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NSW Police Force

# **Body-Worn Video Standard Operating Procedures**

Technology Command

Version 2.5

November 2022

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**DOCUMENT CONTROL**

<b>TITLE</b>	Body-Worn Video Standard Operating Procedures
<b>COMMAND RESPONSIBLE</b>	Technology Command
<b>AUTHORISATION</b>	Deputy Commissioner, Corporate Services
<b>PUBLICATION DATE</b>	November 2022
<b>CURRENT VERSION</b>	2.5
<b>REVIEW DATE</b>	November 2023
<b>CLASSIFICATION</b>	OFFICIAL: Sensitive

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**DOCUMENT CLASSIFICATION**

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**MODIFICATION HISTORY**

<b>VERSION</b>	<b>APPROVAL DATE</b>	<b>AUTHORISATION</b>	<b>SUMMARY OF CHANGES</b>
<b>1.6</b>	25 August 2017	MEIG	Draft SOPs
<b>2.2</b>	15 January 2019	Education & Training Command	Final version
<b>2.3</b>	20 December 2019	State Intelligence Command	Allow use of BWV as search warrants and other uninvited entry operations, subject to approval
<b>2.4</b>	November 2021	State Intelligence Command	BWV use for DVEC, sensitive tag, prosecution process, activating/ceasing recording, Commissioner's Foreword
<b>2.5</b>	November 2022	Technology Command	BWV for CEW (T7) use, amend Commissioner's Foreword

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## COMMISSIONER'S FOREWORD

As an officer of the NSW Police Force (NSWPF), you are provided equipment and training to achieve a safer NSW, which includes the protection of people from harm and property from damage. The introduction of body-worn video (BWV) cameras has enhanced our collective capability to reliably record incidents and obtain accurate evidence.

With this capability comes high expectations of professional police behaviour, including requirements to wear BWV cameras on a mandatory basis, where practicable, when operationally deployed in uniform to perform a response policing role.

Activation of BWV cameras is required when circumstances to commence recording are anticipated, evolving, or actually occurring. In addition to ensuring early activation, a BWV recording should only be deactivated when all relevant material, including interactions and evidence, has been captured and the incident has concluded. Capturing reasons for deactivation is as important as determining early activation.

It is clear that BWV recordings support operational policing activities by connecting words and actions with context. This allows BWV cameras to be used in a range of scenarios, such as incidents involving domestic and family violence. Note that prior to deactivating BWV at incidents of domestic violence, police must record the victim's intention to provide a statement by Domestic Violence Evidence in Chief (DVEC) recording. For these reasons, every police officer must understand the requirements to wear, activate and deactivate recordings, whether that be in public places, private dwellings, and premises (e.g. businesses), vehicles, in the execution of search warrants, or anywhere else police are lawfully entitled to be.

Mandatory wearing and early activation, where practicable, will protect the overriding integrity of operational policing activity. Results already show significant outcomes of protection for operational police officers and the delivery of exceptional evidence to judicial officers in courts throughout NSW.

The guidance provided in this policy reflects my expectations and those of the Commissioner's Executive Team. In short, you must know when to wear, activate and deactivate BWV cameras.

You must understand:

- positive considerations and circumstances of activation
- that early activation is required wherever possible, unless it is not reasonable to do so
- recording of entire incidents is required
- early camera deactivation that results in the failure to record something of relevance will require explanation to a supervisor or a court.

The language in this foreword is necessarily direct. There must be no misunderstanding of your powers and obligations when wearing and using BWV cameras. I know the value associated with broad use, not the least of which is to protect honest, hard-working police officers at the forefront of providing protective services that keep communities safe.

Karen Webb APM  
Commissioner of Police



## INTRODUCTION

### PURPOSE

These standard operating procedures (SOPs) have been developed to guide police in the lawful use of BWV cameras. They also provide advice to police on when it may not be appropriate to use such equipment.

BWV cameras support operational policing activities. They will be used where police believe it is appropriate to record the events taking place, or the environment they are operating in. The cameras will support police investigations by recording visual and audio evidence of an incident or crime.

The *Surveillance Devices Act 2007* allows police to use BWV in a broad range of situations. Police can record in public places, private dwellings and premises (e.g. businesses), and vehicles where they are lawfully entitled to be.

The use of BWV cameras will be incident specific, and the cameras will be worn on a police officer's uniform/clothes in an overt manner. Members of the public will be advised they are being recorded if it is practicable to do so before or at the time of activating the recording, or as soon as is reasonably practicable.

