

# Office of the Public Advocate

## **Inquiry into the use of electronic monitoring at disability accommodation sites in Queensland**

A systemic advocacy report

**May 2014**

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# Terms used in this report

Term	Definition
Accommodation support	A funded service that provides the support needed by a resident to live at a disability accommodation site. The support provided typically includes assistance with daily activities such as self care, domestic tasks, mobility and communication.
Audio monitors	Audio monitors record and monitor speech. The most common audio monitors used at disability accommodation sites are baby monitors and intercoms.
Community Visitor	A person employed by the Community Visitor Program who is empowered by the <i>Guardianship and Administration Act 2000</i> to visit visitable sites. Visitors inquire into and lodge complaints about issues raised by consumers or by concerned members of the community. They focus on issues affecting individual consumers and systemic issues that place consumers at risk of abuse, neglect or exploitation.
Disability accommodation site (site)	A place, other than a private family dwelling, where residents live and receive accommodation support services. This includes the Forensic Disability Service. For the purposes of this inquiry, this is limited to 'visitable' sites as per the <i>Guardianship and Administration Act 2000</i> .
Electronic monitoring	The process of capturing audio, visual, positional or virtual information about a person using electronic methods. Only audio and visual electronic monitoring was examined in this inquiry.
Electronic monitoring device	Refers to devices that are used to collect information about an individual via electronic means. For the purposes of this inquiry, this primarily refers to audio and visual electronic monitoring devices.
Formal substitute decision-maker	A guardian under the <i>Guardianship and Administration Act 2000</i> or an attorney under the <i>Powers of Attorney Act 1998</i> who can make decisions for a matter on behalf of an adult with impaired decision-making capacity. The nature of a guardian's or attorney's appointment <u>may</u> allow them to make decisions about electronic monitoring.
Informal decision-maker	A member of the resident's support network who makes decisions on behalf of a resident; this may include family members, close friends, or other people that provide support.
Organisation	A profitable or not-for-profit business or government department that provides accommodation support at disability accommodation sites.

Term	Definition
Personal information	Information that is associated with an identifiable living individual. It can include correspondence, audio recordings, images, alpha-numerical identifiers and combinations of these. For information to be personal information it must be about an individual and the individual's identity must be reasonably ascertainable from the information or opinion.
Products of electronic monitoring	The information captured during the process of electronic monitoring, whether or not it is stored or retained.
Resident	A person with impaired decision-making capacity and/or another type of impairment or disability who lives at a disability accommodation site.
Restrictive practices	The use of containment, seclusion, chemical, physical or mechanical restraint, or restricting access to objects as defined under the <i>Disability Services Act 2006</i> .
Site	See Disability accommodation site
Visual monitors	Visual monitors record and monitor visual images. The most common visual monitors used at disability accommodation sites are closed circuit cameras, still image cameras, and portable video devices.

# Introduction

## About this Report

This report presents the findings of a collaborative inquiry undertaken by the Office of the Public Advocate, the Office of the Adult Guardian and the Community Visitor Program into the prevalence of, and reasons for, the use of electronic monitoring at disability accommodation sites in Queensland. It aims to highlight some of the potential risks for people with impaired decision-making capacity in the use of this technology and discusses the human rights and legislative frameworks that apply to the use of electronic monitoring.

In this report, the term electronic monitoring devices refers to devices that are used to collect information about an individual via electronic means. For the purposes of this inquiry, this is limited to audio and visual electronic monitoring devices.

*Audio monitors* record and monitor speech. The most common audio monitors used at disability accommodation sites are baby monitors and intercoms. *Visual monitors* record and monitor visual images. Closed circuit cameras, still image cameras, and portable video devices are the most commonly used visual monitors at disability accommodation sites.

The use of technology as an aid to support is not new. For example, call buttons have been used in hospital and aged care settings for many years. However, while the use of such technology seeks to enhance support and improve responsiveness, it is apparent that increasingly sophisticated devices are being used.

The provision of accommodation support, both for people with disability and people who are ageing, occurs across a variety of environments, each with differing facilities, equipment and practices. These environments are dynamic in their endeavours to increase responsiveness to changing needs and expectations, and avail themselves of evolving technologies that may be of benefit to clients.

It is not unreasonable, therefore, to expect that electronic monitoring devices may have a place within contemporary service delivery, particularly given that similar advancements in assistive technologies have been of enormous benefit to the effectiveness and sustainability of support.

An article published in the *Courier Mail* in December 2012 describing the use of baby monitors and closed circuit cameras in nursing homes<sup>1</sup> alerted the Office of the Public Advocate to the possibility that such devices may also be in use at disability accommodation sites. Initial enquiries however yielded very little information about the extent to which electronic monitoring devices might be used in these settings.

Given that the use of electronic monitoring invariably involves the collection of personal information, it raises important issues of privacy for people with impaired capacity. As an emerging issue, there has been little attention given to the privacy issues raised by the use of electronic monitoring in relation to people with impaired capacity. This creates significant risks for both the organisations that use electronic monitoring and the vulnerable adults that are subject to it.

Given the potential for significant breaches of privacy that may arise as a result of the use of electronic monitoring, and in response to the lack of publicly-available research into the prevalence and use of electronic monitoring in providing accommodation support services for people with disability, the Office of the Public Advocate, the Office of the Adult Guardian, and the Community Visitor Program collaborated to undertake an inquiry into the use of electronic monitoring at disability accommodation sites in Queensland.

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<sup>1</sup> Renee Viellaris, 'Questions Raised Over Baby Monitors in Queensland Nursing Homes', *The Courier Mail* (online), 28 December 2012 <<http://www.couriermail.com.au/ipad/questions-raised-over-baby-monitors-in-queensland-nursing-homes/story-fn6ck51p-1226544338675>>.

## Technology and Privacy

Electronic monitoring has become commonplace and generally accepted in many aspects of modern life. Our activities are monitored in public places through closed circuit cameras operated by private security contractors; phone calls are monitored for training and quality purposes; and electronic keys and card readers are used in many workplaces.

Advances in technology often present significant benefits to society. Most people accept electronic monitoring as being part and parcel of living in contemporary society, and in many cases appreciate the sense of safety and security it offers.

Australians are however also becoming increasingly aware of their right to privacy,<sup>2</sup> a right that is articulated in human rights instruments such as the *Universal Declaration of Human Rights*.<sup>3</sup>

For example the findings from a survey undertaken by the Office of the Australian Information Commissioner, indicates that 'one third (33%) of Australians say that they have had problems with the way that their personal information was handled in the previous year'.<sup>4</sup>

The same study found that nearly nine in ten Australians (85%) believe that employers should have a policy covering issues such as when they will use surveillance equipment to monitor employees and when they will monitor telephone conversations, amongst other actions involving the use of devices to monitor and/or record individual activities.

There are two forms of privacy that are generally afforded legal protection: the privacy of personal information and personal privacy. Personal privacy and breaches of information privacy are currently the subject of an inquiry into *Serious Invasions of Privacy in the Digital Era* being undertaken by the Australian Law Reform Commission (ALRC).<sup>5</sup> In undertaking this inquiry, the ALRC has acknowledged that the right to personal privacy is not currently well understood or defined in Australia.

While the right to personal privacy is not generally well reflected in legislation, certain provisions in the Queensland *Criminal Code* give rise to the potential for staff and organisations that use electronic monitoring to commit a misdemeanour offence in respect of a breach of privacy. For example, it may be an offence to visually monitor a resident at a disability accommodation site if the resident is in a private place (such as a bathroom or bedroom), or is engaging in a private act (such as using a toilet) and the recording is for the purpose of observing or recording that private act.<sup>6</sup> For the monitoring to be an offence, it must be conducted without the person's consent and in circumstances where a reasonable adult would expect to be afforded privacy.<sup>7</sup>

It may also be an offence for a person to distribute any such recording without the other person's consent.<sup>8</sup> The term 'distribution' has a broad meaning and includes exhibiting a recording or making it available for access.<sup>9</sup>

Furthermore, the right to privacy of personal information is the subject of significant protections through the *Information Privacy Act 2009* (Qld) and the *Privacy Act 1988* (Cth). Every time a person's image is captured on a camera, or their voice is captured on some type of recording device, it is highly likely that personal information, as per the purposes of both Acts, is being captured.

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<sup>2</sup> Office of the Australian Information Commissioner, *Community Attitudes to Privacy Survey: Research Report* (Australian Government, 2013) 4.

<sup>3</sup> *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, 3<sup>rd</sup> sess, 183<sup>rd</sup> plen mtg, UN Doc A/810 (10 December 1948) art 22 ('*Universal Declaration of Human Rights*').

<sup>4</sup> Office of the Australian Information Commissioner, above n 2, 3.

<sup>5</sup> Australian Law Reform Commission, *Serious Invasions of Privacy in the Digital Era*, Discussion Paper No 80, (2014).

<sup>6</sup> *Criminal Code Act 1899* (Qld) sch 1 ss 227A(1)(b)(i)-(ii).

<sup>7</sup> *Ibid* sch 1 ss 227A(1)-(1)(a).

<sup>8</sup> *Ibid* sch 1 s 227B(1).

<sup>9</sup> *Ibid* sch 1 ss 227B(2)(a)-(b).

This means that organisations that provide accommodation support at their sites and that utilise electronic monitoring need to ensure that staff at all levels clearly understand their legal obligations as well as the human rights frameworks for the protection of the privacy of people with disability, as well as that of staff and visitors to these facilities.

