

# VARE PROCEDURAL GUIDELINES





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## 1 INTRODUCTION

### 1.1 History of VARE (now also referred to as a Division 5 recording)

In January 1995, in response to recommendations by the Victorian Law Reform Commission, Victoria Police commenced a pilot project involving the Video and Audio Taping of Evidence (VATE), from 'vulnerable witnesses'. In 1998, as a result of the pilot project, Victoria Police implemented the **Video & Audio Taped Evidence (VATE)** system state-wide.

In 2005, due to technological advances, several SOCA Units began recording statements with the use of digital technology (**Visual & Audio Recorded Evidence - VARE**). In 2010 all SOCIT offices were fitted out with VARE equipment.

With the introduction of the *Criminal Procedure Act 2009*, use of recorded evidence-in-chief of children and cognitively impaired witnesses in sexual offence and assault matters came under the control of that Act. The *Criminal Procedure Regulations 2009* refer to a VARE interview as a Division 5 recording because the provisions relating to VARE interviews are contained in Division 5 of Part 8.2 of the *Criminal Procedure Act 2009*.

### 1.2 Purpose of VARE

The purpose of VARE is to ensure that electronically recorded statements provide the following functions:

- to afford vulnerable witnesses better access to the Criminal Justice system.
- enable the witness' evidence-in-chief to be given to the court, without the pressure associated with the witness giving evidence-in-chief "viva voce"..
- the witness does not have to repeat their account of the evidence to various professionals involved in investigations.
- to produce statements that comply with statutory and regulatory requirements and rules of evidence to enable statements to be admissible in criminal proceedings.
- to provide a verbatim account as contemporaneously as possible to the incident.

## 2 CRITERIA FOR CONDUCTING A VARE INTERVIEW

Section 366 of the *Criminal Procedure Act 2009* provides the criteria which allows for VARE interviews to be admitted into evidence.

### 2.1 VARE Offence Criteria

#### **366 Application of this Division**

- (1) This Division applies to a criminal proceeding (other than a committal proceeding) that relates (wholly or partly) to a charge for—
- (a) a sexual offence; or
  - (b) an indictable offence which involves an assault on, or injury or a threat of injury to, a person.



## 2.2 VARE Witness Criteria

- (2) This Division applies to a witness in a criminal proceeding referred to in subsection (1) if the witness is—
- (a) a person under the age of 18 years; or
  - (b) a person with a cognitive impairment.<sup>1</sup>

## 2.3 Definitions.

<b>The Act:</b>	unless otherwise stated, any reference in these guidelines to 'the Act' means a reference to the <i>Criminal Procedure Act 2009</i> .
<b>The Regulations:</b>	unless otherwise stated, any reference in these guidelines to 'the regulations' means a reference to the <i>Criminal Procedure Regulations 2009</i> .
<b>Legal Proceeding:</b>	includes any civil, criminal or mixed proceeding and any inquiry in which evidence is or may be given before any court or person acting judicially. As provided by s 3 of the Act, in relation to the Magistrates' Court, includes a committal proceeding but does not include the exercise by the registrar of the Magistrates' Court of any jurisdiction, power or authority vested in the registrar as infringements registrar.
<b>Sexual Offence:</b>	means an offence under Subdivision (8A), (8B), (8C), 8(D), (8)E or (8)EAA of Division 1 of Part 1 of the <i>Crimes Act 1958</i> or under any corresponding previous enactment or an attempt to commit any such offence or an assault with intent to commit any such offence;
<b>Cognitive Impairment:</b>	as provided by s 3 of the <i>Criminal Procedure Act 2009</i> includes impairment because of mental illness, intellectual disability, dementia or brain injury;
<b>Division 5 recording (VARE):</b>	means an audio or audiovisual recording of a kind referred to in Division 5 of Part 8.2 of the Act.

## 2.4 VARE in Circumstances Other Than Sexual and Physical Assault

In relation to all statements, consideration is required as to the most appropriate format of the statement. The legislation allows the use of VARE in serious crime investigations other than sexual offences and physical assault, such as Coronial Inquests, Culpable Driving and Arson Causing Death. Such witnesses must still comply with the VARE Witness Criteria (see section 2.2).

The investigating member is to consult with a sub-officer, or prescribed person from the relevant SOCIT as to the suitability of the witness to have their statement recorded on VARE.

<sup>1</sup> *Criminal Procedure Act*, 366(2).





### 2.4.1 Circumstances when VARE statements are not to be conducted

A VARE statement should not generally be conducted in the following circumstances:

- the witness refuses or objects;
- the parent or guardian objects (see also section 2.4.2);
- the age and ability of the witness to give evidence is such that a written statement is more appropriate.

**Note:** This decision will be made in consultation between the prescribed person and the investigating member.

### 2.4.2 Circumstances when a VARE interview may be considered in the absence of parent/guardian consent:

There is currently no legislative requirement to obtain parental (or guardian) consent before conducting a VARE interview. In accordance with the Victoria Police Manual, members should seek consent unless the circumstances of the matter dictate that this is not appropriate. If parental consent is not possible or appropriate and the VARE is deemed necessary having regard to the interests of the child and the investigation, an independent person should be present during the process.

## 2.5 Admissibility of recorded evidence-in-chief (Witness Requirements)

### 368 Admissibility of recorded evidence in chief

- (1) Subject to subsection (3), a recording referred to in section 367 is admissible as evidence in a summary hearing, special hearing or trial in the proceeding as if its contents were the direct testimony of the witness if-
  - (a) a transcript of it was served personally on the accused in accordance with section 391, or on the legal practitioner representing the accused in accordance with section 394-
    - (i) in the case of a summary proceeding, at least 14 days before the contest mention hearing or, if a contest mention hearing is not held, the summary hearing;
    - (ii) in the case of a trial, at least 14 days before the day on which the trial is listed to commence or, if a special hearing is to be held, at least 14 days before that hearing; and
  - (b) the court is satisfied that the accused and the legal practitioner of the accused were given, in accordance with the regulations, a reasonable opportunity to listen to and, in the case of an audiovisual recording, view the recording; and
  - (c) at the summary hearing, special hearing or trial, the witness-
    - (i) identifies himself or herself and attests to the truthfulness of the contents of the recording; and
    - (ii) is available for cross-examination and re-examination.



