



Investigation Report



Keeping a watchful eye: NT Police Utilisation of Body Worn Video Cameras

March 2023

Acknowledgement of country

We pay respect to the past, present and emerging Traditional Custodians and Elders of lands throughout the Northern Territory.

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EXECUTIVE SUMMARY

1. Police officers have an enormously challenging job. They often have to interact with people who are at a low point in their lives. They operate in varied social and cultural environments. They are increasingly called on to act in many different roles, not only pursuing offenders but as the first contact point for a broad range of vulnerable people who may also be offenders or victims. The situations in which they have to work are frequently far from straightforward. Those situations regularly involve a significant level of contention and aggression. They are the people we expect to run towards danger and discord rather than away.
2. In performing their multifaceted duties, NT police officers are subject to high and increasing levels of expectation and scrutiny from the community generally and from a range of stakeholders. We, as a community, expect a substantial degree of professionalism and exemplary conduct from officers, even in the face of extraordinarily demanding conditions.
3. In line with community expectations, there are rising expectations on the NT Police Force (**NT Police**) as an organisation to maintain the highest levels of guidance, support and effective management for individual officers. It has never been more important for NT Police to clearly state its expectations of officers, provide support and guidance to help them achieve those expectations, and monitor officer conduct to facilitate the achievement of those expectations.
4. This report considers the administration of the NT Police Body Worn Video camera (**BWV**) program, in light of the emerging prominence of BWV as an essential tool for officer support, guidance and management.
5. It notes the substantial benefits of BWV for NT Police reviewing the actions of individual officers. BWV can be tremendously helpful in resolving conflicting versions of events regarding particular incidents. It is frequently crucial in quickly identifying the truth of the situation.
6. It is just as likely to provide evidence that police acted reasonably as it is to raise problematic officer conduct issues. However, where there are identified concerns about officer conduct, it can provide valuable evidence as to the background of incidents and the progress of incidents to give context to the decision-making and actions of officers. It often places supervisors and senior managers in a much better position to consider the reasonableness of police conduct and any further investigative steps that may need to be taken.
7. BWV ultimately enhances the ability of NT Police managers to identify any need for corrective action in respect of individual officers, for example, through approaches such as remedial training, personnel management processes or disciplinary action.
8. In addition to individual corrective action, BWV footage is a valuable tool for identifying systemic issues that require NT Police attention, for example, failings in current guidance or the need to enhance guidance or improve training for officers. It can also prove a useful tool for broader training and other personal development of officers.
9. Further, as BWV technology develops, the scope for senior officers to monitor events in real-time and provide immediate guidance and support to frontline police will continue to improve.
10. That is not to say that BWV should be regarded as a cure-all. In many cases, the combination of video footage and audio can provide compelling evidence as to the circumstances of an incident. However, there will often be a need to obtain evidence from officers and other witnesses and review relevant documentation to get the best understanding of the situation.

11. There will also be cases where footage is unclear (for example, for incidents in dark locations, at night) or the BWV does not fully capture the events (it may be pointing in a different direction or have become dislodged). However, for the most part, BWV presents a spectacular improvement over situations where a reviewer must rely solely on conflicting versions of events.
12. Crucially, BWV should be seen as a major asset for NT Police in terms of enhancing transparency, accountability and public confidence in the organisation.
13. Flowing on from direct benefits to NT Police, the report also discusses the enormous advantages of NT Police BWV as a tool for independent external complaint and oversight mechanisms, such as the Ombudsman, which aim to establish the truth of complaints and promote effective and appropriate police conduct.
14. This report further explores other significant benefits of BWV, such as utilisation of footage for evidentiary purposes, as a contemporary record (or as an aid to memory recall) for criminal and civil proceedings.
15. It also recognises mixed views in the academic literature on the suggested impact of BWV on moderating the conduct of officers and the people with whom they come into contact, and the impact of BWV awareness on the confidence of officers engaging with people in the performance of their duties.
16. In addition to identifying benefits, the report acknowledges the limitations of BWV and points to potential hurdles to effective implementation of the NT Police BWV program. It proposes a range of potential policy and procedural enhancements to promote effective ongoing administration of the program.
17. BWV has been in use within NT Police since a three month trial was initiated in late 2014. BWV devices are an expensive addition to the accoutrements worn by police officers. The budget for the program is approximately \$1.2M per year.
18. The experience of this Office is that BWV is not a panacea but has been enormously beneficial from the perspective of establishing the truth and effective resolution of *Ombudsman Act 2009* complaints and police disciplinary proceedings.
19. The ultimate conclusion of the report is that BWV represents a substantial but essential ongoing investment for NT Police for the host of reasons identified above and in the body of the report. Like any program, it is important that it continues to be well managed and actively promoted within NT Police. The report makes a number of recommendations (listed on the next two pages) at both strategic and operational levels.
20. I acknowledge the co-operation of officers of NT Police and the Department of Corporate and Digital Development (DCDD) in the conduct of this investigation. NT Police was provided with an advanced draft of this report for comment. Comments have been acknowledged or taken into account in preparing the final version of the report.

Peter Shoyer
Ombudsman NT
March 2023

RECOMMENDATIONS

Recommendation 1

NT Police continue to maintain and adequately resource its broad-based Body Worn Video program.

Recommendation 2

NT Police senior executives actively express to the NT Government and to police officers, ongoing commitment to the BWV program, noting the numerous benefits for the community, the NT Police Force, the justice system and individual officers in maintaining broad-based use of BWV.

Recommendation 3

NT Police continue to actively promote and closely monitor use of BWV by officers across the board, including enhancement of written guidance on its benefits and consequences of non-compliance.

Recommendation 4

NT Police develop clear policies and processes for notification of failure or loss of a BWV device and for replacement.

Recommendation 5

NT Police consider:

- initiating a brief refresher for recruits (including accelerated recruits), 12-18 months after initial training, to observe proficiency in use of BWV cameras as well as Evidence.com;
- utilisation of BWV refresher training for officers who have, or may have, failed in some aspect of BWV utilisation;
- including refresher BWV training for all officers as an element of routine competency maintenance.

Recommendation 6

NT Police continue to investigate and assess individual failings with regard to BWV utilisation, engaging as appropriate a range of training, personnel management and disciplinary options to promote effective utilisation.

Recommendation 7

NT Police review its systems and processes for recording issues and complaints around BWV utilisation and access, to ensure information is recorded appropriately and readily available to managers and senior officers who may find it necessary to review such records for personnel management, complaint handling and disciplinary purposes or systemic analysis.

Recommendation 8

NT Police provide adequate internal personnel and resources to effectively maintain the BWV program.

Recommendation 9

NT Police:

- establish a governance structure for the BWV program to oversight all aspects of administration and actively promote utilisation by officers. It should provide for ongoing oversight of BWV utilisation trends and identification of any potential risk areas.
- implement an audit program (with random and structured elements) to establish levels of compliance with BWV utilisation and other requirements, including storage, categorisation and access. Results of audits to be fed into the governance structure.

Recommendation 10

NT Police develop a policy around use of non-BWV official and personal devices to record the exercise of police functions and activities. Issues for consideration in policy development should include:

- indicating a strong preference for use of official NT Police devices for recording, with personal devices only being used when there is no reasonable option to use an official device;
- whether there should be limitation or stipulation of the type of devices to be used;
- whether personal devices should be registered, either initially or once they have been used to record the exercise of a police function or activity;
- whether and how an officer should give notice and provide a copy of relevant footage, including an express requirement to do so;
- the need for a requirement to provide unredacted copies of footage to NT Police, with the possibility of later discussion with NT Police regarding redaction of irrelevant personal matter;
- to what extent there should be a capacity in a supervisor or officer administering the BWV program, to access and review footage and information on a personal device to assure NT Police that all relevant footage of an incident has been provided; and
- any other measures to protect against data being inappropriately deleted, copied or redacted or the potential for claims to that effect.

Recommendation 11

NT Police review current categorisation and retention requirements to ensure they are effective from a practical perspective and comply with legislative records management requirements, including the *Information Act*. This may include exploring the potential for use of API technology with service providers for the purpose of categorizing incidents for retention purposes.

Recommendation 12

NT Police:

- consider, as a matter of priority and in consultation with the Ombudsman's Office and stakeholders, the potential to facilitate simpler options for complainants' legal representatives to view footage in a manner that duly recognises the privacy of other individuals appearing in video or audio;
- ensure that adequate resources are provided to promptly respond to information access applications in compliance with its obligations under the *Information Act*.

In order to progress consideration and implementation of these recommendations, I request that the Commissioner of Police give to me, within three months of provision of this report, written notice of:

- (a) the steps taken or proposed to be taken to give effect to each recommendation; or
- (b) if no steps, or only some steps, have been taken or are proposed to be taken in respect of a recommendation, the steps taken and the reasons for not taking all the steps necessary to give effect to it.

CHAPTER 1: BWV benefits and limitations

1. Body Worn Video camera devices (**BWV**) were introduced in the Northern Territory Police Force (**NT Police**) for a three month pilot trial beginning on 29 December 2014. The trial involved police officers being issued BWV in a range of frontline areas in both the Darwin and Alice Springs regions.
2. Utilisation has grown substantially since then to the stage where it is now the norm and a requirement for frontline officers to wear and appropriately activate BWV.

BWV benefits

3. At the time of the pilot trial, NT Police perceived the benefits from deploying BWV to include:
 - *A reduction in Complaints Against Police (CAP)*
 - *Enhanced transparency and officer accountability*
 - *Enhanced prosecution outcomes*
 - *Provision of an important new type of evidence for criminal and internal administrative investigations, and*
 - *Enhanced community confidence in its police force.¹*
4. A number of benefits have been advanced more generally for utilising this type of technology. Some relate to improving justice system processes, including:
 - utilisation for evidentiary purposes in court or tribunal proceedings;
 - assisting in the reduction of resources required to provide evidence in such proceedings;
 - reducing the trauma of victims having to repeat evidence in such proceedings; and
 - assisting officers with recall of encounters, days, weeks and even months after the event.
5. Other suggested benefits relate to direct behavioural impacts that will improve the conduct of those involved and reduce the need or potential for poor behaviour or use of force, including:
 - improving the behaviour of people who come into contact with police, once they become aware they are being recorded;
 - improving the decision-making and behaviour of police when they are aware they are being recorded;
 - promoting consideration by officers of the importance of de-escalation and minimum necessary use of force;
 - contributing to a more confident approach on the part of officers who know they are protected through having a true record of events to support their actions.

¹ Letter to Ombudsman from Commissioner of Police dated 23/12/2014.

6. Yet other mooted benefits involve enabling better management of officers and complaints against officers, including:
 - improving the capacity of supervisors and senior officers to review incidents and the actions of officers, as well as the demeanour of parties to an encounter;
 - identifying strengths and failings in conduct or service delivery standards that may not otherwise have been caught;
 - contributing to understanding of officers' decision making processes during encounters that may not be as easily understood or appreciated through written documentation alone;
 - if multiple officers are present during an encounter, differing angles and perspectives of the encounter can be captured to provide a fulsome understanding of the entire encounter;
 - promoting timely resolution of complaints from members of the public about excessive use of force and other forms of poor conduct;
 - providing a training tool for the officers involved and more generally;
 - providing valuable evidence to further consideration of necessary systemic changes and enhancements; and
 - allowing external oversight bodies such as courts, tribunals or investigative bodies who are required to review, assess and or make determinations regarding encounters to better gauge the interaction of the parties at the time of the encounter.
7. More broadly, it has been proposed that BWV utilisation promotes public confidence in NT Police by enhancing the transparency and accountability of officers and the organisation for the manner in which police duties are performed.

BWV literature

8. There has been extensive research into claimed benefits and limitations of BWV throughout the world. The results to date have not been conclusive. Below is a discussion of a cross-section of recent literature on the topic. It does not purport to be a comprehensive analysis of what is a rapidly growing body of work but it provides a flavour of recent debates and developments.
9. The benefits of using BWV for the purposes of taking or recording evidence (paragraph 4 above) are broadly acknowledged.² As well as use as direct evidence, BWV has been noted to assist officer recall of events, providing higher quality reporting.³ However, there have been potential caveats suggested such as that the very fact of BWV recording may reduce the recall of officers (cognitive offloading), that details from BWV may be unintentionally or intentionally incorporated into an officers memory or recount and that officers may exclude true details when they are not included in BWV footage.⁴ NT Police points to the possibility that the presence of BWV may (but should not) distract from members making contemporary written notes.

² Clare I (2019), with earlier guilty pleas but limited impact on court processes/outcomes, Gaub (2018), Lum (2020). **Full citations for referenced papers are included in the *References* section at the end of this report.**

³ Adams D (2020), Barbosa (2021), Blaskovits (2020), Dawes (2015).

⁴ Adams D (2020), Blaskovits (2020).

