

Protections for certain witnesses giving evidence

Legal Aid NSW submission to the
Department of Justice

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Legal Aid 
NEW SOUTH WALES

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About Legal Aid NSW

The Legal Aid Commission of New South Wales (**Legal Aid NSW**) is an independent statutory body established under the Legal Aid Commission Act 1979 (NSW). We provide legal services across New South Wales through a state-wide network of 24 offices and 221 regular outreach locations, with a particular focus on the needs of people who are socially and economically disadvantaged.

We assist with legal problems through a comprehensive suite of services across criminal, family and civil law. Our services range from legal information, education, advice, minor assistance, dispute resolution and duty services, through to an extensive litigation practice. We work in partnership with private lawyers who receive funding from Legal Aid NSW to represent legally aided clients.

We also work in close partnership with LawAccess NSW, community legal centres, the Aboriginal Legal Service (NSW/ACT) Limited and pro bono legal services. Our community partnerships include 29 Women's Domestic Violence Court Advocacy Services.

Our Domestic Violence Unit, comprising lawyers and social workers, advises and assists victims of domestic and family

violence who have experienced serious threats or have complex needs.

The Criminal Law Division assists people charged with criminal offences appearing before the Local Court, Children's Court, District Court, Supreme Court, Court of Criminal Appeal and the High Court. The Criminal Law Division also provides advice and representation in specialist jurisdictions including the State Parole Authority, Drug Court and the Youth Drug and Alcohol Court.

The Children's Legal Service advises and represents children and young people under 18 involved in criminal cases and Apprehended Violence Order applications in the Children's Courts.

Legal Aid NSW welcomes the opportunity to make a submission in response to the Consultation Paper *Protections for certain witnesses in the criminal justice system*. Should you require any further information, please contact:

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Introduction

Legal Aid NSW welcomes the opportunity to comment on the proposals in the Department of Justice's Consultation Paper, *Protections for certain witnesses giving evidence*.

We agree with the Department's statement that the existing legislation providing protections for witnesses who are giving evidence is complex. Apart from the existing protections cited in the Paper, other relevant legislated supports for witnesses are found in the *Evidence (Audio and Audio Visual Links) Act 1998* (NSW) (**AVL Act**), the *Court Suppression and Non-Publication Orders Act 2010* (NSW) and Part IAD of the *Crimes Act 1914* (Cth).

Legal Aid NSW is concerned that further expansion of available supports for victims may add complexity to this already complex legislative landscape.

We believe that the primary purpose of protections for witnesses giving evidence should be to ensure that the witness gives the best quality evidence possible and that any available protections for witnesses should be balanced with the fundamental right of an accused to a fair trial.

At the outset, Legal Aid NSW suggests that consideration be given to a law reform approach that consolidates and simplifies the existing piecemeal approach to supports for witnesses in criminal proceedings. Such an approach could be modelled on that taken in the United Kingdom for vulnerable and intimidated witnesses, and have the following features:

- A range of protections for vulnerable witnesses available at the discretion of the court, with presumptions operating in favour of highly vulnerable witnesses, such as children, complainants in cases of sexual assault and witnesses with cognitive impairment.
- The court has a broad discretion to determine what protections will best support a vulnerable witness to give their evidence.
- Guidelines assist courts in the exercise of their discretion to ensure that the needs of witnesses are balanced with the interests of justice.¹

The UK legislation sets out the types of special measures that may be available including the use of screens, evidence via a live link, evidence given in private, removal of wigs and gowns, video recorded evidence, use of intermediaries and aids to communication. Special measures can be authorised for an eligible witness if the court considers that they will be likely to improve the quality of a witness's evidence.²

¹ Part II of the *Youth Justice and Criminal Evidence Act 1999* (UK)

² Under Part II of the *Youth Justice and Criminal Evidence Act 1999* (UK) some child witnesses are deemed to be in need of special protection (children giving evidence in sexual offence cases or in a case involving an offence of violence, abduction or neglect). In such cases, the court does not have to consider whether special measures will be likely to improve the quality of their evidence. Complainants of sexual offences are also automatically eligible for special measures.

The Victorian Law Reform Commission recommended a similar approach, where the criteria for eligibility should be the same for each special measure, so that eligibility for one measure means eligibility for all.³

Many of the proposals are directed at children giving evidence. We consider that all of those proposals should apply to all:

- children under 18 years, including child defendants and
- criminal, AVO and forensic procedure proceedings involving a child.

