



Queensland

*Recording of Evidence Act 1962*

# **Recording of Evidence Regulation 2018**

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Queensland

# Recording of Evidence Regulation 2018

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# Recording of Evidence Regulation 2018

## Part 1 Preliminary

### 1 Short title

This regulation may be cited as the *Recording of Evidence Regulation 2018*.

### 2 Commencement

This regulation commences on 2 September 2018.

### 3 Definitions

The dictionary in schedule 2 defines particular words used in this regulation.

## Part 2 Provision of copies of records and transcriptions

### Division 1 Provision of copies to persons generally

#### 4 Initial request for copy of transcription

- (1) This section applies if—
  - (a) a person makes a request to the chief executive for a copy of a transcription of a record under the Act; and
  - (b) when the person makes the request—
    - (i) 1 or more persons (each a *recorder*) provides a transcription service; and

[s 4A]

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- (ii) a relevant person has not made an earlier valid request to the chief executive for a copy of the transcription.
- (2) The chief executive must give the request to a recorder as soon as practicable after receiving the request.
- (3) The recorder to whom the request is given may charge the person an amount, worked out in accordance with the relevant arrangement, for a copy of the transcription.
- (4) If the person pays, or enters into an agreement to pay, the amount under subsection (3), the recorder must issue a copy of the transcription, in electronic form, to the chief executive as soon as practicable after receiving the request.

#### **4A Joint request for copy of transcription**

- (1) This section applies if—
  - (a) 2 or more parties to a legal proceeding, or legal representatives of the parties, make a joint request to the chief executive for a copy of a transcription of a record under the Act of the proceeding; and
  - (b) when the parties or legal representatives make the request—
    - (i) 1 or more persons (each a *recorder*) provides a transcription service; and
    - (ii) a relevant person has not made an earlier valid request to the chief executive for a copy of the transcription.
- (2) The chief executive must give the request to a recorder as soon as practicable after receiving the request.
- (3) The recorder to whom the request is given may charge the parties an amount, worked out in accordance with the relevant arrangement, for a copy of the transcription.
- (4) If the parties pay, or enter into an agreement to pay, the amount under subsection (3), the recorder must issue a copy

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of the transcription, in electronic form, to the chief executive as soon as practicable after receiving the request.

#### **4B Giving copy of transcription requested under s 4 or 4A**

- (1) This section applies if—
  - (a) a person requests a copy of a transcription of a record under the Act; and
  - (b) a recorder issues a copy of the transcription, in electronic form, to the chief executive under section 4(4) or 4A(4).
- (2) The chief executive must give the copy of the transcription to the person as soon as practicable after receiving the transcription.
- (3) The chief executive must give the copy of the transcription in 1 of the following ways—
  - (a) if the person requests the copy of the transcription to be given in printed form—in that form;
  - (b) otherwise—in electronic form.
- (4) For a joint request mentioned in section 4A(1), the chief executive must comply with subsections (2) and (3) for each party or legal representative of the party who made the request.
- (5) The chief executive must not charge a fee for giving a copy of the transcription under this section.

#### **4C Request for copy of transcription in relation to which ss 4 and 4A do not apply**

- (1) This section applies if—
  - (a) a person makes a request to the chief executive for a copy of a transcription of a record under the Act; and
  - (b) sections 4 and 4A do not apply in relation to the request.

[s 4D]

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- (2) If the person pays, or enters into an agreement to pay, the fee for the request, the chief executive must issue a copy of the transcription to the person as soon as practicable after receiving the request.
- (3) The chief executive must issue the copy of the transcription in 1 of the following ways—
  - (a) if the person requests the copy of the transcription to be issued in printed form—in that form;
  - (b) otherwise—in electronic form.

#### **4D Request for copy of audio record**

- (1) This section applies if—
  - (a) a person makes a request to the chief executive for a copy of an audio record; and
  - (b) a copy of the audio record is available in electronic form.
- (2) If the person pays, or enters into an agreement to pay, the fee for the request, the chief executive must issue the person a copy of the audio record in electronic form as soon as practicable after receiving the request.

#### **4E Fees**

Schedule 1 states, for section 13(2)(f) of the Act, the fees payable for the issuing of a copy of a transcription of a record or an audio record under section 4C or 4D.

