



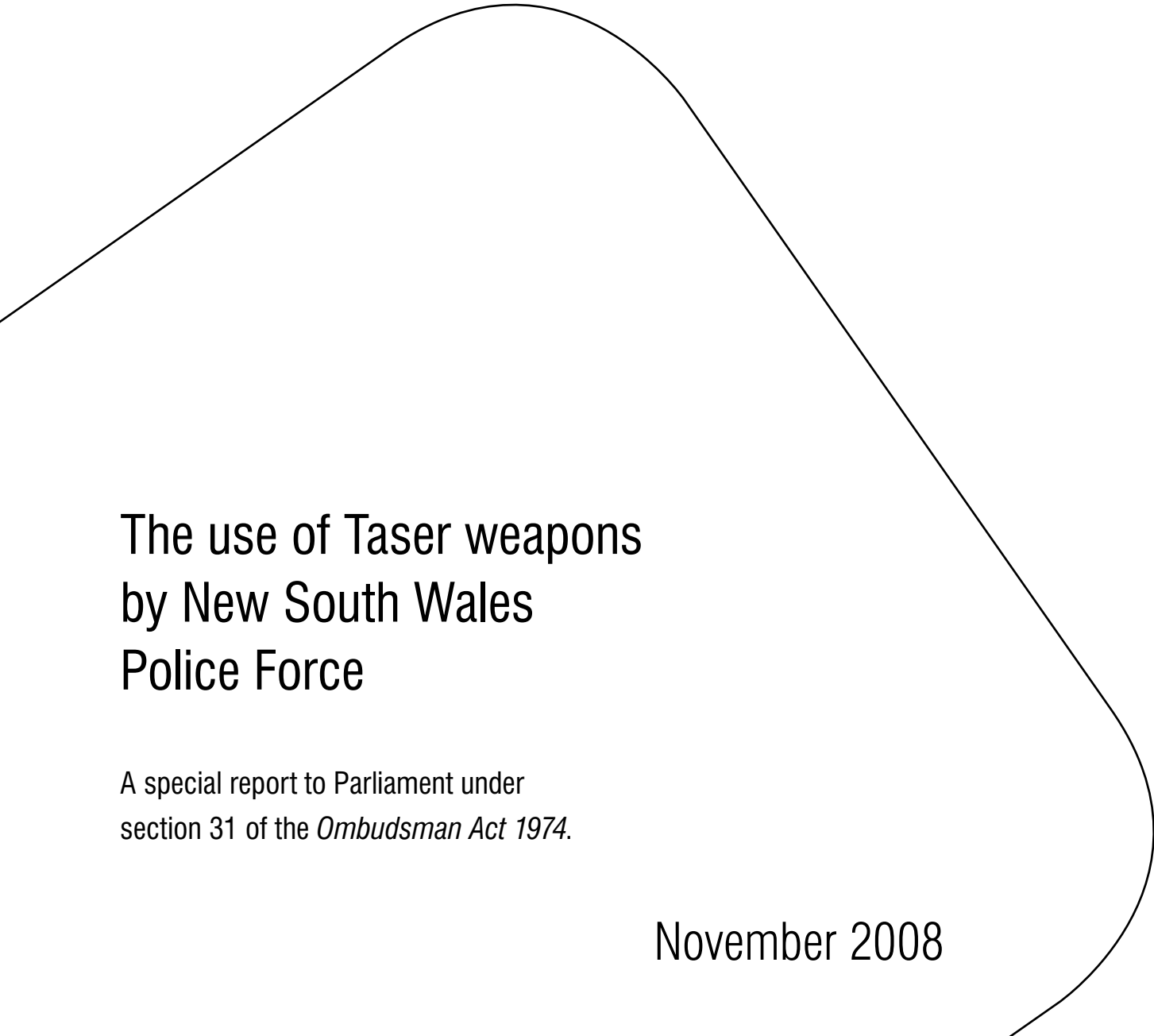
NSW Ombudsman

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# The use of Taser weapons by New South Wales Police Force

A special report to Parliament under section 31  
of the *Ombudsman Act 1974*.

November 2008



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Our logo has two visual graphic elements; the 'blurry square' and the 'magnifying glass' which represents our objectives. As we look at the facts with a magnifying glass, the blurry square becomes sharply defined, and a new colour of clarity is created.

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19 November 2008



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The Hon Richard Torbay MP  
Speaker  
Legislative Assembly  
Parliament House  
Sydney NSW 2000

Dear Mr President and Mr Speaker

I submit a report pursuant to s.31 of the *Ombudsman Act 1974*. In accordance with the Act, I have provided the Minister for Police with a copy of this report.

I draw your attention to the provisions of s.31AA of the *Ombudsman Act 1974* in relation to the tabling of this report and request that you make it public forthwith.

Yours sincerely

Bruce Barbour  
**Ombudsman**



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# Foreword

The purpose of this report is to bring to the attention of Parliament and the community the findings of a recent investigation into the use of Taser weapons by members of the New South Wales Police Force. The report of that investigation is attached.

Police have the power to use force in certain circumstances. This power is essential to enable officers to effectively carry out their mission of working with the community to reduce violence, crime and fear. However, there is significant public interest in ensuring that when force is used, this occurs in a way that is reasonable and proportionate. It is also important that any weapons used by police are, as far as possible reliable, effective, and do not subject officers and members of the public to unreasonable or unintended risk of harm.

Taser is a proprietary name but is now commonly associated with a specific type of less lethal weapon designed to administer an electric shock on contact to cause incapacitation and/or submission of a person.

The decision to investigate the NSW Police Force use of Tasers was made in part, because officers in specialist units had been using Tasers for five years, without any substantial review of their use. There also was a significant spike in Taser use by those units in 2007. At the same time, there were increasing reports from overseas raising significant concerns about Taser use including the potential for unjustified and excessive use of Tasers, the inadequate regulation of Taser use and their possible contribution to a number of deaths.

The purpose of our investigation was to determine whether the policies, procedures and training requirements around police use of Tasers were appropriate and comprehensive; whether the use of Tasers by officers was reasonable and effective; whether it complied with legal and policy requirements; and whether there were any issues or concerns with Tasers or their use by officers.

While we found that Tasers appear to have been a useful option for officers in the specialist units to achieve effective resolution of dangerous and high risk matters, we are of the view that the training materials, policy documents and accountability measures used by NSW Police Force should be significantly improved to ensure the use of Tasers is as safe and effective as possible.

During the latter part of the investigation, the Commissioner of Police with the support of the then Minister decided to extend the use of Taser weapons to general duties officers acting as duty officers and supervisors in all local area commands from October 2008. The NSW Police Force is in the process of training and authorising some 2,000 general duties officers to use Tasers. It is likely that the number of incidents where Tasers are used will significantly increase in the future as a result.

Already there have been a number of uses since the roll out. Unlike the general use by the specialist squads over the past five years, four of the first five uses by general duties officers have been in the 'drive-stun' mode. Using a Taser in this mode may place officers and people being subjected to a Taser application at greater risk, and has been found to be most susceptible to excessive use by police.

The risks of using Tasers are far higher when used by general duties officers compared to specialist units given that general duties officers receive significantly less training about managing high risk incidents, and they do not work in well rehearsed team environments. In order to ensure that Taser use is safe, effective and consistent it will be imperative for these officers to receive clear, comprehensive and consistent guidance about Taser use.

That is currently not the case in my opinion. There is no common standard operating procedures (SOPs) for Taser use across the NSW Police Force. Instead there are multiple SOPs used by different units and general duties officers. Furthermore, while the current SOPs give general guidance on the types of situations in which Taser use is authorised, they do not give adequate guidance about the situations in which they should not be used. The SOPs also do not give adequate guidance about the use of Tasers on potentially vulnerable individuals and in high risk environments. This poses an unacceptable risk to both officers who use the weapons and the general public.

The roll out of Tasers to general duties police has been the subject of widespread media publicity and is justifiably a matter of high public interest.

Given the expanded use of Taser weapons, it is essential for the training, policies and procedures governing Taser use to be clear, comprehensive and consistent, and for officers to be strictly accountable for weapon usage.

The attached investigation report comprehensively deals with these issues and makes 29 recommendations to improve the current use of Tasers by NSW Police Force to achieve better accountability and safe use.

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Given the continuing uncertainty about the medical risks that Tasers may pose, and the risks surrounding use of Tasers by general duties officers, the use of Tasers by police should be carefully scrutinised into the future.

I consider it is in the public interest that there be a further two year review of Taser use by an independent authority and that there be no further roll out of Tasers to general duties officers until such a review is conducted and the findings reported publicly.

Such a review will help to ensure that police use of Tasers is lawful, reasonable and appropriate, and that any matters that arise as a consequence of Taser use by general duties officers are properly addressed.

A handwritten signature in black ink, appearing to read "B. A. Barbour". The signature is written in a cursive, flowing style.

Bruce Barbour  
**Ombudsman**

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# Executive Summary

## Background

Tasers are designed to administer an electric shock on contact. When used, such weapons are intended to cause the incapacitation and/or submission of a person. Tasers can be used in two modes. In the first, known as probe-mode the Taser is used by firing a cartridge of barbed projectiles at a person. In this mode, the electrical current can cause involuntary muscle contractions where the person loses control over his or her body. A Taser can also be used in drive-stun mode, where it is applied directly to the body of the person. In this mode a Taser will cause localised pain and debilitation rather than complete incapacitation. The application of both modes is extremely painful.

Tasers have inbuilt accountability measures so that their use can be monitored and reviewed. For example, they store information about each time the Taser has been used, which can be downloaded onto a computer. In addition, they release confetti like tags when discharged, so the serial number of the Taser cartridge can be identified. Further, an audio-visual recording device 'Taser Cam' can be attached to the X26 Taser (the model predominantly used by NSW Police) to record footage prior to, during and after the use of a Taser.

Tasers were provided to the NSW Police Force Tactical Operations Unit (TOU) and its regional counterparts, the State Protection Support Units (SPSU) in early 2002. These units provide 24 hour, statewide tactical support to operational police dealing with high risk incidents, such as sieges, arrest of particularly violent people, suicide interventions, and restraint of people with mental illness. In 2007 Tasers were issued to another specialist unit, the Public Order and Riot Squad (PORS).

In December 2007 we commenced an investigation into the NSW Police Force use of Tasers. This was not in response to a complaint made to our office, but because of:

- the high public interest in ensuring police use of force is reasonable and proportionate,
- the fact that the NSW Police Force had been using Tasers for close to five years without a substantial review of their use,
- concerns raised in studies and the media about the possible medical risks to people subjected to electric shock by Tasers, including the possibility of Taser related deaths, and
- concerns raised in studies and the media about risks posed by the increasing use of Tasers by law enforcement agencies worldwide, such as the potential for unjustified and excessive use of Tasers and inadequate regulation of Taser use.

On 18 May 2008 the NSW Government announced that the use of Tasers within the Police Force would be extended to general duties officers working as supervisors and duty officers. It was announced that 229 Tasers would be purchased, and 2,000 officers would be trained in their use. This roll out commenced in October 2008.

## Lessons learnt from other jurisdictions

For the purpose of our investigation we reviewed a significant amount of material about use of Tasers by police overseas and within Australia. The material we reviewed about Tasers raised the following issues:

- There remains dissent in the medical and scientific communities about whether Tasers can cause irregular heart rhythms including ventricular fibrillation, which is life threatening. Major studies have found that the risk of danger to the heart is low in healthy adults, and Tasers are generally safe to use on such people. However, there is less certainty about the safety of using Tasers on people who may be particularly sensitive to exposure, such as pregnant females, those who are young or elderly, people with pre-existing medical conditions, and those who are affected by drugs or alcohol. There is also less certainty about the safety of using Tasers against a person multiple times or for a prolonged period.
- There is no doubt that people have died after being subjected to a Taser application. However, there is dispute about the role Tasers have played in either causing or contributing to these deaths. This is because many of the people who died subsequent to a Taser application had pre-existing health conditions, were under the influence of drugs and/or alcohol at the time of the incident, engaged in a protracted struggle with police, and were subjected to multiple types of force and restraint by police, usually including multiple and/or prolonged Taser applications. These factors make it difficult to determine the precise cause(s) of death.
- Taser use is most appropriately limited to situations where a person's behaviour is, at a minimum, combative or aggressive. It is more appropriate for police to deal with people who are uncooperative or non-compliant but not violent or aggressive by other less forceful means.

- It is important for police to be governed by clear and comprehensive policies about when it is, and is not appropriate to subject a person to a Taser application, and the factors which must be taken into consideration when deciding to use a Taser. It is also important for comprehensive and accurate records to be kept about when Tasers are used to ensure that Taser use complies with relevant legal and policy requirements, and to ensure that Tasers are not increasingly relied upon in circumstances where use of a lesser amount or type of force would be appropriate (that is, to prevent 'mission creep').

## Incidents where Tasers were used by the NSW Police Force

Tasers are authorised for use by authorised NSW Police officers:

- to protect human life,
- as a less lethal option for controlling people where violent resistance or confrontation occurs, or is imminent,
- if the officer is in danger of being overpowered or to protect themselves or others from injury, or
- for protection against animals.

Between May 2002 and December 2007, police officers from the TOU and SPSU used Tasers in an operational context on 48 occasions. Across the 48 incidents, 50 people were subjected to a Taser application (in two incidents two people were subjected to a Taser application, and in the other 46 incidents only one person was subjected to a Taser application).

### People subjected to a Taser application

Of the 50 people subjected to a Taser application:

- 48 (96%) were male and 2 (4%) were female.
- 31 (62%) were Caucasian, 5 (10%) were Middle Eastern and 5 (10%) were Aboriginal and Torres Strait Islanders.
- 17 (34%) were between the ages of 18–29, and 15 (30%) were between the ages of 30–39. One was under 18 years old.
- 34 (68%) were identified as having mental health issues.
- 26 (52%) were identified as having a history of drug and alcohol abuse or were considered likely to have been under the influence of alcohol at the time they were subjected to a Taser application.

### Types of incidents where a Taser was used

Of the 48 incidents where a Taser was used, 18 (38%) involved armed and dangerous people, 17 (35%) involved intervening in suicide attempts, 5 (10%) were sieges, and 3 (6%) were drug-related. The majority of incidents occurred in homes, with 32 of the 48 incidents (67%) where a person was subjected to a Taser application occurring in either a house or apartment.

In 47 of the 48 incidents (98%), the person subjected to the Taser application was armed, or thought by police to be armed, with one or more weapons (most commonly knives and firearms). In 19 of the 48 incidents (40%) where police used a Taser they also used additional weapons, most commonly OC spray or fogger.

### Use of a Taser during incidents

During the 48 incidents, Tasers were used at least 67 times. This includes 10 incidents where a person was subjected to two Taser applications, and four incidents where a person was subjected to three Taser applications.

Of the 46 incidents, where the mode of Taser application is known, in 26 incidents (57%) the Taser was used in probe mode only, in 13 incidents (28%) the Taser was used in drive-stun mode only, and in 7 incidents (15%) the Taser was used in both probe and drive-stun mode.

Police rated the use of the Taser as effective in 35 of the 48 incidents (73%). In four incidents (8%) the use of the Taser was rated as ineffective and in six incidents (13%) police rated the first Taser use as ineffective, but a subsequent use of the Taser as effective. In three incidents (6%) it was unclear whether the Taser was effective.

### Injuries, deaths and medical attention received

At least 37 (74%) of the people subjected to a Taser application were known to have been injured during the incident. However, most of the injuries were not as a direct result of the Taser application. Forty-six (92%) people subjected to a Taser application received medical attention following the incident. In two incidents police officers were subjected to the effects of the Taser application.

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During our analysis of police records we became aware that one person had died twelve days after being subjected to a Taser application. During the incident, the man was subjected to a number of Taser applications. The first application, in probe mode, caused the man to fall back, however it failed to have proper effect and the man continued to aggressively resist police. The second application, in probe mode, failed as the darts did not make contact with the man. The third application, in drive-stun mode, was made once the man was lying on the floor. It was effective and police were able to handcuff the man.

The man had a number of health problems so it is unclear what role, if any, the Taser application played in his death. According to the man's death certificate, the cause of death was a heart attack. The death certificate also made reference to the fact that the man had long term heart disease, a thyroid problem, Hepatitis C, Schizophrenia and was a heavy smoker. The death certificate and police records relating to the death did not mention that the man had been subject to a Taser application twelve days earlier.

## Major findings

Overall, the evidence suggests that use of Tasers by the NSW Police Force specialist units to manage high risk incidents has been operating reasonably well, and Tasers appear to have been a useful option for officers in the specialist units to achieve effective resolution of dangerous and high risk matters. We are unaware of any instances where a Taser was used in clear contravention of legal and policy requirements, and from the material we have examined, it appears that in most of the incidents where the specialist units used Tasers, they were used in a reasonable manner, and an effective resolution to the incident was achieved by the officers involved. In making this finding, we note that:

- we have identified a number of inadequacies in the clarity and comprehensiveness of the policies governing police use of Tasers,
- we were not provided with comprehensive information about all incidents where Tasers were used,
- the information provided to us by police contained some inconsistencies, and
- we were not able to independently verify the information provided by police as, to date it has not been police practice to make use of Taser accountability mechanisms.

As of 2 October 2008, trained and certified NSW Police Force general duties officers, acting as duty officers and supervisors, are authorised to use Tasers. As a consequence of the roll-out Tasers will no longer be limited to a small number of highly experienced officers who work together, in small groups, and receive the same training. Instead, over 2,000 officers from around NSW, who work in very different operational environments will be authorised to use Tasers.

The risks of using Tasers are far higher when used by general duties officers compared to specialist units given that general duties officers receive significantly less training about managing high risk incidents, and they do not work in a team environment. In order to ensure that Taser use is safe, effective and consistent it will be imperative for these officers to receive clear, comprehensive and consistent guidance about Taser use. In addition, a requirement for comprehensive record keeping will enable use of Tasers to be monitored, and issues to be addressed as they arise.

## Recommendations

### Education and training

We have made a number of recommendations to improve the comprehensiveness of training provided to officers about Tasers. In particular, we are of the view that the NSW Police Force is overly reliant on information provided by Taser International (the weapon manufacturer) and that more comprehensive information should be integrated into the training course about Tasers.

In addition, we feel that officers (including those not authorised to use a Taser) should be provided with further training about how to effectively back-up and support an officer using a Taser, and appropriate procedures for gaining control of a situation if a Taser does not operate effectively.

We are also of the view that officers authorised to use Tasers receive training about mental health issues, including the most effective ways to communicate with people thought to be suffering from mental illness, and the most effective ways to de-escalate situations involving mentally ill people who are behaving in a violent or aggressive manner.



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## Standard Operating Procedures

At present, the TOU and SPSU are not guided by standard operating procedures (SOPs) that specifically govern use of Tasers. Instead, the SOPs used by these units cover less lethal tactics generally. PORS has SOPs that specifically govern Taser use, and similar SOPs have recently been developed for general duties officers authorised to use Tasers. However, there are a number of differences between these documents.

We are of the view that Taser specific SOPs should be developed for all officers within the NSW Police Force authorised to use Tasers. This is because Tasers have particular strengths and weaknesses, they have operational limitations and are of particular risk when used in a certain way or in certain circumstances. For maximum safety and effectiveness of use, it is important that officers have information about these matters readily available to them in a comprehensible and easily accessible format.

We are of the view that maximum simplicity, consistency and accessibility would be achieved if a single set of SOPs was developed to regulate Taser use by all officers within the NSW Police Force who are authorised to use Tasers, including those in different specialist units and general duties officers. This approach would make it easier for officers seeking information or guidance about Taser use, it would simplify and streamline education and training about Taser use, and ensure greater consistency of reporting across the units. It would also mean that when SOPs were reviewed and updated to reflect current information or lessons learnt operationally, this information would be conveyed to all units at the same time.

Alternatively, if the NSW Police Force continues to utilise multiple SOPs, we are of the view that all SOPs governing Taser use should be made as consistent as possible and be regularly updated.

There are a number of areas where in our view NSW Police officers would benefit from greater information being included in the SOPs regulating Taser use. Providing police with comprehensive information about relevant factors will assist them to make the best decisions possible about how to safely and effectively resolve difficult and often dangerous situations in the field. We have therefore recommended that a number of issues be specifically detailed in the SOPs. In particular the SOPs should provide:

- That officers are not authorised to subject a person to a Taser application unless that person is violently confronting or resisting police. Taser use by an officer other than in such circumstances may be subject to management action.
- That when a person has been subjected to a Taser application, officers are to explain to the person that there may be health risks associated with the application, and offer the person a medical assessment. Records are to be kept about whether the person receives medical attention, and whether medical personnel are informed that the person was subjected to a Taser application.
- Further guidance to officers about if and when it is appropriate to subject the following people to a Taser application: people with mental illness; children; pregnant females; elderly people; people affected by drugs and/or alcohol; people with a heart condition or implanted defibrillators; and Indigenous Australians.
- Further guidance to officers about: when it is (and is not) appropriate to subject a person to multiple or prolonged Taser applications; if and when it is appropriate to use a Taser in drive-stun mode; and more comprehensive information about potentially hazardous environmental factors which must be considered prior to using a Taser.

## Accountability mechanisms

We have made a number of recommendations to improve the accountability of officers using Tasers. In particular, it is recommended that:

- All Taser dataport download records be downloaded and audited on a regular basis.
- As resources permit, Taser Cam audio-visual recording devices be fitted to the Tasers used by the specialist units, as well as to those used by general duties officers.
- Records about Taser use be made more comprehensive and consistent, ensuring officers report instances of Taser use where the weapon has been drawn, aimed or sparked as a deterrent, as well as where a Taser is used in probe or drive-stun mode.
- The NSW Police Force report annually about police use of Tasers.
- The NSW Police Force continue progressing the development and establishment of a use of force register as a matter of priority.

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## Further review of police use of Tasers

We are of the view that it would be of significant benefit for the NSW Police Force use of Tasers to be subjected to further monitoring and evaluation for a two year period. This is because:

- We support police continuing to use Tasers only on the basis that training, policies and procedures, and accountability mechanisms are improved in a timely manner.
- The NSW Police Force is rolling out use of Tasers to general duties police officers. Use of Tasers in this context is considered to be of higher risk, than when used by specialist units.
- There remains significant dissent about whether Tasers can affect the cardiac rhythms of people subjected to a Taser application, and questions remain about the safety of using Tasers against people in vulnerable population groups, particularly when a Taser is applied for a prolonged period, or multiple times.
- In line with the Canadian Commission for Public Complaints against the RCMP, we are of the view that police use of the Taser is 'very much a public policy issue, and ... the public has a role to play in shaping how the police use the weapon'.<sup>1</sup>

Therefore we have recommended that there be a further independent review of the use of Tasers by the NSW Police Force for a two year period from the time general duties officers became authorised to use the weapon.

In addition, we are of the view that the NSW Police Force should refrain from further extending Taser use by officers, for a period of at least two years. Until that time, when more will be known about how, why and how often officers use Tasers in an operational setting the risks of further extending use of the weapons would be too great.

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## Endnotes

<sup>1</sup> Commission for Public Complaints Against the Royal Canadian Mounted Police (Canada), *RCMP Use of the Conducted Energy Weapon (CEW): Final Report*, 12 June 2008, Executive Summary.

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# Glossary

ACPO	Association of Chief Police Officers (United Kingdom)
ACT	Australian Capital Territory
AFID tags	Anti Felony Identification Device tags are confetti like tags that identify the serial number of a Taser which has been used
ATSI	Aboriginal or Torres Strait Islander
CED and CEW	Conducted Energy Device and Conducted Energy Weapon are alternative names for Tasers
CET	Commissioner's Executive Team (NSW Police Force)
CMC	Crime and Misconduct Commission (Queensland)
COPS	Computerised Operational Policing System (NSW Police Force)
CVD	Cardiovascular disease
'drive-stun' mode	When a Taser is used by applying the weapon directly against a person
DOMILL	DSAC sub-committee on the medical implications of less-lethal weapons (United Kingdom)
LAC	Local Area Command (NSW Police Force)
MHIT	Mental Health Intervention Team (NSW Police Force)
NSW	The state of New South Wales, Australia
NSWPF	NSW Police Force
OC spray	Oleoresin capsicum spray, also known as capsicum spray
OHS	Occupational Health and Safety
OSTTU	Operational Safety Traffic and Training Unit (NSW Police Force)
PORS	Public Order and Riot Squad (NSW Police Force)
Probe mode	When a Taser is used by firing a cartridge of barbed projectiles (darts) at a person
PSNI	Police Service of Northern Ireland
RCMP	Royal Canadian Mounted Police
Siege	A police operation in which an armed person in a dwelling or room is surrounded, with the intention of compelling the person to surrender
SMIT	Six Minute Intensive Training (NSW Police Force)
SOPs	Standard operating procedures
Specialist units	This term refers to the NSW Police Force, Tactical Operations Unit, State Protection Support Unit, and Public Order and Riot Squad, that is, the units within the NSW Police Force that are currently authorised to use Tasers
SPG	State Protection Group (NSW Police Force)
SPSU	State Protection Support Unit (NSW Police Force)
STAR squad	Special Task and Rescue Squad (South Australia Police)
Subjected to a Taser application	We use this term to describe incidents where police have used or attempted to use a Taser against a person in order to incapacitate them, so that they can be restrained. When we use this expression we are referring to instances where a Taser was used one or more times, in probe or drive-stun mode, regardless of whether the Taser application(s) was effective
TOU	Tactical Operations Unit (NSW Police Force)
UK	United Kingdom
USA	United States of America

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# Chapter 1.

## Introduction

It is the mission of the NSW Police Force to work with the community to reduce violence, crime and fear.<sup>2</sup> This is a difficult, unpredictable and often dangerous role. For example, in 2006–07 the NSW Police Force received 2,631 workers' compensation claims for injuries sustained on duty.<sup>3</sup> In 2001 the Australian Institute of Criminology noted that about one police officer a year is murdered, and 'perhaps 10 per cent of officers each year are victims' of assault, usually involving fists, body fluids, syringes or bottles.<sup>4</sup>

Police officers are provided with a range of powers and tools to detect criminal offences, apprehend offenders and reduce unlawful behaviour. In many instances, communication and negotiation are the most effective tools that police have to resolve situations where people are acting in an anti-social or illegal manner. In recognition of this, the concepts of containing a situation and negotiating with the person are the central platforms on which the NSW Police Force tactical response model is based.<sup>5</sup>

However, there is no doubt that police are often placed in situations where individuals continue to act in a threatening, aggressive or unpredictable manner despite attempts by officers to engage in dialogue and issue instructions. In these circumstances use of force, in a way that minimises damage and injury to officers, the individual or members of the public, may be the most efficient and effective way for police to resolve a situation.

While it is appropriate and necessary that police have the power to use force in some circumstances, there is significant public interest in ensuring that when force is used, this occurs in a way that is reasonable and proportionate. It is also important that any weapons used by police are, as far as possible reliable, effective, and do not subject officers and members of the public to unreasonable or unintended risks of harm.

It is also crucial that there are clear and comprehensive laws, policies and procedures to inform officers about the appropriate use of the weapons and tactics available to them. In order to be effective, this legal and policy framework must be supported by a comprehensive education and training regime. In addition, reporting and auditing mechanisms must be in place to ensure that when force is used, officers are accountable, complaints against them can be thoroughly investigated, and systemic issues can be monitored. These factors help to ensure police use of force is proper, reasonable, fair and effective.

Our office receives many complaints each year about the use of force by police, with 1,252 allegations of excessive use of force made to our office in 2006–07.<sup>6</sup> In addition, in recognition that this is an area of significant public interest, we have on occasions decided to investigate issues surrounding police use of force, when we have not received specific complaints about a particular issue, weapon or tactic. For example, in 1999–2000 we conducted an own-motion investigation into police use of oleoresin capsicum (OC) spray.

In mid-2006 our office began examining the use of Tasers by the NSW Police Force. Tasers are a weapon designed to incapacitate or subdue a person by administering an electric shock.

Tasers were provided to the NSW Police Force Tactical Operations Unit (TOU) and its regional counterparts, the State Protection Support Units (SPSU) in early 2002. In 2007 they were issued to another specialist unit, the Public Order and Riot Squad (PORS). Between May 2002 and December 2007, police officers in NSW used Tasers in an operational context on 48 occasions. In these incidents the Tasers were used by specially trained officers as a less lethal force option for high risk policing incidents, including sieges, arrest of particularly violent people, suicide interventions, and restraint of people with mental illness.

We commenced a formal investigation into the NSW Police Force use of Tasers on 5 December 2007. The purpose of our investigation was to determine whether the policies, procedures and training requirements around police use of Tasers are appropriate and comprehensive; whether the use of Tasers by officers complies with legal and policy requirements, and is reasonable and effective; and whether there are any issues or concerns with Tasers or their use by officers.

### 1.1. NSW Ombudsman investigation

Section 159 of the *Police Act 1990* provides:

- (1) *If it appears to the Ombudsman that any conduct of a police officer could be, but is not, the subject of a complaint, the Ombudsman may make the conduct the subject of an investigation under the Ombudsman Act 1974.*



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(2) *The Ombudsman may make preliminary inquiries for the purpose of deciding whether to make any such conduct the subject of an investigation under the Ombudsman Act 1974.*

In mid 2006 we began conducting informal inquiries regarding the use of Tasers by the NSW Police Force. This was not in response to a complaint made to our office, rather due to:

- the high public interest in ensuring police use of force is reasonable and proportionate,
- the fact that the NSW Police Force had been using Tasers for close to five years without a substantial review of their use,
- concerns raised in studies and the media about the possible medical risks to people subjected to electric shock by Tasers, including the possibility of Taser related deaths, and
- concerns raised in studies and the media about risks posed by the increasing use of Tasers by law enforcement agencies worldwide, such as the potential for unjustified and excessive use of Tasers and inadequate regulation of Taser use.

As part of our preliminary inquiries we asked police to provide us with information about:

- the education and training provided to officers authorised to use Tasers, including relevant standard operating procedures,
- use of Tasers by officers,
- weapon storage and accountability measures,
- management of information and record-keeping, and
- the processes by which the NSW Police Force evaluates its Taser use and Taser use in other jurisdictions, on an ongoing basis.

The NSW Police Force provided information regarding the number and model type of Tasers held by police, the police units where the weapons were used, draft Standard Operating Procedures (SOPs) governing the use of Tasers, and some records relating to each operational firing of the weapon between 2002 and 2007.

Having regard to the public interest about use of force by police officers and the issues arising from our initial inquiries, we decided to conduct a direct investigation into the NSW Police Force use of Tasers. As required by legislation, we informed the NSW Police Force of this decision on 5 December 2007, by way of a Notice of Investigation under section 16 of the *Ombudsman Act 1974*.

For the purpose of our investigation we required several NSW Government departments to provide us with documents and information under section 18 of the *Ombudsman Act 1974*. We sought information and records about those incidents where Tasers were used by police. We also sought information to determine whether medical attention was provided to people who had been subjected to a Taser application.

## **1.2. Methodology**

This section provides more information about the records and information we sought to obtain from NSW Government departments, and outlines the additional research methods we undertook during the course of our investigation.

### **1.2.1. Literature Review**

In September 2007 we conducted an initial review of available literature regarding Tasers, focusing on Taser use in Australia, the United Kingdom, New Zealand, Canada and the United States.

The material examined included media items, journal articles, government-commissioned reports and studies, websites, parliamentary inquiries, and other published material. Throughout the investigation period, we continued to examine newly published and existing literature and media items as we became aware of them.

### **1.2.2. Provision of information by the NSW Police Force**

#### **1.2.2.1. Notices to produce information and documents**

During the course of our investigation we issued three notices under section 18 of the *Ombudsman Act 1974*, requiring the NSW Police Force provide information and documents to us.<sup>7</sup>

On 5 December 2007 we issued a notice requiring police provide information and records about all incidents where officers had used Tasers, details of Taser training provided to police, and information on proposed Taser trials. We also

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requested advice about any arrangements the NSW Police Force had made to obtain information about the use of Tasers by other law enforcement agencies. The NSW Police Force provided us with its response on 11 February 2008, in the way of a number of statements of information in response to our questions, and a range of documents. These documents included all records related to the use of the Taser, such as Less Lethal User Report Forms and TOU Operational Incident Forms, as well as copies of internal correspondence and minutes of meetings.

On 26 March 2008 we issued a second notice requiring police to provide additional information relating to the incidents where police used Tasers. The NSW Police Force provided us with its response on 14 May 2008 including outstanding records documenting incidents involving the use of Tasers. We subsequently received video footage of one of the Taser incidents, as well as photographs taken in relation to another Taser incident.

On 19 May 2008 we issued a notice to the NSW Police Force to obtain details about the roll out of Tasers to general duties officers, as announced on 18 May 2008. We received a response on 6 June 2008 and were provided with a number of documents relating to the decision to extend Taser use within the Force, including a draft review of the health and safety issues associated with the use of Tasers by NSW Police officers, relevant approval documents, and procurement information.

#### 1.2.2.2. COPS downloads

The NSW Police Force Computerised Operational Policing System (COPS) is a database used by police to record, assess and analyse crime information and intelligence. For the purpose of our investigation, we accessed COPS in order to obtain further information about the incidents for which police had provided us with information.

There are many different types of COPS records. For this review we predominantly examined:

- event records — records of incidents at which police were in attendance,
- custody records — records completed by custody officers regarding the time a person spends in police custody, including any medical treatment provided,
- charge records — records detailing offences a person has been charged with and the outcome of legal proceedings, and
- information reports — records containing intelligence information about a person, place and/or entity.

#### 1.2.3. Provision of information by the Ambulance Service of NSW

On 5 December 2007 we issued a notice to produce documents and information under section 18 of the *Ombudsman Act 1974* requiring the Ambulance Service of NSW to provide ambulance records for incidents involving people who had been subjected to a Taser by police. This request was made to gain further information about the injuries and medical attention received by people during and after a Taser application. On 11 March 2008 we issued a second notice under section 18 to the Ambulance Service. This notice was issued to obtain further information because the material we had previously received appeared incomplete and we had also become aware of additional incidents where Tasers had been used.

In total, the Ambulance Service provided us with records for 38 of the incidents involving police use of Tasers. In one further incident, the Service was not able to provide us with a copy of the ambulance attendance record. However, we were provided with a summary of information regarding treatment of a person who was subjected to a Taser application by ambulance officers.

#### 1.2.4. Provision of information by Area Health Services

On 4 April 2008 we issued a notice to produce documents and information under section 18 of the *Ombudsman Act 1974*, to the following Area Health Services:

- Sydney West,
- Sydney South West,
- South Eastern Sydney and Illawarra, and
- North Sydney and Central Coast.

We sought to obtain information about instances where an ambulance did not attend the scene, or where it was not clear to us whether an ambulance attended the scene, and where it was possible that a person subjected to a Taser application was taken directly to hospital by police following the incident.

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### 1.2.5. Visits to hospitals

On 29 and 30 May 2008 officers from the Ombudsman visited hospitals in the South East Sydney and Illawarra Area Health Service region and the Sydney West Area Health Service region. The purpose of these visits was to inspect records relating to two people who had been admitted to hospital after being subjected to a Taser application during a police operation.

### 1.2.6. Provision of information by the NSW Registry of Births, Deaths and Marriages

On 4 June 2008, we issued a notice to produce documents under section 18 of the *Ombudsman Act 1974*, to the NSW Registry of Births, Deaths and Marriages to obtain the death certificate of a person who died two weeks after being subjected to a Taser application.

### 1.2.7. Information from other jurisdictions

We obtained information about the use of Tasers by law enforcement officers in other jurisdictions in Australia and overseas. In particular we sought information about the purposes for which Tasers are used in other jurisdictions, education and training requirements relating to Taser use, and any operational or policy issues relating to use of these weapons.

On 12 May 2008 we wrote to the Police Commissioners in all states and territories in Australia requesting information about:

- guidelines, policies or standard operating procedures which govern the circumstances when Tasers can be utilised, and by whom,
- guidelines, policies or SOPs which govern the actual use of Tasers, including actions to be taken before and after use (for example, warnings to be given, medical attention to be provided),
- guidelines, policies or standard operating procedures which govern storage of Tasers, record keeping about use of the weapon or other accountability measures if available,
- details of any training conducted, including what it involves and who it is conducted by, and
- other information which may be considered useful for the purpose of our investigation.

All of the states and territories responded, and we were provided with relevant guidelines and SOPs.

### 1.2.8. Consultation with the NSW Police Force

On 24 October 2007 officers from the Ombudsman attended the Sydney Police Centre and met senior police involved in the management of police units who use Tasers and a number of officers responsible for using Tasers. During the meeting we observed a demonstration of how a Taser would be used during a high risk incident.

On 19 August 2008 a copy of our provisional report was forwarded to the Commissioner of Police. We asked for feedback about the provisional report by 16 September 2008, including comments on the suggested recommendations.

We note that at the time we provided our provisional report to the NSW Police Force, the SOPs governing general duties officers' use of Tasers had not been finalised, general duties officers had not yet received training about using Tasers, and Tasers had not yet been provided to Local Area Commands (LACs). Therefore our provisional recommendations included issues we felt should be included in relevant training and policy documents.

A response was received from the NSW Police Force on 3 October 2008, the day after Tasers were authorised to be used by trained and certified general duties officers. At this time we obtained a copy of the finalised SOPs governing Taser use by general duties officers.

We have made a number of amendments to our provisional report in response to examining the SOPs governing Taser use by general duties officers, and the comments made by the NSW Police Force about the provisional report. In particular, we have amended and deleted some of our provisional recommendations. Where appropriate, we have included the comments of the NSW Police Force in this report.

### 1.2.9. Research limitations

For the purpose of our investigation we relied heavily on information provided to us by the NSW Police Force. In many instances it was difficult for us to analyse this information because:

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- some records we received were incomplete,
  - some reports and records we received were inconsistent,
  - different units within the NSW Police Force have different reporting requirements and forms,
  - reporting forms changed over time, and
  - information provided by police could not be independently verified.

We have included more information about these issues throughout this report.

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## Endnotes

<sup>2</sup> *Police Act 1990*, s.6(1).

<sup>3</sup> This equates to 17.23 per 100 staff. *NSW Police Force Annual Report 2006–07*, p.50.

<sup>4</sup> Australian Institute of Criminology, Mayhew, C., *Occupational Health and Safety Risks Faced by Police Officers*, 2001, No. 196, February 2001, p.2.

<sup>5</sup> NSW Police Force, *Tactical Options Model*, June 2007.

<sup>6</sup> This equates to 11% of allegations made about police. NSW Ombudsman, *Annual Report 2006–07*, p.56.

<sup>7</sup> Section 18 of the *Ombudsman Act 1974* provides the Ombudsman with the power for the purposes of an investigation to require a public authority to provide a statement of information, any document or thing, or a copy of any document.



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# Chapter 2.

## Background

### 2.1. Use of force in policing

In all jurisdictions throughout Australia and overseas, police rely on a range of equipment, weapons and legal powers to effectively enforce the law and apprehend people suspected of committing offences. The powers and tools available to officers vary enormously between jurisdictions. For example, in some jurisdictions police officers are predominantly unarmed. Others are provided with a range of weapons which they are authorised to use in certain circumstances. Within each individual police force there are also differences in the equipment and weapons that particular officers are authorised to use depending on factors such as rank, role, or attachment to a particular unit.

