

## **MEMORANDUM**

**Response & Operations: National Office** 

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Subject: Body-Worn Camera evidence review and recommendations

Body-Worn Camera Evidence Review and Recommendations for NZ

Section 9(2)(a) Official Information Act 1982

#### **BACKGROUND**

Police organisations around the World are increasingly turning to body-worn cameras to record police-civilian interactions. Response and Operations have commenced planning for a body-worn camera trial for NZ Police in 2019.

#### **PURPOSE**

The purpose of this document is to provide a summary of the existing evidence around BWCs and to make recommendations for a BWC implementation trial and evaluation in NZ.

#### **OVERVIEW**

There has not yet been any research examining body-worn cameras (BWC) in New Zealand. The vast majority of the literature is based on research conducted in the USA and UK, but there has also been some research conducted in Australia, Canada, Norway and Turkey. In total, we have reviewed 86 articles/reports relating to body-worn cameras<sup>1</sup>; 49 articles/reports focused specifically on evaluating some aspect of police officers using BWCs (see bibliography for details). Section 9(2)(g) Official Information Act 1982

Section 9(2)(g) Official Information Act 1982

- Overall, the outcomes of existing BWC programs vary widely, with some findings in opposite directions in different studies.
- The context and goals of BWC programs vary widely, and it is not necessarily appropriate to generalise expectations to the NZ context.

<sup>&</sup>lt;sup>1</sup> From KAI literature search 72 articles/reports and 1 abstract reviewed; 62 articles excluded—5 due to repeated publication of same study, 57 judged not relevant. Thirteen additional articles/reports sourced and reviewed.

#### There are several reasons for the inconsistent outcomes:

- Different policy regarding officer discretion around what is recorded (and officer adherence to the policy);
- Different policy around notifying the public that they are being recorded;
- Improvements can only be seen if there is a problem. In some places, BWCs have been brought in as a means to address problems—misconduct, excessive use of force, assaults on police, frivolous complaints against police, and poor police-community relations—through increased transparency and accountability. In other places, BWCs are brought in in the absence of specific problems to address, so there is less room for BWCs to have an effect on these measures.
- Spill-over effects: many implementation trials have not adequately separated BWC and control conditions, so comparisons between them are not meaningful, or become diluted. Spill-over can occur because the same officer wears a BWC in some shifts but not in others, or because officers wearing BWCs attend the same incidents as officers not wearing BWCs, as well as through poor adherence to the protocol (e.g. officers in the control condition choosing to wear a BWC or vice versa).
- Many studies have very low base rates of the key measures (e.g. complaints, use of force, assaults on police) which makes it difficult to detect whether BWCs cause change, and whether any differences are robust or due to random variation. This problem is further exacerbated because many studies only have small numbers of police officers participating, and/or short trial durations.
- Some studies only compare pre-BWC and post-BWC time periods, so any changes are not necessarily due to the BWCs, but may be caused by other factors, random variation, or changes already occurring over time.

#### **KEY FINDINGS**

Many of the findings reported are only descriptive differences (i.e. higher or lower rates), not statistically robust effects; at least some differences are likely to be due to chance.

#### Use of force

- Most studies showed either no differences (7 studies) or less use of force (5 studies) by BWC officers compared to no-BWC officers. However, BWC officers had higher rates of use of force when they had complete discretion over what to record (1 study).
- BWC officers had higher rates of compliant handcuffing than no-BWC officers (2 studies).
- Four studies showed decreases in use of force from pre- to post- implementation for both BWC and no-BWC officers; in 3 studies the decrease was greater for BWC officers than no-BWC.
- One study found that initial decreases persisted over 3 years, but another found use of force returned to baseline rates after 3 years.
- Section 9(2)(g) Official Information Act 1982
- The results are mixed and do not easily generalise to the NZ context; we do not expect BWCs to cause compelling reductions in use of force in NZ.

### Assaults on police/Police injuries

- Two studies showed no differences in rates of assaults or officer injuries for BWC compared to no-BWC officers.
- Three studies showed higher rates of assault on BWC officers; one study suggested that this result only occurred when officers had no discretion about what to record. One explanation is that the monitoring deterred officers from actions that would not come across well on camera (such as using loud aggressive commands) and as a result they had reduced control of the situation and were at higher risk of assault.
- Section 9(2)(g) Official Information Act 1982
- It would be good for training around BWC use to discourage officers from inaction, and make it
  clear that the footage will not be used for general monitoring and scrutiny, but as evidence
  and for review if complaints arise.

