

Authorised Version

Criminal Procedure Amendment Regulations 2018

S.R. No. 46/2018

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Authorised Version

STATUTORY RULES 2018

S.R. No. 46/2018

Criminal Procedure Act 2009

Criminal Procedure Amendment Regulations 2018

The Governor in Council makes the following Regulations:

Dated: 17 April 2018

Responsible Minister:

MARTIN PAKULA
Attorney-General

ANDREW ROBINSON
Clerk of the Executive Council

1 Objective

The objective of these Regulations is to amend the Criminal Procedure Regulations 2009—

- (a) to provide further for Division 5 recordings and other recordings; and
- (b) to prescribe intermediaries as persons who may ask questions under section 367 of the **Criminal Procedure Act 2009**; and
- (c) to provide a form of oath and affirmation for intermediaries; and
- (d) to provide for the use of Part 8.2A recordings.

2 Authorising provision

These Regulations are made under section 420 of the **Criminal Procedure Act 2009**.

3 Commencement

These Regulations come into operation on 17 April 2018.

4 Principal Regulations

In these Regulations, the Criminal Procedure Regulations 2009¹ are called the Principal Regulations.

5 Objectives

After regulation 1(b) of the Principal Regulations **insert—**

"(ba) provide for the use of various recordings for the purposes of assisting intermediaries or the training or evaluation of intermediaries; and".

6 Definitions

(1) In regulation 4 of the Principal Regulations, in the definition of *Division 5 recording*, for "Act." **substitute** "Act;".

(2) In regulation 4 of the Principal Regulations **insert** the following definition—

"Part 8.2A recording means an audio or audiovisual recording made in a proceeding in which an intermediary is appointed under Part 8.2A."

7 Who may ask questions

(1) In regulation 5(d) of the Principal Regulations, for "Police." **substitute** "Police;".

(2) After regulation 5(d) of the Principal Regulations **insert—**

"(e) a person on the panel established under section 389H of the Act who may be appointed as an intermediary for the witness."

8 Regulation 11 substituted

For regulation 11 of the Principal Regulations **substitute—**

"11 Use of Division 5 recordings, copies or transcripts

- (1) A Division 5 recording, a copy of a Division 5 recording or a transcript of a Division 5 recording may only be used—
 - (a) in, or in connection with, a proceeding referred to in Division 5 of Part 8.2 or in Part 8.2A of the Act; or
 - (b) in accordance with regulation 22.
- (2) Except in accordance with Part 8.2 of the Act or these Regulations, a person must not have possession of, or access to, a Division 5 recording, a copy of a Division 5 recording or a transcript of a Division 5 recording."

9 New Part 5 inserted

After Part 4 of the Principal Regulations **insert—**

"Part 5—Intermediaries

21 Intermediaries' oath or affirmation

For the purposes of section 389K(4) of the Act, the prescribed form of oath or affirmation is the form set out in Schedule 1 or a similar form.

22 Use of recordings and transcripts

- (1) For a purpose referred to in subregulation (2), Victoria Police or the relevant court, as the case may be, may provide to the Secretary to the Department of Justice and Regulation a copy or transcript of—

- (a) a Division 5 recording; or
 - (b) a recording of a special hearing; or
 - (c) a Part 8.2A recording.
- (2) The Secretary to the Department of Justice and Regulation may authorise in writing a person to use a copy or a transcript of a recording provided under subregulation (1) for the purpose of—
- (a) assisting an intermediary to perform a function set out in section 389I of the Act, including assessing a witness; or
 - (b) subject to subregulation (3), training or evaluation in connection with intermediaries.
- (3) A copy or transcript of a Division 5 recording or a Part 8.2A recording or a copy or transcript of a recording of a special hearing may only be used in accordance with subregulation (2)(b) if—
- (a) all legal proceedings in relation to the subject matter of the recording or transcript are concluded; and
 - (b) all reasonable measures have been taken to remove information from the recording or transcript that discloses or is likely to disclose the identity of the victim or any other person."

10 New Schedule 1 inserted

After Part 5 of the Principal Regulations **insert—**

**"Schedule 1—Oaths and
affirmations**

Regulation 21

Oaths by intermediaries

I swear (*or the person taking the oath may promise*) by Almighty God (*or the person may name a god recognised by the person's religion*) that I will well and truly communicate questions and answers, and make true explanation of all matters and things, that are required of me in this case to the best of my ability.

Affirmations by intermediaries

I solemnly and sincerely declare and affirm that I will well and truly communicate questions and answers, and make true explanation of all matters and things, that are required of me in this case to the best of my ability."

Endnotes

¹ Reg. 4: S.R. No. 169/2009 as amended by S.R. No. 1/2011.