#### **4F Rounding of amounts expressed as numbers of fee units**

- (1) This section applies for working out the amount of a fee expressed in this regulation as a number of fee units.
- (2) For the purpose of the *Acts Interpretation Act 1954*, section 48C(3), the amount is to be rounded—



- (a) if the result is not more than \$100—to the nearest multiple of 5 cents (rounding one-half upwards); or
- (b) if the result is more than \$100 but not more than \$1,000—to the nearest multiple of 10 cents (rounding one-half upwards).

*Example—*

If a fee were 97.40 fee units and the value of a fee unit were \$1.015, the number of dollars obtained by multiplying 97.40 by \$1.015 would be \$98.861. Because \$98.861 is halfway between \$98.85 and \$98.90, it is rounded upwards, so the amount of the fee would be \$98.90.

#### **4G Entitlement to copies at no or reduced cost**

- (1) This section applies if, under the Act, a person is entitled to a copy of a transcription of a record or an audio record, at—
  - (a) no cost; or
  - (b) a cost that is less than the amount that would otherwise be payable for the copy under this division (the *reduced cost*).
- (2) Any provision of this division providing for the person to pay an amount in relation to obtaining a copy of the transcription or audio record applies as if the provision required the person to pay no cost, or the reduced cost, as mentioned in subsection (1).

#### **4H Orders of court or judicial person**

- (1) This section applies if, under an Act or an order of a court or judicial person, a copy of a record under the Act must not be made available to a person.
- (2) This division does not apply to a request for a copy of a transcription of the record or for a copy of the record in the form of an audio record—
  - (a) made by the person; or
  - (b) if the request is made by the person and 1 or more other persons—to the extent the request applies to the person.

## **Division 2                      Provision of copies to judicial persons**

### **5                      Provision of copies**

A copy of a record under the Act of a legal proceeding, or a copy of a transcription of a record under the Act of a legal proceeding, may be provided to a judicial person—

- (a) in printed form or electronic form; and
- (b) even if the proceeding has ended.

*Note—*

Section 5B(3)(a) of the Act requires arrangements to be in place for providing copies of records and transcriptions to judicial persons at no cost.

## **Division 3                      Provision of copies to particular persons at no or reduced cost**

### **6                      Purpose of division**

For section 5B(3)(b) of the Act, this division states the entitlements of particular persons to a copy of a record under the Act, or a copy of a transcription of a record under the Act, at no cost or at a cost that is less than the amount that would otherwise be payable.

### **7                      Parties to legal proceedings—financial hardship**

- (1) A person who is a party to a legal proceeding may apply to the chief executive, on the ground of financial hardship, for the waiver of all or part of an amount that would otherwise be payable for—
  - (a) a copy of a record under the Act of a legal proceeding;  
or
  - (b) a copy of a transcription of a record under the Act of a legal proceeding.

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- (2) The application must be accompanied by, or include—
- (a) documents demonstrating the person’s financial hardship; or
- Examples of documents that may demonstrate financial hardship—*  
bank statements, pay slips, Centrelink statements
- (b) if a relevant legal service represents the person in the legal proceeding or is otherwise assisting the person with the proceeding, a written notice by the service stating that—
- (i) the service represents the person in, or is assisting the person with, the proceeding; and
- (ii) the person meets the service’s means test, however described, for deciding applications for legal representation or legal assistance.
- (3) The chief executive may waive payment by the person of all or part of the amount if the chief executive reasonably believes there is a ground of financial hardship.
- (4) For subsection (3), a notice under subsection (2)(b) is evidence of the ground of financial hardship.
- (5) The person is entitled to the copy for free, or on payment of the relevant amount, as decided under subsection (3).
- (6) In this section—
- relevant legal service*** means—
- (a) Legal Aid Queensland established under the *Legal Aid Queensland Act 1997*; or
- (b) a community legal service within the meaning of the *Legal Profession Act 2007*, schedule 2.

## **8 Industrial registry and party to industrial proceeding**

- (1) The industrial registry is entitled to 1 free copy of a transcription of a record under the Act of an industrial proceeding.

[s 9]

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- (2) A party to an industrial proceeding, or the party's legal representative, is entitled to 1 free copy of a transcription of a record under the Act of the proceeding if a copy of the transcription has been issued to the industrial registry.

*Note—*

The free copy of the transcription to which a party to an industrial proceeding is entitled under subsection (2) is available from the industrial registry.

