

Serial 10

Justice Legislation Amendment (Body-worn Video and Domestic Violence Evidence) Bill 2016

Ms Fyles

A Bill for an Act to amend the *Evidence Act* and the *Surveillance Devices Act* in relation to body-worn video and recorded statements of evidence in proceedings for domestic violence offences

NORTHERN TERRITORY OF AUSTRALIA

JUSTICE LEGISLATION AMENDMENT (BODY-WORN VIDEO AND
DOMESTIC VIOLENCE EVIDENCE) ACT 2016

Act No. [] of 2016

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2016

An Act to amend the *Evidence Act* and the *Surveillance Devices Act* in relation to body-worn video and recorded statements of evidence in proceedings for domestic violence offences

[Assented to [] 2016]
[Second reading [] 2016]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Justice Legislation Amendment (Body-worn Video and Domestic Violence Evidence) Act 2016*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

Part 2 Amendment of Evidence Act

3 Act amended

This Part amends the *Evidence Act*.

4 Section 4 amended

(1) Section 4, definition **recorded statement**

omit

(2) Section 4

insert (in alphabetical order)

complainant, see section 21G.

domestic violence, see section 21G.

domestic violence offence, see section 21G.

domestic violence offence proceeding, see section 21G.

recorded statement:

(a) for Part 3 – see section 21A(1); or

(b) for Part 3A – see section 21G.

5 Section 21A amended

Section 21A(1), definition **vulnerable witness**, after paragraph (c)

insert

(ca) who is a complainant in a domestic violence offence proceeding; or

6 Part 3A inserted

After section 21F

insert

Part 3A Domestic violence offence proceedings**21G Definitions**

In this Part:

complainant, for a domestic violence offence proceeding, means an adult against whom a domestic violence offence the subject of the proceeding is alleged, or has been found, to have been committed.

domestic violence, see section 5 of the *Domestic and Family Violence Act*.

domestic violence offence means:

- (a) an offence constituted by, or involving, conduct that is domestic violence; or
- (b) an offence against section 120(1) of the *Domestic and Family Violence Act*.

domestic violence offence proceeding means a proceeding for a domestic violence offence.

recorded statement means an interview, recorded on video-tape or by other audiovisual means, in which a police officer elicits from a complainant statements of fact that, if true, would be of relevance to a domestic violence offence proceeding.

21H Evidence of complainant

- (1) A recorded statement that complies with section 21J:
 - (a) may be played at the hearing of the charge for, or the trial in respect of, the domestic violence offence to which it relates; and
 - (b) if it is played at the hearing or trial, may be admitted as the complainant's evidence in chief, or part of the complainant's evidence in chief, in the proceeding.
- (2) However, the court may refuse to admit all or part of the recorded statement if the court considers it is in the interests of justice to do so.
- (3) A complainant may (but need not) be present in the courtroom when a recorded statement of evidence of the complainant is played in the courtroom.
- (4) The complainant's demeanour, and words spoken or sounds made by the complainant, during the playing of a recorded statement of evidence of the complainant, are not to be observed or overheard in the courtroom unless the complainant elects to be present in the courtroom for that part of the proceeding.

21J Requirements for recorded statement

- (1) To be admissible, a recorded statement must be made:
 - (a) as soon as practicable after the events mentioned in the statement occurred; and
 - (b) with the informed consent of the complainant.
- (2) For subsection (1)(b), a recorded statement is made with informed consent if:
 - (a) the police officer informs the complainant that:
 - (i) the recorded statement may be used in evidence in a domestic violence offence proceeding; and
 - (ii) the complainant may be required to give further evidence in the proceeding; and
 - (iii) the complainant may refuse consent; and
 - (b) the complainant indicates in the recorded statement that the complainant consents.
- (3) A recorded statement:
 - (a) must include a statement by the complainant as to the complainant's age; and
 - (b) must be made as a statutory declaration in compliance with section 20 of the *Oaths, Affidavits and Declarations Act*.
- (4) If any part of a recorded statement is in a language other than English:
 - (a) the recorded statement must contain an English translation of the part; or
 - (b) a separate written English translation of the part must accompany the recorded statement.

21K Service of recorded statement on defendant's legal practitioner

- (1) This section applies if:
 - (a) a recorded statement has been made for a domestic violence offence proceeding; and
 - (b) the defendant is represented by a legal practitioner in the proceeding.

- (2) The prosecution must serve a copy of the recorded statement on the defendant's legal practitioner as soon as practicable after the proceeding is commenced.
- (3) The defendant must not be given, or take a copy of, the recorded statement.

21L Access to recorded statement if defendant unrepresented

- (1) This section applies if:
 - (a) a recorded statement has been made for a domestic violence offence proceeding; and
 - (b) the defendant is not represented by a legal practitioner in the proceeding.
- (2) The prosecution must:
 - (a) serve an audio copy of the recorded statement on the defendant as soon as practicable after the proceeding is commenced; and
 - (b) give the defendant a reasonable opportunity to view the recorded statement on a day before the hearing of the charge for, or before the committal date in respect of, the domestic violence offence to which the recorded statement relates.

