



## How are Taser weapons used by the NSW Police Force?

A Special Report to Parliament under  
s. 31 of the *Ombudsman Act 1974*

**October 2012**

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**NSW Ombudsman**  
**Level 24, 580 George Street**  
**Sydney NSW 2000**  
**Phone (02) 9286 1000**  
**Toll free (outside Sydney Metro Area): 1800 451 524**  
**Facsimile: (02) 9283 2911**  
**Telephone typewriter: (02) 9264 8050**  
**Website: [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au)**  
**Email [nswombo@ombo.nsw.gov.au](mailto:nswombo@ombo.nsw.gov.au)**  
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## Foreword

This is the second comprehensive investigation that my office has undertaken into the use of Taser weapons by the New South Wales Police Force (NSWPF). The first investigation was done at a time when Tasers were only used by police officers within specialist units of the NSWPF. Since that report in 2008, Taser weapons have been rolled out for use by all accredited general duties police officers in NSW.

The increase in the number of Taser weapons and officers who can carry a Taser bring a greater risk that Tasers may be used inappropriately. The controls and accountability mechanisms for their use now need to be of the highest standard – to ensure not only proper use, but to minimise any opportunities for or risks of misuse. Also of concern is the potential that an over-reliance on Tasers will diminish police officers' skills in important areas such as communication, negotiation and weaponless control.

The Taser can be an effective device when it is used appropriately and in accordance with the law, the NSWPF tactical options model and Taser use procedures. However, Taser use must always be balanced against the potential danger to human life and the risk of serious injury to members of the community or police officers.

On any assessment, the Taser is an intrusive and invasive weapon. It pierces the skin when the Taser probes are discharged and inflicts considerable pain on the person subject to the Taser. It can also lead to additional safety risks, depending on the circumstances of use and the nature of the interaction. Around Australia, there have been well publicised misuses of Taser which have led to significant and justified concern within the community. For these reasons, a Taser must be used only in situations where there is a real threat of harm or danger to police or members of the community.

This investigation was commenced in October 2010 and it is the most comprehensive review of Taser use to date in Australia. We have evaluated data relating to 2,252 Taser use incidents, together with a detailed examination of 556 individual police Taser use incidents – where we closely analysed all police records as well as the video footage from the Taser Cam. Such a detailed review allowed us to not only examine the application of relevant police procedures and rules in each incident, but also how they were interpreted and applied by operational police and how the internal accountability and review system worked for each incident.

Our findings support the ongoing use of Taser weapons by the NSWPF. We identified a small number of misuses or breaches of relevant Taser rules and procedures, and found that the accountability framework was strong and in most cases worked well. The positive nature of many of these findings is, I believe, a direct result of the strong accountability framework in place, the detailed rules and procedures for use, and the decision to have Taser Cam as a mandatory feature in each Taser.

Notwithstanding our generally positive findings, we did identify incidents where the use of the Taser was inappropriate or where the internal review process was either inadequate or inconsistent. These cases point to some significant issues of concern around the interpretation of procedures and criteria for use of Tasers and the adequacy and consistency of the internal review processes.

We have made 44 recommendations to ensure that what is essentially a good system is made better and stronger. There will always be a risk that Tasers can be misused. An enhanced accountability framework with greater clarity and guidance will help to further minimise the risk of Taser misuse – and, importantly, result in such misuse being identified and dealt with quickly and effectively.

This investigation has required a significant amount of work by both staff from my office and senior and other police officers. It is important to record that the Commissioner of Police has been very supportive of the investigation. From the start, he committed to ensuring that we were given ready access to everything we needed to complete our review and analysis of Taser use.

I have made two further recommendations that the Commissioner respond to me within two months of this report in relation to each recommendation, and within three months with a schedule and timeframe for the implementation of the recommendations.



Bruce Barbour  
Ombudsman



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# Executive summary

## Background

Increasingly, law enforcement agencies around the world have introduced or are introducing a conducted energy device or weapon (which we refer to as a Taser) as a tactical option within their use of force model.

The Taser is a weapon that pierces the skin when used in probe mode, causes significant pain to the person subjected to the Taser, and has a number of safety and medical risks associated with it. For these reasons, its use must be limited to situations where there is a real threat or danger to police or members of the community.

The New South Wales Police Force (NSWPF) first introduced Tasers in 2002 – but in limited numbers and only to specialist police units – and we conducted our first investigation into Taser use by members of the NSWPF during 2007–08. We reported our findings to Parliament in November 2008 and made 29 recommendations about training, policies and accountability measures.

We recommended that the NSWPF refrain from further extending Taser use by officers for at least two years, and that another independent review be conducted. This recommendation was not implemented and, as we finalised our first report, the decision was made to roll out Tasers to accredited general duties officers acting as duty officers and supervisors in all local area commands (LACs).

## Why we conducted a second investigation (Chapter 1)

Between October 2008 and November 2011, the NSWPF rolled out a total of 1,122 Tasers to accredited general duties police.

During 2009 and 2010, there were a number of high profile cases within Australia where a person died or was seriously injured after police had discharged a Taser at them. In two of the cases, the Taser had been discharged multiple times. This led to public disquiet about the use of Tasers. In both Queensland (Qld) and Western Australia (WA), the Crime and Misconduct Commission (CMC) and the Corruption and Crime Commission (CCC) started major reviews of Taser use by police in their respective jurisdictions.

By October 2010, the NSWPF had still not implemented a number of the recommendations made in our 2008 report. It had now been two years since Tasers were first made available to duty officers and supervisors. We decided that a further comprehensive and independent review of the use of Tasers, as recommended in our 2008 report, was warranted. We therefore started this investigation on 26 October 2010.

Our investigation has focused on Taser use by general duties officers only – it is in first response situations that Tasers are most commonly used and where the greatest risks lie. The police specialist groups who are also armed with Tasers are lower frequency users who have greater specialist training than general duties officers. We did not examine their Taser use in this investigation.

## The investigation (Chapter 1)

Central to this investigation was the analysis and examination of data and information on Taser use incidents involving NSWPF general duties officers. The data and information included:

- For 2,252 Taser use incidents between 1 October 2008 and 30 November 2011 (the review period) – data tables collated by the NSWPF.
- For 1,446 Taser use incidents between 1 October 2008 and 30 November 2010 – all records and documents including Situation reports, internal documents and correspondence, minutes of meetings, and internal review outcomes.
- For all Taser use incidents that occurred between 1 December 2009 and 30 November 2010 – the Taser Cam video files for each individual use, and the weapon summary reports covering the period 1 August 2010 to 30 November 2010.

For detailed analysis and assessment, we selected every Taser use incident that occurred during the six month period from 1 June 2010 to 30 November 2010 (the sample period). During this period, there were 631 Taser use incidents of which 556 incidents related to use against people – we excluded the 75 incidents that involved accidental discharge or use on an animal.

Our analysis of these incidents included interrogating police data and records, viewing the Taser Cam footage for each incident, assessing the behaviours and actions of the police and the individuals subjected to the Taser, and

deciding whether – on our objective assessment – the criteria for use of a Taser had been met and whether the use was reasonable. We also engaged an independent expert on use of force and operational policing – a former NSWPF Senior Assistant Commissioner – to examine and assess some of the Taser use incidents.

The NSWPF also provided us with information on injury claims made by police officers, policies, operating procedures, training material and information about the internal reviews of incidents involving the use of a Taser.

We conducted three focus groups to obtain feedback from current serving NSW police officers on Taser use and the internal review processes. Two of the focus groups were with general duties officers who all had firsthand experience with using a Taser. One focus group was with region-based Professional Standards Managers, who are directly involved in reviewing Taser use.

We reviewed the available literature and research on Taser use, and information from the Local Courts of NSW, the NSW State Coroner, the NSW Bureau of Crime Statistics and Research (BOCSAR), police services in Australia and New Zealand, and oversight bodies in Australia.

We have worked closely with the NSWPF throughout our investigation and consulted with them about various preliminary views that we reached. During our investigation, the NSWPF made a number of changes to the Taser Standard Operating Procedures (the Taser SOPs), some of which were in response to our feedback and consultations.

## The debate about Tasers (Chapter 2)

Taser use continues to generate much public interest and debate both domestically and internationally. The arguments for and against their use all have a legitimate basis, and some are supported by credible research evidence.

The key arguments in support of Taser use are that they:

- are an alternative to lethal force
- reduce injuries to police officers, the public, and the people threatening and behaving violently to police and others
- can be an effective deterrent, sometimes even without being discharged
- help police to resolve violent incidents.

There is anecdotal evidence supporting these claims, and in the last few years there has been some credible quantitative research supporting some of the assertions. The overseas research in particular provides weight to these arguments, although the research that has been done in Australia with law enforcement agencies has been less consistent in providing evidence that supports the arguments for Taser use.

The key arguments against Taser use are:

- the risk of death following Taser use
- the risk of injury during or after Taser use
- mission creep and use of the device purely for compliance
- the misuse of Tasers.

The question of whether a Taser can directly cause a person's death continues to be debated within the medical profession. There is no doubt that a concerning number of deaths have occurred in connection with a Taser. In many of these cases the Coroner has been unable to determine any cause of death, and in some cases the Coroner has found that the Taser contributed to the person's death.

The risks relating to serious injury are well recognised. Taser International (the manufacturer of the Taser devices used by the NSWPF) has on several occasions issued advice and cautions on Taser use. The risks relating to mission creep and Taser misuse and abuse have been documented in a number of significant reports both in Australia and overseas. Both the WA CCC and the Qld CMC have published reviews on Taser use that highlighted concerns and risks around mission creep and Taser misuse.

## The accountability framework for Taser use in NSW (Chapters 3, 4 and 5)

Police officers are governed by laws, NSWPF policies and review processes. For the use of Tasers, the most significant elements of the accountability framework are as follows:

- **Law Enforcement (Powers and Responsibilities) Act 2002** (LEPRA) – Part 18 of LEPRA provides officers with the power to only use force that is 'reasonably necessary' in exercising their legal functions, which includes making an arrest.
- **The NSWPF Tactical Options Model (TOM)** – The TOM sets out a framework to assist officers in determining what level of force is appropriate to gain control of a situation.

- **Standard Operating Procedures for use of Electronic Control (TASER) Devices (the Taser SOPs)** – The Taser SOPs provide guidance about deciding when use of a Taser is an appropriate response, the criteria that must be met to justify Taser use, information about the governance, accountability, record-keeping requirements, storage and safe handling of a Taser, and practical advice for the effective use of a Taser.
- **Taser Cam** – The Taser Cam is an audiovisual recording device fitted to the Taser used by the Public Order and Riot Squad (PORS) and by general duties officers in the NSWPF. It is automatically activated when the safety switch is turned off. The Taser Cam footage is downloaded to the police computer system for viewing and review.
- **Taser review panels (TRPs)** – Each police region has a TRP made up of senior officers, including the Region Commander and Regional Professional Standards Managers (PSM). They review all operational Taser use, as well as any hazardous practices (e.g. accidental discharge) that occur within their policing region/area, to ensure that Taser use complies with training and the Taser SOPs. The operation of the TRPs is governed by the *Region Taser Review Panel Standard Operating Procedures* (the TRP SOPs). There are also three other TRPs for particular specialist areas.
- **The Taser Executive Committee (TEC)** – This committee oversees the use of Tasers and monitors the accountability framework for their use. This includes monitoring particular incidents and trends in Taser use, making recommendations for change, and ensuring the TRPs work effectively and in accordance with the TRP SOPs. The TEC is made up of four senior commanders and an officer from the Professional Standards Command.
- **The police complaints system** – Like other aspects of police conduct, the use of a Taser may be the subject of a complaint under Part 8A of the *Police Act 1990*. Generally the NSWPF handle these complaints, with oversight by our office and in some cases the Police Integrity Commission.

There have been two court decisions in NSW where the use of a Taser by a member of the NSWPF was found to be unreasonable and contrary to the requirements of LEPRA. These two decisions also contribute to the accountability framework – in terms of setting out the requirement for both a subjective and objective test to be satisfied in deciding to use a Taser, and in assessing whether a Taser use is reasonable and lawful.

Training is the other element of the accountability framework. To be authorised to carry a Taser, NSWPF officers must successfully complete Taser accreditation training. This training includes a theoretical and a practical component, with delivery over two four-hour sessions. At the end of the theoretical component, officers are given an open-book written test of 25 multiple choice questions plus one question requiring them to identify the parts of the Taser (in use by the NSWPF). A pass mark of 80% or higher is required to be accredited.

Once accredited, police officers are required to be recertified annually. The training for reaccreditation consists of a 75 minute lecture and a two hour practical training session.

## How were Tasers used by the NSWPF between 2008 – 2011 (Chapter 6)

During our investigation, we examined data for Taser use between 1 October 2008 and 30 November 2011 (the review period).

A Taser can be used in:

- **Draw and cover mode** – The Taser is activated and pointed (but not fired) at a person.
- **Probe mode** – The Taser has a peak open-circuit of 50,000 volts and is used by firing a cartridge of barbed projectiles (darts) at a person. The darts are connected by fine, insulated copper wires and will deliver an electrical discharge through a series of short, repetitive electrical pulses. When fired correctly, the Taser will cause Neuromuscular Incapacitation (NMI) in which the person loses control over their body and falls to the ground until the current stops.
- **Drive-stun mode** – The Taser is applied directly to the body of the person. It does not achieve NMI as the electricity acts only on a small area, but it causes pain and debilitation.

One purpose of our analysis was to answer important questions about how Tasers are used – when, how frequently, against whom, in what mode etc – and to identify if there were any changes over the review period in any of these variables. The key findings are:

- When the Taser rollout first started they were used an average of 31 times per month. This monthly average climbed to 84 as more Tasers were provided to general duties police officers. This figure then decreased to 67 times per month.
- In 73% of incidents a Taser was drawn but not fired. In 17% the Taser was discharged once in probe mode. In 7% of incidents a Taser was used multiple times or continuously, and in 4% of incidents a Taser was used in drive-stun mode. In the majority of cases (94%), only one person was subjected to Taser use during the incident.

- Taser incidents most commonly occurred on a weekend (42%), between 8pm and midnight (29%), and in a private residence (56%).
- The police officer who used the Taser was most commonly a male (85%), between 35 and 39 years of age (23%), at the rank of senior constable (27%), and had served in the NSWPF for four years or less (41%).
- In the 38 month period, 66 or 4% of Taser operators had used a Taser four or more times.
- A Taser was most commonly used against a male (89%) aged between 18 and 24 years (25%). In most cases the male was affected by alcohol and/or drugs (56%).

Based on our analysis on individual Taser incidents between 1 June 2010 and 30 November 2010 (the sample period) we also found that:

- In 30% of incidents where we viewed the Taser Cam footage, the person's behaviour was cooperative, passive resistant or active resistant. Note – in some of these cases the use of Taser was justifiable in draw and cover mode because, for example, police going to the situation had been advised that violence was occurring.
- In most incidents, the Taser subject did not have a weapon (74%).
- In almost a third (31%) of incidents we examined individually, Taser subjects were suspected by police of having had, or to be suffering from, mental health issues.
- The Taser was applied to the chest area (31%) in most incidents, followed by the mid-section (22%) and back areas (22%). When the Taser was used in probe or drive-stun mode, one or more uses were ineffective in 34% of incidents.
- In most incidents, a Taser was used in conjunction with other tactical options (68%).
- In the majority of incidents, the use of the Taser resolved the incident (72%).
- The person involved was often charged with one or more offences after the incident (56%). The most common charge was for assault (27%).

For the most part, the results reflect the situations and characteristics expected for Taser use by general duties officers. The fact that the most frequent Taser users have less than four years policing experience highlights the importance of the Taser SOPs and training providing clear and unambiguous instruction on appropriate Taser use. It is also interesting to note that the majority of Taser subjects were not armed and the situation was eventually resolved. In the majority of incidents, the Taser was used in conjunction with other tactical options.

## Did police comply with the criteria for using a Taser? (Chapter 7)

We did a comprehensive analysis of the 631 Taser use incidents that occurred during the sample period. As part of this analysis, we assessed each Taser use – viewing the Taser Cam footage and all the police records and information about each incident to help us decide if the use met one or more of the four criteria for use found in the Taser SOPs that were in force during this period (version 1.16). These criteria are to:

- protect human life
- protect yourself or others from person/s where violent confrontation or resistance is occurring or imminent
- protect officer/s in danger of being overpowered or to protect themselves or another person from injury
- protection from animals.

After excluding incidents where the Taser use involved accidental discharge or use on an animal, we found that – for the remaining 556 operational incidents – police used the Taser in accordance with the criteria for use in 476 (86%) incidents.

Of the 80 incidents that appeared to involve a breach of the criteria for use:

- 53 related to draw and cover incidents
- 9 related to probe incidents
- 1 related to a drive-stun incident
- 17 related to multiple or continued use incidents.

This high level of compliance indicates that the NSWPF management has been effective in teaching and training officers to understand the criteria for use. In addition the low number of instances of serious misuse is also a result of the rigorous accountability framework that the NSWPF have put into place, as well as the presence of a Taser Cam on all Tasers. The Taser Cam is a particularly important safeguard against serious and unlawful use as it records what occurs – and the footage cannot be accessed or tampered with by the police officer who has used the Taser.

However, our review of Taser use incidents and our examination of the Taser SOPs, the TRP SOPs and Taser training identified a number of concerns that warrant closer attention:

- We identified 80 incidents – 14% of all Taser use incidents in the sample period – where we believe that the use of the Taser did not meet the Taser SOPs criteria for use. In 27 of these incidents a person has been subjected to a Taser use in either probe or drive-stun mode when they should not have been.

- The Taser SOPs are not sufficiently clear or precise, and some terms can and are being interpreted too widely.
- The Taser review processes were, in some cases, inconsistent across the NSWPF in how Taser use incidents were assessed and managed.
- In the two matters where a court determined that the use of force (i.e. the use of a Taser) was unreasonable and not in accordance with LEPRA, the NSWPF had – before the court proceedings – determined that the use of the Taser was in accordance with the Taser SOPs.
- Mission creep and use of a Taser as a compliance device are significant concerns. Although these concerns are not reflected through systemic changes in data trends over time on Taser use, we did find several such incidents during our examination of individual Taser use. These findings are of concern not only because they are misuses, but also because Taser use in this way has the potential to diminish police officers' skills in communication, negotiation and weaponless control.

The following three sections – on improving the Taser SOPs, Taser training and the Taser review processes – outline the key areas where changes should be made to address these concerns and better mitigate the risks associated with Taser use.

## Improving the Taser SOPs (Chapter 7)

The Taser SOPs have been the subject of many reviews and improvements since the Taser was introduced as a tactical option by the NSWPF. During our investigation, several areas of concern that we identified have since been addressed by the incorporation of further instruction or sections in the Taser SOPs as outlined below:

- A Taser should be securely stored before entering the custody area of a police station.
- Communication is the hub of the TOM and should be used as a component of all other tactical options including a Taser.
- A Taser must not be used on compliant subjects exhibiting non-threatening behaviour.
- A Taser must not be used on passive noncompliant subjects.
- When using a Taser, the operator should avoid targeting the head, face, groin or chest areas.
- The level of resistance to justify Taser use is 'violent resistance', as opposed to any form of resistance.

There is also now a section that defines what a 'high risk' incident is and advises that officers should use a containment strategy and seek specialist support – unless there are exigent circumstances, in which case use of a Taser or other use of force may be appropriate.

These are pleasing and welcome changes. However, there are a number of areas where further clarification or refinement of the Taser SOPs is required to ensure that Tasers are used only when there is a real danger or threat of aggression and/or harm to the safety of police or others – and only if that use of force would be reasonable and proportionate.

The Taser SOPs make up one element of the accountability framework to prevent mission creep and Taser misuse. To achieve this, they must set appropriate standards for Taser use and be clear, unambiguous and well defined. The changes recommended in this report seek to achieve that.

## Using a Taser to protect from injury

The current Taser SOPs allow police to use a Taser 'to protect officer/s in danger of being overpowered or to protect themselves or another person from injury'. We found a number of instances where police discharged a Taser as a pre-emptive measure to avoid a struggle and a possible injury that might occur if police attempted to physically restrain and arrest a person.

Our concern is that protection from 'injury' can be read too broadly as any type of injury, from very minor through to severe. We identified a number of cases where the threat of injury was a threat of only a minor injury. In accordance with LEPRA, police must balance the requirement for control versus injury and ensure the use of force is proportionate and reasonable in the circumstances. Because a Taser pierces the skin through the darts projected (in probe mode), is painful (either in probe or drive-stun mode), and presents real safety and medical risks to the subject (from falling or from the Taser device itself), to be proportionate and reasonable it must only be used when there is a threat of serious actual bodily harm. In our view, the threshold for use in terms of injury needs to be clearly articulated or defined at this level. (Recommendation 1)

## Multiple uses of a Taser

We identified 17 incidents where the multiple use of a Taser did not comply with the Taser SOPs. Multiple use is of particular concern in terms of risk – Taser International recommends that multiple and continued use should be minimised. In their training material, they advise that a 15 second exposure should not be exceeded without justification and that several United States (US) police organisations have set out 15 seconds exposure as a significant safety point. We have recommended that the NSWPF incorporate this advice into the Taser SOPs and training. The NSWPF should also develop better practice guidelines to support the current material on Taser use and specifically emphasise the topic of multiple use of a Taser and the associated risks. (Recommendations 2 and 21)

In a number of incidents, we found that police failed to identify and record the reasons for each further use of the Taser. We have therefore recommended that the Taser SOPs and training require this level of reporting, and specifically which criterion was met for each individual use. We also noted that, in multiple use incidents, the subject was sometimes not given enough time to comply with the instruction being issued by the police officer. The NSWPF should ensure Taser training emphasises that officers give a person who has been the subject of Taser use reasonable time to comply with the instructions given. (Recommendations 3 and 4)

## Using a Taser in drive-stun mode

The Taser SOPs state that drive-stun mode should be used only in exigent circumstances. However, this requirement is not listed under criteria for use (but under another section called 'Methods of use – exigent circumstances'), and 'exigent circumstances' are not defined. A particular risk with a Taser in this mode is that it may be used to obtain compliance by inflicting pain on the subject. Use in drive-stun mode should be rare and exceptional so the restrictions on use in this mode should be given greater prominence in the Taser SOPs. In particular, they should be under a heading or section listing circumstances where Taser use would generally not be considered appropriate and where exigent circumstances must always be present.

We have also recommended that a definition of exigent circumstances be included in the Taser SOPs. Exigent circumstances are a threshold that can be used to justify Taser use in particular situations where it would usually be inappropriate and a breach of the Taser SOPs. Given the importance of this term, it is essential that it is clearly and formally defined. We have also recommended that when an officer cites exigent circumstances to justify the use of a Taser (in any mode or circumstance), they should be required to set out or describe the exigent circumstances that were present so that the TRP can assess whether this threshold has in fact been met. (Recommendations 5 and 6)

## Using a Taser in draw and cover mode and the question of a lower threshold

We found 53 draw and cover incidents from the sample period where the use of the Taser appeared to be in breach of the Taser SOPs. When we put these cases to the NSWPF, they argued that most of them met a lower threshold, which allows police officers to draw or point a Taser when 'you consider you are likely to be justified using it' (the likely threshold). We noted that the likely threshold was not in the Taser SOPs that applied at the time these Taser uses occurred (it appears for the first time in version 1.17, which came into force on 4 December 2010), so our assessment remains unchanged on the number of draw and cover incidents from the sample period that are in breach of the applicable Taser SOPs.

The introduction of a new and different criterion for using a Taser in draw and cover mode in the Taser SOPs (version 1.17) needed careful consideration in this investigation. In version 1.17 (and the current version 1.18), the likely threshold is in a section on 'methods of use' as opposed to the section on 'criteria for use'.

Three significant questions arose about the likely threshold:

- Is 'likely' an adequate standard or criterion for Taser use even in draw and cover mode?
- Would the likely threshold increase the risk of inappropriate Taser use?
- Is it clear to the users of the Taser SOPs that this new threshold found under 'methods of use' is a criterion for Taser use in draw and cover mode?

The NSWPF argue that the lower threshold to use a Taser in draw and cover mode:

- is an effective policing tool
- helps officers to gain control of a situation
- ensures the officer can draw a Taser in operational readiness.

They have also argued that, in many cases, simply drawing a Taser has resolved a situation – without the Taser being discharged. If a higher threshold of 'imminent' or 'actual' violent confrontation or violent resistance is required, the situation will have already escalated to the point where the Taser operator is required to discharge the Taser to manage the situation. We accept these arguments have merit.

However, our concern about introducing the lower threshold for use of a Taser in draw and cover mode is that it increases the risk of a Taser being used for compliance only – that is, in the absence of threatening, dangerous or aggressive behaviour – and may also result in unreasonable decisions to discharge a Taser.

On balance, we are persuaded by the arguments for the lower threshold of use for a Taser in draw and cover mode. However, this is contingent upon the implementation of our recommendations to:

- improve and clarify the criteria for use in the Taser SOPs (Recommendations 1, 2, 5, 6, 7, 10 and 12)
- develop best practice guidelines to supplement the Taser SOPs and training (Recommendation 21)
- improve the TRP process for assessing uses (Recommendations 22, 23 and 24).

We noted during our investigation that the likely threshold was not recognised and/or well understood as being a criterion for use of a Taser in draw and cover mode. This was evident from our focus groups with police officers, our own interpretation of the Taser SOPs and that of our independent expert. We have therefore recommended that the Taser training be amended to reflect the likely criterion and emphasise the requirement to disarm a Taser if it is no longer likely that discharging it will be justified. (Recommendation 7)

The TEC should also monitor the frequency of Taser use to evaluate the impact of changes to the threshold for use of a Taser. (Recommendation 8)

There is also a particular risk that – with the introduction of the likely threshold – Tasers may be used more frequently for compliance only. This risk can best be mitigated by the Taser SOPs being amended to clearly state that Taser use (in any mode) on noncompliant subjects exhibiting non-threatening behaviour or on passive noncompliant subjects is a prohibited use – and would constitute a breach of the criteria for use. (Recommendation 9)

### **Circumstances where a Taser should generally not be used**

During our investigation, we identified a number of situations where the prevailing rule or requirement should be that a Taser should not be used unless there are exigent circumstances. In each case, the risks of misuse and/or the risks to safety (either to police or the people subjected to Taser use) are increased. The Taser SOPs should explicitly specify that – unless there are exigent circumstances – Taser use is not permitted in the following scenarios:

- when a person is fleeing or running from police
- when a person is handcuffed
- during a high risk search of premises or other high risk situations.

A situation is defined as high risk when it meets one of the following criteria:

- the offence committed by the suspect/offender is of a serious nature
- there is an expressed intention by the suspect/s to use lethal force
- there are reasonable grounds to believe that the suspect may use lethal force, has caused or may cause injury or death, or has issued threats to kill or injure a person
- the suspect has a prior history of violence or is currently exhibiting violence
- there are innocent participants (e.g. hostages or bystanders) involved.

### ***People fleeing***

The SOPs for discharging a Taser are drafted in a way that covers situations involving confrontation. In our view, this is because it is generally contemplated that the use of a Taser would only be considered as proportionate force in such situations.

In practice, Tasers have been discharged not to calm down a confrontational situation – but to stop a person from running away from police. We have serious concerns about the use of a Taser for such a purpose. Unless a person is armed or poses a real danger to other people, we do not accept that this level of force can be justified against a fleeing person.

There were 14 cases that we reviewed where the Taser was used in this way. In seven cases the Taser was used in probe mode and in the other seven in draw and cover mode. The TRPs did not adopt a consistent approach when reviewing whether or not the use was in accordance with the Taser SOPs.

We have recommended that the NSWPF amend the Taser SOPs to specify that the discharge of a Taser to prevent people fleeing from police should not occur unless warranted by the seriousness of the offence(s), and their escape poses a serious risk that they are likely to re-offend or cause serious injury to themselves or others if not immediately apprehended. (Recommendation 10)

Additional guidance should also be provided through examples of scenarios where exigent circumstances are met and where use of a Taser on a fleeing person might be justified. (Recommendation 11)

### **People in handcuffs**

A person who is handcuffed and therefore also unarmed is clearly less dangerous than one who is not. Also, by the time someone has been handcuffed, the incident has already progressed to a stage where police officers have been able to physically restrain and control them to put on the handcuffs.

In our investigation, we identified two incidents where police discharged a Taser on a person who was handcuffed in circumstances we consider were not permitted under the Taser SOPs.

In addition, we found six cases where a person was put in handcuffs after a Taser was fired at them in probe mode – but then the Taser was not disarmed for an extended period of time. We are concerned that the Taser SOPs do not clearly state that, after a person has been handcuffed, the use of a Taser will not be justified in all but the most exceptional cases. If a person's hands are restrained, their physical ability to endanger other people is minimal.

We have recommended that the NSWPF amend the Taser SOPs to instruct officers not to use Tasers against any handcuffed person unless the use can be justified under the criteria for use and there are exigent circumstances. (Recommendation 12)

Additional guidance should also be provided through examples of scenarios where exigent circumstances are met and where use of a Taser on a person who is handcuffed might be justified. (Recommendation 13)

### **High risk situations**

The Taser SOPs specifically prohibit the use of Tasers in high risk situations, except in exigent circumstances. Under the *National Guidelines for Deployment of Police to High Risk Situations, Deployment of Police Negotiators and the Use of Lethal Force – 2005* and the *NSW Police Force Handbook*, general duties police must assess whether a situation is a high risk incident that requires assistance from specialist police such as the Tactical Operations Unit (TOU) and police negotiators. Unless there is an immediate need to protect people, the officers should only contain and negotiate until those specialist police arrive.

We support this approach. However, in our investigation we identified instances of general duties police officers using their Tasers in such situations. The NSWPF share our concerns about the tendency for general duties police to try to resolve high risk situations without the assistance of specialist officers.

Following our consultations with the TEC about this issue, the NSWPF – in the most recent version (1.18) of the Taser SOPs – have provided a definition of a high risk incident and specified that a Taser should not be used to resolve high risk situations unless exigent circumstances exist that require immediate action, which may include the use of a Taser. We support these amendments and have recommended that Taser training incorporate material to help officers identify high risk situations in which specialist assistance such as the TOU should be sought. (Recommendation 14)

We also identified five incidents in which Tasers were used to search premises in what could be described as a high risk situation. Our review of these situations raised a question as to whether the Taser is an appropriate tactical option, and whether the general duties officers should have called for assistance from the TOU. We have recommended that the Taser SOPs and training be amended to clarify the circumstances in which it is appropriate to use a Taser during a premises search. (Recommendation 14)

### **Overall structure and clarity of the current Taser SOPs**

The Taser SOPs have been revised numerous times since they were introduced in 2002. Through the many iterations and reviews, existing sections have been amended and new sections incorporated. Over time they have become confusing and ambiguous in some areas, with unintuitive section headings that do not clearly point to what is in that section.

There should be a comprehensive review of the Taser SOPs to improve them in terms of readability, clarity of expression, definition, guidance and overall structure. We have specifically recommended that, at a minimum, there should be sections in the Taser SOPs on the following topics:

- risks associated with Taser use (target areas, areas to avoid and higher risk subjects)
- the criteria for Taser use in draw and cover mode
- the criteria for Taser use in probe mode
- circumstances where a Taser is restricted or should generally not be used
- circumstances where Taser use is prohibited. (Recommendation 15)

## Ensuring consistent standards in all procedures relating to Taser use

We have noted that, in addition to the Taser SOPs for general duties police officers discussed in this report, there are two other documents that govern Taser use by specialist areas within the NSWPF – the Taser SOPs for the Public Order and Riot Squad, and the ‘Use of Force’ Guidelines for the TOU.

In view of the recommendations made in this report about the Taser SOPs for general duties police officers, it would be timely for the NSWPF to review all procedures on Taser use to ensure consistent standards across the NSWPF. (Recommendation 16)

## Improving Taser training (Chapter 7)

Our review of the current Taser training material found that the practical and theoretical components are generally covered to a high standard. Importantly, police officers have to complete annual reaccreditation training – and if they misuse a Taser they are decertified and then retrained. We also found that the content of the training material seeks to address many of the issues about the risks and limitations of Tasers identified in our 2008 report.

However, there are some issues that require further attention and improvement. In particular, we have recommended that:

- Training should update officers on changes to the Taser SOPs. (Recommendation 17)
- The component of the training that gives officers an opportunity to engage in role-playing activities should be widened to cover situations involving vulnerable people, where Taser use would not be appropriate and where the appropriate action is not clear to further develop officers’ risk assessment and decision-making abilities. (Recommendation 18)
- The Taser SOPs should be amended to include the requirement to avoid targeting known pre-existing injury areas. (Recommendation 19)
- All general duties officers should receive mental health training as a matter of priority. (Recommendation 20)
- The TEC should consider developing best practice guidelines to supplement the Taser SOPs and training. These guidelines would provide more detailed guidance and advice on key issues such as the criteria for use – including scenarios when Tasers should not be used – and tips for avoiding unnecessary cycles and discharges, and responding to subjects exhibiting behaviours associated with excited delirium. (Recommendation 21)

## Improving Taser review processes (Chapter 8)

The NSWPF currently have the most comprehensive Taser review process in Australia and possibly overseas. We were unable to identify any jurisdiction where a review process was as comprehensive. One internationally distinguishing feature is that in NSW every Taser use is required to be reviewed by a panel made up of senior police (the TRP) – within three days of the incident.

The mandatory use of Taser Cam also provides a significant accountability measure. It provides an objective, visual and contemporaneous view of events that helps in the assessment of whether the Taser use was justified. It also acts as a deterrent against misuse, as officers are aware that everything they do or say after the Taser is armed will be recorded and scrutinised.

Our investigation identified a number of areas where the current review processes could be strengthened.

## Recording details on criteria assessed, breaches and remedial actions taken

The TRP SOPs provide TRPs with a standard form (the Regional Taser Review Record) to record their assessments of Taser uses. The form does not guide TRPs to record the criterion for use that officers have cited as justification for the use of the Taser, nor to specify any breaches of the Taser SOPs that are identified. This can make it difficult to fully understand a TRP’s final decision.

In our investigation we found the lack of specific detail could cause some confusion. For example, in some cases where the TRP sent a reminder notice to an officer to tell them something they could have done better, the form showed that the use was in accordance with the Taser SOPs – but the free text suggested that the conduct was in breach of them. Reminder notices are a form of remedial action. It is important that the reasons for any remedial action are accurately and appropriately recorded.

The South West Metropolitan Region uses a different form, which requires the TRP to note the criterion for use that has been met and record whether or not the Taser usage was in accordance with the Taser SOPs.

We have recommended that the TRP SOPs be amended to require the TRP to specify:

- the criterion for use that justified the use of the Taser
- any breaches of the Taser SOPs
- the reasons for remedial action. (Recommendation 22)

### **Applying the tests to assess if Taser use is reasonable**

Sections 230 and 231 of LEPRA authorise police to use as much force as is 'reasonably necessary' to make an arrest or perform other functions under the Act. The courts have adopted the ordinary definition of the word 'reasonable' and assess whether police actions are reasonably necessary through both subjective and objective tests.

In assessing Taser use incidents, weight should be given to the officers' perceptions of the levels of threat – as this informs the subjective test of whether force was reasonable in the circumstances. The written records of the incident (i.e. the Computerised Operational Policing System (COPS) record and Taser Sitrep) contain the views of the officers about the level of threat they perceived at the time, and their justification for using the Taser in light of that threat. Importantly, these records may describe what happened before and after the Taser was armed, or what was happening that is not captured by the Taser Cam. The objective part of the test should be informed by a review of the Taser Cam footage and Taser dataport download information, the number of officers attending the incident, and any independent accounts of the incident.

In our investigation we identified incidents where:

- The objective evidence about the use of the Taser was inconsistent with the account recorded by police in COPS, and these inconsistencies were not always made the subject of further inquiry by the TRP.
- We found significant discrepancies between the Taser Cam footage and the written records of the event – in that the records refer to actions or behaviour occurring while the Taser was armed that clearly do not appear on the Taser Cam footage.
- The TRP has appeared to prefer the subjective records over the objective records in such cases, without providing an explanation for this preference.

We have recommended that the TRP SOPs be amended to explicitly require TRPs to assess both the subjective and objective evidence of a Taser use incident. They need to do this to determine if the use was reasonably necessary, and to identify and explain any inconsistencies between officers' accounts and Taser Cam footage and the reasons they preferred one over the other. (Recommendation 23)

This also raises the question of whether the Taser SOPs and associated training are explicit in terms of the requirements of LEPRA to use only as much force as is reasonably necessary. It is essential that police officers have a clear understanding that the criteria for use in the Taser SOPs are subject to the LEPRA provisions. It is also important that Taser operators understand that if the question of use of force is examined by a TRP or by a court, that both a subjective and objective test will be applied in determining whether it was reasonable. (Recommendation 24)

### **Improving TRP reviews of multiple use incidents**

In our investigation we found that TRPs did not always identify the fact that a Taser had been used on a person multiple times, or that more than one Taser had been used. The Taser SOPs explicitly state that multiple use of a Taser should be avoided. In our view, incidents involving multiple use require a higher level of scrutiny. We found cases where the TRP did not question inconsistencies in the detail provided about multiple use incidents.

To improve accountability in this area, we have recommended that the TRP SOPs be amended to require the TRP to review the Taser dataport download information in each case and record the number of discharges or cycles of the Taser. We have also recommended that the TRP SOPs and associated forms and records be amended to require the TRP to make a finding about whether each discharge or cycle of the Taser is justified under the criteria for use in the Taser SOPs and reasonable in the circumstances. (Recommendations 25 and 26)

### **Reducing inconsistencies in review outcomes**

We identified a number of inconsistencies in the way the TRPs identified and addressed a range of breaches about matters other than criteria for use. To reduce these inconsistencies and clarify the intent of the relevant SOPs and training, we have recommended that the:

- TRP SOPs be amended to include guidance on the circumstances in which remedial action is required for police obscuring the Taser Cam. (Recommendation 27)
- Taser SOPs and training and the TRP SOPs specify that failing to properly store a Taser is a hazardous use that will result in remedial action. (Recommendation 28)

- TRP SOPs require TRPs to assess and record whether police have complied with the requirement to call an ambulance when a person has been subjected to Taser use in probe or drive-stun mode. (Recommendation 29)
- Taser SOPs be amended to advise that failure to call an ambulance or hospital personnel when Tasers have been discharged may result in remedial action. (Recommendation 30)
- Taser SOPs include guidance about pointing Tasers at the ground during operational situations. (Recommendation 31)
- TRP SOPs require the TRP to assess whether the practice of pointing an armed Taser to the ground during an operational situation is appropriate in each circumstance. (Recommendation 32)

### Clarifying the roles of the TRP and LAC in the internal review process

The TRP SOPs are unclear about the role of LACs in the internal review process. Section 4.1 allows the TRP to send a request to an LAC to provide further information about the circumstances in which the Taser was used, if the records made by the Taser user are incomplete. The TRP SOPs are less clear about whether the LAC is also given authority to determine if the use of the Taser complied with the Taser SOPs, or whether their role is only to provide information to the TRP to allow them to determine the matter. We found a number of cases that illustrated this lack of clarity.

It is appropriate that TRPs have the flexibility to request information from LACs about the circumstances of Taser use and for the LACs to provide comments about whether the use involved any breach of the Taser SOPs. To assist this process the TRP SOPs should specify the roles and responsibilities of the TRPs and LACs in the review process. (Recommendation 33)

However, the TRP SOPs should clearly state that the TRP are responsible for making the final assessment and decision as to whether the use complied with, or was in breach of, the Taser SOPs. This is because TRPs have greater expertise in reviewing these matters and are better placed to ensure consistency. (Recommendation 34)

### The TRP's role in reviewing Taser use that is part of a critical incident investigation

We identified three incidents where the TRP had not reviewed the Taser Cam footage and associated police records because the incident was the subject of a critical incident investigation.

A critical incident investigation is started when a person dies or is seriously injured in connection with police actions or a police operation. These incidents often attract public attention and scrutiny, and potentially involve examining police conduct that could constitute serious misconduct. The critical incident investigation is clearly not limited to looking at the question of police conduct – it will investigate all issues and matters related to the incident that occurred.

Although the TRP SOPs do not specifically address Taser use incidents that become part of a critical incident investigation, it is clear that the TRP should still conduct their review on the appropriateness of the Taser use for the critical incident lead investigator to consider. As a TRP is made up of senior officers with considerable expertise in reviewing Taser use incidents, it is logical that in such serious incidents the TRP perform their specialist function. This should be specified in the TRP SOPs. (Recommendation 35)

### The TEC and use of force data

One of the key recommendations in our 2008 report was that the NSWPF develop a use of force register to help them analyse and monitor trends in the use of force, and assess how force is used by police officers and whether the use is reasonable. Our investigation considered their progress on developing this register.

The NSWPF have advised that COPS now includes a mandatory field for use of force, which includes recording Taser use. We assessed the adequacy of the NSWPF's systems to ensure the quality, accuracy and comprehensiveness of the data in COPS and analyse the information captured. In our view, there are still a number of improvements to be made.

We have recommended that the NSWPF implement strategies to improve their data collection and analysis for use of force to allow accurate recording of all tactical options and reporting about trends in use and in injuries. We have also asked the NSWPF to provide us with a report outlining use of force trends (March 2009 – March 2013) by May 2013. (Recommendations 36 and 38)

It is also critical that the NSWPF progress the proposed enhancements to the Enterprise Data Warehouse system as a matter of priority. (Recommendation 37)

### Complaints about Taser use under Part 8A of the Police Act 1990

The NSWPF are generally taking appropriate action to investigate and resolve complaints about the use of Tasers. Of the 72 complaints that were investigated by the NSWPF, we found four investigations (5.6%) to be deficient. This

result compares favourably to the annual rate of deficient investigations for all matters which, in the financial year 2010–11, was 9%.