## Contemporary contexts underpinning supports and services for people with disability

In recent years, the *Convention on the Rights of Persons with Disabilities* has heralded a paradigm shift in the way that people think about disability. Underpinned by what is known as the ‘social model of disability’, the Convention incorporates a contemporary approach to disability and emphasises the importance of:

- recognising that disability is an evolving concept and that disability results from the interaction between people with impairments and their surroundings;
- the right and capacity of people with disability to make valued contributions to their communities; and
- recognising that all categories of rights apply to people with disability, who should therefore be supported to exercise those rights.<sup>10</sup>

As indicated above, it is now understood that the extent to which a person’s impairment is ‘disabling’ may be impacted by the availability of appropriate support and the way in which support is provided; it may also be exacerbated by environmental and attitudinal barriers.

This contemporary understanding is reflected in the policy and legislation underpinning the National Disability Insurance Scheme (NDIS), introduced in Australia in 2013, which seeks to improve social and economic participation by people with disability.

Given that the NDIS will enable access to disability supports for an increasingly greater number of people with disability, it is anticipated that there will be a resultant increase in people and organisations seeking to provide the support required by people with disability to enable their effective participation in community, including an increasing number of private organisations.

The evolving landscape of disability service provision is also likely to bring with it an increasing interest in the way that technological advances can benefit people with disability both by way of individual assistive devices and also technology that can aid the quality of service provision itself.

In the latter scenario, this may give rise to challenges in achieving the appropriate balance between technology as a support-enhancing tool versus a means by which to achieve cost efficiencies in staffing levels.

For example, while the use of electronic monitoring devices may well enable greater responsiveness by staff, they also present a significant risk of invasion of privacy.

Balancing these imperatives is important. The considerations for best practice at the end of this report, developed in collaboration with the Office of the Information Commissioner (Queensland), are provided to assist disability service providers to achieve this balance.

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<sup>10</sup> *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, [2008] ATS 12 (entered into force 3 May 2008) (*‘Convention on the Rights of Persons with Disabilities’*).



# Methodology

This inquiry sought to gather information about the prevalence of, and reasons for, the use of electronic monitoring at disability accommodation sites in Queensland. A quantitative methodology was used to systematically and objectively explore the prevalence and use of electronic monitoring.

The primary data collection for this research was undertaken in two phases. The first phase was a census of 'visitable' disability accommodation sites conducted by the Community Visitor Program (CVP). The second phase was a voluntary online survey of the organisations that provide accommodation support services for people with disability in Queensland.

## Census of disability accommodation sites

The census of disability accommodation sites, conducted by the CVP, forms the most significant part of this inquiry. Community Visitors visited 861 sites (operated by 90 different organisations) in Queensland between March and June 2013. The accommodation support services that are delivered at the disability accommodation sites that were the subject of this inquiry are either provided or funded by the Department of Communities, Child Safety and Disability Services (DCCSDS).

The site census data collection tool is presented in Appendix 1.

## Survey of organisations

Between January and April 2014, an online survey of organisations was undertaken to provide an organisational perspective on the use of electronic monitoring at disability accommodation sites in Queensland. In addition to seeking organisational-level responses to the issues explored in the site census, the survey also examined the extent to which organisations were aware of the use of electronic monitoring at disability accommodation sites operated by their organisation, and the existence of policy frameworks for the use of electronic monitoring.

Of the 40 organisations that responded to the survey, only 12 were ones that had been identified through the site-level census as using electronic monitoring. However, the survey responses of two of those organisations were excluded from the analysis due to incomplete data. This means that responses from 10 of the 40 organisations (25%) identified in the site census as using electronic monitoring were represented in the survey of organisations.

While only accounting for a small number of organisations, the responses of these 10 organisations were invaluable to the inquiry as they highlighted the attitudes and policy frameworks in place where electronic monitoring was in use. It is the responses from these 10 organisations that are presented in the findings that relate to organisational survey results.

The organisational survey is presented in Appendix 2.

## Privacy and Confidentiality

Maintaining confidentiality throughout the inquiry was of primary concern to the Office of the Public Advocate and the Office of the Adult Guardian. All staff involved in the inquiry were bound by the appropriate use and disclosure of official information provisions of the Public Service Code of Conduct. These provisions require that data is securely stored with access limited to those who were involved in the reporting on information, and is only used for the purpose for which it was collected.

This report on the findings of the inquiry only presents aggregated data. Individuals and organisations are not identified in this report.

# Results of the inquiry

## Snapshot of findings

Of the 861 sites involved in the site census, 13% utilised some form of electronic monitoring of their residents. The electronic monitoring devices in use at the sites were evenly split between audio monitors (48%) and visual monitors (44%).

Most residents subject to electronic monitoring had an intellectual disability (89%). This is consistent with the overall profile of people residing at disability accommodation sites.

The most common reasons cited by sites for using electronic monitoring were the health issues of residents (45%) followed by their desire to safeguard residents from accidental harm (19%). The existence of challenging behaviours (10%) or self-harming behaviours (6%) were less commonly cited but still notable reasons. Residents subject to restrictive practices were more likely to be the subject of electronic monitoring than residents who were not subject to restrictive practices.

Of the sites that utilised electronic monitoring, only 31% had a policy framework to guide the way in which electronic monitoring is used. However, it would appear that electronic monitoring was not always carried out in accordance with these policy frameworks. Further there was often disparity between what organisations reported in the survey as their understanding of what was occurring at a site level, and what was revealed by the site census.

For example, while the majority of organisations indicated that they sought written (70%) or verbal (20%) consent from residents prior to commencing electronic monitoring residents, a third of sites (33%) reported that it was not the practice at the site to seek consent prior to monitoring residents, and actual consent had not been sought from 27% of residents who were subject to electronic monitoring at the time of the site census.

Further while 90% of organisations reported, that as a matter of policy, access to electronic monitoring and the products of electronic monitoring was restricted, less than a quarter (21%) of sites reported that they actually restricted access to electronic monitoring devices and the products of electronic monitoring at the site.

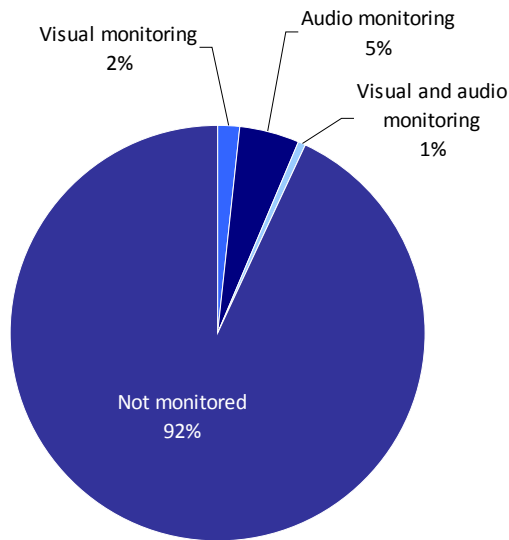
## Prevalence, profile and reasons for electronic monitoring

### Prevalence

Of the 861 sites involved in the census, 114 sites (13%) used some form of electronic monitoring of their residents. Electronic monitoring was utilised by both the government provider of accommodation support as well as non-government organisations funded by government to provide accommodation support.

Of the 2,748 residents included in the site census, 195 residents (approximately 8%) were subject to some form of electronic monitoring. Almost 5% of residents of disability accommodation sites were subject to audio monitoring only, 2% were subject to visual monitoring only, and 1% were subject to both (Figure 1).

**Figure 1** Residents by electronic monitoring status



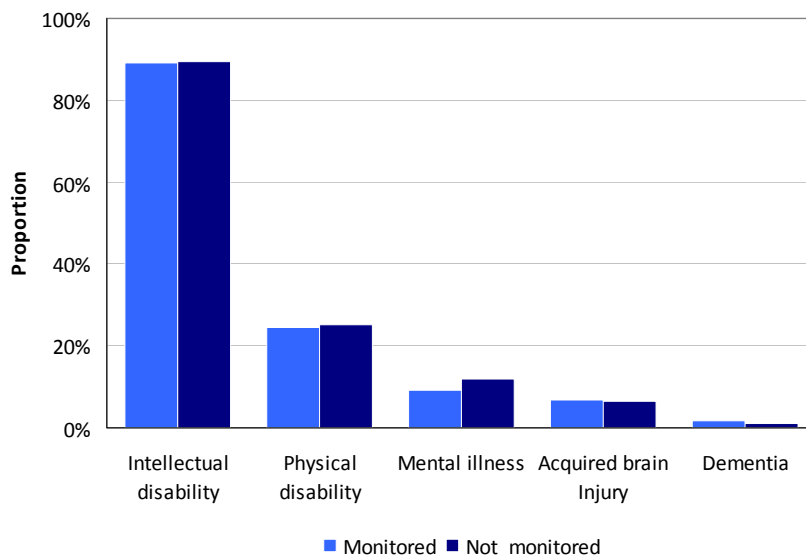
## Demographic profile of residents subject to monitoring

Overall there was little difference in the age profile between those residents subject to electronic monitoring and those who were not. The one exception is that residents in the 40-44 year age group were more commonly subject to electronic monitoring than other age groups.

More male residents (63%) were subject to electronic monitoring than female residents (37%).

The most common type of disability amongst residents was intellectual disability (89%), followed by physical disability (25%). The other disability types of mental illness (12%), acquired brain injury (6%) and dementia (1%) were less common (Figure 2).