- (2) The admissibility of a recording of the evidence of a person under the age of 18 years is not affected only because the person attains the age of 18 years before the evidence is presented in a proceeding.
- (3) The court may rule as inadmissible the whole or any part of the contents of a recording.<sup>2</sup>

**Note:** Victims and witnesses must not be told that the VARE statement will exclude them from giving evidence in court proceedings.

### 3 WHO CAN CONDUCT A VARE

#### 3.1 Who may ask questions?

##### 367 Use of recorded evidence-in-chief

A witness may give evidence-in-chief (wholly or partly) in the form of an audio or audiovisual recording of the witness answering questions put to him or her by a person prescribed by the regulations for the purposes of this section.<sup>3</sup>

##### 3.1.1 Who is a prescribed person?

###### Regulation 5 of the *Criminal Procedure Regulations 2009* provides

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.<sup>4</sup>

#### 3.2 Standard of dress

Prescribed persons conducting VARE statements should dress appropriately having regard to the circumstances of the matter including the witness' personal situation. This discretion should take into account a desire to minimise the authoritative role of the interviewer creating an environment more conducive to adducing a complete account from the witness.

<sup>2</sup> *Criminal Procedure Act (Vic) 2009* s 368.

<sup>3</sup> *Ibid* s 367.

<sup>4</sup> *Criminal Procedure Regulations (Vic) 2009* r 5.



## **4 PRE-VARE CONVERSATION**

### **4.1 Joint investigations with Department of Human Services (DHS)**

Child Protection and Police should where practicable meet to plan joint investigations. Joint planning ensures effective management of both the criminal and protective issues. The response should at all times take into account the interests of the witness and the collection and presentation of the best available evidence.

#### **4.1.1 Planning & Preparation**

DHS members should wherever possible be present to view the VARE interview. Planning with DHS may be conducted by phone or in person and should continue throughout the entire investigative process. During the planning stage consideration should be given to the possibility of conducting a VARE statement in the event of a disclosure.

The decision as to who leads the disclosure interview should be made after an assessment of the circumstances of each particular case. If a VARE is being considered, police should lead the interview.

#### **4.1.2 Disclosure Interview**

The disclosure interview should be considered to provide information about the nature and scope of the offence/s, details of likely police processes and familiarise the witness with the VARE process. During this conversation, the principles of investigative interviewing should be applied. For further details, please refer to the [SOCIT Project Practice Notes: Investigative Interviewing](#)

Disclosure interviews should be accurately and fully recorded in writing by one party and their accuracy attested to by both interviewers. There may be occasions where a disclosure interview is not required, for example where it is clear that the child has witnessed the relevant incident being investigated

## **5 VARE EQUIPMENT**

### **5.1 Checking VARE Equipment (also refer VARE Monitor Reference Guide)**

- camera angles:
  - main camera should be focussed on the subject only; and
  - there is no need to include the interviewer in the main screen
- secondary camera, should show overall room and all persons present;
- satisfactory lighting, quality of picture;
- clarity and level of audio (refer audio levels indicators);
- ensure time/date generator is accurate; and
- during the VARE, utilise the zoom function where required, to focus on writing, drawing, pointing or demonstrations by the witness.



**Note:** Where a portable VARE unit is utilised, the main camera focus should be on the subject only.

## **5.2 Support and Maintenance**

If you experience technical difficulties with VARE equipment call ADT for Support & Maintenance on 1300 737 282. This is a 24-hour number, however trained technicians are available between 0700hrs (EST) and 2300hrs (EST) Monday to Friday.

Additional information is located at: [Infrastructure and IT Department](#)

### **5.2.1 Officer in Charge SOCIT responsibilities**

The Officer in Charge (OIC) of the SOCIT shall maintain a register of the reported faults and maintain a record of the attendance of service technicians, ensuring an appropriate level of service is provided under current tender and contractual obligations.

## **6 VARE SUITE**

### **6.1 Arrangement of VARE suite**

Furniture should be kept to a minimum. Ensure that the VARE suite has all equipment that may be required during the interview, including white boards, paper and pens for the witness.

### **6.2 Familiarising witnesses with VARE equipment and procedure**

The extent and detail of this process will be a matter of judgment for the prescribed person taking into account the likely effect on the witness. The prescribed person should explain the VARE process in language and level of detail appropriate for the witness.

Witnesses should be shown the VARE suite to allow time to familiarise themselves with the environment.

## **7 VARE CONSUMABLES**

### **7.1 Supply of VARE Consumables**

The supply of DVDs and cases are a Regional responsibility.



### 7.1.1 DVD Specifications

The DVDs for use in VARE interviews are quite specific and must be of high quality:

- High Quality brand (such as Verbatim)
- DVD+R (**Not Re-writeable**)
- 16X Speed
- LightScribe

## 8 VARE Register

### 8.1 SOCIT VARE Register

A VARE Register, in the form of an electronic database **must** be maintained at every SOCIT, in order to comply with the relevant provisions of the Criminal Procedure Regulations. The database must include:

- the interview details; and
- subject details; and
- DVD locations; and
- interviewing/investigating members; and
- other persons present; and
- DVD/file movements.

**Note:** Locations other than SOCITs are to use a hard copy VARE Register (VP 259) **or** station property book.

#### 8.1.1 Working Copy

If a Working Copy is forwarded to an investigating member from a unit other than the SOCIT that conducted the VARE, this movement is to be recorded in that SOCIT's VARE Register.