10. In my view, the advantages identified in paragraph 4 are real and significant factors favouring widespread BWV implementation throughout the Northern Territory.
11. As for other suggested benefits, the literature is far from settled, as noted in the following introduction to an edition of *Policing: A Journal of Policy and Practice*, Dymond (2017):

BWCs are often said to have promise insofar as they may improve the overall quality of police-citizen interactions, reduce levels of force used by officers and subjects, reduce injuries and assaults, provide evidence to support arrest and prosecution, and enhance police transparency, legitimacy and accountability, particularly (although not exclusively) in interactions involving police weaponry, less lethal or otherwise. They may also help generate improvements in officer training, enhance professional development and encourage reflective practice by officers. For those interested in policing research, too, the advent of BWCs may offer not just an interesting topic in their own right, but may offer new possibilities to explore the complexities of police-civilian interactions.

Yet, BWCs are controversial with regard to the privacy rights of those captured on video and the many logistical and practical issues of video storage, retention, and access, whilst conflicting evidence exists about their potential to minimize police use of force and to reduce assaults on officers (Ariel et al 2016), as well as their consequences for policing research. Moreover, the relationship between the introduction of body worn cameras and the outcomes often associated with them seems less straightforward than some might imagine. Indeed, instead of a linear, predictable process, the impact of BWCs seems mitigated by a complex, unpredictable 'dance of agency' (Pickering 2020: 191) between the technology and the policies surrounding them, the officers that wear them, and the subjects that are filmed by them. For example, experiences in Northamptonshire ... show that the adoption of BWC is not just a simple case of technologies simply being recognized as valuable and hence adopted. Instead, interactions between officers, the physical technology and departmental policies (say, for example, early experiences with head-worn cameras that made many officers feel self-conscious) may lead to technology being rejected – at least initially. Similarly, ... pieces by Ariel et al and Young and Ready ... highlight the complex ways in which institutional policies may interact with the beliefs, actions and agency of both officer and subject to produce a range of (intended and unintended) outcomes – not all of which may be positive. Thus the acceptance of BWCs as 'business as usual', and their ability to generate a range of tangible benefits and public goods, is not necessarily guaranteed.

12. A more positive note is struck in Gaub (2020):

Academics, practitioners, and the public view research through different lenses, but seek to answer the question at the crux of nearly all BWC research: Are BWCs a worthwhile investment? None of the summaries provided here fully answer this question, but we disagree with Lum et al.'s (2019) gloomy outlook of the state of BWC research. When viewed holistically, the literature shows that departments can enjoy substantial benefits from BWCs. But BWCs are one tool among many at an officer's disposal, and like every tool, they have limitations. Good planning and implementation are difficult and time-intensive, and there are numerous pitfalls — some expected, others unforeseen. Departments have struggled with privacy legislation, the monetary and personnel costs required for redaction and retention, and balancing accountability and transparency priorities among the agency and the public. Positive outcomes are by no means guaranteed, but in our view, the early story on BWCs is ultimately bright. This is no small feat given the weighty issues at play, the often significant pressure to deploy BWCs quickly, and the high level of difficulty associated with planning, implementing, and managing a BWC program.

13. The majority of the literature does support a reduction in complaints when BWV is worn.⁵ However, others have identified no evidence of impact⁶ or an increase in complaints.⁷
14. There is also support for the proposition that BWV leads to reduced use of force by police⁸, although again there is literature which points to no impact⁹ or increased use of force.¹⁰
15. Preventive aspects of BWV use are of particular relevance from the perspective of compliance with the United Nations *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)*. The objective of OPCAT is to establish a system for prevention of torture and other forms of ill-treatment in places of detention.
16. Any measure that is likely to moderate police conduct with respect to people in detention will have a preventive impact on the potential for ill-treatment, in line with OPCAT, which has been ratified by, and is in the process of being implemented in, Australia.¹¹
17. In that regard, it should be noted that much of the literature on police conduct is based on short to medium term studies, in specific policing contexts. There is a broader point as to whether longer term exposure to BWV scrutiny across-the-board will inevitably influence officers to adopt a more moderate approach to the exercise of police powers, including use of force. In other words, whether officers who have spent their careers operating with BWV as the norm are more likely to moderate their conduct. While there is some commonsense behind that proposition, establishing the reality and extent of such an impact will require further long term studies.
18. On the material available to date, the ongoing utilisation of BWV with respect to people detained by police should be treated as a significant positive from the perspective of OPCAT compliance.
19. As for moderating the behaviour of people with whom police interact, conclusions are again divided, with support for a moderating effect¹², no impact¹³ and promoting negative behaviour if officers are more hesitant in their approach due to being under BWV scrutiny.¹⁴
20. The literature is also divided on the impact of BWV on public opinion with regard to the performance and reputation of police. There is support for increased accountability and transparency giving the public greater confidence in the work being done by police.¹⁵ However, there is also recognition that BWV footage can produce powerful, highly distressing and potentially negative images that can be misinterpreted when publicised out of context.¹⁶
21. There has also been consideration of impacts of BWV on police decision making regarding which activities they choose to undertake and their exercise of discretion in particular cases. The obvious hope is that BWV will be a factor encouraging officers to act with reasonable circumspection and consideration of the circumstances in the exercise of their discretion,

⁵ For example, Braga (2018), Braga (2019), Lum (2020), Martain (2020), Owens (2018), Petersen (2020), Police Ombudsman for Northern Ireland (2020).

⁶ Yokum (2019).

⁷ Claire 1 (2019).

⁸ Barbosa (2021), Braga (2018), Braga (2019).

⁹ Petersen (2020) and Yokum (2019).

¹⁰ Clare 1 (2019).

¹¹ The NT Ombudsman is currently the NT Interim National Preventive Mechanism for OPCAT.

¹² Adams I (2019), Ariel (2018), Douglas (2020).

¹³ Clare 1 (2019).

¹⁴ Ariel (2018), Lofstrand (2021).

¹⁵ For example, Braga (2018), Clare 2 (2019), Demir (2018), Lofstrand (2021).

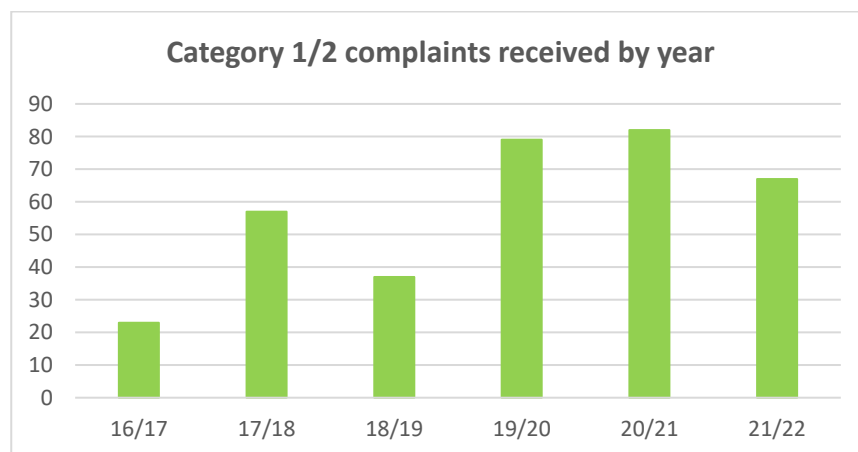
¹⁶ Adams I (2019), Gaub (2018).

without BWV impacting on their willingness to undertake their functions as necessary. Support for such an outcome is again mixed, with a positive impact recognised by some¹⁷, no significant impact by others¹⁸, and a negative impact by yet others, on the basis of too much officer circumspection in the face of increased scrutiny through BWV.¹⁹

22. With regard to the effectiveness of complaint investigation, there is support for BWV aiding investigations and speeding up the course of investigations.²⁰ A reduction in unresolved complaints, and consequent increase in sustained complaints has also been noted.²¹
23. There is also considerable support for the use of BWV as a training tool for new and ongoing officers and for individual officers involved in incidents.²²
24. The above analysis shows that the literature currently gives rise to considerable contest on many issues regarding BWV utilisation by police. To an extent, this may be attributed to different approaches to terminology and measurement of success and impact. It may well also be attributable to the many different contexts in which police operate and in which BWV has been introduced. In that regard, I note calls for clarification of the goals and methodology around testing the success of BWV.²³

NT Ombudsman experience

25. As to changes in conduct of people interacting with police, there is no obvious sign of behavioural improvement caught on footage viewed by our Office. This is notwithstanding that members of the public often enquire as to whether BWV is on and Police often volunteer that events are being recorded. However, it is likely that our observations are skewed by the fact that BWV generally reaches our Office when things go wrong rather than when behaviour has been moderated.
26. As for some moderating impact on police conduct, serious complaint numbers in the past few years are higher than in the past. As BWV use has been adopted to a greater extent over recent years, the number of Category 1 and 2 complaints (involving more serious allegations) has risen to a higher average level (see table below).



¹⁷ Braga (2018), Harrison (2021).

¹⁸ Braga (2019), Clare 2 (2019), Lum (2020).

¹⁹ Ariel (2018), Lawrence (2019), Lofstrand (2021).

²⁰ For example, Police Ombudsman for Northern Ireland (2020).

²¹ Cubukcu (2021).

²² Lum (2020), Mangels (2020), Petersen (2020), Phelps (2016).

²³ Alpert (2018), Malm (2019).

27. There may be a number of factors influencing this rise. It may perhaps be due in part to greater confidence of complainants that there will be evidence (namely, BWV) on which NT Police and the Ombudsman can resolve a potential conflict between differing versions of events between the complainant and police. More complaints may also be made by complainants who have had the opportunity to view BWV (either obtained in the course of court proceedings or through freedom of information processes). NT Police points to the possibility that changes in approach by legal aid agencies and additional complaints arising from the NT Police response to the COVID-19 pandemic may also be contributing factors. Declines have been experienced in 2021/22 and to date in 2022/23.²⁴ However, the pattern over recent years cannot be used as support for a view that BWV is having a moderating effect on officer conduct.
28. Nevertheless, having viewed many hours of footage over recent years, it is clear that most officers are acutely aware when BWV is on. It is not infrequent in our experience for officers to draw attention to the fact that BWV is turned on. For example, a person who is complaining about police treatment may be informed that BWV is on and is capturing the incident.

Benefits for officer management, complaint handling and strategic development

29. This Office certainly finds enormous benefits in the capacity to review BWV footage. Obtaining vision of incidents is not a panacea. There are limits, which are discussed later in this chapter. However, having access to clear BWV is of huge benefit in resolving the frequent contest of versions of events that face us and providing background to incidents.
30. In saying that, it is important to note that having access to audio in addition to video is of major benefit to anyone who is called upon to review police conduct. While a picture may be worth a thousand words, BWV audio is enormously important in conveying the tenor of interactions and the precise nature of communications.
31. It is fair to say that many complaints where BWV or other footage is not available, have in the past, and continue today, to present obstacles to establishing the truth of complaint allegations. In the context of Ombudsman complaints and police disciplinary proceedings, there is a standard of proof required for making an adverse finding against an officer. If that cannot be satisfied by cogent evidence, such a finding may not be open.²⁵

²⁴ A total of 34 Category 1 and 2 complaints received in 2022/23 to end February, suggests there will be a decline (but still around 50 such complaints) in the current year.

²⁵ See the decision of the High Court in *Briginshaw v Briginshaw* [1938] HCA 34, regarding the relevant test. Its import is summarised by the Integrity Commission Tasmania as follows (p62):

In Briginshaw it was said that, where the potential outcomes are more serious, 'reasonable satisfaction' should not be arrived at with inexact proofs, indefinite testimony, or indirect inference. This means that the more serious the outcomes, the more solid the evidence needs to be.

Briginshaw has at times been misinterpreted to mean that the civil standard of proof is a sliding scale, and that where the outcomes are potentially very serious (dismissal), the standard of proof is higher.

Briginshaw actually means that the evidence itself needs to be stronger (more substantial) if the outcomes are potentially more serious. For instance, if the outcomes are potentially very minor, you may be able to be reasonably satisfied on the balance of probabilities on the basis of uncorroborated hearsay evidence. You would be less likely to be reasonably satisfied on the same evidence if the outcome was potentially dismissal.

32. In Ombudsman complaints, it is not uncommon for versions of events presented by the complainant and subject officers to differ markedly.²⁶ That disparity may be resolved by assessment of credibility and other information, including the evidence of other witnesses. However, in many complaints that do not have video/audio coverage, there may not be enough to elevate one version above others. In the past, many allegations have ended with an *Unresolved* finding, which did little to satisfy complainants or officers whose conduct was impugned.
33. BWV footage has been the key to effective resolution of many complaints, a proportion of which have ended with recommendations for corrective action in respect of individual officers, including personnel management action, remedial advice/training or disciplinary action under the *Police Administration Act 1978* (the **PAA**).
34. Footage captured over a number of encounters can provide valuable insight into how officers conduct themselves in given scenarios and respond to certain situations, even if conduct has not reached the level of a breach of discipline. If after reviewing various encounters it becomes apparent that an officer has a propensity to behave negatively whilst engaging in certain situations, NT Police can use the footage captured to provide advice, training, options and/or tools to guide the officer to improve their conduct for future encounters.
35. BWV footage can also provide valuable information to assist with addressing systemic issues, implement new strategies and/or address training requirements for officers generally.
36. One only has to review case studies from recent Ombudsman annual reports to note the number of cases where BWV, CCTV or a combination of both, have assisted in an effective resolution of a complaint issue. Footage and audio has been hugely beneficial in establishing what did or did not occur in any given situation. It has allowed much more detailed analysis of the often complex and challenging environment in which police operate.

