

**Hon Kris Faafoi**  
Minister of Justice

**Proactive release – Evidence (Digital Video Records) Amendment Regulations 2022**

Date of issue: 13 June 2022

The following documents have been proactively released in accordance with Cabinet Office Circular CO (18) 4.

Some information has been withheld on the basis that it would not, if requested under the Official Information Act 1982 (OIA), be released. Where that is the case, the relevant section of the OIA has been noted and no public interest has been identified that would outweigh the reasons for withholding it.

No.	Document	Comments
1	<b>Evidence (Digital Video Records) Amendment Regulations 2022</b> <i>Cabinet paper</i> Office of the Minister of Justice	Some information has been withheld in accordance with section 9(2)(j) of the OIA to enable a Minister of the Crown or any public service agency or organisation holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations).
2	<b>Cabinet Legislation Committee Decision [LEG-22-MIN-0057]</b> <i>Cabinet Minute</i> Cabinet Office <i>Meeting date: 9 May 2022</i>	Released in full.

In Confidence

Office of the Minister of Justice

Cabinet Legislation Committee

## Evidence (Digital Video Records) Amendment Regulations 2022

### Proposal

- 1 I seek Cabinet's authorisation for submission to the Executive Council of the Evidence (Digital Video Records) Amendment Regulations 2022.

### Background

- 2 The Evidence Regulations 2007 (the regulations) deal mainly with procedural and technical matters associated with video recorded evidence in criminal proceedings. On 21 November 2021 Cabinet agreed to:
  - 2.1 a comprehensive re-write of the regulations to consolidate and modernise them, and support the implementation of the Sexual Violence Legislation Act 2021 provisions around video evidence e.g. allowing pre-recorded cross-examination; and
  - 2.2 make 'interim' minor and technical changes to the regulations, in advance of the re-write, to clarify that Police can use digital, as well as hard copy, video evidence [LEG-21-MIN-0194].
- 3 The Evidence (Digital Video Records) Amendment Regulations implement the decision to make 'interim' changes described in paragraph 2.2 above.

### Policy

*The amendment regulations are needed in advance of the comprehensive re-write so Police can make required upgrades to its recording technology*

- 4 The current regulations use concepts and language relating to recording technology from the 1990s. In particular, they reflect the use of physical copies of VHS tapes, which is making compliance increasingly difficult.
- 5 s9(2)(j)

*Current requirements relating to video records will be retained but made 'technology neutral'*

- 6 The amendment regulations are limited to clarifying that Police can use digital (as well as hard copy) methods of recording, storing and providing access to video evidence of witnesses. They make minor modifications to the requirements for making and dealing with digital video records in a secure manner, with controlled access. In particular, amendments include:
  - 6.1 Introducing a new subpart that modifies the language and processes in Part 1, which deals with physical format recordings, so that it applies to dealing with digital video records;
  - 6.2 Disapplying regulations 14-18, which set out processes for dealing with 'working' and 'master' copies of recordings, to digital video records;
  - 6.3 Introducing requirements for dealing with the 'means of access' to a digital video recording, e.g. a password

*The amendment regulations are 'interim' regulations only*

- 7 These are 'bridging' regulations which will apply only for a short period this year until they are replaced by the new Evidence Regulations referred to in paragraph 2.1. Although the structure and exact wording of the new regulations will change, the concept of being technology neutral will endure.
- 8 The comprehensive re-write of the regulations is underway. Parliamentary Counsel Office is in the early stages of drafting. Ministry of Justice officials will seek public feedback on an exposure draft of the new regulations in mid-2022 before seeking Cabinet approval to bring the regulations into force. The new re-written regulations must be in place by December 2022 to ensure video evidence provisions in the Sexual Violence Legislation Act 2021 can come into effect.

#### **Timing and 28-day rule**

- 9 The amendment regulations would come into force on 9 June 2022, enabling Police to progress technology upgrades before servicing support for its DVD equipment ends.
- 10 If agreed by Cabinet, the amendment regulations can be submitted to the Executive Council on 9 May for the Governor-General's approval and published in the Gazette on 12 May. This will allow for the requisite 28 days between publication and the regulations coming into force.

