

Investigative interviewing witness guide

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Policy statement and principles

What

Investigative interviewing affects people's perceptions of the criminal justice system. People will not come forward if they have no confidence in the quality of investigators' interviewing techniques, particularly witnesses. This chapter is focused on informing investigators' understanding of:

- interviewing techniques for witnesses
- evidential and legislative requirements
- making Police video records of witness interviews
- showing and giving access to Police video records of witness interviews
- powers and duties as maker of Police video records witness interviews.

Why

Poor interviewing is of no value to anyone; it is a waste of time, resources and money resulting in inadequate justice for children and victims. Hence, the need to apply competent and professional interviews of witnesses.

How

Police will:

- be flexible and use techniques depending on the interviewee, situation and circumstance
- if there is more than one witness to an incident take care to minimise the risk of memory contamination between witnesses
- if a witness becomes a suspect during interview, adopt procedures for interviewing suspects including cautioning the person and visually recording the interview.
- utilise three interview models for interviewing witnesses:
 - free recall for cooperative interviewees
 - conversation management for reluctant interviewees
 - enhanced cognitive interviewing: builds on free recall using advanced techniques to assist cooperative interviewees
- change the interviewing technique when witnesses move from being cooperative to uncooperative and vice versa during interviews and revert to the free recall model where possible
- plan and prepare for interviews, no matter what type of interview is being considered, noting the 5 phases of interviewing; planning and preparation, engage and explain, account, closure and evaluation
- in decision making relating to interviews, consider the witness's well-being and investigative needs
- consider having a support person present at an interview to support a witness if it is in the interests of the witness and the person is an appropriate person to support the witness.
- comply with the requirements detailed in the [Evidence \(Video Records and Very Young Children's Evidence\) Regulations 2023](#) - see [Annex 1](#) in this chapter
- apply the 'Prevention First' national operating model with interviewing witnesses to reduce harm caused by criminal activity and promoting safer communities.

Overview

Purpose

This chapter provides guidelines for:

- interviewing witnesses, including reluctant or difficult witnesses, using the five stages of the PEACE interviewing framework:
 - planning and preparation
 - engage and explain
 - account
 - closure
 - evaluation
- identifying witnesses requiring special consideration (see 'Investigative interviewing of witnesses requiring special consideration' for the procedures to be followed)
- deciding when specialist interviewers are required
- using [support persons](#)
- the [storage and transcription](#) of Police video records
- [applications for alternative ways of giving evidence](#)
- legislative requirements detailed in the Evidence ([Video Records and Very Young Children's Evidence](#)) Regulations 2023 - see [Annex 1](#) in this chapter.

It is designed to support interviewers at all levels of the Investigative Interviewing Standards and Training framework.

What is the purpose of interviewing witnesses?

The purpose of interviewing witnesses is to elicit the witness's complete accurate reliable account of the alleged event(s) and any other information that would assist the investigation.

Guidelines are not prescriptive

Every witness is different. The guidelines are not a prescriptive format that must be rigidly followed, nor should they imply that all other techniques are unacceptable. You should be flexible, using techniques as and when you see fit depending on the interviewee, situation and circumstance.

Merely following the guidelines will not make a good interview or interviewer. Interviewing is a skilled task requiring training, practice and judgement. As the interviewer, you may decide that in the interests of justice or to promote the witness's well-being the interview requires procedures different to those described.

Any decisions of this kind should be made in consultation with your supervisor and, where appropriate, the prosecuting agency.

Who is a witness?

Witnesses are people who have information about an alleged offence or offender. They may be an eyewitness, present at the event, or someone who can only provide peripheral information. The term includes victims as defined by section [4](#) Victims' Rights Act 2002.

In these guidelines, the term 'witness'...

includes...	does not include...
victims - - a person against whom an offence is committed by another person - a person who, through, or by means of, an offence committed by another person, suffers physical injury, or loss of, or damage to, property (s4 'victims' (a)(i) and (ii) Victim Rights Act 2002)	suspects Special provisions for dealing with suspects are detailed in the Investigative interviewing suspect guide .

Multiple witnesses

If there is more than one witness to an incident take care to minimise the risk of memory contamination between witnesses by:

- separating them as soon as is practical and interviewing them individually
- if the interview is delayed, consider asking them not to discuss the incident with others involved and explain why, i.e. the potential for post-event information to contaminate memory. Note that a more flexible approach is required with witnesses who may be stressed by the incident as discussing it with others may help therapeutically.

Witnesses who become suspects

If during the interview there is sufficient evidence to charge the person with an offence, then the person needs to be cautioned and the procedures for interviewing suspects referred to.

Related information

See also these related Police Manual chapters:

- '[Hate crimes and hate incidents investigations](#)' chapter for information about recognising, recording and dealing appropriately with **hate crime**, **hate incidents** and **hate speech** within the context of scene attendance, investigations, applying proportionality and using discretion
- [Investigative interviewing of witnesses requiring special consideration](#)
- [Investigative interviewing suspect guide](#)
- [Specialist Child Witness Interview Guide](#)
- [Investigative interviewing accreditation policy](#)
- [Notebooks and job sheets](#)
- Investigative interviewing doctrine (a document for training):

[Investigative interviewing doctrine - PI from November 2015.pdf](#)

625 KB

Other information on investigative interviewing can be found on the [Investigations and intelligence](#) page.

Feedback or advice

Email any feedback, comments or queries to:

investigative.interviewing.unit@police.govt.nz

Forms

All investigative interviewing forms are located on 'Police Forms' under 'Investigative Interviewing'.

Health and safety duties

The Police Commissioner and Police Executive as Officers of the 'persons conducting a business or undertaking' (PCBU) under section 36 of the [Health and Safety at Work Act 2015](#) must ensure so far as is reasonably practicable the health and safety of Police employees in the workplace and those whose activities are influenced or directed by the PCBU while carrying out the work. They must also ensure that the health and safety of other persons (e.g. the public) is not put at risk from investigation work carried out by Police, including where interviewing witnesses, so far as is reasonably practicable.

A key enabler is the application of the [TENR-Operational threat assessment](#) in the workplace.

Interviewing principles and framework

Ten principles of investigative interviewing

Ten principles provide an authoritative guide to ethical interviewing. Approach all interviews with these principles in mind and use them to actively examine your own attitudes and behaviours.

1	Interviewing is at the heart of investigation.
2	The aim of an interview is to discover the truth.
3	Information must be complete, accurate and reliable.
4	Keep an open mind.
5	Act fairly.
6	Questioning can be persistent.
7	Some witnesses require special consideration .
8	Suspects must be interviewed in accordance with the law.
9	Special care must be taken to identify suspects requiring special consideration.
10	Be sensitive to cultural background and religious beliefs.

PEACE interviewing framework

Conduct witness interviews using the PEACE interviewing framework.

Step	Action
1	Planning and preparation: Review available information and establish interview aims and objectives.
2	Engage and explain: Develop rapport and explain interview processes and procedures.
3	Account: Using an appropriate interview model gain an account of events and probe the account for more information.
4	Closure: Conclude the interview and address any concerns.
5	Evaluation: Evaluate how the information obtained impacts on the investigation and also evaluate the performance of the interviewer.

Interview models

These [three interview models](#) are used within the PEACE framework:

- **Free recall:** encourages cooperative interviewees to give their own account of what happened in their own time and without interruptions.
- **Conversation management:** enables the interviewer to control the interview and elicit as much information as possible from a

reluctant interviewee.

- **Enhanced cognitive interviewing**: builds on free recall using advanced techniques to assist a cooperative interviewee to recall as much high quality information as possible.

Planning and preparing for interviews

Planning and preparation is one of the most important phases in effective interviewing. Always plan and prepare, no matter what type of interview is being considered, to ensure you are ready to conduct an effective and ethical interview.

What should be covered when planning and preparing for an interview?

Step	Action
1	Consider: <ul style="list-style-type: none">- interview aims and objectives- investigatively important topics- witness profile: identity factors and current state- legal requirements- interview structure- contingencies for interviewee reaction- practical arrangements, including whether or not the interview should be delayed because the witness requires special consideration.
2	Decide if the witness requires special consideration and if they do what initial action you should take.
3	Complete a written interview plan where possible.

It is paramount you consider the witness' well-being and investigative needs in this decision making.

Witnesses requiring special consideration

A witness requires special consideration when additional measures are needed at interview to maximise communication to allow them to provide an accurate account due to their personal characteristics or the circumstances of the offending.

Examples of witnesses who may require special consideration when being interviewed include:

- children
- the elderly
- intoxicated witnesses
- traumatised victims
- witnesses with intellectual disability or mental health conditions
- victims of family violence and sexual assault
- witnesses with communication difficulties, or with English as a second language.

'[Investigative interviewing - witnesses requiring special consideration](#)' outlines factors to consider and how standard interviewing practices might be varied to cater for witnesses requiring special consideration'

Timing of the interview

As a general rule the interview should be conducted as early as possible for both investigative purposes and to minimise the risk of memory contamination and forgetting.

Consider the following when deciding when to interview a witness:

- **investigative factors** - what are the needs of the investigation? How quickly do we need the information?
- **interviewee factors** - what are the needs of the interviewee? Would the interviewee benefit from delaying the interview? Involve the interviewee in the decision.
- **memory factors** - the longer the delay in conducting interview, the greater the room for potential memory contamination and forgetting.

If a witness is showing signs of trauma consider delaying the interview. Check with the witness as to their preference - some may want

to be interviewed straight away. Also remember some witnesses, e.g. family violence victims, may be more forthcoming with information if interviewed immediately. In some cases it is important to interview the witness as near to the event as reasonable so the investigation can be completed with urgency.

Should the interview be delayed?

In some cases (e.g. when the witness is intoxicated, tired or traumatised) you may need to delay the interview until the witness is in a state suitable for interview and you are fully prepared. You want to gain as much accurate information from them as possible.

Ensure you get their full details and any information required for initial action if you believe it would be advantageous to delay the interview.

Preparing the interview location

- Consider the best and most appropriate location to conduct the interview.
- A quiet room that is free from distractions and interruptions allowing both you and the witness to concentrate is an ideal setting.
- Consider where the witness may prefer to be interviewed. It may be appropriate to ask them their preference.
- Set up the interview room and arrange the seating - ten to two is the preferred position.
- Check equipment.
- Make sure you have any required communication aids ready - including pen and paper for drawing sketch plans.
- Consider implications if a [support person](#) or interpreter is required.
- Provide refreshments and tissues where appropriate.

Engage and explain

Preparing the witness for interview

First impressions count, so the opening phase of the interview often determines the success of the interview as a whole. The engage and explain interview phase may be immediately before the interview or on a separate occasion depending on the circumstances of the case. It can also take place in person or over the telephone.

Engage the witness

Establish rapport to put the witness at ease and allow for maximum recall by:

- introducing yourself and any others present
- asking the witness what they would like to be called
- asking when is a suitable time for interview, e.g., do they have any pressing needs or commitments?
- personalising the interview, i.e. treat the witness as an individual and talk to them in a manner and language they understand
- discussing neutral topics
- communicating empathy, i.e., addressing any concerns about events, the interview and the investigation.

Maintain impartiality to establish the foundation for a relationship of trust by:

- keeping an open mind, i.e., don't pre-judge the witness
- using open questions and not interrupting - begin with **TEDS** style questions to encourage the witness to start talking
- actively listening.

Explain interview procedures

Explain interview procedures including:

- reason(s) for the interview - do this in a way that makes the interview's purpose clear but does not specify the nature of the offence
- routine(s) that will be adopted - note taking and method of recording
- the interview structure - tell them they will be asked for their account and then you may ask questions to clarify their information

Account

Identifying a suitable interview model

Different techniques can be used to help witnesses provide a full account of events. The techniques used will depend on your interviewing skills and the witness's level of cooperation.

Use this table to help identify the most suitable model.

Model	Interviewee	Incident	Interviewer
Free recall	Cooperative (including witnesses requiring special consideration)	All	Free recall trained
Conversation management	Difficult to interview or reluctant (including witnesses requiring special consideration)	All	Conversation management trained
Enhanced cognitive interviewing	Cooperative	Serious or complex	Enhanced cognitive interviewing trained

Changing models during interview

Witnesses can move from being cooperative to uncooperative and vice versa during interviews and you may need to change your interviewing technique as a result. Revert to free recall model where possible.

