



New South Wales

Surveillance Devices Amendment (Police Body-Worn Video) Bill 2014

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Surveillance Devices Act 2007* (*the Act*) to allow for the use of body-worn video by police officers. The Bill excepts police use of body-worn video from offences that prohibit the use of surveillance devices to record private conversations and to record the carrying on of activities.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 **Amendment of Surveillance Devices Act 2007** **No 64**

Schedule 1 [1] defines *body-worn video* for the purposes of the Act as equipment worn on the person of a police officer that is capable of recording visual images or sound or both.

Schedule 1 [2] and [3] except police use of body-worn video from the offences in sections 7 (1) and 8 (1) of the Act. Those provisions prohibit, in particular circumstances, the use of a listening device to record a private conversation and the use of an optical surveillance device to record visually the carrying on of an activity. As body-worn video is both a listening device and an optical surveillance device for the purposes of the Act, a police officer's use of body-worn video

in the circumstances described by sections 7 (1) and 8 (1) would constitute an offence without the proposed exceptions.

Schedule 1 [8] defines the circumstances in which a police officer's use of body-worn video will not be an offence under section 7 (1) or 8 (1) of the Act. Those circumstances are limited to situations where all of the following apply:

- (a) the police officer is acting in the execution of his or her duty,
- (b) the use of body-worn video is overt (as when, for example, the police officer has informed the person who is to be recorded of the use of body-worn video),
- (c) if the police officer is recording a private conversation, the police officer is in uniform or has provided evidence that he or she is a police officer to each party to the private conversation.

It will also not be an offence if the police officer uses body-worn video inadvertently or unexpectedly to record a private conversation or the carrying on of an activity, or if the police officer's use of body-worn video is incidental to the use of body-worn video that complies with all the requirements set out in paragraphs (a)–(c) above.

Schedule 1 [4], by expanding the definition of *protected information* in section 39 of the Act, widens the scope of existing offences in section 40 in order to prohibit the disclosure of information obtained from the use of body-worn video in accordance with the requirements of Schedule 1 [8]. The disclosure of information obtained otherwise than in accordance with the requirements of Schedule 1 [8] will be prohibited by existing provisions of the Act.

Schedule 1 [5] expands an existing aggravated offence in order to prohibit the disclosure of information obtained from the use of body-worn video in accordance with the requirements of Schedule 1 [8] where the person intends to (or knows that, or is reckless as to whether, the disclosure will) prejudice the effective conduct of an investigation into any offence and not merely an indictable offence (as is currently the case with other forms of protected information).

Schedule 1 [6] allows information obtained from the use of body-worn video in accordance with the requirements of Schedule 1 [8] to be disclosed in connection with the exercise of a law enforcement function by a member of the NSW Police Force or the education and training of members of the NSW Police Force, or for any purpose prescribed by the regulations. **Schedule 1 [7]** is a consequential amendment.



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New South Wales

Surveillance Devices Amendment (Police Body-Worn Video) Bill 2014

No. , 2014

A Bill for

An Act to amend the *Surveillance Devices Act 2007* to make provision with respect to the use of body-worn video by police officers.

The Legislature of New South Wales enacts:

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1 Name of Act

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This Act is the *Surveillance Devices Amendment (Police Body-Worn Video) Act 2014*.

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2 Commencement

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This Act commences on the date of assent to this Act.

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Schedule 1	Amendment of Surveillance Devices Act 2007	1
	No 64	2
[1] Section 4 Definitions		3
	Insert in alphabetical order in section 4 (1):	4
	<i>body-worn video</i> means equipment worn on the person of a police officer that is capable of recording visual images or sound or both.	5 6
[2] Section 7 Prohibition on installation, use and maintenance of listening devices		7
	Insert after section 7 (2) (f):	8
	(g) the use, in accordance with section 50A, of body-worn video by a police officer.	9 10
[3] Section 8 Installation, use and maintenance of optical surveillance devices without consent		11 12
	Insert after section 8 (2) (e):	13
	(f) the use, in accordance with section 50A, of body-worn video by a police officer.	14 15
[4] Section 39 What is protected information?		16
	Insert at the end of paragraph (c) of the definition of <i>protected information</i> :	17
	, or	18
	(d) any information obtained from the use, in accordance with section 50A, of body-worn video by a police officer.	19 20
[5] Section 40 Prohibition on use, communication or publication of protected information		21 22
	Insert before the penalty provision in section 40 (2):	23
	If the offence against subsection (1) involves information obtained from the use, in accordance with section 50A, of body-worn video by a police officer, each reference in this subsection to a relevant offence includes a reference to any offence.	24 25 26 27
[6] Section 40 (4A)		28
	Insert after section 40 (4):	29
	(4A) Information obtained from the use, in accordance with section 50A, of body-worn video by a police officer may also be used, published or communicated:	30 31 32
	(a) in connection with the exercise of a law enforcement function by a member of the NSW Police Force, or	33 34
	(b) in connection with education and training of members of the NSW Police Force, or	35 36
	(c) for any purpose prescribed by the regulations.	37
[7] Section 40 (5)		38
	Insert “or (4A)” after “subsection (4)”.	39

[8] Section 50A	1
Insert before section 51:	2
50A Police use of body-worn video	3
(1) The use of body-worn video by a police officer is in accordance with this section if:	4
(a) the police officer is acting in the execution of his or her duty, and	5
(b) the use of body-worn video is overt, and	6
(c) if the police officer is recording a private conversation, the police officer is in uniform or has provided evidence that he or she is a police officer to each party to the private conversation.	7
(2) Without limiting the ways in which the use of body-worn video may be overt for the purposes of subsection (1) (b), the use of body-worn video is overt once the police officer informs the person who is to be recorded of the use of body-worn video by the police officer.	8
(3) The use of body-worn video by a police officer is also in accordance with this section if:	9
(a) it is inadvertent or unexpected, or	10
(b) it is incidental to the use of body-worn video by the police officer in the circumstances set out in subsection (1).	11
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