPRA s. 421}*

Does the person have impaired capacity? *{PPRA Schedule 6}*

If so, obtain the services of a support person (i.e., a parent or other person), to provide or who is able to provide support necessary to help the person receiving the care by looking after or managing the persons interests. *{PPRA s. 422; OPM 6.3.3}*

If a support person is required to be present?

If a support person is required to be present (e.g., if the person has impaired capacity or the suspect is under 17 years of age) ensure that the support person has read and understood **Form 36: 'Information for Support Persons about Their Role'**.

Does the person need an interpreter? *{PRC s. 31; OPM 6.3.7; PPRA s. 433}*

In deciding whether to arrange for the presence of an interpreter, you may ask a person any question, other than a question related to the person's involvement in the offence that may help you decide if the person needs an interpreter.

Is the person a visiting foreign national? *{PRC s. 32; PPRA s. 434}*

- **Before I ask you any questions, I must tell you that you have the right to telephone, or attempt to telephone, the embassy or consular office of the country of which you are a citizen.**
- **Do you want to telephone your embassy or consular office?**

Introduction

- **I am (name and rank) of (name of police station or police establishment). I wish to question you about (briefly describe offence).**

Voluntary attendance

Attends station by themselves *{PRC s. 28(3)}*

- **Did you come here of your own free will?**
- **Has any threat or promise been held out to you to get you to take part in this interview?** *{PPRA s. 416}*

Before you start the interview, you must ask these questions *{PRC s. 28(3)}*

- **Do you understand that you are not under arrest?**

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- **Do you understand that you are free to leave at any time unless you are arrested?**

Refer to 'Cautioning of all persons questioned for indictable offences'

Under arrest *{PPRA s. 365(2)}*

- **You are under arrest for (state nature of offence) and have been conveyed here today for the purpose of questioning and/or investigation about this offence.**
- **Do you understand what has occurred?**
- **Do you understand that you are not free to leave?**

Refer to 'Cautioning of all persons questioned for indictable offences'

Cautioning of all persons questioned for indictable offences

Right to silence *{PPRA s. 431; PRC s. 29(2)}*

- **Before I ask you any questions, I must tell you that you have the right to remain silent.**
- **This means that you do not have to say anything, or answer any question, or make any statement unless you wish to do so.**
- **However, if you do say something or make any statement, it may be used later as evidence. Do you understand?**

Additionally for a child:

- **Do you understand that if you do speak, that whatever you say will be recorded by this device?**
- **Do you understand that if you speak, whatever you say may be told to a court?**

Right to communicate with friend, relative or lawyer *{PPRA s. 418; PRC s. 26(1)}*

- **You have the right to telephone or speak to a friend or relative to inform that person where you are and to ask him or her to be present during questioning.**
- **You also have the right to telephone or speak to a lawyer of your choice to inform the lawyer where you are and to arrange or attempt to arrange for the lawyer to be present during questioning.**
- **If you want to telephone or speak to any of these people, questioning will be delayed for a reasonable time for that purpose.**
- **Is there anyone you wish to telephone or speak to?**

Adoption of Events

- **Do you agree I saw you earlier today at (state place) and had a conversation with you?**
- **Has any threat or promise been held out to you to get you to take part in this interview?** *{PPRA s. 416}*

Further questioning

If either prior or during questioning the suspect does not want to answer questions:

- **Would you please explain what you mean when you say you do not wish to answer any (further) questions? Is it that you do not wish to answer that question, particular questions or any further questions?**
- **Do you wish to answer any further questions regarding this complaint or (alibi, other events)?**
- **Are you prepared to provide personal details for the purpose of this interview?**
- **Are you prepared to have the details of the complaint outlined to you?**
- **Do you wish to make any comment concerning this complaint?**
- **Do you wish to provide your version of events?**

Concluding questions

- **Is there anything else at all that you wish to say in relation to this matter?**
- **Have you taken part in this interview of your own free will?**
- **Has any threat or promise been held out to you to get you to take part in the interview?**
- **Were you told of your right to remain silent at the start of/during this interview?** *{PPRA s. 431}*
- **Have you answered the questions truthfully here today?**

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- **Does anyone present wish to say anything before I conclude this interview?**
- **I will now terminate this interview. I make the time (state time). Do you agree with that time?**

NOTE: For further information refer to the PPRA, PRC, FRH or DERIE Manual.
This document can be located on the Training and Development SharePoint page.
Inquires can be forwarded to Operational Policy and Improvement phone 0439 834 936.

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