**Figure 2** Disability profile of residents by electronic monitoring status



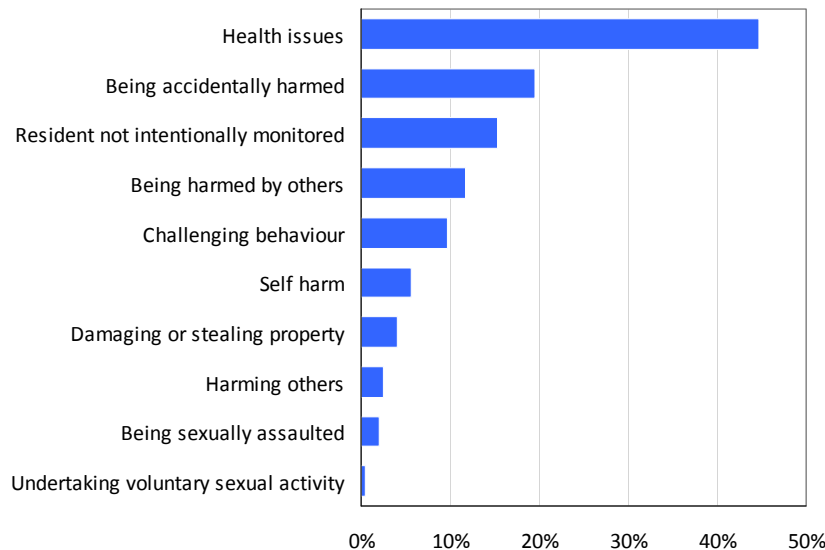
**Note:** Residents may have multiple disability types.

## Reasons identified for electronic monitoring

As seen in Figure 3, the most common reason provided by sites for monitoring residents was the health issues of residents (45%). Safeguarding residents from harm, either accidental (19%) or from the actions of others (12%), was also a common rationale for monitoring residents. Fifteen percent (15%) of residents were unintentionally monitored.

Electronic monitoring was being used in response to challenging behaviours for nearly one in ten residents who were subject to electronic monitoring.

**Figure 3** Reasons for electronically monitoring



**Note:** The census allowed for sites to indicate more than one reason for a resident to be electronically monitored.

Organisational and site-level responses regarding the reasons for electronic monitoring were generally consistent. However, substantial disparity was noted between organisational responses and aggregated site-level data in the areas of challenging behaviour, harming others and self harm.

## Residents subject to restrictive practices and substitute decision-making

Of the 2,748 residents captured in the site census, 519 (19%) were subject to either an approved or unapproved restrictive practice. Residents who were subject to restrictive practices were twice as likely to be subject to electronic monitoring (12%) than residents who were not subject to restrictive practices (6%).

Of the residents subject to electronic monitoring, 44% had a formal substitute decision-maker and 70% had an informal decision-maker. Some residents subject to electronic monitoring had both a formally appointed decision-maker and an informal decision-maker.

# Profile of electronic monitoring devices

## Types of monitoring devices

There were 248 electronic monitoring devices in use across the 114 sites identified as using electronic monitoring through the site census. The electronic monitors in use were split almost evenly between audio monitors (48%) and visual monitors (44%), with roughly 8% of devices possessing both audio and visual capabilities.

The individual sites that use electronic monitoring generally employed a small number of visual or audio monitors to electronically monitor residents. Almost 70% of the sites identified as using visual monitoring used between one to four visual monitors. The average over all sites was calculated to be 1.2 visual monitors per site.

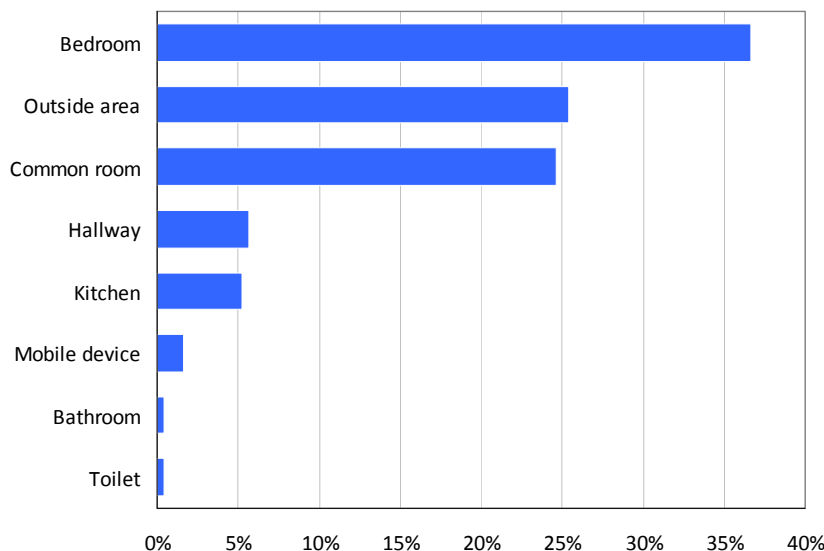
There were however notable examples where sites employed substantially more visual electronic monitoring devices to monitor residents. Three separate sites were recorded to each use 12 visual monitors and one site used 32 visual monitors. On average, this equates to between 3.5 to six visual monitors per resident at these sites.

## Locations of monitoring devices

Generally speaking, electronic monitoring devices were most often located in bedrooms (37%), the exterior of the house (25%) and common rooms (25%). Electronic monitoring devices located in outside areas were almost always visual monitors.

Electronic monitoring devices were also installed in hallways (6%), kitchens (5%), bathrooms (0.4%) and toilets (0.4%). A small proportion (2%) of electronic monitoring devices were mobile recording devices (Figure 4).

**Figure 4** Locations of electronic monitors at sites



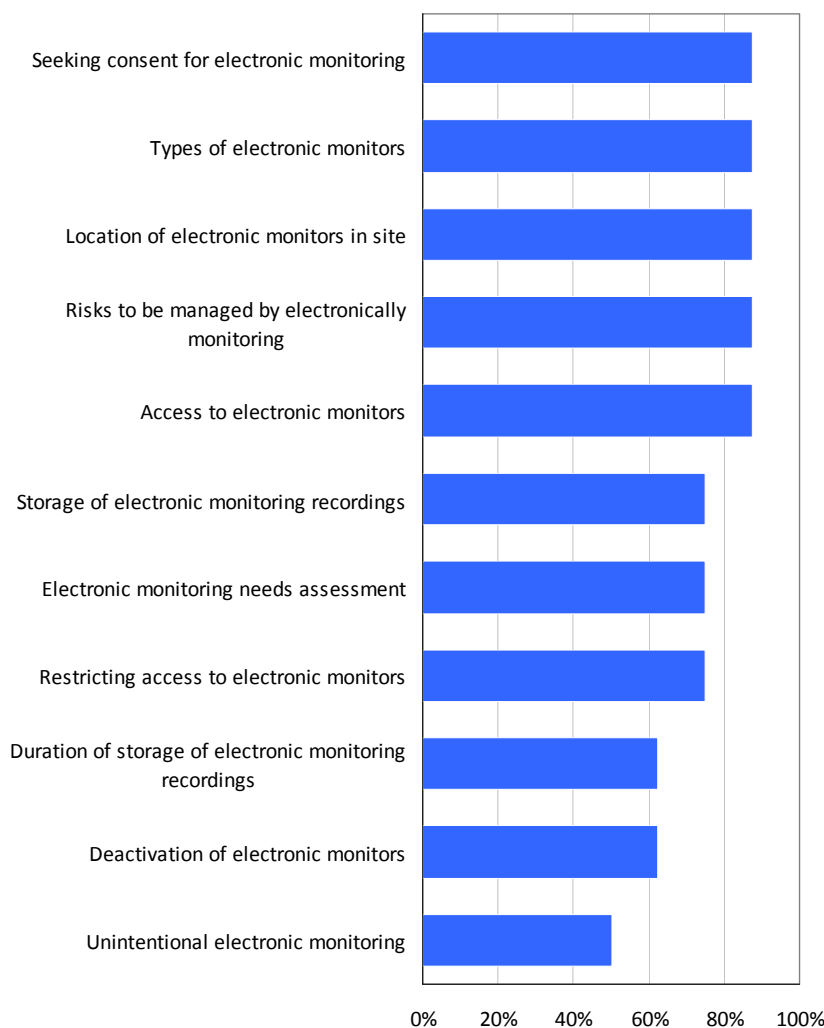
# Policy and Practice

## Existence of policies and procedures

Of the sites utilising electronic monitoring, only 31% identified that they had a policy in place to guide the use of electronic monitoring. This contrasts significantly with the organisational survey data in which the majority of organisations that use electronic monitoring (80%) indicated that, at minimum, they had a procedure to describe how electronic monitoring should be used. One in five organisations (20%) had neither a policy nor procedure.

The survey of organisations collected information on the key elements included in electronic monitoring policies. Figure 5 indicates the key elements that organisations stated were included in their organisational policies for electronic monitoring.

