



Western Australia

Evidence Act 1906

**Evidence (Visual Recording of Interviews with
Children and Persons with Mental Impairment)
Regulations 2004**

Evidence (Visual Recording of Interviews with Children and Persons with Mental Impairment) Regulations 2004

Contents

1.	Citation	1
2.	Commencement	1
3.	Terms used	1
4A.	Authorisation of persons	2
4.	Prescribed class of persons — s. 106HA(1)(a) and (1a)(a)	2
5.	Prescribed requirements and extent to which they are to be met — s. 106HA(1)(b)	3
6A.	Prescribed requirements and extent to which they are to be met — s. 106HA(1a)(b)	4
6.	Opportunity of accused to view visually recorded interview — s. 106HB(2)(b)	5
7.	Certificate to accompany visually recorded interview	5
Notes		
	Compilation table	7

Defined terms



Western Australia

Reprinted under the
Reprints Act 1984 as
at 1 August 2014

Evidence Act 1906

Evidence (Visual Recording of Interviews with Children and Persons with Mental Impairment) Regulations 2004

1. Citation

These regulations are the *Evidence (Visual Recording of Interviews with Children and Persons with Mental Impairment) Regulations 2004*¹.

[Regulation 1 amended: Gazette 20 May 2014 p. 1600.]

2. Commencement

These regulations come into operation on the same day as the *Criminal Law Amendment (Sexual Assault and Other Matters) Act 2004* comes into operation¹.

3. Terms used

(1) In these regulations —

Commissioner of Police means the Commissioner of Police appointed under the *Police Act 1892* section 5;

department means the department of the Public Service principally assisting in the administration of the *Children and Community Services Act 2004*;

r. 4A

relevant person means a person —

- (a) who is a member of the Police Force; or
- (b) authorised by the Commissioner of Police under regulation 4A; or
- (c) who is an officer as defined in the *Children and Community Services Act 2004* section 3;

section means a section of the Act.

- (2) If a word or expression used in these regulations is defined in section 106A then it has the same meaning in these regulations.

[Regulation 3 amended: Gazette 20 May 2014 p. 1600.]

4A. Authorisation of persons

The Commissioner of Police may, by notice in writing, authorise a person who is engaged by the Western Australian Police Service under a contract for services, or otherwise, to be a relevant person for the purposes of these regulations.

[Regulation 4A inserted: Gazette 20 May 2014 p. 1600.]

4. Prescribed class of persons — s. 106HA(1)(a) and (1a)(a)

For the purposes of section 106HA(1)(a) and (1a)(a) a person is of the prescribed class if —

- (a) the person is a relevant person and has successfully completed a training course about conducting interviews of a kind mentioned in section 106HA(1) or (1a) —
 - (i) provided by the Western Australian Police Service; or
 - (ii) provided by the department; or
 - (iii) approved in writing by the Commissioner of Police;

or

- (b) the person —
 - (i) is a member of the police force or police service of the Commonwealth or of another State or a Territory; and
 - (ii) is authorised under a law of the Commonwealth or of another State or a Territory to conduct interviews with a child or a person with a mental impairment in the circumstances set out in section 106HA(1)(a) or (1a)(a).

[Regulation 4 inserted: Gazette 20 May 2014 p. 1601.]

5. Prescribed requirements and extent to which they are to be met — s. 106HA(1)(b)

For the purposes of section 106HA(1)(b) an interview meets the prescribed requirements if it was —

- (a) conducted in such a manner that, as far as is practicable, statements made by the child in the interview were not elicited by the use of leading questions; and
- (b) where the child is under the age of 12 years, conducted in such a manner —
 - (i) that the child appears to understand that participating in the interview is a serious matter and that in giving the interview the child has an obligation to tell the truth; or
 - (ii) that it is apparent that the child has reached a level of cognitive development that enables the child to understand and respond rationally to questions and to give an intelligible account of his or her experiences;

and

- (c) conducted or recorded in a manner that provides all, or most, of the following information —
 - (i) the date on which the recording was made;
 - (ii) the place at which the recording was made;

r. 6A

- (iii) the identity of all persons who were present at any time during the interview;
- (iv) any breaks in the interview, the time the break commenced and concluded and the reasons for the break.

