

Authorised Version No. 002
Criminal Procedure Regulations 2009

S.R. No. 169/2009

Authorised Version incorporating amendments as at
25 January 2011

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PART 1—PRELIMINARY

1 Objectives

The objectives of these Regulations are to—

- (a) provide for the making, use, possession, editing, storage, access to and destruction of audio and audiovisual recordings referred to in Division 5 of Part 8.2 of the **Criminal Procedure Act 2009**; and
- (b) specify the allowances and expenses that are to be paid to prosecution witnesses; and
- (c) other matters required or necessary to be prescribed by the **Criminal Procedure Act 2009**.

2 Authorising provision

These Regulations are made under section 420 of the **Criminal Procedure Act 2009**.

3 Commencement

These Regulations come into operation on 1 January 2010.

4 Definitions

In these Regulations—

the Act means the **Criminal Procedure Act 2009**;

Division 5 recording means an audio or audiovisual recording of a kind referred to in Division 5 of Part 8.2 of the Act.

PART 2—DIVISION 5 RECORDINGS

5 Who may ask questions

For the purposes of section 367 of the Act, the following persons are prescribed—

- (a) a member of Victoria Police who has successfully completed a training course conducted by Victoria Police on the procedures for making a Division 5 recording and examining a witness;
- (b) a person authorised in writing by the Chief Commissioner of Police who has successfully completed a training course conducted by Victoria Police on the procedures for making a Division 5 recording and examining a witness;
- (c) if the questions are put to the witness in another State or the Northern Territory, a member of the police force of that State or Territory;
- (d) if the questions are put to the witness in a Territory other than the Northern Territory, a member of the Australian Federal Police.

Reg. 5(b)
amended by
S.R. No.
1/2011
reg. 3(1).

Reg. 5(c)
inserted by
S.R. No.
1/2011
reg. 3(2).

Reg. 5(d)
inserted by
S.R. No.
1/2011
reg. 3(2).

6 Information to be included in a Division 5 recording

In addition to any other requirement made by or under the Act, a Division 5 recording must include—

- (a) the date on which, and the place at which, the recording is made;
- (b) the times at which the recording is commenced and concluded;
- (c) identification of all persons present during any part of the recording;

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- (d) the times at which any break in questioning commenced and concluded and the reason for the break.

7 Copies of a Division 5 recording

- (1) The Chief Commissioner of Police may authorise copies to be made of a Division 5 recording 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 is made; and
 - (b) the name and address of the person to whom the copy is given.

8 Transcript of a Division 5 recording

If a transcript of a Division 5 recording is made, a copy of the transcript must be given, as soon as is practicable, to the witness answering questions or to his or her parent or guardian.

9 Right of accused to listen to or view Division 5 recording

- (1) If a Division 5 recording is made, the informant in the proceeding must give notice to the accused that the accused and his or her legal practitioner have the right to listen to and, in the case of an audiovisual recording, view the recording at a time and place agreed between the accused and the informant.
- (2) If an accused and his or her legal practitioner wish to listen to and, in the case of an audiovisual recording, view the Division 5 recording, the informant must make the recording or a copy of it available for listening or viewing at the time and place agreed.

10 Record of persons listening to or viewing Division 5 recordings

If the accused or his or her legal practitioner listens to or views a Division 5 recording, the informant, or a person acting on behalf of the informant, must record the following information—

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

11 Use of Division 5 recordings or copies

- (1) A Division 5 recording or a copy of a Division 5 recording may only be used in or in connection with a proceeding referred to in Division 5 of Part 8.2 of the Act.
- (2) No person is entitled to have possession of or access to a Division 5 recording or copy of a recording except in accordance with Part 8.2 of the Act and these Regulations.

12 Retention and destruction of recordings and copies

- (1) If a Division 5 recording is made, the Chief Commissioner of Police must retain one copy of the recording in his or her safe custody.
- (2) Subject to subregulation (1), if a Division 5 recording is made, the Chief Commissioner of Police must ensure that any copies made of the recording are destroyed or erased, no later than 6 months after the latest of the—

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- (a) conclusion of the proceeding; or
 - (b) expiry of any appeal period in relation to the charge; or
 - (c) conclusion of a proceeding of a kind referred to in section 374(2) of the Act.
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PART 3—PROSECUTION WITNESSES ALLOWANCES AND EXPENSES

13 Attendance allowance for expert witness

A prosecution witness who is called to give evidence at a court in a professional or expert capacity, is entitled—

- (a) to an amount of \$79.50 if the period of absence from his or her place of business or residence to attend the court is 4 hours or less; or
- (b) if the period of absence is more than 4 hours, to an amount of \$79.50 plus \$20.60 for each additional hour, or part of an hour, that he or she is absent from his or her place of business or residence in excess of 4 hours, up to a maximum of \$158.80 for any one day.