**Figure 5** Key elements of organisational electronic monitoring polices or procedures



**Note:** Organisations were able to indicate multiple elements in responding to the question about policy content.

# Consent to electronic monitoring

## Seeking consent

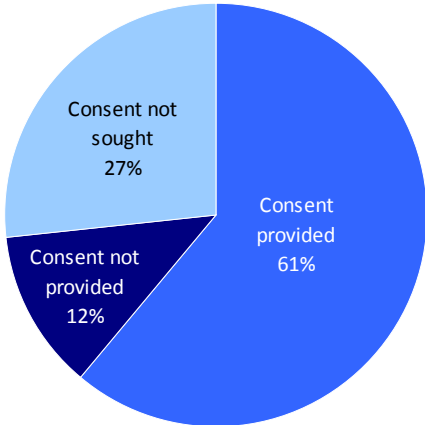
While the majority of organisations indicated that they seek either written (70%) or verbal (20%) consent prior to electronically monitoring residents, this conflicted with the data obtained from the site census. One third of sites (33%) reported that it was not the practice at the site to seek consent prior to monitoring residents. At sites using electronic monitoring where seeking consent was reported to be the practice, 29% of sites sought written consent and 38% sought verbal consent.

## Levels of consent

The census also examined whether actual consent had been obtained from each resident who was subject to electronic monitoring. Consent was only sought from 73% of residents who were subject to electronic monitoring at the time of the census. The remaining 27% had not been asked to provide consent.

Of particular concern is that 12% of residents subject to electronic monitoring had declined to provide consent and were electronically monitored regardless.

**Figure 6** Provision of consent by electronically monitored residents



## From whom consent was sought

The survey of organisations indicated that organisations believe that consent is sought most often from a resident’s formal decision-maker (80%). Organisations also indicated that they believed consent to be sought equally as often from the resident (60%) as from an informal decision-maker (60%).

However, the site census revealed that these figures are inconsistent with the site-level practices for these organisations. Aggregated data from the site census revealed that, in practice, organisations rarely seek consent from residents (29%) but may seek consent from either informal (61%) or formal decision-makers (47%).

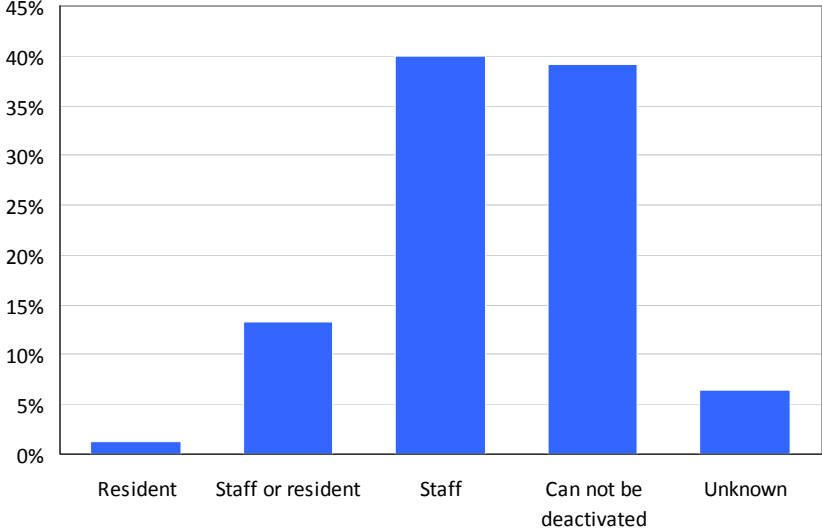
## Unintentional monitoring

It is worth noting that the site census found that 15% of residents were unintentionally monitored, although the organisational survey results indicated that only 10% of organisations acknowledge that unintentional monitoring occurred at their sites.

# Residents' ability to deactivate monitors

Residents were rarely able to exercise choice over whether or not the electronic monitoring devices were deactivated. Almost two in five devices (39%) were incapable of being deactivated, which may indicate that many sites are unable to offer residents this choice (Figure 7).

**Figure 7** Deactivation of electronic monitors at sites



Where residents were able to deactivate devices, these were almost always audio monitors. Based on anecdotal reports from Community Visitors, these audio monitors were most often baby monitors that can be easily deactivated.

By contrast, the monitors that were not able to be deactivated were almost all visual monitors. The site census identified 17 visual monitors located in residents' bedrooms that could not be deactivated.

## Security and access

In practice, one in five (21%) sites secured the electronic monitoring devices and the products of electronic monitoring. Where the devices were secure, the most common ways in which access to the electronic monitoring devices was restricted included isolation of the devices in a secure room with a locked door (9%) or securing the devices via electronic means such as passwords (6%).

At an organisational level however, 90% of organisations were of the understanding that their sites restricted access to electronic monitoring devices and the products of electronic monitoring. Half (50%) of organisations also indicated that they believed that access to the electronic monitoring devices and products of electronic monitoring was limited only to staff.

## Needs assessment

A large majority of respondent organisations (90%) indicated that it was their policy to undertake needs assessments prior to employing electronic monitoring. It was reported that individual needs assessments were performed by 80% of organisations and 10% of organisations performed needs assessments at the site level.

A small proportion (10%) of organisations indicated that they did not perform a needs assessment at all.



Organisations indicated that most needs assessments (80%) were undertaken by staff in the head office of the organisation. The survey did not collect information on whether these assessments were conducted in person with the resident proposed to be subject to electronic monitoring.

## Policy compliance

One in five organisations had no process to assess compliance with their electronic monitoring policy or procedure.

All organisations that used electronic monitoring and that had an electronic monitoring policy or procedure indicated that they monitor compliance with the direction provided through these documents by either random (25%) or regular (75%) audits.

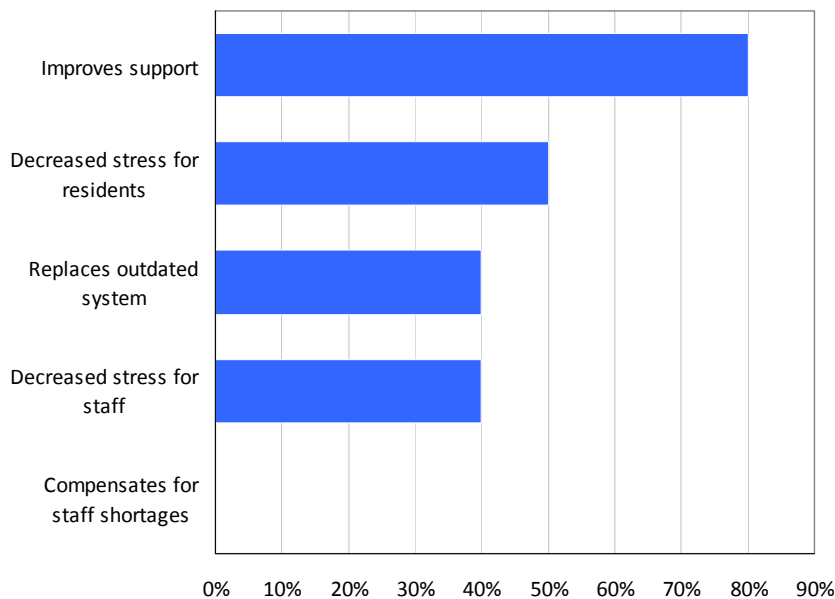
A large proportion of organisations (40%) nominally audit electronic monitoring policy compliance through assessments undertaken by site staff. External auditors were equally common (40%).

## Benefits of electronic monitoring

Organisations and sites were generally in agreement regarding the perceived benefits or results from the use of electronic monitoring. Organisations indicated that the most common benefit from using electronic monitoring was improved support for residents (80%); followed by decreased stress for residents (50%); decreased stress for staff (40%) and replacing outdated systems (40%) (Figure 8).

Interestingly, none of the respondents to the organisational survey indicated that electronic monitoring compensated for a shortage in staff while a minority of respondents at the site-level (9%) did.

**Figure 8** Benefits of using electronic monitoring



**Note:** Organisations were able to indicate multiple benefits in responding to the question about the benefits of using electronic monitoring.

# Discussion

## Concerns arising from the findings

Used in 13% of the disability accommodation sites surveyed, electronic monitoring is a significant issue but is not yet common place.

Despite the relatively limited use of electronic monitoring, there are a number of concerns that arise from the results of this inquiry. Given that the use of electronic monitoring as a tool to aid in service provision is a relatively new phenomenon in the disability services sector, the timing of this inquiry provides the opportunity to address these concerns proactively.

A key concern is that at a third of sites, it was reported that consent for the use of electronic monitoring is not being sought from either the person with disability or a substitute decision-maker. While concerning from a rights-based perspective, this also shows that organisations may lack an understanding of their legal obligations.

The location of monitors in bedrooms and bathrooms is particularly invasive, and may give rise to criminal liability.<sup>11</sup> Furthermore, there seems to be little consideration of whether options should be available for residents to deactivate monitors when they would like some privacy and activate it at times when they would appreciate the safety and security of monitoring.

While most sites appear to use electronic monitoring judiciously, this inquiry identified sites with as many as 32 monitors in place. The use of such extensive electronic monitoring represents a potentially significant invasion of the privacy of residents at that particular site. As noted above, of equal concern from a privacy perspective is the significant proportion of electronic monitoring devices located in people's bedrooms (37%) and, while in smaller numbers, in bathrooms (0.4%) and toilets (0.4%).

Whether one device or many, the potential for a breach of privacy is significant and, by association, may have serious implications for staff and organisations.

Approximately one third of residents who are subject to electronic monitoring are also subject to restrictive practices. Restrictive practices include for example detaining a person in their residence, secluding a person in a room, physically restraining a person or using medication to restrain them. The use of these practices in funded disability services in Queensland is subject to the appropriate consent from a guardian for restrictive practice matters or from the Queensland Civil and Administrative Tribunal. The use of electronic monitoring is another practice that may restrict a person's rights, and it is of particular concern that in many cases it seems it is utilised without appropriate consent.