In some jurisdictions it is common for all police officers to carry a firearm, and in certain circumstances, to use it with the intention of applying lethal force. In addition, officers of most forces are provided with one or more weapons which are intended to incapacitate or subdue a person who is acting in an aggressive, threatening or non-compliant manner, without resorting to lethal force. Such devices are known as 'less lethal' weapons, and include:

- Incapacitant or irritant aerosols, which are generally available in the form of spray, foam, mist, and fog, and include:
  - Oleoresin capsicum spray (OC or capsicum spray), which is based on capsaicin, a naturally occurring oily resin. It causes eyelids to spasm/shut, blood vessels to dilate, bronchial tubes to constrict, mucous membrane to secrete profusely, and blood to rush to the upper body, weakening extremities.
  - CS spray, which is an irritant rather than an incapacitant when used in aerosol. It causes profuse tearing, severe sense of burning to skin, restricted sense of breathing, and secretions from mucous membranes.<sup>8</sup>
- Batons — made of aluminium, steel or synthetic materials, some of which are expandable.
- Tactical dogs — such as those trained in locating property, apprehending people, and protecting police officers and members of the public.
- Impact munitions — such as beanbag rounds or plastic baton rounds. These weapons are shot from a distance, usually from a shotgun or gas launcher, and are designed to stun or incapacitate a person.<sup>9</sup>
- Ferret rounds — the round is fired from a shotgun, and releases CS gas after penetrating a barrier, such as a glass window.

The United States National Institute of Justice has argued that less lethal weapons are valuable for use by law enforcement officers when:

- lethal force is not necessary,
- lethal force is justified and available for backup but lesser force may subdue the aggressor, and
- lethal force is justified but its use could cause collateral effects, such as injury to bystanders or life-threatening damage to property and the environment.<sup>10</sup>

While there is significant dissent about the appropriate use of less lethal weapons, particularly in instances where lethal force is not considered appropriate, some overarching guidance on this issue is provided by the United Nations endorsed *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which states:

2. Governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons.

3. The development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled.

4. Law enforcement officials, in carrying out their duty shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.

5. *Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:*
- (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;*
  - (b) Minimize damage and injury, and respect and preserve human life;*
  - (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;*
  - (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.<sup>11</sup>*

## 2.2. The Taser

A conducted energy device (CED) (also known as an electro-muscular incapacitation device) is designed to administer an electric shock on contact. When used, such devices, or weapons, are intended to cause the incapacitation and/or submission of a person.

For the purpose of this report, the term 'Taser' is used to describe CEDs.<sup>12</sup> This is because the CEDs used by police in all states of Australia, and extensively in other parts of the world, for law enforcement purposes, are the Advanced Taser M26, which was released in 1999 (hereafter the 'M26') and the Taser X26 which was released in 2004 (hereafter the 'X26').<sup>13</sup> These weapons were developed by Taser International, a corporation based in the United States, which began to sell CEDs in 1993.

The Taser looks like a pistol and operates in a similar way in that a trigger is used to operate the weapon. A red laser sight assists the person firing the weapon to aim accurately.

There are two modes in which a Taser can be used. In the first, known as 'probe-mode', the Taser is used by firing a cartridge of barbed projectiles (darts) at a person. There are a range of cartridges available, which determine the distance the darts will be fired. The NSW Police Force currently uses cartridges which fire the barbs up to 6.4 metres (21 feet).<sup>14</sup> The darts are projected by compressed nitrogen within the cartridge, and are connected to the Taser gun by fine, insulated copper wires. Each cartridge is single-use only, and must be removed or replaced after being discharged in probe-mode.

If the darts lodge in the skin or clothing of a person, a 50,000 volt electric shock will be discharged into their body by a series of short, repetitive electrical pulses, which prevent effective muscular activity (known as electro-muscular disruption).<sup>15</sup> Lewer and Davison explain:

*Whilst the barbs remain attached this discharge can be repeated multiple times by pulling the trigger again (and again). The immediate effects are debilitating. The current causes involuntary muscle contraction and extreme pain. The victim completely loses control over their body and falls to the floor until the current stops.<sup>16</sup>*

A Taser can be used in 'drive-stun' (also known as 'touch-stun') mode, where it is applied directly to the body of the person.<sup>17</sup> However, the effectiveness of the Taser is reduced when used in drive-stun mode, and it does not have the same electrical effect on the central nervous system. A United Kingdom Home Office report on Tasers published in 2002 reported that '[t]he electricity will only act over a small area when used in touch-stun mode, causing pain and debilitation rather than complete incapacitation'.<sup>18</sup> In other words, when used in drive-stun mode, muscle disruption does not occur, and officers rely on pain in order to obtain a person's submission or compliance.

When a Taser trigger is depressed the Taser generates an electrical charge that lasts for five seconds once the darts or weapon have made contact with the person or another object. However, the current can be stopped by engaging the safety lever.<sup>19</sup> In addition, the person activating the Taser has the option of extending the initial current beyond five seconds,<sup>20</sup> or applying the current in multiple five second bursts.

If a Taser cartridge is unloaded, and the operator depresses the trigger while the safety switch is off, this will cause an arcing of electricity between the Taser probes.<sup>21</sup> Such a spark demonstration is loud and can be used by the operator in an attempt to gain a person's compliance without subjecting them to an electrical charge.

### 2.2.1. The M26 and X26

The NSW Police Force utilises both M26 and X26 Tasers. The newer X26 model is marketed as smaller, lighter and with greater incapacitating power than the earlier M26 model.<sup>22</sup> Other differences between the two, include:

- The X26 uses a custom lithium battery with a longer battery life than the AA alkaline batteries used in the M26.

- The electrical pulse is discharged differently in the M26 and X26, and the 'direct incapacitating effect of the X26 has been estimated to be 5% greater than that of the M26 due to the more optimal pulse duration.'<sup>23</sup>
- The X26 follows a 'constant current' design rather than the M26's 'constant voltage' design, which means that its effects are more predictable, and its battery consumption is much lower.<sup>24</sup>
- The X26 contains a display panel which illustrates remaining energy, burst time (the time period the trigger is depressed), warranty expiration, unit temperature, illumination status and current time and date. The M26 also has a display panel which shows that the laser is on, and the device is capable of firing, but does not indicate if there is sufficient battery power to fire or discharge.

Both the M26 and X26 have inbuilt accountability measures. For example, both models store information about each time the Taser is used, which can then be downloaded to a computer. The M26 is able to store information relating to up to 585 uses of the Taser including date and time. The X26 is able to store information relating to up to 1,500 uses of the Taser including time, date, burst duration, unit temperature and remaining battery charge.

In addition, both the M26 and X26 release 30–40 confetti-like Anti Felony Identification Device (AFID) tags when discharged. Each tag contains the serial number of the cartridge from which it was discharged, meaning the particular Taser which has been used can be identified.

Taser International also markets an audio-video recording device 'Taser Cam' which can be attached to the X26. This recorder is activated when the safety switch is disengaged (that is, the Taser is ready to fire), and allows footage prior to, during and after the use of an X26 to be recorded, and downloaded.<sup>25</sup>

## 2.3. Advantages and limitations of the Taser

### 2.3.1. Advantages of the Taser

Law enforcement agencies initially introduced Tasers to provide officers with an option that they could use in circumstances where they would otherwise use lethal force. In short, Tasers were considered a weapon that would save lives.<sup>26</sup>

In situations where less lethal weapons are considered appropriate, there are a number of advantages of the Taser compared to other less lethal weapons, such as batons and OC spray. One of the primary advantages of the Taser is that, when used in probe mode, it does not rely on pain to obtain a person's compliance. This means that an individual who is impervious to pain or demonstrating 'superhuman' strength because of factors such as mental illness or intoxication, should be able to be incapacitated by a Taser for the purpose of being restrained. This is due to the weapon's effects on the central nervous system.

Another advantage of the Taser is that, because it is a weapon which can be used at a distance of several metres, police should not have to engage in close combat with a person who they are trying to subdue, until the person has been incapacitated by the electric current, or is willing to cooperate (possibly in order to avoid being subjected to an additional Taser charge). This means that there is less likelihood of an officer being injured while trying to subdue a person acting in a threatening or aggressive manner.

It has also been reported that many incidents have been successfully resolved, with uncooperative people deciding to comply with police directions, as a result of police officers threatening to use a Taser, or 'sparking' the device by depressing the trigger with the cartridge removed.<sup>27</sup> This may contribute to the fact that some police forces report reductions in uses of force against police after Tasers have been introduced. For example, the Orange County Sheriff's Office, in the United States, has reported a reduction of 50% of officer injuries following the introduction of Tasers in 2000.<sup>28</sup> In addition, United Kingdom police have reported that since the start of a Taser trial in some areas, there has been a 41% reduction in the days lost to police due to assault and associated injuries.<sup>29</sup>

Further, Ventura County, California, USA, recently reported a 72% reduction in injuries during the first full year in which the police were armed with Tasers.<sup>30</sup> We note, however, that an independent risk assessment commissioned by the NSW Police Force, states that 'the issue of CEDs in [Western Australia] to stations has actually resulted in an increase rather than a decrease in police assaults.'<sup>31</sup> This conflicts with reports from the Police Union in that state which claim that since Tasers were introduced the number of assaults on its members have halved.<sup>32</sup>

Other advantages of the Taser compared to other less lethal weapons are that in most instances when a Taser is used, pain is not felt by the person subjected to the Taser application once the electrical charge finishes. Similarly, most people do not suffer more than superficial injuries during a Taser charge. In contrast people who suffer the effects of OC spray need to be 'decontaminated' and may feel pain for minutes or hours, and those who have been subdued with batons can suffer longer term injuries such as bruises and broken bones.<sup>33</sup>



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### 2.3.2. Limitations of the Taser

A number of concerns about Taser use have been identified in the literature about the weapon, and as a result of use of the weapon in other jurisdictions. These are discussed in Chapter 3.

During our investigation a number of other operational limitations of the Taser have been identified. It is now broadly accepted that in circumstances where officers would justifiably resort to using a firearm with the intention of applying lethal force, Tasers are often not an appropriate substitute weapon. For example, in circumstances where a Taser is used in response to a person wielding a firearm, should the Taser fail to operate effectively, the person may still be able to fire his or her weapon. In addition, if the Taser charge is effective and the person suffers an electric shock, the resulting involuntary muscle contraction may lead to the person unintentionally firing the weapon.

The Taser is not an appropriate weapon to use if there are flammable substances located nearby. This is because the spark from the Taser charge could ignite the substance and cause a fire. Similarly, Tasers should not be used in conjunction with aerosol sprays, if they are flammable,<sup>34</sup> nor if a person is suspected to be a suicide bomber, with explosives strapped to their body because of the 'incredible risk' that the bomb may detonate.<sup>35</sup>

Further, Tasers are not considered a suitable weapon to diffuse tensions and stem anti-social behaviour when there are large crowds of people present, such as at riots or demonstrations. A spokesman for the NSW Police Association has commented that 'Tasers are inappropriate for use in protest or riot situations given they are known to escalate violence and antagonise the relationship between police and protestors'.<sup>36</sup> In addition, the logistics of effectively aiming and firing a Taser in probe mode at a person, and subsequently restraining them are likely to be very difficult when there are numerous, agitated people nearby. The wires on the Taser are very fine and easy to break, and can easily become dislodged from the person or their clothing.

## 2.4. The effectiveness of the Taser

In the field, a variety of factors can affect whether a Taser will effectively subdue a person. In some instances, multiple shocks may be required in order to sufficiently subdue a person in order to effectively restrain them.

When fired in probe mode, a Taser may not subject a person to an electric shock, or may subject them to a lesser charge than will effect total incapacitation. This may result if any of the following occur:

- one of the darts misses the person,
- the person's clothing, in which one or both darts lodge, is too thick or loose,
- the darts lodge close together in an area with low muscle mass,
- there is inadequate battery charge,
- the wires break after the cartridge has been fired, or
- the Taser is shot at a person who is running away or falling, and although the darts connect with the subject, they are pulled out due to momentum.<sup>37</sup>

The British Columbia Office of the Police Complaint Commissioner summarised the findings of a number of reports that have examined the effectiveness of Tasers at incapacitating people.<sup>38</sup> These include:

- A study by the Joint Non-Lethal Weapons Human Effects Center of Excellence, which estimated that the likelihood of a Taser application causing complete electromuscular disruption was from 56 to 80%, with the chances decreasing the greater the distance between the person firing the Taser, and the subject. Partial electromuscular disruption was estimated at between 4 and 6%, again decreasing with distance.<sup>39</sup>
- A report by the Madison Police Department which found that out of 92 times Tasers were used, the device was successful in producing incapacitation 77% of the time.<sup>40</sup>
- An American study by the Orange County Sheriff's Office and the Florida Gulf Coast University which examined the effectiveness of various lower lethality options employed by police. This study found:

*[t]he TASER to be effective in 77–95% of the cases studied, with the effectiveness varying greatly between divisions. Specialized units had much lower failure rates (11%) than patrol (22%). ... Most significantly, the study found that the TASER had the highest level of de-escalation (subjects were less likely to fight harder against arrest) and provided a substantial deterrent effect even when not used.<sup>41</sup>*

In Australia, the Commissioner for Police in South Australia recently stated:

*"[The Taser] is a useful piece of equipment which can be used to prevent serious injury and harm but, and it is a big but, it doesn't work in every case because of the technology involved...*

*Our experience with the STAR [Special Task and Rescue] Group is that in 10 per cent of the cases it did not work and that was with a group of highly trained, highly disciplined specialists who used it in controlled situations.*

*"It is likely the success rate in a general duties environment will be even less than it was for the STAR Group".<sup>42</sup>*

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## Endnotes

- <sup>8</sup> CS is the common name for 2-chlorobenzalmalonitrile. It was discovered by two Americans, Ben Corson and Roger Stoughton, in 1928, and the chemical gets its name from the first letters of the scientists surnames.<http://thefreedictionary.com/CS+Gas>. Accessed 28 October 2008.
- <sup>9</sup> United States Department of Justice, National Institute of Justice, Impact Munitions Use: Types, Targets, Effects, October 2004, pp.1–2, <http://www.less-lethal.org/docs/60/NIJ-ImpactWeaponReport.pdf>. Accessed 20 February 2008.
- <sup>10</sup> U.S Department of Justice, National Institute of Justice, <http://www.ojp.usdoj.gov/nij/topics/technology/lesslethal/welcome.htm>. Accessed 8 September 2008.
- <sup>11</sup> *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, Adopted by the Eighth United National Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.
- <sup>12</sup> TASER® is a trademarked name of Taser International. However, the term and device existed before the company did. The name is an acronym derived from *Tom Swift and His Electronic Rifle*, one of Victor Appleton's Tom Swift Books. Kleinig, J., 'Ethical Constraints on Taser Use by Police', *Policing: A Journal of Policy and Practice*, 2007, Vol. 1, p.284.
- <sup>13</sup> According to media reports, the Queensland Police Service has recently called for tenders to supply CEDs, and Nioa, a private dealer of small arms, is seeking to provide Stinger S-200s (produced by United States Stinger Systems, a rival to Taser) to the Service. Robertson, J., 'Nioa Defence caught in Stinger-Taser crossfire', *The Courier-Mail*, 14 April 2008. <http://www.saa.org.au/newssaa/mediamonitor/april08/140408nioa-defence-caught-stinger-taser-crossfire.html>. Accessed 18 August 2008.
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# Chapter 3.

## Concerns about the Taser

As outlined in section 2.1, the *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, requires law enforcement agencies to carefully evaluate the development and use of less lethal weapons, and to ensure the use of such weapons is carefully controlled.

In some jurisdictions attempts were made to research and evaluate Tasers before a decision was made to adopt them for law enforcement purposes. However, the scope of such research and evaluation is highly variable, and concerns have been raised that generally:

- There has been inadequate research to enable adequate evaluation of the safety, effectiveness, utility and impact of Taser use by law enforcement agencies.
- The research into the impact of Tasers on vulnerable people, such as children, the elderly, people who are intoxicated, and those with physical or mental health conditions, is particularly inadequate.
- Much of the research which has been conducted into Tasers has been conducted by or on behalf of manufacturers of these weapons, or by people offered incentives by such companies, making the rigour and independence of such studies questionable.<sup>43</sup>

The main issues relating to Tasers are whether they are appropriate weapons to be used by police officers, and if so, under what circumstances they should be used. There appears to be universal agreement that there is a need to 'identify, develop, and evaluate new or improved devices and other technology that will minimise the risk of death and injury to law enforcement officers, suspects, prisoners and the general public'.<sup>44</sup> However, some stakeholders argue:

- a number of people have died following being subjected to an electric shock by a Taser, and others have sustained serious injuries, and
- while it is not always clear what role (if any) the Taser has played in such instances, there has not been sufficient research or evaluation into the effects of the Taser, particularly in relation to prolonged or multiple charges, or in relation to use of the Taser on vulnerable populations, to justify their use.

In light of these issues, concern has been raised by some commentators that:

- the number of police being armed with Tasers is increasing significantly,
- Taser use is not limited to incidents where lethal force might otherwise be authorised and/or justified, and
- the systems, policies and procedures about Taser use, in some jurisdictions may be inadequate, particularly in areas such as education and training, record keeping and accountability.

### 3.1. The risk of death following electric shock by a Taser

The Northern Ireland Policing Board has succinctly summarised:

*The most serious medical risk associated with the use of Taser is loss of life resulting from the discharge of the Taser's electrical charge. This is a controversial subject and the conclusions of scientific and medical research conflict. That there have been a number of sudden deaths reported after the use of Taser is not in doubt. How far the evidence has established a causal link between death and the use of Taser, either as a sole direct cause or as a contributory cause, is disputed.*<sup>45</sup>

As outlined by the Board, the issue of whether Tasers cause death or serious injury is extremely contentious. The research in this area is complex, and there is significant dissent amongst medical and scientific experts about the quality and validity of studies that have been conducted, and conclusions reached. As we have no medical expertise, we are not in a position to provide detailed assessments of, or conclusions about these issues. However, we have provided summaries of some of the research conducted, and general comments about issues raised.

#### 3.1.1. The risk of heart stimulation, cardiac arrhythmias and ventricular fibrillation

When an electric shock is administered to a person there is the possibility that it will cause electrical interference to the heart.<sup>46</sup> Cardiac arrhythmias are an abnormal heart beat including those that are too fast, too slow, or otherwise irregular, including ventricular fibrillation. This is:

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*An abnormal irregular heart rhythm whereby there are very rapid uncoordinated fluttering contractions of the lower chambers (ventricles) of the heart. Ventricular fibrillation disrupts the synchrony between the heartbeat and the pulse beat. ... It is life threatening.<sup>47</sup>*

Nanthakumar et al note that:

*Stimulation of the heart is a separate issue compared with induction of arrhythmia, as stimulation may happen only during discharge and may not be evident even immediately following the discharge. In contrast, induction of arrhythmia may relate to stimulation of the heart because, depending on pre-existing defects (e.g., a previous heart attack, drug intoxication), each person's heart may have a different susceptibility to life-threatening arrhythmia during stimulation.<sup>48</sup>*

Tasers are intended to stimulate only skeletal muscles and not internal organs such as the heart.<sup>49</sup> A number of studies have been conducted to determine whether Tasers in fact stimulate the heart, and whether a Taser charge can cause cardiac arrhythmias which can lead to death.

According to information on the Taser International website:

*The TASER CED cannot stop the heart. While it has brief high currents, just like a strong static electricity shock, the pulses are significantly too short in duration to affect the heart. Since the pulses are too weak to affect the heart a series of them will not affect it either.<sup>50</sup>*

The Northern Ireland Policing Board has summarised early research into Taser deaths conducted by Kornblum and Reddy. Their study involved analysing the deaths of 16 people, subsequent to being subjected to a Taser application, in Los Angeles between 1983 and 1987. The Northern Ireland Policing Board also outlined criticisms about this study. This research and critique are illustrative in that the issues and concerns raised then (in the early 1990s) have been raised repeatedly since, and continue to be relevant at the present time.

Of the 16 deaths that Kornblum (a former Chief Medical Examiner) and Reddy studied:

*All were males within the age range 20–40 years who had a history of abuse of controlled substances. All but three were under the influence of cocaine, phencyclidine (PCP) or amphetamine. All were behaving in a “bizarre or unusual fashion” but were unarmed. The study reported that “officers used Tasers to try to subdue the subject. In each case, what started out as a relatively benign situation escalated into a belligerent confrontation with the police and eventually resulted in the death of the suspect.”<sup>51</sup>*

The researchers found that: the time interval between Taser application and death ranged from 15 minutes to three days; between one and eight Taser dart wounds were present on each body; and a number of the deceased had injuries such as broken bones and gunshot wounds. The cause of death was attributed by the researchers to drugs in 13 of the cases. Two cases were certified as having been caused by electrical injuries, but the researchers felt that one clearly fit within the ‘cocaine category’, and it was felt the arrhythmia suffered by the other, could have been caused by a number of factors (drug use, excitement and/or Taser use).<sup>52</sup>

Terence Allen, the former Deputy Medical Examiner of Los Angeles was critical of the research conducted by Kornblum and Reddy. This is because they failed to report on the location of the Taser dart wounds, therefore it could not be determined whether an electrical current may have passed through the heart region. In addition, the number and duration of Taser shocks were not reported, which Allen felt was important because ‘the risk of ventricular fibrillation increases not only with the amount of current but also with the duration of its application.’<sup>53</sup>

Allen stated that if the deaths caused by gunshot wounds, blunt force trauma or physical restraint were excluded from the study, there remained nine individuals who were alive and active, who collapsed after being subjected to a Taser application, and who subsequently died. Allen concluded that the Taser contributed to at least these nine deaths. His overall assessment was that while the Taser:

*May be “generally safe in healthy adults”, pre-existing heart disease, psychosis and the use of drugs including cocaine, PCP, amphetamine and alcohol “may substantially increase the risk of fatality.”<sup>54</sup>*

A number of studies about Tasers have since been conducted. Some argue that Tasers are safe as they do not induce ventricular fibrillation. For example, in January 2005, a peer reviewed article was published in the official journal of the International Cardiac Pacing and Electrophysiology Society.<sup>55</sup> This study used devices with the same wave form and pulse duration as the X26 Taser, but which could be adjusted to provide greater levels of electrical charge than that produced by the X26. Tests were conducted to determine what level of power could reliably induce ventricular fibrillation in adult domestic pigs. It was found ‘[A CED] discharge that could induce [ventricular fibrillation] required 15–42 times the charge of the standard [CED] discharge.’<sup>56</sup> The study also found that the devices may be safely applied multiple times if needed. The study was criticised because the medical advisor to Taser International assisted

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the researcher, and because the research protocols 'did not include such potentially relevant factors as drug ingestion and the elevated heart rate provoked by physical struggle.'<sup>57</sup>

Taser International has recently publicised several studies reporting the safety of Tasers. According to the company these studies involved human subjects and produced the following results:

- *Contrary to the speculation that an electronic control device could induce ventricular fibrillation, the rhythm found... is associated with drug overdoses and cannot be induced with electrical stimulation;*
- *Real time ultrasound showed that even when electronic control device probes are placed across the heart, the ECD electrical pulses have no effect on the human heart.*<sup>58</sup>

Other studies, however, conclude that there may be risks to the heart from a Taser charge. For example, one recent peer reviewed article in the *Canadian Medical Association Journal* cited three studies, one performed by the authors, which showed that a stun gun discharge can stimulate the heart of pigs. One of the studies reported the deaths of two animals caused by ventricular fibrillation immediately after the stun gun charge.<sup>59</sup> The authors acknowledged that theoretical analyses have suggested that stun guns cannot deliver the amount of energy required to stimulate the heart or cause ventricular fibrillation. They felt that the discrepancies between theory and observation were likely because 'experimental studies that support the claim that stun guns do not stimulate the heart base their arguments on conservative device settings and experimental designs that often do not reflect a clinically relevant or "worst case" scenario.'<sup>60</sup> In addition, 'an identical pulse with a specific duration and strength could have different stimulation effects on different people.'<sup>61</sup>

In relation to the fact that these studies were conducted on pigs, the authors commented:

*a human's chest is different from that of a pig, and there may be differences in electrophysiology between human and pig hearts. One should be prudent in extrapolating data from animals to humans because of this fact. The corollary, though, is that most of the basic mechanistic concepts in cardiac fibrillation and defibrillation are derived from animal studies, not humans. In addition, the safety margins for energy of stun gun discharge established by manufacturers were derived from animal models.*<sup>62</sup>

A number of criticisms have been made about the various studies which have been conducted about the safety of Tasers. Nanthakumar *et al* state that studies:

- involving humans, usually involve healthy volunteers,
- do not usually reflect the common scenario, in which multiple, prolonged shocks are delivered with the possibility of the darts landing near the thorax (chest region),
- often record electrocardiogram findings before and after, but not during, the stun gun discharge, and
- sometimes do not use actual stun gun darts, but modified devices, for which the output power can be controlled.<sup>63</sup>

Others have commented that:

- studies are usually conducted on animals not humans,<sup>64</sup> and
- a number of studies have been funded by Taser International, and researchers are offered salary and stock options by the company, which may impact on the impartiality of research.<sup>65</sup>

The general consensus of studies about Tasers appears to be that the M26 and X26 are unlikely to affect the cardiac rhythms of healthy adults. However, many studies note that the threshold for the onset of cardiac arrhythmias may be affected by a range of factors, such as mental illness, drug or alcohol use, pre-existing heart disease, or stress.

For example, in 2003 and 2004 the Alfred Hospital in Victoria conducted electrical safety analyses of both the M26 and the X26 Tasers. These studies found that while the Taser may affect cardiac rhythm through fibrillation, the output is below the fibrillation threshold set out in the Australian Standard, and therefore presents an acceptable risk for use in law enforcement.<sup>66</sup> However, it was noted that the fibrillation threshold standard does not take into account vulnerabilities in the potential subject, nor the potential for multiple or prolonged applications.

The Alfred Hospital X26 report also commented:

*All tests on human beings in the reports/studies have been conducted on fit and healthy people with normal heart rate and blood pressure conditions. None of the large scale studies examines the effects on aggravated/violent person who may have high heart rate and blood pressure conditions, abnormal heart conditions and/or low skin impedance due to high perspiration.*

*None of the reports obtained analyse the direct effect on people under the influence of PCP, alcohol, amphetamines or any other drugs.*<sup>67</sup>

In addition, the Canadian Police Research Centre released a report in 2005, following its review of CEDs. This found:

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*During the course of this review of existing research into the physical safety of CED, it became apparent that most of the studies reviewed focused on the cardiac safety of CED. Based on these studies' findings, it is reasonable to conclude that the risk of danger to the heart from [ventricular fibrillation] or any other aspect of electrocardiophysiology, as a result of the use of a CED, is very low in healthy subjects. The research does call for a greater understanding of CED effects on vulnerable subjects, such as those that are intrinsically and/or extrinsically compromised (such as substance abuse and/or mentally ill).<sup>68</sup>*

An assessment of existing data was conducted by civilian contractors for the Joint Non-Lethal Weapons Directorate Human Effects Center of Excellence, established by the United States Air Force Research Laboratory and the Joint Non-Lethal Weapons Program. In relation to cardiac effects, this found:

*Ventricular fibrillation was not expected to occur in otherwise healthy adult populations, although data are too limited to evaluate probabilities for potentially sensitive populations or for alternative patterns of exposure.<sup>69</sup>*

In summary, there is significant dissent in medical studies about whether a Taser charge can affect a person's heart and possibly cause death. While major studies have found Tasers to be generally safe to use on healthy adults, there is less certainty about whether these weapons are as safe to use on other people, such as those who are stressed, have pre-existing medical conditions, or are intoxicated.

### **3.1.2. Deaths reported to have occurred following a Taser application**

While Tasers have been introduced in most law enforcement jurisdictions as a way to avoid the use of lethal force and reduce the rate of firearms-related serious injury to subjects and officers, there is no doubt that people have died or been seriously injured after being subjected to an electric shock by a Taser.

Amnesty International reported in 2007 that there had been 291 deaths following the use of the Taser in the United States and Canada.<sup>70</sup> The United States National Institute of Justice has also reported that as the number of law enforcement agencies using Tasers has increased, the number of deaths reported to be associated with this less-lethal technology also has increased.<sup>71</sup> In addition, a number of high profile deaths in Canada in 2007 have led the Royal Canadian Mounted Police to limit its use of the Taser pending the results of investigations and inquiries.<sup>72</sup>

In a recent report to the US Securities and Exchange Commission, Taser International reported that it was the defendant in 34 wrongful death lawsuits in the United States.<sup>73</sup>

In early June 2008, Taser International lost its first product-liability claim in the United States. In the case of *Heston v City of Salinas*:<sup>74</sup>

*A San Jose, California, jury yesterday said Taser had failed to warn police in Salinas, California, that prolonged exposure to electric shock from the device could cause a risk of cardiac arrest. The jury awarded \$1 million in compensatory damages and \$5.2 million in punitive damages to the estate of Robert Heston, 40, and his parents.<sup>75</sup>*

According to media reports, police were called to Mr Heston's family home to assist in removing him from the premises. Mr Heston's parents contacted police as they believed he may be under the influence of drugs, due to his bizarre behaviour. While attempting to remove Mr Heston from the house, three officers simultaneously used M26 Tasers against Mr Heston, for a total period of 75 seconds. He suffered cardiac arrest at the scene, and was subsequently placed on life support. This was switched off the following day.<sup>76</sup>

The jury cleared the police officers of any liability as they were not aware that repeated exposures to a Taser could cause death. In addition, the compensatory damage verdict was reduced by the jury's finding that Heston was 85 percent responsible for his death (Mr Heston was found to have consumed high levels of methamphetamine).<sup>77</sup>

Taser International is intending to appeal the verdict, with its lawyer stating that:

*Use of the Taser on Heston didn't cause his death, ... Heston fit "the well established symptom pattern for methamphetamine intoxication and associated excited delirium," a condition linked to sudden death in custody.<sup>78</sup>*

### **3.1.3. The difficulty of determining cause of death**

It is important to note the fact that a person dies following an electric shock by a Taser does not necessarily mean that the Taser was the cause of the death, or contributed to it. In many instances people subjected to a Taser application by police may:

- be under the influence of drugs and/or alcohol,

- be stressed and/or exhausted because of an encounter or struggle with police,
- have a mental illness and/or be experiencing some type of psychosis,
- be of poor general health, or have pre-existing medical conditions,
- have been subject to more than one type of force by police, or
- be restrained by police in a way that compromises their ability to breathe.

A number of these factors may apply in any given case and each of them, alone or in combination could cause or contribute to a person's death. Amnesty International has noted that, of the deaths it has documented following a Taser charge:

- *those who died were generally subjected to repeated or prolonged shocks,*
- *use of the taser was often accompanied by the use of restraints and/or chemical incapacitant sprays,*
- *many of those who died had underlying health problems, such as heart conditions or mental illness, or were under the influence of drugs, and*
- *most of those who died went into cardiac or respiratory arrest at the scene*<sup>79</sup>

The range of factors that are present when a person dies following being subjected to a Taser application by police often makes it difficult for a precise cause of death to be determined. Some of the causes of death outlined in the Amnesty International Report include:

- *The Medical Examiner ruled the death a homicide; Williams died of "acute physiologic stress associated with multiple electrical shocks during attempted restraint by police for schizophrenia with excited delirium".*
- *...The San Mateo county coroner ruled that cocaine intoxication, taser, restraints and the struggle with officers contributed to his heart attack.*
- *... "In this case a number of circumstances came together and could have contributed to Mr. Camba's death — his pre-existing physical condition, acute drug intoxication, and violent struggling, along with having the taser applied to him and being maximally restrained".*
- *... Jose Angel Rios died of heart failure caused by obesity and cocaine use, with use of the taser and pepper spray listed as contributory factors, according to the Santa Clara County Coroner.*<sup>80</sup>

Complicating matters further is the fact that in the United States Taser International has on a number of occasions challenged medical examiners in court for listing Taser exposure as a cause of death.<sup>81</sup> Recently, a court in Ohio ruled that autopsy results in three different matters must be amended to remove reference to devices made by Taser International as a cause of death. In relation to this matter:

*Dr. Matthew Stanbrook of the Canadian Medical Association (CMA) says the decision doesn't take into account the difficult[y] of determining an exact cause of death in almost every case.*

*"If we were required to have at the level of scientific and medical certainty that something was the cause of death, before we were permitted to declare it, most of the people who died in North America would have died of unknown causes," Stanbrook said.*

*"It is a physician making their best judgment given all the facts available."*<sup>82</sup>

In relation to the same matter, Dr. Jeff Jentzen of the United States National Association of Medical Examiners said the case could affect other autopsy results. He commented 'the physician shouldn't be threatened by individual companies attempting to preserve the reputation of their project.'<sup>83</sup>

### 3.1.3.1. Excited delirium

Most of the literature and commentary about deaths possibly caused by Tasers raise the issue of excited delirium. The term excited delirium has been used to describe behaviour exhibited by some people in confrontational situations with police, and to explain why some people (usually following confrontations with police) have died. One report states:

*The typical scenario for a subject with excited delirium is a rapid onset of acute paranoia, followed by aggression toward inanimate objects, often glass ... This activity is frequently accompanied by a variety of bizarre activities including (but not limited to) disrobing, running, yelling, hiding, exhibitions of superhuman strength, extreme aggression to individuals, resistance to pain and physical restraint. The subject is usually male, often has a known psychiatric disorder, may show evidence of intoxication with cocaine or other illicit substances, fails to respond appropriately to external cues such as police presence, and usually demonstrates incoherent speech or incoherent screaming. Subjects very frequently exhibit profound struggling against officers and/or restraints for upwards of 15 minutes after restraints are applied despite the futility of such struggle, can be extremely hot to the*



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*touch (clinical hyperthermia) and may or may not have excessive sweating... Individuals suffering from excited delirium are thought to be at risk of sudden death very soon after being physically and/or chemically restrained.*<sup>84</sup>

The United Kingdom prison service has stated:

*Differentiating someone in excited delirium from someone who is simply violent is often difficult. People suffering from excited delirium may:*

- *have unexpected strength and endurance, apparently without fatigue,*
- *show an abnormal tolerance of pain,*
- *feel hot to touch,*
- *be agitated,*
- *sweat profusely,*
- *be hostile,*
- *exhibit bizarre behaviour and speech.*

*It may only become apparent that a prisoner is suffering from excited delirium when they suddenly collapse.*<sup>85</sup>

Excited delirium is said to be brought on by 'drug use, alcohol withdrawal, low blood sugar, mental illness or extreme fatigue — anything that affects dopamine'<sup>86</sup> and generally, deaths attributed to excited delirium occur soon after the person who has engaged in a struggle with police is restrained. It has been said that there may come 'a period of sudden tranquillity [at which point] the officers realise the subject has stopped breathing.'<sup>87</sup>

A number of different weapons and types of restraint have been used by police prior to deaths which have been attributed to excited delirium. One doctor has commented:

*'It's always the same. The presentation is the same, the behavioural syndrome is the same, the hyperthermia is there, and the phenomenon of sudden death is there. And it doesn't matter whether they were restrained, or hogtied, or pepper sprayed or tasered — it's the same.'*<sup>88</sup>

However, the concept of excited delirium is itself controversial. This is because it is not a medical condition recognised by medical associations<sup>89</sup> and 'nearly all reported cases of excited delirium involve people who are fighting with police'.<sup>90</sup> These factors have led to some commentators arguing that excited delirium is 'an entirely manufactured psychological condition'<sup>91</sup> that is used as a way for police to deny responsibility for deaths that officers' use of force may have caused, or contributed to.<sup>92</sup>

In the United States, some medical examiners list excited delirium as a cause of death. However, in other jurisdictions within the United States, while the characteristics of excited delirium can be listed as contributing factors to a death, the term is not itself used as a cause of death.

*"These are terms that are bandied about and used to describe a certain sequence of events. That does not necessarily make it a medical term," Coroner Michael Murphy [of the Clark County coroner's office] said. "We are more careful to say it was 'cardiac arrest during a restraining procedure.'"*

*Unless the medical establishment adopts excited delirium, Murphy says, he will not use it on a death certificate.*

*"This is an evolving term," he said, "and we have to watch it very closely."*<sup>93</sup>

Despite the controversy surrounding the concept of excited delirium, some police forces have developed policies to inform police about the most appropriate way to manage people behaving in an excited, aggressive and incoherent manner.<sup>94</sup> This has been done in an effort to minimise the possibility of deaths occurring. The policies which have been developed tend to inform police:

- how to recognise the signs of a person experiencing excited delirium,
- to treat the situation as a medical emergency,
- to ensure the minimal amount of force necessary to restrain the person is used,
- to restrain the person in a way that does not compromise their ability to breathe, and
- to ensure the person is observed so that assistance can be rendered if they stop breathing.<sup>95</sup>

Despite the controversy about whether a condition called excited delirium actually exists, there is no doubt that deaths have occurred where people who are highly excited, agitated, aggressive and incoherent, by reason of intoxication, mental illness or a combination of factors, have been restrained by police using Tasers and/or other tactics. In light of the fact that many people displaying these characteristics come into contact with police and may need to be restrained by them, and it is not currently known what exactly causes and contributes to some of these deaths, the development of such policies by police appears to be a sensible approach.

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As expressed in one Canadian report:

*The reasonableness of any use of force will always be determined by the situational factors. Our responsibility as a police community is to give officers the information to make the best possible decision.*<sup>96</sup>

### 3.1.4. Possible effect of Taser charge on cardiac rhythm of vulnerable people

There are people other than those who are affected by drug or alcohol use, mental illness, or excited delirium, who may be at a higher risk of cardiac effects of a Taser discharge than healthy adults.

#### 3.1.4.1. Children and the elderly

In May 2007 it was reported that 'there is very limited information globally on the relative vulnerability of children to Tasers, from either operational data or experimental studies on animals.'<sup>97</sup> Children may be at increased risk in the use of Tasers due to low body mass. There is a heightened risk of cardiac arrest from ventricular fibrillation, and further that there is a great risk of injuries from barb penetration.<sup>98</sup> Because of continuing uncertainty, a United Kingdom committee on the medical implication of less lethal weapons maintains that until further research is undertaken, children and people of smaller stature should be considered at greater risk than adults.<sup>99</sup> Taser International says that its products are safe to use on anyone weighing at least 60 pounds (27.2 kg).<sup>100</sup>

The same issues concerning children relating to weight and muscle mass apply to Taser use on the elderly.

