

UNCLASSIFIED



Taking of Photographs and Video Guideline

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1 Introduction

The taking of images, still or video, are undertaken by members of emergency services including New South Wales State Emergency Service (NSW SES) for a wide range of purposes.

These include use by media, in publications, training manuals and user guides, community engagement and in presentations and reports.

Copyright and privacy legislation, NSW SES' Code of Conduct and Ethics and State Rescue Board Policy have a significant influence on where images may be taken, what images may be recorded, how they are distributed, and who owns them.

This guideline provides advice for members on:

- Where they can record images
- What images may be taken
- The distribution of images to a third party
- Copyright and ownership of images

This guideline refers to the recording of images while on NSW SES duty or representing NSW SES. This includes but is not limited to images collected on NSW SES premises, during an emergency response, proceeding to or returning from an emergency response, NSW SES social gatherings, representing NSW SES at meetings, handovers, and presentations, and at community engagement or media activities.

Relevant legislation and Policies:

- Children and Young Persons (Care and Protection) Act 1998
<http://www.legislation.nsw.gov.au/maintop/view/inforce/act+157+1998+cd+0+N>
- Copyright Act 1879
<http://www.legislation.nsw.gov.au/maintop/view/inforce/act+20+1879+cd+0+N>
- Copyright Act 1968 <http://www.comlaw.gov.au/Details/C2014C00291>
- Defamation Act 2005
<http://www.legislation.nsw.gov.au/maintop/view/inforce/act+77+2005+cd+0+N>
- Inclosed Lands Protection Act 1901
<http://www.legislation.nsw.gov.au/maintop/view/inforce/act+33+1901+cd+0+N>
- NSW SES Code of Conduct and Ethics
- State Rescue Board Policy 3rd Edition 2013, Annex B, Taking of Photographic Images at and From a Rescue Incident. Pages 30-32
<http://www.emergency.nsw.gov.au/content.php/481.html>
- Surveillance Devices Act 2007
<http://www.legislation.nsw.gov.au/maintop/view/inforce/act+64+2007+cd+0+N>

1.1 Definitions

Term	Definition
Image	A recorded physical likeness or representation, either a still or moving image.

1.2 Objectives

To provide advice for members on where images taken on duty as a member may be taken, the nature of material that such images may depict, the distribution of images to a third party, and the copyright and ownership of such images.

2 Guidelines

2.1 Where Images May be Taken

There are a range of restrictions as to where you may capture an image. If you are not certain if you should capture an image, ask for permission or do not photograph or video at all.

You may not photograph or video on private property without the consent of the owner.

Consent may be obtained verbally or in writing using the NSW SES Photo Release Form. This form is available in EOS in Corporate Communications public documents.

<http://eos.ses.nsw.gov.au/sites/OTC1/Pages/Corporate-Communications.aspx>

Private property extends to publically accessible private spaces such as shopping malls, petrol stations, motels, and other businesses.

Publicly owned spaces such as nursing homes, schools, child care facilities, or hospitals, are deemed by the *NSW Inclosed Lands Protection Act* to have the same control rights as private land, and you may not take photographs or video without permission.

Often, owners of private but publically accessible places such as schools, shopping malls, nursing homes, etc. generally do not object to members of the public taking non-commercial

photos on their property without permission. If you are attending such a location as a NSW SES member, you must ask permission before acquiring any image, particularly as the image may show damage to that property.

Once you physically leave the property there is no restriction on taking photographs of a property from a public space. For example, photographing a NSW SES crew working on a damaged property from a public street outside the boundary of the property.

2.2 What Images May be Taken

Just because it is not illegal to take an image does not mean that in every circumstance an image can appropriately be taken, or if taken, shared. When taking an image while on duty for NSW SES you should take into account the following principles.

