

Reprint
as at 1 July 2019



Evidence Regulations 2007 (SR 2007/204)

Anand Satyanand, Governor-General

Order in Council

At Wellington this 23rd day of July 2007

Present:

His Excellency the Governor-General in Council

Pursuant to sections 200 and 201 of the Evidence Act 2006 and, in relation to preliminary hearings, pursuant also to section 212 of the Summary Proceedings Act 1957, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

Contents

	Page
1 Title	5
2 Commencement	5
3 Interpretation	5
3A Application of regulations to certain military proceedings	6

Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

These regulations are administered by the Ministry of Justice.

Part 1		
Video record evidence in criminal proceeding		
Subpart 1—Recording video evidence		
4	Application of subpart	7
	<i>Who may be present at video recording of interview</i>	
5	Only certain persons may be present during interview	7
6	Person to support witness may be present	7
7	Interpreter may be present	8
	<i>What must be on video record</i>	
8	What must be on video record	8
9	Additional requirement if break taken	9
10	Additional requirement if premature conclusion	9
11	Additional requirement if person present to support witness	9
12	Additional requirement if interpreter present	9
	<i>Equipment failure</i>	
13	Equipment failure	10
	<i>Master copy and working copy</i>	
14	Copies of video record	10
15	Master copy	10
16	Working copy	10
17	How master copy identified and kept	11
18	How working copy identified and kept	11
	Subpart 2—Restrictions on showing, viewing, copying, and supplying working copy and master copy	
19	Application of subpart	12
20	Limited purposes for which Police may show working copy	12
20A	Requirements for experts viewing video records	13
20B	Limited places where working copy of video record of evidence may be viewed	14
20C	Judge or judicial officer may impose conditions	14
	<i>Request for video record made by responsible department or Family Court Judge</i>	
21	Responsible department may request video record of certain complainants	14
22	Family Court Judge may request video record of certain complainants	15
23	Transcript to accompany video record supplied to responsible department or Family Court	16
24	Copying or showing transcript limited to certain purposes	16

	<i>Request for video record under section 119A of the Act by Judge or judicial officer in other proceedings</i>	
24A	Judge or judicial officer may request copy of video record	18
24B	Safe custody, use of video record and transcript, prohibition on copying video record, and copying of transcript	18
24C	Disclosure of copy of video record, transcript, or summary	19
24D	Disclosure by viewing video record	19
24E	Admissibility	19
	<i>Request by authorised advisors</i>	
25	Authorised advisor may request copy of video record	20
26	Conditions of supply of copy of master copy to authorised advisor	20
27	Transcripts to accompany copy of master copy supplied to authorised advisor	21
	<i>Prosecution to give transcript to defence following not guilty plea</i>	
28	Prosecutor to give transcript to defence following not guilty plea	21
	<i>Subpart 3—Lawyer’s copy</i>	
29	Application of subpart	22
30	Lawyer’s copy	22
31	Custody of lawyer’s copy	22
32	Use of lawyer’s copy by defendant’s lawyer	22
33	Prohibition on copying lawyer’s copy	23
34	Use of lawyer’s copy by Crown lawyer	23
	<i>Subpart 4—Retention and destruction of master copy, copies of master copy, working copy, copies of working copy, and lawyer’s copy</i>	
35	Application of subpart	24
36	Meaning of destruction date A and destruction date B	24
	<i>Privacy preserved</i>	
37	Privacy to be preserved	24
	<i>Master copy to be used in criminal proceeding</i>	
38	Producing and retaining master copy for criminal proceeding	24
	<i>Court retention and destruction obligations</i>	
39	Obligations of court to retain and destroy master copy and copy of master copy	25
	<i>Police retention and destruction obligations</i>	
40	Obligations of Police to retain and destroy master copy	25
41	Obligations of Police to retain and destroy working copy and copy of working copy	25
42	Obligations of Police to retain and destroy lawyer’s copy	25

<i>Responsible department and Family Court retention and destruction obligations</i>		
43	Obligations of responsible department to retain and destroy working copy	26
44	Obligation of responsible department to retain and destroy copy of working copy	26
45	Obligations of Family Court to retain and destroy working copy	26
46	Obligations of Family Court to retain and destroy copy of working copy	26
<i>Retention and destruction obligations of other courts and tribunals</i>		
46A	Retention and destruction obligations of other courts and tribunals supplied with copy of video record and transcript under regulation 24A	27
<i>Exception</i>		
47	Destruction before destruction date	27
<i>Transcripts</i>		
48	Retention and destruction of transcripts	27
Part 2		
Warning or informing jury about very young children's evidence		
49	Warning or informing jury about very young children's evidence	28
Part 3		
Revocation and transitional provision		
50	Revocation	28
51	Transitional provision	29
Part 4		
Mobile video record evidence in criminal proceedings concerning family violence		
52	Application	29
53	Interpretation	29
54	Requirements for recording mobile video records	30
55	Storage of mobile video records	30
56	Application of regulations 20, 20A, 20B, 20C, 24A, 24B, 24C, 24D, 24E, and 28 to mobile video records	31
57	Access to mobile video records	31
58	Privacy in respect of mobile video records	32
59	Producing and retaining copies of mobile video records for criminal proceedings concerning family violence	32
60	Obligations of Police to retain and destroy mobile video records	32
61	Destruction of transcripts	33
62	Records to be kept of dealings with mobile video records	33

**Part 5
Offences**

63	Failure to comply with requirements	33
	Schedule Form	34

Regulations

1 Title

These regulations are the Evidence Regulations 2007.

2 Commencement

These regulations come into force on 1 August 2007.

3 Interpretation

In these regulations, unless the context otherwise requires,—

Act means the Evidence Act 2006

authorised advisor means—

- (a) the Secretary for Justice; or
- (b) a person engaged by the Minister of Justice or the Secretary for Justice to give advice about a review application

Commissioner means the Commissioner of Police

Crown lawyer means a Crown prosecutor, any lawyer representing the Police or the Crown, or any lawyer employed or instructed by the Solicitor-General

Crown prosecutor has the meaning given to it by section 5 of the Criminal Procedure Act 2011

interview means an interview with a witness whose evidence is being video recorded

lawyer's copy, in relation to a video record referred to in section 106 of the Act, means a copy of a video record supplied by the Police to a defendant's lawyer or a Crown lawyer in accordance with regulation 30

master copy, in relation to a video record, has the meaning given to it by regulation 15

party's copy, in relation to a video record referred to in section 119A of the Act, means a copy of a video record supplied by the Police in accordance with regulation 24C

Police employee has the meaning given to it by section 4 of the Policing Act 2008

responsible department means the department that is, with the authority of the Prime Minister, for the time being responsible for the administration of the Oranga Tamariki Act 1989

review application means—

- (a) an application for the exercise of the prerogative of mercy; or
- (b) an application under section 406 of the Crimes Act 1961

working copy, in relation to a video record, has the meaning given to it by regulation 16.

Regulation 3 **Crown lawyer**: inserted, on 9 January 2017, by regulation 4(1) of the Evidence Amendment Regulations 2016 (LI 2016/292).

Regulation 3 **Crown prosecutor**: inserted, on 9 January 2017, by regulation 4(1) of the Evidence Amendment Regulations 2016 (LI 2016/292).

Regulation 3 **interview**: amended, on 12 September 2008, by regulation 4 of the Evidence Amendment Regulations 2008 (SR 2008/297).

Regulation 3 **lawyer's copy**: replaced, on 9 January 2017, by regulation 4(2) of the Evidence Amendment Regulations 2016 (LI 2016/292).