#### 3.1.4.2. Pregnant women

Pregnant women may also be at increased risk of injury and/or death when fired at by a Taser, although this has not been concretely established. In its training materials, Taser International states that:

*[p]regnant females are at elevated risks from falling, muscle contraction, stress, and other factors. For these and other health considerations, it is advisable to avoid deployment of the TASER device on pregnant females wherever practicable.*<sup>101</sup>

There have been reports of pregnant women miscarrying after being subject to a Taser application. For example, a Northern Ireland Policing Board Human Rights Advisors' report notes an incident in which a woman who was six months pregnant miscarried 12 hours after she was subjected to a Taser application.<sup>102</sup>

A 1992 medical study at the University of Texas Health Centre indicated there may be a link between being subjected to a Taser application and miscarriage.<sup>103</sup> However, while there have been a number of cases in which a miscarriage has occurred after a woman has been subjected to a Taser application, there have not been any substantial medical studies into causality.<sup>104</sup>

#### 3.1.4.3. People with heart conditions

In 2002 a United Kingdom committee on the medical implications of less lethal weapons stated 'it is believed that ... pre-existing heart disease may lower the threshold for cardiac arrhythmias'.<sup>105</sup> There are also concerns that the electrical charge from the Taser could affect pacemakers and implanted defibrillators<sup>106</sup> with recent medical research suggesting that 'further investigation is required to understand the effects of CEDs on people with cardiac devices'.<sup>107</sup>

The United Kingdom, Metropolitan Police Service, *Restraint and Mental Health Report* flags potential dangers with using Tasers on people with mental illness as those who take anti-psychotic drugs often experience long term side effects which affect heart function.<sup>108</sup>

#### 3.1.4.4. Indigenous Australians

Concerns have been raised about the impact Tasers may have on Aboriginal people, particularly in jurisdictions where Taser use has been rolled out to frontline police. Concerns have been raised, firstly because of the over-representation of Aboriginal people who come into contact with the police, and the likelihood that this over-representation will extend to use of Tasers.

In addition, concerns have been raised that the below-average health of many Indigenous Australians may mean that being subjected to a Taser application will pose greater risks to them.<sup>109</sup> Indigenous Australians experience cardiovascular disease (CVD) at significantly higher rates than non-Indigenous Australians. In 1996–2000 the number of indigenous deaths from CVD was more than three times the number expected from rates for the non-Indigenous population.<sup>110</sup>

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*The striking difference between Indigenous and non-Indigenous people in CVD mortality is the very much greater impact among young and middle aged Indigenous people. For all CVD, the death rates for Indigenous people were 12 to 17 times higher than those for non-Indigenous people in the 25–34 years and 35–44 years age groups.<sup>111</sup>*

Criminologist Chris Cunneen has noted:

*“You would imagine the cardiovascular and health issues Aboriginal people face would raise concerns”...*

*“The testing [of tasers] has been done on healthy people and in controlled environments. But that’s not the way it’s used.”<sup>112</sup>*

## **3.2. The risk of injury following electric shock by a Taser**

Injuries arising from incidents where people are subjected to a Taser application generally relate to:

- injuries from darts,
- injuries from falls as a person loses coordination and control when incapacitated by a Taser, and
- injuries arising from the electric shock.

### **3.2.1. Injuries from darts**

There is a chance that the darts may penetrate the skin of a person being subjected to a Taser application, particularly if the weapon is aimed at an area of exposed skin. It has been estimated that there is an 80% risk of minor burns occurring following a person being subjected to a Taser application at a distance of 7–11 feet, and an 85% chance of lacerations at this distance.<sup>113</sup> Circular burns that result from electric shock by a Taser have been found to be generally smaller than three centimetres in size, similar to a bee sting, and likely to clear up within a few days without medical treatment.<sup>114</sup> However, one Canadian report notes that cases have been observed where police officers subjected to a Taser application as part of their training have sustained minor permanent scarring as a result of the charge, and that in a civil suit in Alaska an individual collected damages for permanent scarring after being subjected to a Taser application.<sup>115</sup>

It has been found that the probability of a Taser probe hitting the eye is low.<sup>116</sup> However, there has been at least one instance in Australia where a Taser dart hit and lodged in the eye of a man.<sup>117</sup>

If the darts have penetrated the skin of a person fired upon they may need to be physically removed by police or medical personnel. As a result, some agencies classify penetrating darts as a bio-hazard, which need to be handled in a way that minimises the risk of contamination of others.<sup>118</sup>

### **3.2.2. Injuries from falls**

It was found in 2002 that falls due to Taser incapacitation did not lead to a high degree of serious head injury, as ‘most subjects apparently collapsed in a semi-controlled manner’.<sup>119</sup> However, there have been reports of shoulder dislocations and chipped teeth, resulting from falls, among police who have been subjected to Taser applications during training exercises.<sup>120</sup>

The risk of injuries from falls is greater if the person is located in an elevated or otherwise dangerous position, such as at the top of stairs. In September 2008, for example, media reports claimed ‘a New York man armed only with a fluorescent light tube ... died after plunging from a second-storey ledge when he was Tasered by police.’<sup>121</sup>

### **3.2.3. Muscular contraction injuries**

There have been a number of cases recorded where officers training to use Tasers, who are subjected to an electric shock by a Taser as part of this exercise, have received serious back injuries. Taser International acknowledges that there have been at least 10 training-related injury lawsuits filed against it since 2003.<sup>122</sup> One of these was filed by a police officer who suffered a fractured back after being subjected to a one-second Taser application. An investigative news report about the incident revealed a memo that had been written by a doctor working for Taser International, in which the doctor confirmed that the injury was a result of the Taser application.<sup>123</sup> The court found that Taser International was not liable for back injuries as this was a danger associated with Taser use the company was unaware of at the time.<sup>124</sup>

In late 2007, a peer-reviewed medical journal reported an incident of an officer being seriously injured when exposed to a five second Taser application during training.<sup>125</sup> In this case, in order to avoid the Taser darts puncturing the

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skin, the wires were attached to the officer with alligator clips. The officer did not fall during the application, however, suffered thoracic spine compression fractures and was conveyed to a hospital emergency room. The officer did not have a history of back injuries, nor were there any risk factors. The officer was not able to return to active duty for at least nine weeks after the incident.

A further injury to an officer during Taser training was discussed in an article published in a United States medical journal in early 2008. On this occasion the officer was shot in the back with two darts, and suffered a thoracic spine compression fracture injury.<sup>126</sup> The authors of the article felt confident that the injury was a direct result of the Taser use.

In addition to back injuries, there have also been reports of officers in training receiving hamstring injuries, transient muscle soreness and vertigo as a result of a Taser application.<sup>127</sup>

Taser International recognises the possibility of muscular contraction injuries following a Taser application:

*The TASER device can cause strong muscle contractions that may result in physical exertion or athletic type injuries. In certain instances this may be serious for some people, such as those with pre-existing conditions and/or special susceptibilities. This may also occur in instances where a person has an unusual and/or unanticipated response to the TASER device deployment and/or discharge.*<sup>128</sup>

Taser International requires people subjecting themselves to a Taser charge voluntarily to sign a waiver of liability.<sup>129</sup>

### 3.3. Mission creep

It is an international law enforcement standard that police officers should use the minimum amount of force necessary to resolve a situation. To this end, a use of force model or continuum is often used by law enforcement agencies to inform or guide officers about the methods or weapons that are appropriate to resolve particular types of incidents.<sup>130</sup>

Tasers were initially introduced to provide police with an alternative to using lethal force in extremely high risk incidents. In some jurisdictions there remain strict limitations on Taser use by officers, and these weapons are only considered appropriate for use in high risk incidents, where violence is committed or threatened and there are serious risks to the safety of the police, the public, or the person who may be subjected to the Taser application.

However, in many jurisdictions, Tasers are increasingly being used by police in situations where high levels of risk are not present, and police could likely manage the situation effectively without resorting to force. This is known as mission creep. For example, on some occasions Tasers are being used in the first instance on people who are being uncooperative or non-compliant, but who are not acting in an aggressive or threatening manner.<sup>131</sup> Amnesty International has expressed concerns about the 'pervasive inappropriate use of the weapon'.<sup>132</sup> In addition, the Australian Council for Civil Liberties has stated:

*What we're concerned about is that even during this accelerated rollout [in Queensland], there are frequent newspaper reports that tasers are being used in ordinary, everyday and mundane policing situations... [t]hat use of paramilitary force in situations which are totally unjustified, is what we're concerned about.*<sup>133</sup>

The Commission for Public Complaints Against the Royal Canadian Mounted Police, *Interim Report into the RCMP Use of the Conducted Energy Weapon* found that mission creep is occurring in relation to Tasers. The report noted:

*The CEW is currently one of several use of force weapons available to law enforcement. As such, the CEW has a role in specific situations that require less than lethal alternatives to reduce the risk of injury or death to both the officer and the individual when use of force is required. In other words, it is an option in cases where lethal force would otherwise have been considered. However, the CEW use has expanded to include subduing resistant subjects who do not pose a threat of grievous bodily harm or death and on whom the use of lethal force would not be an option. The question to be addressed then is in what situations are CEWs not appropriate for use.*

*Currently RCMP policy classifies the CEW as an "intermediate" device placing it in the same category as oleoresin capsicum spray. This classification permits use of the weapon for those situations where an individual is exhibiting behaviours that are deemed "resistant", and not just "combative" or posing a risk of "death or grievous bodily harm" to the officer, themselves or the general public. It is the position of the Commission that the placement of the CEW as an "intermediate" device authorizes deployment of the weapon earlier than reasonable.*

*The current approach by the RCMP clearly illustrates a shift in permissible usage from the original intent in 2001, which was more restrictive in that the weapon was to be used to subdue individual subjects who resisted arrest, were combative or who were suicidal. The Commission refers to the expanded and less restrictive use as "usage creep". This has resulted in deployment of the weapon outside stated objectives as illustrated by cases ... where the individuals have exhibited behaviours that were clearly non-combative or where there was no active resistance.*<sup>134</sup>

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In order to prevent mission creep, and recognise when it is occurring, it is important for police to have in place strict guidelines about when Taser use is considered appropriate. In addition, officers must be educated to ensure they have a comprehensive understanding of the guidelines. Further, accountability measures must be in place to ensure that all uses of the Taser comply with policies and procedures, and that any misuse is investigated and appropriate action taken to minimise the possibility of misuse re-occurring.

### 3.4. The possibility of Tasers being misused

Tasers can potentially be misused in a number of ways. As outlined in section 3.3 Tasers can be used by police in situations where such use of force is not authorised. In addition, regardless of whether Taser use is justified in a particular situation, there are risks that the weapon can be used in an unreasonable or excessive manner. In particular, a person subjected to electric shock by a Taser may be shocked in a vulnerable location (for example, face, throat or groin regions) or they may unjustifiably be subjected to a number of Taser applications (by one or more Tasers), or one application for a prolonged period. In addition, they may be subjected to a Taser charge after they have been effectively restrained by police.

The potential for Tasers to be used inappropriately or excessively is of particular concern because the devices are hand-held and easily transportable, they cause extreme pain for the duration of the charge, and they usually leave little or no outward sign of being used on a person. In addition, the more serious risks associated with Taser use, such as death and serious injury, appear to occur more frequently in circumstances where a person has been exposed to a prolonged Taser charge, or multiple charges.<sup>135</sup>

In its 2006 report about Tasers, Amnesty International (USA) refers to deaths which have occurred following people being subjected to Taser applications. In one of these a man was subjected to two Taser applications, with one application lasting 57 seconds; in another a man was subjected to six Taser applications, with one application lasting two minutes and 49 seconds. Another incident was reported where a man was subjected to up to 19 Taser applications by two separate Tasers.<sup>136</sup> Further, as outlined in section 3.1.2, a man died in the United States after he was subjected to simultaneous charges by three separate Tasers, for a period totalling 75 seconds.<sup>137</sup>

Concerns have also been raised about the possibility of weapons such as Tasers being used as an instrument of torture, or to inflict cruel, inhumane or degrading treatment on people being detained. The United Nations Special Rapporteur on the question of torture expressed concern about stun gun technology, particularly in the context of crowd control. It was noted that 'a number of countries are developing equipment for the purpose of crowd control by law enforcement... these new technologies have the potential to be used for torture and ill-treatment, including collective punishment if abused.'<sup>138</sup>

There have also been concerns about the use of Tasers on people who have already been restrained. Davison and Lewer point to a 2004 investigation undertaken in the United States by the *Denver Post* about Taser use in Colorado. The investigation found that one third of the 112 people subjected to Taser applications were restrained in handcuffs at the time.<sup>139</sup> According to the Ontario Superior Court judgement in *Regina v Walcott*, it was held:

*since the discharge of a taser after a person has been restrained and controlled would have no other purpose than to punish the person... I find that... [the discharge] constituted "cruel and unusual treatment."*<sup>140</sup>

There have also been reports of Tasers being misused by the United States military. Amnesty International has reported that four members of a United States special operations unit in Iraq had been disciplined for using excessive force on prisoners, including the improper use of Tasers. Reports have also been made about Iraqi detainees being subjected to electric shock by Tasers, while handcuffed and blindfolded.<sup>141</sup>

It is important to note that there are inbuilt accountability measures, such as the AFID tags, dataport download information and Taser audio-visual recording attachments which may help to minimise the risk of Tasers being misused.<sup>142</sup> However, the effectiveness of such accountability measures will be limited unless they are used consistently, and their use is monitored, reviewed and audited.<sup>143</sup> In addition, the accountability features will only be useful if the legislation, policies and procedures provide clarity to officers about the circumstances where it is reasonable to use force (including use of a Taser), and the most appropriate use of force options in different circumstances.

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# Chapter 4.

## Use of the Taser in other jurisdictions

### 4.1. Use of Tasers by law enforcement officers overseas

Tasers have been used in law enforcement overseas for a number of years. Below is a summary of the history and usage of these weapons in a number of overseas jurisdictions. We have included brief information about some reviews and reports conducted about Taser use in these jurisdictions.

#### 4.1.1. United States of America

In the United States, Tasers are available to law enforcement officers as well as the general public.<sup>144</sup> It is believed that approximately 11,500 law enforcement agencies have acquired Tasers, and that 260,000 such devices are deployed operationally by law enforcement agencies.<sup>145</sup>

Amnesty International (USA) released reports in 2004 and 2006 detailing its concerns about Taser use, and related deaths.<sup>146</sup> The American Civil Liberties Union of Northern California also released a report in 2005 outlining concerns about the lack of Taser regulation.<sup>147</sup> The Department of Justice, through the National Institute for Justice, is currently funding a number of projects about CEDs. The National Institute of Justice *In-custody Death Study: The Impact of Use of Conducted Energy Devices* is one such study, which involves a panel of medical professionals studying deaths related to the use of Tasers and reviewing current medical research into the effects of these weapons. The panel released an interim report of their findings in June 2008 and is expected to release a final report in 2009.

The interim report concludes that law enforcement agencies should use Tasers, providing they are used in accordance with accepted national guidelines.<sup>148</sup> The panel found no conclusive medical evidence to indicate a high risk of serious injury or death from the direct effects of Taser exposure to normal healthy adults. However, the panel noted the effect of Taser exposure on other groups is not clearly understood and further data is required about the effects of Tasers on small children, people with heart disease, the elderly, pregnant women and other at risk individuals. The panel recommended that the use of Tasers on these groups should, as far as reasonably possible, be avoided.<sup>149</sup>

The panel's preliminary review of deaths following Taser exposure indicated that most deaths are associated with subjecting a person to continuous or repeated Taser applications. While the medical risks of repeated exposure to Taser charges are unknown and the role of the Tasers in causing the death in these cases is unclear, the panel found that caution should be exercised in repeatedly using CED as a means of subduing a person.<sup>150</sup>

#### 4.1.2. Canada

In Canada, Tasers are only available to law enforcement officers. They have been used in Canada since 1998 (Victoria was the first state to use them). Taser use is guided by the National Use of Force Framework, developed by the Canadian Association of Chiefs of Police, and guidelines and policies for individual agencies are determined by responsible agencies at federal, provincial and municipal levels. Amnesty International (Canada) released a report in May 2007 on the inappropriate and excessive use of Tasers in Canada, in which it stated there had been 18 deaths following the use of Tasers in the country.<sup>151</sup>

There are currently a number of inquiries and reports underway into the use of Tasers by Canadian police. The Nova Scotia Department of Justice released the first half of a report into the use of Tasers in the province, following the death in November 2007 of a man in custody, 30 hours after he was subjected to a Taser application.<sup>152</sup> The Standing Committee on Public Safety and National Security of the Canadian Parliament House of Commons is also conducting a study into the use of Tasers, involving hearings with key stakeholders and experts.<sup>153</sup>

Further, in December 2007, following the death of a man in Vancouver airport who was subjected to a Taser application by officers of the Royal Canadian Mounted Police (RCMP), the Commission for Public Complaints against the RCMP released an Interim report on RCMP use of the Taser. The main recommendation of this interim report was that the Taser be classified as an 'impact weapon' and use only be permitted in situations where an individual is combative or posing a risk of death or grievous bodily harm to themselves or a member of the public. Until this behaviour is displayed or threatened it may be more prudent for another use of force option to be used or, if possible, to engage in further dialogue.<sup>154</sup>

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The final report, released in June 2008, recommended this policy be implemented immediately. The final report provided an in-depth statistical analysis of the use of CEDs according to the RCMP database and an analysis of police force policies around CEDs. It found that current RCMP policies did not discuss using CEDs on at risk groups, including people with substance abuse issues and recommended the introduction of clearer operational guidelines on the use of CEDs on at risk groups. The report recommended that in general, CED policy should focus less on the technical aspects of the weapon and more on the contextual issues surrounding its use. The report also recommended that medical attention be sought for all people subjected to a CED.<sup>155</sup>

In the province of Saskatchewan in Canada, decisions have recently been made to stop using Tasers on inmates in jails, and also to refrain from issuing Tasers to 'regular police officers' because of questions about their safety.<sup>156</sup>

#### 4.1.3. United Kingdom

Police in the United Kingdom are predominantly unarmed. However, since 2004 Tasers have been available to all authorised firearms officers in England and Wales for use in circumstances where they have the authority to use firearms. A twelve month trial began in September 2007 in ten forces allowing Tasers to be used by specially trained units, who are not firearms officers, in high risk circumstances. Extensive monitoring and reporting on Taser use has been undertaken by the Association of Chief Police Officers (ACPO) and the Home Office, including medical and scientific reviews of the technology.<sup>157</sup>

The Police Service of Northern Ireland (PSNI) has undertaken studies of less lethal weapons, which include consideration of human rights issues.<sup>158</sup> The PSNI recently introduced 12 Taser units in a pilot program with highly trained firearms officers from the PSNI Special Operations Branch.<sup>159</sup> A spokesperson of the PSNI said that the Human Rights Adviser to Northern Ireland's Policing Board has confirmed that the pilot program is in compliance with the United Kingdom *Human Rights Act 1998*. However, the Northern Ireland Human Rights Commission remains concerned that Tasers could possibly violate Articles 2 and 3 of the European Convention on Human Rights related to inhumane treatment and the right to life.<sup>160</sup>

#### 4.1.4. New Zealand

New Zealand Police is a largely unarmed force, although the X26 Taser was trialed by general duties police officers in four districts, from September 2006 to August 2007. Before being eligible to use Tasers, officers were required to undertake an eight hour training course, with requirements for annual re-qualification.

During the trial Tasers were not routinely carried by officers, rather, they had to obtain authorisation, or notify the communications centre, before taking a Taser to an incident. Tasers were only to be used when an officer assessed a person's behaviour as threatening and endangering the safety of the public, the officer or themselves. Officers were advised that 'under no circumstances was the device to be discharged to induce compliance with an unco-operative but otherwise non-aggressive person'.<sup>161</sup>

The trial was monitored through a Tactical Options Report Database, internal review and audit process, and an external medical advisory group. Information regarding the trial was regularly updated on the New Zealand Police website.<sup>162</sup>

The final report about the trial was published in August 2008. This provides:

*Taser use was reported for 128 incidents over the twelve-month trial (one use against a dog was not included in subsequent analysis). In 75% of incidents the Taser was deployed in presentation mode. Deployment in presentation mode comprised 80 laser paintings, 12 presentations, and 3 arcings of the device. In 15% of incidents the Taser was deployed in discharge mode. In discharge mode the probes were fired 14 times, drive stun was used twice, and a combination of probes fired and drive stun was used 3 times. In the remaining 10% of incidents the Taser was only removed from its holster ('deholstered').<sup>163</sup>*

The report concluded:

*Overall the NZ Police Taser trial experience indicates there is the potential to realise benefits such as a reduction in firearms presentations, assaults on police officers, and injuries to subjects if Tasers were available more widely as a tactical option for NZ Police.<sup>164</sup>*

## 4.2. Use of Tasers by law enforcement officers within Australia

Tasers are used in all Australian jurisdictions for law enforcement purposes. However, the purposes and extent to which they are used differs greatly.

#### 4.2.1. Western Australia

Western Australian Police tactical response teams were issued with Tasers in 1999–2000. In June 2007, 1,100 Tasers were purchased so that a Taser would be available for every on duty police officer.<sup>165</sup> Officers participate in a one day training course to learn how to use the weapon.<sup>166</sup>

A Western Australian police spokesman stated that Tasers are another option for police to use instead of firearms, and that each Taser use must be justified and recorded in a use of force report.<sup>167</sup> However, the Western Australian Police Commissioner, Karl O'Callaghan's view was that Tasers would not only be used in situations where firearms might be drawn. He noted 'we will use [Tasers] on anyone who is seriously aggressive. ... Where police feel that they are in danger or going to be injured, or a member of the community is in danger, they will be used.'<sup>168</sup>

According to media reports there has been significant increase in the use of Tasers in Western Australia, with Tasers used 804 times in 2007, a four-fold increase in the number of uses in the previous year (in 2006, Tasers were used in 178 incidents).<sup>169</sup> There has also been significant media attention recently to several incidents where Tasers have been used, including one incident where a man had a heart attack after being subject to a Taser application (initial reports from police said it was unclear whether the man received an electric shock from the Taser),<sup>170</sup> and one incident where a Taser was used on a twelve year old boy.<sup>171</sup> A further incident involving a person who died following a Taser application is due to come before the Western Australian coroner.<sup>172</sup>

#### 4.2.2. Queensland

In Queensland Tasers have been used by Special Emergency Response Teams since 2002. In March 2007 a 12 month trial in two regions was announced involving all district duty officers or regional duty officers. The trial was jointly monitored by Queensland Police and the Queensland Crime and Misconduct Commission (CMC). An interim report on the trial was due to be provided to Queensland Police at the beginning of 2008. However, prior to the completion of the trial and submission of the interim report (due on 29 January 2008), the Queensland Police Minister Judy Spence made an announcement that all first-response officers would receive a Taser when the trial ended in June 2008. Following this, the CMC released an information paper on its website providing basic facts about the Taser and listing the weapon's advantages and disadvantages.<sup>173</sup>

In March 2008, the Taser trial was extended to all frontline general duties officers, including junior police, in Brisbane's south. This extension was made to assist policy development, training and reporting procedures, and assist with the future roll out of Tasers across the Service.<sup>174</sup>

In March 2008 findings from the inquest of the deaths of four young men who were shot dead by police were released by the Queensland State Coroner. In the findings, the coroner referred to the trial of Tasers by Queensland police, and the evaluation of the trial by the CMC. The coroner recognised that:

*[had] the officers involved in this incident had access to a taser gun they would have been deployed... [and] such deployment may have resulted in each of the incidents being resolved without anyone being killed.*<sup>175</sup>

However, given the current controversy regarding the use of Tasers in some jurisdictions, the coroner recommended that 'the evaluation by the CMC have regard to international experience in the use of these implements'.<sup>176</sup>

#### 4.2.3. Northern Territory

Specialist police in the Northern Territory have been armed with Tasers since 2003. On 30 January 2008 Northern Territory Police issued a statement that Tasers would be rolled out to front line officers who have completed the required training. The move to roll-out Tasers followed 'the studying of extensive research, interstate and international experience, as well as the evaluation of [Taser] use by specialist Northern Territory Police since 2003'.<sup>177</sup> Seventy four Tasers have now been issued territory wide,<sup>178</sup> with six at Alice Springs police station and one Taser at each bush station.<sup>179</sup>

The Northern Territory Police fact sheet on Taser use states:

*The Police may use TASER to defend themselves or others, to disarm and/or restrain violent offenders, prevent self harm or to control an animal. They can be used when the actions of the person against whom they are used give rise to a fear that physical injury to any person will result.*<sup>180</sup>

#### 4.2.4. Victoria

Following a 12 month trial, X26 Tasers were approved for use by the Victorian Special Operations Group and Critical Incidents Response Teams in 2004. Their use continues to be limited to these units.

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A review of fatal shootings by Victoria Police, published in November 2005, includes a discussion of the equipment and procedures of Victoria Police. The report supports continued use of Tasers in Victoria.<sup>181</sup> In August 2005, the Victorian State Coroner handed down findings in a police shooting death, and recommended that 'Victoria Police consider making the Taser generally available to senior officers ... as an alternative option to lethal force'.<sup>182</sup> The coroner further suggested that:

*[m]any of the police shooting deaths investigated by the Coroner over a considerable number of years would have been prevented, had this Air-Taser technology then been available.*<sup>183</sup>

Following the announcement, in January 2008 that front line police in Queensland would be provided with Tasers, the Victorian Police Association called for their wider use in Victoria.<sup>184</sup> In addition, according to the *Herald Sun*, 86 % of officers who responded to a media survey believed that all operational police should be armed with Tasers.<sup>185</sup>

In April 2008 a spokesman for the Victorian Police stated that the force was researching the use of Tasers generally, and the potential for use by Victorian police officers:

*The research is ongoing and involves studies of interstate and international use of the Taser, along with studies of the use by specialist units within Victoria Police, ...*

*Once the research is complete, a report will be forwarded to the Chief Commissioner with recommendations on suitability of the Taser for general duties police members.*<sup>186</sup>

#### 4.2.5. Tasmania

The Tasmanian Special Operations Group has possessed X26 Tasers since 2000. However, there have only been two occasions where a Taser has been used since they were introduced.<sup>187</sup>

#### 4.2.6. South Australia

In South Australia the Special Task and Rescue (STAR) Squad was issued with Tasers in 2002.

In June 2008 Police Commissioner Mal Hyde announced that two patrol cars in two local service areas are to be equipped with X26 Tasers, as part of a trial of uniformed police using Tasers. The trial comes after an evaluation of the use of the weapon by officers in the STAR squad. Police will only be able to use a Taser if an incident involves an armed person and the use of the Taser could prevent serious injury.<sup>188</sup>

Commissioner Hyde said that while a decision on the further deployment of Tasers would be made following the trial, he was concerned that the availability of too many weapons could cause problems for police officers:

*We are concerned about members being confused in terms of a volatile and high-risk situation as to which piece of equipment they should use in the circumstances, ... We would not like an officer hurt or even killed because we have made their job more difficult by making it more complicated for them.*<sup>189</sup>

The Commissioner also raised concerns about the possibility of high levels of force becoming 'normalised' among police officers when it was not justified:

*There is still a question mark as to whether or not there are some fatalities in the use of this equipment and so we need to manage it in a way which either avoids that possibility or uses it in a circumstance where that level of force is fully justified because of the risk. ...*

*I don't think the community would accept it if it was used in a mainstream way simply to get people to comply with police directions or to avoid a bit of push and shove in policing.*<sup>190</sup>

#### 4.2.7. Australian Capital Territory

In August 2006 X26 Tasers were approved for use by the Australian Federal Police, Australian Capital Territory (ACT) Policing Specialist Response and Security Team. This was following an 18 month trial during which the Taser was taken into the operational environment more than 400 times, and used on nine occasions (the weapon was drawn on two occasions, aimed on four occasions and discharged on three occasions). Currently, six Tasers are available for use by officers in the ACT.<sup>191</sup>

In June 2007 the Australian Federal Police released a report about the use of Tasers by police in the ACT during and after the trial. This reported that the Taser had been used on 26 occasions, which included a weapon being:

- drawn on 10 occasions,
- drawn and aimed on seven occasions,
- discharged in the drive stun mode on three occasions,
- probes discharged on four occasions, and
- combination of probe discharge and drive stun mode on two occasions.<sup>192</sup>

A short description of each incident was included in the report, which concluded 'to date AFP Professional Standards has received no complaints relating to the use of the Taser and no reports of injury from the people subjected to Taser applications.'<sup>193</sup>

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# Chapter 5.

## Use of Tasers by the NSW Police Force

### 5.1. Tactical options and use of force model

The NSW Police Force has in place a Tactical Options Model (introduced in 1998) that provides guidance to officers about the options they can use to manage incidents they attend. Rather than a linear use of force continuum model, whereby tactical options are placed in a hierarchy of low level force options (such as communication) to high level force options (use of firearm), the NSW Police Force uses a circular tactical options model. This recognises that the most appropriate tactical option(s) will depend on a range of circumstances and factors.

Circumstances such as proximity to a weapon, ground position, imminent danger or the mental state of the person targeted may inform officers about the most appropriate tactical options to use to gain control over a situation. Other relevant factors to be considered include the age, gender, and fitness of officers or the person they are targeting, and the number of offenders and/or officers at the scene.

Tactical options included in the model are containment and negotiation, officer presence, tactical disengagement, communication, weaponless control, OC spray, batons, Tasers and firearms. Communication is considered one of the most effective tools of police officers.<sup>194</sup>

According to the tactical options model, officers are expected to make a risk assessment of the situation, take charge, form a planned response and then select the most appropriate tactical option to use in the situation. The ability to disengage or de-escalate a situation is essential in managing any incident.

### 5.2. Structure and role of relevant NSW Police Force units

Operationally, the NSW Police Force is organised into 80 LACs, which are in turn, grouped into six geographic regions. Within each LAC are a number of police stations. It is the role of general duties police officers at these stations to respond to incidents where antisocial behaviour and/or criminal activity may be occurring.

In addition, Specialist Operations units support the activities of frontline police by providing highly specialised functions and services. Specialist Operations comprises six diverse commands encompassing Counter Terrorism & Special Tactics, Forensic Services, Operational Communications & Information, Special Services, Public Affairs and Professional Standards.<sup>195</sup>

Within the Counter Terrorism & Special Tactics Command are the State Protection Group, Anti Terrorism & Security Group, Counter Terrorism Operations, and the Coordinated Response Group.

The State Protection Group (SPG) comprises the:

- Dog Unit, which provides specialist dog services, including dogs and handlers for general purposes, critical incidents, drug and firearms/explosive detection, urban search/rescue and searching for cadavers.
- Negotiation Unit, which provides highly trained negotiators for a variety of situations including suicide intervention, sieges, kidnap and extortion matters as well as any matter where police believe a trained negotiator may be of assistance.
- Police Armoury, which is responsible for the purchase, issuing and maintenance of all service firearms and appointments.
- Rescue and Bomb Disposal Unit, which provides specialised support in the provision of an effective search, rescue and bomb response.
- Commissioner's Firearms and Operational Safety Committee, whose role it is to: review the service response to high risk incidents, continually review less than lethal technology, police service defensive weapons, equipment and tactics; oversight weapons and defensive training.
- Tactical Operations Unit (TOU) and State Protection Support Unit (SPSU) which provide 24 hour, statewide tactical support to operational police dealing with high risk incidents.



### 5.2.1. NSW Police Force management of high risk incidents

The TOU is a full time permanent tactical squad staffed by officers who have attained minimum physical standards in a range of activities, and who receive physical training as well as training in tactics and weapons.

Its role is to respond to all high risk incidents in the Sydney Metropolitan basin. Given the size of NSW, the TOU is supported by the SPSU. The SPSU is staffed by police in the southern, western and northern regions who perform front-line policing duties (such as highway patrol or general duties) and who have been trained by the TOU to respond to high risk incidents. The SPSU are akin to part-time TOU personnel that respond to high risk incidents outside the metropolitan area.

A high risk incident is defined in the *National Guidelines for the Deployment of Police in High Risk Incidents*<sup>196</sup> and has been adopted into NSW Police policy and procedure. The guidelines provide that:

*The circumstances and types of situations which may be defined as high risk vary widely. The essential judgement that needs to be exercised is whether the real or impending violence or threat to be countered is such that the degree of force that could be applied by the police is fully justified. In this context, one or more of the following criteria may be used may be used to define High Risk for the purpose of these guidelines:*

- a) *Seriousness of the offence committed by the suspect/offender.*
- b) *Expressed intention by suspect(s) to use lethal force.*
- c) *Reasonable grounds to believe that the suspect:*
  - *may use lethal force,*
  - *has caused, or may cause, injury/death, or*
  - *has issued threats to kill or injure persons.*
- d) *The suspect has:*
  - *a prior history of violence,*
  - *no recent history of violence but known to be violent in the past, or*
  - *is exhibiting violence now.*
- e) *Involvement of innocent participants e.g. hostages, VIP's or bystanders.*<sup>197</sup>

This definition of high risk incident is necessarily broad, but includes:

- resolving siege/hostage situations,
- arresting armed and dangerous people in high risk situations,
- conducting high risk searches of premises,
- escorting and security of internationally protected people, heads of state and holders of high public office, and
- providing support services for major operations considered to be of high risk.<sup>198</sup>

Some incidents that the TOU responds to are pre-planned, such as an arrest of a person considered particularly dangerous. Others, such as a siege, are unplanned or reactionary (also known as emergency) operations.

Except in the case of pre-planned operations, TOU officers are generally not the first to respond to high risk incidents. Often, local police will be contacted about an incident, and will attend the scene. If the situation is deemed high risk or escalates into a high risk situation, the local police will contact the SPG and an assessment will be undertaken to determine whether the situation meets the criteria of a high risk incident.<sup>199</sup>

There is a chain of command authorising TOU attendance at incidents, and use of weapons by TOU officers. For example, authority to use less lethal tactics as part of a planned tactical course of action to resolve a high risk incident must be granted by the relevant Assistant Commissioner.<sup>200</sup> However, in the case of an emergency the protocols of activation can be attended to after use of the TOU.<sup>201</sup>

The specialist units within the SPG will often be deployed together to an incident deemed to be high risk. For example, in most instances, staff from the TOU will usually be accompanied by staff from the negotiation unit. The dog unit may also be in attendance.

Responsibilities for managing a high risk incident are divided between the local police and specialist units:

*[t]he LAC [or specialist crime unit] officer in charge is responsible for management of the incident, [and] the Tactical Commander of the TOU is responsible for the management of TOU members and their actions during [the] incident.*<sup>202</sup>

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We have been advised that while local police retain ultimate responsibility for managing an incident, they often seek the advice of specialist units in attendance, who are seen as the 'experts' in resolving high risk situations.<sup>203</sup>

#### 5.2.1.1. Policy of containment and negotiation

The NSW Police Force employs a doctrine of 'containment and negotiation' in its approach to resolving high risk incidents. Containment in this context refers to taking control of the situation to restrict the person's mobility by maintaining him or her within a defined perimeter.<sup>204</sup> Containment also means keeping the perimeter secure and not allowing unauthorised people entry. Negotiation involves 'a planned intervention ... to diffuse a crisis and achieve a peaceful resolution through the use of skilled communication'.<sup>205</sup>

The SPG considers negotiation its primary less lethal force tool. Often at high risk incidents the TOU's primary role is to ensure the security of negotiators. In some circumstances TOU officers will not communicate with the person during an operation, except to give orders in the event of an arrest.<sup>206</sup>

#### 5.2.1.2. Use of force

Sometimes negotiation will not be effective, and in order to gain control over a situation police officers will be required to use force. The types of tactics and weapons available to TOU and SPSU officers include officer presence, communication, weaponless control, impact munitions, aerosol sprays, chemical munitions, tactical dogs, batons, Tasers and firearms.

Police presence is the least forceful tactic, and shooting a firearm with lethal intent is the most forceful tactic. Within these extremes, other available weapons and tactics are not placed within a hierarchy. Instead, as outlined in section 5.1 situational factors are used to dictate the type and level of force appropriate in a given situation.

When responding to a high risk incident, TOU operatives work together as a team, usually involving five or six officers, to obtain control over the situation and make an arrest. During an operation officers may have a number of weapons or appointments drawn and ready to be used if needed.

#### 5.2.1.3. Debrief and reporting

Following a high risk incident there may be a debrief at the scene for all police officers involved. A more comprehensive critical incident team debrief of the incident will be held for all SPG officers. At the debrief team members will outline their views about the operation. Debrief records are kept, and issues raised may be incorporated in training and policies to ensure they remain up-to-date and appropriate.<sup>207</sup>

Following a high risk incident, both local police and specialist units have reporting responsibilities. Generally, local police are responsible for inputting information into COPS, the NSW Police Force computerised operational policing system. Members of the TOU are required to complete an operation incident form, as well as a less lethal report form if weapons are used.

### 5.2.2. Public Order and Riot Squad

On 1 September 2005 the Minister for Police and the Commissioner of Police jointly announced the establishment of the Public Order and Riot Squad (PORS). PORS commenced full operation in mid January 2006 and falls under the Command of the Deputy Commissioner, Field Operations and the Assistant Commissioner, Major Events & Incidents Group.

The squad is available for deployment 24 hours a day, at both planned events, and in response to incidents with little or no prior warning. Local area commanders can request PORS attendance and assistance at an operation or incident if it falls within the PORS Charter of Operations, and the Region Operations Manager certifies that specialist assistance is required.<sup>208</sup>

The PORS Charter of Operations are:

- riots,
- protests and demonstrations,
- high visibility policing,
- events where large crowds are anticipated,
- support of large scale operations,
- searches for improvised explosive devices,
- searches for evidence, people, property or cannabis plantations,

- first responders for chemical, biological and radiological incidents,
- security at correctional institutions during industrial disputes, and
- disaster victim identification.<sup>209</sup>

When PORS is deployed to an incident, the local area commander will usually retain command of the incident, with responsibility for ensuring the appropriate police response.

