

# Proposed reforms to expand Police Use of Body Worn Cameras in Private Contexts

Submission to ACT Government Justice and Community  
Safety Directorate Consultation

**13 May 2021**



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## Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.<sup>1</sup>

The ALA office is located on the land of the Gadigal of the Eora Nation.

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<sup>1</sup> [www.lawyersalliance.com.au](http://www.lawyersalliance.com.au).

## **Introduction**

1. The ALA welcomes the opportunity to have input into the consultation being undertaken by the Justice and Community Safety Directorate ('JACS') regarding the proposed reforms to expand police use of body worn cameras ('BWCs') in private contexts.
2. The ALA gives in-principle support for the expansion of use of BWCs in private contexts as it considers that BWCs provide an important accountability mechanism for police activities in private contexts. However, the ALA considers that there is a need for clear guidelines to be developed governing the use of BWCs in private contexts before the reforms are fully implemented. The ALA also submits that legislation should specifically clarify that BWC footage obtained from police in all contexts, including private contexts, can be used in all civil proceedings.

## **BWCs and police accountability**

3. The ALA considers that BWCs can provide an important accountability measure on police conduct, as they can provide a visual and audio record of police interactions with individuals, including interactions in which there is potential for confrontation or an escalation of conflict.
4. The ALA submits that, unless civilians request that BWCs be turned off, police should be required to record every encounter they have with members of the public, including those that occur within a private context.
5. The ALA submits that the timely release of BWC footage, balanced with privacy considerations, is key to holding law enforcement officials accountable for their conduct.
6. The ALA submits that subject to privacy considerations, a person seeking a copy of a BWC recording should be entitled to receive that recording within 21 days after requesting that recording, unless the release would interfere with an investigation.

## **The need for guidelines governing the use of BWCs in private contexts**

7. The ALA submits that BWC footage will only offer greater accountability if the use and review of footage is governed by effective and transparent guidelines. The ALA recommends

that the widespread rollout of BWCs in private contexts should be deferred until clear guidelines are published.

8. The ALA submits that the guidelines will need to provide clear and detailed guidance on the following:
  - The relevant privacy considerations of which the police must be aware when activating their BWCs in a private context;
  - That when requested by individuals to deactivate the BWC in a private context, that the BWC is deactivated;
  - That unless so requested, the police members ensure that the BWC is operating at all times;
  - The management and storage of BWC recordings, ensuring compliance with the Australian Privacy Principles.
  - That subject to privacy considerations, a person seeking a copy of a BWC recording should be entitled to receive that recording within 21 days after requesting that recording, unless the release would interfere with an investigation.

## Use of BWC footage in civil proceedings

9. The ALA strongly urges the ACT Government to ensure that that BWC footage obtained from police may be used in all civil proceedings. The ALA is concerned that, otherwise, courts may be denied access to critical evidence in civil cases, creating the potential for a grave miscarriage of justice.
10. A recent Victorian County Court ruling confirmed that the use of such BWC footage in civil proceedings is not permitted by the *Surveillance Devices Act 1999* (“the Act”). On 25 September 2020 in *Konstantin German v State of Victoria*,<sup>2</sup> the County Court ruled that s 30E of the Act prevented the State of Victoria from discovering BWC footage in its possession to the Plaintiff, despite the footage being highly relevant to the proceeding.

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<sup>2</sup> [2020] VCC 1517.

11. The ALA submits that it is in the public interest to ensure that BWC footage is able to be used in civil proceedings brought against police officers for alleged misconduct. Such footage could either support the claim against the police concerned or vindicate the actions of those police members. The ALA submits that Courts, judges and juries should not be denied evidence of great probative value to a matter.
12. The ALA is concerned that without such clarification, there will be an inconsistency where Courts, judges and juries can access BWC footage in criminal matters but not civil matters. Witnesses may have even viewed or be questioned about the footage for the purposes of a criminal case, but later be unable to rely on it in a related civil claim.
13. Further, it is also worth noting that footage obtained from police cameras, such as those contained in police cells, police station lobby areas and police divisional vans, are routinely disclosed and provided to Courts in civil proceedings and criminal proceedings. However, if the CCTV footage only captured part of the incident, and the BWC footage captured another part (including audio), a Court may only have half of the evidence and be denied an opportunity to properly examine all of the evidence regarding the event if the BWC footage is not able to be accessed in civil proceedings.
14. The ALA submits that the legislation should specifically clarify that BWC footage obtained from police in all contexts, including private contexts, can be used in all civil proceedings.

## **Other considerations**

15. The ALA submits that members of the public should be able to seek access to BWC footage in a private context, subject to the Australian Privacy Principles, through a simple streamlined freedom of information process.
16. The ALA submits that all BWC recording footage should be retained for at least three years, with the management and storage of such footage in accordance with the requirements of the Australian Privacy Principles.

## **Conclusion**

17. The Australian Lawyers Alliance (ALA) welcomes the opportunity to provide this submission to the consultation being undertaken by the Justice and Community Safety Directorate

regarding the proposed reforms to expand police use of BWCs in private contexts. The ALA looks forward to seeing the guidelines governing the use of BWCs in private contexts before the reforms are fully implemented.



**Amber Wang**  
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