14 Allowances and expenses of other witness

- (1) This regulation applies to a prosecution witness who is called to give evidence at a court other than in a professional or expert capacity.
- (2) If the witness is engaged in an income producing vocation and loses income because of his or her attendance at the court, he or she is entitled to the amount of income actually lost up to a maximum of \$69.10 for each day, or part of a day, that he or she is necessarily absent from his or her place of business by reason of the attendance.
- (3) If the witness is not engaged in an income producing vocation but he or she necessarily incurs expenditure because of his or her attendance at the court that is not provided for in regulation 15, 16, or 17, he or she is entitled to the amount of the actual expenditure incurred up to a maximum of \$33.70 for each day.

15 Meals

(1) A prosecution witness who is called to give evidence at court and who is necessarily absent from his or her home by reason of the attendance at court is entitled to the following allowances for meals during his or her absence—

(a) if the witness is absent from his or her home overnight—

	<i>Capital City</i>	<i>Any other location</i>
Breakfast	\$17.70	\$15.75
Lunch	\$19.75	\$18.05
Dinner	\$34.05	\$31.15
Total	\$71.50	\$64.95

(b) if the witness is absent for a part of a day only, departing and returning the same day—

Breakfast	\$12.40
Lunch	\$12.40
Dinner	\$16.50
Total	\$41.30

(2) Despite subregulation (1), a prosecution witness is only entitled to an allowance—

- (a) for breakfast, if he or she is absent from his or her home between 7.00 a.m. and 9.30 a.m.;
- (b) for lunch, if he or she is absent from his or her home between 12.00 p.m. and 3.00 p.m.;
- (c) for dinner, if he or she is absent from his or her home between 5.00 p.m. and 7.00 p.m..

16 Accommodation

A prosecution witness who is called to give evidence at a court and who is necessarily absent from his or her home overnight because of his or her attendance at the court is entitled to the cost incurred by him or her of alternative accommodation up to a maximum of \$150.00 for each night of his or her absence.

17 Travelling

- (1) A prosecution witness who is called to give evidence at a court is entitled to an allowance in respect of the expense of travelling to and from the court equal to the cost of the most economical form of transport having regard to the total expense of attending the court.
- (2) If the witness uses his or her own vehicle, he or she is entitled to an allowance of 18 cents for each kilometre travelled to or from the court.

18 No payment to prisoners

A prisoner of the Crown is not entitled to any payment under these Regulations.

19 Evidence of expenses etc. to be produced

A person who is authorised to approve payments authorised by these Regulations must not approve the payment of an amount to a witness under these Regulations unless there is produced to him or her evidence satisfactory to him or her—

- (a) in the case of regulation 14(2), that as a result of attending at the court the witness has sustained, or will sustain, a loss of income, or of time that the witness would otherwise have devoted to an income producing vocation; or

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- (b) in the case of regulations 14(3) and 16, of the expenditure or cost incurred by the witness;
or
 - (c) in the case of regulation 15, that the witness was absent from his or her home by reason of attendance at court at the relevant times;
or
 - (d) in the case of regulation 17(1), of the cost of the most economical form of transport.
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**PART 4—PRE-HEARING DISCLOSURE BY ELECTRONIC
TRANSMISSION**

20 Pre-hearing disclosure by electronic transmission

- (1) For the purposes of section 49(1)(a) of the Act, the Public Correctional Enterprise in the Department of Justice is a prescribed agency.
 - (2) For the purposes of section 49(2) of the Act, the E*Justice database is the prescribed database.
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ENDNOTES

1. General Information

The Criminal Procedure Regulations 2009, S.R. No. 169/2009 were made on 15 December 2009 by the Governor in Council under section 420 of the **Criminal Procedure Act 2009**, No. 7/2009 and came into operation on 1 January 2010: regulation 3.

The Criminal Procedure Regulations 2009 will sunset 10 years after the day of making on 15 December 2019 (see section 5 of the **Subordinate Legislation Act 1994**).

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S.R. No. 169/2009

Endnotes

2. Table of Amendments

This Version incorporates amendments made to the Criminal Procedure Regulations 2009 by statutory rules, subordinate instruments and Acts.

Criminal Procedure Amendment (Recorded Evidence-in Chief) Regulations 2011,
S.R. No. 1/2011

Date of Making: 25.1.11

Date of Commencement: 25.1.11

3. Explanatory Details

No entries at date of publication.