## 5.3. Rationale for introducing Tasers to NSW Police Force units

### 5.3.1. Tactical Operations Unit

In 2001 the TOU requested permission from the Standing Committee on Firearms and Operational Officer Safety to trial the M26 Taser. As outlined in an internal police memo:

*The Tactical Operations Unit has been conducting on going research in the use of 'Less Lethal' options so we continue to have available the best options for the resolution of High Risk Incidents without loss of life. At present the Tactical Operations Unit has the 'Less Lethal' options of Batons, CS& OC sprays, the Bean Bag round for our Remington 870 shotguns, SPG Dogs and use of a shield team deploying any or all of those options.<sup>210</sup>*

The TOU noted that:

*Both the Western Australian Police, Tactical Response Group and the Victorian Police, Special Operations Group have adopted these devices [Tasers] and used them operationally. They have found the device to be highly effective in instantly immobilizing and restraining violent offenders in the majority of deployments and they fully support its use.<sup>211</sup>*

While the initial plan was to evaluate the effectiveness of the Taser as an option for less lethal force, the TOU argued that 'it is not considered necessary to conduct a complete trial of the device as this has been thoroughly undertaken by both the West Australian and Victorian Police Services'.<sup>212</sup> In December 2001 approval was given for the TOU to purchase two M26 Tasers, as well as training material and operational cartridges, and to train and qualify four TOU personnel as instructors for the purpose of evaluating the Taser for use in high risk incident resolution.<sup>213</sup>

By March 2002, five TOU officers had undertaken the training course and obtained manufacturer accreditation allowing them to train and qualify other officers as operational users of the Taser.<sup>214</sup> It was noted by officers at this time that 'the devices were assessed as having tremendous potential to resolve situations where other less than lethal options such as OC capsicum spray or impact munitions were ineffective or not appropriate'.<sup>215</sup>

From the time that Tasers were initially evaluated by the NSW Police Force, officers acknowledged that there would be a range of operational limitations and weaknesses with their use. For example, in 2002 the following was noted:

#### *Limitations*

- *The M26 Advanced Taser has a limited range of 21 feet, requiring tactical personnel to close with an offender to under that distance.*
- *Use of the device is not appropriate if the offender has spread flammable liquid, as there is a risk of spark from the device.*
- *It is a requirement to have both projectile darts contact the clothing or body of the subject to complete a circuit. If one dart misses the device will not work.*
- *The device requires considerable power to operate effectively, which means that battery life is limited and batteries must be charged frequently with resultant costs.*
- *In the event that the device did not disable an offender as intended due to ineffective deployment it will always be necessary to have armed personnel on standby to protect the Taser operator.*

#### *Risks*

- *The correct deployment of the device may result in a small puncture (needle stick injury) if the device contacts skin and not clothing.*
- *There is the potential danger of injury to an offender's eye by a projectile dart if the face was targeted or struck. SOP's will require personnel to aim the device at the back and lower torso area to minimise the chance of such an injury.<sup>216</sup>*

However, despite these limitations and risks, the TOU recommended the immediate operational use of the Taser as a 'special tactic'. It was considered that the potential risks and limitations must 'be balanced against the very real and immediate risk of serious injury or death to an offender, the public and Police during a volatile high-risk incident.' It

was also noted that the limitations and risks would be 'minimised and controlled by thorough training and effective supervision in the operational environment.'<sup>217</sup>

The TOU first used a Taser in an operational context in May 2002.

### 5.3.2. State Protection Support Unit

The Commissioner's Standing Committee on Firearms and Operational Officer Safety met on 30 May 2002 and granted the SPSU approval to train with and use Tasers in an operational setting. The minutes of the meeting state:

*The Taser device has been recently introduced operationally by the Tactical Operations Unit, SPG. The device is an effective non lethal option for use against persons armed with weapons other than firearms or those who pose a serious threat to specialist police because of their exhibited violence.*

*Their use by SPSU police is considered appropriate. The devices are to be purchased from Region funds if their purchase is approved by the relevant Region Commander. Purchasing arrangement should be made through the State Protection Group which will also provide the necessary training.'*<sup>218</sup>

### 5.3.3. Public Order and Riot Squad

On 7 February 2006 the then Premier Morris Iemma announced that a trial was to be conducted to determine whether or not the Taser was an appropriate less than lethal tactical option for use by PORS.<sup>219</sup> The then Premier also announced the acquisition of 12 X26 Tasers for PORS.

A working group was formed which considered a range of international and local research on Tasers. In addition, three senior police officers who were members of the working party evaluated the use of Tasers and other less-lethal tactics and options in public order incidents while training overseas.<sup>220</sup> Officers reported to the Firearms Standards Committee:

- *Essentially, overseas research and OH&S concerns raised [led] to a view that testing [Tasers for public order management situations] is not appropriate in light of perceived unsuitability of Tasers in [public order management] situations.'*<sup>221</sup>
- *The US/UK experience is that Tasers have been largely withdrawn from Public Order scenarios as they can have adverse unintended consequences. Usage is primarily for critical incidents.'*<sup>222</sup>

In July 2007 a senior police officer reporting on the use of Tasers by PORS advised:

*I have thoroughly considered the research, available data, views of the working group and those of the experts in the field of Taser deployment and public order policing. I have also carefully considered public opinion on the use of tactical options by Police in resolving public disorder incidents.*

*In conclusion, I am satisfied in situations of public disorder that New South Wales Police have developed and continue to develop a range of tactical options, other than Taser, to resolve public disorder incidents in a timely and professional manner.'*<sup>223</sup>

The senior officer also found, however, that the 'Taser may be an appropriate less than lethal option in certain circumstances for use' by PORS in instances including, but not limited to:

- use by arrest teams in violent confrontations,
- cell extractions, and
- urgent, high risk circumstances that require immediate action prior to the arrival of the TOU.<sup>224</sup>

In August 2007 the then Police Minister David Campbell approved the use of Tasers by members of PORS.<sup>225</sup> The Police Commissioner at the time, Ken Moroney, stated that officers would not be permitted to use Tasers to deal with unruly crowds:

*The guidelines are very strict and they will be used particularly where it relates to extreme violent acts by individuals rather than say a lawful demonstration. There are other options available to police officers in those circumstances.'*<sup>226</sup>

This decision to issue officers from PORS with Tasers was criticised by the Police Association of NSW. In a media release issued on 6 August 2007 the acting Secretary of the Police Association, Greg Black, stated 'Tasers are inappropriate for use in protest or riot situations given they are known to escalate violence and antagonise the relationship between police and protesters.'<sup>227</sup> The Police Association argued that rather than issuing PORS with Tasers, all first response police vehicles in NSW should be fitted with the weapons.<sup>228</sup>

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A Taser was first used by PORS in an operational setting in February 2008.<sup>229</sup>

## 5.4. Roll out of Tasers to general duties officers

On 17 September 2007, in response to information we sought for the purpose of our investigation we were advised by the then Police Commissioner, Ken Moroney:

*The broadening of the use of Tasers to include General Duties policing, by way of a proposal to trial their use in a number of Local Area Commands was canvassed by the NSW Police Force. However, the LAC trial did not proceed and the use of Tasers by members of the NSW Police Force remains limited to the PORS, TOU and the SPSU.*<sup>230</sup>

On 18 May 2008, however, the NSW Government announced:

*NSW Police are to increase the number of Tasers in the Force, by extending their use to general duties police working as Supervisors and Duty Officers.*

*229 new Tasers will be ordered for a strategic phased rollout, with 2,000 officers to be trained in their safe use. Each Taser is to be equipped with a camera to provide an accurate video recording when it is deployed.*<sup>231</sup>

According to comments made by the then Minister for Police and the Commissioner of Police, the decision to expand Taser use was made for two reasons. The first is to reduce injuries sustained by police officers, and the second is to provide officers with a less lethal option to use in situations where they might use a firearm, thereby reducing deaths and injuries inflicted by police.

Police Commissioner Andrew Scipione stated that an increase in violent attacks on officers had prompted the extension.<sup>232</sup> In addition, he stated:

*If this is but one option that gives the police officers in the streets of NSW some alternative rather than to use deadly force, rather than to shoot somebody and killing them, then this is a good option.*<sup>233</sup>

Similarly, then Police Minister David Campbell said the Tasers would be used to 'ensure better protection for officers and to reduce avoidable deaths in high-risk situations.'<sup>234</sup> The Minister also commented:

*I believe that this will lead to a reduction in the number of injuries to police from assault as they're seeking to arrest someone or it will see a reduction in injuries from assault against other people in our community.*<sup>235</sup>

When announcing the extension, Mr Scipione stated:

*"[Tasers] do not affect the heart or other vital organs — that we know — that is what the research tells us... The taser in itself is not likely to cause anyone to die... If there are other medical pre-existing conditions, if there was a situation where somebody was suffering from a drug and they were prone to go and slump into some unconscious state and die then that would happen regardless of the use of a taser."*<sup>236</sup>

Mr Scipione stated that Tasers would not be used on pregnant women, but that they may be used on children.<sup>237</sup>

### 5.4.1. Risk assessment about extension of Taser use to general duties officers

Prior to making a decision as to whether or not to extend Taser use to general duties officers, the NSW Police Force commissioned an independent review of the health and safety issues associated with the use of Tasers by police officers.<sup>238</sup> This concluded that 'there is no doubt that a CED is an appropriate less than lethal force option when used under the right conditions.'<sup>239</sup> In particular, the risk assessment noted that Tasers should only be used:

- by experienced personnel who have received sufficient training in: tactical response options; the use and limitations of Tasers; contingency plans for if the Taser fails; and mental illness,
- in situations where at least three trained police officers are available at the scene, and
- when medical assistance is promptly available.

### 5.4.2. Deployment of Tasers

On 2 October 2008 the Minister for Police, Tony Kelly, and Police Commissioner, Andrew Scipione announced that Tasers had been issued to the 80 LACs across NSW and that 400 general duties officers had been trained and certified to use Tasers.<sup>240</sup>

Authorisation for Taser use is limited to mobile supervisors, including sergeants and duty officers, who:

- Are competent personnel who have been trained in [Taser] use, limitations, de-escalation processes, contingency plans, outcomes, medical requirements and appropriateness of use with at-risk populations;
- Are well practiced in the choice of appropriate tactical response for the circumstances;
- Will deploy the TASER in situations where other trained police personnel are available at the scene (where possible this would be the two first response officers plus the supervisor);
- Comply with a range of other internal controls and accountabilities...<sup>241</sup>

The NSW Police Force has advised us that a further roll out of Tasers to general duties officers may occur in the future:

*From the evaluation of the deployment of TASERs to this initial group, the above parameters may be modified to allow for further deployment to other groups as part of a staged roll-out to all General Duties officers.*<sup>242</sup>

## Endnotes

- <sup>194</sup> Information about the constable education program, provided to us by NSW Police Force, 27 June 2005. Information confirmed as current on 19 July 2008.
- <sup>195</sup> NSW Police Force website, [http://www.police.nsw.gov.au/about\\_us/annual\\_report](http://www.police.nsw.gov.au/about_us/annual_report). Accessed 22 April 2008.
- <sup>196</sup> 'First Officer Response to Hostage/Barricaded Incidents', *Policing Issues and Practice Journal*, October 2005, pp.1-2.
- <sup>197</sup> 'First Officer Response to Hostage/Barricaded Incidents', *Policing Issues and Practice Journal*, October 2005, pp.1-2.
- <sup>198</sup> 'First Officer Response to Hostage/Barricaded Incidents', *Policing Issues and Practice Journal*, October 2005, p.4.
- <sup>199</sup> Emergency operations are assessed by the Senior Field Supervisor, Tactical Operations Unit. Pre-planned operations are assessed by the Commander, State Protection Group. NSW Ombudsman meeting with Tactical Operations Unit, 24 October 2007.
- <sup>200</sup> NSW Police Force, Tactical Operations Unit, *Less Lethal Standard Operating Procedures*, 26 June 2007.
- <sup>201</sup> 'First Officer Response to Hostage/Barricaded Incidents', *Policing Issues and Practice Journal*, October 2005, p.4. NSW Police Force, Tactical Operations Unit, *Less Lethal Standard Operating Procedures*, 26 June 2007.
- <sup>202</sup> Information provided by the NSW Police Force, 11 February 2008.
- <sup>203</sup> NSW Ombudsman meeting with Tactical Operations Unit, 24 October 2007.
- <sup>204</sup> NSW Police Force, *Mandatory Continuing Police Education Scheme, Responding to High Risk Incidents*, July 1999.
- <sup>205</sup> 'First Officer Response to Hostage/Barricaded Incidents', *Policing Issues and Practice Journal*, October 2005, p.3.
- <sup>206</sup> NSW Ombudsman meeting with Tactical Operations Unit, 24 October 2007.
- <sup>207</sup> NSW Ombudsman meeting with Tactical Operations Unit, 24 October 2007.
- <sup>208</sup> NSW Police Public Order and Riot Squad Request for Assistance Form, NSW Police Force intranet. Accessed 17 May 2008.
- <sup>209</sup> NSW Police Force, Public Order and Riot Squad Charter of Operations, NSW Police Force intranet. Accessed 17 May 2008.
- <sup>210</sup> NSW Police Force memo, Tactical Operations Unit, State Protection Group, 5 October 2001. Provided to NSW Ombudsman 27 March 2008.
- <sup>211</sup> NSW Police Force memo, Tactical Operations Unit, State Protection Group, 30 November 2001. Provided to NSW Ombudsman 27 March 2008.
- <sup>212</sup> NSW Police Force memo, Tactical Operations Unit, State Protection Group, 30 November 2001. Provided to NSW Ombudsman 27 March 2008.
- <sup>213</sup> NSW Police Force memo, Commissioner's Standing Committee on Firearms and Operational Officer Safety, 21 December 2001. Provided to NSW Ombudsman 27 March 2008.
- <sup>214</sup> NSW Police Force memo, Tactical Operations Unit, State Protection Group, 11 March 2002. Provided to NSW Ombudsman 27 March 2008.
- <sup>215</sup> NSW Police Force memo, Tactical Operations Unit, State Protection Group, 11 March 2002. Provided to NSW Ombudsman 27 March 2008.
- <sup>216</sup> NSW Police Force memo, Tactical Operations Unit, State Protection Group, 11 March 2002. Provided to NSW Ombudsman 27 March 2008.
- <sup>217</sup> NSW Police Force memo, Tactical Operations Unit, State Protection Group, 11 March 2002. Provided to NSW Ombudsman 27 March 2008.
- <sup>218</sup> Minutes of the NSW Police Force, Commissioners Standing Committee on Firearms and Operational Officer Safety meeting 30 May 2002.
- <sup>219</sup> NSW Police Force memo, Public Order and Riot Squad, 28 July 2007. Provided to NSW Ombudsman 11 February 2008.
- <sup>220</sup> NSW Police Force memo, Public Order and Riot Squad, 13 September 2006. Provided to NSW Ombudsman 11 February 2008.
- <sup>221</sup> Minutes of the NSW Police Force, Firearms Standards Committee, 1 August 2006. Provided to NSW Ombudsman 11 February 2008.
- <sup>222</sup> Minutes Firearms Standards Committee Meeting, 8 March 2006. Provided to NSW Ombudsman 11 February 2008.
- <sup>223</sup> NSW Police Force memo, Public Order and Riot Squad, 28 July 2007. Provided to NSW Ombudsman 11 February 2008.
- <sup>224</sup> NSW Police Force memo, Public Order and Riot Squad, 28 July 2007. Provided to NSW Ombudsman 11 February 2008.
- <sup>225</sup> 'NSW police issued with stun guns' *ABC News*, 6 August 2007. <http://www.abc.net.au/news/stories/2007/08/06/1997253.htm>. Accessed 19 September 2007.
- <sup>226</sup> 'NSW police issued with stun guns' *ABC News*, 6 August 2007. <http://www.abc.net.au/news/stories/2007/08/06/1997253.htm>. Accessed 19 September 2007.
- <sup>227</sup> NSW Police Association media release, 'Minister gets it wrong on Tasers', 6 August 2007.
- <sup>228</sup> NSW Police Association media release, 'Minister gets it wrong on Tasers', 6 August 2007.
- <sup>229</sup> See section 7.5.2 for details about this incident.
- <sup>230</sup> Letter from Ken Moroney, Commissioner of Police to Simon Cohen, Assistant Ombudsman (Police), NSW Ombudsman, faxed 17 September 2007.
- <sup>231</sup> NSW Police Force media release, 'NSW Police to deploy more Tasers', 18 May 2008.
- <sup>232</sup> *ABC News*, 'More NSW police to be issued Taser guns', 18 May 2008. <http://www.abc.net.au/news/stories/2008/05/18/2248215.htm>. Accessed 15 September 2008.
- <sup>233</sup> Symons-Brown, B., 'NSW top cop says tasers not fatal', *Australian Associated Press*, 18 May 2008. <http://global.factiva.com.wwwproxy0.nun.unsw.edu.au/aa/default.aspx?pp=Print&hc...> Accessed 19 May 2008.

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- <sup>234</sup> Carty, L., 'Officers to adopt shock tactics', *Sydney Morning Herald*, 18 May 2008. <http://www.smh.com.au/news/national/officers-to-adopt-shock-tactics/2008/05/18/1210765250708.html>. Accessed 19 May 2008.
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- <sup>236</sup> Symons-Brown, B., 'NSW top cop says tasers not fatal' *Australian Associated Press*, 18 May 2008. <http://global.factiva.com.wwwproxy0.nun.unsw.edu.au/aa/default.aspx?pp=Print&hc...> Accessed 19 May 2008.
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- <sup>238</sup> Armour J., *NSW Police Draft risk review of the use of Less lethal technologies: Conducted Energy Devices such as TASERS*, March 2008.
- <sup>239</sup> Armour J., *NSW Police Draft risk review of the use of Less lethal technologies: Conducted Energy Devices such as TASERS*, March 2008, p.34.
- <sup>240</sup> NSW Police Force media release 'Tasers issued to all Local Area Commands', 2 October 2008.
- <sup>241</sup> Information provided by the NSW Police Force, 10 June 2008.
- <sup>242</sup> Information provided by the NSW Police Force, 10 June 2008.

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# Chapter 6.

## Legislation and policies

### 6.1. Legislation

NSW legislation provides that 'any hand-held defence or anti-personnel device that is designed to administer an electric shock on contact, such as the Taser Self-Defence Weapon' is a prohibited weapon.<sup>243</sup> In other words, it is illegal for a person to possess or use a Taser unless authorised to do so by a permit granted by the Commissioner of Police.<sup>244</sup> However:

- (2) *A person is not guilty of an offence [relating to possessing or using a prohibited weapon] only because of something done by the person while acting in the ordinary course of the person's duties:*
- (a) *as a police officer (or as a student police officer), or*
  - (b) *as a correctional officer employed in the Department of Corrective Services, or*
  - (c) *as a member of the police force, or as a custodial officer (however described), of the Commonwealth or of another State or Territory, or*
  - (d) *as a member of the armed forces of the Commonwealth, or of any government that is allied or associated with the Commonwealth in any war or joint military exercise in which the Commonwealth is engaged.*<sup>245</sup>

In addition, it is lawful for a police officer exercising a function under NSW law in relation to an individual or thing, and anyone helping the police officer, to use such force as is reasonably necessary to exercise the function.<sup>246</sup> Further, a police officer or other person who exercises a power to arrest another person may use such force as is reasonably necessary to make the arrest or to prevent the escape of the person after arrest.<sup>247</sup>

### 6.2. Education and Training

#### 6.2.1. Tactical Operations Unit

Initial Taser training for TOU officers was provided by the Australian representative and sole Australian distributor of Taser International. In 2005 'trainers from Taser International came to Australia and conducted a number of courses to enhance the training package, and allow for the internal NSW Police Force certification of Taser instructors.'<sup>248</sup> The TOU now has four certified Taser instructors, including master Taser instructors.<sup>249</sup>

Taser training is included within a nine day less lethal training course. The less lethal training course 'involves all aspects of less lethal technologies utilised by the TOU including weaponless control, chemical munitions (aerosol sprays), impact munitions, Tasers and tactical dogs'.<sup>250</sup> Taser training occurs over one eight-hour shift within this training course. The course is based on the Taser International training package, with minor modifications which take into account the NSW Police Force use of force model and chain of command for authorising use of the weapon.

The training course includes a half-day PowerPoint presentation with accompanying commentary by a trainer. Training materials are prepared by Taser International, and updated regularly.<sup>251</sup> The lesson plan includes technological, electrical and medical information (including effects on pacemakers, and information on sudden unexpected deaths and excited delirium), as well as operational instructions and tactical considerations.

Students are informed that extensive research conducted and/or compiled by Taser International can be found on the company's website. The TOU has informed us that in addition to the research material provided by Taser International, TOU officers conduct their own informal research into the technology via the internet.<sup>252</sup>

The eight hour training course also includes 45 to 60 minutes of practical handling training, where officers are required to fire two cartridges.<sup>253</sup> In addition, '[m]embers of the TOU are afforded the opportunity to be exposed to the effects of the Taser via alligator clips for a period of 5 seconds.'<sup>254</sup> While this exposure is voluntary, TOU officers have informed us that if an officer refuses to be subjected to a Taser application, they are not permitted to carry a Taser.<sup>255</sup> All students must take note of instructor and user warnings and risks, which include a liability waiver form. This must be signed prior to being exposed to a Taser application.<sup>256</sup>

We have been advised that no NSW Police Force officers have sustained injuries while being subjected to a Taser application during training.<sup>257</sup> On one occasion an officer fainted after being subjected to a Taser application, however,



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this was considered to have occurred due to the officer not eating or drinking prior to the charge, and being anxious about the experience.<sup>258</sup> Taser International product warnings do note that 'some individuals may experience an exaggerated response to a device exposure, or threatened exposure, which may result in a person fainting and possible secondary injury.'<sup>259</sup>

Taser training is complimented by scenarios in the general TOU less lethal training program, which is regarded within the NSW Police Force as one of the most intensive police training programs. Following the training course, an examination is held. Officers must pass this written examination with a minimum score of 80% to be authorised to use a Taser. Re-accreditation of officers for the use of Taser occurs annually, with Taser International requiring two cartridges to be fired as part of this process.<sup>260</sup>

The NSW Police Operational Safety Traffic and Training Unit (OSTTU) has proposed extending Taser training to a two-day course.<sup>261</sup>

### **6.2.2. State Protection Support Unit**

All SPSU officers are currently trained to use a Taser. The training materials and accreditation process used by the SPSU are identical to those used by the TOU.

There are three officers in the Northern region accredited to conduct training. There is one master Taser instructor in the Western region, however to date this instructor has not carried out the accreditation of any personnel. There is one master Taser instructor in the Southern region, and eight Tactical Training instructors.

All officers trained in Taser use are re-accredited to use Tasers on an annual basis. Training instructors are assessed at an annual camp by officers from OSTTU and the TOU. SPSU officers are then assessed by these Tactical Training instructors in order to be re-accredited.

### **6.2.3. Public Order and Riot Squad**

Taser accreditation is limited within PORS to officers acting as tactical commanders and team leaders. There are currently eight sergeants and three inspectors in PORS who are accredited to use Tasers in an operational context. There are no master instructors in PORS, and training is provided by master instructors attached to the TOU and the SPSU. The training and re-accreditation processes are the same as those provided by the two other units. However, the PORS SOPs state that three practice cartridges must be fired prior to certification.<sup>262</sup> Re-accreditation occurs annually, and is due to commence in September 2008.

### **6.2.4. General duties supervisors and duty officers**

As at 2 October 2008, 400 Supervisors and Duty Officers had received training and certification to use X26 Tasers, with 1,500 further officers due to receive the training.

*This training consists of 8 hours of initial instruction that includes the firing of 3 cartridges, passing a written test with a minimum score of 80% and annual recertification thereafter.*<sup>263</sup>

## **6.3. Policies and procedures**

There are a number of NSW Police Force policies and procedures to ensure:

- police use of force is reasonable and justified,
- police conduct their job in the safest possible way,
- weapons are managed, maintained, used and stored properly, and
- deaths and injuries to or caused by police are investigated thoroughly.

Some of the policies most relevant to police use of Tasers are summarised below.

### **6.3.1. Police Handbook**

The NSW Police Force Handbook provides guidance for all officers on a range of issues. To date, there is no specific information regarding Tasers in the Police Handbook. However, a number of issues covered in the Handbook are relevant to the use and management of Tasers.

### 6.3.1.1. Occupational Health and Safety

This chapter of the Handbook states that:

*the management of Occupational Health and Safety (OHS) should not be seen as a separate activity or responsibility, nor should it be viewed by individual Commanders/Managers as an extra responsibility. OHS systems must be integrated into normal business activities and become part of the way the organisation's work is normally done. Considering the nature of policing, the issue of the 'safest way' to get the job done must be of primary importance.*<sup>264</sup>

### 6.3.1.2. Specialist units

The Handbook covers a range of issues relating to the specialist units, including authorisation of attendance at operations and authorisation for weapon usage. The Handbook also covers issues such as actions to be taken once a weapon has been used, including the necessity of providing first aid and medical assistance to people who are injured.

## 6.3.2. NSW Police Force Safety Policy Statement

The NSW Police Force Safety Policy Statement provides that the NSW Police Force is committed to:

- allocating appropriate resources to measure and continually improve safety,
- complying with legal and organisational requirements for safety, health and injury management,
- minimising the risk of injury and disease for staff and others at workplaces,
- actively identifying hazards, assessing and reducing risk, and
- providing appropriate safety information, instruction, training and supervision.<sup>265</sup>

## 6.3.3. Guidelines for the management and investigation of critical incidents

According to police policy, a critical incident 'is an incident which by its nature or circumstances requires an independent investigation and review.'<sup>266</sup> Examples of critical incidents include:

- homicide, or attempted homicide of a police officer, if serious injuries are sustained
- death or injury resulting from the discharge of a firearm by a police officer
- discharge of a police firearm in high risk operational circumstances (where no injuries are sustained)
- death or serious injury to a person in police custody, or arising from a police operation
- death or serious injury from use of police appointments (not firearm) or as a result of the application of physical force by a police officer, or
- any other event that could attract significant attention, interest or criticism from the community.

The guidelines outline the roles and responsibilities of various officers in relation to a critical incident. In particular, the Senior Critical Incident Investigator is responsible for ensuring that all critical incidents are investigated in a rigorous and thorough manner, and ensuring that appropriate action is taken following the conclusion of the investigation, if any offence is identified. When investigating an incident, the Critical Incident Investigation Team will look particularly at 'the lawfulness of police action, the extent of police compliance with relevant guidelines, legislation and internal policy and procedures.'<sup>267</sup>

Following a critical incident, an investigation report is to be prepared and provided to relevant senior officers.

## 6.3.4. Standard Operating Procedures

### 6.3.4.1. Tactical Operations Unit and State Protection Support Unit

The TOU does not have SOPs that specifically relate to Taser use. Instead, the unit's SOPs cover less lethal tactics generally. These were approved in June 2007 and provide that less lethal tactics may be used at a high risk incident:

- *to protect human life,*
- *as a less lethal option for controlling people where violent resistance or confrontation occurs,*
- *if the officer is in danger of being overpowered or to protect themselves or others from injury,*
- *for protection against animals.*<sup>268</sup>

The SOPs explicitly state that 'the use of Less Lethal tactics must be reasonable and proportionate to the overall tactical situation.' In deciding whether or not it is appropriate to use less lethal tactics, personnel must consider

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a range of factors including the subject's age, physical condition, emotional state, and the involvement of mental illness, drugs or alcohol. They must also consider the overall tactical situation, the number of personnel available, and risks to the public, police and the person who will potentially be subject to a less lethal tactic or weapon. In addition, consideration must be given to the availability of appropriate medical support.<sup>269</sup>

The SOPs inform officers about the areas of a human body that should be avoided when weapons are used, so as to minimise injuries.

In relation to medical treatment, the SOPs state:

*Impact munitions and other Less Lethal tactics may not result in any immediately visible injury. Offenders should be offered an examination by Ambulance personnel in the first instance. If there is any doubt as to the extent of an injury, an offender should be conveyed without undue delay to an appropriate medical facility for a more thorough examination and treatment.*

*Tactical police are to ensure that any injury that occurs through use of a less lethal tactic is treated by appropriate personnel as soon as practicable after the resolution of the incident.<sup>270</sup>*

The TOU has advised:

*Where a Taser has been deployed against a subject this information is relayed via the Tactical Commander to the LAC [officer in charge]. Ambulance personnel will be called from the Command Post to the incident site to examine the subject prior to TOU members handing the subject back to LAC police for custody and investigative roles.*

*The Tactical Commander will brief the LAC officer in charge as to what has occurred, the less lethal tools deployed, and the anticipated effects.<sup>271</sup>*

The SOPs also contain provisions concerning reporting and recording of less lethal tactics. Information about these provisions is outlined in section 6.4.3.2 below.

The SPSU uses the same SOPs as the TOU.

#### 6.3.4.2. Public Order and Riot Squad

The PORS SOPs for use of the Taser were approved in June 2007. In August 2007 a meeting of the Commissioner's Firearms and Operational Safety Committee considered the issue of whether PORS and the TOU should continue to have distinct SOPs. At this time '[i]t was agreed that there were different lines of authority permitting use and vastly different conditions of use between the groups.<sup>272</sup> Therefore the two units continue to use different SOPs.

Some aspects of the PORS SOPs are similar to the TOU SOPs about less lethal tactics. For example, the criteria for use are substantially the same,<sup>273</sup> as are the considerations which must be taken into account when deciding whether or not to use a Taser (see section 6.3.4.1). One factor that the TOU is required to consider before using a Taser, which is not specifically mentioned in the PORS SOPs is 'the involvement of mental illness'. It is not clear whether this omission in the PORS SOPs was intentional.

Overall, the PORS SOPs are a great deal more specific and comprehensive than those of the TOU. For example, they provide additional factors which must be taken into account before a decision to use a Taser is made, including:

*Assessment of the surrounding environment should be made prior to deployment, with considerations to secondary hazards, such as height, water, traffic and flammables.*

They also explicitly state when a Taser may not be used:

- a. *Taser may not be used on individuals who are compliant and non-threatening,*
- b. *the Taser may not be used as punishment or retaliation,*
- c. *use of other tactical options by the Taser operator, simultaneously with deployment of Taser, should be avoided,*
- d. *handcuffed prisoners should not be Tased without extenuating circumstances.<sup>274</sup>*

The SOPs also inform officers:

- Except in exigent circumstances, authority to use a Taser as part of a pre-planned operation must be granted by the Commander of PORS, or their field representative.
- The Taser should be aimed at the centre of the seen body mass, and face and groin areas should be avoided.
- A loud verbal warning of 'Taser. Taser. Taser' should be given unless circumstances do not permit.
- Holding the trigger continuously beyond the initial five second charge will prolong the charge. To do so the operator must be justified and satisfied that the person is not compliant and is still hostile or aggressive.

The SOPs also outline a range of actions to take after a Taser has been used. In particular:

- Probes should be removed by properly trained personnel. Ambulance or hospital personnel are to remove probes that penetrate the face, neck, breast area of a female, or the groin areas.
- Probes that have entered a target's body should be treated as biohazards.
- Photographs of the scene, probe impact sites and any other related injuries should be taken.
- A number of AFID tags should be collected at the scene and retained with the empty cartridge.

In addition:

*8.3 When a subject is Tased, resulting in injury, operatives at the scene should render immediate first aid and arrange for ambulance personnel to attend the incident scene.*

*8.4 All persons that are Tased will be assessed by qualified medical personnel, either at the scene if circumstances allow, or travel by ambulance to the nearest hospital for assessment. (Persons that are Tased should not be conveyed to hospital in a caged vehicle where applicable).*

### 6.3.4.3. General duties supervisors and duty officers

The NSW Police Force *Standard Operating Procedures For use of Taser — General Duties Electronic Control Device* (General Duties SOPs) were finalised in September 2008. The SOPs provide information about Tasers and Taser components, instructions about loading and unloading Tasers, storage, cleaning and inspection of Tasers.

The SOPs contain substantially similar criteria for use as the TOU SOPs about less lethal weapons and the SOPs governing Taser use by PORS officers. That is, a Taser may be used:

- to protect human life,
- to control person/s where violent resistance or confrontation occurs or is imminent,
- to protect officer/s in danger of being overpowered or to protect themselves or another person from injury, or
- for protection from animals.<sup>275</sup>

We note that unlike the PORS SOPs, the General Duties SOPs do not include information about the circumstances when a Taser may not be used.

The General Duties SOPs specify that prior to using a Taser, an assessment should be made of the surrounding environment, with considerations to secondary hazards, for example 'location, proximity to bodies of water, traffic hazards and flammables.'<sup>276</sup> However, unlike the TOU SOPs about less lethal weapons and the PORS SOPs governing Taser use, the General Duties SOPs do not include information about the considerations which must be taken into account prior to making a decision to use a Taser, such as the age, physical, emotional and mental state of the individual, and the risks to the public, police and person.

Like the PORS SOPs, the General Duties SOPs advise officers to aim for the centre of body mass when using a Taser, and advise officers to 'avoid targeting the face or groin areas'.

The General Duties SOPs advise officers that holding the trigger beyond the initial five second Taser charge will prolong the Taser charge, and state '[c]ontinued use of the Taser must be justified in all the circumstances following assessment of the subject's compliance'. We note that the PORS SOPs provide a higher threshold in relation to subjecting a person to a Taser charge that is longer than five seconds. These SOPs state that to prolong the Taser exposure beyond five seconds 'the operator must be justified and satisfied that the subject is not compliant and still hostile or aggressive.'<sup>277</sup>

The General Duties SOPs require police officers to render immediate first aid following use of a Taser, and require ambulance personnel to be called on all occasions where a person has been subjected to a Taser application.

## 6.4. Accountability

### 6.4.1. Use of inbuilt Taser accountability measures

#### 6.4.1.1. AFID Tags

From the material we have been provided by the NSW Police Force, it does not appear that officers routinely collect or record information about the AFID tags which are dispensed from a Taser, each time it is used.

#### 6.4.1.2. Taser Cam

As outlined in section 2.2.1, X26 Tasers can be fitted with a camera that records audio-visual footage when the safety lever is disengaged. At present, the NSW Police Force specialist units which use Tasers do not possess or use these Taser Cams.

The Tasers used by general duties police acting as supervisors and duty officers are fitted with Taser Cams.

#### 6.4.1.3. Dataport download facility

Each time a Taser is used, information such as date, time and burst duration (length of time the trigger is depressed) is stored in the weapon's 'on-board computer'.<sup>278</sup> This information can be downloaded and stored in a database, for use in gathering statistics and verifying officers' reports about Taser use.

In February 2008 we were advised:

*[There is] [c]urrently... no provision for SPSU Operatives or the Operations Coordinator to download information through the dataport facility. No training, equipment or information has been provided in relation to this process.*<sup>279</sup>

In addition:

*The Tasers all store information of each firing, however, the TOU does not currently have the dataport download equipment, although "the facility to download the information is available within the NSW Police Force".*<sup>280</sup>

PORS does have the capacity to download information from its X26 Tasers. In addition, the PORS SOPs provide:

*As soon as possible after the Taser has been used, the on shift Tactical Commander or Staff Officer will assess the Taser's database to verify that the Taser was fired and to print the report generated by the Taser's dataport.*

The PORS SOPs also provide:

*The Staff Officer PORS is responsible for accessing each of the individual Taser's database monthly, verifying that there have been no deployments of probes, except for those that have been reported*<sup>281</sup>

The General Duties SOPs state that when a Taser has been used, it is to be returned to the police station and the data is to be downloaded. In addition:

*The Commander or their delegate is responsible for accessing each of the individual Taser's database monthly, verifying that there have been no deployments of probes, except for those that have been reported.*<sup>282</sup>

### 6.4.2. Carriage and storage of Tasers

Tasers are stored by the NSW Police Force in secure vehicles, armouries and locked storage facilities (some of which are alarmed). In the specialist units, Tasers are not issued to individual officers, but are transported to incidents in secure vehicles. While on shift, general duties officers authorised to use Tasers are to carry the Taser in an organisationally approved holster, on their support side (that is, the side opposite to where their firearm is holstered).<sup>283</sup>

### 6.4.3. Reporting and record keeping

When specialist units attend high risk incidents with local police, the latter retain responsibility for managing the situation overall, while the specialist unit is responsible for management of unit members, and their actions. Similarly, local police and specialist units have different reporting responsibilities. Local police are generally responsible for inputting information about the incident into the COPS database, while the specialist units are required to complete specific forms about the 'job' or incident.

#### 6.4.3.1. Recording information on COPS

COPS was 'developed to enable law enforcement organisations to capture, access and analyse crime information and intelligence on an organisation wide basis.'<sup>284</sup> Any relevant information regarding an incident involving police should be entered into a COPS incident report. Each COPS incident report is given a number, and may be linked to other related COPS incident reports.

When completing records in COPS, the reporting officer completes a range of fields which describe the person involved in the incident and details about the event. Some of these fields are mandatory, but in many areas of COPS the reporting officer has discretion to determine which information to include. There is also space for the reporting officer to write a narrative, in his or her own words, about the event.

It is the responsibility of local police attending an incident to input information into the COPS database. This is mirrored in the TOU SOPs, which state:

*Duty Officers and Senior Investigators are to be requested to ensure that the use of Less Lethal tactics by members of the Tactical Operations Unit and State Protection Support Unit is recorded on the COPS event for the incident.*

However, the PORS SOPs require officers that use Tasers in an operational context to 'complete a COPS entry at the first available opportunity after the incident.'<sup>285</sup>

#### 6.4.3.2. Tactical Operations Unit — reports and records about Taser use

The TOU SOPs contain provisions regarding who must be informed when less lethal tactics are used. According to the SOPs, if a less lethal tactic is used at a high-risk incident:

- the Tactical Team Leader is to be informed at the first practical opportunity,
- the Team Leader is to inform the Operations Co-ordinator at the first practical opportunity, and
- the Operations Co-ordinator must inform the Duty Officer or Senior Investigator taking custody of the person of the use of the weapon, and its effects.

The Operations Co-ordinator is responsible for ensuring that personnel who use less lethal tactics or devices accurately record the circumstances of their use.<sup>286</sup>

The onus is on individual officers who use a less lethal tactic to make a detailed record of the circumstances surrounding the use, and any resulting injury. The SOPs explicitly state that 'Personnel will record in detail any injury or significantly the lack of any visible injury resulting from the employment of a Less Lethal tactic.'<sup>287</sup>

The SPG Incident Event form is used to record the details of incidents attended. This includes the job number, type of job, requesting officer and agency, the TOU senior field supervisor and attending TOU operatives, details of any injuries, details of the weapons and tactics used, and a narrative of the incident. This form also records debrief details. It is generally completed by the Senior Field Supervisor, and signed off by the Commander of the TOU, the Commander of the Negotiations Unit, and the Commander of the SPG.

In events where a less lethal tactic is used, a separate Less Lethal User Report form is required to be completed. In the time period since the TOU has been using Tasers, there have been a number of different formats, which have required different types of information and levels of detail to be included, on the form. The latest version of the form is completed electronically. The information required to be completed on the form includes: the location of the incident, type of incident, the characteristics of the individual(s) police targeted, the types of force used, and injuries sustained to the person or police officer. If a Taser is used, the officer completing the form is required to include information about:

- whether the Taser was used in probe or drive-stun mode,
- the duration of the Taser application,
- the distance between the officer firing the Taser and the target,
- the number of cartridges used, and
- whether the charge was effective.

There is also space on the form for a brief summary about the event, and comments about the weapon use.

We have been advised that:

*The TOU does not record and document the use of the Taser that relates solely to the drawing, sparking or use of the laser. In the High Risk environment members often have the taser drawn, and armed with the laser showing in preparation to deploy as the situation develops. This does not mean that the taser is automatically utilised, as the offender may surrender, or other tactics utilised to resolve the situation.*<sup>288</sup>

#### 6.4.3.3. State Protection Support Group — reports and records about Taser use

As SPSU operatives use the same SOPs as the TOU, the reporting requirements are the same.

Operatives from the SPSU do not appear to be consistently recording information about events where Tasers are used. From information we have received, it appears that in some incidents, the SPG Incident Event form and Less Lethal Report form are completed. In others, information is recorded on an SPSU Operational Incident Form. Information recorded on this form includes the type of incident (emergency or pre-planned), the SPSU members attending, the negotiators attending, the SPSU field supervisor, other support people in attendance, details of tactics and who they were approved by, injuries, property damage and a narrative of the full details of the incident.

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On some occasions, SPSU operatives also complete a debrief form, summarising issues arising at the debriefing session.

