

2009

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

EVIDENCE (MISCELLANEOUS PROVISIONS) REGULATION 2009

SL2009 - 23

EXPLANATORY STATEMENT

Circulated by authority of
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Attorney General

Outline

Section 101(1) of the *Evidence (Miscellaneous Provisions) Act 1991* (the Act) provides that the Executive may make regulations for the Act.

The purpose of the Evidence (Miscellaneous Provisions) Regulation 2009 (the Regulation) is twofold; to provide a definition of ***prescribed person*** for the purposes of section 40E(1) of the Act, and to prescribe a position for the purposes of a ***responsible person*** in section 40G of the Act.

Prescribed person

Section 40E(1) of the Act defines an audiovisual recording to be an audiovisual recording of a witness answering questions of a prescribed person in relation to the investigation of a sexual or violent offence.

The Regulation defines a prescribed person to be a police officer who has completed training in the making of audiovisual recordings of witnesses answering questions in relation to the investigation of sexual and violent offences. The Regulation recognises that a police officer may have completed the relevant training in the ACT, or in another jurisdiction where audiovisual recordings are already used as evidence (for e.g. Victoria and Queensland). The Regulation also recognises that training may have occurred prior to the making of the Regulation. ACT Policing have already conducted training for a number of police officers to ensure that they can give effect to the legislation as soon as possible following commencement

Responsible person

Section 40G of the Act provides that where a prosecutor intends to tender an audiovisual recording as evidence in a proceeding, the prosecutor must give to the accused person, or their lawyer, written notice of that intention. The written notice must, amongst other things, state the person responsible for arranging access for the accused, or their lawyer, to see and listen to the recording. The notice must state the responsible person by naming the person, or stating the occupant of a position prescribed by regulation.

The Regulation prescribes the position of Superintendent of Prosecution and Judicial Support.

NOTES ON CLAUSES

Section 1 **Name of regulation**

This section explains that the name of the regulation is the *Evidence (Miscellaneous Provisions) Regulation 2009*.

Section 2 **Commencement**

This section states that the regulation will commence on the day the *Sexual and Violent Offences Legislation Amendment Act 2008*, section 11 commences.

Section 3 **Notes**

This section explains that a note included in the regulation is explanatory and is not part of the regulation.

Section 4 **Prescribed person – Act, section 40E(1) and (3)**

This section prescribes a police officer who has completed training in the making of audiovisual recordings of witnesses answering questions in relation to the investigation of sexual or violent offences for the purposes of section 40E(1) and (3) of the *Evidence (Miscellaneous Provisions) Act 1991*. The training may be completed in the ACT or elsewhere, and before or after the commencement of this section.

Section 5 **Responsible person – Act, s 40G(4)(b)**

This section prescribes the position of Superintendent of Prosecution and Judicial Support for the purposes of section 40G(4)(b) of the *Evidence (Miscellaneous Provisions) Act 1991*.