Our detailed comments on the Department's proposals follow.

Proposals 1 - 2 CCTV

Proposal 1

Amend the CPA so that a child who is 16 or 17 years of age is entitled to give evidence via CCTV or other alternative arrangements.

Legal Aid NSW supports this proposal. We suggest that CCTV be available to all children (that is, witnesses under the age of 18 years at the time they give evidence and defendants) in criminal proceedings for personal violence offences and associated AVO proceedings, and in proceedings under the *Crimes (Forensic Procedures) Act 2000* (NSW) (**Forensic Procedures Act**).

Legal Aid NSW notes that the use of CCTV is likely to cause some delay in proceedings, and agrees that the provision should be drafted to acknowledge that CCTV may not always be available, and to provide for alternative arrangements to be made available in such cases, such as the use of a screen or planned seating.

Proposal 2

Amend the CPA so that domestic violence complainants in criminal proceedings being dealt with on indictment are entitled to give evidence via CCTV or other alternative arrangements in some circumstances, at the discretion of the court.

Legal Aid NSW supports the proposal to provide a broad discretion to allow domestic violence complainants to give evidence by CCTV (or alternative arrangements) for offences being dealt with on indictment.

We do not agree with the statement in the Consultation Paper that currently, domestic violence complainants in criminal proceedings do not have access to CCTV or related alternative arrangements. The *Evidence (Audio and Audio Visual Links) Act 1998* (NSW) permits evidence to be taken via audio link or audio visual link, unless the court considers:

- the necessary facilities are unavailable or cannot reasonably be made available, or

³ Victoria Law Reform Commission *Victims of Crime in the Criminal Trial Process* (November 2016), [8.25].

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- the court is satisfied that the evidence or submission can more conveniently be given or made in the courtroom or other place at which the court is sitting, or
 - the court is satisfied that the direction would be unfair to any party to the proceeding, or
 - the court is satisfied that the person in respect of whom the direction is sought will not give evidence or make the submission.⁴

Should the proposal be implemented, Legal Aid NSW considers it preferable for the court to have a general discretion to order the use of CCTV, either on application by the prosecution or of its own motion. We do not support the alternative proposal to structure the court's discretion around certain criteria, such as those in place in Western Australia. It would set an unrealistically high bar, and require some evidence regarding the likely impact on the complainant if CCTV were not used. This would potentially re-traumatise an already vulnerable and distressed complainant. Instead, the court should also be able to inform itself, with no need for formal evidence, when exercising the discretion.

Proposals 3 – 6 Support persons

Proposal 3

Amend the CPA so that a child who is 16 or 17 years old is entitled to a support person in all criminal proceedings.

Legal Aid NSW supports this proposal on the basis that it extends to all children (that is, witnesses under the age of 18 years at the time they give evidence and defendants) in criminal proceedings, in AVO proceedings, and in proceedings under the Forensic Procedures Act. The rationale of allowing a support person to assist a child witness to give their best evidence, and to reduce any fear or stress associated with giving evidence, applies to all child witnesses, not only those called by the prosecution.

We suggest however that the choice of a support person should be subject to judicial oversight to ensure the accused's person's right to a fair trial is not affected (as provided for example in section 294C(4) of the *Criminal Procedure Act 1986* (NSW) (**CPA**).⁵ Consideration should also be given as to whether children themselves should be prohibited from being support persons (for example, as a support person for a younger sibling).

⁴ Section 5B(2).

⁵ Where a court can disallow the complainant's choice of support person in proceedings for a prescribed sexual offence if the choice of the witness is likely to prejudice the accused's person's right to a fair trial (for example, because the person chosen is a witness or a potential witness in the proceedings).

Proposal 4

Amend the CPA so that domestic violence complainants in all proceedings are entitled to have a support person present while giving evidence.

Legal Aid NSW supports this proposal. As with the previous proposal, we suggest the entitlement is subject to some form of judicial oversight, including on the basis of safeguarding the accused's right to a fair trial. Consideration should also be given as to practical and resource implications of a broad entitlement to a support person in all criminal proceedings. We do not share the Department's view that this proposal would not impact on court resources, given the significant volume of domestic violence proceedings dealt with in Local Courts in NSW. If a complainant wants a particular support person who is either not suitable or available, an adjournment may be required to effect their statutory right. This could impact on the current timeframes for conduct of domestic violence proceedings in the Local Court.