BWV supporting complaint allegations

37. With regard to BWV supporting complaint allegations, there are many examples in previous annual report case studies. I do not propose to reproduce a large number of sustained cases in this report. I will merely recount the first five police conduct case studies from my most recent Annual Report to illustrate the benefits of BWV in establishing failings or room for improvement.

Example - BWV shows excessive use of force

The complainant alleged that, in arresting him, NT Police used excessive force by pushing him to the ground and placing a knee to his head and neck, applying handcuffs with force and pulling him to his feet by his arms and handcuffs.

BWV from one officer enabled a clear finding that allegations of excessive force regarding an officer were sustained. It showed the complainant did not appear to be offering resistance or making an attempt to escape. It showed the officer raised his elbow as he ran towards the complainant and struck out with his elbow and forearm causing the complainant to fall.

²⁶ It is acknowledged that divergence in versions of events should not necessarily be taken as arising from deliberate misstatement by one party. Recollections are often influenced by circumstances at the time or by the passage of time. Recall may be impacted due to heightened circumstances of an event or the influence of various substances. It may be affected by the passage of time or mixed with other past or later recollections. One party may not have the same background information or physical point of view as another. Often, matters such as decisions to arrest or use force involve fine judgement calls. A party may subconsciously incline to a version that reinforces their take on the matter.

It showed that the officer placed one knee on the complainant's mid-lower back and one directly on his head near the back of his neck, for the time it took to apply handcuffs, approximately 15 or 16 seconds. The officer left the Police Force prior to finalisation of disciplinary action.

Conversely, the BWV supported a finding that allegations in relation to the application of handcuffs or lifting the complainant to his feet were not sustained.

Example – BWV points to failings in investigation of domestic violence

The complainant was taken into custody following a call for police attendance in relation to a domestic violence incident during which he was alleged to have assaulted family members.

Complaint allegations related to the lawfulness of his apprehension and use of force at the watch house. BWV provided background to the actions of police in deciding to apprehend the complainant. It enabled the Investigating Officer (IO) to conclude that there were deficiencies identified both with respect to the action taken against the complainant and the action and investigation taken to pursue and address the potential criminal and domestic violence aspects of the incident. Disciplinary proceedings were undertaken in respect of officers with regard to both aspects.

BWV (supplemented by CCTV) also provided context with regard to allegations of use of excessive force in the take down of the complainant at the watch house, after he spat on an officer and the application of a spit hood. The footage identified a failure to remove the spit hood once the complainant was placed in a cell.

Example – BWV allows careful assessment of police holds

Police responded to a report of a domestic disturbance. They arrived to find the complainant, his partner and infant child in a public area

Police established that the complainant appeared to be in breach of a Domestic Violence Order (DVO). The complainant took his child from his partner and was holding the child in his arms. Officers attempted to convince him to hand the child to his partner but he refused. He attempted to avoid arrest and became more agitated and aggressive, yelling and swearing at officers. His partner attempted to take the infant from him but he refused. Officers became increasingly concerned for the safety of the infant after attempting to resolve the situation peacefully over about 15 minutes.

The complainant then began threatening officers before taking a step towards one of them. An officer then instituted a four second 'choke hold' until the complainant released the infant to his partner.

Officers then continued with the arrest and struggled to handcuff the complainant as he was providing active resistance. The same officer re-commenced a 'choke hold'. The complainant remained restrained in this fashion for 15 seconds.

BWV captured the incident in detail. It showed the effect of the second choke hold on the complainant, who appeared to lose consciousness before recovering and again resisting police. The footage allowed the IO to carefully assess the situation, concluding that the initial hold was justified but the second hold was not reasonable. The officer was subject to disciplinary action.

Example – BWV allows assessment of implementation of liquor restrictions

A licensee complained about the impact of a four day licensing operation by police in a town, which entailed three days of full coverage Point of Sale Intervention (POSI) in take away outlets around the town. The investigation involved consideration of broader issues relating to the operation but BWV also enabled identification of a number of issues regarding specific interactions between officers and customers over the course of the operation.

These included unfairly ascribing responsibility for a nearby disturbance to customers waiting in line, failing to consider the individual circumstances of customers in line, and refusing service on grounds not justified by the *Liquor Act*, including requiring an ID document showing proof of lawful residence in the town.

The IO recommended a number of officers be given remedial advice in relation to these issues. The IO also recommended that the concerns raised by the complainant and by officers involved in the operation be drawn to the attention of senior police involved in planning the operation, to assist with future planning.

In this case, BWV was helpful not only in identifying individual conduct issues but providing evidence to assist with broader future planning.

Example – BWV shows an issue with use of OC spray

The complaint regarded rough driving of a police vehicle after a person was apprehended. The IO found no evidence to support the allegation but BWV allowed NT Police and my Office to identify ancillary issues relating to the arrest.

The complainant was involved in a physical altercation with another person. Police intervened. OC spray was utilised. While the officer claimed he made attempts to utilise verbal commands for the complainant to desist before deploying OC spray, the IO concluded that CCTV and BWV footage showed otherwise. The IO concluded that there did not appear to be any verbal communication/command provided by the officer prior to the deployment of the OC spray. The IO found this issue sustained. The officer concerned is no longer with NT Police.

BWV supporting officers

38. BWV that has helped sustain an allegation is matched by cases in which BWV has been effective as a basis to reject a complaint issue. I have included some cases of this type below to illustrate that the effectiveness of BWV footage can lay not only in finding fault with police action but also in 'clearing the air' for officers who have been subject to significant but unfounded allegations.

Example - BWV points to pre-existing injuries

The complainant alleged he was significantly injured by police and suffered a broken wrist and damage to his hip, including cartilage nerve damage. The complainant advised he was thrown into the back of a police vehicle with force and then taken to the police watch house.

The arrest of the complainant was captured in full on BWV. It did not support his allegations of excessive force during the arrest. The complainant could be heard on the footage advising police that his injuries were old injuries and that he hadn't yet made contact with a doctor. Police could be seen to be both professional and courteous during the arrest. No misconduct was identified.

Example – BWV refutes allegation of punching in the face

Five police officers were alleged to have entered a man's home, broken down his bedroom door and punched him in the face while executing an arrest for a domestic violence incident.

Police were responding to a report of assault and domestic violence. Examination of BWV demonstrated that there was no assault by police against the complainant and at no time were police seen on the footage punching him in the face or otherwise using excessive force.

Example – BWV resolves stomping allegation

A woman found obstructing traffic by sitting in the middle of a busy road alleged that a police officer handcuffed her and then used excessive force by stomping on her and that she now had a sore wrist.

The officer had BWV turned on during the entire incident, including events leading up to the complainant's apprehension. The footage showed the complainant was non-compliant with directions given to her to move off the road and was subsequently apprehended for protective custody.

The BWV showed no evidence of unnecessary or excessive force during the complainant's apprehension.

Example – BWV footage from multiple officers

A complainant alleged that during her arrest attending police officers pointed a Taser at her, used excessive force to apprehend her, failed to provide reasons for arrest, and taunted her.

The two frontline police officers engaged in the arrest were wearing BWV and activated it immediately prior to arrival at the complainant's location. They did not deactivate their cameras until departing the scene. Other officers at the scene all had their BWV activated. It captured the entire incident from various angles and timeframes.

Footage from BWV and watch house CCTV was viewed along with all relevant documentation in relation to the incident. The footage did not support any of the allegations made by the complainant. The footage was also viewed by the legal representative of the complainant. The complaint was dismissed.

Example – BWV camera resolves misunderstanding of police actions

A member of the public called police to report a taxi driver assaulting a passenger in his vehicle. The third party claimed that when the officers attended, they didn't speak with the passenger involved, only the driver who was the alleged perpetrator.

When the officers attended they activated their BWV cameras and could be seen speaking with both parties. Neither appeared distressed and confirmed that they knew each other and were just playing around, with the taxi driver commenting that "they know each other." There were other passengers in the taxi, none of whom appeared to be distressed or concerned about the situation.

The BWV recorded the actions of police in attendance and provided clear evidence that police spoke with the individual parties who did not seem to be injured or concerned about their wellbeing.

Example – BWV clarifies incident observed by third party witnesses

A person suffered a bleeding head wound when they fell to the ground after an officer grabbed and pulled on their arm. The incident took place in a shopping centre. The person who suffered the injury did not complain but two complaints were received from members of the public who witnessed the incident.

All three officers involved activated their BWV. Being able to view the incident in its entirety from different angles and hear what was said was very beneficial for the resolution of the complaint. Although the two third parties were relatively close to the incident, the Investigating Officer (IO) and our Office had the advantage of being able to review the course of events in detail by way of the BWV.

The BWV showed that, when force was used, the individual was exhibiting signs of aggression in the way he was facing the officers, in his language and in his motion towards an officer. His behaviour was confrontational. He may or may not have carried it further but the potential was there.

The injury to the individual's head was highly regrettable. However, the way he fell was probably contributed to by his impaired reflexes, and there is potential for injury in any use of force. The IO found that the police action was not unreasonable given the circumstances. Our Office explained the outcome to the complainants and thanked them for raising their concerns.

BWV limitations

39. As useful as it can be, there is no doubt BWV has its limitations. It is expensive to roll out and maintain across a decentralized police force. There are practical limits to its operation and effectiveness. It is generally utilised overtly but there are issues around privacy and treatment of vulnerable people. Further, its effectiveness can be significantly impacted by limited, obstructive or careless utilisation by officers.

Resource implications

40. Costs associated with implementing BWV are high. Depending on the nature of arrangements this can include costs of purchase or rental of equipment, training, maintenance, replacement of damaged and worn equipment, storage and preservation. The annual budget for NT Police BWV is approximately \$1.2M.
41. The NT is a harsh environment and the nature of policing places a heavy toll on what is relatively sensitive equipment. It is also a huge jurisdiction with many, widely-separated police facilities. Providing adequate and timely access to necessary equipment for upkeep and downloading BWV across many facilities adds to the cost. There are also connectivity issues in some remote locations causing issues in downloading of data from cameras.
42. It is also important to maintain an ongoing administrative structure for ensuring effective operation of all aspects of the system.
43. All this requires a major and ongoing commitment of funding and time from police officers and administrators.

Practical limits

44. BWV has a relatively narrow field of vision and will only capture certain aspects of an incident. Police are often on the move and BWV footage will frequently move around with them, sometimes quite violently if, for example, an officer is running in pursuit of an assailant.²⁷
45. Police also commonly come into close physical contact with members of the public, particularly when engaging in use of force. This contact often results in the coverage of BWV being minimised or completely obscured. Hence, the importance of every officer involved having their BWV turned on at all relevant times.
46. It is also a reality of police operations that many activities take place at night with little or no light to shine on incidents. Environmental conditions such as rainy weather may also cause issues with vision and audio.
47. Further, not every piece of police activity or background is caught by BWV. In an environment where BWV use is widespread but not ubiquitous, some may suggest the absence of footage of an incident or parts of an incident is not only a failing for which an officer should be sanctioned but can be relied on as evidence to counter versions of events put forward by police.
48. NT Police also note there are battery life limits, especially if a member undertakes an extended shift or overtime and has not had opportunity to recharge and limits due to poor IT / telecommunications infrastructure in some remote areas which impacts on officers ability to download video over available band width.
49. These practical limitations mean that BWV will not always provide a complete picture of events. However, there are many cases in which it will provide a comprehensive depiction of events or at least add appreciably to the understanding of what happened.
50. Caution must, however, be exercised before accepting that an isolated snippet of BWV footage can tell the whole story or, indeed, that the absence of footage adds weight to an allegation of police wrongdoing.

Overt use

51. NT Police are provided legislative authority under the *Surveillances Devices Act 2007* (the **SDA**) to use BWV in circumstances where they may capture private activities or private conversations. Section 14A of the SDA permits police use of BWV if use is overt, inadvertent or unexpected.
52. Not all footage captured by BWV will fall within the strictures of the SDA but, in such cases, section 14A does provide justification for use.²⁸
53. There is clearly an emphasis on overt use if BWV will capture private activities or conversations. This can raise issues when plain clothes officers are exercising their duties. The Police Practice and Procedure – Body Worn Video Instruction (the **BWV Instruction**) provides, “*Members must be mindful that BWV is an overt recording mechanism. If used in a covert manner without necessary authorities, then there is a risk of evidence being ruled inadmissible and being excluded at court.*”

²⁷ Miranda (2022).