However, we are concerned about whether TRPs are correctly identifying Taser use incidents that should be recorded as a complaint. To remedy these concerns, the NSWPF – in consultation with our office – should amend the TRP SOPs to include advice about the circumstances in which reports suggesting a breach of the Taser SOPs should be recorded as an internal complaint and notified to our office. (Recommendation 39)

### **Implementing a debriefing process**

During our consultations with the NSWPF, we indicated that the internal Taser review process would be enhanced by providing feedback to Taser operators when it is clear they could have handled a particular situation better. We also suggested that, in these situations, Taser operators should have the opportunity to view the Taser Cam footage of the incident. The NSWPF agreed that there would be benefits in developing a mechanism to provide feedback.

On 1 August 2012, the NSWPF introduced a debrief process. It is mandatory for all officers who have used a Taser in probe or drive-stun mode, and extends to uses in draw and cover if the TRP have identified that feedback would be beneficial. The Taser operator sees the Taser Cam footage and receives feedback from a debriefing officer – that is, the LAC Crime Manager, Duty Officer or Team Leader.

This is a positive initiative and there will be significant benefits from a debrief process. However, it is essential that the debrief process does not inadvertently compromise the accountability framework. We have recommended that the NSWPF ensure that all officers involved in conducting debriefs with Taser operators are required to have undertaken Taser accreditation training. (Recommendation 40)

We have also recommended that the TRP SOPs be amended to:

- ensure that TRPs refer matters for debriefing only after completing an internal review and making a finding that the use complied with the criteria for use in the Taser SOPs (Recommendation 41)
- include guidance about the types of issues identified during the internal review that are appropriate for resolution through a debriefing process. (Recommendation 42)

Given the debrief process is a new one and requires additional police resources, the NSWPF should also ensure that data and records are kept to allow an evaluation of the debrief process to be undertaken 12 months after its introduction. (Recommendation 43)

### **NSWPF's future plans for the type of Taser device**

The Taser device currently in use by the NSWPF is a model called the X26. In May 2012, the NSWPF advised that they had ordered two X2 Tasers (a different model) to assess and evaluate their suitability for future use. The X2 Taser differs from the X26 in that it houses two cartridges as opposed to one in the X26 – this provides for a backup shot to occur. Some other features include two lasers (as opposed to one), the use of a warning arc to be generated once loaded, an optional shutdown feature and a Taser Cam with high resolution that allows full colour images.

It is clear that the X2 offers some advantages over the X26, but it also has some disadvantages in terms of potentially higher risk issues that are discussed throughout this report – particularly in relation to multiple use.

We will continue to monitor the issue of Taser use by the NSWPF and have recommended that, before the NSWPF make any decision to introduce a different model of Taser, they consult with our office and give us copies of any evaluation reports and advice. (Recommendation 44)

## **How our findings add to the Taser debate (Chapter 9)**

We earlier set out some of the arguments that have been made both for and against police use of Tasers. As part of this investigation, we have considered whether our findings provide any evidence to support these arguments.

### **The arguments for the benefits of Taser use**

#### ***A less-lethal option***

One of the rationales for introducing Tasers is that they give police a less-lethal option to use than a firearm. Our key findings relevant to this issue are that:

- Not all of the incidents we reviewed where the person had a weapon would have necessarily resulted in police using a firearm if the officer did not have a Taser. However, we did find cases where the use of the Taser did effectively resolve a high risk situation that may have otherwise required a firearm to be drawn.

- Overall, there was only a small number of incidents where a Taser was used as an alternative to a firearm.
- Because use of force data kept by the NSWPF is unreliable before the introduction of the Taser (mandatory recording of use of force was not implemented until after the rollout of Tasers), it is not possible to determine if the introduction of Tasers has had an impact on the number of firearms either displayed or discharged. However, since the introduction of the Taser, there does not appear to have been a significant change in the use of firearms.
- For other use of force options, the use of Oleoresin Capsicum (OC) spray has decreased marginally since the introduction of the Taser and the use of weaponless control has increased during the same period.

From a qualitative point of view, police officers who participated in focus groups commented that they prefer using a Taser to OC spray. This is because OC spray may lead to officer contamination and is uncomfortable for the subject person for a longer period of time than a Taser. Some officers also commented that the use of a baton was a more significant use of force than a Taser because it is quite violent and leaves bruises. However, in noting the downward trend in Taser use that is evident since its introduction, some officers commented that the paperwork and accountability requirements for Taser use are a disincentive to using it.

### ***Reducing assaults on and injuries to police***

Another argument for introducing Tasers is that they reduce the number of assaults on, or injuries to, police officers. Our investigation found:

- There has been a statistically significant decline in incidents recorded in COPS as 'assault police' or 'resist or hinder a police officer' since the introduction of Tasers to general duties police officers in 2008.
- There has been an ongoing downward trend in the number of injuries to police caused by assaults. However, this trend started before Tasers were introduced – suggesting factors other than Taser may have initiated and contributed to the downward trend.

It would be overly simplistic to conclude that Tasers alone have caused the reduction as a number of factors may have contributed to this result. For example, crime trend analysis conducted by BOCSAR shows that incidents of violent offences generally have been stable or reduced over the 60 months up to December 2010 across NSW. It may be that police are attending fewer incidents in which violent confrontation occurs – resulting in a reduction of the number of assaults on police.

The data presented in this report indicating a reduction in the number of high risk incidents attended by specialist units may also be evidence of a reduction in violent crime. There are also other factors or confounding variables that may contribute to changes that have not yet been considered – for example, improvements in training, additional powers or authorities for alternatives to arrest. Further longitudinal data collection and the analysis of other contributing factors are required before any definitive conclusions on the contribution of Tasers can be made.

It is pleasing to see that the number of assaults on and resulting injuries to police officers is reducing. A more definitive evaluation of the impact of Tasers and other tactical options on the incidence of injuries caused by assaults on police will require the NSWPF to improve their collection of information about injury and use of force.

### ***Helping to resolve violent incidents***

In terms of Tasers being used as a deterrent to violent confrontation, we are satisfied – based on our review – that Tasers provide police with an important additional tactical option for managing incidents involving violent or potentially violent situations. However, the effectiveness of Tasers is clearly linked to the skills and knowledge of the officers using the other tactical options that are essential to resolve these types of incidents.

## **The arguments against Taser use**

### ***The risk of death and serious injury***

Since 2010, there have been two deaths in NSW connected to Taser use by police. In one case, the NSW State Coroner found the cause of the death was unable to be determined and that the police involved had behaved appropriately. The other case is currently before the Coroner.

Although our investigation does not contribute to the medical debate about whether Tasers can be a direct cause of death, the experience in NSW and other domestic and international jurisdictions should be sufficient to recognise this is a risk that must at the very least be considered when formulating any guidelines on the use of Tasers. Taser International have pointed to high risk practices and higher risk members of the community, and procedures on Taser use should restrict or prohibit Taser use in these circumstances. A key factor relating to the risk of death is the multiple use of a Taser. In Chapters 7 and 8 we discuss this issue and make recommendations to strengthen the

threshold for using Tasers and the NSWPF internal review process to ensure that multiple use of Tasers is limited and subject to increased scrutiny.

In terms of risk of serious injury, we examined injuries resulting directly from the use of a Taser. This includes those that result from a Taser barb penetrating the body or as a result of a fall when a person collapses due to NMI. We found no incidents in the sample period involving a serious injury that resulted directly from the use of a Taser, and only one incident outside the sample period where a person had surgery to remove a Taser barb from his neck. We found that 13 people suffered minor injuries such as burns and puncture marks as a direct result of Taser discharge.

Overall, we found from the sample of 556 incidents that the incidence of serious injury – as a direct result of the use of a Taser, or as a result of an incident in which a Taser was used by police – was low.

### ***The risk of mission creep***

We carefully examined whether there was evidence of mission creep or of police, over time, using Tasers in situations for which they were not intended. These situations included gaining compliance from people who were uncooperative or noncompliant but not violent or aggressive, and using Tasers too early in encounters and in situations where there was no risk of serious injury or where a lesser use of force option would have been effective. We found 60 incidents in the sample where a Taser was used for compliance only, 41 of which were in draw and cover mode. Our analysis of trend data on Taser use over time did not identify any significant indications of mission creep more generally.

### ***The risk of misuse***

We examined the evidence of misuse of Tasers by the NSWPF. A positive finding from our review was a high level of compliance, 86%, with the criteria for use set out in the Taser SOPs. We found 27 incidents or 5% where a Taser was discharged in circumstances raising concerns of unreasonable force because the Taser was used, in our view, in breach of the criteria for use.

Two incidents – *R v Ali Alkan* and *R v Bugmy* – were the subject of court proceedings, in which the court found that police used a Taser unlawfully as it was contrary to ss. 230–231 of LEPRA.

Although we regard the remaining 25 incidents where a Taser was discharged in breach of the Taser SOPs as serious, we found no incidents where the Taser had been used to torture, assault or hurt the subject in a manner that would warrant consideration of a criminal investigation or prosecution of the officer involved.

## **Concluding remarks**

Our investigation found that the use of Tasers by general duties police in NSW has largely been consistent with operational procedures and policies. It also confirms that Tasers provide an effective tactical option for general duties officers responding to incidents involving violent confrontation.

There has been a statistically significant decline in the number of incidents recorded by police as involving 'assault police' or 'resist or hinder officer' since Tasers were introduced, and a continuation of an earlier decrease in the number of injury claims by police as a result of being assaulted. These trends are positive and pleasing, but further longitudinal data collection and analysis by the NSWPF will be needed to evaluate whether the trends are directly related to the use of Tasers.

We found that the NSWPF have established a comprehensive internal review process to monitor the use of Tasers and that police are generally complying with SOPs and training in the majority of cases.

We also identified a number of incidents where police have used Tasers in breach of procedures that raise legitimate concerns that need to be addressed. Our findings have led us to make 44 recommendations to strengthen and improve NSWPF policies, procedures and practices. These recommendations are designed to ensure that the NSWPF continue to set the best standards possible for using a Taser and that police are held accountable, under a fair and thorough process, for any misuse that occurs.

We will monitor the implementation of these 44 recommendations, and have made two final recommendations for the NSWPF to provide us with information about the progress of implementation.

Public concern and scrutiny about Taser use will continue. This is not only because of the deaths associated with Taser use – but also because of the type of weapon it is, what it can potentially do to a person when it is used, and because of the risk of misuse. The NSWPF should be commended for the steps they have taken to ensure that Tasers are used appropriately, but our recommendations should be implemented to ensure public confidence is maintained.

## Recommendations

1. That the NSWPF modify the Taser SOPs so that the criterion for discharge of a Taser is to protect from serious actual bodily harm, as opposed to any type of injury. .... 115
2. That the NSWPF amend the Taser SOPs and training to restrict the multiple use of Tasers to a 15 second exposure during any incident and that use beyond 15 seconds will constitute a breach of the Taser SOPs. .... 116
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11. Additional guidance should be provided which sets out examples or scenarios where Taser use against a fleeing person might be considered acceptable – for example, warranted by the seriousness of the offence or the escape of the person posing a serious risk that they are likely to re-offend or cause serious injury to themselves or others if not immediately apprehended. .... 134
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15. That the NSWPF review the existing Taser SOPs to improve their overall structure and readability. At a minimum, there should be sections on the following topics:
  - Risks associated with Taser use (target areas, areas to avoid and higher risk subjects).
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  - The criteria for Taser use in probe mode.
  - Circumstances where Taser use is restricted.
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18. That the NSWPF include reality-based scenarios in Taser accreditation training and reaccreditation training that deal with:

- vulnerable people – to reinforce the importance of communication, negotiation and other de-escalation techniques
- situations in which Taser use is not an appropriate use of force – including circumstances where a person is acting in a non-threatening, compliant or passively noncompliant manner
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• trends in the frequency of injuries to people subjected to Taser, including injuries directly caused by Tasers and arising from incidents in which a Taser is used	
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Finally, we thank and acknowledge the considerable time spent by the Police Integrity Commission in preparing the DVD with the Taser Cam footage that has been released with this report and made available on the Ombudsman's website.

# Acronyms

ACT	Australian Capital Territory	NSWPF	NSW Police Force
ADVO	Apprehended Domestic Violence Order	NSWPF Handbook	<i>NSW Police Force Handbook</i>
AFID tags	Anti Felony Identification Device tags	OC spray	Oleoresin Capsicum spray, also known as capsicum spray
BOCSAR	NSW Bureau of Crime Statistics and Research	PODS	Police Oversight Data Store held by the Police Integrity Commission
c@ts.i	Customer Assistance Tracking System (NSWPF)	POI	person of interest
CCC	Corruption and Crime Commission (Western Australia)	PORS	Public Order and Riot Squad (NSWPF)
CED	Conducted Energy Device	PORS SOPs	Public Order and Riot Squad Standard Operating Procedures [for use of Taser]
CEW	Conducted Energy Weapon	PSM	Professional Standards Manager (NSWPF)
CID	Central Information Display	Qld	The state of Queensland, Australia
CMC	Crime and Misconduct Commission (Queensland)	QPS	Queensland Police Service
CMF	Command Management Framework (NSWPF)	RCMP	Royal Canadian Mounted Police
CMT	Complaint Management Team (NSWPF)	SAP	NSWPF human resources information system
CNI	Central Names Index	SBS	Special Broadcasting Service
COPS	Computerised Operational Policing System (NSWPF)	Sitrep	Situation report
DCOP	Deputy Commissioner of Police (NSWPF)	SOPs	Standard Operating Procedures
DPM	Digital Power Magazine	SPSU	State Protection Support Unit (NSWPF)
e@gle.i	Investigation Management System (NSWPF)	Taser SOPs	Standard Operating Procedures for the use of Electronic Control (Taser) Devices by the NSWPF
ECD	Electronic Control Device	TEC	Taser Executive Committee (NSWPF)
ECW	Electronic Control Weapon	TOM	Tactical Options Model
EDW	Enterprise Data Warehouse (NSWPF)	TOU	Tactical Operations Unit (NSWPF)
IR Illuminator	Infrared Illuminator	TRP	Taser Review Panel (NSWPF)
LAC	local area command (NSWPF)	TRP SOPs	Region Taser Review Panel Standard Operating Procedures
LEPRA	<i>Law Enforcement (Powers and Responsibilities) Act 2002</i>	UK	United Kingdom
MEIG	Major Events and Incidents Group (NSWPF)	US	United States of America
MHIT	Mental Health Intervention Team (NSWPF)	VIEW IMS	VIEW Imagery Management System (NSWPF)
NFA	No further action	VKG	NSWPF Radio Operations
NMI	Neuromuscular Incapacitation	WA	The state of Western Australia, Australia
NSW	The state of New South Wales, Australia	WAPOL	Western Australia Police

# Glossary

2008 report	NSW Ombudsman's special report to Parliament, <i>The Use of Taser Weapons by New South Wales Police Force</i> , November 2008.
accidental discharge	Discharge of a Taser accidentally – for example, when performing a spark test of the Taser weapon. This is an example of hazardous practice.
Anti Felony Identification Device tags	Each time a Taser cartridge is deployed, at least 24 small confetti-like AFID tags are ejected. Each AFID is printed with the serial number of the cartridge deployed.
arrhythmia	An abnormal heartbeat.
backup officer(s)	In the context of a Taser incident, the police officer who provides support to the officer(s) using the Taser. Their role is to move in and control the person who is being subjected to the Taser.
Braidwood Inquiry	A Canadian Commissions of Inquiry conducted by Thomas R. Braidwood, Q.C. into the use of Tasers by provincially regulated law enforcement agencies and other authorised persons, and inquiring into the death of Robert Dziekanski at the Vancouver International Airport on 14 October 2007.
CNI Number	A number assigned to a person who interacts with the NSWPF.
Command Management Framework	The CMF is an audit process used by all commands within the NSWPF to ensure legislative compliance.
Computerised Operational Policing System	COPS is a database used by police to record, assess and analyse crime information and intelligence.
Conducted Energy Device	CED is an alternative name for Tasers.
Conducted Energy Weapon	CEW is an alternative name for Tasers.
containment and negotiation	Set up perimeters and restrict access to an area, and then negotiate with the person.
continued Taser use	When the Taser trigger is held continuously to discharge a constant current until the trigger is released.
COPS Event	A COPS Event is an event recorded by police officers in the COPS database.
criteria for use	In the context of Taser use, the threshold that must be met before using a Taser.
Customer Assistance Tracking System	c@ts.i is a web-based complaint registration and tracking system used to record, manage and report on complaints against police.
deploying officer	The officer using the Taser during an incident – also referred to as the Taser user or the Taser operator.
discharge of a Taser	Taser use in probe or drive-stun mode.
draw and cover incident	An incident during which a Taser is used in draw and cover mode by one or more officers against one or more subjects.
drive-stun incident	An incident during which a person is subjected to a single Taser use in drive-stun mode.
e@gle.i	e@gle.i is the NSWPF Investigation Management System that allows officers to capture and report on information gathered during the investigation of a major crime.
Enterprise Data Warehouse system	The EDW system is a repository of information from COPS and other systems used for reporting.
excited delirium	A state of extreme agitation, excitability and aggression, characterised by exceptional strength and lack of responsiveness to pain.
firing data	See 'Taser dataport download information'.
general duties police	NSWPF officers who perform general duties and undertake response-style policing activity.
hazardous practice	As defined in the SOPs for the use of Tasers by NSWPF general duties officers, hazardous practice is any action or inaction by the Taser user that falls outside of the Taser SOPs or their intent, requiring remedial action. An example of a hazardous practice is accidentally discharging a Taser.
high risk situation	A situation which meets the criteria to require specialist police to attend to resolve the incident.
isolation test (Taser)	Testing the use of Taser in isolation, without other tactical options.
M26 Taser	An older model of the Taser used by NSWPF specialist units which has now been phased out.
mission creep	In the context of Tasers, this refers to the increasing reliance on Tasers by police in circumstances where the use of a lesser amount or type of force would be appropriate, or where the situation could be resolved without resorting to force.
multiple Taser use	The use of a Taser in one or more of the following ways against an individual – in probe mode as well as drive-stun mode, multiple trigger pulls in probe mode, multiple trigger pulls in drive-stun mode, two or more officers subjecting a person to Taser use during a single incident.
multiple/continued use incident	An incident during which a person is subjected to more than five seconds of electrical current from the Taser. This can occur when an officer holds the trigger continuously beyond the initial five second cycle (continued Taser use), or when the Taser is used multiple times in probe and/or drive-stun mode (multiple Taser use).
Neuromuscular Incapacitation	NMI is an involuntary loss of muscle control due to stimulation of the sensory nerves and the motor nerves.
officer presence	Gaining control of a person or a situation by the mere presence of the police officer(s).

Oleoresin Capsicum spray	An OC spray is a type of chemical munitions that uses an airborne delivery system to convey an inflammatory agent to a person's location to restrain or limit their actions.
Phase 1 of the Taser rollout	The period during which the NSWPF issued Tasers to general duties police working as duty officers and supervisors only – between 1 October 2008 and 30 November 2009.
Phase 2 of the Taser rollout	The period during which the NSWPF issued Tasers to all general duties police – between 1 December 2009 and 30 November 2010.
Police Oversight Data Store	PODS is a database maintained and developed by the Police Integrity Commission containing data derived from a number of NSWPF systems including COPS, c@ts.i, e@gle.i and SAP.
positional asphyxia	Positional asphyxia occurs when the position of a person's body interferes with his or her ability to breathe, which can result in death.
probe incident	An incident during which a person is subjected to a single Taser use in probe mode.
Region Taser Review Panels	TRPs are panels set up to review Taser use by NSWPF officers for each of the six policing regions.
review period	The period during which Taser incidents were under review in this report – between 1 October 2008 and 30 November 2011.
sample period	The period in which Taser incidents were selected for detailed review in this report – between 1 June 2010 and 30 November 2010.
shot data	See 'Taser dataport download information'.
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.
Situation report	Sitreps are used to notify senior officers within the NSWPF of significant incidents – such as critical or other major incidents, serious crimes, the arrest of serving police officers, serious injury to officers, particularly good or meritorious police work, and any other matter likely to attract significant public or media interest. They are also required to be submitted after any Taser use.
spark test	Testing the Taser weapon by depressing the trigger and observing a visible spark between the electrodes.
specialist units	This term refers to the NSWPF TOU, SPSU and PORS – that is, the specialist units within the NSWPF that are currently authorised to use Tasers.
SAP system	The NSWPF human resources information system.
subjected to Taser use	This term is used to describe incidents where police have used or attempted to use a Taser against a person in draw and cover, probe or drive-stun mode.
tactical disengagement	A tactical option for police to retreat to a safe location.
Tactical Options Model	The TOM is a framework used by sworn officers of the NSWPF to assess the level of force that is appropriate to gain control of a situation.
target area	The body part on which the Taser is applied.
Taser	A brand of electronic control device designed to administer an electrical discharge on contact that will cause incapacitation and/or submission of a person.
Taser Cam	An audiovisual recording device that can be fitted to selected models of the Taser (including X26) to record footage before, during and after the use of a Taser.
Taser dataport download information	The information in a data chip within the Taser that records the date, time, duration of application (length of time the triggered is depressed), temperature and battery status each time the Taser is used in probe or drive-stun mode. Also called firing data or shot data.
Taser incident	An incident during which a Taser was used by a police officer.
Taser operator	The police officer who uses a Taser – also referred to as the Taser user.
Taser Sitrep	A Sitrep specifically developed by NSWPF to report Taser-related incidents to senior command.
Taser subjects	People subjected to Taser use.
Taser use in draw and cover mode	Drawing the Taser from the holster to cover a subject.
Taser use in drive-stun mode	When a Taser is applied directly to the body of the person.
Taser use in probe mode	When a Taser is used by firing a cartridge of barbed projectiles (darts) at a person.
Taser user	The police officer who uses a Taser – also referred to as the Taser operator.
ventricular fibrillation	A life-threatening abnormal heart rhythm.
VIEW Imagery Management System (IMS)	A NSWPF enterprise-wide system for uploading, managing and storing digital video and still images. It is designed to operate together with e@gle.i (the NSWPF Investigation Management System).
VKG	NSWPF Radio Operations.
weapon summary report	Report generated from Taser dataport download information.
weaponless control	Weaponless control includes defensive kick, defensive strike/punch, knife defence, take-downs, ground wrestle, check/re-direction drill, arm restraint/wristlock, hand-to-hand combat and other weaponless control techniques.
X2 Taser	A newer Taser model than the X26. This Taser weapon houses two cartridges allowing a backup shot.
X26 Taser	The model of the Taser currently used by the NSWPF.

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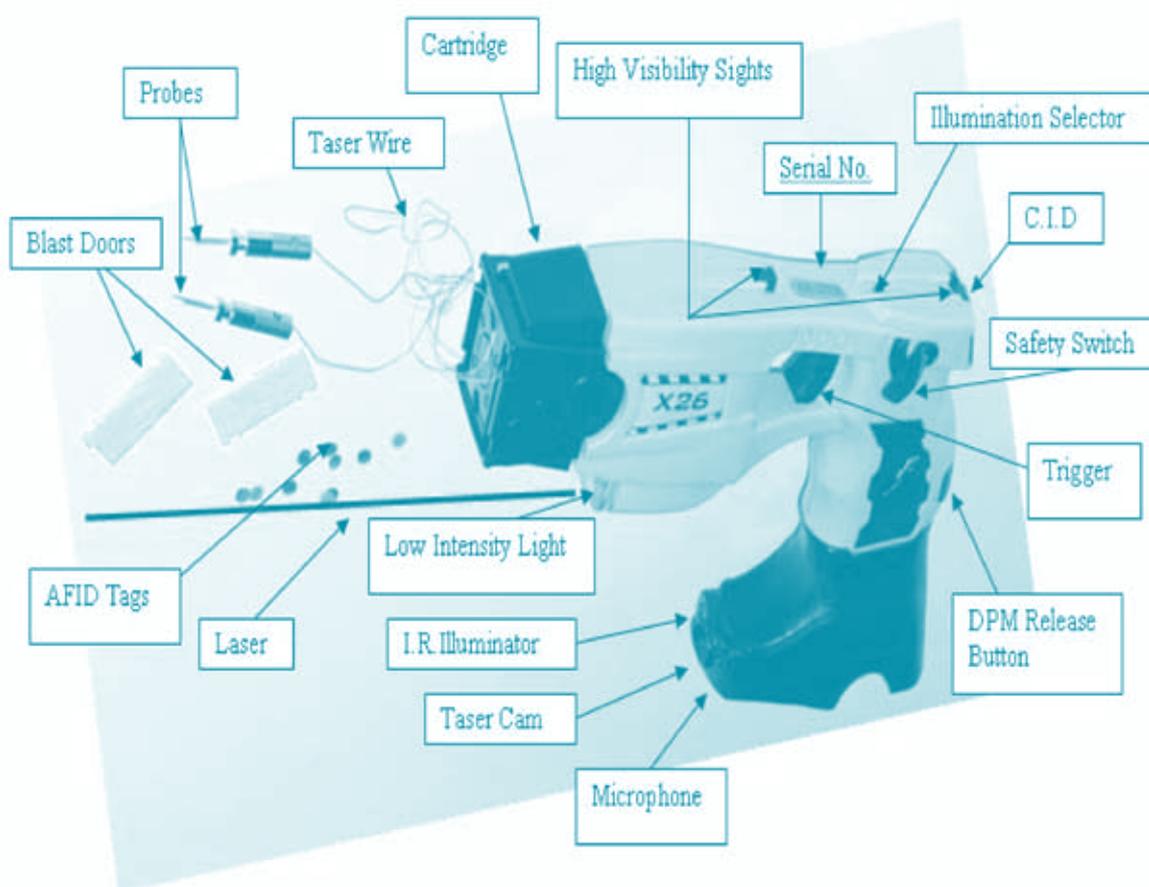
## Chapter 1. Introduction

Increasingly, law enforcement agencies around the world have introduced or are introducing conducted energy devices (CED) or weapons (CEW) as tactical options within their use of force model.

A CED is designed to administer an electrical discharge on contact that will cause incapacitation and/or submission of a person. For this report, the term 'Taser' is used to describe CEDs.<sup>1</sup> This is because the CEDs currently used by the New South Wales Police Force (NSWPF), and extensively in other jurisdictions for law enforcement purposes, are the Taser X26 (the X26), which was released in 2004. These weapons were developed by Taser International, a corporation based in the United States, which began selling CEDs in 1993.

A 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 helps the person firing the weapon to aim accurately.

**Figure. 1:** Components of a Taser X26



**Source:** NSW Police Force, *Standard Operating Procedures for use of Electronic Control (TASER) Devices by the NSW Police Force*, version 1.18, (approved for release in July 2012), p. 7.

A Taser can be drawn and used to cover a person (draw and cover mode) and there are two modes in which a Taser can be discharged – probe mode and drive-stun mode.

In probe mode, a Taser is used by firing a cartridge of barbed projectiles (darts) at a person. There is a range of cartridges available, which determine the distance the darts will be fired. The NSWPF currently use cartridges which fire the barbs up to 21 feet (6.4 metres). For the Taser to have maximum effect, it should be deployed 7–15 feet (2.1–4.5 metres) away from the person subject to the Taser application. When a Taser is deployed from less than 7 feet away the darts can lodge too close together, making the Taser ineffective. A Taser deployed from more than 21–25 feet (6.4–7.6 metres) away could lead to the darts missing the person.<sup>2</sup>

The darts are projected by compressed nitrogen within the cartridge and are connected to the Taser by fine, insulated copper wires. Each cartridge is single-use only (in the X26), and must be removed or replaced after being discharged in probe mode.

A Taser has a peak open-circuit of 50,000 volts – if the darts lodge in the skin or clothing of a person, an electrical discharge will be administered to their body by a series of short, repetitive electrical pulses. These prevent effective muscular activity – this is known as Neuromuscular Incapacitation or NMI.<sup>3</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>4</sup>

In drive-stun mode, the Taser is applied directly to the body of the person with or without the cartridge installed. The effectiveness of the Taser is reduced in this 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 the electricity will only act over a small area when used in drive-stun mode, causing pain and debilitation rather than complete incapacitation.<sup>5</sup> In other words, muscle disruption does not occur and officers rely on pain 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. The person activating the Taser also has the option of extending the initial current beyond five seconds, or applying the current in multiple five second bursts.<sup>6</sup>

A Taser Cam is an audiovisual recording device that can be fitted to selected models of the Taser (including the X26) to record footage before, during and after the Taser is used. This device is activated when the safety switch is turned off – that is, when the Taser is ready to fire – and the footage can be downloaded onto a computer for viewing.

Tasers are now in use in every Australian policing jurisdiction to some extent. Internationally, Tasers are used in a significant number of countries, including the United States, Canada, the United Kingdom and New Zealand.

The use of Tasers for law enforcement purposes has been hailed as an effective tactical option. It is a less-lethal use of force compared to firearms and reduces injuries to both police and the individuals involved in altercations with police. However, the Taser has also been criticised as being a dangerous device associated with a concerning number of deaths and a weapon that is open to misuse and mission creep – for example, being used as a compliance device and diminishing police skills in using other methods to de-escalate situations.

The NSWPF first introduced Tasers in 2002, although at this time they were limited to specialist units. Tasers have subsequently been rolled out to Taser-accredited general duties police. By the end of 2011, there were approximately 15,258 NSWPF officers (including officers attached to specialist units) trained to use a Taser, and approximately 1,122 Tasers in use.

The NSW Ombudsman, as the principal organisation with oversight responsibilities for the police complaints system, has been monitoring complaints and associated issues related to the use of Tasers since 2008. This is our second report on the use of Tasers by the NSWPF.

The remainder of this chapter provides:

- a description of the background events and issues that led to the decision to conduct this investigation
- the methodology used in the investigation
- an overview of the structure of this report.

## 1.1 Background leading to this investigation

In November 2008, the NSW Ombudsman released a special report to Parliament, *The use of Taser weapons by New South Wales Police Force* (the 2008 report). That report examined the use of Tasers by the NSWPF from May 2002 until December 2007. At that time, a total of 56 Tasers had been distributed to five specialist units within the NSWPF.

In our 2008 report, we made a total of 29 recommendations to improve:

- the comprehensiveness of training
- the police Standard Operating Procedures (SOPs)
- accountability.

Our 2008 report found that – in most of the incidents where specialist units used Tasers – they appeared to have been used in a reasonable manner and could be an effective way to resolve high risk incidents. However, we cautioned that our findings were based on police records, which were often inadequate or unclear and related only to Taser use by highly trained specialist officers working in a supportive team environment. In our view, further

evaluation was needed to understand the advantages, disadvantages and risks of Taser use before rolling them out to the broader population of police. We therefore recommended that the NSWPF refrain from further extending Taser use by officers for a period of at least two years and that an independent review of Taser use be conducted.

As our 2008 report was being drafted, the NSW Government announced in May 2008 that Tasers would be extended to general duties police working as supervisors and duty officers. In October 2008, as we finalised our 2008 report, the first Tasers were already in the hands of general duties supervisors and duty officers. 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. These were to:

- reduce injuries to police officers
- provide these officers with a less-lethal option to use in situations where they might use a firearm, thereby reducing deaths and injuries inflicted by police.<sup>7</sup>

According to a Safety Risk Management Assessment Report by the NSWPF, the restriction of this rollout to only substantive general duties supervisors and duty officers would mitigate the risk of unlawful or excessive Taser use entailed by a rollout to all general duties officers. This report stated that:

*The use of the Taser at the higher supervisory level within the organisation should ensure that good decision-making is used when choosing to use the Taser and that any use is fully justified under all current legislative boundaries.<sup>8</sup>*

In responding to our 2008 report in January 2009, the NSWPF made it clear that – while the report was welcomed and they accepted the intent of many of the recommendations made – they considered:

*... that no action is required in respect of many of the report's recommendations because of the focus they have on the Taser in a standalone sense. That is they do not relate to the existing model of police tactical options training and education but rather focus on a single set of standard operating procedures ...*

*It is important to note that the NSWPF accepts the intent of many of the recommendations made by the report but, as they have already been addressed by the NSWPF (that is, our action was not a result of your report) or are better addressed through means other than those recommended (eg. through training rather than SOPs), we cannot report that action is a result of the report.<sup>9</sup>*

On 14 June 2009, less than a year after the first rollout to general duties supervisors and duty officers, the then NSW Premier, Nathan Rees, announced that: 'All first response police officers will carry Tasers as part of their standard equipment.'<sup>10</sup> Funding was allocated for the distribution of 1,962 Tasers over an 18 month period (note: this figure has not been reached). The then Minister for Police, Tony Kelly, specified that there would be strict accountability measures making use of the Taser Cam recording facility. On 1 December 2009, the NSWPF started a gradual rollout of Tasers to all local area commands (LACs) for first response general duties officers to use.

During 2009 and 2010 there were a number of incidents involving police use of Tasers in Australia, which caused public concern, including:

- February 2009 – in Queensland a 16 year old was hit by a car in Ipswich, west of Brisbane, after police threatened to use a Taser on him and he complied with directions to lie on the ground.<sup>11</sup>
- April 2009 – a 39 year old man died in Alice Springs after he was subjected to two Taser applications as well as multiple bursts of Oleoresin Capsicum (OC) spray by police.<sup>12</sup>
- June 2009 – in Brandon in North Queensland a man died soon after police used a Taser on him. In that incident, the Taser was reportedly fired up to 28 times before the man's death.<sup>13</sup>
- July 2009 – in Western Australia a man caught fire after police shot him with a Taser while he was carrying a fuel container and a cigarette lighter. The man suffered second and third degree burns to his face, neck and chest.<sup>14</sup>
- October 2010 – a Western Australian man was subjected to Taser use 13 times by police while in an East Perth watch house. The first of the uses of the Taser against this man occurred when he refused to comply with a strip-search by holding onto a bench.<sup>15</sup>

In our 2009–10 Annual Report, we described an incident that occurred in NSW in March 2009. In this case a Taser was fired at an unarmed man who had been behaving erratically on a busy road. The man, who was attempting to comply with a police request to get off the road, was subjected to Taser use twice by a police officer. At least five police were in close proximity to the man at the time he was subjected to the Taser. The charges against this man were subsequently dismissed, with the court determining the use of the Taser was unreasonable. This is Case study 1 in this report and is discussed further in Chapter 3.

In the Annual Report, we restated our belief 'that the SOPs that guide police use of Tasers contain criteria for use that are capable of too wide an interpretation and leave too much to the discretion of individual officers'.<sup>16</sup> At that time, the NSWPF had refused to amend their SOPs to make it clear that Tasers should be used only when a person is violently confronting or resisting police.

On 20 October 2010, soon after the publication of our Annual Report, the then Minister for Police, Michael Daley, and the NSWPF issued a media release, which reported that as a result of recommendations made by the NSW Ombudsman as part of his Annual Report an explicit instruction 'never to use [a Taser] to resolve a passive, non-threatening situation' would be included in the SOPs relating to the use of Tasers.<sup>17</sup>

The Minister stated that:

*This amendment will simply leave no doubt in their minds that Tasers are to be used as a last resort and that they are no substitute for using negotiation and conflict resolution skills.*<sup>18</sup>

Also during this period, significant reviews of police uses of Tasers were being undertaken in Queensland (Qld) and Western Australia (WA).

In Qld, a review of Taser policy, training and monitoring and review by the Queensland Police Service (QPS) and the Crime and Misconduct Commission (CMC) was announced in 'direct response to a death proximal to a Taser deployment in Brandon, North Queensland, on 12 June 2009'.<sup>19</sup> At that time, the planned continuation of the rollout of Tasers to QPS was suspended to allow the review to be finalised and its recommendations implemented where possible. That review was completed in July 2009 and made a total of 27 recommendations to improve procedures, training and monitoring processes. The report was called *Review of Policy, Training, and Monitoring and Review Practices, July 2009* – and in this report we refer to it as the QPS–CMC report 2009.

In 2010 the CMC started an independent evaluation to determine if the recommendations had been implemented and, if so, the effects of the changes to QPS's revised policy, training and monitoring processes. They found that 24 of the 27 recommendations were implemented, but that there was room for further improvement.<sup>20</sup> The report was called *Evaluating Taser Reforms: A review of Queensland Police Service policy and practice, April 2011* – and in this report we refer to it as the Qld CMC 2011 report.

In WA, the Corruption and Crime Commission (CCC) – during the course of reviewing complaints or allegations of excessive or improper use of force – identified some issues of concern relating to Taser use by WA police (WAPOL) officers. They started collecting data and noting trends and issues in other jurisdictions, and eventually decided that it was necessary to undertake research into Taser use by WAPOL officers. Their report, published in October 2010, made 10 recommendations to reduce misconduct risks relating to Taser use. The report was called *The Use of Taser® Weapons by Western Australia Police, 4 October 2010* – and in this report we refer to it as the WA CCC 2010 report.

## 1.2 Ombudsman decision to investigate

The public disquiet and concern about Taser incidents reported in the media, the availability of Tasers to large numbers of officers in a wide range of operational settings, and the limited implementation of the recommendations in our 2008 report prompted the NSW Ombudsman to start a second investigation into the police use of Taser weapons and the systems used to record and review their use.

On 26 October 2010 we informed the NSWPF of this decision, by way of a Notice of Investigation under s. 16 of the *Ombudsman Act 1974* (Ombudsman Act).

To allow for the effective review of police complaints involving Tasers, in December 2010 the NSW Ombudsman and the Police Integrity Commission agreed to new guidelines (which specify complaint types that must be notified to our office) under s. 121 of the *Police Act 1990*. This new agreement, which took effect from 1 February 2011, included a requirement that the NSWPF notify the Ombudsman of all complaints that allege or indicate:

*Any unreasonable conduct involving the use, discharge or safe keeping of police issued weapons including firearms, Tasers, OC Spray and batons, including but not limited to breaches of relevant NSWPF standard operating procedures, guidelines or policies.*<sup>21</sup>

### 1.3 Chronology of rollout of Tasers in New South Wales

Table. 1 provides a summary of the rollout of Tasers to police officers in NSW.

**Table. 1: Chronology of rollout of Tasers in NSW**

Date	Event or milestone
December 2001	Approval for the NSWPF Tactical Operations Unit (TOU) to purchase two M26 Tasers to evaluate Taser use in the resolution of high risk incidents.
Early 2002	Approval by the NSWPF Commissioner's Executive Team for the use of Tasers by the TOU.
May 2002	First operational use of Tasers by the TOU, and approval for the State Protection Support Units (i.e. the TOU's regional counterparts) to use Tasers.
May 2007	Approval by the NSWPF Commissioner's Executive Team for the use of Tasers by the NSWPF Public Order and Riot Squad (PORS) officers at the rank of inspector and sergeant.
August 2007	Approval by the then Police Minister to issue Tasers to members of the PORS.
December 2007	First formal investigation started by the NSW Ombudsman into the NSWPF use of Tasers.
February 2008	First operational use of Tasers by the PORS.
May 2008	Announcement that Tasers were to be rolled out to accredited general duty police working as duty officers and supervisors at all 80 LACs within NSW.
September 2008	Release of version 1.15 of Taser SOPs for Taser use by general duties police. <sup>22</sup>
1 October 2008	Start of rollout of X26 Tasers (fitted with Taser Cams) to Taser accredited NSWPF general duties officers working as supervisors and duty officers.
November 2008	Tabling of the NSW Ombudsman's report, <i>The use of Taser weapons by New South Wales Police Force: A special report to Parliament under s. 31 of the Ombudsman Act 1974</i> .
1 December 2009	Rollout of X26 Tasers (fitted with Taser Cams) to all NSWPF LACs for use by Taser accredited general duties police officers.
1 July 2010	Release of version 1.16 of Taser SOPs for Taser use by general duties police.
26 October 2010	Second formal investigation of the NSWPF's use of Tasers by the NSW Ombudsman began.
November 2010	All M26 Tasers phased out in specialist units. Tasers used by PORS fitted with Taser Cams.
4 December 2010	Release of version 1.17 of Taser SOPs for Taser use by general duties police.
4 July 2012	Release of version 1.18 of Taser SOPs for Taser use by general duties police.

**Notes:** See Appendix A for an outline of major changes in the Taser SOPs from version 1.16 to 1.18.

The X26 Tasers used by the TOU and SPSU are not fitted with Taser Cam.

### 1.4 Key questions to be addressed in this investigation

The key questions we sought to address through this investigation were:

- What are the arguments for and against Tasers? (Chapter 2)
- How has the NSWPF been using Tasers? (Chapter 6)
- What legislation, policies and procedures govern Taser use by the NSWPF? (Chapter 3)
- To what extent have the NSWPF policies and procedures governing Taser use been complied with? (Chapter 7)
- Are those policies and procedures appropriate and, if not, what are the changes that need to be made? (Chapter 7)
- How are NSWPF officers trained in the use of Tasers? (Chapter 4)
- Is the training appropriate and, if not, what changes need to be made to that training? (Chapter 7)
- What are the review and accountability processes that apply to the use of Tasers by NSWPF officers? (Chapter 5)
- To what extent are those processes complied with? (Chapter 8)
- Are those processes appropriate and, if not, what are the changes that need to be made? (Chapter 8)
- What is the evidence that Tasers provide an effective alternative to lethal force, provide a deterrent to violence, or reduce injuries and assaults on police in NSW? (Chapter 9)
- What evidence is there of death or serious injury after using a Taser, and of serious misuse or mission creep in NSW? (Chapter 9)

## 1.5 Methodology for this investigation

The methodology we used for this investigation was as follows:

- review of relevant literature and research
- review and analysis of data, information and documentation provided by the NSWPF
- review of information and documentation provided by other agencies or organisations
- review and analysis of individual Taser use incidents
- focus groups with NSWPF officers
- consultation with the NSWPF.