On receipt the investigating member must record receipt of the Working Copy in the relevant VARE register/database or station property book and notify the originating SOCIT of the reference number.

The Officer in Charge of the receiving unit **must** ensure the Working Copy is kept in a secure cabinet and any movements are recorded in the hard copy applicable VARE Movement Register **and** LEAP/Interpose narrative.

### 8.2 Production of Working Copy at court

Although the recordings are labelled 'Master' and 'Working Copy' it is important to remember that both copies are made simultaneously and according to the *Evidence Act*, unless there is dispute about their authenticity, are to be treated the same. The **Working Copy** is the recording produced at Court.



Section 146 of the *Evidence Act 2008* provides

#### 146 Evidence produced by processes, machines and other devices

- (1) This section applies to a document or thing—
- (a) that is produced wholly or partly by a device or process; and
  - (b) that is tendered by a party who asserts that, in producing the document or thing, the device or process has produced a particular outcome.
- (2) If it is reasonably open to find that the device or process is one that, or is of a kind that, if properly used, ordinarily produces that outcome, it is presumed (unless evidence sufficient to raise doubt about the presumption is adduced) that, in producing the document or thing on the occasion in question, the device or process produced that outcome.

**Example** It would not be necessary to call evidence to prove that a photocopier normally produced complete copies of documents and that it was working properly when it was used to photocopy a particular document.<sup>5</sup>

## 9 VARE LOG

A VARE log (VP 1242 & 1243) **must** be completed and a copy attached to each Master Recording and Working Copy of a VARE.

### 9.1 Purpose and content of the VARE log

The main purpose of a VARE log is to **assist transcription** by highlighting relevant **non-verbal events and gestures** during the interview. This information is required for the Transcription Office and Records Disposal Unit (RDU). The 'event' section of the log may be used to record any significant events in the interview. The 'event' section is optional but if used, should be used in conjunction with the 'Monitor's Checklist'.

The log **must** include:

- date, time and location of the VARE statement;
- time the recording was commenced and concluded;
- name, rank and registered number of the prescribed person;
- details of any other person/s present in the VARE suite during the interview.

**Note:** The log is **not** a verbatim account of the VARE statement.

#### 9.1.1 Who is to complete the log?

It is recommended that a monitor completes the log during the VARE statement. If there is no monitor available at the time, then the prescribed person must complete the log at the conclusion of the VARE when reviewing the recording.

<sup>5</sup> *Evidence Act 2008* (Vic) s 146.



## 10 MONITORING VARE

### 10.1 Role of monitor

The role of the monitor is to assist the prescribed person with the VARE process. The monitor's responsibilities are to note:

- legislative and procedural requirements are complied with;
- recording equipment functions correctly;
- identify offences and points of proof;
- clear disclosures;
- time/date of offence/s;
- identity of offender/s;
- reference to corroborative evidence;
- evidence of recent complaint;
- all relevant non-verbal communication.

**Note:** A VARE Monitor Checklist (Help Guide) has been developed as a guide to ensure the is accessible on VP Forms – VARE forms has been developed as a guide to assist the Prescribed Person and ensure all appropriate areas are covered during the VARE process.

## 11 PERSONS PRESENT DURING VARE RECORDING

### 11.1 Investigating member

If the police investigator (other than the prescribed person conducting the VARE) has been assigned prior to the VARE commencing, they are to be contacted and encouraged to attend and monitor the VARE. The prescribed person should arrange a suitable time for the VARE having regard to the needs and availability of the witness and any other people associated with the investigation. The investigating member may perform the monitor role.

### 11.2 DHS Child Protection Workers

Child Protection Workers should wherever possible view the interview and take notes from the monitoring room. The relevant legislation does not allow a protective worker to ask questions during the VARE statement.

Questions put to the witness by child protection workers must be at the conclusion of the formal interview and separate to the VARE process. These questions should be fully documented to counter any claims of contamination by the later conversation with child protection workers.

There is currently no provision in the Criminal Procedure Act or Regulations to obtain permission from a parent/guardian to allow protective workers to view a VARE recording. This matter has been referred back to parliament for consideration. Refer to section 19 on transcriptions.





### 11.3 Children - Parent/Guardian or Independent Person

A parent/guardian or independent person **should** be present when taking a statement from a child victim or witness. Exceptions may arise where circumstances necessitate they be excluded from the process. Circumstances may include the following:

- 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 the parent/guardian;
- where the parent/guardian is a witness or otherwise involved in the investigation and observing and/or monitoring may adversely affect the investigation and/or any future prosecution;

In circumstances where it is appropriate for a parent/guardian to monitor the interview from the monitoring room, they may do so, although this is no requirement for this to occur.

If either the witness or the parent/guardian objects to this arrangement, they may be present in the interview room but must be informed that they can not ask questions of the witness or prompt any answers.

In circumstances where the parent/guardian does not wish to view the VARE process, or they are unable to continue viewing from the monitoring room, it is acceptable for the person to remain present elsewhere within the vicinity.

Where a parent or guardian is a witness, it is recommended that their statement is obtained prior to viewing the VARE interview.

As with any other case, parents/guardians should be advised not to discuss the specific details of an investigation or a witness' evidence, prior to court.

#### 11.3.1 Identifying the Lawful Guardian:

Contact DHS who will supply or verify details of the lawful guardian. The day-to-day caregiver is not necessarily the lawful guardian.

### 11.4 Persons with a Cognitive Impairment - Independent Third Persons

A qualified Independent Third Person (ITP) **must** be present in the interview room when a person with a cognitive impairment is interviewed. The prescribed person is the only person that can ask questions of the witness during the VARE.

**The role of the ITP is limited to:**

- facilitating communication;
- providing emotional support;
- ensuring the witness understands that their participation is voluntary.