²⁸ NT Police note that when activated the camera flashes with a round red light, except when in covert mode.

Privacy

54. Even when utilisation is authorised, BWV has the potential to impinge on people's expectations of privacy.²⁹
55. It is important that police maintain awareness of the privacy of people who may be captured on BWV. Footage will often capture not only persons of interest to police but also people who are incidentally caught on camera, such as members of the public and people who live in homes they enter. Often they will have nothing to do with the reasons behind police actions.
56. It is accepted that there will be inevitable ancillary capture of uninvolved people. However, particularly in private dwellings, police should make all reasonable efforts to inform people they are being recorded and not unnecessarily record private activities or conversations.
57. In that regard, police should always bear in mind that BWV operation may present concerns for vulnerable people such as children and victims of crime, and take the time to inform and explain the reasons for BWV use when the circumstances permit.

Risk of limited uptake

58. There is always a risk that there will be limited utilisation of BWV by police if they see adoption of BWV as unnecessary or contrary to their interests.³⁰ While there are acknowledged positives in terms of protecting officers who are doing the right thing³¹, there can also be concerns regarding:
 - increased supervisory scrutiny of every aspect of day to day operations;
 - the potential for ill-informed external or public scrutiny and comment around police conduct, based on BWV which only provides limited evidence of background and context; and
 - the potential for BWV to capture personal moments and 'coping' strategies of officers who operate in an extraordinarily complex and stressful environment.³²
59. It has been suggested that this level of intense scrutiny can contribute to officer burnout.³³
60. There is certainly potential for some officers to limit compliance if they are uncertain or concerned about the ultimate benefits of BWV.³⁴
61. If an officer is so minded, there is considerable practical scope to avoid or limit BWV utilisation. They may simply fail to turn on BWV or 'succumb' to a technical problem.³⁵
62. The literature emphasises the need for BWV implementation to be strongly supported and promoted at the highest levels within organisations, with strong policies mandating utilisation and appropriate monitoring and compliance measures, including sanctions where necessary.³⁶

²⁹ Gaub (2020), Harrison (2021).

³⁰ Dymond (2017).

³¹ See above, *BWV supporting officers*, and Harrison (2021).

³² Adams I (2019).

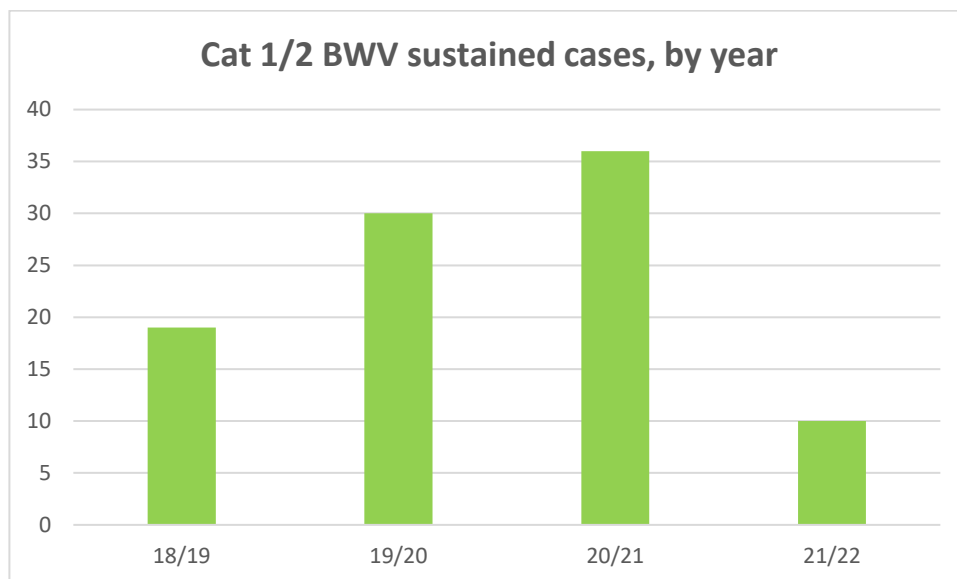
³³ Adams I (2019), Lofstrand (2021).

³⁴ Martain (2020), Piza (2018).

³⁵ For example, Miranda (2022) on the effects of bodily movement by officers on BWV effectiveness.

³⁶ Adams (2019), Petersen (2020), Piza (2018), Spencer (2017).

63. It has also been suggested that consideration may need to be given to external regulation of BWV implementation if measures internal to police forces are found inadequate.³⁷
64. Chapter 2 reviews a number of individual operational issues that have arisen in the implementation of the NT Police BWV scheme. Sometimes they arise by virtue of the variable and physical nature of police work or through technical problems with equipment. On other occasions they arise through genuine inadvertence. However, on occasion, the circumstances are suggestive of a distinct lack of enthusiasm for BWV implementation. In either of the latter two cases, action to remind officers of the importance of proper BWV utilisation will usually be warranted.
65. NT Police has taken considerable steps to advance officer utilisation of BWV, including substantial training, general guidance and individual corrective action. Chapter 4 discusses steps taken in this regard in detail.
66. Even with the substantial efforts of NT Police, the table below shows a significant number of complaints to the Ombudsman in recent years have involved a sustained finding of a failure in relation to BWV utilisation.³⁸



Note: Cases finalised up to 28 February 2023.³⁹
 Figures based on year in which complaint made rather than incident date.
 One count for each finalised case, even if more than one officer was involved.

67. The reduced figures for sustained findings for complaints made in 2021/22 are promising. It is hoped this decline will be sustained, as might be expected with growing familiarity and acceptance of BWV. However, for the moment, it is prudent to proceed on the basis that failures in compliance are continuing and need to be actively monitored and addressed by NT Police.

³⁷ Blewer (2021).

³⁸ Most failings in utilisation of BWV are identified by NT Police investigators or my Office, rather than individual complainants.

³⁹ NT Police notes that when BWV was rolled out and due to funding there were limited units purchased with units rolled out to direct frontline officers. Over the years NT Police has increased licenses and doubled the number of units. It states an increase in units and members using the devices has an effect on increase in cases of failure to utilise. It submits this correlates with the increase in complaints.

68. Having said that, it is important to bear in mind that, even though the number of sustained findings is significant in terms of overall sustained findings against police, it represents a very small proportion when regard is had to the number of officers utilising BWV on a daily basis, often on numerous occasions each day.

Summary

69. In brief, there is a considerable and growing body of literature that supports numerous benefits of BWV use for police. Its benefits as a moderator of behaviour are yet to be fully established but, in the NT, its growing acceptance and use by officers continues to have a positive impact on officer conduct and decision-making. It is not a cure-all but is a highly effective tool.

70. It is a tool for establishing the truth of situations whether it affords evidence of reasonable conduct, significant failings or simply room for improvement, on the part of officers.

71. The BWV program is resource-intensive but also highly beneficial for NT Police and for officers who are subject to scrutiny. Officers must bear in mind the requirements for overt use and take care when using BWV to consider the privacy and dignity of individuals they are filming, particularly on private premises.

Recommendation 1

NT Police continue to maintain and adequately resource its broad-based Body Worn Video program.

Recommendation 2

NT Police senior executives actively express to the NT Government and to police officers, ongoing commitment to the BWV program, noting the numerous benefits for the community, the NT Police Force, the justice system and individual officers in maintaining broad-based use of BWV.

CHAPTER 2: Individual operational issues

72. Over time, a range of operational concerns have been identified with individual police utilisation of BWV.

Failure to activate

73. A common problem is failure to activate or failure to activate at the earliest opportunity. The BWV Instruction states:

BWV will be used 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.

1. *BWV may also be used at the member's discretion on any occasion when the member thinks a recording may be of evidential value in the future and to make a recording is proportionate and lawful in the circumstances (for example if you foresee a complaint arising out of police actions or inactions).*
 2. *When responding to an incident with customer contact, in line with the above, officers should commence recording at the earliest possible opportunity in order to maximise the opportunities to capture evidence. Best practice would be to activate recording shortly before arriving on scene.*
 3. *Where the member has been unable to activate their device due to device failure or other circumstances, members will need to justify why in their notebook or other record of the incident, as to why the recording was not made.*
74. When turned on prior to officers attending an encounter, BWV has the capacity to capture an entire incident with both vision and sound. Early activation is important to understanding the events that led officers to initially attend an incident and then continuing to exercise police powers during the encounter.
75. Decision making during encounters is generally undertaken on the ground by the officers during the incident. This means judgment calls involving exercise of discretion, lawfulness and electing whether and how to take action need to be made within a very short time span. It is extremely useful if the circumstances which led officers to make decisions and undertake actions are captured on BWV for review. When officers fail to activate BWV, it leaves their actions open to question by their superiors, potential complainants and third parties such as the Ombudsman.

Example – Apprehension at a remote community

After obtaining evidence, police identified an offender as requiring immediate arrest. They drove out to a remote community, walked up to a house, and executed the arrest, but did not activate BWV until they were on the ground grappling with the offender.

Police knew they were entering a potentially volatile situation. It would have been prudent to activate BWV as soon as they exited their vehicle to capture the chain of events leading up to arrest. A complaint was received suggesting excessive force and disrespect but it was unable to be resolved due to conflicting versions of events and no other available evidence.

Example – Use of force on apprehension

Police identified an offender for arrest. They went away to discuss their apprehension plan/tactics, however failed to discuss BWV camera activation until they were in a scuffle with the complainant. In this situation, it was fortunate that there was street-based Closed Circuit Television (CCTV) footage that supported the actions of police as reasonable.

In the absence of the CCTV footage, officer's responses would have had to be obtained and other witnesses pursued. This would have added substantially to the length and costs of the investigation and possibly have ended with an Unresolved finding.

Example – No BWV at biosecurity check point

The complainant alleged that an officer at a biosecurity checkpoint spoke rudely to him and refused to let him past on his way to visit a very sick relative. The complainant had checked the situation with police prior to travelling and was entitled to pass through.

The officer did not activate their BWV at any time during the incident. The officer stated that they had removed their ballistic vest due to hot working conditions and initially could not work out how to affix the BWV to their uniform.

In this case, there was evidence available from other people that corroborated the version of events of the complainant. The allegations were sustained and action was taken against the officer, including for failing to activate BWV.

76. In some cases, an officer may simply state that they forgot to activate their camera. It is also not uncommon for officers to claim that they have come across a situation which demanded immediate physical action and that they have not had time to activate. NT Police note there is also the situation of junior inexperienced officers who become heightened in an emerging situation, who need time and experience to think matters through and react calmly.
77. The immediate demands of a situation may limit the potential for an officer to turn BWV on. However, this is often relied on as an excuse even when reasonable foresight about a situation should have provided ample opportunity for activation. This is particularly true when officers know they are going into a situation that might give rise to a risk of dispute or physical conflict. While arrests may give rise to "dynamic" situations, the lead up often affords an opportunity to consider and initiate BWV.

Tried but failed

78. There have also been numerous cases where officers have stated they were in a rapidly emerging situation and tapped to turn on their BWV only to later find that, in the rush, they had failed to turn it on. In some cases, they have turned BWV on later but often only after the peak of an incident has passed.

No need to activate

79. Some officers have argued that the circumstances did not require them to activate their BWV: that the situation did not fall within the requirements of the BWV Instruction.
80. The BWV Instruction has developed over time in recognition of the benefits of capturing footage of a range of police functions. The nature of police functions that should be captured by BWV are discussed later in this report. Suffice it to say for current purposes that a number of such arguments have been rejected as plainly unsustainable.

Someone else had it covered

81. A number of cases have involved an officer claiming that they saw no need to turn on their BWV as another officer already had their BWV on. The limitations of BWV coverage from any single device and the benefits of having multiple versions of BWV footage have already been discussed. There is a clear requirement on all officers to activate their BWV at appropriate times. It is important that that requirement be maintained and regularly reinforced.

Example – Leave it to another

A complainant was involved in an alleged road rage incident with another driver. The complainant alleged that police were unreasonably failing to charge or issue an infringement to the other driver.

One officer did not activate his BWV. The officer stated they were under the impression that another officer had already obtained all details from a person as to his version of events and said he had not used any police powers. He also stated that his partner had BWV activated when speaking to the complainant and felt that when he became involved, the matter was completed.

The officer was provided with remedial advice to activate his BWV from the commencement of attending a matter until its conclusion.

Switching off

82. Equally problematic can be a situation where BWV is prematurely switched off before the conclusion of an interaction. These cases can give rise to complaints that BWV has been deliberately switched off to avoid detection of poor behaviors or unjustified use of force. This can raise questions in the public's mind about the intentions of the officer, can impact on prosecutions and can give rise to complaints requiring further investigation.

Example – Camera turned on and off during interaction

A female passenger in a vehicle complained about police conduct during a roadside stop and search. The complainant alleged that she was not informed of the reasons for her arrest and was spoken to rudely by the officer over an extended period of time.

