# Body Worn Cameras: An effective or cosmetic policing response to domestic and family violence?

**Authors**

Dr Naomi Pfitzner, Lead Researcher in the Monash Gender and Family Violence Prevention Centre and Lecturer in Criminology, Faculty of Arts, Monash University.

20 Chancellors Walk,

Clayton Campus, VIC 3800

Naomi.Pfitzner@monash.edu.au

ORCID ID: https://orcid.org/0000-0003-1757-9170

**Biography:**

Dr Naomi Pfitzneris a Lead Researcher with the Monash Gender and Family Violence Prevention Centre and a Lecturer in Criminology in the Faculty of Arts, Monash University (Victoria, Australia). Her research has a key focus on domestic and family violence prevention and response.

Professor Sandra Walklate, Eleanor Rathbone Chair of Sociology conjoint with Professor of Criminology, Monash University

Eleanor Rathbone Building, University of Liverpool,

Bedford Street South L69 7ZA

S.L.Walklate@liverpool.ac.uk; sandra.walklate@monash.edu

**Biography:**

Professor Sandra Walklateis Eleanor Rathbone Chair of Sociology at the University of Liverpool (UK), Professor of Criminology at Monash University (Australia), and adjunct professor at QUT (Brisbane, Australia). Professor Walklate is internationally recognised for her work in victimology and research on criminal victimisation

Emeritus Professor Jude McCulloch, Faculty of Arts, Monash University.

20 Chancellors Walk,

Clayton Campus, VIC 3800

jude.mcculloch@monash.edu

**Biography:**

Emeritus Professor Jude McCulloch is a Fellow of the Australian Academy of Social Sciences. Emeritus Professor McCulloch’s early research investigated the growing integration of war and crime, police and the military and security and crime control and the implications of this for justice. Recent research considers on risk, prevention and family violence.

**Institution and Corresponding author details**

Monash University, Victoria, Australia 3800

Naomi Pfitzner, email: naomi.pfitzner@monash.edu, telephone: +61 3 9905 8048

# ABSTRACT

Drawing together literature on police body worn cameras (BWC) and video recorded evidence in domestic and family violence matters, this paper explores whether technology can ‘fix’ criminal justice responses to domestic and family violence. We argue that the use of police BWC and digitally recorded audio visual evidence in domestic and family violence matters is not a cure-all for deficiencies in criminal justice responses to domestic and family violence. While the use of such technologies may alleviate some of the deficiencies highlighted in the Australian state of Victoria’s 2016 Royal Commission into Family Violence, it raises serious concerns about victim’s agency and privacy. We argue that the introduction of such technologies requires significant investment in training and education - for police to adapt to their changed role and for judicial officers, legal practitioners and potential jurors in understanding and interpreting victim survivor behaviour on film.

**KEYWORDS**

Domestic violence, family violence, policing, body worn camera, technology, criminal justice

# INTRODUCTION

Across the globe increasing attention has been paid to the prevention and the reduction of violence against women. In Australia, this has brought a decade of significant policy reform and action including the world’s first national violence prevention framework (Our Watch, Australia’s National Research Organisation for Women’s Safety (ANROWS) and VicHealth, 2015) and the 2016 Victorian Royal Commission into Family Violence (RCFV) (State of Victoria, 2016b). The seven volume Royal Commission report, made 227 recommendations all of which the Government committed to implement, leading to numerous domestic and family violence[[1]](#footnote-1) (DFV) reforms in the Victorian criminal justice sector. The RCFV noted that:

 ‘[a]n effective police response is essential to the victims’ ability to remain safe, receive a fair outcome, and recover from the violence’ and that ‘improvements must be made in order to ensure that family violence is regarded as core business, to improve the investigation of offences, and to ensure that police interact appropriately with victims . . .’.

While acknowledging a significant shift in policing DFV in the previous fifteen years the RCFV identified the still ‘inconsistent approaches that can lead to very different experiences for victims, depending on the circumstances of their interaction with police’ (State of Victoria, 2016a: 1). Recommendation 58 called for Victoria Police to trial and evaluate the use of body worn cameras (BWCs) to ‘collect statements and other evidence from family violence incident scenes’ (State of Victoria, 2016a). The RCFV considered that BWC could potentially reduce victim trauma associated with giving evidence in court; assist police, prosecutors and the courts by providing higher-quality evidence that might increase guilty pleas; and increase community confidence that offenders are held to account. The RCFV gave particular prominence to the potential of BWC to reduce the administrative burden on front line police. This was considered potentially significant in relation to expanding police capacity (State of Victoria, 2016a: 106; see also Harris, 2018). Hoping to equip police to deliver improved victim-centred responses to DFV in a time of escalating demand, the RCFV envisioned that the police use of BWCs in DFV incidents would improve police efficiency related to statement taking and evidence gathering at DFV incidents.

The RCFV considered it was ‘imperative’ that the trial be rigorously evaluated to mitigate against unintended consequences particularly for victims. Such consequences were stated to include BWC evidence being used against victims given that misidentification of the primary aggressor by police was understood to be a significant ongoing issue in the policing of DFV (State of Victoria, 2016a: 106). As Harris (2020) points out, despite their increasing use by police there have been few evaluations of BWC internationally. McCulloch et al. (2020) evaluated the police trial of BWC in line with this recommendation but concluded that the limitations of the review timeframe, the relatively small number of uses of the technology by police and within the court system during the review timeframe, and absence of victim perspectives, meant that further evaluation should be undertaken. In addition, the scope of the evaluation was limited solely to the use of BWC to digitally record audio visual evidence in chief from victims.

Outside the domestic violence context, BWCs have proven to be a popular technological fix for law enforcement issues in terms of facilitating police accountability and transparency in police-community interactions. The popularity of and pre-occupation with technological fixes as a ‘techno-fix’ approach to crime prevention is well documented (Wells, 2018; Byrne and Marx, 2011). In many ways such fixes stand as exemplars of Young’s (1999: 130) identification of the criminal policy pre-occupation with the ‘cosmetic fallacy’. This fallacy suffers from two errors. In offering technical solutions to the problem of crime it ‘reverses causality: crime causes problems for society rather than society causes the problem of crime’, and it reflects a simplistic view of the social world, its social structures and the meaning making behaviour of human beings within it. Yet as the twenty-first century has unfolded, and technology has developed apace, the belief in techno-fixes has become ever more entrenched. Indeed, this belief is becoming increasingly entrenched as police forces turned to digital responses during the covid pandemic (Walklate et al., 2021). This is particularly the case as mobile phones have increasingly become a feature of recording crime, experiences of criminal victimisation, and used as evidence in courts. Indeed, as Douthwaite (1983: 31) observed some time ago, technological fixes are: ‘an attempt to answer a social or human problem using technological devices or systems without any attempt to modify or alter the underlying social or human problem’, expressed by Young (1999) as the cosmetic fallacy.

