

Review of NSW Police Force body-worn video policy and practice

March 2025

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ISBN 978-1-74003-071-7

The Law Enforcement Conduct Commission acknowledges and pays respect to the Traditional Owners and Custodians of the lands on which we work, and recognises their continuing connection to the lands and waters of NSW. We pay our respects to the people, the cultures, and the Elders past and present.



Office of the Chief Commissioner

5 March 2025

The Hon Ben Franklin, MLC
President
Legislative Council
Parliament House
SYDNEY NSW 2000

The Hon Greg Piper, MP
Speaker
Legislative Assembly
Parliament House
SYDNEY NSW 2000

Dear Mr President and Mr Speaker

Review of NSW Police Force body-worn video policy and practice

In accordance with s 138 of the *Law Enforcement Conduct Commission Act 2016* (the Act), the Commission provides you with a copy of its report *Review of NSW Police Force body-worn video policy and practice*.

Under s 142(2) of the Act, I recommend that this report be made public immediately.

Yours sincerely



The Hon Peter Johnson SC
Chief Commissioner

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Foreword

Body-worn video (BWV) cameras are an invaluable tool in contemporary policing. BWV allows police officers to capture accurate, high-quality visual and audio recordings of incidents and interactions with the public. Such recordings provide crucial evidence to assist criminal prosecutions, coronial inquests, and the investigation of allegations of police misconduct. Appropriate use of BWV is thus vital to support the safety of police officers and community members. It is equally useful in ensuring public confidence in the police.

The Law Enforcement Conduct Commission supports the widespread and routine use of BWV cameras by the NSW Police Force, along with proper filing systems, and making footage accessible to permitted parties such as legal representatives.

At the time of publishing this report, the NSW Police Force was in the midst of 2 key projects to enhance its BWV capability. The outcomes of both projects will have important implications for strengthening police accountability.

Firstly, the NSW Police Force is currently rolling out new BWV cameras with the capability for automatic activation when a police officer draws their service firearm or Taser. Once fully rolled out, it is likely that this technology will increase the availability of footage of high-risk incidents where such weapons are used. However, most policing interactions will not meet this threshold. As such, capturing evidence of most policing activities will continue to depend on manual activation of BWV cameras by police officers.

The second major BWV-related project currently underway in the NSW Police Force is the review of *the Body-Worn Video Standard Operating Procedures (SOPs)*. This instructional document tells officers how and when to activate BWV. It is essential that the BWV SOPs contain clear, consistent instructions to officers around BWV activation. The NSW Police Force has indicated it will take the 15 recommendations of this report into account in its review of the SOPs.

In light of the significant changes underway, the key message of this report is that the NSW Police Force ought to mandate activation of BWV cameras where police powers are being used. This is likely to optimise the valuable evidence capture potential of BWV.

The Commission will seek to publish the NSW Police Force's response to the recommendations of this report in the coming months. In the meantime we will continue our scrutiny of the NSW Police Force's use of BWV through our complaints assessment, oversight, systemic research, and investigations functions.

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Introduction

Use of body-worn video (BWV) cameras by the NSW Police Force is made lawful by the *Surveillance Devices Act 2007* (NSW).

Widespread use of BWV by NSW police has several benefits for police officers, the public and the Law Enforcement Conduct Commission, by:

- providing accurate, contemporaneous and compelling evidence to assist in criminal prosecutions
- providing a tool for the swift handling of complaints against police where footage provides exculpatory evidence
- increasing officers' confidence and security in attending incidents involving violent behaviour
- reducing the need for already traumatised witnesses and police officers to repeat evidence in court, coronial or misconduct proceedings
- effectively identifying training needs and ways to improve the safety of officers and the community
- serving as a learning tool for police recruits to review examples of good policing
- increasing accountability, transparency and integrity of operational policing activity.

The Commissioner of Police emphasises the importance of BWV to the NSW Police Force in the Commissioner's Foreword to the *Body-Worn Video Standard Operating Procedures* (SOPs):

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.¹

In recognition of the important role of BWV for police and the public, the Commission has an ongoing interest in scrutinising the NSW Police Force's policies, systems and practices for capturing and storing BWV footage.

This report captures the most recent updates in the ongoing conversation between the Commission and the NSW Police Force in relation to BWV use and implications for police integrity and oversight.

¹ NSW Police Force, Technology Command, *Body-Worn Video Standard Operating Procedures*, version 2.7, (November 2023) 5.

How we did our review

This report draws on work undertaken by the Commission across a range of its functions under the *Law Enforcement Conduct Commission Act 2016* (LECC Act) including:

- monitoring and review of NSW Police Force misconduct investigations²
- on-site audits of BWV storage and filing processes at NSW Police stations³
- research including reviewing the Commission's database for BWV-related complaints and misconduct matters⁴
- conducting our own investigations into allegations of serious police misconduct⁵, and
- monitoring of NSW Police Force critical incident investigations.⁶

This report is also informed by work previously presented to the NSW Police Force as an issues paper in July 2023, and the NSW Police Force response to the issues paper received in October 2023. The issues paper highlighted 34 issues for the NSW Police Force to consider and answer. We also invited the NSW Police Force to provide us with any additional information about BWV practices, training, and risk management. The 34 issues and the NSW Police Force's response to each item is at Appendix A.

We provided a final version of this report to the NSW Police Force in November 2024 and the NSW Police Force made short comments on the report on 28 January 2025.⁷

Recent reports by the Commission relating to BWV

A key source of information for the Commission on police use of BWV is the Commission's investigation of NSW Police Force misconduct allegations. Two such investigations by the Commission, Operation Venti and Operation Mantus, revealed a range of views within the NSW Police Force about the value of BWV, and highlighted important considerations for police accountability.

The Commission commenced Operation Venti following a complaint about the conduct of police officers during their interaction with an Aboriginal young person in the early hours of 21 November 2020. A Sergeant who used excessive force on the young person was wearing BWV at the time of the interaction but failed to activate it. The Sergeant's failure to activate BWV was compounded by his failure to report and record his use of force against the youth and the resulting injuries. The Sergeant's evidence before the Commission demonstrated disinterest in the use of BWV.⁸ The Commission published its final report on Operation Venti in July 2023, concluding that the incident was a powerful case for making the use of BWV mandatory. Operation Venti is discussed further in [section 2.7](#) of this report.

² *Law Enforcement Conduct Commission Act 2016* (NSW) ss 26, 101-105.

³ LECC Act s 32.

⁴ LECC Act s 27.

⁵ LECC Act s 51.

⁶ LECC Act Part 8.

⁷ Letter from Assistant Commissioner, NSW Police Force to Chief Commissioner, Law Enforcement Conduct Commission, Report on Body Worn Video (BWV) Policy and Practice dated 28 January 2025.

⁸ Law Enforcement Conduct Commission, *Operation Venti* (Report, July 2023) 30 [5.15].

The Commission commenced Operation Mantus following a complaint made to the Commission concerning the arrest of a young Aboriginal boy by plain clothes police in Northern NSW on 11 September 2022. The plain clothes officer involved in arresting the child had failed to use BWV to record any of their interactions with the child.⁹ The absence of BWV increased the investigative resources required by the Commission to determine the facts of the incident. The Commission published its final report on Operation Mantus in December 2023. Among the report's 19 recommendations was that the NSW Police Force BWV Standard Operating Procedures should also apply to plain clothes officers. Operation Mantus is discussed further in [section 3.5](#) of this report.

Report summary

[Section 1](#) reviews the NSW Police Force's evolving BWV technological capability and highlights some implications for oversight and monitoring of potential misconduct. Key considerations include proper storage and filing of footage, and emerging evidence capture risks as obsolete technologies are phased out and new technology is procured.

[Section 2](#) outlines current NSW Police Force BWV policy as set out in the BWV SOPs. The NSW Police Force has improved the SOPs over the course of ongoing discussions with the Commission. However, we remain concerned that the current wording of the SOPs is ambiguous and allows officers too much discretion around when to activate. This may be contributing to varying attitudes and inconsistent practices among officers around when to activate or deactivate BWV. We conclude that the NSW Police Force should simplify instructions to officers around BWV activation.

[Section 3](#) considers practical aspects of BWV use by police in their day-to-day duties. This includes the role of BWV in responding to domestic violence, search warrants, and use of BWV by plain clothes officers and tactical response officers. We highlight some inconsistent and ambiguous instructions provided to police officers in relation to BWV use in these operational settings. We also note some opportunities for enhancing current tagging systems to ensure footage is correctly labelled and accessible for a range of purposes.

[Section 4](#) considers how police keep the public informed about BWV policy, retention times, and complainant access to footage. We also summarise the current arrangements around Commission access to BWV footage required to exercise our functions. This section recommends the NSW Police Force update its public website with current and clear information about BWV to support the timely and fair administration of justice.

⁹ Law Enforcement Conduct Commission, *Operation Mantus*, Report (December 2023), 145 [4.213].

1. The impact of changing technologies

The NSW Police Force has used BWV cameras for almost 10 years. A pilot operational phase started in November 2015. State-wide roll out of BWV cameras commenced on 21 November 2016.¹⁰

A 2019 evaluation of the NSW Police Force's Phase 2 BWV roll out found that BWV use was contributing positively to indicative trends including improving perceptions of community-police relations, accountability and safety; reduction in sustained complaints against NSW Police Force members; and an increase in successful NSW Police Force prosecutions where BWV footage was available.¹¹

As of March 2024, the NSW Police Force had approximately 4,500 BWV cameras operational in the field.¹² In August 2024 there were approximately 16,000 police officer positions filled across the state, and approximately 2,200 additional vacancies.¹³

The NSW Police Force's BWV capability has been impacted as technologies age, become obsolete, and as new technologies emerge. These changes have implications for police accountability and oversight. In particular, the NSW Police Force proposes to introduce new 'integrated connected officer' technology – described below.

The new integrated connected officer technology procured by the NSW Police Force is likely to produce a range of benefits and enhance the use of BWV by officers. The NSW Police Force has said that the new technology will address many of the issues raised by the Commission in this report. However, for some of the issues we have raised with police, it is not clear how the new technology will answer the risks posed by the current approach. A date for full roll out of the new technology is unknown. Waiting on the deployment of the new technology leaves a number of risks unaddressed for a significant period.

1.1 Diminishing BWV capability

The NSW Police Force is currently experiencing shortages in availability of BWV cameras for general duties officers. The NSW Police Force has advised the Commission that:

- it is not adequately resourced to issue a BWV camera to every officer.¹⁴

¹⁰ NSW Government, Statutory review of the Police Body-Worn Video provisions of the Surveillance Devices Act 2007, (Final report, July 2020) 4.

¹¹ A Davies, Report on Evaluation of the NSW Police Force Body - Worn Camera Phase 2 Implementation (December 2019) Charles Sturt University, 6.

¹² Legislative Council, Parliament of New South Wales, Portfolio Committee No. 5 – Justice and Communities, Police and Counter-terrorism, the Hunter, *Budget Estimates 2023-2024: Responses to supplementary questions on notice*, 21 March 2024, 32.

¹³ Minister for Police and Counter-terrorism the Hon. Yasmin Catley, Legislative Council, Parliament of New South Wales, Portfolio Committee No. 5 – Justice and Communities, Police and Counter-terrorism, the Hunter, *Budget Estimates -2024*, 30 August 2024, 4.

¹⁴ Letter from A/Commissioner, NSW Police Force, to Chief Commissioner, Law Enforcement Conduct Commission, undated.

- there is diminishing availability of replacement cameras to back-fill gaps when broken cameras are sent for repair.

As of 23 February 2024 the NSW Police Force owned a total of 8,427 BWV cameras.¹⁵ Of these, 4,512 (approximately 54%) were in use, and a further 2,915 cameras (approximately 34%) were defunct or broken.¹⁶ In March 2024 the Minister for Police advised Budget Estimates of ‘a further 1,000 cameras awaiting delivery in March 2024’.¹⁷

The NSW Police Force is also in the process of phasing out the current X26P model Tasers in readiness for the introduction of the new T7 model Taser. Unlike the X26P, the new T7 model does not have a built-in camera which automatically activates when the Taser is drawn. This means that video capture of the use of new T7 Tasers will depend on officers wearing and manually activating their BWV cameras until the new interconnected officer technology is fully rolled out.¹⁸

A further technological challenge for the NSW Police Force is that it does not have the capability to store more BWV recordings.¹⁹ The storage system is already experiencing issues such as significant download times from when BWV cameras are docked after a shift to when all BWV has successfully downloaded on to the server. This means BWV cameras are often unavailable for use by officers for extended periods whilst data is downloaded from the camera.²⁰ The NSW Police Force has cited the lack of storage as one of the primary contributing factors that weigh against its capacity to mandate the use of BWV by officers.²¹ According to a verbal briefing provided to the Commission, the NSW Police Force intends to upgrade storage capacity as the new integrated connected officer technology is procured and rolled out.²²

1.2 New technologies

In August 2024 the NSW Police Force engaged Axon Public Safety Australia Pty Ltd in a contract to provide new integrated connected officer camera technology.²³

¹⁵ Legislative Council, Parliament of New South Wales, Portfolio Committee No. 5 – Justice and Communities, Police and Counter-terrorism, the Hunter, *Budget Estimates 2023-2024: Responses to supplementary questions on notice*, 21 March 2024, 32.

¹⁶ Legislative Council, Parliament of New South Wales, Portfolio Committee No. 5 – Justice and Communities, Police and Counter-terrorism, the Hunter, *Budget Estimates 2023-2024: Responses to supplementary questions on notice*, 21 March 2024, 32.

¹⁷ Legislative Council, Parliament of New South Wales, Portfolio Committee No. 5 – Justice and Communities, Police and Counter-terrorism, the Hunter, *Budget Estimates 2023-2024: Responses to supplementary questions on notice*, 21 March 2024, 32.

¹⁸ The BWV SOPs address this by stating that an officer should use a BWV camera “when use of a T7 model Conducted Electrical Weapon (CWE -Taser) is anticipated, and circumstances permit.” See Technology Command, NSW Police Force, *Body-Worn Video Standard Operating Procedures*, version 2.7, November 2023, p 8.

¹⁹ A/Commissioner of Police, NSW Police Force, Response to draft Body-Worn Video observations paper, undated, Tab 1, Issue 9.

²⁰ A/Commissioner of Police, Letter to Law Enforcement Conduct Commission, undated, received 16 October 2023.

²¹ A/Commissioner of Police, NSW Police Force, Response to draft Body-Worn Video observations paper, undated, Tab 1, Issue 9.

²² Verbal briefing from Assistant Commissioner, NSW Police Force to the Law Enforcement Conduct Commission, 8 November 2024.

²³ NSW Government Tendering, ‘Contract Award Notice Details’, *NSWPF Integrated Connected Officer (BWV, ICV and HAD) - YR-2023-0086* (Web Page, 19 August 2024)

<<https://www.tenders.nsw.gov.au/?event=public.cn.view&CNUUID=14D98E43-C28C-3068-953A5D982CADED75>>.

This technology uses Bluetooth to automatically activate an officer's BWV camera when a Taser or police Glock handgun is drawn. The contract will deliver 9,987 new BWV cameras as well as In Car Video and Holster Activation Devices.²⁴

At a verbal briefing in November 2024, the NSW Police Force advised the Commission that roll out of the new BWV cameras (not including the integrated automatic holster activation technology) will be complete by March 2025 in metropolitan Commands.²⁵ Statewide roll out of the new BWV cameras is estimated to be complete by March 2026.²⁶

The NSW Police Force has not provided the Commission with a formal update on the new contract or indicated a time frame for complete roll out of the integrated automatic activation technology including the In Car Video and Holster Activation Devices.

The NSW Police Force has indicated to the Commission that when the new technology is procured it will also address other issues of concern to the Commission including:

- exploring how to remind officers to activate their BWV cameras at the time of an incident²⁷
- technical enhancements to allow BWV footage to be tagged as both 'evidence' and 'complaint'²⁸
- issues relating to the attachment of BWV cameras to ballistic vests.²⁹

However the NSW Police Force has not explained how the new technology will address these issues.

1.3 Emerging risks

The Commission is concerned that diminishing storage space and delays in backfilling non-functional BWV cameras until the complete roll out of integrated connected officer technology may create risks for Commands including:

- inconsistent or imbalanced access to technology across different Commands
- less BWV cameras available
- fewer incidents captured on BWV, and
- the loss of potentially valuable evidence to assist criminal and misconduct investigations.

²⁴ Verbal briefing by Assistant Commissioner, NSW Police Force to the Law Enforcement Conduct Commission, 8 November 2024.

²⁵ Verbal briefing by Assistant Commissioner, NSW Police Force to the Law Enforcement Conduct Commission, 8 November 2024.

²⁶ Verbal briefing by Assistant Commissioner, NSW Police Force to the Law Enforcement Conduct Commission, 8 November 2024.

²⁷ A/Commissioner of Police, NSW Police Force, Response to draft Body-Worn Video observations paper, undated, Tab 1, Issue 4.

²⁸ A/Commissioner of Police, NSW Police Force, Response to draft Body-Worn Video observations paper, undated, Tab 1, Issue 16.

²⁹ A/Commissioner of Police, NSW Police Force, Response to draft Body-Worn Video observations paper, undated, Tab 1, Issue 23.

In July 2023 we asked the NSW Police Force to update us on its approach to replacing old or ageing technology, and how the roll out of integrated interconnected officer technology relates to this. Specifically we asked:

- whether Police Area Commands and Districts are replacing BWV cameras in circumstances where they fail, or waiting for new cameras compatible with the integrated connected officer technology to be rolled out, and
- if existing model BWV cameras are not being replaced until cameras compatible with connected officer technology are rolled out, how is the NSW Police Force proposing to manage risks associated with a reduction in available BWV cameras.

At a verbal briefing in November 2024 the NSW Police Force indicated that, as part of the interconnected officer technology roll out across the state, existing BWV cameras in good working order will be re-distributed to 'top up' failing technology in other Commands.³⁰ This is a sound approach.

The Commission appreciates that commercial aspects of procurement processes such as tenders, bids and negotiations, must be kept confidential to ensure probity and fairness in competition and to help guard against corruption risks. The Commission does not require such information from the NSW Police Force. However the Commission is interested in the NSW Police Force's plans to address corporate risk areas resulting from reduced evidence capture and storage capability.

³⁰ Verbal briefing by Assistant Commissioner, NSW Police Force to the Law Enforcement Conduct Commission, 8 November 2024.

2. BWV policy

The primary operational document instructing NSW police officers on using BWV is the NSW Police BWV SOPs. The BWV SOPs are available to all officers via the NSW Police Force Intranet. The current version of the SOPs is not publicly available.

The purpose of the BWV SOPs is to instruct officers on:

- when and when not to use BWV
- management of recorded footage
- use of footage as evidence
- requirements for security, archiving and records management.