Table. 2 summarises the activities that occurred for each research step.

**Table. 2: Methodology summary**

Research approach/step	Activities/Information provided
Literature review	We reviewed publicly available research and literature from Australia and overseas. This included reports, research studies, parliamentary debates, journal articles, websites and media reports.
Review and analysis of data, information and documentation provided by the NSWPF	The NSWPF provided extensive material on Taser use incidents (including Taser Cam video files), data and information on injury claims made by police officers, policies, operating procedures, training materials and other documentation about Taser uses and the review of those uses.
Review of information and documentation provided by other agencies or organisations	Information and documentation – e.g. transcripts, data, policies etc – was provided by a number of sources including the Local Courts of NSW, the NSW State Coroner, the NSW Bureau of Crime Statistics and Research, police services in Australia and New Zealand, and oversight bodies in Australia.
Analysis of Taser incident data provided by the NSWPF	We obtained and analysed information about 2252 Taser incidents from 1 October 2008 to 30 November 2011 (the review period).
Detailed review and analysis of a six month sample of Taser use incidents	We conducted a comprehensive review of 631 Taser incidents that occurred between 1 June and 30 November 2010 (the sample period). We also engaged an external independent expert on use of force and operational policing who reviewed 50 of these 631 Taser incidents using the same methodology.
Focus groups with NSWPF officers	We conducted three focus groups with NSWPF officers to obtain their views and experiences relating to Taser use and the associated NSWPF procedures and review processes.
Observation and inspection	In late 2011, we attended the NSW Police Academy to observe the Taser user accreditation training provided to recruits, and the Taser user reaccreditation training for NSWPF officers. In late 2011, we also attended the City Central LAC to inspect the Taser storage system.
Consultation with NSWPF	During the course of this investigation, we have held many consultation meetings/discussions with the NSWPF.  After our initial examination of NSWPF documentation (particularly the SOPs for Tasers) and the detailed review of 631 Taser incidents, we wrote to the NSWPF in October 2011 with a range of queries, issues and points that needed clarification. The NSWPF provided their formal written response in January 2012.  Consultation on particular issues continued during the first half of 2012.

### 1.5.1 Data and information provided by the NSWPF

During the course of this investigation, the NSWPF have provided extensive data, information and material (received between December 2011 and February 2012). This has included:

- For Taser uses between 1 October 2008 and 30 November 2011 (the review period) – data tables collated by the NSWPF on 2,252 Taser incidents involving general duties police officers.
- For all Taser uses between 1 October 2008 and 30 November 2010 – additional records and documents connected to 1,446 Taser incidents including Situation reports, internal documents, internal correspondence, minutes of meetings, and internal review outcomes.
- For all Taser uses between 1 December 2009 and 30 November 2010 – Taser Cam video files for all uses.
- Weapon summary reports containing Taser dataport information on Taser uses between 1 August 2010 and 30 November 2010.

- Complaints against police related to Taser use received between 1 October 2008 and 30 November 2011.
- Data on injury claims by NSWPF officers received between 2000–01 and 2010–11.
- All information and documents about the use and review of Tasers – e.g. training material, operating procedures, internal memoranda and advice.

In addition to the information provided by the NSWPF, we also had access to information about Taser incidents from the following sources:

- The NSWPF Computerised Operational Policing System (COPS) – a database used to record, assess and analyse crime information and intelligence – which we accessed to obtain further information about the Taser incidents.<sup>23</sup>
- The Police Integrity Commission Police Oversight Data Store (PODS) – a database containing data derived from a number of the NSWPF systems.<sup>24</sup> We accessed PODS to obtain further information about the officers who deployed Tasers and the people subjected to Taser use.<sup>25</sup>

### 1.5.2 Review and analysis of 631 Taser incidents

As part of this investigation, we selected 631 Taser incidents that had occurred during the six month period between 1 June 2010 and 30 November 2010 (the sample period) for detailed examination. We developed a coding tool and instructions, and provided reviewer training to ensure consistency and reliability between the individual reviewers who formed part of the Ombudsman Review Team.

The review and analysis included collecting and coding information from the records and information provided by police – for example, whether a verbal warning was issued before the Taser use, the recorded reason(s) for Taser use, whether the Taser use incapacitated the subject person etc.

By the end of 2011, we had completed and assessed the incidents using criteria such as:

- the type of behaviour exhibited by the person subjected to Taser use, ranging from cooperative through to acting in a manner intended to cause grievous bodily harm or death
- whether the person subjected to Taser use had warnings on COPS that they had or were suspected to have a history of mental health issues
- whether the Taser use breached one or more of the criteria for Taser use under section 4 of the Taser SOPs<sup>26</sup> and, if so, the reason(s) for the assessment of a breach
- whether the use of the Taser was in breach of any other sections of the Taser SOPs or was otherwise hazardous
- whether there were multiple and/or continued use of the Taser by any of the officers involved and, if so, whether such use was justified and the reasons for the assessment of unjustified Taser use (if any)
- whether any of the Taser uses were ineffective and, if so, whether all instances of ineffectiveness were noted in the written records and what the consequences of Taser ineffectiveness were
- whether the initial use of force by police was necessary in the circumstances
- whether the use of force by police during the incident was reasonable in all the circumstances
- whether adequate first aid and/or medical treatment was provided to the person
- whether any records were missing
- the quality and accuracy of the records
- whether the decisions of the Region Taser Review Panels (TRPs) were satisfactory, and the reasons for any unsatisfactory decisions
- whether the management actions taken by the NSWPF were satisfactory, and the reasons for any unsatisfactory actions.

The 631 incidents included 556 operational incidents, 65 accidental or hazardous discharges, and 10 incidents involving protection from animals. In the remainder of this report the discussion refers to the 556 operational incidents, unless explicitly mentioned.

### 1.5.3 Review of selected Taser incidents by an independent expert

We also engaged former NSWPF Senior Assistant Commissioner, Mr Peter Walsh APM, to conduct an independent review of a select number of Taser uses from the 556 incidents. Mr Walsh retired from the NSWPF prior to the introduction of Tasers; however, he was engaged to perform this role because of his extensive experience and seniority within the NSWPF, and his practical and expert understanding of use of force incidents involving general duties police, the NSWPF Tactical Options Model (TOM) and the LEPR requirements on use of force.

The purpose of the independent review was to determine if there was consistency in the assessment of Taser incidents, and consistency in the understanding and application of the Taser SOPs. The 50 incidents selected for independent review represented a range of incidents – including incidents where we had issues of concern and incidents where we believed the Taser use was reasonable and in accordance with the Taser SOPs.

For each incident, Mr Walsh was asked whether the Taser use was appropriate and in accordance with the Taser SOPs. He was also asked to provide any observations on the adequacy of the Taser SOPs and SOPs relating to use of force.

Mr Walsh was provided with the same information that we had, such as:

- the relevant versions of Taser SOPs and TRP SOPs, as well as Taser documents on the NSWPF intranet<sup>27</sup>
- statements by the NSWPF about the arrangements and procedures for their internal review of Taser uses, the process for downloading and retaining Taser Cam footage and Taser dataport information, and how the Taser dataport information was used
- provisions in the *NSW Police Force Handbook* about arms and appointments
- the Taser Cam footage and police written records of the incidents – including COPS records, Situation reports, weapon summary reports and police internal review records.

Mr Walsh completed the final report on his independent review in December 2011 and met with us to discuss his findings in January 2012.

We then compared Mr Walsh's assessments with our assessment on four aspects. These were:

- whether there was a breach of the criteria for Taser use (agreed 66%)
- in incidents involving multiple Taser uses, whether those uses were justified (agreed 77%)
- whether the uses of force by officers were justified (agreed 82%)
- whether the TRP review process was satisfactory (agreed 46%).

Overall, the level of consistency between our assessment and that of the independent expert was good. The aspect with the lowest agreement rate was the fourth aspect – whether the TRP review process was satisfactory. In this area, Mr Walsh agreed with our assessment on 23 of the 50 incidents (46%). Of these, the Ombudsman Review Team and Mr Walsh both assessed that the TRP review process was unsatisfactory in 20 incidents and satisfactory in three incidents. Of the remaining 27 incidents on which our views differed, Mr Walsh considered the TRP review process was unsatisfactory in five incidents and satisfactory in 22 incidents.

### 1.5.4 Focus groups with NSWPF officers

In late 2011, we conducted three focus groups with NSWPF officers.

The first two focus groups were with general duties police officers. The aim was to give general duties police officers who had used Tasers in an operational setting an opportunity to share their experiences of, and their views on, Taser use and the review processes. One focus group was conducted with officers from metropolitan LACs and the other was with officers from regional LACs.

To accommodate rostering issues, we gave the NSWPF a list of 60 general duties officers from each of the two policing regions, and asked them to nominate 10 officers from each of the LACs to make up the focus groups. The list of officers we gave to the NSWPF was drawn from a list of all officers who had been identified in NSWPF records as having used a Taser between 1 December 2009 and 30 November 2010.

The issues canvassed with the first two focus groups included:

- the perspective of general duties officers on the benefits of Tasers
- their views on training and operational procedures
- their views on accountability measures.

The third focus group was with all region-based NSWPF Professional Standards Managers (PSMs). PSMs are directly involved in reviewing incidents of Taser use by general duties officers and we sought their views on:

- the process for reviewing Taser use
- the SOPs for the use of Tasers
- the process for seeking further review of a Taser use when problems have been identified, including when they would seek the advice of weapons instructors
- how feedback is provided to the Taser operators
- the limitations of the Taser Cam
- how to find out whether medical attention was provided to people who had been subjected to Taser use, if this is not clear from the written records
- trends in the use of Taser by NSWPF general duties officers.

### 1.5.5 Consultation on the final draft report

On 5 September 2012, a draft copy of this report was provided to the Commissioner of Police. This was to give the NSWPF an opportunity to provide feedback on the material presented, to confirm that the descriptions of police processes and practices were accurate, and to provide comments on the draft recommendations.

We received a response from the NSWPF on 20 September 2012. Where appropriate, we have included or addressed their comments and feedback, and made changes in this report.

### 1.5.6 Research limitations

For our investigation, we have relied on the accuracy of the data provided by the NSWPF. Possible limitations of this data include inaccuracies, incompleteness and inconsistencies. The NSWPF provided some particular qualifications on certain data – these are listed below.

#### *Data relating to Taser incidents*

For incidents involving Taser use between 1 October 2008 and 30 November 2010, the NSWPF advised of a number of limitations:

- a previous version of the Situation report form recorded less information than the new version introduced in September 2010
- Situation reports for 28 incidents were not located, possibly due to the officer's failure to complete the report or human error
- Taser Cam footage is available for most, but not all, incidents between 1 December 2009 and 30 November 2010
- weapon summary reports are not available before August 2010.

While conducting our review of the 556 Taser incidents in the sample period, we noticed that in some cases the records were inconsistent in one or more of the following ways:

- the data in the spreadsheets provided was inconsistent with the written records
- the account provided in a COPS record was inconsistent with that in the Situation report of the same incident
- some information in the data section of a COPS record was inconsistent with the narrative section of that record
- the written accounts did not reflect what was depicted on the Taser Cam footage.

#### *Data on injury claims made by police officers*

For data on injury claims made by police officers, the NSWPF advised that data before 2008 was not an accurate reflection of the number of injuries sustained by employees. This was because:

- the creation of the Safety Command in 2005 resulted in a number of changes to the reporting of injury
- online reporting of injury claims was introduced in 2007, and the injury reporting form was also changed in 2007–08
- as the NSWPF have changed insurer in January 2011, some data from their previous insurer had not been transferred to the new insurer
- the data provided relates to all sworn officers employed after March 1988 and civilian employees only<sup>28</sup>
- it is currently not possible for the NSWPF to accurately limit data relating to injuries claims to sworn staff in field operations, so the data we were given relates to all NSWPF employees.

### *Data relating to people subjected to Taser use*

We asked the NSWPF to provide us with data on COPS about people who were subjected to Taser use – including whether those people identify as Aboriginal and/or Torres Strait Islander, whether any charges were laid against them following the Taser incidents, and the legal outcomes of those charges. In some cases, the legal action being taken against a person was recorded, but information about the relevant court proceedings was not.

## **1.6 Structure of this report**

The structure of the rest of this report is as follows:

- Chapter 2 – Reviews the debate about Taser use by law enforcement officers in the literature, looking at both the arguments supporting the use of Tasers and the risks associated with their use.
- Chapter 3 – Provides an overview of the legislation, policies and procedures governing Taser use by the NSWPF. It also considers Tasers in the context of the TOM used by the NSWPF.
- Chapter 4 – Describes the training provided to NSWPF officers on the use of Tasers. To give context for the discussion of appropriate use of force in resolving Taser incidents, this chapter also discusses other training provided to NSWPF officers – including general training for officers at the NSW Police Academy, annual mandatory training for all officers, and mental health training provided to some officers.
- Chapter 5 – Outlines the review and accountability requirements that apply to the use of Tasers by NSWPF general duties officers.
- Chapter 6 – Presents statistics on the use of Tasers by the NSWPF since October 2008. This provides a picture of how often the Tasers were used, the types of situations in which they were being used, who was using them, and on whom the weapons were used. It also identifies any trends in Taser usage by the NSWPF.
- Chapter 7 – Assesses Taser use by NSWPF general duties officers during the sample period, focusing on their extent of compliance with the Taser SOPs. It also considers whether the Taser SOPs and training are appropriate, and whether any changes need to be made.
- Chapter 8 – Examines how the review and accountability processes have been working in practice. This includes an assessment of how the sample of 556 matters was handled by the NSWPF, and how complaints were dealt with since the rollout of Tasers in October 2008. The appropriateness of the review and accountability processes is considered, and changes required are discussed.
- Chapter 9 – Considers our investigation findings and results and how they contribute to the Taser debate.
- Chapter 10 – Outlines the conclusions on the key findings of this investigation, and sets out our two final recommendations for monitoring the implementation of recommendations made in this report.

## Endnotes

1. 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.
2. NSW Police Force, *User Certification Course TASER® X26 Electronic Control Device*, version 14.2–17 (NSWPF – version 6.2), 2011, pp. 45, 91, 95.
3. Kleinig, J., 'Ethical Constraints on Taser Use by Police', *Policing: A Journal of Policy and Practice*, 2007, vol. 1, p. 284.
4. Lewer, N., and Davison, N., 'Electrical Stun Weapons: Alternative to Lethal Force or a Compliance Tool?', Bradford Non-Lethal Weapons Research Project, January 2006, p. 2. <[www.bradford.ac.uk/acad/nlw/](http://www.bradford.ac.uk/acad/nlw/)> accessed 27 May 2008.
5. Donnelly, T., Douse, K., Gardner, M., and Wilkinson, D., *PSDB Evaluation of Taser Devices*, Police Scientific Development Branch, Home Office Policing and Crime Reduction Group, Home Office, United Kingdom, 2002.
6. Taser International, *Taser® X26E Series Electronic Control Device Specification, Law Enforcement X26*, version 2.0, 2 June 2009.
7. Hansard, NSW Legislative Council, 22 October 2008, p. 10318; NSWPF media release, 'NSW Police to deploy more Tasers', 18 May 2008; 'Officers to adopt shock tactics', *Sydney Morning Herald*, 18 May 2008, <[www.smh.com.au/news/](http://www.smh.com.au/news/)> accessed 19 May 2008.
8. NSW Police Force, *Safety Risk Management Assessment – TASERCAM – Implementation of Tasercam within the NSW Police Force*, 17 September 2008, p. 17.
9. Letter from Acting Commissioner of Police, Dave Owens, NSW Police Force, to Bruce Barbour, Ombudsman, NSW Ombudsman, 21 January 2009.
10. Nathan Rees, Premier of New South Wales, media release, 'Tasers for frontline police to be delivered in budget', 14 June 2009.
11. Queensland Office of the State Coroner, *Inquest into the death of Andrew John Bornen*, 16 July 2010.
12. *Inquest into the death of Gottlieb Rubuntja* [2010] NTMC 048.
13. 'Bloodied Taser victim taunted police: inquest', *The Australian*, 10 March 2011, <[www.theaustralian.com.au/news/](http://www.theaustralian.com.au/news/)> accessed 14 March 2011. 'Taser death: stun gun fired 28 times', *ABC News*, 18 June 2009, <[www.abc.net.au/news/](http://www.abc.net.au/news/)> accessed 31 May 2011.
14. Corruption and Crime Commission, *The Use of Taser® Weapons by Western Australia Police*, 4 October 2010, p. 56.
15. Corruption and Crime Commission, *Report on the Investigation of Alleged Public Sector Misconduct in Relation to the Use of Taser® Weapons by Officers of Western Australia Police and the Department of Corrective Services*, 16 April 2012.
16. NSW Ombudsman, *Annual Report 2009–2010*, p. 79.
17. Michael Daley, Minister for Police and Minister for Finance, media release, 'Police operating procedures for the use of Tasers to be tightened', 20 October 2010.
18. *ibid.*
19. Queensland Police Service, *Review of the Queensland Police Service Taser Trial*, 2009, p. 1.
20. Queensland Crime and Misconduct Commission, *Evaluating Taser Reforms*, April 2011, p. xvii.
21. NSW Ombudsman and Police Integrity Commission, *Guidelines agreed between the Police Integrity Commission and the Ombudsman after consultation with the Commissioner of Police under the Police Act 1990*, 1 December 2010 (effective 1 February 2011), p. 6.
22. The majority of the versions before version 1.15 are draft working documents. We have not included the dates of these versions because they are not relevant to this review and report.
23. For example, if a COPS record provided by the NSWPF stated that it was linked to another COPS record. There are many different types of COPS records, but we mainly reviewed events records (i.e. records of incidents at which police were in attendance).
24. These systems include COPS, c@ts.i, e@gle.i and SAP.
25. Information accessed included: officers' complaint history, as well as the following types of information about people who were subjected to Taser applications: (1) police warnings on COPS. The COPS database allows police to enter and access warnings based on a person's prior interactions with police. These warnings primarily relate to safety issues, such as whether the person has been known to be violent, carry a weapon, resist police, suffer from mental health issues, or use drugs and/or alcohol. For this investigation, our main concerns were police warnings about a person's history of violence and mental health issues before the Taser incident, and (2) charges laid against people subjected to Taser applications arising from the incidents and the legal outcomes of those charges.
26. NSW Police Force, *Standard Operating Procedures for use of Electronic Control (TASER) Devices by the NSW Police Force*, version 1.16, 1 July 2010, section 4, p. 14.
27. NSW Police Force, *Taser Frequently Asked Questions*; NSW Police Force, *Taser Tips & Tricks*, May 2011; NSW Police Force, *Taser Six Minute Intensive Training AA015: TASER - Criteria for Use 1*, 9 February 2011; NSW Police Force, *Taser Six Minute Intensive Training AA016: TASER - Criteria for Use 2*, 9 February 2011; NSW Police Force, *Taser Six Minute Intensive Training AA017: TASER - Post Deployment Actions and First Aid*, 9 February 2011; NSW Police Force, *Taser Six Minute Intensive Training AA018: TASER - Reporting TASER Incidents*, 10 February 2011; NSW Police Force, *Taser Six Minute Intensive Training AA019: TASER Download*, 10 February 2011.
28. Injury claims made by police officers employed before April 1988 are managed through internal management of liability: Letter from Assistant Commissioner Alan Clarke, NSW Police Force, to Bruce Barbour, Ombudsman, NSW Ombudsman (in response to a notice issued under s.18 of the *Ombudsman Act 1974*), 13 December 2010. There are now fewer than 2,000 police officers who were employed before April 1988: information provided by the NSW Police Force at a meeting with Ombudsman staff on 7 June 2011.



## Chapter 2. The Taser debate

The use of Tasers continues to generate much public interest and debate within the national and international community. Their use in law enforcement in Australia has expanded significantly within the past decade and they are widely seen as a useful way for police to resolve violent and confrontational incidents. However there remain widely held concerns about Taser use – particularly the potential for them to be misused and cause serious injury or death. This chapter explores the arguments for and against Taser use that are now well documented in public comments, debates and the relevant literature.

### 2.1 The arguments for Tasers

Tasers are reportedly being used or trialled by policing, correctional, military and other agencies in over 40 countries across the world.<sup>1</sup> As of 31 March 2012, nearly 600,000 Tasers have been sold to over 16,730 law enforcement, private security and military agencies.<sup>2</sup> The main arguments that have been given to support the introduction or further expansion of Tasers to policing agencies are that Tasers:

- are an alternative to lethal force
- will reduce injuries to police officers, the public, and the people threatening police or others
- help police to resolve violent incidents
- can be an effective deterrent, even in some cases without being discharged.

These reasons were put forward in NSW to support the rollout of Tasers to general duties police.

#### 2.1.1 An alternative to lethal force

There are often calls for the increased availability of Tasers following the use of lethal force by police.<sup>3</sup> Tasers are seen as an alternative to lethal force based on their effectiveness in defusing potentially violent situations, which possibly reduces the need to resort to lethal force.<sup>4</sup>

One United States (US) study found that of the 4,303 use of force incidents reviewed over a five year period that did not involve lethal force, 500 incidents (12%) could have justified the use of lethal force because the subject had some form of weapon (blunt object, edged weapon, firearm, or vehicle).<sup>5</sup> It concluded that, because the officers had opted to use less-lethal force options despite the fact that they might have been legally justified to use their firearms, the lives of the 500 subjects had been saved.

In the United Kingdom (UK) trial of Taser use, Tasers were deployed in 58 incidents where officers were authorised to carry firearms.<sup>6</sup> An evaluation of the trial concluded that from interviews with the firearms officers, 'Taser appears to have been effective in reducing the need to use lethal force at incidents where it has been deployed'.<sup>7</sup>

On the other hand, the WA CCC 2010 report found that since Western Australia Police (WAPOL) officers began carrying Tasers in 2007, the use of firearms in use of force incidents doubled between 2007 and 2009 – from 6% in 2007 to 12% in 2009.<sup>8</sup>

One commentator has argued that Tasers are often justified as an alternative to lethal force, but in practice all the Australian jurisdictions provide for a much lower threshold for Taser use than for the use of firearms.<sup>9</sup>

When the rollout of Tasers to all New South Wales (NSW) general duties police was announced in June 2009, the current Premier of NSW, Barry O'Farrell (who was then Leader of the Opposition), said:

*The NSW Liberal/Nationals have been calling for Tasers to be made available to front line police officers for well over a year ... We have repeatedly told NSW Labor front line police should be equipped with alternatives to using lethal force and Tasers are one of those alternatives.*<sup>10</sup>

Similarly, when announcing the tightening of Standard Operating Procedures governing the use of Tasers (the Taser SOPs), the then NSW Minister for Police Michael Daley stated that Tasers 'present an option that is infinitely less-lethal than a firearm to diffuse volatile, dangerous and potentially life-threatening situations'.<sup>11</sup>

#### 2.1.2 Reducing assaults on police

In Australia, it has been estimated that 10% of police officers are assaulted each year.<sup>12</sup> Some claims have been made that Tasers could reduce the number of these assaults. For example on 17 September 2010, the then Minister for Police Michael Daley, told the General Purpose Standing Committee No. 3 on Police, Finance that:

*We cannot say how many people's lives have been saved or police protected from injury through the provision of Tasers to help police deal with high-risk, violent confrontations. The fact is we have had a 24 per cent drop in the number of police assaulted in the past year from 744 to 563.*

*That is 181 fewer officers being punched, kicked or bitten while trying to serve the community. It is 181 more police going home to their families in one piece, and coming back to work the next day instead of being off work nursing injuries.<sup>13</sup>*

The figures quoted by the Police Minister have been repeated by other interested parties. For example, the Police Association of NSW has reported the 24% reduction and commented that Tasers have helped reduce injuries to police, offenders and the public<sup>14</sup> and the NSW Police Force (NSWPF) Corporate Spokesperson for Tasers, Assistant Commissioner Alan Clarke, referred to a 24% drop in assaults on police on the SBS television program, *Insight* in October 2010:

*[Tasers] are introduced into areas where there is violence and aggression and with or without Taser these are situations that can result in death or serious injury. What we can say is that since Taser has been introduced in New South Wales in October 2008, that assaults on police have reduced by 24%, the extent of injury on police as a result of assault has also diminished and in time when we have a higher level of data, I am sure we will find that injury to offenders reduces as well. In effect, these devices are actually making police in the community safer.<sup>15</sup>*

Despite these claims, there is very limited research, data and evidence about whether Taser use has in fact reduced the number of police assaulted.

We examine the possible impact of Taser use on the rate of assaults on NSW police officers in more detail in Chapter 9.

### 2.1.3 Reducing injuries to police officers and members of the public

The claims that the use of Tasers is likely to result in a reduction of injuries to police (rather than a reduction in assaults on police) are more widely canvassed in the literature.

Law enforcement agencies have commented that Tasers are likely to reduce injuries to officers, as well as injuries to people threatening police or others.<sup>16</sup> Taser International, the manufacturer of Taser weapons, reports on its website that there were significant decreases in officer injuries as a result of Tasers – up to 80%, as well as sizeable reductions in injuries to subjects by up to 82%.<sup>17</sup>

Research shows that the risk of injury to officers and subjects increases when the officer tries to subdue a person using physical force, police dogs or impact weapons such as batons.<sup>18</sup> This suggests that the probability of injuries might be reduced if officers can subdue subjects from a distance, without having to come into physical contact with them. Since the Taser is a weapon that can be used at a distance of several metres, police should not have to engage in close combat with a person they are trying to subdue – until the person has been incapacitated by the electric current and no longer presents a threat. Therefore Tasers are said to have the potential to lower the chances of injuries to both officers and subjects.

A 2010 study funded by the National Institute of Justice – the research, development and evolution agency of the US Department of Justice – investigated factors related to injuries that may occur to police officers and citizens during use of force events.<sup>19</sup> The study considered the use of force data from three law enforcement agencies individually, as well as a combined dataset from the records of over 24,000 use of force incidents from 12 large US local law enforcement agencies. The multi-agency analysis showed that:

- the use of physical force (hands, feet or fists) by police was three times more likely to result in injury to officers, and increased the risk of injury to subjects by 50%
- the use of Tasers did not affect the risk of injury to officers, but did reduce the risk of injury to subjects by 70%.

Of the three agencies whose data was analysed individually, the use of Tasers reduced the risk of injuries to subjects for two agencies – but only lowered the risk of injuries to officers for one agency.

The study indicated that reductions in subject and officer injuries were not surprising, as Tasers allow officers to control subjects from a distance – without engaging in person-on-person physical combat. However they noted that these weapons are not painless or risk-free, and most injuries assessed from the use of force data – whether to officers or subjects – are minor and involve muscle strain, bruises, small cuts or scrapes.

Another study from the US, conducted in 2009, evaluated seven law enforcement agencies that had used Tasers and six that had not, to draw conclusions about officer and subject safety in use of force incidents.<sup>20</sup> This study found that Tasers were associated with improved safety outcomes in six areas when compared with law enforcement agencies that did not use Tasers. The six areas measured were:

- officer injuries
- subject injuries
- subject severe injuries
- officers receiving injuries requiring medical attention
- subjects receiving injuries requiring medical attention
- subjects requiring injuries that resulted in them being sent to hospital.

There were no differences between law enforcement agencies that used Tasers and those that did not in three areas measured. These areas were:

- number of subject deaths
- officer severe injuries
- officer injuries requiring hospitalisation.

In Canada, Thomas R Braidwood QC was appointed in 2009 to conduct an inquiry (Braidwood Inquiry) into the use of Tasers by provincially regulated law enforcement agencies and other authorised persons.<sup>21</sup> The Braidwood Inquiry found that, in the Vancouver Police Department, there was no significant difference in arrest-related injuries to officers six years before and eight years after Tasers were introduced. In British Columbia there was also no steady fall in arrest-related injuries to police and correctional officers since the introduction of Tasers between 1998 and 2003.<sup>22</sup>

In Australia, a survey of 101 Queensland Police Service (QPS) officers showed that an overwhelming majority of these officers considered that Tasers would reduce the risk of injury to both officers and subjects.<sup>23</sup> During interviews, officers who had deployed a Taser said that they believed that they or the subjects would have sustained injuries if a Taser had not been available. In addition, a panel of senior QPS personnel assessed a sample of 75 Taser incidents and determined that the use of the Taser had reduced the risk of injury to the officer and the subject in 96% of the incidents.

On the other hand, the WA CCC 2010 report found that the use of Tasers by WAPOL did not reduce officer injuries.<sup>24</sup> They found that – despite an increase in the use of Tasers between 2007 and 2009 – injuries to police had increased by 22%, the proportion of officers requiring hospitalisation was relatively stable, and officers received more injuries in Taser-related incidents than other use of force incidents. However, a detailed analysis of use of force reports for a three month period between July and September 2009 showed that, compared with other use of force incidents, subjects were 54% less likely to be injured in Taser-related incidents.

One of the rationales for the rollout of Tasers to NSW general duties police has been that it would result in a reduction of injuries to police. When announcing the issue of Tasers to general duties police in NSW, the Commissioner of Police said:

*A Taser is a less than lethal solution that allows officers to quickly and safely subdue a dangerous individual who presents a threat to life and is a serious danger to anyone around them.*

*What is important is that this can be done without the officers themselves being injured ...*

*... Equally importantly, the deployment of the Taser can save the life of the individual who may be threatening police or others.<sup>25</sup>*

The impact of Taser use on officer and subject injuries in NSW is considered in detail in Chapter 9.

## 2.1.4 Resolving violent incidents

Tasers are promoted as a use of force option that can help police officers resolve violent or potentially violent situations.<sup>26</sup> This is because in probe mode the Taser does not rely on pain to obtain a person's compliance, so an individual who is impervious to pain should still be able to be incapacitated by a Taser and restrained.

In the US, a study of use of force by officers in two US law enforcement agencies over a five year period found that Taser was the most successful less-lethal force option in ending a confrontation. Of the 2,113 initial Taser deployments in probe or drive-stun mode, 1,459 deployments (69%) achieved compliance by the subject.<sup>27</sup>

In the UK, an evaluation of a trial of Tasers by five police forces found that many officers perceived Tasers as a weapon that can quickly resolve incidents involving violent offenders who are difficult to approach and restrain while minimising the risk of injury to officers.<sup>28</sup>

In Australia, a survey of 101 QPS officers who had received Taser training was done during a review of the QPS's Taser trial.<sup>29</sup> When given a list of potential advantages of the Taser, a majority of the survey participants considered that Tasers made it easier to gain compliance from the subject and improved the resolution of violent incidents. However, it should be noted that 55 of the respondents had not yet had the opportunity to deploy a Taser since their training.

In 2009–10, WAPOL conducted a review of Tasers<sup>30</sup> since they were progressively distributed to general duties officers during 2007. They reported that anecdotal responses provided during group interviews with about 250 operational officers were that a Taser is the only tactical option that totally incapacitates a subject – and Taser use in probe mode had been effective in incapacitating subjects as they are usually unable to continue their violent behaviour after a single Taser cycle.

Victoria Police started a pilot program authorising Taser use by all general duties and highway patrol police in the Bendigo and Morwell response zones from 1 July 2010.<sup>31</sup> An interim evaluation of the first six months of this program indicated that – of the 52 police officers who completed an online survey – the majority (79%) believed that the Taser is an effective tactical option where a subject is likely to cause serious injury. It should be noted that at the time of the interim evaluation the Taser had not been used in probe or drive-stun mode, and the weapon had only been taken

out of the holster on ten occasions. Also, at the time the survey was completed, a number of survey participants had not yet had the experience of carrying or being part of a patrol where a Taser was being carried.

A report by Australian Capital Territory (ACT) Police on 26 incidents involving Taser use by ACT specialist officers from December 2004 to June 2007 asserted that the use of Tasers 'has resulted ... in the effective de-escalation and resolution of potentially violent situations' that would otherwise have caused injury to the officers, the subjects or members of the public.<sup>32</sup>

When Tasers were first rolled out to NSWPF duty officers and supervisors in October 2008, a key justification was that Tasers could be used to resolve violent incidents. The then Minister for Police, Tony Kelly stated that:

*Police need to be able to curb violent situations quickly and effectively. Tasers have been used successfully negotiating violent or precarious situations. That is why the New South Wales Government has rolled out about 200 additional Tasers to duty officers and supervising sergeants across the state, after appropriate and rigorous training, for use in extreme situations.*<sup>33</sup>

### 2.1.5 Displaying or drawing Tasers as a deterrent

There is evidence to suggest that people often become compliant when an officer aims a Taser at them, without the need to fire the weapon. There is also a trend, both in Australia and overseas, of police officers increasingly drawing their Tasers more often than deploying the weapons in probe or drive-stun mode.

A trial of Tasers by five police forces in the UK found that in seven of the 58 Taser incidents (12.1%), the mere aiming of the Taser resulted in compliance by the subject. In a further 26 incidents (44.8%), officers only had to aim the Taser at the subjects to achieve compliance.<sup>34</sup> Records of Taser use in England and Wales between 22 April 2004 and 30 June 2009 show that of the 5,426 Taser uses, 3,654 (67%)<sup>35</sup> did not involve probe or drive-stun deployment.

In Canada, the Commission for Public Complaints Against the Royal Canadian Mounted Police observed an upward trend in Tasers being used for deterrent and compliance purposes. The drawing of Tasers (i.e. without probe or drive-stun deployment) as a proportion of all Taser uses increased from 45% in 2007, to 49% in 2008 and 60% in 2009.<sup>36</sup> The available Royal Canadian Mounted Police's quarterly reports on Tasers show that the drawing of Tasers continued to rise between January and September 2010 – to 68% over the nine month period.<sup>37</sup>

The 2008 review of the QPS's Taser trial found that – of the 170 Taser incidents between July 2007 and June 2008 – 70 incidents (41%) were resolved on presentation of the Taser and a verbal warning.<sup>38</sup> Similarly, a report by ACT Police on Taser use by ACT specialist officers shows that 16 of the 26 Taser incidents (39%) were resolved without the weapon being used in probe or drive-stun mode.<sup>39</sup> In the Northern Territory, a review of Taser use within the Northern Territory Police Force was completed in 2009 and it was claimed that 'Taser has also resulted in the arrest of offenders on a number of occasions when its presentation alone has occurred'.<sup>40</sup>

During the 2010 review of Tasers by WAPOL, interviews with general duties officers suggested that there is a perception among officers that the mere presence or display of a Taser can help to de-escalate violent or potentially violent situations.<sup>41</sup>

On the other hand, the fact that some incidents have been resolved by drawing the Taser without deployment could be an indication that the weapon is being used for compliance purposes only. The WA CCC 2010 report found that there was a steady increase in the drawing of a Taser without deployment over time.<sup>42</sup> The CCC commented that – even though WAPOL believed this showed that the Taser is effective in resolving incidents – another possible interpretation of the trend is that the Taser is increasingly being used as a compliance tool. We discuss this issue in the context of NSW in Chapters 7, 8 and 9.

In NSW, by the time the NSW Government decided to extend the use of Tasers to all general duties police, the mere display or drawing of a Taser was also seen as an effective deterrent.<sup>43</sup> Announcing the rollout, the then Minister for Police Tony Kelly stated:

*People are already getting the message about the Taser's effectiveness – the mere sight of the Taser was enough to resolve the conflict in 55% of the times it was pulled from the holster.*<sup>44</sup>

In August 2011, the Minister for Police and Emergency Services, the Hon. Michael Gallacher said:

*... experience in New South Wales shows that Tasers operate as an effective deterrent and assist in quickly de-escalating violent and dangerous situations. The latest data show that in 70 per cent of incidents in which Tasers were drawn, they were not fired. However, Tasers are only one of a suite of options available to New South Wales police officers. It is always made clear that the use of Tasers should never be a first resort ahead of effective communication skills.*<sup>45</sup>

As Chapter 6 will show, consistent with global trends, NSWPF general duties officers have also been drawing the Taser more frequently than deploying it in probe or drive-stun mode.

## 2.2 The arguments against Tasers

The arguments against the use of Tasers have been made in many reports and media articles. Key issues or concerns about their use by police are:

- the risk of death after Taser use
- the risk of injury after Taser use
- mission creep and the use of Tasers as a compliance device
- the misuse of Tasers.

### 2.2.1 Risk of death or serious injury after Taser use

Amnesty International has claimed that since June 2001 more than 330 people are reported to have died in the US after being subjected to Taser use, and 25 similar deaths have been reported in Canada. In at least 50 cases, coroners are reported to have listed the Taser as a cause or contributory factor in the death.<sup>46</sup>

Amnesty International reviewed at least 90 autopsy reports and other sources – including media reports, lawsuits and reports of official investigations involving the use of M26 and X26 Tasers. While noting that their review was not a scientific study and they were not in a position to reach conclusions about the role of the Taser in each case, they made a number of observations. These included that:

- most of those who died were agitated, disturbed and/or under the influence of stimulant drugs, and a significant proportion had heart disease
- many were subjected to multiple or prolonged shocks, often far more than the standard five second cycle
- in most cases, the deceased are reported to have gone into cardio-respiratory arrest at the scene shortly after being shocked
- in some cases, the deceased had no drugs in their system or underlying health problems and collapsed shortly after being shocked
- in a significant proportion of cases (43% of the autopsy reports reviewed), the deceased was subjected to a Taser in the chest
- in many cases, additional forms of restraint were applied – including methods known to impair breathing or restrict the flow of blood to the brain.

Amnesty International also observed that although some individuals were highly disturbed and combative, the vast majority (around 90%) of those who died were unarmed, and many of them did not appear to present a serious threat when they were subjected to a Taser application and other force.

In relation to medical risks, the Braidwood Inquiry concluded that:

*Even in the case of people with healthy hearts:*

- *An external electrical current can overtake the human body's internal electrical system, resulting in ventricular capture, which may lead to ventricular tachycardia and, in some cases, ventricular fibrillation.*
- *There is evidence that the electrical current from a conducted energy weapon is capable of triggering ventricular capture.*
- *Based on animal studies, I am satisfied that the greatest risk of ventricular fibrillation arises when the probes are vectored across the heart, and that the risk of ventricular fibrillation increases as the tips of the probes get closer to the wall of the heart.*
- *There is a short 'window' during the heart's normal beat cycle (the T-wave), when the heart is most vulnerable to an external electric shock. However, this narrow window does not apply to rapid ventricular capture causing ventricular tachycardia, which may degenerate into ventricular fibrillation.*
- *Although there is often a lack of physical evidence on autopsy to determine whether arrhythmia was the cause of death, if a person dies suddenly and from no obvious cause after being subjected to a conducted energy weapon, death is almost certainly due to an arrhythmia.*

*The risk of ventricular fibrillation increases significantly in several circumstance – if the subject has cardiovascular disease or in thin subjects who have a smaller skin-to-heart distance. The intense pain, coupled with anxiety and stress, can cause an outpouring of adrenalin that can stimulate the heart and lead to dangerous arrhythmias. Skeletal muscle contractions can lead to acidosis, which affects the electrolyte balance, making the heart more susceptible to ventricular fibrillation. Also, an electrical current coinciding with a T-Wave peak may induce fibrillation with*

*a threshold 25 or more times lower than at other times in the heartbeat cycle. Finally, there are several risks associated with deployment against a subject who is wearing an implanted pacemaker or defibrillator.*

*Several researchers have raised concerns that the electrical current from a conducted energy weapon may induce spasm in the muscles of respiration (diaphragm and intercostal muscles), interfering with the subject's ability to breathe. This could, in the case of prolonged deployment, lead to acute respiratory failure or acidosis. The body's natural response to acidosis is to hyperventilate, which can be frustrated if the subject is lying face down, if pressure is applied to the chest or neck area, or if the officer's attempt to restrain the subject results in the subject struggling. The weapon's electrical current might also cause muscle damage (rhabdomyolysis), which can lead to cardiac arrest or acute renal (kidney) failure.<sup>47</sup>*

In 2011, the US National Institute of Justice completed a study of deaths following electro muscular disruption. This study was directed by a steering group that included the National Institute of Justice, the College of American Pathologists, the Centres for Disease Control and Prevention, and the National Association of Medical Examiners. To support the study, a medical panel consisting of forensic pathologist/medical examiners and specialists in cardiology, emergency medicine, epidemiology and toxicology was established. The panel did not include people who had worked as litigation consultants for or against Conducted Energy Device (CED) manufacturers.

