

## Victoria Police Manual – Procedures and Guidelines

### Visual audio recorded evidence

#### Source Policy

These Procedures and Guidelines support and must be read in conjunction with the following:

- Criminal Procedure Act 2009
- Criminal Procedure Regulations 2009
- Evidence (Recorded Evidence) Regulations 2004
- VPMP Interviews and statements

#### Application

Procedures and Guidelines are provided to support the interpretation and application of rules and responsibilities. They include recommended good practices and assessment tools to help employees make lawful, ethical and professional decisions. Employees should use the **Professional and ethical standards** to inform the decisions they make to support interpretation of Procedures and Guidelines.

Procedures and Guidelines are not mandatory requirements on their own. However, where rules and responsibilities state that employees must have regard to Procedures and Guidelines, the Procedures and Guidelines must be used to help make decisions in support of the rules.

These Procedures and Guidelines apply to:

- Operational members
- Work Unit Managers
- Sexual Offences and Child Abuse Unit (SOCAU)
- Sexual Offences and Child Abuse Investigation Teams (SOCIT)

#### Procedures and Guidelines

### 1. Purpose

Visual Audio Recorded Evidence (VARE) is used so vulnerable witnesses have better access to the Criminal Justice system and are able to provide evidence-in-chief without the pressure associated with giving evidence in an open court. VAREs also ensure that:

- the witness does not have to repeat their evidence to all of the professionals involved in the investigation
- statements comply with statutory and regulatory requirements
- a verbatim account is provided as close as possible to the time of the offence occurring.

## 2. Legislative requirements

- The *Criminal Procedure Act 2009* provides the prescribed framework for making, using, possessing, storing, accessing and destroying VARE. These Procedures and Guidelines address the requirements of the Regulations and provide additional procedural guidance.
- The *Criminal Procedure Act* allows the evidence-in-chief of a witness for the prosecution to be given wholly or partly in the form of an audio or audio-visual recording of the witness answering questions put to them by a prescribed person. In these circumstances, the witness must be a:
  - a person under the age of 18 years
  - and/or
  - person with a cognitive impairment, who has been the victim of, or witness to:
    - a sexual offence; or
    - an indictable offence which involves an assault on, or injury or a threat of injury to, a person (s.366).
- A prescribed person is:
  - a police member who has successfully completed the VP VARE Training Course and is able to conduct the interview
  - a person authorised in writing by the Chief Commissioner who has completed VP VARE training
  - 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;
  - if the questions are put to the witness in a Territory other than the Northern Territory, a member of the Australian Federal Police.

## 3. Factors in determining whether to take a VARE statement

The reasonableness of the decision to take a VARE statement can affect the admissibility of the VARE as evidence. Several factors to take into consideration when determining whether to take a VARE statement are as follows:

- a primary factor is the welfare of the witness and this includes the effects of the interview and any subsequent court process
- a VARE statement should not generally be taken where:
  - the witness refuses or objects to the recording of the statement

- the witness is under the age of 18 years and their parent/guardian objects to the use of the visual recording method (however, this can be overridden where the welfare of the child necessitates it and an appropriate independent person is present)
  - there is no prescribed person available and the circumstances of the case warrant an immediate statement
  - the age of the witness is such that they are likely to be over 18 at the time of the subsequent court hearing (unless they are an impaired person)
  - the prescribed person and the investigating member determine that the age and ability of the witness to give evidence is such that a written statement is more appropriate
  - the recording equipment is not functioning.
- the likelihood of capturing evidence which may otherwise become unavailable
  - seek advice from a supervisor or prescribed person as to the suitability of the person to have their statement recorded by VARE.

## 4. When to use a VARE

A VARE statement should be used to record the statements of children and persons with a cognitive impairment who are a witness in a sexual or physical offence.

### 4.1 *Circumstances Other Than Sexual and Physical Assault*

Section 366(1)(b), *Criminal Procedure Act* also allows the use of VARE in serious crime investigations other than sexual and physical assault, such as Coronial Inquests, Culpable Driving and Arson Causing Death. In these circumstances the witness must still comply with the VARE Witness Criteria (see section 2).

