



Western Australia

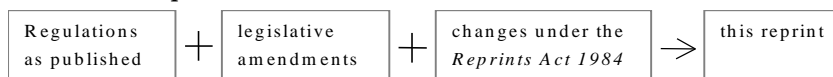
Evidence Act 1906

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

**Reprint 1: The regulations as at 1 August 2014**

## Guide for using this reprint

### *What the reprint includes*



### *Endnotes, Compilation table, and Table of provisions that have not come into operation*

1. Details about the original regulations and legislation that has amended its text are shown in the Compilation table in endnote 1, at the back of the reprint. The table also shows any previous reprint.
2. Transitional, savings, modifying or other provisions identified in the Compilation table may be important. The table may refer to another endnote setting out the text of these provisions in full.
3. A table of provisions that have not come into operation, to be found in endnote 1a if it is needed, lists any provisions of the regulations being reprinted that have not come into operation and any amendments that have not come into operation. The full text is set out in another endnote that is referred to in the table.

### *Notes amongst text (italicised and within square brackets)*

1. If the reprint includes a regulation that was inserted, or has been amended, since the regulations being reprinted were made, editorial notes at the foot of the regulation give some history of how the regulation came to be as it is. If the regulation replaced an earlier regulation, no history of the earlier regulation is given (the full history of the regulations is in the Compilation table).

Notes of this kind may also be at the foot of Schedules or headings.

2. The other kind of editorial note shows something has been —
  - removed (because it was repealed or deleted from the law); or
  - omitted under the *Reprints Act 1984* s. 7(4) (because, although still technically part of the text, it no longer has any effect).

The text of anything removed or omitted can be found in an earlier reprint (if there is one) or one of the written laws identified in the Compilation table.

### *Reprint numbering and date*

1. The reprint number (in the footer of each page of the document) shows how many times the regulations have been reprinted. For example, numbering a reprint as “Reprint 3” would mean that the reprint was the 3<sup>rd</sup> reprint since the regulations were published. Reprint numbering was implemented as from 1 January 2003.
2. The information in the reprint is current on the date shown as the date as at which the regulations are reprinted. That date is not the date when the reprint was published by the State Law Publisher and it is probably not the date when the most recent amendment had effect.

Western Australia

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

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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*<sup>1</sup>.

[Regulation 1 amended in 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 operation<sup>1</sup>.

### **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*;

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***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 in 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 in 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 in 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**

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- (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 in 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 in 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**

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- (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 in Gazette 20 May 2014 p. 1602.]*

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## Notes

- <sup>1</sup> 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> <sup>2</sup>	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)

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- <sup>2</sup> 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**

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**Defined terms**

*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

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