The use of BWV cameras and the content produced is governed by the *Surveillance Devices Act 2007*, which treats BWV recordings as protected information. This means the footage can only be used under certain circumstances prescribed in the act or under a regulation made under the act. There are penalties in the act of up to seven years imprisonment for the unlawful use or disclosure of such footage. If police fail to record something of relevance, they may be asked to explain their decision to a supervisor or a court.

BWV content will be securely stored, archived, and disposed of in accordance with the *State Records Act 1998* disposal authorities.

Five guiding principles provide the basis for proper use of BWV by NSWPF officers.

**1. BWV CAMERA EQUIPMENT WILL BE USED BY NSWPF OFFICERS IN THE LAWFUL EXECUTION OF THEIR DUTIES. POLICE WILL USE THEIR JUDGEMENT WHEN DECIDING TO USE IT AND ITS USE WILL BE OBVIOUS AND OVERT.**

The *Surveillance Devices Act 2007* allows police officers to use BWV cameras overtly in the execution of their duties. When operating the camera, use will be in accordance with the SOPs and training developed. It is expected that BWV use will be incident specific.

**2. BWV WILL BE USED BY POLICE TO RECORD EVENTS, INCIDENTS AND EVIDENCE. THERE WILL BE SOME INSTANCES WHERE BWV SHOULD NOT BE USED AND SOME OCCASIONS WHEN ITS USE MAY NOT BE APPROPRIATE.**

BWV SOPs and training will assist police in making decisions when these issues arise. In addition, they will provide guidance to police who encounter vulnerable members of the community where use of the camera may require additional consideration.

**3. BWV SUPPORTS CONVENTIONAL FORMS OF EVIDENCE GATHERING; IT DOES NOT REPLACE THEM.**

BWV devices operate as a modern-day equivalent of a police notebook and provide a contemporaneous record of observations and events in the field. Police officers will continue to follow current procedure for best evidence collection and management and best practice for the presentation of evidence at court.

**4. BWV RECORDINGS WILL BE SECURELY PROCESSED AND MANAGED IN ACCORDANCE WITH RELEVANT LEGISLATION, POLICY AND PROCEDURES.**

BWV cameras, BWV application and any associated BWV content are the property of the NSWPF. Data retention, review and disposal will be in line with relevant legislation and current guidelines developed in consultation with NSW State Records Authority.



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The NSWPF will, to the best of its ability, ensure the integrity of BWV content throughout the upload, storage, retrieval for official use and disposal process.

## **5. THE NSWPF WILL PROVIDE GENERAL INFORMATION TO THE COMMUNITY ON THE USE OF BWV BY POLICE.**

In implementing BWV, the NSWPF will provide general information to the public about BWV devices and their use by police officers.

Police will undergo comprehensive training prior to using BWV equipment. For further advice in relation to the lawful use and release of BWV content or other multimedia material, please contact the Operational Legal Advice Unit, Police Prosecutions Command in the first instance.

### **SCOPE**

These SOPs apply to operational police.

### **PROHIBITED USE OF PERSONAL RECORDING DEVICES**

All personnel are prohibited from using non-issue personal recording devices.

## **BWV USE**

### **BWV AND OFFICIAL POLICE NOTEBOOKS**

BWV will not replace the need to make a written record in an officer's official police notebook. BWV cameras support police conducting operational activities, by recording evidence and behaviour. When using BWV as part of evidence gathering officers should record use of BWV in their official notebook and where appropriate, include reasons for the exercise of police powers.

### **WHEN TO WEAR BWV**

All police who carry out operational response<sup>1</sup> duties must complete the relevant BWV training. All operational police will be trained in the use of BWV. Training includes legislation, camera operation and the use of BWV application.

All police officers wearing police uniform, whilst engaged in duties of operational response, must, where practicable, wear as part of their uniform, a BWV camera for use in accordance with these SOPs. Police engaged in proactive and/or investigative duties should also take and use BWV cameras in support of their policing activities.

Use of a BWV camera by a police officer wearing uniform or plain clothes must be overt and in the lawful execution of duty. Overt use refers to the use of a BWV device in a way where it can be seen and identified as a video and audio recording device. The device is to be worn so that it is observable and not hidden, concealed or secreted. Officers will, when practicable, announce to persons they are speaking with that their conversation is being recorded by the BWV camera being worn by the officer. Any police officer in plain clothes must provide evidence they are a police officer and identify themselves as such.

### **POLICE USE OF BWV**

A police officer will activate their BWV camera when it is appropriate to do so. In making the decision to activate the BWV camera, a police officer will use their own judgement and take into account a number of factors, including:

- officer safety and protection
- the need to capture evidence
- accountability
- community expectations

<sup>1</sup> 'Operational response' means the deployment of a police officer, in uniform, to perform a response policing role (Use of Conducted Electrical Weapons (Taser) SOPs)

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- contentious situations
- involvement of vulnerable people
- protection for offenders and the community
- any other relevant factors that exist.