State Rescue Board Policy prohibits the taking of photographs or video at a rescue without the consent of the NSW Police Force. NSW SES members taking images at rescues must only do so with Police permission, whether on private or public land and even if the subject provides their consent. This includes rescues where the NSW SES is the lead agency such as flood rescue. Images that could identify a member of the public should not be placed on social media or given to the media or used in any publication without first receiving permission from Corporate Communications. Email corporatecommunications@ses.nsw.gov.au to seek permission.

Images may be taken at training or rescue competitions including of moulaged victims. They must always be clearly identified as being an artificial response scene and the use of 'actors'.

Images should not be taken where they:

- could bring NSW SES or NSW Government into disrepute
- could reasonably be found to breach the NSW SES Code of Conduct and Ethics
- are not consistent with NSW SES TARPS Statement of Values
- could reasonably be found to be crude, threatening, vulgar, obscene, or pornographic
- depict improper safety, operational, or work related practices
- portray content of a sensitive nature such as a serious or critical injury, distressed persons, fatalities, or incidents that are under investigation
- show personal details or confidential information

- could reasonably be found to cause distress to members of the community or embarrass NSW SES.

2.3 Collecting and Distributing Images

Images are generally collected using a wide range of recording devices. This includes but is not limited to mobile phones, cameras, video cameras (including 'Go Pro' type cameras), security cameras, and images taken from remotely controlled aerial vehicles.

Members should use NSW SES owned or leased recording devices where available. The NSW Government owns images taken by NSW SES members on NSW SES devices. (see section 2.5).

The State Rescue Board permits the recording of rescues where Police have provided permission. Any member of the public whose image is captured also needs to give their consent.

Members may use recording devices such as 'Go Pro' style cameras attached to clothing or attached to helmets at incidents. Members may mount these devices on an official NSW SES vehicle. Mountings must not damage NSW SES property. These devices should not inhibit or delay the undertaking of any response and should be mounted so as to not constitute a safety risk. This includes a quick release capability on the camera in case of entanglement.

The official use of remotely controlled aerial vehicles, for any purpose, is currently prohibited by NSW SES.

Images may be distributed to third parties, such as but not limited to, the media, social media, other Government agencies, sponsors, and the public, however the released image must comply with requirements established in this guideline. The permission of the photographer's immediate supervisor is required prior to distribution to a third party.

2.4 Consent

You may take and publish a person's photograph, without their consent or knowledge, but within limitations, taking into consideration laws around anti-voyeurism, defamation and obscenity, nuisance, and trespass.

As long as you are in a public place and you are not in breach of laws around anti-voyeurism, defamation, obscenity, nuisance, and trespass, and provided you are not harassing the person you are photographing, you may photograph or video them without their knowledge or consent.

When videoing, be aware that it is unlawful to sound record private conversations without consent. If you video and capture background conversations between people in a public place, that might breach the Surveillance Devices Act 2007. Great care should be taken in these circumstances.

Aside from specific provisions in the Children and Young Persons (Care and Protection) Act 1998 (especially child protection orders arising from abuse, Apprehended Violence Order's (AVOs) or custody proceedings), there are few unique legal protections when it comes to photographs/video of children in public places. This means that under normal circumstances you may photograph children without the need for consent.

NSW SES Members are required to ask for consent from the parent or guardian where the child is the subject of the photograph/video. A photo release form for written consent is available on EOS under Corporate Communications public documents.

If you are on private or inclosed land, members are required to ask for the owner's consent to photograph/video while on their property, even if the person who is the subject of the photograph is willing to be photographed or videoed.

2.5 Intellectual Property

Copyright law states that the person who 'takes the photo owns the photo' and can sell the rights unless they took the image in the course of their employment. When you are on duty as a member of NSW SES, whether or not that duty relates specifically to the taking of photographs, or if you are contracted or engaged by NSW SES to take images, those images are the intellectual property of NSW SES. Copyright law states that Commonwealth, State or Territory government is the first owner of copyright in material created, or first published, under its direction or control.

See Australian Copyright Council: <http://www.copyright.org.au/find-an-answer/browse-by-what-you-do/photographers/> - refer to 'Photographers and Copyright'.