

Chief Commissioner's Instruction

The following instruction is issued pursuant to the powers of the Chief Commissioner under section 60, Victoria Police Act 2013. This Chief Commissioner's Instruction was originally published on the Victoria Police intranet on 16 December 2019 and is effective from that date. This instruction expires 12 months from publication or until earlier cancelled or reissued.

CCI 04/20 Digitally recorded evidence in chief (family violence)

Context

This CCI supports the use of body worn cameras (BWC) to capture digitally recorded evidence in chief (DREC) at a family violence incident by providing guidelines to members, supervisors and work unit managers in the trial locations.

This CCI was initially issued on 12 August 2019 as CCI 02/19. This was then reviewed and replaced by CCI 07/19 on 16 December 2019. This CCI reissues and replaces CCI 07/19 which was due to expire.

Contents

Context.....	1
Contents	1
Scope and application.....	1
References.....	1
Definitions	2
Responsibilities and procedures	2
Family violence incidents	2
Disclosure of digitally recorded evidence-in-chief.....	5
Viewing of digitally recorded evidence-in-chief	6
Use and Disclosure at Courts.....	7
Further advice and information	8

Scope and application

This CCI applies to members, supervisors and work unit managers who are:

- trained in the use of BWCs for general duties and for taking DREC family violence victim statements
- responsible for the authorisation of briefs of evidence which contain DREC footage.

It also applies to members, Police Custody Officers (PCO) and prosecutors who are:

- involved in the management of accused persons in police custody, or
- involved in the prosecution of accused persons to which a DREC applies.

Members must be trained in both the BWC general duties training and the BWC DREC training in order to capture a DREC from a victim of family violence.

References

This CCI is supported by and should be read in conjunction with the following:

- VPM Body worn cameras
- CCI 10/17 – Mobile device deployment

- Body worn camera family violence operational guidelines
- Body worn camera operational guidelines
- VPM Interviews and statements
- VPMP Family violence
- VPMG Family violence
- VPMG Recording of operational duties
- VPMP Briefs of evidence

Definitions

The following definitions apply to this CCI:

- **BWC** – Victoria Police issued body worn camera
- **DREC** – Digitally recorded evidence-in-chief statement, taken using a Victoria Police issued BWC.

Also refer to the general [VPM Dictionary](#) for definitions and acronyms.

Responsibilities and procedures

Family violence incidents

1. Members should activate their BWC when they attend a family violence incident and throughout their management of the incident, in line with the Activation Framework outlined in **VPM Body worn cameras**.
2. Indirect evidence from the family violence scene, such as injuries and property damage should be documented using the BWC.

Considerations for taking a DREC

3. There is a difference between the use of BWC to record operational activities, including family violence incidents, as opposed to the use of BWC specifically for taking a DREC.
4. Similar to the taking of a formal written statement, the DREC should occur as soon as practicable to the incident in order to obtain the best possible evidence.
5. A DREC can be taken at any location considered appropriate which provides a level of comfort and privacy for the victim. This may include at:
 - the scene of the family violence
 - a police premises
 - a hospital or other appropriate location.
6. Members must consider the emotional and physical state of the victim before taking a DREC. The DREC should be deferred to another time or the use of a written statement may be utilised as an alternative, if appropriate, to ensure the safety and wellbeing of the victim.

Taking a DREC

7. Prior to the taking of a DREC, the member conducting the interview must provide the victim with information relevant to the DREC process. Refer to Appendix B informed consent preamble in the **BWC family violence operational guidelines**. The provision of

information should be captured on the BWC prior to it being stopped to capture a DREC.

8. In preparation to take the DREC, the BWC recording must be stopped. When stopped, the BWC should be positioned as per the **BWC family violence operational guidelines**.
9. Before commencing, members must be satisfied that the victim understands the purpose of the recording and how it will be used. If consent is refused, a written statement must be used.
10. When the DREC is started, the recording must capture the victim reaffirming their consent. For more information about the process of taking a DREC refer to **BWC family violence operational guidelines**.
11. Prior to the conclusion of the DREC, the victim must attest to the truth of the statement at the end of the recording.