The investigation established that the apprehending officer deliberately turned his BWV off and on again on more than one occasion during the interaction, leading to gaps in coverage of several minutes.

The officer claimed he was legally required to turn off his BWV at different stages because of the nature of discussions he was having. The investigating officer found the officer was not justified in suspending his BWV. It was further noted that Instruction provided that continuous recording is the preferred option and that footage can be redacted if there are concerns. Instructions further provided that the member must justify any selective capture in their notebook. The officer did not do so. The officer was given remedial advice in relation to BWV utilisation.

It was also recommended that a Broadcast be sent out to all officers explaining the limited reasons it may be permissible to suspend BWV during an interaction.

Example – Intermittent use justified

A person complained about the police response to an altercation they had with an employee in the car park of a supermarket. The issues raised included unhelpfulness, unnecessary escalation of the matter and a relatively minor use of force. The incident stretched over a lengthy period, with attending police turning BWV off and on at different points.

The NT Police resolution officer reviewed the BWV and considered the circumstances on each occasion when a decision was made to turn off BWV. They described the incident as fluctuating between police facilitating a citizen raising a customer service enquiry with the supermarket, to a considered intervention on behalf of NT Police to reasonably and necessarily remind the complainant of her obligations under the declared public health emergency, and then an unfortunate escalation to directed communications in an attempt to gain the complainant's lawful compliance. They concluded it was reasonable for the BWV's of both police officers to have been activated and ceased intermittently.

Dropped or lost

83. From time to time in a pursuit or a struggle, an officer's BWV will be dislodged. With luck, it may still capture some relevant video or audio (audio alone may provide useful evidence) but it may simply sit in the place it fell and record the grass or sky. The device will usually be recovered, but its contents may be of limited value to further investigation of the incident or proceedings. On occasion, a device may be lost entirely.
84. There have only been a small number cases where cameras have been lost but temporary detachment of a device is more common. It is important that officers mount devices correctly and in a reasonable location on their person whilst performing their duties in order to minimise the possibility of the camera becoming dislodged.

Example – Camera lost during operations

NT Police received a complaint from a man who was arrested during a police operation established to address community unrest involving weapons and violent confrontations.

The complainant alleged that during his arrest police kned him in the torso, as well as punching him and kneeling him in the neck. The complainant advised that he had no injuries despite the police actions. There was no BWV footage available.

One officer advised that he had attempted to turn on his BWV as he was pursuing the complainant on foot. During the foot pursuit the officer lost his footing down an embankment and in doing so knocked the BWV off the mount on his vest. The officer saw his BWV fall on the ground near the complainant in the creek bed. The whole area was heavily vegetated. Despite two attempts, one shortly after the incident and a second at a later time, the BWV was not located.

The loss of the camera made it difficult to establish the extent of any force used and the officer denied unreasonable use of force. The use of force allegation was Unresolved.

Obscured

85. There can also be cases where BWV is mounted in a position so that it provides limited vision or becomes obscured because of other equipment or apparel. For example, a hip mounted camera which is pointing down may provide little vision of the upper part of anybody. Or a cloth or towel may fall over the camera lens.

86. It is important that officers take care to ensure that BWV is firmly fixed in a suitable position and not likely to be obscured. However, NT Police advise that the best position in which to place the camera may vary depending on the officer concerned and the circumstances.
87. In that regard, following discussions with our Office, an NT Police Investigating Officer recommended that consideration be given to inclusion in relevant documentation of a sentence, *“The mounting or positioning of a body worn camera (BWC) on an officer while on duty must be in a position to best capture available evidence (visual & audio) for the type of duties you are performing at the time.”*

Malfunction

88. On occasion, an officer may state that there was a malfunction with the equipment. As noted, the NT environment is harsh but there is clearly an imperative on officers to take prompt action to ensure their equipment is working effectively or replaced as soon as possible.

Example –Battery problems

We received a complaint in relation to the questioning and search of youths in a public place. The complaint suggested the questioning was accusatorial, at times antagonistic and very public and both the questioning and searches were carried out without a responsible adult present.

While a number of officers present activated BWV, one did not. The officer stated that during a period of about nine months he sporadically had issues and faults with his BWV not charging fully. He said that on quite a few occasions he would kit up at the start of shift and his camera would still be flashing red or sometimes orange within the charger, indicating it has not charged fully. He stated he made a number of efforts to obtain another BWV camera and eventually received one. He said this ‘new’ camera was a second-hand camera from a member leaving the Force. He said it had the same charging issue as the camera he swapped it for, meaning it was not charging correctly.

An audit was conducted of the camera and it was ascertained that the device was recording and functioning correctly before and after the relevant incident, except that the battery life would deplete rapidly throughout a shift.

The officer was given remedial advice in relation to wearing and activating the BWV in compliance with the BWV Instruction and advised that further non-compliance may result in disciplinary action.

Facilitating pursuit

89. There are also cases where a BWV has been turned off part way through a pursuit, with the stated intent of not conveying the location of a pursuing officer to a fleeing offender.
90. There is no doubt that the flashing light on the BWV is noticeable in the dark. However, there is a stealth mode available on BWVs. While this feature may not have been initially known to all officers, its existence and steps necessary to initiate it have been broadcast to all officers.
91. Noting the comments in Chapter 1 on overt use, it may well prove appropriate at some stage of a pursuit to use this function while continuing to use BWV.

Summary

92. The absence of BWV footage of encounters, especially where no alternative evidence is available, can be highly detrimental to an investigation. The absence of footage can significantly add to disputes between complainants and police and delay investigations, as well as leading to cases where there is no prospect of anything but an *Unresolved* outcome.
93. Problems with utilisation of the types discussed above can arise through no fault of the officer. They may be simply a factor of urgency or the rigours of police work or bad luck. However, there have also been cases arising from bad decisions of officers, apparent lack of commitment to BWV utilisation or lack of care in planning, preparation or implementation.
94. There are limited circumstances that may justify or explain failure to utilise BWV but these should not arise frequently, so long as adequate forethought and preparation is undertaken.
95. It is vital that NT Police continue to take action to enforce compliance with BWV requirements.

Recommendation 3

NT Police continue to actively promote and closely monitor use of BWV by officers across the board, including enhancement of written guidance on its benefits and consequences of non-compliance.

CHAPTER 3: Hardware, systems and storage

96. Most NT Police officers have an individually assigned BWV camera. When they finish a shift, the camera is placed on a combined charger/downloader device in the officer's allocated police facility. While the camera charges, the footage captured by the camera is downloaded onto a web embedded portal called Evidence.com.
97. NT Police BWV cameras use about 1 Gigabyte (Gb) of data per hour to record footage. Therefore over a 12 hour shift, they could theoretically accumulate 12 Gbs of data. We are advised that most officers submit approximately 1- 3 hours of footage (1-3 Gb of data) per shift.
98. For most officers, the process of downloading and charging is automated. It simply involves the officer docking the BWV camera onto the allocated docking station. Officers do not take BWV cameras home as they are required to leave them docked at their allocated police facility.

Figure 1.3: NT police BWV Docking Stations – Palmerston police station



99. However, officers in some remote police facilities may not have a docking station but instead link directly to their computer to charge and download. This requires an additional skill set and utilisation of software.
100. Officers can also record footage on other official NT Police devices and personal devices and upload it to Evidence.com. Recording on other devices is discussed further in Chapter 5.

Camera types

101. NT Police have a leasing contract with Axon Enterprise Inc (**Axon**) for BWV, their mounts and user licenses. They are currently equipped with one of two types of BWV camera devices, the Axon Body 2 (AB2) and the Axon Flex 2 (AF2). These cameras are designed for tough environmental conditions faced in areas such as law enforcement, correctional services, security and military type activities.

102. Police are also trialing Axon Body 3 (AB3) cameras which have live stream capability. AB3 footage can be viewed remotely from a base position whilst officers are on the ground during operations. They also have GPS tracking capability

Figure 1.1: AB2, AF2 and AB3 BWV camera devices



Table 1.1: Axon BWV camera device specifications

Specifications			
	<u>Axon Body 2 (AB2)</u>	<u>Axon Flex 2 (AF2)</u>	<u>Axon Body 3 (AB3)</u>
Video resolution	1080P / 720P / 480P	1080P / 720P / 480P	1080H, 720H, 720L, 480p
Video Format	MPEG4	MPEG-4 (MP4); H.264	MPEG4
Field of View	143°	120°	Not specified
Battery Life	12+ hrs	12+ hrs	12+ hrs
Storage	64 GB	64 GB	64 GB
Record time	Up to 70 hrs	Up to 70 hours depending on resolution	Not specified
Pre-event buffer audio	Configurable	Configurable	Configurable up to 120 seconds
Drop test	6 ft [1.8 m]	6 ft [1.8 m]	1.8 meters (Ambient), 1.2 meters (Cold)

Allocation of BWV

103. NT Police have purchased a large number of cameras over the years since their introduction in 2014. At the time of investigation, NT Police had a total of 1,220 cameras at their disposal to service the NT. Of the cameras available, 1,152 were allocated across frontline officers, with some specific units utilising a camera sharing pool system.

104. The pooling system allows officers working within particular groups to use a camera when they carry out specific operational roles.

105. When cameras are being issued to officers or units, consideration is given to whether the officer is involved in frontline duties, whether they are likely to exercise police powers, the number of cameras available at the time and whether a high impact operation is being undertaken, for example, New Year's Eve, or a Christmas traffic campaign.
106. Issue of BWV is now standard for all operational general duties officers. Specialist investigative areas have also been issued BWV, with only non-operational officers not being issued personal devices. Where officers are typically non-operational, a pool of devices means BWV is available for them as required for specific operations or tasks. The extent of issue of devices is, of course, subject to ongoing funding.

Officers' camera obligations after shifts

107. BWV cameras are mostly stored in the designated storage location on a docking station. As officers come off their shifts, they are expected to routinely place their camera on the docking station in readiness for uploading and charging for the next day.
108. Officers have the ability to charge their BWV cameras whilst working in the field for extended periods via a USB (charge/sync) cable, however cameras are typically only charged at the docking station in each facility after the end of a shift.
109. If a camera is on charge and an officer urgently needs to use it, it will automatically cache the memory, and as soon as it is re-docked, will go back to the previous download and continue from where it left off.
110. Our Office noted that it is possible for an officer to mistakenly take another officer's camera from a docking station, however we were advised that this does not happen frequently. The cameras all have labels on them with the officer's surname. If this was to occur, an officer could send an e-mail to the PFES System Administrator account and advise that they have used another officer's camera, with their reasons for doing so. The PFES System Administrator could then allocate the relevant footage to the correct officer's cases/footage files.

Management of BWV devices and Evidence.com

111. NT Police initially provided a single internal resource in the form of a PFES System Administrator role to assist with both business administration and technical support for the Evidence.com web embedded portal tool. The role of the PFES System Administrator included:
- Redact evidence (officers)
 - Evidence categorisation, tagging, transcription and sharing (officers)
 - Advise changes to access requirements (Ultra fast charging)
 - Advise changes to access evidence groups (Ultra fast charging)
 - Provide approval to procure licenses, hardware and services (Chief Operating Officer)
 - Contract Management (PFES Procurement)
 - Policy (Professional Standards).

112. The Department of Corporate and Digital Development (DCDD) Technology Services has been supporting the NT Police BWV program since 2016, through the following units:

Table 1.2: DCDD Technology Services administration support units

MOBILITY SERVICES	ABS – APPLICATION SUPPORT	ICT TRAINING
<p><u>BWV and Docks</u></p> <ul style="list-style-type: none"> • Assign cameras • Manage BWV inventory • Dock Management • Manage end of life process • Hardware Disposal • Manage Lost/ Faulty /Damaged devices • Returned devices • Procure additional devices <p><u>Mobile Device Manager (MDM)</u></p> <p>Deploy Axon Apps</p>	<p><u>Evidence.com</u></p> <ul style="list-style-type: none"> • Access to restricted files • Create/Delete/Modify groups • User Management • Reset Credentials 	<ul style="list-style-type: none"> • BWV Intranet Material • One on One training • Group Training • 1st and 2nd level Application User Assistance

113. During the investigation we were advised that the ongoing PFES System Administrator left the role in mid-2021 and the role was being filled on a temporary basis. This will be discussed further in Chapter 5.

Faulty or damaged devices

114. When a BWV camera is damaged or broken, it is referred back to the PFES System Administrator for fault finding/replacement. If a camera is damaged in a remote police station, the PFES System Administrator would normally call the officer and ask them to troubleshoot and go through some fault finding exercises on the phone before electing to send it back into Darwin for assessment and replacement if required. At the time we raised a query, there were only two damaged cameras in the NT Police stock.