The purpose of this paper is to examine the extent to which the use of BWCs in the context of incidents of domestic abuse have the potential to fall into the trap of constituting the kind of techno-fix observed by Douthwaite (1983) or have the capacity to resist the shortcomings of Young’s (1999) cosmetic fallacy. To explore this question, the paper falls into four parts. First, drawing on the work of Hersh (2015) we outline some key questions posed by technological fixes in relation to criminal justice policy generally. The second part of the paper explains the narrative review strategy used to systematically search the literature on which this paper is based. In the third section the paper teases out the strengths and the weaknesses found within the existing evidence base on police BWC and digitally recorded evidence in the context of incidents of domestic abuse. This material is presented as five key dilemmas and analysed in line with Hersh’s (2015) classification of ‘fixes’, ‘intermediate solutions’ and ‘systemic solutions’. Based on this analysis in the final part of the paper we consider whether or not the use of BWCs in the context of domestic abuse afford a space in which the cosmetic fallacy of techno-fixes can be resisted.

# Technological Fixes in Criminal Justice.

Much of the existing literature on technological fixes in the criminal justice field centres on the absence or presence of technology, distinguishing between ‘hard’ and ‘soft’ technology. For example, Byrne and Marx (2011) differentiate between *hard* material-based technologies, such as CCTV cameras and technology-enhanced patrol cars, and soft information-based innovations, such as facial recognition software and crime hot spot mapping tools. They categorise hard technologies as materials, devices and equipment used to prevent and control crime, and soft technologies as ‘the strategic use of information to prevent crime and to improve the performance of the police’ (Byrne and Marx, 2011: 19). A systematic review of forty years of research on CCTV cameras found that they did have an effect on preventing vehicle and property crime but needed to be narrowly targeted at these types of offences and not deployed as a ‘stand-alone’ generic crime prevention measure (Piza et al., 2019). There is evidence to suggest however, that such initiatives have a role to play in enhancing the public’s sense of safety at particular times and in particular places (see for example the extensive work of Gill, 2003). On balance then, whether hard or soft, the impact of any technology on crime and particular types of offences needs to be situated within the wider social context in which it is being implemented.

Following this line of argument Hersh (2015) criticises the narrowness of current debates on the role of technology insofar as they centre on the advantages and disadvantages of technological solutions in very particular policing and criminal justice contexts. She argues the central question should be whether the proposed solution takes a *comprehensive* approach that considers the interplay of social factors inherent in complex social problems or whether it simply seeks to ‘fix’ one factor while ignoring others. Hersh (2015) reframes the focus away from the technological tools used, whether ‘hard or ‘soft’, to the nature of the solution claimed for them. She proposes a typology distinguishing between ‘systemic solutions’, ‘intermediate solutions’ and ‘fixes’with the latter further divided into subsets of technological and non-technological fixes. According to Hersh (2015) systemic solutions involve holistic approaches which consider the multiple and interconnecting dimensions of a problem in a local or global context as well as the short- and long-term consequences. In contrast, she describes a ‘fix’ as:

A short term and partial solution which focuses on a particular aspect of a problem and ignores the underlying causes, other aspects of the problem and the relationships between them, and the potential medium- and long-term consequences. (Hersh, 2015: 71).

Intermediate solutions lie somewhere in between offering neither systemic nor quick fixes. She goes on to suggest that use of technology is compatible with systemic solutions but the salient factor in the success of any of these ‘solutions’ is whether a ‘holistic perspective which considers all factors and the relations between them’ is taken (Hersh, 2015: 75).

Hersh’s criticism of existing work on technological fixes in crime prevention and policing echoes the central findings of the 2016 Victorian RCFV. In assessing the Victorian DFV system, the Royal Commission criticised the State’s siloed responses to DFV and concluded that services need to work together with a more integrated approach to DFV response and prevention (State of Victoria, 2016b). Of course, calling for integrated approaches to DFV is not new but what is perhaps new is the potential use of technology in assisting such a response. Aligning with these calls for more integrated, victim-centred systemic responses to DFV prevention, this paper uses Hersh’s (2015) typology as a heuristic device through which to consider the research evidence on the use of body worn cameras and digitally record evidence in DFV matters in support of developing such holistic approaches.

# METHOD: SYSTEMATIC NARRATIVE REVIEW

We undertook a narrative review of the evidence in this field. As Baumeister and Leary (1997) explain, narrative reviews discuss and integrate previous findings from a methodologically diverse range of studies to map current knowledge on a specific topic from a theoretical standpoint. This narrative literature review takes a broad approach, drawing together findings about the use of digitally recorded audio visual evidence in DFV matters from a range of fields and uses Hersh’s (2015) solution typology comprising of ‘fixes’, ‘intermediate solutions’ and ‘system solutions’ to interrogate these technologies as potential to ‘techno-fixes’. The overarching research question was:

* How are BWCs and digitally recorded audio visual evidence theoretically anticipated to impact on domestic and family violence matters?

