



# Safety and Security Equipment

## Body Worn Cameras

SSE

### Custodial Operations Practice Directive

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#### Scope

1. Human Rights
2. Limitation of Human Rights
3. Body Worn Cameras Overview
4. Information Privacy
5. Operational Deployment
6. Maintaining the Chain of Custody
7. Evidence Management System
8. Loss or Damage of a Body Worn Camera



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## 1. Human Rights

It is unlawful for corrective services officers and QCS staff to act or make decisions in a way that is not compatible with human rights, or in making a decision, fail to give proper consideration to a human right relevant to the decision.

Giving proper consideration to human rights entails identifying human rights which may be relevant to a decision and considering whether the decision would be compatible with human rights.

A decision will be compatible with human rights when it does not limit a human right, or only limits a right to the extent that is reasonable and demonstrably justifiable.

Human rights which may be relevant include:

- a) the right to equal and effective protection against discrimination;
- b) the right not to be treated or punished in a cruel, inhuman or degrading way;
- c) the right to privacy and reputation; and
- d) the cultural rights – generally and for Aboriginal and Torres Strait Islander peoples.

These considerations include the prisoner, QCS staff, members of the public and where relevant, Queensland Health staff.

## 2. Limitation of Human Rights

In determining whether a limitation may be reasonable and demonstrably justifiable, the following factors are relevant to consider:

- a) The nature of the human right – this involves looking at the purpose and underlying value of the human right. For example, the purpose of the right to privacy is to protect an individual's personal information but also their private life generally, including their appearance, clothing, gender, and sexuality.
- b) The nature of the purpose of the limitation – this involves considering the actual purpose or legitimate aim/reason for limiting the human right. For example, the purpose of using a Body Worn Camera (BWC) is to enhance the safety and security of QCS staff, members of the public and Queensland Health staff while escorting a prisoner external to a corrective services facility.
- c) The relationship between the limitation and its purpose – this involves considering the rational connection between the limitation of the right, and whether this will actually help to achieve said purpose or legitimate aim. For example, will limiting the right to privacy by utilising a BWC enhance the safety and security of QCS staff, members of the public and Queensland Health staff while escorting a prisoner external to a corrective services facility by being a deterrent to the prisoner?
- d) Whether there are any less restrictive and reasonably available ways to achieve the purpose – this involves a 'necessity analysis' where it is necessary to consider the purpose of the limitation and if it can be achieved in any other way. For example, the use of a BWC is only authorised while responding to an incident, and there are clear directions when the BWC must not be activated. Currently, there are no other effective options available which achieves the propose of increasing the safety and security of the QCS staff, members of the public and Queensland Health staff.
- e) The importance between the purpose for the limitation and preserving the human right – this involves a balancing exercise of the benefits obtained by the limitation vs the harm caused to the human right. The greater the incursion of the right, the more important the purpose will need to be to justify the limitation. For example, does the importance of enhancing the safety and security of QCS staff, members of the public and Queensland Health staff outweigh the impact on the right to privacy?





### 3. Body Worn Cameras Overview

BWCs are small recording devices, video and audio, worn by corrective services officers as part of their personal protective equipment (PPE). BWCs are used to record events prior to, during and after an incident or at other times when interacting with prisoners. BWCs provide an audio-visual record of events from the officer's point of view.

For information regarding the approved AXON model of BWCs utilised, refer to the AXON Help Centre <https://help.axon.com/hc/en-us>.

Corrective services officers are authorised to use a BWC to record images and sound while they are acting in the performance of their duties. BWCs and recordings must only be used for official purposes and not for any private use.

BWCs must be used as an overt recording device and are not to be used in covert activities. Officers using a BWC must be clearly identifiable as a corrective services officer, including wearing an approved QCS uniform or other form of suitable identification.

Use of a BWC should:

- a) reduce incidents such as staff assaults by acting as a deterrent;
- b) enhance the safety and security of a corrective services facility;
- c) reduce the number of frivolous and/or vexatious complaints made by prisoners;
- d) improve stakeholder confidence in the management of prisoners and use of force incidents; and
- e) provide important evidence for criminal investigations and breach proceedings.