Proposal 5

Amend s294(7) of the CPA so that complainants and tendency witnesses in prescribed sexual offence proceedings are entitled to a support person who can provide assistance in the same way as a support person for other categories (as provided for in s 306ZK of the CPA).

Legal Aid NSW does not support this proposal.

We agree that the current provisions concerning available supports for sexual assault complainants and vulnerable witnesses is confusing and should be clarified. However, the current proposal confuses the roles of support persons and witness intermediaries, interpreters, or communication assistants for vulnerable witnesses.

The roles and underlying policy considerations behind the two statutory regimes are different: support persons for sexual assault complainants, whether they are a friend, parent or a trained sexual assault counsellor (for example) are not appointed by the court and are not independent officers of the court. Their duty is to the complainant. On the other hand, children and witnesses with a cognitive impairment are more likely to have communication difficulties when they give their evidence and may therefore require the assistance of an accredited witness intermediary⁶ or an interpreter.⁷

As outlined by the former Attorney General when the legislation for the Child Sexual Assault Evidence Pilot scheme was introduced, witness intermediaries are neutral and independent communication specialists who are appointed by the court and meet minimum prescribed qualifications.⁸

⁶ Appointed either under provisions to support the current Child Sexual Assault Evidence Pilot Part 29, Schedule 2, CPA or under section 275B of the CPA.

⁷ Appointed under section 306ZK(2)(b) of the CPA.

⁸ Hon Gabrielle Upton MP, Attorney General, Second Reading Speech *Criminal Procedure Amendment (Child Sexual Offence Evidence Pilot) Bill 2015* (22 October 2015).

We consider that it is vital that a distinct statutory role of a witness intermediary in NSW be maintained. To conflate their role with that of a support person would undermine their independence in the criminal trial process, and increase the risk of challenges to verdicts on the basis that a fair trial has been prejudiced by their partisan participation in the court process.

Legal Aid NSW would not oppose a narrower proposal to amend section 294C(7) of the CPA to extend the operation of section 306ZK to complainants in prescribed sexual assault proceedings who are also vulnerable persons.

Proposal 6

Amend the CPA to allow any prosecution witness in certain circumstances to have a support person in proceedings for a prescribed sexual offence where the prosecution has made an application.

Legal Aid NSW supports this proposal in principle but considers that it should be narrowed. As presently framed, the proposal would enable applications to be made for any prosecution witness, including police officers and expert witnesses, without any apparent justification. We suggest that the proposed presumption in favour of the appointment of a support person be removed. The application should be presumption neutral and supported by more targeted criteria than the proposed criteria of “necessary and appropriate.” Factors should include the objective of assisting the witness to give their best evidence and the interests of justice. We also consider that defence should also be entitled to apply for a support person.

Proposals 7 – 9 Closed Court

Proposal 7

Amend the Crimes (Domestic and Personal Violence) Act 2007 (C(DPV)A) to introduce a presumption for a closed court in all AVO proceedings when children aged 16 and 17 years are involved.

Legal Aid NSW supports this proposal but considers the presumption should extend to all criminal, AVO and forensic procedure proceedings involving a child defendant.

Provisions to enable closure of the court are presently only available for children for criminal proceedings in which a child is a party, or for child defendants in AVO proceedings.⁹ Contrary to the position outlined in Annexure A of the Consultation Paper, section 10 of the *Children’s (Criminal Proceedings) Act 1987* (NSW) (**CCPA**) does not apply to criminal proceedings involving adult defendants. Legal Aid NSW is aware of cases where a child witness has been called to give evidence in a prosecution against an adult. In such matters, there was no legislative basis for the court to rely on to close the court.

⁹ Section 10 of the *Children (Criminal Proceedings) Act 1987* (NSW) & section 41 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW).

On the basis of similar policy considerations that support closed court provisions, Legal Aid NSW submits that the CPA, the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) and the Forensic Procedures Act should also be amended to provide for non-publication orders in respect of the identity of any child, reflecting section 15A of the CCPA.

Proposal 8

Amend the CPA to introduce a presumption for a closed court when an adult witness with a cognitive impairment is giving evidence in all criminal proceedings and all AVO proceedings.