Using the free recall model

The phases and steps of the free recall model are fully explained and practiced within interview training at Level 1 and Level 2. This table details the steps that should be completed when using the free recall model.

Interview stage	Actions
Set the scene and initiate free report	<ul style="list-style-type: none"> - Initiate a free report by using an open TEDS type question. Ask the witness to give an account of everything they know about the matter under investigation. - Allow for pauses and do not interrupt the witness. Actively listen using minimal prompts that do not go beyond the witness's account. - Reflect back what was said where necessary. - Take notes of areas you wish to obtain more information about. - If appropriate, get the witness to draw a sketch plan. If more detail is required go through another free report.
Identify and expand witness topics	<ul style="list-style-type: none"> - Break down the witness's account into manageable relevant topics. - Systematically expand each topic of the witness's account by obtaining a free report with open TEDS type questions. When open questions are no longer fruitful use probing 5Wh + How type questions if necessary. - Try to go through the topics in the order the witness gave them in their initial free report. - Take notes of what is said to aid your memory when preparing a formal statement. - Repeat this process until you have covered all topics.
Identify and expand investigatively important topics	<ul style="list-style-type: none"> - Introduce investigatively important topics not yet covered. - Systematically expand each topic of the witness's account by obtaining a free report with open TEDS type questions. When open questions are no longer fruitful use probing 5Wh + How type questions if necessary. - Repeat this process until you have covered all investigatively important topics.
Summary	<ul style="list-style-type: none"> - After the witness has provided all their information, summarise back what they have told you in their own words to ensure you have understood them correctly.
Closure	<ul style="list-style-type: none"> - Ensure the witness dates and endorses any sketch plans or notes they have made as they may be referred to later and used in court.

Free recall questioning style

Whether or not your witness requires [special consideration](#), you should use these interviewing techniques to minimise the risk of influencing what the witness says.

Do...	Explanation /example
Keep questions short and simple	The younger or more vulnerable the person, the shorter and more simply phrased the questions need to be.
Ask questions in a language and manner the person understands	i.e., open TEDS type questions in simple language are the best for the majority of interviewees.
<ul style="list-style-type: none"> - Move to more specific closed questions using 5WH's + How when open questions are no longer fruitful and more detail is required - Begin with the least explicit version of the closed question 	<ul style="list-style-type: none"> - The drawback of using specific closed questions is that the witness might respond with a choice without elaborating or be tempted to guess to assist or please you in the absence of a genuine memory. Thus, the quality of the information gleaned tends to be poorer than information gained from open TEDS type questions. - Why questions should be couched in an empathetic way. Why questions can gain valuable information for an investigation - but can suggest blame. The context in which they are asked, and tonality of the interviewer will make these questions appropriate or inappropriate.
<p>Clarify with the interviewee any wording or phrases as required.</p> <p>If a support person is present, check with them before the interview, wording or phrases you think the witness may find difficult or for which the witness may have a different meaning than commonly held</p>	<p>Examples:</p> <ul style="list-style-type: none"> - 'aunty' means parent's sister to most people but to others it may include a long-term female family friend. - the term 'penis' may not be understood but the term 'dick' may.
Avoid topic hopping	i.e., rapidly moving from one topic to another and back again.
Avoid interrupting	Some witnesses may speak slowly and pause for longer.
Avoid repeating questions	The witness might infer their initial response was incorrect.
Avoid developmentally inappropriate questions	e.g., some witnesses might find questions relating to time, date, height, length, weight, age etc. difficult.
Only use leading questions (one implying the answer or assuming facts that are in dispute) as a last resort	<p>If a witness responds to a leading question with relevant information not led by the question, revert to open questions.</p> <p>These types of questions may provide the interviewee with knowledge or ideas they have not previously formulated.</p>
Avoid asking questions with a 'Yes'/'No' answer	<p>The witness may want to please by saying 'Yes' and avoid discussing uncomfortable topics by responding negatively.</p> <p>However, these questions may be appropriate for clarification.</p>

Question types

This table outlines commonly used question types.

Open TEDS type questions	Probing 5 Wh's + How questions
Tell	What?
Explain	Where?
Describe	When?
Show	Who?
	Why?
	How?

ADVOKATES

Use the mnemonic 'ADVOKATES' to ensure an eye witness covers all relevant information when describing a suspect.

A	Amount of time under observation	How long did the witness have the suspect in view?
D	Distance	What was the distance between the witness and suspect?
V	Visibility	What was visibility like at the time? (including time of day, street lighting, etc)
O	Obstruction	Were there any obstructions to the view of the witness?
K	Known or seen before	Had the witness ever seen the suspect before? If so, where and when?
A	Any reason to remember	Did the witness have any special reason for remembering the suspect? (e.g., a distinguishing feature or peculiarity, or the nature of the incident itself)
T	Time lapse	How long has elapsed since the witness saw the suspect?
E	Error or material discrepancy	Are there any errors or discrepancies between descriptions given in the first and subsequent accounts of the witness?
S	Salience	It is important to examine how salient a person is within an event scene. Were there 5 armed robbers at the scene or only 1? A person can only process so much information at one time due to limited processing capacity.

If the suspect or other person is well known to the witness the description may still be of use for identification purposes when spoken about by others - but may not have to be as in depth as when the suspect is unknown.

Account: notes and statements

Note taking

When conducting interviews, you face the formidable task of both actively listening and formulating questions. Notes:

- help you later to write the statement or interview summary
- can be used to brief other members of the investigation team
- are not usually discoverable as they are made as part of the investigative process (do not disclose your notes but attach them to the file should defence counsel apply to the court for disclosure).

If you do not take notes, you may:

- miss pieces of information
- make assumptions or misinterpret what was said
- use your own words or phrases rather than the interviewee's.

Be aware that taking too many notes can be a distraction for the interviewee and may interfere with their concentration and ability to recall information.

Notebooks

Your notebook is a record of your duties, what you did, who you spoke to, your observations, sketch plans or diagrams, initial interview notes and, if absolutely necessary, statements from interviewees.

Courts readily accept that police may refer to notes made contemporaneously or as soon as practicable after the event when giving evidence. You must record relevant details about the interview in your notebook including:

- date, time and place of the interview
- interviewee's name and contact details.

See [‘Notebooks and job sheets’](#) chapter for further information about using notebooks and job sheets.

Notebook statements

Only take statements in your notebook when it is impractical to obtain and record a formal statement following the usual way (see below). In these circumstances record the entries as you would using the same format for a formal statement. Record any comments made by the witness in full in notebook format before commencing the statement interview.

Job sheets

Do not record formal statements in job sheet format (job sheets are official records, chronologically listed, of action taken, information gathered, people spoken to and exhibits seized).

Use a jobsheet to record a conversation with a witness when:

- they have been spoken to and it is established that they do not need to be interviewed on a more substantial basis
- a preliminary interview has been conducted and the decision is made to refer the matter to a specialist interviewer
- they refuse to be formally interviewed but have provided investigatively important information.

Written statement

Most witness interviews result in a written formal statement at the end of the interview to:

- record information the witness can provide (for both investigative and prosecution processes) or further lines of enquiry that may then be used as evidence in any court proceeding.
- refresh the witness's memory should the matter proceed to court
- cross-examine the witness should they later give contradictory evidence.

The interview record is a complete record of all information the witness can provide and should also include relevant inadmissible evidence.

When to record a statement

Obtain formal statements from anyone who can provide investigatively important information including:

- prospective witnesses
- witnesses of doubtful reliability
- any person who can give important information in major enquiries
- spouses of suspects and offenders
- associates of suspects
- likely defence witnesses (this helps cross-examination and can prevent witnesses from tailoring stories for the defence)
- people suspected of making false complaints
- people making complaints against the police.

Procedure for recording written formal statements

After the final summary follow this procedure to prepare a written statement.

Step	Action
1	<p>Use POL2150A (and associated cover sheet) for all witness statements and POL 2150 B to record witness personal details. (located in Police Forms>Investigative Interviewing>Statements)</p> <p>Ideally, type the statement on the computer. Alternatively, handwrite on lined paper. (Use one side of the page only. Leave space at the top of each page for the file pin). Only record it in your notebook if the other methods are impractical.</p>
2	<p>In the statement's heading enter:</p> <ul style="list-style-type: none">- the witness's name, age (only if under 18 years) and occupation- date and time of the statement- your name and station. <p>(Do not repeat this information in the text of the statement itself).</p>
3	<p>Using your notes, record the formal statement in chronological order of the incident and narrative form in the first person. (e.g. 'I noticed a yellow car outside the bank...'). Use the person's own words, phrases and expressions.</p> <p>Cover all information the witness can provide in as much detail as possible including:</p> <ul style="list-style-type: none">- time, date and place of the incident- circumstances of the incident- detail actions and descriptions of people involved or simply present- details of what the individuals did and said- descriptions of property stolen or damaged, and injuries caused- a description of the suspect and how they may be identifiable- any other information that may help to:<ul style="list-style-type: none">- locate the offender- trace missing property- corroborate or refute information- identify further enquiries. <p>Avoid using abbreviations, jargon or correcting the person's grammar or vocabulary. If the person uses slang or colloquialisms, ask them to clarify the meaning and write the explanation in the statement (so the intended meaning can be clearly understood).</p>
4	<p>If diagrams/maps/sketches were used by interviewee:</p> <ul style="list-style-type: none">- record their use in the statement e.g., 'I have drawn a diagram of the street, showing where the crash took place'.- ensure the interviewee signs and dates them.
5	<p>Complete the coversheet (POL 2150 B) with all the witness's personal details. If relevant ask the witness to sign consent for Police access to personal information relating to the investigation. Completing this task at the end of the interview will help prevent the de-personalisation of the interview through asking these administrative questions.</p> <p>To protect the witness's privacy do not disclose the coversheet without legal advice.</p>

Do not:

- short cut this process as it will reduce the quality and quantity of information obtained
- start writing the formal statement until after the witness has given their full account, i.e., an uninterrupted account has been given that has been probed for more information and they have answered all investigatively important questions.

Endorsing the formal statement

Once you have recorded everything in writing take these steps to endorse the statement.

Step	Action
1	<p>Ask the interviewee to:</p> <ul style="list-style-type: none">- read the formal statement (if this is not possible, follow procedure for witnesses not able to read)- make and initial any corrections or additions and sign at the end of each page
2	<p>Once the interviewee is satisfied with the content of the statement you must record the s82 Criminal Procedure Act 2011 declaration at the end of the statement:</p> <p>- I confirm the truth and accuracy of this statement. I make the statement with the knowledge that it is to be used in court proceedings. I am aware that it is an offence to make a statement that is known by me to be false or intended by me to mislead.'</p> <p>Invite the interviewee to sign the statement with their full signature below the declaration. If they refuse to sign, note this on the statement and record in your notebook</p>
3	<p>You endorse the formal statement by:</p> <ul style="list-style-type: none">- initialling and numbering the bottom of each page- endorsing at the end of the statement:<ul style="list-style-type: none">- 'Statement taken and signature witnessed by:'- adding your full signature, QID and finish time.

Witnesses not able to read and write

If you are unsure about a witness's ability to read and write follow this procedure.

Step	Action
1	<p>Ask the witness to read out the first sentence or two to you. If they have difficulty, offer to read it to them or get a colleague to read it so there can be no allegation of distortion.</p>
2	<p>Sit beside the witness so they can see where you are reading from.</p>
3	<p>Before endorsing the statement write the following declaration:</p> <p>'This statement has been read to me. I confirm the truth and accuracy of this statement. I made the statement with the knowledge that it is to be used in court proceedings. I am aware that it is an offence to make a statement that is known by me to be false or intended by me to mislead.'</p> <p>Make a note about their reading ability in your notebook so you have a record if you are questioned in court.</p>
4	<p>The person reading the formal statement endorses the statement: 'I have read this statement to WITNESS'S NAME. I have asked them if they wish to make any alterations which I have done and initialled with READER'S NAME.' The reader signs off the formal statement and writes the time.</p>

Closure and evaluation

Closing interviews

Whatever interview model has been used, close interviews by:

- reviewing information obtained and confirming that everything has been covered (open a new [account](#) phase if any information has been omitted)
- asking if the witness has any questions and answering them appropriately
- thanking the witness for their time and effort
- advising that if they recall further information about the event after the interview, they should make a written note of what they recall and contact you
- preparing for future events (e.g. referral to support services, photographs, medical examination, court or further police involvement with the witness)
- providing them with your card or name and contact telephone number or another officers as appropriate
- returning to building rapport or other neutral topics
- ending in a positive, polite and prospective manner.

