

# Evidence (Children) Regulation 2004

[2004-522]



New South Wales

## Status Information

### Currency of version

Repealed version for 6 August 2004 to 11 October 2007 (accessed 17 July 2024 at 22:34)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Repeal**

The Regulation was repealed by sec 6 of the [Criminal Procedure Amendment \(Vulnerable Persons\) Act 2007 No 6](#) with effect from 12.10.2007.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Evidence (Children) Regulation 2004



New South Wales

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

BOB DEBUS, M.P., Attorney General

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Evidence (Children) Regulation 2004*.

### 2 Commencement

This Regulation commences on 1 September 2004.

**Note—**

This Regulation replaces the *Evidence (Children) Regulation 1999* which is repealed on 1 September 2004 by section 10 (2) of the *Subordinate Legislation Act 1989*.

### 3 Definitions and notes

(1) In this Regulation:

**defence notice** means a notice given by an accused person or his or her lawyer under clause 5.

**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 4.

**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 4 (2) (d).

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

(2) Notes included in this Regulation do not form part of this Regulation.

## **Part 2 Recorded interviews**

### **4 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 76 of the *Criminal Procedure Act 1986* 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.

### **5 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.

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

- (1) A responsible person who receives a defence notice that complies with clause 5 must give the persons named in the defence notice as referred to in clause 5 (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.

### **Part 3 Miscellaneous**

#### **7 Savings**

Any act, matter or thing that, immediately before the repeal of the *Evidence (Children) Regulation 1999* had effect under that Regulation continues to have effect under this Regulation.