The study included extensive consultation with stakeholders and considered nearly 300 CED related deaths, all the available peer-reviewed literature, and extensive information about the use of CEDs in the field. According to the final report:

*There is no conclusive medical evidence within the state of current research that indicates a high risk of serious injury or death from the direct or indirect cardiovascular or metabolic effects of short-term CED exposure in healthy, normal, nonstressed, nonintoxicated persons. Current medical research in humans and animals suggests that a single exposure of less than 15 seconds from a TASER® X-26™ or similar model CED is not a stress of a magnitude that separates it from the other stress-inducing components of restraint or subdual. Based on cases reviewed by this panel, most adverse reactions and deaths associated with CED deployment appear to be associated with multiple or prolonged discharges of the weapons. There is limited research with regard to exposures of greater than 15 seconds. Further, extended CED exposure may not be effective in the subdual of some individuals with high levels of drug intoxication or mental illness. Therefore, if the CED is ineffective in subduing an individual after a prolonged exposure, law enforcement officers should consider other options.<sup>48</sup>*

The report also stated that:

- The potential for moderate or severe injury related to CED exposure is low. However darts may cause puncture wounds or burns, puncture wounds to an eye could lead to loss of vision, falls due to muscle contraction or incapacitation can lead to potentially fatal head injuries or skeletal fractures, and CED strikes to the head have resulted in dart penetration of the skull, unconsciousness and seizures.
- There is currently no medical evidence that CEDs pose a significant risk for induced cardiac dysrhythmia in humans when deployed reasonably. In addition, current research does not support a substantially increased risk of cardiac dysrhythmia when the darts penetrate a person's chest in front of the heart. However, it is recognised that CED use involving this area of the chest is not totally risk-free. CED use on people with pacemakers and defibrillators can also be potentially hazardous.
- Very little research has been conducted about whether the positioning of the CED darts has an effect on respiration (breathing).
- Further study is needed to determine the amount of stress caused by prolonged or repetitive CED exposure in normal subjects. While it would be useful for similar studies to be conducted in relation to people with significant disease or drug intoxication, ethical constraints would prevent this.
- Exposing small children, those with diseased hearts, the elderly, pregnant women and other potentially at-risk individuals to CED deployments should be minimised or avoided (when recognised), as the effects of CED exposure in these populations is not clearly understood and more data is needed.
- Some form of medical screening is recommended after all CED exposures.

Earlier this year, a study published in *Circulation* – the American Heart Association's peer-reviewed journal – found that the electrical shocks from Electronic Control Devices (ECDs) can result in cardiac arrest due to ventricular tachycardia or fibrillation and death. The study examined eight cases that were part of Taser-related litigation. They involved immediate loss of consciousness and sudden cardiac arrest and/or death during or after receiving shocks from Taser X26, with one or both probes in the chest near or over the heart. In seven of the eight cases, the person died.<sup>49</sup>

## 2.2.2 Excited delirium and its association with death resulting from Taser use

There continues to be controversy surrounding the existence and role of 'excited delirium' in causing or contributing to deaths that have occurred after a person has been the subject of a Taser use. Excited delirium is:

*... one of several terms that describe a syndrome that is broadly characterized by agitation, excitability, paranoia, aggression, great strength and unresponsiveness to pain, and that may be caused by several underlying conditions, frequently associated with combativeness and elevated body temperature.<sup>50</sup>*

The notion of excited delirium is controversial because it is not a recognised medical condition, and is most commonly used in the context of explaining why people resisting police have died. As noted in our 2008 report:

*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 ... policies by police [to manage people displaying the signs and symptoms associated with excited delirium] appears to be a sensible approach.<sup>51</sup>*

The Braidwood Inquiry acknowledged that police officers are increasingly being called on to deal with emotionally disturbed people who exhibit extreme behaviours, including violence, imperviousness to pain, superhuman strength and endurance, hyperthermia, sweating and perceptual disturbances. However, this cluster of behaviours is not a medical condition or a diagnosis, but symptoms of various underlying medical conditions. The Braidwood Inquiry concluded that it is not helpful to blame resulting deaths on 'excited delirium' as this avoids having to examine the underlying medical condition or conditions that actually caused death, and whether use of a Conducted Energy Weapon (CEW) and/or other methods to restrain the subject contributed to the death. Instead of escalating the situation by using a CEW or force to physically restrain the subject:

*The unanimous view of mental health presenters was that the best practice is to de-escalate the agitation, which can best be achieved through the application of recognized crisis intervention techniques.<sup>52</sup>*

The Braidwood Inquiry further stated that in extreme circumstances where crisis intervention techniques fail to de-escalate the situation, it may be necessary to physically restrain the subject, which may require the use of a CEW. In such cases, best practices are to ensure that a CEW is used for the shortest period of time possible, that officers immediately restrain the subject and that medical personnel provide treatment once the subject is restrained.<sup>53</sup>

The National Institute of Justice's 2011 final report on the study of deaths following electro muscular disruption noted that the term 'excited delirium' has been criticised. However, it went on to state that whether or not the term is used, the behaviour and medical conditions associated with excited delirium are well recognised and at least some of the people experiencing it are at risk of death in the short term. Police should become familiar with the behaviour and indications associated with excited delirium, and generally limit Taser discharges to the minimal amount needed to achieve restraint.<sup>54</sup>

In the study published in *Circulation* discussed in the preceding section, of the eight cases examined, only one person survived. For the eight cases in the study:

- The drug screen results showed that two people did not have drugs or alcohol in their systems, two people had drugs only in their system, two people had alcohol only in their system, and two people had both drugs and alcohol in their system.
- Four people had a normal heart, one person had a confirmed heart problem, and three people were alleged by one party to have a structural heart disease.
- In six cases, the person received multiple and/or continuous Taser applications, and in two cases the person received a single five second Taser electrical cycle. The total durations of shocks ranged between five and 62 seconds, with the longest continuous shock being 49 seconds.<sup>55</sup>

The study found that the sudden deaths were unlikely to be due to excited delirium because there was an immediate loss of consciousness or death during or after the Taser deployments:

*Alternative explanations such as excited delirium would be more relevant when there was a significant time delay between ECD deployment and loss of consciousness/responsiveness or death. However, when loss of consciousness/responsiveness occurs during/immediately after an ECD chest shot, as it did in each of the cases above, and the subsequent rhythm is VT/VF or asystole (if a long time has elapsed without resuscitation) with no other cause apparent, it*

*becomes difficult to exonerate the effects of the shock. It is also possible that combinations exist. For example, prolonged QT interval in takotsubo cardiomyopathy or metabolic changes from prolonged or repeated shocks might predispose to pacing-induced VT/VF.<sup>56</sup>*

The study also rejected the idea that the alleged structural heart diseases or high blood alcohol concentrations were the reasons for the sudden deaths:

*Several victims were alleged to have structural heart disease (cases 2, 4, 7, and 8) and/or had elevated blood alcohol concentrations (cases 1, 3, 4, and 8). Although sudden death caused by underlying heart disease or alcohol is possible, one would have to postulate that the heart disease or alcohol coincidentally induced sudden loss of consciousness precisely at the time of ECD application. Far more likely is that stimulation from the ECD in the presence of structural heart disease and/or alcohol intoxication induced VT/VF.<sup>57</sup>*

### 2.2.3 Recent deaths associated with incidents involving Taser use by police in Australia

In recent years, there have been several deaths after the use of a Taser by police officers in Australia. In NSW, a man who was armed with two knives died soon after being subjected to Taser use by police in early October 2010.<sup>58</sup> In March 2012, a man died after being pursued by several officers and being subjected to multiple Taser use. The pursuit occurred following an alleged incident at a Sydney city convenience store. This matter is currently the subject of a coronial inquest. These cases are further discussed in Chapter 9.

In June 2009, in Brandon in North Qld, a man died soon after police used a Taser on him. In that incident, the Taser was reportedly fired up to 28 times before the man's death.<sup>59</sup> This incident is the subject of a coronial inquest held on 11 and 12 July 2011, which has been adjourned for findings.<sup>60</sup>

In April 2009, a 39 year old Aboriginal man died in the Northern Territory after he was subjected to two Taser applications as well as multiple bursts of OC spray by police.<sup>61</sup> The man had been behaving strangely and causing concerns to his family. When police arrived, they considered that the man was exhibiting irrational and extreme behaviour, and decided to take him into their custody or control so that he could receive a mental health assessment at the hospital. The man did not wish to go to the hospital, resulting in a confrontation with police. After being subjected to two Taser applications and a considerable amount of OC spray, he experienced breathing difficulties and later died in the hospital. The cause of death was found to be coronary atherosclerosis.

The Coroner heard that:

- The man might have been suffering mental health issues, or had suffered them in the past.
- The man had heart disease and might have already been suffering a heart attack when the police arrived at the scene, which could explain his strange behaviour.
- The man's heart condition presented a very significant risk of sudden and unexpected damage to the heart, which frequently results in death.
- A combination of stresses the man was under around the time of the incident could have led to his heart attack – including his arguments with family and police, his scuffle with the police, being placed on the ground, being subjected to multiple Taser and OC spray uses, and running around and falling down.
- There was no evidence to support a finding of positional asphyxia.

The Coroner determined that although the Taser was discharged eight times over two minutes and 14 seconds, the probes were not connected at the time and only two of the Taser applications seemed to have been successful. He expressed the view that due to the other great stresses the man was under at the time, the actions of the police might or might not have contributed to the man's death. However he did find that the use of the Taser in this case was premature and inappropriate, stating that:

*In hindsight, and in circumstances where the deceased was not armed nor making any threats to kill or cause serious harm, in my view the use of the Taser was premature and inappropriate. However, given the speed and confusion of the event, and agitation and noncompliance of the deceased, I do not wish to criticize the inexperienced and junior police officer himself. ... In my view, better training of officers such as ... in just when to use the Taser is necessary.<sup>62</sup>*

The Coroner heard evidence that the use of the Taser fell within the previous guidelines – under which the Taser should only be used where there is a real and imminent risk of violence – but that there is a proposal to increase the threshold to 'real and imminent risk of serious harm'. He accepted that the use of Taser in such situations would not be appropriate if the proposal is accepted. The Coroner expressed the view that the threshold for discharging a Taser should be increased:

*In my view, the community as a whole would expect that police would not utilise the Taser except in the most serious of circumstances and as a method of last resort, ie. prior to the utilisation of lethal force via a firearm. It is important that police understand this and that it is conveyed to each and every officer during the course of their training, and subsequent re-training.<sup>63</sup>*

The Coroner accepted that it would be illogical to provide junior police with a firearm, which could result in lethal use of force, but not a Taser. However, he stressed that:

*... it should be made clear to all police officers, and in no uncertain terms, that Tasers or ECD devices should only be deployed in cases where there is a real and imminent risk of serious harm and that all other less forceful methods have been considered and discounted.<sup>64</sup>*

The Coroner recommended that:

*... police training in relation to the use of Tasers be such that police understand quite clearly that Tasers should not be used simply as a compliance tool and their use should only be considered in the most serious of circumstances.<sup>65</sup>*

He further recommended that the Commissioner of Police continue with his review of Tasers and implement certain amendments to the good practice guide – including an amendment that the recommended target areas should be the back when practical, and when such shots are not practical the lower centre of mass for front shots.

## 2.2.4 Advice of Taser International

Taser International regularly cites research reports to support the view that the risk of injuries to subjects after Taser use are low. For example, in the 'Science and Medical' section of its website, Taser International quoted a 2009 US study that 'more than 99% of subjects do not experience significant injuries after conducted electrical weapon use'.<sup>66</sup> Nevertheless, Taser International does acknowledge that:

*The ECD can produce physiologic or metabolic effects which include, but are not limited to, changes in: acidosis; adrenergic states; blood chemistry, blood pressure; calcium, creatine kinase ("CK"); electrolytes (including potassium); lactic acid; myoglobin; pH; respiration; heart rate, rhythm, capture; stress hormones or other biochemical neuromodulators (e.g., catecholamines). Therefore, reasonable efforts should be made to minimize the number of ECD exposures and resulting physiologic and metabolic effects. In human studies of electrical discharge from a single ECD of up to 15 seconds, the effects on acidosis, CK, electrolytes, stress hormones, and vital signs have been comparable to or less than changes expected from physical exertion similar to struggling, resistance, fighting, fleeing, or from the application of some other force tools or techniques. Adverse physiologic or metabolic effects may increase risk of death or serious injury.<sup>67</sup>*

Taser International also warns about the possibility of muscle contraction or strain-related injuries, temporary discomfort and pain, seizure and fainting. In addition, the risk of secondary injuries from loss of balance, fall, uncontrolled fall, change in momentum, drowning, or loss of control of any mode of transportation, conveyance or machinery are recognised.<sup>68</sup>

Taser International advises that repeated, continuous or simultaneous exposures should be minimised:

*Reasonable efforts should be made to minimize the number of ECD exposures. ECD users should use the lowest number of ECD exposures that are objectively reasonable to accomplish lawful objectives and should reassess the subject's behaviours, reactions, and resistance level before initiating or continuing the exposure. If subject is noncompliant after a number of ECD exposures, consideration should be given to whether alternative control measures in conjunction with or separate from the ECD are appropriate under the circumstances.<sup>69</sup>*

Taser International's training material (version 18, January 2012) includes the following advice:

**Do not exceed 15-second exposure without justification.**

*Several police organizations have set out 15 seconds (multiple applications or continuous) of Electronic Control Device (ECD) exposure as a significant safety point:*

- *Police Executive Research Forum (PERF), Community Oriented Policing Services (COPS), & US Department of Justice (DOJ) (2011)*
- *Int'l Association of Chiefs of Police (ICAP) (2010)*
- *American Academy of Emergency Medicine (AAEM) (2011)*
- *National Institute of Justice (NIJ) (2011).<sup>70</sup>*

For higher risk populations, Taser International advises:

*ECD use on a pregnant, infirm, elderly, small child, or low body-mass index ("BMI") person could increase the risk of death or serious injury. ECD use has not been scientifically tested on these populations. The ECD should not be used on members of these populations unless the situation justifies possible higher risk of death or serious injury.<sup>71</sup>*

Since our last report, Taser International has also released the following advice:

*When possible, avoid intentionally targeting the ECD on sensitive areas of the body such as the head, throat, chest/breast, or known pre-existing injury areas without legal justification. The preferred target areas are below the neck area for back shots and the lower center mass (below chest) for front shots. The preferred target areas increase dart-to-heart safety margin distance.<sup>72</sup>*

### 2.2.5 Dissenting views about risk of injury or death

In our 2008 report we concluded that:

*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.<sup>73</sup>*

Medical and scientific experts continue to disagree as to whether Tasers can cause serious injury and/or death. In particular there is significant contention in relation to a number of issues including:

- whether Tasers can cause cardiac arrhythmias (an abnormal heartbeat) including ventricular fibrillation (a life-threatening abnormal heart rhythm)
- whether the results of animal studies into Taser safety can be extrapolated to humans
- the fact that studies on humans being subjected to a Taser application usually involve healthy volunteers
- whether the safety margins applying to Taser use in healthy adults apply to people who are affected by drugs or alcohol, mental illness, heart conditions or other vulnerable people such as children, the elderly or Indigenous Australians.

### 2.2.6 Risk of mission creep and other forms of Taser misuse

Mission creep, in the context of Taser use, has been defined as 'the tendency for police to, over time, use Tasers in situations for which they were not intended'.<sup>74</sup>

*Rather than using Tasers only in situations where there is a risk of serious injury, officers may start to become over-reliant on Tasers as a use of force option, using them in situations where there is no risk of serious injury or where a lesser use of force option would have been as effective. Mission creep may also be indicated by officers using Tasers earlier on in their interactions with people, reflecting the Taser becoming 'a weapon of first choice' or 'go-to' option for resolving situations.<sup>75</sup>*

Related to this is the risk that police will increasingly use Tasers simply to obtain a subject's compliance – in the absence of a sufficient threat of harm or injury to justify the Taser use. This unreasonable use for compliance is the area where we are most likely to identify mission creep. In this report, we also refer to this issue as using a Taser for 'compliance only'.

These issues are of particular concern to those who advocate against Taser use or for more restricted Taser use. We noted in our 2008 report the concerns of Amnesty International about 'the pervasive inappropriate use of the weapon' and the Australian Council for Civil Liberties concerns that:

*... 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.<sup>76</sup>*

The issues of mission creep and use for compliance only, have also been the focus of concern for police oversight agencies in Australia. In our 2008 report we stated that, although Tasers were initially introduced to provide police with an alternative to using lethal force in extremely high risk situations, in many jurisdictions Tasers are increasingly being used in situations where people are being uncooperative or noncompliant – but not acting in an aggressive or threatening manner. To prevent this mission creep and recognise where it is occurring, it is important for police to

have in place strict guidelines about when Taser use is considered appropriate – and officers must be educated to ensure they have a comprehensive understanding of these guidelines. There must also be accountability measures in place to ensure that all uses of the Taser comply with policies and procedures, and action is taken when misuse occurs.

The WA CCC stated in their 2010 report that their literature review and assessment of the experiences of other jurisdictions led to the conclusion that there is a real risk that Taser weapons will be misused, and a real and significant risk that Taser weapons will be subject to mission creep – that is, Tasers will be used in situations where they were not intended to be used and where such use is unwarranted.

The report states that:

*Taser weapons are at risk of being used for purposes other than those for which they were issued. The risk of mission creep is revealed through trends in two main areas.*

- *Taser weapon use against particular groups.*
- *Taser weapon use for low level confrontation at the expense of communication techniques aimed at de-escalation.<sup>77</sup>*

The Qld CMC 2011 report noted that mission creep and over-reliance on Tasers was a key risk in the trial evaluation of Tasers and warranted close monitoring. Their review of Taser usage data found no concrete evidence of mission creep in terms of Tasers being used in less serious situations, replacing other use of force options or being used earlier in policing interactions.<sup>78</sup>

## 2.2.7 Other forms of Taser misuse

We highlighted in our 2008 report that Tasers have the potential to be misused in a number of other ways. For example, they can be used by officers when force is not authorised, or they 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.<sup>79</sup>*

We also noted concerns about the possibility of weapons such as Tasers being used as instruments of torture or to inflict cruel and inhumane or degrading treatment on people being detained.

A number of examples were provided about reports of Taser misuse – and we reiterated the importance of police using the Taser inbuilt accountability measures, and police organisations having in place appropriate systems to monitor, review and audit Taser use by officers.

In the WA 2010 report, the CCC noted that the threshold for use of Tasers by police in WA is relatively low in comparison to other Australian jurisdictions – that is, Taser use is permitted to prevent injury to both officers and members of the public. The report stated that:

- Tasers have become the weapon of choice for police officers in WA, and overall their use increased 25% from 2007 to 2009.
- Unexpectedly, the use of firearms by police doubled between 2007 and 2009 from 6% to 12% of all uses of force.
- Injuries to police officers also unexpectedly increased between 2007 and 2009, and officers received more injuries in Taser weapon-related incidents than in incidents where Tasers were not used.

The report found:

*Notwithstanding the high percentage of appropriate use, the Commission's analysis of Taser weapon incidents has led to the identification of misuse of Taser weapons in Western Australia. WAPOL officers are using Taser weapons:*

1. *for compliance and in other situations in contravention to WAPOL Taser weapon policy, although in most cases this is identified and dealt with appropriately through WAPOL misconduct systems and processes;*
2. *in situations where such use is potentially improper or excessive, including against people whose level of resistance appears to present only a small chance of harm to officers, and this type of use appears to be increasing;*

3. *disproportionately against indigenous people, and the proportion of such Taser weapon use is increasing (from 16% of all Taser weapon use in 2007 to 30% in 2009); and*
4. *against people in high risk groups including individuals with a mental illness, those who are suffering from substance abuse, or those who are otherwise exhibiting signs of extreme psychological distress. In a small proportion of these cases, effective communication and de-escalation techniques are not being utilised prior to the Taser weapon use.*<sup>80</sup>

The Qld CMC 2011 report outlined their evaluation of whether the 27 recommendations from the QPS-CMC 2009 report had been implemented, the effects of the new policies and training on Taser use by police, recent developments in international best practice, and whether there are any gaps in QPS policy and practices.

They found that the introduction of the revised policy had some positive effects on QPS use of Tasers, including:

- a decrease in the frequency of Taser uses – particularly presentations (draw and cover) and probe modes
- some reduction in the proportion of people being subjected to multiple or prolonged discharges
- a noticeable decrease in Taser deployments against handcuffed people.

However, some issues continued to be of concern to the CMC. In particular, in the 10 months after the introduction of the revised policy, they found that:

- 40% of those subjected to a Taser discharge were subjected to multiple or prolonged discharges
- deployments were more likely to involve a person suspected of having underlying mental or physical health conditions, or believed to be under the influence of drugs or alcohol
- over 20% of Taser uses were targeted at Indigenous people
- some officers may increasingly be threatening to use a Taser without actually presenting or deploying it
- the rate of Taser-related injuries, while still relatively uncommon, increased considerably.

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## Chapter 3. Legislation, policies and procedures governing Taser use by the NSWPF

In this chapter we outline the legislation, policies and procedures that provide the framework for the use of Tasers by general duties police in New South Wales (NSW). This includes the general principles underpinning use of force under the Tactical Options Model (TOM), the applicable legislation and case law, details about the Taser Standard Operating Procedures (the Taser SOPs), and other relevant NSW Police Force (NSWPF) procedures and guidelines on the use of Tasers.

### 3.1 Use of force by the NSWPF

The NSWPF's TOM is a framework designed to help officers assess what level of force is appropriate to gain control of a situation. As shown in Figure. 2, the NSWPF uses a situational, rather than an incremental or linear, tactical options model. A situational model places the officer in the middle of a circular arrangement of options, from which they choose the most appropriate measure, based on the characteristics of the situation at hand.<sup>1</sup> In contrast, an incremental or linear model can be described as:

*... a traditional use-of-force continuum in which the officer has an escalating series of options available in response to a suspect's behaviour. As the suspect becomes increasingly combative, the officer is permitted to climb the ladder and use a force option greater than that of the suspect.<sup>2</sup>*

The TOM requires an officer to consider a range of factors and circumstances when deciding on the most appropriate options to gain control over a situation. Factors to be considered include the age, gender, size, fitness and skill level of officers or the person they are targeting, and the number of offenders and/or officers at the scene. Circumstances such as proximity to a weapon, injury or exhaustion, ground position, disability, imminent danger and the mental state of the person targeted must also be taken into account.

Nine tactical options are included in the model. These are officer presence, communication, contain and negotiate, tactical disengagement, weaponless control, Oleoresin Capsicum (OC) spray, baton, Taser (Electronic Control Device – ECD) and firearm. The model allows more than one tactical option to be used at a time. Communication is considered the 'hub' of the model as it should be a constant element in all the tactical options.

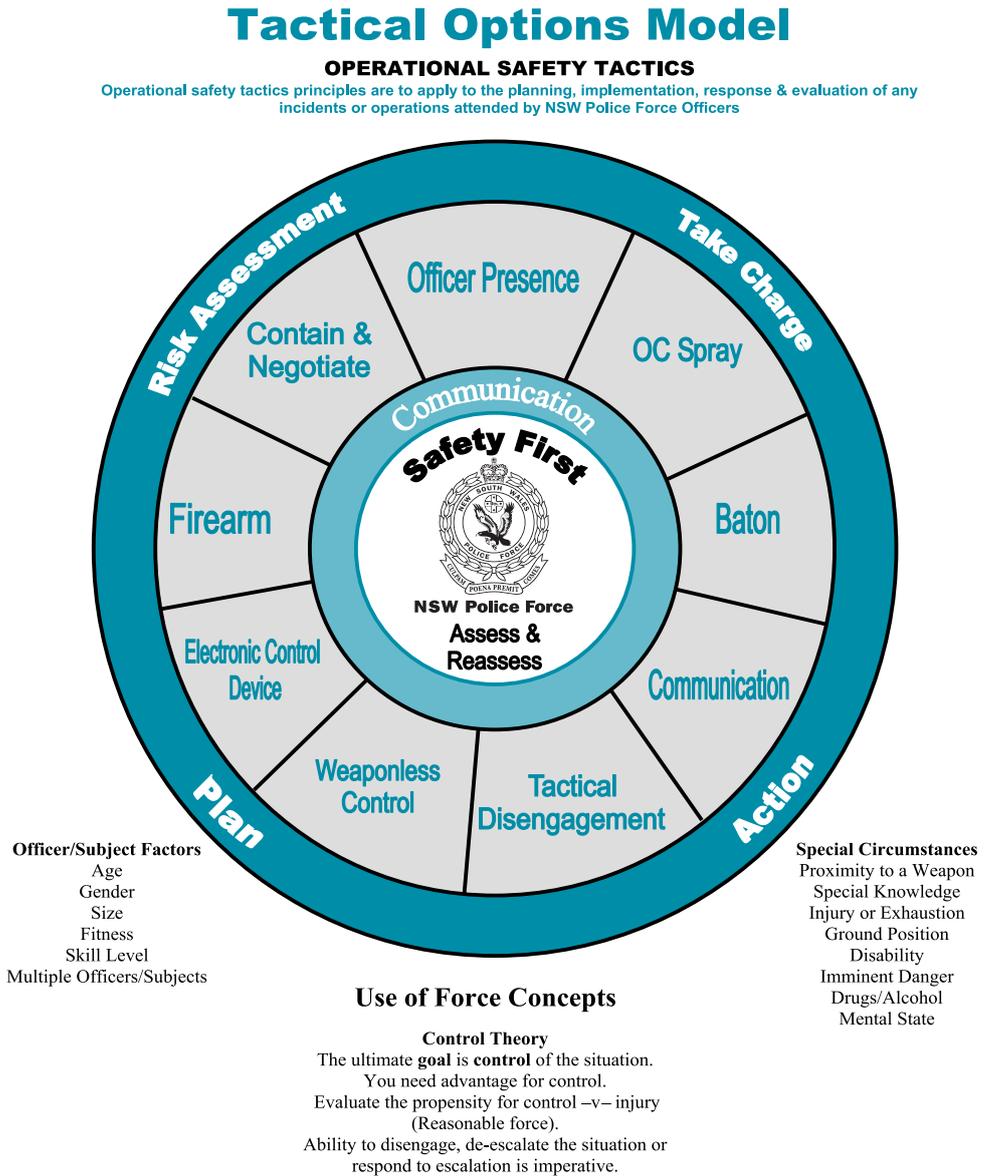
The TOM also highlights the importance of continually assessing and reassessing the situation to appropriately escalate or de-escalate the force used. Officers are expected to make a risk assessment of the situation, take charge, form a planned response and then select the most appropriate tactical option to use in the situation. The ability to disengage or de-escalate a situation is considered essential in managing any incident.

In the *NSW Police Force Handbook*, officers are instructed to use the minimum amount of force required:

*The goal of promoting a safe and secure community necessitates the application of force by police officers on a daily basis, at a range of levels. One of the challenges you will face lies in balancing the need to bring situations to a safe and effective conclusion with the need to avoid excessive applications of force.*

*To avoid excessive application of force and maintain an effective incident response you should use the minimum amount of force that is appropriate for the safe and effective performance of your duties and proportionate to the risks you face.<sup>3</sup>*

Figure. 2: NSWPF's Tactical Options Model



Source: NSW Police Force, *Standard Operating Procedures for use of Electronic Control (TASER) Devices by the NSW Police Force*, version 1.18, (approved for release in July 2012), p.25.

## 3.2 Legislation and case law for use of force and Tasers

### 3.2.1 Police exemption to carry a Taser and Taser cartridges

Under the *Weapons Prohibition Act 1998*, a Taser gun or similar anti-personnel ECD and a cartridge designed to propel probes or prongs from such a weapon are listed as prohibited weapons.<sup>4</sup> Unauthorised possession or use of a prohibited weapon is an offence carrying a maximum penalty of 14 years imprisonment.<sup>5</sup> A police officer (or student police officer) acting in the ordinary course of their duties is exempt from the requirement to have a permit for a prohibited weapon.<sup>6</sup>

### 3.2.2 Police exemption to use Taser Cam

The *Surveillance Devices Act 2007* prohibits the installation, use or maintenance of listening devices to overhear, record, monitor or listen to a private conversation.<sup>7</sup> This prohibition does not apply to the use of a Taser Cam by the NSWPF to record the operations of the Taser and the circumstances of its operation.<sup>8</sup>

### 3.2.3 Police powers to use reasonable force

Part 18 of the *Law Enforcement (Powers and Responsibilities) Act 2002* (LEPRA) provides police officers with the power to use such force as is reasonably necessary in exercising their legal functions – including to make an arrest or prevent the escape of a person after the arrest.

#### **Part 18 Use of force**

##### **230 Use of force generally by police officers**

*It is lawful for a police officer exercising a function under this Act or any other Act or law in relation to an individual or a thing, and anyone helping the police officer, to use such force as is reasonably necessary to exercise the function.*

##### **231 Use of force in making an arrest**

*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.*

### 3.2.4 Recent case law

Since the start of our investigation, there have been two important court cases in NSW that relate to the use of a Taser in the context of police powers to use reasonable force under LEPRA. In both these cases, the court has outlined the tests that should be applied in determining if police use of a Taser is reasonable under the circumstances.

Importantly, both cases emphasise that – when assessing whether the use of force is reasonable – both a subjective test (what the officer may have believed about what was occurring) and an objective test (what the evidence or facts are about what was occurring, which resulted in the use of force) are applied.

In the first case, *R v Ali Alkan* [2010] NSWLC 1, Magistrate Helipern commented that Tasers were high on the scale of types of force open to police who seek to make an arrest.<sup>9</sup> His Honour held that the use of a Taser by police was improper because it was unnecessary, unreasonable and failed to comply with the SOPs.

The CCTV footage for this case study has been released with this report and can be viewed on the Ombudsman's website.

#### **Case study 1 – Unnecessary and unreasonable use of a Taser (*R v Ali Alkan*)**

In the early hours of the morning, an experienced police officer followed a man as he was walking erratically in the middle of a busy street in the Sydney CBD (Oxford Street). The officer stated that initially the man did not respond to his repeated commands to get off the road. He then turned and looked in the general direction of the officer momentarily. According to the officer, when he reiterated his command to get onto the footpath, the man walked towards the curb and began to run. The officer armed the Taser, and waited for another officer to pass between him and the man before firing the Taser. The man fell to the ground and thrashed about. The police claimed that at this point the man struggled when officers tried to restrain him. He then rose to his feet and was subjected to a second Taser cycle. The man was found to be in possession of a small quantity of drugs, and was taken to hospital to have the Taser probes removed.

The CCTV footage showed that in the 10 seconds before the Taser was first fired, the officer directed the man to the footpath with a pointing motion and the man was clearly compliant. He was on, or was stepping onto, the footpath when he was subjected to the first Taser application. As a result of the first Taser shot, the man fell heavily from the footpath onto the road and thrashed about on the ground. Within a second of him rising to his feet hesitantly, he was subjected to a second Taser application. Contrary to the claims of some of the other officers present, it was clear from the CCTV footage that the man did not struggle between the two Taser applications. There were at least four other police officers present when the man was first shot – two in front of him on the footpath and two behind the deploying officer on the road. According to the deploying officer's contemporaneous notes of the incident, he was aware of the presence of at least three of the other officers – one of whom was an Inspector.

A complaint investigation by the NSWPF found that the use of the Taser was appropriate and within the Taser SOPs.

The man was charged with possessing prohibited drugs. The magistrate who presided over the matter held that the man's arrest was unlawful because unnecessary and excessive force was used and that the arrest was not necessary.

Section 99 of LEPRA provides that a police officer must not arrest a person unless the officer suspects on reasonable grounds that the arrest is necessary to achieve specified purposes. The magistrate found that there were no reasonable grounds for the officer's view that the arrest was necessary. This was because the man was compliant and did not pose a risk to either the community or himself at the time the view was formed.

Under ss. 230–231 of LEPRA, a police officer may use such force as is reasonably necessary to make an arrest, prevent the escape of the person after arrest, or exercise their legal function. In relation to whether the force used was reasonable, the magistrate noted that the word 'reasonable' imports an objective test, and that the factors relevant to the assessment of force include the opinion of the deploying officer as well as other factors – such as the level of criminality involved. He observed that the use of Tasers is a very high level of force, compared to other tactical options available to the officer to make an arrest. This was based on the fact that the Public Order and Riot Squad Standard Operating Procedures (PORS SOPs) refer to Tasers as a 'less-lethal' tactic, which shows an acknowledgement by the police that the use of the Taser is 'a tactic that may cause death'.<sup>10</sup> The risks of injury from Tasers appear to be so high that the PORS SOPs stipulate that a consideration for Taser use is the availability of medical support.

The magistrate stated that:

70 *The reasons given by [the officer] for the use of such high level force are unconvincing. The various reasons given for using the Taser were the lack of support from other police, to protect the life of the defendant, to protect members of the public from being killed or seriously injured, to protect his own safety and to stop the situation from escalating.*

71 *Within the ten seconds prior to firing, [the officer] was aware of three police being present in close proximity, from the Public Order and Riot Squad no less. The defendant was being compliant and mounting the footpath. No members of the public were at risk at that time. To suggest that at that point of time, out of concern for the safety of the defendant, it was reasonable to fire two darts into his back and electrocute him is fanciful. There were no attempts at talking to the defendant, or at placing a hand on his shoulder or other means listed above. To describe shooting someone with a Taser in these circumstances, as a non-escalation, is as literally [un] true (sic) as it is patently excessive.*

72 *Clearly the way the defendant fell was prone to a high risk of injury after the first Taser. He fell from the footpath onto the road, and that he did not suffer a significant head or other injury is most fortunate.*

73 *On any reasonable view the use of the Taser was excessive force, well beyond what was reasonably necessary in the circumstances. The reasons given for the second Taser illustrate this further – there were four police from the Public Order and Riot Squad standing right next to the defendant. Each and collectively they had other non-lethal as opposed to less-lethal options. There had been no struggle. Even accepting [the officer's] subjective view, on an objective test it was unreasonable to Taser a second time. After the defendant rose to his feet, having been Tased once already, to suggest he was an immanent (sic) threat with four police from the Riot and Public Order Squad within arms length is not a reasonable conclusion.*

74 *It can be argued in many circumstances, including this one, that there is a greater risk to police in utilising the least force. That does not mean that it is reasonable to use excessive force where there are clearly other options available.<sup>11</sup>*

The magistrate held that the use of the Taser was also improper because it was unnecessary, unreasonable and failed to comply with the PORS SOPs. The PORS SOPs contain the four criteria for use and a provision preventing use on a person who is compliant and non-threatening. In addition, the PORS SOPs provide specific further considerations for Taser use under section 6:

## **6. Considerations:**

6.1 *The use of less-lethal tactics must be reasonable and proportionate to the overall situation. When assessing whether it is reasonable to deploy the Taser, the officer may consider factors such as:*

- *The age of the suspect*
- *Their physical condition*
- *The emotional state*
- *The overall tactical situation*
- *The involvement of mental illness, drugs and alcohol*
- *The risk to the public*
- *The risk to the police*

- The risk to the subject
- The availability of appropriate medical support
- The public perception in the circumstances
- The availability of any appropriate alternatives to the use of the Taser
- The availability of sufficient personnel to take custody without the need for less-lethal tactics.<sup>12</sup>

Noting that an objective test applies to the considerations for Taser use, the magistrate went on to state that:

79 Applying the tests it is apparent from the CCTV that, on any objective assessment, there were other means available to [the officer] to apprehend the defendant, and there was no reasonable basis for the opinion that violent confrontation was imminent. The defendant's behaviour prior to the ten seconds leading up to the use of the Taser was reprehensible. His conduct in the last ten seconds was not. There was no reasonable basis for the view that there was a risk to human life neither at the time the Taser was used, nor in the approximately ten seconds beforehand. There was no reasonable risk to the officer being overpowered, and there were, to [the officer's] knowledge, three police present when the defendant was Tased. The defendant was, on any objective view, compliant and non-threatening. He was not armed, had not raised his fist, behaved aggressively or even verbally threatened any persons. There was, in the officer's mind, at least the possibility of drugs, and also the possibility of mental illness. The public perception, I should imagine, would be one of shock and horror at a person being Tased, thrashing about, rising to his feet, and being shocked again.

80 It was not reasonable to deploy the Taser when one considers a number of factors in clause six [of the PORS SOPs], including the overall tactical situation, the risk to the public, police and the defendant. Further there were many other options available. There were sufficient police personnel to take the defendant into custody or to search him without any need for Taser use. There was a police station only metres away.<sup>13</sup>

The magistrate then considered whether the evidence should be admitted in spite of the fact that it was illegally and improperly obtained. Having taken into account a number of factors, he decided that the evidence should not be admitted. Those factors included:

- The breaches of the law and impropriety were grave, in that the officer had unnecessarily assaulted the person 'with a potentially lethal weapon without warning, in the back, where there was at least three other police within centimetres'.<sup>14</sup> The person was wounded and electrocuted, hit the gutter and the road, experienced muscular contraction, was shot a second time with the Taser and hospitalised for the removal of the Taser probes.
- The illegal and improper action of the officer was deliberate, considered as well as wanton, in the true sense of that word.
- The evidence could have easily been obtained without any illegal or improper action – the officer could have used his stop and search power, issued a move-on direction or detained the person as an intoxicated person.
- The breaches were all the more serious given the seniority of the officer.
- The person has suffered extreme punishment and significant physical harm as a consequence of an allegation of a minor offence.

As a result, the prosecution had no evidence to offer and the charge against the person was dismissed.

### **Our assessment of the Taser use**

After the judgment was handed down, we expressed our independent view to the NSWPF that the officer's use of the Taser constituted unreasonable force. We recommended that an adverse complaint finding be made against the officer and that he and the other officers involved receive further training in the appropriate use of Tasers. We also recommended that this case become an example in police training of how a Taser should not be used.

While the officers involved subsequently received additional training, the NSWPF did not support making an adverse finding against the main officer – although they did acknowledge that the officers could have handled the incident differently. The NSWPF expert on Taser deployment did not agree with our conclusion that the Taser use was inappropriate, and the NSWPF stated that there were less ambiguous examples of inappropriate Taser use available for training purposes. This matter was also referred to the Office of the Director of Public Prosecutions to consider proceedings against the main police officer for assault. After consideration, the acting Director decided against instituting proceedings.

In the second case, *R v Bugmy*<sup>15</sup>, the arresting police officer justified the use of a Taser on the grounds that he feared that police might be assaulted. The court accepted that the officer held these fears given Mr Bugmy's previous history of violence, including violence against police. However, the court applied an objective test to consider what a reasonable police officer would have done in the same situation and held that a reasonable police officer would have continued to negotiate and communicate further with Mr Bugmy.

The Taser Cam footage for this case study has been released with this report and can be viewed on the Ombudsman's website.

## Case study 2 – What should a reasonable officer have done? (*R v Bugmy*)

Three police officers attended a residence to arrest a man for domestic assault. When the officers gained entry, the man was holding a plate of food and a fork in one hand and a steak knife in another. One of the officers aimed his Taser on the man and the other two officers pointed their OC sprays at him. The man was directed to put the knife down and get down on the ground several times. He relinquished the knife to his partner, but refused to get down on the ground. Instead, he kneeled on the floor, took off his shirt and cap, and put his hands behind his head. After the man's further refusal to get down on the ground, one of the officers issued a verbal warning of 'Taser, Taser, Taser' and fired the Taser probes at the man's chest. The man fell on the ground and was handcuffed by another officer. He went limp, so two officers lifted him up and dragged him to the police truck.

The evidence of the officers was that, after the man was arrested and taken into custody, he referred to being 'shot' by the officers and verbally threatened them, causing them to feel intimidated and fear for their safety. The man was charged with the offences of resisting police, intimidating police and using an offensive weapon to prevent lawful detention.

The deploying officer told the court that the man had been violent towards police in the past, and that he feared that he and the two female police officers at the scene would have been assaulted if the man was not lying face down on the ground.

At the hearing, the magistrate found that the evidence of the man's utterances in custody was improperly obtained – contrary to LEPRA and the Taser SOPs.

In deciding that the evidence was improperly obtained, the magistrate observed that there was a direct causal link between the man being shot with a Taser and the words he spoke. He noted the court's observation in *R v Ali Alkan* that in considering whether the use of force was reasonably necessary to make the arrest or prevent the escape of the person after arrest under s. 231 of LEPRA, an objective test should be applied. He noted, however, that the objective test must be applied in a realistic environment – taking into account some of the subjective factors relevant to the deploying officer and the situation he faced.

The magistrate noted that it was lawful for police to go to the man's residence to arrest him to ensure his attendance at court and prevent further offences being committed. It was also acknowledged that the situation was very stressful and frightening for the officer, given the man's history of violence and violent resistance against police. His Honour accepted that the man removing his shirt, in the context in which it occurred, could be interpreted as threatening behaviour and potentially an indication that the man was prepared to fight. However, his Honour observed that in the lead-up to the use of the Taser, the man was kneeling and had his hands behind his slightly bowed head for a considerable period of time – his behaviour was defiant but not verbally threatening.

Furthermore, the magistrate took into consideration the fact that the Taser SOPs emphasised that tactics of communication and negotiation should be used where possible, and that a Taser should be used only when violent confrontation is occurring or imminent.

Taking into account these factors, he found that:

*... a reasonable police officer would have allowed a calmer head to prevail. A reasonable police officer in the position of Senior Constable [name] would have sought to negotiate further and communicate further with Mr Bugmy. A reasonable police officer would have sought to calm everybody down including himself and his colleagues and a reasonable police officer would have insisted for a longer period of time that Mr Bugmy subdue himself – and the example I would use is that he would have insisted more and continually that Mr Bugmy lay on his chest.<sup>16</sup>*

Having determined that the evidence was improperly obtained, the magistrate then had to decide whether to admit the evidence despite the impropriety. In deciding to exclude the evidence, he took into account a number of factors – including the fact that the impropriety was 'quite grave and ... allowed what was ostensibly a battle of wills to descend to a violent situation and one which caused considerable discomfort, pain and probably

fear' to the person.<sup>17</sup> Although the magistrate did not find that the officer deliberately breached the Taser SOPs, there might have been a breach of the procedures for arresting and subduing alleged offenders. His Honour also found that the officers could have obtained the evidence without behaving improperly.