## 5. Persons present during VARE recording

### 5.1 *Investigating member*

- The investigating member (other than the prescribed person conducting the interview) should attend and monitor the VARE.
- The investigating member may perform the monitor role.

### 5.2 *Monitor*

The role of the monitor is to assist the prescribed person with the VARE process. For further details please refer to Section 10.

### 5.3 **Parent / guardian**

- A parent/guardian or independent person should be present when taking a statement from a child victim or witness. The following circumstances require that the parent/guardian or independent person is to be excluded:
  - the parent/guardian does not wish to be present or observe the interview
  - the witness may be reluctant to make a disclosure in the presence of a parent/guardian
  - the parent/guardian is a witness or otherwise involved in the investigation and observing and/or monitoring may impact on the investigation and/or future prosecutions.
- Where a parent or guardian is a witness, it is recommended that their statement is obtained prior to viewing the VARE interview.

### 5.4 **Joint investigations with Child Protection**

- When a case involves a joint investigation with the Department of Human Services - Child Protection, where practical a meeting should occur to ensure effective planning and management of the criminal and protective investigations.
- Child Protection should be present to view the VARE and take notes.
- The *Criminal Procedure Act* and the *Criminal Procedure Regulations 2009* do not allow Child Protection Workers to view a VARE recording once completed or ask questions during the recording of the VARE statement.

### 5.5 **Independent third persons and interpreters**

- A qualified Independent Third Person (ITP) is to be present in the interview room when a person with a cognitive impairment is being interviewed.
- The prescribed person is the only person who can ask questions of the witness during the VARE.
- Interpreters are to be obtained through one of Victoria Police's contracted interpreting services. For further details please refer to **VPMG Interviews with vulnerable persons**.

## 6. Conduct of the VARE statement

### 6.1 **Disclosure interviews**

- An initial disclosure interview should be considered prior to a VARE to provide information about the nature of the offence/s and assist to familiarise the witness with police and VARE processes. The principles of investigative interviewing should be applied. For further details please refer [SOCIT Project Practice Notes: Investigative Interviewing](#).

- Disclosure interviews should be accurately and fully recorded in writing by one member.

### **6.2 Investigating member**

Contact SOCIT as to the suitability of the witness to be interviewed and the availability of a prescribed person, interview site and equipment to conduct the statement.

### **6.3 Prescribed person**

- Has the final decision on whether to take a VARE statement.
- Must take the VARE statement according to the VARE Procedural Guidelines.
- The guide, 'VARE interview Checklist-Prescribed Person' can be accessed via VP Forms to assist the prescribed person during the interview.

## **7. VARE log**

- The purpose of a VARE log is to assist transcription by highlighting relevant non-verbal events and gestures during the interview and is required for the transcription office and the Victoria Police Archive Storage Centre (VPASC). The VARE log is to include:
  - date, time and locate of the VARE statement
  - time the recording was commenced and concluded
  - name, rank and registered number of the prescribed person
  - details of any other persons present in the VARE suite during the interview.
- A VARE log is to be completed by the monitor who is to record:
  - whether legislative and procedural requirements are complied with
  - that recording equipment functions correctly
  - identify offences and points out proof
  - clear disclosures
  - time/date of offence/s
  - identity of offender/s
  - reference to corroborative evidence
  - evidence of recent complaints
  - all relevant non-verbal communication.

A VARE log [Form 1242 and 1243] is to be completed and a copy attached to each master recording and working copy.

## **8. Interview requirements to be recorded on the VARE**

- In addition to any other requirement made under the *Criminal Procedure Act* the following must also be recorded:
  - date and place of the recording

- times the recording is started and stopped
  - identification of all persons present during any part of the recording
  - times and reasons for breaks.
- The full name of the witness or victim should be included in the VARE statement. Other personal details should only be included if they are directly relevant to the circumstances of the case.

## 9. VARE register

In accordance with the *Criminal Procedure Regulations* a VARE Register in the form of an electronic database is to be maintained at every SOCIT. Other locations are to use a hard copy VARE Register [Form 259] or station property books. The database is to include:

- the interview details
- subject details
- DVD/CD locations
- interviewing/investigating members
- other Persons present
- DVD/CD file movements.