Evaluate information obtained

After interviewing a witness:

- review the information obtained and consider:
 - the impact of the information on the investigation
 - what evidence there is in relation to offences, ingredients and potential defences
 - descriptions of people, items and events that may be vital to the investigation
 - the urgency and need for further enquiries
- consider what follow-up action is required to prepare the witness for any future court proceedings. It may be advantageous to keep in regular contact with the witness especially as court proceedings approach.

Self-evaluation

Self-evaluate your own performance:

- what did you do well?
- what could you have done better?
- what areas can you develop?
- how will you acquire these skills?

Difficult to interview or reluctant witnesses

General considerations

If the witness is difficult to interview (compliant but challenging to interview) or reluctant (is not forthcoming with information they have that may assist the investigation) follow the usual procedures for preparing for the interview and engaging with the witness. Note that your attitude to the witness will contribute to how they respond to you and determine the success or otherwise of the interview.

Take particular care to:


- treat the witness with dignity and respect
- keep an open mind - do not assume they will be uncooperative
- be patient - it may be frustrating but the end result will make it worthwhile
- empathise with their position
- be non-judgmental - being judgemental is likely to result in further resistance.

Witness's right to decline to be interviewed

Interviews are always conducted with consent as a witness is not obliged to answer your questions unless there is a statutory obligation (which only exists in special circumstances e.g. under the Land Transport Act 1998). This means it is a person's right to decline to be interviewed and you cannot and must not force someone to speak with you.

Procedure when witness refuses to talk

Follow this procedure if the witness initially refuses to talk to you or be formally interviewed.

Step	Action
1	Spend time building rapport with the witness. This may take several sessions. Record your interactions in your actions.
2	Provide the witness with an outline of the offence(s) under investigation, and explain the potential importance of the information they may have and the processes involved with the interview. Give them enough information to make an informed choice as to whether to speak to you, but do not provide specific details about the allegations or what they are believed to have witnessed
3	Ask them why they don't want to be interviewed, and try to address their concerns. If they refuse to tell you, consider what their concerns might be (from your planning and preparation) and address these.
4	<p>If the witness then agrees to be interviewed, interview them as you would any other witness. If they are not forthcoming with information when using the free recall model then use the conversation management model:</p> <p>-</p> <div data-bbox="135 607 791 656" style="border: 1px solid black; padding: 2px;"> <p> Investigative interviewing doctrine - PI from November 2015.pdf 625 KB</p> </div>
5	If the witness still refuses to be interviewed but will talk with you informally about the offence, obtain as much detail as you can from them using open questions and, if required, closed questions.
6	<p>If the witness refuses to talk to you at all, that is their right. Avoid over persistence and:</p> <ul style="list-style-type: none"> - get their full details so they can be summonsed if required - proceed to the closure phase of the interview.
7	<p>Closure:</p> <ul style="list-style-type: none"> - close the interview as usual and provide them with your contact details should they change their mind or have any queries later - record in your notebook or on a jobsheet: <ul style="list-style-type: none"> - any information they have provided about the offence - the reasons given for refusing to be interviewed - your opinion on why they refused. <p>A detailed account of what was said is vital as the witness may later give contradictory evidence or be called by the defence. Should this eventuate your record may be needed for cross examination.</p>
8	Consider revisiting the witness at another time in consultation with the <u>OC</u> case or a supervisor.

Strategies for witnesses difficult to interview

Some witnesses may be more challenging to interview because they have difficulty understanding what is required or continuously go off topic. In these cases you should:

- be patient. Some witnesses involve a lot more time and effort. Consider why they are difficult to interview including whether they require [special consideration](#) and if you should delay the interview. Some may go off topic because they find it upsetting to discuss the alleged offence(s) and others may simply not understand what is expected of them. Always bear in mind that different people remember things in different ways and what appears to be going off topic to you, may simply be the witness retrieving the information in the most effective way for them.
- consider re-explaining the ground rules, they may simply not understand what is required of them.
- keep using open questions but set clear parameters and re-direct the witness if they go off the topic. If this does not work introduce more probing questions. Be careful not to ask leading questions.
- a witness may not remember all the details of what happened, so do not assume that they know everything. If you keep questioning them when they do not know the answer they may make up information in an attempt to please you or get frustrated with you and the interview process.

See also the '[Investigative interviewing - witnesses requiring special consideration](#)' chapter.

Investigatively important witnesses

Witness examples

Examples of witnesses for whom it is investigatively important to maximise the accuracy and completeness of their evidence include:

- victims of and witnesses to serious offences
- family members of suspects
- witnesses who may later become suspects
- prison/cellmate witnesses.

Video record witness interviews

The best way to maximise the quality of the evidence of important witnesses is to video record their interview (see 'Video recorded interviews' in the '[Investigative interviewing witness guide](#)').

Police can apply to the judge for some investigatively important witnesses, (excluding prison/cellmate witnesses and suspects) , to give evidence in chief by video record based on a number of grounds including:

- the nature of proceedings
- nature of the evidence the witness is expected to give
- relationship of the witness to any other party to the proceeding.

And some witnesses are entitled to give their evidence and chief by video record, if they wish, in which case a notice needs to be given - for example,:

- adult family violence complainants (where the video record is made within 2 weeks of the alleged offence)
- sexual case complainants or propensity witnesses
- child witnesses.

(s103, 106A, 106D and 107 Evidence Act 2006)

Selecting interview model

Level 3 specialist interviewers who are interviewing significant witnesses may choose to use enhanced cognitive interviewing techniques provided they have been trained in those techniques.

Prison/cellmate witnesses

Prison/cellmate witnesses can provide important information and at times evidence that is included at a trial. Their evidence will incur a higher level of judicial scrutiny and questions regarding the veracity of the witness.

Police must ensure that the [Solicitor-General's Guidelines](#) for use of prison inmate admissions is followed.

The reputational risk posed to Police in any case where a prison or cellmate confession or information is obtained and is to be relied on at Court or to progress an investigation, requires that the relevant Territorial Detective Superintendent **must** be advised prior to any evidential use of information obtained through target engagement tactics so that the Director: Criminal Investigations and Territorial Detective Superintendent can review the interview in conjunction with the Crown Solicitor. See '[Target engagement tactics evidential review](#)' in 'Part 18 - Oversight, review and debrief of homicide and serious crime investigations' of the Homicide and serious crime investigations chapter for the review process.

Each time a witness is considered for use they must be recorded in the Police Register for Inmate Witnesses (IMT File 210823/1077) via the National [CHIS](#) Manager.

See '[Target engagement tactics evidential review](#)' in 'Part 18 - Oversight, review and debrief of homicide and serious crime investigations' of the Homicide and serious crime investigations chapter for the review process.

When planning for a witness interview with a prisoner, please refer to the following link regarding [Supreme Court direction on the treatment of prisoner witness evidence](#).

Support persons

Benefits of having a support person

Having a support person present for the witness can have many benefits, such as:

- reducing the witness's anxiety
- ensuring the witness's well-being and that they understand procedures
- aiding your understanding of the witness's needs
- providing support to the witness leading up to court proceedings.

These benefits help you develop a working relationship with the witness and help to gain a complete, accurate and reliable account.

When a support person may be present in the room during interview

Under regulation 9 of the [Evidence \(Video Records and Very Young Children's Evidence\) Regulations 2023](#) a person may be present at an interview (that is recorded on under those regulations) to support a witness if -

- a. The witness considers that it is in their interests for the person to support them; and
- b. The interviewer considers that the person is an appropriate person to support the witness.

This advice equally applies to all other interviews.

A support person does not have to be present in the room when the interview is conducted. They can be nearby, so the interviewee can speak with them as necessary and /or can be supported in breaks.

Specialist trained interviewers and [CIB](#) staff are trained to deal with serious crime, victims and witnesses. Consideration has to be given to the victim, and the overall investigation. The impact of having another person present in the room needs to be considered.

When to use a support person

When deciding whether to use a support person, ask the witness for their preference and consider:

- whether they are a victim
- the overall investigation
- the impact of having another person present in the room
- the witnesses' characteristics, and
- whether having a support person present will benefit the witness and/or the investigation.

Remember that specialist trained interviewers and [CIB](#) staff are trained to deal with serious crime, victims and witnesses.

Always consider using a support person when the witness:

- is under the age of 18 years or very elderly
- has a communication difficulty (including a disability)
- is showing signs of trauma
- is a victim of sexual assault
- fears intimidation
- uses a language other than English as their first language
- is a victim or witness of a serious offence
- is closely related to the suspect (although bear in mind the relationship of the support person to the suspect and whether they are likely to create barriers to the investigation).

If a witness falls into one of the categories above but you think it is inappropriate to use a support person discuss this with you supervisor.

Who is an appropriate support person

An appropriate support person is someone who:

- is an adult (of or over the age of 18 years)
- is not a suspect or witness in the matter under investigation
- you believe will not attempt to pervert the course of justice
- is available within a reasonable period of time (be flexible, it may be preferable to wait for someone the witness feels supported by).

Appropriate support people include a parent or guardian, carer, family or whānau member, close friend, mental health support worker, specialist support counsellor.

Specialist support persons

Enlist the help of a specialist support person with:

- adult sexual assault victims
- witnesses with communication difficulties (In some cases a communication assistant or interpreter may be more useful. Note, regulation 10 of the Evidence (Video Records and Very Young Children's Evidence) Regulations 2023 provides for an interpreter or a communication assistant to be present at an interview to assist the witness. See also 'Specialist interviews of witnesses with certain conditions' in '[Investigative interviewing - witnesses requiring special consideration](#)' for further guidance)
- witnesses showing signs of extreme trauma.

Witness usually chooses support person

Usually the support person should be someone of their choice but in some circumstances it may be appropriate for you to choose, for example, with a mentally disordered person in care their mental health worker may be the most appropriate person.

Support persons who are also witnesses

Only in exceptional circumstances should the support person also be a witness in the matter under investigation i.e. a support person is required and no one else is available who can provide the witness with the support they require. In these circumstances interview the support person before interviewing the witness and explain they must not take part in the interview while acting as a support person (Reg. 9(2) refers).

Role of a support person

Support person's role during interviews

This table outlines the role of support people during interviews.

Interview phase	Support person's role
Engage and explain	<p>On the support person's arrival, speak to them alone and explain that their role is to:</p> <ul style="list-style-type: none"> - provide support to the witness and ensure their well-being - ensure the witness understands what's happening - not ask the witness questions about what's happened before the interview, as this will contaminate or influence memory - not discuss anything that's been said in the interview in breaks as this may contaminate or influence memory - not prompt the witness or answer questions on their behalf - participate in a briefing with Police on what has occurred, if necessary. <p>Meeting together with the witness and support person:</p> <ul style="list-style-type: none"> - Explain/re explain the interview process to the witness in front of the support person - advise the witness of the support person's role - answer any questions they have about the interview process - allow the support person to spend some time alone with the witness to discuss the interview process before commencing the interview <p>If a specialist support person is present speak with them about the witness's needs and decide what is an appropriate interview process.</p>
Account	<p>If the support person is present during the interview:</p> <ul style="list-style-type: none"> - inform them they are not to take part in the interview or prompt the witness or answer questions on their behalf. <p>Otherwise, arrange for the support person to:</p> <ul style="list-style-type: none"> - monitor the interview from another room if the facilities are available and this is the witness' preference, or - wait in a nearby room until the interview's completion.
Closure	<ul style="list-style-type: none"> - Ensure a support person is present during the interview's closure. If the matter proceeds to court the witness may require ongoing support. - Let them know of any counselling referrals made and possible investigation outcomes. - If a written statement is prepared from the interview, include the support person's details and get them to endorse the statement as well if the interview is conducted in their presence. They should sign the statement: <i>'This statement was made in the presence of...'</i> - Keep the witness (or carer) updated as appropriate, explain processes, brief them for court and arrange for counselling, if required.

