



New South Wales

Surveillance Devices Regulation 2022

under the

Surveillance Devices Act 2007

His Honour the Administrator, with the advice of the Executive Council, has made the following Regulation under the *Surveillance Devices Act 2007*.

MARK SPEAKMAN, MP
Attorney General

Explanatory note

The object of this Regulation is to remake, with minor amendments, the *Surveillance Devices Regulation 2014*, which is repealed on 1 September 2022 by the *Subordinate Legislation Act 1989*, section 10(2).

This Regulation provides for the following—

- (a) the declaration of laws of other jurisdictions to be corresponding laws under the *Surveillance Devices Act 2007*,
- (b) the additional purposes for which the information obtained from the use of body-worn videos by police officers may be used, published or communicated,
- (c) the exemption of ambulance officers from the prohibition against the use of certain body-worn recording devices to permit the officers to use those devices for a trial period,
- (d) savings and formal matters.

This Regulation comprises or relates to matters set out in the *Subordinate Legislation Act 1989*, Schedule 3, namely matters of a machinery nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Surveillance Devices Regulation 2022*.

2 Commencement

This Regulation commences on 1 September 2022.

Note— This Regulation replaces the *Surveillance Devices Regulation 2014*, which is repealed on 1 September 2022 by the *Subordinate Legislation Act 1989*, section 10(2).

3 Definition

In this Regulation—

the Act means the *Surveillance Devices Act 2007*.

Note— The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

Part 2 General provisions

4 Corresponding laws—the Act, s 4

For the Act, section 4(1), definition of *corresponding law*, the following laws of other jurisdictions are declared to be corresponding laws—

- (a) the *Surveillance Devices Act 2007* of the Northern Territory,
- (b) the *Police Powers and Responsibilities Act 2000* of Queensland, Chapter 13,
- (c) the *Police Powers (Surveillance Devices) Act 2006* of Tasmania,
- (d) the *Surveillance Devices Act 1999* of Victoria,
- (e) the *Crimes (Surveillance Devices) Act 2010* of the Australian Capital Territory.

5 Police officers' use of body-worn video—additional purposes for using information obtained—the Act, s 40

- (1) For the Act, section 40(4A)(c), the information obtained from the use of body-worn video by a police officer may also be used for the following purposes—
 - (a) coronial proceedings under the *Coroners Act 2009*,
 - (b) administrative decisions made under an Act administered by the Minister for Police and Emergency Services,
 - (c) proceedings of a court or tribunal in which the NSW Police Force or the State is a party or in which a member of the NSW Police Force is called as a witness,
 - (d) investigations of a complaint against, or the conduct of, a member of the NSW Police Force,
 - (e) investigations of an alleged workplace injury to a member of the NSW Police Force,
 - (f) a media production including, for example, a television, radio or internet broadcast, but only if—
 - (i) the body-worn video from which the information is obtained is provided particularly for the purposes of the media production, and
 - (ii) the NSW Police Force has approved all content to be used in the media production, and
 - (iii) the use of the information is otherwise lawful and does not breach guidelines issued by the Commissioner of Police for the purposes of this subsection.
- (2) In this section—
use of information includes publication and communication of the information.

6 Ambulance officers' use of body-worn recording devices—trial—the Act, s 59(2)

- (1) An ambulance officer is exempt from the Act, sections 7 and 8, in relation to the installation, use and maintenance of a body-worn recording device if—
 - (a) the ambulance officer uses the device while acting in the execution of the ambulance officer's duty, and
 - (b) the device is attached to the uniform of, or is otherwise worn on, the ambulance officer, and
 - (c) at least one of the following apply to the use of the device by the ambulance officer—

- (i) before making a recording, the ambulance officer made a reasonable attempt to ensure the person likely to be recorded by the device was aware the device was capable of recording images or sound, or both,
- (ii) in the opinion of the ambulance officer, there is a significant risk of harm to the ambulance officer or another person,
- (iii) the recording of images or sound, or both, by the device is inadvertent or unexpected.

Note— The Act, section 7 prohibits the installation, use and maintenance of listening devices while the Act, section 8 prohibits the installation, use and maintenance of optical surveillance devices without consent.

- (2) In this section—

body-worn recording device means a listening device or optical surveillance device, or both, worn on a person.

ambulance officer means a paramedic or other member of staff of the NSW Health Service who is employed primarily in connection with the provision of ambulance services in the Ambulance Service of NSW under the *Health Services Act 1997*, section 67A.

- (3) This section is repealed at the end of 30 November 2023.

Note— The Act, section 59(3) provides that this section takes effect on and from the expiry of the period during which either House of Parliament may, under the *Interpretation Act 1987*, section 41, disallow this Regulation.

Part 3 Savings and transitional provisions

7 Savings

An act, matter or thing that, immediately before the repeal of the *Surveillance Devices Regulation 2014*, had effect under the Regulation continues to have effect under this Regulation.

8 Transitional provision—ambulance officers' use of body-worn recording devices under repealed regulation

- (1) Despite the repeal of the *Surveillance Devices Regulation 2014*, repealed clause 5 continues in effect until the commencement of this Regulation, section 6.

Note— The Act, section 59(3), provides that this Regulation, section 6, takes effect on and from the expiry of the period during which either House of Parliament may, under the *Interpretation Act 1987*, section 41, disallow this Regulation.

- (2) In this section—
repealed clause 5 means clause 5 of the *Surveillance Devices Regulation 2014* as in force before the repeal of that Regulation.