## Complaints

- Comparisons showed no differences (4 studies) or fewer complaints for BWC officers than no-BWC officers (6 studies). One study found that although use of force complaints were lower for BWC officers, complaints regarding misconduct were higher.
- Eight studies showed overall decreases in rates of complaints from pre- to post-implementation, with one study showing the decrease was still evident after 3 years. In two cases the decrease was bigger for BWC than no-BWC officers. Even though the reductions also occurred for no-BWC officers, it is possible that they were caused by introducing BWCs, either through "contagious accountability" whereby all staff changed their behaviour in the climate of increased accountability, or alternatively through contagious transparency, whereby public perceptions of increased accountability decreased dissatisfaction and complaints.
- One further study showed a decrease in rates of complaints from pre- to post-implementation for BWC officers, but an increase for no-BWC officers.
- Section 9(2)(g) Official Information Act 1982

## Guilty pleas/judicial outcomes

- BWC footage was associated with either no difference (2 studies) or a slight increase (2 studies) in guilty pleas and guilty judicial outcomes.
- In NZ, recording victim video statements (VVS) for family harm incidents has been linked with a higher rate of early guilty pleas, although there may be a selection bias in who agreed to record a VVS in this study.
- Section 9(2)(g) Official Information Act 1982

### Officer Activities

- BWCs have been associated with a higher arrest rate (3 studies), a lower arrest rate (3 studies) and no change to the arrest rate (4 studies).
- Three studies showed BWC officers laid more charges/issued more citations; in one study, domestic assault rates increased by 600%.

- Two studies found that BWC officers conducted less stop and searches than no-BWC, but another found no differences. (Note that the goal of these studies was to reduce unfair stop-and-searches).
- Two studies reported a higher number of self-initiated calls by BWC officers compared to no-BWC officers, and another found no differences.
- Two studies reported no differences between BWC and no-BWC officers across all activities.
- Section 9(2)(g) Official Information Act 1982

#### Officers' Attitudes about BWCs

- Most studies found officers were generally positive about BWCs (9 studies), but in some cases
  officers were very negative (3 studies); this pessimism tended to occur in agencies where BWC
  footage was used for general performance oversight and management.
- One common perceived advantage of BWCs was the increased amount and quality of evidence, such as through capturing context and atmosphere of incident. As a result, officers felt more protected in having evidence to justify their actions, protected from frivolous complaints, and more confident of convictions.
- Some officers reported that increased video monitoring led to increased hesitancy to act, and avoidance of risky situations.
- These results highlight the importance of identifying the purpose of our BWC program and goals that will maximise officer buy-in. We suggest framing the BWC program as protecting officers and improving evidence and not for general oversight.

#### Public Attitudes about BWCs

- In general, people were very positive about police using BWCs (10 studies), specifically for improving fairness, accountability, transparency and procedural justice.
- People who interacted with an officer wearing BWC were often not aware of the BWC (2 studies), but when they were aware of the BWC, it enhanced perceptions of procedural justice (1 study).
- In Australia, police detainees reported being generally positive about BWCs, for protection of police, public and arrestees, and for improved police accountability and fairness. They reported some concerns about privacy and consent, as well as around officers' discretion to stop/start/edit recording to distort the context.

#### BWC activation

- Four studies reported low levels of BWC activation, even when required by policy.
- BWCs were more likely to be activated when officers were also required to notify civilians that they were recording (1 study).
- Section 9(2)(g) Official Information Act 1982
- Consider automatic activation of BWCs when officers respond to call for service (and/or other appropriate situations) with discretion to stop recording in certain situations according to policy.

#### RECCOMENDATIONS FOR IMPLEMENTING A BWC TRIAL IN NZ

The potential aims/goals of BWCs are not all compatible with one another— priorities need to be identified in order to develop BWC goals/policy and in order to design an effective trial and evaluation. Below we outline eleven recommendations regarding BWC goals/policy and four recommendations regarding the trial design; the recommendations are informed by previous research, as well as Tactical Options data and PPP findings from NZ Police.