Police can use BWV to record:

- private conversations they have with others, whether or not all parties to the conversation consent to the recording
- events in any location, regardless of whether it is a public place or private property.

Use of BWV includes the capturing of events unfolding as police approach a location or recording their initial approach towards a person. Section 50A (3) of the Surveillance Devices Act 2007 allows recordings that are inadvertent, unexpected, or incidental.

The Surveillance Devices Act also covers the unintended capture of secondary or nearby conversations taking place when police are speaking with another party.

Police should use the BWV camera during their shift to record incidents they attend, evidence they see and conversations they have with members of the public.

BWV recordings should be incident-specific (whether or not the recording is ultimately required for use as evidence). Police will not be required to record their entire shift or every interaction that occurs whilst they are on duty.

Once a BWV camera is activated to record, the person being recorded should be advised of the presence of the camera and that it is recording their actions and conversation. If it is not practicable to do so before or at the time, do this as soon as is reasonably practicable after activating the recording. The recommended statement to be used by police when using the BWV to record a conversation is: "I am wearing a body-worn video camera, and our conversation and your actions are being recorded. Do you understand that?"

### **WHEN TO USE BWV**

A BWV camera should be used in the following circumstances:

- when police would normally use their official police notebook to record information
- to capture evidence or record something of relevance
- when a police power is anticipated or being exercised, or whilst performing a policing function
- first response crime and incident investigation. BWV can be very effective for recording the location of objects and evidence at the scene of a crime or during a search situation in the field
- licensed premises (business) inspections and patrols
- policing incidents involving antisocial behaviour
- vehicle stops
- conversations with members of the public that relate to an incident, is relevant to an investigation, potential criminal proceedings, or contain possibly valuable information
- situations where the use of force is anticipated
- when use of a T7 model Conducted Electrical Weapon (CEW - Taser) is anticipated, and circumstances permit
- when conducting intimate (strip) searches (Law Note 46: R v Jimenez [2000]).

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All recordings should be treated as having evidentiary value until confirmed otherwise. The primary investigating officer at the scene of an incident should activate their BWV camera to record any evidence relevant to the investigation. Other BWV users attending the same incident should consider using their camera to collect their own evidence.

Note: BWV recordings should capture interactions comprising the entire incident and only cease when all relevant evidence has been captured and the incident is determined complete. If practicable, consider providing an explanation for ceasing to record on the recording. You may be required to explain a failure to record something of relevance to your supervisor or a court.

### SEARCH WARRANTS

The use of BWV during search warrant execution must comply with the Search Warrant SOPs and any directions given by the Case Officer/Operation Commander, including when to commence the video recording. For more information, refer to the Search Warrant SOPs, and in particular Annexure F of that document, and to Search Warrant Practice Note 18/16.

Note that where filming is conducted by police officers using BWV cameras, there is an exemption under s.7(2)(g) of the Surveillance Devices Act 2007 that permits audio and visual recording to continue, despite objections from persons being recorded. In any case, you cannot mute the recording of sound by a BWV camera.

### DOMESTIC VIOLENCE EVIDENCE IN CHIEF

Officers filming Domestic Violence Evidence in Chief (DVEC) may use either a BWV camera, a MobiPOL device or a dedicated DVEC camera, depending on which is convenient.

If BWV is to be used to record a DVEC, police must record:

1. the first complaint (very brief initial version) from the victim
2. the scene, the demeanour of the offender, untreated injuries of any victim and the presence of children
3. any admissions/denials and the reaction of the offender to the allegation of a DV offence
4. the arrest and removal of the offender from the scene.

### FILMING OF STRIP SEARCHES

Police must provide the best possible evidence available, including BWV footage of police actions. However, *Law Enforcement (Powers and Responsibilities) Act 2002* (LEPRA) dictates the need for police to ensure the protection of rights and dignity of people with whom they interact.

A person's privacy is not a sufficient reason to cease filming a strip search conducted in the lawful execution of an officer's duty. Particular care is required to ensure the person's privacy is adequately protected by ensuring the footage cannot be viewed by people without a lawful reason to do so.

Officers must be certain of their powers regarding strip searches before commencing any strip search. This is covered in Section 31 of LEPRA as follows:

*A police officer may carry out a strip search of a person if:*

- (a) *in the case where the search is carried out at a police station or other place of detention—the police officer suspects on reasonable grounds that the strip search is necessary for the purposes of the search, or*
- (b) *in the case where the search is carried out in any other place—the police officer suspects on reasonable grounds that the strip search is necessary for the purposes of the search and that the seriousness and urgency of the circumstances make the strip search necessary.*

Police must familiarise themselves with the rules pertaining to strip searches contained in Section 33 of LEPRA.