#### 6.4.3.4. State Protection Group — Effectiveness Rating

We have been provided with a table in which the SPG has rated each use of the Taser by the TOU and SPSU as either effective or ineffective. The table indicates that in some instances where a Taser was used, the first (and in one instance second) application was not effective, but that a subsequent application was effective.<sup>289</sup>

#### 6.4.3.5. Public Order and Riot Squad

The PORS SOPs explain the five stages of Taser use as follows:

1. a Taser is drawn so as to cover a person that is displaying aggressive or hostile behaviour,
2. the laser is on and aimed at the subject,
3. the cartridge is removed and the trigger is pulled, producing an arcing of electricity between the probes (a spark demonstration),
4. the Taser is used in drive stun mode, and
5. the Taser is used in probe mode.

The PORS SOPs state that all five stages are reportable and require officers that use a Taser in an operational context to complete a COPS entry, the heading of which must indicate that a Taser has been used.

In addition, the officer must complete a PORS 'Use Reporting Form'. This is very similar to the SPG Less Lethal User Report form.<sup>290</sup>

This information is to be forwarded to: the Commander, PORS; the Commander, Major Events & Incidents Group; and to the Deputy Commissioner, Field Operations.

#### 6.4.3.6. General duties supervisors and duty officers — reports and records about Taser use

The General Duties SOPs require officers to complete a COPS entry, including the serial number of the Taser, at the first available opportunity after the Taser has been used in either probe or drive-stun mode. These reports are to be forwarded to the Commander Operational Skills and the Deputy Commissioner — Field Operations. In addition, when a Taser has been used the Duty Operations Inspector VKG is to be contacted immediately and informed of the situation.

### 6.4.4. Inspection and auditing

The specialist units which use Tasers all inspect and audit their Tasers on a periodic basis. However, there is no consistency between units about how often these audits are conducted. We have been advised that:

- The TOU conducts monthly audits of its Tasers. Supervisors and inspectors also conduct 'dip sampling' to verify compliance with control procedures.
- Auditing and inspection of operational equipment in the Northern Region SPSU, including Tasers and Taser cartridges occurs twice a year.
- Each zone in the Southern Region has a nominated coordinator, who is responsible for the accountability and maintenance of all equipment within their zone. The coordinators conduct quarterly audits of Tasers.
- Tasers held by PORS are scheduled to be inspected weekly.<sup>291</sup>

We have not been provided with information about how often Tasers located within the Western Region SPSU are inspected.

The NSW Police Force has advised that Tasers used by general duties officers are to be inspected weekly.<sup>292</sup>

### 6.4.5. Proposed use of force register

At present, the NSW Police Force does not comprehensively and systematically record information about each time force is used by one of its officers. While information is routinely recorded in the COPS database, and on specialist unit report forms, the type of information and level of detail recorded varies greatly and there have not been any efforts made to collate, examine and analyse it. This means that it is currently not possible for the NSW Police Force to determine:

- how often police use force,
- the reasons why force is used by police,

- which police use force,
- the type(s) of force used,
- the effectiveness of different types of force, and
- the number and types of injuries that result (to officers and people subjected to force) when police use different types of force.

In November 2005, the then Assistant Commissioner, Professional Standards, attended the 14<sup>th</sup> Annual Policing Integrity Forum, at which there was discussion about excessive use of force by officers and the issue of use of force registers. As a result, the Strategic Research Team, Intelligence Unit, Professional Standards Command, was requested to conduct research on existing use of force registers and the options for the introduction of a use of force register in the NSW Police Force. The research was completed and presented to the Commissioner's Executive Team (CET) in November 2006.

In June 2007, resolutions were made at a CET meeting in relation to the establishment of a project to further the development of a use of force register in the NSW Police Force. The project was scheduled to be completed by September 2008. However, we have been advised that it has not yet been completed.<sup>293</sup>

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## Endnotes

- <sup>243</sup> *Weapons Prohibition Act 1998*, Schedule 1, s.2 (18). Note this does not include any such hand-held device that may lawfully be used on an animal in accordance with the *Prevention of Cruelty to Animals Act 1979*. Note, emphasis in text has been removed.
- <sup>244</sup> *Weapons Prohibition Act 1998*, Schedule 1(2)(18).
- <sup>245</sup> *Weapons Prohibition Act 1998*, s.6 (2).
- <sup>246</sup> *Law Enforcement (Powers and Responsibilities) Act 2002*, s.230.
- <sup>247</sup> *Law Enforcement (Powers and Responsibilities) Act 2002*, s.231.
- <sup>248</sup> Information provided by the NSW Police Force, 11 February 2008.
- <sup>249</sup> Master Taser instructors are accredited to train other Taser instructors as well as Taser operators.
- <sup>250</sup> Information provided by the NSW Police Force, 11 February 2008.
- <sup>251</sup> The training package and presentation is currently at Version 14, updated in November 2007. We have been provided with Version 13 of the Training materials, and Version 14 of the Instructor Materials, including a DVD disc with the PowerPoint presentation, other material (for example, a public information kit), instructor notes and lesson plans.
- <sup>252</sup> NSW Ombudsman meeting with Tactical Operations Unit, 24 October 2007. Confirmed in phone conversation with State Protection Group, 5 March 2008. Note, we have not been provided with any research materials sourced by the Tactical Operations Unit.
- <sup>253</sup> Taser International, *Instructor Certification Lesson Plan, version 14, Taser X26 and Advanced Taser M26*, November 2007, p.278.
- <sup>254</sup> Information provided by the NSW Police Force, 11 February 2008.
- <sup>255</sup> NSW Ombudsman meeting with Tactical Operations Unit, 24 October 2007. Note, Taser International does not require exposure to a Taser charge for instructor or user certification. Taser International, *Instructor Certification Lesson Plan, version 14, Taser X26 and Advanced Taser M26*, November 2007, p.59.
- <sup>256</sup> Taser International, *Instructor Certification Lesson Plan, version 14, Taser X26 and Advanced Taser M26*, November 2007, p.60.
- <sup>257</sup> Information provided by the NSW Police Force, 11 February 2008.
- <sup>258</sup> NSW Ombudsman meeting with Tactical Operations Unit, 24 October 2007.
- <sup>259</sup> Taser International, *Product Warnings: Law Enforcement*, 28 April 2008, www.taser.com. Accessed 3 June 2008.
- <sup>260</sup> Taser International, *Instructor Certification Lesson Plan, version 14, Taser X26 and Advanced Taser M26*, November 2007, p.278. Note, on 3 October 2008, the NSW Police Force informed us that in future officers in the Tactical Operations Unit will be re-accredited to use Tasers twice yearly.
- <sup>261</sup> This was discussed in the NSW Police Commissioner's Firearms and Operational Safety Committee meeting on 6 December, 2007. Information provided by the NSW Police Force 11 February 2008.
- <sup>262</sup> NSW Police Force, Public Order and Riot Squad, *Standard Operating Procedures For Use of Taser*, June 2007.
- <sup>263</sup> NSW Police Force, *Standard Operating Procedures For use of TASER — General Duties Electronic Control Device*, September 2008.
- <sup>264</sup> NSW Police Force, *Police Handbook*, 'Occupational Health and Safety' chapter, updated January 2007. NSW Police Force intranet. Accessed 3 June 2008.
- <sup>265</sup> NSW Police Force, *Safety Policy Statement*, November 2007.
- <sup>266</sup> NSW Police Force, *Critical Incident Guidelines*, version 3, February 2007, p.4.
- <sup>267</sup> NSW Police Force, *Critical Incident Guidelines*, version 3, February 2007, p.20.
- <sup>268</sup> NSW Police Force, Tactical Operations Unit, *Less Lethal Standard Operating Procedures*, 26 June 2007.
- <sup>269</sup> NSW Police Force, Tactical Operations Unit, *Less Lethal Standard Operating Procedures*, 26 June 2007.
- <sup>270</sup> NSW Police Force, Tactical Operations Unit, *Less Lethal Standard Operating Procedures*, 26 June 2007.
- <sup>271</sup> Information provided by the NSW Police Force, Tactical Operations Unit, 11 February 2008.
- <sup>272</sup> Memo, NSW Police Force, State Protection Group, 3 September 2007. Information provided by the NSW Police Force, 11 February 2008.
- <sup>273</sup> See section 6.3.4.1. Note that the Public Order and Riot Squad SOPs specify that a Taser may be used 'As a less lethal option for controlling person/s when violent resistance or confrontation occurs or likely to occur, and there is no other means by which to do so' [emphasis added]. The limitation emphasised is not included in the Tactical Operations Unit SOPs, however, the Tactical Operations Unit SOPs govern use of all less lethal weapons.
- <sup>274</sup> NSW Police Force, Public Order and Riot Squad, *Standard Operating Procedures For Use of Taser*, June 2007.



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- <sup>275</sup> NSW Police Force, *Standard Operating Procedures For use of TASER — General Duties Electronic Control Device*, September 2008.
- <sup>276</sup> NSW Police Force, *Standard Operating Procedures For use of TASER — General Duties Electronic Control Device*, September 2008.
- <sup>277</sup> NSW Police Force, Public Order and Riot Squad, *Standard Operating Procedures For Use of Taser*, June 2007.
- <sup>278</sup> The data does not distinguish between whether a Taser has been fired, or simply sparked. Note, the M26 does not record information about burst duration.
- <sup>279</sup> Information provided by the NSW Police Force, 11 February 2008.
- <sup>280</sup> Information provided by the NSW Police Force, 11 February 2008.
- <sup>281</sup> NSW Police Force, Public Order and Riot Squad, *Standard Operating Procedures For Use of Taser*, June 2007.
- <sup>282</sup> NSW Police Force, *Standard Operating Procedures For use of TASER — General Duties Electronic Control Device*, September 2008.
- <sup>283</sup> NSW Police Force, *Standard Operating Procedures For use of TASER — General Duties Electronic Control Device*, September 2008.
- <sup>284</sup> NSW Police Force intranet, COPS information. Accessed 18 August 2008.
- <sup>285</sup> NSW Police Force, Public Order and Riot Squad, *Standard Operating Procedures For Use of Taser*, June 2007.
- <sup>286</sup> NSW Police Force, Tactical Operations Unit, *Less Lethal Standard Operating Procedures*, 26 June 2007.
- <sup>287</sup> NSW Police Force, Tactical Operations Unit, *Less Lethal Standard Operating Procedures*, 26 June 2007. Emphasis in the original.
- <sup>288</sup> Information provided by the NSW Police Force, 11 February 2008.
- <sup>289</sup> The State Protection Group effectiveness rating schedule is further discussed in section 7.5.1 and 8.5.2.4.
- <sup>290</sup> See section 6.4.3.2.
- <sup>291</sup> Information provided by the NSW Police Force, 11 February 2008.
- <sup>292</sup> Information provided by the NSW Police Force, 3 October 2008.
- <sup>293</sup> Information provided by the NSW Police Force, 3 October 2008.

# Chapter 7.

## Incidents where Tasers were used by the NSW Police Force, May 2002 – December 2007

### 7.1. Introduction

This chapter provides an overview of Taser use in an operational context between May 2002 and December 2007. It is primarily based on information provided by the NSW Police Force. Unless otherwise specified, we have obtained information about the incidents where Tasers were used, and the people subjected to Taser applications from a variety of NSW Police Force records and reports, such as COPS records, SPG incident reports and less lethal user report forms. In some instances we have also relied on information provided by the NSW Ambulance Service and hospital records.

Where percentages are included in this chapter, they may not add up to 100% as numbers have been rounded.

#### 7.1.1. Tasers within the NSW Police Force

Between May 2002 and December 2007 the units within the NSW Police Force that were authorised to use Tasers were the TOU, SPSU (split operationally into the Northern Region, Southern Region and Western Region) and PORS.<sup>294</sup>

Fifty six Tasers were available across these units, with 38 (68%) being X26 Tasers, and the remaining 18 (32%) being M26 Tasers. Table 1 shows the type of Tasers possessed by each of the units.

**Table 1. Distribution of X26 and M26 Tasers across NSW Police Force units**

Unit	Number of X26 Tasers	Number of M26 Tasers
TOU	13	4
SPSU Northern Region	6	4
SPSU Southern Region	1	10
SPSU Western Region	6	0
PORS	12	0
Total	38	18

Source: NSW Police Force records provided to or accessed by NSW Ombudsman.

Three of the units (TOU, SPSU Northern Region and SPSU Western Region) had access to both models of Taser, while the SPSU Western Region and PORS possessed only X26 Tasers. It is not clear why over 90% of the Tasers held by the SPSU Southern Region are the older M26 model, while the majority of Tasers held by each of the other units are the newer X26 model.

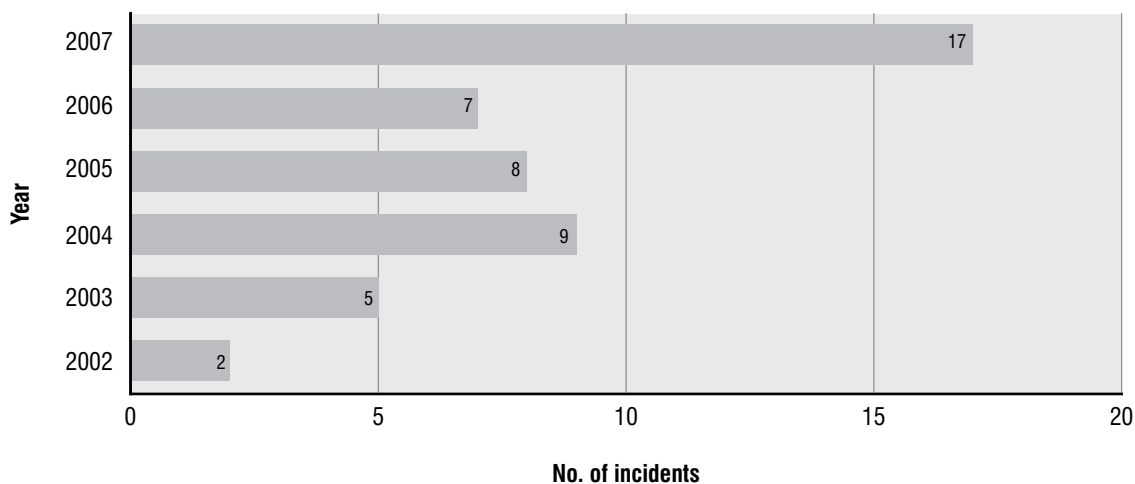
### 7.2. Use of Tasers

#### 7.2.1. Number of incidents where Tasers were used

Between May 2002 and December 2007 the NSW Police Force used Tasers during 48 operations or incidents they attended.<sup>295</sup>

Figure 1 shows the number of incidents where officers have attended and used a Taser during each year between May 2002 and December 2007.<sup>296</sup> We are not aware of any reasons for the sharp rise in Taser use in 2007. However, we note that the TOU was responsible for all but one of the incidents where a Taser was used during 2007.

**Figure 1. Taser incidents by year**



Source: NSW Police Force records provided to or accessed by NSW Ombudsman. (n=48)

Table 2 identifies the NSW Police Force units that used Tasers between May 2002 and December 2007.

**Table 2. Number of incidents where Tasers used by NSW Police Force units**

Unit	Number of incidents where Taser used	Percentage
TOU	39	81%
SPSU Northern Region	5	10%
SPSU Southern Region	4	8%
SPSU Western Region	0	0%
Total	48	

Source: NSW Police Force records provided to or accessed by NSW Ombudsman.

### 7.2.2. Model of Taser used in each incident

In 39 of the 48 incidents (81%) it was not possible for us to tell from police records which model Taser was used.

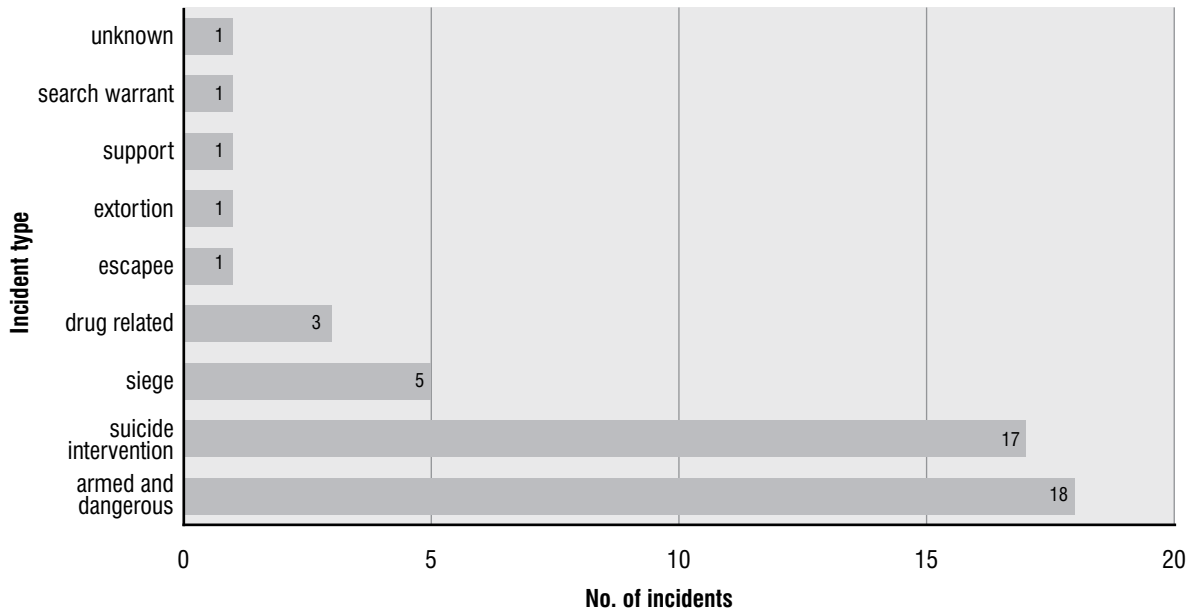
In the nine incidents where we were able to ascertain which model Taser was used, an X26 model Taser was used in four incidents (8%), and an M26 model Taser was used in five incidents (10%).

### 7.2.3. Types of incidents where Tasers were used

As discussed in section 5.2.1, the NSW Police Force categorises operations as emergency (reactionary) or pre-planned.<sup>297</sup> According to police records, in 35 incidents where Tasers were used (73%), police were responding to emergency situations including suicide interventions and sieges. In 10 incidents (21%) the operation was pre-planned, for example, it involved the execution of a search warrant or drug seizure. In three incidents (6%) police did not record the type of job attended.

Police also record a brief description of the event where the Taser was used.<sup>298</sup> Based on this information, Figure 2 identifies the types of incidents where police used Tasers between May 2002 and December 2007. Police most commonly used Tasers at incidents involving armed and dangerous people (38%) and when intervening in suicide attempts (35%).

**Figure 2. Taser use by incident type**



Source: NSW Police Force records provided to or accessed by NSW Ombudsman. (n=48)

#### 7.2.4. Possession of weapon by person subjected to the Taser application

In 47 of the 48 incidents (98%), the person subjected to the Taser application was armed, or thought by police to be armed, with some kind of weapon.<sup>299</sup> In 23 incidents (48%) the person had, or was thought to have, more than one weapon in their possession.

The most common weapons were knives — in 24 incidents (50%) people subjected to a Taser application had, or were thought to have had knives in their possession. This was followed by firearms — in 21 incidents (44%) people had, or were thought to have had firearms in their possession. Other weapons people subjected to a Taser application had in their possession were hammers, axes, flammable liquids and sharp objects including broken glass, razor blades and scissors.

#### Case study 1

Police arrived at a house to find a man holding his infant child hostage. The man was armed with a knife and threatening to harm the child. A siege situation ensued and unsuccessful negotiations between the police and the man took place over six hours. Ambulance officers were concerned about the child's safety and police eventually entered the premises and used physical force to release the child from the man's hold. The man fell to the floor, struggling violently among broken glass and other items that could have caused injury to himself or police. Police subjected the man to a Taser application, in drive-stun mode, and the man was restrained and handcuffed. Ambulance officers at the scene treated the man for self-inflicted wounds and abrasions to his face and body and then conveyed him to hospital.

#### 7.2.5. Presence of NSW Police Force specialist units at incidents where Tasers were used

As discussed in section 5.2.1, The TOU, SPSU and PORS are often called to attend high risk incidents in conjunction with other specialist units within the NSW Police Force, such as the Negotiation Unit, Dog Unit, or Rescue and Bomb Disposal Unit. Analysis of police records shows that NSW Police Force specialist units (other than the unit which used the Taser) were present at 46 of the 48 incidents (96%) where Tasers were used.

The additional NSW Police Force specialist units present at incidents where Tasers were used are identified in Table 3.

**Table 3. Presence of NSW Police Force specialist units at incidents**

Specialist unit	Number of incidents attended
Specialist negotiators	41
Dog squad	30
Surveillance	8
Rescue/bomb disposal unit	4
State Protection Support Unit	4
State Technical Investigation Branch	3
Police Air	3
Water Police	1
Radar Engineering Unit	1
Public Order and Riot Squad	1

Source: NSW Police Force records provided to or accessed by NSW Ombudsman.

The total number of incidents attended does not add up to 48 because in 34 incidents (71%) more than one NSW Police Force specialist unit attended the incident where a Taser was used.

According to police records, a specialist negotiator attended 33 of the 35 emergency incidents (86%) where Tasers were used.<sup>300</sup> In addition, a specialist negotiator attended six of the ten (60%) pre-planned operations where Tasers were used. However police records suggest that the specialist negotiators did not attempt negotiations at any of the pre-planned operations. Specialist negotiators were present at two other incidents where a Taser was used. However, it is not known whether these were emergency or pre-planned incidents.

## Case study 2

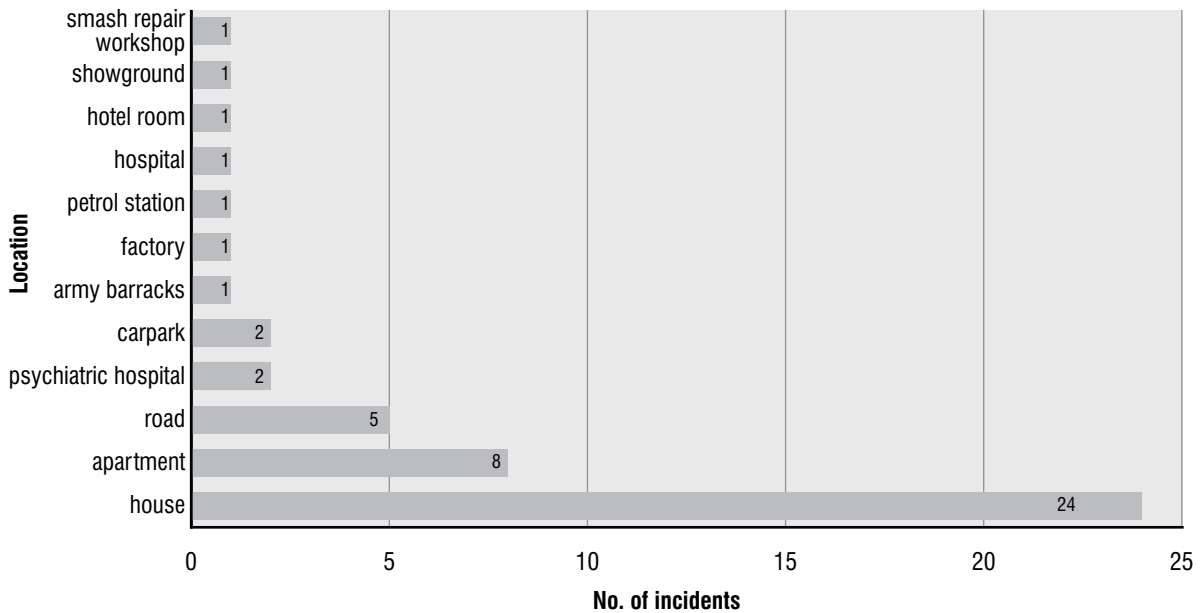
A man attended his parents' home and demanded money from them to buy drugs. They refused and the man armed himself with two knives and chased them from the premises. When police arrived at the scene the man charged at police and threatened them with a sword. Police retreated to a safe distance and requested SPSU and specialist negotiators to attend the scene. Over two and a half hours negotiators attempted to communicate with the man. The man was extremely erratic and asked police to shoot him several times. Police were concerned the man would charge at them, forcing them to use firearms to resolve the situation. Police used a Taser and OC spray to subdue the man who was taken into custody.

### 7.2.6. Locations where Tasers were used

Police used Tasers at a range of public places and private premises. Figure 3 shows the location of incidents where Tasers were used.

The majority of incidents occurred in homes — 32 of the 48 incidents (67%) where a person was subjected to a Taser application occurred in either a house or apartment.<sup>301</sup> Seven incidents (15%) took place in either a carpark or on the road. In all of these incidents the person subjected to the Taser application had been driving a car at some point during the incident.

**Figure 3. Location of incidents where Tasers were used**



Source: NSW Police Force records provided to or accessed by NSW Ombudsman. (n=48). Note, one of the incidents included in the category 'psychiatric facility' occurred in a car on the grounds of a psychiatric facility.

### Case study 3

A police operation related to drug supply involved police following a man in his vehicle. Police were about to move in and arrest the man when he noticed the police vehicle behind him and accelerated. The man drove onto the other side of the road where he collided with a second police vehicle. The collision stopped the car but the man refused to get out of the vehicle. Police believed the man may have been holding a weapon behind his back and subjected him to a Taser application in probe mode. This caused the man to roll out of his vehicle and the Taser probe to break free. The man returned to being uncooperative and police subjected him to OC fogger. This allowed police to restrain and handcuff the man. Ambulance officers treated the man at the scene and he was conveyed to hospital for observation.

### Case study 4

Police were called to premises where a man was brandishing two kitchen knives. Police were able to escort the man's family from the house, however the man locked himself inside. Police attempted to negotiate with the man for 80 minutes. Police established that the man was in a psychotic state and further unsuccessful negotiations took place. After seven hours police forced entry into the house and the man lunged towards them. A number of knives and other potential weapons lay on the floor and police subjected the man to a Taser application. The man was subdued and transferred to hospital where he was scheduled under the *Mental Health Act*.<sup>302</sup>

#### 7.2.7. Number of people subjected to a Taser application during each incident

Across the 48 incidents, 50 people were subjected to a Taser application. In 46 incidents, only one person was subjected to a Taser application. In two incidents, two people were subjected to a Taser application.

#### 7.2.8. Probe and drive-stun modes

As discussed in section 2.2 Tasers can be used in either probe mode, or drive-stun mode. In the former an electric shock is administered when two darts, attached to wires, are fired from a distance and attach to a person's skin or

clothing. In the latter, the Taser is applied directly to the person, and the person receives an electric shock in the region where the Taser is applied.

Figure 4 identifies which mode the Taser was in when used in each incident.<sup>303</sup>

In 26 of the 46 incidents (57%) the Taser was used in probe mode only. In over a quarter of incidents (28%) the Taser was used in drive-stun mode only and in seven incidents (15%) the Taser was used in both probe and drive-stun modes. In circumstances where the Taser was used in both modes, it was always used in probe mode first and then drive-stun mode.

### 7.2.9. Number of times Taser used in each incident

During the 48 incidents Tasers were used a total of 67 times.<sup>304</sup> In 14 of the 48 incidents, a person was subjected to multiple Taser applications or the incident involved more than one person being subjected to a Taser application.

Tasers were used across the 48 incidents as follows:

- in 31 incidents (65%) one person was subjected to one Taser application,
- in two incidents (4%), two people were subjected to a single Taser application each,
- in ten incidents (21%) one person was subjected to two Taser applications,
- in four incidents (8%) one person was subjected to three Taser applications, and
- in one incident (2%) it is unknown how many times the Taser was used on a person.

A total of 14 of the 50 people (28%) subjected to Taser applications, were subjected to multiple Taser applications.<sup>305</sup>

### 7.2.10. Multiple uses of the Taser — mode of Taser

In the 14 incidents where the person was subjected to multiple Taser applications, Tasers were used as follows:

- in five incidents the Taser was used once in each mode,
- in four incidents the Taser was used in probe mode only,
- in two incidents the Taser was used in drive-stun mode only,
- in one incident the Taser was used twice in probe mode and once in drive-stun mode,
- in one incident the Taser was used once in probe mode and twice in drive-stun mode, and
- in one incident the Taser was used once in probe mode. The Taser mode during the second Taser use is unknown.

### 7.2.11. Distance over which Taser was fired

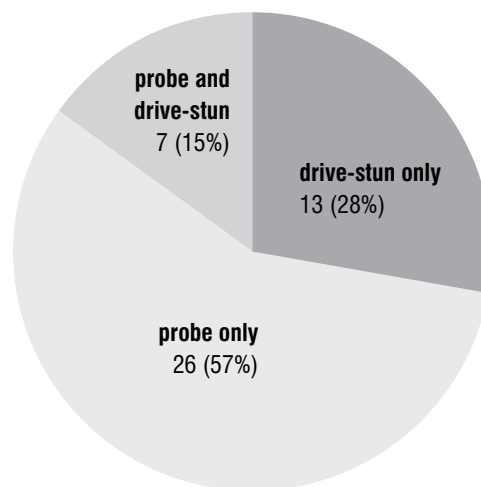
Taser International recommends that when the Taser is used in probe mode the distance between the police officer firing the Taser and person subjected to a Taser application should be between 7–15 feet (2.1–4.6m).<sup>306</sup>

Across the 48 incidents, Tasers were used in probe mode a total of 43 times.<sup>307</sup> Figure 5 shows the distance between the police officer firing the Taser and the person subjected to a Taser application in all incidents where the Taser was used in probe mode.

### 7.2.12. Duration of Taser application

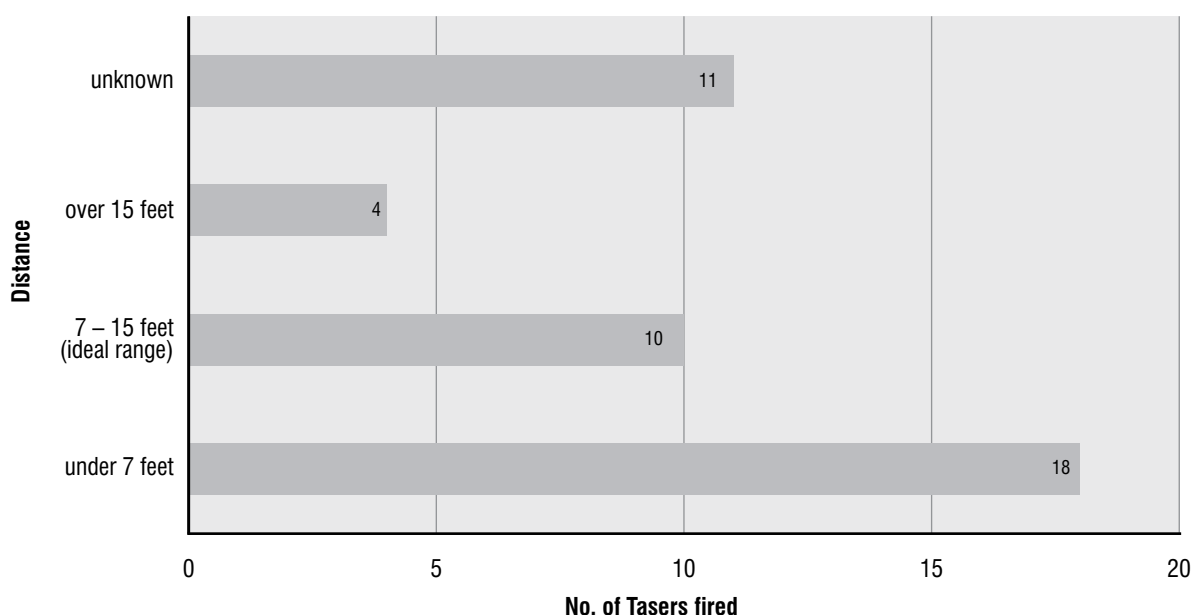
As discussed in section 2.2, when the trigger is depressed the Taser generates an electrical charge that lasts for five seconds once the darts or weapon have made contact with the person or another object. Holding the trigger beyond five seconds will increase the length of the application. The NSW Police Force has advised us that no single Taser

Figure 4. Taser mode



Source: NSW Police Force Less Lethal reports provided to the NSW Ombudsman. (n=46). Total does not equal 48 as in two incidents the Taser mode is unknown. In one incident where a Taser was used the less lethal report was not completed. In this case, we relied upon information in COPS which stated that the Taser had been used in drive-stun mode.

**Figure 5. Distance between police officer and person subjected to a Taser application in probe mode**



Source: NSW Police Force records provided to or accessed by NSW Ombudsman. (n=43)

application lasted for longer than five seconds. Of the people subjected to multiple Taser applications, at least four people were subjected to two Taser applications, lasting five seconds each.

### 7.2.13. Other tactics or weapons used by police during the incident

The TOU has informed us that when it attends an operation, officers are usually armed with a number of different types of weapons so that they have a range of tactical options to use depending on the circumstances.<sup>308</sup>

In 19 of the 48 incidents (40%) where police used Tasers they also used additional weapons.<sup>309</sup> In some incidents police used a number of additional weapons.

Table 4 identifies the additional weapons used by police at these incidents.<sup>310</sup>

**Table 4. Additional weapons used by police at incidents where Tasers were used**

Type of weapon used	No of incidents in which weapon used
OC spray/fogger	12
Police Dog	3
Chemical munitions (eg. Ferret rounds)	2
Bean bag rounds	2
Baton	1
CS Spray	1
Riot shield	2

Source: NSW Police Force records provided to or accessed by NSW Ombudsman.

The number of incidents where weapons other than Tasers were used is greater than 19 (the total number of incidents where additional weapons were used) as in some incidents more than one additional weapon was used.



### 7.3. Description of people subjected to Taser applications

Across the 48 incidents where Tasers were used 50 people were subjected to one or more Taser applications. This is because two incidents involved two people being subjected to a Taser application.

#### Case study 5

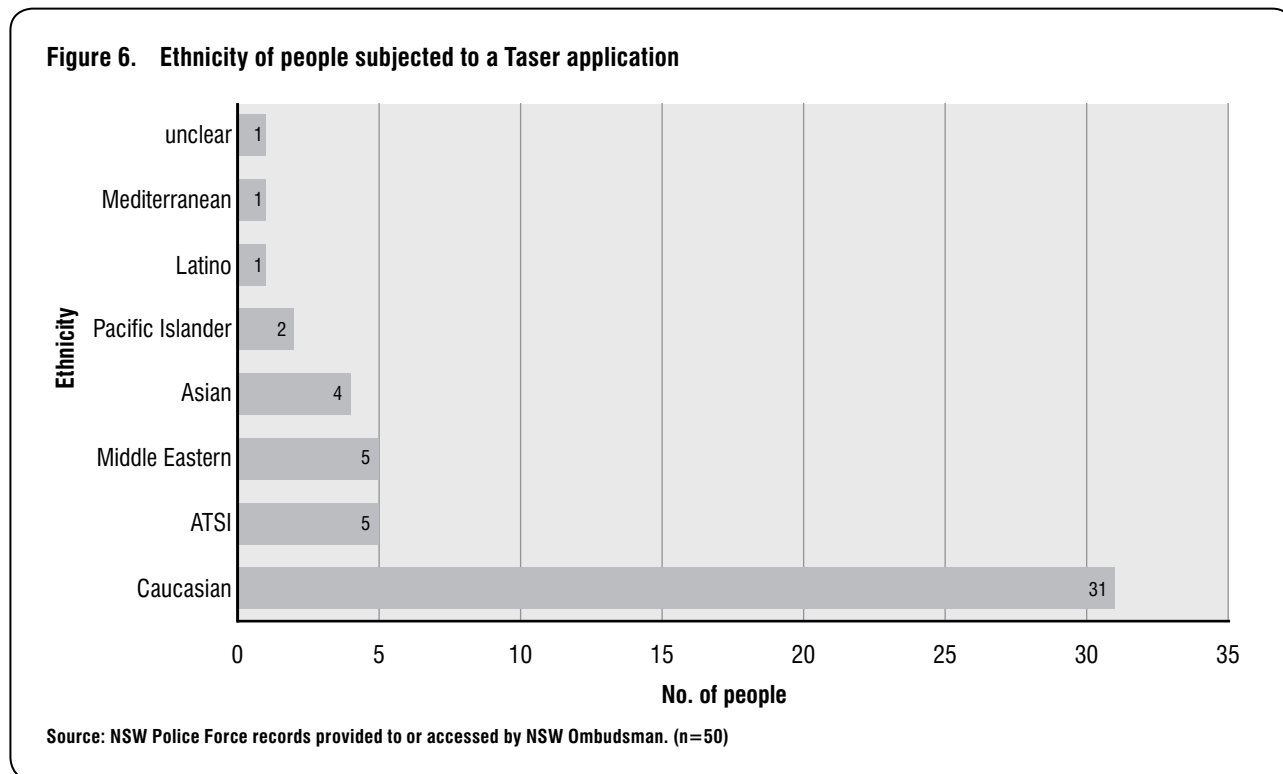
A person was in the process of being transferred to an immigration detention centre. During a visit with their family the person began placing razor blades in their mouth and threatening self harm if police approached them. The family began breaking glass and also threatened self harm. During negotiations, which lasted six hours, the person and another family member began to self harm. They were both subjected to a Taser application and transferred to hospital for psychiatric assessments.

#### 7.3.1. Gender

Forty-eight of the 50 people (96%) subjected to a Taser application were male. Only two people (4%) subjected to a Taser application were female.

#### 7.3.2. Ethnicity

Figure 6 shows the ethnicity of people who were subjected to a Taser application.



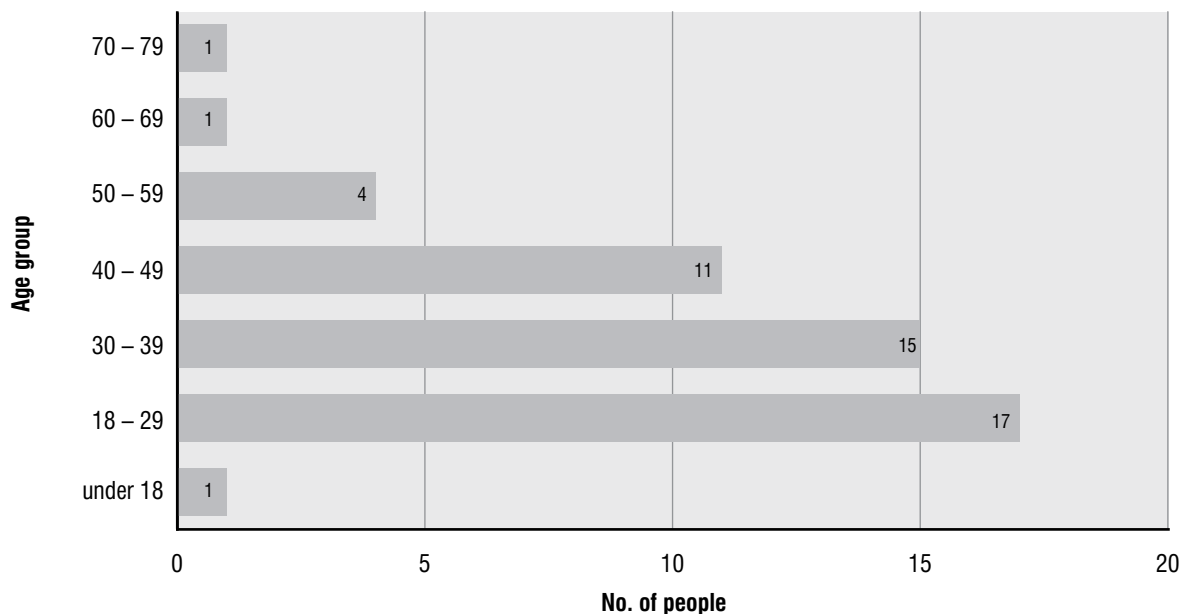
Aboriginal and Torres Strait Islander people made up 10% of people subjected to a Taser application.<sup>311</sup> We note that in the most recent census 2.1% of the NSW population identified as Indigenous Australians.<sup>312</sup>

#### 7.3.3. Age

Figure 7 shows the age of people subjected to a Taser application.