6A. Prescribed requirements and extent to which they are to be met — s. 106HA(1a)(b)

For the purposes of section 106HA(1a)(b) an interview meets the prescribed requirements if it was —

- (a) conducted in such a manner that, as far as is practicable, statements made by the person with a mental impairment in the interview were not elicited by the use of leading questions; and
- (b) conducted in such a manner that it is apparent that the person —
 - (i) understands that the giving of evidence is a serious matter and that the person must tell the truth; and
 - (ii) has a level of cognitive functioning that enables the person to give an intelligible account of his or her experiences;

and

- (c) conducted or recorded in a manner that provides all, or most, of the following information —
 - (i) the date on which the recording was made;
 - (ii) the place at which the recording was made;
 - (iii) the identity of all persons who were present at any time during the interview;
 - (iv) any breaks in the interview, the time the break commenced and concluded and the reasons for the break.

[Regulation 6A inserted: Gazette 20 May 2014 p. 1601-2.]

6. Opportunity of accused to view visually recorded interview — s. 106HB(2)(b)

The accused and his or her counsel have been given a reasonable opportunity to view a visually recorded interview for the purposes of section 106HB(2)(b), if —

- (a) at least 3 clear days prior notice in writing has been given to the accused or his or her counsel specifying —
 - (i) at least 2 occasions during normal office hours when the interview may be viewed; and
 - (ii) the place where the interview may be viewed;and
- (b) the interview was available to be viewed at the place specified in the notice on each occasion specified in the notice.

[Regulation 6 amended: Gazette 11 Mar 2008 p. 820.]

7. Certificate to accompany visually recorded interview

- (1) A person who conducts a visually recorded interview is to certify that —
 - (a) he or she —
 - (i) is a person of a class prescribed under section 106HA(1)(a) or (1a)(a); and
 - (ii) conducted the interview;and
 - (b) the details specified in the certificate are true and correct.
- (2) A certificate is to specify —
 - (a) sufficient details to identify the visually recorded interview in respect of which it is given; and
 - (b) the name, and contact details, of the person who conducted the interview; and

r. 7

- (c) details showing that the person is a person of a class prescribed under section 106HA(1)(a) or (1a)(a).
- (3) A certificate given or purporting to be given under this regulation —
 - (a) is admissible as evidence of the facts specified in the certificate; and
 - (b) in the absence of proof to the contrary, is proof of those facts.
- (4) A person must not give any information that is false or misleading in a certificate.

Penalty: \$2 000.

[Regulation 7 amended: Gazette 20 May 2014 p. 1602.]

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Notes

- ¹ This reprint is a compilation as at 1 August 2014 of the *Evidence (Visual Recording of Interviews with Children and Persons with Mental Impairment) Regulations 2004* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

Citation	Gazettal	Commencement
<i>Evidence (Visual Recording of Interviews with Children) Regulations 2004</i> ²	31 Dec 2004 p. 7147-50	1 Jan 2005 (see r. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Evidence (Visual Recording of Interviews with Children) Amendment Regulations 2008</i>	11 Mar 2008 p. 819-20	r. 1 and 2: 11 Mar 2008 (see r. 2(a)); Regulations other than r. 1 and 2: 12 Mar 2008 (see r. 2(b))
<i>Evidence (Visual Recording of Interviews with Children) Amendment Regulations 2014</i>	20 May 2014 p. 1599-602	r. 1 and 2: 20 May 2014 (see r. 2(a)); Regulations other than r. 1 and 2: 21 May 2014 (see r. 2(b))
Reprint 1: The Evidence (Visual Recording of Interviews with Children and Persons with Mental Impairment) Regulations 2004 as at 1 Aug 2014 (includes amendments listed above)		

- ² Now known as the *Evidence (Visual Recording of Interviews with Children and Persons with Mental Impairment) Regulations 2004*; citation changed (see note under r. 1).

Defined terms

Defined terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined term	Provision(s)
Commissioner of Police.....	3(1)
department	3(1)
relevant person.....	3(1)
section.....	3(1)