For a staff training tool outlining the approved use of a BWC, refer to the Operating the AXON body worn camera training video linked to this COPD under the related directives and documents section.

#### 3.1 Circumstances when BWC recordings may/may not be used

The use of BWCs and associated recordings must be in accordance with the Queensland Corrective Services (QCS) Management of Closed Circuit Television and Body Worn Camera Systems Policy.

The use of BWCs to record incidents and prisoner interactions must also give proper consideration to the prisoner's relevant human rights. Specifically, the subsequent access and viewing of the footage must take into consideration the prisoner's privacy and reputation.

BWC recordings may be used as part of internal reviews, investigations and post incident reviews. Refer to section 7. Evidence Management System of this COPD for information regarding release/distribution of BWC footage.

A BWC may be utilised as a supplementary method of recording a breach of discipline hearing but not as the primary recording of the breach hearing. BWC footage may also be made available during the breach of discipline process. Refer to the COPD Breaches of Discipline.

BWC recordings may be used for training and development purposes in accordance with the People Capability Practice Directive: Use of BWC and Closed Circuit Television Footage for Training Purposes.





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#### 4. Information Privacy

Personal information captured by BWC must be collected, stored, used, and disclosed in accordance with the Information Privacy Principles (IPPs) of the *Information Privacy Act 2006* (IP Act).

A BWC recording that includes audio and/or visual records of any individual (including other QCS officers, prisoners or any other person), who can be identified from that recording, is considered to be that individual's personal information.

A QCS officer must only activate their BWC in accordance with section 5 of this COPD, Operational Deployment. Activation of a BWC where not in accordance with this COPD has the potential to be unlawful under the IP Act.

All stored BWC recordings must be appropriately protected from loss, unauthorised access, or any other misuse. BWC audio and visual recordings, equipment and software remain the property of QCS.

QCS can only use or disclose the parts of the BWC recordings that are directly relevant to fulfilling the particular purpose it was collected for, unless the other purpose is authorised by law.

The QCS Right to Information and Privacy Unit must be contacted for advice, prior to any proposed use or disclosure of BWC recordings that are not permitted under this COPD, the Management of Closed Circuit Television and Body Worn Camera Systems Policy or under People Capability Practice Directive: Use of Body Worn Camera and Closed Circuit Television Footage for Training Purposes.

A Chief Superintendent of a corrective services facility must ensure appropriate signage is displayed at the entrance and through the corrective services facility to inform persons of the purpose, legislative authority for electronic, audio and video recordings and any entities to which the department usually discloses information of that kind. Refer to the COPD Facility Security: Security Management Systems and Intercoms and the COPD Facility Security: Barrier Control and Access.

The Information Management Unit, Digital Services and Information Technology are responsible for the QCS Retention and Disposal Schedule (RDS) and will provide advice regarding requirements for retention and disposal of recordings.

##### 4.1 Right to Information and Information Privacy requests

Persons may request to access BWC recordings under provisions of the *Right to Information Act 2009* and the *Information Privacy Act 2009*. All such requests must be referred to the QCS Right to Information and Privacy Unit.

Advice must be sought from the QCS Right to Information and Privacy Unit when responding to requests for BWC recordings arising from a warrant or subpoena.

#### 5. Operational Deployment

The Chief Superintendent must determine the functional areas for the deployment of BWCs and a register must be maintained which details deployment (issue and return) of each BWC to an individual officer.





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A BWC may be issued to staff at the commencement of their shift and worn securely on their person, either using the attachments provided, harness or vest (as available). Refer to the COPD Safety and Security Equipment: Management of Safety and Security Equipment.

A corrective services officer must ensure a BWC is operational at the commencement of deployment. Refer to the Operating the AXON body worn camera training video available on the QCS intranet.

When wearing a BWC it should be placed in a location where the lens will not be obscured by other equipment worn by the officer, particularly when responding to incidents. The BWC must provide an adequate field of vision for the recording.

