

Version
as at 6 January 2024



Evidence (Video Records and Very Young Children's Evidence) Regulations 2023

(SL 2023/111)

Cindy Kiro, Governor-General

Order in Council

At Wellington this 6th day of June 2023

Present:

Her Excellency the Governor-General in Council

These regulations are made under sections 201 and 201A of the Evidence Act 2006 on the advice and with the consent of the Executive Council.

Contents

	Page
1 Title	5
2 Commencement	5
3 Interpretation	5
4 Admissibility	8
5 Application of regulations to certain military proceedings	8
6 Transitional, savings, and related provisions	8

Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

These regulations are administered by the Ministry of Justice.

Part 1
Making Police video records

Application

7	Police video records to which Part applies	9
	<i>Who may be present at making of Police video record</i>	
8	Only certain people may be present during making	9
9	Support person	9
10	Interpreter or communication assistant	10
	<i>What must be on Police video record</i>	
11	What must be on Police video record	10
12	Requirements if recording paused or interrupted	11

Part 2
Showing and giving access to Police video records

Application and overview

13	Application of Part	11
14	Overview of Part	11

How access given

15	How access given to court or Judge	12
16	Access by other person usually to be electronic access	12
	Subpart 1—Showing of or access to Police video records: general provisions	

Permission or requirement in legislation or Judge's decision

17	Showing or access must be permitted or required	13
----	---	----

Suspects and defendants

18	Showing Police video record to suspect or defendant	14
----	---	----

Lawyers representing suspects

19	Lawyers representing suspects	14
----	-------------------------------	----

Lawyers in criminal proceedings

20	Lawyers in criminal proceedings	15
21	Defendant's lawyer	15
22	Prosecutor to give transcript to defence following not guilty plea	16
23	Change of defendant's lawyer	17
24	Counsel appointed to assist court	17
25	Crown lawyers	17

Disclosure in Family Court proceedings

26	Permitted purpose of access or disclosure	18
26A	Family Court Judge may request access to consider whether to order disclosure	19

27	Family Court Judge may order disclosure	19
27A	Requirements before ordering disclosure	19
27B	Requirements if Family Court Judge orders disclosure	20
	<i>Disclosure in proceedings that are not criminal proceedings or Family Court proceedings</i>	
28	Application for disclosure in accordance with section 119A of Act	21
29	Order for disclosure	21
30	Disclosure to parties or lawyers under order for disclosure	22
31	Use of Police video record or transcript or summary by parties or their lawyers under order for disclosure	22
	<i>Access by certain officials</i>	
32	Responsible department	23
33	Authorised advisers	24
	<i>Experts</i>	
34	Experts	24
	<i>Limits on access to Police video records and transcripts</i>	
35	Judge may impose conditions	25
36	Place where listed person may view and be shown especially sensitive Police video record	25
	Subpart 2—Other showing of or access to Police video records	
37	Other showing of or access to Police video records	26
	Subpart 3—Transfer of Police video records onto portable data storage devices	
38	Transfer of copy of Police video record onto portable data storage device	27
39	Regulations to apply to copies on portable data storage devices	28
	Part 3	
	Obligations on people given access to Police video records	
40	Application of Part	28
41	Overview of Part	29
	Subpart 1—Obligations that apply to all users	
42	Keeping Police video record secure	29
43	Access log	29
44	Destruction of means of accessing Police video record	30
	<i>Transcripts</i>	
45	Transcripts	30
	Subpart 2—Prohibition against making copies	
46	Prohibition against making copies of Police video records or transcripts	31

Part 4		
Powers and duties of Police as maker of Police video records		
47	Application of Part	31
	<i>Secure storage</i>	
48	Transfer to Police storage system or facility	32
49	Storage requirements	32
50	Producing Police video records for criminal proceedings	32
	<i>Editing Police video records and transcripts</i>	
51	Editing Police video records or transcripts	32
	<i>Police to retain Police video records and transcripts</i>	
52	Police video record and transcript to be retained for 10 years	33
	<i>Revoking access to Police video record</i>	
53	Police may revoke access to Police video record	33
	<i>Record keeping</i>	
54	Record keeping: Police video records	33
55	Record keeping: transcripts	34
	<i>Making and arranging for return of transcripts</i>	
56	Transcript of Police video record	34
	<i>Backup copies and changes to file format or storage location</i>	
57	Backup copies and changes to file format or storage location	35
Part 5		
Making, before trial, of video record of sexual case complainant's or propensity witness's evidence in court		
58	Restricting attendance by, or excluding, members of media	35
Part 6		
Warning or informing jury about very young children's evidence		
59	Form of warning or information that Judge may give to jury	35
Part 7		
Revocation and amendment		
	<i>Revocation</i>	
60	Revocation	36
	<i>Amendment commencing on 6 January 2024</i>	
61	Principal regulations	36
62	Regulations 26 and 27 replaced	37
	Schedule 1	38
	Transitional, savings, and related provisions	

Schedule 2	40
Required descriptive or identifying information for Police video records	
Schedule 3	41
New regulations 26 to 27B inserted	

Regulations

1 Title

These regulations are the Evidence (Video Records and Very Young Children's Evidence) Regulations 2023.

2 Commencement

- (1) These regulations come into force on 6 July 2023.
- (2) However, regulation 62 comes into force on 6 January 2024.

3 Interpretation

In these regulations, unless the context otherwise requires,—

access, in relation to a court or person being given access to a Police video record,—

- (a) means being provided electronic access to the Police video record by the Police, a court, or a person; but
- (b) does not include showing the court or person the Police video record

Act means the Evidence Act 2006

adult complainant means a complainant who is not a child complainant

authorised adviser means a person who is any of the following:

- (a) the Secretary for Justice;
- (b) a person engaged by the Minister of Justice or by the Secretary for Justice to give advice about a review application;
- (c) a member, specialist adviser, or employee of the Criminal Cases Review Commission

child and **child complainant** have the meanings given to them in section 4(1) of the Act

court, for anything in these regulations about an application for disclosure of a video record under section 119A of the Act, includes—

- (a) a judicial officer; and
- (b) a body over which a judicial officer presides

Crown lawyer means a person who is any of the following:

- (a) a Crown prosecutor;
- (b) a lawyer representing the Police or the Crown;
- (c) a 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

especially sensitive Police video record means a Police video record of—

- (a) any child complainant; or
- (b) any witness (including an adult complainant) in a sexual case or a violent case

family violence complainant has the same meaning as in section 106AA of the Act

finally determined, in relation to a proceeding, means—

- (a) when all available appeals have been determined, or the time for filing any appeal has passed, including in relation to a retrial; or
- (b) the proceeding has been discontinued (and no appeal is available for the decision to discontinue the proceeding)

interview means an interview—

- (a) with a witness; and
- (b) by or for the Police (for example, by an interviewer (as defined in regulation 8(1)(a)) who is an employee of Oranga Tamariki—Ministry for Children), and who is interviewing the witness on behalf of the Police); and
- (c) under Part 1

Judge—

- (a) has the meaning given to it in section 4(1) of the Act; but
- (b) for anything relating to an application for disclosure of a video record under section 119A of the Act, also includes a judicial officer

member of the media has the same meaning as in section 198(2) of the Criminal Procedure Act 2011

Police means the New Zealand Police

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

Police storage system or facility, for Police video records, means a storage system or facility—

- (a) for those Police video records; and
- (b) that the Commissioner of Police has approved for the storage of those Police video records

Police video record—

- (a) means a video record—
 - (i) of an interview (as defined in this regulation) with a witness; and
 - (ii) made under Part 1; and
 - (iii) made on any device; and
 - (iv) described in regulation 7(1); and
- (b) includes a copy of, an extract from, a part of, an edited version of, or a summary of a video record specified in paragraph (a)

related proceeding, for a criminal proceeding to which a video record relates, means—

- (a) an appeal arising out of that proceeding; or
- (b) a retrial

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 an application that is—

- (a) an application for the exercise of the prerogative of mercy; or
- (b) an application under the Criminal Cases Review Commission Act 2019

sexual case has the meaning given to it in section 4(1) of the Act

sexual case complainant or propensity witness has the meaning given to it in section 4(1) of the Act

show, in relation to a person (**person A**) being shown a Police video record, means to show the Police video record (for example, a Police video record that is stored in a Police storage system or facility referred to in regulation 48)—

- (a) to person A; and
- (b) by electronic means; and
- (c) in the presence or otherwise under the supervision of the Police, the court, or the other person (for example, a lawyer) showing it to person A

transcript, of a Police video record,—

- (a) includes—
 - (i) the whole or a part of a transcript of the Police video record;
 - (ii) a copy of a transcript of the Police video record;
 - (iii) an edited version of a transcript of the Police video record; but
- (b) excludes—
 - (i) comments or notes in respect of a transcript that are made by a user of the transcript in accordance with regulation 45:

- (ii) an excerpt of a transcript, if the excerpt is contained in submissions, a judgment, or a court order

user, of a Police video record, or a transcript, means a person (other than any Judge, Registrar or Deputy Registrar of a court, other member of court staff, juror, or Police employee, acting in that capacity) who, under Part 2, has either or both of—

- (a) access to a Police video record:
- (b) use of a transcript

violent case has the meaning given to it in section 4(1) of the Act.