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The searching officer is to ensure, if they are wearing a BWV camera, that it is turned off during the conduct of a strip search. The support officer is to record the search using a BWV camera. During the strip search, compliance is required with all relevant provisions of LEPR.



### **T7 CONDUCTED ELECTRICAL WEAPON (CEW – TASER)**

When a T7 CEW is worn, so must a BWV camera because the T7 CEW does not have a built-in camera. Mandatory wearing of a BWV camera does not apply to the X26P model CEW which is fitted with a high-definition camera.

When use of a T7 CEW is anticipated, and circumstances permit, manual activation of the BWV camera is required to capture interactions comprising the entire incident and only cease when all relevant evidence has been captured and the incident is determined complete, remembering primary consideration is individual and officer safety.

In circumstances where a police officer is unable to activate the BWV camera prior to use of a T7 CEW, the officer is required to manually activate the BWV camera as soon as possible after T7 CEW use and at a time that is operationally safe and reasonably practicable. At that time the police officer should describe on the BWV the circumstances surrounding use of the T7 CEW.

### **WHEN NOT TO USE BWV**

A BWV camera should not be used in the following circumstances:

- to record an entire rostered shift, except when justified in specific circumstances
- to record material that is not related to the lawful execution of police duties
- to covertly record material
- within 25 metres of a suspect device or flammable material
- work surveillance purposes
- when the filming does not comply with LEPR (e.g. if a police officer was to record a person of the opposite gender during a strip search)
- a courtroom or court precinct, unless responding to an incident.

### **WHEN IT MAY NOT BE APPROPRIATE TO USE BWV**

The primary purpose of BWV is to capture real-time information and evidence. Common sense, experience and good judgement should be used when making a decision to use BWV. The recording of vulnerable members of the community, in particular young persons, and individuals with intellectual or physical disabilities, may present challenges that attract discretion.

### **UNRELATED/PREJUDICIAL COMMENTARY**

BWV should not be used to record general police conversation; for example, when patrolling in a police vehicle.

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Police are reminded that appropriate language should always be used and commentary that may amount to opinion or hearsay evidence (which may be prejudicial) should be avoided.

### **PROFESSIONAL CONVERSATIONS**

Police should not record images or conversations dealing with strategy, methodology, tactics and lines of enquiry or other case-related issues. Officers should, where possible, avoid recording police specialist equipment, preparation and execution of tactical activities, discussions with other police or personnel from other agencies at incidents or major operations. If in doubt about such content, BWV users should seek advice from a supervisor.



### **INTERACTIONS WITH VULNERABLE PERSONS**

Police may attend incidents where parties in the matter may be considered to have special needs or could be classified as vulnerable persons. These people may be witnesses, victims or persons of interest.

Use of BWV in such situations may need to be considered in light of the vulnerability of the person with whom police are dealing. Appropriate communication is required to ensure understanding of the BWV camera, its purpose and use.

Clause 28 of the *Law Enforcement (Powers and Responsibilities) Regulation 2016* provides the following guidance for vulnerability:

- children (young persons under the age of 18)
- people who have impaired intellectual functioning
- people who have impaired physical functioning
- people who are Aboriginal or Torres Strait Islanders
- people who are of non-English speaking background.

BWV is another way of recording investigative processes. When interacting with a person identified as vulnerable, police will, where practicable, announce that interactions are being recorded in such a way as to be understood by the vulnerable person. A support person may be required to assist in this process. Once it is clear the vulnerable person does understand the reasons the BWV is being used, police should ensure that evidence of their understanding is included in the recording.

### **VULNERABLE PERSON REQUIRING A SUPPORT PERSON OR INTERPRETER**

Where police encounter a vulnerable person that requires a support person or interpreter, every effort should be made to find a suitable person to fulfil these roles. BWV may still be used to capture evidence of the scene. If and when a support person/interpreter arrives, inquiries can continue with the vulnerable person as per normal police procedure, including the use of BWV, if considered appropriate.

