



## **Evidence Amendment Regulations 2008**

Rt Hon Dame Sian Elias, Administrator of the Government

### **Order in Council**

At Wellington this 8th day of September 2008

Present:

The Right Hon Helen Clark presiding in Council

Pursuant to section 201 of the Evidence Act 2006 and, in relation to preliminary hearings, pursuant also to section 212 of the Summary Proceedings Act 1957, Her Excellency the Administrator of the Government, acting on the advice and with the consent of the Executive Council, makes the following regulations.

### **Contents**

		Page
1	Title	2
2	Commencement	2
3	Principal regulations amended	2
4	Interpretation	2
5	New regulation 4 substituted	2
	4 Application of subpart	2
6	Only certain persons may be present during interview	3
7	New regulation 6 substituted	3
	6 Person to support witness may be present	3

8	Interpreter may be present	3
9	What must be on video record	3
10	New regulation 11 substituted	4
	11 Additional requirement if person present to support witness	4
11	Application of subpart	4
12	Limited purposes for which police may show working copy	4
13	Authorised advisor may request copy of video record	4
14	Application of subpart	4
15	Application of subpart	5

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## Regulations

### 1 Title

These regulations are the Evidence Amendment Regulations 2008.

### 2 Commencement

These regulations come into force on 12 September 2008.

### 3 Principal regulations amended

These regulations amend the Evidence Regulations 2007.

### 4 Interpretation

The definition of **interview** in regulation 3 is amended by omitting “complainant” and substituting “witness”.

### 5 New regulation 4 substituted

Regulation 4 is revoked and the following regulation substituted:

#### “4 Application of subpart

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 informant in the proceeding is a member of the police.”

**6 Only certain persons may be present during interview**

- (1) Regulation 5(b) is amended by omitting “complainant” and substituting “witness”.
- (2) Regulation 5(d) is amended by omitting “complainant” and substituting “witness”.

**7 New regulation 6 substituted**

Regulation 6 is revoked and the following regulation substituted:

**“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)”.

**8 Interpreter may be present**

- (1) Regulation 7(a) is amended by omitting “complainant” and substituting “witness”.
- (2) Regulation 7(b) is amended by omitting “complainant” and substituting “witness”.

**9 What must be on video record**

- (1) Regulation 8 is amended by revoking paragraph (c) and substituting the following paragraph:
  - “(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”.
- (2) Regulation 8(d) is amended by omitting “complainant” in each place it appears and substituting in each case “witness”.
- (3) Regulation 8 is amended by revoking paragraph (e) and substituting the following paragraph:

“(e) any interpreter present promising to accurately and completely translate the words of the witness; and”.

**10 New regulation 11 substituted**

Regulation 11 is revoked and the following regulation substituted:

**“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)”.

**11 Application of subpart**

Regulation 19 is amended by omitting “complainant’s” and substituting “witness’s”.

**12 Limited purposes for which police may show working copy**

(1) Regulation 20(d) is amended by omitting “complainant” and substituting “witness”.

(2) Regulation 20(f) is amended by omitting “complainant” and substituting “witness”.

**13 Authorised advisor may request copy of video record**

Regulation 25(1) is amended by omitting “complainant” and substituting “witness”.

**14 Application of subpart**

Regulation 29 is amended by omitting “complainant’s” and substituting “witness’s”.

**15 Application of subpart**

Regulation 35 is amended by omitting “complainant’s” and substituting “witness’s”.

Rebecca Kitteridge,  
Clerk of the Executive Council.

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**Explanatory note**

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations, which come into force on 12 September 2008, amend the Evidence Regulations 2007.

There are 2 areas of change as follows.

**Application of rules about video records to interviews with prosecution witnesses**

At present, the principal regulations apply only to the video recording of complainant evidence. With 1 exception (see below) the regulations are amended so that they apply to the video recording of the evidence of any 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 informant in the proceeding is a member of the police.

The exception is that *regulations 21 to 24* (which relate to a responsible department requesting a video record of certain complainants for certain purposes) are not amended. These will continue to apply only to complainants.

**Requirement to show taking of oath or making of affirmation on video record**

Regulation 8 of the principal regulations sets out the matters that must be shown on a video record of an interview of a complainant if it is

intended that the video record may be offered later as evidence in a criminal proceeding.

Currently, in the case of a complainant of or over 12 years of age, regulation 8(c) requires the video record to show the person taking an oath or making an affirmation. A *new regulation 8(c)* is substituted which—

- refers to a witness rather than a complainant, in line with the change described above; and
- requires that the video record show the witness making a promise to tell the truth.

Currently regulation 8(e) requires the video record to show any interpreter present taking an oath or making an affirmation. A *new regulation 8(e)* is substituted which requires that the video record show any interpreter present promising to accurately and completely translate the words of the witness.

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These regulations are administered by the Ministry of Justice.

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