Example - Lost and not replaced due to shortages

A complainant contacted us, alleging that during a traffic stop, the attending police officer invaded his personal space when he reached into his vehicle to obtain his driver’s license which had been placed on the dashboard by the complainant. The officer attempted to hold the license for the purpose of undertaking routine checks and a brief physical altercation occurred between the officer and the complainant. The complainant wanted the officer charged with assault, stating that the officer had no right to reach into his property, and no reason to invade his personal space or grab any part of his body.

On investigation, it was found that one of the attending officers was not wearing BWV despite having been issued one. It was established that the officer had lost his camera during a previous incident and had not been issued with a replacement due to BWV stock unavailability at the time. Fortunately, the incident was captured by the BWV of the officer’s partner.

Example – Limited availability

A complainant alleged that attending officers failed to adequately investigate an assault on her, including failing to take a statement from her about the incident. The complainant was concerned that officers also failed to make enquiries with nearby residents, to determine if they witnessed the alleged assault. She also alleged that police failed to provide or seek medical aid for her injuries.

It was found that one of the attending officers was not wearing BWV, despite being in the front line of policing for some time. The officer had not been issued with a camera due to limited BWV stock availability at the time.

115. On receipt of a broken/damaged camera, the PFES System Administrator will send the camera back to Axon and order a replacement unit. NT Police reported to us the following technical hardware faults and or failures of BWV camera stock.

Table 1.3: Faults and failures experienced by police in AB2 and AF2 BWV camera devices

Axon Body 2		Axon Flex 2	
<u>Fault type</u>	<u>Number of Units</u>	<u>Fault type</u>	<u>Number of Units</u>
Camera side Fault	5	Device Disconnects	5
Bluetooth Failure	3	Bluetooth Failure	2
Run Over	1		
2.5mm connector cable damaged	1		
Fail to charge	1		

116. NT Police have advised that there are no concerns with the current BWV cameras supplied and that they are more than adequate to meet the needs of NT Police.

117. At the time we enquired, there were no formal guidelines for the BWV camera replacement process, although the PFES System Administrator had been working on establishment of written procedures.

118. While this does not appear to be a major concern, it is important that there is a clear and streamlined process for reporting and addressing problems with BWV devices and systems. Officers on the ground should be left in no doubt as to their obligations and simple steps they need to take in the event of a problem.

Recommendation 4

NT Police develop clear policies and processes for notification of failure or loss of a BWV device and for replacement.

CHAPTER 4: Guidance, training & corrective action

Policies and procedures

119. Section 14A of the *Police Administration Act 1978* (the PAA), authorises the Commissioner of Police to issue General Orders and Instructions to secure the good government and efficient working of NT Police. Instruments that relate to the use and application of BWV include:

- *Police Practice and Procedure (PPP) – Body Worn View – Instruction* (the **BWV Instruction**)
- *Police Practice and Procedure (PPP) - Domestic and Family Violence Evidence in Chief*
- *Instruction – Custody and Transport*
- *Instruction – Point of Sale Intervention.*

Circumstances of use

120. The BWV Instruction states that use of BWV, once issued, is mandatory and that it should be considered part of an officer's operational accoutrements. It states that BWV is to be used as an overt system and should not be used for covert recordings except in exceptional circumstances where prior approval has been given by the Officer in Charge, Special Projects Unit.

121. The BWV Instruction states: *"BWV will be used 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)."*

122. The BWV Instruction provides substantial detail as to situations in which an officer should use BWV, including, for example when an officer:

- decides to use statutory powers to stop a motor vehicle in order to engage with one or more of the occupants;
- attends private premises in order to effect an arrest;
- proposes to enter any privately owned land or premises, vehicle, vessel or aircraft in pursuance of any legal power in order to search those premises and for the duration of the search;
- decides to conduct the search of a person, premises, land, vehicle, vessel or aircraft in accordance with the PAA or any other statutory power;
- stops a person in a public place due to a reasonable suspicion that they have committed, are committing, or are about to commit an offence;
- believes an interaction presents or is likely to present a risk to the safety of the officer or other persons present;
- is or may be required to exercise the use of force against persons or property; or
- gives a direction to an individual or group under any statutory power (for example, a direction to leave an area, cease to loiter or proclamation to disperse).

123. Even with such detailed guidance, officers from time to time contend that the circumstances facing them did not require activation of BWV.

Example – Welfare check on youths

Police pursuing enquiries about a missing youth spoke to two female youths they found in a public place in the middle of the night. The officers obtained their details and ascertained their residential addresses but took no further action.

Their parents later complained that the officers did not contact them to inform them of the girls' location or request that they be collected. The girls were not escorted to their homes or to another place of safety.

There was no BWV of the contact. The NT Police resolution officer did not consider that the conversation with the youths fell within the requirement for BWV activation (see paragraph 121 above) but did advise the officer concerned that the best practice for an operational police officer is that consideration be given to activating BWV whenever dealing with the public in an official capacity.

Broadcasts

124. NT Police utilise sworn officer Internal Broadcast e-mails to all police officers in order to communicate timely information to officers across the NT.

125. Between 12 September 2016 and 20 May 2021, NT Police sent out 19 Broadcasts to officers providing reminders, education and instructions relating to BWV cameras, their usage and the requirements for activation.

Table 1.5: Police Broadcasts sent out from 12 September 2016 to 20 May 2021

	From	Authorised by	Subject	Date
1	Media, PFES	Executive Director, Office of the Commissioner and CEO	New Instruction – Body Worn Video – Police Practice and Procedures	Sept 2016
2	Media, PFES	Deputy Commissioner, Capability and Specialist Services	Body Worn Video Rollout Update	Sept 2017
3	Media, PFES	Commander, College Command	Domestic & Family Violence Evidence in Chief Video Recorded Statements	Feb 2018
4	Media, PFES	Commander, Professional Standards Command	Body Worn Video – Requirement to Wear and Use	March 2018
5	Media, PFES	Deputy Commissioner, Operations	In Car Video – Caged Vehicles	May 2018
6	Communications PFES	Commander, Professional Standards Command	Body Worn Video – Requirement to Wear and Use – Consideration of Serious Breach of Discipline for non-use	Feb 2019
7	Communications PFES	Commander, Professional Standards Command	Lessons Learnt – Recommendations from Internal Investigations/ Complaints Obligations in reporting Breaches of Police Misconduct	June 2019

8	Communications PFES	Acting Commander, Professional Standards Command	Body Worn Video Footage – Recording of personal identity particulars	May 2020
9	Communications PFES	Commander, Territory Communications and Operational Support	For Darwin Local Court matters only	June 2020
10	Communications PFES	Acting Commander, Darwin and Road Policing Command	Recording Destruction of Seized Alcohol	July 2020
11	Communications PFES	Chief Operating Officer, Business and Operational Support Services	Body Worn Camera replacement to rollout in August	July 2020
12	Communications PFES	Commander, Professional Standards Command	Body Worn Video – Reminder – Mandatory Requirement to Wear and Use	August 2020
13	Communications PFES	Commander, Territory Communications & Operational Support	Identification Evidence	October 2020
14	Communications PFES	Chief Operating Officer, Business and Operational Support Services	Axon Citizen	October 2020
15	Communications PFES	Commander, Territory Communications & Operational Support	Body Worn Video Disclosure and Evidence.com	Nov 2020
16	Communications PFES	Chief Operating Officer, Business and Operational Support Services	AXON CITIZEN – Changes to evidence requests relating to Red-light Camera Footage and St John information	Feb 2021
17	Communications PFES	Commander, Territory Communications and Operational Support	Doli Incapax - Youth Offenders - Aged 10 years or older but under 14 years old	Feb 2021
18	Communications PFES	Deputy Commissioner, Territory Operations & Road Safety	Timely submission of Youth Diversion files	April 2021
19	Communications PFES	Acting Commander, Professional Standards Command	BWV procedure in relation to identity protection	May 2021

126. While they should not be relied on as the sole source of ongoing encouragement and instruction regarding BWV utilisation, Internal Broadcasts appear to be an effective tool in that regard.

Training

127. NT Police advise the following regarding training arrangements for footage capture and storage for BWV and other devices.

Recruits

128. Training in both theoretical and practical aspects of BWV use and storage is conducted at the NT Police, Fire and Emergency Services College (the College).

129. The training program on BWV camera & Evidence.com is delivered by the ICT Training Business Unit within the DCDD. Training lasts for 2½ hours. The program incorporates a student assessment at the end of the session to confirm that students meet a satisfactory standard.

130. Recruit Constables, Aboriginal Community Police Officers and Frontline Auxiliaries attend this training, which incorporates the following learning outcomes:

Table 1.4: NT Police College training program – BWV camera and Evidence.com

Session Title		Learning Outcomes
1	Accessing & Navigating Evidence.com	<ul style="list-style-type: none"> ➤ Access & navigate the application ➤ Manage uploaded evidence files ➤ Navigate the Evidence Profile Page ➤ Create, extract & manage clips & markers ➤ Share evidence with team officers
2	AXON Capture	<ul style="list-style-type: none"> ➤ Link their Evidence.com account to the AXON Capture application on the iPad ➤ Take photo, audio & video files using Capture ➤ Import photo, audio & video files from the Photo Gallery in the iPad ➤ Upload photo, audio & video files to Evidence.com
3	Setup & Sync iPads & Cameras	<ul style="list-style-type: none"> ➤ Setup Users iPad and AXON View application ➤ Synchronise Users BWV Camera to their iPad ➤ Understand the operation of the BWV Camera ➤ Manage files from BWV Camera through AXON View ➤ Understand how to upload footage and change the BWV Camera

131. The Body Worn Cameras, Accessing & Navigation in Evidence.com (Revised June 2019) Session Plan document, provides a highlighted warning to students signifying that Evidence.com is not www.youtube.com and that students are not to browse Evidence.com footage that is not relevant to them.

132. Information on BWV capabilities and limitations is also provided by specialist NT Police Technical Workshops staff from ICT Training Business Unit within DCDD.

133. Further information about the use of BWV equipment both practically and best-practice procedures is delivered by recruit squad coordinators with reference to the BWV Instruction.

134. Professional Standards Command (PSC) staff give each recruit squad ongoing support and review students for compliance during the training program. Information about BWV footage requirements is provided during the first week of training and constant reiteration by recruit squad coordinators is provided throughout the training program.
135. The College does not implement a specific assessment to test proficiency in the use of BWV cameras. Testing is undertaken as part of two formal assessment processes – formative and summative assessment which takes place respectively at the mid-point and at the end of the training program. As part of their reality-based assessment, recruits are required to wear and operate BWV correctly. Recruits who fail to wear and use BWV correctly might receive an unsatisfactory mark and therefore fail the module/assessment.
136. Noting their likely past experience with BWV use, accelerated recruits do not necessarily receive the same level of formal training in BWV use.

Post training on BWV

137. BWV training is generally limited to recruits. There is no routine arrangement for training or refresher courses for experienced officers. Officers are, however, stated to be constantly reminded of the importance of the correct use of BWV as part of their day-to-day duties. The Internal Broadcasts discussed above lend some weight to this claim.
138. NT Police advise that among lessons that have been learnt since the introduction of BWV are the benefits of officer training in the use and activation of BWV. They advise that implementation of BWV has required a significant cultural change in relation to the understanding and acceptance of use. On reflection, they consider more detailed training in the appropriate use of BWV would have achieved a higher uptake in early stages of BWV introduction.
139. It is important that all officers are competent in the practical aspects of use of BWV cameras and associated technology. It is equally important that they clearly understand the benefits of BWV use and when BWV use is required or prudent.
140. Experienced officers are likely to develop practical technical competence over time through repeated use of a device. However, there will be officers of longstanding who are re-entering a frontline role who would benefit from initial guidance or a refresher. There may also be a need for guidance to ensure all officers can fully utilise the potential of the IT systems that sit behind BWV. In some cases, there may be a need for additional guidance on practical issues such as where and how to mount a device to stop vision being obscured or the device being dislodged, and how to use covert mode. And there are always benefits in refresher training to remind officers of the circumstances in which BWV should be activated.
141. NT Police may regard the combination of existing guidance mechanisms as adequate for the purposes of experienced officers. The need for additional training will be dependent on the extent of problems and failings identified. As noted in Chapter 1, there are some promising signs in terms of a possible downturn in the number of sustained instances of BWV failings in complaints received in 2021/22 and 2022/23. However, as also pointed out, there are still identified issues that need to be addressed.
142. In light of the various failings identified in Chapter 2, it is worth NT Police considering whether introductory training should be expanded and/or BWV refresher training should be built into existing refresher training options or at least be adopted as an option for corrective action in particular cases.

Recommendation 5

NT Police consider:

- initiating a brief refresher for recruits (including accelerated recruits), 12-18 months after initial training, to observe proficiency in use of BWV cameras as well as Evidence.com;
- utilisation of BWV refresher training for officers who have, or may have, failed in some aspect of BWV utilisation;
- including refresher BWV training for all officers as an element of routine competency maintenance.

Individual corrective action

143. Quite apart from routine training, refresher courses and broadcasts, NT Police may address failings of individual officers with respect to BWV utilisation in a number of ways. Individual failings may be identified in the course of dealing with complaints from the public or on internal review by a supervisor or more senior officer.