4 Admissibility

- (1) Nothing in these regulations affects the admissibility of video record evidence in court proceedings.
- (2) These regulations do not limit—
 - (a) objections to, or submissions on, the admissibility of video record evidence in court proceedings; or
 - (b) a decision by a Judge (for example, under section 106(8) of the Act) whether to admit a video record that is offered as evidence.

5 Application of regulations to certain military proceedings

- (1) This regulation applies 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.
- (2) These regulations, apart from regulation 7(1)(b), must be read as applying to those proceedings.
- (3) For the purposes of subclause (2), a reference in these regulations to the Police is to be treated as including a reference to the Military Police of the New Zealand Defence Force.
- (4) For the purposes of subclause (2), a reference in these regulations to a Crown lawyer is to be treated as including a reference to a lawyer who—
 - (a) is a member of, and serves as a legal officer in, the New Zealand Defence Force; or
 - (b) has been instructed by the Director of Military Prosecutions—
 - (i) to conduct a prosecution; or
 - (ii) to assist the Director in performing the Director's functions under section 101F of the Armed Forces Discipline Act 1971.

6 Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1 have effect according to their terms.

Part 1 Making Police video records

Application

7 Police video records to which Part applies

- (1) This Part applies to a Police video record if—
 - (a) it is intended that the Police video record may be offered by the prosecution as the witness's evidence in chief in a criminal proceeding under section 106 of the Act; and
 - (b) the criminal proceeding is to be commenced by a Police employee.
- (2) This Part applies to the making of a Police video record whether or not it is offered later as the witness's evidence in chief in a criminal proceeding under section 106 of the Act.
- (3) This Part does not apply to a Police video record of an interview with a defendant.

Compare: SR 2007/204 r 52(3)

Who may be present at making of Police video record

8 Only certain people may be present during making

- (1) The following people are the only people who may be present at the making of a Police video record:
 - (a) 1 or more persons to facilitate the interview, 1 of whom must be responsible for interviewing the witness (the **interviewer**):
 - (b) the witness:
 - (c) a person needed to operate the recording device (who may also be a person facilitating the interview):
 - (d) the witness's lawyer:
 - (e) if regulation 9 applies, a person who is present to support the witness:
 - (f) if regulation 10 applies, an interpreter or a communication assistant.
- (2) Any of the above people may be present at the interview in person or by electronic means.

9 Support person

- (1) A person may be present at an interview to support a witness (in addition to a lawyer under regulation 8(1)(d)) if—
 - (a) the witness considers that it is in their interests for the person to support the witness; and
 - (b) the interviewer considers that 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.

10 Interpreter or communication assistant

An interpreter or a communication assistant may be present at an interview to assist the witness if—

- (a) the witness does not have sufficient proficiency in the English language to understand and participate in the interview if it is conducted in English;
- (b) the witness has a communication disability;
- (c) it is necessary or desirable (for any reason) to provide communication assistance to the witness so that they may understand and participate in the interview.

What must be on Police video record

11 What must be on Police video record

- (1) The following people must be clearly visible on a Police video record for the entire interview (even if they are not physically in the same place):
- (a) the witness;
 - (b) the support person (if applicable);
 - (c) the interpreter or communication assistant (if applicable).
- (2) It is sufficient for any other person present at an interview to be recorded by audio only (*see also* subclause (4)).
- (3) A Police video record must also show the following:
- (a) the interviewer stating the date on which, and time at which, the interview starts; and
 - (b) the interviewer, the witness, the support person (if any) and the interpreter or communication assistant (if any) identifying themselves; and
 - (c) subject to any contrary direction by a Judge, for a witness who is of or over the age of 12 years, that witness making a promise to tell the truth (in any form, provided the overall effect is a promise to tell the truth); and
 - (d) for 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) an interpreter present promising to accurately and completely interpret the words of the witness; and
 - (f) the entire interview; and
 - (g) an accurate means of measuring and recording time in hours, minutes, and seconds; and
 - (h) the interviewer stating the date on which, and the time at which, the interview finishes.
- (4) If any other person is present at the interview (*see also* subclause (2)), a Police video record must also—
- (a) show, or record by audio, that other person; and
 - (b) include that other person identifying themselves.

12 Requirements if recording paused or interrupted

If the recording of a Police video record is paused or interrupted for any reason and then recommenced, the Police video record must—

- (a) contain an explanation by the interviewer of the reason why the recording was paused or interrupted; and
- (b) show the interviewer stating the date on which, and time at which, the interview is paused and recommenced.

Part 2

Showing and giving access to Police video records

Application and overview

13 Application of Part

This Part applies only to Police video records.

14 Overview of Part

General

- (1) This Part sets out rules for accessing, showing, and disclosing Police video records—
- (a) in criminal proceedings; and
 - (b) in civil proceedings; and
 - (c) to certain officials.

Criminal proceedings

- (2) Disclosure in criminal proceedings (or related proceedings) is governed mostly by the Act (*see also*—
- (a) section 42(2) of the Criminal Disclosure Act 2008; and

- (b) section 29(1)(e) of the Privacy Act 2020).
- (3) However, these regulations set additional requirements for how disclosure is to occur.

Family Court proceedings and other civil proceedings

- (4) Under the Act and these regulations, a civil court (that is to say, the Family Court, or a court presiding over other civil proceedings) is entitled to be given access to a Police video record for the purpose of considering whether it should be disclosed to the parties or lawyers in a proceeding before it (for example, under regulation 29 and section 119A of the Act).

Certain officials

- (5) Certain officials may be given access for limited purposes, namely—
- (a) the chief executive of the responsible department, to discharge a duty under legislation (*see* regulation 32); and
- (b) an authorised adviser, for a review application (*see* regulation 33).

Obligations on people given access

- (6) *See also* Part 3 for obligations on people shown or given access to Police video records.

How access given

15 How access given to court or Judge

- (1) This regulation applies if any of the following permits or requires a court or a Judge to be given access to a Police video record:
- (a) the Act;
- (b) these regulations;
- (c) a Judge's decision (for example, a Judge's direction, order, or request) made under the Act or these regulations.
- (2) The Police must give the court or Judge access to the Police video record by means of—
- (a) electronic access to the Police video record; and
- (b) a transcript of the Police video record (if one has been made).
- (3) But the Police must, instead or as well, give the court or Judge access to the Police video record by means other than electronic access (for example, by transferring a copy of a Police video record onto a portable data storage device and giving it to the person) if asked to do so by the court or Judge.

16 Access by other person usually to be electronic access

- (1) This regulation applies if any of the following permits or requires a person (except a court or Judge) to be given access to a Police video record:
- (a) the Act (for example, section 106(3) or (4) of the Act):

- (b) these regulations:
 - (c) a Judge's decision (for example, a Judge's direction, order, or request) made under the Act or these regulations (for example, an order made under section 106(4B) of the Act).
- (2) Access to the Police video record must be given to the person by means of electronic access unless—
- (a) the person requests the Police to give the person access to the Police video record by means other than electronic access (for example, by transferring a copy of the Police video record onto a portable data storage device and giving it to the person), and the Police, in response to the request, gives the person access to the Police video record by means other than electronic access; or
 - (b) if the Police do not give the person a copy of the Police video record by means other than by electronic access in response to a request made by the person to do so, a Judge under regulation 38 orders that access to it be given to the person by means other than electronic access.
- (3) Before the Police give the person access to the Police video record by means other than electronic access, the Police must also consider the requirements under regulation 38(1).
- (4) Before a Judge makes an order that access to a Police video record be given to a person by means other than electronic access, the Judge must also consider the requirements under regulation 38(3) and (4).
- (5) This regulation is subject to regulation 50 (producing Police video records for criminal proceedings).