Regulation 3 **party's copy**: inserted, on 9 January 2017, by regulation 4(1) of the Evidence Amendment Regulations 2016 (LI 2016/292).

Regulation 3 **Police employee**: inserted, on 9 January 2017, by regulation 4(1) of the Evidence Amendment Regulations 2016 (LI 2016/292).

Regulation 3 **responsible department**: amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

3A Application of regulations to certain military proceedings

If the provisions of the Act relating to video record evidence are applied under the Armed Forces Discipline Act 1971 or the Court Martial Act 2007 to proceedings under either of those Acts,—

- (a) these regulations, apart from regulation 4(b) and Part 4, must be read as applying to those proceedings; and
- (b) any reference to the Police is to be treated as including a reference to the Military Police of the New Zealand Defence Force; and
- (c) any reference to a Crown lawyer is to be treated as including a reference to a lawyer who—
 - (i) is a member of and serves as a legal officer in the New Zealand Defence Force; or
 - (ii) has been instructed by the Director of Military Prosecutions—
 - (A) to conduct a prosecution; or
 - (B) to assist the Director in performing the Director's functions under section 101F of the Armed Forces Discipline Act 1971.

Regulation 3A: inserted, on 9 January 2017, by regulation 5 of the Evidence Amendment Regulations 2016 (LI 2016/292).

Part 1

Video record evidence in criminal proceeding

Subpart 1—Recording video evidence

4 Application of subpart

- (1) This subpart applies to the video recording of the evidence of a witness if—
 - (a) it is intended that the video record may be offered later by the prosecution in a criminal proceeding as evidence in the proceeding; and
 - (b) the proceeding is commenced by a Police employee.
- (2) To avoid doubt, this subpart does not apply to a video record of an interview of a defendant.

Regulation 4: substituted, on 12 September 2008, by regulation 5 of the Evidence Amendment Regulations 2008 (SR 2008/297).

Regulation 4(1)(b): replaced, on 9 January 2017, by regulation 6(1) of the Evidence Amendment Regulations 2016 (LI 2016/292).

Regulation 4(2): inserted, on 9 January 2017, by regulation 6(2) of the Evidence Amendment Regulations 2016 (LI 2016/292).

Who may be present at video recording of interview

5 Only certain persons may be present during interview

The following persons are the only persons who may be present at the video recording of an interview:

- (a) the person facilitating the interview (the **interviewer**):
- (b) the witness:
- (c) any person needed to operate the recording equipment:
- (d) if regulation 6 applies, a person who is present to support the witness:
- (e) if regulation 7 applies, an interpreter.

Compare: SR 1990/164 r 4(1)

Regulation 5(b): amended, on 12 September 2008, by regulation 6(1) of the Evidence Amendment Regulations 2008 (SR 2008/297).

Regulation 5(d): amended, on 12 September 2008, by regulation 6(2) of the Evidence Amendment Regulations 2008 (SR 2008/297).

6 Person to support witness may be present

- (1) A person may be present at an interview to support a witness if the interviewer considers that—
 - (a) it is in the interests of the witness; and
 - (b) the person is an appropriate person to support the witness.

- (2) A person present at an interview under subclause (1) must not take part in the interview.

Compare: SR 1990/164 r 4(2)

Regulation 6: substituted, on 12 September 2008, by regulation 7 of the Evidence Amendment Regulations 2008 (SR 2008/297).

7 **Interpreter may be present**

An interpreter may be present at an interview if—

- (a) the witness does not have sufficient proficiency in the English language to understand the interview if conducted in English; or
- (b) the witness has a communication disability.

Compare: SR 1990/164 r 4(3)

Regulation 7(a): amended, on 12 September 2008, by regulation 8(1) of the Evidence Amendment Regulations 2008 (SR 2008/297).

Regulation 7(b): amended, on 12 September 2008, by regulation 8(2) of the Evidence Amendment Regulations 2008 (SR 2008/297).

What must be on video record

8 **What must be on video record**

A video record of an interview must show the following:

- (a) the interviewer stating the date and time at which the interview starts; and
- (b) each person present identifying himself or herself; and
- (c) subject to any contrary direction by a Judge, in the case of a witness who is of or over the age of 12 years, that person making a promise to tell the truth (in any form, provided the overall effect is a promise to tell the truth); and
- (d) in the case of a witness who is under the age of 12 years,—
 - (i) the interviewer informing the witness of the importance of telling the truth and not telling lies; and
 - (ii) subject to any contrary direction by a Judge, the witness making a promise to tell the truth (in any form, provided the overall effect is a promise to tell the truth); and
- (e) any interpreter present promising to accurately and completely translate the words of the witness; and
- (f) the entire interview; and
- (g) an accurate means for measuring and recording time in hours, minutes, and seconds; and
- (h) the interviewer stating the time at which the interview finishes; and

- (i) if any of regulations 9 to 12 apply, the matters required by those regulations.

Compare: SR 1990/164 r 5(1)(a)–(d), (g), (3)

Regulation 8(c): substituted, on 12 September 2008, by regulation 9(1) of the Evidence Amendment Regulations 2008 (SR 2008/297).

Regulation 8(d): amended, on 12 September 2008, by regulation 9(2) of the Evidence Amendment Regulations 2008 (SR 2008/297).

Regulation 8(d)(i): amended, on 12 September 2008, by regulation 9(2) of the Evidence Amendment Regulations 2008 (SR 2008/297).

Regulation 8(d)(ii): amended, on 12 September 2008, by regulation 9(2) of the Evidence Amendment Regulations 2008 (SR 2008/297).

Regulation 8(e): substituted, on 12 September 2008, by regulation 9(3) of the Evidence Amendment Regulations 2008 (SR 2008/297).

Regulation 8(g): replaced, on 9 January 2017, by regulation 7 of the Evidence Amendment Regulations 2016 (LI 2016/292).

9 Additional requirement if break taken

A video record of an interview must also show the interviewer stating the following matters if the interviewer decides that a break is to be taken during the recording of the interview:

- (a) the fact that a break is being taken; and
- (b) the estimated duration of the break; and
- (c) the reason for taking it.

Compare: SR 1990/164 r 5(1)(e)

10 Additional requirement if premature conclusion

A video record of an interview must also show the interviewer stating the following matters if the interviewer decides to conclude the interview without asking all the intended questions:

- (a) the fact that the video record is concluding prematurely; and
- (b) the reasons for that.

Compare: SR 1990/164 r 5(1)(f)

11 Additional requirement if person present to support witness

A person present at an interview to support a witness must be clearly visible throughout the video recording of the interview.

Compare: SR 1990/164 r 5(4)

Regulation 11: substituted, on 12 September 2008, by regulation 10 of the Evidence Amendment Regulations 2008 (SR 2008/297).

12 Additional requirement if interpreter present

An interpreter present at an interview must be clearly visible throughout the video recording of the interview.

*Equipment failure***13 Equipment failure**

- (1) The following steps are to be taken if any recording equipment (including the video record itself) fails during the video recording of an interview and the failure is not able to be fixed immediately:
 - (a) the video record must be removed from the video recording equipment and dealt with under the following regulations in this Part; and
 - (b) the interview must be recommenced on another video record as soon as practicable.
- (2) A video record of an interview that is recommenced must—
 - (a) show the interviewer stating that this is a new video record of an interview that started on another video record but was interrupted by equipment failure; and
 - (b) recommence approximately at the point it was interrupted by the equipment failure.

Compare: SR 1990/164 r 6

*Master copy and working copy***14 Copies of video record**

- (1) There must be at least 2 video records made of an interview.
- (2) The video records must include—
 - (a) a master copy (the **master copy**); and
 - (b) a single working copy of the master copy (the **working copy**).

