Western Australia

Evidence Act 1906

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

As at 25 Sep 2025 Official Version
[PCO 01-b0-01] Published on www.legislation.wa.gov.au

Western Australia

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
Uncommenced provisions table	7
Other notes	7

Defined terms

Western Australia

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 operation [1].

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*;

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;

(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

(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.]

Notes

This is a compilation of the *Evidence (Visual Recording of Interviews with Children and Persons with Mental Impairment) Regulations 2004* and includes amendments made by other written laws. For provisions that have come into operation, and for information about any reprints, see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

Compilation table

Citation	Gazettal	Commencement
Evidence (Visual Recording of Interviews with Children) Regulations 2004 [1]	31 Dec 2004 p. 7147-50	1 Jan 2005 (see r. 2 and *Gazette* 31 Dec 2004 p. 7130)
Evidence (Visual Recording of Interviews with Children) Amendment Regulations 2008	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))
Evidence (Visual Recording of Interviews with Children) Amendment Regulations 2014	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)

Uncommenced provisions table

To view the text of the uncommenced provisions see *Acts as passed* on the WA legislation website.

Citation	Published	Commencement
Evidence Act 2025	assented to 25 Sep 2025 s. 387(f)	18 Sep 2027 (see s. 2(e) and SL 2026/190 cl. 2)

Other notes

[1] 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

[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)

© State of Western Australia 2025.
This work is licensed under a Creative Commons Attribution 4.0 International Licence (CC BY 4.0).
To view relevant information and for a link to a copy of the licence, visit www.legislation.wa.gov.au.
Attribute work as: © State of Western Australia 2025.

By Authority: GEOFF O. LAWN, Government Printer