Results from previous BWC research vary widely in terms of increasing or decreasing outcome measures such as use of force, arrests, complaints, and assaults on police. In addition, the results do not necessarily generalise to the NZ context—we cannot expect to see the same dramatic reductions in use of force as in places where excessive use of force is addressed through BWC implementation.

One clear and certain contribution that BWCs can make in NZ is to reduce doubt about what happened at an incident. We recommend focusing our BWC program a ound this key point in order to maximise the impact of BWCs for NZ. More specifically, using BWCs provides opportunities to:

- Improve the amount and quality of evidence obtained (for both prosecutions and complaints);
- Improve public trust in police by improving perceptions of accountability, transparency, and procedural justice (or to at least prevent a drop in trust by eliminating doubt about what occurred at critical incidents).

We strongly encourage that these overlapping goals are central to the development of BWC policy and procedures.

## Specific Recommendations for BWC Usage in NZ Police

## 1. BWC recording should not be restricted to the upper levels of PCA.

- Recording incidents before they progress to high levels of PCA will capture more complete
  information, providing better evidence for both prosecutions and addressing complaints, and
  providing a better understanding of the context and precursors to using force.
- In 2017, at incidents where a tactical option was used, 48% had an initial PCA of Assaultive or CBH/death. If BWC recording was based on the PCA being at these upper levels, we would miss capturing the full event for 52% of events where force was used. (Note: 31% had initial PCA Active Resistant; 18% Passive Resistant; 3% cooperative).
- The vast majority of complaints against police are based on the use of empty hand tactics (68% in 2017), a tactic which may be more likely to be used at lower levels of PCA. Empty hand tactics also have a high risk of injury. Having footage of these incidents will help us better understand what is happening, will help resolve complaints more easily and quickly, and will improve public perceptions of transparency. On the other hand, equipping officers with BWCs but failing to record incidents where complaints and injuries arise will most likely hurt public trust and confidence.
- Officers cannot predict how a situation will develop ahead of time, and events may unfold very quickly. It is problematic to begin recording partway through an interaction (for instance when the PCA reaches the higher threshold), because it can further aggravate a tense

situation. It is also difficult for officers to remember to start recording while they are already managing a difficult interaction, meaning recording may be missed altogether. Starting recording before the interaction begins is safer for everyone and will capture a more complete record of the context and communication leading up to any use of force.

- Challenges
  - More incidents captured requires more storage, potentially subject to more requests for release, privacy concerns about what is captured.

## 2. Consider automatic activation of recording under certain circumstances, with officers having discretion to stop recording under certain circumstances.

- Makes it easier for officers to continue their work as normal, while capturing complete footage of incidents.
- Removes the mental burden on officers to repeatedly evaluate whether or not they should be recording and remembering to start recording.
- Reduces element of human error, decreasing the risk of failing to capture important incidents.
- Research has shown widely varied rates of recording by individual officers, even working
  under the same policy. Making recording automatic will provide consistency and clear
  expectations about what will be captured.
- Increases transparency by making it clear in which circumstances we can expect footage to be captured.
- Addresses public concerns about police discretion to start/stop/edit recordings to manipulate context, potentially improving trust (or at least not damaging trust).
- Automatic activation should only be for specific circumstances that are identified and made clear to officers. Cameras should not run continuously; officers' conversations with colleagues, administrative work, and meal breaks etc. should not be captured by BWC.
- Circumstances to start recording might include responding to a call for service, getting out of
  the patrol car, or other appropriate situations as determined by policy. Circumstances to stop
  recording might include speaking with an informant, if a victim does not want to be recorded,
  if there is nudity, if a homeowner/tenant doesn't give consent to record inside their house, or
  other appropriate situations as determined by policy.
- Challenges
  - Officers may feel that discretion is being limited;
  - Officers may feel that they are not trusted to do their work, and that they are being monitored;
  - Privacy concerns around what is captured.

# 3. When officers decide to stop recording, they should capture the explanation/justification on camera before recording is stopped.

