



Queensland

Recording of Evidence Act 1962

Recording of Evidence Regulation 2018

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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

4AA Application of division

This division does not apply in relation to a copy of a record or a transcription of a record of a legal proceeding before the Mental Health Review Tribunal.

4 Initial request for copy of transcription

(1) This section applies if—

[s 4A]

- (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
 - (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 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—

[s 4D]

- (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.
- (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 4.75 fee units and the value of a fee unit were \$1.10, the number of dollars obtained by multiplying 4.75 by \$1.10 would be \$5.225. Because \$5.225 is halfway between \$5.20 and \$5.25, it is rounded upwards, so the amount of the fee would be \$5.25.

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

[s 5]

- (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—

Sections 5B(3)(a) and 6(5)(a) of the Act require 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.
- (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.
- (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.
- (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*).
- (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.

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

[s 11A]

- (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 2A Other matters

11A Prescribed tribunal—Act, s 6

For section 6(1) of the Act, the Mental Health Review Tribunal is prescribed.

11B Prescribed judicial person for tribunal—Act, s 6

For section 6(2) of the Act, the president of the Mental Health Review Tribunal is prescribed for the tribunal.

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

	Fee units
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

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.