

Crimes (Surveillance Devices) Body-worn Cameras Guidelines 2022

Disallowable Instrument D2022-9

made under the

Crimes (Surveillance Devices) Act 2010, s43C (Body-worn Cameras Guidelines)

EXPLANATORY STATEMENT

A body worn camera (BWC) is a device that is capable of recording visual images and sound which is utilised by police officers to create an objective and contemporaneous record of events, critical incidents, and interactions with members of the community during the course of their duties.

Section 43B of the *Crimes (Surveillance Devices) Act 2010* (the Act) now provides the primary legislative authority and obligations for police officers in the ACT to use a BWC. Generally under the Act, police officers are now permitted to use (record) with a BWC in public, and in private premises where they can lawfully be present in the execution of their duties.

Section 43C of the Act requires creation of guidelines regarding the use of BWCs by police officers. These guidelines are in the form of a Disallowable Instrument. This is a publicly available guideline issued by the chief police officer in accordance with the Act, and provides guidance on the use of BWCs by police officers in the performance of their duties, and to assist the ACT community in understanding how police use BWCs and their rights involved in their use.

The guidelines detail when a BWC must/may be used, human rights considerations when making a decision to record, as well as storage, use and disposal requirements for BWC recordings. The guidelines are issued by the Chief Police Officer in consultation with the director-general. Police officers are required to comply with the requirements of the guidelines.

A regulatory impact statement is not required as this instrument does not impose appreciable costs on the community or a part of the community (see s 34 (1) *Legislation Act 2001*).

Clause Notes

Clause 1 names the instrument the *Crimes (Surveillance Devices) Body-worn Cameras Guidelines 2022*.

Clause 2 states that the instrument commences on the commencement of the Act, section 43C.

Clause 3 provides that, following consultation with the director-general, the chief police officer makes the guidelines set out in the schedule, outlining the procedures for the use of body-worn cameras by police officers in the ACT.

Clause 4 sets out the definitions of terms used in the guidelines.

The **Schedule** provides the guidelines within the following headings:

Part 1 – Purpose

This part outlines the dual purpose of the guidelines to provide guidance on the use of body-worn camera's (BWCs) by police officers in the performance of their duties, and to assist the ACT community in understanding how police use BWCs and their rights involved in their use.

Part 2 – Scope

This part provides the extent of the application of the guidelines within the ACT.

Part 3 – Principles and Governance

This part details the relevant legislation that the guidelines reference and how BWC use by police officers is further managed.

Part 4 – Use of a BWC

This part details the considerations that are relevant to the decision of when and how to record by police officers, in accordance with the Act. This includes:

- Circumstances of use – provides detailed explanation and examples of situations of when and how, a police officer;
 - 'must' use a BWC to record;
 - 'may' choose to use a BWC to record.
- Overt use of a BWC – provides detailed explanation and examples of situations how a police officer must ensure the use of BWC is overt;
- Ceasing use – provides circumstances of when a police officer may 'cease' (stop) recording.

For instance, police officers exercising a right of entry in residential premises should, as far as practicable, seek to avoid recording anything more than is necessary given their purpose for entering the residence.

Part 5 – Exceptions to Use

This part details the exceptions and considerations a police officer should use when they are otherwise not required to use a BWC, in accordance with the Act. This includes:

- Practicability – provides detailed explanation and examples of situations when it is not 'reasonably practicable' for a police officer to use a BWC;
- Risk to Safety – provides detailed explanation and examples of situations when use of a BWC by a police officer 'could cause or increase a risk to a person's safety';
- Privacy – provides detailed explanation and consideration of when use of a BWC by a police officer 'would unreasonably limit a person's privacy'.

Part 6 – Recordings

This part outlines the procedures, governance and legislative requirements that apply to the BWC recordings; their storage, use and disposal requirements. This includes:

- Storage;
- Access and use by police officers;
- Access by the members of the public.

Part 6 provides a high-level summary of the considerations which may apply to release of recordings, depending on which Commonwealth provisions apply. This section does not alter or detract from lawful considerations under the relevant Commonwealth or ACT legislation.

Part 7 – Complaints

This part outlines how a member of the public may make a complaint in relation to a police officer failing to use a BWC in accordance with the Act and guidelines.

Part 8 – Human Rights

This part addresses how the guidelines have been developed in accordance with the *Human Rights Act 2004* (ACT). The use of BWCs by police has a number of human rights benefits, including by improved accountability and transparency in police interactions with members of the community, by providing an accurate and detailed record of events and decision making processes by police in the performance of their duties.

BWC recordings can provide evidence that assists all parties in criminal proceedings, supporting a person's right in criminal proceedings. For instance, it is anticipated that the expanded use of BWCs by police inside private premises, within the reasonable limitations as set out in the guidelines, will support the human rights of victim-survivors of family violence by enabling recording in such settings.

This part also explains how a member of the public may make a complaint if they consider that a police officer's use of a BWC has unreasonably interfered or limited their human rights.