The role of the ITP is to be explained to the witness prior to the commencement of the VARE. If the ITP believes that the witness is confused and does not understand a question, they should alert the prescribed person who will then address the confusion with the witness.

### 11.5 Interpreters

Interpreters must be sourced through the Victorian Interpreting & Translation Services (VITS) when required. **Phone: 03 9280 1988.**

## 12 INTERVIEW REQUIREMENTS

### 12.1 VARE Interview Checklist

To assist prescribed persons a VARE Interview Checklist – Prescribed Person (Help Guide) has been developed as a guide or memory prompt only. It is accessible on VP Forms – VARE forms. Prescribed persons may modify this checklist to suit individual style and needs, proving that the legislative requirements are adhered to.

### 12.2 Legislative Requirements to be recorded on a VARE

Regulation 6 provides:

**Information must 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
- (d) the times at which any break in questioning commenced and concluded and the reason for the break.<sup>6</sup>

**Note:** In most circumstances these requirements should be fulfilled in chronological order at the start of the recording. It is necessary to have some sense of formality to the VARE statement to equate it to actual evidence-in-chief.

#### 12.2.1 Exception to Legislative Requirements

There will be situations where the formality of the recording will need to be minimised. The regulation does not specify when these formalities must be recorded. The **prescribed person** may alter the timing of the formalities to suit the particular circumstances, if in their judgment it will assist the flow of the interview.

<sup>6</sup> *Criminal Procedure Regulations 2009* (Vic) r 6.



### 12.2.2 Witness address and personal details

Only the full name of the witness or victim should be included in a VARE statement. Other personal details should only be included if they are directly relevant to the circumstances of the case.

## 12.3 Competency requirement

A competency test is not a legislative requirement, however, it is considered necessary as a matter of practice.

### 12.3.1 Form of Competency Test

There is no specific format as to the wording of the competency test. It is however, accepted that the line of questioning needs to establish certain things, namely:

- That a witness understands the meaning of telling the truth and demonstrates this.
- That the witness understands the importance of telling the truth on this occasion.
- That they undertake to tell the truth on this occasion.

## 12.4 Administering competency test to children under 10 years and persons with a cognitive impairment

To establish competency of young children or cognitively impaired persons the above three points may need to be simplified. The following guide has been prepared as a result of research into investigative interviewing and this approach should be adopted to effectively administer the competency test to young children (10 years or under), or cognitively impaired persons:

1. During the rapport/developmental assessment stage, the interviewer should canvass the issue of competency.
2. Ask simple, concrete questions that refer to a child's experiences, and start with establishing the witnesses understanding of a lie.
3. Try to avoid abstract concepts such as:  
"What is the difference between truth and lies?" or  
"What is a truth?"
4. **Avoid** referring to yourself in the first person, such as "If I said..." The child may see you as a figure of authority if this line of questioning is used and may therefore provide an inaccurate response.

If you intend using this approach, pose the question in the third person.  
eg. "If someone said....."

### **The Truth**

5. An alternative to using 'the truth' is to ask 'what really happened' as this is more certain and an easier concept for a child to grasp.



6. If you have established that the child understands what a lie is make sure you follow that up with a demonstration that the child understands what it means to tell the truth. Again use an example rather than asking for a definition.

**Example 1:** *“If someone said that I was holding a bunch of flowers, would that be true or a lie?”*      Witness response....  
*“What am I holding (pen)?”*      Witness response....

**Remember:** you may need to experiment with the child's terminology.

**Do not** refer to colours in the example, as your interpretation of a particular colour may differ from that of a child's i.e. witness may be colour blind, or have different terms for varying shades of colour.

#### Follow up with the ‘Importance’ component

7. “Do you understand it's important to tell me only what really happened?”

#### The ‘Undertaking’

8. “It is very important today that we both talk about things that have really happened. Will you only tell me about things that have really happened?”

## 13 SUSPENDING VARE STATEMENTS

### 13.1 Breaks during VARE

Breaks should be taken when necessary. For example:

- the witness requires a break; or
- the interviewer needs to discuss the matter with people outside the interview room.

It is recommended that the VARE equipment continue recording during short breaks. If the recording continues during a break the prescribed person should inform the witness of this.

Whenever longer breaks are taken during the interview it is important not to break the continuity of the interview, however, if stopped, all persons involved in the interview should be seen to leave the interview room and turn off the tape via the stop or pause facility. Upon recommencement the time and the reason for the break should be explained.

#### 13.1.1 Discussions during break

No discussion regarding evidentiary matters should occur with the witness during breaks in the VARE recording. If discussion inadvertently occurs during breaks this must be **re-confirmed** on the VARE recording.



## 14 ACKNOWLEDGMENT

### 14.1 Administering an acknowledgment

All VARE interviews should contain a verbal acknowledgment whereby the witness attests to the truthfulness of the contents of the interview. Section 110 of the Act makes specific reference to statements to be included in hand-up briefs as follows:

#### 110 Contents of hand-up brief

A hand-up brief must contain -

...

- (f) if the committal proceeding relates (wholly or partly) to a charge for a sexual offence, a copy of every statement made by the complainant to any member of the police force that relates to the alleged offence and contains **an acknowledgment of its truthfulness**.<sup>7</sup>

When dealing with a witness who has limited understanding due to age or mental ability the form of the acknowledgment will need to be simplified. For example:

- We spoke earlier about the truth and telling lies, do you remember when we talked about that?
- What you told me today, is that what really happened?
- Tell me what you think would happen if someone told lies to the police in one of these talks/interviews?

### 14.2 Acknowledgment on transcript

A written acknowledgment should not be placed at the end of a VARE transcript. The VARE recording is the evidence and the transcript is only an aid.

## 15 REVIEWING VARE RECORDINGS

### 15.1 Purpose of review

Reviewing the VARE recording ensures:

- the recording equipment has been operated correctly, and
- the contents of the recording is an accurate record of the questions asked and the answers given during the interview.

