

JU302\*

Evidence Act 1906

## **Evidence (Visual Recording of Interviews with Children) Regulations 2004**

Made by the Governor in Executive Council.

### **1. Citation**

These regulations are the *Evidence (Visual Recording of Interviews with Children) Regulations 2004*.

## 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 —  
“**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.

## 4. Prescribed classes of persons — s. 106HA(1)(a)

- (1) For the purposes of section 106HA(1)(a) a person is of the prescribed class if the person —
  - (a) is employed in, or engaged by, the department whether as a public service officer under the *Public Sector Management Act 1994*, under a contract for services, or otherwise;
  - (b) is member of the Police Force or an employee in the Western Australian Police Service; or
  - (c) has successfully completed a training course about interviewing children provided by —
    - (i) the Western Australian Police Service; or
    - (ii) the department,or a course approved in writing by the Commissioner of Police as being similar to such a course.
- (2) In this regulation —  
“**Commissioner of Police**” means the person holding or acting in the office of Commissioner of Police under the *Police Act 1892*;  
“**department**” means the department of the Public Service principally assisting in the administration of the *Community Services Act 1972*.

## 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.

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

The defendant 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 defendant 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.

**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); 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) which of the classes prescribed under section 106HA(1)(a) (see regulation 4(1)) applies to him or her.
- (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.

By Command of the Governor,

M. C. WAUCHOPE, Clerk of the Executive Council.

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