Subpart 1—Showing of or access to Police video records:
general provisions

Permission or requirement in legislation or Judge's decision

17 Showing or access must be permitted or required

The Police or a person may show or give access to a Police video record to a person—

- (a) only if permitted or required by any of the following:
 - (i) the Act:
 - (ii) these regulations:
 - (iii) a Judge's decision (for example, a Judge's direction, order, or request) made under the Act or these regulations; and
- (b) only in accordance with all of the following:
 - (i) the Act:
 - (ii) these regulations:

- (iii) any applicable Judge's decision made under the Act or these regulations:
- (iv) any applicable rules of court:
- (v) any applicable Judge's decision made under any applicable rules of court.

Suspects and defendants

18 Showing Police video record to suspect or defendant

- (1) The Police or a person (for example, a lawyer) may show a Police video record to the following people but must not otherwise allow them to view or have access to it:
 - (a) a person suspected of having committed an offence to which the Police video record relates:
 - (b) a defendant to a charge in relation to which the Police video record may be or has been offered as evidence.
- (2) A suspect or defendant may be shown a Police video record only to allow them—
 - (a) to know and respond to the case against them:
 - (b) to seek legal and expert advice.
- (3) If a suspect or defendant has a lawyer who is representing them, they may be shown a Police video record only in the presence of that lawyer.
- (4) The lawyer must,—
 - (a) if viewing the Police video record with the suspect or defendant, actively supervise the suspect's or defendant's viewing of the Police video record; and
 - (b) not allow the suspect or defendant to view the Police video record unsupervised; and
 - (c) take all reasonable steps to ensure that the suspect or the defendant does not make any unauthorised use of the Police video record (*see* examples in regulation 42).
- (5) If a suspect or defendant does not have a lawyer representing them, they may be shown a Police video record only in the presence of a Police employee.
- (6) *See also* regulation 36, which limits where a listed person may view and be shown especially sensitive Police video records, if regulation 36(2) applies.

Lawyers representing suspects

19 Lawyers representing suspects

- (1) The Police may allow the lawyer representing a person suspected of having committed an offence to which the Police video record relates to view the

- Police video record for the purpose only of enabling the lawyer to give legal advice to the suspect.
- (2) The lawyer may view the Police video record without the presence, and not under any supervision, of the Police only for the purpose described in sub-clause (1).
 - (3) The lawyer must,—
 - (a) if viewing the Police video record with the suspect, actively supervise the suspect's viewing of the Police video record; and
 - (b) not allow the suspect to view the Police video record unsupervised; and
 - (c) take all reasonable steps to ensure that the suspect does not make any unauthorised use of the Police video record (*see* examples in regulation 42).
 - (4) *See also* regulation 36, which limits where a listed person may view and be shown especially sensitive Police video records, if regulation 36(2) applies.

Lawyers in criminal proceedings

20 Lawyers in criminal proceedings

- (1) This regulation applies if any of the following permits or requires a defendant's lawyer or a Crown lawyer to be given access to a Police video record in criminal proceedings:
 - (a) the Act;
 - (b) these regulations;
 - (c) a Judge's decision (for example, a Judge's direction, order, or request) made under the Act or these regulations (for example, an order made under section 106(4B) of the Act).
- (2) If the lawyer is permitted to be given access, the Police may give the lawyer a means of accessing the Police video record (*see* regulation 16).
- (3) If the lawyer is required to be given access, the Police must give the lawyer a means of accessing the Police video record (*see* regulation 16).
- (4) This regulation is subject to—
 - (a) section 106(4A) to (4C) of the Act; and
 - (b) regulation 36, which limits where a listed person may view and be shown especially sensitive Police video records, if regulation 36(2) applies.

21 Defendant's lawyer

- (1) A defendant's lawyer may access a Police video record given to them under section 106 of the Act, or use a transcript of the Police video record given to them under regulation 22(1), only in connection with (for example, reviewing

- charges filed, case preparation, or both, for) the criminal proceeding to which the Police video record relates or a related proceeding.
- (2) The lawyer's access or use may be for all or any of the following purposes:
 - (a) showing the Police video record to the defendant:
 - (b) giving a copy of the transcript to the defendant:
 - (c) showing the Police video record or transcript to another lawyer, or to an expert, or both:
 - (d) giving access to the Police video record and a copy of the transcript to an expert (*see* subclause (5) for a limit on this).
 - (3) The lawyer must,—
 - (a) if showing the Police video record to the defendant, actively supervise the defendant's viewing of the Police video record; and
 - (b) not allow the defendant to view the Police video record unsupervised; and
 - (c) comply with any additional conditions directed by a Judge under section 106(4) of the Act; and
 - (d) take all reasonable steps to ensure that the defendant does not make any unauthorised use of the Police video record (*see* examples in regulation 42).
 - (4) A defendant's lawyer must not give access to a Police video record that is not an especially sensitive Police video record to any other person (other than an expert) without the permission of a Judge.
 - (5) A defendant's lawyer must not give access to a Police video record that is an especially sensitive Police video record to any other person (including an expert) without the permission of a Judge.
 - (6) If a lawyer gives access to a Police video record, or a copy of a transcript, to an expert, the lawyer must advise the expert of the obligations the expert has in relation to the Police video record and transcript under regulation 34 and Part 3.

22 Prosecutor to give transcript to defence following not guilty plea

- (1) The prosecutor must ensure that a typed transcript of a Police video record 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.

- (4) In this regulation, **prosecutor** means the person who is for the time being conducting the case against the defendant in accordance with section 10 of the Criminal Procedure Act 2011.

Compare: SR 2007/204 r 28

23 Change of defendant's lawyer

If a defendant's lawyer changes (for example, during a criminal proceeding to which the Police video record relates, or for a related proceeding),—

- (a) the Police must, on request, give the new lawyer for the defendant a means of accessing a Police video record that the lawyer who previously represented the defendant was given and any transcript that has been made:
- (b) regulations 44 and 45(1)(e) apply to the lawyer who previously represented the defendant.

24 Counsel appointed to assist court

- (1) This regulation applies—
 - (a) to the criminal proceeding to which the Police video record relates, or a related proceeding; and
 - (b) if a lawyer is counsel appointed to assist the court.
- (2) These regulations apply to the counsel appointed to assist the court—
 - (a) as if they were the defendant's lawyer (*see*, in particular, regulations 21 to 23 and 36); and
 - (b) with any necessary modifications; and
 - (c) unless a Judge directs otherwise under this paragraph.

25 Crown lawyers

- (1) A Crown lawyer may access a Police video record given to them, or use a transcript of that Police video record, only in connection with—
 - (a) the criminal proceeding to which the Police video record relates, or a related proceeding (for example, in connection with instructions from the Police, or in connection with a Crown prosecution, or for determining or reviewing charges to be filed, or case preparation); or
 - (b) the Crown lawyer performing or exercising any duty, function, or power, under legislation, of a Crown lawyer.
- (2) The Crown lawyer's access or use may be for all or any of the following purposes:
 - (a) showing a Police video record to allow the witness to view it:
 - (b) showing the Police video record or transcript to another Crown lawyer, or to an expert, or both:

- (c) giving access to the Police video record and a copy of the transcript to an expert.
- (3) A Crown lawyer may give the means of accessing the Police video record and a copy of a transcript of the Police video record to an expert, but when doing so must advise the expert of the obligations the expert has in relation to the Police video record and transcript under regulation 34 and Part 3.