## 10. After the VARE statement has been made

### 10.1 Prescribed person

- Deliver to the investigating member the:
  - working copy
  - interview log
  - Affidavit Re Accuracy of VARE Recording [Form 267].
- Within ten days of the recording being conducted:
  - forward the master recording and a copy of the interview log to VPASC
  - e-mail notification of forwarding the master recording to the VPASC.
- Record all details of the movement of the recording in the VARE Register.
- If recorded onto DVD/CD, store the master recording in a secure location at the SOCIT

### 10.2 Investigating member

- On receipt of the working copy, record the details in the CIU VARE Register or Property Book; notify the relevant SOCIT of appropriate numbers.
- Prepare a brief of evidence and submit it for checking and authorisation.
- Obtain a transcription of the statement; see section 7.

- Notify the accused or their legal practitioner that they may view the VARE statement. Use Notice to Accused of Notice of Opportunity to Listen To/View Recorded Evidence [Form 269].
- Give a copy of the transcript to the witness or their parent/guardian as soon as practicable.
- A copy of the transcript is to be personally served (s.368(1)(a), *Criminal Procedure Act*) on the accused or accused's legal practitioner at least 14 days prior to a contest mention or when a copy of the full brief is requested; whichever occurs first.
- Complete the Affidavit of Service of Transcript of Recorded Evidence [Form 268].
- If the brief of evidence is not authorised, send the working copy of the VARE DVD and a report to the relevant SOCIT Manager.

### 10.3 VARE packages

- The prescribed person (if not the investigating member) is to prepare a VARE package so the investigating member can continue the investigation. The VARE package is to include:
  - VARE working copy with viewing register in cover
  - Affidavit of Accuracy [Form 267]
  - blank affidavit of service of transcript [Form 268]
  - notice to accused of opportunity to listen to/view recorded evidence [Form 269]
  - original VARE log [Form 1242 and 1243].
- When forwarding VARE packages ensure the following:
  - deliver discreetly by hand
  - by DX service, endorsed courier or Australia Post
  - securely packaged in a single envelope/wrapped and marked SENSITIVE: PERSONAL, placed inside a secure plastic mailing bag
  - address and return address fully detailed
  - receipt not required but should be considered. For further details please refer to **VPMG Information use, handling and storage**.
- All VARE movements from a SOCIT must be recorded in the Tape/File movements section in the VARE register.

### 10.4 Work Unit Manager

- Secure and store the VARE working copy.
- Ensure the relevant VARE Register is completed.

### 10.5 **SOCIT Manager**

- Secure and store VARE statements.
- Check the VARE Register is completed and prescribed person's duties are completed.
- Ensure VARE consumables (e.g. discs and covers) are appropriately used, stored and destroyed as necessary.

## 11. Accessing and viewing the VARE statement

### 11.1 **Reviewing the VARE recording**

- The master recording and working copy should be reviewed by the relevant prescribed person as soon as practical to ensure:
  - the recording equipment has operated correctly
  - accuracy of the conversation.
- The relevant prescribed person is to complete the Affidavit RE of VARE Recording [Form 267] outlining if the DVD/CD was viewed/listened to in either its entirety or selected portions including the commencement and conclusion of the interview, as required under the *Criminal Procedure Act*.
- A copy of this affidavit is to accompany the VARE working copy to the investigating member for inclusion in the brief.
- A VARE coversheet should be completed and signed by the prescribed person reviewing the VARE.

### 11.2 **Release out of police custody**

VARE statements can only be released out of police custody:

- in accordance with the relevant legislation:
  - *Criminal Procedure Act* & Schedule 5, *Magistrates' Court Act* (charges filed before 01/01/10)
  - *Criminal Procedures Act* & Regulation 11, CP Regulations (charges filed on/after 01/01/10).
- when subpoenaed to a Court hearing (includes proceedings before the Family, Federal Circuit Court, Children's or Magistrates' Court). The police member producing the statement must:
  - obtain a receipt from the court registrar
  - arrange for return of the recording to police custody at the completion of the court case
  - record the movements in the Register
  - seek further advice from a SOCIT Manager, if necessary.