Police must use accredited interpreters in operational and legal matters to communicate with people who:

- are unable to communicate in English
- have limited understanding of English

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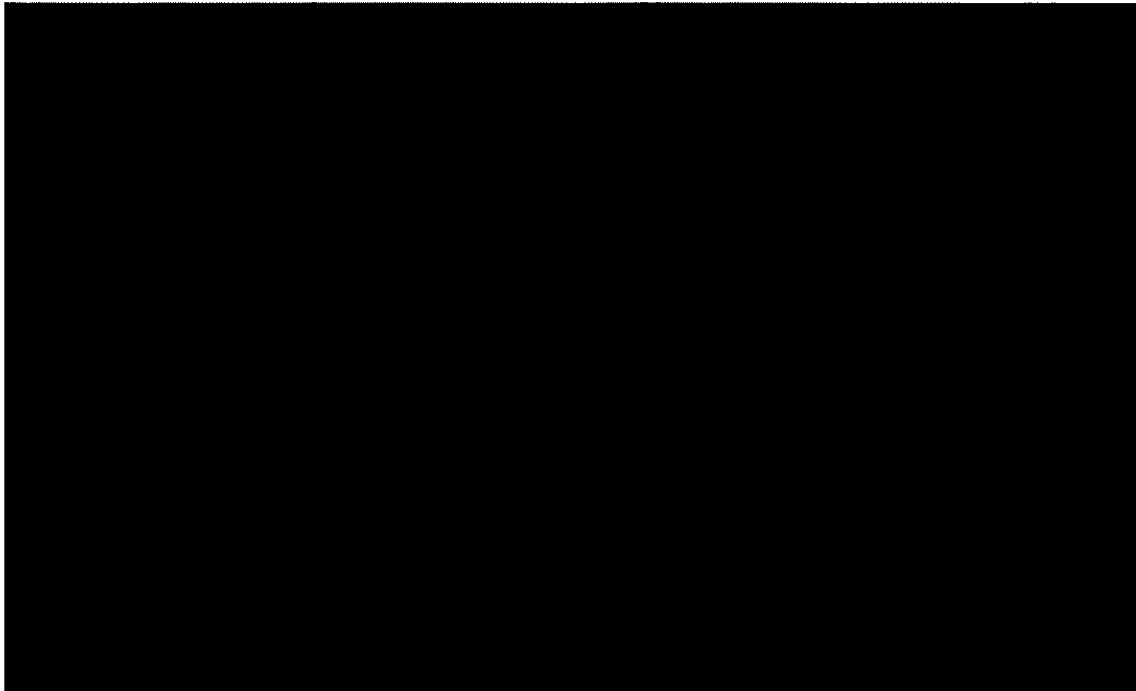
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- are more comfortable communicating in their first language
- are deaf, hearing impaired or speech impaired
- are support people for child victims, offenders, and witnesses.

In some cases, police may choose to cease the use of BWV in favour of other available means of recording the situation.



### **UPLOADING AND TAGGING BWV FOOTAGE**

At the end of a shift, check the BWV camera into the docking station, which will initiate automatic uploading. Footage will remain on the local server until it is tagged by the user as content that is of evidentiary value, i.e. the footage may be relevant to an investigation, disciplinary procedure, legal claim or complaint. Failing to tag material with such relevance may lead to managerial or disciplinary action. Content not tagged is considered non-evidentiary and will remain unclassified on the local server for a period of six months, after which it will be automatically deleted.

BWV footage/content can be tagged under three categories:

1. Evidence
2. WHS (Work, Health & Safety) – only to be used where the content is not already tagged as evidence, and it relates to a work, health and safety issue that might be in the interests of the BWV user and/or the NSWPF to keep
3. Complaint – only to be used where the content is not already tagged as evidence and only where an officer believes that keeping such footage may assist in the investigation of a possible future complaint.

Create a relevant COPS record for incidents the subject of BWV content. This may be an Event, Intelligence Report, Case, etc. Access the BWV application and tag any relevant BWV content as evidence.

Obtain the corresponding COPS record number (Event, Intelligence Report, Case number) to complete the tagging process. Once tagged, the BWV content will be moved to secure storage in the VIEW Imagery Management System (IMS) database. Access VIEW IMS to review BWV content (see BWV intranet page for information on viewing BWV content).