Disclosure in Family Court proceedings

26 Permitted purpose of access or disclosure

In regulations 26A to 27B, **permitted purpose**, of access to or disclosure of a Police video record or transcript of a Police video record, means,—

Child complainant: for specified proceeding

- (a) for a Police video record, or transcript of a Police video record, of a child complainant, allowing parties to a proceeding under all or any of the following legislation, or the lawyer for any of those parties, or a lawyer for a child in the proceeding, or a lawyer appointed to assist the court in the proceeding, to view the Police video record or transcript for the purposes of the proceeding (for example, for case preparation):
 - (i) Care of Children Act 2004;
 - (ii) Family Violence Act 2018;
 - (iii) Part 2 of the Oranga Tamariki Act 1989; and

Child complainant: to prepare specified report

- (b) for a Police video record, or transcript of a Police video record, of a child complainant, allowing a person specified in one of the following subparagraphs to view the Police video record or transcript for the purposes of assisting the person to prepare the report mentioned in that subparagraph:
 - (i) a person whom the court or (if the court directs) the Registrar considers qualified to prepare, and whom the court or (if the court directs) the Registrar has requested to prepare, a cultural, medical, psychiatric, or psychological report on the child under section 133 of the Care of Children Act 2004;
 - (ii) a person who is to prepare a medical, psychiatric, or psychological report on the child under section 178 of the Oranga Tamariki Act 1989; and

Adult complainant: for specified proceeding

- (c) for a Police video record, or transcript of a Police video record, of an adult complainant, allowing parties to a proceeding under all or any of the following legislation, or the lawyer for any of those parties, or a lawyer for a child in the proceeding, or a lawyer appointed to assist the court

in the proceeding, to view the Police video record or transcript for the purposes of the proceeding (for example, for case preparation):

- (i) Care of Children Act 2004:
- (ii) Family Violence Act 2018.

Regulation 26: replaced, on 6 January 2024, by regulation 62.

26A Family Court Judge may request access to consider whether to order disclosure

- (1) A Family Court Judge may request access from the Police to a Police video record of a child complainant or of an adult complainant to consider whether the Police video record should be disclosed under regulation 27 for a permitted purpose.
- (2) The Family Court Judge may make the request on their own initiative, or on an application by—
 - (a) a party to a proceeding in the Family Court; or
 - (b) a lawyer representing a party to the proceeding; or
 - (c) a lawyer for a child in the proceeding; or
 - (d) a lawyer appointed to assist the court in the proceeding.
- (3) In response to a request made by a Family Court Judge under this regulation, the Police must give the Judge access in accordance with regulation 15.

Compare: SR 2007/204 r 22

Regulation 26A: inserted, on 6 January 2024, by regulation 62.

27 Family Court Judge may order disclosure

A Family Court Judge may order disclosure of a Police video record, a transcript of the Police video record, or both, for a permitted purpose in accordance with regulations 27A and 27B.

Regulation 27: replaced, on 6 January 2024, by regulation 62.

27A Requirements before ordering disclosure

- (1) A Family Court Judge may order disclosure of a Police video record, a transcript of the Police video record, or both, under regulation 27 only—
 - (a) if satisfied of the matters specified in subclause (2); and
 - (b) after having considered the matters in subclause (5).
- (2) For the purposes of subclause (1)(a), the Judge must be satisfied that—
 - (a) reasonable steps have been taken to ascertain any view of the complainant on the proposed disclosure; and
 - (b) if the complainant is a child, the disclosure serves the welfare and best interests of the complainant (*see also* subclause (3)); and

- (c) the disclosure serves the welfare and best interests of the child (if any) who is the subject of the Family Court proceeding; and
 - (d) disclosing the Police video record or transcript is not likely to jeopardise any pending criminal proceeding (*see also* subclause (4)).
- (3) Before deciding the matter in subclause (2)(b), if a lawyer for the child has been appointed, the Judge must consult that lawyer.
- (4) Before deciding the matter in subclause (2)(d), the Judge must consider whether the court should first seek the views of the following:
- (a) the Police;
 - (b) a party who was, or is, the subject of allegations made in the Police video record, or a lawyer acting for that party.
- (5) For the purposes of subclause (1)(b), the Judge must have considered—
- (a) the extent to which the video record is relevant to the proceedings; and
 - (b) the likely extent of harm to the complainant whose evidence is contained in the video record from disclosure of that record; and
 - (c) any view of the complainant on the proposed disclosure as ascertained under subclause (2)(a); and
 - (d) the public interest in protecting the privacy of complainants; and
 - (e) any other matter that the Judge considers relevant to the disclosure of the Police video record or transcript.

Regulation 27A: inserted, on 6 January 2024, by regulation 62.

27B Requirements if Family Court Judge orders disclosure

- (1) An order for disclosure of a Police video record, a transcript of the Police video record, or both, under regulation 27 must—
- (a) authorise the viewing of the Police video record or transcript—
 - (i) by the person or people concerned; and
 - (ii) only for a permitted purpose; and
 - (b) require that the viewing take place within the Family Court premises; and
 - (c) require that the viewing, if it is by a party (and not only by a lawyer for a party, or only by a person preparing a report for the court) is supervised—
 - (i) by a Registrar of the Family Court or by any person nominated by a Registrar (if it takes place within the Family Court premises); or
 - (ii) by a lawyer.
- (2) Despite subclause (1)(b), the order may, if the Family Court Judge, in their discretion, thinks fit, require that the viewing of a Police video record (other than an especially sensitive Police video record), or a transcript, take place—

- (a) not within the Family Court premises; but
 - (b) at another place in accordance with any directions by the Judge.
- (3) If the order requires that the viewing of a Police video record (other than an especially sensitive Police video record) or a transcript by a party take place not within the Family Court premises, but at another place in accordance with any directions by the Judge, and be supervised by a lawyer (*see* subclauses (1)(c) and (2)),—
- (a) the lawyer is authorised by this subclause to have access to the Police video record or transcript for the purpose of supervising the party's viewing at that place; and
 - (b) regulation 21(3) applies to the lawyer as if the party they represent were a suspect or defendant; and
 - (c) the lawyer is also authorised by this subclause to have access to the Police video record or transcript for the purpose of case preparation.

Regulation 27B: inserted, on 6 January 2024, by regulation 62.

Disclosure in proceedings that are not criminal proceedings or Family Court proceedings

28 Application for disclosure in accordance with section 119A of Act

- (1) This regulation applies to a Judge who receives an application made under regulation 29 for disclosure of a Police video record.
- (2) The Judge may request access to the Police video record from the Police to consider whether it should be disclosed.
- (3) In response to a request, the Police must give the Judge access to the Police video record in accordance with regulation 15(2).

29 Order for disclosure

- (1) A Judge may, on an application made for the purpose, order disclosure of a Police video record to all or any of the parties, the lawyers acting for the parties, or a lawyer appointed to assist the court, in a proceeding that is not a criminal proceeding or a Family Court proceeding, after considering—
 - (a) the tests and matters in sections 119A(2) and 119B of the Act; and
 - (b) what directions it is in the interests of justice to give or make under sections 119A(3) and (4) of the Act for the way in which the Police video record is to be disclosed (for example, by giving a person an opportunity to view the Police video record or an extract from it).
- (2) In considering if it is in the interests of justice to order disclosure under section 119A(2)(b) of the Act, and to give or make directions under sections 119A(3) and (4) of the Act, other matters that the Judge may consider relevant under section 119B(f) of the Act include, without limitation,—

- (a) whether a party who is not represented by a lawyer should be supervised when accessing or viewing the Police video record, or a transcript or a summary of the video record:
- (b) whether a party who was previously, or is, a suspect or defendant who was, or is, the subject of allegations made in the Police video record should be able to view the Police video record, or a transcript or a summary of the video record, only in the presence of, and under the supervision of, a lawyer (*see also* regulation 31(4)):
- (c) if the Police video record is an especially sensitive Police video record, whether disclosure should be provided by a party or lawyer viewing the Police video record, rather than accessing it.

30 Disclosure to parties or lawyers under order for disclosure

- (1) If a Judge orders that disclosure be made by way of giving access to a Police video record, the Police must give to every person named in the order in accordance with any directions in the order—
 - (a) access to the Police video record (*see* regulation 16); and
 - (b) a transcript of the Police video record (if one has been made).
- (2) If disclosure is ordered by any of the other means set out in section 119A(3) of the Act, the Police must make disclosure by that means and in accordance with any directions in the order.
- (3) However, if the Judge orders disclosure by way of viewing in relation to an especially sensitive Police video record, the viewing of it is subject to regulation 36, if regulation 36(2) applies.
- (4) If the Judge orders that a copy of a transcript be given to any person, the Registrar of the court may copy the transcript and give that person a copy.