The magistrate held that the man was not guilty of the charge of using an offensive weapon to prevent lawful detention, as the knife was not used to prevent his arrest. In his Honour's view, although the man was holding a steak knife in his right hand and had fleetingly flicked his right wrist and elbow in the approximate direction of the deploying officer, the footage indicates that he was merely gesticulating at the police and 'telling them off', rather than using the knife to prevent his lawful apprehension.

Since the evidence of the man's utterances at the police station was excluded, to support the charge of resisting police the prosecution relied on an allegation that the man became a dead weight and would not walk to the vehicle. The magistrate held that since the man did not directly apply physical force against the officer to prevent his arrest, he was also not guilty of the offence of resisting police.

### **Police assessment of the Taser use**

A complaint on this matter was received by the NSWPF after the judgment was handed down on 17 February 2012. The NSWPF notified us of the complaint and advised that they were declining to investigate it on the basis that the magistrate's comments that the use of the Taser was an impropriety was not a comment alleging that the NSWPF SOPs for use of Taser were not applied by the officers.

The use of a Taser for this incident was also reviewed by the Western Region Taser Review Panel (TRP) in May 2011. The TRP determined that there was no breach of policy by the officers involved and no further action was required to be taken.

### **Our assessment of the Taser use**

We wrote to the NSWPF to advise that we did not accept the decision to decline this matter because the finding of the magistrate that police had acted contrary to s. 231 of LEPPRA (i.e. the use of force was not reasonable) would have to equate to a breach of the Taser SOPs – that is, the Taser SOPs cannot set rules and criteria for use that are contrary to law. In our view, if the NSWPF argument was true – that is, the officer had breached the law but not the Taser SOPs – then the Taser SOPs would need to be amended.

We were advised by the NSWPF that they were appealing the case.

On 4 September 2012, it was announced that the appeal would be withdrawn. We have again written to the NSWPF requesting their advice on how this complaint matter will now proceed.

## **3.3 The Taser SOPs**

SOPs are a set of written instructions, guidelines or rules about how a task or procedure is to be performed. The NSWPF have two separate SOPs relating to the use of Tasers by police. The first is the Taser SOPs for general duties police. The PORS have their own set of operating procedures, and the NSWPF advises these have been amended to align with the SOPs for general duties police. The TOU do not have specific SOPs for Tasers, but their use of Tasers is covered under their 'Use of Force' Guidelines.

In our 2008 report, we recommended that the NSWPF develop a single set of operating procedures governing the use of Tasers or develop standard procedures to ensure consistency between commands. The NSWPF did not implement the recommendation for a single set of operating procedures.

In this report, we focus on the Taser SOPs, which were written to provide general duties police with the essential information needed to allow them to use Tasers. It is the primary policy document about when general duties police are permitted to use a Taser. The information provided to police in the Taser SOPs is not exhaustive and is supplemented by mandatory training that is a prerequisite to being certified as an accredited Taser user.

The Taser SOPs were first published to coincide with the rollout of Tasers to NSWPF general duties officers working as duty officers and supervisors in October 2008. Since then, the Taser SOPs have been revised and amended a number of times. Their coverage has also been expanded to apply to other general duties officers and specialist units that perform response policing duties – including Commuter Crime Units and uniformed police attached to Strikeforce Raptor, the Middle Eastern Organised Crime Squad, and the South West Metropolitan Region Response Group. The key changes in the Taser SOPs since version 1.16 are outlined in Appendix A of this report.

In October 2011, we wrote to the NSWPF setting out a number of issues about Taser use identified through our detailed review of Taser incidents. In April and May 2012, the NSWPF consulted us on their proposed changes to the Taser SOPs. Version 1.18 of the Taser SOPs was approved for release in July 2012.<sup>18</sup> This is the version currently in force and discussed below.

### 3.3.1 Scope of the Taser SOPs

The broad scope of the Taser SOPs is reflected in the introduction to the document, which states that:

*This document sets out the Standard Operating Procedures for issue, return, deployment, Criteria To Discharge TASER (Probes Discharged; Drive-stun), post deployment actions and governance relative to response police use of TASERs. It is to be read in conjunction with the TASER Familiarisation Presentation and the NSWPF TASER User Training Package presented on the TASER Intranet Page and the New South Wales Police Force Tactical Options Model.<sup>19</sup>*

The Taser SOPs include information about:

- the history of Electronic Control Devices (Tasers)
- the history of the use of Tasers by the NSWPF
- the authority of police to carry Tasers
- technical information on how to use the weapon
- procedures for safe storage and handling
- when police are allowed to draw the Taser
- criteria to discharge the Taser – that is, use it in probe or drive-stun mode
- when not to use a Taser, and when a Taser may be used in exigent circumstances only
- methods of use and post deployment actions
- the remediation policy relating to hazardous practices
- procedures relating to reporting, downloading and reviewing information about Taser use
- the role of Region or Specialist Command TRPs.

In summary, the Taser SOPs are a multipurpose guideline that includes technical advice about how to operate a Taser and the actions to be taken following deployment, administrative procedures for safe handling, record keeping, auditing of Taser use and policy advice about when police are authorised to use a Taser.

### 3.3.2 Who can carry and use Tasers

The Taser SOPs govern the use of Tasers by officers attached to local area commands and specialist commands that perform response-style policing activities. Duty officers, inspectors and supervisors are permitted to carry Tasers when operating as a single unit. For all other officers, the SOPs emphasise that 'the major criteria for TASER deployment for operational use is that only one (1) TASER is to be issued to a minimum of two (2) officer team deployment as part of a response capability'.<sup>20</sup> This is because a Taser is best used in a team approach to incidents.

Officers must be trained and certified by qualified Taser instructors before being authorised to carry and use Tasers. The initial training involves eight hours of instructions (including the firing of three cartridges) and passing a written test. Taser users must also be recertified annually in order to carry and use the Taser. If they are not recertified, their accreditation to use a Taser will lapse. (See Chapter 4 for further details on Taser training and education).

### 3.3.3 Importance of the Tactical Options Model

The Taser SOPs emphasise the importance of the NSWPF's TOM by stating that the model needs to be applied in all circumstances and that officers must consider all their tactical options when deciding whether to resort to the Taser. The Taser SOPs also stress that:

*Police should familiarise themselves with the Tactical Options ... Model. In particular, **COMMUNICATION** is the hub of the [Tactical Options Model] wheel ... and therefore should be used as a component of all other tactical options. Force should only be used where de-escalation or negotiation techniques have not been successful, or where circumstances do not allow any reasonable opportunity to attempt those techniques.<sup>21</sup>*

### 3.3.4 Drawing the Taser

Before drawing their Tasers, officers must consider all their tactical options. They are instructed not to draw, point or aim their Tasers unless they consider that they are likely to be justified in using it. Officers are also required to continually assess the environment and the situation, and deactivate and re-holster their Tasers when the reasons justifying drawing it no longer exist:

#### 4. DRAWING THE TASER

4.1 Police must consider all their tactical options when considering resorting to TASER. Do not draw your TASER, point, or aim it unless you consider you are likely to be justified in using it. When the TASER is drawn from the holster the officer should adhere to all general firearms safety principles including safe direction.

4.2 When the situation warrants the drawing of the TASER and the covering of the subject/s, the TASER should only be discharged when one or more elements of the Criteria To Discharge TASER (Probes Discharged; Drive-stun) exists ... Police should continue to assess the environment and the situation unfolding before them and where the reason/s justifying the drawing of the TASER cease to exist, the TASER should be deactivated and re-holstered.<sup>22</sup>

### 3.3.5 Criteria to discharge Taser (probes discharged or drive-stun)

The Taser SOPs require that officers consider the TOM and must have regard to the 'criteria to discharge Taser' in the SOPs as well as their Taser training. The criteria to discharge a Taser are as follows:

*The TASER may be discharged at the discretion of the TASER User as a tactical option after proper assessment of the situation and the environment to:*

**5.1 Protect human life.**

**5.2 Protect yourself or others from person/s where violent confrontation or violent resistance is occurring or imminent.**

**5.3 Protect officer/s in danger of being over powered or to protect themselves or another person from injury.**

**5.4 Protection from animals.**

**NB: Once TASER has been used, officers should attempt to restrain the subject as quickly as possible. Once the subject is effectively under control, the use of TASER should be discontinued.**<sup>23</sup>

### 3.3.6 Considerations before using a Taser

The Taser SOPs stipulate that officers should assess their surrounding environment before using a Taser. In particular, consideration should be given to crowded situations and secondary hazards such as location, the presence of flammables, traffic hazards and proximity to bodies of water.

### 3.3.7 Target area

According to the Taser SOPs, Taser users should aim the Taser at the centre of mass. To achieve the maximum effect when discharging the Taser, they are instructed to aim and place one Taser probe above the waistline and another probe below the waistline of the person. When targeting a person, the Taser's laser sight should be in line with the:

- a) *preferred target area – aim for the centre of seen target mass of the back (where possible avoid targeting the head).*
- b) *secondary target area – aim for lower torso front (where possible avoid targeting the face, groin or chest areas).*<sup>24</sup>

### 3.3.8 Stages of use of the Taser

The Taser SOPs identify three stages of Taser use – draw and cover, probes discharged and drive-stun:

**6.4.1 Draw & Cover:** *Where circumstances dictate the drawing of the TASER from the holster so as to cover a subject who is displaying aggressive or threatening behaviour, the TASER must be immediately armed by moving the safety switch to the 'F' (Fire) position, the power indicator is illuminated and the integrated Laser is on and aimed at the subject. (The 'Red' laser dot is visible on the subject, at the projected point of contact).*

**6.4.2 Probes Discharged:** *The TASER is discharged resulting in the cartridge discharging and firing of the two probes, which are connected to the TASER device by thin, high voltage insulated wire. Neuromuscular Incapacitation (NMI) occurs resulting in a direct involuntary contraction of the muscles that disrupts neuromuscular control.*

**6.4.3 Drive-stun:** *The Drive-stun is a tactic that can only be achieved by direct contact of the electrodes of the TASER to a subject with or without a cartridge attached to the TASER device. Drive-stun mode may cause pain and will NOT achieve Neuromuscular Incapacitation (NMI). Where only one probe has made good contact with a subject, Drive-stun may be successful in achieving NMI. Therefore, the use of Drive-stun should only be considered in exigent circumstances.*<sup>25</sup>

Before the Taser is used in probe or drive-stun mode, a verbal warning should be given unless circumstances do not permit.

### 3.3.9 Continued and multiple use of the Taser

The Taser SOPs explain that each Taser trigger pull releases a five second cycle of electrical current. If the trigger is pulled again during the five second cycle, it will not prolong the cycle unless it is held continuously. Holding the trigger continuously would produce a constant electrical current until the trigger is released.

The term 'multiple use of the Taser' is not defined in the Taser SOPs. The NSWPF advised that, against an individual, the term means one or more of the following:

- the use of a Taser in probe mode as well as drive-stun mode
- multiple trigger pulls in probe mode
- multiple trigger pulls in drive-stun mode
- two or more officers subjecting a person to Taser use during a single incident.<sup>26</sup>

The Taser SOPs state that continued or multiple use of the Taser should be avoided where practicable, and warn that such use increases the risk of serious injury or death:

*Continued/multiple use of the TASER should be avoided where practicable and must be justified in all the circumstances following assessment of the subject and in accordance with the Tactical Options Model. One or more Criteria To Discharge TASER (Probes Discharged; Drive-stun) must be present to justify further use of a TASER.*

**NB: Multiple cycles or prolonged use of TASER may increase the risk of serious injury or death.**<sup>27</sup>

### 3.3.10 When not to use the Taser

The Taser SOPs, under a section called 'Methods of Use – Other Considerations', specifically state that the Taser must not be used against people who are compliant and exhibiting non-threatening behaviour, or people who are being passively noncompliant.

### 3.3.11 When carriage, handling or use of the Taser is prohibited except in exigent circumstances

Under the Taser SOPs, there are a number of situations where the Taser should not be carried, used or handled except in exigent circumstances.

- High risk situations – the Taser SOPs prohibit the use of a Taser to resolve such situations unless exigent circumstances exist that require immediate action, which may include the use of a Taser. The Taser SOPs also state that:

*Where police are confronted with this type of scenario they should consider applying the strategy of containing the situation and seeking specialist support. TASERs should not be used as a substitute for applying the 'National Guidelines For The Deployment Of Police To High Risk Situations' unless exigent circumstances dictate the need for immediate action.*<sup>28</sup>

- Entering establishments such as courts, gaols and custody areas of police stations while carrying a Taser – the Taser SOPs state that the convention to secure Tasers before entering establishments such as courts, gaols and custody areas of police stations will apply except in exigent circumstances where the use of the Taser may be required. However, there is an agreement between the NSWPF and the NSW Ministry of Health for officers to retain their Taser when entering a secure mental health ward.
- Handing over a Taser to other officers outside the police station – the Taser SOPs state that Tasers should not be handed over to other officers outside the police station except in exigent circumstances. All Tasers should remain with the Taser user who retrieved the Taser at the start of their shift.
- Using a Taser in drive-stun mode – under the Taser SOPs, the use of drive-stun as a tactical option should be considered only in exigent circumstances, on the basis that drive-stun may cause pain but will not incapacitate the subject.

## 3.4 Policies, procedures and guidelines relevant to NSWPF Taser users

### 3.4.1 NSW Police Force Handbook

The *NSW Police Force Handbook*<sup>29</sup> provides guidance to officers about a range of issues relevant to their powers, functions and responsibilities. Under the heading 'Electronic Control Devices', there is information about the following issues:

- criteria for the use of Tasers
- requirements for training and authority to carry Tasers
- responsibilities of Commanders regarding compliance with the Taser SOPs, regular inspections of Taser weapons, and procedures for storing and tracking Tasers
- requirements to provide first aid and request assistance from ambulance personnel.

### 3.4.2 NSWPF Safety Policy Statement

The *Safety Policy Statement*<sup>30</sup> outlines the NSWPF's commitment to safety and the principles underlying their safety policy. It applies to operational police and management, but also covers the NSWPF's safety responsibilities and accountabilities to members of the public. The statement is also relevant to managing use of force incidents, including those involving Taser use.

According to the *Safety Policy Statement*, the NSWPF's commitment is to:

- *Appropriately define and allocate safety responsibilities;*
- *Allocate appropriate resources to measure and continually improve safety;*
- *Comply with legal and organisational requirements for safety, health and injury management;*
- *Minimise the risk of injury and disease for staff and others at our workplaces;*
- *Actively identify hazards, assess and reduce risk;*
- *Provide workplaces, work practices, substances, plant, equipment and other assets that are, as far as practicable, safe and without risk to health;*
- *Provide appropriate safety information, instruction, training and supervision; ...*<sup>31</sup>

The *Safety Policy Statement* also lists a number of safety principles, including:

- the consideration of safety in planning and conducting work and operations
- supervisors ensuring that safety requirements are implemented and maintained
- that safety lessons should be learnt from incidents
- that staff should contribute, report issues, follow procedures and not accept unsafe behaviour
- all incidents, hazards, risks and suggestions are to be raised with management and Occupation, Health and Safety Committees.<sup>32</sup>

### 3.4.3 National guidelines for deploying police in high risk situations

In November 1992, the Australasian Police Ministers' Council (now the Standing Council on Police and Emergency Management) endorsed the *National Guidelines for the Deployment of Police in High Risk Situations*, prepared by the National Police Research Unit.<sup>33</sup> The guidelines were amended in 2005.<sup>34</sup> These guidelines specify a core set of nationally agreed guidelines for the management of high risk situations, including the deployment of police in high risk situations, the deployment of police negotiators and the use of lethal force by police.

The NSWPF policies and procedures for high risk incidents have been developed to be consistent with these guidelines.<sup>35</sup> The relevance of these guidelines is that they provide criteria for deploying specialist police – they set out the types of situations where general duties police officers should generally not attempt to resolve but contain the situation.

The guidelines recognise that there is a wide range of circumstances and types of situations that may be considered 'high risk'. In deciding whether a situation should be defined as high risk, the real or impending violence or threat must be such that the degree of force that could be used by police in dealing with the situation is fully justified. A situation may be defined as high risk if it meets one or more of the following criteria:

- seriousness of the offence committed by the suspect/offender;*
- expressed intention by suspect/s to use lethal force;*

(c) reasonable grounds to believe that the suspect:

- may use lethal force;
- has or may cause injury/death;
- has issued threats to kill or injure any persons;

(d) the suspect:

- has a prior history of violence;
- is exhibiting violence now;

(e) involvement of innocent participants (e.g., hostages, VIPs, or bystanders).<sup>36</sup>

The guidelines state that negotiation is the preferred option for resolving high risk incidents, and that non-violent means should be used as far as is reasonably possible before resorting to the use of force. Police managers are required to consider the option of deploying trained police negotiators to high risk situations, and to ensure that such deployment is made at the earliest opportunity to maximise the possibility of resolving the incident without violence.

Specially trained police tactical units should be deployed:

(a) in all High Risk Situations, or when it is reasonably established that the resolution of an incident requires [their] expertise, or when there is a potential that alternative action would reasonably be expected to result in the death or injury to police, suspects or other members of the public; and

(b) when authorised by an officer, at a level approved by the Commissioner of Police for this purpose.<sup>37</sup>

When police become aware of a high risk situation, they should request the deployment of these tactical units. Clear levels of command and areas of responsibility should be established at the scene. Tactical units should not undertake any tactical action to resolve the situation until authorised by a commissioned officer at the rank of Assistant Commissioner or above (or delegate). Police are required to 'exercise restraint in the use of force and act in proportion to the seriousness of the offence, level of risk involved and the legitimate objectives to be achieved'.<sup>38</sup> Where practical, medical assistance must be made available at the site of the incident, and where necessary and safe to do so, such assistance should be provided at the earliest opportunity in order to save lives or reduce the impact of injuries. Police should also try to minimise any impact of their actions on innocent people.

Firearms should not be used 'against another person except in self-defence or defence of others against the imminent threat of death or serious injury; to prevent the perpetration of a particularly serious crime involving grave threat to life; and only when less extreme means are insufficient to safely and effectively achieve these objectives'.<sup>39</sup>

Where police officers find it necessary to use lethal force, they must:

(a) exercise restraint and only use sufficient force to achieve their objectives;

(b) minimise injury to human life;

(c) minimise material damage;

(d) ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible opportunity; and

(e) ensure that a relative or close friend of the injured or affected person is notified at the earliest possible opportunity.<sup>40</sup>

The guidelines state that police management must ensure that the activities of police tactical units are adequately recorded in accordance with established procedures for:

- all instances involving the police use of lethal force causing death or injury;
- any police use of force in the performance of their duty, and outside training or practice;
- any use of force used against police or other persons as appropriate; and
- any incidence of death during a police operation that is not due to the police use of force.<sup>41</sup>

Police managers should also ensure that police and police negotiators involved in high risk situations receive a formal debriefing. The debriefing should identify any procedural or tactical strengths, and police managers should ensure that prompt and appropriate action is taken to address any inadequacies in dealing with the situation. The debriefing and follow-up actions should be documented.

### 3.4.4 NSWPF policy for high risk situations

The NSWPF's Tactical Operations Unit (TOU) is primarily responsible for dealing with high risk situations. It provides operational support to all police, with the aim of resolving high risk situations without loss of life, injury to people or damage to property. Given the size of NSW, the TOU is supported by its regional counterpart – the State Protection Support Unit (SPSU). When responding to high risk situations, the TOU are generally deployed with police negotiators.

The NSWPF have adopted the definition of high risk situation from the *National Guidelines for Deployment of Police to High Risk Situations, Deployment of Police Negotiators and the Use of Lethal Force – 2005*. The *NSW Police Force Handbook* also states that the TOU may be deployed to the following high risk situations:

- siege or hostage situations
- the arrest of armed and dangerous offenders
- high risk entries and searches of premises
- escorts of a high risk nature
- security of internationally protected persons, heads of state and holders of high public office at risk
- incidents involving persons threatening self-harm
- high risk major operations.

In a high risk situation, general duties police must carefully consider their personal safety as well as the safety of other police and the public. Where possible, they should:

- *Consider the guiding principles of containment and negotiation*
- *Isolate the incident site by establishing a perimeter*
- *Request the assistance of the TOU and Police Negotiators.*<sup>42</sup>

However, in exigent circumstances, the general duties officer may have to act before the arrival of the TOU. When a direct threat requires immediate action, general duties police must consider using commensurate force to protect human life.

General duties officers should request urgent assistance from the TOU and police negotiators through the Duty Operations Inspector, Sydney Communications Centre. In emergency high risk situations, any officer can request assistance from the TOU and police negotiators – but they should seek advice first from a senior officer, if possible.

### 3.4.5 Guidelines for managing and investigating critical incidents

A critical incident is one where a person has died or been seriously injured in connection with police actions or a police operation. In NSW, all critical incidents are investigated by police in accordance with the *Critical Incident Guidelines*.<sup>43</sup> These guidelines establish the roles and duties along the chain of command when dealing with 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 that appropriate prosecution action is taken if any offence is identified. When investigating an incident, the Critical Incident Investigation Team are to consider 'the lawfulness of police action, the extent of police compliance with relevant guidelines, legislation and internal policy and procedures'.<sup>44</sup>

If a person dies soon after a Taser use, the NSWPF will deem the matter to be a critical incident.

## Endnotes

1. Australasian Centre for Policing Research, *National Minimum Guidelines for Incident Management, Conflict Resolution and Use of Force*, 1998.
2. Joyner, C. and Basile, C., 'The Dynamic Resistance Response Model', *FBI Law Enforcement Bulletin*, September 2007, p. 17.
3. NSW Police Force, *NSW Police Force Handbook*, 30 May 2012, p. 532.
4. *Weapons Prohibition Act 1998* (NSW) Schedule 1 cl 2(18A)–(18B).
5. *ibid.*, s. 7(1).
6. *ibid.*, s. 6(2).
7. *Surveillance Devices Act 2007* (NSW), s.7(1).
8. *Surveillance Devices Act 2007* (NSW), s.7(2)(f) provides that the prohibition against the use of listening devices does not apply to 'the use of a listening device, being a device integrated into a Taser issued to a member of the NSW Police Force, to record the operation of the Taser and the circumstances surrounding its operation'.
9. *R v Ali Alkan* [2010] NSWLC 1.
10. *ibid.*, [67].
11. *ibid.*, [70]–[74].
12. *ibid.*, [78].
13. *ibid.*, [79]–[80].
14. *ibid.*, [86].
15. *R v Bugmy* (Unreported, Local Court of NSW, Magistrate Dunlevy, 17 February 2012).
16. *ibid.*, p. 7.
17. *ibid.*, p. 8.
18. NSW Police Force, *Standard Operating Procedures for use of Electronic Control (TASER) Devices by the NSW Police Force*, version 1.18, (approved for release in July 2012).
19. *ibid.*, p. 3.
20. *ibid.*, p. 3.
21. *ibid.*, section 3.12, p. 15, (emphasis in original).
22. *ibid.*, section 4, p. 16.
23. *ibid.*, section 5, p. 16, (emphasis in original).
24. *ibid.*, section 6.6, p. 18.
25. *ibid.*, section 6.4, p. 17.
26. *ibid.*
27. *ibid.*, section 6.9, p. 18, (emphasis in original).
28. *ibid.*, section 1.26, p. 11.
29. NSW Police Force, *NSW Police Force Handbook*, 30 May 2012.
30. NSW Police Force, *Safety Policy Statement*, July 2009.
31. *ibid.*, p. 1.
32. *ibid.*
33. National Police Research Unit, *National Guidelines for the Deployment of Police in High Risk Situations*, November 1992; in Australasian Centre for Policing Research, *National Guidelines Compendium: Police Use of Lethal Force, Deployment of Police in High Risk Situations, Deployment of Police Negotiators*, Report series number 123, 1995, pp. 17–22.
34. Australasian Centre for Policing Research, *National Guidelines for Deployment of Police to High Risk Situations, Deployment of Police Negotiators and the Use of Lethal Force – 2005*.
35. NSW Police Force, Commissioner's Circular, CN No. 94/45, 'National Guidelines for the Deployment of Police High Risk Situation', 2 May 1994.
36. Australasian Centre for Policing Research, *National Guidelines for Deployment of Police to High Risk Situations, Deployment of Police Negotiators and the Use of Lethal Force – 2005*, p. 2.
37. *ibid.*, Guideline 22, pp. 7–8.
38. *ibid.*, Guideline 19, p. 7.
39. *ibid.*, Guideline 39, p. 9.
40. *ibid.*, Guideline 41, p. 10.
41. *ibid.*, Guideline 10, p. 6.
42. NSW Police Force, *NSW Police Force Handbook*, 30 May 2012, p. 483.
43. NSW Police Force, *Critical Incident Guidelines*, version 5, August 2012.
44. *ibid.*, pp. 10, 11, 28.

## Chapter 4. Training and education for NSWPF Taser use

This chapter outlines the training provided to New South Wales Police Force (NSWPF) recruits and general duties officers, including specific Taser training as well as general training at the NSW Police Academy. The information in this chapter is primarily based on:

- Taser and NSW Police Academy training materials provided by the NSWPF
- observations of Taser training at the NSW Police Academy
- observations of the NSWPF annual Taser reaccreditation training
- focus groups with NSWPF general duties officers
- the NSWPF's response to our notice to produce information and documents<sup>1</sup>
- other correspondence from the NSWPF providing information.

### 4.1 NSWPF Taser training

Before the rollout of Tasers to NSWPF general duties officers on 1 October 2008, selected Operational Safety Instructors were provided with training by senior instructors from Taser International. This training allowed those Operational Safety Instructors to be certified as Taser instructors or master Taser instructors. Master Taser instructors are accredited to train other Taser instructors as well as Taser operators.

In 2008–09 and 2009–10, the NSWPF implemented an intensive Taser training program to ensure that as many general duties officers were accredited to use Tasers as possible. Initially the training was delivered to general duties supervisors and duty officers for the first phase of the rollout of Tasers. The Taser International training materials, with the addition of reality-based scenarios designed by the NSWPF, were used to provide the 2008–09 Taser use certification training to these officers.

For the second phase of the rollout, Taser training was introduced as mandatory training for 2009–10. A training package was developed to help the NSWPF Taser instructors to deliver Taser training to general duties officers. The package included lesson plans, multimedia presentations, scenario-based training, a written test and a practical skills assessment.

In January 2011, the NSWPF began providing Taser training to recruits at the NSW Police Academy. By 1 November 2011, 15,258 NSWPF officers had completed Taser accreditation training.

The Taser user accreditation training includes a theoretical component and a practical component over two four-hour sessions.

#### 4.1.1 Taser training – theoretical component

The theoretical component consists of a multimedia PowerPoint presentation with commentary by a NSWPF Taser instructor, followed by an open-book written test. Before attending the presentation, officers are required to have completed pre-course readings.

The training material is based on the Taser International training package, with modifications to include the NSWPF's Tactical Options Model (TOM) and criteria for Taser use as well as operational issues identified by the NSWPF. The presentation covers a range of topics, including technological, electrical and medical information related to Tasers, the NSWPF's use of force model and criteria for Taser use, circumstances in which a Taser must not be used, factors that increase the risks associated with Taser use, and reporting requirements.

#### *Use of force*

The Taser training discusses the NSWPF's TOM, the criteria for Taser use and the concept of reasonable force. Officers are instructed that the use of a Taser constitutes a use of force and therefore must be objectively reasonable and proportionate in all the circumstances. They are also advised that each Taser application is considered an additional use of force. The training states that when assessing whether it is reasonable to discharge the Taser, the officer should consider a number of factors. Examples of factors to be taken into account include:

- the age, physical condition and emotional state of the person
- the overall situation confronting the officers
- the likelihood that the person may be suffering from a mental illness or affected by drugs and/or alcohol
- the risks to the public, the police and the person involved.

### **Effective target zones**

Officers are advised that the preferred primary target zone for using the Taser is below the neck on the back of a person because the muscle groups in this area are larger than in other areas. The preferred secondary target zone is the lower torso on the front of a person because this will increase the effectiveness of the Taser and also reduce the risk of the probes hitting sensitive body areas.

Officers are warned that the Taser should not be aimed at the head or the throat 'unless [the] situation dictates a higher level of injury risk is justified'.<sup>2</sup> They are directed that when using a Taser in probe mode, they should avoid targeting the head, face, throat or genitals.

The training states that when using the Taser in drive-stun mode there must be exigent circumstances and the weapon should be applied to the specific body parts to maximise effectiveness. These body parts are the brachial plexus tie-in (upper chest), radial (forearm), pelvic triangle, common peroneal (outside of thigh) and tibial (calf muscle). Officers are instructed to avoid applying the Taser in drive-stun mode to the head and the throat whenever practical, although these areas are identified as possible secondary target areas if officers are defending themselves from a violent attack. The following warning accompanies the references to using a Taser in the secondary target areas.

*WARNING: Use care when applying drive-stun to neck or groin. These areas are sensitive to mechanical injury (such as crushing to the trachea or testicles if applied forcefully). However, these areas have proven highly effective targets. These areas should only be targeted when officers are defending themselves from violent attacks. Refer to your department's policy regarding drive-stuns in these and other sensitive areas.*<sup>3</sup>

### **Considerations when deciding whether to use the Taser**

The Taser training also canvasses certain considerations when deciding whether to use the Taser – including an assessment of high risk situations, and the need to avoid over-reliance on Tasers. Officers are instructed that the Taser can be effective in dealing with people threatening self-harm. However, 'the TASER device is NOT a substitute for lethal force'.<sup>4</sup> Officers are advised to follow their basic officer survival training in such situations and establish a higher order tactical option if necessary.

### **Circumstances in which the Taser must not be used**

Officers are trained on when it would be inappropriate to use Tasers. In particular, an officer must not use the Taser on non-threatening and/or compliant subjects, in instances of passive noncompliance, or to threaten, punish or retaliate. They are also advised that a handcuffed person must not be subjected to Taser use unless one or more of the criteria for use exists.

### **Extended or repeated applications of the Taser**

The Taser training discusses the need to avoid extended or repeated applications of the Taser and, if this cannot be avoided, the need to reassess the person between Taser cycles. It states that multiple Taser applications cannot be justified on the grounds that a person has failed to comply with a command, unless there are other indications that the person is about to flee or poses an immediate threat – particularly when more than one officer is present to help control a situation. In addition, any decision to apply the Taser multiple times must take into account whether a person is physically, mentally or emotionally capable of complying with the officers' commands, and whether the officers present are issuing conflicting commands.

### **Risk factors**

The Taser training identifies the following factors that may increase the risks associated with Taser use:

- the presence of flammable liquids or fumes, or Taser use in other explosive environments
- people who are in elevated positions
- people operating a moving vehicle or machinery
- people who are fleeing
- pregnant women, children and people who are frail or infirm – as there is a heightened risk of injury from a fall
- people who are suffering from mental health issues
- proximity to swimming pools or other bodies of water
- intentional application of the Taser to sensitive body parts
- repeated Taser applications.

In relation to vulnerable groups, the training material states:

*Young, old, pregnant, frail, mentally ill ... There's little doubt that we can justify such uses from a 'policy' perspective.*

*Likewise, these uses often defy logic in the minds of those outside law enforcement.*

*It is clearly in our best interest to limit such cases when we logically can.<sup>5</sup>*

In addition, officers are advised that the risk of injury from a fall is potentially the greatest risk associated with the use of a Taser. This risk is not restricted to people in elevated positions – it can also occur through ordinary interactions between officers and a person, especially when that person is moving or fleeing.

The training states that 'current human studies have concluded that TASER applications directly across the chest do not impair normal breathing patterns'.<sup>6</sup> However, in circumstances where extended or repeated Taser discharges are required, the Taser operator should reassess the person between Taser cycles. It also asserts that 'modern pacemakers and implanted cardiac defibrillators withstand external electrical defibrillators at least 800 times stronger than the TASER conducted energy pulses'.<sup>7</sup>

The Taser training suggests that events leading up to a sudden unexpected death are frequently set in motion hours, days, even weeks before police are called or summoned. The common factors associated with sudden unexpected deaths are said to include:

- *Chronic/toxic drug use*
- *Pre-existing heart conditions*
- *Obesity and poor cardiovascular condition*
- *Diabetes and other pre-existing diseases*
- *Protracted physical struggle*
- *Exhaustive mania/metabolic acidosis*
- *Agitated/excited delirium*
- *Positional/Restraint/Compressive asphyxia.<sup>8</sup>*

Officers are advised to be aware of warning signs indicating that a person may need immediate medical assistance due to pre-existing conditions, possible drug overdose, cocaine psychosis or excited delirium. These warning signs include:

- *Bizarre or violent behaviour*
- *Signs of overheating/profuse sweating*
- *Disrobing*
- *Violence toward/attacking glass, lights, and reflective surfaces*
- *Superhuman strength and endurance*
- *Impervious to pain – self-mutilation*
- *Disturbances in breathing patterns or loss of consciousness*
- *Complaints of respiratory difficulty.<sup>9</sup>*

The training also discusses positional asphyxia (i.e. when the position of a person's body interferes with their ability to breathe) and strategies that would reduce the risk of positional asphyxia.

### **Effectiveness of a Taser**

The NSWPF Taser training advises that the distance between the two Taser probes should be at least four inches (10.16cm) for increased effectiveness. Officers are trained to recognise when a Taser use does not appear to be effective. In particular, the electrical current of the Taser is loud when used on practice targets, but is relatively quiet when used on a person. This means that the Taser is likely to be ineffective when the electrical current is loud during field use and the person does not seem to be incapacitated. Officers are also instructed to evaluate the effectiveness of a Taser application by paying attention to a person's reaction. A lack of reaction or a lack of change in behaviour could indicate that the Taser application was ineffective. The training suggests that officers should consider the following tactical options – reloading the Taser cartridge and targeting a different area, using the Taser in drive-stun mode with a cartridge in place, or considering other force options.

Officers are advised that the Taser may be of limited effectiveness for a number of reasons. These include if the person is wearing loose or very thick clothing, one or both probes missed, the person has low nerve or muscle mass, the spread of the probes is too narrow, the wires attached to the probes break or the Taser user made an error in operating the Taser.

The training suggests that if one of the probes missed or if the spread of the probes is too narrow, the Taser operator should then consider using the Taser in drive-stun mode. If only one probe is attached to a person, applying the Taser in drive-stun mode on the person with the cartridge still attached will complete the circuit and cause Neuromuscular Incapacitation (NMI).

It is noted that the leading causes of ineffective Taser applications in probe mode are misses and disconnection from clothing. Narrow spread between probes has also limited Taser effectiveness. It is stressed that officers need to 'always be prepared to discharge a second cartridge, perform a drive-stun follow up, or resort to another force option'.<sup>10</sup>

The training states that no single weapon or technique is effective at all times, and that both the Taser and the cartridges can be damaged or malfunction. Officers are reminded that they need to 'always have a backup plan for the use of alternative tactical options'.<sup>11</sup>

### ***Taser use in drive-stun mode***

The Taser training notes that using the Taser in probe mode is more desirable than using it in drive-stun mode. This is because it is more effective, can be applied from a safer distance, usually requires fewer cycles and results in fewer injuries. Officers are reminded that applying a Taser in drive-stun mode is to be considered only in exigent circumstances, because it causes pain only instead of NMI.

Officers are instructed that it is not considered NSWPF policy to apply the Taser in drive-stun mode without the cartridge. If a Taser application in drive-stun mode is ineffective, the Taser operator should 'evaluate [the] location of [the] drive-stun, consider an additional cycle to a different pressure point, or consider alternative force options'.<sup>12</sup>

### ***The role of backup officers***

According to the Taser training, an officer who is at the scene and not operating the Taser is to act as a backup officer. The role of a backup officer is to move in and control the person who is being subjected to the five second electrical charge from the Taser, when it is reasonably safe to do so. It is stressed that the backup officer must always listen to the commands given to them by the Taser operator. Officers also learn that certain individuals may not be able to comply with verbal commands following a Taser cycle – for example, if they are intoxicated, emotionally disturbed or suffering from excited delirium.

Each Taser cycle is to be used as a 'window of opportunity' to control a person or apply handcuffs while the person is incapacitated by the Taser cycle. This may eliminate the need for multiple Taser cycles. Officers are also advised to consider having other reasonable and appropriate force options available.

### ***When medical attention is required***

Officers are instructed that once a person is under control or handcuffed, they have to evaluate the person's need for medical attention for any underlying chemical or mental conditions observed. They are reminded that the assistance of ambulance officers must be obtained after any Taser use in probe or drive-stun mode. They are also instructed to closely monitor a person for injuries after any Taser application and ensure that there is increased supervision over the person if they are detained in a cell.

## **4.1.2 Taser training – written test**

At the end of the PowerPoint presentation, the officers take an open-book written test. The test consists of 25 multiple-choice questions and one additional question requiring the officers to identify the parts of the X26 Taser. More than half of the questions in the test (14 out of 26 questions) relate to technological, electrical or medical issues. The test also includes:

- one question on the NSWPF criteria for Taser use
- one question about when the Taser should be armed
- one question on situations in which Tasers should not be used
- one question about the preferred target zone
- three questions about the effectiveness of the Taser
- one question about risk assessment in high risk incidents

- two questions about the role of the backup officer
- two procedural questions – one on testing the weapon and another on what constitutes hazardous practices.

The minimum score required to pass the written test is 80%.

### 4.1.3 Taser training – practical component

The practical Taser training component covers the handling of the weapon, including firing training cartridges as well as live cartridges. The officers are instructed on six aspects of handling a Taser – preparing for a shift, loading and unloading the Taser, drawing and holstering the weapon, discharging the Taser, safety issues and storing the weapon. The NSWPF advised that their policy prohibits the voluntary exposure of officers to the effects of the Taser.

At the end of the practical training session, officers are assessed on their ability to deal with a reality-based scenario. Each officer is given some background information about the scenario immediately before the role play. They are required to demonstrate their ability to:

- draw and arm the Taser
- maintain an appropriate distance from the person involved to ensure maximum Taser effectiveness
- issue verbal commands as well as a verbal warning of Taser use
- fire the Taser probes
- instruct the backup officer
- gain control of the situation.

During the practical session, officers are told to communicate with the person – while drawing the Taser, during the Taser cycle and after the discharge of the weapon. They are then required to demonstrate their communication skills during the practical skills assessment.

The NSWPF advised that officers who are not yet authorised to use a Taser can obtain information about Tasers from a Taser education package, the Taser PowerPoint presentation and other educational resources on the NSWPF intranet.

### 4.1.4 Taser remediation training

The Taser SOPs define hazardous practice as ‘any action or inaction demonstrated by the Taser user that falls outside of these standard operating procedures or their intent, requiring remedial action’.<sup>13</sup> An accredited Taser user who commits a hazardous practice must report the hazardous practice to the Commander (or his or her delegate), who may suspend the Taser user from using the weapon. A Taser user who is suspended from Taser use will be required to undertake remediation training as soon as possible. This should occur no later than one month from the date on which the remediation notice was issued. The remediation training consists of extracurricular training activities with a Taser instructor that should at least address the issues that caused the Taser user’s suspension.

### 4.1.5 Annual Taser reaccreditation training

The NSWPF conduct annual mandatory training for all police officers. Section 2.6 of the Taser SOPs requires that all qualified Taser users be recertified annually during mandatory training. Failure of a qualified Taser user to be recertified during annual mandatory training will result in a loss of accreditation.

In the 2011–12 training year, the mandatory training included:

- Taser review (theory) – to be undertaken by all police officers, including those who have not yet been accredited as Taser users.
- Taser review (practical) – to be completed by all accredited Taser users.
- Isolation test (Taser) which is testing the use of a Taser in isolation, without other tactical options – to be completed by all accredited Taser users.

The Taser reaccreditation training consists of a 75 minute lecture and a two hour practical training session. It is a condensed version of the Taser user accreditation package, but does specifically emphasise areas that the NSWPF consider to be high risk. These areas include preferred target zones, hazardous practices and considerations related to such practices, and the correct procedure for testing the weapon. The reaccreditation training also specifically covers the role of backup officers (regardless of whether they are trained in the use of Tasers) to reinforce the importance of securing the person while he or she is under NMI.

During our attendance at the Taser reaccreditation training, we observed that there was an emphasis on alternative tactical options to Tasers – as well as considerable discussion about the factors relevant to assessing the appropriate tactical options in a situation. A number of factors were discussed and relevant examples provided. These included the physical characteristics of both the officer and the person involved, the mental condition of the

person, the number of people involved, whether the people involved were affected by drugs and/or alcohol, the presence of weapons, whether the officer has already been injured, and the danger to the public.

Several issues identified during field use have been addressed through the reaccreditation training – such as the fact that some backup officers have not moved in to restrain or secure the person during a Taser cycle, some Taser operators have obscured the Taser Cam while deploying the weapon, and some have pointed the Taser to the ground instead of aiming it at the person.

During mandatory training in 2011–12, all NSWPF officers were required to perform the role of a backup officer in a reality-based scenario involving Taser use. The Taser users were tested on correct techniques in using the Taser, as well as their communication with the Taser subject and the backup officer throughout the scenario. Officers performing the role of backup officers were required to move in to secure and handcuff the person while they were being subjected to a Taser cycle, to place the person in a recovery position, and to communicate with them.

#### 4.1.6 Updating Taser training

The NSWPF regularly incorporates new information into their Taser training materials and courses. This information is obtained from Taser International, field experiences of NSWPF officers, police in other Australian jurisdictions, national and international conferences related to Taser use,<sup>14</sup> literature reviews and internet searches.

##### *Information from Taser International*

The NSWPF advised that Taser International has provided them with training bulletins, as well as information on equipment testing procedures, deaths related to arrests, legal outcomes and international research.

