

# Surveillance Devices Regulation 2022

[2022-526]



New South Wales

## Status Information

### Currency of version

Current version for 13 December 2024 to date (accessed 28 December 2024 at 19:16)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**

Sec 6A(4) of this Regulation (sec 6A(4) repeals sec 6A at the end of 31.12.2025)

Sec 6B(3) of this Regulation (sec 6B(3) repeals sec 6B at the end of 30.11.2025)

Sec 6C of this Regulation (sec 6C(3) repeals sec 6C at the end of 31.8.2027)

- **Staged repeal status**

This legislation is currently due to be automatically repealed under the [Subordinate Legislation Act 1989](#) on 1 September 2027

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 13 December 2024

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New South Wales

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# Surveillance Devices Regulation 2022



New South Wales

## 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This Regulation replaces the *Surveillance Devices Regulation 2014*, which is repealed on 1 September 2022 by the *Subordinate Legislation Act 1989*, section 10(2).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 Delegation by Attorney General—the Act, s 51B**

- (1) The Attorney General may delegate a function of the Attorney General under the Act, Part 3 or 5 to a person who is—
- (a) an Australian legal practitioner, and
  - (b) employed in the department in which the Act is administered as—
    - (i) a Public Service senior executive, or
    - (ii) a legal officer grade 6 or clerk grade 11 or 12 in the legal branch, however described, of the department.

(2) In this section—

**Public Service senior executive** has the same meaning as in the [Government Sector Employment Act 2013](#).

**6A ICAC's use of unlawful surveillance device recordings—the Act, s 59(2)**

- (1) This section applies to a private conversation, a record or report of a private conversation or a record or report of the carrying on of an activity that is obtained by the use of a surveillance device in contravention of the Act, Part 2 by a person other than ICAC (**relevant material**).
- (2) ICAC is exempt from the Act, Part 2 in relation to ICAC obtaining, possessing, publishing or communicating relevant material in accordance with the [Independent Commission Against Corruption Act 1988](#).
- (3) If ICAC relies on the exemption in subsection (2) in the course of an investigation under the [Independent Commission Against Corruption Act 1988](#), any report relating to the investigation prepared by ICAC under that Act, section 74 must include a statement to that effect.
- (4) This section is repealed at the end of 31 December 2025.
- (5) In this section—

**ICAC** means the Independent Commission Against Corruption and includes an officer of the Commission.

**Note—**

The Act, section 59(3) provides that this section, as inserted by the [Surveillance Devices Amendment \(ICAC\) Regulation 2023](#), 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 that regulation.

**6B Sheriff's officer's use of body-worn recording devices—trial—the Act, s 59(2)**

- (1) A sheriff's 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 officer uses the device while acting in the execution of the officer's duty, and
  - (b) the device is prominently attached to the officer's uniform, and
  - (c) at least one of the following apply to the use of the device by the officer—
    - (i) before making a recording, the 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 officer, there is a significant risk of harm to the officer or

another person,

(iii) the recording of images or sound, or both, by the device is inadvertent or unexpected.

(2) In this section—

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

**sheriff's officer** has the same meaning as in the [Sheriff Act 2005](#).

(3) This section is repealed at the end of 30 November 2025.

### **6C SafeWork inspector's use of body-worn recording devices—the Act, s 59(2)**

(1) A SafeWork inspector 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 inspector uses the device while acting in accordance with the inspector's powers under the [Work Health and Safety Act 2011](#), and

(b) the device is prominently attached to the inspector's clothing, and

(c) at least one of the following apply to the use of the device by the inspector—

(i) before making a recording, the inspector 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 inspector's opinion, there is a significant risk of harm to the inspector or another person,

(iii) the recording of images or sound, or both, by the device is inadvertent or unexpected.

(2) In this section—

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

**SafeWork inspector** means a person who is appointed as—

(a) an inspector under the [Work Health and Safety Act 2011](#), section 156, or

(b) an inspector under the [Explosives Act 2003](#), section 25, while exercising powers under the provisions of the [Work Health and Safety Act 2011](#) applied by the [Explosives Act 2003](#), section 27.

(3) This section is repealed at the end of 31 August 2027.

**Note—**

The Act, section 59(3) provides that this section, as inserted by the *Surveillance Devices Amendment (Body-Worn Video) Regulation 2024*, 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 the 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.