144. Our Office also monitors issues raised with respect to individual officers and may notify NT Police if we identify patterns or concerns with BWV utilisation of an officer, even if there have not been adverse findings. Even in cases where a sustained finding is not made, there may well be appropriate non-disciplinary steps that NT Police can take to raise an issue with an officer in order to step in to ensure problematic behaviours do not emerge. Sometimes a word of explanation or discussion of an issue is all that is needed to promote understanding and compliance.

145. There are a variety of options for action by NT Police in relation to BWV utilisation concerns, ranging from:

- discussion between the officer and a supervisor;
- remedial advice;
- further training to ensure understanding and proficiency;
- managerial guidance for minor breaches of discipline under section 14C of the *Police Administration Act 1978* (the PAA); to
- formal disciplinary action under Part IV of the PAA.

146. The early implementation of BWV focused on discussion, education and, if necessary, remedial advice. However, as the program has matured, officers who have been responsible for repeated failures, notwithstanding reminders, have appropriately been subjected to disciplinary action.

Example - Remedial advice for PALI

A woman complained that her home address was incorrectly 'flagged' in a way that prevented her from purchasing alcohol. The complainant was frustrated with having to constantly explain where she resided and that she was not restricted from purchasing alcohol.

The investigation found that a Police Auxiliary Liquor Inspector (PALI) who interacted with the complainant had not activated his BWV during an entire shift.

The PALI was provided with remedial advice regarding the requirement to activate BWV on every occasion in which a police power is utilised in accordance with the *Liquor Act 2019*, including conduct of Point of Sale Intervention duties.

Example – Second instance of non-activation

A complaint from a member of the public raised issues around the lawfulness of arrest, excessive use of force, threatening to use force, and failure to activate BWV. An officer failed to activate his BWV until the complainant was undergoing decontamination at a police station following use of OC spray. The issue in relation to BWV use was sustained.

The officer had been given remedial advice in relation to non-activation 2½ years ago. An audit of the officer's BWV use showed that he had regularly used BWV since the first remedial advice, activating it several times a shift. Further remedial advice was considered appropriate given the length of time that had passed since the previous incident and the fact there was no identified pattern of BWV non-compliance. The officer was provided remedial advice and reminded that activation of BWV upon arrival to a job is essential.

Example – Multiple chances to activate

An officer on a motor bike was informed of a disturbance at a nearby venue. The officer approached and took hold of a person who broke free. He did not activate his BWV. The officer returned to his bike and attempted to locate the person. About 10 minutes later, the officer located and pursued the person on his bike. He caught up with him, spoke to and apprehended him. He did not turn on his BWV.

The officer did activate his BWV when later talking to friends of the person but then turned it off. He then engaged with another person with a view to arresting him. The officer was assaulted and used force but did not turn on his BWV until part way through the incident.

The officer cited fatigue and said he either forgot to turn on his BWV or made an unsuccessful attempt to activate due to the urgency of the situation. Disciplinary action was commenced against the officer in relation to his BWV use and other issues.

Example - Time to activate

Two officers became involved in a vehicle pursuit in a remote area. The driver of the police vehicle only activated his BWV when the vehicle came to a halt. This was accepted by the investigating officer as reasonable in the circumstances. The other officer did not activate his BWV at all, even though he immediately used substantial force to apprehend the driver of the other vehicle. Disciplinary action was recommended in relation to failure to use BWV and other matters but the officer separated from NT Police prior to finalisation of that action.

147. There is an ongoing need to reinforce the importance of appropriate BWV use. Initial and refresher training is important, as is the utilisation of internal broadcasts. However, implementation of the BWV program is now reaching a mature stage where unexplained, and particularly repeated, failure to implement should give rise to the potential for disciplinary action.

Recommendation 6

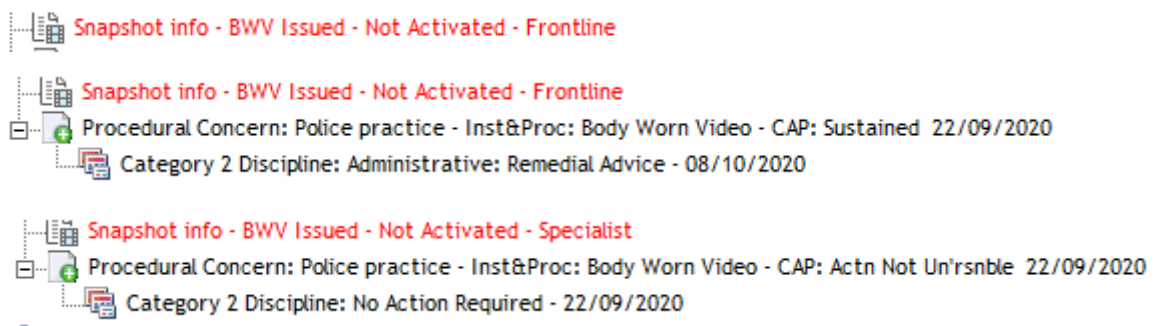
NT Police continue to investigate and assess individual failings with regard to BWV utilisation, engaging as appropriate a range of training, personnel management and disciplinary options to promote effective utilisation.

Police recording of incidents – IAPRO System

148. To assess when and what corrective action is necessary, it is important that NT Police maintain effective and accessible records of situations in which an individual officer has failed, or may have failed, in relation to BWV utilisation. This is important to identify situations where non-compliance may be escalating or may at least call for some form of corrective action.
149. Our Office sought to understand how NT Police identifies such officers. Specifically we were interested in how the Professional Standards Command (**PSC**) records remedial advice and other sanctions in relation to non-adherence to BWV requirements.
150. NT Police advised that the IAPRO system is utilised for the recording of officer use of BWV every time an officer is identified and listed for an incident such as a Complaint against Police (CAP) investigation, internal investigation and or a serious custody incident.
151. An “officer snapshot” of information relevant to officers involved in an incident has been implemented into the IAPRO system to be recorded against each officer.

Figure 1.5: Police IAPRO system – Officer Snapshot showing recordings against officer

Examples:



152. NT Police BWV ‘officer snapshot’ codes are:

- BWV Issued – Activated – Complete
- BWV Issued – Activated – Incomplete
- BWV Issued – Not Activated – Frontline
- BWV Issued – Not Activated – Specialist
- BWV Issued – Not Worn – Frontline
- BWV Issued – Not Worn – Specialist
- BWV Issued – Not Worn – Technical Issue
- BWV Issued – Worn – Technical Issue
- BWV Not Issued – Frontline
- BWV Not Issued – Specialist
- BWV Not Relevant – Off Duty
- BWV Not Relevant – On Duty
- BWV – Other.

153. For preliminary investigation and Internal Investigation matters, the PSC will search the Evidence.com portal and identify if BWV is available. If footage is not found, the PSC will seek advice via e-mail from the officer about the location of the footage. Where there is apparent non-compliance, an allegation is linked to the specific officer and the incident and is then recorded as Procedural Concern> Police practice> Instructions & Process> Body worn video.
154. This extends not only to officers who are subject to complaint or investigation but to other officers who attended in a circumstance where it appears they should have activated their BWV.
155. Findings and action taken (for example, providing remedial advice or further training or taking disciplinary action) are recorded on IAPRO, which can then be searched in the future to identify past incidents and any emerging patterns.
156. The accuracy of IAPRO is reliant on the quality of manual input and can be subject to human error. On several occasions, unrecorded remedial advice for a prior failing with regard to BWV utilisation has been identified by our Office or PSC in the course of a later complaint relating to the same issue.

Recommendation 7

NT Police review its systems and processes for recording issues and complaints around BWV utilisation and access, to ensure information is recorded appropriately and readily available to managers and senior officers who may find it necessary to review such records for personnel management, complaint handling and disciplinary purposes or systemic analysis.

CHAPTER 5: Program and information management

157. This chapter considers various system-related issues, including program administration and governance; auditing officer utilisation; ensuring the integrity of footage; categorisation, retention and disposal of footage; and use and disclosure of footage.

Program administration

158. As noted previously, during the investigation we were advised that the PFES System Administrator had left the role in mid-2021 and had not been replaced by an ongoing appointee.

159. The preceding discussions in this report and this chapter show that there are many aspects of effective system administration that demand a dedicated internal administrative structure to support the running and monitoring of the BWV program within NT Police.

160. While DCDD can offer effective technical support, there is a need for a permanent PFES System Administrator, with the necessary motivation and experience to administer the program and monitor and promote appropriate BWV utilisation by officers. The role requires a mix of technical, audit and engagement skills to deal with the variety of functions outlined in this report. It is important that it be filled on an ongoing basis.

Recommendation 8

NT Police provide adequate internal personnel and resources to effectively maintain the BWV program.

Program governance and audits

161. NT Police were asked what periodic reviews and/or checks are undertaken on officers in relation to BWV utilisation compliance. It was found that there are no directed specific regular checks/audits to review officer compliance. Any checks undertaken on officers are done for specific reasons, most prominently including:

- Use of Force (UoF) Review – Undertaken by supervisors/managers when assessing particular instances of UoF;
- Custody Review - Review of Custody Incidents where submission of Custody Injury Illness Reports (CIIR) are undertaken. Reviewed by the Watch Commander and Superintendents;
- Audit of CIIRs - The NT Police Risk Management and Internal Audit Division maintains a register of all CIIR events for trending purposes and provides a report to the Custody Steering Committee. These assessments include the entire custody process as well as reviewing BWV and/or watch house footage to enable a holistic perspective on the entire process and not the event in isolation;
- Complaint against Police and Internal Disciplinary investigations;
- Criminal and Coronial investigations involving officers examining evidence and actions of officers including compliance with policy;
- Review of BWV when submitted as evidence for a prosecution file, domestic violence order application, etc;
- Review of BWV if an officer is subject to disciplinary outcomes, e.g., to be of good behavior for a set period of time.

162. NT Police were also asked if there had been any regular meetings that included BWV utilisation as a standing topic or any documentation that captured discussions around officers and their BWV camera usage since 1 July 2019. We were advised that police had not undertaken scheduled meetings specific to BWV utilisation, but rather if an issue arose, policy was referred to or Broadcasts were sent out to all officers.
163. NT Police advise that supervisors and managers often express concern at the added workload associated with BWV use, given all the other duties they have. One example is increased requirements for Use of Force review (including review of BWV) which they describe as being very time consuming.
164. It is important for there to be ongoing governance and oversight of the BWV program at a senior level to ensure that it is meeting its objectives and that officers are complying with its requirements. This needs to extend to consideration of levels of utilisation, obstacles to utilisation and initiatives to promote utilisation among officers.
165. This need not necessarily be carried out by a stand-alone governance committee but could be a standing agenda item for an existing group charged with oversight of a number of programs.
166. It is important that the deliberations of that group be informed by a program of random and structured audits of individual officer utilisation. An ongoing PFES System Administrator would provide invaluable support for these purposes.

Recommendation 9

NT Police:

- **establish a governance structure for the BWV program to oversight all aspects of administration and actively promote utilisation by officers. It should provide for ongoing oversight of BWV utilisation trends and identification of any potential risk areas.**
- **implement an audit program (with random and structured elements) to establish levels of compliance with BWV utilisation and other requirements, including storage, categorisation and access. Results of audits to be fed into the governance structure.**

Integrity of footage and use of other devices

Safeguards against tampering with footage

167. Axon Body 2 cameras are stated to prevent tampering by officers through providing both physical and virtual security controls:

Physical Security:

- Non-Standard Connection – The Axon Body 2 uses a non-standard connection.
- Sealed Compartment – the Axon Body 2 is completely sealed. To access the internal memory, the camera must be destroyed.
- eMMC – the Axon Body 2 uses 64 gigabyte solid-state non-removable embedded eMMC memory card which is populated directly on a circuit board (unlike an SD card). Thus, it must be de-soldered.

Virtual Security:

- No Ability to Delete, alter, or overwrite on the camera – Axon cameras have no ability to delete, alter or overwrite. Thus, all footage on the camera can only be removed by uploading the data to the digital evidence management system.
- Unlisted Partition – The storage within Axon cameras are not partitioned. Thus, an attacker would need to guess the partition.
- Encryption – the Axon camera can provide encryption on the device if required.

168. NT Police advise:

The solution is designed to completely abide by the Australian guidelines for authentication and integrity of evidence.

Principle 1: Data never altered

Principle 2: Controlled access to data

Principle 3: Audit Log

1. All data is stored in its original format (can be verified via the cryptographic hash). All processes (redaction, metadata, etc.) are done as separate files - never altering the original data.

2. Access to the data is controlled by the application's security features (multi-factor authentication, role-based permissions, etc.). Specifically around preventing modification and deletion of captured footage.

3. Complete Audit log of all actions performed on the data (review, download, etc.). Audit log is unalterable and cannot be deleted from the system.