The SOPs require officers to wear BWV cameras:

on a mandatory basis, where practicable, when operationally deployed in uniform to perform a response policing role.³¹

The question of when it is 'practicable' to wear a camera is impacted by various considerations:

- availability of body-worn cameras in the local command
- whether the camera can be appropriately attached to an officer's uniform
- the nature of the work being undertaken by police.

We address these considerations in [section 3](#) of this report.

In relation to when to activate the BWV camera, the current BWV SOPs state:

police **should** [emphasis added] use a BWV camera 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

³¹ Technology Command, NSW Police Force, *Body-Worn Video Standard Operating Procedures*, version 2.7, November 2023, p 5.

- conversations with members of the public which may relate to an incident, is relevant to an investigation, potential criminal proceedings, or contains possibly valuable information
- situations where the use of force is anticipated
- when use of a T7 model Conducted Electrical Weapon (CWE Taser) is anticipated, and circumstances permit
- when conducting intimate (strip) searches (Law Note 46: *R v Jiminez* [2000]).³²

Crucially, the SOPs permit officers a level of discretion around when to use BWV:

In making the decision to activate the BWV camera, a police officer will **use their own judgment** [emphasis added] and take into account a number of factors, including:

- Officer safety and protection
- The need to capture evidence accountability
- Community expectations
- Contentious situations
- Involvement of vulnerable people
- Protection for offenders and the community
- Any other relevant factors that exist.³³

The intention of this discretion is to address safety issues relevant to the situation and to avoid breaches of privacy and the recording of confidential information.

2.1 Recent improvements to the BWV SOPs

Since November 2021, in response to issues raised by the Commission, the NSW Police Force has updated the BWV SOPs to reflect:

- mandatory *wearing* of BWV for all uniformed officers engaged in operational duties, where practicable.³⁴
- an expectation that officers activate early, and not deactivate until all relevant material has been captured and the incident concluded.³⁵
- guidance on using BWV when responding to reports of domestic violence³⁶ and in the execution of search warrants.
- *manual activation when using a T7 Conducted Electrical Weapon (Taser)*

³² Technology Command, NSW Police Force, *Body-Worn Video Standard Operating Procedures*, version 2.7, November 2023, p 8.

³³ Technology Command, NSW Police Force, *Body-Worn Video Standard Operating Procedures*, version 2.7, November 2023, p 7-8.

³⁴ Technology Command, NSW Police Force, *Body-Worn Video Standard Operating Procedures*, version 2.7, November 2023, p 7.

³⁵ Technology Command, NSW Police Force, *Body-Worn Video Standard Operating Procedures*, version 2.7, November 2023, p 5.

³⁶ Technology Command, NSW Police Force, *Body-Worn Video Standard Operating Procedures*, version 2.7, November 2023, p 9.

- an explanation of ‘stealth mode’ which disables all light and sound from the BWV camera except for a dim red light.³⁷

The Commission welcomes these improvements to the SOPs, especially the clarification that officers are expected to record incidents in their entirety and make notes of reasons why BWV is deactivated before the end of an incident.

At the time of publishing this report, the NSW Police Force was in the process of reviewing the BWV SOPs – discussed further below at [section 2.7.2](#).

2.2 Instructions in the BWV SOPs remain ambiguous

Despite the above updates to the BWV SOPs, the Commission remains concerned that the current instructions around activation are ambiguous, and that this could lead to unclear expectations and inconsistent practice around BWV activation.

In July 2023 we highlighted concerns to the NSW Police Force about inconsistent wording between the ‘Commissioner’s Foreword’ section of the SOPs compared to the rest of the document regarding whether BWV ‘should’ be activated or is ‘required’ to be activated.

The NSW Coroner also raised similar concerns around unclear guidance in the BWV SOPs, twice recommending that the NSW Police Force clarify the wording around expectations for activation and deactivation.³⁸

The Commission has seen a number of incidents during our investigations and oversight of police misconduct where:

- attending officers wore BWV cameras but did not activate them at the incident
- multiple attending officers wore BWV, but only some of these officers activated their cameras
- officers’ failure to activate their BWV from the onset of an incident resulted in the absence of compelling evidence, which would have otherwise been relevant in criminal and misconduct proceedings.

In light of the above concerns and supporting examples, we asked the NSW Police Force to consider amending the BWV SOPs to ensure there is clarity and consistency between the Commissioner’s Foreword and subsequent guidance for officers on expectations for activation, early deactivation, and providing explanations for failure to activate.

In October 2023 the NSW Police Force agreed that the language in the SOPs should align in the manner suggested by the Commission and said that it would make the appropriate changes.³⁹

At the time of publishing this report, the NSW Police Force had not made the changes to the BWV SOPs.

³⁷ Technology Command, NSW Police Force, *Body-Worn Video Standard Operating Procedures*, version 2.7, November 2023, p 9.

³⁸ See Appendix B.

³⁹ A/Commissioner of Police, NSW Police Force, Response to draft Body-Worn Video Observations paper, undated, Tab 1, Issue 1.

2.3 Allegations of ‘Fail to comply with BWV SOPs’

In April 2023 the NSW Police Force added an allegation of ‘Fail to comply with policy/procedures – use of BWV SOPs’ to its list of departmental misconduct allegations. Between 30 April 2023 and 30 April 2024 this allegation arose 124 times. Table 1 shows the outcomes of each allegation arising in the 12-month period.

Table 1: Allegation outcomes - ‘Fail to comply with BWV SOPs’ at 30 April 2024 (n = 124)⁴⁰

NSW Police Force declined to investigate	Investigated, misconduct identified	Investigated, no misconduct identified	Allegations not yet resolved
57 (46%)	34 (27%)	23 (19%)	10 (8%)

The Commission supports adding this new allegation category to the misconduct management system. It may assist in identifying and remediating matters where officers have not used their BWV as instructed by the SOPs.

However, we are concerned that permitting officers to ‘use their own judgment’ in relation to when they need to activate their cameras blurs the distinction between an officer’s choice and the threshold for compliance with the SOPs. Further, the instruction that officers ‘should’ activate instead of ‘must’ activate raises a question about what circumstances would constitute a breach of the BWV SOPs.

These ambiguities may leave room for an inconsistent approach to adjudicating allegations that an officer ‘failed to comply’ with the BWV SOPs.

The Commission has observed this inconsistent approach in our assessment and oversight of NSW Police Force misconduct matters. In one case, a triage officer declined to investigate an allegation that a subject officer failed to activate BWV in a situation which otherwise satisfied circumstances for activation, on the basis that the SOPs only recommend that officers ‘should’ activate, rather than mandating activation.

The below case study highlights a further example of the same issue.

Case study 1: Failure to activate BWV when using police powers not considered a breach of the BWV SOPs

Police were engaged in a vehicle pursuit of a stolen car. A young person jumped out of the moving stolen car and tried to run away from police. The police facts stated the young person was tackled to the ground and resisted arrest. The young person alleged that police punched him in the face during the arrest, causing him injuries. The officers involved in the incident were wearing BWV but did not activate it during the incident.

Police investigated the young person’s complaint that the involved officers used excessive force. The police investigator concluded that the injuries were consistent with falling out of a moving vehicle and being tackled to the ground, and there was no evidence to support the allegation that police punched the

⁴⁰ Calculation made by the Commission on 9 May 2024.

young person in the face. The police investigator did not speak to the officers involved.

The Commission reviewed the misconduct investigation report. The report noted that BWV was not activated, but did not enquire as to the circumstances of the officers' failure to activate the BWV even though they were using police powers. The misconduct report did however note that the officers received advice and guidance to remind them of the importance of BWV.

The Commission wrote to the NSW Police Force pursuant to s 104 of the LECC Act requesting that the NSW Police Force consider sustaining an allegation of 'Fail to comply with BWV SOPs' against the subject officers.

The NSW Police Force agreed to reconsider the circumstances of the BWV use. Ultimately it did not consider the officers had failed to comply with the BWV SOPs because:

The involved officers were in compliance with Body-Worn Video SOPs being that they were in uniform and wearing BWV cameras whilst operationally patrolling the streets [...]

The ongoing pursuit at speed, fleeing of the vehicle and resistance by [the young person] presented a dynamic response situation where it is reasonable that the activation of the BWV was overlooked in the rapid response required. Whilst it would have been preferable and best practice for the BWV to be activated, **I must highlight that the BWV SOPs direct that BWV 'must' be worn and 'should' be used. I do not agree that these circumstances amount to 'unprofessional conduct', 'misconduct' or a breach of NSWPF BWV SOPs** [emphasis added]. As recognised within the Commander's Certification of the Investigation Report the involved officers have been reminded of the importance of the use of BWV and have been provided with advice and guidance in this regard. Both officers acknowledged the advice and were accepting of the guidance provided. I remain satisfied that this action is sufficient to address the issue and support the encouragement of use of BWV where practicable in future.

Although the Commission was not entirely satisfied with the outcome, we were satisfied that police had considered our request, and further follow up was unlikely to result in a different outcome. On this basis we decided further action was not warranted and the matter could be closed.

The above case study highlights a lack of clarity around the threshold for compliance versus non-compliance given the BWV SOPs instruction that officers 'should' not 'must' activate.

It also highlights a decision to not investigate or make sustained findings even though a failure to comply was identified and remedial action taken. This is an issue commonly identified by the Commission. Of the 58 allegations of 'fail to comply with BWV SOPs' declined by NSW Police Force between 30 April 2023 and 30 April 2024, over half (n=34, 58%) saw the triage officer recommend some kind of management action to the subject officer even though the allegation was

declined.⁴¹ Management action acknowledges that conduct was inconsistent with the expectations of the BWV SOPs and needed to be addressed.

The NSW Police Force is of the view that a decision to not investigate or make sustained findings even though a failure to comply was identified is within the provisions of s 131(1)(a) of the *Police Act 1990 (NSW)*.⁴² This section provides that the Commissioner of Police 'may investigate or otherwise deal with a misconduct matter'.⁴³

Notwithstanding this position, the Commission remains concerned that the above approach risks the following issues:

- The NSW Police Force's own misconduct management data may not accurately reflect the true prevalence of the practice of non-activation in circumstances where activation was warranted.
- Systemic trends of BWV-related misconduct and loss of otherwise valuable BWV evidence may remain undetected and unaddressed.
- Individual subject officers' misconduct histories may not reflect actual patterns of non-activation and escalation of misconduct risk.

Inconsistency in investigation processes and outcomes also impacts fairness for subject officers and complainants. An important principle of complaints management systems is that allegations are adjudicated as consistently as possible. In July 2023 we asked the NSW Police Force how it proposed to guide Commands in adjudicating allegations of 'Fail to comply with policy/procedures – use of BWV SOPs' given the BWV SOPs permit officer 'judgment' as to when they 'should' activate.

In October 2023 the NSW Police Force replied that:

The BWV SOPs are written as guiding principles but also include specific requirements regarding its lawful use and circumstances when BWV should be activated.

As these guidelines relate to operational policing where each situation will have its unique features a 'Failure to adhere to BWV policy and procedures' will need to be assessed considering all of the above aspects, including the officer's rationale in relation to how they exercised their discretion.⁴⁴

This response does not alleviate our concerns that the wording of the BWV SOPs is ambiguous and may lead to inconsistent practice. The ambiguity is further compounded by the NSW Police Force's response that the SOPs are simultaneously 'guiding principles' and 'specific requirements'. There is no clear delineation in the SOPs as to which instructions should be treated as guiding principles as distinguished from specific requirements about when BWV should be activated.

⁴¹ Management action included counselling, coaching, advice and guidance, training or otherwise being 'spoken to'.

⁴² Letter from Assistant Commissioner, Commander, Professional Standards Command, NSW Police Force, to Chief Commissioner, Law Enforcement Conduct Commission, 28 January 2025.

⁴³ *Police Act 1990 (NSW)* s 131(1)(a).

⁴⁴ A/Commissioner of Police, NSW Police Force, Response to draft Body-Worn Video observations paper, undated, Tab 1, Issue 2.

The Commission agrees that each situation will need to be assessed on a case by case basis, including the officer's rationale. We also acknowledge that many policing interactions are dynamic and can unfold quickly. That said, the BWV camera can be activated very quickly, and police are trained to anticipate when their powers may need to be exercised.

The Commission remains concerned that the current policy wording does not give sufficiently clear guidance as to when an officer's actions can be properly regarded as a failure to comply with the policy and procedures as opposed to an acceptable exercise of their discretion. We are not satisfied that the NSW Police Force has taken sufficient steps to ensure a consistent approach to adjudicating the allegation of 'Fail to comply with policy/procedures – use of BWV SOPs'. We acknowledge that decisions about misconduct management ultimately lie with the investigating Command. Nevertheless, the NSW Police Force could support all Commands to have a more consistent approach to adjudication by providing examples drawn from previous resolved misconduct matters about what kinds of conduct might be considered serious enough to constitute a breach of the SOPs.

2.4 Providing reasons for not activating BWV

The BWV SOPs say officers 'should' activate BWV when using police powers, or when they anticipate using police powers.⁴⁵ Nevertheless the Commission frequently reviews incidents where officers were using police powers but did not activate their BWV, as in the case study below.

Case study 2: Failure to activate BWV results in management action

Two police officers were performing duties in a regional town. The first officer located a young person who fitted the description of a suspected car thief, and chased the suspect. During the chase, a large knife fell from the suspect's pants. A struggle occurred between the suspect and the officer. The officer sustained a fracture in his hand during the struggle. A second officer arrived at the scene and assisted in arresting the suspect.

Both officers wore BWV but failed to activate it during the chase and subsequent arrest of the suspect. BWV was activated after the suspect was detained by police. The officers did not record reasons for not using BWV.

The Aboriginal Legal Service made a complaint to the Commission that the officers used excessive force. Initially the NSW Police Force declined to investigate this allegation. The Commission required the NSW Police Force to investigate whether the officers used unreasonable force against the suspect.⁴⁶ The investigator concluded that there was insufficient evidence to prove the allegations.

The police investigation report noted the absence of BWV, and that it could have assisted in this matter, but added, 'the dynamic reaction of these circumstances in dealing with the young person provides some reason as to why it was not utilised earlier'.

⁴⁵ Technology Command, NSW Police Force, *Body-Worn Video Standard Operating Procedures*, version 2.7, November 2023, p 8.

⁴⁶ The Commission can require the Commissioner of Police to investigate misconduct matters under s 99(3) of the LECC Act.

The misconduct investigation concluded that the issue of BWV should be addressed as a training issue throughout the Police District.

The Commission acknowledges there may be good reasons why an officer has not activated BWV, notwithstanding the guidance in the BWV SOPs to use it in certain circumstances. In the Commission's view, officers should record those reasons contemporaneously in the relevant COPS event or in their police notebooks. This record would provide the best evidence of why BWV footage was not obtained. This information may assist any subsequent misconduct investigation or any criminal examination of the incident.

Currently the NSW Police Force BWV SOPs do not address the issue of recording reasons for failing to activate cameras in circumstances that would otherwise satisfy the criteria for when BWV 'should' be activated.

It would be beneficial to both officers and supervisors if the NSW Police Force BWV SOPs use stronger and clearer wording about the need for officers to record reasons for non-activation. For example, the Tasmania Police *Body Worn Camera Guidelines* state:

Should members not record an incident for any reason, the reasons why the recording has not occurred must be documented by the member in their police notebook or other record of the incident (for example, within the incident report).⁴⁷

The SOPs should also clarify in which circumstances supervisors will be expected to ask officers to explain their decision not to activate BWV.

In October 2023 the NSW Police Force told us that it would amend the SOPs to reflect that, where the SOPs refer to circumstances where BWV should be activated and such guidance is not adhered to, the officer must record the reasons for non-activation in the relevant COPS Event.⁴⁸ This change would be acceptable to the Commission.

At the time of publishing this report, the NSW Police Force had not made this change to the BWV SOPs.

Recommendation 1: The NSW Police Force amend the BWV SOPs to reflect that, in circumstances where BWV should have been activated but an officer failed to do so, the officer must record the reasons for non-activation, for example in the relevant COPS Event or in their police notebook.

2.5 Providing reasons for de-activating BWV

The BWV SOPs encourage officers to record as much of an incident as possible:

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.⁴⁹

⁴⁷ Tasmania Police, *Body Worn Camera Guidelines*, version 5.0, February 2024, section 3.7.

⁴⁸ A/Commissioner of Police, NSW Police Force, Response to draft Body-Worn Video observations paper, undated, Tab 1, Issue 2.

⁴⁹ Technology Command, NSW Police Force, *Body-Worn Video Standard Operating Procedures*, version 2.7, November 2023, p 9.

But the SOPs also set out circumstances in which it may not be appropriate for officers to continue recording:

- capturing unrelated or prejudicial commentary
- professional conversations such as discussions about strategy or confidential information
- interactions with vulnerable persons.⁵⁰

Currently the BWV SOPs advise officers that they should record reasons for stopping the recording 'if practicable' and that they '**may** be required to explain a failure to record something of relevance to your supervisor or a court' [emphasis added].⁵¹

The Commission has reviewed complaints about incidents in which officers deactivated their BWV before the end of an incident and did not provide reasons. The case study below highlights one example of this, in which the NSW Police Force took appropriate management action against the subject officer.

Case study 3: De-activating BWV part-way through an incident

In 2022, a probationary constable (PC) and a leading senior constable (LSC) attended a call to a domestic violence incident. When police arrived at the location, the PC turned on his BWV camera. Police noticed that the female victim was upset and arguing with a male person of interest (POI). The victim told police that she was in the process of moving out and because of that the POI had threatened to bash her. The POI denied the victim's version of events.

The LSC and PC took the victim outside to speak to her. The PC recorded the victim's version of events on BWV, however the victim did not want to provide a formal statement.

The LSC told the PC to turn off the BWV after their conversation with the victim. The LSC went back into the house and spoke with the POI. This conversation was not recorded on BWV. The LSC then told the PC to turn the BWV back on when they cautioned the POI.

The POI invited a witness to the domestic violence incident into the premises. Police had a conversation with the witness but did not record it on BWV.

The subsequent investigation found that the LSC failed to comply with NSW Police BWV SOPs when he instructed the PC to turn off the BWV before the incident was completed.

The investigation also found that the LSC had a previous complaints history of not turning on BWV when speaking to suspects of serious domestic violence incidents. Consequently, the investigator identified the LSC as a potential risk to the command in relation to attending domestic violence incidents.

⁵⁰ Technology Command, NSW Police Force, *Body-Worn Video Standard Operating Procedures*, version 2.7, November 2023, p 11.

⁵¹ Technology Command, NSW Police Force, *Body-Worn Video Standard Operating Procedures*, version 2.7, November 2023, p 9.

The LSC was issued with a Commander Warning Notice and placed on a 6 month Conduct Management Plan. This is an appropriate response by NSW Police Force.

