

**The purpose of this statement is to confirm Bene's position in relation to optical surveillance devices in residents' rooms.**

### **Introduction**

Under the *Surveillance Devices Act 2016 (SA) (Act)*, the use of an optical surveillance device to record or observe the carrying on of a private activity without the consent of each party to that activity is unlawful.

Furthermore, the Act also provides that the installation of an optical surveillance device to record or observe the carrying on of a private activity without the express or implied consent of each party and the express or implied consent of the owner or occupier of the premises is unlawful.

There are certain circumstances under the Act providing exemption from the need to obtain consent, which include:

- the installation, use or maintenance by the installer if it is reasonably necessary for the protection of the installer's 'lawful interests';
- the installation, use or maintenance is 'in the public interest'.

In adopting this position statement Bene is also mindful of:

- the rights of a resident (under the Charter Of Aged Care Rights) including:
  - to be treated with dignity and respect, and
  - to personal privacy;
- the rights of staff to work in an environment free of harassment.

### **Bene's position on use of optical surveillance devices in residents' rooms**

It is therefore Bene's position that:

1. unless:
  - there are sufficient concerns regarding the care and safety of a resident so that use of an optical surveillance device is the most appropriate response in exercising duty of care to a resident (and thereby protecting the lawful interests of the provider); or
  - the installation and use is in the public interest

Bene will not itself install and/or use an optical surveillance device in residents' rooms and will only do so (unless the circumstances specifically require otherwise) with the knowledge and consent of staff.

2. having regard to the difficulty of satisfactorily monitoring and/or controlling the use of personal information obtained by its use, Bene will not permit the installation and/or use of an optic surveillance device by or on behalf of a resident (or their representative or substitute decision maker) under any circumstances.

In the event that Bene installs an optical surveillance device in order to protect its lawful interests or in the public interest, the use of information or material derived will not be used or communicated except as permitted by the Act (which permits disclosure to a party to the activity, or elsewhere with their consent or to investigating agencies such as the police), and subject to the *Privacy Act 1988* (Cth) and the *Aged Care Act 1997* (Cth).

**Listening devices**

Please note that similar rules apply in relation to the use of a listening device under the Act. Unless an exemption under the Act applies, a listening device must not be used to record a private conversation without the express or implied consent of all parties to the conversation and the express or implied consent of the owner or occupier of the premises in which the device is being used.

**Glossary**

**Listening device** means a device capable of being used to listen to or record a private conversation or words spoken to or by any person in private conversation (whether or not the device is also capable of operating as some other kind of surveillance device) and associated equipment.

**Optical surveillance device** means a device capable of being used to observe or record visually (whether for still or moving pictures) a person, place or activity, and associated equipment.

**Private activity** means:

- an activity carried on by only one person in circumstances that may reasonably be taken to indicate that the person does not desire to be observed by any other person; and
- an activity carried on by more than one person in circumstances that may reasonably be taken to indicate that at least one party to the activity desires that it be observed only by the other parties

but does not include an activity in a ‘public place’ (which includes a place to which free access is permitted to the public with the express or tacit consent of the owner or occupier of that place).

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ST1-FOR-04	1	11.2023	11.2025	New Position Statement which sets out Bene’s position on the use of optical surveillance devices in the private rooms of older people living in residential care	CEO