- (3) The free copy may be issued—
- (a) in electronic form only; and
  - (b) even if the industrial proceeding has ended.

- (4) In this section—

***industrial proceeding*** means a legal proceeding before—

- (a) the industrial relations commission; or
- (b) the industrial court; or
- (c) the registrar appointed under the *Industrial Relations Act 2016*.

***industrial registry*** means the registry under the *Industrial Relations Act 2016*.

## 9 Victim of personal offence

- (1) A victim of a personal offence the subject of a criminal proceeding in the Supreme Court or the District Court is entitled to 1 free copy of—
- (a) an existing transcription of a record under the Act of the proceeding; or
  - (b) if a transcription does not exist—an audio record of the proceeding.
- (2) If the victim is a child, each of the following persons is entitled to 1 free copy instead of the victim—
- (a) each parent of the child;
  - (b) the child's legal representative.

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- (3) If the victim is an adult who has died as a result of the personal offence, each person who is a spouse, child, parent or sibling of the victim is entitled to 1 free copy.
- (4) The free copy may be issued—
- (a) if the copy is a transcription mentioned in subsection (1)(a)—in printed form or electronic form; and
  - (b) to the person entitled to the copy under this section or to 1 of the following—
    - (i) the person’s legal representative;
    - (ii) a guardian appointed for the person under the *Guardianship and Administration Act 2000*;
    - (iii) an attorney appointed by the person under an enduring power of attorney under the *Powers of Attorney Act 1998*; and
  - (c) even if the criminal proceeding has ended.
- (5) A reference in this section to a child, parent or sibling of a victim includes a reference to a person who, under Aboriginal tradition or Island custom, is regarded as a child, parent or sibling of the victim.
- (6) In this section—

***personal offence*** means an indictable offence committed, or alleged to have been committed, against the person of any person.

***victim***, of a personal offence, means the person against whom the offence is committed or alleged to have been committed.

## **9A Particular legal proceedings before coroner or industrial magistrate**

- (1) This section applies in relation to a legal proceeding before a coroner or industrial magistrate, if the legal proceeding relates to the death of a person (the ***deceased person***).

[s 9A]

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- (2) An entitled person for the deceased person is entitled to 1 free copy of—
  - (a) an existing transcription of a record under the Act of the proceeding; or
  - (b) if a transcription does not exist—an audio record of the proceeding.
- (3) The free copy may be issued—
  - (a) if the copy is a transcription mentioned in subsection (2)(a)—in printed form or electronic form; and
  - (b) to the entitled person or to 1 of the following—
    - (i) a legal representative of the entitled person;
    - (ii) a guardian appointed for the entitled person under the *Guardianship and Administration Act 2000*;
    - (iii) an attorney appointed by the entitled person under an enduring power of attorney under the *Powers of Attorney Act 1998*; and
  - (c) even if the legal proceeding has ended.
- (4) In this section, a reference to a child, parent or sibling of a deceased person includes a reference to a person who, under Aboriginal tradition or Island custom, is regarded as a child, parent or sibling of the deceased person.
- (5) In this section—

***entitled person***, for a deceased person, means—

  - (a) if the deceased person is a child—
    - (i) each parent of the child; and
    - (ii) the child’s legal representative; or
  - (b) if the deceased person is an adult—each person who is a spouse, child, parent or sibling of the adult.

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## 10 Defendant in criminal proceeding

- (1) A defendant in a criminal proceeding in the Supreme Court or the District Court is entitled to 1 free copy of a transcription of a record under the Act of the proceeding.
- (2) The free copy may be issued—
  - (a) in printed form or electronic form; and
  - (b) to the defendant or the defendant’s legal representative; and
  - (c) even if the criminal proceeding has ended.

## 11 Government assessor or scheme manager under Victims of Crime Assistance Act 2009

- (1) This section applies to a government assessor or the scheme manager in performing any of the following functions under the *Victims of Crime Assistance Act 2009*—
  - (a) dealing with an application for assistance, or amendment of a grant of assistance, under chapter 3 of that Act;
  - (b) amending assistance under chapter 3, part 15 of that Act;
  - (c) recovering, for the State, an amount from a person under chapter 3, part 16 of that Act.
- (2) The government assessor or scheme manager is entitled to—
  - (a) 1 free copy of an existing transcription of a record under the Act of—
    - (i) a criminal proceeding relating to a relevant offence for the act of violence for which assistance is sought or has been granted; or
    - (ii) a proceeding under the *Domestic and Family Violence Protection Act 2012* relating to the act of violence for which assistance is sought or has been granted; or

- (b) free electronic access to an audio record of a proceeding mentioned in paragraph (a)(i) or (ii).
- (3) The copy mentioned in subsection (2)(a) may be issued—
  - (a) in printed form or electronic form; and
  - (b) even if the proceeding has ended.
- (4) In this section—

*government assessor* see the *Victims of Crime Assistance Act 2009*, schedule 3.