- Puts the onus on officers and ensures they consider in advance and justify why an incident (or part of it) is not recorded.
- If it is appropriate, BWC should capture victim or witness request for recording to stop.

### 4. Consider notifying members of the public that they are being recorded.

- Notifying people that they are being recorded maximises any chance that the BWC will have a civilising effect on their behaviour.
- Multiple studies showed that people were typically not aware that their interaction with the police was being captured by BWC, limiting any deterrent effects the BWC might have.

- When people were aware that their interaction was captured by BWC, they saw the
  interaction as more procedurally just; notifying civilians that they are being recorded may
  work to improve public perceptions of police.
- The studies with the largest effects in reduced use of force, assaults on police, and complaints all required officers to notify the public about BWC recording, and the authors (Ariel and colleagues) argue strongly that the notification is essential for BWC to improve outcomes on these measures.
- In addition, officers who were required to verbally notify civilians about recording at the start of an interaction had much higher rates of recording, probably because it worked as a memory prompt.
- Notification could either be a verbal announcement, or officers could wear a bright lapel pin to make it clear that interaction was being recorded (or similar).
- Section 9(2)(g) Official Information Act 1982
- Challenges
  - Extra burden for officers to remember (if verbal notification).
  - Some people may not respond well.
- 5. Do not use BWC footage for general oversight and scrutiny of staff behaviour in the absence of a complaint or other concern.
  - If staff feel the cameras are being used to monitor their behaviour, they may feel that they are not trusted or valued by the organisation, which can be demotivating and lead to de-policing.
  - Some research suggests that frontline staff members' concerns about increased oversight lead to increased reluctance to act, opening themselves up to the risk of assault, or skipping directly over lower levels of force directly to higher level tactics, because they do not seize control of dangerous situations.
- 6. The goals and purpose of the BWCs should be very clear to officers involved, highlighting the benefits, and the ways in which BWC footage will be used and not used.
  - Frontline officer buyen is essential for any BWC program to succeed.
  - We suggest framing BWCs as having both a protective and an evidentiary purpose. Officers
    are protected from unreasonable complaints and from enduring long complaints
    investigation/resolution processes, with BWCs providing evidence as to what actually
    happened, and justifying their actions. In addition, BWCs improve evidence capture which
    should be beneficial for officers in achieving prosecutions (overcoming the common issue of
    relying on one person's word against another's).
  - It should be made clear that BWC footage will not be used for general oversight of performing duties, but will be reviewed if a complaint/concern arises.
  - Consider discussing BWC usage with Police Association representative to pre-empt and address any issues and ensure support.
- 7. Officers should be encouraged to use BWCs pro-actively in capturing evidence, such as through explaining out loud what is happening on the way to an incident, background information, and PCA/TEN-R judgments. If possible, after the incident has ended, officers should also record a description and explanation about what occurred.
  - This additional information will improve the quality of the evidence, capturing the officer's subjective understanding and evaluations in the immediate situation. This record will be more

- accurate than any later reporting, avoiding any biases from hindsight, post-hoc justifications, or information learned after the incident.
- This kind of record would provide higher quality evidence than post-hoc statements or testimony. (Could footage be used as Evidence in Chief, replacing police statements and/or testifying, like Victim Video Statements have been?)
- Narration will make it clearer to other observers what is happening in the footage, improving the value of the evidence (e.g. for a judge/jury).
- Stating their thinking out loud would ensure officers made necessary evaluations in advance (e.g. TEN-R), and would make it easier for them to recall this information later for reporting purposes.
- Narration might also be useful for officer's professional development, looking back at the incident and their perceptions at the time (but see Recommendation 8).
- 8. Officers should not review any evidentiary BWC footage (or other officers' footage from the incident) until after testifying, or at a minimum until after preparing a written statement and all relevant reporting (e.g. TOR form).
  - Each victim, witness and offender has a unique perspective and understanding of the incident and what happened; the same is true of each officer. Each person's perspective offers something different to our overall understanding of an incident, and should be kept as separate lines of evidence, independent of the BWC footage. Reviewing the footage is very likely to change what the officer remembers and reports, narrowing their focus to only what was included in the video, as well as adding in information from the video that was not initially noticed or considered. If the officer does not view the footage, the two lines of evidence (BWC and officer's perspective) are kept separate, positine, and importantly above criticism.
  - Section 9(2)(g) Official Information Act 1982
  - Preventing officers from reviewing their BWC footage would be a transformational and World-leading move, and is the best practice based on very strong and substantial scientific evidence about the reconstructive nature of memory.
  - The argument that officers should not view BWC footage has been raised by civil liberties groups and academics, and has led at least one BWC program to stop completely, unable to find a satisfactory solution.
  - Keeping the lines of evidence separate should contribute to improved public trust and confidence, and increased credibility of officer's evidence.
  - This approach would also overcome the administrative burden of managing BWC footage, in terms of officers reviewing footage and flagging incidents for evidence. Incident times and dates should be reported elsewhere (e.g. in a TOR form), and these could be used by someone in an administrative role to identify and flag the relevant footage.
  - Challenges
    - Officers may be upset about not being able to view the footage, and feel as though it is to catch them out or question their credibility. Appropriate framing and explanation will be essential.
    - Restricts the use of BWC footage for reflection and professional development.

