

**SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS  
ATTORNEY-GENERAL'S PORTFOLIO**

**Program: 1.4 Justice Services**

**Question No. AE17/014**

**Senator Hinch asked the following question at the hearing on 28 February 2017:**

Senator HINCH: Okay. I am wondering: what is the practice of the Commonwealth courts and tribunals in editing transcripts of proceedings? Do we have any national standards or laws to protect the integrity of court recordings?

Senator Brandis: I do not know the immediate answer to that question but I can tell you, going back to my days at the bar, what the practice is. The practice is that counsel at the bar, at the end of a day's hearing, will read the transcript, and if they detect an error in the transcript—this is a matter of professional duty to the court—they will bring that error to the attention of the judge at the beginning of the proceedings the next morning. That is quite a routine thing to happen in court.

**ANSWER PROVIDED:**

Senator Brandis: Before the officers leave the table, and before we move off that bracket of evidence, I want to add to the answer where Senator Hinch and Senator Xenophon asked me about court transcripts. I should advise the committee, as I am advised by the Chief Justice of the Family Court, that in fact there is a court protocol in operation in relation to the correction of transcripts, and we will obtain a copy of that protocol and table it.

**The answer to the honourable senator's question is as follows:**

The Attorney-General's Department has consulted with the Family Court of Australia concerning the processes for the editing of transcripts of court proceedings. The Family Court has provided the following information concerning the transcript of hearings by way of letter addressed to the Department dated 24 March 2017.

Practical Considerations

The provision of transcript for hearings in the Family Court is provided by an independent provider, currently Auscript. The Court enters into an agreement with the provider for the provision of services.

Proceedings are audio recorded usually (but not always) remotely by Auscript. The Judges of the Family Court do not obtain running transcript and the Court does not have funding to acquire a running transcript. Thus transcript is not routinely available to Family Court Judges in the running of a case. Judges sometimes order written transcript of the evidence of a particular witness, especially expert witnesses, so that the parties will have an opportunity to read their evidence and deal with it in their submissions. If the Court orders written transcript it is provided to all parties. Apart from that limited circumstance Judges do not have access to written transcript. If Judges wish to listen to the evidence, as part of the contract with Auscript the audio is available on a "listen only" basis.

The Family Court is not able to require a change to a transcript. Any changes to transcripts are made as a result of a decision by Auscript in accordance with the audio held by it and on a limited basis in accordance with Auscript's protocol as outlined below.

### Auscript's protocol

*The following steps are followed before a decision is made to amend and reissue a transcript (Court or parties).*

- 1. A thorough investigation of the queries is conducted by one of our experienced Quality Officers.*
- 2. We advise the client that we are reviewing the transcript and audio, we generally respond in 24 hours.*
- 3. Conduct a review against the audio to determine if corrections need to be made to the transcript.*
- 4. Amendments **will only** be made in accordance with the audio and contracted format and style. Our team take this process very seriously and will not deviate from this process. Each of our staff members knows that they are engaged to produce an accurate record of the audio.*
- 5. If amendments are confirmed, the transcript will be reissued to the requesting party and an autocopy sent to the Court.*
- 6. We provide a summary of the changes in the email to the recipients of the transcript.*
- 7. We report on quality complaints weekly to the Auscript management team and monthly to the Court.*
- 8. Our ISO 9001 audit ensures that quality complaints and reissues are completed in accordance with our quality management system.*

*The number of reissues that are required due to an error are minimal as a result of the objectivity and performance of our Audio Transcribers. Auscript Audio Transcribers control the transcript process and are governed by a stringent set of policies and procedures, including conflict of interest and quality processes. All transcribers receive intensive training, to produce an accurate record of the spoken word, in line with client requirements. Their remuneration is based on accuracy, confirmed by random quality checks on raw turns completed each month.*

*Further to this, audio is only accessible to those staff that need to access it to create a record of the Court. All audio is stored securely and access controlled on a needs to know basis.*

Under this current process it is clear that the Court is not able to require a change to the transcript. Any change made is as a result of a decision by the third party provider and will only be made in accordance with the audio held by it and on the limited basis outlined above.

### The Chief Justice's concerns about allegations of altering transcript

The Chief Justice has expressed that she is extremely concerned by wild allegations that Judges would alter transcript in order to change evidence. A Judge takes an oath to hear a case "without fear or favour, affection or ill-will". In other words to approach a case impartially with no interest as to outcome.

The Chief Justice considers that if anyone was seriously suggesting that a Judge was deliberately altering transcript to bring about a particular result then that would be behaviour in breach of their oath of office and which, if proved, would require consideration by both houses of Parliament for removal of the Judge for misconduct.

An allegation that a Judge may have behaved in this way is the most serious allegation that could be made. Chief Justice Bryant says that if anyone has any **credible** evidence that this had occurred, that evidence should be provided to the Attorney-General who would then need to consider whether to move both houses of Parliament.

The Chief Justice says that it should be understood that the making of such allegations without any credible evidence is a serious issue and has the capacity to bring the system of justice into disrepute.