

Version No. 002
Evidence (Recorded Evidence) Regulations
2004

S.R. No. 156/2004

Version as at 29 February 2008

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1 Objective

The objective of these Regulations is to make provision for the making, use, possession, storage, access to and destruction of audio and video recordings referred to in section 37B of the **Evidence Act 1958** and clause 6(1)(h) of Schedule 5 to the **Magistrates' Court Act 1989**.

2 Authorising provision

These Regulations are made under section 152(2) of the **Evidence Act 1958**.

3 Commencement

These Regulations come into operation on 12 December 2004.

4 Revocation

The Evidence (Recorded Evidence) Regulations 1994¹ are **revoked**.

5 Definitions

In these Regulations—

the Act means the **Evidence Act 1958**;

recording means an audio or video recording of a kind referred to in section 37B(2) of the Act and clause 6(1)(h) of Schedule 5 to the **Magistrates' Court Act 1989**.

6 Who may put questions

For the purposes of section 37B of the Act, a person is prescribed if he or she is a member of the police force who has successfully completed a training course conducted by Victoria Police on the procedure for making recordings.

7 Information to be included on recording

In addition to any other requirement made by or under the Act or the **Magistrates' Court Act 1989**, a recording must include—

- (a) the date on which, and the place at which, the recording was made;
- (b) the times at which the recording was commenced and concluded;
- (c) identification of all persons present during any part of the recording;
- (d) the times at which any break in questioning commenced and concluded and the reason for the break.

8 Copies of recordings

- (1) The Chief Commissioner of Police may authorise copies to be made of a recording made in or in connection with a proceeding and must ensure that the recording and all copies of the recording are kept in safe custody.
- (2) If a copy of a recording is made, the Chief Commissioner must record—
 - (a) the date on which the copy was made; and
 - (b) the name and address of the person to whom the copy was given.

9 Transcript of recording

If a transcript of a recording is made, a copy of the transcript must be given as soon as practicable to the witness answering questions or to his or her parent or guardian.

10 Right of defendant to listen to or view recording

- (1) If a recording has been made in a proceeding, the informant in the proceeding must give notice to the defendant that the defendant and his or her legal practitioner have a right to listen to and, in the case of a video recording, view the recording at a time and place agreed between the defendant and the informant.
- (2) If a defendant and his or her legal practitioner wish to listen to and, in the case of a video recording, view the recording, the informant must make the recording or a copy of it available for listening or viewing at the time and place agreed.

11 Record of persons listening to or viewing recordings

If any person listens to or views a recording, or a copy of a recording, a record of the following information must be made—

- (a) the name of the person viewing or listening to the recording or copy;
- (b) the capacity in which the person is involved in the proceeding;
- (c) the date on which and the time at which the recording or copy was viewed or listened to;
- (d) the name of the person who gave access to the person to view or listen to the recording or copy.

12 Use of recordings or copies

- (1) Subject to subregulation (2), a recording or a copy of a recording may only be used in or in connection with a proceeding referred to in section 37B of the Act or clause 6(1)(h) of Schedule 5 to the **Magistrates' Court Act 1989**.
- (2) The witness questioned on a recording or, in the case of a witness under the age of 18, his or her parent or guardian, may consent in writing to any other use to which the recording or a copy of the recording may be put.
- (3) If a person is incapable of giving consent by reason of impaired mental functioning, his or her parent or guardian may give consent under subregulation (2).
- (4) A recording or a copy of a recording must be used and stored so as to preserve as far as possible the privacy of the person questioned.
- (5) No person is entitled to have possession of or access to a recording or copy of a recording except in accordance with section 37B of the Act or clause 6(1)(h) of Schedule 5 to the **Magistrates' Court Act 1989** and these Regulations.

13 Destruction of recordings and copies

If in or in connection with a proceeding a person has been questioned and a recording made of the questioning, the Chief Commissioner of Police must destroy or erase, or cause to be destroyed or erased, the recording and all copies of the recording within 6 months after the conclusion of the proceeding or the expiry of any appeal period or, if a person has consented under regulation 12(2) to another use, the end of that use.

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ENDNOTES

1. General Information

The Evidence (Recorded Evidence) Regulations 2004, S.R. No. 156/2004 were made on 7 December 2004 by the Governor in Council under section 152(2) of the **Evidence Act 1958**, No. 6246/1958 and came into operation on 12 December 2004: regulation 3.

The Evidence (Recorded Evidence) Regulations 2004 will sunset 10 years after the day of making on 7 December 2014 (see section 5 of the **Subordinate Legislation Act 1994**).

2. Table of Amendments

There are no amendments made to the Evidence (Recorded Evidence) Regulations 2004 by statutory rules, subordinate instruments and Acts.

3. Explanatory Details

¹ Reg. 4: S.R. No. 202/1994.