



## Full Day Hansard Transcript (Legislative Council, 12 November 2014, Proof)

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Extract from NSW Legislative Council Hansard and Papers Wednesday, 12 November 2014 (Proof).

### SURVEILLANCE DEVICES AMENDMENT (POLICE BODY-WORN VIDEO) BILL 2014

#### Second Reading

**The Hon. DAVID CLARKE** (Parliamentary Secretary) [5.04 p.m.], on behalf of the Hon. John Ajaka: I move:

That this bill be now read a second time.

I seek leave to incorporate my second reading speech in *Hansard*.

#### Leave granted.

The Government is pleased to introduce the Surveillance Devices Amendment (Police Body-Worn Video) Bill 2014.

The purpose of this bill is to amend the Surveillance Devices Act 2007 to allow for the overt use of body-worn video devices by police officers acting in the execution of their duty. This significant reform will allow police to use this equipment as an everyday operational law enforcement tool.

The Surveillance Devices Act regulates the use of surveillance devices, including optical devices and listening devices.

The Act generally prohibits the use of surveillance devices without a warrant or authorisation issued by a court, unless the device is being used in certain limited circumstances. The unlawful use of surveillance devices is a criminal offence punishable by five years imprisonment.

A body-worn video device with the capability of recording images and sound falls within the definition of both an optical surveillance device and a listening device under the Surveillance Devices Act. Therefore, the current restrictions in the Act only permit the use of these devices in very limited circumstances unless a warrant or authorisation has been issued.

The NSW Police Force commenced running limited trials using body-worn video devices in July 2013. These trials have been conducted within the existing boundaries of the Surveillance Devices Act. Following positive results from these trials, the New South Wales Government announced \$4 million to fund a broader rollout of the devices and the supporting infrastructure.

The bill sets up the legislative regime for the broad rollout and use of body-worn video devices by police as an operational tool. The devices will operate as a modern day equivalent of a police notebook providing for a contemporaneous record of observations and events in the field. These reforms recognise that video recording devices are already broadly available and widely used in the community. The bill provides a structured and considered framework for use of this twenty-first century technology in modern day policing.

This bill introduces exemptions to the relevant offence provisions in the Surveillance Devices Act to allow for the overt use of body-worn video devices. However, these exemptions only operate where police use the devices in accordance with the particular requirements set out in the bill.

As long as the use is overt, the police officer is acting in the execution of his or her duty, and a party to any private conversation which is being recorded knows they are talking to a police officer then recording using body-worn video will be permitted.

These amendments will facilitate the use of body-worn video by police in the broad range of situations they encounter in the execution of their duties. Police will be able to record in public places and with the consent of the person being recorded, as they can now. Further, as long as the requirements of this bill are met they will also be able to record private conversations and in private premises.

Although the use of body-worn video devices by police is supported by these reforms, the ordinary rules of evidence will still apply to the use and admissibility of the recordings captured. That is, the usual evidentiary rules that apply to the admissibility of hearsay evidence, identification evidence and admissions have not been displaced. Further, the amendments do not alter any existing legislative

requirements to record activities, for example the use of tasers and search warrants, nor do they affect the procedures in place for photographing and recording evidence such as forensic procedures under the Crimes (Forensic Procedures) Act 2000.

The use of body-worn video devices by police is a positive step forward in the prevention and investigation of crime. Their use will be beneficial for police, offenders and the community more broadly. The evidentiary value of the recordings may expedite investigations and prosecutions and could reduce the number of defended hearings. The general use of body worn video could also lead to a reduction in assaults on, and complaints against, police officers as interactions with suspects and members of the public will be recorded.

Appropriate safeguards in the bill maintain an individual's right to privacy by regulating the use, communication and publication of information obtained from body-worn video devices. The restrictions that currently apply to information obtained from other types of surveillance devices will generally apply to information obtained using body-worn video devices. The restrictions will prohibit the use, communication and publication of information unless necessary for a specified purpose such as the investigation of a complaint against a police officer.

Further, to reflect the broader use of body-worn video as a tool for law enforcement purposes, the NSW Police Force will be able to use the information obtained for any purpose connected with the exercise of law enforcement functions such as the investigation and prosecution of crime, as well as for internal training and education of members of the NSW Police Force.