Using specialist interviewers

Specialist interviewers

Specialist child witness interviewers	Specialist adult witness interviewers
<p>A specialist child witness interviewer:</p> <ul style="list-style-type: none">- is a trained interviewer for children and young persons under the age of 18 years- has received specialist training in how to interview children on Police video record according to the Evidence (Video Records & Very Young Children's Evidence) Regulations 2023 and national standards. <p>Contact these interviewers through the Child Protection Team or the CIB or SCWI National Trainer/Co-Ordinator based at PNHQ.</p>	<p>A specialist adult interviewer:</p> <ul style="list-style-type: none">- is a trained Level 3 specialist adult witness interviewer for persons aged 18 years or older- has received specialist training in using enhanced cognitive interviewing and video recording interviews in accordance with the Evidence (Video Records & Very Young Children's Evidence) Regulations 2023 and national standards. <p>Contact these interviewers through your CIB.</p>

Use specialists when video recording interviews

If resourcing allows, then specialist interviewers should conduct all witness interviews that need to be video recorded (although there are different processes for [Victim Video Statements - see the Victim Video Statements \(VVS\): User Guide](#)).

Interviews should be video recorded in all cases where the witness meets criteria set out in section 103 Evidence Act 2006 (or the other specific situations covered in Part 3, subpart 5 of the Evidence Act, including sexual case complainants, family violence complainants and child witnesses) and where an application may be made to give evidence by the alternative way of Police video record.

Advantages of video recording evidence

The advantages of visually recording interviews can include:

- greater quality and quantity of information obtained
- minimising trauma to the witness by simplifying the process and having their interview played as their evidence in chief
- reducing contamination by the interviewer through the process of transposing the interview into a statement
- providing a valuable means for the witness to refresh their memory before judicial proceedings.

Types of witnesses requiring specialist interviewers

Always consider using specialist interviewers in these cases. These witnesses potentially meet criteria set out in section [103](#), [106C](#), or [107AA](#) of the Evidence Act 2006.

Children and adults with disabilities or communication difficulties	Adults
<ul style="list-style-type: none">- Children and young people under the age of 18 years- Witnesses 18 years or older but with a disability or communication difficulty and who are victims/witnesses of sexual and serious physical assaults- Any case where you believe it is important to minimise the stress on the child witness, including when they are:<ul style="list-style-type: none">- a victim- very young- the witness to a serious offence or an incident in which a family member is a suspect	<ul style="list-style-type: none">- Adults (18 years or older) requiring special consideration especially if they:<ul style="list-style-type: none">- suffer from some sort of disability (other than intellectual)- are traumatised- fear intimidation- are related to the suspect- are investigatively important.- Investigatively important witnesses (including propensity witnesses) to serious offences such as:<ul style="list-style-type: none">- homicides- serious assaults (including when a recidivist family violence offender is involved)- sexual assaults- kidnapping and abduction- aggravated robberies involving firearms.

Make decisions about using specialists case by case

Make decisions about using specialist interviewers and recording interviews on a case-by-case basis depending on the availability of a specialist interviewer, appropriate rooms, equipment and transcription services.

If you think a specialist should be engaged to interview your witness, discuss this with your supervisor and:

- if the witness is a child or young person seek advice from your local Child Protection Team or specialist child witness interviewer
- if the witness is an adult seek advice from a Level 3 specialist adult witness interviewer or the [CIB](#).

Deciding whether to use a SCWI or Level 3 specialist adult witness interviewer

Use a specialist child witness interviewer in preference to a Level 3 specialist adult witness interviewer with children under the age of 18 years and witnesses who have an intellectual disability or communication difficulty. Any decisions to depart from this process can be made on a case-by-case basis by the [O/C](#) of the case in consultation with a local specialist child witness interviewer, e.g. if the witness is mature for their age.

When a Level 3 specialist is not available

Districts should have sufficient Level 3 Adult Witness Interviewing resources to enable interviews to be carried out on any day. If necessary, consideration should be given to interviewers being called back to interview when not on duty, e.g. weekends.

If a specialist adult interviewer is not available, a Detective Senior Sergeant can authorise a suitably competent investigator to conduct and video record the interview as per the guidelines below.

Consideration must be given to a variety of factors when making this decision (in no particular order) e.g:

- victim and interviewer profile
- potential for Police video record to be placed as the person's evidence in chief at trial
- known or unknown offender
- urgency of information from interview for investigation and requirement for transcription.

ASA Victim Interviews	Other Victim/Witness Categories
<p>The interview is authorised by a Level 4 (CSP010) trained District <u>ASA</u> Coordinator (Detective Senior Sergeant or Detective Sergeant Acting in the role) to be conducted by a <u>CIB</u> Investigator who is:</p> <p>Level 2 Investigative Interviewing accredited (INT018)</p> <p>AND</p> <p>Level 3 <u>ASA</u> trained (ie completion of Detective Qualification Course post August 2013 or CSP005 (pre 2013), or <u>ASA</u> CSP010 (Advanced ASA - Level 4)</p>	<p>The interview is authorised by a Detective Senior Sergeant (or Detective Sergeant Acting in the role) to be conducted by a <u>CIB</u> Investigator who is:</p> <p>Level 2 Investigative Interviewing accredited (INT018)</p>

Note:

- Victim interview rooms should be used. Suspect interview rooms/facilities must not be used to interview victims or witnesses on DVD
- Child victims must only to be interviewed by Specialist Child Witness Interviewers.
- An inactivated/expired Level 3 interviewer should only be considered if they meet the above criteria and proceed with 'normal' interview procedures for video recording interviews with adults.

Video recorded interviews

Compliance with Evidence (Video Records & Very Young Children's Evidence) Regulations 2023

Video recorded interviews that may be used as an alternative form of evidence must comply with the procedures detailed in the Evidence (Video Records & Very Young Children's Evidence) Regulations 2023.

See:

- [Annex 1](#) in this chapter for the legislative requirements under the Evidence (Video Records and Very Young Children's Evidence) Regulations 2023 pertaining to Police video records and transcripts
- '[Specialist Child Witness Interview Guide](#)' chapter for procedures about video recording interviews with children
- '[Victim Video Statements \(VVS\): User Guide](#)' to better enable frontline officers responding to family violence episodes to legally and appropriately, record, upload and review interviews of family violence victims using your iPhone and the AXON CAPTURE application. Note: The process below does not apply to VVS.]

Where should video recorded interviews be conducted?

Ideally a dedicated witness interviewing suite should be used to conduct video recorded interview (unless other interview facilities have been approved by a CIB Supervisor).

In all cases ensure the room is set up for the witness and is comfortable, clean and tidy. If using a suspect room, be mindful of the possibility of cross-contamination and the well-being of the witness.

Mobile interviewing units are available in most Districts and via the [PNHQ](#) pool of units to be used in any location.

Reconfirm consent at interview from witness for recording statement on Police video record

After the introductions of the persons present at the video recorded interview, the following questions should be asked of the witness to verify their consent to record their interview statement on Police video record (to comply with section 82 of the Criminal Procedure Act 2011):

- "Earlier you agreed to have your interview statement recorded on video and I want to check you are okay with that?"
- "You are aware that:
 - "(suspect) will be able to be shown the Police video record?"
 - "the Police video record may be used as evidence in Court?"
- "You agree to this Police video record being used as evidence in Court?"

Procedures for commencing the witness interview on Police video

Follow these procedures to later assist the transcriber with typing the transcript.

StepAction

- 1 Check everyone is visible in the recording and should the witness be wearing a hat or cap, then ask to remove it.
- 2 Reduce background noise such as pen clicking, paper shuffling, chair squeaking etc.
- 3 Note that interviews are typed verbatim - avoid acknowledging every statement with a 'yeah' or 'mmhm' to assist in the flow of the interview.
- 4 Avoid talking overtop of the witness.
- 5 Spell all names and locations to ensure these are typed correctly.
- 6 Ask the witness to:
 - speak clearly
 - speak slowly
 - speak into the microphone
 - keep hands away from their face/mouth.
- 7 Remind the witness of any of the points in step 6 throughout the interview if necessary.
- 8 **Remote interview locations**

When interviewing in a remote location (e.g., in hospital), ensure the cell phone is placed within a one metre radius of both interviewer and the witness.

Monitor's role

A monitor should normally be used to remotely oversee the interview when video recording witness interviews, unless impracticable. Reasons for not having a monitor should be recorded in the OC Witness or Investigation notebook. Ideally the monitor should be an officer with a detailed knowledge of the investigation.

The monitor should:

- scrutinise the interview content identifying areas that are missing or which need clarifying or expanding for the purpose of the investigation
- be alert to interviewer errors and confusions in communication between the interviewer and witness
- take accurate and legible interview notes of the required investigative information
- record the time at significant points throughout the interview
- provide feedback on content and/or approach to the interviewer during breaks in the interview
- only interrupt the interview if absolutely necessary e.g. if the equipment fails or a legal requirement is missed
- at the conclusion of the interview complete an [interview evaluation](#) using the appropriate form.

Interview evaluation

The interview evaluation should be completed by the monitor or interviewer on the appropriate form, in consultation with each other.

The evaluation should be completed as soon as practical after the interview, while the information is still fresh in the monitor's/interviewer's mind.

Evaluation purpose

The purpose of the evaluation is to:

- provide a summary of the interview
- process the information from the interview in the context of the investigation
- identify offences, ingredients and probable defences

- establish what further enquiries need to be conducted and determine urgency
- identify important descriptions of people and objects that may be vital to the investigation
- ensure dissemination of the information obtained by providing the investigating team/supervisor with a relevant summary.

Processes while using (old) DVD technology before new video recording technology is in interview suites

Evidence (Video Records & Very Young Children's Evidence) Regulations 2023 (further information provided in Schedule 1) anticipate the use of digital recording and cloud storage technology, for example, by:

- Storing the digital video record in storage system or facility (rather than on a DVD master copy) and keeping a digital access log (rather than having and completing a paper certificate).
- Providing for defence counsel (and others who need to view the video record) to have access to view it electronically (rather than receiving a copy of a DVD), and then revoking that access when it is no longer required (rather than counsel returning the DVD copy).

While these digital processes are well established and in place for VVS, the technology is still being updated in interview suites and in the meantime video records will continue to be stored on DVDs and DVDs provided to defence counsel. Transitional provisions in Schedule 1 to the Evidence (Video Records & Very Young Children's Evidence) Regulations 2023 allow for:

- Video record made prior to 6 January 2023; and
- Video records made after that date in DVD format.

To apply with appropriate modifications, such as:

- A reference to giving access to the video record is to be read as including giving or having a copy of a DVD on which a copy of the video record is stored.
- A reference to keeping the person's login and password for accessing the video record, is to be read as an obligation on the person who receives the DVD to store it securely and so it cannot be accessed by an unauthorised person.
- A reference to destroying the means of accessing the video record, is to be read as an obligation to return the DVD to Police or the court that gave it to the person.

For these videos, the distinction between a master copy and the working copy (that existed under the 2007 regulations) continues to apply also.

Video interview extraction from interview machines

Supplier of DVD video interview machines

Black Diamond Technologies Ltd (BDT) are the current suppliers of the DVD video interview machines.

Misplaced, damaged or incorrect burning to the DVD disc

Should the master copy of an interview either be misplaced, damaged or not burnt to the DVD disc correctly, then BDT have the capability to recover a copy from the internal hard drive of the machine if this occurs.

If the burning of the disc is due to a fault in the machine, then there is no charge to Police from BDT. If it is due to operator error e.g., not burning off the second set of discs for an interview that has gone over 120 minutes, there will be a charge to the District where the interview was conducted.

Police employees are not to contact BDT directly to facilitate an extraction and instead are to complete an ICT Service Portal Request using the following path:

- Home > All Catalogs > ICT Requests > Interview Recording Extraction Required

This pathway produces the online form to complete and will result in a charge back automatically to the Police employee's assigned cost centre.

Creating video working copies of an interview

BDT do not carry out a video extraction for the creation of further working copies of an interview.