Seventeen of the 50 people (34%) subjected to a Taser application were between 18–29 years of age. Fifteen were between the ages 30–39 (30%), and 11 (22%) were between the ages 40–49. Only one person was under the age of 18 at the time they were subjected to a Taser application.<sup>313</sup>

**Figure 7. Age of people subjected to a Taser application**



Source: NSW Police Force records provided to or accessed by NSW Ombudsman. (n=50)

### Case study 6

Police and a mental health team arrived at the home of a 74-year-old woman to enforce a scheduling order under the *Mental Health Act*. The woman had a history of mental illness and was delusional. The woman refused to co-operate with police. She armed herself with a meat cleaver and locked herself in a room within the house. She struck herself with the meat cleaver several times. Police attempted to use OC spray on the woman, however she appeared unaffected. A siege situation ensued and police negotiators tried to talk to the woman over the next four hours. The woman began hitting her throat with the bladed edge of the meat cleaver. Fearing she would be seriously injured, police forced open the door and subjected the woman to a Taser application. The woman was subdued and the meat cleaver was removed from her hand. She was treated on the premises by ambulance officers and subsequently taken to hospital for medical observation and psychiatric treatment.

#### 7.3.4. Mental health issues

According to police and medical records, 34 of the 50 people (68%) subjected to a Taser application were identified as having mental health issues as follows:

- 19 people made threats of self harm or actually self harmed during the incident,
- 19 people were identified as having mental illnesses, including schizophrenia, depression and/or bipolar disorder,
- 14 people were identified as suicidal or threatened suicide during the incident,<sup>314</sup>
- 6 people told police to shoot them during the incident,
- 2 people were identified as being in a state of psychosis at the time they were subjected to a Taser application,
- 1 person subjected to a Taser application was intellectually disabled. This person also had bipolar disorder, and
- in 3 incidents, police had originally attended the premises to enforce a scheduling order under the *Mental Health Act*.<sup>315</sup>

In 13 incidents the person was scheduled under the *Mental Health Act* as a result of the incident where they were subjected to a Taser application. In a further 12 incidents the person was subjected to psychiatric treatment or assessment following the incident where they were subjected to a Taser application.

## Case study 7

Police were called to a man's home by his mental health carer who informed police that the man was upset over a domestic dispute, intoxicated and threatening self harm. The man had paranoid schizophrenia and bipolar disorder. Negotiators began speaking with the man from outside the premises, however the man continued to threaten self harm. Police observed him cutting his arm with a knife and forced entry onto the premises. The man lunged towards police with the knife and police subjected him to a Taser application in probe mode. He was treated at the scene by ambulance officers for self inflicted cuts to his wrists and then placed in police custody.

## Case study 8

Police attended the residence of a man with an intellectual disability at the request of the carers' service who looked after the man. He was being abusive and threatening towards his carers. When police entered the premises the man threatened them with a knife. Police attempted to negotiate with the man unsuccessfully. Police also attempted to use OC spray but it was unsuccessful as it was sprayed through a flyscreen and the man wore glasses. From outside the premises, police were able to open a window in another room in the house. As the man attempted to close the window, an officer fired a Taser in probe mode at the man through the open window. The man was subdued and taken to a hospital for psychiatric assessment.

### 7.3.5. Use of drugs and alcohol

Police records indicate whether a person subjected to a Taser application was known to have a history of drug and/or alcohol abuse or appeared to be under the influence of drugs and/or alcohol at the time they were subjected to the Taser application. Police assessments about whether the person was under the influence of drugs and/or alcohol at the time they were subjected to a Taser application are made through observing the person's behaviour or because of information provided to them either by the person subjected to the Taser application or other people involved in the incident. In some cases, police had prior knowledge about the person's drug and/or alcohol abuse.<sup>316</sup>

According to police records and ambulance records, 26 of the 50 people (52%) subjected to a Taser application were identified as having a history of drug and/or alcohol abuse or were likely to have been under the influence of drugs and/or alcohol at the time they were subjected to the Taser application. This includes two people who were identified as being in a drug-induced psychosis at the time of the incident. Twenty people (40%) subjected to a Taser application were identified as having both drug and alcohol, and mental health issues.

Police records often indicated the substance the person was known to use or was considered likely to be under the influence of, at the time they were subjected to the Taser application. These are listed below in Table 5.

**Table 5. Substances used by people subjected to a Taser application**

Substance	No of people police believed to be using the substance
Alcohol	14
Ice (Methamphetamines)	5
Amphetamines	1
Cannabis	2
Methadone	2
Prescription drugs e.g. Temazepam	2
Illegal Steroids	1
Under influence of drugs/alcohol — substance unspecified	7

Source: NSW Police Force records provided to or accessed by NSW Ombudsman, and NSW Area Health Services and NSW Ambulance Service records provided to NSW Ombudsman.

The total is greater than 28 as some people were thought to have used multiple substances.

### 7.3.6. Police warnings about the person

The NSW Police Force COPS database allows police to enter and access warnings about people based on any prior police interactions with that person. These warnings primarily relate to safety issues such as whether the person is considered to be violent or has been known to carry a weapon.<sup>317</sup>

#### 7.3.6.1. Warnings prior to the incident

Thirty-one of the 50 people (62%) subjected to a Taser application had at least one prior warning about them on the COPS database, at the time they were subjected to the Taser application. A number of people had multiple warnings. The majority of warnings related to the person having one or more of the following:

- 'Level of Resistance' (where violence has been demonstrated towards police and police used force in response),<sup>318</sup>
- possession of firearms,
- mental health issues, and
- aggression towards police.

#### 7.3.6.2. Warnings received following the incident where the person was subjected to a Taser application

Nineteen of the 50 people (38%) subjected to a Taser application had warnings placed on their COPS entries as a result of the incident where a Taser was used. Ten of the people who received warnings already had prior warnings. This was a first warning for the remaining nine people. The contents of the warnings are provided in Table 6.

**Table 6. Warnings placed on COPS following the incident where a person was subjected to a Taser application**

Contents of warning	No of people receiving the warning
Level of resistance	9
Incident involved SPG/TOU	5
Weapons in possession	4
Person wanted for offence e.g. armed robbery	4
Police weapon has no effect on person e.g. Taser, CS Spray	2
Approach person with caution	2
Does not comply with police direction	1

Source: NSW Police Force records provided to or accessed by NSW Ombudsman.

The number of incidents where weapons other than Tasers were used is greater than 19 as in some incidents more than one additional warning was recorded.

### 7.3.7. Threats of harm made to police

There is currently no system in place for the regular reporting of use of force by police officers. However, there is a section in COPS, the 'Level of Resistance' field, which police are required to complete when there has been violence or a threat of violence against police and the police used force in response to that violence.

According to COPS data, the Level of Resistance field was completed following nine of the 48 incidents (19%) where a person was subjected to a Taser application. However, this appears to be an under-representation of incidents where police faced or were directly threatened with violence by the person subjected to the Taser application. According to police records in 26 of the 48 incidents (54%), police faced or were directly threatened with violence by the person subjected to the Taser application.<sup>319</sup>

#### Case study 9

A man was observed breaking property and throwing it from the window of an apartment onto the street. Police were called to attend the scene. Upon arrival a police officer was struck in the head by a glass vase thrown from the apartment by the man. The man barricaded himself inside the apartment and was seen

## Case study 9 cont'd

waving a meat cleaver and blood filled syringe. The man threatened to stab and injure any police officer who attempted to enter the unit. TOU and specialist negotiators were called to the scene, however negotiations were unsuccessful. The man set paper alight in the apartment and a fire appeared to flare. TOU officers rammed open the door and deployed Tasers. The man was handcuffed and taken to hospital, where he was scheduled under the *Mental Health Act*.

## 7.4. Effects of Taser application

### 7.4.1. Deaths

During our analysis of police records we became aware that one person had died twelve days after being subjected to a Taser application. The man had a number of health problems so it is unclear what role, if any, the Taser application played in his death. Given the widespread concern that has been documented about Taser use on people with health problems, and in particular heart conditions it is worth noting the circumstances in which this man was subjected to the Taser application and his subsequent death.

Our analysis of incidents where Tasers were used only considered the immediate effects of the Taser application on the person's health and the medical attention they received directly following the Taser application. Therefore we are unaware if anyone else died in the days or weeks after they were subjected to a Taser application.

## Case study 10

Police arrived at the home of a 56-year-old man to enforce a scheduling order under the *Mental Health Act*. The man refused police entry to the premises and after police forced entry onto the premises, the man threatened police with a frying pan. During the incident, the man was subjected to a number of Taser applications. The first application, in probe mode, caused the man to fall back, however it failed to have the proper effect and the man continued to aggressively resist police. The second application, in probe mode, failed as the darts did not make contact with the man. The third application, in drive-stun mode, was made once the man was lying on the floor. It was effective and police were able to handcuff the man.

Twelve days after this incident the man was walking home from the shops when he collapsed suddenly on the footpath. Police and ambulance attended the scene and the man was transported to hospital where attempts to revive him continued, but were unsuccessful. According to the man's death certificate, the cause of death was a heart attack. The death certificate also made reference to the fact that the man had long term heart disease, a thyroid problem, Hepatitis C, Schizophrenia and was a heavy smoker. The death certificate and police records relating to the death did not mention that the man had been subject to a Taser application twelve days earlier.

### 7.4.2. Injuries sustained by people subjected to Taser application

According to Police and medical records, at least 37 of the 50 people subjected to a Taser application (74%) were known to have been injured during the incident. Most of the injuries were not as a direct result of the Taser application, rather they were as a result of other factors, for example glass shattering and hitting the person or injuries sustained during physical struggles with police.

Table 7 identifies the type of injuries sustained by people during incidents where they were subjected to a Taser application.

### 7.4.3. Medical attention received by person subjected to a Taser application

Forty-six of the 50 people (92%) subjected to a Taser application received medical attention following the incident as follows:

- Forty of the 50 people (80%) were treated at the scene of the incident. Of these, thirty-four people (68%) were treated at the scene of the incident by ambulance officers and five people (10%) were treated by the NSW

**Table 7. Type of injuries sustained by people subjected to a Taser application**

Type and cause of injury	Number of people with injury
Abrasions	13
Lacerations	9
Puncture marks from the Taser	8
Self inflicted injuries (includes self inflicted stab wounds and self inflicted lacerations)	8
OC contamination	7
Bean bag round lodged in arm of person, removal required surgery	1
Police dog bite	1
Chest pains	1
Other	3

Source: NSW Police Force records provided to or accessed by NSW Ombudsman.

The total does not add up to 37 as a number of people subjected to a Taser application sustained more than one injury during the incident.

Ambulance Service, Special Casualty Access Team. In one incident (2%) it is unclear who treated the person at the scene of the incident.

- Three people (6%) were only treated by ambulance officers once they were at the police station. One of these people was subsequently taken to hospital by police.<sup>320</sup>
- Twenty-seven people (52%) received treatment at a hospital following the incident where they were subjected to a Taser application.<sup>321</sup> This includes 20 people (40%) taken to hospital by ambulance, 5 people (10%) taken to hospital by police, 1 person (2%) who took themselves to hospital, and 1 (2%) who was subjected to a Taser application within a hospital and was subsequently treated there.

### Case study 11

Police were called to a residence to respond to a domestic dispute. Upon entering the premises police found the bedroom in darkness and what appeared to be a weapon on the bed. Police withdrew from the premises and began negotiating with the alleged perpetrator of the domestic violence who agreed to leave the premises. Upon exiting, he became confrontational and resisted arrest. Police subjected the man to a Taser application. He was handcuffed and taken to the police station. At the police station he complained of injuries he claimed occurred during the domestic dispute. Ambulance officers attended the police station and conveyed the man to hospital under police guard.

### Case study 12

A man was outside a methadone clinic threatening to injure himself with a piece of broken glass if he could not receive his methadone immediately. He began cutting his wrists with the glass. Police attempted to negotiate with the man but when he attempted to cut his neck with the glass police used a Taser and OC fogger simultaneously. The man was subdued and handcuffed. An ambulance was already at the scene and treated the man's injuries. He was taken to hospital for further treatment and psychiatric assessment.

#### 7.4.4. Effects of Taser application on police officers

In two incidents police officers were subjected to the effects of the Taser application. In one incident, the Taser wires broke during use and two officers came in contact with these leads. In the other incident, an officer was hit by one of the Taser probes fired by another officer. Officers were not injured in either of these incidents.

In ten incidents (20%) police officers were injured during the arrest of the person who had been subjected to the Taser application. In five of these incidents (10%) the injuries sustained by police were described in NSW Police Force records as minor.

## 7.5. Effectiveness of the Taser

The NSW Police Force classified the effectiveness of each use of the Taser between May 2002 and December 2007.<sup>322</sup>

Police rated the use of the Taser as effective in 35 of the 48 incidents (73%). In four incidents (8%) the use of the Taser was rated as ineffective and in six incidents (13%) police rated the first Taser use as ineffective, but a subsequent use of the Taser as effective.<sup>323</sup> In three incidents (6%) the rating of the Taser use is unclear.

Based on police debrief notes about the ten incidents where Tasers were used and at least one of the Taser applications was rated as ineffective, we were able to identify the reasons why police rated the Taser use as ineffective. This information is presented in Table 8.<sup>324</sup>

**Table 8. Reasons for Taser ineffectiveness**

Reason for ineffectiveness, as outlined in Police debrief notes	No. Taser applications that were ineffective
One Taser probe missed the person, or did not hold	4
Probes missed person	2
Taser failed to fire	1
Police officer stepped on wires	1
Good contact not made between the person and Taser	1
Suspected battery issue	1
Person subjected to Taser application was wearing heavy clothing	1
Wire broke	1

Source: NSW Police Force records provided to or accessed by NSW Ombudsman.

The total is greater than 10 as some incidents the Taser was used ineffectively more than once.

### 7.5.1. Issues with police effectiveness ratings

In addition to the incident records provided to us, the NSW Police Force also provided us with a document summarising the Taser effectiveness ratings across the 48 incidents. We did not rely on this document as in at least three incidents, the Taser effectiveness rating recorded on this document conflicted with the information provided in the Less Lethal reports. For example, in one incident the summary document stated that the use of a Taser was ineffective, however the less lethal report and other police documents stated that the Taser use had 'gained attention'.<sup>325</sup>

### 7.5.2. Use of Taser by officers from the Public Order and Riot Squad

As discussed in section 5.3.3 approval by the Minister for Police, was given for officers in PORS to use Tasers in August 2007. A Taser was first used in an operational setting in February 2008. Although this incident occurred outside of the period where we investigated NSW Police Force use of Tasers, we have included a summary of the incident below in case study 13.

#### Case study 13

In February 2008 PORS used a Taser for the first time at an incident they were called to attend involving a brawl between 10–15 people. Police were discussing the brawl with one of the men involved when they were approached by another ten of the men involved. Police told these men to leave the area, however a number remained and one of the men pushed a police officer to the ground. Another officer, fearing for his own safety,

## Case study 13 cont'd

sprayed OC spray at the man who had pushed the officer. As a result, a fight broke out between officers and the men. Police tried to arrest one of the men who violently resisted and tried to punch the arresting officer. The officer wrestled the man to the ground and a member of PORS subjected the man to two Taser applications, both in drive-stun mode. The man was subdued and handcuffed by police.

## Endnotes

- <sup>294</sup> The Public Order and Riot Squad did not use a Taser in an operational setting until February 2008. For further details of this incident see section 7.5.2.
- <sup>295</sup> As discussed in section 6.4.3.2 and 6.4.3.3 the Tactical Operations Unit and State Protection Support Unit are only required to report instances where a Taser is used against a person in probe or drive-stun mode. These figures therefore do not include incidents where a Taser may have been drawn, aimed and/or sparked but not used in probe or drive-stun mode.
- <sup>296</sup> Note, this figure only shows the number of incidents where police attended and used a Taser, it does not indicate the number of times a Taser was used at each incident.
- <sup>297</sup> This information is recorded by officers as 'type of job' on the State Protection Group — Incident Event form.
- <sup>298</sup> This information is recorded as the 'job description' on the State Protection Group — Incident Event form. In one incident police did not record a job description.
- <sup>299</sup> This includes incidents where the person threatened to use a weapon, but on arrest was found not to be carrying a weapon, and incidents where a weapon was found during a search of the premises where the person was subjected to a Taser application. It also includes cases where the police officer had a prior warning that the person was armed and dangerous or was known to carry weapons in the past.
- <sup>300</sup> As discussed in section 5.2.1, incidents where Tasers were used were classified as either emergency or pre-planned. State Protection Group Incident event forms and information from COPS stated if a specialist negotiator had attended the incident. In another emergency incident, a negotiator had been requested but had not yet arrived at the incident by the time the person was subjected to a Taser application.
- <sup>301</sup> This includes incidents where Tasers were used in the front or rear yard of a house or on the balcony of an apartment.
- <sup>302</sup> Most of the case studies we cite in this report that mention the *'Mental Health Act'* refer to the *Mental Health Act 1990* that was repealed on 15 November 2007. This Act was replaced by the *Mental Health Act 2007*, which commenced on 16 November 2007. Given that it is not relevant for the purposes of this report, which Act people were scheduled under, we have left all references in the report to the Mental Health Act undated.
- <sup>303</sup> This information was taken from the Less Lethal report form for each incident. The total does not equal 48 as in two incidents the Taser mode is unknown (in one of these incidents the Taser was used twice and the mode of the second use only was unknown).
- <sup>304</sup> This figure may be an underestimate as in one incident the number of times the Taser was used is unknown.
- <sup>305</sup> This figure could possibly be 15 as in one incident it is unknown how many times the Taser was used on the person.
- <sup>306</sup> When used in probe mode a Taser fires two darts at a slight diagonal. These darts move further apart the further they travel. For the Taser to have maximum effect, it should be fired from 7–15 feet away from the person subjected to the Taser application. When a Taser is fired from less than 7 feet away from the person the darts can lodge too close together, making the Taser ineffective. A Taser fired from more than 15 feet away could lead to the darts missing the person. There is no recommended distance for firing a Taser in drive-stun mode as this mode is used when the Taser is in direct contact with the person's body. Taser International, *Instructor Certification Lesson Plan, version 14, Taser X26 and Advanced Taser M26*, November 2007, p.167.
- <sup>307</sup> This total is greater than 33 (the number of incidents where a Taser was used in probe mode only or probe and drive-stun mode) as the Taser was used more than once in probe mode in a number of incidents as discussed in section 7.2.10.
- <sup>308</sup> NSW Ombudsman meeting with Tactical Operations Unit, 24 October 2007.
- <sup>309</sup> This figure does not include incidents where police may have drawn other weapons, but not used them.
- <sup>310</sup> The information in this table is based on less lethal reports and State Protection Group Incident Event forms. In one incident the information was obtained from COPS.
- <sup>311</sup> In one case, COPS information did not identify the person as ATSI, and he refused to answer the Questionnaire which would have confirmed his ATSI status. However, he is noted as having called Aboriginal Legal Aid while in custody, so he has been included in the ATSI numbers. Two other people subjected to Taser applications identified as ATSI in prior custody records.
- <sup>312</sup> Australian Bureau of Statistics, Census 2006, <http://www.abs.gov.au>. Accessed 23 June 2008.
- <sup>313</sup> We are not able to include a case study about this incident as the relevant matter is still before the courts.
- <sup>314</sup> This includes one incident where police initially attended the scene to prevent a suicide attempt.
- <sup>315</sup> The total is greater than 34 (the number of people identified as having mental health issues) as a number of people were identified as having multiple mental health issues.
- <sup>316</sup> Warnings about the person on COPS often provided information on a person's drug/alcohol use. This information was not necessarily indicative of the person being under the influence of drugs and alcohol at the time they were subjected to the Taser application. For example, on one occasion the person was a regular user of cannabis, however, did not appear to be under the influence of cannabis at the time he was subjected to the Taser application.
- <sup>317</sup> Police are also able to access intelligence about individuals from other sources. For example the State Protection Group Intelligence Unit provides the Tactical Operations Unit and Negotiations unit with personal information about persons of interest. However, our analysis is based only on COPS warnings.
- <sup>318</sup> See section 7.3.7 for further discussion of Level of Resistance.
- <sup>319</sup> This information was obtained from State Protection Group Incident Event forms.
- <sup>320</sup> Ambulance officers were called to the police station following complaints of poor health by the person subjected to the Taser application.
- <sup>321</sup> Note, some of the people were taken to hospital for psychiatric assessment following the incident where they were subjected to a Taser application.



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- <sup>322</sup> This rating was provided in the less lethal report for each incident. In one incident there was no less lethal report, however the rating was provided in the relevant State Protection Group — Incident Event form.
- <sup>323</sup> This figure includes one incident where police rated the first and second uses of the Taser as ineffective and the third as effective.
- <sup>324</sup> The table also includes information about one incident where the Taser effectiveness rating was unclear. This incident involved two Taser applications. The first application was rated as ineffective and the rating for the second application was unclear. There are two further incidents where the Taser use was rated as effective on the less lethal report but additional information provided by COPS suggests that all or part of the Taser use was ineffective. The information from COPS, outlining the reasons for these Taser applications being ineffective, has been included in this table.
- <sup>325</sup> On the Less Lethal report, the police officer can rate the Taser use as effective if it either 'gained attention' or 'gained compliance'.

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# Chapter 8.

## Findings

### 8.1. Summary

NSW police officers have the power and authority to use force when exercising functions under NSW law. This is a significant power, but one that is restricted by the requirement that force be limited to that which is reasonably necessary to exercise the function. The responsibility for ensuring use of force is reasonable, rests both on the NSW Police Force and individual officers. The Force is responsible for ensuring weapons and tactics provided to officers are safe and effective, and that officers are given sufficient training and guidance to enable them to make appropriate decisions and act in a reasonable way when confronted with situations which are often dangerous and unpredictable.

Tasers were introduced to the NSW Police Force in 2002 so that the specialist units 'continue to have available the best options for the resolution of High Risk Incidents without loss of life'. At this time the weapon was considered 'an effective non lethal option for use against persons armed with weapons other than firearms or those who pose a serious threat to specialist police because of their exhibited violence.' Prior to introduction of the weapon, its strengths and limitations were considered. However, the NSW Police Force did not conduct a comprehensive risk assessment or trial of Tasers before they were introduced.

The NSW Police Force has not conducted a comprehensive review or analysis of Taser use since the weapon was introduced in 2002, to determine whether Taser use is assisting officers to effectively resolve high risk incidents without loss of life, and whether Tasers are an effective option to use against people who pose a serious threat to police. This lack of review, combined with the significant public interest in ensuring police use of force is safe, reasonable and appropriate contributed to our decision to investigate Taser use by the NSW Police Force.

#### 8.1.1. Use of Tasers in high risk incidents

As outlined in section 6.3.4 Tasers are authorised for use by specialist units in high risk incidents:

- to protect human life,
- as a less lethal option for controlling people where violent resistance or confrontation occurs,
- if the officer is in danger of being overpowered or to protect themselves or others from injury, or
- for protection against animals.

Overall, the evidence suggests that use of Tasers in this context has been operating reasonably well, and Tasers appear to have been a useful option for officers in the specialist units to achieve effective resolution of dangerous and high risk matters. We are unaware of any instances where a Taser was used in clear contravention of legal and policy requirements, and from the material we have examined, it appears that in most of the incidents where the specialist units used Tasers, they were used in a reasonable manner, and an effective resolution to the incident was achieved by the officers involved.

In making this finding, we note that we have identified a number of inadequacies in the clarity and comprehensiveness of the policies governing police use of Tasers. In addition, we were not provided with comprehensive information about all incidents where Tasers were used and the information provided to us by police contained some inconsistencies. Further, we were not able to independently verify the information provided by police as, to date it has not been police practice to make use of Taser accountability mechanisms.

We have made a number of recommendations which, if implemented, will provide extra guidance to police about their responsibilities when using a Taser, and also help ensure more thorough and consistent records about Taser use are kept in the future. This will enable future use of Tasers by the NSW Police Force to be safer and more effective, and will enable Taser use to be more comprehensively monitored and reviewed.

#### 8.1.2. Use of Tasers by general duties officers

During the course of our investigation, the NSW Police Force announced that it would be extending Taser use to general duties officers, acting as supervisors. At the time of providing our provisional report to the NSW Police Force, this policy had not been implemented at an operational level. At the time of finalising the report, general duties officers had been authorised to use Tasers for several weeks.

Overall we feel that the issues discussed throughout this report will need to be carefully considered as Taser use continues to be rolled out to general duties police officers. The risks of using Tasers appear to be far higher when used by general duties officers, compared to specialist units, given that general duties officers receive significantly less training about managing high risk incidents, and generally do not work in a team environment. Ensuring that general duties officers are given comprehensive training and guidance about how to appropriately and effectively use a Taser will help to mitigate these risks. In addition, a requirement for comprehensive record keeping will enable use of Tasers to be monitored, and issues to be addressed as they arise.

In addition to the range of recommendations made below, our provisional report expressed the view that the use of Tasers by general duties officers would be safest and most effective, if limited to situations where specialist units are currently authorised to use Tasers, that is to protect against injury or loss of life, and to control people where violent resistance or confrontation occurs.<sup>326</sup>

The risks of authorising Taser use to manage less serious incidents are significant. In addition to the risks involved if a Taser fails to operate effectively (such as injury to officers), and risks of injury to people subjected to a Taser application, there is also a significant risk that public confidence in police will be undermined if the force used to resolve incidents is excessive. There is no doubt that being subjected to a Taser application is an extremely painful, and most likely humiliating, experience. For these reasons we are strongly of the view that it is neither reasonable nor appropriate for Tasers to be authorised as an option for officers to use in incidents where people are being passively resistant to, or uncooperative with police.

To this end, in our provisional report we made a recommendation that the NSW Police Force continue to limit authorisation for Taser use:

- to protect human life,
- as a less lethal option for controlling people where violent resistance or confrontation occurs,
- if the officer is in danger of being overpowered or to protect themselves or others from injury, or
- for protection against animals.

We have since examined the SOPs developed to govern the use of Tasers by general duties supervisors and duty officers. We are pleased to note that the authority for general duties officers to use Tasers has been limited to these circumstances.<sup>327</sup>

To ensure that the guidance provided to officers about this issue is clear and unambiguous, we also suggested to the NSW Police Force that it would be appropriate for the SOPs governing use of the weapon to specifically provide that subjecting a person who is not violently confronting or resisting police to a Taser application is not authorised. In addition, if officers are found to be responsible for using a Taser in such situations they will be subject to management action.

### **Recommendation:**

1. The NSW Police Force standard operating procedures governing Taser use specifically provide that officers are not authorised to subject a person to a Taser application unless that person is violently confronting or resisting police and that Taser use by an officer other than in such circumstances may be subject to management action.

The NSW Police Force has advised us that the SOPs governing use of Tasers will be amended to include such provisions.<sup>328</sup>

## **8.2. Education and training**

While we acknowledge that the amount of training received by officers within the NSW Police Force specialist units is high,<sup>329</sup> we have outlined below a number of areas where we feel that education and training about Taser use could be strengthened to ensure that officers are sufficiently well prepared to make a determination about whether Taser use is appropriate in the circumstances. Also to ensure that the weapon is used safely and effectively, and appropriate actions are taken after a weapon has been used.

### **8.2.1. Integrating more comprehensive information into training materials**

As mentioned in section 6.2 officers are accredited to use Tasers following completion of an eight hour course, which involves a half-day PowerPoint presentation, 45–60 minutes of weapon handling training, the firing of two Taser cartridges,<sup>330</sup> and exposure to a Taser charge. Re-accreditation occurs annually.

While we note that officers in the specialist units which use Tasers are highly trained in comparison to general duties officers, given the high risk nature of their roles, we have a number of concerns about the way that training is currently conducted. In particular, we feel that it would be beneficial if the NSW Police Force integrated a broader range of materials into its training package about Taser use. We are of the view that at present, the NSW Police Force is overly reliant on material provided by Taser International when informing officers about Tasers, and instructing them how to use the weapon.

We recognise that Taser International has minimum requirements in order for officers to be certified to use X26 and M26 Tasers, and that use of the Taser International lesson plan is a necessary part of this process. However, relying wholly or largely on information provided by Taser International is problematic as manufacturers of weapons have an inherent interest in emphasising the strengths of their products and downplaying their limitations. In addition, the Taser International lesson plan is a generic course which is aimed at all law enforcement agencies which use Tasers. It therefore does not take into consideration the NSW law enforcement context.

It may be useful for officers to be informed about, or provided with material, including:

- reports about Taser use in other jurisdictions, including those written by police agencies, or agencies which oversight, investigate or research police use of force,
- scientific studies examining the medical implications of Taser applications,
- articles by academics, non-government organisations, or the media, which discuss issues concerning or relevant to Taser use, and
- material discussing the placement of Tasers within a use of force model.

Increasing the range of information presented to police as part of training about Taser use will be particularly important for training general duties officers to use Tasers. General duties officers may have less knowledge and experience about how to effectively manage high risk situations, than officers in the specialist units, and are likely to have received significantly less training overall about weapons and tactics. In addition, general duties officers using Tasers will not be working in a team environment, like the specialist units, and will therefore be at greater risk from offenders if a Taser does not operate effectively.

Further, a concern that has been raised a number of times in the literature and among NSW police themselves, is the possibility that when general duties officers have the power to use Tasers, they may see use of the weapon as a quicker and easier means of gaining compliance, rather than attempting to communicate and negotiate, or de-escalate a situation in another less forceful manner.<sup>231</sup> This is a significant issue given the potentially serious health and injury risks that Tasers may pose, and the possibility of public confidence in police being undermined if force is used excessively or inappropriately.

We feel that integrating a broader range of materials into the training course about Tasers will help to ensure that officers have a thorough and balanced understanding about the benefits, risks and safety concerns of Taser use, and will help to ensure that lesson plans are relevant to, and consistent with the NSW law enforcement context, and the NSW Police Force tactical options model.

### **Recommendation:**

2. The NSW Police Force integrate a broader range of materials into its training course about Tasers, ensuring that the lesson plans are relevant to, and consistent with the NSW law enforcement context, and the NSW Police Force tactical options model.

## **8.2.2. Operational readiness**

We have been advised that PORS and general duties officers will be re-accredited to use Tasers on a yearly basis, and that the TOU will be re-accredited twice yearly.<sup>332</sup> The TOU is required to fire two Taser cartridges as part of this process, and PORS and general duties officers are required to fire three cartridges. The frequency of the accreditation process appears reasonable. However, given that Tasers are often used in situations which are high risk and unpredictable, and the effectiveness of the weapon will vary greatly depending on the operational environment (such as the distance and location of the person police wish to restrain, other parties, and surrounding hazards such as flammable substances, traffic and water) we are of the view that wherever possible, it would be beneficial for police trained to use Tasers to receive refresher training more often than once a year.

Comprehensive training will also need to be provided to general duties officers who are not authorised to deploy a Taser, but who may work alongside officers that are. It will be important for such officers to be thoroughly educated about the actions to take once a Taser has been used, including being provided with information about:

- how to effectively back-up and support an officer using a Taser,
- measures to gain or maintain control of a situation if a Taser does not operate effectively,
- how to effectively and safely restrain a person, who has been subjected to a Taser application,
- procedures relating to removal of darts, and provision of medical attention, and
- reporting requirements following use of a Taser.

In our provisional report we included a recommendation that the NSW Police Force ensure that officers, including those not authorised to use a Taser, receive regular training about these issues. In response the NSW Police Force advised:

*Mandatory training for NSWPF officers will provide information relating to the use of Tasers and the management of subjects such as the issues described in this recommendation.*<sup>333</sup>

### **Recommendation:**

3. The NSW Police Force ensure that officers, including those not authorised to use a Taser, receive regular training about issues such as:
  - a. how to effectively back-up and support an officer using a Taser,
  - b. measures to gain or maintain control of a situation if a Taser does not operate effectively,
  - c. how to effectively and safely restrain a person, who has been subjected to a Taser application,
  - d. procedures relating to removal of darts, and provision of medical attention, and
  - e. reporting requirements following deployment of a Taser.

### **8.2.3. Provision of training about mental illness**

Because a high percentage of people subjected to a Taser application by police were identified as having mental health issues<sup>334</sup> it is appropriate to ensure that all officers trained to use a Taser should also receive comprehensive information and training about dealing with those who appear to be mentally ill. This issue was also raised in the review of the health and safety issues associated with the use of Tasers, commissioned by the NSW Police Force.<sup>335</sup>

We note that there have been significant improvements to the training provided to police about mental health in recent years. In 2006 the NSW Police Force mental health education and training unit included units on mental health as part of the core subjects in the Associate Degree in Policing, and as part of the continuing training for probationary constables. Several Six Minute Intensive Training (SMIT) modules have also been created about mental health issues. These can be accessed by all officers via the NSW Police Force intranet, with operational staff encouraged to utilise SMITs at the commencement of shifts. Additional information and training on policing and mental health issues are available to officers in the *Policing Issues and Practice Journal*, the NSW Police mental health partnerships video training packages, the NSW Police Handbook, ongoing education courses at the NSW Police College, and as part of the negotiators course presented by the SPG.

The Mental Health Intervention team (MHIT) is a 24 month pilot program which commenced on 1 July 2007 in three trial LACs, these being Eastern Beaches, Penrith and Tuggerah Lakes. Training for the MHIT commenced in February 2008 and police that have completed the four day education package are recognised as specialist Mental Health Intervention Officers in the field. The trial aims to educate police to identify behaviours which may indicate mental illness and provide them with materials and strategies for dealing with people with mental illness.

The aims of the MHIT are to:

- *Reduce the risk of injury to police and mental health consumers when dealing with mental health related incidents.*

- *Improve awareness amongst front line police of the risks involved in the interaction between police and mental health consumers.*
- *Improved collaboration with other government and non-government agencies in the response to, and management of, mental health crisis incidents.*
- *Reduce the time taken by police in the handover of mental health consumers into the health care system.*<sup>336</sup>

As raised in the review of the health and safety issues associated with the use of Tasers, commissioned by the NSW Police Force, it would be appropriate for all officers authorised to use Tasers to have received training about mental health issues by the MHIT.<sup>337</sup> At the very least, officers authorised to use Tasers should be provided with training about:

- the most effective ways to communicate with people thought to be experiencing mental illness
- the most effective ways to de-escalate situations involving mentally ill people who are behaving in an aggressive or violent manner, and
- the circumstances when it may be appropriate to subject a person thought to be suffering from mental illness, to a Taser application.

In addition, given the issues surrounding the concept of excited delirium (see section 3.1.3.1), we feel that it would be appropriate that training provided to officers about mental illness include information about appropriate ways to deal with people thought to be experiencing excited delirium or psychosis. This could include educating officers about restraining people in a way that their ability to breathe will not be compromised, the importance of observing those at risk, and the requirement to treat the situation as a medical emergency.

### **Recommendation:**

4. The NSW Police Force ensure that officers authorised to use Tasers have received training about mental health issues, including being provided with information about:
  - a. the most effective ways to communicate with people thought to be experiencing mental illness,
  - b. the most effective ways to de-escalate situations involving mentally ill people who are behaving in an aggressive or violent manner,
  - c. the circumstances when it may be appropriate to subject a person thought to be suffering from mental illness, to a Taser application, and
  - d. the most appropriate ways to deal with people thought to be experiencing excited delirium or psychosis.

#### **8.2.4. Information sharing between units**

Given that the TOU uses Tasers on a more regular basis than the SPSU or PORS, it is the unit most likely to develop a comprehensive understanding of the most appropriate circumstances in which to use a Taser, and the limitations of the weapon. The debriefing sessions following high risk incidents provide officers with the chance to discuss these issues, and inform senior officers about them.

The NSW Police Force informed us that training materials and policies can be updated and amended in response to issues raised at debriefing sessions. However, we were not provided with details about the mechanisms in place to ensure that this occurs. In addition, we were unaware of the processes for ensuring lessons learnt by the TOU, for example, are shared with the other units that use Tasers less frequently.

In our provisional report, we included a recommendation that the NSW Police Force put in place formal mechanisms for:

- updating training manuals and policies in response to issues raised during NSW Police Force operations, and
- information exchange between units that use Tasers.

In response, the NSW Police Force advised:

*The NSWPF considers that it has mechanisms in place to share information in order to update manuals, policies and processes. Reports on Taser use are to be forwarded to the Commander, Operational Skills whose core*

*business is to review operational procedures, where warranted. Such reports will also flow to the Deputy Commissioner, Field Operations. This is reflected in the SOPs.*<sup>338</sup>

We acknowledge that the General Duties SOPs require reports about Taser use to be forwarded to the Commander, Operational Skills and Deputy Commissioner, Field Operations. The PORS SOPs also require reports about Taser use by PORS officers to be forwarded to the Deputy Commissioner, Field Operations (although not the Commander, Operational Skills).<sup>339</sup> The TOU less lethal weapons SOPs do not contain provisions about reporting of Taser use to senior officers.

Given the different reporting structures of the officers within the NSW Police Force authorised to use Tasers, the different SOPs governing Taser use, and the fact that SOPs are due for review at different times, we feel that it would be useful for the NSW Police Force to review the adequacy of the mechanisms in place to update manuals, policies and processes, in response to issues that arise following police operations in NSW or elsewhere.

### **Recommendation:**

5. The NSW Police Force review the adequacy of mechanisms in place for:
  - a. ensuring training manuals and policies are updated in a timely manner as operational issues are raised, and
  - b. information exchange between officers that use Tasers.

#### **8.2.5. Exposure to Taser charge during training**

As discussed in section 6.2.1, exposure to a Taser charge has formed part of the Taser training course. Although officers were informed that exposure to a Taser charge is a voluntary part of the course, in substance it was rendered compulsory by not allowing an officer who has refused to be subjected to a Taser application to use a Taser.

While one NSW police officer fainted after being subjected to a Taser charge, no NSW police officers have sustained injuries while being subjected to a Taser application during training. However, as outlined in section 3.2 there have been numerous accounts of officers being injured overseas as a result of being subjected to a Taser application during training. In relation to these incidents, and occupational health and safety concerns, a number of police forces have stopped subjecting officers to an application of a Taser charge.<sup>340</sup>

Taser International does not require officers to be subjected to a Taser charge in order to receive accreditation to use an M26 or X26 Taser. However, any officers who agree to be subjected to a charge, are required to sign a waiver and covenant not to sue Taser International.