<sup>7</sup> *Criminal Procedure Act 2009* (Vic) s 110(f).



### 15.1.1 Review by prescribed person

In all cases the 'Master' and 'Working' copy should be reviewed as soon as practicable to ensure the accuracy of the conversation and enable completion of the Affidavit of Accuracy.<sup>8</sup>

#### 113 Rules with respect to recordings

(1) A transcript of an audio or audiovisual recording of an examination under section 106 or of the evidence-in-chief of a witness under Division 5 of Part 8.2 must be accompanied by an affidavit sworn by the person who asked the questions, or made the recording, attesting to the accuracy of the recording.

(2) A person who acknowledges the contents of a recording referred to in subsection (1) that the person knows at the time to be false may be dealt with as if the contents of the recording had been evidence given in court

While the Act does not provide guidance for ensuring the accuracy of a recording, legal Advice provided by the VGSO<sup>9</sup> is as follows:

*Section 113 (2) implies that the person swearing an affidavit (the deponent) must take steps to ensure that he or she is not attesting to 'false information'.*

*The only certain way of ensuring the accuracy of a VARE (recording), would be to play back a recording in its entirety. However, if this is not possible or practicable, at a minimum, steps should be taken by the deponent to satisfy himself or herself of the accuracy of the VARE (recording).*

*Where full viewing of the recording/s are not deemed to be practical, as a minimum, the member is to play back the start and end of the VARE recording to ensure the accuracy of the voices and/or images of those present during the recording and "fast-forward" through the remainder of the recording to ensure it is accurate.*

*Full playback of a VARE recording is to be conducted when necessary, to ensure its accuracy. Ultimately, the member viewing or listening to the recording has to be satisfied to the best of his or her knowledge and belief that the recording is accurate.*

The VARE coversheet should also be completed and signed by the member reviewing the VARE at this time.

Further advice has been provided by the VGSO<sup>10</sup> in relation to section 113 (1) of the Act, as follows:

*Given that human error is inherent in the transcription process, where possible, a transcript of an audio or audiovisual recording of the examination should be checked against the recording by the member who asked the questions of the witness, as this is the only way to ensure the accuracy of the transcript.*

*However, while an accurate transcript is advisable, s.113 does not require an 'Affidavit of Accuracy' regarding the transcript. An 'Affidavit of Accuracy' is only required for the recording.*

<sup>8</sup> *Ibid* s 113.

<sup>9</sup> VGSO File Number 1229624

<sup>10</sup> *Ibid*



### 15.1.2 Viewed by other persons

Regulation 10 provides:

#### 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 VARE recording the informant or a person representing 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.<sup>11</sup>

**Note:** The above information **must** be included on the VARE coversheet.

### 15.2 Affidavit of accuracy

At the completion of the VARE interview and after reviewing the contents of the recording, the prescribed person **must** complete an affidavit confirming the accuracy of the recording.<sup>12</sup> A copy of this affidavit **must** accompany the Working copy to the investigating member for inclusion in the brief (VP 267).

## 16 VARE PACKAGES

### 16.1 Content of VARE Package

If the prescribed person is not the investigating member, the prescribed person is to prepare a VARE investigation package for forwarding to the investigating member which includes

- Working copy of the recording with viewing register in cover;
- Affidavit of Accuracy (VP 267);
- Blank affidavit of service of transcript (VP 268);
- Notice to accused of opportunity to listen to/view recorded evidence (VP 269);
- Original VARE Log (VP 1242 & 1243)

### 16.2 Delivering VARE Recordings

VARE recordings are classified as POLICE-IN-CONFIDENCE information. When forwarding VARE packages, the following procedures are to be followed<sup>13</sup>:

- Discreetly by hand, or
- By DX service (where appropriate), endorsed courier or Australia Post

<sup>11</sup> *Criminal Procedure Regulations 2009 (Vic)* r 10.

<sup>12</sup> *Criminal Procedure Act 2009 (Vic)* s 113(1)

<sup>13</sup> VPMG Security classified information





- Securely packaged in a single envelope/wrapping marked POLICE-IN-CONFIDENCE, placed inside a secure plastic mailing bag
- Address and return address fully detailed
- Receipt not required, but may be considered in certain circumstances

### 16.3 Recording movement in VARE Register

All VARE movements from a SOCIT must be recorded in the 'Tape/File Movements' section in the Computerised VARE Register.

## 17 SUBSEQUENT STATEMENTS

### 17.1 Need for subsequent statement

Situations may arise where subsequent/additional statements are required. These situations may include where the witness recalls further details of the offence, wishes to detail a new offence or more detail is required.

Additional statements may be taken in the same format (VARE or written) as preceding statements, depending on the circumstances and it may be advantageous to do so.

However, if the initial statement was taken by VARE and only minor details or amendments need to be added or made, it may be appropriate to take a subsequent statement in writing, instead of another VARE.

If in doubt about the appropriate method to utilise for subsequent statements seek advice from supervisors, OPP, VGSO, SOCIT Project or the Sexual Crimes Squad.

## 18 ACCUSED/LEGAL PRACTITIONER LEGISLATIVE RIGHTS

If a VARE recording is to be admissible at later proceedings the following legislative requirements must be adhered to.

### 18.1 Notice to Accused of Opportunity to View/Listen to Recorded Evidence

If a VARE recording is made the following **must** be complied with:

Regulation 9(1) provides

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.<sup>14</sup>

<sup>14</sup> *Criminal Procedure Regulations 2009 (Vic) r 9(1).*



**Note:** It is recommended that the Notice to Accused of Opportunity to Listen/View Recorded Evidence (VP 269) be served at the time the accused is charged.