The Commission's view is that the wording of the NSW Police Force BWV SOPs should be strengthened to require officers to always provide reasons for deactivating BWV during an incident, rather than the current guidance to 'give consideration' to providing reasons. Recording reasons for deactivation is particularly relevant in circumstances where allegations of misconduct arise. A contemporaneous record of the reasons for deactivation is an important safeguard for involved officers. Deactivation of BWV in the middle of an interaction without adequate justification may give rise to reasonable suspicions about the motive for deactivation.

Note that the Victoria Police Manual uses stronger language around reasons for deactivation. It instructs that when a BWV recording is not made, or stopped prematurely in circumstances that would otherwise require activation, officers 'must' record the circumstances on their mobile electronic device, or in their official diary, or on the camera itself.⁵² The Manual further instructs that the record should provide enough detail to later account for the omission and identify the supervisor who directed the action (if applicable).⁵³

We asked the NSW Police Force if it would strengthen the wording of the BWV SOPs to require officers to explain reasons for deactivation. The NSW Police Force declined to change the SOPs, but noted that it has measures in place to proactively monitor premature BWV deactivation, including audits and dip sampling under the Command Management Framework and Police Powers Panels.⁵⁴

The Commission is pleased that the NSW Police Force has these measures in place. However the Commission questions the sufficiency of these safeguards and quality assurance mechanisms.

Dip sampling and audits are retrospective, randomised activities. These measures are not designed to systematically identify matters where officers have deactivated their BWV camera during an incident, nor to consider the adequacy of reasons an officer may have provided for any such deactivation. A more effective safeguard would require officers to include reasons in the COPS event and require supervisors to check each time that the reasons provided are sufficient.

The NSW Police Force also told us in October 2023 that it would consider developing online training packages and mandatory learning modules on expectations for officers around early deactivation of BWV cameras in training.⁵⁵ However it has not provided any further information about proposed training since then.

The Commission considers the NSW Police Force could do more to prevent the misconduct issue of officers prematurely deactivating BWV without adequate reasons. As such the Commission maintains that the BWV SOPs should be changed

⁵² Victoria Police, *Victoria Police Manual - Body worn cameras*, December 2023, pp 4-5.

⁵³ Victoria Police, *Victoria Police Manual - Body worn cameras*, December 2023, p 5.

⁵⁴ A/Commissioner of Police, NSW Police Force, Response to draft Body-Worn Video Observations paper, undated, Tab 1, Issue 5 and 6.

⁵⁵ A/Commissioner of Police, NSW Police Force, Response to draft Body-Worn Video Observations paper, undated, Tab 1, Issue 7.

to mandate providing reasons (either on the recording or in the COPS event) for deactivating BWV during an incident.

Recommendation 2: The NSW Police Force mandate that officers must provide reasons for prematurely deactivating BWV during an incident, and reflect this in any future BWV SOPs, guidelines or training.

2.6 The value of multiple BWV perspectives

It is common for multiple police officers at once to be involved in policing interactions requiring the exercise of police powers, for example, incidents of public disorder, or multiple alleged offenders. It is also quite common for more than one officer in attendance to be wearing a BWV camera.

Having multiple perspectives of such incidents captured by BWV offers many benefits to police, including providing:

- a fuller and more comprehensive view of what occurred, especially if other officers' cameras are obscured, such as during a use of force
- compelling evidence of other parties hindering or assaulting police
- context or justification for the actions of police subject to misconduct allegations, and
- evidence of other parties involving themselves in an arrest.

The Commission has reviewed misconduct matters where the availability of multiple angles of BWV due to activation by multiple attending officers allowed the NSW Police Force to efficiently deal with false allegations of misconduct.

Currently the BWV SOPs state:

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.⁵⁶

The Commission asked the NSW Police Force if it could require officers other than the primary investigating officer to activate BWV when attending incidents (where the circumstances are such that BWV should be used). The NSW Police Force refused, indicating that it considered the current instructions to be sufficient.⁵⁷ The Commission does not agree.

The current instructions for multiple attending officers to 'consider' activating their BWV is a further example of where the SOPs allow too much leeway around activation. The SOPs do not clearly set out an expectation for officers other than the primary investigating officer to activate their BWV.

This may result in loss of evidence that otherwise would have been valuable in helping the NSW Police Force and other investigating agencies such as the

⁵⁶ Technology Command, NSW Police Force, *Body-Worn Video Standard Operating Procedures*, version 2.7, November 2023, p 9.

⁵⁷ A/Commissioner of Police, NSW Police Force, Response to draft Body-Worn Video Observations paper, undated, Tab 1, Issue 8.

Commission and the NSW Coroner resolve criminal or misconduct allegations more efficiently. It is important that investigative bodies have access to as many camera angles of volatile incidents as possible.

Recommendation 3: The NSW Police Force update the BWV SOPs to specify that when an officer is wearing a BWV camera and is in attendance at an interaction involving multiple officers, all officers must activate their BWV cameras. If officers do not activate their cameras, they must provide reasons.

2.7 Policy wording

The Commission is of the view that the current BWV SOPs instruction that officers 'should' activate BWV in certain circumstances but may also 'use their own judgement' creates ambiguity around the imperative for activation. The Commission appreciates that one rationale for giving officers broad discretion as to when they will activate their BWV cameras is to avoid breaches of privacy and the recording of confidential information. However this is leading to inconsistencies in BWV use and in adjudication of allegations of failures to adhere to the SOPs.

A 2021 paper in the University of New South Wales Law Journal highlighted similar concerns around unclear BWV activation policy and officer discretion:

Failure to comply with provisions that are uncertain and often determined by the officers themselves makes it highly likely that there will be no – or at least minor – consequences for police failures to follow the guidelines. What legislation would provide that the current guidelines do not, thus, can be summed up in three words – certainty, compulsion and consequences

[...]

Complicated guidelines about when and where to start recording lack the certainty required to ensure officers will be recording events at the requisite time. In the same way that any legislation containing penal provisions can include defences or excuses, provisions could be drafted to account for instances where recordings were not made.⁵⁸

These quotations reflect the experience of the Commission in reviewing BWV related matters. The current BWV SOPs use of 'should' amounts to a less-than-mandatory imperative to activate BWV and accommodates too much officer discretion. This results in otherwise-valuable evidence not being captured when it should have been.

The current ambiguous policy wording is contributing to this valuable technology being underutilised by the NSW Police Force. It also means that the NSW Police Force and the Commission continue to exchange various threads of formal correspondence and expend public resources in relation to a range of individual and systemic BWV-related misconduct issues. It is in the public interest that the NSW Police Force take steps to optimise use of its own technology and systems. A clearer policy around activation is required.

⁵⁸ Robyn Blewer and Ron Behlau, 'Every move you make...every word you say': Regulating police body worn cameras', (2021) 44(3) *UNSW Law Journal*, 1180, 1196, 1197.

Another benefit of clarifying policy wording is that it may help address the mix of attitudes and practices the Commission has observed amongst NSW police officers regarding wearing and using BWV. The Commission's Operation Venti identified a concerning example of this, in which opportunities for evidence capture were lost as a result.

Case study 4: LECC Operation Venti reveals inconsistent BWV practices

Operation Venti was triggered by a complaint to the Commission about the conduct of police officers during their interaction in the early hours of 21 November 2020 with a young person who was then aged 16 and identified as Aboriginal. During the interaction a Sergeant threw a torch at the back of the young person's head, hitting him on the back of the head and causing injury. Police then pursued the young person, handcuffed, searched him, and detained him in the back of a police car. The officer was wearing BWV at the time but failed to activate it during the interaction.⁵⁹

On 28 February 2022, the Commission decided to investigate this matter under Operation Venti. The Commission published its final report on Operation Venti in July 2023. The Commission found that the officer's use of force was unlawful. The Sergeant's failure to activate BWV was compounded further by his failure to report and record his use of force against the youth which caused injury.⁶⁰

Hearings for Operation Venti revealed some concerning attitudes among the subject officers about BWV use. In his evidence before the Commission, the Sergeant demonstrated disinterest in the use of BWV, citing practical barriers as an excuse for not activating the camera, such as the perception that it can take up to 10 seconds to activate the BWV. Other witnesses giving evidence at the hearing did not corroborate these barriers.⁶¹ The Sergeant also indicated that he was of the understanding that it was acceptable if he decided not to use his BWV at all during a shift and that there were shifts when he was out in the field when he did not activate it at all.⁶² Another officer who attended the relevant incident gave evidence to the Commission that he was 'not a fan' of activating BWV and was resistant to doing so as he had seen other officers disciplined for things captured on video.⁶³

The final report on Operation Venti concluded that:

The Commission is concerned with any police officer choosing not to activate BWV [...] The importance of BWV cannot be overstated. The NSWPF should ensure that there is a consistent approach adopted as to its use and that more senior police officers appropriately encourage and promote the use of body worn video cameras in accordance with the SOPs.⁶⁴

⁵⁹ Law Enforcement Conduct Commission, *Operation Venti* (Report, July 2023) 30 [5.15].

⁶⁰ Law Enforcement Conduct Commission, *Operation Venti* (Report, July 2023) 32.

⁶¹ Other officers who gave evidence at the hearing did not report similar difficulties with operating BWV effectively. Similarly, the evidence of the Assistant Commissioner did not support the Sergeant's view. See Law Enforcement Conduct Commission, *Operation Venti* (Report, July 2023) 30-33.

⁶² Law Enforcement Conduct Commission, *Operation Venti* (Report, July 2023) [7.39].

⁶³ Law Enforcement Conduct Commission, *Operation Venti* (Report, July 2023) [7.40].

⁶⁴ Law Enforcement Conduct Commission, *Operation Venti* (Report, July 2023) [7.41].

[...]

This investigation has revealed ongoing and inconsistent practices and attitudes towards the wearing and use of BWV. These unsatisfactory aspects persisted in late 2022 despite the developing and increasingly strict and emphatic BWV SOPs which issued in 2021 and November 2022.⁶⁵

[...]

There is a continuing need for the NSWPF to emphasise with vigour and repetition, the community expectation that police officers will wear and activate on all appropriate occasions their BWV. This should be almost second nature now to operational police officers.⁶⁶

There is a powerful case for making the use of BWV mandatory.⁶⁷

There should be disciplinary consequences for officers who do not use BWV in the course of their duties in accordance with the BWV SOPs.⁶⁸

2.7.1 BWV policy in other jurisdictions

Activating BWV when using police powers is mandatory in Queensland, Victoria, Tasmania, Northern Territory and South Australia.

The relevant Queensland Police Service (QPS) policy document gives detailed instructions to police officers about when they are expected to:

- activate cameras in buffering mode
- turn on the recording function, and
- switch off cameras.

Importantly, the QPS policy clarifies the meanings of the directive terms used in the policy [emphasis in original]:

The heading **ORDER** and the terms **are to**, **are not**, **is to** and **is not** require compliance with. Orders are not to be departed from, unless exceptional circumstances exist. Members will be required to explain and justify their decision to depart from such policy in subsequent investigations and/or court proceedings.⁶⁹

The policy *orders* that officers commence recording:

- as soon as practicable after an officer reasonably believes that they may use a police power or apply a use force⁷⁰

⁶⁵ Law Enforcement Conduct Commission, *Operation Venti* (Report, July 2023) [9.1].

⁶⁶ Law Enforcement Conduct Commission, *Operation Venti* (Report, July 2023) [9.3].

⁶⁷ Law Enforcement Conduct Commission, *Operation Venti* (Report, July 2023) [9.4].

⁶⁸ Law Enforcement Conduct Commission, *Operation Venti* (Report, July 2023) [9.5].

⁶⁹ Queensland Police Service, *Digital Electronic Recording of Interviews and Evidence Manual: Introduction*, issue 27, Public Edition, April 2024, p. 2.

⁷⁰ Queensland Police Service, *Digital Electronic Recording of Interviews and Evidence Manual: Section 4*, issue 27, Public Edition, April 2024, p. 4.

- when a recording might assist in providing evidence in the investigation of an offence or a suspected offence, or when an officer believes the interaction should be recorded
- at the scene of a significant event that may be reasonably expected to be subject of later external review (such as a fatal traffic incident, arson, terrorist event) **irrespective of whether they are investigating the incident** [emphasis added].⁷¹

The QPS policy states that when an officer has commenced recording, the officer should continue recording until the incident is finalised. Prior to ending a recording, officers should clearly state the recording will be stopped and the reasons for doing so.⁷²

In Tasmania, police ‘must’ activate their BWV camera in specific circumstances including acting in an enforcement capacity or using statutory powers unless there are legal or operational reasons not to do so.⁷³ The Tasmanian policy also defines that ‘must’ indicates a mandatory action and ‘should’ indicates a recommended action to be followed unless there are sound reasons for taking a different course of action.⁷⁴

In Victoria, police officers ‘must’ start a BWV recording when exercising legislated or common law powers, or when an incident is occurring (or likely to occur, or has occurred).⁷⁵ Supervisors are responsible for monitoring the use of BWV during their shift.⁷⁶ The relevant instructional document also directs that, if an officer is in doubt whether the circumstances of a situation meet the criteria for activation, they ‘must’ start recording, and later categorise the footage as non-evidentiary or inadvertent if it is found to not be relevant.⁷⁷ Like Queensland, the Victorian document includes a definitions section clarifying the meaning of key terms used in the document, including ‘frontline duties’.⁷⁸

In South Australia, police officer obligations for BWV use are set out in a General Order. The Order instructs that BWV ‘must’ be activated as soon as practicable where:

- there is face to face interaction with the public that occurs in the course of an officers’ duty (for example a traffic stop, request for assistance or a general tasking)
- it would provide corroborative evidence (for example a search of a premises when no one is present), and

⁷¹ Queensland Police Service, *Digital Electronic Recording of Interviews and Evidence Manual: Section 4*, issue 27, Public Edition, April 2024, p. 4.

⁷² Queensland Police Service, *Digital Electronic Recording of Interviews and Evidence Manual: Section 4*, issue 27, Public Edition, April 2024, p. 4.

⁷³ Tasmania Police, *Body Worn Camera Guidelines - version 5.0 - February 2024* p 5.

⁷⁴ Tasmania Police, *Body Worn Camera Guidelines - version 5.0 - February 2024* p 4.

⁷⁵ Victoria Police, *Victoria Police Manual - Body worn cameras*, December 2023, p 3.

⁷⁶ Victoria Police, *Victoria Police Manual - Body worn cameras*, December 2023, p 2.

⁷⁷ Victoria Police, *Victoria Police Manual - Body worn cameras*, December 2023, p 3.

⁷⁸ Victoria Police, *Victoria Police Manual - Body worn cameras*, December 2023, p 1.

- it is used for recording domestic violence evidence-in-chief.⁷⁹

The General Order also requires officers to activate BWV even though other officers at the same event may be recording. The Order also instructs that recording is not to be interrupted.⁸⁰

The Northern Territory *Police Practice and Procedure – Body Worn Video Instruction* states that BWV use is mandatory for officers engaged in overt policing duties.⁸¹ The document says Police ‘will’ use BWV:

[...] in any circumstance where it may assist in providing a record of evidence in respect of the investigation of any offence or suspected offence. It will also be utilised when the use of BWV would provide transparency of an encounter (for example, Protective Custody apprehension, stop and search, use of force).

BWV will be switched on prior to, and during any encounter where a member utilises a police power, unless impracticable.⁸²

In Western Australia, policy instructs that police officers ‘must’ activate a BWV recording at a Critical Event or Critical Incident. The SOPs define a Critical Event as any event where the effectiveness of the police response is likely to have a significant impact on the confidence of the victim, their family and/or the community. This includes active armed offender Incidents, vehicle fatalities or serious injuries, family violence incidents, public order incidents, and emergency management events. Critical incidents include (among other things) major or serious crimes, police shootings, family violence involving police officers, major civil disorder events, and officer welfare checks.⁸³

The WA policy further instructs that officers ‘should’ commence recording in other circumstances, including when there is a reasonable belief the recording will:

- capture evidence
- capture the use of force
- capture the use of legislated or common law powers
- provide transparency, or
- improve interaction with community members.⁸⁴

⁷⁹ Email from Detective Chief Inspector, Internal Investigation Section, South Australia Police to Senior Project Officer, Prevention and Engagement team, Law Enforcement Conduct Commission, 12 September 2024.

⁸⁰ Email from Detective Chief Inspector, Internal Investigation Section, South Australia Police to Senior Project Officer, Prevention and Engagement team, Law Enforcement Conduct Commission, 12 September 2024.

⁸¹ Northern Territory Ombudsman, *Keeping a watchful eye: NT Police utilisation of body worn video cameras* (Investigation Report, March 2023) [120].

⁸² Northern Territory Ombudsman, *Keeping a watchful eye: NT Police utilisation of body worn video cameras* (Investigation Report, March 2023) 25.

⁸³ Email from Acting Superintendent, Ethical Standards Division, Western Australia Police Force to Senior Project Officer, Prevention and Engagement team, Law Enforcement Conduct Commission 26 September 2024.

⁸⁴ Email from Acting Superintendent, Ethical Standards Division, Western Australia Police Force to Senior Project Officer, Prevention and Engagement team, Law Enforcement Conduct Commission 26 September 2024.

The above examples highlight that BWV activation in certain circumstances is mandatory in most police jurisdictions in Australia.

2.7.2 Current review of the BWV SOPs

At the time of publishing this report the NSW Police Force had commenced a review of the BWV SOPs. The NSW Police Force's final report on the review is due in April 2025.⁸⁵ The NSW Police Force has indicated it will take the recommendations of this report into account in its review of the BWV SOPs.

At a verbal briefing the NSW Police Force advised that the SOPs review will ultimately lead to a renewed emphasis within the NSW Police Force on encouraging officers to activate BWV often, and would promote a cultural shift among its officers towards understanding the benefits of activating BWV as a matter of course.⁸⁶ The Commission supports this goal.

The NSW Police Force indicated that it intends to engender the desired cultural change through inspirational leadership rather than enforcing compliance.⁸⁷ The Commission acknowledges that leadership may have an impact on officers embracing the benefits of early and widespread BWV activation. We are keen to see how the NSW Police Force proposes to encourage officers to readily take up BWV activation. Strong messaging from NSW Police Force leadership will be key. It seems the intention of the NSW Police Force is that officers will be encouraged to activate not only when exercising a statutory power, but in the lead up to such execution of powers.⁸⁸ The Commission supports this approach.

However, it remains important that officers are given clear guidance about when they are expected to activate their BWV. Such clear expectations are also important so that the community understands how and when officers will use BWV. Those expectations will need to be clearly articulated in written form, so that every officer, from those performing frontline duties, to their supervisors, through to officers in senior leadership can follow and reinforce them.

The preceding sections highlight that there is a need to improve officers' compliance with BWV policy to ensure this valuable evidence collection tool is optimised by the NSW Police Force. A clear, simple policy around activation ought to be the basis of setting expectations for officers around BWV activation.