In October 2009, Taser International released a training bulletin that stated:

*Researchers have been able to demonstrate changes in heart rate and rhythm consistent with cardiac pacing and, in some cases, ventricular fibrillation (VF) in small swine, an arrhythmia that can be fatal without intervention, and have concluded that the close distance between the ECD dart and the heart is the primary factor in determining whether an ECD will affect the heart. The threshold for VF has been estimated to be 12.6 times that for cardiac pacing. This risk is judged to be extremely low in field use. In order to increase the safety margin and since field experience shows that ECD discharges are effective when deployed to the large muscles of the back, abdomen, legs and pelvic triangle, users should aim for the back or (when practical) toward the mid lower abdomen and avoid intentionally targeting the chest area with probe applications to increase effectiveness and avoid the remote potential risk of cardiac effect.<sup>15</sup>*

Based on this medical research, Taser International revised their product warnings to include the following specific warning:

**Sensitive Body Part Hazard.** *When possible, avoid intentionally targeting the ECD on sensitive areas of the body such as the head, throat, chest/breast, or known pre-existing injury areas without legal justification. The preferred target areas are the lower center mass (below chest) for front shots and below the neck area for back shots.<sup>16</sup>*

Following the rollout of Tasers in October 2008, the Taser SOPs provided that:

- 5.7 When targeting the subject, the integrated sights should be aligned with:*
- a. preferred target area - aim for the centre of seen target mass of the back (where possible avoid targeting the head)*
  - b. secondary target area – aim for lower torso front (where possible avoid targeting the face or groin areas).<sup>17</sup>*

The NSWPF also incorporated the advice from Taser International on preferred target zones and the need to avoid sensitive areas of the body into their 2009–10 Taser accreditation training and the 2010–11 Taser reaccreditation training. The training material also stated that officers should avoid targeting the head, face, throat and genitals. However, it did not specifically refer to the need to avoid targeting the 'chest/breast' or 'known pre-existing injury areas' as stated in the product warnings issued by Taser International.

In July 2012, the Taser SOPs were amended to include the advice that officers should also avoid targeting the Taser at the chest area where possible.<sup>18</sup>

##### *Information from field experiences of NSWPF officers*

The NSWPF advised that – to ensure that training manuals and policies are updated as operational issues arise – the Taser Executive Committee (TEC) regularly reviews Taser incidents and receives reports on training issues. If the committee decides to amend Taser training, they also monitor and evaluate the implementation of any amendments

made. The Commander, Operational Skills, Education and Training Command – who is a member of the TEC – is responsible for ensuring that any recommendations for changes to the Taser SOPs are incorporated into Taser training. In addition, a Taser-accredited weapons trainer sits on each Region TRP responsible for reviewing Taser incidents. The weapons trainer shares any issues arising from the TRP review with other weapons trainers through the chain of command, and also assists in improving practices in the field.

The NSWPF do not have a formal process for officers to exchange information about Taser use. Information sharing occurs informally in the workplace, plus officers can exchange information on Taser use through the NSWPF's intranet.<sup>19</sup>

The NSWPF advised us that they have made numerous amendments to the Taser training. These include, for example, awareness of the need to avoid over-reliance on the Taser and extended or repeated applications of the weapon, the need to use force that is reasonable in the circumstances, issues related to vulnerable people, and the risk of injury resulting from a fall.

## 4.2 General training for NSWPF recruits and officers

### 4.2.1 Training recruits at the NSW Police Academy

Police are trained on the use of Tasers within the broader context of use of force. Topics of particular relevance include:

- the NSWPF's TOM
- the concepts of use of force and reasonable force
- the use of communication, negotiation and conflict resolution skills as a tactical option
- appropriate techniques in handling situations involving vulnerable people.

All NSWPF recruits must complete one of three approved education and training programs. The most popular program is the Associate Degree in Policing Practice jointly offered by the NSWPF and Charles Sturt University. Initially, officers doing this course are required to complete 27 weeks of full-time study at the NSW Police Academy and 80 hours of field placement at a police station. If the recruit is offered employment with the NSWPF, they complete further studies by distance education while working full time as a probationary constable.

#### *NSWPF's Tactical Options Model*

The NSWPF's TOM is mainly covered in four of the 18 subjects within the Associate Degree in Policing Practice, but is also reinforced throughout the course by simulated training exercises. These exercises require recruits to choose between tactical options and, in some instances, transition from one tactical option to another.

The course addresses the concepts of the use of force and reasonable force, as well as the legal basis for using force. Recruits are taught that an officer who uses force beyond their authority may be committing an offence. They are also trained to take into account various considerations in evaluating the appropriate use of force, such as the mental health of the people involved.

#### *Reasonable use of force*

Use of force is addressed throughout the curriculum for the Associate Degree in Policing Practice. The legal basis for use of force is also specifically discussed in relation to the powers of arrest and cautioning, the definition of coercive force, justifications for using coercive force, and elements of excessive force. The concept of use of force that is proportionate to each situation is also reinforced throughout operational safety training. Recruits are required to demonstrate their understanding of the concept of use of force through role plays in several subjects.

#### *Using communication, negotiation and conflict resolution skills*

The use of verbal communication as a tactical option is emphasised in a number of subjects within the Associate Degree in Policing Practice. It is also one of the criteria against which recruits are assessed when they undertake simulated training scenarios as part of their final assessments.

Communication, as an integral part of the NSWPF's TOM, is dealt with in a number of subjects and is continually emphasised throughout recruit education and training exercises. In discussing operational safety and tactics, communication is highlighted as a constant element present in all eight tactical options. In simulated policing, recruits are taught that communication is a continual process that is expressed both verbally and non-verbally and allows the officer to maintain control.

In addition, there are discrete subjects within the Associate Degree in Policing Practice that address communication. The subject 'Communication in Policing' covers communication skills, conflict management and resolution – both generally and specifically for the policing environment. It also covers general communication strategies and skills in dealing with vulnerable people including children, people from different cultural backgrounds and people in mental health crisis.

### ***Dealing with situations involving people in mental health crisis***

Four subjects within the Associate Degree in Policing Practice discuss vulnerable people and how officers can handle situations involving them. These subjects address communication skills and the concept of vulnerability within the population.

On the issue of mental illness, recruits receive instructions on the definition of mental illness, symptoms of a mental illness, police powers to apprehend and detain people suffering from a mental illness, and the commission of offences by people with a mental illness.

#### **4.2.2 Annual mandatory training for NSWPF officers**

The NSWPF's annual mandatory training for all police officers is divided into three areas – use of firearms, defensive tactics, and mandatory continuing police education. Each training year may have a different focus based on operational needs. In addition to Taser training, the mandatory training in the 2011–12 training year also included sessions on use of force (theory) and reality-based scenarios.

The training session on the theory of use of force covers the NSWPF's TOM as well as when it is appropriate, and when it is not appropriate, to use the officers' arms and appointments – including firearms, batons, Oleoresin Capsicum (OC) spray, Tasers and handcuffs. The session also discusses considerations related to high risk situations and mandatory reporting of use of force in COPS.

The training includes role playing in a reality-based scenario to test the officers' situational awareness, actions and objectives in resolving the scenario. Officers are required to demonstrate their ability to use the appropriate tactical options, have regard to their own safety as well as the safety of others, gain control of the person, manage other people present at the scene and take appropriate actions after the incident has been resolved, such as contacting ambulance services.

#### **4.2.3 Mental health training for NSWPF officers**

The NSWPF Mental Health Intervention Team (MHIT) began as a two year pilot program in July 2007. The aims of the program included:

*Reducing the risk of injury to police and mental health consumers when dealing with mental health related incidents;*

*Improving 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, and;*

*Reducing the time taken by police in the handover of mental health consumers into the health care system.<sup>20</sup>*

An intensive four day MHIT education package was developed in consultation with mental health experts. The package provides specialist mental health training to police officers and covers:

- different types of mental illnesses
- how to identify behaviours indicative of mental illness
- different tools for dealing with people experiencing a mental health crisis – such as communication strategies, risk assessment, de-escalation and crisis intervention techniques
- an understanding of the *Mental Health Act 2007*, as well as the Memorandum of Understanding between the NSWPF, Ambulance Service of NSW and the NSW Department of Health.

Between February 2008 and March 2009, this education package was delivered to 40 officers from three local area commands (LACs) at Eastern Beaches, Penrith and Tuggerah Lakes. Officers who completed the training became accredited specialist Mental Health Intervention Officers.

The NSWPF engaged Charles Sturt University to evaluate the program. The evaluation report found that the pilot program had successfully achieved its aims by:

- reducing the number of injuries to people suffering a mental illness
- increasing officers' understanding of de-escalation techniques
- improving the confidence of officers in dealing with mental health related events
- improving inter-agency collaboration
- reducing the amount of time spent on jobs involving the involuntary admission or transport of patients to mental health facilities.<sup>21</sup>

However, the report found that there was room for improving the MHIT training. In relation to Taser use, the report recommended that:

*Whilst the NSW MHIT model compares favourably with established best practice for police training in interacting with mental health consumers, we recommend that NSWPF consider expanding the MHIT training in the following manner:*

...

*To address the issue of Tasers explicitly in the MHIT training, and consider inclusion of a mental illness awareness module in the Taser training program to mitigate concern that Tasers may be employed as a de-escalation device in lieu of negotiation and/or communication skills.<sup>22</sup>*

The report noted that:

*Linking Taser training to mental health training is a politically charged issue for NSW Police Force, but in light of data suggesting that a high proportion of individuals who are Tasered have a mental illness, it must be considered. Whilst it is important that the two issues retain a degree of separation to avoid any allegation of police being trained to Taser mental health consumers, logic suggests that by giving officers MHIT training, they may be inoculated against the accusation (and perhaps practice) that Tasers are used as a result of misunderstanding mental health consumers' behaviour. We suggest that Taser trained general duties (GDs) officers are a priority target group for the MHIT training as it rolls out across the state in the first instance.<sup>23</sup>*

The MHIT pilot program was considered a success and the MHIT was permanently established on 1 July 2009.<sup>24</sup> Initially, the MHIT training was provided to officers of all ranks from the three LACs participating in the pilot program. The training was then provided to Mental Health Contact Officers, who were inspectors from each of the 80 LACs across NSW. The course is now open to all general duties officers performing first response duties, with preference given to sergeants and constables with at least two years policing experience in LACs that have a high incidence of interactions with people in mental health crisis.

The NSWPF aim to deliver the four day MHIT training package to at least 10% of all general duties officers by the end of 2015, which means training approximately 300 officers per year. As of December 2011, 670 NSWPF officers have completed the training.<sup>25</sup> In addition, the NSWPF is considering a proposal for all general duties officers to undertake a one day mental health training program. This program is intended to be rolled out over a two year period to supplement the four day MHIT course and the existing Taser training.<sup>26</sup>

The NSWPF advised that:

*We regard training in mental health issues as a priority for police and a significant aid to officers in determining the most suitable way to recognise and resolve situations in which mentally ill people pose a risk to themselves or others. The Commander of the Mental Health Intervention Team has been a member of the Taser Executive Committee, the NSW Police Force's peak body for review of Taser use, since its inception.<sup>27</sup>*

The NSWPF stated that they recognise the importance of officers being aware of mental health issues when using Tasers and other tactical options. Their TOM includes a list of special circumstances for officers to take into account when deciding which tactical options are appropriate. These special circumstances include the mental state of the person, and whether he or she was affected by drugs and/or alcohol at the time.<sup>28</sup>

Regarding the implementation of the recommendations related to Tasers in the evaluation report by Charles Sturt University, the NSWPF stated:

*It was determined that Taser use and training should be based primarily on the situation confronting the officer (i.e. imminence of the threat of physical harm) rather than characteristics (mental health or other) of the person posing the threat. This is not to say that such characteristics are unimportant but rather that given the imperative to introduce Tasers, there was a need to initially train officers in the fundamentals of this new use of force option. With Taser training now well advanced, the NSW Police is exploring how Taser use can be better contextualised. The proposed one day mental health training program ... is an example of how the NSW Police Force is looking to enhance the capabilities of its frontline officers.<sup>29</sup>*

The NSWPF further advised that although Taser use is not formally included in the MHIT training, it is dealt with broadly in a 30 minute operational safety lecture. If the proposal for all general duties officers to undertake a one day mental health training program is approved, officers would be instructed on how mental health issues relate to critical incidents and the use of Tasers and other tactical options. The NSWPF noted that since a one day program would require fewer resources than the four day MHIT program, it could reach a greater percentage of officers.

## Endnotes

1. Letter from Assistant Commissioner Alan Clarke, NSW Police Force, to Bruce Barbour, Ombudsman, NSW Ombudsman (in response to a notice issued under s.18 of the *Ombudsman Act 1974*), 13 December 2010.
2. NSWPF, *User Certification Course TASER® X26 Electronic Control Device*, version 14.2–17 (NSWPF – version 6.2), 2011, p. 81.
3. *ibid.*, p. 128.
4. *ibid.*, p. 108 (emphasis in original).
5. *ibid.*, p. 77.
6. *ibid.*, p. 71.
7. *ibid.*, p. 20.
8. *ibid.*, p. 113.
9. *ibid.*, p. 116.
10. *ibid.*, p. 132.
11. *ibid.*, p. 131.
12. *ibid.*, p. 126.
13. NSW Police Force, *Standard Operating Procedures for use of Electronic Control (TASER) Devices by the NSW Police Force*, version 1.18, (approved for release July 2012), section 1.21, p. 11.
14. Examples of conferences attended include the Police Executive Research Forum held in the USA during July 2010, and the Australasian Conducted Energy Weapon Forum on the Sunshine Coast in October 2010.
15. Taser International, *Training Bulletin 15.0 Medical Research Update and Revised Warnings*, version 2.0, 12 October 2009, p. 8.
16. Taser International, *Training Bulletin 15.0 Medical Research Update and Revised Warnings*, version 2.0, 12 October 2009, attachment—Taser International, *TASER® X3™, X26™, and M26™ ECD Warnings, Instructions, and Information: Law Enforcement*, 30 September 2009, p. 4.
17. NSW Police Force, *Standard Operating Procedures for use of TASER—General Duties Electronic Control Device*, version 1.15, September 2008, section 5.7, p. 14; NSW Police Force, *Standard Operating Procedures for use of Electronic Control (TASER) Devices by the NSW Police Force*, version 1.16, 1 July 2010, section 5.7, p. 16; NSW Police Force, *Standard Operating Procedures for use of Electronic Control (TASER) Devices by the NSW Police Force*, version 1.17, 4 December 2010, section 5.7, p. 16.
18. NSW Police Force, *Standard Operating Procedures for use of Electronic Control (TASER) Devices by the NSW Police Force*, version 1.18, (approved for release July 2012), section 6.6, p. 18.
19. Letter from Assistant Commissioner Alan Clarke, NSW Police Force, to Bruce Barbour, Ombudsman, NSW Ombudsman (in response to a notice issued under s.18 of the *Ombudsman Act 1974*), 13 December 2010.
20. NSW Police Force, *NSW Police Force's Award Winning Mental Health Intervention Team Training* (August 2011), last updated 14 October 2011 <[www.police.nsw.gov.au/community\\_issues\\_mental\\_health](http://www.police.nsw.gov.au/community_issues_mental_health)> accessed 30 March 2012, p. 2.
21. Herrington, V. et al, *The Impact of the NSW Police Force Mental Health Intervention Team: Final Evaluation Report*, Charles Sturt University Centre for Inland Health Australian Graduate School of Policing, December 2009.
22. *ibid.*, p. 5 (emphasis in the original has been removed).
23. *ibid.*, p. 87.
24. NSW Police Force, *NSW Police Force's Award Winning Mental Health Intervention Team Training* (August 2011), last updated 14 October 2011 <[www.police.nsw.gov.au/community\\_issues\\_mental\\_health](http://www.police.nsw.gov.au/community_issues_mental_health)> accessed 30 March 2012.
25. Letter from Acting Deputy Commissioner Field Operations Alan Clarke, New South Wales Police Force, to Michael Gleeson, Manager Police Division, NSW Ombudsman, 20 January 2012. Additionally, 31 NSWPF civilian employees and employees of interstate law enforcement agencies have completed the course.
26. Letter from Acting Deputy Commissioner Field Operations Alan Clarke, New South Wales Police Force, to Michael Gleeson, Manager Police Division, NSW Ombudsman, 20 January 2012.
27. *ibid.*, p. 1.
28. Letter from Assistant Commissioner Alan Clarke, NSW Police Force to Bruce Barbour, Ombudsman, NSW Ombudsman (in response to a notice issued under s.18 of the *Ombudsman Act 1974*), 13 December 2010.
29. Letter from Acting Deputy Commissioner Field Operations Alan Clarke, New South Wales Police Force, to Michael Gleeson, Manager Police Division, NSW Ombudsman, 20 January 2012, p. 2 (emphasis in the original).

## Chapter 5. Review and accountability requirements for Taser use by the NSWPF

Although the use of Tasers by police can have a number of potential benefits, it also involves the risk of death, injury and misuse. The principal ways to minimise the risk of misuse are to use the weapon's inbuilt accountability features (which record certain information about each Taser use), and to have appropriate procedures in place for recording, reporting, monitoring and reviewing Taser use.

Currently, there is a multilayered process for reviewing Taser use by New South Wales Police Force (NSWPF) general duties officers. This process includes:

- the recording and reporting of Taser use by the officers involved
- the review and assessment of all incidents involving Taser use by a Taser Review Panel (TRP) – a region-based body specifically set up to perform this function
- a recently developed debrief process to ensure that Taser operators receive feedback on their use of the Taser
- oversight of the Taser review process and the monitoring of trends in Taser use and complaints by the Taser Executive Committee (TEC) – a purpose-built committee consisting of high ranking NSWPF officers
- oversight by the Ombudsman through the complaint handling system.

The information in this chapter is primarily based on:

- the NSWPF's response to our notice to produce information and documents<sup>1</sup>
- other correspondence from the NSWPF providing information
- the Taser Standard Operating Procedures (Taser SOPs)
- the Taser Review Panel Standard Operating Procedures (TRP SOPs).

### 5.1 Inbuilt accountability mechanisms

Tasers used by NSWPF general duties officers have several inbuilt accountability features that allow their use to be monitored and reviewed. These are:

- A Taser Cam – a recording device fitted to the weapon to capture audio and visual information before, during and after Taser use.
- A dataport download facility – this allows certain information about each Taser use stored on the data chip within the weapon to be downloaded.
- Anti Felony Identification Device (AFID) tags – these are confetti-like tags containing the serial number of the Taser cartridge that are released each time the Taser is discharged, so that the Taser cartridge used can be identified. NSWPF station records can then be used to match the cartridge with the Taser and consequently the Taser operator.

#### 5.1.1 Taser Cam

The Taser Cam is an audiovisual recording device that can be fitted to selected models of the Taser. The recorder is activated when the safety switch is in the 'armed' position (that is, the Taser is ready to fire) and allows footage before, during and after the use of the Taser to be recorded and downloaded.<sup>2</sup> When the battery is fully charged, the Taser Cam can store 90 minutes of video and audio information. However, after 20 minutes of continuous recording, the Taser will stop recording and enter into 'sleep mode' automatically.<sup>3</sup>

The X26 Tasers issued to NSWPF general duties officers are fitted with Taser Cams. Since the Taser SOPs require that the Taser be armed each time it is drawn to cover a subject, the Taser Cam is activated whenever the Taser is used – whether in draw and cover, probe or drive-stun mode.

Under the Taser SOPs, officers are required to download the audiovisual data recorded by the Taser Cam immediately upon their return to the police station if a Taser has been used outside the police station or accidentally discharged. If a critical incident has been declared, the downloading of the Taser footage has to be supervised by an independent senior officer.

All Taser Cam footage is stored in the NSWPF VIEW Imagery Management System (IMS).<sup>4</sup> The VIEW IMS is an enterprise-wide system for uploading, managing and storing digital video and still images, which is designed to operate within e@gle.i. Under the VIEW IMS, officers directly upload the Taser Cam data into IMS, but are unable to view or retain a copy of the footage. The downloaded Taser Cam data is managed on the e@gle.i system. Access to the system is restricted to the Deputy Commissioner (DCOP), Field Operations, and other approved people. Officers

can only obtain copies of Taser Cam recordings for evidentiary or investigative purposes if this is authorised by the Local Area or Unit Commander. The Taser Cam data stored on each Taser is also downloaded each month, even if the Taser has not been used operationally during that month.

Footage from a Taser Cam can be used:

- to help find out what happened during an incident and why the Taser was used – if the recollections of events by officers at the scene differ
- as evidence during proceedings relevant to the incident, such as criminal proceedings against the subject or misconduct allegations against police
- to help determine if the Taser SOPs were complied with and identify areas requiring further education and training
- as a training aid – to demonstrate good practice as well as inappropriate use of the weapon.

Although the Taser Cam is an important tool that enhances the accountability and transparency of Taser use, it does have several limitations:

- Because the Taser Cam is located at the base of the Taser handle, the camera lens can be blocked by an officer's fingers.
- When the Taser is used in drive-stun mode, the visual images are unclear because the Taser Cam is too close to the subject. It is therefore a very limited accountability measure or control for drive-stun uses.
- The model of the Taser Cam that can be fitted to the X26 Taser can only record video in black and white at 15 frames per second and at a relatively low resolution (640 x 480 resolution).<sup>5</sup> Although the Taser Cam can record in low light conditions, the quality of the video and audio data can be compromised by poor lighting conditions and a noisy environment.

### 5.1.2 Dataport download facility

There is a data chip within the Taser that records the date, time, duration of application (length of time the trigger is depressed), and the temperature and battery status each time the Taser is used in probe or drive-stun mode. The information recorded (often called the firing data or shot data) can be downloaded through the Taser dataport onto a local computer to verify officers' reports about Taser use and gather statistics.<sup>6</sup> The NSWPF download the Taser Cam and firing data onto the VIEW System.

If a Taser has been used in probe or drive-stun mode, a weapon summary report is generated from the data and log files. Between August and November 2010, weapon summary reports were sent to the chair of the TEC for review.<sup>7</sup> These reports are used to establish the actual duration of Taser cycles, as well as the date and time of firing. We were advised that since December 2010, shot data has been uploaded into the e@gle.i system, which is available to TRPs.<sup>8</sup>

### 5.1.3 AFID tags

When a Taser cartridge is discharged, the Taser releases 20–30 confetti-like AFID tags.<sup>9</sup> Each tag contains the barcoded serial number of the Taser cartridge from which it was discharged,<sup>10</sup> which allows each cartridge use to be traced.<sup>11</sup>

AFID tags were part of the Taser equipment supplied by Taser International to the NSWPF before the Taser Cam was introduced in NSW.<sup>12</sup> We were advised that the NSWPF does not routinely collect AFID tags because they consider that the existing recording processes are appropriate, and most incidents involve either one Taser or one person of interest only. They consider AFID tags to be a secondary source of evidence and use them only in exceptional circumstances – that is, in critical incidents where the Taser operator is not immediately identifiable or multiple Tasers and multiple victims were involved. At the time of writing, there has been only one Taser use incident where AFID tags were collected and reviewed.

## 5.2 Internal monitoring and review processes

### 5.2.1 Recording Taser access

Each command maintains a Taser Register that tracks the movement of Tasers and Taser cartridges in and out of storage within the command. Officers must make an entry in the Taser Register when they retrieve a Taser and Taser cartridges from the police station at the beginning of their shift, and when they return the Taser and cartridges to the storage area at the end of their shift.

Officers are prohibited from handing over a loaded Taser to another officer outside the police station, except in exigent circumstances. If they have been handed a Taser by another officer outside the station, they must fill in the Taser Register at the earliest possible opportunity after returning to the station.

For each Taser, the Taser Register records information about:

- The issue of the Taser – when and by whom the Taser was issued to the officer who received the Taser, the serial number of the cartridges issued and whether a spark test has been performed.
- The return of the Taser – the date and time the Taser was returned to storage, the serial number of the cartridges returned and to whom the Taser was returned.
- The operational use of the Taser – the date and time the Taser was used, the name of the Taser operator, the mode of Taser use (i.e. draw and cover, probe or drive-stun mode), the serial number of the cartridge(s) used (if probes were deployed) and the relevant Computerised Operational Police System (COPS) event number.
- The download of the Taser Cam data and firing data – when and by whom the data was downloaded.
- The auditing process by supervisors and duty officers – when and by whom the audit was undertaken, and confirmation that a computer file has been created.<sup>13</sup>

### 5.2.2 Recording and reporting Taser use

If a Taser has been used in probe or drive-stun mode, the Taser operator must inform their direct supervisor of the situation immediately.<sup>14</sup> When the subject is being placed in custody, the arresting officer must notify the custody manager that a Taser has been used on the subject and specify where the probes made contact. This information is then recorded in the custody records on the COPS.

When they return to the police station or unit, Taser operators must report any Taser use in draw and cover, probe or drive-stun mode by:

- creating an event record on COPS – that must identify the type of incident as ‘Taser use’ and record the tactical options used during the incident in the ‘use of force’ field within the record
- preparing a Taser Situation report (Taser Sitrep) if the Taser has been used in probe or drive-stun mode.<sup>15</sup>

The COPS event and Taser Sitrep must identify the mode of Taser use. Any hazardous practice in the use of a Taser – including, for example, accidental discharge while testing the weapon – must also be recorded in COPS and reported to the Local Area or Unit Commander. They will ensure that appropriate action is taken where required. A Taser operator who has committed a hazardous practice may be suspended from using a Taser and be required to undertake remediation training.

All COPS events relating to Taser use are sent to the Region/Specialist Command Professional Standards Manager (PSM), the Commander, Operational Skills and the DCOP, Field Operations.

The Taser Sitreps are first submitted to the duty officer or supervisor for verification before being sent to:

- the Region Commander for the policing region in which the Taser use occurred, or the Unit Commander for specialist police
- the Duty Operations Inspector, VKG (police radio operations), Sydney
- the Operations Response Unit, Officer of the Commissioner
- the Media Unit, Public Affairs.

### 5.2.3 Reviewing Taser use

Before the rollout of Tasers to general duties police, reviews of Taser use were done by the Tactical Operations Unit and Public Order and Riot Squad Commanders as required.

During the first phase of the rollout of Tasers to NSWPF general duties officers working as supervisors and duty officers (October 2008 – November 2009), all Taser uses by general duties police were reviewed by the DCOP, Field Operations. Since the second phase of the Taser rollout began on 1 December 2009, DCOP, Field Operations, ceased the review of all Taser uses and this function devolved to Region TRPs – with oversight from the TEC. However, the DCOP, Field Operations, may personally ask to review specific incidents.

#### **Region Taser Review Panels**

There are nine TRPs, one for each of the policing regions<sup>16</sup>, and one each in State Crime Command, Police Transport Command and the Major Events and Incidents Group. They are governed by the TRP SOPs.<sup>17</sup> TRPs are responsible for reviewing all operational Taser use in draw and cover, probe and drive-stun mode – as well as all hazardous practices that occur within their policing region – to ensure that Taser use complies with training and the Taser SOPs.

Each TRP consists of:

- the Region Commander
- the Region PSM
- the Region Operations Manager or equivalent
- a senior Operational Safety Instructor with Taser training accreditation.

However, TRP meetings can proceed with only the Region Commander and the Region PSM in attendance.

Each TRP meets and reports to the TEC monthly. The TRPs must ensure that all operational Taser uses within their policing region are reviewed within 72 hours of the deployment if possible. The Region Commander must personally review all Taser uses in probe or drive-stun mode that involve a person of interest, whereas the PSM may review Taser use in draw and cover mode and hazardous practices on behalf of the TRP.

Reviews of Taser use by the TRP involve an analysis of the available records – including the COPS record, the Sitrep and the Taser Cam footage. After analysing the records, the TRP makes a determination by applying the Taser SOPs to the circumstances.

The TRP SOPs provide for making records of the review process, including the Regional Taser Review Record and minutes of TRP meetings. The Regional Taser Review Record is completed with information such as incident details, type of Taser use, quality of Taser Cam vision and the decision of the TRP. These records are scanned into e@gle.i which can then be accessed by the TEC.

The final section of the Regional Taser Review Record contains information about the decision of the TRP.<sup>18</sup> The decision can include any determination, comment or recommendation that is appropriate, but in most cases the TRP will reach one of the following three conclusions:

- the Taser usage is in accordance with SOPs/NFA (no further action)
- the incident should be referred to the local area command (LAC) to obtain more information
- the incident should be referred to the Complaints Management Team, to be dealt with as a complaint under Part 8A of the *Police Act 1990*.

Recent changes to the Taser SOPs mean that TRPs must state which of the criteria to discharge Taser was used in the incident under review. However, the TRPs now have the discretion to determine that a Taser use was a technical breach of the Taser SOPs but was 'otherwise reasonable in the circumstances'.<sup>19</sup> These changes are discussed in detail in Chapter 8.

### **Taser Executive Committee**

The TEC was established on 24 November 2008. Members of the TEC include:

- the Chair of the TEC, who is the Commander, Major Events and Incidents Group, as well as the Corporate Spokesperson on Tasers for the NSWPF
- the Commander, Public Order and Riot Squad
- the Commander, Operational Skills, Education and Training Command
- the Commander, Mental Health Intervention Team
- a representative from the Professional Standards Command.

The TEC meets monthly and reports to the DCOP, Field Operations. Before the TRPs were established, the TEC reviewed all Taser uses by general duties police at the same time as, but separately from, the DCOP, Field Operations. Since the formation of the TRPs, the TEC:

- works with the Region and Specialist Commands to ensure that all operational Taser uses and hazardous practices are recorded and reviewed
- provides governance of TRPs, ensuring they comply with their terms of reference and SOPs
- assists in the development of NSWPF Taser policies and SOPs
- reports significant Taser-related matters to DCOP, Field Operations, and provides regular progress reports
- ensures that processes are in place to capture, record and report data, intelligence and trends relating to Taser use by NSWPF general duties officers
- makes recommendations on all aspects of Tasers – including training, accreditation, deployment, storage and accountability
- monitors data on complaints and police misconduct to identify emerging trends.

### **Deputy Commissioner of Police, Field Operations**

Since 1 December 2009, DCOP, Field Operations, performs an oversight function – identifying the organisational implications of Taser use. They also provide an additional layer of scrutiny by identifying specific incidents or matters for review, requesting reviews and enforcing compliance with Taser policy and procedures.

#### **5.2.4 Debrief process**

The Taser SOPs provide that the debrief process is conducted by a Commissioned Officer and facilitated by the Region/Command PSM, using the approved debrief form at a suitable time after the Taser has been deployed. The process is conducted in relation to Taser use in probe or drive-stun mode, and by exception, draw and cover.

The NSWPF advised that the Taser debrief process started on 1 August 2012. The PSMs fill in a Taser Debrief Review Form, which lists all the issues identified during the review by the PSM and the Region Commander. The form is uploaded onto the e@gle.i system and linked to the records of that Taser use. The debrief officer uses the records relating to that Taser use to conduct and report on the debrief process.<sup>20</sup>

This debrief process is a recent addition to the framework governing the use and review of Taser use by NSWPF general duties officers. It deals with a concern we had about Taser users not receiving feedback on the appropriateness of their use and whether the situation could have been effectively dealt with by using other available tactical options. The debrief process is discussed in further detail in Chapter 8.

#### **5.2.5 Carrying, storing and maintaining Tasers**

##### **Carrying and storing of Tasers**

Tasers and Taser cartridges are stored by the NSWPF in Taser safe or storage units in police stations. The Taser SOPs provide that Tasers must be carried in NSWPF-approved holsters, preferably on the duty belt. If the Taser is carried on the duty belt, the Taser must be positioned on the officer's support side – the opposite side to where their firearm is located. Instead of carrying the Taser on their duty belt, officers may wear it on a load-bearing vest.

The Taser SOPs have an express provision on securing and storing Tasers at certain establishments or areas – such as courts, correctional institutions and the police custody areas of police stations. The provision states that if police are ordinarily required to store their firearms before entering an establishment, the same practice will apply to Tasers – unless exigent circumstances exist that may require the use of the weapon.

The *NSW Police Force Handbook* states that officers performing custody roles will not enter a custody area armed. In the chapter covering 'Arms and Appointments', the handbook states that:

*Commanders will ensure all officers performing station duties wear their arms and appointments at all times. The only exceptions are officers performing custody roles, and officers on restricted duties who have current approval not to carry (or only carry particular) arms and appointment.*<sup>21</sup>

Other LACs with custody areas may have their own guidelines about the treatment and care of people in custody.<sup>22</sup>

The NSWPF have reached an agreement with the NSW Ministry of Health for police officers to retain their Tasers when entering a secure mental health ward. This advice has now been incorporated into the Taser SOPs. A NSWPF Commissioner's Policy Notice issued in June 2012 advised officers that 'it is the NSWPF position that officers SHOULD retain their Taser with them when entering a Mental Health Facility, so as to afford them the use of the Taser as a tactical option should the need arise'.<sup>23</sup> However, officers were further advised that:

*Attending officers should consider all aspects of the Tactical Options Model for the situation including alternate means of restraint or containment. The onus to make an appropriate tactical judgement as to the use or non use of Taser resides with the individual officer. A Taser should not be used solely to make a mental health patient comply or submit to medication or treatment.*

*For the use of Taser to be appropriate inside the facility, the patient must be exhibiting behaviour that satisfies one or more of the criteria for the use of Taser ...*<sup>24</sup>

##### **Replacing and repairing Tasers**

The NSWPF Armoury is responsible for the maintenance of Tasers and Taser cartridges if they are found to be damaged or not working properly.

Minor maintenance issues are initially dealt with by a local Operational Safety Instructor. If they cannot resolve the problem, the Taser with the Taser Cam will be returned to the NSWPF Armoury and inspected by qualified technicians. The armoury will replace or repair faulty Tasers and replace damaged cartridges as required.

Taser International provide a limited 12 month warranty for X26 Tasers, Taser Cams and Taser cartridges. If a Taser is determined to be defective and no exclusion from liability applies, Taser International will replace or repair the product.<sup>25</sup>

The Western Australia Police conducted a review of their Taser use and identified a number of concerns related to retaining Tasers past the manufacturer's warranty and the four year out-of-warranty repair and maintenance contract. These concerns included:

- whether Tasers can be relied on to function properly outside the contract period
- occupational health and safety issues related to using Tasers that are not warranted to operate correctly
- liability for Western Australia Police if a Taser outside the warranty period was found not to have been functioning properly and had been associated with injury or death
- the detection of when a Taser has become unsafe or unreliable.<sup>26</sup>

In the years since the rollout of Tasers to general duties police, the NSWPF have provided for Taser replacement or repair in their budget. During the 2010–11 financial year, \$550,751 was assigned for replacing or repairing up to 15% of the Taser stock held by the NSWPF.<sup>27</sup>

In the 2011–12 budget discussions, the Minister for Police stated:

*A total of \$551,000 has been provided for the maintenance of tasers. We want them to be working properly and effectively. The funding is for maintenance and technical support, training and replacement of redundant components.*<sup>28</sup>

On 4 May 2012, the NSWPF advised that they have ordered two X2 Tasers with high definition Taser Cam for evaluation purposes only. Once the evaluation has been completed, the findings will be reported to DCOP, Field Operations, and the TEC.<sup>29</sup> This topic is discussed further in Chapter 8.

### 5.2.6 Inspecting and auditing Taser equipment

The Command Management Framework (CMF) is an audit process used by all commands within the NSWPF to ensure legislative compliance. The CMF places responsibility on commands to monitor compliance and manage risks, reducing the need for external audits.

To comply with the CMF, each command must conduct inspections and audits of Taser equipment. Taser equipment includes Tasers, Taser cartridges, and Taser storage units or safes. The Taser SOPs provide that:

- all Taser operational equipment should be inspected each week
- the Taser Register must also be inspected weekly, including a check to ensure that a spark test has been performed at least once a week
- Taser Cam data should be downloaded monthly
- pages of the Taser Register that have been completed should be electronically copied and filed in a central location each month
- an extended spark test<sup>30</sup> of each Taser must be performed every quarter.

The Local Area or Unit Commander (or delegate) must access the database of each individual Taser monthly to verify that all discharges of Taser probes have been reported. They must also ensure that local records about the receipt, issue and disposal of cartridges are properly maintained and reconciled.

The NSWPF advised that they conducted an Operational Readiness Audit in 2010, one aspect of which focused on the storage and maintenance of Tasers and Taser cartridges at 16 metropolitan and country LACs.

Inspection reports and breaches of Taser storage and maintenance procedures are recorded within the CMF database, together with any corrective action recommended or taken. There are thousands of these records, but most of them relate to minor breaches that have been dealt with locally.

Major breaches of Taser storage and maintenance procedures are captured as part of the Taser use and complaint data. Officers found to be responsible for major breaches are likely to be subject to remedial training and/or management action.

### 5.3 External oversight of Taser use complaints

Part 8A of the *Police Act 1990* provides that a person may make a complaint about the conduct of a police officer to the Commissioner, the Ombudsman or the Police Integrity Commission. Conduct is defined broadly and may include allegations relating to the misuse of Tasers by police – including criminal conduct, unreasonable conduct and perceived or actual breaches of policies, practices or procedures.

The Commissioner must notify the Ombudsman of any complaints specified in guidelines agreed between the Ombudsman and the Police Integrity Commissioner. These guidelines currently specify a range of complaints that must be notified including:

*Any unreasonable conduct involving the use, discharge or safe keeping of police issued weapons including firearms, Tasers, OC Spray and batons, including but not limited to breaches of relevant NSWPF standard operating procedures, guidelines or policies.*<sup>31</sup>

The Ombudsman can require the NSWPF to investigate a complaint and to provide him with a copy of the investigation report. If the Ombudsman is not satisfied that the complaint has been investigated in a timely and effective manner, he may require that it be further investigated and the actions taken reconsidered. The Ombudsman may at any time investigate the complaint directly or prepare a report to the Commissioner of Police and the Minister of Police to make recommendations about the matter.

## Endnotes

1. Letter from Assistant Commissioner Alan Clarke, NSW Police Force, to Bruce Barbour, Ombudsman, NSW Ombudsman (in response to a notice issued under s. 18 of the *Ombudsman Act 1974*), 13 December 2010.
2. Taser International, *TASER CAM™* <www.taser.com/products/on-officer-video/taser-cam> accessed 24 July 2012.
3. NSW Police Force, *Standard Operating Procedures for use of Electronic Control (TASER) Devices by the NSW Police Force*, version 1.18, (approved for release July 2012), section 1.9, p. 9.
4. Letter from Assistant Commissioner Alan Clarke, NSW Police Force, to Bruce Barbour, Ombudsman, NSW Ombudsman (in response to a notice issued under s. 18 of the *Ombudsman Act 1974*), 13 December 2010; Mares, J., 'Taser Video Management: VIEW Imagery Management System – e@gli.i Integration: Concept Discussion' (presented at a meeting between senior NSWPF officers and NSW Ombudsman staff on 9 December 2010).
5. Taser International, *TASER CAM™* <www.taser.com/products/on-officer-video/taser-cam> accessed 24 July 2012. A more advanced model of the Taser (X2) can be fitted with an improved recorder, 'TASER CAM HD'. The Taser Cam HD records coloured videos at 30 frames per second at 1280 x 720 resolution, and is also sensitive to poor lighting conditions: Taser International, *TASER CAM™ HD* <www.taser.com/products/on-officer-video/taser-cam-hd> accessed 24 July 2012.
6. Taser International, *TASER® X26™ ECD* <www.taser.com/products/law-enforcement/taser-x26-ecd#features accessed> 24 July 2012.
7. Letter from Assistant Commissioner Alan Clarke, NSW Police Force, to Bruce Barbour, Ombudsman, NSW Ombudsman (in response to a notice issued under s. 18 of the *Ombudsman Act 1974*), 13 December 2010.
8. Letter from Acting Commissioner Nick Kaldas, NSW Police Force, to Bruce Barbour, Ombudsman, NSW Ombudsman, 19 January 2012 – enclosure entitled 'NSW Police Force draft response'.
9. NSW Police Force, *Standard Operating Procedures for use of Electronic Control (TASER) Devices by the NSW Police Force*, version 1.18, (approved for release July 2012), section 1.17, p. 10.
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11. Taser International, *TASER® Cartridges* <www.taser.com/products/law-enforcement/taser-cartridges> accessed 24 July 2012.
12. Letter from Assistant Commissioner Alan Clarke, NSW Police Force, to Bruce Barbour, Ombudsman, NSW Ombudsman (in response to a notice issued under s. 18 of the *Ombudsman Act 1974*), 13 December 2010.
13. NSW Police Force, *Standard Operating Procedures for use of Electronic Control (TASER) Devices by the NSW Police Force*, version 1.18, (approved for release July 2012), Annexure C; letter from Assistant Commissioner Alan Clarke, NSW Police Force, to Bruce Barbour, Ombudsman, NSW Ombudsman (in response to a notice issued under s. 18 of the *Ombudsman Act 1974*), 13 December 2010.
14. NSW Police Force, *Standard Operating Procedures for use of Electronic Control (TASER) Devices by the NSW Police Force*, version 1.18, (approved for release July 2012), section 7.1, p.19.
15. *ibid.*, sections 9.1, 7.13, pp. 20, 22.
16. The six policing regions are: Central Metropolitan Region, North West Metropolitan Region, South West Metropolitan Region, Northern Region, Southern Region and Western Region.
17. NSW Police Force, *Region Taser Review Panel Standard Operating Procedures*, version 1.3, 25 October 2010.
18. NSW Police Force, *Regional Taser Review Record*, version 1.01 (undated).
19. NSW Police Force, *Standard Operating Procedures for use of Electronic Control (TASER) Devices by the NSW Police Force*, version 1.18, (approved for release July 2012), sections 13.1–13.2, p. 23.
20. Letter from Assistant Commissioner Alan Clarke, NSW Police Force, to Bruce Barbour, Ombudsman, NSW Ombudsman, 22 August 2012.
21. NSW Police Force, *NSW Police Force Handbook*, 30 May 2012, p. 27.
22. Letter from Assistant Commissioner Alan Clarke, NSW Police Force, to Bruce Barbour, Ombudsman, NSW Ombudsman (in response to a notice issued under s. 18 of the *Ombudsman Act 1974*), 13 December 2010.
23. NSW Police Force, *Commissioner's Policy Notice 12/12: Taser Use in Mental Health Facilities*, version 1.2 dated January 2012, issued in June 2012, p. 1 (emphasis in original).
24. *ibid.*, p. 1.
25. Taser International, *TASER International, Inc.'s Warranty, Limitations and Release: Law Enforcement Products – International Sales (Non-U.S. and Canada) (Effective January 17, 2012)*, 17 January 2012.
26. Western Australia Police, *Post Implementation Review of Taser*, May 2010.
27. Letter from Assistant Commissioner Alan Clarke, NSW Police Force, to Bruce Barbour, Ombudsman, NSW Ombudsman (in response to a notice issued under s. 18 of the *Ombudsman Act 1974*), 13 December 2010.
28. Hansard, NSW Legislative Council, 7 September 2011, p. 5055. See also NSW Government, *Budget Paper No.4: Infrastructure Statement 2011–12*, pp. 4–10.
29. Letter from Deputy Commissioner, Field Operations, Nick Kaldas APM, NSW Police Force, to Linda Waugh, Deputy Ombudsman, NSW Ombudsman, 14 May 2012.
30. An extended spark test involves performing three successive spark tests in a row in order to identify if the battery life of a Taser has degraded: NSW Police Force, *Standard Operating Procedures for use of Electronic Control (TASER) Devices by the NSW Police Force*, version 1.18, (approved for release in July 2012), section 1.16, p. 10.
31. NSW Ombudsman and the Police Integrity Commission, *Guidelines Agreed Between the Police Integrity Commission and the Ombudsman After Consultation with the Commissioner of Police Under the Police Act 1990*, 1 December 2010 (effective 1 February 2011), clause 13, p. 6.