Compare: SR 1990/164 r 7(1)

15 Master copy

A master copy is either—

- (a) a single video record of an interview; or
- (b) if 2 or more video records are made of an interview (for example, if 2 or more video records are made simultaneously in a multi-deck machine or linked machines), one of those video records.

Compare: SR 1990/164 r 7(2)(a)

16 Working copy

- (1) The working copy is,—
 - (a) if regulation 15(a) applies, a copy of the master copy made as soon as practicable after the making of the master copy is complete; or
 - (b) if regulation 15(b) applies, one of the simultaneously made video records.

- (2) If more than 2 video records of an interview are made simultaneously, the record or records that are not the working copy or the master copy—
- (a) must, subject to paragraph (b), be identified, kept, and dealt with under these regulations as if they were the working copy; but
 - (b) may be treated as if they were a copy of a working copy—
 - (i) for the purposes of regulations 21(2)(b), 22(2)(b), and 30(1) (which allow a copy of a working copy to be supplied to certain other persons); and
 - (ii) if supplied under those regulations, for the purposes of these regulations generally.

Compare: SR 1990/164 r 7(2)(b)

17 How master copy identified and kept

- (1) A master copy must be—
- (a) sealed with a certificate in the form set out in the Schedule; and
 - (b) placed in safe custody with the Police.
- (2) The Police must keep a record of—
- (a) the date on which the master copy was received into safe custody; and
 - (b) the particulars of—
 - (i) who has dealt with the master copy from that date; and
 - (ii) the reasons for dealing with it.

Compare: SR 1990/164 r 8

18 How working copy identified and kept

- (1) A working copy must be—
- (a) identified as a working copy by a copy of the certificate in the form set out in the Schedule; and
 - (b) placed in safe custody with the Police.
- (2) A record of every person who views, or had custody of, a working copy must be kept with it.
- (3) The record must include—
- (a) the name and occupation of the person who viewed, or had custody of, the working copy; and
 - (b) the date on which that person viewed it or, as the case requires, the period during which the person had custody of it.
- (4) Nothing in subclause (1)(b) prevents the Police from—
- (a) supplying the working copy under subpart 2; or

- (b) making or supplying a copy of a working copy under subpart 2 or 3.

Compare: SR 1990/164 rr 9, 11(1)

Subpart 2—Restrictions on showing, viewing, copying, and supplying working copy and master copy

19 Application of subpart

This subpart applies to a video record that has been made of a witness's evidence under subpart 1.

Regulation 19: amended, on 12 September 2008, by regulation 11 of the Evidence Amendment Regulations 2008 (SR 2008/297).

20 Limited purposes for which Police may show working copy

- (1) The Police may only show a working copy for the following purposes:
 - (a) to seek advice from a Crown lawyer or any other person, for example, an expert, to determine whether—
 - (i) any, and if so what, charges ought to be filed; or
 - (ii) any care or protection proceeding ought to be instituted:
 - (b) to allow any of the following persons to know the case against them:
 - (i) a person suspected of having committed an offence to which the video record relates:
 - (ii) a defendant to a charge in relation to which the video record may be used in evidence:
 - (c) to allow any lawyer representing a person referred to in paragraph (b)(i), a defendant's lawyer, or an expert to view it:
 - (d) to allow the witness to view it:
 - (e) for the purpose of making a transcript:
 - (f) to allow any Crown lawyer or expert to view it:
 - (g) to enable any Judge to view it in order to—
 - (i) determine whether it is admissible in a proceeding; or
 - (ii) comply with any requirement in an enactment or imposed by a rule of law:
 - (ga) for training or reviewing the performance of any person who is training as, or is, an interviewer:
 - (gb) to comply with an order of a Judge or judicial officer under section 119A of the Act to give the parties in other proceedings and (if relevant) their lawyers or an expert an opportunity to view a video record:
 - (h) to enable the Commissioner or any other member of the Police to discharge his or her duties under an enactment:

- (i) to assist the Police in any further investigations of suspected offences that may have been committed by any person referred to in paragraph (b).
- (2) Subclause (1)(b), (c), and (gb) is subject to regulation 20B.
- (3) The Police must inform any expert who views a working copy that the expert must comply with regulation 20A.

Compare: SR 1990/164 r 10

Regulation 20(1)(a): amended, on 9 January 2017, by regulation 8(1) of the Evidence Amendment Regulations 2016 (LI 2016/292).

Regulation 20(1)(a)(i): amended, on 9 January 2017, by regulation 8(2) of the Evidence Amendment Regulations 2016 (LI 2016/292).

Regulation 20(1)(b): replaced, on 9 January 2017, by regulation 8(3) of the Evidence Amendment Regulations 2016 (LI 2016/292).

Regulation 20(1)(c): replaced, on 9 January 2017, by regulation 8(3) of the Evidence Amendment Regulations 2016 (LI 2016/292).

Regulation 20(1)(d): amended, on 12 September 2008, by regulation 12(1) of the Evidence Amendment Regulations 2008 (SR 2008/297).

Regulation 20(1)(f): replaced, on 9 January 2017, by regulation 8(4) of the Evidence Amendment Regulations 2016 (LI 2016/292).

Regulation 20(1)(ga): inserted, on 9 January 2017, by regulation 8(5) of the Evidence Amendment Regulations 2016 (LI 2016/292).

Regulation 20(1)(gb): inserted, on 9 January 2017, by regulation 8(5) of the Evidence Amendment Regulations 2016 (LI 2016/292).

Regulation 20(2): inserted, on 9 January 2017, by regulation 8(6) of the Evidence Amendment Regulations 2016 (LI 2016/292).

Regulation 20(3): inserted, on 9 January 2017, by regulation 8(6) of the Evidence Amendment Regulations 2016 (LI 2016/292).

20A Requirements for experts viewing video records

- (1) An expert may view a video record only for the purpose of providing expert advice.
- (2) An expert who views a video record must not copy the video record.
- (3) An expert who is given possession of a video record—
 - (a) must not give or show the video record to any other person; and
 - (b) must keep the video record in safe custody; and
 - (c) must return the video record to the Police or the relevant lawyer on the earlier of the following:
 - (i) when requested to do so by the Police or the relevant lawyer;
 - (ii) when ordered to do so by a Judge or judicial officer;
 - (iii) as soon as practicable after the proceedings to which it relates are finally determined or discontinued.

Regulation 20A: inserted, on 9 January 2017, by regulation 9 of the Evidence Amendment Regulations 2016 (LI 2016/292).

20B Limited places where working copy of video record of evidence may be viewed

A working copy to which section 106(4A) of the Act applies may be viewed by the persons referred to in regulation 20(b), (c), and (gb) only at the following places:

- (a) premises under the control of the Police or a Crown lawyer:
- (b) other premises agreed to by the Police or a Crown lawyer:
- (c) other premises as directed by a Judge or judicial officer.

Regulation 20B: inserted, on 9 January 2017, by regulation 9 of the Evidence Amendment Regulations 2016 (LI 2016/292).

20C Judge or judicial officer may impose conditions

A Judge or judicial officer may impose any conditions on a person to whom a defendant's lawyer or a party in civil proceedings intends to provide access to a working copy, including restricting or prohibiting access to the working copy.

Regulation 20C: inserted, on 9 January 2017, by regulation 9 of the Evidence Amendment Regulations 2016 (LI 2016/292).

