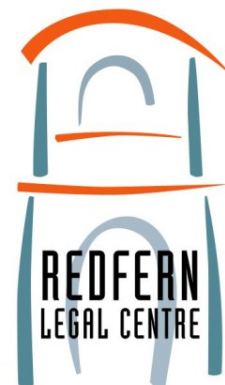


# Factsheet No.15

## Body-worn video



This factsheet gives information about Body-worn video (BWV) in NSW. BWV is a portable camera worn by some police to record their interactions with the public.

### Do all police use BWV?

No. BWV can be worn by both uniform and plain clothed police. Not all police officers have BWV.

If police are wearing BWV you can see it on the front of their uniform.



### Do Police have to use BWV?

No. It is up to individual officers to decide if they want to turn BWV on. This means the use of BWV is discretionary.

Even if an officer is wearing BWV it may not be turned on.

### Do I have to consent?

No. Police do not need your consent to start recording. But:

- the use of BWV should be obvious
- police should tell you that you are being recorded before, or as soon as possible after, the recording starts.

If you don't want the police to use BWV, the police officer should make a note of this.

### What can police record?

Police can record public or private conversations and events in any location.

Police can film any interaction in the lawful exercise of their duty, so long as they comply with the *Law Enforcement (Powers and Responsibilities) Act (NSW) 2002 (LEPRA)* and any other relevant rules. For example, police may film a strip search so long as it is not being filmed by the person doing the search, or a person of the opposite sex.

### What should police record?

Police should use BWV when exercising a police power or performing a policing function, especially where they think that force will be used (except for entry with a search warrant). For example, police should use BWV if they stop, search or arrest a person or search a vehicle.

A police power is something that the law enables police to do, that other people cannot do, for example arrest someone.

### What should police not record?

There are certain things police should not record, such as when the filming would not comply with LEPRA or it is not related to the lawful execution of their duties.

In some situations, police may not record when dealing with vulnerable members of the community, such as young people or people with intellectual or physical disabilities.

## **What can police use the video recording for?**

BWV footage can only be used in certain circumstances, like:

- criminal proceedings (when a criminal charge goes to court)
- coronial inquests and inquiries
- to investigate offences or prepare briefs and/or statements
- to assist in the investigation of complaints
- to investigate a critical incident
- to assist in the training and education of police

In some special circumstances, BWV may be released to the public or to the media. For example, it could be released to find wanted suspects or for public safety.

## **How long is BWV kept for?**

BWV footage is kept by police for 6 months. After 6 months it is destroyed, unless it is 'tagged' by police as evidence. This means 'having evidentiary value'.

## **When will BWV be "tagged" as an incident of evidentiary value?**

It is up to individual officers whether they 'tag' BWV as having value to an investigation, disciplinary procedure, legal claim or complaint.

If there is BWV relating to a 'critical incident', it must be tagged, however police officers have discretion as to whether to turn on the BWV during a critical incident. A critical incident is one involving a member of the NSW Police Force which has resulted in the death of or serious injury to a person.

If a request is made for access to BWV or a complaint is made in relation to an incident where BWV is available, then the footage should be "tagged" and securely stored. However, there are no clear guidelines on this.

## **Can I get a copy of BWV?**

If you are involved in an incident where there is BWV, you can request access to the footage by making an application under the *Government Information (Public Access) Act 2009* (NSW). Information about how to do this can be found at: <https://www.ipc.nsw.gov.au/fact-sheet-your-right-access-government-information>

Usually, you will then be able to attend the police station and view the BWV. A copy will not usually be provided to you because of police concerns about the release of the personal information of others, such as police officers and witnesses.

If BWV is relevant to a criminal prosecution, then BWV footage should form part of the Brief of Evidence.

*Published on 10 September 2021*

### **Produced by Redfern Legal Centre**

*This factsheet is not a substitute for legal advice. If you have a problem, please seek legal advice from your local community legal centre.*