

South Australia

Evidence Regulations 2022

under the *Evidence Act 1929*

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Schedule 1—Repeal of *Evidence Regulations 2007*

1—Short title

These regulations may be cited as the *Evidence Regulations 2022*.

2—Commencement

These regulations come into operation on 1 September 2022.

3—Interpretation

In these regulations—

Act means the *Evidence Act 1929*

4—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.

5—Identity parades

- (1) For the purposes of section 34AB(2)(a)(i) of the Act, reasonable steps must be taken when making an audio visual record of an identity parade to ensure that—
 - (a) the witness identifying, or attempting to identify, a person alleged to have committed an offence is visible at all relevant times during the conduct of the identity parade; and
 - (b) if the witness indicates that a person taking part in, or whose image is included in, the parade is alleged to have committed an offence—that person or image (as the case requires) is visible at the time the witness gives the indication; and
 - (c) anything said by the witness, and any other person present, during the conduct of the identity parade is recorded.

- (2) For the purposes of section 34AB(2)(a)(i) of the Act, the Commissioner of Police must keep an audio visual record of an identity parade relating to a person until—
- (a) if the person has been charged with an offence to which the identity parade relates but is subsequently discharged—the day on which the person is so discharged; or
 - (b) if the person has been convicted or acquitted of an offence to which the identity parade relates—
 - (i) if an appeal has not been lodged within the period provided for lodging an appeal against the conviction or acquittal—the end of the period; or
 - (ii) if an appeal has been lodged within the period provided for lodging an appeal against the conviction or acquittal—the appeal lapses or is finally determined,whichever is the later; or
 - (c) if the person to whom the record relates has not been charged with an offence to which the identity parade relates—until the end of the period within which the person can be charged with the offence.

6—Prescribed South Australian courts

Pursuant to paragraph (e) of the definition of *South Australian court* in section 59IA of the Act, the following courts and tribunals are South Australian courts for the purposes of Part 6C of the Act:

- (a) the Environment, Resources and Development Court;
- (b) the South Australian Employment Tribunal;
- (c) the Youth Court of South Australia.

7—Fee for authorised news media representative

- (1) The fee prescribed for the purposes of section 69A of the Act in respect of an authorised news media representative must be paid not later than 1 June in each year for the next financial year.
- (2) If, however, the fee is paid for a term of less than 12 months, the fee payable is a proportion of the relevant fee, being the proportion that the number of whole months in the term bears to 12 months.

Schedule 1—Repeal of *Evidence Regulations 2007*

The *Evidence Regulations 2007* are repealed.

Editorial note—

As required by section 10AA(2) of the *Legislative Instruments 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 28 July 2022

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