

**34. Practice Direction No 3 of 2006 – Special Hearings – Pre-recorded Evidence - Editing**

1. Rules 81A.27A – 81A.27J apply to special hearings conducted under s 21B of the Evidence Act.
2. Unless a Judge orders otherwise, the Sheriff is to make a duplicate copy of the recording of the special hearing pursuant to r 81A.27E within seven days of the completion of the special hearing.
3. Upon completion of the duplicate copy of the recording, the Sheriff shall forthwith advise the parties that the duplicate recording has been completed and is available for editing.
4. If the prosecution or the defence are of the view that the duplicate recording should be edited before being played to a jury, an application for an order pursuant to r 81A.27F relating to the editing is to be made within 14 days of advice from the Sheriff that the duplicate recording is available.
5. The primary purpose of editing a recording of a special hearing is to remove from the recording to be played to the jury any part of the recording which contains the following:
  - material that is plainly both inadmissible and unfairly prejudicial to an accused;
  - any part of the proceedings which, had the witness been giving evidence in front of a jury, would plainly have occurred in the absence of the jury;
  - any part of the proceedings which occurred in the absence of the witness or while communication between the Court and the witness was muted.
6. Usually, editing for “cosmetic” purposes is inappropriate. For example, usually it is not appropriate to edit evidence, objections or discussions which occurred while communication between the Court and the witness was live and which, had the witness been giving evidence in the presence of the jury, would have occurred in the presence of the jury.
7. Editing of those parts of the recording which fall within paragraph 5 of this practice direction, and which both the prosecution and defence agree should be edited, may occur without leave of a Judge. In the absence of agreement, a ruling of the trial Judge must be sought.
8. If it is thought by either party that editing should occur for reasons other than those identified in paragraph 5 of this practice direction, editing may only occur with the leave of the trial Judge.
9. Should a ruling of the trial Judge be required pursuant to paragraphs 7 or 8 of this Practice Direction, an application is to be made for a

directions hearing and, in advance of the directions hearing, the Judge is to be provided with a copy of the relevant pages of the transcript with the proposed passages to be edited highlighted.

10. The edited version of the duplicate recording is to be provided to the Sheriff pursuant to r 81A.27F not less than seven days prior to the date listed for the commencement of the trial before the jury.