31 Use of Police video record or transcript or summary by parties or their lawyers under order for disclosure

- (1) A party in a proceeding to which regulation 29 applies or their lawyer or a lawyer appointed to assist the court in the proceeding may use a Police video record or transcript or summary only in connection with the proceeding in which disclosure of the Police video record was ordered under regulation 29.
- (2) A party in a proceeding to which regulation 29 applies or their lawyer or a lawyer appointed to assist the court in the proceeding who is given a Police video record or transcript or summary under an order for disclosure made under regulation 29 must not show or give a copy of the Police video record or transcript or summary to any other person (including an expert) unless they have the permission of the Judge to do so.
- (3) If the party or their lawyer or a lawyer appointed to assist the court in the proceeding (**person A**) is permitted by a Judge to show or give a copy of a Police

video record or transcript or summary to another person (**person B**), person A must—

- (a) do so in accordance with any applicable court order; and
 - (b) advise person B of the obligations they have in relation to the transcript under regulation 34 and Part 3.
- (4) A lawyer acting for a party in the proceeding or a lawyer appointed to assist the court in the proceeding who is given access to a Police video record under an order for disclosure made under regulation 29 must, if showing the Police video record to the party, comply with regulation 21(3) as if—
- (a) the party were a defendant in a criminal proceeding; and
 - (b) the lawyer were the defendant's lawyer.

Access by certain officials

32 Responsible department

- (1) The responsible department may request that the Police give the department access to a Police video record of a child complainant to enable the chief executive of the responsible department to discharge a duty under legislation.
- (2) In response to a request made under subclause (1), the Police must give the department—
 - (a) access to the Police video record; and
 - (b) a transcript of the Police video record (if one has been made).
- (3) The responsible department may only copy or arrange for the copying of a transcript in its custody under this regulation if the copying is for the purpose specified in subclause (1), and if—
 - (a) satisfied that doing so serves the welfare and 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 serves the welfare and best interests of the complainant if the complainant is a child; and
 - (c) satisfied that doing so is not likely to jeopardise any pending criminal proceeding; and
 - (d) a record is kept of every person to whom a copy of the transcript is given.
- (4) The responsible department may only show a transcript in its custody under this regulation to a person if—
 - (a) satisfied that doing so serves the welfare and 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 serves the welfare and best interests of the complainant if the complainant is a child; and
- (c) satisfied that doing so is not likely to jeopardise any pending criminal proceeding; and
- (d) a record is kept of every person to whom a copy of the transcript is shown.

33 Authorised advisers

- (1) An authorised adviser (as defined in regulation 3) who for the purpose of a review application (as so defined) requires access to a Police video record that has been offered as evidence in a criminal proceeding may request the relevant court to order that the adviser be given access to the Police video record.
- (2) In response to a request, a Judge may order that the Police give the adviser—
 - (a) access to the Police video record (*see* regulation 16); and
 - (b) a transcript of the Police video record (if one has been made).
- (3) In considering a request made by an authorised adviser who is a member, specialist adviser, or employee of the Criminal Cases Review Commission, the Judge must have regard to the purpose of the Criminal Cases Review Commission Act 2019.
- (4) An adviser may show or give access to the Police video record, or show or give a copy of the transcript, to any other person (including an expert) if the adviser is satisfied that doing so is—
 - (a) necessary or desirable to enable the other person to help with the giving of advice on the review application; and
 - (b) not likely to jeopardise any pending criminal proceeding.
- (5) If an adviser under subclause (4) shows or gives access to the Police video record or shows or gives a copy of the transcript to a person, then that adviser must—
 - (a) inform that person of the obligations they have in relation to the Police video record and transcript under regulation 34 and Part 3; and
 - (b) keep a record of every person to whom a copy of the transcript is given.

Experts

34 Experts

- (1) If these regulations permit an expert to have access to a Police video record or use a transcript of the Police video record, the expert may do so—

- (a) only in accordance with these regulations and any applicable court order (*see*, for example, the obligations they have under Part 3), or if otherwise authorised by a court to do so; and
 - (b) only in connection with the proceedings to which the Police video record relates, or an appeal arising out of those proceedings, or a retrial, in which they are giving expert evidence.
- (2) An expert must not show the Police video record or give the means of accessing it, or show or give a copy of the transcript, to any other person.

Limits on access to Police video records and transcripts

35 Judge may impose conditions

- (1) This regulation applies if a provision of the Act or of these regulations permits or requires a court or person (**person A**) to—
- (a) show or give access to a Police video record to a person (**person B**); or
 - (b) show or give a copy of a transcript to a person (**person B**); or
 - (c) order that the Police give access to a Police video record, or a transcript of a Police video record, or both, to a person (**person B**).
- (2) A Judge may, by order made on their own initiative or an application for the purpose by person A, impose any conditions on person B's viewing of or access to the Police video record or viewing or use of the transcript.
- (3) If subclause (1)(c) applies, the Judge may impose the conditions in the order mentioned in subclause (1)(c), or in another order.

36 Place where listed person may view and be shown especially sensitive Police video record

- (1) In this regulation,—
- listed person** means a person who is any of the following:
- (a) a suspect or a lawyer representing a suspect;
 - (b) a defendant or a defendant's lawyer;
 - (c) a person who is given disclosure of a Police video record by way of viewing by order of a Judge made—
 - (i) under regulation 29; and
 - (ii) in accordance with section 119A of the Act;
 - (d) an expert
- listed place** means a place that is premises under the control of, or agreed to by, the Police or a Crown lawyer.
- (2) A listed person may view and be shown an especially sensitive Police video record (for example, under section 106(3) of the Act) only at a listed place.

- (3) Subclause (2) applies even if the especially sensitive Police video record is not offered by the prosecution as the witness's evidence in chief under section 106 of the Act.
- (4) Subclause (2) does not apply, however, if an order that the especially sensitive Police video record be given to the listed person has been made by a Judge under legislation other than subclause (5) of this regulation, for example, under section 106(4B) of the Act (Judge may order that especially sensitive Police video record be given to defendant's lawyer before it is offered in evidence by the prosecution as the witness's evidence in chief).
- (5) Despite subclause (2) (if it applies), an order of a Judge made under this subclause may permit the listed person to view and be shown the especially sensitive Police video record at a place that—
 - (a) is not a listed place; and
 - (b) is another place in accordance with any directions by the Judge.

Subpart 2—Other showing of or access to Police video records

37 Other showing of or access to Police video records

- (1) This regulation applies to Police video records and permits the Police to show or give access to Police video records for purposes additional to those provided for in subpart 1.
- (2) The Police may—
 - (a) show a Police video record to allow the witness to view it;
 - (b) show or give access to a Police video record if the witness or their guardian agrees, to allow the following to view it or access it:
 - (i) a person acting on behalf of an organisation authorised by legislation to investigate any matter to which the Police video record may be relevant;
 - (ii) a lawyer who intends to make an application to a court, to which the Police video record is relevant;
 - (c) allow a defendant's lawyer, or a defendant's expert, to view a Police video record (for example, as it tends to support, rebut, or have a material bearing on the case against a defendant in the criminal proceeding);
 - (d) allow a lawyer representing a person making a review application to view a Police video record.
- (3) The Police may show or give access to a Police video record for the following purposes at any time:
 - (a) to assist the Police in any further investigations of suspected offences that may have been committed by a person referred to in regulation 18(1)(a) or (b):

- (b) to seek advice from a Crown lawyer (or any other person, for example, an expert) to determine or review determinations about whether—
 - (i) any, and if so what, charges ought to be filed; or
 - (ii) any care or protection proceeding ought to be instituted:
- (c) to allow a Crown lawyer or expert to view it, including to allow a Crown lawyer to discharge a duty under legislation:
- (d) to enable a Judge to view it in order to discharge a duty or comply with a requirement under legislation (other than a requirement dealt with under subpart 1) or imposed by a rule of law:
- (e) 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 legislation or imposed by a rule of law:
- (f) for training or reviewing the performance of any person who is training as, or is, an interviewer:
- (g) to make a transcript:
- (h) to allow the Secretary for Justice, or a person engaged by the Minister of Justice or by the Secretary for Justice, to view it in order to give advice about an application for the exercise of the prerogative of mercy:
- (i) to enable the Commissioner of Police, a constable, or a Police employee to discharge a duty or meet a requirement under legislation (for example, the Criminal Cases Review Commission Act 2019).