      However, this could be limited to footage flagged as evidentiary, which could be made available for viewing after the evidence had been used, or after it has been determined an officer would not be required to testify.
    - May challenge organisational culture and expectations.

- 9. Officers should not have the ability to edit or redact footage at any time.
  - This restriction is essential to transparency, in order for BWC footage to stand up to scrutiny and build public trust.
  - Addresses public concerns about police discretion to start/stop/edit recordings to manipulate context, potentially improving trust (or at least not damaging trust).

## 10. Consider using BWCs to capture initial interviews as evidence in family harm and other appropriate incidents.

- Increased quality, amount, and scope of evidence, including context, physical damage, and emotional state of victim.
- Several studies have demonstrated higher rates of guilty pleas and guilty verdicts as a result of
  video victim statements in family harm. Similarly, research has shown substantially more
  details are reported in victim interviews recorded soon after the incident, compared to incourt testimony. Recording initial interviews very soon after an incident will increase the
  amount and quality of evidence gathered, and should contribute to obtaining more just court
  outcomes.
- Challenges
  - Consequences for victims if video is used as evidence when they do not want to pursue charges.
- 11. In developing policy, consider the eight recommendations and examples from BWC Scorecard developed in association with the American Civil Liberties Union.
  - Following these recommendations/criteria will maximise public perceptions of transparency, trust, and procedural justice, and protect NZ police from public scrutiny on the basis of any of these key BWC issues.
  - Meeting all eight criteria would be World-leading. Of the 75 BWC programs reviewed in 2017, the highest score achieved was 5 out of 8 criteria; there was considerable variation in which criteria were met.
  - The eight criteria are based on: [1] policy availability; [2] officer discretion around recording; [3] personal privacy conterns; [4] pre-report viewing; [5] retention of footage; [6] protection of footage; [7] footage availability; and [8] biometric technology.
  - The scorecard is available at this link: <a href="https://www.bwcscorecard.org/static/pdfs/LCCHR%20and%20Upturn%20-%20BWC%20Scorecard%20v.3.0.pdf">https://www.bwcscorecard.org/static/pdfs/LCCHR%20and%20Upturn%20-%20BWC%20Scorecard%20v.3.0.pdf</a>

## Specific Recommendations for Implementing a BWC Trial in NZ Police

- 1. To best identify the effects of BWCs in the trial, BWCs should be assigned through block randomisation, where several sections at a station wear BWCs, and other sections at the same station do not. For example, at each trial station, officers in sections 1, 3, and 5 wear BWCs for the duration of the trial, while officers in sections 2 and 4 do not wear BWCs at any point during the trial. The officers who do and do not wear BWCs should not typically attend the same incidents.
  - This allocation strategy will provide the strongest differentiation between the BWC and no-BWC officers, best enabling us to compare groups and identify effects caused by BWCs.