The general lack of policy frameworks guiding the use of electronic monitoring at disability accommodation sites should be addressed as a priority. A related concern is that, even where there are policies, these do not seem to be implemented in a consistent manner at the site level. This could suggest that at a site level there may be also a lack of awareness of the human rights and legal obligations that exist in relation to the use of electronic monitoring and perhaps a lack of guidance for staff in the use of such practices.

The following section outlines the human rights and legal frameworks for the use of electronic monitoring in disability services.

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<sup>11</sup> *Criminal Code Act 1899* (Qld) sch 1 s 227A(1).

# Human rights, legal frameworks and electronic monitoring

## Human rights

Any use of electronic monitoring should be underpinned by a human rights framework, particularly where it is used in the course of providing support for vulnerable adults, including adults with disabilities and older people who may be at heightened risk of privacy invasion.

The right to privacy is recognised in the United Nations *Universal Declaration of Human Rights* (UDHR), the *International Covenant on Civil and Political Rights* (ICCPR), and in numerous other international treaties.

The UDHR and ICCPR provide that:

*No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interferences or attacks.*<sup>12 13</sup>

Importantly, the *Convention on the Rights of Persons with Disabilities* (CRPD) states that this right exists regardless of the place of residence or living arrangements. It also obligates state parties to protect the privacy of people with disability on an equal basis with others.

*No person with disabilities, regardless of place of residence or living arrangements, shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence or other types of communication or to unlawful attacks on his or her honour and reputation. Persons with disabilities have the right to the protection of the law against such interference or attacks.*

*State Parties shall protect the privacy of personal health and rehabilitation information of persons with disabilities on equal basis with others.*<sup>14</sup>

This is important because some people with disability may live in accommodation support arrangements where, as this study suggests, they may be particularly vulnerable to invasions of their privacy.

So as not to be arbitrary in nature, organisations should only carry out electronic monitoring when it is in accordance with a policy framework (that is consistent with human rights and legislative frameworks), where it is reasonable in the circumstances, and where it is related to a *bona fide* operating purpose of the agency and is proportionate to that purpose.

Programs, policies and legislation should take into account the specific ways in which people with disability may be vulnerable to invasions of their privacy, or the heightened risk of privacy invasion experienced by people with disability,<sup>15</sup> particularly in accommodation support services.

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<sup>12</sup> *Universal Declaration of Human Rights* art 12.

<sup>13</sup> *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force on 23 March 1976) art 17 ('*International Covenant on Civil and Political Rights*').

<sup>14</sup> *Convention on the Rights of Persons with Disabilities* art 22.

<sup>15</sup> Phillip French, *Human Rights Indicators for People with Disability: A Resource for Disability Activists and Policy Makers* (Queensland Advocacy Incorporated, 2008) 89.

Consistent with the relevant human rights instruments discussed above, people with disability must not be subject to unlawful or arbitrary interference with their privacy; this right is accorded to all people irrespective of the existence of disability.<sup>16</sup> This means that organisations must seek to comply with their obligations under the relevant legislative frameworks when implementing electronic monitoring.

From a human rights perspective, the invasion of privacy represented by electronic monitoring cannot be justified for issues related to lack of resources, such as insufficient support staff.

## The law and legal frameworks for privacy

The Australian Law Reform Commission (ALRC) has recognised that the common law is still developing in Australia in terms of recognising the right to personal privacy and is subject to some uncertainty. The ALRC is currently undertaking an inquiry in relation to whether there should be a statutory cause of action for serious invasions of personal privacy. In some cases however, a person may be able to bring an action for trespass to protect themselves from physical intrusions<sup>17</sup>, serious breaches or nuisance in relation to invasions of privacy.<sup>18</sup>

In Queensland, as discussed previously, the *Criminal Code* protects certain breaches of a person's privacy via visual recording.<sup>19</sup> The Code also prohibits the distribution of these recordings, which includes making the recordings available for access.<sup>20</sup>

More generally, the right to privacy of personal information is the subject of significant protections through legislative frameworks at both the Commonwealth and State/Territory levels. In Queensland, the *Information Privacy Act 2009* provides for the protection of personal information collected and held by Queensland government agencies and provides rules for what those agencies must and may do with personal information.

Queensland state government departments (such as DCCSDS) and their 'bound' contracted service providers (that is, non-government agencies that DCCSDS have contracted with to deliver services) have important obligations under the *Information Privacy Act 2009* in the way they deal with personal information, which includes the way they use electronic monitoring.

## Rights for individuals

Under the *Information Privacy Act 2009*, residents with disability who are subject to electronic monitoring have the following rights:

- They can expect the organisations and sites where they live to comply with their privacy obligations under the *Information Privacy Act 2009* (see below);<sup>21</sup>
- They can expect that their personal information (gained through electronic monitoring) will be protected;<sup>22</sup>
- They can make a complaint to the organisation if the organisation does not respect their privacy obligations under the *Information Privacy Act 2009*, for example from failing to protect their personal information gained through electronic monitoring;<sup>23</sup> and

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<sup>16</sup> *Universal Declaration of Human Rights* art 12; *International Covenant on Civil and Political Rights* art 17.

<sup>17</sup> *TCN Channel Nine Pty Ltd v Anning* (2002) 54 NSWLR 333 and *TCN Channel Nine Pty Ltd v Ilvari Pty Ltd* (2008) 71 NSWLR 323, cited in Australian Law Reform Commission, *Serious Invasions of Privacy in the Digital Era*, Issues Paper No 43 (2013) 12.

<sup>18</sup> *Raciti v Hughes* (1995) 7 BPR 14837, *Stoakes v Brydes* [1958] QWN 5 and *Khorasandjian v Bush* [1993] QB 729, cited in Victorian Law Reform Commission, *Surveillance in Public Places*, Final Report No 18 (2010) 51.

<sup>19</sup> *Criminal Code Act 1899* (Qld) sch 1 s 227A(1) (see discussion of this offence in the introduction).

<sup>20</sup> *Ibid* sch 1 s 227B(1).

<sup>21</sup> *Information Privacy Act 2009* (Qld) s 27.

<sup>22</sup> *Ibid* s 27, sch 3 (Information Privacy Principles).

<sup>23</sup> *Ibid* s 166.

- They can make a complaint to the Information Commissioner where they think that the organisation has carried out electronic monitoring in a way that has failed to comply with their privacy obligations and has not addressed their initial complaint.<sup>24</sup>

## Obligations on agencies

In turn, agencies that are utilising electronic monitoring, and those entities that they have contracted their services out to, have a number of obligations under the *Information Privacy Act 2009*, including the obligation to comply with the Information Privacy Principles under the Act.<sup>25</sup>

The Information Privacy Principles address the following issues:

- Collection of personal information;<sup>26</sup>
- Storage and security of personal information;<sup>27</sup>
- Providing information about personal information held by an agency;<sup>28</sup>
- Access to and amendment of documents containing personal information;<sup>29</sup>
- Accuracy and relevance of personal information;<sup>30</sup>
- Use of personal information;<sup>31</sup> and
- Disclosure of personal information.<sup>32</sup>

## Best practice considerations

The following section outlines a range of considerations that organisations should take account of in their policies, procedures and practices associated with any actual or proposed use of electronic monitoring. They are underpinned by a mix of legal obligations, human rights principles and best practice approaches. However it should be noted that this information does not constitute a comprehensive list of legal obligations and organisations should ensure that they seek independent legal advice in this regard.

## Assessing the need for electronic monitoring

Prior to implementing electronic monitoring, the need to use electronic monitoring must be fully assessed. The use of electronic monitoring must relate to a lawful purpose that is directly related to the function of the organisation.<sup>33</sup>

The organisation should also consider whether electronic monitoring, including the particular type of monitoring being considered for use, is the best way to achieve this purpose. For example, even while electronic monitoring may be considered necessary, it may not be necessary to actually keep the audio or visual recordings and 'live' monitoring may suffice.<sup>34</sup>

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<sup>24</sup> Ibid s 165.

<sup>25</sup> Ibid ss 34-35.

<sup>26</sup> Ibid s 27, sch 3 principles 1-3.

<sup>27</sup> Ibid s 27, sch 3 principle 4.

<sup>28</sup> Ibid s 27, sch 3 principle 5.

<sup>29</sup> Ibid s 27, sch 3 principles 6-7.

<sup>30</sup> Ibid s 27, sch 3 principle 8.

<sup>31</sup> Ibid s 27, sch 3 principle 10.

<sup>32</sup> Ibid s 27, sch 3 principle 11.

<sup>33</sup> Ibid sch 3 principle 1.

<sup>34</sup> Ibid sch 3 principle 3.

Privacy obligations include requirements that the collection of personal information must be lawful and fair; not an unreasonable intrusion into a person's domestic affairs; and the person must be made generally aware of the purpose for the collection of personal information and those to whom their personal information may be disclosed.<sup>35</sup> The process of obtaining consent is an opportunity for any proposed use of electronic monitoring devices to be an open and transparent process; this will be discussed further in the next section.