To meet the requirements of regulation 54 of the Evidence (Video Records & Very Young Children's Evidence) Regulations 2023, the process to create further working copies is as follows:

- keep a record of all dealings with the master copy
- with your supervisor's approval, request the master copy from safe custody (storage)
- in the presence of a supervisor (best practice) or if not available, a second constabulary member as a witness, unseal the master copy, recording the date and time and reason it has been opened. Regulation 37(3)(i) gives authority for a constable or a Police employee to access the Police video record to discharge a duty
- carry out the DVD copying process on a machine creating the number of copies you require in the presence of the witness, recording the date and time of completion
- when completed, reseal the master copy using a new set of seals and sign the seal in the presence of the witness, recording the date and time
- return the resealed master copy into safe custody (storage), recording the date and time.
- complete a Formal Written Statement identifying the witness present and the chronology of the process.

Management of Police video records

Introduction

This section outlines procedures to be followed after video recording interviews with witnesses, including how to have the Police video recorder admitted as an alternative way of giving evidence.

See [Annex 1](#) in this chapter for the legislative requirements under the Evidence (Video Records and Very Young Children's Evidence) Regulations 2023 pertaining to Police video records and transcripts.

Storage and chain of custody

Because the Police video recording may be used as an exhibit, the interviewer must take these precautions to ensure it is kept secure and the chain of custody and compliance with the Evidence (Video Records and Very Young Children's Evidence) Regulations 2023 is maintained.

Step Action

- 1 Seal, label and arrange for storage of the interview records.
- 2 Make a minimum of two records. Mark one the 'Master' and the other 'Working' copy. If a third record is made, mark this as a 'Lawyers' copy and retain it to be used later for disclosure if required.
- 3 Store all copies of the interview record in a secure location. This means a locked cabinet or room as designated by your District.
- 4 Complete a Certificate for DVD/Police Video Record (in Police Forms > Investigative Interviewing > Witness Video Recorded) and store this with each copy of the record.

Transcripts

All witness video recorded interview records should be transcribed if they contain relevant information.

The O/C Investigation is responsible for:

- arranging for transcription of the working tape and ensuring that the defendant's lawyer receives a copy of the transcript (under reg 22(1) as soon as practicable after a not guilty plea as soon as reasonably practicable
- providing a copy of the video record to defence counsel in accordance with section 106 of the Evidence Act (or facilitating viewing if the lawyer is not entitled to receive a copy and not order is made for a copy to be given to the lawyer) . The Criminal Disclosure Act does not apply to video records made under the Evidence (Video Records and Very Young Children's Evidence) Regulations 2023, (s 42(2) of the Criminal Disclosure Act)).
- filing of formal statements - see 'Formal statements' in the ['Prosecution file and trial preparation'](#) chapter for more information.
 - contains large amounts of irrelevant and inadmissible material, or
 - is long and complex, or
 - does not present the evidence in chronological order.

Disclosure of Police video records and transcripts

If a Police video record of an interview exists it must be noted on the exhibits list and Disclosure Index, as well as any transcript prepared. Refer to 'Disclosure of Police video interviews, transcripts and TASER data' in the [Criminal disclosure](#) chapter for more information.

See ['Procedures for commencing the witness interview on Police video'](#) in this chapter for guidance that will subsequently assist the transcriber with typing the transcript.

Using the Police video record as a formal statement

See 'Formal statements' in the ['Prosecution file and trial preparation'](#) chapter for information about filing the Police video record as a formal statement at the appropriate pre-trial stage of a jury trial proceeding.

After the conclusion of the case - destruction of records

The [Evidence \(Video Records and Very Young Children's Evidence\) Regulations 2023](#) require interview records made under those Regulations and a transcript to be retained for a mandatory minimum initial period as follows.

Result	Police video record (including any edited versions) and a transcript
Criminal proceeding to which the video record relates (or a related proceeding) has been finally determined	Police responsibility: Must retain the video record for a minimum of 10 years after final result
No criminal proceedings brought, or the Police video record is not offered as evidence in a criminal proceeding or a related proceeding	Police responsibility: Must retain for a minimum of 10 years after the date the Police video record was made*

*After 10 years, these records will need to be reviewed and a decision made in each case whether the records should be destroyed or erased. If 10 years has elapsed since a record relating to an unsolved investigation was made, you must retain the master copy in a secure location until the prosecution is concluded or untenable.

Alternative ways of giving evidence

Applications for alternative way of giving evidence

Ordinarily, a witness will be required to give their evidence orally in court. A witness can only give evidence in court by alternative means (e.g. using a Police video record of an interview instead of giving evidence in person) permitted under Part 3, [subpart 5](#) of the Evidence Act 2006. There are general provisions for applying for directions about alternative ways of giving evidence under [s 103](#). These are subject to some provisions for specific situations, such as:

- Sections [106AA to 106B](#) which relate to family violence complainants and entitle an adult family violence complainant whose evidence is recorded within 2 weeks of the alleged family violence incident to give their evidence in chief by the video record, in which case the prosecutor must file a written notice stating the intention to do so.
- Sections [106C to 106J](#) which relate to sexual case complainants or propensity witnesses of any age and similarly entitle the witness to give their evidence by alternative means, and for the prosecutor to give a written notice.
- Sections [107AA to 107B](#) which relate to (other) child witnesses in criminal proceedings, who are also entitled to give their evidence by alternative means, and the party intending to call that witness must provide written notice.

Even where a Police video record is shown as the witness's evidence in chief, they are required to be available for cross-examination. You should therefore consider, and you will likely need to liaise between the prosecutor and the witness to ascertain the witness's views on what they might need to minimise the stress of cross-examination, e.g. screens, CCTV etc. as appropriate. In some cases it is also now possible to have a court pre-hearing to record the cross examination before the trial (see section [106D](#)).

Factors to consider when deciding whether to apply

Discuss with the prosecutor whether to use (either on application or by notice) the Police video record as the witness' evidence in chief on a case by case basis taking into consideration the criteria set down in in the [Evidence Act](#) (including the views of the witness, the type of alleged offending, and whether the witness is under 18), and whether the Police video will provide the best means of evidence.

An alternative way of evidence application (or notice) is required:

- in a judge-alone trial, if you believe the Police video is the best evidence for such a hearing.
- where a pre-trial oral evidence order has been made pursuant to s90 of the Criminal Procedure Act 2011, necessitating a hearing for the taking of the evidence of a particular witness, if you believe the Police video is the best evidence for such a hearing.

An application is **not** required for any hearing where the relevant witness is not required to give evidence. That includes pre-trial hearings in jury trial matters, unless an oral evidence order has been made in respect of that witness for the purposes of the pre-trial hearing.

For matters that are proceeding beyond a case review hearing and toward a jury trial, the Crown Prosecutor may make an application or given notice of the intention to use an alternative way of evidence where they believe the Police video record is the best evidence for the trial.

Procedures for making applications

In all matters, applications for an alternative way of evidence must be made as early as practicable before the proceeding and well **before** the witness is required to give oral evidence in court.

The O/C Investigation should indicate to the prosecutor as early as possible that they believe an alternative way of evidence application (or notice) is required for the witness and the grounds for the application (as per section 103 or the other relevant specific Evidence Act provision). That view and the reasons for it should be set out clearly in the covering report on the file.

The prosecutor:

- considers whether an application (or notice) is appropriate
- may require evidence in support of the application, and (which the O/C will be responsible for obtaining/arranging that)
- makes an alternative way of evidence application (or gives the relevant notice) at the pre-trial hearing.

When the video record is to be played as the person's evidence in chief

Follow the 'Disclosure of Police video records and transcripts and TASER data' procedures in the [Criminal disclosure](#) chapter if the

Police video record is to be played as the witness's evidence in chief.

Preparing the witness to give evidence

To refresh the witness's memory before giving evidence the O/C Investigation should arrange for the witness to view their video recorded interview. Usually this should take place within a week of the oral hearing, but the timing will vary depending on the circumstances of the case. For complainants, consider arranging for a support person to be present when reviewing the interview.

Enhanced cognitive interviewing

When should enhanced cognitive interviewing be used?

Enhanced cognitive interviewing should be used with cooperative adult witnesses when you need to maximise the quality and quantity of the information obtained - for example, if the witness is investigatively important.

Selection of the interviewer

Enhanced cognitive interviews must only be conducted by Level 3: Specialist adult witness interviewers who are specially trained in using these techniques. Where practical, also consider:

- the interviewer's experience in relation to the type of offence under investigation and the characteristics of the witness
- any previous experience of the interviewer with the witness (that may aid or have an adverse effect on the interview)
- whether the witness has volunteered a preference.

Dealing with significant evidential inconsistencies and/or omissions

For a variety of reasons there may be significant inconsistencies and/or omissions between the witness's account and other evidence such as:

- what the witness is previously reported to have said
- the accounts of other witnesses
- the scene examination or exhibits
- injuries of the witness or suspect.

You must keep an open mind to the cause of the inconsistencies. They may have arisen for a variety of reasons including genuine mistakes often originating from memory failure or cross-contamination of the witness or others reporting the information, or the witness may be fabricating or exaggerating their account.

Decisions to raise these inconsistencies at interview must be made by the interviewer in consultation with the O/C Investigation taking these principles into account:

- explanations should only be sought:
 - for significant inconsistencies and where careful consideration has excluded any obvious explanation for them
 - on video at the end of the interview (or at another interview) when the witness's account has been fully explored
- the purpose of seeking an explanation is to establish the truth; it is not to put pressure on the witness to change their account
- when seeking an explanation the interviewer must take into account the characteristics of the witness and extent to which they are vulnerable to suggestion, compliance or acquiescence
- questions used to seek an explanation must be carefully planned, phrased tactfully and presented in a non-confrontational manner.

Further interviews

As an investigation progresses it may be necessary to clarify information/inconsistencies that have arisen with a witness. Decisions regarding how this is conducted should be made on a case-by-case basis. No two situations will be the same and there may be a variety of reasons why a further interview is required.

Consideration should be given to:

- mode of recording, e.g., Police video record of interview or written formal statement
- need for support person
- necessity of re-interview

Fabrication

If a further interview is required due to the original complaint being a fabrication, follow the guidance on 'Inconsistent or fabricated complaints' in the [Adult sexual assault investigation \(ASAI\) policy and procedures](#). The same principles for speaking to ASA victims regarding possible fabrication of complaint apply to other witnesses.

Annex 1

Police video records and transcript requirements under the Evidence (Video Records and Very Young Children's Evidence) Regulations 2023

Admissibility

Nothing in the regulations affects the admissibility of video record evidence in court proceedings.
(Reg. 4)

Application of regulations to certain military proceedings

The regulations apply if the provisions of the [Evidence Act 2006](#) relating to video record evidence are applied to proceedings under the Armed Forces Discipline Act 1971 or the Court Martial Act 2007. For further details see regulation 5.

Definitions

These definitions apply to this chapter and those arising from the [Evidence \(Video Records & Very Young Children's Evidence\) Regulations 2023](#) and the [Evidence Act 2006](#) are identified accordingly.

Term	Meaning
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Access	Access, in relation to a court or person being given access to a Police video record: <ul style="list-style-type: none">- means being provided electronic access to the Police video record by the Police, a court, or a person, but- does not include showing the court or person the Police video record.
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(Reg. 3)

Authorised adviser	Authorised adviser means a person who is any of the following: <ul style="list-style-type: none">- the Secretary for Justice- a person engaged by the Minister of Justice or by the Secretary for Justice to give advice about a review application- a member, specialist adviser, or employee of the Criminal Cases Review Commission.
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(Reg. 3)

Child	Child means a person under the age of 18 years.
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(s. 4)

Child complainant	Child complainant, in relation to any proceeding, means a complainant who is a child when the proceeding commences.
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(s. 4)

Crown lawyer	Crown lawyer means a person who is any of the following: <ul style="list-style-type: none">- a Crown prosecutor:- a lawyer representing the Police or the Crown:- a lawyer employed or instructed by the Solicitor-General
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(Reg. 3)

Especially sensitive Police video record	Especially sensitive Police video record means a Police video record of: <ul style="list-style-type: none">- any child complainant; or- any witness (including an adult complainant) in a sexual case or a violent case.
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(Reg. 3)

- Family violence complainant** A family violence complainant means a person who is not a child and who is to give or is giving evidence in a family violence case (which does not include a sexual case).
(s. 106AA)
- Formal statement** A Police video record made in compliance with the [Evidence \(Video Records & Very Young Children's Evidence\) Regulations 2023](#) and the [Evidence Act 2006](#) may also be a formal statement because the statement may be “recorded in any medium”, if it meets the other requirements of section 82 of the Criminal Procedure Act 2011 (for example, if accompanied by the applicable declaration). Section 82 states:
- A **formal statement** is a statement recorded in any medium by a person who is a potential witness in a criminal proceeding where:*
- (a) the statement contains the evidence of that witness; and*
 - (b) the statement contains, or is accompanied by, a declaration by the witness that the statement is true and that the witness made it with the knowledge that it may be used in court proceedings; and*
 - (c) the statement complies with subsection (2), (3), or (3A) if applicable.*
- Interview** Interview means an interview:
- with a witness, and
 - by or for the Police (for example, by an interviewer (as defined in regulation 8(1)(a)) who is an employee of Oranga Tamariki - Ministry for Children), and who is interviewing the witness on behalf of the Police), and
 - under Part 1
- (Reg. 3)
- Police** Police means the New Zealand Police
- (Reg. 3)
- Police employee** Police employee has the meaning given to by section 4 of the Policing Act 2008.