Legal Aid NSW does not oppose this proposal on the basis that it applies to defendants and defence witnesses.

Proposal 9

Amend the CPA to allow for a closed court when domestic violence complainants are giving evidence in criminal proceedings and AVO proceedings, at the discretion of the court (covering evidence given by playing a DVEC recording and oral evidence).

Legal Aid NSW supports this proposal. We agree that playing DVEC recordings in open court can be distressing for complainants. Due to the circumstances in which these recordings are made, they are likely to show the complainant in a highly distressed state. The proposal should not replace necessary training of police and prosecutors in how DVEC statements are most appropriately filmed, including with the informed consent of the complainant, and the role of the complainant's wishes in informing a decision that the DVEC recording will be played in place of oral evidence.

We also consider the proposal should extend to defence witnesses. There may be circumstances (for example, when the defendant is herself a victim of domestic violence) where the witness's ability to give their best evidence is adversely affected if given in public.

We do not support the suggested criteria to guide the court's discretion in determining applications for evidence to be given in camera. The proposed criteria sets an unrealistically high bar, and would require some evidence regarding the likely impact on the complainant if the court was not closed. Instead, we suggest that the court should be required to balance the principle of open justice with the need to protect witnesses from embarrassment and distress and the wishes and circumstances of the witness. The court should also be able to inform itself, with no need for formal evidence to be called, when exercising the discretion.

Proposals 10 – 12 Evidence in chief in form of a recording

Proposal 10

Amend the CPA so that a child who is 16 or 17 years is entitled to give evidence in chief in the form of a recording in all criminal proceedings and associated AVO proceedings.

Legal Aid NSW does not oppose this proposal on the basis that it proceeds with the same safeguards that apply to evidence given in accordance with sections 306U-306Z of the CPA. This includes provision that the recording only be used as evidence in chief where it has been prepared in the course of the investigation, and before charges have been laid against the accused.

On the basis of our experience in DVEC and child sexual offence prosecutions, we consider there will be resource implications should the proposal be implemented due to the need for editing of the recordings prior to their admission in evidence.

We acknowledge and support the intention of the proposal that the entitlement to give evidence in chief in the form of a recording is available for all witnesses under 18 years.

Proposal 11

Amend the CPA so all complainants in prescribed sexual offence proceedings are entitled to give evidence in chief in the form of a recording.

Legal Aid NSW does not support this proposal. The DVEC provisions address the specific context of domestic violence offending, where the ongoing use of coercion and control of a domestic violence victim can be used to prevent or undermine her willingness to give oral evidence in court. The circumstances of complainants in prescribed sexual assault proceedings that are not confined to domestic violence offending may be quite different.

We note that concerns have been raised about the use in Victoria of pre-recorded interviews as evidence for some adult complainants in light of the varied skill of police officers in leading evidence or eliciting relevant information varies: editing is often required of the existing audio-taped evidence that can be relied upon and generally, prosecuting counsel are best placed to examine in chief given determinations of relevance and admissibility.¹⁰ Due to these concerns, Victoria Legal Aid has recommended that improving police investigative interviewing, including through improved skills and training, would need to be prioritised if pre-recorded interviews were able to be used as evidence.

These concerns reflect Legal Aid NSW's experience with the use of DVEC recordings, which have given rise to significant practical challenges around showing the recording to the accused, the provision of transcript and editing of recordings to exclude inadmissible material. These are detailed in our comments provided to the Department in June 2106 concerning the evaluation of DVEC (an extract of which is provided at **Attachment 1**).

Should the proposal be implemented, there would be significant resource implications for Legal Aid NSW.

¹⁰ Victoria Legal Aid *Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse* (October 2016), 11.

Proposal 12

Amend the CPA so all tendency and/or coincidence witnesses in prescribed sexual offence proceedings are entitled to give evidence in chief in the form of a recording.

Legal Aid NSW does not support this proposal, for the reasons outlined in relation to proposal 11.

The circumstances of adult tenancy/or coincidence witnesses who are not vulnerable are not analogous to those of vulnerable witnesses and complainants in prosecutions for domestic violence offences.

Implementation of the proposal would have significant resource implications for Legal Aid NSW.

Proposals 13 – 16 Playing original evidence in subsequent proceedings

Proposal 13

Amend the CPA to allow a record of the original evidence of a tendency and / coincidence witness in prescribed sexual offence proceedings to be admissible as evidence in a subsequent trial or re-trial.