Subpart 3—Transfer of Police video records onto portable data storage devices

38 Transfer of copy of Police video record onto portable data storage device

- (1) Before giving a person access to a Police video record by means other than electronic access under regulation 16(2)(a), the Police must—
 - (a) be satisfied that it is not reasonably practicable for the person who is to be given access to the Police video record to be given that access by electronic means; and
 - (b) consider the matters in subclause (4).
- (2) In the situation specified in regulation 16(2)(b), a Judge may order that a Police video record be given to a person by means other than by electronic access (for example, by transferring a copy of a Police video record onto a portable data storage device and giving it to the person).
- (3) Before a making an order under subclause (2), a Judge must—

- (a) be satisfied that it is not reasonably practicable for the person who is to be given access to the Police video record to be given that access by electronic means; and
 - (b) consider the matters in subclause (4); and
 - (c) make the order subject to any conditions that the Judge considers appropriate after taking into account the matters in subclause (4).
- (4) The matters that must be considered by the Police or a Judge (*see* subclause (1)(b) or (3)(b) and (c)) are the following:
- (a) the privacy of the witness;
 - (b) the likelihood that the witness is vulnerable;
 - (c) the desirability of minimising the number of copies of a Police video record that circulate independently of a Police storage system or facility or a storage system or facility controlled by a court;
 - (d) the need to ensure that the Police video record is not viewed or accessed by any unauthorised person;
 - (e) the public interest in ensuring that Police video records of the type dealt with in these regulations are protected from misuse;
 - (f) the interests of justice.

39 Regulations to apply to copies on portable data storage devices

These regulations apply with any necessary modifications to a copy of a Police video record that is transferred onto a portable data storage device by the Police under regulation 16(2)(a) or by order of a Judge. For example,—

- (a) the obligation in regulation 42 must be read as an obligation on the person who is given a copy of a Police video record on a portable data storage device to store it securely so that it cannot be accessed by an unauthorised person;
- (b) the obligation in regulation 44 must be read as an obligation on the person who is given a copy of a Police video record on a portable data storage device to return the portable data storage device to the Police or the court that gave it to them at the applicable time described in regulation 44(a) to (c).

Part 3

Obligations on people given access to Police video records

40 Application of Part

This Part applies to—

- (a) Police video records made under Part 1; and

- (b) a person (other than any Judge, Registrar or Deputy Registrar of a court, other member of court staff, juror, or Police employee, acting in that capacity) who is given access to those Police video records, or transcripts, or both, under the Act or Part 2.

41 Overview of Part

- (1) Subpart 1 sets out the obligations that apply to people in relation to their access to Police video records, use of transcripts, or both.
- (2) Subpart 2 prohibits making copies of Police video records or transcripts, but also provides for exceptions.

Subpart 1—Obligations that apply to all users

42 Keeping Police video record secure

A user must take all reasonable steps to keep a Police video record secure, including by—

- (a) securely storing the means of accessing the Police video record (for example, a login and password) so that it cannot be accessed by an unauthorised person; and
- (b) otherwise ensuring that the Police video record is not viewed or accessed by an unauthorised person.

Examples

A person who is viewing the Police video record on a device (for example, on a computer screen) must ensure, while they do so, that the Police video record is not visible to, or audible by, any unauthorised person.

A lawyer who is showing a Police video record to a suspect, defendant, or party (in Family Court or other civil proceedings) who is not permitted to have access to a Police video record must ensure that the suspect, defendant, or party does not record the Police video record using a mobile phone or any other type of recording device.

43 Access log

- (1) A user must keep a log of each instance of access made to a Police video record (including by themselves) by recording the following information in each case:
 - (a) the name (or names) of the person (or people) who accessed the Police video record; and
 - (b) the date on and time at which this occurred.
- (2) In subclause (1), an **instance of access made to a Police video record**—
 - (a) includes an instance of using the means of accessing the Police video record that were—
 - (i) given by the Police to a person (A, for example, a lawyer); and

- (ii) given by A to another person (**B**) (for example, under regulation 21(4) or (5)) and used by B to access the Police video record; but
 - (b) does not include a person (**B**, for example, an expert) being shown the Police video record by another person (**A**, for example, a lawyer) who has been given the means of accessing the Police video record.
- (3) Subclause (2)(a) does not limit subclause (1), and subclause (2)(b) overrides subclause (1).
- (4) Subclause (1) is satisfied if the information required by subclause (1) is recorded by, and retrievable from, a secure storage system or facility.

44 Destruction of means of accessing Police video record

A user who has been given the means of accessing a Police video record must not access the Police video record, must destroy the means of accessing the Police video record, and must if the user has the Police video record return it to the Police, after the first to occur of the following things:

- (a) they are told by the Police or relevant lawyer or they receive notice that a Judge has ordered that any record of the means of accessing the Police video record must be destroyed or erased:
- (b) the purpose for which they were given the means of accessing the Police video record no longer applies, for example, an expert completes giving their evidence in the proceeding for which they were given the means of accessing the Police video record:
- (c) the proceeding for which they were given the means of accessing the Police video record is finally determined.

Transcripts

45 Transcripts

- (1) A user who has possession of a transcript of a Police video record—
 - (a) may use it only for purposes for which a Police video record or transcript may be accessed or used by them under—
 - (i) the Act; and
 - (ii) these regulations; and
 - (iii) any applicable Judge's decision made under the Act or these regulations (for example, an order that places conditions on use); and
 - (iv) any applicable rules of court; and
 - (v) any applicable Judge's decision made under any applicable rules of court; and
 - (b) must use it in accordance with the legislation and decisions mentioned in paragraph (a)(i) to (v); and

- (c) may show or give a copy of it to a person only if they are permitted to do so by legislation or a decision mentioned in paragraph (a)(i) to (v); and
 - (d) must take all reasonable steps to keep it secure so that it cannot be accessed or used by an unauthorised person; and
 - (e) must take all reasonable steps to return it to the court or person they obtained it from, or delete or destroy it, if any of the circumstances listed in regulation 44(a) to (c) apply, or may return or delete or destroy it at an earlier time; and
 - (f) must keep a record of—
 - (i) the date on which they were given a copy of the transcript; and
 - (ii) the date on which they returned the transcript or deleted or destroyed it (or took all reasonable steps to do so).
- (2) This regulation—
- (a) applies whether the transcript is unedited or edited; and
 - (b) does not of itself provide a right to be given a copy of a transcript.

Subpart 2—Prohibition against making copies

46 Prohibition against making copies of Police video records or transcripts

- (1) A copy may be made of a Police video record or a transcript of a Police video record only if these regulations permit, or a Judge orders,—
- (a) for a Police video record, by the Police;
 - (b) for a transcript, by the Police, a court (that is given a copy under Part 2), a lawyer, a party, or an authorised adviser.
- (2) This regulation does not prevent a lawyer, under Part 2, from showing another lawyer, or an expert, or both, a transcript by sharing an electronic copy (for example, by emailing the other lawyer, or the expert, or both, an electronic copy, with or without comments or notes, for example, about editing).
- (3) This regulation does not prevent a lawyer from printing the electronic copy of a transcript for their own use or for another permitted use.

Part 4

Powers and duties of Police as maker of Police video records

47 Application of Part

This Part applies to the Police as the maker of Police video records.

*Secure storage***48 Transfer to Police storage system or facility**

- (1) The Police must, as soon as practicable after a Police video record is made, transfer it by digital means directly to a secure Police storage system or facility.
- (2) Once the transfer is complete, the Police must delete the copy of the Police video record from the recording device that made it.

