

South Australia

Evidence (Domestic Violence Proceedings) Variation Regulations 2019

under the *Evidence Act 1929*

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Part 1—Preliminary

1—Short title

These regulations may be cited as the *Evidence (Domestic Violence Proceedings) Variation Regulations 2019*.

2—Commencement

These regulations come into operation on the day on which section 7 of the *Statutes Amendment (Domestic Violence) Act 2018* comes into operation.

3—Variation provisions

In these regulations, a provision under a heading referring to the variation of specified regulations varies the regulations so specified.

Part 2—Variation of *Evidence Regulations 2007*

4—Insertion of regulation 3AAA

After regulation 3 insert:

3AAA—Domestic violence proceedings—recorded evidence

- (1) If a statement in a section 13BB recording is in a language other than English, that statement must be translated into English, either in the recording or in a transcript made at a later time.

- (2) If a transcript is made in accordance with subregulation (1), the transcript must accompany the recording to which it relates if—
 - (a) the defendant elects to listen to or view the recording before it is admitted into evidence in proceedings; or
 - (b) the recording is admitted into evidence in proceedings.
- (3) If a person translates a statement in a section 13BB recording in accordance with subregulation (1)—
 - (a) the person must state, in the form of an affidavit, that the statement was accurately translated into English; and
 - (b) if the recording is admitted into evidence in proceedings—the affidavit must accompany the recording.
- (4) The court may require that a translation made in accordance with subregulation (1) be verified (in such manner as the court may direct) as an accurate translation of the relevant statement.
- (5) A person who has possession of, or access to, a section 13BB recording must not allow access to the recording by another person except—
 - (a) for the legitimate purposes of any proceedings in which the recording has been admitted into evidence or to which the recording relates; or
 - (b) for use by a public official for purposes connected with their official functions; or
 - (c) as may be authorised by the prosecution.

Maximum penalty: \$5 000.

- (6) A complainant gives *informed consent* to the making of a recording for the purposes of the definition in section 13BB(10) of the Act if the consent is given in accordance with the following requirements:
 - (a) a police officer must tell the complainant—
 - (i) that the police officer is recording the complainant; and
 - (ii) that the recording may be used in court; and
 - (b) the complainant must indicate (whether by words or conduct) that they consent to the making of the recording.
- (7) For the purposes of subregulation (6)(b) (and without limiting the manner in which a complainant may indicate that they consent to the making of a recording), a lack of objection to a recording may, in the circumstances, constitute a sufficient indication of consent to the recording.
- (8) In this regulation—

public official has the same meaning as in section 67G of the Act;

section 13BB recording means a recording made by a police officer that is, or may be, admissible in proceedings for a domestic violence offence under section 13BB of the Act.

Note—

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Made by the Governor

with the advice and consent of the Executive Council
on 18 July 2019

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