The organisation should consider the development of a needs assessment tool. For each resident that will be subject to electronic monitoring, this tool should objectively establish:

- The purpose for which electronic monitoring is being considered;
- Whether not using electronic monitoring may result in any detriment to the person, and the nature of that detriment;
- The impact on the resident's privacy of the use of electronic monitoring;
- The less invasive or intrusive alternatives that have been considered to meet the need or reduce detriment to the resident and why they are not suitable;
- If there is no less invasive alternative, how electronic monitoring will be used in the least invasive or intrusive way possible; and
- The most appropriate means to communicate with the resident (as well as with their family and friends, and staff) with respect to any proposed or actual use of electronic monitoring.

## **Talking to the person about electronic monitoring and obtaining consent**

The organisation must take all reasonable steps to ensure that the resident subject to electronic monitoring is aware of the fact that it is proposed to monitor them and/or that they are currently being monitored.<sup>36</sup> While failing to obtain consent for the collection of personal information may not necessarily represent a breach of privacy, a notice ensuring that the resident is generally aware of the use of electronic monitoring should be given.<sup>37</sup>

The organisation should talk to the resident and explain that is proposed to monitor them and the reason why it is proposed to monitor them.<sup>38</sup> The person providing this explanation must be honest about the use of monitoring and the reason why it is being used and not try to trick or deceive the resident.

The privacy principles require that people are informed about the purpose for which their personal information is collected, any legislative authorisation for the collection, and to whom it is the organisation's usual practice to provide the personal information. This information can be communicated through a notice, termed a 'collection notice', which is generally available to the resident and others. This notice should be in a format that the resident can understand, for example, it could take the form of a poster in the vicinity of the electronic monitoring device.

The organisation should seek the resident's views about electronic monitoring. The resident may also have views or preferences about how electronic monitoring should be utilised. For example the resident may prefer a camera or audio recording device to be in a particular location. They may also like the opportunity to activate the monitor or deactivate it. It may be that they would like the safety and security of being monitored at some times, but find it an invasion of their privacy at other times.

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<sup>35</sup> Ibid sch 3 principle 1.

<sup>36</sup> Ibid sch 3 principle 2.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

Discussions with the resident should include information about all available options, and organisations should ensure all reasonable efforts are made to accommodate a resident's wishes.

The resident's human and legal rights must also be explained to them. They should be told about their right to complain to the organisation about the use of electronic monitoring and if they are not happy with the organisation's response, their right to complain to the Information Commissioner.

Should a resident need assistance to make a complaint, this could be provided by a member of the resident's support network, or if the resident does not have a natural support network (or their friend or relative does not want to make a complaint), an independent advocate. Organisations should ensure that they have processes in place to support the resident to access the assistance that they may require to make a complaint.

Informed consent should be obtained in relation to each resident subject to the intended electronic monitoring; this should ideally be obtained prior to the implementation of any monitoring. This includes those residents who may be subject to incidental or unintentional monitoring.<sup>39</sup>

A person's capacity to give consent to electronic monitoring must be considered carefully. It may be that after time is spent explaining the purpose and need for electronic monitoring to the resident, and seeking their views and wishes on how electronic monitoring can be implemented for them, they are considered to have the capacity to consent to the use of monitoring.

Depending on the nature of their appointment, if a resident has a guardian or attorney for personal matters, that person may be the relevant decision-maker to provide formal lawful consent to the use of electronic monitoring. However, if there is uncertainty regarding whether a particular person can provide consent, advice should be sought from the Queensland Civil and Administrative Tribunal.

The presence of a guardian or attorney however does not mean that the use of electronic monitoring should not be discussed with the resident and their views and wishes sought.<sup>40</sup>

## **The storage and security of information gained from electronic monitoring**

For 'live' recording the organisation should carefully consider who can hear or see the recording. Only those people who need to see or hear the recording should be able to do so. The recording must not be available for other residents, guests, visitors or staff not involved in the care of the resident to see or hear.<sup>41</sup> Access to certain prohibited visual recordings is also covered by s227B of the Queensland *Criminal Code*.

Under no circumstances should live or kept recordings be viewed or listened to for purposes of entertainment or to belittle a person.

If it is necessary to keep the audio or visual recordings, there should be a policy about the storage and destruction of such records. These recordings should be kept in secure storage, where only a limited number of people have access. Accurate records must be maintained about the recordings that have been made and kept.

The recordings should only be used for the purpose for which they were originally made and for no other purpose unless an exemption applies; for example under Information Privacy Principle 10 for the purposes of an audit of health and safety procedures.<sup>42</sup>

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<sup>39</sup> Ibid.

<sup>40</sup> *Guardianship and Administration Act 2000* (Qld) sch 1 pt 1 (general principles); *Powers of Attorney Act 1998* (Qld) sch 1 pt 1 (general principles).

<sup>41</sup> *Information Privacy Act 2009* (Qld) sch 3 principle 4.

<sup>42</sup> Ibid s 27, sch 3 principle 10.

They must also not be disclosed to any person except for the purpose for which they were originally made,<sup>43</sup> or in the other following limited circumstances:

- With the agreement of the resident to whom the recordings relate;
- If satisfied on reasonable grounds that the use is necessary:
  - For a law enforcement activity carried out by a law enforcement agency
  - To prevent or lessen a serious threat to an individual or the public; or
- If its use is otherwise authorised by law for a directly related other purpose.<sup>44</sup>

The resident who is the subject to the monitoring has a right to access the recordings.<sup>45</sup> The resident must be made aware of this right and assisted to access the recordings if they wish to do so.

## Review

A best practice policy must describe the process by which the use of electronic monitoring for a resident will be reviewed. The review periods should not be longer than six months and should occur as frequently as required by the circumstances of the individual or the purposes for which the electronic monitoring is in place.

The review process should revisit the needs assessment for the resident being monitored and determine again if electronic monitoring is required and whether it would be the best option for the resident given the current situation. It should also re-establish consent and re-inform the resident (and any decision-maker/s involved in the decision) about the purpose of the electronic monitoring and their rights.

## Complaints

If a resident believes that the organisation or site where they live has not complied with their obligations under the *Information Privacy Act 2009*, then they can first complain to the organisation. The organisation must deal with the complaint within 45 business days.<sup>46</sup>

If the resident is not satisfied with the way the organisation dealt with the complaint they can then make a complaint to the Information Commissioner.

If resolution of the complaint has not been successful or the Information Commissioner believes the resolution of the complaint cannot be achieved through mediation, the complainant can request that the Information Commissioner refer their complaint to the Queensland Civil and Administrative Tribunal for its determination and potential orders.<sup>47</sup>

## A note on ‘bound service providers’

The *Information Privacy Act 2009* defines an ‘agency’ as a department, a Minister, a local government, or a public authority.

The *Information Privacy Act 2009* also requires an agency to take all reasonable steps to make a contracted service provider subject to the privacy principles as if they were an agency themselves.

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<sup>43</sup> Ibid sch 3 principle 4.

<sup>44</sup> Ibid sch 3 principle 10.

<sup>45</sup> Ibid sch 3 principle 6.

<sup>46</sup> Ibid s 166.

<sup>47</sup> Ibid s 176.



This means that when a Queensland government agency, such as the DCCSDS, enters into a service agreement with another entity (such a non-government organisation) to deliver disability services, the agency must take all reasonable steps to ensure that the contracted service provider is required to comply with the Act. For example this may occur by ensuring that there are clauses in the service agreement or contract that state that the contracted service provider agrees to be bound pursuant to section 35 of the *Information Privacy Act 2009*.

If the agency has included such a clause in the service contract, then the contracted service provider will be responsible for any privacy breaches that occur. If however the agency does not take reasonable steps to bind the contracted service provider, then the agency will be responsible for any privacy breaches that occur in relation to the mishandling of personal information.<sup>48</sup>

There is no capacity under the *Information Privacy Act 2009* for a bound contracted service provider to pass on its privacy obligations to a sub-contractor. If it is intended that a contractor be permitted to sub-contract, it is recommended that the sub-contractor enter into a separate Deed of Privacy with the head contractor.

**\*Disclaimer and other obligations:**

If non-government service providers receive funding from the Commonwealth Government to provide services, or have annual turnovers larger than \$3M then they could also have obligations under the *Information Privacy Act 1988* (Cth). Please note that obligations for compliance with the *Information Privacy Act 1988* (Cth) do not apply to an organisation contracting with a State or Territory government to the extent of that contract.

The discussion of the legal frameworks that apply to electronic monitoring provided in this report should be considered as general information only. Agencies should seek their own advice in relation to the applicability of the *Information Privacy Act 2009* (Qld) and/or the *Information Privacy Act 1988* (Cth), and their obligations.

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<sup>48</sup> Ibid s 37.

## Conclusion

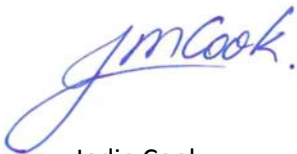
While the use of electronic monitoring devices as a means by which to enhance support is acknowledged, this inquiry into the use of electronic monitoring at disability accommodation sites in Queensland has also raised a number of concerns.

In particular, the inquiry highlighted a number of practice issues that may indicate the need for increased understanding and/or application of legal obligations relevant to the use of electronic monitoring by organisations, particularly staff at the site-level.

I am pleased to have had the opportunity to engage with this issue before it has reached a crisis point. The information obtained in this inquiry presents the disability services sector with a unique opportunity to respond proactively by creating robust policy frameworks for the use of this emerging technology.

