

POLICE PANOPTICON:

Zooming in on the use of body worn
cameras by Victoria Police officers

REPORT SUMMARY

Samantha Varghese, Ovi Rajasinghe,
Mahnoor Sikandar, Kiara Wagner,
and Katherine Schofield

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RIGHTS ADVOCACY PROJECT:
CRIMINAL JUSTICE TEAM

rightsadvocacyproject.org

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Summary

Body-worn cameras (**BWCs**) are portable devices used by Victoria Police to capture audio and video recordings of interactions between officers and the public. BWCs were introduced in Victoria in 2018, heralded as a mechanism to increase police accountability and transparency.

In Victoria, the activation and use of BWCs and BWC footage by police officers is almost solely governed by the Victoria Police Manual (VPM). While the VPM is issued with the authority of the Chief Commissioner, making a police officer's failure to comply with its instructions a breach of discipline, there is no transparency surrounding how breaches of the BWC policy are handled and what disciplinary measures are taken. The absence of a legislative framework regulating the operation of BWCs means that Victoria Police has discretion on whether to activate or cease recording, to retain or delete footage, and to disclose footage obtained by BWCs in evidentiary briefs. Lack of independent oversight and accountability measures significantly diminishes the potential of BWCs to enhance the accountability of police.

Our recommendations aim to implement legal safeguards to ensure BWCs and subsequent footage is used in a transparent manner. We have identified activation, disclosure, and enforcement as key issues to explore in providing comprehensive recommendations for both legislative and policy reform.

Summary of Recommendations

1. Activation Recommendations

We propose introducing the following recommendations, aimed at addressing issues with the current activation framework in the VPM and legislation:

- Legislate the circumstances in which officers are required to activate their BWC. While we acknowledge there are some technical and practical limitations, the expectation is that an officer wearing a BWC will be recording all operational incidents for their shift.
- Officers must commence recording once a decision is made that the circumstances meet the criteria before the activity/interaction occurs, for example, prior to attending an incident when developing operational plans or tactics.
- Officers must point to their camera and notify all present individuals subject to that incident that the BWC is active and the footage can be accessed by both parties for legal proceedings.
- Delete the 30 second pre-set video only buffer, so both video and audio are captured when in standby mode prior to the device being started.

2. Disclosure and Retention Recommendations

Footage of police misconduct is an effective accountability mechanism, as it can provide objective evidence of the incident. This can improve access to justice for individuals seeking redress against Victoria Police, as well as defendants in criminal proceedings. It is therefore essential that all individuals involved have access to BWC footage.

The following provisions attempt to strengthen the requirements and oversight in disclosing and retaining footage.

Insert provisions related to retention and editing into the *Criminal Procedure Act 2009* (Vic)

- Outlining the responsibilities of individual members in uploading, editing, and providing access to the footage.
- Outlining the responsibilities of supervisors in overseeing, editing and authoring access to the footage.
- Improve retention time frames and responsibilities.
- Once footage has been uploaded onto Victoria Police's internal system, any editing to the footage must be completed within one month.
- BWC footage must only be edited consistently with the purposes of the activation framework.
- All edits must be tracked, including timestamps, and reasons for edits recorded and disclosable upon request.
- Where BWC footage is edited, an original master version of the footage must be

retained and made available to parties to the proceeding upon request.

- In the instance a challenge arises to the disclosed edited footage, a special hearing will determine the lawful scope of the edits.
- Incidents relating to assault or resist police charges should result in a different officer handling footage once docked, with supervision from a manager through the entirety of the proceedings.
- An incident involving use of force that leads to detention or arrest; or a formal or informal complaint being registered, must lead to automatic flagging with a supervisor, with the officers involved in the incident to have no access to the footage once docked.

Insert provisions related to preliminary brief of evidence in the *Criminal Procedure Act 2009* (Vic)

- The preliminary Brief of Evidence must outline the availability of body worn footage.
- The preliminary Brief of Evidence must outline whether access to body worn footage is available to be viewed at court at first mention or via a legal representative.
- BWC footage must be available as part of the preliminary Brief of Evidence for remand matters. Failure to include access to BWC footage at this stage will create a rebuttable presumption of inadmissibility of police witness evidence.
- Where BWC footage is included as part of the preliminary Brief of Evidence, and the BWC footage to be tendered as evidence has been edited, the original (unedited) master version of the BWC footage must also be included in the Brief of Evidence.

Amendments to the VPM:

- All relevant BWC footage forming part of the Brief of Evidence must be available at the first hearing, including where there is a remand hearing.
- The preliminary Brief of Evidence must include a password/token enabling the legal practitioner to view the relevant BWC footage on the online portal. If, for whatever reason, the footage is not available to view in the online portal, a USB with the BWC footage must be provided with the preliminary Brief of Evidence.

3. Enforcement Recommendations

The deficiencies in Victoria Police's current system for transparently receiving and resolving complaints against police, and disciplining police, are widely recognised. It is essential that an effective and efficient process is developed to encourage and enforce police officer compliance with the VPM.

Insert provisions in the *Evidence Act 2008* (Vic)

We recommend inserting a provision related to improperly-obtained evidence in the *Evidence Act 2008* (Vic) in instances where an officer tampers with their BWC or BWC footage in relation to the incident, fails to activate their BWC before or during the incident as required by activation policy, fails to adhere to retention requirements in relation to the incident, or fails to disclose all BWC footage relevant to the incident.

As per s138 *Evidence Act 2008* (Vic), the court will need to engage in a balancing exercise, namely whether the desirability of admitting the evidence outweighs the undesirability of admitting evidence that has been obtained in this manner.

4. Policy Reform Recommendations

We propose Victoria Police should develop rigorous, ongoing training to inform officers of the operation and policy objectives of BWCs to improve their reception and activation. The training program should include the following fundamentals:

- How and where to wear BWCs.
- BWC activation, retention and disclosure policies set out in the VPM and Victoria Police Act 2013 (Vic) (if amended).
- The appropriate exercise of officer discretion, including how to balance the necessity to record against legitimate privacy concerns in high stress situations.
- The evidentiary consequences for a breach of BWC policy; and
- The civil and criminal liability arising from a breach of BWC policy.

We also recommend increased and regular intervals of supervision to periodically:

- Monitor compliance with BWC policy.
- Provide feedback to individual officers; and
- Update the training program to address common failures.
- A period of no more than six months should be left between the review and retraining of officers on the use of BWCs.

Victoria Police should provide data (in their annual report, or elsewhere) about breaches of the BWC policy, including statistics about disciplinary proceedings and follow up training that resulted from those breaches. Specifically:

- How many breaches of the policy were recorded.
- A breakdown of what type of breach (activation, retention, disclosure).
- What proportion of detected breaches led to disciplinary action.
- A breakdown of the outcomes of disciplinary action (fines, suspension, counselling).
- Further education about the policy breached.