Request for video record made by responsible department or Family Court Judge

21 Responsible department may request video record of certain complainants

- (1) The responsible department may ask the Police for a copy of a video record of a child complainant for the following purposes:
 - (a) allowing the complainant to view the video record:
 - (b) enabling the Director-General of the responsible department, or any social worker employed by the responsible department, to discharge his or her duties under an enactment.
- (2) In response to a request made under subclause (1), the Police must supply one of the following to the responsible department:
 - (a) the working copy; or
 - (b) a copy of the working copy.
- (3) The responsible department must place the working copy or the copy of the working copy in safe custody.
- (4) This regulation does not give any person authority to make a copy of the working copy or a copy of the copy of the working copy supplied to the responsible department under subclause (2).
- (5) A working copy supplied to the responsible department under subclause (2)(a) must be returned to the Police on request.

Compare: SR 1990/164 r 11A

Regulation 21(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

22 Family Court Judge may request video record of certain complainants

- (1) A Family Court Judge may ask the Police for a copy of a video record of a child complainant (the **child**) for the Family Court for any of the following purposes:
 - (a) allowing parties to a proceeding under the Care of Children Act 2004 or the lawyer for any of those parties to view the video record:
 - (b) assisting a person that the Family Court Judge considers qualified to prepare a cultural, medical, psychiatric, or psychological report on the child under section 133 of the Care of Children Act 2004:
 - (c) allowing parties to a proceeding under Part 2 of the Oranga Tamariki Act 1989 or the lawyer for any of those parties to view the video record:
 - (d) assisting a person to prepare a medical, psychiatric, or psychological report on the child under section 178 of the Oranga Tamariki Act 1989:
 - (e) allowing parties to a proceeding under the Family Violence Act 2018 or the lawyer for any of those parties to view the video record.
- (2) In response to a request made under subclause (1), the Police must supply one of the following to the Family Court:
 - (a) the working copy; or
 - (b) a copy of the working copy.
- (3) The Family Court must place the working copy or the copy of the working copy in safe custody.
- (4) The Family Court may only show the video record if,—
 - (a) if the proceeding is one under the Care of Children Act 2004 or is a care or protection proceeding under the Oranga Tamariki Act 1989, a Family Court Judge is satisfied that showing it is in the best interests of—
 - (i) the child who is the subject of the proceeding under the Care of Children Act 2004; or
 - (ii) the child who is the subject of the care or protection proceeding under the Oranga Tamariki Act 1989; and
 - (b) a Family Court Judge authorises in writing the viewing of it by the person or persons concerned; and
 - (c) the viewing takes place within the Family Court premises; and
 - (d) the viewing is supervised by a registrar of the Family Court or by any person nominated by a registrar; and
 - (e) the Family Court Judge is satisfied that showing it is not likely to jeopardise any pending criminal proceeding.

- (5) This regulation does not give any person authority to make a copy of the working copy or a copy of the copy of the working copy supplied to a Family Court under subclause (2).
- (6) A working copy supplied to a Family Court under subclause (2)(a) must be returned to the Police on request.
- (7) This regulation does not affect whether or not a video record is admissible as evidence in any proceeding.

Compare: SR 1990/164 r 11B

Regulation 22(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Regulation 22(1)(c): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

Regulation 22(1)(d): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

Regulation 22(1)(e): inserted, on 1 July 2019, by regulation 5(1) of the Evidence (Family Violence) Amendment Regulations 2019 (LI 2019/93).

Regulation 22(4): amended, on 1 July 2019, by regulation 5(2) of the Evidence (Family Violence) Amendment Regulations 2019 (LI 2019/93).

Regulation 22(4)(a): replaced, on 1 July 2019, by regulation 5(3) of the Evidence (Family Violence) Amendment Regulations 2019 (LI 2019/93).

23 Transcript to accompany video record supplied to responsible department or Family Court

- (1) The Police must also supply a copy of any existing transcript of a video record if the video record is supplied to—
 - (a) the responsible department under regulation 21; or
 - (b) a Family Court under regulation 22.
- (2) A copy of a transcript supplied to the responsible department or a Family Court under subclause (1) must be placed in safe custody with the working copy or the copy of the working copy to which it relates.

Compare: SR 1990/164 r 11C(1), (2)

24 Copying or showing transcript limited to certain purposes

- (1) The responsible department may only copy or arrange for the copying of a transcript in its custody under regulation 23 in relation to a purpose specified in paragraph (a) or (b) of regulation 21(1).
- (2) A Family Court may only copy or arrange for the copying of a transcript in its custody under regulation 23 in relation to a purpose specified in any of paragraphs (a) to (e) of regulation 22(1).
- (3) Despite subclauses (1) and (2), the responsible department or a Family Court may copy or arrange for the copying of a transcript in its custody under regulation 23 if—

- (a) satisfied that doing so is in the best interests of the child who is the subject of the proceeding under the Care of Children Act 2004 or the care or protection proceeding under the Oranga Tamariki Act 1989 or the proceeding under the Family Violence Act 2018; and
 - (b) satisfied that doing so is not likely to jeopardise any pending criminal proceeding; and
 - (c) a record is kept of every person to whom a copy of the transcript is given.
- (4) No person may make a copy of a transcript supplied under this regulation other than as provided for in this regulation.
- (5) A copy of any transcript supplied to the responsible department or a Family Court under regulation 23 must, if regulation 21(5) or 22(6) applies, be returned to the Police on request along with the working copy to which it relates.
- (6) The responsible department or a Family Court may only show a transcript in its custody under regulation 23 to a person if—
- (a) satisfied that doing so is in the best interests of the child who is the subject of the proceeding under the Care of Children Act 2004 or the care or protection proceeding under the Oranga Tamariki Act 1989 or the proceeding under the Family Violence Act 2018; and
 - (b) satisfied that doing so is not likely to jeopardise any pending criminal proceeding; and
 - (c) a record is kept of every person to whom a copy of the transcript is shown.

Compare: SR 1990/164 r 11C(3)–(7)

Regulation 24(2): amended, on 1 July 2019, by regulation 6(1) of the Evidence (Family Violence) Amendment Regulations 2019 (LI 2019/93).

Regulation 24(3)(a): amended, on 1 July 2019, by regulation 6(2) of the Evidence (Family Violence) Amendment Regulations 2019 (LI 2019/93).

Regulation 24(3)(a): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

Regulation 24(6)(a): amended, on 1 July 2019, by regulation 6(2) of the Evidence (Family Violence) Amendment Regulations 2019 (LI 2019/93).

Regulation 24(6)(a): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

Request for video record under section 119A of the Act by Judge or judicial officer in other proceedings

Heading: inserted, on 9 January 2017, by regulation 10 of the Evidence Amendment Regulations 2016 (LI 2016/292).

24A Judge or judicial officer may request copy of video record

- (1) A Judge or judicial officer who receives an application under section 119A of the Act may request a copy of a video record of evidence to consider whether under section 119A(2)—
 - (a) a copy of the video record, or a transcript or a summary of the video record, will be disclosed to the lawyers acting for the parties or any party in person; or
 - (b) the parties will be given an opportunity to view the video record.
- (2) In response to a request, the Police must supply a copy of the video record and the transcript to the relevant Judge or judicial officer.

Regulation 24A: inserted, on 9 January 2017, by regulation 10 of the Evidence Amendment Regulations 2016 (LI 2016/292).