With assistance and advice from the Office of the Information Commissioner, the Office of the Public Advocate and the Office of the Adult Guardian will develop a number of resources that may include an internal audit tool, joint fact sheets, checklists and training resources to assist agencies in this endeavour.

In closing, I would like to personally thank the Adult Guardian and the Information Commissioner for the assistance they have provided in the course of this inquiry. I would also like to acknowledge and thank the Community Visitors for their significant input to this inquiry. The ongoing commitment by Community Visitors to protecting the rights and interests of adults with impaired capacity should be commended.



Jodie Cook  
**Public Advocate**  
**Office of the Public Advocate**

# Appendix 1 - Site census data collection tool

## Targeted inquiry into the use of electronic monitoring at disability accommodation sites

Office use only

Org code  Site code  Collector

Date of visit: \_\_\_\_\_ Visitor name: \_\_\_\_\_

Site name: \_\_\_\_\_ Site address: \_\_\_\_\_

### PART A - Questions 1 to 12 are about the site being visited.

**1 - What is the current number of resident consumers at the site?**

Record a single number   
(Number)

**2 - What is the maximum number of resident consumers for the site?**

Record a single number   
(Number)

**3 - Does the site use electronic monitoring such as video or closed circuit cameras or baby monitors?**

Circle one response only

1. Yes
2. No

If the answer to Question 3 is No, skip to PART C, Question 16.

**4 - Does the site have a policy and procedure for the use of electronic monitoring?**

Circle one response only

1. Yes
2. No

**5 - Where are the recordings stored?**

Circle each response that applies

1. On site
2. Head office
3. Third party premises
4. Footage/recordings not stored
5. Other:
99. Unknown

**6 - How many cameras are usually in use at the site?**

Record a single number OR Circle one response only  None  
(Number) 0

**7 - How many audio monitors are usually in use at the site?**

Record a single number OR Circle one response only  None  
(Number) 0

**8 - How many months are video recordings retained?**

Record a single number OR Circle one response only  Not retained Unknown  
(Months) 0 (blank)

**9 - How many months are audio recordings retained?**

Record a single number OR Circle one response only  Not retained Unknown  
(Months) 0 (blank)

**10 - How is access to the electronic monitoring restricted?**

Circle each response that applies

1. Secure room (eg a room with a locked door)
2. Electronic security (eg computers with password access)
3. Access not restricted
4. Other:
99. Unknown

**11 - By what method does your organisation seek consent to be subject to electronic monitoring?**

Circle one response only

1. Written consent
2. Verbal or non-verbal (eg Auslan or makaton) consent
3. Consent not sought

**12 - Does the use of electronic monitoring result in any of the following?**

Circle each response that applies

1. Improves support (more prompt assistance when needed etc)
2. Replaces other system (call buttons, staff checking in on consumers etc)
3. Compensates for staff shortages
4. Decreased stress/anxiety for consumers
5. Decreased stress/anxiety for staff

**PART B - Questions 13 to 15 are about the electronic monitoring devices in use at this site. Ask these questions for each monitor at the site.**

	Device 1	Device 2	Device 3	Device 4	Device 5	Device 6	Device 7	Device 8
<b>13 - What is the device's location?</b> <i>Circle one response only</i>	1. Bedroom 2. Bathroom 3. Toilet 4. Hallway 5. Common room 6. Kitchen 7. Outside area 8. Mobile device	1. Bedroom 2. Bathroom 3. Toilet 4. Hallway 5. Common room 6. Kitchen 7. Outside area 8. Mobile device	1. Bedroom 2. Bathroom 3. Toilet 4. Hallway 5. Common room 6. Kitchen 7. Outside area 8. Mobile device	1. Bedroom 2. Bathroom 3. Toilet 4. Hallway 5. Common room 6. Kitchen 7. Outside area 8. Mobile device	1. Bedroom 2. Bathroom 3. Toilet 4. Hallway 5. Common room 6. Kitchen 7. Outside area 8. Mobile device	1. Bedroom 2. Bathroom 3. Toilet 4. Hallway 5. Common room 6. Kitchen 7. Outside area 8. Mobile device	1. Bedroom 2. Bathroom 3. Toilet 4. Hallway 5. Common room 6. Kitchen 7. Outside area 8. Mobile device	1. Bedroom 2. Bathroom 3. Toilet 4. Hallway 5. Common room 6. Kitchen 7. Outside area 8. Mobile device
<b>14 - What type of device is it?</b> <i>Circle one response only</i>	1. Visual 2. Audio 3. Visual and audio	1. Visual 2. Audio 3. Visual and audio	1. Visual 2. Audio 3. Visual and audio	1. Visual 2. Audio 3. Visual and audio	1. Visual 2. Audio 3. Visual and audio	1. Visual 2. Audio 3. Visual and audio	1. Visual 2. Audio 3. Visual and audio	1. Visual 2. Audio 3. Visual and audio
<b>15 - Who is permitted to deactivate this device?</b> <i>Circle one response only</i>	1. Staff 2. Consumer 3. Staff or consumer 4. Cannot be deactivated 5. Unknown	1. Staff 2. Consumer 3. Staff or consumer 4. Cannot be deactivated 5. Unknown	1. Staff 2. Consumer 3. Staff or consumer 4. Cannot be deactivated 5. Unknown	1. Staff 2. Consumer 3. Staff or consumer 4. Cannot be deactivated 5. Unknown	1. Staff 2. Consumer 3. Staff or consumer 4. Cannot be deactivated 5. Unknown	1. Staff 2. Consumer 3. Staff or consumer 4. Cannot be deactivated 5. Unknown	1. Staff 2. Consumer 3. Staff or consumer 4. Cannot be deactivated 5. Unknown	1. Staff 2. Consumer 3. Staff or consumer 4. Cannot be deactivated 5. Unknown
	If unknown, why:	If unknown, why:	If unknown, why:	If unknown, why:	If unknown, why:	If unknown, why:	If unknown, why:	If unknown, why:

**PART C - Questions 16 to 25 are about the consumers at this site. Ask these questions for each consumer at the site.**

	Consumer 1	Consumer 2
<b>16 - What is the consumer's age?</b> <i>Provide single number only</i>	(Number)	(Number)
<b>17 - What is the consumer's gender?</b> <i>Circle one response only</i>	<ol style="list-style-type: none"> <li>Male</li> <li>Female</li> <li>Unknown</li> </ol>	<ol style="list-style-type: none"> <li>Male</li> <li>Female</li> <li>Unknown</li> </ol>
<b>18 - What disability types does the consumer have?</b> <i>Circle each response that applies</i>	<ol style="list-style-type: none"> <li>Acquired brain injury (ABI)</li> <li>Intellectual disability</li> <li>Mental illness</li> <li>Dementia</li> <li>Physical</li> </ol>	<ol style="list-style-type: none"> <li>Acquired brain injury (ABI)</li> <li>Intellectual disability</li> <li>Mental illness</li> <li>Dementia</li> <li>Physical</li> </ol>
<b>19 - Is the consumer subject to a currently approved restrictive practice?</b> <i>Circle one response only</i>	<ol style="list-style-type: none"> <li>Yes</li> <li>No</li> </ol>	<ol style="list-style-type: none"> <li>Yes</li> <li>No</li> </ol>
<b>20 - Is the consumer subject to a currently unapproved restrictive practice?</b> <i>Circle one response only</i>	<ol style="list-style-type: none"> <li>Yes</li> <li>No</li> </ol>	<ol style="list-style-type: none"> <li>Yes</li> <li>No</li> </ol>
<b>21 - Does the consumer have an informal and/or formal decision maker?</b> <i>Circle each response that applies</i>	<ol style="list-style-type: none"> <li>Yes – formal</li> <li>Yes – informal</li> <li>No</li> <li>Does not need a decision maker</li> </ol>	<ol style="list-style-type: none"> <li>Yes – formal</li> <li>Yes – informal</li> <li>No</li> <li>Does not need a decision maker</li> </ol>
<b>22 - Is the consumer subject to intentional and/or unintentional electronic monitoring?</b> <i>Circle one response only</i>	<ol style="list-style-type: none"> <li>Yes – visual</li> <li>Yes – audio</li> <li>Yes – visual and audio</li> <li>Not monitored</li> </ol>	<ol style="list-style-type: none"> <li>Yes – visual</li> <li>Yes – audio</li> <li>Yes – visual and audio</li> <li>Not monitored</li> </ol>
For each consumer, if the response to <b>Question 22</b> is <i>Not monitored</i> , then go to <b>Question 16</b> for the next consumer. When the details for all consumers have been entered, this is the <b>end of the survey</b> .		
<b>23 - Has consent to be electronically monitored been given?</b> <i>Circle one response only</i>	<ol style="list-style-type: none"> <li>Yes</li> <li>No</li> <li>Consent not sought</li> </ol>	<ol style="list-style-type: none"> <li>Yes</li> <li>No</li> <li>Consent not sought</li> </ol>
<b>24 - From whom was consent to be electronically monitored sought?</b> <i>Circle each response that applies</i>	<ol style="list-style-type: none"> <li>The consumer</li> <li>An informal decision maker</li> <li>The formal decision maker</li> </ol>	<ol style="list-style-type: none"> <li>The consumer</li> <li>An informal decision maker</li> <li>The formal decision maker</li> </ol>
<b>25 - What is the reason for electronically monitoring the consumer?</b> <i>Circle each response that applies</i>	<ol style="list-style-type: none"> <li>Being harmed by others</li> <li>Self harming</li> <li>Being accidentally harmed</li> <li>Harming others</li> <li>Damaging or stealing property</li> <li>Undertaking voluntary sexual activity</li> <li>Being sexually assaulted</li> <li>Health issues</li> <li>Challenging behaviours</li> <li>Consumer <u>not intentionally monitored</u></li> <li>Other: <input type="text"/></li> </ol>	<ol style="list-style-type: none"> <li>Being harmed by others</li> <li>Self harming</li> <li>Being accidentally harmed</li> <li>Harming others</li> <li>Damaging or stealing property</li> <li>Undertaking voluntary sexual activity</li> <li>Being sexually assaulted</li> <li>Health issues</li> <li>Challenging behaviours</li> <li>Consumer <u>not intentionally monitored</u></li> <li>Other: <input type="text"/></li> </ol>

