

Justice and Community Safety Directorate
ACT Government
220 London Circuit
Canberra ACT 2601

Via email: JACSLPPCRIMINAL@act.gov.au

Dear Justice and Community Safety Directorate,

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

The ACT Council of Social Service (ACTCOSS) advocates for social justice in the ACT and represents not-for-profit community organisations. We strive for a Canberra that is a just, safe and sustainable community in which everyone has the opportunity for self-determination and a fair share of resources and services.

Thank you for the opportunity to provide comment on proposals to extend the use of body worn cameras into private settings by ACT Policing.

In general, ACTCOSS supports the use of body worn cameras (BWCs) by ACT Policing, however, we have questions about their extension into private settings without consent.

Extensive research has demonstrated the significant impact of BWCs on police and citizen behaviour, and broader police-citizen relationships including in public spaces.¹ In particular, studies have shown that the cameras can drastically reduce the use of force by police, as well as the incidence of citizen complaints against police.² We welcome the use of any tool that increases police accountability.

If used within rigorous and ethically sound frameworks, BWCs can instigate more positive interactions between the police and the ACT community. However, ACTCOSS is concerned about the use of BWCs in private contexts without explicit and transparent policy on data collection, storage, retention and security.

The proposed amendments to the ACT *Listening Devices Act 1992* would allow police to use their BWCs in private contexts without asking for consent if the use of the BWC is overt and the

1 C Lum, M Stoltz, CS Koper and JA Scherer, 'Research on body-worn cameras: What we know, what we need to know', *Criminology & public policy*, 2019, 18(1): 93-118.

2 B Ariel, WA Farrer and A Sutherland, 'The Effect of Police Body-Worn Cameras on Use of Force and Citizens' Complaints against the Police: A Randomised Controlled Trial', *Journal of Quantitative Criminology*, 2015, 31(3): 509-535.

camera is activated in the course of the officer's duties. We are sympathetic to the impracticalities of always obtaining consent but urge the ACT Government to consider ways that citizens might be made aware of the possibility of filming. As an example, in Spain police BWCs are identifiable with bright yellow labels, meaning that their use is always overt.³

We support the expanded use of BWCs, however, we are concerned about increased opportunities for on-the-fly editing of footage by police without clear directives on when the cameras might be switched on or off. As the proposed amendments are more vague in relation to conditions under which the cameras can be deployed, we urge the Justice and Community Safety Directorate to monitor usage and account for periods in which the cameras have been purposefully switched off.

We are also cautious of the potentially perverse outcomes of this change, as less opportunities for police discretion can lead to harsher penalties, a greater number of arrests and more people entrenched within the justice system. However, we also know that police discretion can be fuelled by unconscious or conscious bias and can have serious consequences in relation to the number of Aboriginal and/or Torres Strait Islander people in detention or under Community Corrections Orders in the ACT.⁴ We recognise the role that BWCs can have in reducing the use of discretion on the part of the police and the justice system more broadly. Again, we therefore encourage the Justice and Community Safety Directorate to monitor arrest numbers as the use of BWCs expands.

ACTCOSS encourages the ACT Government and the Justice and Community Safety Directorate to seriously consider how the footage obtained from BWCs is stored and secured, and how this information is communicated with the public.

In Victoria, BWC footage is defined as 'protected information' under the *Surveillance Devices Act 1999*, to which only authorised officers have access. All access is monitored, tracked and auditable. Victorian police are also required to provide copies of BWC recordings to arrested persons within seven days.⁵ We

3 F Coudert, D Butin and D Metayer, 'Body-worn cameras for police accountability: Opportunities and risks', *Computer Law and Security Review*, 2015, 31: 749-762.

4 K Beckett, 'The Uses and Abuses of Police Discretion: Toward Harm Reduction Policing', *Harvard Law and Policy Review*, 2016, 10(1): 77.

5 Victoria Police, *Body worn cameras*, Victoria Police website, State Government of Victoria, 27 April 2021, accessed 10 May 2021.

endorse both measures and believe that this framework, coupled with a policy of randomised reviews of footage even where there have been no complaints about police behaviour, will uphold accountability and transparency and reduce opportunities for police to edit or conceal footage.

The Victorian model also makes explicit the policy for how long footage will be retained. Non-evidentiary footage is retained for 90 days, and other footage is held for periods determined by legislation. We advocate for similar transparency around retention periods in the ACT, especially given the proposed increase in footage taken in private settings.

While data is being stored by ACT Policing, we are concerned about the security of the BWC footage. Footage taken in private settings is even more likely to contain images of victims, and of vulnerable people, including perpetrators or offenders. Any proposed amendments should acknowledge this heightened vulnerability and outline, in detail, how data is to be stored and secured.

In principle, we support the expanded use of BWCs by ACT Policing but only with the right protections in place. Specifically, we believe that the Justice and Community Safety Directorate must put in place more rigorous frameworks and policies for securing the footage and protecting the members of the ACT community that it might capture. These frameworks and policies should be available publicly and developed after community consultation.

If you wish to discuss this feedback further, please contact me, or our Senior Policy Officer on justice, Gemma Killen, at gemma.killen@actcoss.org.au.

Yours sincerely,



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Chief Executive Officer

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14 May 2021