### 18.1.1 Viewing by Accused and his/her legal practitioner

Regulation 9(2) provides:

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.<sup>15</sup>

To ensure safe custody of the recording this viewing should occur at a **police complex** and in a room allowing the accused and his/her legal practitioner to consult in privacy.

### 18.2 Viewing by other parties

Only police personnel directly involved in the investigation are permitted to view the VARE recording. The Regulations are clear that **only** the accused and his/her legal practitioner are permitted to view the recording. For example, requests by defence counsel to view the statement with a psychologist are outside the scope of the regulations and should be denied.

In the event that the parents/guardians request to view the VARE recording (not the interview), there is currently no legislative provision for this.

## 19 TRANSCRIBING VARE RECORDINGS

### 19.1 Legislative requirements

Where an accused has been charged or the matter is proceeding by way of summons and a brief of evidence is authorised, the VARE **must** be transcribed. A VARE recording is only admissible in a legal proceeding if a transcript of the recording is served personally on the accused or by post on his/her legal practitioner, at least 14 days before the commencement of the hearing.<sup>16</sup>

A transcript must be accompanied by an Affidavit of Accuracy (s113 C.P. Act)

The Affidavit of Service of Transcript of Recorded Evidence (VP 268) must be completed and retained in the investigation file.

### 19.2 Copy of a VARE transcript must be provided to the witness or to the parent / guardian of the witness.

Regulation 8 provides

If a transcript of a Division 5 (VARE) 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.<sup>17</sup>

<sup>15</sup> *Ibid* r 9(2).

<sup>16</sup> *Criminal Procedure Act 2009* (Vic) s 368(1).

<sup>17</sup> *Criminal Procedure Regulations 2009* (Vic) r 8.





### 19.2.1 Copy to Protective Worker

A VARE recording will not be released to DHS unless required for court purposes, and then DHS will be required to subpoena the VARE. Protective workers are encouraged to observe the VARE recording as part of the Child Protection Investigation when the VARE recording is being conducted. Parent/Guardian consent is not required in these circumstances.

If a suspect is charged, a transcript of the VARE will have been made. Where a Child Protection Worker demonstrates a need, Police will provide a copy of any transcript made for criminal proceedings

**Note:** For subpoena of VARE statements see section 26 of these guidelines.

### 19.3 Authorisation for transcription

If **not** an arrest matter, the brief must be authorised before a transcript is requested. Transcript request forms are to be authorised by a Senior Sergeant or above, or an officer in charge of CIU or SOCIT (VP 254).

#### 19.3.1 Complex investigations

If the recording forms part of a complicated investigation (i.e. multiple victims, offenders and offences) consideration will be given to transcribing the recording prior to initiating charges.

Briefs forwarded to the 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 necessity for the transcript should be authorised by the investigator's OIC.

### 19.4 Providing a transcript for civil matters, where a transcript has not previously been made

In matters where no charges have been laid and the matter has not proceeded to criminal court, a transcript of the recording will in most cases not have been made. If the matter later proceeds, via Civil or Crimes Compensation processes, a request may be made by the witness/parent/guardian for the transcript. Members are to advise the applicant that a written request from themselves or via their solicitor is to be forwarded to the OIC of the respective SOCIT.

**Note:** Any request for a transcription in these circumstances **must** contain an undertaking by the applicant to pay the costs associated with transcribing the statement.

### 19.5 Obtaining a transcript

A transcription of the recording **must** be arranged once a person is charged. **Do not** wait for the outcome of the mention hearing.



The investigator must provide the following documents to obtain a transcript:

- working copy of VARE recording;
- copy of VARE log;
- completed order for Transcription (VP 254);
- blank CD

**Documents are to be forwarded to:** Transcription Office  
Level 2/456 Lonsdale Street  
Melbourne  
DX 210301  
Phone: 03 8628 3295

**Note:** Investigators should allow at least 10 working days for the transcription to be completed.

## 20 BRIEF PREPARATION

### 20.1 Brief of Evidence

An authorised brief of evidence that contains a VARE recording **must** include the following:

- Transcript of VARE recording attached where the written statement would ordinarily be located;
- Affidavit of Accuracy (VP 267).

#### 20.1.1 Exhibit list

There is no requirement for the VARE recording to be listed as an exhibit as it takes the place of a written statement, and should instead be referred to in the witness list. The VARE transcript should not be listed as an exhibit as this is merely an aid to the evidence.

#### 20.1.2 Prescribed person statement

When an investigator is compiling a brief of evidence that contains a VARE recording, the prescribed person is to supply a statement detailing their involvement in the case.

This prescribed person statement **must** include the following:

- Qualification as a prescribed person; and
- Time, date, place of interview; and
- Persons present; and
- Type of equipment used; and
- Brief details of prior contact with the victim; and
- Completion of affidavit of accuracy.

**Note:** A Prescribed Person Statement Guide (Help Guide) is accessible at VP Forms – VARE Forms or via the SOCIT VARE database.



## 21 INVESTIGATIONS BY INTERSTATE POLICE INVOLVING VARE RECORDINGS

### 21.1 Interstate Statements

Statements relating to investigations being conducted by other law enforcement agencies should be conducted in consultation with the relevant agency, in accordance with their guidance and legislative requirements.

At the time of conducting the interview the prescribed person may be unaware that there will be a need for an interstate investigation. If it eventuates that there is a need to forward a VARE recording interstate the instructions outlined in section **21.1.1** apply.

**Note:** All requests from interstate police should be directed to State Intel Liaison.  
Phone: 03 9865 5119.

#### 21.1.1 Request by interstate police for VARE recording

If a VARE recording has been requested by interstate police, the prescribed person shall conduct the statement in the manner requested and forward the VARE (working copy) to the investigating police in a sealed grey bag as an Investigators Package. Refer section **16.1**.

The VARE register shall clearly indicate this transfer and a register number shall be obtained from the interstate police to cross-reference to the VARE register.