#### **Compliance**

- 11 These regulatory changes comply with:
  - 11.1 the principles of the Treaty of Waitangi;

- 11.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993
- 11.3 the principles and guidelines set out in the Privacy Act 2020
- 11.4 relevant international standards and obligations; and
- 11.5 the Legislation Guidelines (2021 edition).

### **Regulations Review Committee**

- 12 There are no apparent grounds for the Regulations Review Committee to draw the amendment regulations to the attention of the House of Representatives under Standing Order 327.

### **Certification by Parliamentary Counsel**

- 13 Parliamentary Counsel has certified the attached amendment regulations as being in order for submission to Cabinet.

### **Impact analysis**

- 14 A regulatory impact assessment was prepared in relation to the substantive re-write and update of the Evidence Regulations. It was developed in accordance with the necessary requirements and submitted at the time that LEG approval of the policy relating to the regulations was sought [LEG-21-MIN-0194].
- 15 Treasury's Regulatory Impact Analysis team has determined that the amendments to the Evidence Regulations to apply procedure to digital video records of evidence recordings is exempt from the requirement to provide a Regulatory Impact Statement. It is exempted on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities.

### **Publicity**

- 16 The amendment regulations will be published in the *New Zealand Gazette* as soon as they have been made.

### **Proactive release**

- 17 I propose to proactively release this paper after the amendment regulations have been gazetted.

### **Consultation**

- 18 The following agencies were consulted on this paper and the draft regulations: New Zealand Police, Crown Law Office, the Ministry of Social Development, Oranga Tamariki, Te Puni Kōkiri, the Ministry for Pacific Peoples, the Ministry for Women, Department of Corrections, the New Zealand Defence Force, and the Treasury. The Department of Prime Minister and Cabinet was informed.

## Recommendations

19 The Minister of Justice recommends that the Committee:

- 1 **note** that the Cabinet Legislation Committee agreed to make minor and technical changes to the Evidence Regulations 2007 to enable Police to use digital methods of recording, storing and providing access to video evidence of witnesses [LEG-21-MIN-0194].
- 2 **note** that the Evidence (Digital Video Records) Amendment Regulations 2022 will give effect to the decision referred to in paragraph 19.1 above.
- 3 **note** that the Evidence (Digital Video Records) Amendment Regulations 2022 are 'bridging' regulations, which will be replaced by new modernised Evidence Regulations later in 2022.
- 4 **authorise** the submission to the Executive Council of the Evidence (Digital Video Records) Amendment Regulations 2022.
- 5 **note** that the Evidence (Digital Video Records) Amendment Regulations 2022 will come into force on 9 June 2022.

Authorised for lodgement

Hon Kris Faafoi  
Minister of Justice



# Cabinet Legislation Committee

## Minute of Decision

*This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.*

### Evidence (Digital Video Records) Amendment Regulations

**Portfolio**                      **Justice**

On 5 May 2022, the Cabinet Legislation Committee:

- 1        **noted** that the Cabinet Legislation Committee agreed to make minor and technical changes to the Evidence Regulations 2007 to enable Police to use digital methods of recording, storing and providing access to video evidence of witnesses [LEG-21-MIN-0194];
- 2        **noted** that the Evidence (Digital Video Records) Amendment Regulations 2022 give effect to the decision referred to in paragraph 1 above;
- 3        **noted** that the Evidence (Digital Video Records) Amendment Regulations 2022 are 'bridging' regulations, which will be replaced by new modernised Evidence Regulations later in 2022;
- 4        **authorised** the submission to the Executive Council of the Evidence (Digital Video Records) Amendment Regulations 2022 [PCO 24445/2.0];
- 5        **noted** that the Evidence (Digital Video Records) Amendment Regulations 2022 come into force on 9 June 2022.

Rebecca Davies  
Committee Secretary

**Present:**

Hon Chris Hipkins (Chair)  
Hon Andrew Little  
Hon Poto Williams  
Hon Stuart Nash  
Hon Kris Faafoi  
Hon Kiri Allan  
Hon Dr David Clark  
Hon Meka Whaitiri  
Kieran McAnulty, MP (Senior Government Whip)

**Officials present from:**

Office of the Prime Minister  
Officials Committee for LEG