

## USE OF RECORDING DEVICES POLICY

### Purpose

1. This policy explicitly prohibits non-consensual use of audio and visual recording devices by employees in the workplace.
2. Further, employees are explicitly prohibited from arranging for others to make non-consensual audio or visual data recordings.

### Application

3. This policy contains a set of whole-of-government instructions issued by the Head of Service under the Public Sector Management Act 1994 which binds all employees and officers engaged under that Act.
4. This policy does not apply:
  - to audio or visual recordings lawfully obtained under an Australian law; or
  - when required to accommodate an employee who has an impairment or disability and who is otherwise unable to write or conveniently record information or data.

### Background

5. Modern technology and the proliferation and use of personal mobile communication and other electronic devices, has made it increasingly easy for employers or employees to make non-consensual recordings in the workplace. For example, an employee might wish to secretly record a workplace conversation with a colleague to prevent harassment or to record bullying or other unpleasant behaviour; managers might secretly record a routine workplace exchange such as a one-on-one interview, performance appraisal, consultation forum or in the context of a potential grievance or disciplinary process. In both examples, the other party did not have knowledge of the recording and therefore could not have given consent.
6. However, the ACT Government has a broad responsibility to ensure that non-consensual audio or visual data recordings via the use specific devices or devices such as 'smartphones', does not occur.
7. The Respect, Equity and Diversity Framework and signature behaviours outlined in the ACT Public Service Code of Conduct embody the principles of decency, courtesy, professionalism and fairness and exemplify the way we should behave in the workplace.

A secretive or non-consensual recording is not in keeping with these principles and has the potential to destroy the relationship of trust and confidence between the employer and the employee.

### **Principles**

8. The fundamental principle regarding the use of audio or visual recording devices is that such devices should only be used with the consent of the parties being recorded.
9. The use of audio or image data recordings is also restricted in accordance with ACT and Commonwealth legislation including but not limited to:

*Listening Devices Act 1992 (ACT);*

*Crimes Act 1900 (ACT); and*

*Information Privacy Act 2014 (ACT)*

### **Audio Recordings**

10. An employee must not make use of a recording device to listen to or record a conversation, without first gaining consent from each party to the conversation.
11. Where consent is not obtained from each participating party, an alternative arrangement should be made such as taking notes, utilising a support person or deferring the conversation until a satisfactory agreement can be reached.

### **Visual Data (Camera) recordings**

12. A public sector employee must not make use of a visual recording device to make a non-consensual visual recording (still or moving) in the workplace without the consent of the person being recorded.
13. Such action may also be in breach of the *Crimes Act 1900* and depending on the circumstances, may result in direct referral to the Australian Federal Police.

### **Legislative Reference**

14. The key principles of this policy are aligned with the following authorised sources:
  - *Listening Device Act 1992*

---

Bronwen Overton-Clarke  
Commissioner for Public Administration  
on behalf of Kathy Leigh, Head of Service

---

July 2015