In our provisional report we recommended that the NSW Police Force review the practice of subjecting officers to a Taser charge during training. We were not clear why it had been rendered mandatory for officers training to use a Taser to be subjected to a charge themselves, given that police are not required to be subjected to force from other police weapons, such as firearms and batons as part of their training.<sup>341</sup> In addition, we were not aware of any other instances where refusal to be subjected to force from a weapon results in refusal to be authorised to carry or use it.

In addition, while we recognised that it may be useful for officers to understand that it is extremely painful to be subjected to a Taser charge, and that this tactical option should not be adopted without due consideration, we were of the view that this information could effectively be conveyed to police without subjecting them to a Taser charge. In summary, we could not see any benefits of the practice of exposing training officers to a Taser charge and felt that this practice unnecessarily placed officers at risk of being injured.

We were also of the view that this approach could lead to increased costs for the NSW Police Force in terms of workers compensation and sick leave if injuries did occur. In addition, such practice may be contrary to the NSW Police Handbook occupational health and safety requirements and the NSW Police Safety Policy Statement.<sup>342</sup>

We note that at least some of the general duties supervisors and duty officers who received training to use Tasers in September 2008 were subjected to a Taser application.<sup>343</sup> However, on 3 October 2008 we were advised by the NSW Police Force that:

*On the 12 September 2008 the practice of police volunteering to be exposed to a Taser discharge was ceased through direction from the Deputy Commissioner Field Operations and the Director, Safety Command.*

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We support the decision of the NSW Police Force to end the practice of subjecting officers to a Taser application as part of their training.

### 8.2.6. Updating training model to incorporate amendments to NSW Police Force standard operating procedures

Throughout this report we have made a number of recommendations to enhance the comprehensiveness of NSW Police Force SOPs governing Taser use. We note that, if our recommendations in this area are implemented, the training officers receive about Taser use will also need to be updated and amended to ensure that officers are fully informed about the provisions in the SOPs, and to ensure that the training program and SOPs are complementary.

#### **Recommendation:**

6. The NSW Police Force ensure that the education and training program for officers about use of Tasers is amended to incorporate changes to NSW Police Force standard operating procedures which regulate Taser use.

## 8.3. Development of Taser specific standard operating procedures

PORS is the only specialist unit authorised to use Tasers which currently has SOPs that relate specifically to Taser use. The SOPs used by the TOU and SPSU cover less lethal tactics generally. While we note that officers working in the TOU and SPSU are highly trained, and guided by the SOPs covering less lethal tactics, we feel that it would be beneficial for officers in these units to have a specific document governing Taser use to refer to.

Given the range of high risk incidents attended by the TOU and SPSU, and the variety of weapons and tactics available to them, we do not think it would be useful or appropriate for SOPs governing Taser use to prescribe exactly when Tasers should be used. However, we feel that it would be appropriate to develop a document outlining the advantages and limitations of using a Taser, the factors (including risks) that should be considered prior to using the weapon, the circumstances where it is not appropriate to use a Taser, actions that should be taken after a Taser has been used, and recording and reporting requirements. The clarity provided by SOPs of this nature would assist police to understand their role and responsibilities, and help to ensure consistency in the use of Tasers by different officers, and over time.

We note that the NSW Police Force has previously considered the issue of whether PORS and the TOU should be governed by the same SOPs about Taser use, and that a decision was made to have different SOPs because of the different lines of authority permitting use, and 'vastly different conditions of use between the groups'.<sup>344</sup> While we recognise that officers in different units will need to seek authorisation about using a Taser from different people, we do not feel that this is a significant enough issue to warrant the different units continuing to utilise separate SOPs. Authorisation provisions could, for example, be contained in separate appendices to the one policy document.

In addition, we do not consider that the circumstances where Tasers will be used by PORS, will be significantly different from the circumstances where Tasers are used by the TOU and SPSU.<sup>345</sup> In fact, the SOPs regulating Taser use by the different units are extremely similar in their provisions concerning the criteria for when Tasers may be used, and the considerations which must be taken into account when deciding whether or not to use a Taser. Therefore we do not feel that there is strong justification for the units having different SOPs.

It is our view that there would be considerable benefit if a single policy document was developed to regulate Taser use by officers within the specialist units. This approach would make it easier for officers seeking information or guidance about Taser use, it would simplify and streamline education and training about Taser use, and ensure greater consistency of reporting across the units. It would also mean that when SOPs were reviewed and updated to reflect current information or lessons learnt operationally, this information would be conveyed to all units at the same time.

Further, as outlined in section 8.1.2 the NSW Police Force has agreed that the SOPs governing Taser use will be amended to provide that officers will be the subject of management action if found to be using a Taser in an unauthorised manner. We are of the view that this policy would be significantly easier to implement if all officers authorised to use Tasers are governed by a single set of SOPs. Multiple SOPs may create confusion for officers about the standards that apply to them, and any inconsistencies among the SOPs may make it more difficult for NSW Police to take management action in cases of unauthorised use of Tasers.



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In our provisional report we noted that it would be particularly important for comprehensive SOPs governing Taser use to be developed for when Taser use is rolled out to general duties officers. This is because while the general duties officers armed with Tasers will be supervisors, and therefore experienced officers, they may be less experienced in dealing with high risk incidents than officers in the specialist units. In addition, they may be placed at greater risk when using a Taser because they will not be working in a team environment, and it will be unlikely that medical personnel will be at the scene, standing by (as is often the case with the specialist units). In addition, the development of comprehensive SOPs will help to ensure that mission creep does not occur (see section 3.3 for a discussion about this issue).

In our provisional report we outlined our view that maximum simplicity, consistency and accessibility would be achieved if a single set of SOPs was developed to regulate Taser use by all officers within the NSW Police Force who are authorised to use Tasers, including those in different specialist units and general duties officers. To this end we made a recommendation that the NSW Police Force develop a single set of SOPs governing use of Tasers by officers.

We noted that there would be a number of challenges for the NSW Police Force in developing a single comprehensive policy document about Tasers and their use. For example, there are a number of areas (such as inspection and auditing of Tasers) where units currently have substantially different operating practices. In addition, the different overall training of general duties officers compared to officers in specialist units, the different weapons and tactics available to them, and their different working environment would need to be taken into consideration when developing a single set of SOPs to regulate Taser use.

Despite the challenges of developing a single set of SOPs we felt the benefits of this approach would be considerable, and that the challenges in developing comprehensive SOPs would be able to be overcome with careful consideration. This is particularly the case due to the number of recommendations throughout this report which are intended to significantly improve the clarity, comprehensiveness and consistency of policies and procedures governing Taser use across the NSW Police Force.

In response to our recommendation in the provisional report that the NSW Police Force develop a single set of SOPs governing use of Tasers by officers, the NSW Police Force advised:

*Within the NSWPF there are a number of commands which have specific and varying operational and tactical needs. The NSWPF considers it appropriate that commands are able to prepare operational guidelines and SOPs that support their functions most effectively. Local Area Commands will fall under the NSWPF Standard Operating Procedures for use of Taser ... Specialist units such as the Tactical Operations Unit, State Protection Support Unit and Public Order and Riot Squad have SOPs in place at present that adequately deal with their respective specialist use.<sup>346</sup>*

In other words, the NSW Police Force did not support our provisional recommendation that a single set of SOPs governing Taser use be developed.

We remain of the view that it would be preferable for a single set of SOPs to be developed for all officers within the NSW Police Force authorised to use Tasers. This is because this approach would:

- give officers the clearest advice about when, where and how Tasers should be used,
- simplify and streamline education and training about Taser use,
- make it easier to ensure SOPs are updated and amended in a timely manner, and
- minimise confusion for general duties officers who are not authorised to use Tasers, but who are present when a Taser is used and whose assistance is required during or after a Taser application.

If the NSW Police Force continues to utilise multiple SOPs to regulate Taser use by officers, there are a number of strategies that could be used to improve the comprehensiveness, clarity, consistency and accessibility of guidance about Taser use for officers.

In particular, Taser specific SOPs should be developed for all officers who are authorised to use a Taser. At present, this would necessitate the development of SOPs governing Taser use by members of the TOU and SPSU. While we recognise that officers within these units are highly trained and experienced in managing high risk situations, Tasers pose risks when used in particular environments, when used on particular people, and when used in a particular manner (these risks are discussed in detail throughout this report). To ensure the use of Tasers is safest and most effective, these risks and appropriate strategies to manage them, should be explicitly contained within policy documents that are clear and easily accessible to officers.

In addition, if the NSW Police Force continues to have a number of different SOPs governing Taser use, wherever possible these SOPs should be made as consistent as possible. Further, they should be reviewed and updated regularly to ensure that they are comprehensive and up-to-date.

We are also of the view that any SOPs governing Taser use should include guidance for officers who are not themselves authorised to use a Taser, but who may work alongside officers who are authorised. To this end we also recommended in our provisional report that such SOPs ought to specify the actions that officers are to take once a Taser has been used, including being provided with guidance about:

- how to effectively back-up and support an officer using a Taser,
- measures to gain or maintain control of a situation if a Taser does not operate effectively,
- how to effectively and safely restrain a person who has been subjected to a Taser application,
- procedures relating to removal of darts, and provision of medical attention, and
- reporting requirements following use of a Taser.

In response to this, the NSW Police Force advised:

*The NSWPF notes that the SOPs are not intended to be a comprehensive training tool covering all aspects of Taser usage. All of the issues raised are appropriate topics for the awareness of officers, but may be more appropriately covered partially (or in full) in officer safety training, tactical options training, Taser training or the SOPs.*

*It is noted that some of the suggested inclusions under this recommendation (specifically, the removal of darts and reporting requirements) are addressed in the SOPs.<sup>347</sup>*

In contrast to the advice received from the NSW Police Force in relation to this matter, we are strongly of the view that wherever possible SOPs should cover all aspects of Taser use. As a tactical option, Tasers have particular strengths and weaknesses, they have operational limitations and are of particular risk when used in a certain way or in certain circumstances. For maximum safety and effectiveness of use, it is important that officers have information about these matters readily available to them in a comprehensible format.

While we acknowledge that matters relevant to Taser use will also appropriately be included in other training and policy documents, this of itself does not justify excluding information relevant to Taser use from the SOPs. It is the responsibility of the NSW Police Force to provide officers with accurate, up-to-date and comprehensive information about weapons and tactics, to ensure that officers are able to make the most appropriate decisions in what are often difficult and high-pressure situations. Ensuring SOPs are comprehensive will help to ensure that the NSW Police Force fulfils this responsibility.

To this end, we continue to recommend that any SOPs governing Taser use should include guidance for officers who are not themselves authorised to use a Taser, but who may work alongside officers that are.

## **Recommendations:**

7. The NSW Police Force:
  - a. develop a single set of standard operating procedures governing use of Tasers by officers, or
  - b. develop standard operating procedures governing use of Tasers for all officers authorised to use Tasers, and ensure that the standard operating procedures are consistent wherever possible, and regularly updated.
8. The NSW Police Force standard operating procedures governing Taser use include information about:
  - a. how to effectively back-up and support an officer using a Taser,
  - b. measures to gain or maintain control of a situation if a Taser does not operate effectively,
  - c. how to effectively and safely restrain a person, who has been subjected to a Taser application,
  - d. procedures relating to removal of darts, and provision of medical attention, and
  - e. reporting requirements following use of a Taser.

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## 8.4. Improving the clarity and comprehensiveness of standard operating procedures

There are a number of areas where in our view NSW police officers would benefit from greater information being included in the SOPs regulating Taser use. We note that there is no evidence to suggest that police have acted unreasonably or improperly in the past when using Tasers. However, providing police with comprehensive information about relevant factors will assist them to make the best decisions possible about how to safely and effectively resolve difficult and often dangerous situations in the field.

This is particularly important given that Tasers are currently being rolled out to general duties officers. As a consequence of the roll-out Tasers will no longer be limited to a small number of officers who work together, in small groups, and receive the same training. Instead, over 2,000 officers from around NSW, who work in very different operational environments will be authorised to use Tasers. In order to ensure that Taser use is safe, effective and consistent it will be imperative for these officers to receive comprehensive and consistent guidance about Taser use.

We are of the view that the following matters should be included in all SOPs governing Taser use, if the NSW Police Force decides not to develop a single set of SOPs governing Taser use, as suggested in Recommendation 7a of this report.

### 8.4.1. Provisions relating to medical assessment and treatment

As outlined in sections 6.3.4.1 and 6.3.4.2, both the TOU and PORS SOPs contain provisions regarding when medical attention should be provided to people who have been subjected to a Taser application. We feel that the TOU SOPs are unnecessarily complex and confusing in regard to when medical attention should be provided and who it should be provided by. For example, the SOPs provide that 'Impact munitions and other Less Lethal tactics may not result in any immediately visible injury.' It is not clear whether this statement is intended to mean that there may be an injury that is not immediately visible, or that police should not presume that a person will be injured if they have been subject to force from a weapon.

Further, the SOPs provide that 'Offenders should be offered an examination by Ambulance personnel in the first instance' and also that 'Tactical police are to ensure that any injury that occurs ... is treated by appropriate personnel as soon as practicable'. The SOPs also provide that 'If there is any doubt as to the extent of an injury, an offender should be conveyed without undue delay to an appropriate medical facility'. These provisions are not clear and concise and it is not clear to us whether, under these guidelines, people against whom less lethal weapons are used by police should be offered an examination by ambulance personnel or other medical staff in all instances, or if this is only required if the person subjected to force has a visible injury.

We note that the TOU has advised that ambulance personnel are usually in attendance at the command post during a high risk incident, and that they will be called to the incident site before TOU staff hand the person of interest over to local police (see section 6.3.4.1). However, it appears that four people who were subjected to a Taser application by police in the incidents we examined did not receive any form of medical treatment. An additional three people were only provided with medical attention after they had been taken to a police station (see section 7.4.3). This is a matter of some concern given the health risks that Tasers may pose, particularly to vulnerable people, such as those who are mentally ill, intoxicated by drugs and/or alcohol, young, elderly or in poor general health.

The PORS SOPs are much clearer about when people subjected to a Taser application should be seen by medical personnel. The SOPs specifically provide that:

- if an injury results after a Taser has been used, police are to render first aid immediately, and arrange for an ambulance to attend, and
- all people who have been subject to a Taser application are to be assessed by qualified medical personnel, either at the scene if circumstances allow, or at a local hospital.

The SOPs also provide that if possible it is preferable for people subjected to a Taser application to be transported to hospital by ambulance rather than caged vehicle, and that medical personnel are to remove probes that penetrate sensitive areas of the body.

In our view the PORS SOPs requiring all people subjected to a Taser application to be assessed by medical personnel are reasonable and appropriate.<sup>348</sup> We do not see any reason that TOU or SPSU operatives should not be under the same obligation, and feel this requirement would not be overly onerous to officers. This is because ambulance officers are usually in attendance during a high risk incident where TOU and SPSU officers are working. In addition, people subjected to a Taser application by police officers working for specialist units often require medical assessment or

treatment regardless of the Taser application, either for injuries sustained during the incident, or because of health concerns due to mental illness or intoxication.<sup>349</sup>

We note that it is not possible to compel people who have been subjected to a Taser application to be assessed by medical personnel. However, in order to fulfil their duty of care, we feel that police should:

- explain to each person who has been subjected to a Taser application that there may be health risks associated with the Taser application,
- offer each person who has been subjected to a Taser application a medical assessment by ambulance officers or other appropriately qualified medical personnel,
- make a record that the person who has been subjected to a Taser application has been offered a medical assessment, and the reasons why such an assessment is recommended have been explained to the person, and
- record whether or not the person subjected to a Taser application has agreed to have a medical assessment, and whether such an assessment occurs.

We are aware that some people who are subjected to a Taser application by police are experiencing a form of psychosis at the time of the incident, or are otherwise incapacitated in such a way that police will not reasonably be able to communicate with them about the desirability of obtaining medical attention in relation to the Taser application. People in this category are usually seen by health professionals subsequent to the incident, notwithstanding the Taser application, so that their mental health, or other health issues can be assessed and/or treated. For example, some people are taken to a mental health facility for scheduling under the *Mental Health Act*.

We note that some people seen by medical personnel following a Taser application will be assessed and/or treated for issues that may be far more serious and urgent than injuries relating to the Taser charge. Medical personnel will obviously and rightly prioritise managing a patient's psychosis, stab wounds or broken bones over superficial injuries, such as a small wound caused by a Taser dart. However, we are also aware that in circumstances where medical personnel are examining a person in relation to a medical condition or injuries unrelated to the Taser charge, officers may omit to inform medical staff that the person has been subjected to a Taser application. There are risks with failing to provide this information as a number of people have been known to have died following a Taser charge, and risk factors for these deaths appear to include mental illness, intoxication, and/or stress and exhaustion.

For this reason, we believe that NSW Police Force SOPs regulating Taser use should clearly specify that when a person has been subjected to a Taser application and is being assessed and/or treated by medical personnel, police are to ensure medical staff are informed that the person has been subjected to a Taser application. This will enable medical staff to examine the person to determine whether he or she is experiencing any injuries or health risks as a result of the Taser charge, as well as other more readily apparent illnesses or injuries. In order to remind police of this obligation, and ensure that full records about the event are kept, police should record on relevant forms whether or not medical personnel were informed about the Taser charge, and if relevant, the name of the person informed, or the reasons if medical personnel were not informed.

In response to this issue, as raised in our provisional report, the NSW Police Force advised:

*I do not consider that SOPs need to include such requirements as telling a police officer to tell the ambulance officer who attends that the subject has been Tasered. I would expect that this information will be provided in the natural course of the ambulance officer's attendance.*<sup>350</sup>

We reiterate, however, that there are a number of reasons why the information that a person has been subjected to a Taser application may not be conveyed to ambulance officers, particularly if the person is experiencing an obvious and/or serious injury or medical condition unrelated to the Taser application. In addition, it was sometimes not clear in the records of the NSW Police Force, Ambulance Service and Area Health Services that we examined for the purposes of our investigation into Taser use, whether medical personnel had been informed that a person had been subjected to a Taser application.

In our provisional report we noted that there would be considerable merit in the NSW Police Force producing a fact sheet about Taser use to ensure medical staff have access to some of the key technical information associated with Taser use, so that they can better assess the possible medical implications when assessing and/or treating a person who has been subjected to a Taser application.

In response, the NSW Police Force advised:

*The NSWPF has previously provided the NSW Ambulance Service with information and training regarding Taser. This practice will continue — the Tactical Operations Unit is preparing a briefing sheet to be handed to attending medical personnel.*<sup>351</sup>

## Recommendations:

9. NSW Police Force standard operating procedures include a requirement that, except where it is not possible to communicate effectively with a person because of factors such as mental illness or intoxication, officers are to:
  - a. explain to each person who has been subjected to a Taser application that there may be health risks associated with the application, and
  - b. offer each person who has been subjected to a Taser application a medical assessment by ambulance officers or other appropriately qualified medical personnel.
10. NSW Police Force standard operating procedures include a requirement that officers are to:
  - a. record whether a person who has been subjected to a Taser application has been offered a medical assessment, and received an explanation as to why such an assessment is recommended, and
  - b. record whether or not the person subjected to a Taser application has agreed to have a medical assessment, and whether such an assessment occurs.
11. NSW Police Force standard operating procedures include a requirement that officers are to:
  - a. ensure medical personnel that assess or treat a person who has been subjected to a Taser application, are informed that the person has been subjected to a Taser application, and
  - b. record either the name of the medical personnel informed that a person has been subjected to a Taser application, or the reasons why medical personnel were not informed about the Taser application.

### 8.4.2. Risks of subjecting certain people to a Taser application

As outlined in sections 3.1 and 3.2, the risks of subjecting certain vulnerable people to a Taser application are not clear. Many reports have suggested that further research needs to be conducted on this issue.

#### 8.4.2.1. People experiencing mental health issues

Given that most people subjected to a Taser application in incidents we examined were experiencing a mental health issues (68%),<sup>352</sup> it is surprising that there is very little mention of mental illness in the SOPs governing Taser use. The PORS SOPs and general duties SOPs do not mention this issue at all, and the TOU SOPs simply list mental illness as one factor among many to be considered when deciding whether or not to use a Taser.

The TOU SOPs do not specify whether it is beneficial to subdue people suffering from mental illness with a Taser, or whether it is preferable to avoid subjecting such people to a Taser application. The former is the approach preferred by some mental health advocates on the basis that it resolves situations safely without prolonged stress.<sup>353</sup> However, others argue that subjecting people with a mental illness to a Taser should be avoided, given the uncertainty surrounding the safety of Taser use on vulnerable people. A task force set up in 2007 in Québec, Canada, by the Ministry of Public Security rejected calls for a ban on subjecting people with mental illness to a Taser application, but warned that there were risks in relation to using Tasers on people with mental illness.<sup>354</sup>

While we recognise that each incident is different, and a decision as to whether or not to use a Taser will depend on a range of situational factors, we feel it is problematic that there is effectively no guidance to officers, in the SOPs, about this issue. We feel the issue of whether and when it is appropriate to use a Taser against a person suspected of being mentally ill requires further consideration by the NSW Police Force. The MHIT may be appropriately qualified to provide advice about this issue.

#### 8.4.2.2. Other vulnerable groups

The existing SOPs do not contain information for police officers about the potential risks of subjecting the following people to a Taser application:

- children,
- pregnant females,
- elderly people,
- people who are affected by drugs and/or alcohol,
- people with a heart condition or implanted defibrillators, and
- Indigenous Australians.

We recognise that in many instances police will not readily be able to recognise or determine whether a person fits into one of these categories. For example, a female may not be visibly pregnant or a child may look to be older than his or her age. However, there will be some instances in which a police officer will be aware, for example, that a person is likely to be affected by drugs or alcohol, or has a health condition, through observing the person, prior contact with the person, or police intelligence reports.

We also recognise that there may be circumstances in which police will need to subdue or restrain people who may be vulnerable to a Taser charge, and that use of a Taser may be the most appropriate option in the circumstances to achieve this. We therefore do not suggest entirely proscribing Taser use on such people. This is consistent with the recent United States National Institute of Justice Report, which stated:

*The purported safety margins of CED deployment on normal healthy adults may not be applicable in small children, those with diseased hearts, the elderly, those who are pregnant and other at risk individuals. The effects of CED exposure in these populations are not clearly understood and more data are needed. The use of a CED against these populations (when recognized) should be avoided but may be necessary if the situation excludes other reasonable options.*<sup>355</sup>

It is our view that informing police that there may be additional risks posed by subjecting certain people to a Taser application will help to ensure that police officers give adequate consideration to whether or not it is appropriate to use a Taser in a particular situation. This is consistent with the recent report by the Commission for Public Complaints against the RCMP in Canada, which recommended that 'The RCMP immediately implement clearer operational guidelines around conducted energy weapon use against "at risk populations"'.<sup>356</sup>

We believe that our recommendations for police to explain to each person who has been subjected to a Taser application that there may be health risks associated with the application, and to offer these people a medical assessment (see section 8.4.1), will help to mitigate any risks posed to vulnerable people who have been subjected to a Taser application.

In addition, we feel that the risks against vulnerable people will be balanced by the fact that Tasers will only be authorised for use in situations:

- to protect human life,
- to control people where violent resistance or confrontation occurs or is imminent,
- if the officer is in danger of being overpowered or to protect themselves or others from injury, or
- for protection against animals.

In response to our provisional report, the NSW Police Force commented (in part):

*The NSWPF notes that the SOPs are not intended to be a comprehensive training tool covering all aspects of Taser usage. Police are trained to manage and de-escalate a range of incidents and operational situations which are influenced by a wide range of factors including the health, age, mental state etc. of the subject. Officers are expected to be conscious of medical and psychiatric conditions in their decision making. Taser specific training is provided for against this background.*

*The decision of an officer to use a Taser as the appropriate level of response will ultimately be made on the presence of an immediate risk to the safety of the officer or other people.*<sup>357</sup>

We recognise that police officers are responsible for determining the most appropriate way to manage incidents they attend, and that a number of factors will impact on what course of action officers take. However, we reiterate that it is the responsibility of the NSW Police Force to provide officers with adequate information to enable officers to make reasonable and appropriate decisions. This includes providing clear and easily accessible information about the limitations and risks of particular tactics and weapons, to ensure maximum safety and effectiveness of use. To this end, we support the views outlined in recent overseas reports, that operating procedures should include clear guidelines about using Tasers on potentially vulnerable people.

## Recommendation:

12. The NSW Police Force amend the standard operating procedures governing Taser use to provide further guidance to officers about if and when it is appropriate to subject the following people to a Taser application: people with a mental illness; children; pregnant females; elderly people; people affected by drugs and/or alcohol; people with a heart condition or implanted defibrillators; and Indigenous Australians.

### 8.4.3. Managing incidents involving people with excited delirium or psychosis

As outlined in section 3.1.3.1 a number of police forces have developed policies to inform police about the most appropriate way to manage people behaving in an excited, aggressive and incoherent manner, in particular those thought to be experiencing excited delirium or psychosis. This is because a number of people displaying such characteristics have died after being subjected to police use of force. Some cases have occurred following police use of a Taser, in particular where Tasers were applied numerous times or for prolonged periods.

We feel that in order to minimise the risk of such deaths occurring it would be useful for the NSW Police Force to develop policies that inform police:

- how to recognise the signs of a person experiencing excited delirium or psychosis,
- to treat the situation as a medical emergency,
- to ensure the minimal amount of force necessary to restrain the person is used,
- to restrain the person in a way that does not compromise their ability to breathe, and
- to ensure the person is observed so that assistance can be rendered if they stop breathing.

Given that this is an emerging area of medical knowledge and expertise, with experts holding conflicting opinions about the existence of excited delirium, any policies developed about this issue would need to be frequently reviewed, and updated in order to ensure their relevance and appropriateness.

In response to this issue as raised in our provisional report, the NSW Police Force stated:

*You have noted there is no psychiatric expert consensus as to the existence of this condition. I do not consider that existing police mental health training should include references to as yet unrecognised mental conditions.*<sup>358</sup>

As noted in section 3.1, we have no medical expertise, and are therefore not in a position to provide detailed assessments of, or conclusions about whether Tasers have caused or contributed to deaths. However, from the material that we have reviewed it is clear that when people have died after being subjected to one or more Taser applications, at the time of the Taser application they have often been displaying similar behaviours and 'symptoms'. For example, they:

- have unexpected strength and endurance, apparently without fatigue,
- have an abnormal tolerance of pain,
- feel hot to touch,
- are highly agitated,
- sweat profusely,
- display high levels of hostility, and
- exhibit bizarre behaviour and speech.

We also note that Taser International (whose research and training material is relied upon by the NSW Police Force) is a strong advocate of the existence of excited delirium and representatives of the company have testified in court about the existence of excited delirium, and conduct training sessions about the condition.<sup>359</sup>

While we are not advocating the existence of excited delirium, we remain of the view that in order to minimise the risk of deaths occurring after police have subjected a person to a Taser application, it is important for police to be aware of factors that appear to be associated with such deaths, and have guidelines about how to manage these risks.

## Recommendation:

13. The NSW Police Force develop policies to inform police about the most appropriate way to manage a situation involving a person thought to be experiencing, or displaying characteristics associated with, excited delirium or psychosis.

### 8.4.4. Risks of using a Taser in certain ways or in certain environments

#### 8.4.4.1. Multiple or prolonged Taser applications

As outlined in section 2.2 depressing the trigger of a Taser means the person it is fired at (or applied to) will be subjected to an electrical charge for five seconds. The charge can be stopped by engaging the safety lever, and can be extended by holding the trigger beyond the initial five second current. The person operating the Taser can also apply the charge in multiple five second bursts.

The General Duties SOPs advise officers that holding the trigger beyond the initial five second Taser charge will prolong the Taser charge, and state '[c]ontinued use of the Taser must be justified in all the circumstances following assessment of the subject's compliance'. The PORS SOPs inform officers 'Holding the trigger continuously beyond the initial five second charge will prolong the charge. To do so the operator must be justified and satisfied that the target is not compliant and is still hostile or aggressive'. This is a higher threshold than that provided in the General Duties SOPs.

The TOU SOPs are silent on the issue of prolonging a Taser application. Additionally, none of the SOPs provide guidance as to when it is appropriate to subject a person to multiple Taser applications (by one or more Tasers), and advice about the risks involved.

According to police reports, 35 of the 50 people subjected to a Taser application in the incidents we examined were subjected to one application. Ten people were subjected to two Taser applications and four people were subjected to three applications. It is not known how many Taser applications one person was subjected to.

It appears from the evidence available that the practice of subjecting people to multiple Taser applications, or to prolonged applications carries a high degree of risk. While the 'medical risks of repeated or continuous CED exposure are unknown and the role of CEDs in causing death is unclear'<sup>360</sup> many of the people who have died following a Taser application have been subjected to more than one application, and/or prolonged charges.<sup>361</sup> We acknowledge that there may be occasions where a person who has been subjected to a Taser application, begins resisting police officers again, and officers may feel that the only way they can regain control of the situation and effectively restrain the person is to apply an additional Taser charge. However, because of the risks this approach involves, and the extreme pain this causes the person, we feel that police should have strict guidance about when it is reasonable to apply multiple or prolonged charges.

While it may not be practical to specifically limit the number or duration of Taser charges that police may apply to a person, the policies should be clear about when officers should not subject a person to a Taser application (or further applications). The PORS SOPs currently provide that:

- the Taser may not be used on individuals who are compliant and non-threatening,
- the Taser may not be used as punishment or retaliation,
- use of other tactical options by the Taser operator, simultaneously with deployment of Taser, should be avoided, and
- handcuffed prisoners should not be subjected to a Taser application without extenuating circumstances.<sup>362</sup>

These non-use criteria are not included in the General Duties SOPs.

We are of the view that these non-use criteria should be included in all SOPs governing Taser use. Further, it would be useful for police to be informed that subjecting a person to multiple applications of a Taser creates greater risk and may be life threatening, particularly if the person is vulnerable due to factors such as mental illness, intoxication, or pre-existing ill health. It may be of assistance to officers if they are given information about situations where use of one or more Tasers in other jurisdictions was unreasonable and dangerous. The case of Robert Heston (discussed in section 3.1.2), for example illustrates the risks of multiple Taser applications.

In addition, we reiterate our view, outlined in section 8.1.2, that the SOPS governing use of Tasers should specifically provide that subjecting a person who is not violently confronting or resisting police to a Taser application is not



authorised, and that officers found to be responsible for using a Taser in such circumstances will be subject to management action.

The NSW Police Force has advised:

*The NSWPF notes that the SOPs are not intended to be a comprehensive training tool covering all aspects of Taser usage. However, the NSWPF does accept the need to minimise the extent of prolonged/repeated Taser usage and considers it appropriate for this issue to be addressed in training and the SOPs.*

*The SOPs currently advise that the continued use of Taser must be justified through assessment of the subject's compliance.<sup>363</sup>*

We note that non-compliance is not, in itself, sufficient justification for police prolonging a Taser application, or making multiple applications. The non-compliance must be in the context of violent resistance or confrontation. The SOPs should be amended to reflect this.

### **Recommendation:**

14. The NSW Police Force amend the standard operating procedures governing Taser use to provide guidance to officers about when it is (and is not) appropriate to subject a person to multiple or prolonged Taser applications, including provisions to the effect that:
  - a. multiple or prolonged Taser applications may increase the risk of death or injury to a person,
  - b. the Taser may not be used on individuals who are compliant and non-threatening,
  - c. the Taser may not be used as punishment or retaliation,
  - d. use of other tactical options by the Taser operator, simultaneously with deployment of Taser, should be avoided, and
  - e. handcuffed prisoners should not be subjected to a Taser application without extenuating circumstances.

#### **8.4.4.2. Using a Taser in drive-stun mode**

As outlined in section 2.2 the Taser can be used in probe mode, or drive-stun mode. The latter is where the Taser is pressed directly against a person's skin or clothing. Using the Taser in this way does not cause muscle disruption and relies on pain in order to obtain a person's submission or compliance. As outlined in section 7.2.8 of the 48 incidents we examined, a Taser was used in drive-stun mode on 20 occasions. In 13 of these it was used in drive-stun mode only, and in seven incidents a Taser was used in probe mode followed by drive-stun mode.

The reasons why a Taser was used in drive-stun mode generally appear to be to subdue a person following an ineffective attempt to use the Taser in probe-mode, or to subdue a person aggressively resisting arrest. However, in five of the incidents we examined, the Taser appears to have been used in drive-stun mode against people who were failing to comply with police directions, for example, demands to show their hands, rather than because people were violently resisting police.

We note that the SOPs governing Taser use do not provide any guidance to police officers about the circumstances in which it might be appropriate to subject a person to a Taser application in drive-stun mode. We feel that it may be appropriate to provide such guidance to officers, because using the Taser in drive-stun mode means derogating from many of the stated benefits of the weapon. For example, when using the Taser in drive-stun mode the officer is required to be in very close proximity to the person being restrained, and the weapon may not be effective at incapacitating a person who is impervious to pain or demonstrating abnormal strength due to mental illness or intoxication.

These factors may mean the officer using the Taser is at increased risk from being hurt by the person being subjected to the Taser application, particularly if the officer is not working in a team environment, and has limited or no back-up. This is especially the case given that Tasers can malfunction or not work effectively.<sup>364</sup> It may also mean that the person police are targeting may be at increased risk because he or she may need to be subjected to numerous Taser applications in order to be effectively restrained (because the Taser application in drive-stun mode does not cause electro-muscular incapacitation).

We are of the view that there may be occasions when it is reasonable and appropriate for an officer to use a Taser in drive-stun mode. However, given the increased risks this mode poses to both police officers and targets, and the fact that the Canadian Commission for Complaints about the RCMP has recently found that use of the Taser in drive-stun mode is the mode most susceptible to mission creep,<sup>365</sup> we feel that the NSW Police Force should consider giving officers greater guidance about use of the Taser in this mode. In particular, it is important to ensure that officers are fully informed about the greater risks involved. This is particularly relevant now that general duties police officers are authorised to use Tasers, as they may be less experienced at managing high risk incidents, and less likely to be working in a team environment.

### **Recommendation:**

15. The NSW Police Force amend the standard operating procedures governing Taser use to provide guidance to officers about the risks of using a Taser in drive-stun mode, and the circumstances when it is appropriate to use a Taser in drive-stun mode.

#### **8.4.4.3. Using a Taser in a hazardous environment**

The PORS and General Duties SOPs specify environmental factors that must be taken into account before a decision to use a Taser is made:

*Assessment of the surrounding environment should be made prior to deployment, with considerations to secondary hazards, such as height, water, traffic and flammables.*<sup>366</sup>

The TOU SOPs contain no such guidance to officers. We feel that this situation should be rectified given that in a number of the incidents we examined, Tasers were used in locations or situations which were potentially extremely high risk.

For example, the Taser is considered an inappropriate weapon to use if there are flammable substances in the vicinity of the incident, because the spark from the Taser charge could ignite the substances and cause a fire. However, in five incidents that we examined, a Taser was used despite risks of flammability. Two incidents involved sieges where people threatened to set fire to flammable liquids. In two other incidents, there were substances alight during the incident prior to the Taser being used. A further incident occurred at a service station selling petrol and other flammable materials.

In addition, Tasers were used in two incidents on people in an elevated position, causing them to fall. In one incident, a man was climbing between balconies. The other incident involved a man being subjected to a Taser application when he was at the top of a flight of stairs. As a result he fell and sustained injuries. The injuries caused in these matters were not serious, with one man suffering a swollen wrist and both men suffering abrasions to their face.

In four of the incidents we examined, a person in the driver's seat of a vehicle was subjected to a Taser application. These vehicles appear to have been stationary at the time of the application, although in one of the incidents the driver was revving the vehicle. We note that subjecting the driver of a vehicle to a Taser application may be dangerous given the chance that the driver could involuntarily accelerate the vehicle, in the event of electro-muscular incapacitation.<sup>367</sup>

The risks associated with these incidents highlight the need for clear guidance to officers in SOPs about the environmental factors which must be considered prior to using a Taser in an operational context. They also demonstrate that there is a need for senior police to monitor and review Taser use to ensure it is in all circumstances reasonable and appropriate and does not subject officers or people police are targeting to unnecessary risks.

### **Recommendation:**

16. The NSW Police Force standard operating procedures governing Taser use be amended to include more comprehensive information about potentially hazardous environmental factors which must be considered prior to using a Taser.

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## 8.5. Accountability mechanisms

### 8.5.1. Use of inbuilt Taser accountability measures

#### 8.5.1.1. Taser Cam

As outlined in section 2.2.1, an audio-visual recording device known as a 'Taser Cam' can be attached to the X26 model Taser. This recorder is activated when the safety lever is disengaged, and allows up to 90 minutes of information to be recorded prior to, during and after each use of an X26, even in low light conditions. The audio visual footage and usage records are stored in a searchable library and can be downloaded.<sup>368</sup>

At present none of the Tasers used by the specialist units are fitted with Taser Cams. However, in May 2008, as part of the announced roll out of Tasers to general duties officers, the NSW Police Force advised that '229 new Tasers will be ordered for a strategic phased rollout ... Each Taser is to be equipped with a camera to provide an accurate video recording when it is deployed'.<sup>369</sup>

At the time of providing the NSW Police Force with our provisional report we were not aware whether the NSW Police Force intended to purchase Taser Cams to be fitted to the X26 Tasers already held by the specialist units. In our provisional report we noted that while purchasing an extra 38 Taser Cams would have resource implications for the NSW Police Force, this cost would be far outweighed by the accountability benefits that Taser Cams would provide. For example, footage from a Taser Cam could possibly be used:

- to help determine what occurred during an incident, and why a Taser was used, in the event officers at the scene have different recollections,
- as evidence during proceedings relevant to the incident where the Taser was used, for example, where criminal charges are laid against a person as a result of the incident, or where misconduct allegations are made against police,
- to help determine whether the SOPs are being complied with when a Taser is used, and identify areas where further education and training would be beneficial, and
- as a training aide, to demonstrate good practice, and illustrate inappropriate or unreasonable use of the weapon.

In response to our provisional report, the NSW Police Force advised:

*The NSWPF does not propose to purchase Taser Cam for the specialist commands at this time. Over a period of several years (as you have noted) these commands have proven to be capable of employing Taser without concern or complaint being raised in respect of their use of Taser.*

*It is also important to distinguish the difference between the tactical scenarios faced by the specialist units and the general duties personnel authorised to use Tasers. Fitting a Taser Cam to the X26 alters the grip profile. Specialist units are more likely to have to draw tasers rapidly than general duties personnel. For this reason altering the grip profile of tasers used by specialist personnel is problematic.<sup>370</sup>*

We reiterate our findings in section 8.1.1, that we do not consider, from the material we examined, any Taser has been used by the NSW Police Force in clear contravention of legal and policy requirements. It appears that in most of the incidents where the specialist units used Tasers, they were used in a reasonable manner, and an effective resolution to the incident was achieved by the officers involved.

