Western Australia

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

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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*.

[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.

##### 3. Interpretation

(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 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 the 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;

(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; and

(iv) any breaks in the interview, the time the break commenced and concluded and the reasons for the break.

##### 6A. Prescribed requirements and the 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 is it is given;

(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 in Gazette 20 May 2014 p. 1602.]

Notes

1 This is a compilation 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.

Compilation table

| **Citation** | **Gazettal** | **Commencement** |
| --- | --- | --- |
| *Evidence (Visual Recording of Interviews with Children) Regulations 2004*2 | 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)) |

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)