A corrective services officer assigned a BWC must ensure the device is returned to the appropriate docking station after use and prior to the conclusion of their shift. The BWC will be charged in the dock and any recordings automatically uploaded to the evidence management system. Once the recording is uploaded from the camera to the evidence management system, it will be automatically deleted from the camera.

A BWC should not be utilised by another user until any recordings from the prior use have been uploaded and the BWC is charged.

A BWC must not be removed from the corrective services facility without approval of the Chief Superintendent or nominee, other than for operational purposes e.g. escort duties. An unauthorised removal of a BWC may constitute a safety and security incident: refer to COPD Incident Management: Incident Management Process.

The Chief Superintendent may authorise the deployment of a BWC for external escorts, including Queensland Health facilities. The activation of a BWC in a Queensland Health facility is only authorised when responding to an emergent situation: refer to the COPD Incident Management: Incident Management Process.

In the event a BWC is used while on external escort, where practicable, reasonable attempts must be made not to capture on the recording, members of the public and Queensland Health staff.

### 5.1 Required use of BWC – activate recording

A BWC must be set to record by a corrective services officer in the following circumstances:

- a) when responding to operational incidents;
- b) in use of force incidents;
- c) in planned operational activities such as cell, lockdown and accommodation searches (excluding the search of a prisoner requiring the removal of clothing); or
- d) it is reasonably considered there is a requirement to record an interaction with a prisoner, for example, where a prisoner's behaviour/presentation elevates following a request or direction issued by the officer. In such circumstances, consideration must be given to the prisoner's relevant human rights. In addition, the subsequent access and viewing of the footage must take into consideration the prisoner's privacy and reputation.

A BWC may be activated in a corrective services facility when the dispensing of medication is occurring.

Where practicable, a BWC must be recording prior to a corrective services officer applying use of force.







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If there is no prior opportunity to commence recording before applying use of force, the BWC is to be activated as soon as it is safe to practicably activate the device. Where a BWC has not been activated, the officer or officers directly involved in the incident must complete an officer report and include the reasons for not activating the camera.

For planned interventions, the briefing to staff must include the requirements for recording the event or incident. If a planned intervention occurs in a Queensland Health facility consideration when forming an Emergency Action Plan (EAP) or an Administrative Form 191 Deliberate Action Plan (DAP) is to include:

- a) a briefing of affected Queensland Health staff, and
- b) where possible, that the recording of members of the public and Queensland Health staff is to be avoided.

The recordings may be used as part of the post-incident documentation collated by the incident commander/correctional supervisor.

When using discretion to activate a BWC in circumstances such as those listed above, consideration should be given to the impact of this use on the prisoner's human rights, and the human rights of other involved persons, including:

- a) privacy and reputation;
- b) access to health services without discrimination; and
- c) humane treatment when deprived of liberty.

### 5.2 Required use of BWC – cease recording

A corrective services officer should continue recording until:

- a) the officer's role in the incident is finalised;
- b) the officer is directed to cease by a senior officer/incident commander;
- c) the interaction with the prisoner or individual has ended; or
- d) the need to record the incident is no longer required.

When interacting with visitors and members of the public, including those in Queensland Health facilities, a corrective services officer should exercise discretion when deciding whether to record an interaction. If practical the officer should communicate if a camera is actively recording. There is no requirement to stop recording because a person does not wish to be recorded by a BWC, however continuation of recording in this circumstance needs to be for a safety and security concern and be reasonable, justifiable and proportionate, taking into account the human rights of those involved.

Prior to ceasing a recording, it should be clearly stated by the user that the recording will be stopped and the reason for doing so.

Refer to the Operating the AXON body worn camera training video available on the QCS intranet.

### 5.3 Non-permitted use of BWC – must not activate recordings

To avoid compromising confidentiality or limiting patient disclosure to health practitioners, a BWC must not be activated in the following locations unless a corrective services officer is responding to an emergent situation:

- a) while a consultation is occurring between a prisoner and any health practitioners including Queensland Health staff, Psychologists and mental health professionals; and
- b) where practicable, reasonable attempts must be made not to capture on recording any consultation occurring between a health practitioners and members of the public.