Legal Aid NSW supports this proposal. We suggest that the circumstances for the recording of the original evidence of a tendency and/or coincidence witness should reflect those that apply to the recording of the original evidence of a complainant in prescribed sexual offence proceedings in Part 5 of the CPA.

Proposal 14

Amend the CPA to allow a record of the original evidence of complainant in prescribed sexual offence proceedings to be admissible at any subsequent trial for a prescribed sexual offence where the complainant is called as a tendency and/or coincidence witness.

Legal Aid NSW does not support this proposal. It is fundamentally inconsistent with an accused's right to know the case against them, which is an integral element of a right to a fair trial. It also goes beyond the recommendations of the Royal Commission regarding the use of original evidence in retrials and subsequent trials of the same accused on the same charges.¹¹

We otherwise endorse the detailed submissions concerning this proposal made on behalf of the Public Defenders. Recent decisions of the High Court in *Hughes v The Queen* [2017] HCA 20 and *IMM v The Queen* (2016) 257 CLR 300 have facilitated the greater admission of tendency and coincidence evidence. In NSW, this trend has continued since those decisions.¹² As such, we consider the circumstances where the prosecution would seek to admit the evidence of a complainant as tendency and/or coincidence evidence for

¹¹ Royal Commission into Institutional Responses to Child Sexual Abuse *Criminal Justice Report Parts VII – X* Recommendation 56, page 96.

¹² See, for example, *Armstrong v R* [2017] NSWCCA 323.

another complainant in contexts other than joint trials are even less likely to arise in practice. Any reform in this area would, in any event, preferably await consideration of the current work of the Admissibility of Tendency and Coincidence Evidence Working Group and any decisions of the Council of Attorneys General that will flow from that work.

Should the proposal be progressed, some minimum safeguard of the accused's right to a fair trial would be required. This would include a right to recall the original complainant for further cross examination in the subsequent trial where the complainant is called as a tendency/coincidence evidence.

Proposal 15

Amend the CPA to allow a record of the original evidence of complainant in prescribed sexual offence proceedings to be admissible in any related criminal proceedings in which they are a complainant.

Legal Aid NSW does not support this proposal. It would enable evidence to be admitted regarding acts that have not been the subject of notice to an accused and therefore able to be tested by way of cross examination of a complainant and other witnesses in the proceedings in which the evidence was given. As such, it subverts the usual criminal trial process and the fundamental right of accused to procedural fairness and a fair trial.

In practice, evidence regarding uncharged acts is often given by a complainant and is not subject to cross examination. If the proposal were to proceed, a likely consequence would be that complainants would be subject to far more extensive cross examination about potential uncharged acts, to protect the potential future position of the accused and to ensure compliance with the rule of *Brown v Dunn*.¹³ Applications to recall a complainant for further cross examination would also become the norm, undermining the principle of finality of criminal proceedings.

To the extent that the proposal could be interpreted more narrowly to apply to related offences (and not uncharged acts that may be the subject of a charge at some future time), then we agree with the Public Defender that the amendment is unnecessary in light of section 166 of the CPA.

Proposal 16

Amend the CPA to allow a record of the original evidence of a witness who is a child under 18 or a cognitively impaired person in a prescribed sexual offence proceedings to be admissible as evidence in a subsequent trial or re-trial.

Legal Aid NSW supports this proposal. We suggest that the circumstances where recording of the original evidence of a tendency and/or coincidence witness should be

¹³(1893) 6 R 67. Under this rule of practice, if a witness gives evidence that is inconsistent with what the opposing party wants to lead in evidence, the opposing party should raise the contention with that witness during cross-examination. In general terms, the rule prevents a party from putting forward a case without first giving opposing witnesses the opportunity of responding to it. See, for example, *MWJ v The Queen* (2005) 80 ALJR 329.

same as those in Part 5 of the CPA that apply to the record of the original evidence of a complainant in prescribed sexual offence proceedings.

Proposals 17 – 20 Restricting witnesses who can be called at committal proceedings

Proposal 17

Amend the CPA so that sexual assault tendency and / or coincidence witnesses (defined by s 249D (2)) can only be directed to attend oral evidence at committal proceedings if the s 84 special reason test is satisfied.