2.7.3 A clearer policy may assist officers

Police officers are under significant pressure in their everyday duties. Unsafe, risky situations are common. Widespread, early activation of BWV in these situations offers many benefits to police. This is highlighted in the Commissioner's Foreword to the BWV SOPs.⁸⁹ Simplifying instructions around BWV activation may help

⁸⁵ Verbal briefing from Assistant Commissioner, NSW Police Force to the Law Enforcement Conduct Commission, 8 November 2024.

⁸⁶ Verbal briefing from Assistant Commissioner, NSW Police Force to the Law Enforcement Conduct Commission, 8 November 2024.

⁸⁷ Verbal briefing from Assistant Commissioner, NSW Police Force to the Law Enforcement Conduct Commission, 8 November 2024.

⁸⁸ Verbal briefing from Assistant Commissioner, NSW Police Force to the Law Enforcement Conduct Commission, 8 November 2024.

⁸⁹ Technology Command, NSW Police Force, *Body-Worn Video Standard Operating Procedures*, version 2.7, November 2023, p 5.

alleviate some of the pressures on officers in these heightened situations and improve use of BWV as an evidence capture tool.

Currently, the BWV SOPs instruct that officers ‘should’ activate their BWV camera in 11 different circumstances, and that they should also ‘use their judgment’ around activation.

The Commission recommends simplifying this policy to make clear that officers ‘must’ activate BWV, at a minimum, when exercising statutory powers, or when it is likely that an interaction may lead to the exercise of statutory powers.

If there are legitimate legal or operational reasons not to activate, for example in relation to protecting privacy or considerations regarding vulnerable persons, the officer must make a record of these reasons (see Recommendation 1 of this report). The NSW Police Force should also require officers to record their reasons for deactivating their cameras early, where the situation otherwise meets the requirement for continued activation (see Recommendation 2 of this report). Such a policy should also clarify the role of supervisors in checking reasons for nonactivation or deactivation as part of the existing process of verifying COPS events.

This approach still affords officers some discretion in deciding to not activate the BWV camera, while improving clarity on the policy requirement that BWV be utilised.

Adopting a policy that officers ‘must’ activate BWV when using police powers would also bring the NSW Police Force policy in to step with the majority of other policing jurisdictions in Australia which mandate activation in these circumstances (see [section 2.7.1](#)).

Recommendation 4: The NSW Police Force

- a) mandate that, at a minimum, officers must activate BWV when using statutory powers, or when it is likely that an interaction may lead to the exercise of statutory powers, and**
- b) reflect this policy in any future Standard Operating Procedures or Guidelines that mention BWV use.**

We also encourage the NSW Police Force to include a definitions section in the BWV SOPs which defines key terms, as is done in the Victorian and Queensland policy documents. Defining key terms may help avoid ambiguity and inconsistency in interpretation around what is expected of officers and how to adjudicate deviations from the requirements of the SOPs.

Recommendation 5: The NSW Police Force include in any future BWV SOPs or guidelines a ‘definitions’ section which defines directions (e.g. ‘must’) and key terms (e.g. ‘operational policing’).

3. BWV in the field

3.1 The value of BWV in capturing high-risk incidents

Attending urgent and risky incidents is a key responsibility of NSW Police officers. The NSW Police Force classifies such incidents on a numeric scale, with Priority 1 and 2 representing the most and second most urgent response need. This may also include critical incidents. A critical incident is a death or serious injury involving a police officer, which generally arises from:

- a police officer's discharge of a firearm;
- a police officer's use of force or use of defensive equipment;
- a police officer's use of a police vehicle;
- an incident arising while a person is in police custody or while escaping or attempting to escape police custody; or
- any police operation.

Currently BWV activation at critical incidents and Priority 1 and 2 incidents is not mandatory.

BWV footage can provide an objective, high-quality recording of what happened in a Priority 1, Priority 2 or critical incident. It is in the interests of police and the public that such evidence is captured. For example, on 17 August 2019 Jacob Daniel Carr died as the result of a police operation. The Deputy State Coroner presiding over the inquest into Mr Carr's death found BWV to be very useful to the inquest into the manner and cause of Mr Carr's death:

the use of BWV has been crucial to determining a number of issues that have arisen in this inquest

[...]

not only does BWV provide an evidentiary basis for determining culpability, it also provides a real time appraisal of the circumstances surrounding split second actions and decision making.⁹⁰

Similarly, Deputy State Coroner, Magistrate Erin Kennedy found BWV to be vital in determining the circumstances of death of Brett Walker in July 2022. Mr Walker died from injuries from a fatal police shooting. Magistrate Kennedy described the event as 'horrific' and acknowledged the involved officers were deeply affected by the death.⁹¹

Magistrate Kennedy noted:

The activation of the body worn footage enabled the inquest to proceed without the need for calling of the officers involved. It was all captured

⁹⁰ *Inquest into the death of Jacob Daniel Carr* (NSW Coroners Court, Deputy State Coroner Joan Baptie, 30 November 2023) 42 [225].

⁹¹ *Inquest into the death of Brett Andrew Walker* (NSW Coroners Court, Deputy State Coroner Erin Kennedy, 13 August 2024) [134].

clearly on the footage, and they each gave detailed statements, and no request was made for anyone to question them further.⁹²

The availability of BWV also assisted Magistrate Kennedy to conclude that:

each of the officers were acting in proper execution of their duty. Each acted heroically to put themselves in harms way, to deflect [Mr Walker] from members of the public and to attempt to safely restrain Mr Walker.⁹³

The above Coronial examples highlight the benefits to the NSW Police Force of having BWV footage available in investigations of critical incidents, including:

- efficiently determining the facts and circumstances of deaths
- capturing the lawful, appropriate conduct and bravery of officers, and
- minimising where possible the burden on traumatised officers to give evidence.

However, the Commission has monitored 2 critical incidents ultimately resulting in the deaths of civilians, where police did not activate their BWV camera.

3.1.1 Ensuring evidence capture at critical incidents

The Commission appreciates that, in circumstances relating to a critical incident, the situation is often volatile and can escalate so quickly that police are unable to, or sometimes forget to activate their BWV cameras. We have asked the NSW Police Force on more than one occasion to consider measures that could prompt officers to remember to activate their BWV in the heat of the moment, to ensure valuable evidence of serious incidents is captured.⁹⁴ For example, we suggested placing a reminder on the CAD message for Priority 1 and 2 incidents to remind attending officers to turn on their cameras before exiting the vehicle.⁹⁵

The NSW Police Force responded that the CAD system is used for operational purposes and is not suitable for inclusion of reminders.⁹⁶ The NSW Police Force said it would consider other options to assist officers to remember to activate their BWV cameras at critical incidents as part of its current procurement process for integrated connected officer technology (described above at [section 1.2](#)).⁹⁷

The Commission has a number of concerns with this response.

The NSW Police Force has indicated that the new BWV cameras associated with interconnected officer technology will be rolled out across the state by March 2026. The timeline for roll out of the remaining integrated technology is unknown.

⁹² *Inquest into the death of Brett Andrew Walker* (NSW Coroners Court, Deputy State Coroner Erin Kennedy, 13 August 2024) [126].

⁹³ *Inquest into the death of Brett Andrew Walker* (NSW Coroners Court, Deputy State Coroner Erin Kennedy, 13 August 2024) [132].

⁹⁴ Letter from Chief Commissioner, Law Enforcement Conduct Commission, to the Commissioner of Police, NSW Police Force, 9 June 2023; Letter from Chief Commissioner, Law Enforcement Conduct Commission, to Commissioner of Police, 31 October 2023.

⁹⁵ Law Enforcement Conduct Commission, *Observations paper: NSW Police Force use of Body Worn*, (Report, July 2023), 12-13.

⁹⁶ A/Commissioner of Police, NSW Police Force, Response to draft Body-Worn Video Observations paper, undated, Tab 1, Issue 4.

⁹⁷ A/Commissioner of Police, NSW Police Force, Response to draft Body-Worn Video observations paper, undated, Tab 1, Issue 4.2.

This is a significant period to leave the risk of failure to capture BWV at serious incidents unaddressed. The Commission previously raised this concern with the NSW Police Force in October 2023.⁹⁸

Even when integrated connected officer technology is rolled out, it will not fully address the problem of officers forgetting to activate BWV at Priority 1 and 2 incidents. This is because such incidents may not necessarily involve the use of a Taser or firearm by officers. Other types of force such as batons, capsicum spray, or weaponless force may be used, which will not automatically activate the BWV. Officers may also use communication and negotiating tactics to de-escalate Priority 1 and 2 incidents, or arrive to the aftermath of such incidents after the assailant has fled and the use of appointments is no longer required. Automatic activation of BWV in such scenarios would not occur.

The Commission also previously recommended the NSW Police Force amend the BWV SOPs to require police to activate their BWV cameras before emerging from the police vehicle when responding to Priority 1 and 2 incidents.⁹⁹ The NSW Police Force did not support this recommendation. It provided 3 reasons for this.

Firstly it stated that:

activation of BWV beforehand may impact on the privacy of police officers and may jeopardise the unnecessary mass recording of NSWPF methodology.¹⁰⁰

The Commission's recommendation that the BWV be activated before officers exit the vehicle is not intended to capture planning or methodology discussed by officers about the event they are about to confront. The Commission's recommendation is simply that in the moment before opening the car door, the officer activates the BWV camera, noting that:

- given the nature of the event, the officer's powers are likely to be used
- this is likely to fall within type of circumstances in which BWV should be used, and
- activation before confronting the incident means there is less chance officers will forget due to the heightened situation.

The Commission notes the NSW Police Force's concerns that recording police methodology creates a risk that this methodology may be publicly divulged. However, there are adequate legislative provisions to manage privacy concerns on a case-by-case basis. The *Government Information (Public Access) Act 2009 (NSW)* contains protections against the public release of methodologically sensitive information. The *Law Enforcement Conduct Commission Act 2016 (NSW)* contains similar provisions that may protect police information from public release.¹⁰¹

⁹⁸ Letter from Chief Commissioner, Law Enforcement Conduct Commission, to Commissioner of Police, 31 October 2023.

⁹⁹ Letter from Chief Commissioner, Law Enforcement Conduct Commission, to the Commissioner of Police, NSW Police Force, 9 June 2023.

¹⁰⁰ Letter From Assistant Commissioner, Commander Professional Standards Command, NSW Police Force, to Chief Commissioner, Law Enforcement Conduct Commission, 4 December 2023, p 1.

¹⁰¹ LECC Act s 179.

Secondly, the NSW Police Force disagreed with the recommendation to mandate BWV activation at Priority 1 and 2 incidents because:

The SOPs state that in making the decision to activate the BWV camera a police officer will use their own judgement and consider a number of factors including officer safety, the need to capture evidence, accountability, and community expectations.¹⁰²

As outlined in [section 2.7](#) of this report, the Commission considers that the current policy permitting officers to ‘use their own judgement’ creates ambiguity around when to activate. This contributes to otherwise valuable evidence not being captured, and officers not being held to account. Given the value of BWV evidence to the NSW Police Force and the public, it is appropriate that there are clearer instructions around activation. In the exceptional circumstances where BWV was unable to be activated or the officer had good reasons to choose not to activate, then the officer should be required to clearly state those reasons in the event records, and these should be carefully considered by a supervisor.

Thirdly, the NSW Police Force disagreed with our recommendation to mandate BWV activation at Priority 1 and 2 incidents on the basis that:

Mandating activation when ‘*emerging from the police vehicle*’ will also require a considerable increase in the capacity for storage of BWV footage and require significant additional funding.¹⁰³

The NSW Police Force did not provide the Commission with any information in support of this statement.

In practice, activating BWV when exiting a police vehicle to attend a Priority 1 or 2 incident or critical incident is likely to add a few extra seconds of footage. Further, the NSW Police Force has already indicated to the Commission that its storage space for BWV footage is diminishing.¹⁰⁴ As such, it appears the NSW Police Force already needs to confront solutions to storage space regardless of the Commission’s recommendation. It is difficult for the Commission to accept the NSW Police Force’s argument without supporting information or evidence of the extent of the proposed increase in storage capacity and associated funding.

While the NSW Police Force declined to amend the BWV SOPs as recommended by the Commission, it proposed to address the issue of BWV activation at Priority 1 and 2 incidents in online and scenario-based training:

As it is mandatory that all police who wear a BWV camera have received training on when and how to activate BWV, NSWPF considers that this issue can be remedied through an educative approach rather than a policy approach.¹⁰⁵

¹⁰² Letter From Assistant Commissioner, Commander Professional Standards Command, NSW Police Force, to Chief Commissioner, Law Enforcement Conduct Commission, 4 December 2023, p 1.

¹⁰³ Letter From Assistant Commissioner, Commander Professional Standards Command, NSW Police Force, to Chief Commissioner, Law Enforcement Conduct Commission, 4 December 2023, p 1.

¹⁰⁴ A/Commissioner of Police, NSW Police Force, Response to draft Body-Worn Video observations paper, undated, Tab 1, Issue 9.

¹⁰⁵ Letter From Assistant Commissioner, Commander Professional Standards Command, NSW Police Force, to Chief Commissioner, Law Enforcement Conduct Commission, 4 December 2023, p 1.

This highlights that the NSW Police Force does in fact support the practice of activating BWV at Priority 1 and 2 incidents.

While additional instruction in training is a welcome addition, the Commission is concerned that such training is likely to take several months for the NSW Police Force to develop, approve, and roll out throughout the state.

Additionally, the Commission has previously reported publicly about NSW Police Force failures to effectively roll out mandatory training (with regard to strip searches at Music Festivals) resulting in less than half of the target group completing the training.¹⁰⁶ For these reasons, training alone is unlikely to be the most effective measure to prevent the failure to activate BWV during serious incidents.

3.1.2 The Commission supports mandatory BWV activation

The Commission is concerned that the NSW Police Force is not willing to change its approach to mandate activation of BWV in serious situations such as critical incidents and Priority 1 and 2 incidents, despite recommendations by the Commission and the NSW Coroner. This concern is compounded by the lack of a compelling rationale from the NSW Police Force in support of its position.

The NSW Police Force's current position leaves it open to some reputational and operational risk.

Firstly, it risks eroding public trust in police. It is reasonable for the public to expect that officers are given clear and unequivocal instructions that they must activate their BWV when attending serious incidents, particularly as these incidents can result in injury or death.

Secondly, the absence of BWV footage in investigations of deaths or serious injury means those investigations are likely to take longer to resolve, as it is difficult to quickly determine what happened in an incident without the high-quality audio and visual source of BWV footage.¹⁰⁷ This impacts the wellbeing of involved parties including subject officers and families of people deceased or injured in police incidents.

Even though the Commission has already recommended multiple times in private correspondence to the NSW Police Force to mandate activation at Priority 1 and 2 incidents, we now see a need to re-state the recommendation in the public domain, to call attention to this important issue of accountability.

Recommendation 6: The NSW Police Force mandate BWV activation at Priority 1 and 2 incidents and critical incidents, and implement measures to remind officers to activate upon exiting their vehicle at such incidents.

¹⁰⁶ Law Enforcement Conduct Commission, *Review of a sample of NSW Police Force strip search records 2021-2022*, (Report), September 2023, 23.

¹⁰⁷ For example, see Johnson J, *Director of Public Prosecutions (NSW) v Merhi* [2019] NSWSC 1068, [37], in Robyn Blewer and Ron Behlau, 'Every move you make...every word you say': Regulating police body worn cameras', (2021) 44(3) *UNSW Law Journal*, 1190.

3.2 Recording a suspect's decision to not participate in an interview

Persons of interest held in police custody are entitled to exercise their right to silence, and refuse to participate in a police interview. The Commission's 2023 investigation Operation Mantus¹⁰⁸ uncovered incidents of police officers using BWV to record questions put to a child in custody, after the child declined to participate in a police interview, and that had been communicated to police by the child's lawyer. The evidence before the Commission was that these practices took place across the state over a number of years.¹⁰⁹

The Commission has raised concerns with NSW Police Force about this practice more than once. In July 2023 we asked the NSW Police Force to consider providing instructions in the BWV SOPs to clarify that it is not appropriate to use BWV to record a person's decision not to participate in an interview. Then in December 2023 the Commission's final report on Operation Mantus recommended that the NSW Police Force amend its BWV SOPs to provide that where a suspect has informed investigating police (through a lawyer or otherwise) that the suspect does not wish to be interviewed by police, the police should not proceed to informally interview the suspect, including the use of BWV to record such a conversation.¹¹⁰

In response to this recommendation the NSW Police Force said:

Following receipt of LECC's report, the NSWPF reviewed the current Body Worn Video (BWV) SOPs and made amendments to include some of the LECC and coronial recommendations. However, as the Integrated Connected Officer (ICO) project is ongoing, the NSWPF position on a number of issues will be determined only once the project is completed, and its capability and capacity are fully understood.

A proposal to undertake a strategic review of BWV SOPs and policies to ensure the overall use is within the intent and purpose of the ICO technology for effective and accountable law enforcement activities is being scoped and it is anticipated will be presented to the Commissioner's Executive Team in the next few weeks.¹¹¹

The Commission is not satisfied with this response. Firstly, the intent of Operation Mantus recommendation 7 is for the NSW Police Force to take steps to avoid the misconduct risk of officers recording informal interviews on BWV after a suspect has invoked their right to silence. The recommendation does not relate to or depend on technological capability. Rather it relates to officer behaviour. It is unclear to the Commission how any proposed new integrated connected officer technological capability relates to the substantive issues at hand.

Further, the Commission is concerned that the NSW Police Force proposes to delay its position on whether or not to address this practice in the BWV SOPs until the ICO project is complete. The NSW Police Force has indicated that the BWV

¹⁰⁸ Operation Mantus is discussed further at section 3.5 of this report.

¹⁰⁹ Law Enforcement Conduct Commission, *Operation Mantus* (Report, December 2023) [4.165] – [4.167].

¹¹⁰ Law Enforcement Conduct Commission, *Operation Mantus* (Report, December 2023) 7.

¹¹¹ Letter from Acting Assistant Commissioner, NSW Police Force to Chief Commissioner, NSW Police Force, 23 October 2024, 2.

cameras associated with the ICO procurement will be fully rolled out to the field by March 2026.¹¹² However it is not known when the full suite of technology related to the ICO project will be fully rolled out.

The Commission's original recommendation in Operation Mantus aimed to safeguard fairness in interviewing procedures. It also serves to strengthen the integrity of police prosecutions, as evidence obtained by police in the manner described above may be ruled inadmissible at court. Delaying action on these issues for another 12 months at the very least leaves the NSW Police Force open to the risk of failed prosecutions and offenders remaining at large in the community, if the practice continues unchecked.