21M Failure to comply with service or access requirements

Evidence of a complainant given in the form of a recorded statement is not to be admitted if section 21K or 21L has not been complied with, unless the court is satisfied that:

- (a) the parties consent to the recorded statement being admitted; or
- (b) the defendant or the defendant's legal practitioner has been given a reasonable opportunity to listen to or view the recorded statement and it would be in the interests of justice to admit the recorded statement.

21N Transcript of recorded statement

- (1) Despite any other law, the prosecution in a domestic violence offence proceeding is not required to provide a transcript of a recorded statement for the proceeding to the defendant or the defendant's legal practitioner.

- (2) In a jury trial, the court may order that a transcript of all or part of the evidence given in the form of a recorded statement be supplied to the jury if the court considers that a transcript would be likely to help the jury understand the evidence.

21P Editing or otherwise altering recorded statement

A recorded statement may be edited or otherwise altered only if:

- (a) both parties consent to the edits or alterations; or
- (b) the court before which the domestic violence offence proceeding is taking place so orders.

Example for section 21P

The court might order the editing of the statement to remove inadmissible material.

21Q Offence to publish recorded statement

- (1) A person commits an offence if:
- (a) the person intentionally publishes a recorded statement; and
- (b) the person does not have authority to publish the recorded statement and the person is reckless in relation to that circumstance.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

- (2) For subsection (1), a person has authority to publish a recorded statement only if the person publishes the recorded statement in connection with:
- (a) the investigation of, or a proceeding for, an offence in relation to which the recorded statement is prepared; or
- (b) a rehearing, retrial or appeal in relation to the proceeding.

- (3) In this section:

person includes the complainant who made the recorded statement.

publish means communicate or disseminate information in a way or to an extent that makes it available to, or likely to come to the notice of, the public or a section of the public or anyone else not lawfully entitled to the information.

21R Part does not affect other provisions

This Part does not affect any other provisions of this Act.

Example for section 21R

This Part does not affect the operation of Part 3 in relation to the complainant as a vulnerable witness.

Part 3 Amendment of Surveillance Devices Act**7 Act amended**

This Part amends the *Surveillance Devices Act*.

8 Section 4 amended

Section 4

insert (in alphabetical order)

body-worn video means equipment worn on the person of a police officer that is capable of recording visual images or sound or both.

9 Section 11 amended

After section 11(2)(b)

insert

(ba) the use, in accordance with section 14A, of body-worn video by a police officer; or

10 Section 12 amended

After section 12(2)(d)

insert

(da) the use, in accordance with section 14A, of body-worn video by a police officer; or

11 Section 14A inserted

After section 14, in Part 2

insert

14A Police use of body-worn video

- (1) The use of body-worn video by a police officer is in accordance with this section if:
 - (a) the police officer is acting in the execution of the officer's duty; and
 - (b) the use of body-worn video is overt; and
 - (c) the police officer is in uniform or has provided evidence that the officer is a police officer to each party to the private activity or private conversation to be recorded.
- (2) Without limiting the ways in which the use of body-worn video may be overt for subsection (1)(b), the use of body-worn video is overt once the police officer informs the person who is to be recorded of the use of the body-worn video by the police officer.
- (3) The use of body-worn video by a police officer is also taken to be in accordance with this section if it is inadvertent or unexpected.

12 Section 51 amended

- (1) Section 51(2)(b)(ii)

omit

authorisation.

insert

authorisation; or

- (2) After section 51(2)(b)(ii)

insert

- (c) any information obtained from the use, in accordance with section 14A, of body-worn video by a police officer.

13 Section 53 amended

After section 53(3)

insert

- (4) Local protected information that is information obtained from the use, in accordance with section 14A, of body-worn video by a police officer may also be used, communicated or published:
- (a) in connection with the exercise of a law enforcement function by a police officer; or
 - (b) in connection with education and training of police officers; or
 - (c) for a purpose prescribed by regulation.

Part 4 Consequential amendment of Local Court (Criminal Procedure) Act**14 Act amended**

This Part amends the *Local Court (Criminal Procedure) Act*.

15 Section 60AE amended

- (1) Section 60AE(2), at the end

insert

Note for subsection (2)

A transcript is also not required for a recorded statement under Part 3A of the Evidence Act in a domestic violence offence proceeding – see section 21N(1) of that Act.

- (2) After section 60AE(2)

insert

- (3) Subsection (1)(f) does not apply in relation to a recorded statement under Part 3A of the *Evidence Act* in a domestic violence offence proceeding.

16 Section 105F amended

Section 105F(1), at the end

insert

Note for subsection (1)

A transcript is not required for a recorded statement under Part 3A of the Evidence Act in a domestic violence offence proceeding – see section 21N(1) of that Act.

Part 5 Expiry of Act

17 Expiry of Act

This Act expires on the day after it commences.