49 Storage requirements

- (1) The Police must take all reasonable steps to keep a Police video record stored in a Police storage system or facility secure, including by—
 - (a) securely storing the means of accessing the Police video record (for example, a password) so that it cannot be accessed by an unauthorised person; and
 - (b) otherwise ensuring that the Police video record is not viewed or accessed by an unauthorised person.
- (2) The Police must record descriptive or identifying information for a Police video record stored in a Police storage system or facility.
- (3) The descriptive or identifying information that the Police must record under subclause (2) must include the information set out in Schedule 2.
- (4) If the Police store in a Police storage system or facility any descriptive or identifying information recorded under subclause (2) about a Police video record, the Police must ensure that recorded descriptive or identifying information can be accessed without viewing the content of the Police video record.

50 Producing Police video records for criminal proceedings

- (1) This regulation applies to a Police video record that—
 - (a) is, or is to be, offered as evidence in a criminal proceeding; and therefore
 - (b) must be produced for that criminal proceeding.
- (2) The Police must give the court access to the Police video record (*see* regulation 15).

Compare: SR 2007/204 r 59

*Editing Police video records and transcripts***51 Editing Police video records or transcripts**

- (1) If a Police video record or transcript is edited, the Police must ensure that the original version of the Police video record or transcript is—
 - (a) identified clearly; and
 - (b) kept in a way that preserves the privacy of the people recorded on or in it.

- (2) Subclause (1) applies even if, and after, access is given (to courts, or to other people) to either or both of—
 - (a) the original version of the Police video record or transcript;
 - (b) an edited version of the Police video record or transcript.
- (3) If a Police video record or transcript is edited, the Police must ensure that the edited version is—
 - (a) identified clearly as an edited version; and
 - (b) dealt with in accordance with these regulations as if it were the original Police video record or transcript.

Police to retain Police video records and transcripts

52 Police video record and transcript to be retained for 10 years

- (1) The Police must retain a Police video record and a transcript of a Police video record for 10 years after—
 - (a) the date on which a criminal proceeding to which the Police video record relates or a related proceeding is finally determined; or
 - (b) if the Police video record is not offered as evidence in a criminal proceeding or in a related proceeding, the date on which it was made.
- (2) If a Police video record or transcript is edited, subclause (1) applies to both the original version and the edited version.
- (3) The Police may permanently destroy or erase a Police video record or transcript after the period for which it must be retained under subclause (1).

Revoking access to Police video record

53 Police may revoke access to Police video record

The Police may revoke a person's access to a Police video record if—

- (a) the purpose for which the person was given by the Police the means of accessing the Police video record no longer applies (for example, an expert completes giving their evidence in the proceeding for which they were given by the Police the means of accessing the Police video record); or
- (b) the proceeding for which the person was given by the Police the means of accessing the Police video record is finally determined.

Record keeping

54 Record keeping: Police video records

The Police must keep a record of all of the following information for a Police video record:

- (a) the date on which it is made:

- (b) the date on which it is transferred to a storage system or facility and the name of the person who made the transfer:
- (c) if it is edited, the date on which this occurred, the name of the person who made the edits, and the reason for the editing:
- (d) for each instance of access made to the Police video record, the following information:
 - (i) the date on which, and time at which, the record is accessed in the Police storage system or facility; and
 - (ii) the access authority used to obtain access on each instance of access:
- (e) if access is revoked for a person, the date on which this occurred.
- (f) the date on which a copy is transferred to a portable data storage device, the name of the person who made the transfer, and the reason for doing so:
- (g) for a Police video record offered as the witness's evidence in chief to a court under section 106 of the Act,—
 - (i) the date on which the court was given access to the Police video record (*see* regulations 50 and 51); and
 - (ii) the name of the person who offered the Police video record to the court:
- (h) the date on which it is permanently erased.

55 Record keeping: transcripts

The Police must keep a record of the date on which a copy of a transcript is given to a person or a court.

Making and arranging for return of transcripts

56 Transcript of Police video record

- (1) The Police must make a transcript of a Police video record, as soon as practicable after a requirement that a transcript be made, and be given to a person or a court, applies to the Police under—
 - (a) the Act or these regulations; or
 - (b) an order of a Judge.
- (2) The Police may make a transcript of a Police video record for the purposes of allowing the Commissioner of Police, a Police employee, or a Judge to discharge a duty under legislation.

Backup copies and changes to file format or storage location

57 Backup copies and changes to file format or storage location

- (1) Any backup copy of a Police video record created automatically by a computer system or a storage system or facility must be treated as if it were the Police video record from which the backup was made.
- (2) The Police may alter a Police video record to update or convert its file format or change the location in which it is stored within the storage system or facility.

Part 5

Making, before trial, of video record of sexual case complainant's or propensity witness's evidence in court

58 Restricting attendance by, or excluding, members of media

- (1) A Judge may make an order restricting attendance by, or excluding, any member of the media at any making, before trial, of a video record of a sexual case complainant's or propensity witness's evidence in court.
- (2) When deciding whether to make an order under subclause (1) and, if so, on what terms and conditions, the Judge must consider the following:
 - (a) the following rights, and any justified limitations to them (under section 5 of the New Zealand Bill of Rights Act 1990):
 - (i) the right to freedom of expression (in section 14 of that Act):
 - (ii) the right to a fair and public hearing by an independent and impartial court (in section 25(a) of that Act):
 - (b) the interests of the complainant or witness, and any preferences they have about the attendance in court of members of the media:
 - (c) whether those interests and preferences could be served and met by conditions or restrictions on the attendance of members of the media:
 - (d) because the video record of the evidence is made before trial for use at trial, members of the media will have an opportunity to be present when that evidence is offered at the trial (*see also*, on a complainant's evidence, sections 196 and 199(1)(g) and (4) of the Criminal Procedure Act 2011):
 - (e) any other matters the Judge considers relevant.

Part 6

Warning or informing jury about very young children's evidence

59 Form of warning or information that Judge may give to jury

- (1) This regulation applies to a criminal proceeding—

- (a) tried with a jury; and
 - (b) in which a witness is a child under the age of 6 years.
- (2) However, this regulation applies to the proceeding only if the Judge is of the opinion that the jury may be assisted by a direction about—
- (a) the evidence of very young children; and
 - (b) how the jury should assess that evidence.
- (3) If this regulation applies to the proceeding, 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.

Compare: SR 2007/204 r 49

Part 7

Revocation and amendment

Revocation

60 Revocation

The Evidence Regulations 2007 (SR 2007/204) are revoked.

Amendment commencing on 6 January 2024

61 Principal regulations

Regulation 62 amends these regulations as made.

62 Regulations 26 and 27 replaced

Replace regulations 26 and 27 (in these regulations as made) with the regulations 26 to 27B set out in Schedule 3 of these regulations.

Schedule 1

Transitional, savings, and related provisions

r 6

Part 1

Provisions relating to these regulations as made

- 1 Videotapes made before commencement of, and video records made under, Evidence Regulations 2007**
- (1) This clause applies to—
- (a) a videotape made before the commencement of the Evidence Regulations 2007 in accordance with the Evidence (Videotaping of Child Complainants) Regulations 1990; and
 - (b) a video record made under the Evidence Regulations 2007.
- (2) A videotape or video record specified in subclause (1)(a) or (b)—
- (a) is to be treated as a Police video record that has been made in accordance with these regulations; and
 - (b) may be kept, shown, given, returned, or destroyed in accordance with these regulations, which apply with any necessary modifications.
- (3) An example of the application of subclause (2) is that a reference to transferring a video record to a secure storage system or facility must, for a videotape or video record mentioned in subclause (1), be read as storing the videotape or video record securely.
- 2 Continued use by Police and Military Police of the New Zealand Defence Force of other means of recording video records of interviews with witnesses, including DVDs**
- (1) This clause applies to a Police video record that was or is made by means other than a Police video record referred to in Part 1 of these regulations—
- (a) before the commencement of these regulations in accordance with the Evidence Regulations 2007; or
 - (b) after the commencement of these regulations.
- (2) A Police video record described in subclause (1)—
- (a) is to be treated as having been made in accordance with these regulations, despite any wording that excludes or appears to exclude it because of its format; and
 - (b) except as provided in subclause (4), may be kept, shown, given, returned, or destroyed or erased in accordance with these regulations, which apply with any necessary modifications.

