

Body-Worn Camera Policy

PURPOSE

To understand the operation, use and storage of data in relation to body-worn cameras, by authorised officers from the Department for Energy and Mining in investigations, compliance activity and site inspections.

LEGISLATIVE FRAMEWORK

This policy supports the administration of the following legislation, together with the associated regulations:

- *Energy Resources Act 2000* (SA)
- *Hydrogen and Renewable Energy Act 2023* (SA)
- *Mining Act 1971* (SA)
- *Opal Mining Act 1995* (SA)
- *Electricity Act 1996* (SA)
- *Energy Products (Safety and Efficiency) Act 2000* (SA)
- *Gas Act 1997* (SA)
- *Water Industry Act 2012* (SA)

SCOPE

This policy applies to all authorised officers (AOs) who use body-worn cameras (BWCs) in the course of scheduled and unscheduled site visits, inspections, investigations, execution of search warrants, serving of orders and any other action undertaken in the enforcement of the legislation administered by the Department for Energy and Mining (DEM).

Any action undertaken by an AO may result in the prosecution of alleged offenders, or allegations against DEM AOs, therefore it is important to understand the correct use of BWCs and the handling of evidence captured by their use to ensure admissibility in court.

BWCs not only capture evidence but their presence will help discourage aggressive or inappropriate behaviour, as well as reduce vexatious allegations and complaints. Further, it demonstrates transparency in DEM processes.

RISK ASSESSMENT

Prior to entering a site, AOs must undertake a risk assessment. Generally, BWCs will be worn and activated by at least two AOs during site visits and at any other time or location where orders or directions are being served, warrants executed, or legislative powers utilised. In the unlikely event there are insufficient BWCs when needed, an additional risk assessment should be made by the AOs in conjunction with their manager. If necessary, the visit should be delayed until a camera is available however, if the visit goes ahead (after the risk assessment has been completed), the rationale for the decision is to be recorded in writing in the AO's contemporaneous field notebook (that is recorded in writing at the same time, or as soon as practicable after the conversation or observation has taken place).

SUPPORTING LEGISLATION

The *Surveillance Devices Act 2016* (SA; the SD Act) regulates the use of listening devices and optical surveillance devices in South Australia. For the purposes of the SD Act, BWCs constitute listening devices and optical surveillance devices.

There is a reasonable expectation that any activity of an AO, including a conversation, may be seen or heard by another person who may not be a party to the activity.

Any video and audio collected via BWCs, which is classified as an official record relating to a DEM inspection or investigation must be filed, stored and retained in accordance with all legislation administered by DEM, the *State Records Act 1997* (SA; SR Act) and associated records disposal schedules.

PROCEDURE

BWC storage, charging and downloading

DEM has nine Axon BWCs and three Pro Licences.

DEM Mining has five cameras which are permanently located at DEM head office. Investigators' BWCs are available for general use, in consultation with the General Manager, Compliance and/or the Principal Compliance and Investigations Officer. When not in use, all cameras are stored in the Axon Dock located in the investigations workspace.

DEM Office of the Technical Regulator (OTR) has four cameras which are permanently located at the DEM head office. All are available for general use, in consultation with the OTR Managers. When not in use, all cameras are stored in the Axon Dock located at the Electrical Manager's workspace. BWCs must be returned to the Axon Dock immediately following use.

The Axon Dock provides:

- automatic uploading of data captured by the licenced BWCs to Evidence.com for storage. Evidence.com is a cloud-based digital evidence management system that DEM, has subscribed to, allowing BWC users to manage, review, and share digital evidence captured by the BWC. The footage captured on one of the five unlicensed BWCs can be manually downloaded via a data cable to your computer or external storage device. The BWCs are labelled to indicate their licence status
- recharging of BWC batteries
- a mechanism to ensure BWCs receive and operate the most updated firmware.

BWC operation

If you require further information on how to operate the BWC (including the mounting of the equipment to the AO), detailed instructions can be located in the Axon Body 3 Camera User Guide (user guide). A demonstration video of BWC mounting options can also be found at the [Axon website](#). Whilst the BWC is in operation, there are two distinct modes:

- Ready (Buffering) means that the camera is on and is pre-event buffering.
- Recording (Event) means that the camera is recording.

Once the BWC is mounted, in order to activate Ready mode, press the power button until you feel a short vibration. The camera then emits two short rising-pitch tones with a long vibration and then enters Ready (Buffering) mode. With the camera turned on, the Axon system is in the Ready mode. When Recording (Event) mode is activated, the buffered video captured directly before the event is saved and attached to the event in permanent memory. This feature is intended to capture the video of an incident just before a recording begins. The camera does not capture audio within the pre-event buffer by default (but can be set to do so by an admin).

When Ready mode begins:

- The camera display shows READY.
- The Operation LED on top of the camera blinks green.
- The camera is capturing video but not recording to permanent memory.