- In respect to production of VARES in other jurisdictions, seek advice from the Subpoena Management Unit.
- See **VPMP Information sharing** regarding responsibilities about record management and information release.

### 11.3 Authority to view VARE statements

A VARE statement can only be viewed in the following circumstances:

- Only police members directly involved in the investigation can view the VARE statement.
- Accused and their legal practitioner – if an accused and their legal practitioner wish to view the recording, the informant must make a recording or a copy available for viewing at the time and place agreed. Requests by defence counsel to view the statement with a psychologist are outside the scope of the regulations and should be denied.
- A suspect (who is unlike an ‘accused’ as defined in the *Criminal Procedure Act*) cannot view a VARE statement or be provided with a copy of the recording.
- Child Protection workers are authorised to view the recording of the statement at the time it is being conducted, but are not entitled to view the recording on any subsequent occasion. Also see **VPMG Protecting Children** for additional information for joint investigations with Child Protection.
- There is no legal provision for parents/guardians to view the VARE recording.

### 11.4 Viewing procedures

- The viewing of a VARE statement should occur at a police station to maintain safe custody of the recording. Where applicable, the viewing should also allow an accused and their legal practitioner to converse in private.
- Any person who is permitted to, and views the VARE statement (or a copy), must complete and sign the viewing register on the recording cover, including the reason for viewing.

## 12. Obtaining a VARE statement transcription

### 12.1 Legislation

The *Criminal Procedure Act* requires that for a VARE statement to be admissible as the witness’ evidence-in-chief, a transcript of statement must be served at least 14 days before the commencement of the hearing of the proceedings as follows:

- accused – personal service (s.391)
- accused's Legal practitioner – ordinary service (s.394)
- if a transcript of the VARE has been made, a copy of the transcript is to be provided to the witness or the parent/guardian of the witness as soon as possible
- Where a copy of the transcript has been served on an accused person, the transcript is to be accompanied by a completed Affidavit RE of VARE Recording Form 267
- The Affidavit of service of Transcript of Recorded Evidence [Form 268] is to be completed and retained in the investigation file
- A copy of the VARE recording will not be released to Child Protection unless required for court purposes, in which case Child Protection will be required to serve a subpoena.

## **12.2 Procedure**

- Obtain authority:
  - after charges have been laid and the brief has been authorised – from Senior Sergeant or above, or CIU or SOCIT Manager  
or
  - before charges have been laid – may be authorised if needed as part of a complicated investigation. Authority is as if charges have been laid, also complete a report justifying transcription.
- Forward to the Transcriptions Office:
  - working copy of VARE recording
  - interview log
  - blank disc, if applicable
  - Order for Transcription [Form 254].

## **12.3 Complex investigations**

- If the VARE recording forms part of a complicated investigation consideration should be given to transcribing the recording before initiating charges.
- Briefs forwarded to the Office of Public Prosecution (OPP) for advice are required to contain a transcript of the VARE.
- To obtain a transcript prior to charges being initiated a report detailing the need for the transcript, should be forwarded to the investigating member's OIC who will consider authorisation of the transcript.

### **12.4 Affidavit for committal proceedings**

If the transcript is required for committal proceedings, the person who asked the questions or made the recording must complete an Affidavit Re Accuracy of VARE Recording [Form 267].

## **13. Copying a VARE statement**

- Copies of a VARE recording can be made on the authority of the Manager of the relevant SOCIT unit.
- A record of authorisation is to be attached to the original VARE from which the copy is made.
- The SOCIT manager should record details of when the copy was made and the name and address of the person receiving it on the VARE register.

## **14. Custody and Storage**

VARE recordings are to be stored in a locked cabinet on police premises and used in a manner that preserves the privacy of the person making the statement.

- The prescribed person conducting a VARE should:
  - record DVD/CD details in the SOCIT VARE register
  - forward master recording and copy of log to the VPASC (DX 212296) within ten days
  - use a secure mailing bag
  - notify VPASC via email PBEA: VP ARCHIVE STORAGE CENTRE that the master recording has been forwarded.