However, in making this finding, we noted that we were not provided with comprehensive information about all incidents where Tasers were used and the information provided to us by police contained some inconsistencies. Further, we were not able to independently verify the information provided by police. Had a Taser Cam been attached to Tasers when they were used, this would have helped us to develop a clearer picture about the way that Tasers have been used by specialist units since they were introduced, and provided a much higher level of accountability for officers.

In addition, while we recognise that the operational circumstances where officers from specialist units use Tasers may be different from use by general duties officers, we do not feel that this is sufficient reason to justify officers from these units not using Taser Cams. First, it is unclear why Tasers may have to be drawn more rapidly by specialist officers who are working in a team environment with several tactical options available to them, in situations which sometimes involve lengthy stand-offs or negotiations prior to use of a Taser. Second, it is unclear why, even if Tasers have to be drawn extremely rapidly, that altering the grip profile of Tasers would be problematic for such highly trained specialist officers.

## **Recommendation:**

17. The NSW Police Force purchase 'Taser Cam' recording devices to be fitted to the X26 Tasers held by the specialist units, as resources permit.

### **8.5.1.2. Dataport download facility**

Each M26 and X26 Taser stores information, such as the date and time the weapon was fired, which can be downloaded onto a computer.<sup>371</sup> We note that information is recorded each time the trigger is depressed, and it is not possible to distinguish between occasions when a Taser is sparked as a deterrent, and when it is actually fired or applied with the intention of subduing a person. Notwithstanding this limitation, the information stored on the Tasers provides an important accountability function. In particular, when the information is downloaded and examined, it can be used to verify the accuracy of records and reports created by officers and can be used to generate statistics about Taser use.

As outlined in section 6.4.1.3, we have been advised that officers in both the TOU and SPSU do not download information stored on the Taser dataports, and that they do not possess the equipment or expertise to do so.

In contrast PORS has the equipment to download this information, and its SOPs require downloading and printing of relevant data after each Taser deployment, and monthly auditing of each Taser's database. We were provided with a copy of the dataport download records in relation to the one incident where a Taser was utilised by PORS in the period up to February 2008.

The General Duties SOPs provide that Taser data is to be downloaded immediately after a Taser is discharged. The downloading is to be supervised by a senior officer independent of the incident where a critical incident has been declared. In addition, the Taser data is to be downloaded monthly to verify that there have been no deployment of probes, except for those that have been reported.

It is a matter of significant concern that the NSW Police Force has used, for a number of years, a weapon which contains inbuilt accountability features, and that these features have not been used. There does not seem to be any explanation for this situation, particularly because, according to Taser International, the relevant download kit consists simply of software and a cable, and is easy and fast to use.<sup>372</sup> It is clear that the NSW Police Force now has this equipment, as well as the expertise to use it.

We feel that as a matter of priority the TOU and SPSU should adopt the policies and procedures adopted by PORS and general duties officers, in relation to downloading, examining and auditing of Taser dataport records. This will allow reports of officers in regard to incidents where Tasers are used to be independently verified, and records to be examined on a regular basis to ensure no unauthorised or unreported uses of the weapon have occurred.

## **Recommendation:**

18. The NSW Police Force download and audit all Taser dataport records on a regular basis.

### **8.5.2. Reporting and record keeping**

#### **8.5.2.1. Records made by officers who use a Taser**

As outlined in section 6.4.3, each of the specialist units appears to have different forms for recording information about when a Taser has been used.

The TOU Less Lethal User Report form has changed format a number of times since Tasers were introduced. In recent times more comprehensive information has been required to be included on the form. Overall, the unit appears to be recording information about Taser use with reasonable comprehensiveness and consistency.

The recording and reporting practices of the SPSU are less consistent and comprehensive. As discussed in section 6.4.3.3, a number of different forms are used by officers to record information about incidents where Tasers are used. In relation to one incident we examined, we were not provided with any completed forms, and the only information the SPSU provided us with about the incident was a brief situation report.

PORS was only responsible for one Taser use out of the incidents we examined. The reports we received in relation to this incident were similar to that being used by the TOU.

Unlike officers in the specialist units, general duties officers who use a Taser are not required to complete detailed forms about the Taser use. Instead, the General Duties SOPs state:

*Officers that use a Taser, other than for demonstration or training, must complete a COPS entry, (including serial no. of Taser in narrative) at the first available opportunity after the incident. The entries heading must include that 'Taser' had been discharged. The type of Taser deployment MUST be indicated in the narrative (i.e. Drive Stun or Probes Discharged).<sup>373</sup>*

General duties officers are not required to include information such as: the duration of the Taser application, the distance between the officer firing the Taser and the person subjected to the Taser application, the number of cartridges used, and whether the charge was effective. The SOPs do not specify that information should be recorded about injuries sustained to the police officer or person subjected to the Taser application. Nor are officers required to report instances where a Taser has been drawn but not discharged.<sup>374</sup>

The General Duties SOPs do specify that:

*Upon being placed in custody, the arresting officer will notify the Custody Manager that the prisoner was Tasered and in what area the probes made contact, so that this information can be recorded in the Custody Records on COPS.<sup>375</sup>*

The differences in the reporting practices of different units using Tasers makes it very difficult to analyse Taser use across the NSW Police Force. To overcome this issue, and ensure all officers are making comprehensive records about Taser use, we are of the view that reporting practices about Taser use should be rationalised. Ideally, this would involve each of the units which use Tasers standardising their forms and reporting requirements. If this is not practicable, reporting forms should be made as consistent as possible to allow a comprehensive review of Taser use, including a comparative analysis of Taser use by different units. In addition, it should be mandatory for COPS entries made by general duties officers to include the same information as is required on the specialist units' reporting forms.

One area of significant difference in reporting between the units is that PORS officers are required to report instances where a Taser has been drawn only, where it is aimed at a person, and where it is sparked as a warning, as well as instances where it is actually used in probe or drive-stun mode. TOU, SPSU and general duties officers are only required to report instances where a Taser is actually fired at, or applied to a person.

While we acknowledge that the TOU may have a Taser drawn and ready to be used at many or most of the incidents it attends, we do not feel that this is sufficient reason to justify not making records about when a Taser is used in this way. There are a number of reasons why police should keep comprehensive records about all tactical options and weapons relied upon during an incident, even if the weapon is not used to apply force to an individual.

Such record keeping would, for example:

- enable senior officers to be kept informed about exactly what occurred during particular incidents, and what tactical options were applied or used as back-up,
- enable a police officer's account of an incident to be verified, either by fellow officers, other people involved, or accountability mechanisms such as Taser dataport download records and AFID tags,
- ensure comprehensive records are able to be examined in the event that a person makes a complaint about police conduct in a situation involving application of, or threatened application of, a Taser,
- allow a broad review of police use of weapons, including an analysis of when incidents are resolved because a weapon has been drawn or an officer threatens to use a weapon, but actual force is not required, and
- enable police to develop a greater understanding about the tactical options which work best, alone or in combination, to resolve high risk incidents successfully.

## **Recommendation:**

19. The NSW Police Force improve record keeping about Taser use, in particular:
  - a. improving the comprehensiveness and consistency of records and reports about Taser use, and
  - b. ensuring officers report instances of Taser use when the weapon is drawn, aimed or sparked as a deterrent, as well as when a Taser is used in drive-stun or probe mode.

### 8.5.2.2. Records made by supporting officers

Following a high risk incident, both local police and specialist units have reporting responsibilities. Generally, local police are responsible for inputting information into COPS. As discussed in section 6.4.3.1, the TOU SOPs are consistent with this approach. However, the PORS SOPs require officers from the unit to complete an entry on COPS, at the conclusion of an incident. There may be policy or operational reasons for this divergence in reporting requirements between the specialist units that we are not aware of. However, we note that this discrepancy may cause confusion for either local police or officers within the specialist units about reporting requirements, and as a consequence records may be duplicated or not completed.

In addition, unless there is clear communication between local police and specialist officers who attend an incident, there is a risk that information included on COPS may be incomplete or inconsistent with records kept by the specialist units. For example, in a number of instances, we found the fact that a Taser was used at an incident was not recorded in the narrative of the COPS entry.

It is important for the NSW Police Force to keep clear and comprehensive records about Taser use. To ensure this occurs, it may be appropriate for the NSW Police Force to review its policies about inputting information about Taser use into the COPS database, and consider whether it is necessary to provide additional training or guidance to officers about this issue.

#### **Recommendation:**

20. The NSW Police Force consider reviewing its policies about inputting information about Taser use into the COPS database, and consider whether it is necessary to provide additional training or guidance to officers about this issue.

### 8.5.2.3. Proposed use of force register

Developing a comprehensive understanding about police use of Tasers in particular, and the use of force generally by police is currently not possible due to the lack of consistency in reporting practices and procedures throughout the NSW Police Force, and the fact that information about use of force is not collated and analysed. It is not possible to determine at an organisational level how often force is used, who it is used by, the reasons why force is used, who force is used against, and the outcomes following use of force. This is concerning given the significant public interest in ensuring that police use of force is lawful, reasonable and appropriate.

We understand that a project is currently in development to establish a use of force register in the NSW Police Force. We fully support the establishment of such a register, and are of the view that steps should be taken to prioritise its implementation.

Once established, a use of force register could help the NSW Police Force to determine whether:

- force is being used for legitimate reasons,
- use of force is increasing or decreasing over time,
- particular officers or units are resorting to using force more often than others,
- police favour certain types of weapons in certain situations,
- certain weapons are more effective than others in different situations,
- certain types of weapons are less harmful in terms of injuries to people subjected to force, and
- certain types of weapons are associated with fewer injuries to police officers using force.

Having a good understanding of these issues will enable police to ensure that weapons and tactics are appropriate and effective, and that their use is supported by comprehensive and relevant policies, procedures and training.

However, it is important to recognise that such a register will only be useful if comprehensive and consistent information is routinely included in it, and regular monitoring and analysis of the register is conducted. The NSW Police Force will need to give adequate consideration to these issues in developing a use of force register. Standardising reporting requirements about use of force (including use of Tasers) is likely to be a necessary part of this exercise. Given the significant public interest in police use of force, it will also be important for the NSW Police Force to consider how best to convey information included on the register to members of the public.

In response to our provisional report, the NSW Police Force advised:

*The NSWPF has a current project to develop a Use of Force register. The Commissioner's Executive Team has placed this project on its agenda to ensure it is progressed as a matter of priority.*

### **Recommendation:**

21. The NSW Police Force continue progressing the development and establishment of a use of force register as a matter of priority.

#### **8.5.2.4. Rating effectiveness of Tasers**

As outlined in section 6.4.3.4, the SPG has created a table which records each time a Taser was used during an incident, and whether the use was considered to have been effective or ineffective. This table has been developed for internal police purposes only, however, we note the effectiveness rating table does not appear to be particularly reliable. The primary reason for this appears to be that there are no set criteria against which effectiveness is rated or measured, and ratings are made according to the subjective opinions of individual officers.

We note that while it may be very clear to officers when a Taser is ineffective (for example, it fails to fire a cartridge because of insufficient battery charge) it may be less clear when a Taser charge is effective. For example, officers may have different views about whether a Taser charge is effective or not in circumstances where a Taser is successfully applied to a person, and as a result the person starts to comply with police directions, but then resumes resisting police, or if a person begins cooperating with police despite the fact that a Taser was fired unsuccessfully.

We are of the view that the NSW Police Force should give further consideration to developing a more objective and comprehensive tool with which to measure the effectiveness of Taser usage. This will necessarily involve the development of clear guidelines about the purpose of subjecting a person to a Taser charge, and the outcomes expected to be achieved when a Taser is used.

### **Recommendation:**

22. The NSW Police Force develop a more objective and comprehensive tool to rate the effectiveness of Tasers, and develop clear guidelines about rating effectiveness.

#### **8.5.3. Inspection and auditing**

As outlined in section 6.4.4, there is significant discrepancy in the frequency with which the specialist units undertake inspection and auditing of their Tasers, with one unit inspecting Tasers weekly and another inspecting Tasers only twice a year. Tasers used by general duties officers are required to be inspected on a weekly basis. While we acknowledge that the NSW Police Force has in place a Command Management Framework that allows for a flexible overall approach which encourages individual LACs and units to participate in the development of relevant processes, overall we feel that this lack of consistency is problematic.

It is the responsibility of the NSW Police Force to ensure that regular and thorough audits of weapons are conducted to ensure that they are not missing, malfunctioning or in some other way unsafe or unable to be used. In particular, it is the responsibility of the Commissioner's Firearms and Operational Safety Committee to continually review less than lethal technology, police issue defensive weapons, equipment and tactics; and oversight weapons and defensive training.

Given the discrepancy in the frequency that Tasers are inspected and audited, and the possibility that there is a lack of uniformity in the procedures followed when inspection and auditing functions are carried out, it would be useful for a review to be conducted to ensure that existing practices are adequate, and any shortcomings are identified and rectified. The Commissioner's Firearms and Operational Safety Committee may be well placed to undertake such a review.

### **Recommendation:**

23. The NSW Police Force review the various policies and procedures concerning auditing and inspection of Tasers to ensure that current practices are sufficiently rigorous.

## 8.6. Phasing out of M26 Taser

As outlined in section 2.2.1, the X26 Taser has a number of advantages over the earlier model M26. For example, it is smaller, lighter, more effective at causing incapacitation, has longer battery life, and superior accountability features, including the ability to attach a Taser Cam recording device to the weapon.

Currently the NSW Police Force possesses 18 M26 Tasers, 10 of which are in the possession of the southern region SPSU. During our investigation the NSW Police Force advised us that while there is an intention to gradually phase out the M26 units, it is not anticipated that this will occur in the near future and that the M26 'will remain in use by the specialist units'.<sup>376</sup>

As there are no short term plans to phase out the M26 Tasers, in our provisional report we noted that it may be appropriate for the NSW Police Force to consider whether officers in units which currently have both M26 and X26 Tasers require further training or guidance to ensure that they are operationally ready to use either weapon, if needed. In addition, or as an alternative, consideration could be given to providing the southern region SPSU with sufficient X26 Tasers so that they are not reliant on using M26 Tasers, except in exceptional circumstances. Further, it may be appropriate for the NSW Police Force SOPs to specify that X26 Tasers be used in preference to M26 Tasers where possible.

In response to our provisional report, the NSW Police Force stated:

*M26 Tasers will be phased out by the NSWPF as they become unserviceable. They will be replaced by the X26 Model. The remaining M26 Tasers are held by the Tactical Operations Unit and SPSU and are principally used in training only. Officers in these units have been trained in the use of this weapon.*<sup>377</sup>

## 8.7. Annual reporting about use of Tasers

Given the high level of public interest about police use of Tasers, we feel that there would be significant merit in the NSW Police Force reporting annually about police use of Tasers. This would usefully include information about the number of incidents where a Taser is used, the number of people subjected to Taser applications, the LAC where each incident occurs, and the unit or LAC to which officers who use Tasers are attached.

Such reporting would enable analysis of whether Taser use is increasing or decreasing over time, and the areas where Tasers are most commonly used. It may be appropriate for this reporting to be included in the NSW Police Force Annual Report.

### **Recommendation:**

24. The NSW Police Force report annually about police use of Tasers.

## 8.8. Further review of police use of Tasers

The power for police to use force is a significant one, and one which comes with attendant responsibilities. In line with international expectations, police agencies are responsible for ensuring that use of force and weapons is carefully evaluated and controlled, restraint is exercised, and injury and damage minimised.<sup>378</sup> While we have not become aware of any instances where NSW police have clearly acted inappropriately in subjecting a person to a Taser application, there are a number of ways that the NSW Police Force could strengthen its policies, procedures and reporting mechanisms to ensure that the possibility of this occurring is reduced, and the likelihood of inappropriate action being detected is increased.

In addition to the recommendations we have made throughout this report, we are of the view that it would be of significant benefit for the NSW Police Force use of Tasers to be subjected to further monitoring and evaluation for a period of two years from 2 October 2008, when Tasers were authorised to be used by general duties officers. In particular, we feel that each time a Taser is used in an operational context (including when it is drawn, aimed or sparked) all reports and records about the Taser use should be examined to ensure that use of the Taser complies with all relevant laws, policies and procedures, and reporting requirements are complied with. Such monitoring should also include analysis of Taser inbuilt accountability mechanisms, such as examination of Taser dataport download records, and in the event of injury resulting from the Taser use, relevant medical reports.

There are a number of reasons why we feel that future NSW Police Force use of Tasers should be subject to monitoring and evaluation. In particular:



- We support police continuing to use Tasers only on the basis that training, policies and procedures, and accountability mechanisms are improved. It will be important to ensure that appropriate changes are made in a timely manner.
- The NSW Police Force is rolling out use of Tasers to general duties police officers. Use of Tasers in this context is considered to be of higher risk, than when used by specialist units.
- There remains significant dissent about whether Tasers can affect the cardiac rhythms of people subjected to a Taser application, and questions remain about the safety of using Tasers against people in vulnerable population groups, particularly when a Taser is applied for a prolonged period, or multiple times.
- In line with the Canadian Commission for Public Complaints against the RCMP, we are of the view that police use of the Taser is 'very much a public policy issue, and ... the public has a role to play in shaping how the police use the weapon'.<sup>379</sup>

Given the public interest in police use of force and the ongoing investigations and debates in different jurisdictions about police use of Tasers, it would be appropriate for such a review to be conducted by an independent authority and the information about the NSW Police Force use of Tasers to be included in a public report, at the end of the two year review period. Such a report would usefully include information about:

- the number of incidents where a Taser is used (including drawing, aiming and sparking the weapon),
- the number of people subjected to a Taser application,
- the characteristics of people subjected to a Taser application (for example, age, ethnicity, whether they are believed to be intoxicated or have mental health issues),
- the reasons given for Taser usage,
- the number of incidents where Tasers are used in conjunction with other uses of force,
- the locations where Tasers are used, and the LAC or unit they are used by,
- any injuries or medical concerns raised as a result of Taser use (those affecting both people subjected to a Taser application and police officers involved in the incident),
- the effectiveness of Tasers in resolving incidents,
- the number and type of complaints made about police use of Tasers, and
- any other relevant issues that arise during the course of the two year period where Taser use is being monitored.

We note that 'in the early stages' of the roll out of Tasers to general duties officers, the Deputy Commissioner, Field Operations, is to be informed about 'ALL incidents where a Taser is deployed (whenever police have cause to draw the Taser device), regardless of the time of day or night'.<sup>380</sup> In addition, we recognise that the NSW Police Force has in place a number of bodies which could undertake a longer-term review of Taser use, or whose processes could be used for this purpose. For example, critical incidents are investigated by critical incident investigation teams and it is the role of the Commissioner's Firearms and Operational Safety Committee to review responses to high risk incidents, and review less lethal technology.<sup>381</sup>

However, there are a number of reasons why it would be beneficial for an independent organisation to conduct such a review. First, it is likely that the NSW Police Force will be focusing its resources on effectively rolling out the authorisation for use of Tasers to general duties officers, and re-examining its policies and procedures in light of this report. Second, the NSW Police Force is not in a position to require the provision of documents by other government agencies that may possess material relevant to such a review. In addition, people subjected to a Taser application by police may be unwilling to provide information or opinions about their experience to the agency responsible for using force against them, whereas they may be willing to provide such information to an independent body. Finally, a review conducted by an agency external to the NSW Police Force may be perceived to be more credible in terms of impartiality and objectivity.<sup>382</sup>

Such a review would also require the NSW Police Force SOPs governing Taser use to specify that reports and records relevant to incidents where Tasers are used (including dataport download records and footage of incidents, either from a Taser Cam or other recording device) are to be retained for a minimum period of two years.

## Recommendations:

25. That a further independent review be conducted of the use of Tasers by the NSW Police Force for a two year period and the review report be made public.

26. That prior to determining matters associated with the review, the Minister consult with the NSW Ombudsman.
27. The NSW Police Force standard operating procedures governing Taser use include a requirement that reports and records relating to Taser use be retained for a period of at least two years.

## 8.9. Postponement of further roll out of Tasers

We recognise that Tasers may be effective at assisting general duties police to resolve incidents where police are faced with an aggressive or violent person. However, given the limitations of Tasers, the possible risks to police and members of the public when they are used, and the possibility that inexperienced officers may resort to using Tasers in situations where communication or use of a lesser amount of force may suffice or be appropriate, we support the approach of NSW Police in limiting authorisation to use Tasers to general duties officers acting as supervisors, and duty officers.

We recognise that many jurisdictions within Australia have recently decided to roll out Tasers to all general duties officers. However, we are of the view that the NSW Police Force should refrain from extending Taser use to additional general duties officers, for a period of at least two years from when they are first used by senior general duties officers.

As discussed in section 8.8, we recommend that a further two year review about police use of Tasers should be conducted from the time general duties officers became authorised to use Tasers. Until that time, when more will be known about how, why and how often officers use Tasers in an operational setting, the risks of further extending use of the weapons, in our view, would be too great.

### Recommendation:

28. The NSW Police Force refrain from further extending Taser use by officers, for a period of at least two years.

## 8.10. Broader implications of our investigation

Throughout this report we have made a number of recommendations specifically in relation to the NSW Police Force utilisation of, and governance of Tasers. While Tasers were the only police weapon that we examined for the purpose of this investigation, a number of the issues and concerns identified during our investigation are likely to be relevant to police use of force by means other than Tasers.

### 8.10.1. Assessment and evaluation of new weapons

New weapons are continually being developed and marketed as tools that could assist police officers to reduce violence and crime, and apprehend offenders. For example, weapons that have recently been developed or deployed include a projectile fired from a shotgun, which delivers an electric charge like a Taser, but from a greater distance,<sup>383</sup> a paintball-type projectile which contains OC powder,<sup>384</sup> chemical incapacitants (also known as chemical calmatives, sedatives or anaesthetics),<sup>385</sup> and distraction and disorientation devices, including a flashing torch which uses light to cause a high level of visual impairment and disorientation.<sup>386</sup>

There is no doubt that as new weapons and tactics are developed, it is a useful exercise for police forces to consider whether particular items would assist officers to reduce violence and crime, and apprehend offenders. The utilisation of new equipment will at times be necessary in order to ensure that policing becomes more effective, and safer for both officers and community members.

However, as discussed in section 5.3.1, when the NSW Police Force initially considered utilising the Taser as a special tactic for resolution of high risk incidents, a comprehensive assessment of the weapon was not conducted. Instead, officers relied heavily on information provided by other jurisdictions about the weapon's utility. In addition, these weapons were not trialled by NSW police officers before being adopted by the specialist units. Further, after the weapon was introduced, an evaluation strategy does not appear to have been considered, and a comprehensive

analysis of Taser use by the department has not been conducted. This is despite the fact that use of the weapon has recently been extended.

In our view when the NSW Police Force is making a decision about whether or not to deploy a new weapon, a comprehensive assessment should be undertaken about the weapon, and its likely effects. While we recognise that an important part of such an assessment would include an analysis of weapon usage in other jurisdictions, we feel that relying solely on such information is problematic, and that it would be appropriate for the NSW Police Force to independently investigate a number of issues. Relevant factors to be considered would likely include:

- costs, including those relating to procurement, maintenance and replacement of disposable parts,
- operational capacity and limitations, including how the weapon will 'fit' in relation to other weapons utilised by officers, and the tactical options model used,
- health and safety issues, for both officers and people subjected to the weapon, and
- the possibility or likelihood that introduction of the weapon may have either positive or negative unintended consequences.

Trialling a new weapon is likely to be a useful way of determining whether the assessment made about the weapon's likely impact is accurate. A trial would also provide an opportunity for any unintended issues or consequences that arise following introduction of a new weapon, to be addressed at the earliest opportunity.

We are also of the view that in future, when a decision is made to deploy a new weapon, the NSW Police Force should put in place a strategy to record and evaluate its use. This will help to determine whether the weapon is being used in the manner anticipated, whether it is achieving its stated objectives, and ensure that issues of concern are addressed as they arise.

### **Recommendation:**

29. The NSW Police Force, when considering whether or not to provide officers with a new weapon or tactical option:
  - a. undertake a comprehensive assessment of the weapon or tactical option, and its likely effects,
  - b. consider a limited trial of the weapon or tactical option before making a decision whether or not to adopt it, and
  - c. develop and implement a strategy for evaluating the weapon or tactical option.

## **8.11. Conclusion**

Tasers have been used by officers in specialist units of the NSW Police Force to resolve high risk incidents since 2002. Until the end of 2007, Tasers had been used by officers in only 48 incidents. During this time Tasers appear to have been a reasonably useful and effective tool for resolving high risk incidents, and we are not aware of any instances where a Taser was used in clear contravention of laws and policies. However, incomplete and inconsistent record keeping and the failure of NSW Police Force to use inbuilt Taser accountability mechanisms has placed restrictions on this retrospective review.

Given that the NSW Police Force is currently in the process of authorising 2,000 general duties officers to use Tasers, it is likely that the number of incidents where Tasers are used will significantly increase in the future. Therefore it will be particularly important for the training, policies and procedures governing Taser use to be clear, comprehensive and consistent, and for officers to be strictly accountable for weapon usage. The recommendations made throughout this report should assist in achieving this.

In addition, given the continuing uncertainty about the medical risks that Tasers may pose, and the risks surrounding use of Tasers by general duties officers, it will be important for police use of Tasers to be carefully scrutinised into the future. Reviewing the NSW Police Force use of Tasers for a period of two years from the time general duties supervisors and duty officers became authorised to use Tasers will enable a comprehensive analysis of how, when and why police are using Tasers, and the issues that arise as a result of this use.

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## Endnotes

- <sup>326</sup> Specialist units are also authorised to use Tasers for protection against animals. NSW Police Force records indicate that there have been no instances where a Taser has been used in NSW for this purpose.
- <sup>327</sup> The NSW Police Force, *Standard Operating Procedures For use of TASER — General Duties Electronic Control Device*, September 2008 also endorse use of a Taser in circumstances where violent resistance or confrontation is imminent. This is reasonable and appropriate.
- <sup>328</sup> Information provided by the NSW Police Force, 3 October 2008.
- <sup>329</sup> Officers within the specialist units who use Tasers receive approximately nine months of training throughout the year, including nine days of initial training. Armour J., *NSW Police Draft risk review of the use of Less lethal technologies: Conducted Energy Devices such as TASERS*, March 2008, p.3.
- <sup>330</sup> Officers in the Public Order and Riot Squad and general duties Supervisors and Duty Officers are required to fire three Taser cartridges.
- <sup>331</sup> Lewer, N., and Davison, N., *Electrical stun weapons: alternative to lethal force or compliance tool?*, January 2006, Bradford Non-Lethal Weapon Research Project, University of Bradford, UK; Armour J., *NSW Police Draft risk review of the use of Less lethal technologies: Conducted Energy Devices such as TASERS*, March 2008. See also discussion in section 3.3 on 'mission creep'.
- <sup>332</sup> Information provided by the NSW Police Force, 3 October 2008.
- <sup>333</sup> Information provided by the NSW Police Force, 3 October 2008.
- <sup>334</sup> As discussed in section 7.3.4, 68% of people subjected to a Taser application by NSW Police officers between May 2002 and December 2007 were considered by officers to have mental health issues.
- <sup>335</sup> Armour J., *NSW Police Draft risk review of the use of Less lethal technologies: Conducted Energy Devices such as TASERS*, March 2008.
- <sup>336</sup> NSW Police Force, Mental Health Intervention Team newsletter, January 2008. [http://www.police.nsw.gov.au/\\_data/assets/pdf\\_file/0014/123314/newsletter\\_200801.pdf](http://www.police.nsw.gov.au/_data/assets/pdf_file/0014/123314/newsletter_200801.pdf). Accessed 16 July 2008.
- <sup>337</sup> Armour J., *NSW Police Draft risk review of the use of Less lethal technologies: Conducted Energy Devices such as TASERS*, March 2008, p.34.
- <sup>338</sup> Information provided by the NSW Police Force, 3 October 2008.
- <sup>339</sup> The NSW Police Force, Public Order and Riot Squad, *Standard Operating Procedures For Use of Taser*, June 2007 also require reports to be forwarded to other senior officers. See section 6.4.3.5 for more information about this issue.
- <sup>340</sup> Phoenix Police Department, Arizona; Las Vegas Metropolitan Police Department, Nevada; Scottsdale Police Department, Arizona. As discussed in Coalition for Justice and Accountability, 2005, 'Tasers: a Reassessment', 10 March 2005. <http://www.indybay.org/olduploads/sj-taser-review.pdf>. Accessed 30 June 2008. Vancouver Police Department, Canada, has also stopped the use of Tasers on police officers, following a request by the Workers Compensation Board: Hall, N., 'Police won't Taser themselves or pregnant women, inquiry told', *Vancouver Sun* (Canada), 8 May 2008. <http://www.canada.com/topics/news/national/story.html?id=3ae1d517-722e-4958-b31c-44d300b859bd>. Accessed 9 May 2008.
- <sup>341</sup> We understand that at least some NSW Police officers are exposed to a very diluted form of OC spray during training.
- <sup>342</sup> See sections 6.3.1.1 and 6.3.2 for information about these policies.
- <sup>343</sup> Van Aanholt, J., 'Taser technology rolled out in LAC' *Northern Daily Leader*, 27 September 2008; McCowen, D., 'Shocking new gun', *St George Sutherland Shire Leader*, 7 October 2008.
- <sup>344</sup> NSW Police Force Memo dated 3 September 2007. Information provided by the NSW Police Force, 11 February 2008.
- <sup>345</sup> Note, as at February 2008 a Taser had only been used by the Public Order and Riot Squad in one incident.
- <sup>346</sup> Information provided by the NSW Police Force, 3 October 2008.
- <sup>347</sup> Information provided by the NSW Police Force, 3 October 2008.
- <sup>348</sup> Commission for Public Complaints Against the Royal Canadian Mounted Police, *RCMP Use of the Conducted Energy Weapon (CEW): Final Report*, 12 June 2008, recommendation 2, provides 'The RCMP immediately instruct its members who deploy a conducted energy weapon on a subject seek immediate medical attention for the subject in all circumstances.'
- <sup>349</sup> As outlined in section 7.4.2 at least 37 of the 50 people (74%) subjected to a Taser application by police in the incidents we examined sustained an injury during the incident.
- <sup>350</sup> Information provided by the NSW Police Force, 3 October 2008.
- <sup>351</sup> Information provided by the NSW Police Force, 3 October 2008.
- <sup>352</sup> See section 7.3.4 for a discussion about this issue.
- <sup>353</sup> Kieiltyka, M., 'Talk before Taser: CMHA', 7 May 2008. <http://vancouver.24hrs.ca/News/2008/05/07/pf-5499641.html>. Accessed 8 May 2008.; *The Globe and Mail* (Canada), 'Mental health group advocates use of tasers over guns', 5 April 2008. [http://www.theglobeandmail.com/servlet/Page/document/v5/content/subscribe?user\\_URL=http://www.theglobeandmail.com/m%2Fservlet%2Fstory%2FLAC.20080405.BCTASE.R05%2FTPStory%2F%3Fquery%3Dtaser%2Bmental%2Bhealth%2Badvocates&ord=45548347&brand=theglobeandmail&force\\_login=true](http://www.theglobeandmail.com/servlet/Page/document/v5/content/subscribe?user_URL=http://www.theglobeandmail.com/m%2Fservlet%2Fstory%2FLAC.20080405.BCTASE.R05%2FTPStory%2F%3Fquery%3Dtaser%2Bmental%2Bhealth%2Badvocates&ord=45548347&brand=theglobeandmail&force_login=true). Accessed 30 June 2008.
- <sup>354</sup> Commission for Public Complaints Against the Royal Canadian Mounted Police, *RCMP Use of the Conducted Energy Weapon (CEW) Interim Report including Recommendations for Immediate Implementation*, December 2007, p.3; *The Globe and Mail* (Canada), 'Tasers: Could paranoid rage be the real killer?', 26 October 2007. <http://www.theglobeandmail.com/servlet/story/RTGAM.20071026.wexcited26/BNStory/National>. Accessed 30 June 2008.
- <sup>355</sup> United States Department of Justice, National Institute of Justice, *Study of Deaths Following Electro Muscular Disruption: Interim report*, June 2008, p.4.
- <sup>356</sup> Commission for Public Complaints Against the Royal Canadian Mounted Police (Canada), *RCMP Use of the Conducted Energy Weapon (CEW): Final Report*, 12 June 2008, recommendation 3, p.13.
- <sup>357</sup> Information provided by the NSW Police Force, 3 October 2008.
- <sup>358</sup> Information provided by the NSW Police Force, 3 October 2008.
- <sup>359</sup> Goldman, A., 'Existence of 'Excited Delirium' Debated in Nevada', *Las Vegas Sun* (USA), 26 April 2007. <http://www.emsresponder.com/article/article.jsp?siteSection=1&id=5256>. Accessed 8 June 2008; Hall N., 'Police are 'brainwashed' by Taser maker; Psychologist blames instructions', *Vancouver Sun* (Canada), 14 May 2008.
- <sup>360</sup> United States Department of Justice, National Institute of Justice, *Study of Deaths Following Electro Muscular Disruption: Interim report*, June 2008, p.4.
- <sup>361</sup> Amnesty International (USA), *Amnesty International's continuing concerns about taser use*, 28 March 2006, pp.3-4.
- <sup>362</sup> NSW Police Public Order and Riot Squad, *Standard Operating Procedures For Use of Taser*, June 2007.
- <sup>363</sup> Information provided by the NSW Police Force, 3 October 2008.

- <sup>364</sup> See sections 2.4 and 7.5.
- <sup>365</sup> Commission for Public Complaints Against the Royal Canadian Mounted Police (Canada), *RCMP Use of the Conducted Energy Weapon (CEW): Final Report*, 12 June 2008, p.9. See also, Sprague, O., 'The Deployment of Taser Weapons to UK Law Enforcement Officials: An Amnesty International Perspective', *Policing: A Journal of Policy and Practice*, 2007, p.314. See section 3.3 for a discussion about mission creep.
- <sup>366</sup> NSW Police Force, Public Order and Riot Squad, *Standard Operating Procedures For Use of Taser*, June 2007; NSW Police Force, *Standard Operating Procedures For use of TASER — General Duties Electronic Control Device*, September 2008.
- <sup>367</sup> The Minneapolis Police (USA), *Special Order: Use of Tasers*, 14 April 2006, provides 'Tasers may only be used on those in control of a motorized vehicle or bicycle in motion or those in a location where a fall may cause substantial injury or death when the subject's actions justify deadly force.' <http://www.ci.minneapolis.mn.us/police/about/mcu/SO-Taser1.pdf>. Accessed 12 August 2008.
- <sup>368</sup> Taser International website — <http://www.Taser.com/products/law/Pages/TASERCAM.aspx>. Accessed 27 June 2008.
- <sup>369</sup> 'NSW Police to deploy more Tasers' NSW Police Force media release, 18 May 2008.
- <sup>370</sup> Information provided by the NSW Police Force, 3 October 2008.
- <sup>371</sup> The X26 also stores information about the 'burst duration' or the length of time that the trigger is depressed on each occasion, as well as the unit temperature and remaining battery charge.
- <sup>372</sup> Taser International. <http://www.taser.com/products/law/Pages/USBDataportDownloadkit.aspx>. Accessed 28 June 2008.
- <sup>373</sup> The NSW Police Force, *Standard Operating Procedures For use of TASER — General Duties Electronic Control Device*, September 2008. Emphasis in the original document has been removed.
- <sup>374</sup> Information provided by the NSW Police Force on 3 October 2008 states 'The use of 'sparking' is not sanctioned by the NSWPF due to officer safety concerns'. On 23 October 2008 we received advice from the NSW Police Force that clarified it is only general duties officers who are not authorised to 'spark' Tasers.
- <sup>375</sup> The NSW Police Force, *Standard Operating Procedures For use of TASER — General Duties Electronic Control Device*, September 2008.
- <sup>376</sup> Information provided by the NSW Police Force on 10 June 2008.
- <sup>377</sup> Information provided by the NSW Police Force on 3 October 2008.
- <sup>378</sup> *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, Adopted by the Eighth United National Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.
- <sup>379</sup> Commission for Public Complaints Against the Royal Canadian Mounted Police (Canada), *RCMP Use of the Conducted Energy Weapon (CEW): Final Report*, 12 June 2008, Executive Summary.
- <sup>380</sup> *Police Weekly*, Vol. 20, No. 38, 13 October 2008, p.23.
- <sup>381</sup> We discuss the NSW Police Force investigation of critical incidents in section 6.3.3 and the NSW Police Commissioner's Firearms and Operational Safety Committee in section 5.2.
- <sup>382</sup> Note, in the United Kingdom, 'All Taser deployments will continue to be monitored and a detailed report of every deployment will be produced. These reports will be collated by the Home Office Scientific Development Branch and summarised on a three-monthly basis for assessment by DOMILL.' Police Service of Northern Ireland website, [http://www.psni.police.uk/index/fast\\_facts/pg\\_faq\\_taser.htm](http://www.psni.police.uk/index/fast_facts/pg_faq_taser.htm). Accessed 12 August 2008.
- <sup>383</sup> <http://www.taser.com/products/law/Pages/XREP.aspx>. Accessed 12 May 2008.
- <sup>384</sup> Occasional Paper No.2, March 2007, Department of Peace Studies, University of Bradford, UK.
- <sup>385</sup> Pilant, L., 'Less-Than-Lethal Weapons: New Solutions for Law Enforcement', *International Association of Chiefs of Police Executive Brief*, December 1993. For further discussion on the use of these see Davison, N., 'Off the Rocker' and 'On the Floor': The Continued Development of Biochemical Incapacitating Weapons', *Bradford Science and Technology Report No. 8*, August 2007.
- <sup>386</sup> <http://www.intopsys.com/>. Accessed 12 May 2008.

# List of recommendations

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8. The NSW Police Force standard operating procedures governing Taser use include information about: <ul style="list-style-type: none"> <li>a. how to effectively back-up and support an officer using a Taser,</li> <li>b. measures to gain or maintain control of a situation if a Taser does not operate effectively,</li> <li>c. how to effectively and safely restrain a person, who has been subjected to a Taser application,</li> <li>d. procedures relating to removal of darts, and provision of medical attention, and</li> <li>e. reporting requirements following use of a Taser.</li> </ul>	75
9. NSW Police Force standard operating procedures include a requirement that, except where it is not possible to communicate effectively with a person because of factors such as mental illness or intoxication, officers are to: <ul style="list-style-type: none"> <li>a. explain to each person who has been subjected to a Taser application that there may be health risks associated with the application, and</li> <li>b. offer each person who has been subjected to a Taser application a medical assessment by ambulance officers or other appropriately qualified medical personnel.</li> </ul>	78
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28. The NSW Police Force refrain from further extending Taser use by officers, for a period of at least two years.	91
29. The NSW Police Force, when considering whether or not to provide officers with a new weapon or tactical option:	92
a. undertake a comprehensive assessment of the weapon or tactical option, and its likely effects,	
b. consider a limited trial of the weapon or tactical option before making a decision whether or not to adopt it, and	
c. develop and implement a strategy for evaluating the weapon or tactical option.	

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