Databases from a range of disciplines were searched, including Informit, ProQuest, JSTOR, Criminal Justice Database and Google Scholar. The search strategy involved multiple keyword searches using the terms ‘family violence’, ‘domestic violence’, ‘intimate partner violence’, ‘polic\*’, ‘body worn camera\*’, ‘body camera\*’, ‘video evidence’, ‘video statement’, ‘video recording’, ‘recorded statement’ and ‘recorded evidence’. No limit was placed on date, and non-English publications were not reviewed. Studies were included if they addressed DVF, and audio-visual evidence and criminal justice processes and outcomes or police body worn cameras in the DFV context. Papers were excluded if they were based on police use of body worn cameras in general duties as opposed to DFV policing. Due to the dearth of DFV specific research on police body worn cameras and the use of digitally recorded audio visual evidence in criminal justice processes, articles that focused on the use of such technologies in relation to non-intimate partner sexual violence proceedings were also included. It is acknowledged that there is a difference between BWC audio visual evidence in DFV matters and the recording of such evidence in sexual violence cases. The former are usually taken at the scene of incidents while the latter are recorded sometime after the event and at a police station or other location away from the crime scene. Regardless, the sexual assault related recordings are considered similar enough, in term of the courtroom impacts, to warrant inclusion here. The search identified 15 sources that met the specified criteria, including 9 original research reports and 6 reviews. Of these, 4 were based on qualitative research, 4 were quantitative and 7 used mixed methods. Of the 15 sources identified one paper was from USA and Canada respectively, 3 from New Zealand, 3 from England and Wales and 7 from Australia. It should be noted that one of the Australian articles was a joint UK publication. Six of the 15 sources focused solely on the application of such technologies in rape rather DFV matters more broadly. Our narrative synthesis of the available evidence identified five key dilemmas about the use of surveillance technologies and digitally recorded audio-visual evidence in the DFV context: quality versus quantity; agency versus performance management; process outcomes versus justice outcomes; transparency versus privacy; and visual data versus real data. The following discussion describes each of these dilemmas.

**FINDINGS**

# Quality versus quantity

There are two main issues here: the quality/quantity of information secured through the use of technology and the quality of the skills required by police officers to elicit such information. In drawing attention to this dilemma, the work of Kebbell and Westera (2011), Westera, Kebbell and Milne (2016), Yeong and Poynton (2017), and Kebbell and Westera (2016) included in this review suggests that filming police interviews, at incident scenes or at police stations, with domestic and sexual violence victims using body worn cameras affords the possibility of more accurate and complete victim statements. The contention is that digitally recorded audio visual victim statements, using body worn cameras, have greater accuracy because they are recorded as close to the time of the initial incident as possible, in a less pressured environment than court, and consequently reduce risks of memory loss. In turn, Morrow and others (2016; also included in this review) argue that the detailed and accurate accounts provided by body worn camera video recorded victim statements improve the likelihood of prosecutors going ahead with DFV cases because the quality of this kind of evidence increases the chances of a conviction. This view is supported by Westera, Kebbell and Milne (2013b) who suggest that video recorded statements provide more information to decision-makers in the justice system. They compared 10 New Zealand female rape complainants’ police video recorded interview transcripts with the court transcripts of their live testimony and found that on average two out of three of the police video recorded interviews describing what happened during the alleged sexual or violence offending provided details omitted from the live testimony. These findings suggest that video evidence can provide jurors and judges with a more complete account of events.

Several studies in this review emphasised that the quality of pre-recorded audio visual evidence depends on the skills of the police interviewer (Kebbell and Westera, 2011; Morrow et al., 2016; Westera et al. 2013b; Westera, Powell and Milne, 2017). Significantly, the use of BWCs to record video evidence shifts the role of eliciting ‘facts’ from victims and lawyers at trial to police attending DFV incident reports (Kebbell and Westera, 2011). The change in emphasis places the burden on police to obtain the best available evidence typically at the time of their initial attendance. It has been suggested that this requires police to develop skills beyond those needed for traditional paper-based statements in order to produce quality video victim statements. Thus, the deployment of BWCs requires a significant investment in police education with White (2014) suggesting there has been a time lag in law enforcement education keeping pace with the technology. Adding to this potential capability deficit, device quality has also been shown to influence video recorded evidence, particularly in terms of ease of use and recording quality (see also Owens et al., 2014).

In summary the evidence drawn upon here base suggests that digitally recorded audio visual statements *may* promote quality information over the quantity fact-based approach often associated with paper-based statements though more comparative work between video statements and paper statements would lend greater support to this viewpoint. Nonetheless, both require the active participation of appropriately skilled police officers with the use of technology making different demands on the victim. This leads to the second dilemma discussed below.

# Agency versus performance management

Given the well-documented impact of DFV on victim-survivors, it is important and difficult to balance the need for victim agency in policy interventions with ensuring those interventions take place. In the context of technology this dilemma can be manifested in the drive to improve police performance coupled with the desire to avoid victim attrition. For example, the RCFV (2016) saw the promise of expedited arrests, charges and prosecutions as benefits of the BWC ‘solution’ to high quality victim-centred police responses to DFV (State of Victoria, 2016a). While existing evidence suggests that the promise of efficiencies may be realised, the victim-centred nature of video-recorded statements has been questioned. For example, Canadian researchers Moore and Singh (2018) have raised concerns about the use of audio-visual evidence limiting victims’ agency. They question the use of visual evidence in supposedly ‘victimless’ prosecutions of domestic violence cases where videotaped statements of victims detailing their assaults following an incident are used as evidence in lieu of the victim speaking for themselves at trial. While intended to prevent victim re-traumatisation in court, Moore and Singh (2018) argue that visual evidence, such as victim video statements (VVS), can silence victims and remove their agency in the prosecution process. They conclude that visual evidence creates a second victim, the ‘data double’. The criminal justice system may privilege the data double over the physical victim and this can inhibit the physical victim’s ability to direct the course of their case (Moore and Singh 2018). Similar concerns about the state pursuing prosecutions using VVS regardless of a victim’s expressed wishes (with implications for their sense of agency) have also been raised by Hanna (1996) and Mills (1999). Indeed, in recommending the trial of BWCs in Victoria, the RCFV cautioned that video statements may be used to coerce DFV victims into participating in criminal proceedings and emphasised the importance of the need for ongoing consent (State of Victoria, 2016a).