*relevant offence*, for an act of violence, see the *Victims of Crime Assistance Act 2009*, schedule 3.

*scheme manager* see the *Victims of Crime Assistance Act 2009*, schedule 3.

## Part 3 Transitional provisions

### Division 1 Transitional provision for SL No. 132 of 2018

#### 12 References to expired regulation

A reference in a document to the *Recording of Evidence Regulation 2008* may, if the context permits, be taken to be a reference to this regulation.

### Division 2 Transitional provisions for Recording of Evidence Amendment Regulation 2023

#### 13 Existing request for copy of transcription or audio record

- (1) This section applies in relation to a request, made but not dealt with, before the commencement, for—



- (a) a copy of a transcription of a record under the Act; or
  - (b) a copy of an audio record.
- (2) The following provisions do not apply in relation to the request—
- (a) new part 2, division 1;
  - (b) new schedule 1.
- (3) The following provisions continue to apply in relation to the request as if the *Recording of Evidence Amendment Regulation 2023* had not been made—
- (a) former part 2, division 1;
  - (b) former schedule 1.
- (4) In this section—

*former*, for a provision of this regulation, means the provision as in force immediately before the commencement.

*new*, for a provision of this regulation, means the provision as in force from the commencement.

## 14 **Application of s 9A to legal proceedings started before commencement**

- (1) This section applies in relation to a legal proceeding before a coroner or industrial magistrate started before the commencement.
- (2) Section 9A applies in relation to a request for a copy of a transcription of a record under the Act, or an audio record, of the proceeding made under that section after the commencement.

**Schedule 1      Fees**

section 4E

	<b>Fee units</b>
1 Issuing, under section 4C(2), a copy of a transcription of a record under the Act of a legal proceeding before the industrial relations commission—	
(a) for the first copy of the transcription of the record issued to a person—for each page	4.75
(b) for additional copies of the transcription of the record issued to the same person—for each page	1.05
2 Issuing, under section 4C(2), a copy of a transcription of a record under the Act, other than a record mentioned in item 1—	
(a) for the first copy of the transcription of the record issued to a person—	
(i) for the first 1 to 8 pages of the copy	97.40
(ii) for each additional page after the first 8 pages	12.05
(b) for additional copies of the transcription of the record issued to the same person—for each page	1.60
3 Issuing, under section 4D(2), a copy of an audio record to a person—for each hour, or part of an hour, of the copy	39.95

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## Schedule 2      Dictionary

### section 3

***audio record*** means a record, or part of a record, under the Act that consists of an audio recording.

***electronic form***, in relation to a copy of a record under the Act or a transcription of a record under the Act, means a copy that is stored or recorded electronically.

*Examples of electronic form—*

- a copy stored on a computer disc
- a copy stored on a CD-ROM
- a copy stored on a computer hard drive
- a copy sent by email

***parent***, of a child, includes a person who exercises parental responsibility for the child, other than a person standing in the place of a parent of the child on a temporary basis.

***printed form***, in relation to a copy of a transcription of a record under the Act, means a copy that is produced on paper by longhand writing, typewriting or other means.

***record***, for a record under the Act, includes a part of the record.

***relevant arrangement***, for a person who provides a transcription service, means the arrangement under section 5A of the Act between the chief executive and the person for the provision of the transcription service.

***relevant person***, in relation to a record under the Act, means a person to whom a copy of a transcription of the record may be made available under the Act.

***transcription service*** means the transcription of a record under the Act under an arrangement under section 5A of the Act.

*valid request*, for a copy of a transcription of a record under the Act, means a request, or a joint request, for a copy of the transcription—

- (a) made by a person who has paid, or entered into an agreement to pay, an amount worked out under a relevant arrangement for the copy of the transcription; and
- (b) that has not been cancelled.