## Chapter 6. Use of Tasers by general duties police in the NSWPF

This chapter presents statistics on the use of Tasers by New South Wales Police Force (NSWPF) general duties officers during 2008 – 2011. We examined the statistics to find out:

- how often Tasers were used and the overall trend in Taser usage by NSWPF general duties officers
- trends for different modes of Taser use
- the characteristics of Taser operators – including age, gender, rank and years of service with the NSWPF
- demographic details about people subjected to Taser use (Taser subjects)
- the circumstances surrounding the Taser incidents, how the Taser was used and the outcomes of those incidents.

### 6.1 Data sources and definitions

The statistics, figures and tables in this chapter are based on our analysis of data spreadsheets and information provided by the NSWPF.

In this chapter, we have grouped the information provided into two distinct data sets:

- Data provided to us in electronic table format by the NSWPF about Taser incidents from 1 October 2008 to 30 November 2011. This data is used to present an overall picture of Taser usage since the rollout of Tasers to general duties police. We refer to this as the review period.
- Detailed data obtained from a sample of 556<sup>1</sup> Taser incidents between 1 June 2010 and 30 November 2010. For these 556 incidents, we reviewed written NSWPF records – including records from the Computerised Operational Policing System (COPS), Situation reports (Sitreps), Region Taser Review Panel (TRP) forms and minutes of meetings – as well as Taser Cam footage and weapon summary reports where available. This allowed us to provide an in-depth analysis of the circumstances surrounding Taser usage by the NSWPF. We refer to this as the sample period.

Note – throughout this chapter, the percentages given may not total 100% because of rounding.

#### 6.1.1 How do we define an incident?

In this report, we use 'incident' as a single unit for counting purposes. Generally, an incident involves a unique course of conduct committed by the same person or group of people simultaneously or in sequence over a short period of time.

If an incident involves more than one Taser subject, it is categorised by the most serious Taser use during the incident. We consider multiple/continued Taser use (when a person has been subjected to more than five seconds of electrical current from a Taser) to be the most serious type of Taser use, followed by (in decreasing order of seriousness):

- a single Taser use in probe mode (probe incident)
- a single Taser use in drive-stun mode (drive-stun incident)
- Taser use in draw and cover mode (draw and cover incident).

Using this method of categorisation, if during an incident there is one person subjected to multiple/continued Taser use and another person subjected to a single Taser use, it will be classified or counted as one incident involving multiple/continued Taser use.

### 6.2 How often are police using Tasers?

Between 1 October 2008 and 30 November 2011, there were 2,252 incidents involving Taser use by NSWPF general duties officers. The full data set was 2,560 incidents, but 34 of them involved Taser use against an animal and 274 of them involved hazardous practice only so we excluded those (the issue of hazardous practice is discussed further in Chapter 8, see page 161).

We examined the Taser data to find out if the frequency of Taser use has changed over time. In NSW, the Taser was rolled out to general duties police in two phases:

- **Phase 1** – On 1 October 2008, Tasers were issued to accredited NSWPF general duties officers working as supervisors and duty officers only. They were generally at the rank of sergeants and inspectors. These senior officers were likely to be over the age of 30 years. Also, compared to other general duties officers, a higher proportion of these officers were male. Phase 1 ended on 30 November 2009.

- Phase 2** – On 1 December 2009, Tasers were issued to local area commands for use by all Taser-accredited NSWPF general duties officers (first responders/frontline police). We considered the 12 month period between 1 December 2009 and 30 November 2010 to be Phase 2 of the Taser rollout.

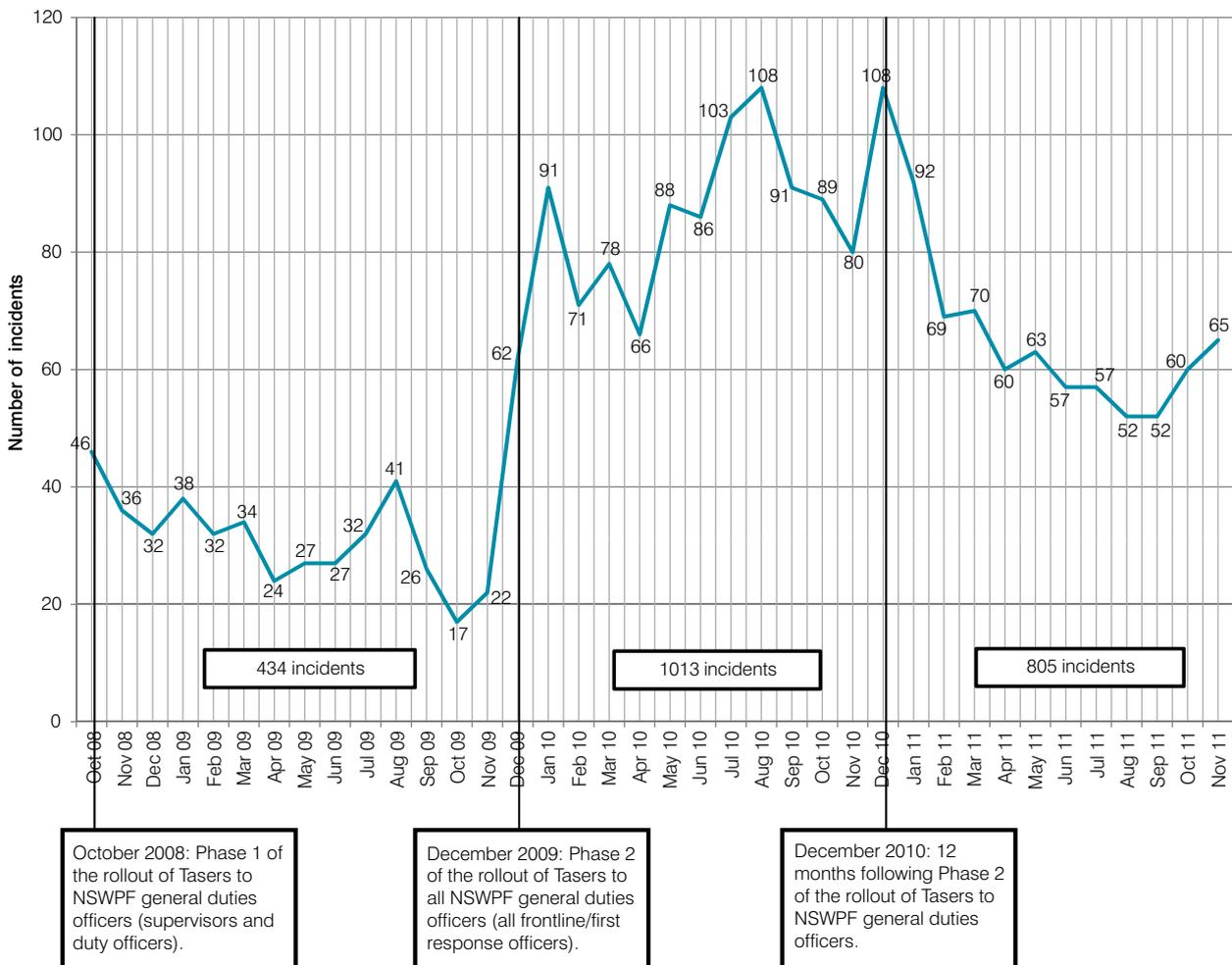
Figure 3 shows the trend in monthly usage of Tasers during the first and second phases of the Taser rollout, and during the review period up to November 2011. During Phase 1 of the Taser rollout, the number of monthly incidents ranged from 17 to 46, with an average of 31 Taser incidents per month. Phase 2 of the rollout saw monthly incidents ranging from 62 to 108, with an average of 84 Taser incidents per month.

In the 12 months following Phase 2, there was a steady decline in the number of Taser incidents – from 108 incidents in December 2010 to a low of 52 incidents in July and August 2011 – before rising slightly to 60 incidents in October 2011 and 65 incidents in November 2011.

Figure 3 also shows the number of Taser incidents increased from 434 incidents in Phase 1 (over 14 months) to 1,013 incidents in Phase 2 (over 12 months), before falling to 805 incidents in the 12 months following Phase 2.

The relatively low number of incidents in Phase 1 reflects the fact that only duty officers and supervisors were trained and certified in Taser use during that period. As expected, the number of Taser incidents increased substantially when all general duties police were given access to Tasers in December 2009. By December 2010, there were 1,096 Tasers issued to general duties police, and 9,073 general duties officers trained and certified in Taser use. This increased to 1,122 Tasers in use by general duties police and 15,258 NSWPF officers (including officers attached to specialist units) trained and accredited in Taser use by November 2011.<sup>2</sup> Despite the increase in the number of Taser accredited officers, the number of Taser incidents has declined since December 2010.

**Figure 3: Number of incidents involving Taser use by rollout phase: Oct 08 – Nov 11**



Source: NSWPF records provided to or accessed by the NSW Ombudsman.

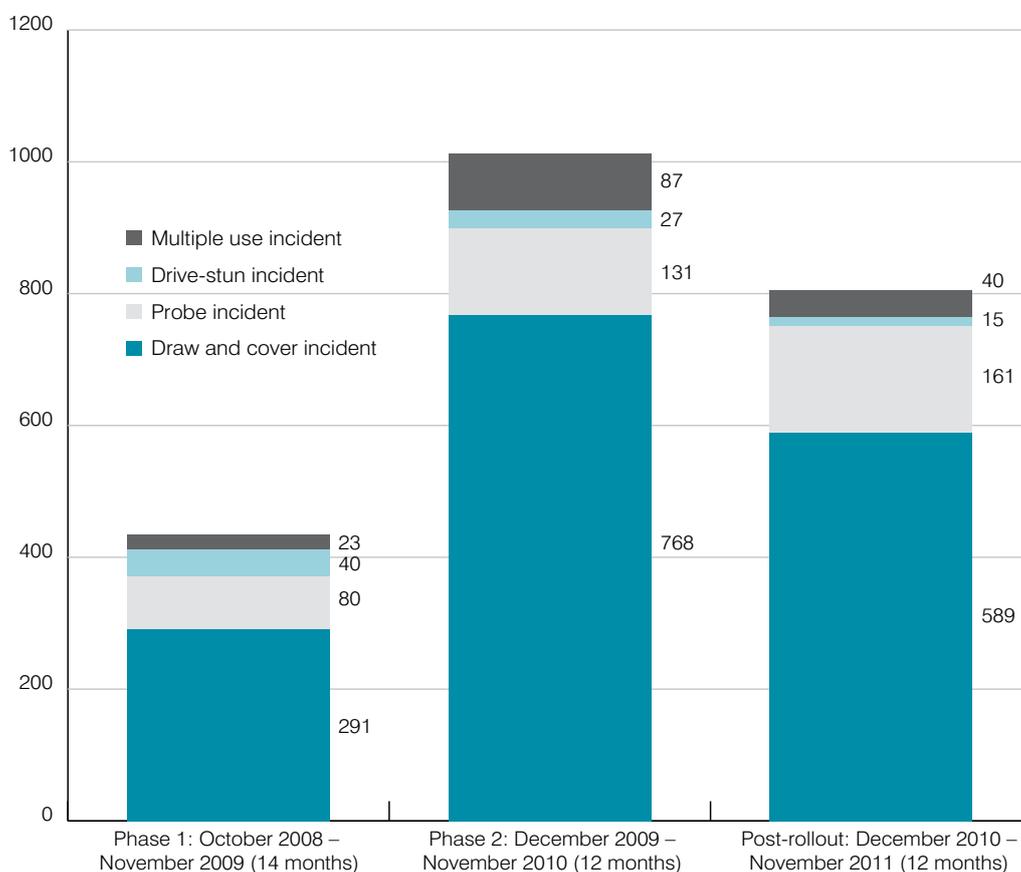
### 6.3 What are the trends in the mode of Taser usage?

The three types of Taser use are draw and cover mode, probe mode and drive-stun mode. The Taser can also be applied in probe and/or drive-stun mode multiple times (multiple Taser use) or for longer than the five second cycle (continued Taser use). The Taser data was analysed to see if there were any trends in terms of the different modes of use.

As shown in Figure. 4, draw and cover mode was by far the most frequent type of use. This is consistent with trends observed in Queensland, Western Australia and Canada.<sup>3</sup> There were relatively few incidents involving the more serious uses – that is, probe and drive-stun modes. Of the 2,252 Taser incidents in the review period up to 30 November 2011:

- 1,648 incidents or 73.2% – involved Taser use in draw and cover mode by one or more officers against one or more subjects (draw and cover incident).
- 372 incidents or 16.5% – involved a single Taser use in probe mode (probe incident).
- 82 incidents or 3.6% – involved a single Taser use in drive-stun mode (drive-stun incident).
- 150 incidents or 6.7% – involved multiple and/or continued Taser uses (multiple/continued use incident).

**Figure. 4:** Number of incidents involving different types of Taser use, by rollout phase: 1 Oct 08 – 30 Nov 11



**Source:** NSWPF records provided to or accessed by the NSW Ombudsman.

Table. 3 shows the number of draw and cover incidents as a proportion of all Taser incidents declined slightly – from 75.8% to 73.2% – between Phase 2 of the Taser rollout (December 2009 – November 2010) and the following 12 months (December 2010 – November 2011).

There was also a small drop in the proportion of drive-stun incidents from 2.7% in Phase 2 to 1.9% in the 12 months after rollout, and a larger reduction in the proportion of multiple/continued use incidents from 8.6% to 5.0% during those periods. The proportion of probe incidents has increased – from 12.9% in Phase 2 to 20% in the following 12 months.

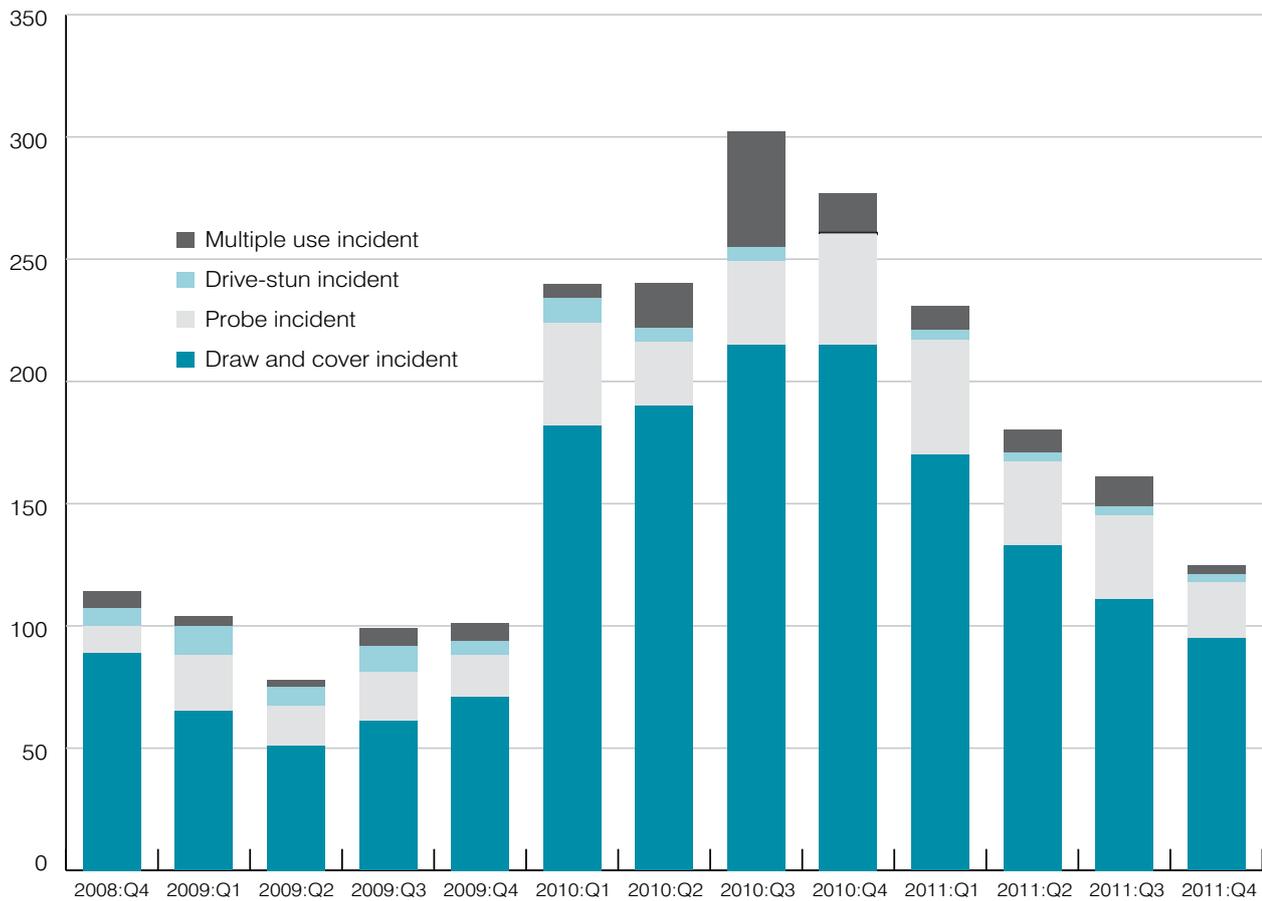
**Table 3:** Breakdown of incidents involving different types of Taser use, by rollout phase: Oct 08 – Nov 11

Phase of rollout of Tasers	Draw and cover incident	Probe incident	Drive-stun incident	Multiple/continued use incident	Total
Phase 1: October 2008 – November 2009 (14 months)	67.1%	18.4%	9.2%	5.3%	100.0%
Phase 2: December 2009 – November 2010 (12 months)	75.8%	12.9%	2.7%	8.6%	100.0%
Post-rollout: December 2010 – November 2011 (12 months)	73.2%	20.0%	1.9%	5.0%	100.0%

**Source:** NSWPF records provided to or accessed by the NSW Ombudsman.

In Chapters 7 and 8 we discuss individual case studies which are indicative of some mission creep. To see if there was any systemic evidence of mission creep, we considered whether there was any change in the relative frequency of different modes of Taser usage by NSWPF general duties officers over time.

Figure 5 shows the breakdown of mode of Taser use by quarter and Table 4 shows that since the fourth quarter of 2009 (when Phase 2 of the Taser rollout began) the number of draw and cover incidents fluctuated between 68.9% and 79.2% – but there was no consistent upward or downward trend. This data is discussed further in Chapter 9.

**Figure 5:** Breakdown of types of Taser incidents, by quarter: Oct 08 – Nov 11

**Source:** NSWPF records provided to or accessed by the NSW Ombudsman.

**Note:** Quarter 4 in 2011 only has two months of data.

**Table 4:** Proportions of types of Taser incidents, by quarter: Oct 08 – Nov 11

Quarter	Draw and cover incident	Probe incident	Drive-stun incident	Multiple/continued use incident	Total
2008 Q4	89 (78.1%)	11 (9.6%)	7 (6.1%)	7 (6.1%)	<b>114</b> <b>(100.0%)</b>
2009 Q1	65 (62.5%)	23 (22.1%)	12 (11.5%)	4 (3.8%)	<b>104</b> <b>(100.0%)</b>
2009 Q2	51 (65.4%)	16 (20.5%)	8 (10.3%)	3 (3.8%)	<b>78</b> <b>(100.0%)</b>
2009 Q3	61 (61.6%)	20 (20.2%)	11 (11.1%)	7 (7.1%)	<b>99</b> <b>(100.0%)</b>
2009 Q4	71 (70.3%)	17 (16.8%)	6 (5.9%)	7 (6.9%)	<b>101</b> <b>(100.0%)</b>
2010 Q1	182 (75.8%)	42 (17.5%)	10 (4.2%)	6 (2.5%)	<b>240</b> <b>(100.0%)</b>
2010 Q2	190 (79.2%)	26 (10.8%)	8 (2.5%)	18 (7.5%)	<b>242</b> <b>(100.0%)</b>
2010 Q3	215 (71.2%)	34 (11.3%)	6 (2.0%)	47 (15.6%)	<b>302</b> <b>(100.0%)</b>
2010 Q4	215 (77.6%)	45 (16.2%)	1 (0.4%)	16 (5.8%)	<b>277</b> <b>(100.0%)</b>
2011 Q1	170 (73.6%)	47 (20.3%)	4 (1.7%)	10 (4.3%)	<b>231</b> <b>(100.0%)</b>
2011 Q2	133 (73.9%)	34 (18.9%)	4 (2.2%)	9 (5.0%)	<b>180</b> <b>(100.0%)</b>
2011 Q3	111 (68.9%)	34 (21.1%)	4 (2.5%)	12 (7.5%)	<b>161</b> <b>(100.0%)</b>
2011 Q4 (2 months)	95 76.0%	23 18.4%	3 2.4%	4 3.2%	<b>125</b> <b>100.0%</b>

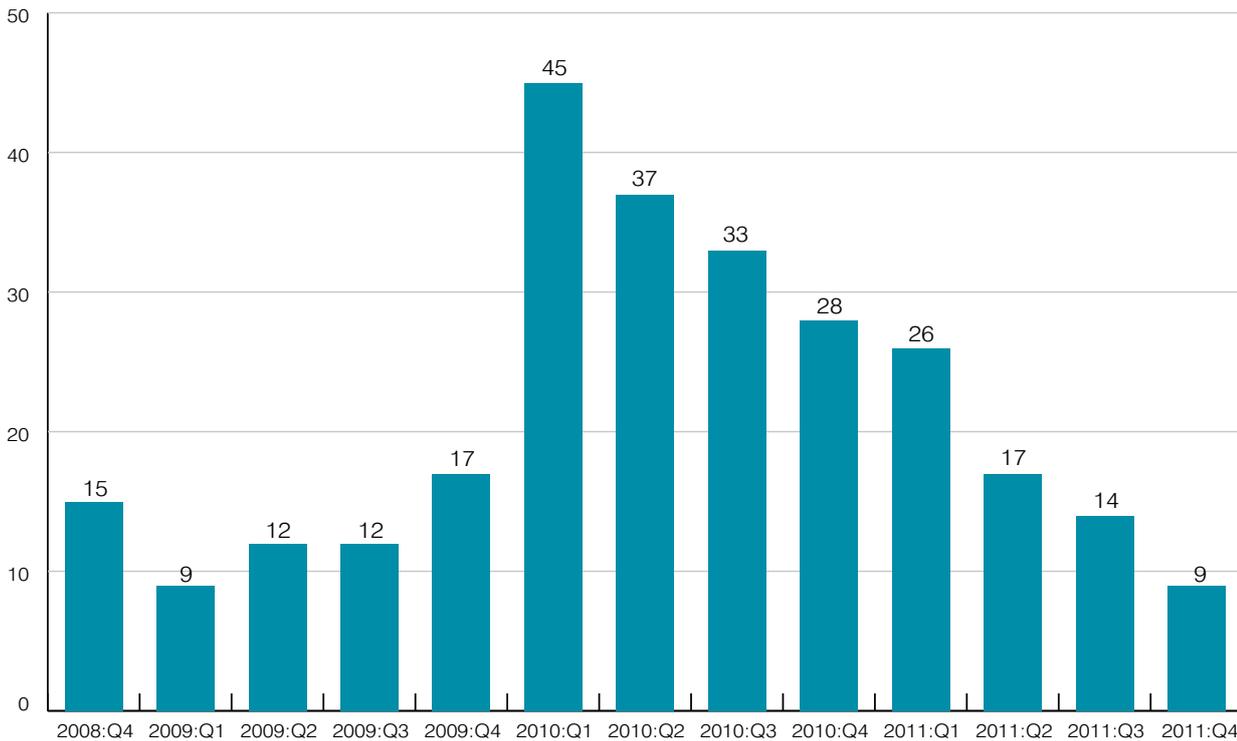
**Source:** NSWPF records provided to or accessed by the NSW Ombudsman.

In addition to the three modes of Taser use, a Taser operator may also commit a hazardous practice – such as accidentally discharging a Taser while performing a spark test.

Between October 2008 and November 2011, there were 274 incidents involving accidental discharge or other hazardous practice.<sup>4</sup> The overwhelming majority of these incidents (263 incidents or 96.0%) involved accidental discharges of the Taser while performing a spark test.

Figure 6 shows that, as expected, accidental discharges or other hazardous practices rose to a peak of 45 incidents at the beginning of Phase 2 of the rollout in the first quarter of 2010, before declining steadily since to a low of 14 incidents in the third quarter of 2011. The TRP's handling of accidental discharges is discussed in Chapter 8.

**Figure 6:** Number of accidental discharges and other hazardous practices, by quarter: Oct 08 – Nov 11



**Source:** NSWPF records provided to or accessed by the NSW Ombudsman.

**Note:** Quarter 4 in 2011 only has two months of data.

## 6.4 What are the characteristics of Taser operators?

This section identifies the number of Taser operators in the review period, as well as the number of times individual Taser operators have used Tasers operationally. It also describes the Taser operators in terms of their gender, age, rank at the time of Taser use, and years of service with the NSWPF.

Between October 2008 and November 2011, 2,346 officers used Tasers operationally in 2,252 incidents.<sup>5</sup>

### 6.4.1 Taser usage by individual Taser operators

Although this report generally does not give a count of unique Taser operators, we were interested to find out how many NSWPF general duties officers who have been trained in Taser use have deployed the weapon operationally. We also wanted to explore whether there were indications of over-reliance on Tasers by any individual Taser operators.

During the review period up to November 2011, there were 1,640 individual Taser operators who had used the Taser operationally. This represents only a small proportion of the 15,258 NSWPF officers who were trained and accredited in Taser use as of November 2011.

We have not found any evidence of over-reliance on Tasers by any individual operators. As shown in Table 5, the majority of these Taser operators have used the Taser in one incident only (1,200 Taser operators, or 73.2%). Only 66 Taser operators (4%) have used the Taser four or more times over the 38 month period. The most number of incidents in which any individual Taser operator was involved was 10.

**Table 5: Frequency of Taser use by individual Taser operators: Oct 08 – Nov 11<sup>6</sup>**

Taser usage by individual Taser operators	Number of individual Taser operators	Percentage of individual Taser operators
Taser operators who have used a Taser in one incident only	1200	73.2%
Taser operators who have used Tasers in two incidents	288	17.6%
Taser operators who have used Tasers in three incidents	86	5.2%
Taser operators who have used Tasers in four incidents	42	2.6%
Taser operators who have used Tasers in five incidents	13	0.8%
Taser operators who have used Tasers in six incidents	6	0.4%
Taser operators who have used Tasers in seven incidents	4	0.2%
Taser operators who have used Tasers in eight incidents	0	0.0%
Taser operators who have used Tasers in nine incidents	0	0.0%
Taser operators who have used Tasers in 10 incidents	1	0.1%
<b>Total</b>	<b>1640</b>	<b>100.0%</b>

**Source:** NSWPF records provided to or accessed by the NSW Ombudsman.

Phase 1 of the rollout of Tasers was limited to NSWPF general duties officers working as supervisors and duty officers. These officers were generally at the rank of sergeants and inspectors, and are likely to be aged over the age of 30 years. Also, compared to other general duties officers, a higher proportion of these officers were male.

The remainder of this section therefore analyses data since the start of Phase 2 of the rollout (December 2009) to give a better picture of the characteristics of Taser operators, when the majority of the general duties officers have been trained and accredited in Taser use.

#### 6.4.2 Gender of Taser operators

Of the 1,905 Taser operators who used a Taser between December 2009 and November 2011, 84.9% were male and 14.8% were female.<sup>7</sup> As Table 6 shows, male police officers are over-represented as Taser operators. They constituted 73.9% of all general duties police on active duty as at 4 May 2012,<sup>8</sup> but accounted for 84.9% of all Taser operators during the two year period since the start of Phase 2 of the rollout.

**Table 6: Gender of Taser operators (Dec 09 – Nov 11), compared with percentage of NSWPF general duties officers on active duty as at 4 May 2012**

Gender of Taser operator	Number of Taser operators	Percentage of Taser operators	Percentage of NSWPF general duties officers on active duty as at 4 May 2012
Male	1618	84.9%	73.9%
Female	282	14.8%	25.9%
Unknown	5	0.3%	0.2%
<b>Total</b>	<b>1905</b>	<b>100.0%</b>	<b>100.0%</b>

**Source:** NSWPF records provided to or accessed by the NSW Ombudsman.

#### 6.4.3 Age of Taser operators

Of the 1,077 officers who have used Tasers operationally between December 2009 and November 2010,<sup>9</sup> the majority of Taser operators were between the ages of 25 and 39 years (695 Taser operators or 64.5%).

Table 7 also shows that:

- Police officers between the ages of 21 and 24 years were disproportionately represented as Taser operators. They were 5.3% of all NSWPF general duties officers on active duty as at 4 May 2012, but accounted for 11% of all Taser operators during the 12 month period.
- Officers between the ages of 25 and 29 years were also over-represented as Taser operators. They were 17.1% of all NSWPF general duties officers on active duty as at 4 May 2012, but were 22.4% of all Taser operators during this period.

- Officers aged 40 years or over were under-represented as Taser operators. They were 38.5% of all NSWPF general duties officers on active duty as at 4 May 2012, but accounted for 24% of all Taser operators in this period.

**Table 7: Age groups of Taser operators: Dec 09 – Nov 10**

Age group	Number of Taser operators	Percentage of Taser operators	Percentage of NSWPF general duties officers on active duty as at 4 May 2012
19-20	0	0.0%	0.01%
21-24	118	11.0%	5.3%
25-29	241	22.4%	17.1%
30-34	211	19.6%	18.7%
35-39	243	22.6%	20.0%
40-44	153	14.2%	19.2%
45-49	63	5.8%	10.1%
50-54	32	3.0%	6.2%
55-59	11	1.0%	2.3%
60-64	0	0.0%	0.6%
65-69	0	0.0%	0.05%
70-74	0	0.0%	0.02%
Unknown	5	0.5%	0.4%
<b>Total</b>	<b>1077</b>	<b>100.0%</b>	<b>100.0%</b>

**Source:** NSWPF records provided to or accessed by the NSW Ombudsman.

#### 6.4.4 Rank of Taser operators

Since Tasers were rolled out to all NSWPF general duties officers on 1 December 2009, the majority of Taser operators were constables (38.6%) and senior constables (26.5%) at the time of Taser use.

Table 8 shows that a disproportionately large number of constables and leading senior constables were Taser operators. Constables made up 38.6% of Taser operators and leading senior constables were 9.8% of all Taser operators – while these officers represented only 25.6% and 0.1% respectively of all NSWPF general duties officers on active duty as at 4 May 2012. On the other hand, senior constables were under-represented as Taser operators. They accounted for 43.4% of all general duties police on active duty as at 4 May 2012, but were only 26.5% of all Taser operators since Phase 2 of the Taser rollout.

**Table 8: Ranks of Taser operators (Dec 09 – Nov 11), compared with ranks as percentages of all NSWPF general duties officers on active duty as at 4 May 2012**

Rank	Number of Taser operators	Percentage of Taser operators	Percentage of NSWPF general duties officers on active duty as at 4 May 2012
Probationary Constable	112	5.9%	10.5%
Constable	735	38.6%	25.6%
Senior Constable	504	26.5%	43.4%
Leading Senior Constable	187	9.8%	0.1%
Sergeant	312	16.4%	14.8%
Senior Sergeant	0	0.0%	0.8%
Inspector	46	2.4%	4.0%
Chief Inspector	2	0.1%	0.1%
Superintendent	0	0.0%	0.7%
Chief Superintendent	0	0.0%	0.0%
Unknown	7	0.4%	0.1%
<b>Total</b>	<b>1905</b>	<b>100.0%</b>	<b>100.0%</b>

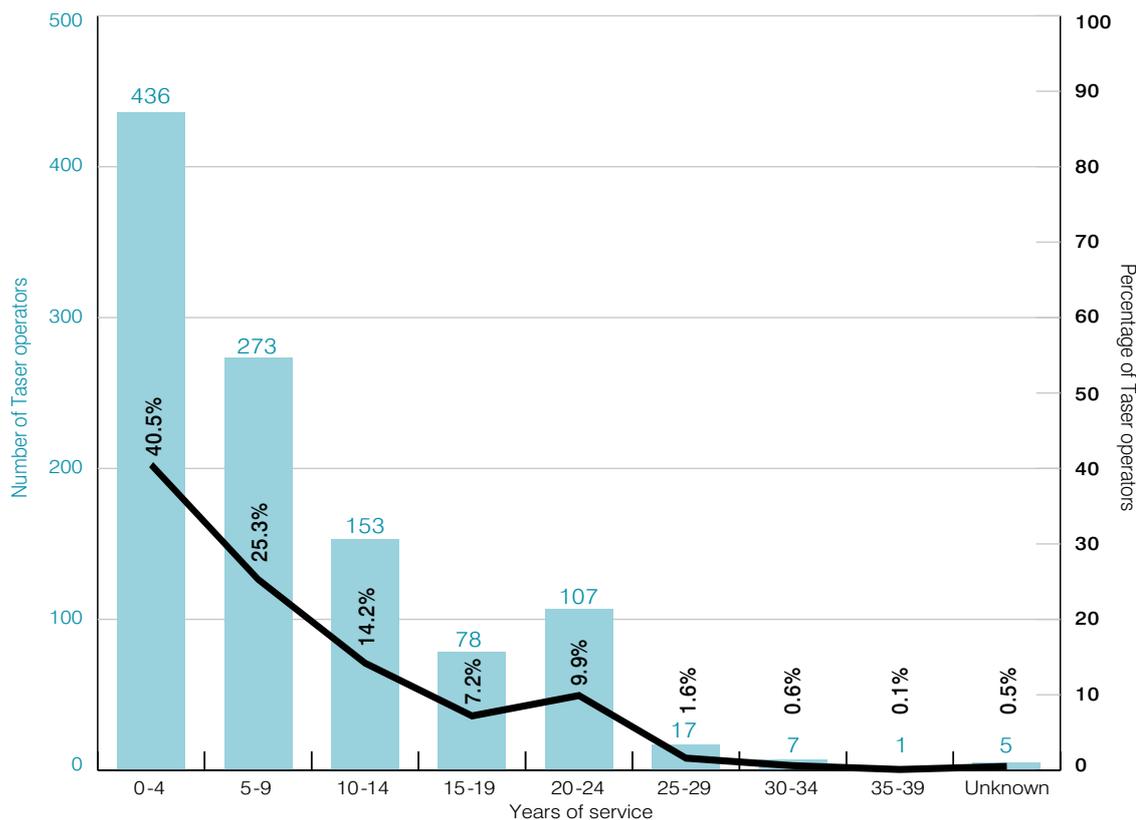
**Source:** NSWPF records provided to or accessed by the NSW Ombudsman.

### 6.4.5 Years of service

Generally speaking, NSWPF general duties officers were less likely to use the Taser as their years of service with the NSWPF increased. Between December 2009 and November 2010,<sup>10</sup> the Taser was most frequently used by Taser operators who had served the NSWPF for 0–4 years (40.5% of Taser operators), while one quarter of the Taser operators had served for 5–9 years.

Less than 3% of Taser operators had served in the NSWPF for 30 years or more. This probably represents transition from frontline to more supervisory and other roles as years of service increase. Only six Taser operators had less than one year of service in the NSWPF. Figure 7 provides a detailed breakdown of the years of service of Taser operators.

**Figure 7:** Taser operators' years of service with the NSWPF: Dec 09 – Nov 10



Source: NSWPF records provided to or accessed by the NSW Ombudsman.

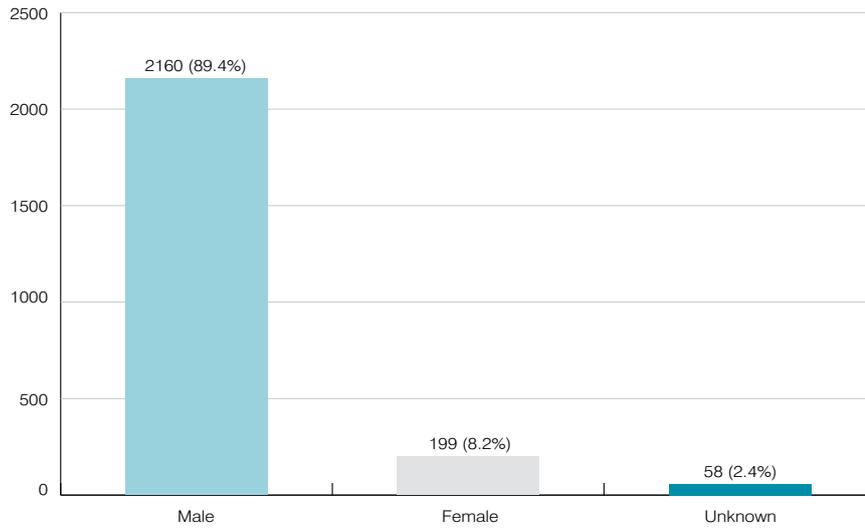
## 6.5 What are the characteristics of Taser subjects?

This section provides demographic information about Taser subjects – including their gender, age, and whether they identified as an Aboriginal and/or Torres Strait Islander.

### 6.5.1 Gender of Taser subjects

The majority of the Taser subjects (89.4% or 2,160 people) were male, and only a small percentage (8.2% or 199 people) were female.

Figure 8: Gender of Taser subjects: Oct 08 – Nov 11



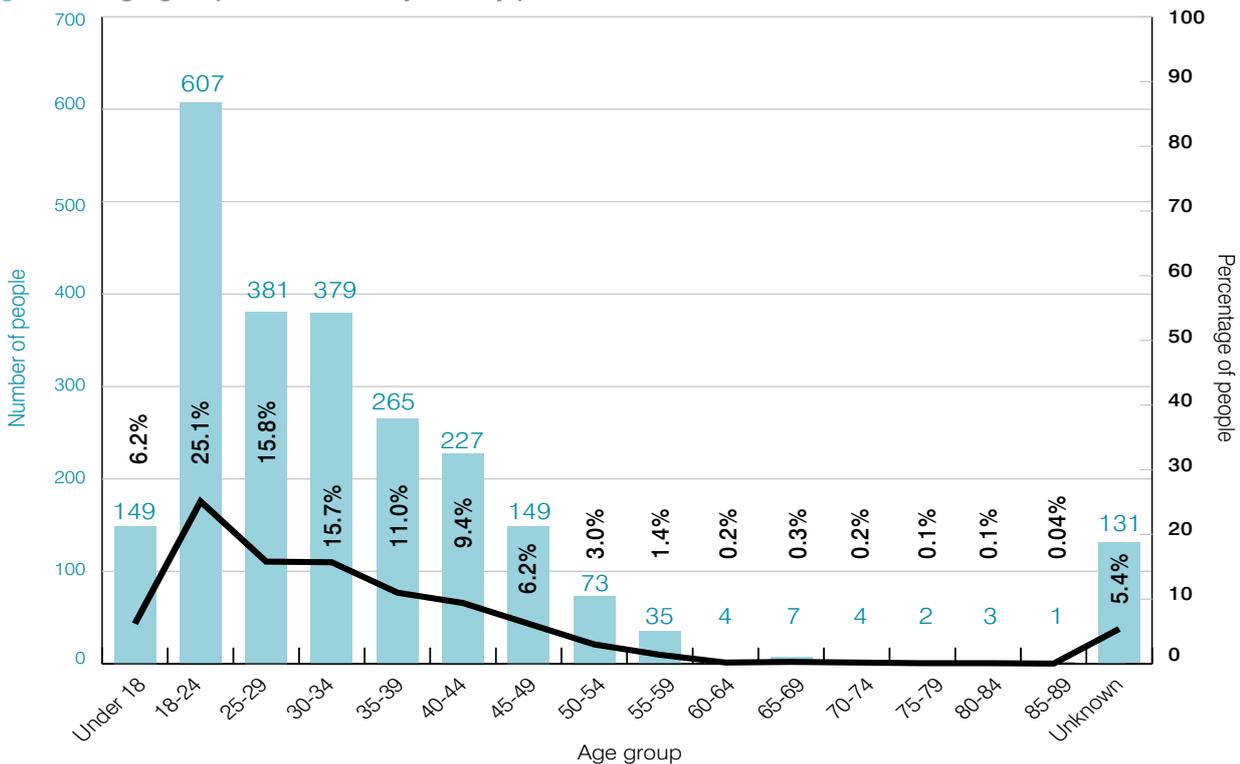
Source: NSWPF records provided to or accessed by the NSW Ombudsman.