## **15. Responsibilities regarding the brief of evidence**

### **15.1 Investigating member**

- Copies of the transcript have been:
  - served on the accused or legal practitioner
  - given to the witness or parent/guardian.
- Where applicable, the following have been included on the prosecutor's copy of the brief:
  - working copy of the VARE statement
  - copy of transcript
  - Affidavit RE Accuracy of VARE Recording Form 267
  - Affidavit of Service of Transcript of Recorded Evidence [Form 268]
  - Notice to Accused of Opportunity to Listen To/View Recorded Evidence [Form 269]
  - a statement from the prescribed person detailing the time, date and place of interview and the type of recording equipment used.

## 15.2 *Supervisor*

- View the VARE recording to make an accurate assessment of the prosecution case.
- Ensure the investigating member has complied with their responsibilities.

## 16. After the investigation or court proceedings

### 16.1 *Responsibilities of the investigating member*

- Once the investigation is complete the investigating member returns the working copy to the originating SOCIT with a report indicating the status and whether the VARE statement is to be destroyed or retained for some other purpose; include the reason for retention. For further details refer to **VPMG Sexual offence investigations**.
- close the VARE Register entry with the final movement.

### 16.2 *Accessing master recording after working copy has been destroyed*

Where the working copy of a recording has been destroyed and it is necessary to access the master recording from VPASC the investigating member or prescribed person is to:

- complete a Request Release of Master Recording VARE from VPASC
- contact the VPASC in advance and arrange for collection of the recording
- ensure details are recorded:
  - in the Register
  - on LEAP.

## 17. Destruction of VARE statements

### 17.1 *Legislation*

- The *Criminal Procedure Regulations* (r.12(1)) requires that the master recording of a VARE must be retained indefinitely.
- All other copies must be destroyed (r.12(2)) no later than 6 months after the latest of the:
  - Conclusion of the proceeding;
  - Expiry of any appeal period in relation to the charge; or
  - Conclusion of a proceeding of a kind referred to in section 374(2) of the *Criminal Procedure Act*.

### 17.2 *Responsibilities*

- Investigating member – is to return the working copy to the originating SOCIT for storage pending destruction once the investigation file is marked

complete. Attach a report indicating the current status of the investigation and whether the working copy is to be destroyed.

- SOCIT Manager – is to enquire if there are any pending matters arising from the SOCIT involvement, e.g. Child Protection involvement, Family Court issues, etc. VARE statements not needed for any other purpose are to be forwarded to VPASC with the Destruction/Retention of VARE Statement completed, indicating whether the working copy is to be destroyed.

### **17.3 Retention of VARE statement where a Warrant to Arrest has been issued**

- Retain master recording at VPASC until the warrant is executed.
- Forward working copy to VPASC for destruction.
- When the warrant is executed a new working copy will be made from the master recording; complete either Request Release of Master CD/DVD from SOCIT Unit [Form 1247] or Request Release of Master Disc VARE from records Disposal Unit [Form 1246].

## Further Advice and Information

For further advice and assistance regarding these Procedures and Guidelines, contact the local SOCIT Unit.

## Update history

Date of first issue	22/02/10	
Date updated	Summary of change	Force File number
15/03/11	Updates to include Criminal Procedure Act legislative change in respect to retention and release of VARE statements (Sections 6 and 11) and definition of prescribed person (Section 1)	057957/09
07/11/11	Amendment 1.7 outlining transcript to be served on the accused or accused legal practitioner at least 14 days prior to a contest mention	069212/1
02/07/12	Amendments include the new VARE Procedural Guidelines updating the process for the use of VARE as an investigative tool.	059599/09
18/11/13	References to redundant instruments following IMSSD review have been updated with corresponding new instruments.	069562/11
28/02/14	References to redundant instruments following IMSSD review have been updated with corresponding new	069562/11

## Victoria Police Manual - Guidelines – Visual audio recorded evidence

	instruments.	
01/07/14	Amendments referencing changes to interpreting services	FF 085268
19/01/15	Amendment to security classification under VARE packages and to custody and storage timeframe for forwarding master copy and log to VPSAC.	FF 089332