The interstate member must be informed of the requirement for safe custody of VARE, limits on copying and the requirement to return the VARE working copy to the originating SOCIT when the file is pending or completed.

Victoria Police will not supply transcripts. Interstate police will be responsible for arranging their own transcript of the VARE recording should they deem it necessary.

## 22 LOST VARE RECORDINGS

In the case of lost recordings, a detailed report is to be compiled by the appropriate member outlining the circumstances and enquiries made to locate the recording. This report must be forwarded to the OIC of the relevant SOCIT.



## 23 COPYING/EDITING VARE RECORDINGS

### 23.1 Authority required

Regulation 7(1) provides

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.<sup>18</sup>

This responsibility is delegated to the Officer in Charge of the respective SOCIT.<sup>19</sup> Any request to copy recordings must be forwarded to the relevant SOCIT OIC.

If the recording is required to be copied due to equipment malfunction, or a recording is damaged, a request outlining this situation is to be prepared for the OIC SOCIT for authorisation. A record of the authorisation must be attached to the original VARE from which the copy is made. The copied VARE must be endorsed with either 'copied from Master' or 'copied from Working', as applicable, on both the DVD and the cover sheet. In the case of a damaged/faulty DVD, that recording is to be stored with the master at RDU.

### 23.2 Once a copy is made (mandatory)

Regulation 7(2) provides

If a copy of a recording is made, the Chief Commissioner must record - .<sup>20</sup>

- (a) the date on which the copy is made, and
- (b) the name and address of the person to whom the copy is given.

This information is to be recorded on the rear of the master recording cover sheet. A notation of all copies is to be made on the VARE register.

#### 23.2.1 Edited copies

All edited versions should be made from the Working copy without altering the Working copy. Editing can be arranged through VPFSD Audio Visual Unit or the Office of Public Prosecutions. Edited copies must be stored as per other copies, see section 24.

### 23.3 VARE conducted with portable equipment

Where portable equipment has been used to conduct a VARE at a location other than a SOCIT, resulting in only one copy being produced, the above procedure (23.1) applies to generating a Working copy.

<sup>18</sup> *Criminal Procedure Regulations 2009 (Vic)* r 7(1).

<sup>19</sup> VPM Guidelines – Visual Audio Recorded Evidence s 8.

<sup>20</sup> *Ibid* reg 7(2).



## 24 STORAGE OF VARE RECORDINGS

The OIC of the Unit/Station is required to ensure that all recordings are stored so as to preserve, as far as possible the privacy of the person questioned, in a locked cabinet on Police premises when not in use.

### 24.1 Master recording

The prescribed person conducting a VARE shall:

- Record DVD details in the SOCIT VARE Register; and
- Forward Master and copy of log to the RDU (DX 212296) within 30 days; and
- Use a secure mailing bag; and
- Notify RDU via e-mail that the Master recording has been forwarded

**Note:** If the above instructions are not adhered to, the Manager RDU will report directly to the OIC of the relevant SOCIT.

#### 24.1.1 Confirmation to Records Disposal Unit (RDU)

Before sending the VARE 'Master' copy to RDU, an e-mail is to be forwarded to RDU PBEA: **RECORDS DISPOSAL UNIT** confirming that the Master/Working copy is being forwarded to the unit. RDU will confirm receipt of the VARE by return email.

### 24.2 Working Copy

In cases where the investigating member is based outside the originating VARE office, the working copy shall be forwarded to the member investigating the complaint and this movement recorded in the SOCIT VARE Database.

On receipt the investigator **must** record receipt of the Working copy of the VARE statement in the relevant VARE register/database or station property book and notify the relevant SOCIT of the reference number.

The respective Officer in Charge of the relevant unit **must** ensure the Working copy is kept in a secure cabinet and any movements are recorded in the hard copy VARE Movement Register (or CIU VARE Register (VP 259) or Station Property Book) **and** LEAP/Interpose narrative.

### 24.3 Warrant of Apprehension

If a Warrant of Apprehension is issued, the working copy will be destroyed after first allowing reasonable time for the investigating member to execute the warrant. Reasonable time should be given to locate the accused for execution of the warrant before the destruction process is initiated. 30 days from the date of issue would be reasonable time for the member to assess whether the warrant is likely to be executed.

Upon execution of the warrant, complete the Request Release of Master VARE from RDU (VP 1246) or Request Release of Master VARE from SOCIT (VP 1247). Obtain the Master

recording and request a copy be made by the OIC SOCIT. The new copy will then become the 'Working' copy and be marked accordingly.

## 25 DESTRUCTION OF VARE RECORDINGS

The primary legal source of Victoria Police's information security obligations is the **CLEDS Standards for Victoria Police Law Enforcement Data Security (2007)**.

All information created or received by Victoria Police employees during the course of their normal business, regardless of format, are defined as a public record under the **Public Records Act 1973** and as such must be stored, disposed of and/or destroyed in accordance with the Act.

This definition of a public record includes but is not limited to: briefs of evidence, patrol duty returns, incident reports, accident records, accountable documents, audio and video tape recordings, emails, electronic documents, information created and stored in electronic databases, watch-house records, penalty notices and other documents created in the course of duty (e.g. day books and diaries).

### 25.1 Brief of Evidence Authorised

#### 25.1.1 Master Recording:

According to the Victoria Police Retention & Disposal Schedule, Briefs of Evidence must be retained for **seven years** after resolution.

However, where a VARE forms part of a Brief of Evidence the Master Recording is to be retained indefinitely.

#### 25.1.2 Copies

Copies are to be treated as follows:

- (a) All **copies** of VARE recordings are to be destroyed within 6 months after the latest of;
- (b) conclusion of the proceeding; or
- (c) expiry of any appeal period in relation to the charge; or
- (d) conclusion of a proceeding of a kind referred to in section 374(2) of the Criminal Procedure Act 2009.<sup>21</sup>

**Note:** The OIC SOCIT is responsible for completing the request for destruction/retention (VP 1245).

<sup>21</sup> *Criminal Procedure Regulations 2009* (Vic) r 12(2).