169. Officers can produce edited copies of their own BWV footage for operational purposes (for example, to provide vision of a particular incident initially captured on a lengthy piece of footage) but initial footage captured will remain untouched.

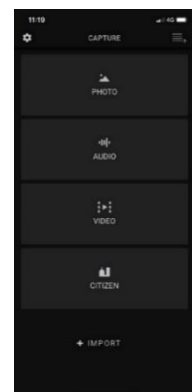
Personal devices and other official devices

170. In addition to BWV cameras, officers are generally issued an official NT Police iOS device (iPhone/iPad) and are also able to use their own personal mobile devices to record video footage of encounters. Use of such devices does not require prior approval but the officer must comply with the *Surveillance Devices Act 2007*.

171. Officers can upload recordings from official and personal devices onto Evidence.com through the Axon Capture IOS application (image at right).

172. An officer must log into their active Axon Evidence account to utilise the application. Capture works in a similar manner to the BWV camera, in that the file is uploaded via Axon's Evidence.com secure storage and then automatically deleted from the device.

173. Once footage is uploaded onto Evidence.com, officers can produce redacted copies of footage but the initial footage will remain as uploaded.



174. While BWV footage is highly secure from the time of capture, use of other devices may open up the potential for edited copies to be uploaded. Hypothetically, an officer might use an editing app on a personal device to retain segments that justify their conduct while removing a segment that does not put them in a favourable light. They could then upload the edited version as the whole of the original footage.
175. There will be technical obstacles to such a course and there will often be pointers to editing or fabrication. However, the potential remains. Further, even if there is no editing, allowing uploading from other devices creates a situation where others may perceive or raise the prospect of some subterfuge in the course of criminal proceedings or a complaint.
176. With official devices, there is clearly greater scope to take charge of the device and conduct searches to establish the *bona fides* of footage, if any question arises.
177. With personal devices, there may be issues around accessing the device and the recordings on it to ensure that all relevant footage is obtained and has not been manipulated. Complex issues may arise over ownership of data on private devices and the ability to source with confidence unredacted footage.
178. There is clearly a preference for recording incidents on the BWV camera and, failing that, on an official NT Police device. This should be stressed with officers. However, there will be infrequent occasions when the only thing that is to hand is a personal device and it is better to record the incident than not.
179. It is important that NT Police develop a policy around utilisation of non-BWV official and personal devices to record the exercise of police functions and activities. It should stress that BWV is the first preference, followed by other official devices. Consideration should be given to prescribing use of personal devices as a last resort.
180. Police should be left in no doubt that, whatever device is used, the entirety of any footage must be uploaded. There should be no editing or clipping prior to upload. Any consideration of editing out private or irrelevant parts of footage should take place once all footage relevant to an incident has been uploaded and should be undertaken only by an appropriate NT Police authority (eg, the Professional Standards Command or the PFES System Administrator).
181. With respect to personal devices, consideration should be given to what additional steps should be taken to maintain, as far as possible, control over, and integrity of, footage recording police actions.

Recommendation 10

NT Police develop a policy around use of non-BWV official and personal devices to record the exercise of police functions and activities. Issues for consideration in policy development should include:

- **indicating a strong preference for use of official NT Police devices for recording, with personal devices only being used when there is no reasonable option to use an official device;**
- **whether there should be limitation or stipulation of the type of devices to be used;**
- **whether personal devices should be registered, either initially or once they have been used to record the exercise of a police function or activity;**

- whether and how an officer should give notice and provide a copy of relevant footage, including an express requirement to do so;
- the need for a requirement to provide unredacted copies of footage to NT Police, with the possibility of later discussion with NT Police regarding redaction of irrelevant personal matter;
- to what extent there should be a capacity in a supervisor or officer administering the BWV program, to access and review footage and information on a personal device to assure NT Police that all relevant footage of an incident has been provided; and
- any other measures to protect against data being inappropriately deleted, copied or redacted or the potential for claims to that effect.

Categorisation, retention and disposal of footage

182. The Police Practice and Procedure Guidelines – Storage of footage, states, *“Prior to the footage being uploaded the officer must decide whether the footage is likely to be required at a future point and allocate a “category” to the footage, this will automatically apply with the associated retention policy. Evidential footage should be marked accordingly”*.

183. The investigation found that, in practice, footage is not being initially categorized in this way. Once footage is uploaded, it is simply stored for a period until it is either needed or eventually deleted. Officers were not selecting category types and appeared to have no capacity to do so, as they merely docked their device.

184. The PFES System Administrator could respond to requests for individual items of footage but did not undertake comprehensive categorisation of incoming footage.

185. Correctly categorising incidents is helpful for the following reasons:

- Footage about a particular incident or type of incident is able to be more easily located by the officer, supervisors, prosecutors and or any other person requiring it in future;
- If an incident is deemed to be high risk, for instance extreme use of force, supervisors can take the necessary steps to take custody of the footage, preserve it and lock it down;
- Once footage is labelled/tagged it can automatically engage the relevant retention timeframe.

Example - Footage could not be located

A complaint was made in relation to interaction with police in relation to purchase of alcohol. It was dealt with through the Complaints Resolution Process.

The subject officer stated that he had his BWV on for the duration of his shift when interacting with customers. The NT Police resolution officer was unable to locate the incident from among 117 pieces of footage for the shift. They considered the possibility that the incident may not have occurred during the identified shift. The matter was finalised without a finding on BWV use.

186. Three apparently divergent policies or practices in relation to BWV footage retention were identified by the investigation:

- An NT Police specific *Axon Category Retention Duration Fact Sheet* lists 85 categories of footage, each with a retention period varying from 30 days to 75 years or *Until manually deleted*. Examples of categories included Assault – Aggravated (75 years), Domestic - Disturbance (7 years), Drug Offence – Commercial (Until manually deleted), Noise complaint (7 years).
- A stated requirement, as of 2020, for footage to be kept for one year then deleted automatically, unless saved for a specific purpose. Once saved, footage is kept indefinitely or until deleted.
- A practice of retaining footage for two years⁴⁰, after which, if not saved for a specific purpose, it is deleted.

187. It is not clear whether the *Fact Sheet* has the status of an approved retention schedule under the *Information Act 2002*.

188. It is acknowledged that categorising every piece of footage would be a substantial administrative burden. The 117 pieces of footage from one shift noted in the example above is no doubt an outlier but it is very common for an officer to activate BWV on numerous occasions throughout a shift for a range of differing activities. The numbers add up very rapidly when the number of officers on duty each day, 24 hours a day, is considered.

189. It is also acknowledged that most specific footage necessary for a particular purpose is identified and preserved within a year, by officers, supervisors and investigators carrying out their duties.

190. There is a valid question as to whether the resource investment needed to categorise every piece of footage into one of the 85 categories in the *Fact Sheet* is justified.

191. It may be that there are technological solutions that would reduce the administrative workload. We note that the PFES Systems Administrator undertook some preliminary steps to explore the potential for automation of categorisation, including possible use of Application Programming Interfaces (API) software.

192. It is important for NT Police to be confident that any system for categorisation and retention meets the need to identify and preserve relevant footage in an efficient and effective manner. It must also be confident that in doing so it meets all legislative requirements, including the records management provisions of the *Information Act*.

193. It is considered that NT Police should review, clarify and explicitly document its processes for categorisation and retention of BWV footage.

Recommendation 11

NT Police review current categorisation and retention requirements to ensure they are effective from a practical perspective and comply with legislative records management requirements, including the *Information Act*. This may include exploring the potential for use of API technology with service providers for the purpose of categorizing incidents for retention purposes.

⁴⁰ This extended retention practice was advised in the early stages of the investigation. NT Police currently advise that un-categorised material will only be retained for a maximum of one year.

Use and disclosure of information

194. BWV footage and audio that records private activities or private conversations is regulated as 'local protected information' under the *Surveillance Devices Act 2007* (the **SDA**).

195. Section 53 of the SDA sets out a range of permitted uses, communications and publications of local protected information. These include direct uses and disclosures by NT Police but also uses and disclosures by other bodies and individuals:

53 Permitted use of local protected information

(1) *Local protected information may be used, communicated or published if it is necessary to do so for any of the following purposes:*

- (a) *the investigation of an offence;*
- (b) *the making of a decision whether or not to bring a relevant proceeding for an offence;*
- (c) *a relevant proceeding for an offence;*
- (d) *an investigation of a complaint against, or the conduct of, a public officer under this Act or a corresponding law;*
- (e) *the making of a decision in relation to the appointment, re-appointment, term of appointment, termination or retirement of a person mentioned in paragraph (d);*
- (f) *the keeping of records and the making of reports by a law enforcement agency or the ICAC under Division 2;*
- (g) *an inspection by the Commonwealth Ombudsman under a provision of a corresponding law that corresponds to section 63 or 65;*
- (h) *an investigation of a complaint under the Information Act 2002 or a law of a participating jurisdiction or the Commonwealth about the privacy of personal information;*
- (i) *to make a protected communication (as defined in section 4 of the ICAC Act) to the ICAC;*
- (j) *to deal with an allegation of improper conduct.*

(2) *Subsection (1)(a), (b) and (c) do not authorise the use, communication or publication of protected information in relation to an emergency authorisation unless the use of powers under the authorisation has been approved under section 39.*

(3) *A reference in subsection (1) to an offence (whether of this jurisdiction or another jurisdiction) is a reference to an offence, whether or not the offence for which the relevant warrant or emergency authorisation was issued or given.*

(4) *Local protected information that is information obtained from the use, in accordance with section 14A, of body-worn video by a police officer may also be used, communicated or published:*

- (a) *in connection with the exercise of a law enforcement function by a police officer; or*
- (b) *in connection with education and training of police officers; or*
- (c) *for a purpose prescribed by regulation.*

196. Following representations from our Office, section 4 of the *Surveillance Devices Regulations 2008* further extends the range of permitted uses, communications and publications with respect to police BWV:

4 Use, communication or publication of police body-worn video

For section 53(4)(c) of the Act, the following purposes are prescribed purposes:

- (a) an application or an investigation of a complaint under the Information Act 2002 or a law of a participating jurisdiction or of the Commonwealth about privacy of personal information or access to information held by public sector organisations, other than for the purpose mentioned in section 53(1)(h) of the Act;*
- (b) a proceeding before NTCAT, including preparation for the proceeding;*
- (c) a civil proceeding, including preparation for the proceeding;*
- (d) an investigation or inquest conducted under the Coroners Act 1993;*
- (e) an investigation of a complaint under the Anti-Discrimination Act 1992;*
- (f) an investigation of a complaint under the Liquor Act 2019;*
- (g) an investigation of a complaint under the Children's Commissioner Act 2013;*
- (h) a television broadcast, radio broadcast, internet broadcast or other broadcast if authorised by a contract:
 - (i) between the Agency responsible for the police force of the Territory and a media production company; and*
 - (ii) that protects the privacy of personal information.**

197. Section 4 permits a number of uses and disclosures of NT Police BWV that might otherwise be unlawful. The extended scope includes information access applications under the *Information Act 2002*, proceedings before courts and tribunals, investigations by independent complaint bodies, and specific arrangements with media entities.

198. However, the fact that a use or disclosure may not be unlawful for SDA purposes does not mean that disclosure to a third party by NT Police is required or advisable.

199. NT Police BWV footage often contains highly sensitive material. BWV records are restricted and will generally only be disclosed to a third party in accordance with the information access provisions of the *Information Act*. Requests for access to BWV under the *Information Act* can be made to the Information Access Team of NT Police: <https://pfes.nt.gov.au/corporate/access-information>.

200. NT Police has experienced high volumes of demand for BWV and CCTV footage over an extended period. Even when it can be released, granting access often involves significant editing to protect the privacy or identity of people who often only incidentally appear in footage or audio. This can add appreciably to the processing time for applications seeking access to footage. There have been significant delays in processing such applications.

201. It is important for NT Police to adequately resource the unit tasked with carrying out its obligations under the *Information Act*. It is also noted that there is software available that can substantially assist with redaction of footage.

202. However, it is always helpful if those who seek information approach the application process with a degree of practicality and flexibility to identify the precise information they seek and discuss reasonable arrangements with NT Police as to the form of access or as to steps that may limit the amount of information sought, so as to enable speedier processing for both the individual and other applicants.

203. There can be real advantages in facilitating early viewing of footage by the legal representatives of a complainant or potential complainant. This may well lead to narrowing of issues in dispute or reduction in the number of formal access applications. It is worthwhile exploring the potential for NT Police to facilitate options for viewing footage in a manner that duly recognises the privacy of any other individuals appearing in video or audio.

Recommendation 12

NT Police:

- **consider, as a matter of priority and in consultation with the Ombudsman’s Office and stakeholders, the potential to facilitate simpler options for complainants’ legal representatives to view footage in a manner that duly recognises the privacy of other individuals appearing in video or audio;**
- **ensure that adequate resources are provided to promptly respond to information access applications in compliance with its obligations under the *Information Act*.**

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