	Consumer 3	Consumer 4
<b>16 - What is the consumer's age?</b> <i>Provide single number only</i>	(Number)	(Number)
<b>17 - What is the consumer's gender?</b> <i>Circle one response only</i>	1. Male 2. Female 3. Unknown	1. Male 2. Female 3. Unknown
<b>18 - What disability types does the consumer have?</b> <i>Circle each response that applies</i>	1. Acquired brain injury (ABI) 2. Intellectual disability 3. Mental illness 4. Dementia 5. Physical	1. Acquired brain injury (ABI) 2. Intellectual disability 3. Mental illness 4. Dementia 5. Physical
<b>19 - Is the consumer subject to a currently approved restrictive practice?</b> <i>Circle one response only</i>	1. Yes 2. No	1. Yes 2. No
<b>20 - Is the consumer subject to a currently unapproved restrictive practice?</b> <i>Circle one response only</i>	1. Yes 2. No	1. Yes 2. No
<b>21 - Does the consumer have an informal and/or formal decision maker?</b> <i>Circle each response that applies</i>	1. Yes – formal 2. Yes – informal 3. No 4. Does not need a decision maker	1. Yes – formal 2. Yes – informal 3. No 4. Does not need a decision maker
<b>22 - Is the consumer subject to intentional and/or unintentional electronic monitoring?</b> <i>Circle one response only</i>	1. Yes – visual 2. Yes – audio 3. Yes – visual and audio 4. Not monitored	1. Yes – visual 2. Yes – audio 3. Yes – visual and audio 4. Not monitored

For each consumer, if the response to Question 22 is *Not monitored*, then go to Question 16 for the next consumer. When the details for all consumers have been entered, this is the **end of the survey**.

<b>23 - Has consent to be electronically monitored been given?</b> <i>Circle one response only</i>	1. Yes 2. No 3. Consent not sought	1. Yes 2. No 3. Consent not sought
<b>24 - From whom was consent to be electronically monitored sought?</b> <i>Circle each response that applies</i>	1. The consumer 2. An informal decision maker 3. The formal decision maker	1. The consumer 2. An informal decision maker 3. The formal decision maker
<b>25 - What is the reason for electronically monitoring the consumer?</b> <i>Circle each response that applies</i>	1. Being harmed by others 2. Self harming 3. Being accidentally harmed 4. Harming others 5. Damaging or stealing property 6. Undertaking voluntary sexual activity 7. Being sexually assaulted 8. Health issues 9. Challenging behaviours 10. Consumer <i>not intentionally monitored</i> 11. Other: <input type="text"/>	1. Being harmed by others 2. Self harming 3. Being accidentally harmed 4. Harming others 5. Damaging or stealing property 6. Undertaking voluntary sexual activity 7. Being sexually assaulted 8. Health issues 9. Challenging behaviours 10. Consumer <i>not intentionally monitored</i> 11. Other: <input type="text"/>

**END OF SURVEY**

# Appendix 2 - Survey of organisations that operate disability accommodation sites

**Electronic monitoring: survey of organisations**

**Organisation details**

This part of the survey collects basic information about your organisation. This is to help the Office of the Public Advocate understand what types of organisations use electronic monitoring and why.

**1. What is the name of your organisation?**

**2. What is the name of your organisation's Chief Executive Officer?**

**3. Approximately what proportion of your organisation's activity relates to providing disability accommodation?**

All of our activity      Most of our activity      Some of our activity      Very little of our activity

**4. For how many residents does your organisation provide disability accommodation?**

**Use of electronic monitoring**

**5. Does your organisation use electronic monitoring devices at its disability accommodation sites?**

Yes

No

**Electronic monitoring policy and compliance**

**6. Does your organisation have a policy and/or procedure for the use of electronic monitoring?**

Have policy

Have procedure

Have both

Have neither

## Electronic monitoring: survey of organisations

### 7. On which of the following areas does your organisation's electronic monitoring policy/procedure provide guidance?

- The types of electronic monitoring that may be used
- The locations within a site for which the placement of electronic monitoring devices is permissible
- Where recordings from electronic monitoring devices should be stored
- The length of time that recordings from electronic monitoring should be stored
- How the need for electronic monitoring is to be assessed
- How consent should be sought from the residents who will be subject to electronic monitoring
- How to treat the unintentional electronic monitoring of residents
- The situations in which it is justifiable to electronically monitor a consumer
- By whom electronic monitoring devices may be deactivated
- Who is permitted access to the electronic monitoring
- How access to the electronic monitoring should be restricted

### 8. How does your organisation monitor its accommodation sites for compliance with its electronic monitoring policy and/or procedure?

- Regular audits
- Random audits
- Compliance not monitored

Other (please specify)

### 9. Who assesses an accommodation site's compliance with your organisation's electronic monitoring policy and/or procedure?

- Staff who work at the site
- Staff who do not work at the site
- Staff from another organisation (for example, auditors)

Other (please specify)

### 10. Please provide any additional information about your compliance monitoring process and the staff who undertake it.

## Electronic monitors - types and locations



## Electronic monitoring: survey of organisations

### 11. At your organisation's accommodation sites, what types of electronic monitoring devices are used?

- Audio monitors
- Visual monitors
- Both audio and visual monitors

### 12. At your organisation's accommodation sites, in what locations may electronic monitoring devices be used?

- Bedroom
- Bathroom
- Toilet
- Hallway
- Common room
- Kitchen
- Outside area
- Mobile device

### 13. How does your organisation assess the need for electronic monitoring?

- On an individual basis
- Site-based needs assessment
- Needs assessment not performed

### 14. Who assesses the need for electronic monitoring?

- Need is assessed centrally by head office staff
- Need is assessed locally by site staff

Other (please specify)

## Consent for electronic monitoring 1

### 15. By what method does your organisation seek consent from residents who will be subject to electronic monitoring?

- Written consent
- Verbal or non-verbal (eg Auslan or makaton) consent
- Consent not sought

## Consent for electronic monitoring 2

## Electronic monitoring: survey of organisations

### 16. From whom does your organisation seek consent for a resident to be electronically monitored?

- The resident
- The resident's informal decision maker (if applicable)
- The resident's formal decision maker (if applicable)

### 17. Does your organisation electronically monitor residents who have declined to provide consent to be monitored?

- Yes - without consent from a substitute decision maker
- Yes - but only with the consent of a formal substitute decision maker
- Yes - but only with the consent of either a formal or informal substitute decision maker
- No - my organisation does not electronically monitor residents without consent.

## Unintentional monitoring

### 18. Are residents at your organisation's accommodation sites subject to unintentional electronic monitoring?

- Yes
- No

## Deactivation of electronic monitoring devices

### 19. At your organisation's accommodation sites, who is permitted to deactivate an electronic monitoring device?

- Staff
- The resident being monitored
- Any resident
- Devices cannot be deactivated
- No one is permitted to deactivate devices

## Access restrictions

## Electronic monitoring: survey of organisations

### 20. At your organisation's accommodation sites, for whom is access to the electronic monitoring restricted?

- All staff
- Some staff
- The resident/s being monitored
- All residents
- Access not restricted

### 21. At your organisation's accommodation sites, how is access to the electronic monitoring restricted?

- Secure room (eg a room with a locked door)
- Electronic security (eg computers with password access)
- Access not restricted
- Other

## Storage of electronic recordings

### 22. Where does your organisation store the recordings?

- On site
- Head office
- Third party premises
- Recordings not stored
- Unknown

Other (please specify)

### 23. For how many months does your organisation retain visual recordings? (Enter zero if your organisation does not store visual recordings)

Months

### 24. For how many months does your organisation retain audio recordings? (Enter zero if your organisation does not store audio recordings)

Months

## Reasons for, and benefits of, electronic monitoring

## Electronic monitoring: survey of organisations

### 25. In what situations do your organisation's accommodation sites electronically monitor residents?

- Being harmed by others
- Self harming
- Being accidentally harmed
- Harming others
- Abusing drugs or alcohol
- Damaging or stealing property
- Undertaking voluntary sexual activity
- Being sexually assaulted
- Health issues (eg seizures)
- Challenging behaviours

Other (please specify)

### 26. Please provide a brief description of any other risks for which electronic monitoring is used as a management strategy.

### 27. Does your organisation consider that the use of electronic monitoring results in any of the following?

- Improves support (more prompt assistance when needed etc)
- Replaces outdated system (call buttons, staff checking in on residents etc)
- Compensates for staff shortages
- Decreased stress/anxiety for residents
- Decreased stress/anxiety for staff

Other (please specify)

### 28. Please provide a brief description of any other benefits that may arise from the use of electronic monitoring.

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