To commence Recording mode:

- Double-press the Event button on the camera. When the camera starts recording, it emits two short tones and two short vibrations, and the display shows the recording icon.
- The 'buffered' video directly preceding the event will be saved and attached to the event recording. This will continue throughout the duration of the recording until you terminate the recording.
- The camera provides indications it is in Recording mode:
 - The camera display shows STARTING and then the recording icon.
 - The Operation LED on the camera blinks red.
 - The camera emits two short tones and two short vibrations every two minutes as a recording reminder.
- To stop recording and return to Ready mode, press Event for three seconds. The camera emits one long tone and vibrates.

Each camera has a zipped kit bag containing the laminated user guide, helpful information sheets including the wording of the cautions and the BWC mounts. Members of the Investigation Team and OTR Managers are available to provide assistance if required.

ACCESS AND MAINTENANCE

Each BWC is individually labelled to identify that particular device. It is important to note this detail because it will be linked to the user so the footage can be accessed in Evidence.com. Uploaded footage is stored for a minimum of ten years however a link will be needed for a non-licensed user to access the footage. The footage can be downloaded to make a 'working copy' (refer to *Storage and record keeping*). If the link to the footage expires before the user has a chance to download the footage, a new link can be provided.

Using the booking sheet located at the docking station, each BWC kit bag containing the BWC mounts and user guide, is to be signed in and out so that the BWCs can be accounted for.

Lost, stolen or deliberately damaged BWCs must be reported to the General Manager, Compliance or the Director, OTR at the earliest opportunity. The General Manager, Compliance or the Director, OTR will determine if a SAPOL report is warranted. Lost BWCs must be reported to the relevant role above as soon as possible.

USING A BWC

A risk assessment must be undertaken prior to entering a site. Where possible, it is recommended that a minimum of two AOs are to wear a BWC on a site visit to allow for the capture of multiple angles, to record conversations and for vision in the event that the AOs become separated.

The BWC is to be in full recording mode for the duration of the site visit to capture evidence, both visual and audible, and to deter abusive behaviour and vexatious complaints.

At the commencement of recording, the AO is to identify themselves, the date, time and location as well as the purpose for which the AO is undertaking the site visit. An example of the commencement statement can be found in Annexure A. Where the AO enters a site wearing the BWC, the AO may notify persons present on site of the fact that they are wearing a BWC. Such a statement can be found in Annexure A.

If the BWC is turned off during the visit, the reason for taking that action should be recorded on the device at the time and notes made as to the reason (i.e. 'recording stopped at [TIME] for meal break'). An example of such a

statement can be found in Annexure A. BWCs are used to protect the interests of all parties and should provide a transparent account of what has occurred. Turning off a device without explanation during a site visit may give rise to allegations of improper behaviour.

SAPOL ATTENDANCE

In addition to the use of BWCs, if aggression or hostile circumstances are anticipated, AOs must request SAPOL attendance for a standby breach of the peace by calling 131 444. This should be arranged prior to attending a site and be recorded in the AO's contemporaneous notebook.

DISCLOSURE

All actions and conversations captured on a BWC may be subjected to public and judicial scrutiny. All footage and audio captured on the BWC will be disclosed to the defendant and the court where the matter proceeds to prosecution. As such, all recordings captured on the BWC must remain in their original format and must not be deleted, edited or manipulated in any way. The recordings are also a government record and as such may be subject to Freedom of Information (FOI) requests. See below for instructions regarding the creation of master and working copies of footage and other files.

DEM CONDUCT AND RECORDING CONSIDERATIONS

As with all inspections and regulatory actions, AOs should ensure:

- professional and respectful conduct is displayed at all times (remembering AOs may also commit offences, for example, under section 92 of the *Environment Protection Act 1993* (SA) for the use of offensive language as well as hindering, obstructing or using force in relation to any other person)
- courtesy and procedural fairness is granted to all persons. The AO must make reasonable efforts to explain the reason for their attendance and associated powers/authority

- AOs MUST inform all those in attendance that the BWC is activated and recording at the start of the visit or interaction and refresh that advice if anyone joins the conversation after the warning was given
- no discussion is to be entered into around protected methodologies or confidential sources/information. If there is information of a confidential nature DEM wishes not to disclose, a claim of privilege must be made on that material prior to any disclosure to the public or the courts
- communication between legal practitioners and their clients must not be recorded on the BWC (in accordance with legal professional privilege).

CAUTIONS AND DIRECTIONS

BWCs may collect important evidence for use in a prosecution. If an AO is recording their conversation with an individual on the BWC and has reasonable cause to suspect that the individual has committed an offence under the Acts enforced by DEM, a full criminal caution should be given to that person (not multiple people at one time) at the earliest opportunity to ensure all conversations captured on the device are given the best chance of admissibility. A laminated copy of the criminal caution is included in every BWC kit bag for easy reference.

The use of a criminal caution is preferable to issuing a compelling direction to a suspect, as the responses provided by a suspect under criminal caution may still be utilised against both the individual and the body corporate. Please speak to an investigator if in doubt about the use of the criminal caution.

BWC footage should be considered complementary to the existing practice of note taking. Handwritten dot point notes, maps etc. are equally as important and should be used in addition to the BWC. It is important to be mindful that prevailing weather conditions such as wind can make recorded conversation inaudible.