Principles of use

Age of the accused	<ul style="list-style-type: none"> The DREC process must not be used if the accused person was under the age of 18 at the time the family violence incident is alleged to have occurred.
Impaired by alcohol or drugs	<ul style="list-style-type: none"> Where there is reasonable belief that a victim is impaired by alcohol or drugs, the DREC process should not be used. Members should defer the taking of the statement to a time when the victim is no longer affected. For more information see VPMP/G Family violence.
Age of the victim	<ul style="list-style-type: none"> The DREC process must not be used if the victim of family violence was under the age of 18 at the time the family violence incident is alleged to have occurred. If the victim meets the criteria for the use of Video Audio Recorded Evidence (VARE) then that process should be followed. See VPM Video Audio Recorded Evidence
Cognitive Impairment	<ul style="list-style-type: none"> Where there is reasonable belief that a victim has a cognitive impairment, the DREC process must not be used. For more information in relation to persons with a cognitive impairment and interactions with them, see VPM Interviews and statements and VPM Video Audio Recorded Evidence.
Presence of children	<ul style="list-style-type: none"> The DREC process should not take place in the presence of a child, or children. In the event that a child's presence is unavoidable, members must take steps to prevent the DREC capturing the child's image. See Body worn camera operational guidelines for redaction options where this is not possible.
Presence of the alleged offender	<ul style="list-style-type: none"> The DREC process must not take place in the presence of the alleged offender.
Collection of DREC at a police station	<ul style="list-style-type: none"> The DREC process may take place in a police station or police premises in a suitable room or environment.

Disclosure of a sexual offence	<ul style="list-style-type: none"> • If at any stage during the DREC process a sexual offence is disclosed, the recording must stop. • In those circumstances, member should refer to VPMP Sexual Offence Investigations. • Advice should be sought from a supervisor, I&R unit or SOCIT
Focus on current incident	<ul style="list-style-type: none"> • The DREC should focus on the current family violence incident. • If the victim discloses other matters of family violence, the recording can still continue. • Focus should remain on the collection of critical details required in an evidence-in-chief statement.
Use of interpreters	<ul style="list-style-type: none"> • The use of interpreters for the DREC process is permitted. • Children or other family members (including the alleged offender) must not be used as interpreters.
Use of a support person	<ul style="list-style-type: none"> • The victim may have a support person present while providing a DREC. • The presence of a support person must be noted on the recording irrespective of whether they are captured on the DREC. • The support person must not be: <ul style="list-style-type: none"> - a person under the age of 18 - a party or witness to the current family violence incident - an active verbal participant in the DREC.

Withdrawal of consent to use DREC footage

12. Victims of family violence are permitted to make an application in writing to withdraw consent for the use of BWC DREC footage.
13. If it is believed that the victim is at greater risk if the withdrawal of consent is accepted, the member, after consulting with a police prosecutor may use the DREC footage without consent.

Risk assessment

14. In order to protect the welfare of victims, the completion of the Family Violence Report [Form L17] must not be filmed. Members should complete the risk assessment after the collection of the DREC.

Evidence management and editing

15. Members must follow the procedures in **VPM Body worn cameras** and **BWC family violence operational guidelines** for tagging, categorisation and uploading of footage, and use of the evidence management system.
16. Any editing or redacting must be done by the brief authoriser in the first instance before being received by the police prosecutor. The police prosecutor may make further edits to the DREC where required.

17. Editing or redacting of DREC footage is permitted, if a legitimate purpose can be demonstrated:

- to remove inadmissible evidence or avoid disclosure of material to the accused
- with the consent of the parties to the proceeding
- to comply with the directions of the court.

Disclosure of digitally recorded evidence-in-chief

Accused	<ul style="list-style-type: none"> • Members must serve the accused with the audio only DREC as part of the normal disclosure procedure in line with the <i>Criminal Procedures Act 2009</i>. • An accused is only permitted to obtain an audio only DREC. They must not be provided with a video copy. • Where the accused has a valid email address, the audio only DREC must be served by email which provides access to a download only link via evidence.com. • To ensure the accused is aware of the conditions and penalties under the legislation, members must use the pro forma email, available in the appendix section of the BWC family violence operational guidelines. • If electronic service is deemed to be unsuitable, or the accused is in a correctional facility, the audio only DREC should be copied to a DVD and served on the accused.
Accused's legal representation	<ul style="list-style-type: none"> • If legal representation for the accused can be confirmed, the video DREC must be served on the accused's legal representative by email which provides access to a download only link via evidence.com. • To ensure the legal representative is aware of the conditions and penalties under the legislation, members must use the pro forma email, available in the appendix section of the BWC family violence operational guidelines.
Victim	<ul style="list-style-type: none"> • Victims are permitted to obtain an audio only DREC on request.
Police prosecutions	<ul style="list-style-type: none"> • Prosecutors are able to view footage via evidence.com. • The unique footage identifying number of the DREC footage must be recorded on the brief of evidence to enable the prosecutor to view the footage.
Office of Public Prosecutions (OPP)	<ul style="list-style-type: none"> • Members must provide the OPP with a video copy of the DREC for all indictable matters prosecuted by the OPP. The DREC should be provided via a DVD.
Coroner's Court	<ul style="list-style-type: none"> • Members must provide the Coroner's Court with a copy of the video DREC by email by providing access to a download only link via

	evidence.com.
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Viewing of digitally recorded evidence-in-chief