24B Safe custody, use of video record and transcript, prohibition on copying video record, and copying of transcript

- (1) The Judge or judicial officer must keep in safe custody (as relevant)—
 - (a) the copy of the video record; and
 - (b) the transcript (and any copies made under these regulations).
- (2) Except as otherwise provided in these regulations, the copy of the video record or the transcript may be used only—
 - (a) by a Judge or judicial officer to make the assessments under section 119A(2) and (4) of the Act; or
 - (b) in proceedings in a court or tribunal.
- (3) No person may make a copy of the copy of the video record supplied by the Police.
- (4) However, a Judge or judicial officer may copy a transcript only for the purposes in subclause (2).
- (5) The Judge or judicial officer must keep a record of every person—
 - (a) to whom the copy of the video record is shown; and
 - (b) to whom the transcript is shown or given.
- (6) Subject to any retention or destruction requirements specified in this Part, the copy of the video record must be returned to the Police as soon as practicable after the proceedings to which it relates are finally determined or discontinued.

Regulation 24B: inserted, on 9 January 2017, by regulation 10 of the Evidence Amendment Regulations 2016 (LI 2016/292).

24C Disclosure of copy of video record, transcript, or summary

- (1) This regulation applies if a Judge or judicial officer orders that a copy, a transcript, or a summary of a video record be disclosed under section 119A of the Act to the parties.
- (2) The Police must make a copy of anything specified in the order and supply it to the lawyer acting for each party or to 1 or more of the parties in person, as is specified in the order.
- (3) If anything is supplied under this regulation to a lawyer acting for a party, regulations 31, 32, 33, and 34 apply (with any necessary modifications).
- (4) If anything is supplied under this regulation to a party in person,—
 - (a) the party must place it in safe custody; and
 - (b) the party must not copy it without the permission of the Judge or judicial officer; and
 - (c) the party must not give it to any other person or show it to any other person without the permission of the Judge or judicial officer; and
 - (d) the party must return it to the Police on the earlier of the following:
 - (i) when requested to do so by the Police (unless a Judge or judicial officer makes an order allowing the party to possess it for a longer period):
 - (ii) when ordered to do so by a Judge or judicial officer:
 - (iii) as soon as practicable after the proceedings to which it relates are finally determined or discontinued.

Regulation 24C: inserted, on 9 January 2017, by regulation 10 of the Evidence Amendment Regulations 2016 (LI 2016/292).

24D Disclosure by viewing video record

- (1) This regulation applies if a Judge or judicial officer orders that a video record be disclosed under section 119A of the Act by giving the parties an opportunity to view it.
- (2) The Police must make arrangements for the parties and (if relevant) their lawyers or an expert to view the video record, as is specified in the order.
- (3) If the video record is of a type to which section 106(4A) of the Act applies, the viewing of it is subject to regulation 20B.

Regulation 24D: inserted, on 9 January 2017, by regulation 10 of the Evidence Amendment Regulations 2016 (LI 2016/292).

24E Admissibility

Regulations 24A to 24D do not affect the admissibility of a video record as evidence in any proceeding.

Regulation 24E: inserted, on 9 January 2017, by regulation 10 of the Evidence Amendment Regulations 2016 (LI 2016/292).

*Request by authorised advisors***25 Authorised advisor may request copy of video record**

- (1) An authorised advisor who requires a copy or copies of a video record of a witness for the purpose of giving advice about a review application may ask the Registrar of the court responsible for the custody of a master copy under regulation 38 to supply a specified number of copies of it.
- (2) On receiving a request under subclause (1), the Registrar must supply the specified number of copies of the master copy requested.

Compare: SR 1990/164 r 13A

Regulation 25(1): amended, on 12 September 2008, by regulation 13 of the Evidence Amendment Regulations 2008 (SR 2008/297).

26 Conditions of supply of copy of master copy to authorised advisor

- (1) A copy or copies of a master copy supplied to an authorised advisor under regulation 25 may only be viewed by—
 - (a) the authorised advisor; and
 - (b) any person the authorised advisor considers can help with the giving of advice about the review application.
- (2) An authorised advisor must place every copy of a master copy supplied to that advisor in safe custody.
- (3) An authorised advisor may supply the copy or one of the copies of the master copy in his or her custody to another person if the authorised advisor considers that person can help with the giving of advice about the review application.
- (4) An authorised advisor who supplies a copy of a master copy to another person under subclause (3) must take all reasonable steps to ensure that the person to whom it is supplied—
 - (a) places it in safe custody; and
 - (b) prevents any other person from viewing it; and
 - (c) returns it to the authorised advisor as soon as is reasonably practicable.
- (5) This regulation does not give any person authority to make a copy of any copy of the master copy supplied to that person under regulation 25.
- (6) Every copy of a master copy supplied to an authorised advisor under regulation 25 must be returned by the authorised advisor to the Registrar who supplied it as soon as is reasonably practicable after the authorised advisor finishes giving advice about the review application or any related matter.

Compare: SR 1990/164 r 13B

27 Transcripts to accompany copy of master copy supplied to authorised advisor

- (1) A Registrar of a court who supplies a copy or copies of a master copy to an authorised advisor under regulation 25 must also supply the authorised advisor with the number of copies of the transcript that the authorised advisor requests.
- (2) Subclause (1) only applies if a transcript of the master copy already exists.
- (3) Every copy of a transcript supplied to an authorised advisor under subclause (1) must be placed in safe custody with the copy or copies of the master copy to which it relates.
- (4) An authorised advisor may only copy or arrange for the copying of a transcript in his or her custody in relation to the purpose specified in regulation 25(1).
- (5) An authorised advisor may only copy or arrange for the copying of a transcript under subclause (4) if—
 - (a) satisfied that doing so is not likely to jeopardise any pending criminal proceeding; and
 - (b) a record is kept of every person to whom a copy of the transcript is given.
- (6) No person may make a copy of a transcript supplied under this regulation except as provided for in this regulation.
- (7) If regulation 26(6) applies, every copy of a transcript supplied under subclause (1) and every copy made under subclause (4) must be returned along with the copy or copies of the master copy.
- (8) An authorised advisor may only show another person a copy of a transcript if—
 - (a) satisfied that doing so is not likely to jeopardise any pending criminal proceeding; and
 - (b) a record is kept of every person to whom a copy of the transcript is shown.

Compare: SR 1990/164 r 13C

Prosecution to give transcript to defence following not guilty plea

Heading: replaced, on 9 January 2017, by regulation 11 of the Evidence Amendment Regulations 2016 (LI 2016/292).

28 Prosecutor to give transcript to defence following not guilty plea

- (1) The prosecutor must ensure a typed transcript of a working copy is given to the defendant or the defendant's lawyer as soon as practicable after the defendant has pleaded not guilty.
- (2) The typed transcript is to be prepared by the Police.

- (3) The court may adjourn a hearing to allow further time for the defendant to consider the transcript if satisfied that subclause (1) has not been complied with.

Compare: SR 1990/164 r 13

Regulation 28 heading: amended, on 9 January 2017, by regulation 12(1) of the Evidence Amendment Regulations 2016 (LI 2016/292).

Regulation 28(1): replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Regulation 28(3): amended, on 9 January 2017, by regulation 12(2) of the Evidence Amendment Regulations 2016 (LI 2016/292).

Subpart 3—Lawyer’s copy

29 Application of subpart

This subpart applies if a copy of a video record of a witness’s evidence to which subpart 2 applies is to be given to a lawyer under section 106 of the Act.

Regulation 29: amended, on 9 January 2017, by regulation 13 of the Evidence Amendment Regulations 2016 (LI 2016/292).

Regulation 29: amended, on 12 September 2008, by regulation 14 of the Evidence Amendment Regulations 2008 (SR 2008/297).

30 Lawyer’s copy

- (1) If this subpart applies in relation to a defendant’s lawyer, the Police must make a copy of the working copy and supply it to that lawyer.
- (2) If this subpart applies in relation to a Crown lawyer, the Police may make a copy of the working copy and supply it to that lawyer.
- (3) A copy of a working copy supplied to a defendant’s lawyer or a Crown lawyer must be certified, in the form set out in the Schedule, as a lawyer’s copy.