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A BWC recording must not be activated in the following circumstances:

- a) a search of a prisoner requiring the removal of clothing;
- b) while in places where a reasonable expectation of privacy exists; for example, locker/change rooms or toilets; and
- c) while in any court precinct.

A situation may occur where a use of force incident arises during a removal of clothing search. In those circumstances the BWC must be used to record the use of force incident. Following such an incident the person responsible for retaining the recording should determine whether, given the nature of the images, the recording should be assigned a restricted status in the evidence management system, taking into account the human rights of those involved.

In addition, staff using a BWC may wish to record the audio of staff and a prisoner during a removal of clothing search, in particular, where the prisoner may be elevated in their demeanour. In those circumstances the officer with the BWC should position themselves outside the cell, or in such a way that the BWC does not record the actual search; however, the audio capability of the BWC will be able to record the interaction.

#### 5.4 Incidents where a BWC has not been activated

Where an incident occurs and a BWC has not been activated when an officer would ordinarily do so; or where a BWC has been deactivated during the recording of an incident:

- a) the officer or officers directly involved in the incident must complete an officer report and include the reasons for not activating the camera; or for deactivating the camera during the incident; and
- b) the report must include the following considerations if relevant to the circumstances (this list is not exhaustive and further details may be required by the Chief Superintendent or nominee):
  - i. the reason or reasons the officer believed that the incident did not require the activation of the BWC at the time;
  - ii. the sudden escalation of the incident resulting in the officer failing to activate their BWC;
  - iii. the BWC being accidentally deactivated as a result of a bump or other physical contact during an appropriate use of force;
  - iv. the officer believing that the BWC had been activated when in fact it had not; and
  - v. the BWC malfunctioned.

If it is identified that a BWC was not activated as outlined in considerations (i) and (ii), the relevant reasons must be recorded in the operational debrief of the incident. Any remedial action identified by the centre that would minimise a re-occurrence of the event must be recorded in the operational debrief.

## 6. Maintaining the Chain of Custody

Information recorded during the use of a BWC must comply with legal requirements for the recording, collection, storage and use of electronic data and images. Recorded data may be used as evidence in court and the integrity of the recording and its management through an appropriate chain of custody is essential. Any action resulting in a failure to comply with the preservation of the chain of custody of recordings, including the unauthorised deletion or use of the data files may constitute a criminal offence. Interference with records, including destruction of information in a record, is also an offence under s133 of the *Queensland Corrective Services Act (CSA) 2006*.

Refer to the *Public Records Act 2002*; *Right to Information Act 2009*; the *Evidence Act 1977*;

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*Information Privacy Act 2009 and Commonwealth Privacy Act 1988.*

A process must be established that ensures BWC recordings comply with Information Privacy Principles regarding the storage, access and amendment of personal information.

#### 6.1 Officer Reports

If a corrective services officer makes a recording using a BWC in response to an incident/event that is to be recorded on IOMS, the officer must complete the Administrative Form 312 Officer Report. The officer report must contain information regarding the activation of the BWC, including identifying the camera used.

Where a corrective services officer makes a recording using a BWC in other circumstances and identifies the need for the recording to be retained, then the officer must complete the Administrative Form 312 Officer Report detailing the nature and reason for the activation. It should be noted an Officer Report must always be completed prior to completion of the officer's shift in accordance with procedural requirements, refer to the COPD Incident Management: Incident Management Process.

#### 6.2 Viewing BWC footage

A corrective services officer may be provided an opportunity in the period shortly after an incident to view a BWC recording after submitting an officer report. However, this may not always be possible. If an officer views a BWC recording after submitting their officer report they are to submit an Administrative Form 312A Supplementary Officer's Report, stating the time and date of viewing the footage and provide any further information considered relevant.

There may also be circumstances where a senior officer makes a decision that it is not appropriate to view a BWC recording, for example a police related incident in a centre such as a death in custody.

Should the circumstance arise that a BWC recording is viewed prior to the completion of an officer report, the report must be a recollection of the events that occurred and detail the reasons why the officer may have made decisions or took certain actions. The report must not be a narrative of the BWC recording. For example, a corrective services officer has a number of elements to satisfy prior to a use of force and a BWC recording may not account for all of these. The officer report must detail these elements in their officer report.