Based on our systematic review very few studies have examined the perspectives of video recorded evidence on DFV victims, thus its impact is largely unknown (Crow, Snyder, Crichlow and Smykla, 2017; Katz et al., 2015; McCulloch et al., 2020). Adams and Mastracci (2017) underscore this absence, particularly its implications for vulnerable victims. Harris (2020) addresses these ‘missing voices’ by including the perspectives of thirteen women with experience of giving evidence about DFV on BWC. While her original interviews did not focus specifically on BWC Harris (2020) found that these women’s main concerns with BWC was whether their use would enhance police accountability and serve their best interests. Nevertheless, it is worth noting that work outside this review suggests that the use of audio-visual recordings in police investigations may reduce the retraction of statements or withdrawal of support by victims for prosecutions (Ellison, 2002). However, victims’ reasons for withdrawing or retracting statements are complex (Hoyle and Sanders, 2000) and at this juncture it is unclear what role victim video statements play in the criminal justice decision-making process. The absence of victims’ voices in police BWC research as evidenced by this systematic review, as both a general response to DFV and to record statements used as evidence in court, is a significant knowledge gap and work in this area is overdue. This absence is especially pertinent to the issues of victim consent and victim privacy in relation to the use of BWC both of which may impact significantly on their experiences of such technology.

# Process outcomes versus justice outcomes

The third dilemma identified in the literature review relates to the intended purpose of BWC: whether or not that purpose is to improve experiences of the justice process, afford improved justice outcomes or increase efficiencies in the system. This dilemma was raised in relation to BWC footage by Douglas and Goodmark in their submissions to the RCFV (State of Victoria, 2016a) largely through the lens of witness credibility.

Witness credibility is regarded as crucial in case outcomes and has been seen as a particularly problematic issue in cases involving sexual and intimate partner violence for some time (see inter alia Adler, 1987; Lees, 1996). More recent work on the use of video as a medium for presenting evidence as a way of combating some of the problems with witness credibility, however, has had mixed results. From work included in this review, Ellison and Munro (2014) for example, found no clear relationship between mock juries’ deliberations in rape trials and the mode used to give complainant evidence. On the other hand, work by Landström, Ask and Sommar (2015) revealed that male assault complainants were perceived as more truthful when communicating live compared with video. Their study explored how the emotionality of a victim’s demeanour affected perceived credibility by asking 81 Swedish law students to view and assess the credibility of a male assault complainant who appeared live or via video (Landström et al., 2015). The complainant was perceived as significantly more credible when giving evidence live (Landström et al., 2015).

Other work included in this review reveals similar findings. For example, Westera, Kebbell and Milne (2013a) explored prosecutors’ perceptions of using video-recorded investigative interviews of adult rape complainants as evidence in court. Thirty New Zealand Crown prosecutors completed a questionnaire which asked them to rate the accuracy of information, credibility of the complainant, likelihood of the alleged offender’s guilt and the realism of the scenario using a 9-point Likert scale. They were also asked to respond to open-ended questions about the advantages and disadvantages of using victim video statements as evidence in court. Aligning with some of Landström et al.’s (2015) findings, nine participants felt that recorded video evidence was less impactful than live testimony (Westera et al., 2013a). Other participants described disadvantages of victim video statements (VVS) centring on poor interview practices, such as illogical question sequencing, allowing complainants to ramble, interviewers expressing empathy and the inclusion of irrelevant and inadmissible details (Westera et al., 2013a). These echo the issues relating to police interview skill and competency discussed above. Advantages of video recordings identified by participants in Westera et al (2013b) included increased accuracy, detail and completeness and certainty about the evidence the complainant would subsequently give in court.

American research by Morrow and colleagues (2016) reviewed here found that police, prosecutors, judges and jurors view BWC footage as superior to other forms of evidence. Based on a pre- and post-test comparison group study of domestic violence case outcomes for officers deployed with and without cameras, they found that arrests, charges filed, cases furthered, and guilty verdicts decreased substantially post-test for domestic violence incidents attended by police officers who did not wear BWCs (Morrow et al., 2016). These findings may represent the possible “tech effect” which Shelton, Barak and Kim (2011) attribute to jurors’ increased expectations of, and demands for, scientific evidence to greater public awareness of, and familiarity with, modern technology together with increased awareness of the availability of that technology, primarily through mass media.

The research evidence reviewed here on the effects of recorded evidence on justice outcomes is also limited and has produced mixed results. Researchers have sought to measure the impact of digitally recorded audio visual evidence through a range of indicators including reduced rates of citizen complaints against police, increased rates of early guilty pleas and improved public perceptions of police accountability (Ellis, Jenkins and Smith, 2015; Katz et al., 2015; Walton, Brooks and Li, 2018). In the context of DFV, emerging evidence suggests that audio-visual evidence may reduce pressure on justice systems by increasing early guilty pleas, arrests, prosecutions, and convictions. For example, a New Zealand study by Walton, Brooks and Li (2018) compared the impact of VVS (n=168) with written statements (n=108) on the rate of early guilty pleas in domestic violence cases that proceeded to court hearings and found that VVS significantly increased the odds of making a guilty plea. This study, based on a 2017-2018 VVS trial conducted by NZ Police in South Auckland, showed that 44 percent of domestic violence cases involving VVS resulted in an early guilty plea compared to only 30 percent of cases with a written victim statement (Walton et al., 2018). When the seriousness of the offence and the type of remand were taken into account, VVS increased the odds of a guilty plea by 77 percent (Walton et al., 2018). Similarly, an American evaluation of a police BWC trial showed improved domestic violence criminal justice outcomes. Morrow and colleagues (2016) compared pre- and post-domestic violence case outcomes for officers deployed with cameras in one squad area (area 82) to officers without cameras in another squad area (area 81). The two squad areas were in the same precinct and geographically similar. Despite slight variation in population size (71,676 in area 81 compared to 56,630 in area 82), the two squad areas had comparable call rates for violent offences, property offences and domestic violence cases (Morrow et al., 2016). This study found that domestic violence incidents attended by officers deployed with cameras were more likely to result in an arrest (40.9% vs. 34.3%), have charges filed (37.7% vs. 26%), have cases furthered (12.7% vs. 6.2%), result in a guilty plea (4.4% vs. 1.2%) and result in a guilty verdict at trial (4.4% vs. 0.9%) (Morrow et al. 2016). Likewise, trials of police BWCs in the United Kingdom provide some evidence to suggest that BWCs improve domestic violence case outcomes (Ellis et al., 2015; Owens et al., 2014). However, the findings are limited by methodological weaknesses. Comparison group studies by Ellis et al. (2015) and Owens et al. (2014) could not confirm whether police officers in the intervention groups activated cameras at every domestic violence incident attended nor if footage was used in later stages of the criminal justice process. Whilst overall these studies indicate that police use of BWC may improve domestic violence case outcomes, it is unclear whether the employment of BWC by police expedites criminal justice processes (process outcomes). Some research undertaken in Arizona indicates that the use of video recorded evidence *increases* delays in the criminal justice system due to the lengthy interview recording, downloading and uploading processes, and logistical issues relating to the digital chain of custody (Katz et al., 2015).

