



New South Wales

Criminal Procedure Amendment (Vulnerable Persons) Regulation 2007

under the

Criminal Procedure Act 1986

The Administrator, with the advice of the Executive Council, has made the following Regulation under the *Criminal Procedure Act 1986*.

JOHN HATZISTERGOS, M.L.C.,
Attorney General

Explanatory note

The object of this Regulation is to provide for the procedure by which a recording made by an investigating official of an interview with a vulnerable person (namely, a child or an intellectually impaired person), where that person was questioned regarding the alleged commission of an offence, can be made available to the accused person and his or her lawyer.

This Regulation remakes, without any changes of substance, the provisions of the *Evidence (Children) Regulation 2004*. That Regulation will be repealed on the commencement of the *Criminal Procedure Amendment (Vulnerable Persons) Act 2007*.

This Regulation is made under the *Criminal Procedure Act 1986*, including sections 4 (the general regulation-making power) and 306V.

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Clause 1 Criminal Procedure Amendment (Vulnerable Persons) Regulation 2007

Criminal Procedure Amendment (Vulnerable Persons) Regulation 2007

under the

Criminal Procedure Act 1986

1 Name of Regulation

This Regulation is the *Criminal Procedure Amendment (Vulnerable Persons) Regulation 2007*.

2 Commencement

This Regulation commences on 12 October 2007.

3 Amendment of Criminal Procedure Regulation 2005

The *Criminal Procedure Regulation 2005* is amended as set out in Schedule 1.

Schedule 1 Amendment

(Clause 3)

Part 5A

Insert after Part 5:

Part 5A Recorded interviews with vulnerable persons

19C Definitions

In this Part:

defence notice means a notice given by an accused person or his or her lawyer under clause 19E.

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 19D.

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

responsible person means a person named in a prosecuting authority notice as referred to in clause 19D (2) (d).

vulnerable person has the same meaning as it has in Part 6 of Chapter 6 of the Act.

19D Prosecuting authority to notify accused of intention to adduce recorded interview

- (1) For the purposes of section 306V (2) of the Act, if a prosecuting authority intends to adduce evidence of a previous representation by a vulnerable person wholly or partly by means of a recorded interview or a transcript of a recorded interview in a criminal proceeding where the vulnerable person 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 clause.
- (2) A notice under subclause (1) must:
 - (a) be in writing, and

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Schedule 1 Amendment

- (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 76 of the Act 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 306V (2) of the Act, a reasonable opportunity to listen to or view the recorded interview.

19E 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.

19F Recorded interview to be made available within 7 days

- (1) A responsible person who receives a defence notice that complies with clause 19E must give the persons named in the defence notice as referred to in clause 19E (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.