3.3 The role of BWV in responding to domestic violence

3.3.1 The imperative to activate BWV at the scene

The NSW Police Force *Domestic and Family Violence Standard Operating Procedures* (DFV SOPs) list mandatory actions that must be completed by attending police.¹¹³ Among these mandatory actions is the following instruction [emphasis added]:

Body Worn Video cameras **should** be used when responding to a DV incident to capture the scene and initial complaint.¹¹⁴

Here the SOPs use both the terms 'mandatory action' and 'should' in relation to BWV activation. 'Should' connotes something less than mandatory. The level of discretion available to officers in this instruction is ambiguous.

This ambiguous language may lead to confusion among officers as to whether recording a domestic violence response on BWV must be completed as a mandatory action or at an officer's discretion. In the Commission's view this requires clarification, and preferably a 'must, unless' test should be included in the DFV SOPs consistent with our recommendations applicable to the BWV SOPs outlined in [section 2.7.2](#) of this report.

3.3.2 Using BWV to obtain Domestic Violence Evidence in Chief

Domestic Violence Evidence in Chief (DVEC) is a video or audio-recorded statement taken from a domestic violence complainant in relation to a domestic violence offence.¹¹⁵ DVEC is taken as soon as practicable after the commission of the offence, and forms all or part of the complainant's evidence in chief at court.¹¹⁶ The use of BWV for obtaining DVEC is addressed in 3 separate NSW Police Force policies: the BWV SOPs, Recording of Domestic Violence Evidence in Chief SOPs and the Domestic and Family Violence SOPs.

¹¹² Verbal briefing by Assistant Commissioner, NSW Police Force to the Law Enforcement Conduct Commission, 8 November 2024.

¹¹³ NSW Police Force, *Domestic and Family Violence Standard Operating Procedures*, 2018, version 5, p. 23.

¹¹⁴ NSW Police Force, *Domestic and Family Violence Standard Operating Procedures*, 2018, version 5, p. 23.

¹¹⁵ NSW Police Force, *Domestic and Family Violence Standard Operating Procedures*, 2018, version 5, p. 66.

¹¹⁶ NSW Police Force, *Domestic and Family Violence Standard Operating Procedures*, 2018, version 5, p. 23.

All 3 SOPs consistently note that the following 4 items should be recorded on BWV when attending a domestic violence incident:

1. The first complaint of the victim
2. The victim’s demeanour and injuries
3. The version of the offender
4. The offender’s arrest.

However the SOPs then diverge regarding whether BWV should or should not be used to obtain DVEC. Table 2 highlights that the BWV SOPs permit BWV use for gathering DVEC, whereas this is contradicted by the DVEC SOPs and the DFV SOPs.

Table 2: Comparison of procedural guidance to officers on using BWV for DVEC

Recording of DVEC SOPs ¹¹⁷	DFV SOPs ¹¹⁸	BWV SOPs ¹¹⁹
BWV should not be used to obtain DVEC evidence unless exigent circumstances dictate the unavailability of a Mobi PÓL device	BWV should not be used to obtain DVEC evidence unless exigent circumstances dictate the unavailability of a MobiPOLdevice	Officers filming DVEC may use either a BWV camera, MobiPol device or dedicated DVEC camera, depending on whichever is convenient.

According to the DFV SOPs and DVEC SOPs, BWV must be turned off and remain off after the initial 4 items have been captured on BWV. The DFV SOPs and DVEC SOPs emphasise that it is important to deactivate BWV at this point due to evidentiary considerations, such as potentially capturing multiple or inconsistent versions from the victim, which may unintentionally create grounds to question the admissibility of the DVEC evidence.¹²⁰ The DVEC SOPs and DFV SOPs also refer to legislative protections for DVEC evidence which ensure the privacy of the victim, which may not apply to BWV footage of the incident.

In contrast, the BWV SOPs state: ‘If BWV is to be used to record a DVEC, police must record [items 1-4 above].’¹²¹ The SOPs do not discuss the process for obtaining the DVEC statement itself on a separate machine. The BWV SOPs do not refer to or cross reference the DVEC SOPs or DFV SOPs.

The Commission considers that the instruction given in the BWV SOPs could be misconstrued by officers to mean that the preliminary recording constitutes the

¹¹⁷ Performance and Support Command, NSW Police Force, *Recording of Domestic Violence Evidence in Chief Standard Operating Procedures*, 2021, 6.

¹¹⁸ NSW Police Force, *Domestic and Family Violence Standard Operating Procedures*, 2018, version 5, p. 55.

¹¹⁹ Technology Command, NSW Police Force, *Body-Worn Video Standard Operating Procedures*, version 2.7, November 2023, p. 8.

¹²⁰ NSW Police Force, *Domestic and Family Violence Standard Operating Procedures*, 2018, version 5, p. 53; Performance and Support Command, NSW Police Force, *Recording of Domestic Violence Evidence in Chief Standard Operating Procedures*, 2021, pp. 9-10.

¹²¹ NSW Police Force, *Domestic and Family Violence Standard Operating Procedures*, 2018, version 5, p. 55.

DVEC itself. Further, the BWV SOPs do not address the important evidentiary reasons why BWV must remain off as listed in the DFV SOPs and DVEC SOPs. In February 2023 the NSW Police Force told us that:

Given its ability to be used in court proceedings, DVEC is the preferred method of obtaining evidence from victims of domestic and family violence. BWV is beneficial when recording the initial stages of D&FV incidents prior to and including the offender being secured; however, is not intended to replace DVEC.¹²²

The Commission does not disagree with this position. But we are concerned that this position is not reflected in the BWV SOPs, and that inconsistencies in the SOPs may cause confusion for officers about the role of BWV when attending reported domestic violence incidents. This could lead to otherwise valuable evidence being lost or ruled inadmissible in court.

In July 2023 we asked the NSW Police Force how it could provide clearer instructions to officers across the DFV SOPs, DVEC SOPs and BWV SOPs about:

- a) obtaining Domestic Violence Evidence in Chief,
- b) the preferred recording device, and
- c) when it is appropriate to activate and deactivate BWV when attending domestic and family violence incidents.

The NSW Police Force replied that it was of the view that sufficient guidance is provided in the BWV SOPs and the DFV SOPs.¹²³

The Commission maintains that the rules for BWV in relation to DVEC should be made consistent across all 3 sets of SOPs in order to avoid confusion and the potential for the evidentiary risks identified by the NSW Police Force to compromise police prosecutions of domestic violence.

Recommendation 7: The NSW Police Force ensure the DFV SOPs, DVEC SOPs and BWV SOPs contain the same rules about the role of BWV in recording DVEC.

3.4 Tactical operations officers

3.4.1 Tactical officers are currently exempt from using BWV

Tactical operations officers are involved in high-risk operations such as sieges and other situations involving armed offenders. The Commission has become aware that tactical operations officers do not routinely use BWV. The BWV SOPs do not specifically exempt tactical officers from using BWV (although the NSW Police Force Taser SOPs specifically exempt tactical officers from using Taser Cam, to protect operational methodology).¹²⁴

¹²² Letter from Assistant Commissioner, Professional Standards Command, NSW Police Force, to A/Chief Commissioner, Law Enforcement Conduct Commission, 1 February 2023, Tab C, p. 4.

¹²³ A/Commissioner of Police, NSW Police Force, Response to draft Body-Worn Video observations paper, undated, Tab 1, Issue 17.

¹²⁴ See Operational Safety & Skills Command, Use of Conducted Electrical Weapons (Taser), April 2020, p. 14.

BWV footage captured by tactical officers would provide important evidence to facilitate critical incident investigations, coronial matters and Commission investigations. However, the NSW Police Force has advised the Commission that it does not support tactical officers being compelled to use BWV.¹²⁵ The NSW Police Force's rationale for this is that the work of tactical officers is considered operationally sensitive, and would fall within the circumstances outlined under 'Professional Conversations' in the BWV SOPs which exempt police methodology from being recorded.¹²⁶

The Professional Conversations section of the BWV SOPs states:

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.¹²⁷

The other reason the NSW Police Force does not support tactical officers being compelled to use BWV is that it does not believe that the protections provided under the *Government Information (Public Access) Act 2009 (NSW)* (GIPA Act) are sufficient to protect tactical operations unit methodology.^{128, 129}

The Commission appreciates that, at times, it may be in the public interest to keep tactical methodology secret, so that it cannot be exploited for harmful or criminal ends. On the other hand, the public has a strong interest in the proper accountability and transparency of the NSW Police Force. This is especially important for the police powers frequently used by tactical officers such as use of force and forced entry to premises.

In practice it is unlikely that BWV material recorded by tactical officers will frequently be subject to a GIPA application by a member of the public. Even in the case that methodologically sensitive police information is subject to a GIPA application, the legislative scheme provides for competing public interest considerations to be weighed up on a case by case basis. As such, the Commission does not accept the NSW Police Force's perception of limitations of the GIPA Act as sufficient grounds to informally exempt tactical officers from using BWV.

¹²⁵ A/Commissioner of Police, NSW Police Force, Response to draft Body-Worn Video observations paper, undated, Tab 1, Issue 20.

¹²⁶ The Commission became aware of this view when monitoring the NSW Police Force investigation of 2 separate critical incidents. This position was also reinforced by in A/Commissioner of Police, NSW Police Force, Response to draft Body-Worn Video observations paper, undated, Tab 1, Issue 19.

¹²⁷ Technology Command, NSW Police Force, *Body-Worn Video Standard Operating Procedures*, version 2.7, November 2023, p 8.

¹²⁸ The GIPA Act authorises and encourages the proactive release of information by NSW public sector agencies. The GIPA Act gives members of the public a legally enforceable right to access government information, and ensures that access to government information is restricted only when there is an overriding public interest against releasing that information. See *Government Information (Public Access) Act 2009* (GIPA Act).

¹²⁹ A/Commissioner of Police, NSW Police Force, Response to draft Body-Worn Video observations paper, undated, Tab 1, Issue 20.

3.4.2 Coronial support for BWV use by tactical officers

The NSW Coroner has indicated more than once that tactical operations officers should wear and activate BWV. This occurred in the Inquest into the death of Tateolena Tauaifaga in 2022, as outlined in the case study below.

Case study 5: NSW Coroner supports BWV use by tactical officers

Tateolena Tauaifaga was a toddler who suffered fatal injuries when a car which was the target of a police pursuit drove into her backyard and hit her. The 2022 Inquest into her death noted that tactical operations officers attending the incident were not wearing BWV.

The NSW Coroner considered whether the tactical officers should have been wearing BWV. The NSW Police Force submitted that there were security issues and practical difficulties associated with those officers wearing BWV cameras. It took the view that use of BWV by the Tactical Operations Unit (TOU) would 'prejudice the confidentiality of the TOU's specialised tactics, equipment and methodology'.¹³⁰ The Coroner's view in that matter was that the confidentiality concerns could be met with protective and/or suppression orders.¹³¹

At the Inquest into the death of Tateolena Tauaifaga, the Commissioner of Police told the Coroner that:

the TOU will conduct a trial of a BWV camera that is currently in development, which may resolve some of those difficulties.¹³²

In acknowledgement of this, the Coroner recommended that the Commissioner of Police:

should continue to investigate ways in which TOU operatives could be equipped with a recording device to be carried on their person which has the capacity to visually and audially record their operations.¹³³

The NSW Police Force's response to the Coronial recommendation was:

Counter Terrorism and Special Tactics Command [CTST] representatives on the Integrated Connected Officer (ICO) working group will consider ICO learnings to investigate suitability of a solution regarding use of cameras and / or recording equipment in tactical vehicles and on persons. Primary consideration is to protect methodology used by tactical police.

Public Interest Immunity should apply as this has ramifications not only for NSWPF tactical police, but national and international capability and training.

In July 2023 we asked the NSW Police Force for updates on the BWV trial for tactical officers referenced by the Commissioner of Police in the Coronial Inquest,

¹³⁰ NSW Coroner, Inquest into the death of Tateolena Tauaifaga, 13 April 2022, p. 49.

¹³¹ NSW Coroner, Inquest into the death of Tateolena Tauaifaga, 13 April 2022, p. 49.

¹³² NSW Coroner, Inquest into the death of Tateolena Tauaifaga, 13 April 2022, [419].

¹³³ NSW Coroner, Inquest into the death of Tateolena Tauaifaga, 13 April 2022, p. 56.

including outcomes and timeframes of the trial. The NSW Police Force responded that:

whilst TOU hold a position on the Integrated Connected Officer (ICO) Working Group, 'Tactical officers' are not in scope. Following outcomes from the current working group, CTST will form a Tactical Operations Group 'BWV working group' to consider the learning and recommendations.

It appears that the BWV trial referenced in the 2022 Inquest findings has not yet occurred, and is contingent on outcomes of the integrated connected officer working group. The NSW Police Force has not provided the Commission with timeframes or terms of reference for the integrated connected officer working group. It is unclear to the Commission why a decision on the Tactical Operations Unit using BWV needs to wait for outcomes of the ICO working group.

In 2024 the Coroner presiding over the Inquest into the death of Todd McKenzie again recommended that the NSW Police Force require tactical police to wear BWV.¹³⁴ The NSW Police Force indicated 'support in principle' for this recommendation.¹³⁵

3.4.3 The Commission supports BWV use by tactical officers

The Commission encourages the NSW Police Force to adopt a practice that all tactical operations officers will wear and activate BWV. This is likely to offer several benefits to the NSW Police Force and strengthen public confidence in police.

Tactical operations are more likely to carry greater risk for involved officers and civilians compared to day-to-day policing duties. Adopting a policy of mandatory BWV use for tactical operations officers sends a message that the NSW Police Force is interested in capturing as much high-quality evidence of its high-risk operations as possible to help resolve criminal investigations and protect the public. The value of BWV in this context is recognised in the Commissioner's Foreword to the BWV SOPs which states that broad BWV use helps:

[...] protect honest, hardworking police officers at the forefront of providing protective services that keep communities safe.¹³⁶

The Commission appreciates that the NSW Police Force has concerns around protecting police methodology. However the benefits to the NSW Police Force outweigh the risks, and the risks are manageable. For example, the Commission would support NSW Police Force storing BWV recordings of tactical operations on a separate, protected system accessible only to limited personnel. The Commission notes also that Western Australia Police Tactical Response Group officers are required to wear and use BWV in accordance with a supplementary set of SOPs relevant to their specialist role and operations.¹³⁷ The Commission would support

¹³⁴ NSW Coroner, Inquest into the death of Todd McKenzie, 5 April 2024, Recommendation 1.

¹³⁵ Letter from Commissioner, NSW Police Force to NSW Attorney General, 6 November 2024, provided by the NSW Police Force to the Law Enforcement Conduct Commission, 13 November 2024.

¹³⁶ Technology Command, NSW Police Force, *Body-Worn Video Standard Operating Procedures*, version 2.7, November 2023, p 5.

¹³⁷ Email from Acting Superintendent, Ethical Standards Division, Western Australia Police Force to Police to Senior Project Officer, Prevention and Engagement team, Law Enforcement Conduct Commission 26 September 2024.

the NSW Police Force making similar special arrangements to govern tactical officer BWV use and ensure the files are adequately protected, while also ensuring that tactical officers capture multiple angles of high-quality audio and visual recordings through the routine activation of BWV.

Recommendation 8: The NSW Police Force mandate use of BWV by tactical officers, where available.

3.5 Plain clothes officers

The Commission has reviewed police misconduct matters which suggest there may be a lack of clarity around the requirement for plain clothes officers or officers conducting specialist operations to wear and use BWV.¹³⁸ The Commission's investigation in Operation Mantus highlighted this issue, and found that there is a proper place for extension of the BWV SOPs to plain clothes officers in an operational setting who may come into contact with members of the public.¹³⁹

Case study 6: LECC Operation Mantus identifies issues with BWV use

The Commission commenced Operation Mantus following a complaint made to the Commission concerning the arrest of a young Aboriginal boy by plain clothes police in Northern NSW on 11 September 2022. The plain clothes officer involved in arresting the child had failed to use BWV to record their interactions with the child.¹⁴⁰ The absence of BWV increased the investigative resources required by the Commission to determine the facts of the incident related to the arrest.

The Commission held a series of public and private examinations between December 2022 and April 2023 to receive submissions and hear evidence.

The lack of information about when BWV was to be worn as part of plain clothes policing emerged as a key issue during examinations.¹⁴¹ The Commission heard that the pro-active crime team involved in the incident did not regularly use BWV.¹⁴² A NSW Police Force Assistant Commissioner acknowledged at an Operation Mantus hearing that police have different understandings about when it is appropriate to use the body-worn video camera.¹⁴³

The Assistant Commissioner agreed that the use of the term 'operational policing' in the BWV SOPs could be more clearly defined, and that the BWV SOPs could include a 'definitions' section.¹⁴⁴ He also agreed that covert or plain clothes officers could carry BWV cameras in their pockets then attach and turn cameras on when necessary.¹⁴⁵

¹³⁸ For example, in one matter, the NSW Police Force officer triaging the complaint considered that plain clothes policing did not fall under the definition of 'operational response' and therefore it was not mandatory for plain clothes officers to use BWV cameras.

¹³⁹ Law Enforcement Conduct Commission, *Operation Mantus* (Report, December 2023), 151.

¹⁴⁰ Law Enforcement Conduct Commission, *Operation Mantus* (Report, December 2023) [4.213].

¹⁴¹ Law Enforcement Conduct Commission, *Operation Mantus* (Report, December 2023) [4.213].

¹⁴² Law Enforcement Conduct Commission, *Operation Mantus* (Report, December 2023) [4.214].

¹⁴³ Law Enforcement Conduct Commission, *Operation Mantus* (Report, December 2023), 150.

¹⁴⁴ Law Enforcement Conduct Commission, *Operation Mantus* (Report, December 2023), 147.

¹⁴⁵ Law Enforcement Conduct Commission, *Operation Mantus* (Report, December 2023), 149.

The Commission published its final report on Operation Mantus in December 2023. Among the report's 19 recommendations was that the Standard Operating Procedures (SOPs) for BWV should also apply to plain clothes officers.

The current version of the NSW Police Force BWV SOPs dated November 2023 now states:

Police dressed in plain clothes and engaged in proactive and/or investigative duties must, where practicable, also take and use BWV cameras in support of their policing activities.¹⁴⁶

The Commission supports including this information in the SOPs. However, we note that this information is currently located on page 10 of the document under the heading 'T7 conducted electrical weapon.' There is scope for the NSW Police Force to clarify this information earlier in the SOPs, such as in the Commissioner's Foreword, or under the heading 'When to use BWV', as it applies to all plain clothes officers, and is not limited to Taser use.

The Commission notes that the NSW Police Force is currently undertaking a review of the BWV SOPs. The Commission encourages the NSW Police Force to clearly signpost in the BWV SOPs that police dressed in plain clothes and engaged in proactive and/or investigative duties must, where practicable, also take and use BWV cameras.