In Australia, as elsewhere, the use of pre-recorded audio visual? evidence has generally been limited to matters involving sexual assault victims, children and complainants who are cognitively impaired. However, in 2015 NSW became the first Australian jurisdiction to allow pre-recorded audio or video evidence in domestic violence cases. A quantitative evaluation of court outcome data for domestic violence assaults by Yeong and Poynton (2017) found that pre-recorded evidence had no statistically significant impact on the probability of a guilty plea, nor the time taken to finalise matters that result in a guilty plea. Drawing on court outcome data from the NSW Bureau of Crime Statistics and Research’s Reoffending Database (ROD) and the pre-recorded evidence, known as Domestic Violence Evidence-in-Chief (DVEC) data from the NSW Police Force’s Computerised Operational Policing System (COPS), they also found limited evidence to indicate that the presence of a DVEC, increased the probability of a conviction (this increased by about two percentage points). Moreover, it should be noted that several potential variables which may have impacted on court outcomes were not examined. These included the quality of evidence collected in DVEC statements and whether the presence of a DVEC induced police to proceed with prosecution where evidence would not usually be considered sufficient to do so. Yeong and Poynton (2017) note that an underlying assumption of the 2015 NSW DVEC reforms was that the presence of a DVEC would increase victims’ willingness to proceed with criminal charges and reduce the trauma associated with court appearances. Given that the law reforms require victims to be available for cross-examination where DVECs are used in criminal proceedings, the validity of the assumption that DVEC will reduce the potential for re-traumatisation remains unclear.

# Transparency versus privacy

The fourth dilemma concerns the tensions between the demand for transparency within criminal justice processes and the considered requirements for victim-survivor privacy. As has been alluded to above the absence of victim voices and any concerns they might have about their privacy and consent is telling. The question of consent has arisen in relation to consent to video record statements, the use of associated footage, and the role of police discretion in these processes along with the destruction of this kind of data. (For a full discussion of these issues, particularly on the dangers of the associated surveillance slippage, see Zwart, 2018). From our review it is evident that different jurisdictions have different practices in relation to all these issues.

For example, United States jurisdictions have a varied approach to consent (Miller, Toliver and Police Executive Research Forum 2014). Some US states operate on a ‘two-party consent’ system where officers using BWCs are legally required to inform citizens when they are recording and to obtain a person’s consent to record (Mateescu, Rosenblat and Body, 2015; Miller et al., 2014). Other US states employ a ‘one-party’ approach where police are not required to inform people they are recording (Mateescu et al., 2015; Miller et al., 2014). To date, Australian jurisdictions have largely waived consent requirements (Department of Police, Fire and Emergency Management (Tasmanian Government), n.d.; NSW Police Force, n.d.; Queensland Police, 2018). In Tasmania officers may must seek permission to record victim statements but may continue to overtly record incidents when consent is denied (Department of Police, Fire and Emergency Management (Tasmanian Government), n.d.). Police in Victoria must seek consent to digitally record evidence-in-chief statements from DFV victim survivors (Victoria Police, 2019).

In relation to ethics, there are ongoing debates about police use of surveillance technology, like BWCs, particularly in regard to vulnerable populations such as victims of DFV and sexual abuse (Adams and Mastracci, 2017; Taylor 2010, 2016). While some commenters claim BWCs increase transparency within policing, others flag concerns about inappropriate use in the absence of well-considered regulations (Adams and Mastracci, 2017; Mateescu et al., 2015; Murphy 2015). A key concern is managing access to, and the distribution of, BWC footage (Adams and Mastracci, 2017; Murphy, 2015). Footage filmed on BWCs tends to be stored on local hard drives and uploaded to centralised cloud-base storage databases (Gannoni et al., 2017; Morrow et al., 2016). These practices raise important security questions as well as questions relating to retention and access rights. The retention period for BWC footage varies by jurisdiction and to date individuals’ proprietary rights to third-party footage are largely unknown (Adams and Mastracci, 2017; Murphy 2015).

# Visual data versus ‘real’ data

The fifth and final dilemma raised in this systematic review is a fundamental question pertaining to the ‘status’ of data gathered in this way. This question alludes to wider epistemological concerns about the role of visual data more generally and what this data can, and cannot, convey about what actually happened. In this regard some have cautioned against the use of BWC footage due to its questionable objectivity and susceptibility to tampering (Bud 2016). Others have pointed out that representations of DFV incidents and corresponding victim statements are inevitably filtered through frontline police members’ individual lenses, whether produced by hand or digital recording. Although it is likely that police members are provided with operational guidelines, digitally recorded audio visual evidence has the *potential* to further enhance the editorial role of police in representing what actually happened particularly through post-production editing and redacting of recorded evidence in preparation for court proceedings. As McKay and Lee (2020: 441) observe:

When officers have the ability to view the footage they have just recorded, this has the capacity to change how the event is understood both by officers involved, but importantly by others viewing the recording as evidence. Thus, the perspective and temporal elements of both recording and viewing can considerably alter the truth-telling capacity of BWC produced footage.

Thus, digital recording foregrounds the subjective nature of police DFV reporting; its dependence on personal decisions regarding what information frontline police do or do not record in video statements; when and where video recordings are made; and what, if any, indirect evidence, such drug and alcohol paraphernalia, from DFV scenes is filmed. In many ways these scene setting decisions might create the space in which familiar and well-documented pre-judgements concerning victim legitimacy continue to flourish. Aligning with this view, Young’s (2010) work on cinematographic representations of violence explores the audience’s (or as Young prefers - the spectator’s) relationship with crime-images and the implications for judgement and justice of visual violence. In analysing visual violence, Young stresses the selectivity of crime-images explaining that:

Each crime-image, each scene of violence, could have been different. Since filmmaking is always dependent upon choices (of movement, dialogue, lighting, music and so on), every scene – every image – could have been composed through different camera angles, dialogue, filters, movements and so on. (Young, 2010: 8)

Uniquely, in the context of BWC, the camera angle is dictated by police members and only shows their point of view (McKay and Lee, 2020). Therefore, the story told by BWC footage is a narrow one; ‘the alleged faithful recording of the event by the BWC presents a singular perspective and incomplete document that may not necessarily capture the full context of the law enforcement event’ (McKay and Lee, 2020: 444).