Regulation 30: replaced, on 9 January 2017, by regulation 14 of the Evidence Amendment Regulations 2016 (LI 2016/292).

31 Custody of lawyer’s copy

- (1) A lawyer who has a lawyer’s copy supplied to him or her under regulation 30 must place it in safe custody.
- (2) A lawyer who has a lawyer’s copy must return it to the Police as soon as practicable after the criminal proceeding to which it relates is finally determined or discontinued.
- (3) Nothing in subclause (2) prevents a lawyer from returning a lawyer’s copy to the Police at any earlier time.

Regulation 31(1): amended, on 9 January 2017, by regulation 15 of the Evidence Amendment Regulations 2016 (LI 2016/292).

32 Use of lawyer’s copy by defendant’s lawyer

- (1) A defendant’s lawyer may use a lawyer’s copy only for the following purposes:

- (a) preparing a case for the person the defendant's lawyer is representing in the criminal proceedings to which the video record relates;
 - (b) obtaining advice from an expert in connection with the criminal proceedings;
 - (c) giving legal advice to the person he or she is representing in the criminal proceedings to which the video record relates.
- (2) If the lawyer's copy has been given to the lawyer under section 106(4) of the Act, the lawyer must not supply the lawyer's copy to any other person (other than an expert) without the permission of a Judge.
 - (3) If the lawyer's copy has been given to the lawyer under section 106(4B) of the Act, the lawyer must not supply the lawyer's copy to any other person without the permission of a Judge.
 - (4) The lawyer must inform any expert who views a lawyer's copy that the expert must comply with regulation 20A.
 - (5) A defendant may view the lawyer's copy only in the presence of a lawyer.
 - (6) Nothing in this regulation prevents—
 - (a) the lawyer from returning the copy under regulation 31; or
 - (b) a Judge or judicial officer imposing conditions under regulation 20C.

Regulation 32: replaced, on 9 January 2017, by regulation 16 of the Evidence Amendment Regulations 2016 (LI 2016/292).

33 Prohibition on copying lawyer's copy

No person may make any copies of a lawyer's copy without the permission of a Judge.

34 Use of lawyer's copy by Crown lawyer

- (1) A Crown lawyer may use a lawyer's copy only—
 - (a) in connection with instructions from the Police; or
 - (b) in connection with a Crown prosecution (including allowing an expert to view it or supplying it to an expert for that purpose); or
 - (c) to discharge his or her duties under an enactment.
- (2) The Crown lawyer must inform any expert who views a lawyer's copy that the expert must comply with regulation 20A.

Regulation 34: replaced, on 9 January 2017, by regulation 17 of the Evidence Amendment Regulations 2016 (LI 2016/292).

Subpart 4—Retention and destruction of master copy, copies of master copy, working copy, copies of working copy, and lawyer’s copy

35 Application of subpart

This subpart applies to a video record of a witness’s evidence to which subpart 2 or 3 applies.

Regulation 35: amended, on 12 September 2008, by regulation 15 of the Evidence Amendment Regulations 2008 (SR 2008/297).

36 Meaning of destruction date A and destruction date B

In this subpart,—

- (a) **destruction date A** means the date that is 10 years after the date on which the criminal proceeding to which a video record relates is finally determined or discontinued; and
- (b) **destruction date B** is the date that is 7 years after the date on which a master copy is made.

Privacy preserved

37 Privacy to be preserved

Until destruction date A, destruction date B, or the date referred to in regulation 47 (whichever applies) the master copy, working copy, every copy of the master copy and working copy, and every lawyer’s copy, must be kept in a way that preserves the privacy of the persons recorded on it.

Compare: SR 1990/164 r 14(8)

Master copy to be used in criminal proceeding

38 Producing and retaining master copy for criminal proceeding

- (1) The following must be produced at a criminal proceeding if a video record is to be given in evidence, used as a formal statement, or produced as an exhibit:
 - (a) the master copy; and
 - (b) a typed transcript of the master copy prepared by the Police.
- (2) Once given in evidence at criminal proceedings, used as a formal statement, or produced as an exhibit, the master copy must be retained in the custody of the court until destroyed or erased in accordance with regulation 39.
- (3) Despite subclause (2), a master copy may be removed from court custody for the period necessary to make a copy or copies of it for the purpose of responding to a request under regulation 25 (which relates to a request by an authorised advisor).

Compare: SR 1990/164 r 12

Regulation 38(1): amended, on 9 January 2017, by regulation 18(1) of the Evidence Amendment Regulations 2016 (LI 2016/292).

Regulation 38(2): replaced, on 9 January 2017, by regulation 18(2) of the Evidence Amendment Regulations 2016 (LI 2016/292).

Court retention and destruction obligations

39 Obligations of court to retain and destroy master copy and copy of master copy

- (1) If a master copy is produced in court, the court must retain custody of it until destruction date A.
- (2) On destruction date A, the court must destroy or erase—
 - (a) the master copy; and
 - (b) all copies of the master copy returned to the Registrar under regulation 26(6).
- (3) If a copy of the master copy is returned under regulation 26(6) after destruction date A, the court must promptly destroy or erase it.

Compare: SR 1990/164 r 14(3), (3A), (3B)

Police retention and destruction obligations

40 Obligations of Police to retain and destroy master copy

- (1) The Police must retain custody of a master copy until—
 - (a) it is produced in court; or
 - (b) if no proceeding is brought, destruction date B.
- (2) On destruction date B, the Police must destroy or erase the master copy.

Compare: SR 1990/164 r 14(2), (3)

41 Obligations of Police to retain and destroy working copy and copy of working copy

- (1) The Police must retain custody of the working copy until destruction date B.
- (2) On destruction date B, the Police must destroy or erase the working copy.
- (3) On destruction date B, the Police must destroy or erase any copy of the working copy in their custody.

Compare: SR 1990/164 r 14(4), (6)(a), (7)(a)

42 Obligations of Police to retain and destroy lawyer's copy

- (1) The Police must retain custody of any lawyer's copy returned to them until destruction date B.
- (2) On destruction date B, the Police must destroy or erase the lawyer's copy.

Responsible department and Family Court retention and destruction obligations

43 Obligations of responsible department to retain and destroy working copy

- (1) This regulation applies if the responsible department has custody of a working copy supplied to it in response to a request made under regulation 21.
- (2) The responsible department must retain custody of the working copy until destruction date B unless it is sooner asked to return the working copy to the Police under regulation 21(5).
- (3) If the responsible department retains custody of the working copy on destruction date B, it must destroy or erase it on that date.

Compare: SR 1990/164 r 14(5), (6)(b)

44 Obligation of responsible department to retain and destroy copy of working copy

- (1) This regulation applies if the responsible department has custody of a copy of a working copy supplied to it in response to a request under regulation 21.
- (2) The responsible department must retain custody of the copy of the working copy until destruction date B.
- (3) On destruction date B, the responsible department must destroy or erase the copy of the working copy.

Compare: SR 1990/164 r 14(5), (7)(b)

45 Obligations of Family Court to retain and destroy working copy

- (1) This regulation applies if a Family Court has custody of a working copy supplied to it in response to a request made by a Family Court Judge under regulation 22.
- (2) The Family Court must retain custody of the working copy until destruction date B unless it is sooner asked to return the working copy to the Police under regulation 22(6).
- (3) If the Family Court retains custody of the working copy on destruction date B, it must destroy or erase it on that date.