PERMISSIONS AND AUTHORITIES

When a BWC is activated by an AO, all those in attendance must be made aware the BWC is operating, and that their conversations are being recorded. This includes other AOs, other agency representatives (SAPOL, Council, SafeWork SA, etc.) and any other persons present. A failure to notify those present of your recording may result in the audio evidence being deemed inadmissible by the courts or unlawful under the SD Act.

AOs appointed under the Acts nominated in the Legislative Framework may rely on the powers contained in the relevant legislation which grants them the authority to enter and inspect. For the purpose of carrying out an authorised investigation, an AO may take photographs, audio or video recordings.

The SD Act directs that, pursuant to sections 4(2)(b) (i) and 5(4)(a)(i), the aforementioned legislation takes precedence over the SD Act (provided the AOs are operating the BWCs in the described circumstances).

COMPETENCIES AND APPROVALS

All BWCs must be stored in their charging dock, and their use in accordance with this policy and procedure has been approved by the appropriate section Director or Executive Director.

All DEM investigators are trained in the use of BWCs and are trained in the use of Evidence.com and are available to assist.

OCCUPATIONAL HEALTH AND SAFETY

The hands-free design of the BWC ensures its operation will not subject the user to any additional health and safety risks by giving them the ability to record events whilst keeping both hands free. AOs should always exercise and prioritise personal safety when attending a site.

STORAGE AND RECORD KEEPING

All recordings, whether subject to DEM criminal or civil enforcement proceedings or not, must be retained in accordance with the legislation administered by DEM, the SR Act and associated records disposal schedules. Most recordings will become permanent records based on the SR Act.

Footage from licenced BWCs is automatically uploaded as the 'MASTER COPY' to Evidence.com when the camera is placed into the charging dock. The file will automatically be date/time stamped. It may be useful to create a 'working copy' for use during the investigation or enforcement action. This copy should be saved to the relevant digital file in a folder marked 'WORKING COPY - [date data obtained]' to make a clear differentiation between the two files.

Where a BWC is unlicensed, the video file will need to be downloaded directly from the device to a digital folder relating to the site and be clearly entitled 'MASTER COPY'. A court will need to be satisfied that the master copy has not been interfered with otherwise it will not be admissible as evidence. The copy must be created and marked 'WORKING COPY'.

The master copy of any footage should only ever be accessed for the purpose of creating a working copy or in the event that the court requests access to it.

DEFINITIONS

Authorised Officer (AO). For the purpose of this policy, the term AO is intended to capture DEM authorised officers or authorised persons who are appointed pursuant to the following legislation administered by DEM:

- s8 of the *Energy Resources Act 2000* (SA)
- s84 of the *Hydrogen and Renewable Energy Act 2023* (SA)
- s14 of the *Mining Act 1971* (SA)
- s77 of the *Opal Mining Act 1995* (SA)
- s64 of the *Electricity Act 1996* (SA)
- s10 and s11 of the *Energy Products (Safety and Efficiency) Act 2000* (SA)
- s62 of the *Gas Act 1997* (SA)
- s72 of the *Water Industry Act 2012* (SA)

For the purpose of this policy, AO is also intended to capture the roles of Electricity Officer, Water Industry Officer and Gas Officers that are duly appointed under their respective legislation below:

- s41 of the *Electricity Act 1996* (SA)
- s10 and s11 of the *Energy Products (Safety and Efficiency) Act 2000* (SA)
- s42 of the *Gas Act 1997* (SA)
- s41 of the *Water Industry Act 2012* (SA)

Body-worn camera. Axon Body 3, currently in use, however updated camera models may be purchased at the discretion and approval of the General Manager, Compliance.

Department for Energy and Mining. The South Australian Government agency charged with the responsibility of enforcing compliance with the Acts nominated in the Legislative Framework.

Evidence.com. The secure evidential management system where all BWC footage is uploaded, stored, accessed, managed, and used.

ASSOCIATED DOCUMENTS

- Axon Body 3 Camera User Guide
- Axon Body 2 camera User Guide

WARNINGS AND FURTHER READING

For more detailed explanations of the software and equipment, the user guide and further (up to date) information on these products is also available via the [Axon website](#).

ANNEXURE A: STATEMENTS

BWC commencement statement

"This is <full name>. Recording has commenced at <time and date> at <location> for the purpose of <reason e.g. arrival on site to respond to a notifiable incident>".

Statement where BWC is turned off

"Recording has been stopped at <time and date> due to <reason>".

Statement upon entry to site

"I am [Name], an [Authorised Officer/person] appointed under the [Legislation], and I am entering this place pursuant to [relevant section] for the purpose of [reason for visit].

I am wearing a body-worn camera to create a video and audio recordings whilst exercising my powers as an Authorised Officer.

Do you understand?"

ACKNOWLEDGEMENT OF COUNTRY

As guests on Aboriginal land, the Department for Energy and Mining (DEM) acknowledges everything this department does impacts on Aboriginal country, the sea, the sky, its people, and the spiritual and cultural connections which have existed since the first sunrise. Our responsibility is to share our collective knowledge, recognise a difficult history, respect the relationships made over time, and create a stronger future. We are ready to walk, learn and work together.

FURTHER INFORMATION

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