

Version  
as at 6 July 2023



## Evidence Amendment Regulations 2016

(LI 2016/292)

Evidence Amendment Regulations 2016: revoked, on 6 July 2023, pursuant to regulation 60 of the Evidence (Video Records and Very Young Children's Evidence) Regulations 2023 (SL 2023/111).

Patsy Reddy, Governor-General

### Order in Council

At Wellington this 5th day of December 2016

Present:

Her Excellency the Governor-General in Council

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

### Contents

	Page
1 Title	3
2 Commencement	3
3 Principal regulations	3
4 Regulation 3 amended (Interpretation)	3
5 New regulation 3A inserted (Application of regulations to certain military proceedings)	4
3A Application of regulations to certain military proceedings	4

---

#### 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.**

6	Regulation 4 amended (Application of subpart)	4
7	Regulation 8 amended (What must be on video record)	4
8	Regulation 20 amended (Limited purposes for which Police may show working copy)	5
9	New regulations 20A to 20C inserted	5
	20A Requirements for experts viewing video records	5
	20B Limited places where working copy of video record of evidence may be viewed	6
	20C Judge or judicial officer may impose conditions	6
10	New regulations 24A to 24E and cross-heading inserted	6
	<i>Request for video record under section 119A of the Act by Judge or judicial officer in other proceedings</i>	
	24A Judge or judicial officer may request copy of video record	6
	24B Safe custody, use of video record and transcript, prohibition on copying video record, and copying of transcript	6
	24C Disclosure of copy of video record, transcript, or summary	7
	24D Disclosure by viewing video record	8
	24E Admissibility	8
11	Cross-heading above regulation 28 replaced	8
	<i>Prosecution to give transcript to defence following not guilty plea</i>	
12	Regulation 28 amended (Prosecutor to give transcript to defence after defendant pleads not guilty)	8
13	Regulation 29 amended (Application of subpart)	8
14	Regulation 30 replaced (Lawyer's copy)	8
	30 Lawyer's copy	8
15	Regulation 31 amended (Custody of lawyer's copy)	8
16	Regulation 32 replaced (Purposes for which lawyer's copy may be used by lawyer)	9
	32 Use of lawyer's copy by defendant's lawyer	9
17	Regulation 34 replaced (Restriction on supply of lawyer's copy)	9
	34 Use of lawyer's copy by Crown lawyer	9
18	Regulation 38 amended (Producing and retaining master copy for criminal proceeding)	10
19	New regulation 46A and cross-heading inserted	10
	<i>Retention and destruction obligations of other courts and tribunals</i>	
	46A Retention and destruction obligations of other courts and tribunals supplied with copy of video record and transcript under regulation 24A	10

20	New Parts 4 and 5 inserted	10
<b>Part 4</b>		
<b>Mobile video record evidence in criminal proceedings concerning domestic violence</b>		
52	Application	10
53	Interpretation	11
54	Requirements for recording mobile video records	11
55	Storage of mobile video records	11
56	Application of regulations 20, 20A, 20B, 20C, 24A, 24B, 24C, 24D, 24E, and 28 to mobile video records	12
57	Access to mobile video records	12
58	Privacy in respect of mobile video records	12
59	Producing and retaining copies of mobile video records for criminal proceedings concerning domestic violence	13
60	Obligations of Police to retain and destroy mobile video records	13
61	Destruction of transcripts	13
62	Records to be kept of dealings with mobile video records	13
<b>Part 5</b>		
<b>Offences</b>		
63	Failure to comply with requirements	14
21	Schedule amended	14

## Regulations

### 1 Title

These regulations are the Evidence Amendment Regulations 2016.

### 2 Commencement

These regulations come into force on 9 January 2017.

### 3 Principal regulations

These regulations amend the Evidence Regulations 2007 (the **principal regulations**).

### 4 Regulation 3 amended (Interpretation)

(1) In regulation 3, insert in their appropriate alphabetical order:

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

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

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

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

- (2) In regulation 3, replace the definition of **lawyer's copy** with:

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

## 5 **New regulation 3A inserted (Application of regulations to certain military proceedings)**

After regulation 3, insert:

### 3A **Application of regulations to certain military proceedings**

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

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

## 6 **Regulation 4 amended (Application of subpart)**

- (1) Replace regulation 4(b) with:

(b) the proceeding is commenced by a Police employee.

- (2) In regulation 4, insert as subclause (2):

- (2) To avoid doubt, this subpart does not apply to a video record of an interview of a defendant.

## 7 **Regulation 8 amended (What must be on video record)**

Replace regulation 8(g) with:

- (g) an accurate means for measuring and recording time in hours, minutes, and seconds; and

**8 Regulation 20 amended (Limited purposes for which Police may show working copy)**

- (1) In regulation 20(a), replace “lawyer or any other person” with “Crown lawyer or any other person, for example, an expert,”.
- (2) In regulation 20(a)(i), replace “laid” with “filed”.
- (3) Replace regulation 20(b) and (c) with:
  - (b) to allow any of the following persons to know the case against them:
    - (i) a person suspected of having committed an offence to which the video record relates:
    - (ii) a defendant to a charge in relation to which the video record may be used in evidence:
  - (c) to allow any lawyer representing a person referred to in paragraph (b)(i), a defendant’s lawyer, or an expert to view it:
- (4) Replace regulation 20(f) with:
  - (f) to allow any Crown lawyer or expert to view it:
- (5) After regulation 20(g), insert:
  - (ga) for training or reviewing the performance of any person who is training as, or is, an interviewer:
  - (gb) to comply with an order of a Judge or judicial officer under section 119A of the Act to give the parties in other proceedings and (if relevant) their lawyers or an expert an opportunity to view a video record:
- (6) In regulation 20, insert as subclauses (2) and (3):
  - (2) Subclause (1)(b), (c), and (gb) is subject to regulation 20B.
  - (3) The Police must inform any expert who views a working copy that the expert must comply with regulation 20A.