 This review raises important questions in relation to the underlying search for technological solutions to social problems. In many ways, as implied in the introduction to this paper, it is difficult to allocate the practices under discussion here to any one of Hersh’s categories. They can and do fall into all three depending upon the jurisdiction under consideration and the extent to which responding to violence against women has been more or less politicised. ‘Knee-jerk’ responses of politicians and campaign voices abound in this field and the resort to technology features as a constituent element of these. However, what this review of the available evidence points to are the underlying dilemmas posed by the increasing presence of technology (BWC) in the field of DFV responses.

It is largely unknown what influence BWC footage has on criminal justice professionals (see recent work by Pickering, 2020), other judicial officers and potential jurors in Australia and elsewhere. Whether or not they will prove to be similarly accepting of potentially editorialised representations of DFV presented in BWC footage and video statements without critical evaluation as with other types of media (Sutherland et al., 2016) remains to be seen.

# CONCLUSION

The dilemmas discussed above point to a range of problems and possibilities emerging from this evidence-based review of the use of police BWC in DFV matters. The review certainly supports the conclusion that the use of police BWC and digitally recorded evidence in DFV matters is not a cure-all for deficiencies in criminal justice responses to DFV. It raises significant concerns about victim agency, victim representation in visual data and the truth telling capabilities of point-of-view cameras. Importantly, the use of BWC and video recorded statements in DFV matters shifts DFV reporting firmly into the realm of cinema. In this context, the police member deployed with a point-of-view camera constructs a singular visual story of DFV shaped by a myriad of personal choices about cinematography, lighting, camera angle, dialogue and editing. The cinematic framing of DFV incidents through a particular policing narrative and a single point-of-view camera reduces the visibility of what occurs beyond the lens and may enhance opportunities for the continuation of familiar and well-documented pre-judgements concerning victim legitimacy.

Drawing on Hersh’s (2015) spectrum of solutions ranging from fixes to intermediate and systemic solutions, the existing evidence indicates that ‘add tech and stir’ is not a recipe for innovation in DFV response. While surveillance technologies and digitally recorded audio visual evidence may alleviate some of the deficiencies highlighted in the 2016 Victorian Royal Commission into Family Violence, the introduction of such technologies requires significant investment in training and education - for police to adapt to their changed role and for judicial officers, legal practitioners and potential jurors to understand and interpret victim survivor behaviour on film. Harris (2020) summarises this by describing BWC as a double-edged swords which may facilitate the production of immediate evidence but may not ensure that evidence represents with the victim’s perspective and may disadvantage victims by capturing behaviour not seen to accord with what criminal justice professionals or juries consider the ‘ideal victim’.

Other parameters also change when the communication medium changes. For example, the site at which the statement is made is likely to be a private residence not a police station. The statement is typically taken immediately after a DFV incident rather than later. Legal context also differs, requiring formal consent and having a different purpose, as evidence-in-chief. All of these issues can significantly reframe what happened, whom it happened to, and how such events are ultimately presented to courts.

The use of police BWCs and video recorded statements in DFV matters does show some promise in terms of the performance management of police officers and their responses to such incidents, at the same time providing decision-makers with higher quality information. However, the evidence to date suggests these technologies are at best a partial solution to the delivery of high-quality, victim-centred responses to DFV envisioned by the RCFV. Furthermore, it seems that this ‘solution’ is dependent on resourced and attentive technology application, recognising the context surrounding each incident, the history of abuse, prioritising victim agency and ensuring that BWC footage is not seen as a substitute for the physical victim. In other words, care needs to be taken concerning ‘visual data creep’ where the validated practices in the use of video-recorded evidence or video-linked evidence for other vulnerable witnesses and/or offenders are assumed to work in DFV. There are important contextual differences between the ‘in-situ’ use of BWCs as evidence and video-recorded evidence and there are dangers in the potential for slippage between these two.

Two years after the RCFV, the Family Violence Reform Implementation Monitor report found the Victorian DFV response wanting, noting that ‘implementation [of the systemic approach envisioned by RCFV] is still largely siloed within agencies, and coordination is proving to be a challenge’ (2018: iv). The remarks of the Family Violence Reform Implementation Monitor that ‘developing a systemic approach is complex and takes time’ ring true in the context of the use of police BWC and recorded evidence in DFV matters; it is important to be mindful that this change is only one cog in the criminal justice wheel. A holistic consideration of the interconnecting relationships between elements that constitute the criminal justice DFV response has yet to be realised.

Despite its benefits to society, however, the technological fix is well named. It is not a real solution. It will work for a time (although no one can be sure for how long). The terrible temptation is to assume the fix will last. (Douthwaite, 1983: 32)

Indeed, whilst many international jurisdictions have trialled police BWCs these have mainly focused on their application in police use of force and civilian complaints. There is little evidence of their use as pre-recorded audio visual evidence in DFV matters. The use of this type of victim evidence in DFV matters is under-developed and the voices of the victims and those charged with such offences in extant studies, are, with the exception of the work of Moore and Singh (2018) absent. Moreover, existing studies on the use of BWCs generally are limited by methodological flaws in the randomisation processes adopted and small sample sizes, all of which reduce the statistical reliability of results and restrict causal inferences (Ellis et al. 2015; Owens et al. 2014). Given this it is impossible to make informed recommendations about police BWC and audio visual evidence in DFV matters or point to best practice. There is an emerging literature on BWC and audio visual evidence in DFV matters but it remains underdeveloped. Further research is needed that addresses issues related to victim experiences, justice outcomes, the impact of audio visual evidence on criminal justice actors, and issues related to police and court efficiency. This will support more careful examination and evaluation of the efficacy of the BWC ‘technological fix’ before the case can be made that Young’s (1999) cosmetic fallacy has been resisted.