3.6 Execution of forced entries and search warrants

Executions of police search warrants are often preceded by forced entries to premises. Forced entries by the NSW Police Force are typically carried out by specialist officers from the Public Order and Riot Squad (PORS), Operations Support Group (OSG) or officers attached to Strike Force Raptor.¹⁴⁷ Searching officers will then commence searching the premises and record this on BWV for evidence capture and to ensure the integrity of the search.

The role of BWV in these operations is addressed differently across multiple NSW Police Force procedural documents. The Search Warrant SOPs list 'video operator' as a mandatory role¹⁴⁸ and state that BWV *may* be used.¹⁴⁹ The Search Warrant SOPs then direct the reader to the BWV SOPs:

Use of body-worn video camera/s at search warrant operations is guided by the Body-worn Video Camera Standard Operating Procedure.¹⁵⁰

The BWV SOPs section on search warrants states only that:

¹⁴⁶ Technology Command, NSW Police Force, *Body-Worn Video Standard Operating Procedures*, version 2.7, November 2023, p 10.

¹⁴⁷ Strike Force Raptor is a specialist unit of the NSW Police Force targeting Organised Motorcycle Criminal Gangs.

¹⁴⁸ State Intelligence Command, NSW Police Force, *Execution of Search Warrant Standard Operating Procedures*, May 2023, 18.

¹⁴⁹ State Intelligence Command, NSW Police Force, *Execution of Search Warrant Standard Operating Procedures*, May 2023, 42.

¹⁵⁰ State Intelligence Command, NSW Police Force, *Execution of Search Warrant Standard Operating Procedures*, May 2023, 42.

The use of BWV during search warrant execution must comply with the Search Warrant SOPs and any directions given by the Case Officer/Operations 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.

The Commission notes that Search Warrant practice note 18/16 does not relate to the use of BWV or any other recording equipment by NSW Police Force officers during search warrants. It relates to the filming of search warrant operations by civilian camera crews contracted to the NSW Police Force, for the purpose of promoting the activities of police officers during the execution of search warrants. The purpose of the BWV SOPs reference to the practice note is unclear.

It appears the BWV SOPs and Search Warrant SOPs cross-reference each other, and amount to instructions that BWV *may* be used, and that activation will be directed by the case officer.

The use of BWV in execution of search warrants has been addressed in stronger terms in ad-hoc emails within the NSW Police Force:

- On 7 January 2022 the then-Acting Commanders of PORS emailed all PORS officers directing that all search warrant entries (STR) must be recorded on BWV by a minimum of 3 officers in the entry team. The email indicated that the use of BWV for search warrants was recommended from December 2021.¹⁵¹
- An email dated 21 November 2023 from the Acting Commander, PORS to all PORS, OSG and Raptor units directed a minimum of 3 BWV cameras must be used for all search warrants, rapid entries and STRs conducted by PORS, OSG and Raptor.¹⁵² The email indicated that the use of BWV would be added to the *PORS & OSG Standard Operating Procedures – Execution of Search Warrants Involving the Deployment of the Public Order & Riot Squad (PORS) and the Operations Support Group (OSG)*.

At the time of publishing this report the NSW Police Force had not updated the relevant SOPs.

Instructions about the role of BWV in search warrants and forced entries are unclear and are dispersed across different documents and pieces of correspondence. This may contribute to confusion around when officers need to activate their BWV.

The NSW Police Force should clarify and consolidate instructions to officers around BWV use in forced entries and search warrant executions, to ensure that there are as many usable camera angles as possible of these operations. The Commission considers that the current direction for a minimum of 3 officers

¹⁵¹ Email from A/Commander, Public Order & Riot Squad to all Public Order and Riot Squad officers, 7 January 2022.

¹⁵² Email from A/Commander, Public Order & Riot Squad to all Public Order and Riot Squad, Operations Support Group and Strikeforce Raptor units, 21 November 2023.

activate their BWV for forced entries and search warrants is not sufficient because the 3 activating officers:

- may be obstructed by obstacles during the unpredictable, potentially volatile forced entry
- may be located at the back of the entry team, which means the footage may be unusable as an evidence source
- may move throughout the premises in different directions, meaning that some angles may not be captured by footage.

Given the high-risk nature of forced entries and search warrants, including increased likelihood of using force against occupants, the Commission considers that *all* officers performing forced entries and search warrants must wear and activate BWV immediately prior to executing the forced entry. This will assist NSW Police Force to capture as much evidence as possible, and to more efficiently deal with allegations of excessive force or other misconduct which may arise in these potentially volatile situations.

Recommendation 9: The NSW Police Force amend the BWV SOPs, Search Warrant SOPs and the Execution of Search Warrants Involving the Deployment of the Public Order & Riot Squad (PORS) and Operations Support Group (OSG) SOPs to contain consistent instructions that all officers undertaking forced entry and search warrants must:

- a) wear BWV cameras where available, and
- b) activate BWV cameras immediately prior to the forced entries to ensure that all operational activity including the forced entry is captured.

3.7 Position of BWV cameras when worn

The BWV SOPs state that the BWV camera 'is to be worn so that it is observable and not hidden, concealed or secreted'.¹⁵³ The Commission has reviewed misconduct matters that suggest there may be a need for the SOPs to clarify instructions about wearing BWV cameras, including:

- BWV cameras worn on the belt resulting in poor footage which does not adequately capture the interaction
- camera placement on the chest getting caught in seatbelts
- ballistic vests worn on top of normal uniform obscuring the BWV cameras
- camera placement on officers in plain clothes.¹⁵⁴

The Commission has also identified that opportunities for capturing BWV may be lost when officers replace their load bearing vests (which carry the BWV camera) with ballistic vests (which are not designed to carry BWV cameras).¹⁵⁵ Attaching a

¹⁵³ Technology Command, NSW Police Force, *Body-Worn Video Standard Operating Procedures*, version 2.7, November 2023, p 7.

¹⁵⁴ For example, during the NSW Police Force misconduct investigation of an alleged failure to comply with the BWV SOPs, it was established that a contributing factor was the absence of a device to comfortably attach the BWV camera to the plain clothes officer.

¹⁵⁵ For example, in the critical incident related to Strike Force Talbragar, a police officer had taken off their normal load-bearing vest with a BWV camera attached, and then put on a ballistic vest. As the ballistic vest was not designed to automatically carry a BWV camera, there was no BWV footage of

BWV camera to a ballistic vest requires a special clamp. At the time of writing this report it did not appear that all local Commands had sufficient clamps for the number of ballistic vests.¹⁵⁶ The NSW Police Force has indicated that it is currently undertaking a procurement process which will consider the use of clamps and ballistic vests with BWV.¹⁵⁷

In July 2023 we asked the NSW Police Force to clarify:

- its current position on the use of BWV cameras when officers are wearing ballistic vests, and
- what steps can be taken to ensure officers wearing ballistic vests can still use BWV cameras.

The NSW Police Force replied:

officer safety is paramount over recording on BWV. Where it poses an immediate risk to officers, they should not delay the use of tactical options or using ballistic vests to accommodate the activation of BWV. However, the use of ballistic vests with BWV is being considered as part of the current procurement process.¹⁵⁸

The Commission agrees that officer safety is paramount. The Commission encourages the NSW Police Force to procure options which protect officer safety and permit BWV recording as it is a valuable, objective record of high-risk operations which is likely to assist the NSW Police Force to resolve criminal, critical incident and misconduct investigations efficiently.

The NSW Police Force has indicated it would *consider* providing clear instructions about the positioning of BWV cameras so they are mounted for optimal capture of footage.¹⁵⁹ The Commission notes that the most appropriate camera placement would depend on several factors, such as the type of camera used, and the type of uniform or vest the officer is wearing.

At the time of publishing this report the NSW Police Force had not updated the BWV SOPs with instructions regarding camera placement, nor indicated to the Commission any timeline for such considerations.

3.8 Relationship between BWV and In Car Video system

Many NSW Police Force Highway Patrol cars have In Car Video (ICV) systems fitted on the dashboard. These systems record video in front of and behind the car while the car is moving or stationary. ICV automatically starts recording when lights or sirens are activated and if a collision is detected. The ICV system captures audio

the incident. See Law Enforcement Conduct Commission, *Five Years of Independent Monitoring of NSWPF Critical Incident Investigation*, (Report, May 2023).

¹⁵⁶ Letter from Acting Assistant Commissioner, Professional Standards Command, to Director, Oversight, Law Enforcement Conduct Commission, 16 October 2023.

¹⁵⁷ A/Commissioner of Police, NSW Police Force, Response to draft Body-Worn Video Observations paper, undated, Tab 1, Issue 23.

¹⁵⁸ A/Commissioner of Police, NSW Police Force, Response to draft Body-Worn Video Observations paper, undated, Tab 1, Issue 24.

¹⁵⁹ A/Commissioner of Police, NSW Police Force, Response to draft Body-Worn Video Observations paper, undated, Tab 1, Issue 22.

external to the vehicle such as a conversation with a civilian driver. It does not capture audio inside the police vehicle.

It is the Commission's view that BWV should be activated in tandem with ICV for the following reasons:

- the BWV SOPs state a BWV camera should be used when exercising a police power, performing a policing function, and during vehicle stops.¹⁶⁰
- activation of BWV while catching up to or pursuing a vehicle of interest would appear to be consistent with the instructions in the BWV SOPs for early activation.
- the Commission has reviewed NSW Police Force documents indicating that the current ICV technology is increasingly unreliable. The technology is well past its intended 5-year lifecycle. Manufacture of replacement parts ceased in 2018 and the NSW Police Force was last able to source replacement parts in 2020.

The availability of both BWV and ICV has proved instrumental in NSW Police Force critical incident investigations, as in the case study below.

Case study 7: BWV and In Car Video assists a critical incident investigation

Strike Force Gari was a critical incident declared by the NSW Police Force and monitored by the Commission in which a vehicle of interest (VOI) collided with a truck shortly after a NSW Police Force Highway Patrol vehicle ceased pursuing the VOI. The driver of the VOI and the truck driver both sustained serious injuries. Officers involved in the pursuit leading up to the incident had activated both BWV and ICV as directed by the Commander of the Highway Patrol unit.

The BWV footage was vital to the subsequent investigation of the circumstances of the critical incident as it captured vision much clearer than the ICV footage. It also provided a clear recording of communications between the involved police vehicle and police radio, including decisions about the pursuit, and the activation of sirens. Without BWV it would have been difficult to determine what was visually recorded on the ICV and how this related to what was being communicated to police radio. The use of BWV in tandem with ICV supported police investigators reaching a finding in that matter and taking action to address identified breaches of the Safe Driving Policy.

In contrast to the above case study, the Commission has monitored critical incidents where ICV capability was found to be unreliable, and availability of BWV would have helped to clarify the circumstances of the incident. This occurred in Strike Force Mulgowrie, a critical incident monitored by the Commission in which a fully marked Traffic & Highway Patrol vehicle collided with a third-party civilian vehicle while attempting to catch up to another vehicle. The ICV system in the police vehicle failed about 8 seconds prior to the collision. The failure is thought to have been caused by the impact of the collision which caused the cartridge to eject from its housing unit. The police officer driving the vehicle did not activate BWV.

¹⁶⁰ Technology Command, NSW Police Force, *Body-Worn Video Standard Operating Procedures*, version 2.7, November 2023, p 8.

Despite the strong rationale for using BWV in tandem with ICV, the Commission has reviewed misconduct matters that suggest there may be confusion about whether the use of ICV negates an officer's need to activate BWV.

We asked the NSW Police Force if the BWV SOPs could specify whether Traffic & Highway Patrol (THP) officers should utilise BWV cameras in tandem with the ICV system. The NSW Police Force responded that:

This issue should not be conflated with the BWV SOPs as BWV SOPs apply to all police officers, not just Traffic and Highway patrol officers.

Additionally, this issue will be dependent upon the capabilities of new BWV cameras currently the subject of procurement.¹⁶¹

The Commission is not satisfied with this response. We consider there is a current need to clarify to all officers, and especially Highway Patrol officers, that ICV does not replace BWV. The Commission understands that the integrated connected officer technology procurement currently underway comprises an integrated ICV component. The NSW Police Force has not provided the Commission with information about how this technology will integrate with BWV. Further, the NSW Police Force has not made clear how the cameras it proposes to procure will address the lack of clear instruction to police about the need to use both ICV and BWV where these technologies are both available.

Given the potential evidence capture gaps created by outdated and unreliable ICV technology, and given that the date for roll out of the proposed new integrated vehicle camera technology is unknown, activating BWV during pursuits offers police the best opportunity for having an objective record of activity, discussions and decisions made during pursuits. This type of evidence will be vital in assisting police investigation of critical incidents and misconduct allegations.

Recommendation 10: The NSW Police Force amend any SOPs related to ICV, BWV and Highway Patrol to emphasise that ICV does not negate the need for BWV activation, and officers must activate BWV when engaging in a pursuit in a police vehicle, and when using police powers once having exited the police vehicle e.g. a vehicle stop.

Recommendation 11: The NSW Police Force advise the Commission on how it plans to capture footage in and around Traffic and Highway Patrol vehicles given the evidence capture risks emerging due to the acknowledged unreliability of failing ICV systems and the lengthy timeline for rolling out integrated connected officer technology.

3.9 Recording warnings and notifications on BWV

BWV footage is an important quality assurance tool to ensure the NSW Police Force issues warnings and notifications appropriately. BWV recordings are also an important accountability measure and a safeguard for police against potential complaints about unlawfully issuing warnings or notifications. The Commission raised this in our final report on Operation Tepito, which investigated the NSW

¹⁶¹ A/Commissioner of Police, NSW Police Force, Response to draft Body-Worn Video Observations paper, undated, Tab 1, Issue 25.

Police Force's application of the Suspect Targeting Management Plan to young people under 18 years old.¹⁶²

Also relevant is the Commission's 3-year review of the operation of amendments to consorting law under Part 3A Division 7 of the *Crimes Act 1900*. That review assessed 92 pieces of BWV footage of police issuing consorting warnings to individuals.¹⁶³ BWV is important in this context as an independent, accurate record of:

- when a consorting warning is issued
- what information is provided to the person warned, and
- whether the person warned understood the warning issued.

This is particularly important for oral, on-the-spot warnings. BWV footage will be of evidentiary value if the NSW Police Force decides to move to charge someone with consorting, which may occur after warnings accumulate. BWV footage is also an important quality assurance tool to ensure the NSW Police Force issue consorting warnings appropriately.

The current NSW Police Force *Consorting Standard Operating Procedures* (Consorting SOPs) state:

[...] when delivering a warning it is imperative you ensure you have a record showing the person understands and acknowledges the warning. Body Worn Video (BWV) provides the best corroborative evidence of an interaction and is considered best practice [...]¹⁶⁴

It is positive that the Consorting SOPs acknowledge the evidentiary value of BWV in this context. Nevertheless, the current wording does not mandate activation. The Commission is concerned that, unless activation is mandated, a lack of clarity may persist regarding expectations of BWV use in these settings.

In February 2023 we recommended that the NSW Police Force amend the Consorting SOPs to require officers, unless there is an overriding operational reason not to, to activate their BWV whenever they are issuing a consorting warning. This is particularly important when issuing an oral warning, and that the reasons for not recording the warning on BWV should be stated in the accompanying COPS event.¹⁶⁵ The NSW Police Force did not support the recommendation, citing that recording the issuing of a warning to a person who is also a human source would reveal the identity of that person.¹⁶⁶

This is not persuasive. There may be some limited circumstances where operational reasons mean a consorting warning should not be recorded on BWV. Should there

¹⁶² Law Enforcement Conduct Commission, *Operation Tepito* (Final Report) October 2023, p. 172.

¹⁶³ A number of the requested pieces of BWV footage were no longer available, as the footage had not been appropriately linked to the COPS record. This meant the footage was only kept for 6 months.

¹⁶⁴ State Crime Command, NSW Police Force, *Consorting Standard Operating Procedures*, December 2022, p. 4.

¹⁶⁵ Law Enforcement Conduct Commission, Review of the operation of amendments to the consorting law under Part 3A Division 7 of the Crimes Act 1900, February 2023, Recommendation 12.

¹⁶⁶ Law Enforcement Conduct Commission, Review of the operation of the amendments to consorting laws under Part 3A Division 7, of the Crimes Act 1900, February 2023, p. 48.

be an overriding operational reason against recording the issuing of a warning, this could easily be noted in the COPS event narrative. This scenario is already accounted for in the Commission's original recommendation. The Commission is concerned that the NSW Police Force has declined to engage with the actual substance of the concerns raised by the Commission, and has effectively dismissed the issue on the basis of a hypothetical and uncommon scenario.

The Commission remains of the view, as noted in our consorting report, that best practice would be to record consorting warnings on BWV to ensure an objective, clear record of the warning to assist any criminal processes, and to establish that the person served adequately understood the meaning of the warning.

3.10 Tagging BWV footage

When officers return to the police station at the end of a shift, they must download any footage from their BWV camera onto the NSW Police Force storage system, and ensure each file is properly labelled (known as 'tagging'). Once tagged, the file is linked to the corresponding record of the incident on the NSW Police Force event database COPS.¹⁶⁷

The BWV SOPs outline the following process for transferring footage from BWV cameras to the NSW Police server:

At the end of a shift, check the BWV camera into the docking station, which will initiate automatic updating. 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 [emphasis added]. 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.¹⁶⁸

3.10.1 Failure to properly tag footage

The Commission has reviewed police misconduct matters where it is clear that BWV footage of evidentiary value was captured on camera but not tagged, and consequently, an important source of information that would have assisted the investigation of misconduct matters was lost. This is evident in the case study below.

Case study 8: Failure to tag BWV footage results in a failed prosecution

In 2021 a police officer observed a vehicle driving towards him in an erratic manner. The officer approached the vehicle and informed the driver that BWV would record their conversation. The officer reported that the driver was sweating, shaking, and appeared affected by drugs. The officer conducted an oral drug test on the driver which returned a positive result for Cannabis and Methamphetamine. The officer issued the driver a Field Court Attendance Notice for Drive Under the Influence.

¹⁶⁷ Technology Command, NSW Police Force, *Body-Worn Video Standard Operating Procedures*, version 2.7, November 2023, p. 12.

¹⁶⁸ Technology Command, NSW Police Force, *Body-Worn Video Standard Operating Procedures*, version 2.7, November 2023, p. 12.

The officer created an event report on the NSW Police Force database shortly after releasing the driver. The officer failed to correctly link the BWV footage to the event. The footage was subsequently deleted from the system prior to the court hearing, because it was not tagged. The Local Court dismissed the charges as police had failed to provide evidence of the quantity of alcohol consumed, admission in relation to drug use, or observations necessary to prove the elements of the offence of 'Drive Under the Influence' beyond reasonable doubt. The matter was referred to the NSW Police Force Failed Prosecution Committee.

