Western Australia

Evidence (Visual Recording of Interviews with Children) Regulations 2004

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Evidence Act 1906

Evidence (Visual Recording of Interviews with Children) Regulations 2004

##### 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 *Children and Community Services Act 2004*.

[Regulation 4 amended in Gazette 11 Mar 2008 p. 819.]

##### 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 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); 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) 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.

Notes

1 This is a compilation of the *Evidence (Visual Recording of Interviews with Children) 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* | 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) AmendmentRegulations 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)) |