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**PII/SECURITY TAG**

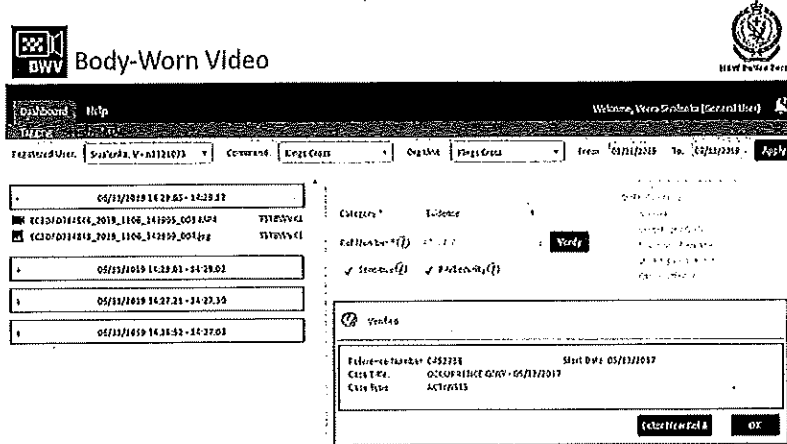
When tagging BWV content as evidence, consider whether the content contains sensitive material or requires additional security considerations. If so, select the 'PII/Security' check box and/or the 'Sensitive' checkbox. This will ensure that due consideration is given to whether the BWV content should be treated (de-identified, etc.) prior to release to third parties (accused/defence, public release, etc.)

**SENSITIVE TAG**

Use the 'Sensitive' checkbox for material of an indecent, confidential, or confronting nature. The checkbox restricts availability of the recording to only commissioned officers (Inspector or higher). Anyone else needs to submit a Request to Access Content in VIEW IMS. Such a request must be sent to a commissioned officer to approve. Once tagged Sensitive, nobody can view the recording in the BWV Tagging application, all access must be via VIEW IMS.

**DVEC RECORDINGS**

If the recording is a DVEC interview, it must be tagged as evidence first, to make the DVEC tags available. Then set those as instructed in the DVEC SOPs.



**RETENTION**

After tagging, BWV content will have archive, disposal and destruction protocols assigned, in accordance with the State Records Act 1998 (NSW) retention and disposal authorities. BWV content not tagged as evidence will be securely stored and scheduled for destruction after six months from the date of recording.

**SHARING BWV FOOTAGE**

If an officer's image has been or may have been recorded by BWV, and that officer has concerns about their image being released (e.g. provided as part of a brief of evidence), they must advise the officer in charge (OIC) of the case if they want their image to be redacted prior to release.

Do not use, communicate, or publish BWV content unless it falls within one of the authorised uses identified within section 40 of the Surveillance Devices Act or permitted by regulation, such as:

- in criminal court proceedings
- coronial inquests and inquiries
- where the material has been disclosed in open court or where the material has entered the public domain
- the investigation of offences
- brief/statement preparation, or advice on whether a prosecution should be commenced and for what offence
- investigation of complaints including oversight by the Law Enforcement Conduct Commission (LECC)

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- connected with the training and education of police
- connected with the exercise of a law enforcement function by a police officer
- Investigation of critical incidents.

Do not copy, use, or disclose BWV material for non-official purposes, such as to show to any unauthorised person or share on social media.

In certain circumstances, it may be lawful to release BWV footage to news media with authority. Refer to Section 4.5 of these procedures, and the NSWPF Media Policy for further information.

The Surveillance Devices Act 2007 provides a prohibition on the use, communication, or publication of protected information. Section 40 of the act creates offences for the unauthorised release of such information. Unauthorised release includes if a person:

- intentionally, knowingly, or recklessly uses, communicates, or publishes any protected information
- intends to endanger the health or safety of any person or prejudice the effective conduct of an investigation into a relevant offence.

Penalties range from two to seven years imprisonment.

Advice should be sought from the Office of General Counsel if there is uncertainty about whether BWV footage can or should be disclosed.

BWV content is not to be shown to any unauthorised persons solely for entertainment, personal enjoyment, or curiosity.

A complete copy of BWV footage, or an edited version for court, defence and prosecution may be created. Images from the footage can also be captured as photographs for use as evidence and may require compliance with the *Crimes (Forensic Procedures) Act*. Copies of BWV footage for production at court can be made in many video formats, including DVD. In some cases, custom editing of BWV content may be required.

**VIEWING BWV FOOTAGE (ACCUSED PERSON / LEGAL REPRESENTATIVE)**

Where BWV content is to be used to support a charge or legal process, police may offer the accused, and/or their legal representative, an opportunity to view BWV content. This should be offered before the date of first court mention and/or before entry of a not guilty plea. If the opportunity is accepted, viewing of the BWV footage is to be facilitated under police supervision.

If an accused or their legal representative requests further viewing of BWV footage, this may also be facilitated.

**REVIEW AND AUDIT**

Police supervisors will have access to BWV footage for auditing of compliance with BWV procedures and standards. The BWV application will generate random dip samples for checking by police supervisors on a regular basis or on demand.

**RELEASE OF BWV FOOTAGE**

Police are the subject of various requests for the release of information through legal process (subpoena), under the direction of oversight agencies, e.g. LECC or pursuant to the *Government Information (Public Access) Act (GIPAA)*. Infolink and the Office of General Counsel facilitate the NSWPF response and provide advice regarding such requests.