Police video record Police video record:
record

- means a **video record**-
 - of a Police interview (as defined in the [Evidence \(Video Records & Very Young Children's Evidence\) Regulations 2023](#) and the [Evidence Act 2006](#) with a witness; and
 - made under Part 1; and
 - made on any device; and
 - described in regulation 7(1); and
- includes a copy of, an extract from, a part of, an edited version of, or a summary of a video record of an interview with a witness.

(Reg. 3)

Under reg 7(1):

- it must be intended that the Police video record *may* be offered by the prosecution as the witness's evidence in chief in a criminal proceeding under s 106 of the Act. All Level 3 interviews are recorded in this way so that the option of playing as the witness's evidence in chief remains available, as are all VVS statements, and the decision as to whether it is desirable to play the video record as the person's evidence in chief at the trial (if there is one) is made later after charges are filed; and
- the criminal proceeding that would be commenced would be commenced by a Police employee. (so only for Police filed charges).

The Police video record does not actually have to have been offered later as the witness's evidence in chief in a criminal proceeding in order for the Regulations to apply (reg 7(2)).

Suspect/defendant interviews not covered by the Regulations (reg 7(3)).

Regulations (Reg.) Reference to the 'regulations' or 'Reg.' in this chapter means the [Evidence \(Video Records & Very Young Children's Evidence\) Regulations 2023](#) and the [Evidence Act 2006](#).

Responsible department Responsible department means the department that is, with the authority of the Prime Minister, for the time being responsible for the administration of the [Oranga Tamariki Act 1989](#).

Review application Review application means an application that is:

- an application for the exercise of the prerogative of mercy, or
- an application under the [Criminal Cases Review Commission Act 2019](#).

(Reg. 3)

Sexual case Sexual case means:

- a criminal proceeding in which a person is charged with, or is waiting to be sentenced or otherwise dealt with for:
 - an offence against any of the provisions of sections 128 to 142A or section 144A of the [Crimes Act 1961](#); or
 - any other offence against a person of a sexual nature, and
- for the purpose of sections 40(3)(b), 44 to 44A, and 95(1) only, a civil proceeding that involves issues in dispute of a sexual nature.

(s. 4)

Sexual case complainant or propensity witness Sexual case complainant or propensity witness means a person of any age who is 1 or both of the following:

- a complainant who is to give or is giving evidence in a sexual case:
- a witness for the prosecution who is to give or is giving evidence in a sexual case that is or includes propensity evidence (as defined in section 40(1)) related to their personal experience of a sexual nature with any 1 or more defendants.

(s. 4)

Show Show, in relation to a person (**person A**) being shown a Police video record, means to show the Police video record (for example, a Police video record that is stored in a Police storage system or facility referred to in regulation 48):

- to person A; and
- by electronic means, and
- in the presence or otherwise under the supervision of the Police, the court, or the other person (for example, a lawyer) showing it to person A.

(Reg. 3)

Transcript Transcript, of a Police video record,:

- includes:
 - the whole or a part of a transcript of the Police video record
 - a copy of a transcript of the Police video record
 - an edited version of a transcript of the Police video record, but
- excludes:
 - comments or notes in respect of a transcript that are made by a user of the transcript in accordance with regulation 45
 - an excerpt of a transcript, if the excerpt is contained in submissions, a judgment, or a court order.

(Reg. 3)

User User, of a Police video record, or a transcript, means a person (other than any Judge, Registrar or Deputy Registrar of a court, other member of court staff, juror, or Police employee, acting in that capacity) who, under Part 2, of the regulations has either

or both of:

- access to a Police video record
- use of a transcript.

(Reg. 3)

Violent case Violent case means a criminal proceeding in which a person is charged with, or is waiting to be sentenced or otherwise dealt with for:

- any of the offences listed in section 87(5)(b) of the Sentencing Act 2002, or
- any other offence of a violent nature against a person.

Making Police video records

Who may be present at making of Police video record

Only certain people may be present during making

The following people are the only people who may be present at the making of a Police video record:

- 1 or more persons to facilitate the interview, 1 of whom must be responsible for interviewing the witness (the interviewer)
- the witness
- a person needed to operate the recording device (who may also be a person facilitating the interview)
- the witness's lawyer
- if regulation 9 applies, a person who is present to support the witness
- if regulation 10 applies, an interpreter or a communication assistant.

Any of the above people may be present at the interview in person or by electronic means. (Reg. 8)

Note: It is now legally possible for participants to not all be physically in the same place. In practice, Police is still working on an appropriate technology solution for that to occur.

Support person

A person may be present at an interview to support a witness (in addition to a lawyer under regulation 8(1)(d)) if:

- the witness considers that it is in their interests for the person to support the witness; and
- the interviewer considers that the person is an appropriate person to support the witness.

Note: The support person present at an interview must not take part in the interview. (Reg. 9)

Interpreter or communication assistant

An interpreter or a communication assistant may be present at an interview to assist the witness if:

- the witness does not have sufficient proficiency in the English language to understand and participate in the interview if it is conducted in English
- the witness has a communication disability
- it is necessary or desirable (for any reason) to provide communication assistance to the witness so that they may understand and participate in the interview.

(Reg. 10)

What must be on Police video record

Ensure to follow these legislative requirements with making Police video record of a witness.

Step Legislative requirement

1 The following people **must** be clearly visible on a Police video record for the entire interview (even if they are not physically in the same place):

- the witness
- the support person (if applicable)
- the interpreter or communication assistant (if applicable).

(Reg. 11(1))

2 It is sufficient for any other person present at an interview to be recorded by audio only (see also step 4).

(Reg. 11(2))

3 A Police video record **must** also show the following:

- the interviewer stating the date on which, and time at which, the interview starts; and
- the interviewer, the witness, the support person (if any) and the interpreter or communication assistant (if any) identifying themselves; and
- subject to any contrary direction by a Judge, for a witness who is of or over the age of 12 years, that witness making a promise to tell the truth (in any form, provided the overall effect is a promise to tell the truth), and
- for a witness who is under the age of 12 years:
 - the interviewer informing the witness of the importance of telling the truth and not telling lies, and
 - subject to any contrary direction by a Judge, the witness making a promise to tell the truth (in any form, provided the overall effect is a promise to tell the truth), and
- an interpreter present promising to accurately and completely interpret the words of the witness, and
- the entire interview, and
- an accurate means of measuring and recording time in hours, minutes, and seconds, and
- the interviewer stating the date on which, and the time at which, the interview finishes.

(Reg. 11(3))

4 If any other person is present at the interview (see also step 2), a Police video record **must** also:

- show, or record by audio, that other person, and
- include that other person identifying themselves.

(Reg. 11(4))

5 **Requirements if recording paused or interrupted**

If the recording of a Police video record is paused or interrupted for any reason and then recommenced, the Police video record **must**:

- contain an explanation by the interviewer of the reason why the recording was paused or interrupted; and
- show the interviewer stating the date on which, and time at which, the interview is paused and recommenced.

(Reg. 12)

Powers and duties of Police as maker of Police video records

Transitional provisions where old technology (DVD and videotapes) is still being used

There are transitional provisions (Schedule 1) that ensure that:

- Videotapes and DVD records made before 6 July 2023 in accordance with the 2007 Regulations and DVD records made after 6 July 2023 (which will continue to occur in interview suites until the old technology is updated) are to be treated as if they have

been made in accordance with the 2023 Regulations.

- Despite the format, they may largely be kept, shown, given, returned, or destroyed or erased in accordance with the 2023 Regulations (with any necessary modifications).
- There is no expectation in this interim period (until any modernisation is complete) that DVD video records be converted to digital format.

See the following sections in this chapter for further guidance about using DVD and videotapes technology:

- [Video interview extraction from interview machines](#)
- [Management of Police video records.](#)

Transfer to Police storage system or facility

As soon as practicable after a Police video record is made, it must be transferred by digital means directly to a secure Police storage system or facility. See 'Commissioner's approval for storage' system or facility for Police video records.

Once the transfer is complete, the copy of the Police video record must be deleted from the recording device that made it.
(Reg. 48)

Requirement for secure storage

All reasonable steps must be taken to keep a Police video record stored in a Police storage system or facility secure, including by:

- securely storing the means of accessing the Police video record (for example, a password) so that it cannot be accessed by an unauthorised person, and
- otherwise ensuring that the Police video record is not viewed or accessed by an unauthorised person.

(Reg. 49(1))

Required descriptive or identifying information for Police video records

Recording descriptive or identifying information must be undertaken for a Police video record stored in a Police storage system or facility. The descriptive or identifying information that is to be recorded, must include the following information:

- whether the video record is the original video record or an edited version
- a reference or file number (if applicable)
- the location where the video record was made and the date this occurred
- the name and date of birth of the person being interviewed
- the name of any guardian of the person being interviewed (if they are under 18 years or for another reason not related to age have 1 or more guardians appointed for them)
- a statement certifying the required descriptive or identifying information as correct, including the name of the person providing that certification and the date on which they did so.

If the Police store in a Police storage system or facility has any descriptive or identifying information recorded about a Police video record, then you must ensure that recorded descriptive or identifying information can be accessed without viewing the content of the Police video record.

(Reg. 49(2), (3) & (4) and Schedule 2)

The following forms (found in Police Forms > Investigative Interviewing > Witness Video Recorded) will assist providing the required descriptive or identifying information for Police video records:

- Consent to Specialist Child Interview
- Specialist Child Interview Statement
- Specialist Child Interview Report
- Certificate for Video or DVD Record to Interview
- Witness Interview - DVD or Videotape Receipt
- Witness - Video Recorded Set
- Witness - Monitor Notes
- Witness - Interview Notes

- Witness Interview Evaluation
- Request for DVD Transcript.

Producing Police video records for criminal proceedings

A Police video record that:

- is, or is to be, offered as evidence in a criminal proceeding; and therefore
- must be produced for that criminal proceeding.

The court must be given access to the Police video record (see regulation 15).
(Reg. 50)

Revoking access to Police video records

A person's access to a Police video record may be revoked if:

- the purpose for which the person was given the means of accessing the Police video record no longer applies (for example, an expert completes giving their evidence in the proceeding for which they were given by the means of accessing the Police video record), or
- the proceeding for which the person was given the means of accessing the Police video record is finally determined.

(Reg. 53)

Showing and giving access to Police video records

Introduction

Disclosure in criminal proceedings (or related proceedings) is governed mostly by the [Evidence Act 2006](#), but see also:

- section 42(2) of the Criminal Disclosure Act 2008; and
- section 29(1)(e) of the Privacy Act 2020).

The Evidence (Video Records and Very Young Children's Evidence) Regulations 2023 sets additional requirements for how disclosure of a Police video record is to occur.
(Reg. 14(2) & (3))

Showing or access must be permitted or required in legislation or Judge's decision

A Police employee or a person may show or give access to a Police video record to a person:

- only if permitted or required by any of the following:
 - the [Evidence Act 2006](#)
 - the [Evidence \(Video Records and Very Young Children's Evidence\) Regulations 2023](#)
 - a Judge's decision (for example, a Judge's direction, order, or request) made under the Evidence Act or the regulations, and
- only in accordance with all of the following:
 - the [Evidence Act 2006](#)
 - the [Evidence \(Video Records and Very Young Children's Evidence\) Regulations 2023](#)
 - any applicable Judge's decision made under the Act or these regulations
 - any applicable rules of court
 - any applicable Judge's decision made under any applicable rules of court.