### 7. Evidence Management System

Access and use of any information stored within the evidence management system is for authorised users only. Authorised users will be assigned varying permissions to allow them to use the functionality of the evidence management system. Any unauthorised access and use is strictly prohibited; for example, use of another officer's User-ID and password. Refer to the QCS Access Management Policy.

The BWC evidence management system identifies a number of tabs that must be completed when saving BWC recordings. Refer to the Appendix SSE22 Body Worn Camera Recordings – File Naming Protocol and the Axon Evidence.com video tutorial linked to this COPD under the Related directives and documents section.

A Chief Superintendent of a corrective services facility must nominate staff to manage the BWC recordings within the evidence management system (local administrator). The evidence management system enables BWC recordings to be uploaded directly from the BWC when the device is plugged into a docking station.

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Staff nominated by the Chief Superintendent must review the collected BWC recordings and assign an incident category for classification. Classification ensures a recording is stored in the evidence management system for the legislated period of time, refer to the Management of Closed Circuit Television and Body Worn Camera System Policy, Section 9, Storage and disposal of recordings. All BWC recordings relating to an incident must be retained.

In the event that a BWC is accidentally activated or not switched off after an incident and content not relevant to that incident is recorded, the officer operating the camera must include the details of this in a report to the staff responsible for the evidence management system (local administrator). The local administrator may make a determination to restrict access to the footage.

Staff must comply with the requirements of the COPD Confidential Information: Disclosure of Confidential Information prior to the release or sharing of recordings from the evidence management system.

The BWC recordings are assigned an Information Security Classification label of 'Sensitive' or 'Protected' in accordance with the QCS Information Security Classification and Handling policy and the Information Security Classification and Handling procedure. A recording that is identified being 'Protected' must be assigned a restricted classification within evidence.com.

A decision may be made by a Chief Superintendent or nominee that a particular BWC recording may be assigned a lesser Information Security Classification.

The evidence management system must be used to manage recordings, including in circumstances where the recording is to be viewed by other QCS staff or for other official purposes.

Recordings are not to be downloaded from the evidence management system to a secondary or alternate storage system (e.g. USB, disc) unless authorised by the Chief Superintendent or nominee. In those circumstances the reason for the downloading of the recording must be noted in the evidence management system (evidence.com). This must include the details of the person receiving the recording or where the recording will be stored. These recordings should, where practicable, be saved in an encrypted format. This will generally only occur in circumstances where the recording is required for an inquiry, investigation and/or for court purposes.

Any recordings that are downloaded from the evidence management system must be stored in accordance with their Information Security Classification and retained for the period detailed in the RDS.

User access to the BWC evidence management system will be managed centrally by the Custodial Operations Directorate. The Chief Superintendent or Superintendent of a corrective services facility must endorse a corrective services officer for access to the evidence management system. Endorsed requests are to be progressed through the My IT Service Centre.

A review of user access to the BWC evidence management system must be undertaken at least every three months. The Custodial Operations Directorate is to be notified of corrective services officers who no longer require system access.

For further information regarding use of the BWC evidence management system, refer to the Axon Evidence.com video tutorial linked to this COPD under the related directives and documents section.





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## 8. Loss or Damage of a BWC

Corrective services officers are responsible for the security, care and condition of issued BWC devices and equipment. Reasonable precautions must be taken to ensure BWCs are not carelessly or negligently exposed to loss or damage.

Officers must report any loss or damage, other than fair wear and tear, of equipment to a correctional supervisor or safety and security equipment co-ordinator as soon as practicable.

Where a BWC is identified as presenting with a fault; for example, failing to charge or record images or audio; a maintenance request is to be made and submitted by completing the Administrative Form 316 Return for Repair of Axon Body Worn Camera outlining:

- a) device;
- b) serial number;
- c) nature of the fault;
- d) if data/footage has been uploaded; and
- e) if data/footage needs to be retrieved.

If possible, recordings should be downloaded from the camera prior to arrangements being made for the device to be replaced.

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