Established procedures for police to follow are set out in the Police Handbook: Chapter S for Subpoenas and Chapter G for GIPAA requests.

The NSWPF may wish to release BWV images for reasons of public safety or for investigative purposes.

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The release of any material for public viewing is to be coordinated through the Police Media Unit once authorised through the chain of command.

### **TROUBLESHOOTING**

If a BWV camera is not operating, report the issue to a supervisor. The supervisor must investigate, and once confirmed, remove the camera from operation. A BluePortal request describing the camera fault is to be generated, with a note regarding whether or not BWV footage requires retrieval.

If a BWV kiosk, docking station or software is not operating as it should, report the issue to a supervisor. The supervisor must investigate and once confirmed, initiate a BluePortal request outlining the problem. If the entire operating system is not functioning, consider suspending camera use until the malfunction has been repaired and the system returned to operational status.

### **BWV EVIDENCE**

#### **EVIDENTIARY CONTENT**

Evidentiary content is video footage of an incident or encounter that can be used for evidentiary purposes, such as a recording of crime, an arrest, a search, use of force, an interaction or confrontational encounter with members of the public.

#### **RELYING ON BWV CONTENT AS PART OF EVIDENCE**

Police should view BWV footage of an incident and interactions with witnesses prior to preparing police or witness statements.

Include in the fact sheet that BWV footage was taken during police attendance at the incident and describe what has been recorded and is available to the court.

Should there be a disruption to recording an incident, the user should produce the available footage, supplemented with a written statement detailing any other evidence. This should include the reason, if known, for the equipment failure or recording disruption/malfunction.

If the reason for failure requires further investigation, it may be necessary to obtain a statement from a suitably qualified expert. It may also be appropriate that the BWV equipment is sealed and stored as evidence.

#### **POLICE OFFICER STATEMENTS**

A statement introducing BWV footage to court should contain relevant information regarding chain of custody. If there is a break in recording, the user should include details and reasons in their statement. Further information in relation to exhibits may be found in the Police Handbook, Chapter E on exhibits and the EFIMS Standard Operating Procedures.

A police officer may view another police officer's BWV footage to refresh their memory of an incident, which must be included in their statement.

A BWV statement format has been developed and can be located on the BWV Intranet site.

#### **WITNESS STATEMENTS**

BWV can be used to capture first account witness statements at or nearby a scene of crime. Witnesses should be permitted to review their account prior to making and signing any written statement. Care should be taken to ensure that witnesses are not permitted access to any aspect of the recording other than their own first account. The witness statement must refer to viewing the BWV footage to refresh their memory prior to completion of their statement.

#### **INTRODUCTION OF VIDEO EVIDENCE**

An example for something like BWV would be that you would commence a paragraph with the time, date, and place, and then describe what was recorded. This would be followed by:

EXHIBIT: I PRODUCE THAT BODY WORN VIDEO RECORDING.

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**INTRODUCTION OF PHOTOGRAPHS**

If you have taken photographs using your BWV, add a follow-up paragraph with a description of what you photographed followed by:

EXHIBIT: I PRODUCE THAT PHOTOGRAPH.

**MULTIPLE RECORDINGS**

If you attend a scene and have multiple BWV recordings, all will need to be included in the brief and served.

Depending on the circumstances, secondary BWV evidence may be able to be introduced via the OIC statement, or else it may require a statement from the recording officer.

**BRIEFS OF EVIDENCE**

If police seek to rely on video material in a brief of evidence, we are required to serve that material in the brief of evidence (i.e. there is no exemption from serving footage, for instance, on the basis it may be uploaded to the internet).

There are limited exemptions to this service for sensitive material (i.e. obscene or indecent images), but this is rare and the mere fact it is taser footage does not make it sensitive material.

If you have video material that you will be relying on, you need to do the following.

1. Make it known in your fact sheet, and that it is available for viewing
2. Consider attaching a still image from video material to your fact sheet
3. When a brief is ordered, you need to have the video material prepared in an evidentiary format
4. Review your video prior to service. If you think there is a sensitive material issue it needs to be raised and considered prior to service
5. When serving this material, include in your brief the attached warning around disseminating the video material

BWV footage will form part of the Brief of Evidence prepared for:

- defence (1 copy)
- the court (1 copy supplied to the Prosecutor)
- file (0 x copy - there only needs to be a reference to the VIEW IMS file name).

If the BWV content contains sensitive material (refer to the *Criminal Procedures Act 1986*, Section 281B), then such sensitive material is not to be provided to the defence and steps should be taken to edit this material out.