# REFERENCES

Adams, I and Mastracci, S (2017) Visibility is a trap: The ethics of police body-worn cameras and control. *Administrative Theory & Praxis* 39(4): 313-328. doi: 10.1080/10841806.2017.1381482

Adler, Z (1987) *Rape on Trial*. London: Routledge and Kegan Paul

Byrne, J and Marx, G (2011) Technological innovations in crime prevention and policing performance: A review of the research on implementation and impact. *Journal of Police Studies* 3(20): 17-40.

Bud, TK (2016) The rise and risks of police body-worn cameras in Canada. *Surveillance & Society*14(1): 117-121. doi: 10.24908/ss.v14i1.6280

Crow, MS, Snyder, JA Crichlow, VJ and Smykla, J. O (2017) Community perceptins of police body-worn cameras: The impact of views on fairness, fear, performance and privacy. *Criminal Justice and Behavior* 44(4): 586-610. doi: 10.1177/0093854816688037

Department of Police, Fire and Emergency Management (Tasminan Government), (n.d.) *Tasmania Police Body Worn Camera Guidelines. Ref: A18/124101. Version 2.0*. Available from: https://www.police.tas.gov.au/uploads/BWC-Guidelines-v14122018.pdf

Douthwaite, J (1983) The Terrible Temptation of the Technological Fix, *Science, Technology & Human Values* 8(1): 31-32. doi: 10.1177/016224398300800107

Ellis, T, Jenkins, C and Smith, P (2015) *Evaluation of the introduction of personal issue body worn video cameras (Operation Hyperion) on the Isle of Wight: Final report to the Hampshire Constabulary*. https://researchportal.port.ac.uk/portal/files/2197790/Operation\_Hyperion\_Final\_Report\_to\_Hampshire\_Constabulary.pdf [accessed 10 Oct, 2020]

Ellison, L (2002) Prosecuting domestic violence without victim participation. *The Modern Law Review* 65(6): 834-858. doi: 10.1111/1468-2230.00412

Ellison, L and Munro, VE (2014) A 'special' delivery? Exploring the impact of screens, live-links and video-recorded evidence on mock juror deliberation in rape trials. *Social & Legal Studies* 23(1): 3-29. doi: 10.1177/0964663913496676

Family Violence Reform Implementation Monitor (Victoria) (2019)  Report of the Family Violence Reform Implementation Monitor: as at 1 November 2018. Melbourne: Victorian Government Printer.

Gannoni, A, Willis, M, Taylor, E and Lee, M (2017). *Surveillance technologies and crime control: Understanding police detainees’ perspectives on police body-worn video (BWV) and CCTV cameras. Report to the Criminology Research Adivsory Council Grant: CRG 31/14-15*. http://crg.aic.gov.au/reports/1718/31-1415-FinalReport.pdf [accessed 10 Oct, 2020]

Gill, M. (ed) (2003) CCTY . London: Palgrave-Macmillan.

Hanna, C (1996) No right to choose: Mandated victim participation in domestic violence prosecutions. *Harvard Law Review,* 109(8): 1849-1910. doi: 10.2307/1342079

Harris, B (2018) Spacelessness, spatiality and intimate partner violence: Technology-facilitated abuse, stalking and justice. In J. Maher, S. Walklate, J. McCulloch, & K. Fitz-

Harris, B (2020) Visualising violence? Capturing and critiquing body-worn video camera evidence of domestic and family violence. Current Issues in Criminal Justice, 32(4): 382-402. doi: 10.1080/10345329.2020.1831730

Hoyle, C and Sanders, A (2000) Police response to domestic violence. British Journal of Criminology, 40(1): 14-36. doi:10.1093/bjc/40.1.14

Katz, CM, Choate, DE, Ready, JR and Nuño, L (2015). *Evaluating the impact of officer body worn cameras in the phoenix police department*. Available at: https://publicservice.asu.edu/sites/default/files/ppd\_spi\_feb\_20\_2015\_final.pdf [accessed 10 October 2020]

Kebbell, MR and Westera, NJ (2011) Promoting pre-recorded complainant evidence in rape trials: Psychological and practice perspectives. *Criminal Law Journal* 35(6): 376-385.

Landström, S, Ask, K and Sommar, C (2015) The emotional male victim: Effects of presentation mode on judged credibility. *Scandinavian Journal of Psychology* 56(1): 99-104. doi: 10.1111/sjop.12176

Lees, S (1996) *Carnal Knowledge*. London: Hamish Hamilton.

Mateescu, A, Rosenblat, A and Body, D (2015). *Police Body-Worn Cameras*. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2569481 [accessed 10 October 2020]

McCulloch, J, Pfitzner, N, Maher, J, Fitz-Gibbon, K. and Segrave, M (2020). *Evaluation of the Victoria Police Digitally Recorded Evidence-in-Chief Family Violence Trial: Final Report.* Monash Gender and Family Violence Prevention Centre, Faculty of Arts, Monash University. Available at: https://www.parliament.vic.gov.au/file\_uploads/Victoria\_Police\_Trial\_of\_Digitally\_Recorded\_Evidence\_in\_Chief\_-\_Family\_Violence\_-\_evaluation\_report\_qbCK1gtW.pdf [accessed 11 January 2021]

Merriam, SB and Bierema, L. L (2013) *Adult Learning : Linking Theory and Practice* San Francisco: John Wiley & Sons, Incorporated.

McKay, C and Lee, M (2020) Body-worn images: Point-of-view and the new aesthetics of policing. *Crime, Media, Culture* 16(3): 431–450. doi: 10.1177/1741659019873774

Miller, L, Toliver, J and Police Executive Research Forum (2014) *Implementing a body-worn camera program: Recommendations and lessons learned*. Available at: https://www.policeforum.org/assets/docs/Free\_Online\_Documents/Technology/implementing%20a%20body-worn%20camera%20program.pdf [accessed 10 October 2020]

Mills, LG (1999) Killing her softly: Intimate abuse and the violence of state intervention. *Harvard Law Review* 113(2): 550-613.

Moore, D and Singh, R (2018) Seeing crime, feeling crime: Visual evidence, emotions, and the prosectuon of domestic violence. *Theoretical Criminology* 22(1): 116-132.