**9 New regulations 20A to 20C inserted**

After regulation 20, insert:

**20A Requirements for experts viewing video records**

- (1) An expert may view a video record only for the purpose of providing expert advice.
- (2) An expert who views a video record must not copy the video record.
- (3) An expert who is given possession of a video record—
  - (a) must not give or show the video record to any other person; and
  - (b) must keep the video record in safe custody; and

- (c) must return the video record to the Police or the relevant lawyer on the earlier of the following:
  - (i) when requested to do so by the Police or the relevant lawyer:
  - (ii) when ordered to do so by a Judge or judicial officer:
  - (iii) as soon as practicable after the proceedings to which it relates are finally determined or discontinued.

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

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

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

**20C Judge or judicial officer may impose conditions**

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

**10 New regulations 24A to 24E and cross-heading inserted**

After regulation 24, insert:

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

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

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

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

- (1) The Judge or judicial officer must keep in safe custody (as relevant)—
  - (a) the copy of the video record; and

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

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

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

**24D Disclosure by viewing video record**

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

**24E Admissibility**

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

**11 Cross-heading above regulation 28 replaced**

Replace the cross-heading above regulation 28 with:

*Prosecution to give transcript to defence following not guilty plea*

**12 Regulation 28 amended (Prosecutor to give transcript to defence after defendant pleads not guilty)**

- (1) In the heading to regulation 28, replace “**after defendant pleads not guilty**” with “**following not guilty plea**”.
- (2) In regulation 28(3), replace “the hearing” with “a hearing”.

**13 Regulation 29 amended (Application of subpart)**

In regulation 29, replace “for a party to a criminal proceeding under section 106(4)(a)” with “under section 106”.

**14 Regulation 30 replaced (Lawyer’s copy)**

Replace regulation 30 with:

**30 Lawyer’s copy**

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

**15 Regulation 31 amended (Custody of lawyer’s copy)**

In regulation 31(1), replace “regulation 30(1)” with “regulation 30”.



**16 Regulation 32 replaced (Purposes for which lawyer's copy may be used by lawyer)**

Replace regulation 32 with:

**32 Use of lawyer's copy by defendant's lawyer**

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

**17 Regulation 34 replaced (Restriction on supply of lawyer's copy)**

Replace regulation 34 with:

**34 Use of lawyer's copy by Crown lawyer**

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

**18 Regulation 38 amended (Producing and retaining master copy for criminal proceeding)**

- (1) In regulation 38(1), replace “offered as alternative evidence” with “given in evidence, used as a formal statement, or produced as an exhibit”.
- (2) Replace regulation 38(2) with:
- (2) Once given in evidence at criminal proceedings, used as a formal statement, or produced as an exhibit, the master copy must be retained in the custody of the court until destroyed or erased in accordance with regulation 39.

**19 New regulation 46A and cross-heading inserted**

After regulation 46, insert:

*Retention and destruction obligations of other courts and tribunals*

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

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

**20 New Parts 4 and 5 inserted**

After Part 3, insert:

**Part 4****Mobile video record evidence in criminal proceedings concerning domestic violence****52 Application**

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

### **53 Interpretation**

In this Part,—

**domestic violence** has the meaning giving to it by section 3 of the Domestic Violence Act 1995 but excludes sexual abuse

**mobile video record** means a video record—

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

### **54 Requirements for recording mobile video records**

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

### **55 Storage of mobile video records**

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

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

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

**57 Access to mobile video records**

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

**58 Privacy in respect of mobile video records**

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

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

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

**60 Obligations of Police to retain and destroy mobile video records**

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

**61 Destruction of transcripts**

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

**62 Records to be kept of dealings with mobile video records**

The Police must keep records of—

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

## Part 5 Offences

### 63 Failure to comply with requirements

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

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

### 21 Schedule amended

- (1) In the Schedule heading, replace “30(2)” with “30(3)”.
- (2) In the Schedule, after “*lawyer’s copy*,” insert “*party’s copy*,”.

Michael Webster,  
Clerk of the Executive Council.

## Explanatory note

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

These regulations amend the Evidence Regulations 2007 (the **principal regulations**) and come into force on 9 January 2017. The changes set out in *regulations 4, 6 to 19, and 21* are made to align the principal regulations with amendments made to the Evidence Act 2006 (the **Act**) by the Evidence Amendment Act 2016. The change set out in *regulation 5* provides that the principal regulations (apart from regulation 4(b) and Part 4) apply to certain proceedings in which the provisions of the Evidence Act 2006 relating to video record evidence are applied under the Armed Forces Discipline Act 1971 or the Court Martial Act 2007. The changes set out in *regulation 20* are made to enable the use of certain mobile video records in criminal proceedings that concern allegations of domestic violence.

Issued under the authority of the Legislation Act 2019.  
Date of notification in *Gazette*: 8 December 2016.

## Notes

### **1** *General*

This is a consolidation of the Evidence Amendment Regulations 2016 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 60