Accused	<p>At the time of interview or while in custody</p> <ul style="list-style-type: none"> Members should provide the accused with an opportunity to view the DREC footage at the time of interview/while in custody. DREC footage must remain separate from the process of using Digital Evidence Capture (DEC). The DREC should be viewed prior to, during a period of suspension or at the conclusion of the formal interviewing using the DEC. <p>At a later time, if the accused is unrepresented</p> <ul style="list-style-type: none"> If an opportunity for the accused to view the DREC is not provided at interview, members must provide an opportunity: <ul style="list-style-type: none"> at a police station, at a time suitable to both parties, prior to the court hearing; or on the day of the court hearing, at a police station adjacent the court. If the accused is in police custody, a PCO, in consultation with a police member, may facilitate the viewing of the DREC. If the accused is in a correctional facility and unrepresented, any requests to view a DREC should be facilitated through the informant. <p>At a later time, if the accused is represented</p> <ul style="list-style-type: none"> The video DREC will be provided to any legal representative the accused may appoint. The nominated legal representative is responsible for ensuring their client views the DREC prior to court. If the accused is in police custody, their legal representative may show the accused the DREC only via a laptop as part of a client meeting. If the accused is in a correctional facility and has nominated legal representation, any request to view a DREC should be facilitated by the nominated legal representative. <p>At court</p> <ul style="list-style-type: none"> The prosecutor must take an Iron Key to court with all DREC for matters listed that day, to facilitate the viewing of DREC prior to court where reasonable, practical and appropriate. If required, the prosecutor may download the relevant DREC footage onto the laptop of the nominated legal representative. An accused must not be supplied a copy of the DREC.
Victim	<ul style="list-style-type: none"> Victims are permitted to view their video DREC on request. The viewing of the DREC must be supervised by a member.

Transcription of BWC family violence DREC

18. Victoria Police are not required to provide a transcribed copy of the DREC except in circumstances defined under legislation. This includes in circumstances where:
- there is a reasonably foreseeable risk that if supplied with an audio DREC, the accused would illegally supply or publish the audio DREC
 - the particular circumstances of the accused mean that a transcript is required (e.g. they are hearing impaired)
 - the matter is to be heard in the County Court or Supreme Court jurisdictions
 - the court orders a transcription.
19. If a transcription of the DREC is required, members must complete VP Form 254 Order for Transcription. For further information on obtaining a transcript refer to **BWC family violence operational guidelines**.

Use and Disclosure at Courts

Use of DREC

20. The DREC should be treated as evidence-in-chief and is not to be tendered into evidence. The DREC can be provided to the Court after the hearing to assist in the administration of justice.

Subpoena of DREC

21. To negate any negative victim impacts, the provision of DREC footage in response to a subpoena is restricted to an audio copy, unless otherwise ordered by a court.

Giving evidence in court

22. A DREC is evidence-in-chief of a victim of family violence. Victims will be required to attend court for contested hearings for the purpose of giving further evidence and to be cross examined unless an exemption or specific considerations apply. For further information refer to **BWC family violence operational guidelines**.
23. The use of a DREC may be permitted in the absence of the victim at court, providing the victim gave their informed consent at the time the evidence was collected.
24. A DREC does not follow normal disclosure procedures outlined in **VPMG Brief preparation and management**. Informants must account for copies (video and audio) supplied to a legal representative or an accused.
25. Where a DREC forms part of a brief of evidence, this should be endorsed on the witness list and, where applicable, referenced in the statement of alleged facts.
26. Unless a pressing safety concern or public interest reason exists, a DREC should be played in full during court proceedings which require evidence-in-chief of the primary victim.
27. Prosecutors must attend court with the DREC downloaded and the technical equipment required to connect to the court IT system.

Further advice and information

For further advice and assistance with this instruction, contact the Strategic Reform Unit, Family Violence Command or PBEA FVC-STRATEGIC-REFORM-MGR