(Reg. 17)

How access is given to court or Judge

When court or Judge is permitted or required to be given access

Regulation 15 (how access given to court or Judge) applies if any of the following permits or requires a court or a Judge to be given access to a Police video record:

- the [Evidence Act 2006](#)
- the [Evidence \(Video Records and Very Young Children's Evidence\) Regulations 2023](#)
- a Judge's decision (for example, a Judge's direction, order, or request) made under the Act or these regulations.

How access given to court or Judge

The court or Judge must be given access to the Police video record by means of:

- electronic access to the Police video record, and
- a transcript of the Police video record (if one has been made).

(Reg [15\(2\)](#))

If asked to do so by the court or Judge, a Police employee must, instead or as well, give the court or Judge access to the Police video record by means other than electronic access (for example, by transferring a copy of a Police video record onto a portable data storage device and giving it to the person) (Reg. [15\(3\)](#)).

Access by other person usually to be electronic access

When person is permitted or required to be given access

Regulation 16 (access to other person usually to be electronic access) applies if any of the following permits or requires a person (except a court or Judge) to be given access to a Police video record:

- the [Evidence Act 2006](#) (for example, section [106\(3\)](#) or [\(4\)](#) of the Act)
- the [Evidence \(Video Records and Very Young Children's Evidence\) Regulations 2023](#)
- a Judge's decision (for example, a Judge's direction, order, or request) made under the Act or the regulations (for example, an order made under section [106\(4B\)](#) of the Evidence Act 2006).

Access to Police video record usually by means of electronic access

Access to the Police video record must be given to the person by means of electronic access unless:

- making a decision if the person requests a copy on a portable data storage device instead.

See '[Transfer of Police video records onto portable data storage devices](#)' in this chapter for further information about the matters that must be considered.

If Police refuse the request, the person may apply to a Judge who will make a decision (reg[16\(2\)\(b\)](#) and [38\(2\)-\(4\)](#)).

Before a Judge makes an order that access to a Police video record be given to a person by means other than electronic access, the Judge must also consider the requirements under regulation [38\(3\)](#) and [\(4\)](#).

Reg. [16\(4\)](#)

Note: Regulation [16](#) is subject to regulation [50](#) (see '[Producing Police video records for criminal proceedings](#)' in this chapter for further information).

Showing Police video record to suspects, defendants or lawyers

Showing Police video record to suspect or defendant

A Police employee or a person (for example, a lawyer) may show a Police video record to the following people but must not otherwise allow them to view or have access to it:

- a person suspected of having committed an offence to which the Police video record relates
- a defendant to a charge in relation to which the Police video record may be or has been offered as evidence.

A suspect or defendant may be shown a Police video record only to allow them:

- to know and respond to the case against them
- to seek legal and expert advice.

(Reg. 18(1) & (2))

Note: If a suspect or defendant has a lawyer representing them, they may be shown the Police video record only in the presence of that lawyer. If a suspect or defendant does not have a lawyer representing them, they may be shown a Police video record only in the presence of a Police employee.

(Reg. 18(3) and (5))

See also '[Place where listed person may view and be shown especially sensitive Police video record](#)' covering regulation 36 in this chapter, which limits where a listed person may view and be shown especially sensitive Police video records.

Requirements of lawyer representing suspect or defendant with showing Police video record

If a suspect or defendant has a lawyer who is representing them, they may be shown a Police video record only in the presence of that lawyer. The lawyer must:

- if viewing the Police video record with the suspect or defendant, actively supervise the suspect's or defendant's viewing of the Police video record, and
- not allow the suspect or defendant to view the Police video record unsupervised, and
- take all reasonable steps to ensure that the suspect or the defendant does not make any unauthorised use of the Police video record, for example:
 - a lawyer who is showing a Police video record to a suspect or defendant who is not permitted to have access to a Police video record must ensure that the suspect, defendant, or party does not record the Police video record using a mobile phone or any other type of recording device.

(Reg. 18(3) & (4))

See also '[Place where listed person may view and be shown especially sensitive Police video record](#)' covering regulation 36 in this chapter, which limits where a listed person may view and be shown especially sensitive Police video records.

Lawyers representing suspects

A Police employee may allow the lawyer representing a person suspected of having committed an offence to which the Police video record relates to view the Police video record for the purpose only of enabling the lawyer to give legal advice to the suspect. The lawyer may view the Police video record without the presence, and not under any supervision, of the Police only for the purpose as described in this paragraph.

The lawyer must:

- if viewing the Police video record with the suspect, actively supervise the suspect's viewing of the Police video record. And
- not allow the suspect to view the Police video record unsupervised, and
- take all reasonable steps to ensure that the suspect does not make any unauthorised use of the Police video record (see example above).

See also '[Place where listed person may view and be shown especially sensitive Police video record](#)' covering regulation 36 in this chapter, which limits where a listed person may view and be shown especially sensitive Police video records.

(Reg. 19)

Lawyers in criminal proceedings

Regulation 20 (lawyers in criminal proceedings) applies if any of the following permits or requires a defendant's lawyer or a Crown lawyer to be given access to a Police video record in criminal proceedings:

- the [Evidence Act 2006](#)

- the [Evidence \(Video Records and Very Young Children’s Evidence\) Regulations 2023](#)
- a Judge’s decision (for example, a Judge’s direction, order, or request) made under the Act or these regulations (for example, an order made under section [106\(4B\)](#) of the Evidence Act).

If the lawyer is **permitted** to be given access, the lawyer may be given a means of accessing the Police video record (see ‘[Access by other person usually to be electronic access](#)’ in this chapter).

If the lawyer is **required** to be given access, the lawyer **must** be given a means of accessing the Police video record (see ‘[Access by other person usually to be electronic access](#)’ in this chapter).

Regulation 20 (lawyers in criminal proceedings) is subject to-

- section 106(4A) to (4C) of the Evidence Act relating to the defendant’s lawyer is not entitled to be given a copy of a Police video record of:
 - any child complainant, or
 - any witness (including an adult complainant) in a sexual case or a violent case; and
- regulation 36, which limits where a listed person may view and be shown especially sensitive Police video records, if regulation 36(2) applies. See ‘[Place where listed person may view and be shown especially sensitive Police video record](#)’ in this chapter for further information.

Defendant’s lawyer

A defendant’s lawyer may access a Police video record given to them under section [106](#) of the Evidence Act or use a transcript of the Police video record given to them under regulation 22(1), only in connection with (for example, reviewing charges filed, case preparation, or both), for the criminal proceeding to which the Police video record relates or a related proceeding.
(Reg. [21\(1\)](#))

The lawyer’s access or use may be for all or any of the following purposes:

- showing the Police video record to the defendant
- giving a copy of the transcript to the defendant
- showing the Police video record or transcript to another lawyer, or to an expert, or both
- giving access to the Police video record and a copy of the transcript to an expert.

(Reg. [21\(2\)](#))

The lawyer must:

- if showing the Police video record to the defendant, actively supervise the defendant’s viewing of the Police video record, and
- not allow the defendant to view the Police video record unsupervised, and
- comply with any additional conditions directed by a Judge under section [106\(4\)](#) of the Evidence Act, and
- take all reasonable steps to ensure that the defendant does not make any unauthorised use of the Police video record (see previous example).

(Reg. [21\(3\)](#))

A defendant’s lawyer must not give access to a Police video record that is not an especially sensitive Police video record to any other person (other than an expert) without the permission of a Judge.
(Reg. [21\(4\)](#))

A defendant’s lawyer must not give access to a Police video record that is an especially sensitive Police video record to any other person (including an expert) without the permission of a Judge.
(Reg. [21\(5\)](#))

If a lawyer gives access to a Police video record, or a copy of a transcript, to an expert, the lawyer must advise the expert of the obligations the expert has in relation to the Police video record and transcript under regulation 34 (obligations of experts) and Part 3 (obligations on people given access to Police video records).
(Reg. [21\(6\)](#))

Prosecutor to give transcript to defence following not guilty plea

The prosecutor must ensure that a typed transcript of a Police video record is given to the defendant or the defendant's lawyer as soon as practicable after the defendant has pleaded not guilty. The typed transcript is to be prepared by the Police.

The court may adjourn a hearing to allow further time for the defendant to consider the transcript if satisfied that subclause (1) has not been complied with.

For the purposes of regulation 22, prosecutor means the person who is for the time being conducting the case against the defendant in accordance with section 10 of the Criminal Procedure Act 2011.

(Reg. 22)

Change of defendant's lawyer

If a defendant's lawyer changes (for example, during a criminal proceeding to which the Police video record relates, or for a related proceeding):

- the new lawyer for the defendant must, on request, be given a means of accessing a Police video record that the lawyer who previously represented the defendant was given and any transcript that has been made
- regulations 44 (destruction of means of accessing Police video record) and 45(1)(e) (return, delete or destroy transcript) apply to the lawyer who previously represented the defendant.

(Reg. 23)

Counsel appointed to assist court

In criminal proceedings to which the Police video record relates, or a related proceeding, and if a lawyer is counsel appointed to assist the court, then the regulations apply to the appointed counsel:

- as if they were the defendant's lawyer (see, in particular, the paragraphs 'Defendant's lawyer', 'Prosecutor to give transcript to defence following not guilty plea', 'Change of defendant's lawyer' and 'Place where listed person may view and be shown especially sensitive Police video record'), and
- with any necessary modifications, and
- unless a Judge directs otherwise.

(Reg. 24)

Crown lawyers

A Crown lawyer may access a Police video record given to them, or use a transcript of that Police video record, only in connection with:

- the criminal proceeding to which the Police video record relates, or a related proceeding (for example, in connection with instructions from the Police, or in connection with a Crown prosecution, or for determining or reviewing charges to be filed, or case preparation), or
- the Crown lawyer performing or exercising any duty, function, or power, under legislation, of a Crown lawyer.

The Crown lawyer's access or use may be for all or any of the following purposes:

- showing a Police video record to allow the witness to view it
- showing the Police video record or transcript to another Crown lawyer, or to an expert, or both
- giving access to the Police video record and a copy of the transcript to an expert.

A Crown lawyer may give the means of accessing the Police video record and a copy of a transcript of the Police video record to an expert, but when doing so must advise the expert of the obligations the expert has in relation to the Police video record and transcript under regulation 34 (obligations of experts) and Part 3 (obligations on people given access to Police video records).

Disclosure for other court proceedings and access by certain officials of Police video record

Introduction

The Evidence Act 2006 and the Evidence (Video Records and Very Young Children's Evidence) Regulations 2023, provide a possible means for Police video record to be made available for proceedings other than criminal proceedings.

Disclosure in Family Court proceedings

The disclosure of a Police video record in Family Court proceedings is regulated by the following regulations:

- Reg. 26 - Family Court Judge may request video record of certain complainants
- Reg. 27 - Copying or showing transcript limited to certain purposes.

Note: Regulations 26 and 27 above will be replaced by the following regulations on 6 January 2024:

- Reg. 26 - Permitted purpose of access or disclosure
- Reg. 26A - Family Court Judge may request access to consider whether to order disclosure
- Reg. 27 - Family Court Judge may order disclosure
- Reg. 27A - Requirements before ordering disclosure
- Reg. 27B - Requirements if Family Court Judge orders disclosure.

(Schedule 3, of the Evidence (Video Records and Very Young Children's Evidence) Regulations 2023)

Disclosure in proceeding that are not criminal or Family Court proceedings

Disclosure in proceedings that are not criminal proceedings or Family Court proceedings is possible under section 119A of the Evidence Act and further details of the process are set out in the following regulations:

- Reg. 28 - Application for disclosure in accordance with section 119A of the Evidence Act
- Reg. 29 - Order for disclosure
- Reg. 30 - Disclosure to parties or lawyers under order for disclosure
- Reg. 31 - Use of Police video record or transcript or summary by parties or their lawyers under order for disclosure.