A Body Worn Video Implementation Committee is to be established. It will oversee the implementation of the reforms and report back to the Government after the amendments have been in operation for 12 months. This review period will allow the Government to assess the impact of body-worn video and consider any necessary operational or legislative changes required to support its ongoing use.

The Implementation Committee will be consulted in the development of operational guidelines by the NSW Police Force. Operational guidelines have been relied on in overseas jurisdictions such as the United Kingdom to guide the use of body-worn video by police. Guidelines will assist police in New South Wales using body-worn video in the field as well as outline the processes for retention, access to, and disposal of recordings.

The guidelines in relation to operational use of body-worn video by police will be made publicly available in due course.

I now turn to the main detail of the bill.

Item [1] of schedule 1 defines body-worn video as equipment worn on the person of a police officer that is capable of recording visual images or sound or both.

Items [2] and [3] insert exemptions into sections 7 and 8 of the Surveillance Devices Act which govern, respectively, the use of listening devices and optical surveillance devices and create offences for improper use of such devices. The use of body-worn video devices by police will be exempt from these offences if it is used in accordance with new section 50A.

Item [8] of schedule 1 contains new section 50A (1), which sets out the requirements for the lawful use of body-worn video by police.

Such use will be in accordance with this section, and therefore exempt from the offences in sections 7 and 8 of the Act where:

- (a) The police officer is acting in the execution of his or her duty, and
- (b) The use of body-worn video is overt; and
- (c) Where a police officer is recording a private conversation, he or she must either be in uniform or provide evidence of being a police officer to each party to the private conversation.

These amendments will mean that police can overtly record activities in private premises and in vehicles, where they are lawfully on the premises whether under a police power, a law or by consent of the owner or occupier. Police will also be able to record private conversations if they are in uniform or have made their status as a police officer known. The consent of the person being recorded, solely for the purpose of allowing the recording to be made, will no longer be required.

Although the consent of a person to being recorded by a body-worn video device is not required, the recording must be overt. New section 50A (2) provides, for example, that use will be overt once the police officer has informed the person being recorded of the use of body-worn video. This does not limit the ways in which a recording can be overt. It simply makes clear that once a person has been told they are being recorded nothing more is required. If a police officer does not tell a person they are being recorded, then other evidence to establish that the use of the body worn video device is overt can be relied upon. This could include where the person recorded has acknowledged the use of the device or

there has been an announcement about the use of the devices.

New section 50A (3) (a) further provides that if the police officer uses a body-worn video as required by section 50A, and inadvertently or unexpectedly records a private conversation or the carrying on of an activity, the police officer will not be committing an offence. If the use is incidental—that is, related to or arising from the lawful use of a body-worn video device—new section 50A (3) (b) will also permit this related use. This will protect the police from accidentally committing offences as long as the principal use of the device is in accordance with the requirements set out in new section 50A (1).

This extension to inadvertent, unexpected and incidental recordings mirrors the provisions governing the use of in-car video in the Law Enforcement (Powers and Responsibilities) Act 2002.

An example of an incidental recording would include where police have lawfully entered premises with the consent of the owner or occupier and consent is withdrawn, or there is a change in circumstances, which means police no longer have lawful authority to be on premises. In this situation, the use of body-worn video by police to record, say, the discussion with the occupant to advise that they are leaving the premises and the subsequent departure of police, would be permitted.

Item [4] of schedule 1 to the bill expands the definition of protected information to include information obtained from the use, in accordance with new section 50A, of body-worn video by police.

Item [5] of schedule 1 ensures that existing offence provisions in the Surveillance Devices Act that prohibit the use, communication or publication of "protected information" apply to information obtained using body-worn video. The offence is punishable by a maximum penalty of two years imprisonment, or seven years in aggravating circumstances involving endangering the health or safety of a person or prejudicing the effective conduct of an investigation.

To reflect the fact that body-worn video is expected to become a commonplace tool that police will use in the lawful execution of their duties, new section 40 (4A) will allow information obtained from the device to be used, published or communicated by a member of the NSW Police Force in connection with the exercise of any law enforcement function. This will include the investigation and prosecution of all criminal offences, including summary offences, as well as the decision to charge a person with a criminal offence. Information obtained from the use of body-worn video can also be used, communicated or published in connection with internal education and training of members of the NSW Police Force.

This bill demonstrates the Government's commitment to ensuring that police officers have all the necessary tools they need to effectively perform their important job of keeping the community safe and secure.

I commend the bill to the House.