Morrow, WJ, Katz, CM and Choate, DE (2016) Assessing the impact of police body-worn cameras on arresting, prosecuting and convicting suspects of intimate partner violence. *Police Quarterly* 19(3): 303-325. doi: 10.1177/1098611116652850

Murphy, ST (2015) *Police body cameras in domestic and sexual assault investigations: Considerations and unanswered questions*. Avaialble at: https://www.bwjp.org/assets/documents/pdfs/police-body-cams-in-domestic-and-sexual-assault-inve.pdf [accessed 10 October 2020]

NSW Police Force (n.d.) Body Worn Video. *Policing in the Community.* Avaialble at: https://www.police.nsw.gov.au/safety\_and\_prevention/policing\_in\_the\_community/body\_worn\_video [accessed 10 October 2020]

Oliva, JR and Compton, M. T (2010) What do police officers value in the classroom?: A qualitative study of the classroom social environment in law enforcement education. *Policing: An International Journal of Police Strategies & Management* 33(2): 321-338. doi: 10.1108/13639511011044911

Owens, C, Mann, D and Mckenna, R (2014) *The Essex body worn video trial: The impact of Body Worn Video on criminal justice outcomes of domestic abuse incidents*. Available at: https://whatworks.college.police.uk/Research/Documents/BWV\_Report.pdf [accessed 10 October 2020]

Queensland Police (2018) *Digital Electronic Recording of Interviews and Evidence Manual Issue 11.1 Public Edition. Section 4: Field audio and video recordings*.Available at: https://www.police.qld.gov.au/corporatedocs/OperationalPolicies/Documents/DERIE/Section4.pdf [accessed 10 October 2020]

Pickering, J.C (2020) Officers' perceptions regarding the unexpected effects of body-worn cameras. *Policing: An International Journal* 43(2): 390-402. doi: 10.1108/PIJPSM-09-2019-0153

Piza, EL, Welsh, BC, Farrington, DP & Thomas, AL (2019) CCTV surveillance for crime prevention: A 40‐year systematic review with meta‐analysis. *Criminology & Public Policy* 18(1): 135-159. doi: 10.1111/1745-9133.12419

Ready, JR and Young, JTN (2015) The impact of on-officer video cameras on police–citizen contacts: findings from a controlled experiment in Mesa, AZ. *Journal of Experimental Criminology* 11(3): 445-458. doi:10.1007/s11292-015-9237-8

Shelton, DE, Barak, G and Kim, YS (2011) Studying juror expectations for scientific evidence: A new model for looking at the CSI myth. *Court Review: The Journal of the American Judges Association* 47(1-2): 8-18.

State of Victoria (2016a) *Royal Commission into Family Violence: Report and recommendations, Vol III, Parl Paper No 132 (2014–16)*.

State of Victoria (2016b) *Royal Commission into Family Violence: Summary and recommendations, Parl Paper No 132 (2014–16)*.

Sutherland, G, McCormack, A, Pirkis, J, Vaughan, C, Dunne-Breen, M, Easteal, P, and Holland, K (2016) Media representations of violence against women and their children: Final report (ANROWS Horizons, 03/2016). Sydney: ANROWS.

Taylor, E (2010) I spy with my little eye: the use of CCTV in schools and the impact on privacy. *The Sociological Review* 58(3): 381-405. doi: 10.1111/j.1467-954X.2010.01930.x

Taylor, E (2016) Body-worn cameras are not a panacea for poor policing*.* Available at: https://theconversation.com/body-worn-cameras-are-not-a-panacea-for-poor-policing-67242

Victoria Police (2019) *Employees by location, June 2019*. Available at: https://content.police.vic.gov.au/sites/default/files/2019-07/Victoria%20Police%20Employee%20numbers%20Jun%202019.pdf#\_ga=2.42405093.1100776716.1564529350-125082201.1555302252 [accessed 10 October 2020]

Victoria Police (2019) *Chief Commissioner’s Instruction 02/19 Body worn camera family violence trial*. Melbourne: Victoria Police.

Walklate, S., Godfrey, B., and Richardson, J. (2021): Changes and continuities in police responses to domestic abuse in England and Wales during the Covid-19

‘lockdown’, *Policing and Society*, 32(2): 221-233. doi: 10.1080/10439463.2021.1896514

Walton, D, Brooks, R. and Li, J (2018) The use of victim video statements in family violence cases increases the rate of early guilty pleas. *Journal of Interpersonal Violence*. Available from: https://doi.org/10.1177/0886260518817065

Westera, NJ, Kebbell, MR and Milne, B (2013a) It is better, but does it look better? Prosecutor perceptions of using rape complainant investigative interviews as evidence. *Psychology, Crime & Law* 19(7): 595-610. doi:10.1080/1068316X.2012.656119

Westera, NJ, Kebbell, MR, and Milne, B (2013b) Losing two thirds of the story: A comparison of the video recorded police interview and live evidence of rape complainants. *Criminal Law Review* no. 4: 290-308.

Westera, NJ, Kebbell, MR, and Milne, B (2016) Want a better criminal justice response to rape? Improve police interviews with complainants and suspects. *Violence Against Women* 22(14): 1748-1769. doi: 10.1177/1077801216631439

Westera, NJ, Powell, MB and Milne, B (2017) Lost in the detail: Prosecutors’ perceptions of the utility of video recorded police interviews as rape complainant evidence. *Australian & New Zealand Journal of Criminology* 50(2): 252-268. doi: 10.1177/0004865815620705

White, MD (2014) *Police officer body-worn cameras: Assessing the evidence*. Avaialble at: https://www.bja.gov/bwc/pdfs/DiagnosticCenter\_PoliceOfficerBody-WornCameras.pdf [accessed 10 October 2020]

Young, A (2010) *The scene of violence: Cinema, crime, affect*. Routledge.

Young, J (1999) *The Exclusive Society.* London: Sage.

Yeong, S and Poynton, S (2017) *Evaluation of the 2015 Domestic Violence Evidence-in-Chief (DVEC) reforms (Crime and Justice Bulletin No. 206)*. Sydney: NSW Bureau of Crime Statistics and Research.

Zwart, W (2018) Slow your roll out of body-worn cameras: privacy concerns and the tension between transparency and surveillance. *Arizona Arizona Law Review* 60(3): 783-813.

1. The term ‘domestic and family violence’ is used throughout this paper for consistency to refer to “domestic violence”, “family violence”, “domestic abuse” and “domestic and family violence”. [↑](#footnote-ref-1)