Access by certain officials

Certain officials may be given access for limited purposes, namely:

- the chief executive of the responsible department (Oranga Tamariki), may request that Police give access to the Police video record of a child complainant to enable the department to discharge a duty under legislation (see regulation 32), and
- where the Police video record has been offered as evidence in a criminal proceeding, an authorised adviser (who requires access for the purpose of a review application) may request the court to order that Police give the adviser access to the Police video record, for a review application.

(see regulations 32 and 33 respectively).

Limits on access to Police video records and transcripts

Judge may impose conditions

Regulation 35 enables a Judge to impose conditions on:

- viewing or access to a video record; or
- viewing or use of a transcript.

Conditions orders may be:

- imposed by a Judge on their own initiative; or
- made after an application is made by the person (e.g., Police) that is required to:
 - show or give access to a Police video record to a person (person B), or
 - show or give a copy of a transcript to a person (person B), or
 - comply with an order to give access to a Police video record, or a transcript of a Police video record, or both, to a person.

Place where listed person may view and be shown especially sensitive Police video record

Definitions applicable to this part and regulation 36.

Term **Definition**

Listed person Listed person means a person who is any of the following:

- a suspect or a lawyer representing a suspect:
- a defendant or a defendant's lawyer:
- a person who is given disclosure of a Police video record by way of viewing by order of a Judge made:
 - under regulation 29; and
 - in accordance with section 119A of the Act:
- an expert.

(Reg. 36(1))

Listed place Listed place means a place that is premises:

- under the control of, or
- agreed to by, the Police or a Crown lawyer.

(Reg. 36(1))

A listed person may view and be shown an especially sensitive Police video record (for example, under section 106(3) of the Evidence Act 2006) only at a listed place (subject to an order of the court under reg 36(5) permitting the video to be shown or viewed elsewhere). This applies even if the especially sensitive Police video record is not offered by the prosecution as the witness's evidence in chief under section 106 of the Evidence Act.

(Reg. 36(2) & (3))

However:

- This requirement to view at a listed person at a listed place does not apply, if a Judge makes an order that the especially sensitive Police video record be given to the listed person under legislation other than regulation 36(5), for example, under section 106(4B) of the Act (Judge may order that especially sensitive Police video record be given to defendant's lawyer before it is offered in evidence by the prosecution as the witness's evidence in chief).
- Even if the requirement to view the record at a listed place (in reg 36(2)) applies, a Judge can make an order under reg 36(5) permitting the listed person to view and be shown the video record at another place. (reg 36(5))

Reg. 36(4)

Other showing of or access to Police video records

Regulation 37 applies to Police video records and permits the Police to show or give access to Police video records for the purposes outlined in this section of the chapter.

The witness, investigating organisation, and certain lawyers

Police video records may be shown, or access given for the following purposes additional to those provided for in subpart 1 (showing of or access to Police video records: general provisions) of the Evidence (Video Records and Very Young Children's Evidence) Regulations 2023:

- Police may show a Police video record to allow the witness to view it
- Police may show or give access to a Police video record (if the witness or their guardian agrees), to allow the following to view it or access it:
 - a person acting on behalf of an organisation authorised by legislation to investigate any matter to which the Police video record may be relevant
 - a lawyer who intends to make an application to a court, to which the Police video record is relevant
- Police may allow a defendant's lawyer, or a defendant's expert, to view a Police video record (for example, as it tends to support, rebut, or have a material bearing on the case against a defendant in the criminal proceeding)
- Police may allow a lawyer representing a person making a review application to view a Police video record.

(Reg. 37(2))

Police, Crown lawyer, expert, Judge, Secretary of Justice and others

Police may show or give access to a Police video record for the following purposes at any time:

- to assist Police in any further investigations of suspected offences that may have been committed by a person referred to in regulation 18(1)(a) or (b)
- to seek advice from a Crown lawyer (or any other person, for example, an expert) to determine or review determinations about whether:
 - any, and if so what, charges ought to be filed, or
 - any care or protection proceeding ought to be instituted
- to allow a Crown lawyer or expert to view it, including to allow a Crown lawyer to discharge a duty under legislation
- to enable a Judge to view it in order to discharge a duty or comply with a requirement under legislation (other than a requirement dealt with under subpart 1) or imposed by a rule of law
- to enable any Judge to view it in order to
 - determine whether it is admissible in a proceeding, or
 - comply with any requirement in legislation or imposed by a rule of law
- for training or reviewing the performance of any person who is training as, or is, an interviewer
- to make a transcript
- to allow the Secretary for Justice, or a person engaged by the Minister of Justice or by the Secretary for Justice, to view it in order to give advice about an application for the exercise of the prerogative of mercy
- to enable the Commissioner of Police, a constable, or a Police employee to discharge a duty or meet a requirement under legislation (for example, the Criminal Cases Review Commission Act 2019).

(Reg. 37(3))

Transfer of Police video records onto portable storage devices

Transfer of copy of Police video record onto portable data storage device

If a person requests that they be given a copy of the video record on a portable data storage device under reg16(2)(a), before giving them access in that way you **must**:

- be satisfied that it is not reasonably practicable for the person who is to be given access to the Police video record to be given that access by electronic means, and
- consider the matters that must be considered below.

If you are not satisfied, you must refuse the request and the person may apply to a Judge for a determination under reg 16(2)(b).

When the Judge is considering an application under regulation 16(2)(b), the Judge must, before making an order:

- be satisfied that it is not reasonably practicable for the person who is to be given access to the Police video record to be given that access by electronic means, and
- consider the matters that must be considered below, and
- make the order subject to any conditions that the Judge considers appropriate after taking into account the matters in the next paragraph.

Matters that must be considered

The matters that must be considered by the Police or a Judge are as follows:

- the privacy of the witness
- the likelihood that the witness is vulnerable
- the desirability of minimising the number of copies of a Police video record that circulate independently of a Police storage system or facility
- or a storage system or facility controlled by a court
- the need to ensure that the Police video record is not viewed or accessed by any unauthorised person
- the public interest in ensuring that Police video records of the type dealt with in these regulations are protected from misuse

- the interests of justice.

(Reg. 38)

Copies on portable data storage devices

The Evidence (Video Records and Very Young Children's Evidence) Regulations 2023 apply (with any necessary modifications) to copies on portable data storage devices.

(Reg. 39)

Obligations on people given access to Police video records

Obligations that apply to users

Obligations that apply to all users in relation to their access to Police video records, use of transcripts or both are set out in the following regulations:

- Reg. 42 - Keeping Police video records secure
- Reg. 43 - Access log
- Reg. 44 - Destruction of means of accessing Police video record
- Reg. 45 - Transcripts.

Prohibition against making copies

A copy may be made of a Police video record or a transcript of a Police video record only if the Evidence (Video Records and Very Young Children's Evidence) Regulations 2023 permit, or a Judge orders:

- for a Police video record, by the Police:
- for a transcript, by the Police, a court (that is given a copy under Part 2), a lawyer, a party, or an authorised adviser.

Note: The regulations do not prevent a lawyer:

- under Part 2, from showing another lawyer, or an expert, or both, a transcript by sharing an electronic copy (for example, by emailing the other lawyer, or the expert, or both, an electronic copy, with or without comments or notes, for example, about editing), or
- from printing the electronic copy of a transcript for their own use or for another permitted use.

(Reg. 46)

Editing Police video records or transcripts

Original version

If a Police video record or transcript is edited, then the original version of the Police video record or transcript must be:

- identified clearly, and
- kept in a way that preserves the privacy of the people recorded on or in it.

Note: This applies even if, and after, access is given (to courts, or to other people) to either or both of:

- the original version of the Police video record or transcript
- an edited version of the Police video record or transcript.

Reg. 51(1) & (2)

Edited version

If a Police video record or transcript is edited, then that edited version must be:

- identified clearly as an edited version, and
- dealt with in accordance with these regulations as if it were the original Police video record or transcript.

(Reg. 51(3))

Retention of Police video records and transcripts

Police video record and transcript to be retained for 10 years

A Police video record and a transcript of a Police video record must be retained for 10 years after:

- the date on which a criminal proceeding to which the Police video record relates, or a related proceeding is finally determined, or
- if the Police video record is not offered as evidence in a criminal proceeding or in a related proceeding, the date on which it was made.

If a Police video record or transcript is edited, then the 10-year retention period above applies to both the original version and the edited version.

A Police video record or transcript may be (but does not have to be) permanently destroyed or erased after the period for which it must be retained.

(Reg. 52)

Record keeping, return of transcripts and backup copies

Police Record keeping: Police video records

Police must keep a record of all the following information for a Police video record:

- the date on which it is made
- the date on which it is transferred to a storage system or facility and the name of the person who made the transfer
- if it is edited, the date on which this occurred, the name of the person who made the edits, and the reason for the editing
- for each instance of access made to the Police video record, the following information:
 - the date on which, and time at which, the record is accessed in the Police storage system or facility, and
 - the access authority used to obtain access on each instance of access
- if access is revoked for a person, the date on which this occurred
- the date on which a copy is transferred to a portable data storage device, the name of the person who made the transfer, and the reason for doing so
- for a Police video record offered as the witness's evidence in chief to a court under section 106 of the Evidence Act 2006:
 - the date on which the court was given access to the Police video record (see regulations 50 and 51), and
 - the name of the person who offered the Police video record to the court
- the date on which it is permanently erased.

(Reg. 54)

Police Record keeping: transcripts

Police must keep a record of the date on which a copy of a transcript is given to a person or a court.

(Reg. 55)

Transcript of Police video record

Police must make a transcript of a Police video record, as soon as practicable after a requirement that a transcript be made, and be given to a person or a court, when the following applies:

- the Evidence Act 2006 or the regulations, or
- an order of a Judge.

Police may make a transcript for the purposes of allowing the Commissioner of Police, a Police employee, or a Judge to discharge a duty under legislation.

(Reg. 56)

Backup copies and changes to file format or storage location

Any backup copy of a Police video record created automatically by a computer system, or a storage system or facility must be treated

as if it were the Police video record from which the backup was made.

Note: Police may alter a Police video record to update or convert its file format or change the location in which it is stored within the storage system or facility.

(Reg. 57)

Judges' orders and warnings

Making, before trial, of video record of sexual case complainant's or propensity witness's evidence in court

Restricting attendance by, or excluding, members of media

A Judge may make an order restricting attendance by, or excluding, any member of the media when a video record is being made in court before a trial of a sexual case complainant's or propensity witness's evidence in court. When deciding whether to make an order and, if so, on what terms and conditions, the Judge must consider the following:

- the following rights, and any justified limitations to them (under section 5 of the NZ of Rights Act 1990)
 - the right to freedom of expression (in section 14 of the NZ of Rights Act 1990)
 - the right to a fair and public hearing by an independent and impartial court (in section 25(a) of the NZ of Rights Act 1990)
- the interests of the complainant or witness, and any preferences they have about the attendance in court of members of the media
- whether those interests and preferences could be served and met by conditions or restrictions on the attendance of members of the media
- because the video record of the evidence is made before trial for use at trial, members of the media will have an opportunity to be present when that evidence is offered at the trial (see also, on a complainant's evidence, sections 196 and 199(1)(g) and (4) of the Criminal Procedure Act 2011):
- any other matters the Judge considers relevant.

(Reg. 58)

Warning or informing jury about very young children's evidence

Form of warning or information that Judge may give to jury

In a criminal proceeding, tried with a jury, and in which a witness is a child under the age of 6 years and if the Judge is of the opinion that the jury may be assisted by a direction about:

- the evidence of very young children, and
- how the jury should assess that evidence,

then, the Judge may give the jury a direction to the following effect:

- even very young children can accurately remember and report things that have happened to them in the past, but, because of developmental differences, children may not report their memories in the same manner or to the same extent as an adult would
- this does not mean that a child witness is any more or less reliable than an adult witness
- one difference is that very young children typically say very little without some help to focus on the events in question
- another difference is that, depending on how they are questioned, very young children can be more open to suggestion than other children or adults
- the reliability of the evidence of very young children depends on the way they are questioned, and it is important, when deciding how much weight to give to their evidence, to distinguish between open questions aimed at obtaining answers from children in their own words from leading questions that may put words into their mouths.

(Reg. 59)