



# Photography and Filming of Clinical Care by Patients, Carers, Relatives, Visitors or Contractors Policy

## 1. Background

A number of concerns have been raised across regions as to the legality of patients, visitors or support people taking photos or filming clinical care provision, particularly in relation to privacy and any requirements for consent. These incidents often occur in the Emergency Department (ED) and Maternity settings, but with near unlimited access to smart phones and social media, such incidents are increasing in all health service settings. There is also an increasing trend of pregnant women engaging professional birth photographer services.

A search for any relevant WA Health and health service policies was unsuccessful. Opinion was obtained from Legal and Legislative Services, who advised the following legislation was relevant:

- [Surveillance Devices Act 2004](#) Commonwealth (*SD Act*)
- [Health Services Act 2016](#) WA (*HS Act*)

While there is no general 'right to privacy' legislation in WA, and very limited common law precedence, the *SD Act* does regulate the use of listening and optical surveillance devices in respect to 'private activities'. The *SD Act* is likely to apply to the use of cameras (both photographic and videography) including smart phones in health services.

## 2. Policy Statement

This policy governs the requirement that patients, carers, relatives, contractors or visitors do not use cameras, mobile phone cameras, video cameras or other image capture devices on WA Country Health Service premises without prior approval and consent of all persons identifiable in the images.

### 2.1 Consent

- The provision of clinical care in a public hospital or health service constitutes a 'private activity'
- Image recording of a private activity, without consent of all parties (patient and staff), may be a criminal offence punishable by a \$5000 fine or 12 months jail
- Consent to image recording may be either expressed or implied
- Where staff do not consent to their image being recorded, they are to make that expressly known to the person recording and may request they cease recording
- Publication of images to social media, without consent of all parties, may also be an offence. If this impacted staff, it would require the staff member to make a privacy complaint to the operator of the social media platform and request removal of their image
- Unintentional recording of the private activity of another (i.e. accidental filming of other patients not screened off in an ED) would not be considered an offence
- Intentional recording of others in a clinical area without their consent would be an offence

## 2.2 Chief Executive Officer (CEO) Power to Direct a Person to Leave the Health Site

- Under *section 211 of the HS Act* the CEO, or delegate approved in writing by the CEO, can direct a person to leave a health service site if that person is reasonably believed to be:
  - creating a disturbance  
or
  - disorderly  
or
  - pose a safety threat to anyone else at the health service (patient, staff, visitor)
- That power may apply where a person refuses a request to cease recording images of clinical care
- A person who refuses a CEO direction to leave the premise can be charged with an offence punishable by a \$5000 fine or 12 months imprisonment

## 2.3 Photography at Birth

- Where possible, consumers / support people are to be advised in advance regarding their rights to record images (i.e. in the antenatal period for the labour/ birth admission).
- A WACHS Consumer brochure has been developed to inform advance discussions (i.e. at the antenatal booking visit) and includes:
  - acknowledgement of the reasons consumers want to record images, especially during child birth
  - advice that:
    - the safety and health of the consumer takes precedence
    - photography /filming is not to impede care
    - photography /filming requires the consent of all identifiable persons and staff present
    - requests to cease photographing /filming must be respected.
  - a process for escalation if the consumer is unhappy with the request to cease photography or filming
  - advice that photography /filming, without consent, can constitute an offence punishable by a fine or imprisonment and be escalated to security staff and /or the police.

## 2.4 Mental Health Patients

Refer to WA Health Operational Directive OD 0643/16 [Use of Photographic Equipment in Mental Health Services](#)

## 3. Definitions

<b>Private activities</b>	Are those which any party involved expects will only be seen by themselves ( <i>SD Act</i> )
---------------------------	--

## 4. Roles and Responsibilities

The Chief Executive Officer is to determine, in writing, the health service delegate who may direct a person to leave a health service under the *HS Act*

Managers of clinical areas are to publically display the WACHS consumer poster on photography and filming of clinical care in relevant areas (except in Maternity areas)

Midwives are to discuss the WACHS consumer brochure on photography and filming during labour / birth at the woman's antenatal booking visit

## 5. Compliance

It is a requirement of the WA Health [Code of Conduct](#) that employees "comply with all applicable WA Health policy frameworks."

A breach of the Code may result in Improvement Action or Disciplinary Action in accordance with the WA Health [Misconduct Policy](#) or Breach of Discipline under Part 5 of the *Public Sector Management Act*.

WACHS staff is reminded that compliance with all policies is mandatory.

## 6. Evaluation

Evaluation of this policy is to be carried out by the site managers reviewing any reported incidents of imaging without consent or non-compliance with requests to cease recording

## 7. Legislation

- [Surveillance Devices Act 2004](#) Commonwealth (*SD Act*)
- [Health Services Act 2016](#) WA (*HS Act*)

## 8. Related Policy Documents

- WACHS [Filming and Photography - Consumer Information Sheet](#)
- WACHS [No Filming or Photography Poster](#)

## 9. Related WA Health Policies

- WA Health Operational Directive OD 0643/16 [Use of Photographic Equipment in Mental Health Services](#)

**This document can be made available in alternative formats  
on request for a person with a disability**

<b>Contact:</b>	Coordinator of Midwifery (K. Reynolds)		
<b>Directorate:</b>	Nursing and Midwifery Services	<b>TRIM Record #</b>	ED-CO-17-1342
<b>Version:</b>	1.00	<b>Date Published:</b>	21 March 2017

Copyright to this material is vested in the State of Western Australia unless otherwise indicated. Apart from any fair dealing for the purposes of private study, research, criticism or review, as permitted under the provisions of the *Copyright Act 1968*, no part may be reproduced or re-used for any purposes whatsoever without written permission of the State of Western Australia.