The police subsequently investigated the officer for failure to comply with BWV procedures and a failure to thoroughly investigate this incident. The misconduct investigation found that the officer had failed to tag and link the BWV footage which may have contained evidentiary value to the relevant COPS record.

The investigation found sufficient evidence to sustain both allegations against the officer. The officer was issued an Assistant Commissioner Warning Notice and a 6-month Conduct Management Plan.

In a similar matter reviewed by the Commission, an officer did not tag BWV footage, or link it to a charge in COPS. The NSW Police Force found the officer failed to comply with the BWV SOPs because the officer did not attempt to find out the correct record number to ensure the footage was appropriately saved.

3.10.2 Measures to assist appropriate tagging practices

The Commission considers there is scope to strengthen the guidance in the BWV SOPs to ensure appropriate tagging practices and help guard against loss of evidence due to failure to tag. In July 2023 we asked the NSW Police Force if it would consider a range of measures to assist officers to properly tag footage to ensure evidence is appropriately captured.

Firstly, we asked the NSW Police Force whether it would include instructions in the BWV SOPs that where a failure to tag relevant footage is identified, and the footage is available, an investigator or supervisor must remedy the issue by ensuring the footage is tagged to a COPS record. The NSW Police Force replied that:

These requirements are already part of Command Management Framework and BWV operating requirements. This responsibility falls to Sergeants or Inspectors as supervisors to ensure BWV is tagged.¹⁶⁹

The Commission does not agree that this is already reflected in BWV operating requirements. In relation to supervisor responsibilities around BWV filing and storage, the BWV SOPs state only that:

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.¹⁷⁰

¹⁶⁹ A/Commissioner of Police, NSW Police Force, Response to draft Body-Worn Video Observations paper, undated, Tab 1, Issue 10.

¹⁷⁰ Technology Command, NSW Police Force, *Body-Worn Video Standard Operating Procedures*, version 2.7, November 2023, p. 14.

Therefore, the Commission does not consider that the NSW Police Force's response adequately engages with the Commission's suggestion.

Secondly, we asked the NSW Police Force if it would include explicit instructions in the BWV SOPs to ensure multiple officers attending an incident were reminded to tag and link their BWV footage to the correct COPS record, for example via the primary officer disseminating a reference to the COPS record to which footage should be attached. The NSW Police Force replied that:

This is currently the instruction that all relevant footage should be tagged to an event.

These instructions will be included in training that any officer who captures BWV footage must ensure that it is tagged to the appropriate COPS record.¹⁷¹

The Commission does not agree that the current instructions are adequate. In relation to ensuring multiple officers tag BWV to the appropriate COPS record the BWV SOPs state only that officers should 'obtain the corresponding COPS record number [...] to complete the tagging process'. Again the NSW Police Force's response does not address the substance of the Commission's suggestion that the current practice could be strengthened by making the primary officer responsible for disseminating the correct event information to other attending officers.

Finally we asked the NSW Police Force if it would consider making technological amendments to COPS to generate automated emails to officers identified in the COPS record reminding them to tag relevant footage to the COPS record. The NSW Police Force replied:

Supervisors when verifying COPS events have a responsibility to remind officers to tag COPS events.

NSWPF will consider if further education on this issue is required.¹⁷²

The Commission is concerned that the NSW Police Force's response again fails to engage with the Commission's actual suggestions. Further the NSW Police Force has briefly referenced 'considering' education and training but has not provided any further information to the Commission about such training. The Commission maintains that the BWV SOPs should contain additional instructions to officers and supervisors to help ensure BWV files are appropriately tagged and that evidence is not lost.

3.10.3 Optimising the 'complaint' tag

Once downloaded from the cameras to the storage system, BWV files can be tagged as either 'complaint', 'evidence' or 'WHS'. Files cannot be tagged as more than one option. Footage with a 'complaint' tag is locked down and cannot be accessed or used for any other purposes such as the preparation of briefs of evidence, and can only be accessed on request from the BWV unit. Table 3

¹⁷¹ A/Commissioner of Police, NSW Police Force, Response to draft Body-Worn Video Observations paper, undated, Tab 1, Issue 11.

¹⁷² A/Commissioner of Police, NSW Police Force, Response to draft Body-Worn Video Observations paper, undated, Tab 1, Issue 12.

highlights the numbers of each tag since the start of NSW Police Force's use of BWV at 21 August 2023.¹⁷³

Table 3: Tags assigned to all NSW Police Force BWV files (at 21 August 2023)

TAG	NUMBER OF FILES TAGGED
Evidence	3,053,513
WHS	10,060
Complaint	8,387
No reason to keep	651,602

In 2021 the Commission observed on inspections at several local police commands that:

- officers rarely tag footage with the 'complaint' tag
- in many instances where footage might be relevant to a complaint, it had already been tagged as 'evidence' in the corresponding COPS event, so could not be tagged with both the 'evidence' and 'complaint' tag
- officers would not typically use the 'complaint' tag unless they were looking retrospectively for BWV footage to support a complaint that had been made within a 6 month time frame from when the footage was captured.

The Commission asked the NSW Police Force if it would consider a technical enhancement to allow BWV footage to be tagged as both 'evidence' and 'complaint'. The NSW Police Force said in October 2023 that it would consider this as part of a larger project to review BWV in line with a procurement process currently underway for integrated connected officer technology (discussed at [section 1.2](#)).¹⁷⁴ The NSW Police Force has indicated roll out of the new BWV cameras will be complete by March 2026, however has not indicated when full roll out of the remaining associated technology will be complete.

The Commission is concerned that the NSW Police Force proposes to delay addressing the current constraints around tagging. Additionally, the NSW Police Force has not explained what bearing the current procurement for BWV compatible with interconnected officer technology has on the question of whether BWV files can have multiple tags.

¹⁷³ A/Commissioner of Police, NSW Police Force, Response to draft Body-Worn Video Observations paper, undated, Tab 1, Issue 13.

¹⁷⁴ A/Commissioner of Police, NSW Police Force, Response to draft Body-Worn Video Observations paper, undated, Tab 1, Issue 16.

4. Access to BWV footage and information

4.1 The NSW Police Force website

In July 2019, the NSW Police Force published a contemporaneous version of the BWV SOPs with sensitive information redacted on the public NSW Police Force website (although it is no longer available).¹⁷⁵ The current version of the BWV SOPs is not available on the NSW Police Force website. In contrast, the BWV guidelines for the Victorian, Tasmania and Queensland police are available to the public via the internet.

The NSW Police Force public website page about BWV contains some outdated information, including that a BWV Phase 2 project ‘will deploy to 490 sites between May 2018 and 30 November 2018.’¹⁷⁶ The website also includes an expired hyperlink inviting members of the public to participate in a survey about the Phase 2 BWV implementation evaluation, even though the final evaluation report was published in 2019.¹⁷⁷

It would serve the public interest if the NSW Police Force removed outdated information from the public BWV website and maintained a current version of the BWV SOPs on the site, with operationally sensitive information redacted where necessary. Publicly available information about expectations and rationale for BWV use may help the public to understand and appreciate the purpose and value of BWV use by police officers.

Recommendation 12: The NSW Police Force maintain the current version of the BWV SOPs on the public NSW Police Force BWV website.

4.2 Footage retention times

Body-worn video footage is generally retained on NSW Police Force information systems for 6 months, unless complaints or legal actions are commenced, in which case it is retained for an ‘extended period’ – although the duration is not specified.

Information about BWV retention times can be relevant to decisions about if and when to request access to BWV footage to assist making a complaint. A 2016 evaluation indicated that wider dissemination of police BWV policies and protocols would contribute to public confidence and benefit community-police relations.¹⁷⁸

The NSW Police Force website does not include information about BWV retention times. The NSW Police Force’s online complaint form, *How to Lodge a Complaint*

¹⁷⁵ NSW Government, Statutory review of the Police Body-Worn Video provisions of the Surveillance Devices Act 2007, (Final report, July 2020), 10.

¹⁷⁶ NSW Police Force, Body-worn video (website)

<https://www.police.nsw.gov.au/safety_and_prevention/policing_in_the_community/body_worn_video>.

¹⁷⁷ The final report is by A Davies, Evaluation of the NSW Police Force Body - Worn Camera Phase 2 Implementation (Report, December 2019) Charles Sturt University.

¹⁷⁸ A Davies, Evaluation of the NSW Police Force Body - Worn Camera Phase 2 Implementation (Report, December 2019) Charles Sturt University.

and a publicly available brochure by the NSW Police Force titled 'Body Worn Video' also does not contain information about retention times.¹⁷⁹

The Commission considers it important that the public and legal representatives can easily access information about BWV retention times. This is consistent with the expectation that public sector agencies in NSW have a legal obligation under the GIPA Act to assist citizens with obtaining access to most government information openly and freely, unless there is an overriding public interest consideration against disclosure.¹⁸⁰

In July 2023 the Commission asked the NSW Police Force if it would consider including on its public facing website clear information that BWV footage is generally only retained for 6 months, unless complaints or legal actions are commenced, in which case it is retained for an extended period. The NSW Police Force replied:

The risk of this issue is that it may encourage members of the public to withhold their complaint past the 6-month mark, knowing NSW Police won't have BWV holdings to draw upon if a complaint is made.¹⁸¹

The Commission is concerned by this response. The risk identified by the NSW Police Force is purely speculative. Information about retention times should not be withheld from the public on the basis of speculation that the information may be misused. To do so is disrespectful to the public and does little to inspire confidence in the integrity of the NSW Police Force.

Further, it cannot be assumed that making footage available to the public will necessarily result in a complaint being sustained against an officer. If anything, the absence of footage is more likely to disadvantage the complainant, rather than assist their case.

Promoting information about how the public can access an independent, objective video record of an incident ultimately benefits the resolution of justice, which is likely to enhance public trust in police. The benefits to police accountability and access to justice outweigh any speculative risks that members of the public may deliberately exploit retention times.

Recommendation 13: The NSW Police Force publish easily accessible information about BWV retention times on the public NSW Police Force website, in brochures and at police stations.

4.3 Complainant access to BWV

The BWV SOPs contain provisions for permitting an accused person and/or their legal representative the opportunity to view BWV of an incident before the date of the first court mention and/or before the entry of a not guilty plea.¹⁸² However the

¹⁷⁹ NSW Police Force, Body Worn Video brochure, undated, <https://www.police.nsw.gov.au/__data/assets/pdf_file/0008/586484/Updated_Brochure_BWV.pdf>.

¹⁸⁰ *Government Information (Public Access) Act 2009* (NSW).

¹⁸¹ A/Commissioner of Police, NSW Police Force, Response to draft Body-Worn Video Observations paper, undated, Tab 1, Issue 30.

¹⁸² Technology Command, NSW Police Force, *Body-Worn Video Standard Operating Procedures*, version 2.7, November 2023, p. 14.

SOPs do not address how a person wishing to make a complaint about police conduct may access relevant BWV content.

Providing members of the public with access to BWV footage, by arrangement of a time to view the footage at a police station, could potentially reduce police time and resources dealing with complaints and conducting lengthy misconduct investigations. This is because potential complainants may decide not to proceed with police complaints, or may withdraw complaints, once they were able to view BWV footage of the incident, particularly where the person's recollection of what occurred may have been impaired due to stress caused by the incident or intoxication. The Commission notes that in Victoria, complainants may attend a police station to view BWV footage of incidents relevant to their complaint.¹⁸³

The issue of complainant access to NSW Police Force BWV was addressed in submissions to the July 2020 NSW Statutory Review, 'Provisions of the *Surveillance Devices Act 2007* inserted by the *Surveillance Devices Amendment (Police Body-Worn Video) Act 2014*' made by the NSW Information and Privacy Commissioner, Aboriginal Legal Service and Redfern Legal Centre.¹⁸⁴ For example, it was observed that there were:

no clear provisions governing public access to body-worn video footage, in particular for complainants of police misconduct, as opposed to complainants in court proceedings, to whom relevant footage is provided as part of the Brief of Evidence.¹⁸⁵

Further, the Aboriginal Legal Service NSW/ACT and Redfern Legal Centre noted that this inequality of access to police body-worn footage contributes to a power imbalance between complainants and investigators, and may lead to complainants' dissatisfaction with the outcome of their matters.¹⁸⁶ Similarly the NSW Law Society and Legal Aid NSW highlighted the need for clear, publicly available guidelines in relation to retention and destruction of body-worn video footage.¹⁸⁷

The decision of the NSW Civil and Administrative Tribunal (NCAT) in February 2021 in *Morgan v Commissioner of Police* is relevant to this issue.¹⁸⁸ In that matter, Mr Morgan sought access to BWV footage of an incident between himself and police officers. The NSW Police Force had granted access to BWV footage to Mr Morgan by way of viewing it at a police station. Mr Morgan sought review of that decision, and access to the footage. In that matter, the member decided that the NSW Police Force should release a copy of the relevant footage to Mr Morgan and pixelate and/or dub, as appropriate, the identity of any third party who had not provided consent for the disclosure of their private information.¹⁸⁹

¹⁸³ Victoria Police, Body Worn Cameras, <<https://www.police.vic.gov.au/body-worn-cameras>>.

¹⁸⁴ NSW Government, Statutory review of the Police Body-Worn Video provisions of the Surveillance Devices Act 2007, (Final report, July 2020), 10.

¹⁸⁵ NSW Government, Statutory review of the Police Body-Worn Video provisions of the Surveillance Devices Act 2007, (Final report, July 2020), 10.

¹⁸⁶ NSW Government, Statutory review of the Police Body-Worn Video provisions of the Surveillance Devices Act 2007, (Final report, July 2020), 10.

¹⁸⁷ NSW Government, Statutory review of the Police Body-Worn Video provisions of the Surveillance Devices Act 2007, (Final report, July 2020), 10.

¹⁸⁸ [2021] NSWCATAD 173.

¹⁸⁹ [2021] NSWCATAD 173.

In July 2023 we posed the following questions to the NSW Police Force:

- a) What is the process by which complainants can access BWV footage?
- b) Is access by viewing at a police station always an option available to complainants (and their legal representatives)?
- c) Can arrangements be made to view at an alternative police station, upon request of the complainant?
- d) Are there other available options for access by complainants?

The NSW Police Force replied:

BWV footage has the potential to include material that may be inappropriate for release, include vulnerable persons (including children), have privacy implications, and jeopardise the integrity of investigations.

NSW Police Force will explore the legalities and the resource implications associated with releasing BWV to complainants and will amend BWV SOPS accordingly.¹⁹⁰

The NSW Police Force's response does not address our questions. Nor does it address issues raised in *Morgan v Commissioner of Police* or the statutory review. The NSW Police Force has not given the Commission any indication of how or when it will explore the legalities and resource implications, nor of its progress towards this end since the NCAT decision 3 years ago, or since the 2020 submissions to the statutory review.

Further, the Commission considers that allowing the public to view footage at police stations is likely to require less resources than pixelating, rendering and re-saving BWV files. At a minimum, the NSW Police Force could make footage available for viewing at a police station and make clear to legal representatives and the public how to arrange this.

Recommendation 14: The NSW Police Force update the Commission on its findings regarding the following aspects of releasing BWV footage to complainants:

- a) legalities
- b) resource implications
- c) whether the SOPs will be updated to include information about releasing BWV to complainants, and if not, reasons why.

Recommendation 15: The NSW Police Force routinely make BWV footage available for complainants to view at a police station upon request, and publicise information to the public about how to access such a service.

¹⁹⁰ A/Commissioner of Police, NSW Police Force, Response to draft Body-Worn Video Observations paper, undated, Tab 1, Issue 32.

4.4 Commission access to BWV

It is frequently necessary for the Commission to require the NSW Police Force to provide us with access to BWV footage so that we can carry out our legislative functions including:

- assessing a complaint properly
- oversighting a police misconduct investigation
- investigating allegations of serious misconduct
- monitoring the NSW Police force investigation of a critical incident.

Since September 2023 the NSW Police Force has proactively provided the Commission with automatic access to BWV data for the assessment of notifiable misconduct matters¹⁹¹ within 7 days of the matter being triaged by the relevant Command.¹⁹² In a small number of cases so far, automation did not occur and the Commission had to request the footage. However, overall the arrangement is working as intended, and has alleviated the burden on Commission resources previously required to individually issue and follow up requests.

While acknowledging the above improvement, the Commission maintains that it would also be preferable to have automatic access to BWV footage in the course of exercising our oversight, investigation or critical incident monitoring functions. Currently the Commission must request this material in each individual matter. A range of NSW Police Force resources are needed to respond to each Commission request, as Professional Standards Command (PSC) receives the request and then forwards it on to the relevant Command. The relevant Command reviews the request, downloads the footage, and then sends the footage back to PSC for review. Then PSC sends the footage to the Commission. The entire process can take between a few days and up to several weeks for each individual file.

There are a range of issues associated with this approach:

- in some cases, the relevant police Command may have already resolved the complaint matter before the Commission has reviewed the footage, and the Commission may lose the opportunity to exercise its oversight functions
- where footage of an incident causes the Commission to require or request investigative actions by the NSW Police Force, delays in obtaining the footage can extend the timeline of misconduct processes
- such delays may cause undue stress to involved NSW Police Force employees and members of the public

Therefore the Commission maintains that enabling direct access to all BWV footage related to all of the Commission's legislated functions, including critical incident monitoring, and investigation and oversight of misconduct matters, is preferable, and would help minimise delays and unnecessary use of resources for both the Commission and the NSW Police Force.

¹⁹¹ These are matters meeting the categories of complaints required to be notified to the Commission as agreed between the Commission and the NSW Police Force under s 14 of the LECC Act.

¹⁹² See letter from Assistant Commissioner, Professional Standards Command, to Chief Commissioner, Law Enforcement Conduct Commission, 15 September 2023.

Appendix A

NSW Police Force response to 34 issues raised by the Law Enforcement Conduct Commission in a draft observations paper about BWV.

(Observations paper sent to NSW Police Force on 4 July 2023, response received from NSW Police Force on 16 October 2023).