The caveat screen will warn the accused or their legal representative that the footage is protected information under the Surveillance Devices Act, is subject to copyright, and may only be used for the purposes of preparing a defence to the charges. Police are reminded that BWV footage should not be disseminated further than the confines of legal process and the court. However, formal requests for BWV footage may be made via subpoena or GIPAA applications, which should be dealt with in the usual manner.

Most courts will have facilities to view BWV footage as part of normal court proceedings. Contact should be made with the Police Prosecutor of the court where the matter is to be heard to ensure that adequate video playback facilities are available. BWV footage can be produced in several playable formats. Ensure that a copy is produced that is compatible with the equipment available at the court where the matter is listed.

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## **INFORMANT / OIC – BWV DESTRUCTION ORDERS**

Where BWV footage has been supplied to the defence, at the conclusion of the court matter, the OIC should seek an order for return of that footage. Upon return, and after the appeal application time has lapsed, BWV copies are to be destroyed in the presence of a witness, with a note of the destruction recorded in an official police notebook. Reference the destruction in the relevant COPS Event or other record.

## **CUSTOM EDITING OF BWV FOOTAGE**

In some cases, BWV footage may require custom editing, for example de-identification of facial images; or editing out portions to capture relevant footage to assist the court. In such circumstances a BluePortal request is required with sufficient detail to ensure an appropriate edited copy is provided. Any editing undertaken must be recorded and may later require explanation to a supervisor or court.

## **TRANSCRIPTION**

Where a transcript of a BWV recording is required, make application in the same manner as for an electronically recorded interview of a suspected person (ERISP) transcript. You must review your recording and if there is an issue with the quality of the audio recording and it will be difficult for the magistrate to hear the recording, a transcript will need to be prepared.

Even when the exhibit concerned has been the subject of an audio transcription, the video contains important visual information such as actions and gestures that can put language into context. Even if a transcript is provided, the video exhibit should still be shown in conjunction with the written text. Refer to the ERISP Transcription Guidelines for further information.

## **INFORMATION AND RECORDS MANAGEMENT**

### **SECURITY OF BWV RECORDS AND METADATA**

BWV content is governed by State Records Act 1998 (NSW) retention and disposal authorities (DA220, DA221 and GA28). These disposal authorities relate to specific offence types that govern the length of time records are required to be kept by the NSWPF.

Once the BWV file has reached the date applicable to its disposal authority classification, it will be permanently deleted from the system. The metadata record of its existence within the system will be retained permanently.

### **WORK, HEALTH & SAFETY**

If a Work, Health & Safety issue has been captured on BWV such as a slip, trip or fall incident, the video can be tagged to support the P902 Incident Notification and any subsequent investigation.

### **SYSTEM AUDITS**

Police Area Commands, Police Districts and Specialist Commands where BWV cameras are assigned will establish Command Management Framework (CMF) checks of the equipment, any content stored on the BWV system and VIEW IMS. Dip samples of content will be generated for supervisors to assess them against training, compliance with BWV SOPs and policy, as well as the Statement of Values and Code of Conduct and Ethics.

Commanders are to ensure that:

- all BWV equipment (cameras and batteries) are maintained, inspected weekly and included in the CMF report
- dip samples (recommend 1% minimum of weekly uploads) are conducted for compliance with BWV SOPs and policy
- ensure any damaged or unserviceable cameras are removed and arrange for them to be repaired or replaced
- COPS events are reviewed to ensure the appropriate activation of BWV.

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### **RELEASE OF BWV TO THE PUBLIC**

The NSWPF may release BWV images to the public for a number of reasons, including:

- tracing wanted suspects
- locating people who have escaped or absconded from custody
- public safety.

Please refer to the NSWPF Media Policy for further information.

### **CRITICAL INCIDENTS AND BWV**

Where a BWV has been used to record events relevant to an event which subsequently becomes a Critical Incident Investigation, action should be taken to secure the BWV camera as soon as possible. At the earliest opportunity, the Senior Critical Incident Investigator is to be informed of the existence of BWV content relevant to the incident.

No attempt should be made to view or download any footage from the BWV camera until the Senior Critical Incident Investigator, or a member of the Critical Incident Investigation Team, is present to supervise the process.

Police directly involved in a critical incident should be provided the opportunity to view relevant BWV footage prior to being interviewed.

Please refer to the NSWPF Critical Incident Guidelines for further information.

### **FURTHER INFORMATION**

For advice on the application of these standard operating procedures please contact Technology Command.

For general advice about the NSWPF use of BWV, please refer to the BWV intranet page.