Compare: SR 1990/164 r 14(5A), (6)(c)

46 Obligations of Family Court to retain and destroy copy of working copy

- (1) This regulation applies if a Family Court has custody of a copy of a working copy supplied to it in response to a request made by a Family Court Judge under regulation 22.
- (2) The Family Court must retain custody of the copy of the working copy until destruction date B.

- (3) On destruction date B, the Family Court must destroy or erase the copy of the working copy.

Compare: SR 1990/164 r 14(5A), (7)(c)

Retention and destruction obligations of other courts and tribunals

Heading: inserted, on 9 January 2017, by regulation 19 of the Evidence Amendment Regulations 2016 (LI 2016/292).

46A Retention and destruction obligations of other courts and tribunals supplied with copy of video record and transcript under regulation 24A

- (1) This regulation applies if a Judge or judicial officer has custody of a copy of a video record supplied to him or her in response to a request under regulation 24A or created for the purpose of disclosure to parties in the proceedings.
- (2) Regulations 36, 37, 38(1) and (2), 39, 41, 42, 47, and 48 apply (with any necessary modifications).

Regulation 46A: inserted, on 9 January 2017, by regulation 19 of the Evidence Amendment Regulations 2016 (LI 2016/292).

Exception

47 Destruction before destruction date

- (1) Nothing in this Part prevents the destruction of the master copy, any copy of the master copy, the working copy, any copy of the working copy, or any lawyer's copy before the date until which the copy would otherwise be required to be kept under this Part if—
- (a) no criminal proceeding is brought; or
- (b) any criminal proceeding brought is discontinued because the video record evidence is considered to be of insufficient probative value.
- (2) If subclause (1) applies, any reference in this subpart to a destruction date must be read as if that reference were a reference to the date on which that master copy, any copy of the master copy, the working copy, any copy of the working copy, or any lawyer's copy was destroyed.

Compare: SR 1990/164 r 14(10), (11)

Transcripts

48 Retention and destruction of transcripts

Any reference in this subpart to a master copy, a copy of a master copy, a working copy, or a copy of a working copy must also apply, with any necessary modifications, to any transcript or copy of a transcript in the custody of any of the following:

- (a) any lawyer for a party to a proceeding to which the transcript relates:
- (b) the Police:

- (c) the responsible department:
- (d) the Family Court:
- (e) an authorised advisor.

Compare: SR 1990/164 r 14(9)

Part 2

Warning or informing jury about very young children's evidence

49 Warning or informing jury about very young children's evidence

If, in a criminal proceeding tried with a jury in which a witness is a child under the age of 6 years, the Judge is of the opinion that the jury may be assisted by a direction about the evidence of very young children and how the jury should assess that evidence, the Judge may give the jury a direction to the following effect:

- (a) even very young children can accurately remember and report things that have happened to them in the past, but because of developmental differences, children may not report their memories in the same manner or to the same extent as an adult would:
- (b) this does not mean that a child witness is any more or less reliable than an adult witness:
- (c) one difference is that very young children typically say very little without some help to focus on the events in question:
- (d) another difference is that, depending on how they are questioned, very young children can be more open to suggestion than other children or adults:
- (e) the reliability of the evidence of very young children depends on the way they are questioned, and it is important, when deciding how much weight to give to their evidence, to distinguish between open questions aimed at obtaining answers from children in their own words from leading questions that may put words into their mouths.

Part 3

Revocation and transitional provision

50 Revocation

The Evidence (Videotaping of Child Complainants) Regulations 1990 (SR 1990/164) are revoked.

51 Transitional provision

A videotape made before the commencement of these regulations in accordance with the Evidence (Videotaping of Child Complainants) Regulations 1990—

- (a) is deemed to have been made in accordance with these regulations, for the purposes of any proceedings to which the Act applies; and
- (b) may be kept, shown, given, returned, or destroyed in accordance with subparts 2 to 4 of Part 1, which apply with any necessary modifications.

Part 4

Mobile video record evidence in criminal proceedings concerning family violence

Part 4: inserted, on 9 January 2017, by regulation 20 of the Evidence Amendment Regulations 2016 (LI 2016/292).

Part 4 heading: amended, on 1 July 2019, by regulation 4 of the Evidence (Family Violence) Amendment Regulations 2019 (LI 2019/93).

52 Application

- (1) This Part applies to mobile video records.
- (2) The provisions of Part 1 do not apply to mobile video records unless, and to the extent, specified in this Part.
- (3) If this Part applies, mobile video records may be offered as evidence in criminal proceedings if—
 - (a) a Police employee commences the proceedings; and
 - (b) the requirements of this Part are met.
- (4) This Part does not apply to any proceedings brought under the Armed Forces Discipline Act 1971 or the Court Martial Act 2007.

Regulation 52: inserted, on 9 January 2017, by regulation 20 of the Evidence Amendment Regulations 2016 (LI 2016/292).

53 Interpretation

In this Part,—

family violence has the same meaning as in section 9 of the Family Violence Act 2018 but excludes sexual abuse

mobile video record means a video record—

- (a) that a Police employee has made on a mobile device with the intention that it be offered later as evidence in criminal proceedings; and
- (b) that records the evidence of a complainant who is not a child; and
- (c) that concerns allegations of family violence.

Regulation 53: inserted, on 9 January 2017, by regulation 20 of the Evidence Amendment Regulations 2016 (LI 2016/292).

Regulation 53 **domestic violence**: revoked, on 1 July 2019, by regulation 7(1) of the Evidence (Family Violence) Amendment Regulations 2019 (LI 2019/93).

Regulation 53 **family violence**: inserted, on 1 July 2019, by regulation 7(2) of the Evidence (Family Violence) Amendment Regulations 2019 (LI 2019/93).

Regulation 53 **mobile video record** paragraph (c): amended, on 1 July 2019, by regulation 7(3) of the Evidence (Family Violence) Amendment Regulations 2019 (LI 2019/93).

54 Requirements for recording mobile video records

- (1) A mobile video record must comply with regulations 5 to 12.
- (2) In addition, every mobile video record must include statements made by the complainant that indicate that the complainant—
 - (a) is aware that the mobile video record may be used as evidence in a court; and
 - (b) agrees to the use of the mobile video record for that purpose.

Regulation 54: inserted, on 9 January 2017, by regulation 20 of the Evidence Amendment Regulations 2016 (LI 2016/292).

55 Storage of mobile video records

- (1) The Police must, as soon as practicable after a mobile video record is made, digitally transfer the mobile video record directly to a storage system or facility that the Commissioner of Police has approved.
- (2) Once the mobile video record is transferred, the Police must delete the mobile video record (or any copy of it) from the mobile device that made it.
- (3) In addition, the Police must ensure that any information about how to access the mobile video record is stored in a manner so that it cannot be accessed or used by an unauthorised person.
- (4) If the mobile video record is edited as a result of an order by a Judge under section 106(7) of the Act,—
 - (a) the new version—
 - (i) must be clearly marked as an edited version; and
 - (ii) must be dealt with in accordance with these regulations as if it were the original mobile video record; and
 - (b) the original must be retained in accordance with regulation 60.
- (5) Any backup copy of a mobile video record created automatically by a computer system or a storage system or facility must be treated as if it were the mobile video record from which the backup was made.

Regulation 55: inserted, on 9 January 2017, by regulation 20 of the Evidence Amendment Regulations 2016 (LI 2016/292).

