



New South Wales

## Evidence (Children) Regulation 1999

under the

Evidence (Children) Act 1997

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Evidence (Children) Act 1997*.

JEFFREY SHAW, Q.C., M.L.C.,

Attorney General

### Explanatory note

The *Evidence (Children) Act 1997* allows children to give evidence of a previous representation wholly or partly in the form of a recording made by an investigating official of an interview with the child where the child was questioned regarding the alleged commission of an offence by the child or by another person. Section 12 (2) of the Act provides that in proceedings where the accused person is not the child who was interviewed, such a recording is not to be admissible as evidence unless the accused person and his or her lawyer (if any) have been given a reasonable opportunity to listen to and, in the case of a video recording, view the recording in accordance with the regulations. The object of this Regulation is to set out a procedure by which a recording can be made available to an accused person and his or her lawyer.

This Regulation is made under the *Evidence (Children) Act 1997*, including section 12 (2) and 31 (the general regulation-making power).

This Regulation comprises or relates to matter of a machinery nature.

**1999 No 386**

Evidence (Children) Regulation 1999

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## Evidence (Children) Regulation 1999

### Part 1 Preliminary

#### 1 Name of Regulation

This Regulation is the *Evidence (Children) Regulation 1999*.

#### 2 Commencement

This Regulation commences on 1 August 1999.

#### 3 Definitions

In this Regulation:

***defence notice*** means a notice given by an accused person or his or her lawyer under clause 6.

***prosecuting authority***, in relation to a prosecution, means the Director of Public Prosecutions, or a police officer, who is responsible for the conduct of the prosecution.

***prosecuting authority notice*** means a notice given by a prosecuting authority under clause 5.

***recorded interview*** means a recording made by an investigating official of an interview during which a child is questioned by an investigating official in connection with the investigation of the commission or possible commission of an offence by the child or any other person.

***responsible person*** means a person named in a prosecuting authority notice as referred to in clause 5 (2) (d).

***the Act*** means the *Evidence (Children) Act 1997*.

#### 4 Notes

The explanatory note, table of contents and notes in the text of this Regulation do not form part of this Regulation.

## 1999 No 386

Clause 5 Evidence (Children) Regulation 1999

Part 2 Recorded interviews

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## Part 2 Recorded interviews

### 5 Prosecuting authority to notify accused of intention to adduce recorded interview

- (1) For the purposes of section 12 (2) of the Act, if a prosecuting authority intends to adduce evidence of a previous representation by a child wholly or partly by means of a recorded interview or a transcript of a recorded interview in a criminal proceeding where the child who made the representation is not the accused person, the prosecuting authority must notify the accused person or his or her lawyer (if any) of the intention in accordance with this section.
- (2) A notice under subclause (1) must:
  - (a) be in writing, and
  - (b) specify each recorded interview (or transcript of such interview) that the prosecuting authority intends to adduce, and
  - (c) contain information to the effect that the accused person and his or her lawyer are entitled to listen to or view each recorded interview at a police station or other place nominated by the prosecuting authority, and
  - (d) set out the name of a person responsible for arranging access to each recorded interview.
- (3) A notice under subclause (1) must be given to the accused person or his or her lawyer at least 14 days before the evidence for the prosecution is given in the proceeding.

**Note.** Section 48CA of the *Justices Act 1902* provides that a transcript of a recorded interview is not admissible in committal proceedings unless the defendant has been given, in accordance with the regulations under section 12 (2) of the *Evidence (Children) Act 1997*, a reasonable opportunity to listen to or view the recorded interview.

### 6 Accused may notify prosecuting authority of intention to access recorded interview

- (1) An accused person or lawyer who receives a prosecuting authority notice may notify the responsible person that he or she requires access to any one or more of the recorded interviews specified in the notice.

- (2) A notice under subclause (1) must:
- (a) be in writing, and
  - (b) set out the name of the accused person and his or her lawyer (if any), and
  - (c) specify the recorded interview or interviews to which the accused person or his or her lawyer require access, and
  - (d) be given to the responsible person at least 7 days before the evidence for the prosecution is given in the proceeding, unless the court gives leave for the notice to be given at a later time.

**7 Recorded interview to be made available within 7 days**

- (1) A responsible person who receives a defence notice that complies with clause 6 must give the persons named in the defence notice as referred to in clause 6 (2) (b) access to listen to or view the recorded interview within 7 days (or such shorter period of time as the court directs) after the day on which the responsible person receives the defence notice.
- (2) The responsible person may give the accused person or his or her lawyer access to listen to or view the recorded interview on more than one occasion.