‘ISSUE	Draft NSWPF position
<p>Issue 1: Would the NSW Police Force consider amending the BWV SOPs to ensure there is clarity and consistency between the Commissioner’s Foreword and subsequent guidance for officers on activation, early deactivation, and providing explanations for failure to activate? Please provide reasons for your response.</p>	<p>NSWPF agrees that the language should align and will make appropriate changes.</p>
<p>Issue 2: How does the NSWPF propose to guide Commands as to how they will adjudicate allegations that fall within ‘Fail to comply with policy/ procedures – use of BWV SOPs’ given the BWV SOPs give officers discretion about when they activate their BWV Cameras?</p>	<p>The BWV SOPs are written as guiding principles but also include specific requirements regarding its lawful use and circumstances when BWV should be activated.</p> <p>As these guidelines relate to operational policing where each situation will have its unique features a <i>‘Failure to adhere to BWV policy and procedures’</i> will need to be assessed considering all of the above aspects, including the officer’s rationale in relation to how they exercised their discretion.</p>
<p>Issue 3: Will the NSW Police Force amend the Body Worn Video Standard Operating Procedures to require officers to record the reasons for not activating Body Worn Video in their notebooks, where the circumstances dictate that Body Worn Video should be activated? Please provide reasons for your response.</p>	<p>NSWPF agrees to amend the BWV SOPs as follows; that where the SOPs refers to circumstances where, ‘BWV should be activated’ and such guidance is not adhered to, the officer must record the reasons for non-activation in the relevant COPS Event.</p>
<p>Issue 4: 1. Could a reminder be placed on the CAD message that alerts officers to the Priority 1 and 2 incidents that they should activate their</p>	<p>1. The CAD system is used for operational purposes and is not suitable for inclusion of reminders.</p>

‘ISSUE	Draft NSWPF position
<p>BWV camera before exiting the vehicle to respond to the incident?</p> <p>2. What other options could NSWPF use to assist officers to remember to activate their BWV cameras at the time of the incident?</p>	<p>2. This issue will be considered as part of the development of the Integrated Connected Officer (ICO) technology which NSW Police aims to have available in mid-2025.</p>
<p>Issue 5: Will the NSW Police Force require officers to provide an explanation on the reasons for deactivating a BWV camera during an incident? Please provide reasons for your response.</p>	<p>The current BWV SOPs refers to this requirement at pg 8.</p> <p><i>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.</i></p>
<p>Issue 6: What instruction could the NSW Police Force give to supervisors to proactively identify any issues with deactivation in audit processes?</p>	<p>Instruction is already contained in Command Management Framework (CMF). Additionally, Police Powers Panels process will identify any deactivation issues when dip sampling matters and investigating them if/when required.</p>
<p>Issue 7: How could the NSWPF address the expectations for officers around early deactivation of BWV cameras in training?</p>	<p>The BWV SOPS currently provides direction regarding deactivation of BWV.</p> <p>The NSWPF will consider developing online training packages and mandatory learning modules to address this issue.</p> <p>The Police Powers Panels process also requires Education Development Officers to identify knowledge gaps and to provide training to officers.</p>
<p>Issue 8: How could the NSW Police Force require officers who attend incidents that may not involve their own investigations or arrests to activate their Body Worn Video where the circumstances are such that Body Worn Video should be used?</p>	<p>The BWV SOPs contains instruction that: <i>Other BWV users attending the same incident should consider using their camera to collect their own evidence.</i></p> <p>The NSW Police Force is of the view that this instruction is sufficient.</p>
<p>Issue 9: Would the NSW Police Force clarify the requirement on officers to activate body worn video by adopting a ‘must unless’ test in the NSW Police Force Body Worn Video Standard Operating Procedures?</p>	<p>BWV Cameras are currently not personal issue and NSW Police are currently procuring more BWV camera resources to enhance the supply of BWV.</p> <p>Page 7 of the NSWPF BWV SOPS currently stipulate that ‘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.</p>

‘ISSUE	Draft NSWPF position
Please provide reasons for your response	Page 7-8 of the BWV SOPS provide a list of when BWV should be used.
<p>Issue 10: Would the NSW Police Force consider including instruction that where any failure to tag relevant footage is identified, and the footage is available, this failure must be remedied by an investigator or supervisor to ensure the footage is tagged to a COPS record.</p> <p>Please provide reasons for your response</p>	These requirements are already part of CMF and BWV operating requirements. This responsibility falls to Sergeants or Inspectors as supervisors to ensure BWV is tagged.
<p>Issue 11:</p> <p>a) Would the NSW Police Force consider including instruction about tagging the footage from multiple officers with Body Worn Video at an incident to one COPS record, and</p> <p>b) outline any responsibilities on the primary officer to disseminate a reference to the COPS record to which to tag this footage?</p> <p>Please provide reasons for your response</p>	This is currently the instruction that all relevant footage should be tagged to an event. These instructions will be included in training that any officer who captures BWV footage must ensure that it is tagged to the appropriate COPS record.
<p>Issue 12: Could COPS send automated emails generated to officers identified in the COPS record reminding them to tag relevant footage to the COPS record? Please identify any technical or operational issues with the use of such automated emails</p>	<p>Supervisors’ when verifying COPS events have a responsibility to remind officers to tag COPS events.</p> <p>NSWPF will consider if further education on this issue is required.</p>

‘ISSUE	Draft NSWPF position
<p>Issue 13: Can the NSWPF identify the proportion of matters tagged with the ‘complaint’ tag?</p>	<p>Yes. The statistics since the inception of BWV to date are: Evidence 3,053,513 WHS 10,060 Complaint 8,387 No reasons to keep 651,602 (Data provided by Technology Command 21 August 2023)</p>
<p>Issue 14: In practice, how does the NSWPF utilise data about matters tagged with the complaint tag?</p>	<p>These matters are assessed as a misconduct matter and referred to Complaint Management Teams for consideration where required.</p>
<p>Issue 15: Would the NSW Police Force consider including additional instructions in the BWV SOPs setting out the responsibilities for investigating officers to tag footage as a ‘complaint’?</p>	<p>The <i>Misconduct Matters Management Guidelines</i> stipulate the responsibility of reporting misconduct if it is identified. When reviewing BWV if misconduct is identified it is reported and assessed with the triaging officer securing the BWV footage.</p>
<p>Issue 16: Would the NSW Police Force consider a technical enhancement to allow BWV footage to be tagged as both evidentiary and a complaint? Please provide reasons</p>	<p>As per the response to Q4, NSWPF will consider this and continue to review in line with the ICO development and rollout.</p>
<p>Issue 17: How can the NSW Police Force provide clearer instructions to officers across the DFV SOPs, DVEC SOPs and BWV SOPs about: a) obtaining Domestic Violence Evidence in Chief, b) the preferred recording device, and c) when it is appropriate to activate and deactivate the Body Worn Video when attending domestic and family violence incidents?</p>	<p>Sufficient guidance is provided in the BWV SOPS (page 8)</p> <p>DV SOPS (page 53) provides clear guidance on when to use BWV to obtain DVEC including when it is appropriate to deactivate the device.</p> <p>DVEC Best Practice Guidelines and Practitioner’s Guide do not specify a preference to use BWV or MobiPol.</p>

‘ISSUE	Draft NSWPF position
<p>Issue 18: Please provide an update about the trial of TOU officers using BWV cameras referenced in the Inquest findings of 13 April 2022, including the outcome and timeframes for the trial.</p>	<p>The response to the coronial recommendation was: <i>‘Counter Terrorism and Special Tactics Command representatives on the Integrated Connected Officer (ICO) working group will consider ICO learnings to investigate suitability of a solution regarding use of cameras and / or recording equipment in tactical vehicles and on persons. Primary consideration is to protect methodology used by tactical police.</i></p> <p><i>Public Interest Immunity should apply as this has ramifications not only for NSWPF tactical police, but national and international capability and training.’</i></p> <p>Whilst TOU hold a position on the Integrated Connected Officer (ICO) Working Group, ‘Tactical officers’ are not in scope. Following outcomes from the current working group, CTST will form a Tactical Operations Group ‘BWV working group’ to consider the learning and recommendations.</p>
<p>Issue 19: Will the NSW Police Force clarify whether there is any exemption for Tactical Operations Unit and Tactical Operations Regional Support Unit officers from wearing Body Worn Video in the NSW Police Force Body Worn Video Standard Operating Procedures?</p>	<p>TOU is not specifically exempt however clarification is provided in the ‘Professional Conversations’ and ‘vulnerable persons’ sections of the BWV SOPS (page 10)</p>
<p>Issue 20: Please provide advice about whether the protections under Government Information (Public Access) Act 2009 (NSW) and the use of protective or suppression orders mentioned by the Coroner in the Inquest findings of 13 April 2022 are appropriate protections for any sensitive information that may be captured by TOU officers wearing BWV.</p>	<p>NSWPF does not believe that the protections that can be provided under protective orders is sufficient to protect TOU methodology. On this basis NSWPF does not support TOU being compelled to use BWV.</p>

‘ISSUE	Draft NSWPF position
If those protections are insufficient, please provide reasons	
<p>Issue 21: Would the NSW Police Force consider including in the BWV SOPs clearer details and instructions on the expectations of and procedures for plain clothes and specialist operations officers’ use of Body Worn Video?</p>	<p>Yes, in principle.</p> <p>SOPS could be clarified to allow for this scenario and consider officer discretion when using BWV which could create a barrier to interpersonal communication. The SOPs could include a reminder that failure to use will require explanation to a supervisor, court, or oversight body.</p>
<p>Issue 22: Would the NSW Police Force consider providing clear instructions about the positioning of Body Worn Video cameras so that they are mounted for optimal capture of footage?</p>	<p>Yes.</p>
<p>Issue 23: Are all PACs and PDs required to have sufficient clamps to attach BWV cameras to ballistic vests so that every ballistic vest is able to be used with a BWV camera attached</p>	<p>Clamp suitability will depend upon the procurement process currently being undertaken and decisions on the type of BWV camera to be used.</p>
<p>Issue 24:</p> <p>a) What is the NSW Police Force current position on the use of BWV cameras when officers are wearing ballistic vests?</p> <p>b) What steps can be taken to ensure officers wearing ballistic vests can still use BWV cameras?</p>	<p>Officer safety is paramount over recording on BWV.</p> <p>Where it poses an immediate risk to officers, they should not delay the use of tactical options or using ballistic vests to accommodate the activation of BWV.</p> <p>However, the use of ballistic vests with BWV is being considered as part of the current procurement process.</p>

‘ISSUE	Draft NSWPF position
<p>Issue 25: Could the NSW Police Force specify in the Body Worn SOPs whether, and if so how, Traffic and Highway Patrol officers should utilise Body Worn Video cameras in tandem with the In Car Video system?</p>	<p>This issue should not be conflated with the BWV SOPS as BWV SOPS apply to all police officers, not just Traffic and Highway patrol officers.</p> <p>Additionally, this issue will be dependent upon the capabilities of new BWV cameras currently the subject of procurement.</p>
<p>Issue 26: Please provide an update about the NSW Police Force approach to replacing existing BWV cameras, including details about whether PACs and PDs are currently replacing BWV cameras in circumstances where they fail, or are waiting for new cameras that are compatible with the integrated connected officer technology to be rolled out.</p>	<p>The NSWPF is unable to provide this information as procurement negotiations are commercial in confidence.</p> <p>Current BWV camera stock is being replenished pending the procurement of new BWV cameras, clamps and capabilities.</p>
<p>Issue 27: For each PAC and PD, please advise the current number of operable BWV cameras held, compared with the number from end June 2022.</p>	<p>The attached document provides the breakdown for each PAC and PD</p> <p>Total issued: 5161 Cameras in field: 4996 Damaged/Out of order: 165</p> <p>(Data provided by Technology Command as of 11 September 2023)</p>
<p>Issue 28: If existing model BWV cameras are not being replaced until the cameras compatible with connected officer technology are rolled out, how is the NSW Police Force proposing to manage the risks associated with a reduction in available BWV cameras?</p>	<p>Current stock is being replenished and is subject to current procurement.</p>

‘ISSUE	Draft NSWPF position
<p>Issue 29: Could the Body Worn Video SOPs include guidance consistent with the STMP III Guidelines, that provision of notification of a person’s status as a STMP target should be recorded on Body Worn Video, including guidance specific to the recording of the notification of children in the presence of a parent or guardian?</p>	<p>This issue is adequately addressed within the STMP III SOPs.</p>
<p>Issue 30: Could the NSW Police Force consider including on their public facing websites clear information that Body Worn Video footage is generally only retained for 6 months, unless complaints or legal actions are commenced, in which case it is retained for an extended period?</p>	<p>The risk of this issue is that it may encourage members of the public to withhold their complaint past the 6-month mark, knowing NSW Police won’t have BWV holdings to draw upon if a complaint is made.</p>
<p>Issue 31: What are the impediments to the NSW Police Force providing the Commission with access to systems to directly access BWV footage relevant to the assessment and investigation of misconduct matters?</p>	<p>This issue has been the subject of separate formal correspondence.</p> <p>The NSWPF will proactively supply BWV data which is relevant to the assessment/investigation and management of misconduct matters within 7 days of triage.</p>
<p>Issue 32: For complainants wishing to access BWV footage:</p> <p>a) what is the process by which complainants can access Body Worn Video footage?</p> <p>b) is access by viewing at a police station always an option available to complainants (and their legal representatives)?</p>	<p>BWV footage has the potential to include material that may be inappropriate for release, include vulnerable persons (including children), have privacy implications, and jeopardise the integrity of investigations.</p> <p>NSW Police Force will explore the legalities and the resource implications associated with releasing BWV to complainants and will amend BWV SOPS accordingly. Currently, page 13 of the BWV SOPS sets out the process for access to view BWV when it relates to a charge or legal process.</p>

‘ISSUE	Draft NSWPF position
<p>c) can arrangements be made to view at an alternative police station, upon request of the complainant?</p> <p>d) are there other available options for access by complainants?</p>	
<p>Issue 33: Does the NSWPF regularly release copies of BWV footage to complainants (with third parties pixelated), and if so, what are the parameters within which this approach is followed?</p>	<p>NSW Police Force will explore the legalities and the resource implications associated with releasing BWV to complainants. However, it is noted that NSW Police holds concerns that releasing a copy of BWV will contravene the <i>Surveillance Devices Act 2007</i>.</p> <p>NSWPF officers currently do not have the skill to pixelate images of third parties and have concerns re breaching of privacy legislation.</p>
<p>Issue 34: Can the available processes for accessing BWV be</p> <p>a) reflected in the Body Worn Video SOPS, and</p> <p>b) included in the public information about police use of Body Worn Video?</p>	<p>As indicated above, NSW Police are exploring the legalities and the resource implications associated with releasing BWV to complainants and will amend the BWV SOPS accordingly. This information, together with guidance for accused persons/legal representatives will be included in the publicly available information on the NSW Police website.</p>

Appendix B

Further detail on Coronial discussions of ambiguity in BWV policy

Deputy Coroner Magistrate Harriet Grahame’s report on the Inquest into the death of Tyrone Adams noted:

... an ambiguity within the [BWV] SOPs arising from, on one hand, the identification of BWV as a useful investigative tool and the direction that it should be used to gather evidence, and on the other, the direction that BWV not be used to record conversations between NSWPF officers. There may be circumstances where, like in the investigation of a police pursuit, NSWPF officers may be eyewitnesses or may be in a position to provide crucial evidence. In those circumstances it is unclear, on the face of the SOPs, whether those conversations should be recorded using BWV.¹⁹³

Accordingly, Deputy State Coroner Grahame recommended:

... that the Commissioner of Police give consideration to amending the Body Worn Video Camera Standard Operating Procedures with a view to providing further clarity in relation to the recording of conversations between police officers in circumstances where those conversations have evidentiary value; for example, where a police officer is a witness to an incident to be investigated by police.¹⁹⁴

The Commissioner of Police did not support the Coroner’s recommendation.¹⁹⁵

More recently, the NSW Coroner’s Inquest into the death of Stanley Russell found that one officer failed to wear a BWV camera at all. Another officer failed to activate the BWV when entering the premises in which Mr Russell was located, because he did not feel it was relevant.¹⁹⁶ One officer gave evidence to the Coroner that, on his reading of the BWV policy, the use of the word “should” indicated to him that police had discretion as to whether to turn their BWV to record.¹⁹⁷ There was no BWV recording of the police shooting Mr Russell.

Deputy State Coroner Magistrate Carmel Forbes said:

Body worn video is an important safeguard for police and for the community, and the failure to wear and activate the cameras was a serious breach of police policy.¹⁹⁸

In his evidence at the Inquest, Detective Superintendent Dickinson agreed that it would be desirable to amend the SOPs to remove terms like “activate” and “use” and clarify the policy means “switch to record”, and to clarify the scope of the discretion not to record.¹⁹⁹

¹⁹³ Deputy State Coroner, Report on the Inquest into the death of Tyrone Adams, State Coroner’s Court, 9 December 2022, paragraph 189.

¹⁹⁴ Deputy State Coroner, Report on the Inquest into the death of Tyrone Adams, State Coroner’s Court, 9 December 2022, p 50.

¹⁹⁵ Deputy State Coroner, Report on the Inquest into the death of Tyrone Adams, State Coroner’s Court, 9 December 2022, p 39.

¹⁹⁶ NSW Coroner, Inquest into the death of Stanley Russell, 14 April 2023, Para 258.

¹⁹⁷ NSW Coroner, Inquest into the death of Stanley Russell, 14 April 2023, Para 262.

¹⁹⁸ NSW Coroner, Inquest into the death of Stanley Russell, 14 April 2023, Para 265.

¹⁹⁹ NSW Coroner, Inquest into the death of Stanley Russell, 14 April 2023, Para 264.

The Deputy State Coroner recommended that:

Consideration be given by the NSWPF to updating the wording of the BWV Standard Operating Procedures Version 2.4 to make clear to officers of the NSWPF:

- (i) when they are required to turn their BWV on to recording (as compared to turning on to standby mode);
- (ii) the scope of their discretion not to record on BWV when their activities otherwise fall within the scope of “When to Use BWV” identified on page 7 of the BWV Standard Operating Procedures.²⁰⁰

²⁰⁰ NSW Coroner, Inquest into the death of Stanley Russell, 14 April 2023, p 54.

Glossary

Glossary	Description
Allegation	An allegation of misconduct or performance issues against a NSW Police Force employee.
BWV	Body-worn video
COPS	The NSW Police Force operations database.
Critical incident	When a person dies or is seriously injured as a result of police use of force, use of a police vehicle, while in or following police custody, or as a result of a police operation.
ICV	In Car Video
LECC	Law Enforcement Conduct Commission
LECC Act	<i>Law Enforcement Conduct Commission Act 2016 (NSW)</i>
Management action	The supervisory or managerial responses available to the NSW Police Force to manage issues affecting its employees in the workplace arising from misconduct and from unsatisfactory performance.
Misconduct matter	A complaint against a NSW Police Force employee or misconduct information about a NSW Police Force employee. Misconduct information is a mandatory or other report or information contained in a document that indicates or suggests conduct is or could be officer misconduct.
NSWPF	NSW Police Force
Police operation	Any activity engaged in by a police officer while exercising the functions of a police officer other than an activity for the purpose of a search and rescue operation.
SOPs	NSW Police Force Standard Operating Procedures
Sustained	Allegations of misconduct found substantiated following an internal (NSW Police Force) misconduct investigation.
Triage	If misconduct matter information is assessed as a Part 8A complaint, the NSW Police Force must triage the allegations to determine the most appropriate way to deal with the matter.

LECC

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