

Western Australia

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

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

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## **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.

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- (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 —

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- (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;
  - (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.

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- (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 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**

<b>Citation</b>	<b>Gazettal</b>	<b>Commencement</b>
<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))

- <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)