- (3) Despite subclause (2)(b), regulation 38(1) and (4) does not apply to the Police giving access to a Police video record described in subclause (1).
- (4) Examples of the application of subclause (2) are as follows:
 - (a) a reference to giving or having access to a Police video record must be read as including giving or having a DVD on which a copy of the video record is stored:
 - (b) the obligation in regulation 42(a) must be read as an obligation on the person who is given a DVD on which a copy of the video record is stored to store it securely so that it cannot be accessed by an unauthorised person:
 - (c) the obligation in regulation 44(b) must be read as an obligation on the person who is given a DVD on which a copy of the Police video record is stored to return the DVD to the Police or the court that gave it to them at the applicable time described in regulation 44(a) to (c).
- (5) The distinction between a master copy and working copies of a video record under the Evidence Regulations 2007 and the applicable requirements under those regulations continue to apply to a video record to which this clause applies under subclause (1)(a), unless there is a conflict with these regulations, in which case these regulations prevail.
- (6) In this clause, **Police** includes the Military Police of the New Zealand Defence Force.

3 Application to proceedings

- (1) This regulation applies to legislation that is all or any of—
 - (a) these regulations (for example, regulations 26 and 27) as made; and
 - (b) regulations 26 to 27B (as inserted by regulation 62).
- (2) That legislation applies, on and after its commencement, to—
 - (a) proceedings commenced on or after its commencement; and
 - (b) proceedings commenced before its commencement and not finally determined (including any rehearing, retrial, or appeal) before its commencement.

Schedule 2
Required descriptive or identifying information
for Police video records

r 49

Whether the video record is the original video record or an edited version

A reference or file number (if applicable)

The location where the video record was made and the date this occurred

The name and date of birth of the person being interviewed

The name of any guardian of the person being interviewed (if they are under 18 years or for another reason not related to age have 1 or more guardians appointed for them)

A statement certifying the required descriptive or identifying information as correct, including the name of the person providing that certification and the date on which they did so

Schedule 3 New regulations 26 to 27B inserted

r 62

26 Permitted purpose of access or disclosure

In regulations 26A to 27B, **permitted purpose**, of access to or disclosure of a Police video record or transcript of a Police video record, means,—

Child complainant: for specified proceeding

- (a) for a Police video record, or transcript of a Police video record, of a child complainant, allowing parties to a proceeding under all or any of the following legislation, or the lawyer for any of those parties, or a lawyer for a child in the proceeding, or a lawyer appointed to assist the court in the proceeding, to view the Police video record or transcript for the purposes of the proceeding (for example, for case preparation):
- (i) Care of Children Act 2004;
 - (ii) Family Violence Act 2018;
 - (iii) Part 2 of the Oranga Tamariki Act 1989; and

Child complainant: to prepare specified report

- (b) for a Police video record, or transcript of a Police video record, of a child complainant, allowing a person specified in one of the following subparagraphs to view the Police video record or transcript for the purposes of assisting the person to prepare the report mentioned in that subparagraph:
- (i) a person whom the court or (if the court directs) the Registrar considers qualified to prepare, and whom the court or (if the court directs) the Registrar has requested to prepare, a cultural, medical, psychiatric, or psychological report on the child under section 133 of the Care of Children Act 2004;
 - (ii) a person who is to prepare a medical, psychiatric, or psychological report on the child under section 178 of the Oranga Tamariki Act 1989; and

Adult complainant: for specified proceeding

- (c) for a Police video record, or transcript of a Police video record, of an adult complainant, allowing parties to a proceeding under all or any of the following legislation, or the lawyer for any of those parties, or a lawyer for a child in the proceeding, or a lawyer appointed to assist the court in the proceeding, to view the Police video record or transcript for the purposes of the proceeding (for example, for case preparation):
- (i) Care of Children Act 2004;
 - (ii) Family Violence Act 2018.

26A Family Court Judge may request access to consider whether to order disclosure

- (1) A Family Court Judge may request access from the Police to a Police video record of a child complainant or of an adult complainant to consider whether the Police video record should be disclosed under regulation 27 for a permitted purpose.
- (2) The Family Court Judge may make the request on their own initiative, or on an application by—
 - (a) a party to a proceeding in the Family Court; or
 - (b) a lawyer representing a party to the proceeding; or
 - (c) a lawyer for a child in the proceeding; or
 - (d) a lawyer appointed to assist the court in the proceeding.
- (3) In response to a request made by a Family Court Judge under this regulation, the Police must give the Judge access in accordance with regulation 15.
Compare: SR 2007/204 r 22

27 Family Court Judge may order disclosure

A Family Court Judge may order disclosure of a Police video record, a transcript of the Police video record, or both, for a permitted purpose in accordance with regulations 27A and 27B.

27A Requirements before ordering disclosure

- (1) A Family Court Judge may order disclosure of a Police video record, a transcript of the Police video record, or both, under regulation 27 only—
 - (a) if satisfied of the matters specified in subclause (2); and
 - (b) after having considered the matters in subclause (5).
- (2) For the purposes of subclause (1)(a), the Judge must be satisfied that—
 - (a) reasonable steps have been taken to ascertain any view of the complainant on the proposed disclosure; and
 - (b) if the complainant is a child, the disclosure serves the welfare and best interests of the complainant (*see also* subclause (3)); and
 - (c) the disclosure serves the welfare and best interests of the child (if any) who is the subject of the Family Court proceeding; and
 - (d) disclosing the Police video record or transcript is not likely to jeopardise any pending criminal proceeding (*see also* subclause (4)).
- (3) Before deciding the matter in subclause (2)(b), if a lawyer for the child has been appointed, the Judge must consult that lawyer.
- (4) Before deciding the matter in subclause (2)(d), the Judge must consider whether the court should first seek the views of the following:

- (a) the Police;
 - (b) a party who was, or is, the subject of allegations made in the Police video record, or a lawyer acting for that party.
- (5) For the purposes of subclause (1)(b), the Judge must have considered—
- (a) the extent to which the video record is relevant to the proceedings; and
 - (b) the likely extent of harm to the complainant whose evidence is contained in the video record from disclosure of that record; and
 - (c) any view of the complainant on the proposed disclosure as ascertained under subclause (2)(a); and
 - (d) the public interest in protecting the privacy of complainants; and
 - (e) any other matter that the Judge considers relevant to the disclosure of the Police video record or transcript.

27B Requirements if Family Court Judge orders disclosure

- (1) An order for disclosure of a Police video record, a transcript of the Police video record, or both, under regulation 27 must—
- (a) authorise the viewing of the Police video record or transcript—
 - (i) by the person or people concerned; and
 - (ii) only for a permitted purpose; and
 - (b) require that the viewing take place within the Family Court premises; and
 - (c) require that the viewing, if it is by a party (and not only by a lawyer for a party, or only by a person preparing a report for the court) is supervised—
 - (i) by a Registrar of the Family Court or by any person nominated by a Registrar (if it takes place within the Family Court premises); or
 - (ii) by a lawyer.
- (2) Despite subclause (1)(b), the order may, if the Family Court Judge, in their discretion, thinks fit, require that the viewing of a Police video record (other than an especially sensitive Police video record), or a transcript, take place—
- (a) not within the Family Court premises; but
 - (b) at another place in accordance with any directions by the Judge.
- (3) If the order requires that the viewing of a Police video record (other than an especially sensitive Police video record) or a transcript by a party take place not within the Family Court premises, but at another place in accordance with any directions by the Judge, and be supervised by a lawyer (*see* subclauses (1)(c) and (2)),—

- (a) the lawyer is authorised by this subclause to have access to the Police video record or transcript for the purpose of supervising the party's viewing at that place; and
- (b) regulation 21(3) applies to the lawyer as if the party they represent were a suspect or defendant; and
- (c) the lawyer is also authorised by this subclause to have access to the Police video record or transcript for the purpose of case preparation.

Rachel Hayward,
Clerk of the Executive Council.

Issued under the authority of the Legislation Act 2019.
Date of notification in *Gazette*: 8 June 2023.

Notes

1 *General*

This is a consolidation of the Evidence (Video Records and Very Young Children's Evidence) Regulations 2023 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 *Amendments incorporated in this consolidation*

Evidence (Video Records and Very Young Children's Evidence) Regulations 2023 (SL 2023/111): regulation 62