56 Application of regulations 20, 20A, 20B, 20C, 24A, 24B, 24C, 24D, 24E, and 28 to mobile video records

- (1) Regulations 20, 20A, 20B, 20C, 24A, 24B, 24C, 24D, 24E, and 28 apply (with any necessary modifications) to mobile video records.
- (2) Any reference in regulations 20, 20A, 20B, 20C, and 28 to—
 - (a) a working copy is to be treated as a reference to a mobile video record; and
 - (b) giving or showing a copy of a video record is to be treated as giving access to the mobile video record in the storage system or facility.

Regulation 56: inserted, on 9 January 2017, by regulation 20 of the Evidence Amendment Regulations 2016 (LI 2016/292).

57 Access to mobile video records

- (1) This regulation applies if a copy of a mobile video record must be given to—
 - (a) a defendant’s lawyer under section 106(4) or (4B) of the Act; or
 - (b) a Crown lawyer under section 106(9) of the Act.
- (2) If this regulation applies, unless a Judge directs otherwise, the Police must provide access to enable the lawyer to view the relevant mobile video record in the storage system or facility.
- (3) If this regulation applies,—
 - (a) regulations 31, 32, 33, and 34 apply; and
 - (b) any reference in those regulations to a copy of a video record, a copy of a working copy, a lawyer’s copy, or supplying or disclosing a copy of a video record is to be treated,—
 - (i) in case of the provision of access to the mobile video record in the storage system or facility, as a reference to the mobile video record in the storage system or facility;
 - (ii) in the case of the provision of the mobile video record on a portable data storage device, as a reference to the mobile video record on the portable data storage device; and
 - (c) any reference in regulations 31 and 34 to custody is to be treated as including custody of the means of access to the relevant mobile video record in the storage system or facility.
- (4) Any mobile video record provided to a defendant’s lawyer or a Crown lawyer on a portable data storage device must be certified as a lawyer’s copy in the form set out in the Schedule.

Regulation 57: inserted, on 9 January 2017, by regulation 20 of the Evidence Amendment Regulations 2016 (LI 2016/292).

58 Privacy in respect of mobile video records

Until destroyed, a mobile video record, and any copy or transcript of the mobile video record, must be kept in a way that preserves the privacy of the persons recorded on it.

Regulation 58: inserted, on 9 January 2017, by regulation 20 of the Evidence Amendment Regulations 2016 (LI 2016/292).

59 Producing and retaining copies of mobile video records for criminal proceedings concerning family violence

- (1) The following must be produced at criminal proceedings concerning family violence if a mobile video record is to be given in evidence:
 - (a) the means to access the relevant mobile video record in the system or facility in which it is stored; or
 - (b) the relevant mobile video record on a portable data storage device.
- (2) Once given in evidence at criminal proceedings concerning family violence, the means of access or the portable data storage device must be destroyed 10 years after the date on which the proceedings are finally determined or discontinued.

Regulation 59: inserted, on 9 January 2017, by regulation 20 of the Evidence Amendment Regulations 2016 (LI 2016/292).

Regulation 59 heading: amended, on 1 July 2019, by regulation 8(1) of the Evidence (Family Violence) Amendment Regulations 2019 (LI 2019/93).

Regulation 59(1): amended, on 1 July 2019, by regulation 8(2) of the Evidence (Family Violence) Amendment Regulations 2019 (LI 2019/93).

Regulation 59(2): amended, on 1 July 2019, by regulation 8(2) of the Evidence (Family Violence) Amendment Regulations 2019 (LI 2019/93).

60 Obligations of Police to retain and destroy mobile video records

- (1) The Police must—
 - (a) retain custody of a mobile video record for 10 years after the date on which the proceedings are finally determined or discontinued; and
 - (b) destroy or erase the mobile video record, and all copies of it, when the period of retention comes to an end.
- (2) However, a mobile video record, and all copies of it, may be destroyed or erased earlier than specified in subclause (1) if—
 - (a) the Police decide not to bring proceedings; or
 - (b) the courts have finally determined that the mobile video record is of insufficient probative value.

Regulation 60: inserted, on 9 January 2017, by regulation 20 of the Evidence Amendment Regulations 2016 (LI 2016/292).

61 Destruction of transcripts

Any transcript of a mobile video record in the custody of the Police or the court must be destroyed at the same time as the relevant mobile video record is destroyed.

Regulation 61: inserted, on 9 January 2017, by regulation 20 of the Evidence Amendment Regulations 2016 (LI 2016/292).

62 Records to be kept of dealings with mobile video records

The Police must keep records of—

- (a) the transfer of a mobile video record from its mobile device to its approved storage system or facility, including the name of the person who made the transfer and the date that the transfer occurred; and
- (b) the transfer of a mobile video record from its storage system or facility to a portable data storage device, including the name of the person who made the transfer and the date that the transfer occurred; and
- (c) each instance of access made to the mobile video record in the storage system or facility.

Regulation 62: inserted, on 9 January 2017, by regulation 20 of the Evidence Amendment Regulations 2016 (LI 2016/292).

**Part 5
Offences**

Part 5: inserted, on 9 January 2017, by regulation 20 of the Evidence Amendment Regulations 2016 (LI 2016/292).

63 Failure to comply with requirements

A person who fails to comply with any requirements or restrictions on the use of, the supply of, or access to video records (including mobile video records) specified under these regulations commits an offence and is liable on conviction,—

- (a) in the case of an individual, to a fine not exceeding \$2,000;
- (b) in the case of a body corporate, to a fine not exceeding \$10,000.

Regulation 63: inserted, on 9 January 2017, by regulation 20 of the Evidence Amendment Regulations 2016 (LI 2016/292).

Schedule Form

rr 17(1)(a), 18(1)(a), 30(3)

Schedule heading: amended, on 9 January 2017, by regulation 21(1) of the Evidence Amendment Regulations 2016 (LI 2016/292).

Form

Certificate for video record of interview

Type of copy: [*specify whether master copy, working copy, lawyer's copy, party's copy, or other*]

Type of electronic record: [*specify whether videotape, DVD, or other*]

Reference number of electronic record:

File number (if applicable):

Date of interview:

Name of person interviewed:

Date of birth of person interviewed:

Name of guardian(s) (if person interviewed is under 18 years or mentally impaired):

Name of interviewer:

Designation/level of position of interviewer:

Name and designation of all other persons present:

Reasons for interview: [*type of incident or offence*]

Location of interview:

Time interview commenced:

Time interview concluded:

Duration of interview:

Number of tapes/DVDs used for this interview:

Number of breaks in interview:

Reasons for breaks, eg, to speak to another person, for refreshments, or toilet breaks (if applicable):

Reasons for premature conclusion of interview (if applicable):

Cross-reference(s) to other tape/DVD records of person interviewed:

Other:

I certify that the contents of this certificate are correct.

Dated:

Signed:

[*Signature of interviewer or*

constable]

Schedule form: amended, on 9 January 2017, by regulation 21(2) of the Evidence Amendment Regulations 2016 (LI 2016/292).

Schedule form: amended, on 1 October 2008, pursuant to section 116(a)(i) of the Policing Act 2008 (2008 No 72).

Schedule form: amended, on 1 October 2008, by section 130(3) of the Policing Act 2008 (2008 No 72).

Rebecca Kitteridge,
for Clerk of the Executive Council.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 26 July 2007.

Reprints notes

1 *General*

This is a reprint of the Evidence Regulations 2007 that incorporates all the amendments to those regulations as at the date of the last amendment to them.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Evidence (Family Violence) Amendment Regulations 2019 (LI 2019/93)

Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31): section 149

Evidence Amendment Regulations 2016 (LI 2016/292)

Criminal Procedure Act 2011 (2011 No 81): section 413

Policing Act 2008 (2008 No 72): sections 116(a)(i), 130(3)

Evidence Amendment Regulations 2008 (SR 2008/297)