- Alternate allocation strategies (and why they will not work as well) include:
  - Assigning BWCs by station would make it hard to draw any firm conclusions about the effect of BWCs; any differences between groups could be due to environmental differences.
  - Comparing outcomes only over time also makes it hard to draw firm conclusions; changes may be caused by other factors, random variation, or changes already occurring over time. However, we can include pre- and post-trial comparisons in combination with the recommended between groups comparisons.
  - Assigning individual officers to wear BWCs on some shifts but not on others causes spillover effects, whereby any behaviour change that becomes ingrained will affect both conditions, diluting BWC effects, and limiting our ability to draw conclusions.
  - Randomly assigning individual officers to wear BWCs or not will risk spill-over effects between officers. For example, an officer's partner may wear a BWC that affects the officer's and/or the subject's behaviour, even though the officer is in the no-BWC condition.

#### Challenges

- Depends on how rosters work may not be possible to allocate in this way;
- Makes the trial set-up more difficult;
- Difficult to manage people changing sections during trial:
- May lead to dissatisfaction among frontline staff who are not allocated to their preferred group. Will need to ensure staff adhere to allocation for duration of trial (i.e. that officers assigned to the no-BWC group do not use BWCs at all, and that officers assigned to the BWC group always wear BWCs).
- 2. Consider recruiting BWC leaders to champion BWC usage among teams.
  - Previous studies have maximised frontline staff buy-in and commitment by recruiting BWC champions to encourage and motivate officers to use BWCs, as well as through celebrating success stories throughout the trial.
- 3. Consider initial testing period with several staff members before the trial begins to identify and address issues with BWCs and processes.
  - Fixing any teething problems before the trial begins means the trial should run more smoothly and staff will be less likely to be put off using BWCs.
  - Recruiting champions to test out the BWCs first will put them in an excellent position to support and encourage other staff members (Recommendation 2).
- 4. Ask champions to record a brief reflection at the end of each shift, telling us about how the BWC worked for them and other officers on their section, outlining any difficulties and successes.
  - These short videos will help us to monitor what is happening in the trial as it is happening, without adding much of a reporting burden.
  - Champions will have a clear role in finding out from their fellow officers how the BWCs worked, and feeding information back to us.
  - The reflections will capture any good news stories in a timely and authentic way that could potentially be used for promoting BWCs to other trial staff or in future.

#### RECCOMENDED EVALUATION MEASURES

Below we outline measures that we recommend using to evaluate the trial. Depending on decisions surrounding goals/policy/design, these recommendations may change.

# Compare outcomes between BWC and no BWC officers, and for trial period vs. same 6-month period in previous year:

- Use of force (overall)
- Tactical options utilised
- Injuries (subject and officer)
- Assaults on police
- Responses to calls for service
- Self-initiated activities

- Arrests
- Charges laid (overall and by offence type)
- Guilty pleas and verdicts
- Complaints received
- Time to resolve complaints
- Time to resolve internal investigations

### BWC footage usage

- amount captured
- used in prosecution
- used to resolve complaints
- used for internal investigation
- used for IPCA investigation
- requested for release by involved parties

## **BWC** footage analysis

- Champions' self-reflection at end of shift
- Evidentiary quality and usefulness can an outsider understand what the footage shows? (see Edmonton Police Service, 2015)
- Compare prosecutor, police officer, public view of evidence contained in BWC footage
- Compare amount and type of information included in footage to officer's testimony or written statement (see Westera, 2013)

## **Public perceptions**

• Follow-up interview/survey with people who had a recent interaction with police (see McClure et al. 2017; White et al. 2017); awareness of BWCs, perceptions of: officers wearing BWCs, civilising effect, procedural justice in interaction etc.

## Officer survey and/or interview. Ask about:

- Overall reflections of BWC
- Should BWCs be a standard appointment?
- What works when using BWCs? What does not work?
- Are BWCs empowering? Why or why not?
- Instances where stopped disorderly behaviour?
- Instances where prompted or aggravated disorderly behaviour?
- Instances where could proceed with charge wouldn't otherwise have proceeded with because had evidence (instead of officer's word against subject's word)?
- Instances where made no difference to offenders' behaviour?
- Other benefits?
- Problems?
- Recommendations for future?
- Katz et al. (2014) 33-item measure of officers' perceptions of BWCs. Six scales: [1] comfort; [2] completion of incident reports; [3] evidence in court; [4] citizen behaviour; [5] officer behaviour; and [6] other benefits and limitations. Rate level of agreement with statements.

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