## 25.2 Brief of Evidence Not Authorised or charges not issued

The destruction legislation does not apply in these cases, therefore the Master Recording will be kept indefinitely and the Working copy destroyed.<sup>22</sup> The current Victoria Police Retention and Disposal Schedule states: Briefs of Evidence where prosecution is not authorised are to be retained for 50 years (major crime) and 7 years (minor crime).

## 25.3 Completed Investigations

When the investigation file is marked complete, the working copy is to be returned to the originating SOCIT for storage pending destruction. The investigating member **must** attach a report indicating the current status of the investigation. The report **must** indicate whether the investigator has requested destruction of the Working Copy.

## 25.4 Destroying VARE recordings

All VARE recordings are to be destroyed by RDU. Working copies are to be forwarded to RDU with the – Destruction/Retention of VARE Statement completed by the OIC SOCIT, nominating the desired action. A notation to this effect **must** be entered on the VARE Register.

## 25.5 Accessing Master recording

If the Working copy has been destroyed and the Master recording is required, the investigating member or prescribed person requesting access must complete the RDU request witnessed by their OIC (VP 1246). A notation of this retrieval **must** be made on the VARE register.

## 25.6 Retention for other purposes

Prior to authorising a request for destruction, the OIC SOCIT must make enquiries to determine if there is a need to retain the VARE for any other purpose. Reasons may include:

- Matters pending at the Family Law Court.
- Ongoing DHS involvement.

## 26 SUBPOENA OF VARE RECORDINGS

### 26.1 Courts and Tribunals

Where VARE recordings are subpoenaed by a court or tribunal, the guiding principle is the best interests of the child and VARE recordings should be provided in compliance with the subpoena.

**Note:** If requests are received from other jurisdictions members are requested to contact the **Subpoena Management Unit 03 9247 3936**.

<sup>22</sup> *Ibid* r 12(1).



### 26.1.1 Producing a copy at court

In all circumstances the Working Copy will be produced at court hearings. The Master recording will be held at RDU unless required for editing purposes or specific requests from the court.

## 26.2 Considerations prior to producing VARE statements at court

When a prescribed person receives a subpoena they shall consider the following issues:

- is the matter still under investigation?
- does the investigating member still require the recording for any purpose?
- if played in the court/tribunal, will this hinder the police investigation?
- has the suspect been interviewed?
- is the recording likely to be needed in another judicial arena at the same time?

**Note:** In all circumstances consult a VARE qualified supervisor.

### 26.2.1 Matter still under investigation

If the matter is still under investigation and a subpoena is received to produce the VARE at court (eg. Family Law Court) the Subpoena Management Unit should be consulted about any potential unwanted consequences of playing the recording in an open court. Members should provide sufficient information for the Subpoena Management Unit to arrange legal representation to convey these concerns to the court to enable them to make an informed decision about whether the VARE is played.

Members should express to the Subpoena Management Unit that the *Regulations* have been designed with the privacy and protection of the witness in mind and any directions by the court should not in any way diminish this privacy and protection.

### 26.2.2 No need for police to retain VARE recording

If the police investigator does not require the statement and no other judicial arena requires the statement, it may be lodged with the Registrar. The Registrar is also to be provided with a sealable plastic grey bag for use when returning the VARE.

**Note:** The secure custody requirements and restrictions on copying the VARE recording must be explained to the Registrar.

Lodgement with the Registrar must be entered in the VARE Register.





### 26.3 Return of VARE recording

Arrangements **must** be made at the time of lodgement with the Registrar for return of the VARE recording via DX Mail or collection and for the OIC to be notified of the completion of the hearing by the Registrar.

### 26.4 Transcript considerations

If there is a transcript, this may be produced to the court if subpoenaed. If a transcript has not been made and the judicial officer or the judge makes an order for transcription it is to be completed by the Victoria Police Transcription Office. The court **must** provide an undertaking to pay transcription costs.

### 26.5 Subpoena process difficulties

If difficulties arise with producing the VARE recording as required under a subpoena or court order the Subpoena Management Unit should be consulted.

### 26.6 Victims of Crimes Assistance Tribunal (VOCAT)

When a request is received from VOCAT regarding a VARE it is imperative that the points outlined in [26](#) are considered. Complete the relevant sections of the VOCAT request and attach a copy of the Interpose narrative. If a transcript has been completed include a copy with a copy of the interview log. Indicate on the report that the VARE is available for viewing when required.

VOCAT may also subpoena the VARE recording. If a subpoena is received from VOCAT follow procedures outlined at section [26](#).

**Note:** Under no circumstances is the VARE or any copy to be handed directly to the victim.

## 27 MAINTAINING QUALIFICATION AS PRESCRIBED PERSON

### 27.1 Prescribed persons deemed not competent

The standard of competency required of prescribed persons to conduct a VARE statement is the responsibility of the respective SOCIT OIC.

If it is deemed that a prescribed person's performance is below the competency levels required, it is recommended that the OIC make contact with the SOCIT Project Training Team to identify appropriate training options for the member to regain the necessary competency level. The authority to conduct VARE recordings may be formally withdrawn by the OIC SOCIT Project Team, pending the member achieving the desired competency level.



## 28 VARE MANAGEMENT

If you have any questions, please contact:

**SOCIT Project Team**  
**Level 6/452 Flinders Street**  
**Melbourne 3000**

**Telephone:** (03) 9611 8800

**Facsimile:** (03) 9611 8818

**PBEA:** [SOCITPROJECT-MGR@police.vic.gov.au](mailto:SOCITPROJECT-MGR@police.vic.gov.au)