Legal Aid NSW does not support this proposal. We consider that tendency and/or coincidence witnesses are already adequately protected by the substantial reasons test under section 82 of the CPA. In the experience of Legal Aid NSW, hearing oral evidence from a tendency and/or coincidence witness can assist an accused in making a decision to plead guilty to an offence. As such, limiting the availability of this group of witnesses from giving oral evidence at committal proceedings would be inconsistent with the objectives of the early appropriate guilty plea reforms.

Proposal 18

Amend the CPA so that children and adults with a cognitive impairment who witness an offence of violence can only be directed to give oral evidence at committal proceedings if the s 84 special reasons test is satisfied.

Legal Aid NSW does not support this proposal. The considerations applying to victims of violence are not the same as those applying to witnesses of violence.

We consider that children and adult witnesses with a cognitive impairment are already adequately protected by section 82 of the CPA. We also note that vulnerable witnesses (children under the age of 16 years and people with a cognitive impairment) giving evidence about an offence of violence are entitled to the additional supports available under Part 6 of the CPA.

Proposal 19

Amend the CPA to:

- *include Commonwealth offences that fall within the types of offences set out in section 84 to ensure a direction for a complainant to attend to give oral evidence is subject to the special reasons test; and*
- *to ensure that particularly vulnerable complainants of Commonwealth offences falling into the types of offences set out in section 83 cannot be directed to attend to give evidence.*

Legal Aid NSW does not oppose this proposal and seeks to be consulted on the draft list of Commonwealth offences to be included in sections 83 and 84 of the CPA.

Proposal 20

Amend the CPA so that the special reasons test under section 84 of the CPA applies to cross-examining a victims of an offence involving violence about additional matters.

Legal Aid NSW does not support this proposal. We consider that witnesses in the circumstances described in the Consultation Paper are adequately protected by the substantial reasons test in section 84(4) of the CPA.

Proposal 21 Creating a child friendly environment

Amend the CPA to specifically allow a discretion to conduct proceedings in a more child friendly environment when a child is giving evidence in criminal proceedings.

Legal Aid NSW supports this proposal in principle and we suggest that further consultation be conducted on the details of the amendments. We consider the discretion should be subject to an overriding interests of justice test.

Appendix 1 Legal Aid NSW's experience with DVEC statements (June 2016)

Access to DVEC video statements

Unless police show the DVEC recording in the course of a formal police interview (ERISP), clients do not have an opportunity to view a DVEC statement early in the proceedings. Notwithstanding the requirements in section 289M (3) of the *Criminal Procedure Act 1986* (NSW) (CPA) we are not aware of any other realistic opportunity for our clients to view the DVEC video recording before the first mention date.

People charged with domestic violence offences are typically refused bail. For clients who are in custody it is wholly impracticable for local court duty lawyers to view the DVEC video recording at the first appearance. While an adjournment may be sought to allow a client to view the recording, in reality Magistrates will want to set an expedited hearing date, and an accused is unlikely to object if bail is refused.

In our experience the DVEC video recording is not served on our offices until a plea of not guilty has been made. The requirement in section 289L(2) of the CPA is generally overlooked by police. We also note that section 289L(2) does not specify the type of recording that should be served, and the definition in section 289C suggests that it could be either an audio or video recording. We suggest that the legislation be amended to require a video and audio recording be served after proceedings commenced. It is essential that the video recording is used to take instructions from an accused.

Access to audio copy of DVEC statement

Clients who are in custody do not have access to the DVEC audio statement provided by the police because it is placed in their property at the police station or the remand centre.

Clients who are on bail usually do not remember to bring the audio copy to court so that they can listen to it with the duty lawyer. There are also practical challenges to listening to an audio statement at the first appearance.

Challenges for vulnerable defendants who are custody

Unrepresented defendants who are in custody have almost no ability to view the DVEC video recording until the hearing date. This affects their opportunity to enter an early guilty plea and prejudices their ability to prepare for the hearing.

For represented defendants who are in custody there are considerable challenges in viewing a DVEC video statement. Taking a disc and laptop into a prison requires additional permission from the Correctional Centre. Many Legal Aid NSW laptops do not have disc drives. Legal Aid NSW suggests that USB flash drives might be used to provide recorded statements to defendants.

Impact on court proceedings

Cross examination of the basis of a DVEC recording may be protracted as the video has to be re-wound to return to a disputed statement. There are also practical difficulties over the editing of recordings to remove inadmissible evidence.