### 6.5.2 Age of Taser subjects

Of the 2,417 Taser subjects between October 2008 and November 2011, over three quarters (1,632 people or 67.5%) were between the ages of 18 and 39 years. Figure 9 shows that:

- The largest proportion of Taser subjects were between the ages of 18 and 24 years (607 people or 25.1%).
- 381 Taser subjects (15.8%) were between the ages of 25 and 29 years.
- 379 Taser subjects (15.7%) were between the ages of 30 and 34 years.
- 265 Taser subjects (11.0%) were between the ages of 35 and 39 years.
- In terms of levels of Taser use against particular age groups, there was virtually no difference between people aged 25–29 years and those aged 30–34 years. For people aged 35 years or above, the level of Taser use against them decreased with age.

Figure 9: Age groups of Taser subjects, by phase of rollout: Oct 08 – Nov 11



Source: NSWPF records provided to or accessed by the NSW Ombudsman.

Table 9 shows that there were 149 Taser subjects under the age of 18 years and 17 Taser subjects aged 65 years or above.

**Table 9: Age groups of Taser subjects, by mode of Taser use received: Oct 08 – Nov 11**

Age group	Number of Taser subjects				Total
	Draw and cover mode	Probe mode	Drive-stun mode	Multiple/continued use	
Under 18	124	19	5	1	149
18–64	1538	345	80	157	2120
65 and over	11	4	1	1	17
Unknown	125	6	0	0	131

**Source:** NSWPF records provided to or accessed by the NSW Ombudsman.

Of the 149 people who were under the age of 18 years when they were subjected to Taser use, nearly half of them (45.0%) were 17 years of age and over one quarter of them (27.5%) were 16 years of age.

Eighteen people (12.1%) were under 15 years of age including:

- Two people who were 11 and 12 years of age at the time of the Taser incident – both were subjected to Taser use in draw and cover mode.
- Six people who were 13 years of age – all subjected to Taser use in draw and cover mode.
- Ten people who were 14 years of age – two were subjected to Taser use in probe mode and eight in draw and cover mode.

In addition, 23 people were 15 years of age – four were subjected to Taser use in probe mode and one in drive-stun mode.

No one under the age of 17 years was subjected to multiple/continued use, but one 17 year old was.

Of the 17 people (7.0%) aged 65 years or over who were subjected to Taser use:

- The oldest person was 87 years of age. He was subjected to Taser use in draw and cover mode.
- No one over the age of 73 years was subjected to anything other than Taser use in draw and cover mode.

### 6.5.3 People who identify as Aboriginal and/or Torres Strait Islander

People who identify as Aboriginal and/or Torres Strait Islander have a disproportionate level of interaction with police, and are over-represented in the criminal justice system, compared to people who are not so identified.<sup>11</sup> We examined the Taser data to find out if they were also over-represented as Taser subjects.

Between June and November 2010 (sample period), there were 591 Taser subjects that we were able to obtain information about whether they identified as Aboriginal and/or Torres Strait Islander.<sup>12</sup> Of these, 173 Taser subjects (29.3%) identified as Aboriginal and/or Torres Strait Islander.

**Table 10: Whether Taser subjects identified as being Aboriginal and/or Torres Strait Islander: Jun 10 – Nov 10**

No		Yes		Total	
Number of people	Percentage	Number of people	Percentage	Number of people	Percentage
418	70.7%	173	29.3%	591	100.0%

**Source:** NSWPF records provided to or accessed by the NSW Ombudsman.

People who identified as Aboriginal and/or Torres Strait Islander make up 2.5% of the Australian population (as well as the NSW population),<sup>13</sup> compared to 29.3% of all Taser subjects. They are therefore significantly over-represented as Taser subjects.

Table 11 shows that people who identify as Aboriginal and/or Torres Strait Islander were more likely to be subjected to Taser use in probe mode, drive-stun mode or multiple/continued Taser use – 27.7% of them were subjected to such a use, while only 22% of people who were not so identified were subjected to such a use.

**Table. 11: Whether Taser subjects identified as Aboriginal and/or Torres Strait Islander, by incident type: Jun 10 – Nov 10**

Identified as Aboriginal and/or Torres Strait Islander	Number of Taser subjects				Total
	Draw and cover incident	Probe incident	Drive-stun incident	Multiple/continued use incident	
Not Aboriginal and/or Torres Strait Islander	326 (78.0%)	43 (10.3%)	7 (1.7%)	42 (10.0%)	<b>418</b> <b>(100.0%)</b>
Identified as Aboriginal and/or Torres Strait Islander	125 (72.3%)	23 (13.3%)	4 (2.3%)	21 (12.1%)	<b>173</b> <b>(100.0%)</b>

Source: NSWPF records provided to or accessed by the NSW Ombudsman.

## 6.6 What are the characteristics of the incident?

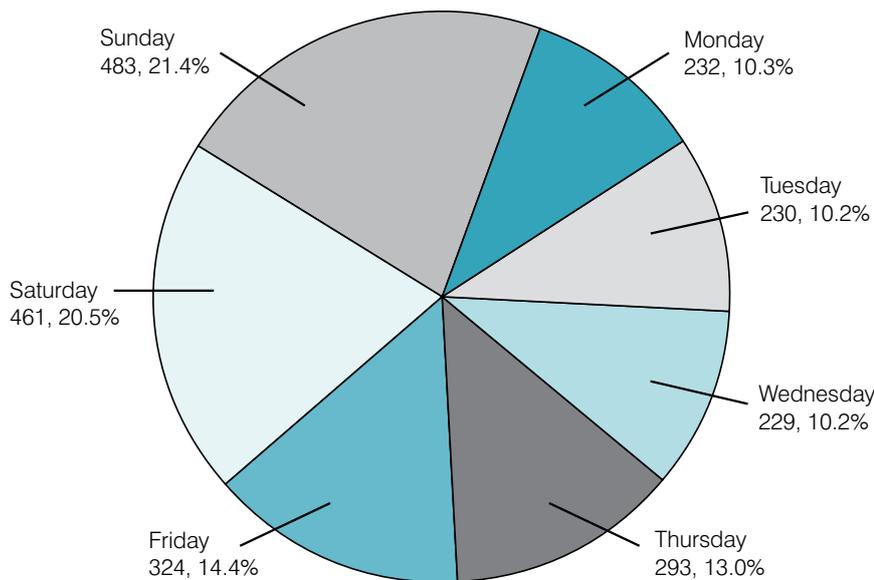
This section provides more detailed information about the context and circumstances surrounding the Taser incidents. It also examines:

- how the Taser was used during the incident
- Taser uses that involved subjects who were suspected by police to have had, or to be suffering from, mental health issues – as well as those who were suspected to be under the influence of drugs and/or alcohol
- whether any subjects were handcuffed or contained in a confined area while subjected to Taser use
- any injuries to officers and Taser subjects
- the legal action taken against the Taser subjects after the incidents.

### 6.6.1 Day and time

Between October 2008 and November 2011, the Taser was most likely to be used on a weekend – with 41.9% of the Taser incidents occurring on a Saturday or a Sunday. As Figure. 10 shows, over half of the Taser incidents (56.3%) took place between Friday and Sunday and over two-thirds (69.3%) between Thursday and Sunday.

**Figure. 10: Days of the week on which Taser incidents occurred: Oct 08 – Nov 11**



Source: NSWPF records provided to or accessed by the NSW Ombudsman.

Most Taser incidents occurred during the night time, with nearly two-thirds (61.9%) occurring between the hours of 8.00pm and 8.00am.

As Table. 12 shows, the busiest time for Taser usage was between 8.00pm and midnight (29.3%), and the least busy period was from 4.00am to 7.59am (6.6%).

**Table. 12:** Time of day where Tasers were used: Oct 08 – Nov 10<sup>14</sup>

Time of day	Number of incidents	Percentage of total number of incidents
12.00–3.59am	376	26.0%
4.00–7.59am	95	6.6%
8.00–11.59am	110	7.6%
12.00–3.59pm	182	12.6%
4.00–7.59pm	259	17.9%
8.00–11.59pm	424	29.3%
<b>Total</b>	<b>1446</b>	<b>100.0%</b>

Source: NSWPF records provided to or accessed by the NSW Ombudsman.

## 6.6.2 Location

Between October 2008 and November 2011, most Taser incidents occurred in a private residence (56.1%) – followed by 29.1% in an outdoor/public place. Only 5.7% of incidents occurred in licensed premises. Police stations, hospitals or justice centres accounted for a further 5.2% of incidents, and the remaining 3.9% occurred in business or commercial premises.

## 6.6.3 Number of Taser subjects during an incident

Of the 2,252 Taser incidents that occurred between October 2008 and November 2011:

- the majority of incidents (2,112 incidents or 93.8%) involved only one person who was subjected to Taser use
- in 70 incidents (3.1%), two people were subjected to Taser use
- in 26 incidents (1.2%), three or more people were subjected to Taser use.<sup>15</sup>

The most number of people subjected to Taser use during an incident was 30.

## 6.6.4 Level of threat from Taser subjects

To find out if the use of Tasers by police met the criteria for use under the Taser SOPs, we analysed the description of the level of the threat present during the Taser incidents within NSWPF records. This included:

- the behaviours of Taser subjects, based on a review of the Taser Cam footage
- the target of the threat posed by the Taser subjects
- whether the subjects had weapons.

### *How are the behaviours of Taser subjects categorised in this report?*

Our identification of the behaviours of Taser subjects is primarily based on viewing the Taser Cam footage. However if the footage was obscured, unclear or missing, the person's behaviour is identified on the basis of the NSWPF's narrative accounts. If we considered that the written records were clearly inconsistent with what is shown on the Taser Cam footage, we assessed the incident on the basis of the footage.

In classifying people's behaviours, we have adopted the five categories used by the Royal Canadian Mounted Police. These are:

- *Cooperative: The subject responds appropriately to the officer's presence, communication and control.*
- *Passive Resistant: The subject refuses, with little or no physical action, to cooperate with the officer's lawful direction. This can assume the form of a verbal refusal or consciously contrived physical inactivity. For example, some subjects will go limp and become dead weight.*
- *Active Resistant: The subject uses non-assaultive physical action to resist an officer's lawful direction. Examples would include pulling away to prevent or escape control, or overt movements such as walking away from an officer. Running away is another example of active resistance.*
- *Assaultive: The subject attempts to apply, or applies force to any person; attempts or threatens by an act or gesture, to apply force to another person, if he/she has, or causes that other person to believe upon reasonable grounds that he/she has the present ability to effect his/her purpose. Examples include kicking and punching, but may also include aggressive body language that signals the intent to assault.*

- *Grievous Bodily Harm or Death: The subject exhibits actions that the officer reasonably believes are intended to, or likely to, cause grievous bodily harm or death to any person. Examples include assaults with a knife, stick or firearm, or actions that would result in serious injury to an officer or member of the public.*<sup>16</sup>

We have also added a category of ‘threatening self-harm’ to capture this behaviour separately.

If more than one person was subjected to Taser use during an incident, each person’s behaviour is assessed separately but recorded against the incident only.

### Behaviours of Taser subjects

In 383 of the 556 incidents (68.9%), the subject’s behaviour was classified as threatening self-harm, assaultive, or grievous bodily harm/death. In 168 incidents (30.2%), the person’s behaviour was identified as cooperative, passive resistant or active resistant.<sup>17</sup>

In some cases – even if the person’s behaviour was assessed as cooperative, passive resistant or active resistant (based on the Taser Cam footage) – other situational factors justified the use of the Taser. This could be, for example, if a police officer had a Taser drawn on entering a situation because they had information that the person on the premises had a history of violence, or that violence or physical assault was reported to be occurring on the premises police were about to enter.

In Chapter 7, we provide our analysis of compliance with the Taser SOPs and the criteria for use – taking into consideration all the situational variables.

**Table 13: Behaviours of Taser subjects, by type of incident: Jun 10 – Nov 10<sup>18</sup>**

Behaviour of Taser subjects	Number of Taser incidents				Total
	Draw and cover incident	Probe incident	Drive-stun incident	Multiple/continued use incident	
Grievous bodily harm or death	8 (1.9%)	4 (6.0%)	0 (0.0%)	4 (6.3%)	<b>16</b>
Assaultive	206 (49.5%)	39 (58.2%)	4 (40.0%)	36 (57.1%)	<b>285</b>
Threatening self-harm	62 (14.9%)	10 (14.9%)	1 (10.0%)	9 (14.3%)	<b>82</b>
Active resistant	78 (18.8%)	10 (14.9%)	3 (30.0%)	10 (15.9%)	<b>101</b>
Passive resistant	34 (8.2%)	4 (6.0%)	2 (20.0%)	4 (6.3%)	<b>44</b>
Cooperative	23 (5.5%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	<b>23</b>
Not applicable <sup>19</sup>	5 (1.2%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	<b>5</b>
<b>Total</b>	<b>416</b> <b>(100.0%)</b>	<b>67</b> <b>(100.0%)</b>	<b>10</b> <b>(100.0%)</b>	<b>63</b> <b>(100.0%)</b>	<b>556</b>

Source: NSW Ombudsman data holdings

### Target of the threat

There were 648 Taser uses in draw and cover, probe or drive-stun mode between June and November 2010.

When conducting our detailed review of Taser incidents in the sample period, we examined the COPS narrative and the description of the incident in the Sitrep to identify the target(s) of the threat posed by the subjects immediately before the use of the Taser. These records show that for the majority of the Taser uses, the threat was directed at police (71.2%), while the other threats were directed almost equally towards the public (13.8%) and the subjects themselves (13.2%).<sup>20</sup>

### Weapons

Of the 620 Taser subjects between June and November 2010, the majority of them (74.2%) did not have a weapon when they were subjected to Taser use. As Table 14 shows, people subjected to Taser use in probe mode or multiple/continued use of the Taser were more likely to have a weapon, than people subjected to Taser use in draw and cover mode or drive-stun mode.

**Table 14: Whether Taser subjects had one or more weapons: Jun 10 – Nov 10**

Whether Taser subjects had weapon(s)	Number of Taser subjects				Total
	Draw and cover incident	Probe incident	Drive-stun incident	Multiple/continued use incident	
No weapons	359 (75.1%)	48 (70.6%)	10 (90.9%)	43 (68.3%)	<b>460</b> <b>(74.2%)</b>
Had weapon(s)	119 (24.9%)	20 (29.4%)	1 (9.1%)	20 (31.7%)	<b>160</b> <b>(25.8%)</b>
<b>Total</b>	<b>478</b>	<b>68</b>	<b>11</b>	<b>63</b>	<b>620</b>

**Source:** NSWPF records provided to or accessed by the NSW Ombudsman.

Of the 160 Taser subjects who had weapons, over half of them (88 people or 52.7%) had a knife. Other types of weapons included, for example, furniture or other household items<sup>21</sup> (14 people), metal bar or pole (7 people), bats (7 people), glass bottles (5 people), and broken glass (5 people).

### 6.6.5 Associated factors – mental health, drug and alcohol use and domestic violence

In analysing the Taser data, we explored the most common factors that were recorded as relating to the incidents. Some of these factors were the mental health of the subjects, drug and/or alcohol use by the subjects, and domestic violence.

#### *Mental health of Taser subjects*

People who have mental health issues have a high level of contact with police.<sup>22</sup> We therefore analysed the Taser data to determine if this was also borne out in the context of Taser incidents.

For the review period up to November 2010, 317 of the 1,446 incidents (21.9%) were identified by police as associated with mental illness.<sup>23</sup> A similar, but slightly higher, proportion of Taser incidents between June and November 2010 were formally classified by the NSWPF as mental health incidents (137 out of 556 Taser incidents or 24.6%).<sup>24</sup>

For the six month sample period between June and November 2010, we reviewed NSWPF Taser incident records to see whether the Taser subjects had received psychiatric assessment or treatment after the incident. We also checked to see if the Taser subjects were suspected by police to have had mental health issues before the Taser incident.<sup>25</sup>

During the sample period, 140 of the 620 Taser subjects (22.6%) received psychiatric assessment and/or treatment after the Taser incident. A further 54 Taser subjects were recorded as having had previous mental health issues, but were not recorded as having received psychiatric assessment or treatment after the incident.

In other words, a total of 194 Taser subjects (31.3% of all Taser subjects) were suspected by police of having had, or were suffering from, mental health issues. Of these, over one-third (67 people or 34.5%) were subjected to Taser use in probe mode, drive-stun mode or multiple/continued use.

#### *Drug and/or alcohol use by Taser subjects*

The majority of the people who come into contact with police are likely to be under the influence of drugs and/or alcohol.<sup>26</sup> Consistent with this, Taser data shows that over half of the Taser subjects were suspected by police to be affected by drugs and/or alcohol at the time of the incident.

NSWPF written records indicated that between October 2008 and November 2010, over half of the incidents (809 out of the 1,446 incidents or 55.9%) were related to drug and/or alcohol.<sup>27</sup> In particular:

- 711 incidents (49.2%) were identified as related to alcohol only
- 57 incidents (3.9%) were identified as related to drugs only
- 41 incidents (2.8%) were identified as related to both drugs and alcohol.

Of the 620 Taser subjects between June and November 2010, 364 of them (58.7%) were suspected by police of alcohol and/or drug use at the time of the incident. This included:

- 299 people (48.2%) who were suspected of alcohol use only
- 40 people (6.5%) who were suspected of both alcohol and drug use
- 25 people (4.0%) who were suspected of drug use only.

Table 15 shows that of those suspected of alcohol and/or drug use:

- 50 (13.7%) were subjected to Taser use in probe mode
- 39 (10.7%) were subjected to multiple/continued Taser use
- the remainder were subjected to Taser use in draw and cover mode, except for seven people who were subjected to Taser use in drive-stun mode.

**Table 15: Drug and/or alcohol use by Taser subjects at the time of the incident: Jun 10 – Nov 10**

Drug and/or alcohol use at the time of the incident	Number of Taser subjects				Total
	Draw and cover incident	Probe incident	Drive-stun incident	Multiple/continued use incident	
Alcohol only	226 (75.6%)	42 (14.0%)	6 (2.0%)	25 (8.4%)	<b>299</b> <b>(100.0%)</b>
Drugs and alcohol	25 (62.5%)	5 (12.5%)	1 (2.5%)	9 (22.5%)	<b>40</b> <b>(100.0%)</b>
Drugs only	17 (68.0%)	3 (12.0%)	0 (0.0%)	5 (20.0%)	<b>25</b> <b>(100.0%)</b>
No	180 (81.1%)	17 (7.7%)	3 (1.4%)	22 (9.9%)	<b>222</b> <b>(100.0%)</b>
Unclear	30 (88.2%)	1 (2.9%)	1 (2.9%)	2 (5.9%)	<b>34</b> <b>(100.0%)</b>

**Source:** NSWPF records provided to or accessed by the NSW Ombudsman.

### Domestic violence

In 2011, 26,808 incidents of assault were recorded by the NSWPF as domestic violence-related – this is 40.4% of all incidents of assault in NSW.<sup>28</sup> Since this is a significant proportion of incidents dealt with by the NSWPF, we examined the Taser data to find out the level of Taser use in domestic violence incidents.

For the review period up to November 2010, 335 of the 1,446 incidents (23.2%) were identified by police as related to domestic violence.<sup>29</sup> A similar proportion of the 556 incidents in our sample (24.8%) were classified as domestic incidents.

### 6.6.6 Target area applied

Under the Taser SOPs that applied to the 556 incidents in the sample period, NSWPF officers were advised to avoid targeting certain sensitive areas of the body where possible – namely the head, face and groin areas.<sup>30</sup> In our detailed examination of Taser incidents during the sample period, we collected information from NSWPF written records to see if this advice was followed.

In our detailed review of incidents within the sample period, NSWPF written records show that of the 202 Taser uses in probe or drive-stun mode, the body part on which a person was subjected to Taser use (target area) was often not recorded (79 Taser uses or 39.1%). There were also five Taser uses for which the Taser was not applied to a target area – for example, where the probes missed.

Table 16 shows the number and proportion of Taser uses by target area, if that information was recorded. From the records, we can identify that:

- The Taser was most often applied to the chest area (30.5%), followed by the mid-section and the back areas (both 22%).
- The Taser was sometimes applied to the thigh/buttock (9.3%) and shoulder areas (8.5%).
- Drive-stun mode was most often applied to the thigh or buttock, accounting for 40% of all target areas for Taser uses in this mode.
- There were three Taser uses on a sensitive body part in three different incidents – one on the groin, one on the head, and one on the neck. All three uses were in probe mode.

**Table 16:** Body part on which the Taser was applied in probe or drive-stun mode: Jun 10 – Nov 10

Target area applied	Number of target areas		
	Probe mode	Drive-stun mode	Total
Chest	35 (35.7%)	1 (5.0%)	<b>36</b> <b>(30.5%)</b>
Abdomen/mid-section	22 (22.4%)	4 (20.0%)	<b>26</b> <b>(22.0%)</b>
Back	22 (22.4%)	4 (20.0%)	<b>26</b> <b>(22.0%)</b>
Thigh/buttock	3 (3.1%)	8 (40.0%)	<b>11</b> <b>(9.3%)</b>
Shoulder	7 (7.1%)	3 (15.0%)	<b>10</b> <b>(8.5%)</b>
Other body part(s)	6 (6.1%)	0 (0.0%)	<b>6</b> <b>(5.1%)</b>
Groin	1 (1.0%)	0 (0.0%)	<b>1</b> <b>(0.8%)</b>
Head	1 (1.0%)	0 (0.0%)	<b>1</b> <b>(0.8%)</b>
Neck	1 (1.0%)	0 (0.0%)	<b>1</b> <b>(0.8%)</b>
<b>Total</b>	<b>98</b> <b>(100.0%)</b>	<b>20</b> <b>(100.0%)</b>	<b>118</b> <b>(100.0%)</b>

**Source:** NSWPF records provided to or accessed by the NSW Ombudsman.

**Note:** The 'target area applied category' was taken directly from the COPS records for each incident (i.e. what the police officer recorded). It is not clear from the records how police officers recorded a probe discharge where one probe dart hit the chest area and the other probe dart area hit elsewhere (e.g. the abdomen). Consequently, within the 'chest category', for example, there may cases included where it was only that one probe dart (rather than two) hit the chest area.

### 6.6.7 Taser use while the person was handcuffed or contained

The Taser SOPs require that officers stop using the Taser once the subject is effectively under control. We therefore reviewed the Taser incidents within the sample period to find out if the Taser had been used on people who were handcuffed or contained in a confined area – such as a police cell or caged area of a police vehicle – at the time the Taser was applied.

For the vast majority of the Taser uses (602 Taser uses or 92.9%), the subject was not handcuffed or contained in a confined area while subjected to Taser use. Incidents involving people who were handcuffed or contained while subjected to Taser use are discussed in Chapter 7.

### 6.6.8 Is the Taser an effective tactical option?

We gathered information about Tasers and the use of other tactical options<sup>31</sup> to explore whether Tasers were effective in resolving incidents, and whether they had any impact on the use of other tactical options – such as communication and OC spray.

There are often claims that Tasers are an alternative to lethal force. If a service firearm was displayed or discharged during a Taser incident, this could suggest that Tasers are not being used as an alternative to lethal force. We therefore also collected information on whether service firearms were used during Taser incidents. This issue is considered further in Chapter 9.

#### *Prior tactical options*

For the sample period, we reviewed NSWPF written records related to the 556 Taser incidents to find out if officers at the scene had used other tactical options before using the Taser. In the majority of the incidents (470 incidents or 84.5%), officers had used other tactical options before resorting to the Taser. Some of the options were:

- communication or verbal commands – used in 384 incidents (69.1%)
- one or more bursts of OC spray – used in 54 incidents (9.7%)
- the display of a service firearm – used in 8 incidents (1.4%).

**Concurrent tactical options**

Of the 556 incidents during the sample period, the Taser was used at the same time as another tactical option in 380 incidents (68.3%). This included:

- communication (including verbal commands) – used in 280 incidents (50.4%)
- one or more bursts of OC spray – used in 27 incidents (4.9%)
- the display of a service firearm – used in 14 incidents (2.5%).

**Did Taser use resolve the incident?**

In the sample period, the use of the Taser resolved 400 of the 556 incidents (71.9%), and failed to resolve 147 incidents (26.4%).<sup>32</sup> If the Taser did not resolve the incident, other tactical options used to resolve the incident included:

- communication (including verbal commands) – used in 29 of the 147 incidents (19.7%)
- one or more bursts of OC spray – used in 11 incidents (7.5%)
- the discharge of a firearm – used in one incident (0.7%).

**Operational ineffectiveness of Taser applications – probe and multiple/continued use**

Tasers do not always operate effectively when used in the field. For example, one or both probes could miss the target, the probes may not penetrate through heavy clothing to make contact with the Taser subject, or the wires connected to the probes could break. Importantly, an ineffective Taser use may result in multiple Taser use on a subject – which could increase the risk of injury or death.

Of the 140 incidents involving Taser use in probe and/or drive-stun mode between June and November 2010, 48 incidents (34.3%) involved at least one ineffective use of the Taser. These 48 incidents were either probe or multiple/continued use incidents, as none of the Taser uses in drive-stun incidents were ineffective.

Of the 67 probe incidents between June and November 2010, 15 incidents involved at least one ineffective use of the Taser (22.4%). Of the 63 multiple/continued use incidents, 33 involved one or more ineffective use of the Taser (52.4%). Multiple use will obviously involve a high degree of ineffective uses, because that is often what justifies the multiple use.

From the NSWPF written records, the most frequently cited reasons for operational ineffectiveness were that one or both probes missed (23 incidents or 47.9%), followed by probes deployed too close together to cause NMI (9 incidents or 18.8%), and subject wearing heavy clothing (8 incidents or 16.7%). There was also one multiple/continued use incident in which the wire broke.

There is a detailed examination of the operational ineffectiveness of Tasers in Chapter 7.

**Table. 17: Reasons for operational ineffectiveness of Taser, by type of incident: Jun 10 – Nov 10**

Reason for operational ineffectiveness of Taser	Number of reasons		
	Probe incident	Multiple/continued use incident	Total
One or both probes missed	10 (66.7%)	13 (39.4%)	<b>23</b> <b>(47.9%)</b>
Probes deployed too close together to cause NMI	0 (0.0%)	9 (27.3%)	<b>9</b> <b>(18.8%)</b>
Subject wearing heavy clothing	3 (20.0%)	5 (15.2%)	<b>8</b> <b>(16.7%)</b>
Wire broke	0 (0.0%)	1 (3.0%)	<b>1</b> <b>(2.1%)</b>
Unclear	2 (13.3%)	5 (15.2%)	<b>7</b> <b>(14.6%)</b>
<b>Total</b>	<b>15</b> <b>(100.0%)</b>	<b>33</b> <b>(100.0%)</b>	<b>48</b> <b>(100.0%)</b>

**Source:** NSWPF records provided to or accessed by the NSW Ombudsman.

**Note:** There were also five draw and cover incidents where the Taser operator had failed to activate the Taser.

### 6.6.9 Injuries

One of the main arguments put forward for introducing Tasers is that their use can effectively resolve violent incidents – and result in fewer injuries to officers, subjects and the public. During our detailed review of the Taser incidents within the sample period, we collected information about injuries to officers and subjects from the NSWPF written records. However since NSWPF records rarely indicate the cause(s) of the injuries, we were only able to collate information about all injuries recorded in relation to the Taser incidents – that is, those injuries could have been sustained at any time during the incident.

#### *Injuries sustained by Taser operators and other officers*

Of the 600 Taser operators who used a Taser between June and November 2010, 553 of them did not sustain any injury during the incident (92.2%). Of the 47 Taser operators who sustained an injury, only six of them (12.8%) were recorded as having received medical treatment after the incident.

Other than the Taser operators, 61 officers who were present at the time of the Taser use were injured during the incident. Of these, 13 officers (21.3%) were recorded as having received treatment in a hospital.

#### *Injury sustained by Taser subjects*

Between June and November 2010, 195 of the 620 Taser subjects (31.5%) sustained an injury at some stage during the incident. Of the 195 Taser subjects, 13 (6.7%) sustained an injury caused by the Taser. Most of these Taser-related injuries were minor injuries – such as puncture marks, lacerations or cuts from the Taser. Details of the level of injury sustained by Taser subjects are discussed in Chapter 9.

Of the 195 Taser subjects who were injured, eight people (4.1%) who were subjected to Taser use in probe mode and/or drive-stun mode were not recorded as having received any medical treatment. One person who was subjected to Taser use in probe mode was not recorded as having received any medical treatment, because he had refused treatment offered by ambulance personnel.

In Chapter 9, we discuss in more detail whether the introduction of Tasers has resulted in fewer injuries to officers and Taser subjects.

### 6.6.10 Legal action against Taser subjects

For Taser incidents that fell within the sample period, we asked the NSWPF for information about any legal action that had been taken against the Taser subjects after the incident. We wanted to find out:

- if any charges were laid against Taser subjects after the incident
- the types of offences allegedly committed by the Taser subjects.

We were able to obtain this information for 598 Taser subjects. Legal action was taken against 334 of the 598 Taser subjects (55.9%). Of these, 333 Taser subjects were charged with a total of 887 offences, and one Taser subject was issued a Criminal Infringement Notice but no further information about the offence(s) was recorded in COPS. For the remaining 264 Taser subjects (44.1%), the NSWPF records did not list any legal action against the person.

Offences ranged in seriousness from traffic and public order offences to murder. The majority of the charges laid were for the offence of assault (243 charges or 27.4%), followed by 'assault police' and 'resist or hinder officer' (215 charges or 24.2%), and public order offences (176 charges or 19.8%).

## 6.7 General profile of a Taser incident and the parties involved

Based on this data, we can provide a general profile of a Taser incident and the parties involved.

Taser incidents were most likely to occur on a Sunday, between 8.00–11.59pm, in a private residence – and involve the use of Taser in draw and cover mode. A Taser operator was likely to be male, between the ages of 35 and 39 years, at the rank of senior constable, and to have served in the NSWPF for 0–4 years. A Taser subject was likely to be male and aged between 18 and 24 years. He was likely to be behaving in an assaultive manner, but without a weapon, and affected by alcohol and/or drugs.

The Taser use was most likely to have resolved the incident. In most incidents the Taser was used in conjunction with other tactical options. The Taser was applied to the chest in most incidents, and it was likely that neither the officers present at the scene nor the Taser subjects sustained any injury. It was probable that the Taser subject was charged with one or more offences after the incident. The charge was most likely to be the offence of assault.

## Endnotes

1. The full sample size is 631 incidents however 75 incidents have been excluded because they involve accidental/hazardous use or use for protection from an animal. The focus of this chapter is on the 556 operational incidents.
2. Email from Detective Inspector Greg Butler, NSW Police Force to Michael Gleeson, Manager, Police Division, NSW Ombudsman, 1 November 2011.
3. Queensland Police Service, *Review of the Queensland Police Service Taser Trial*, 2009; Crime and Misconduct Commission, *Evaluating Taser Reforms: Review of Queensland Police Service policy and practice*, April 2011; Corruption and Crime Commission, *The Use of Taser® Weapons by Western Australia Police*, 4 October 2010; Royal Canadian Mounted Police, *2009 RCMP Annual Report on Conducted Energy Weapons*, 26 July 2010.
4. Figure 6 shows the 265 incidents between October 2008 and September 2011 inclusive. The remaining nine incidents in October and November 2011 are not represented on the graph as the two months do not constitute a full quarter.
5. A police officer is counted once for each incident. If the same police officer has been involved in more than one Taser incident, he or she is counted as a separate Taser operator for each additional incident.
6. Five Taser operators whose identities were not recorded have been excluded from this table. Also, in counting the number of times a Taser operator has used a Taser, hazardous practices and Taser uses against animals have been excluded.
7. There were five Taser operators whose gender was unknown because their identities were not recorded.
8. Information was extracted on 4 May 2012 from the database of police officers we maintain (extracted from a NSWPF database). Because our database is updated regularly, we were unable to obtain this information using an earlier date.
9. The age of Taser operators who used a Taser between December 2010 and November 2011 was not provided by the NSWPF.
10. Data on Taser operators' years of service was not provided by the NSWPF as part of this investigation, but was obtained as part of our general oversight function. Years of service were calculated as the difference between the date on which the officer joined the NSWPF and the date of the Taser incident. This table does not take into account any interval for which an officer may have left the NSWPF (and returned on a later date) as this information is not available to us.
11. As at 31 December 2010, people who identify as Aboriginal and Torres Strait Islander aged 10 years or over were estimated to be 3% in NSW, 3% in Queensland, 2% in South Australia and 28% in Northern Territory. Excluding offenders who received a penalty or infringement notice, from July 2010 to June 2011, Aboriginal and Torres Strait Islander people represented 12% of offenders in NSW, 18% of offenders in Queensland, 13% of offenders in South Australia, and 71% of offenders in the Northern Territory: Australian Bureau of Statistics, *Recorded Crime - Offenders, 2010-11*, 9 February 2012. <[www.abs.gov.au/ausstats/abs@.nsf/Products/2D962B920571532FCA25799E000DDB50?op=endocment](http://www.abs.gov.au/ausstats/abs@.nsf/Products/2D962B920571532FCA25799E000DDB50?op=endocment)> accessed 8 August 2012. In NSW, Aboriginal and/or Torres Strait Islander people represented 14.7% of all persons charged in the Local Courts in 2011, 38.1% of all persons charged in the Children's Court, and 17.7% of all persons charged in the District and Supreme Courts: NSW Bureau of Crime Statistics and Research, *New South Wales Criminal Courts Statistics 2011, 2012*.
12. The total adds up to 591 Taser subjects instead of 620 Taser subjects. This is because: (a) in 15 cases, the information is not available as no CNI number was recorded in relation to the Taser subject; (b) in seven cases, there was no record of whether the Taser subject identified as Aboriginal and/or Torres Strait Islander in COPS; and (c) in seven cases, the CNI numbers were not supplied due to data entry errors. These errors have been corrected.
13. As counted in the 2011 Census: Australian Bureau of Statistics, *Census of Population and Housing - Counts of Aboriginal and Torres Strait Islander Australians*, 2011, 21 June 2012. <[www.abs.gov.au/ausstats/abs@.nsf/Lookup/2075.0main+features32011](http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/2075.0main+features32011)> accessed 7 August 2012.
14. Data on time of day of Taser incidents between December 2010 and November 2011 were provided by the NSWPF. However, it was not provided in a form that would allow statistics to be generated without extensive data cleansing. Table 12 therefore does not include the additional 12 months of data on this variable.
15. There were 30 incidents in which the Taser was activated but no one was subjected to Taser use (e.g. building search), and another 14 incidents which had an unknown number of Taser subjects (e.g. Taser use in draw and cover mode against a crowd).
16. Royal Canadian Mounted Police, *2009 RCMP Annual Report on Conducted Energy Weapons*, 26 July 2010, p. 3.
17. There were an additional five incidents in which no one was subjected to Taser use – for example, when an officer used a Taser during premises search and did not find the person of interest.
18. In one incident, two individuals who were subjected to separate Taser uses exhibited different behaviours – 'assaultive' and 'grievous bodily harm or death' respectively. We have classified the subjects' behaviour according to the highest level of threat present in that incident, i.e. 'grievous bodily harm or death'.
19. 'Not applicable' is used when no one was subjected to a Taser application – for example, when an officer used a Taser during premises search and did not find the person of interest.
20. In 1.8% of the Taser uses, the threat was not recorded. If the threat was directed at more than one group of people (e.g. police and the public), these are counted separately.
21. Examples of furniture and other household items included: chair, table, cupboard door and plant holder.
22. The Drug Use Monitoring in Australia program found that in 2009-2010, nearly two in five police detainees (38%) reported that they have previously been diagnosed with a mental health related issue: Sweeney, J. and Payne, J., *Drug Use Monitoring in Australia: 2009-10 Report on Drug Use among Police Detainees*, Australian Institute of Criminology (AIC) Monitoring report, number 17, 2012.
23. Data on factors associated with Taser incidents between 1 December 2010 and 30 November 2011 was provided by the NSWPF. However, it was not provided in a form that would allow statistics to be generated without extensive data cleansing. The percentage here therefore does not include the additional 12 months of data on this variable.
24. For this analysis, mental health incidents included the NSWPF's incident classifications of: (a) 'Schedule 1', which refers to a certificate issued by a medical practitioner recommending the involuntary admission of a person to a mental health facility. The certificate is in the form prescribed in Schedule 1 to the *Mental Health Act 2007*; (b) 'Convey Schedule 1', which means the transportation of an involuntary patient from one mental health facility to another; and (c) 'Mental Health Act', which refers to the involvement of the police with persons under the *Mental Health Act 2007*.
25. We determined whether subjects were recorded as having had previous mental health issues by examining the COPS Event and Sitrep relating to the incident. If the Taser was used in probe and/or drive-stun mode, we also reviewed all warnings on the COPS database to see if police suspected the subjects of having had mental health issues.
26. The 2009-10 Drug Use Monitoring in Australia report found that two-thirds of police detainees (66%) tested positive to one or more drugs, and nearly half (47%) had been consuming alcohol within 48 hours before their arrest and detention: Sweeney, J. and Payne, J., *Drug Use Monitoring in Australia: 2009-10 Report on Drug Use among Police Detainees*, AIC Monitoring report, number 17, 2012.
27. Data on factors associated with Taser incidents between December 2010 and November 2011 were provided by the NSWPF. However, it was not provided in a form that would allow statistics to be generated without extensive data cleansing. The percentage here therefore does not include the additional 12 months of data on this variable.
28. Goh, D. and Moffatt, S., *New South Wales Recorded Crime Statistics 2011*, NSW Bureau of Crime Statistics and Research, 2012.
29. Data on factors associated with Taser incidents between December 2010 and November 2011 were provided by the NSWPF. However, it was not provided in a form that would allow statistics to be generated without extensive data cleansing. The percentage here therefore does not include the additional 12 months of data on this variable.
30. NSW Police, *For Use of TASER – General Duties Electronic Control Device*, version 1.15 September 2008, section 5.7, p. 14; and NSW Police Force, *Standard Operating Procedures for Use of Electronic Control (TASER) Devices by the NSW Police Force*, version 1.16, 1 July 2010, section 5.7, p. 16. As discussed in Chapter 4, the Taser SOPs have since been amended to include the advice that officers should also avoid aiming the Taser at the chest area where possible: NSW Police Force, *Standard Operating Procedures for Use of Electronic Control (TASER) Devices by the NSW Police Force*, version 1.18, (approved for release in July 2012), section 6.6, p. 18.
31. The count of tactical options are not mutually exclusive – for example, if communication and OC spray were both used at some point during the Taser incident, the incident was counted twice (one in each category) for this analysis. Other tactical options might also have been used in conjunction with these tactical options during an incident.
32. In nine incidents (1.6%), this was not applicable – for example, where Taser was used to conduct a building search.

## Chapter 7. Taser use issues and the adequacy of SOPs and training

This chapter presents the results of our comprehensive review of Taser use by general duties police in NSW. We identify and discuss the Taser uses that are of particular concern and whether they complied with the Taser Standard Operating Procedures (the Taser SOPs) and training for these uses. We also assessed the adequacy of the Taser SOPs – do they set appropriate standards for Taser use, are they concise and easy to understand, and do they provide unambiguous guidance about the obligations placed on police?

For this chapter, we used the detailed information from our examination of 556 Taser incidents and the independent expert's review of 50 incidents, the results of three focus groups held with police, the extensive consultation with the New South Wales Police Force (NSWPF) Taser Executive Committee (TEC), our own examination of the materials/documents made available to us and our observations of the Taser training.

The first section of this chapter gives an overview of the relationship between the Taser SOPs, the Taser training, and the accountability framework currently in place. The following section details our overall assessment of police compliance with the criteria for use specified in the Taser SOPs.

In the remainder of this chapter we discuss specific issues relating to the incidents where police did not appear to comply with the Taser SOPs.

These issues include:

- Taser use for protection from violent confrontation and resistance (page 110)
- Taser use for protection from injury (page 112)
- multiple uses of a Taser (page 115)
- using Tasers in drive-stun mode (page 119)
- using Tasers in draw and cover mode and the question of a lower threshold (page 121)
- our position on the threshold for Taser use in draw and cover mode (page 130)
- discharging a Taser for compliance only (page 131)
- using Tasers on people who are fleeing or evading arrest (page 134)
- using Tasers on people in handcuffs (page 134)
- using Tasers in police custody areas (page 135)
- using Tasers to search premises (page 137)
- using Tasers in high risk situations (page 138)
- the structure and clarity of the Taser SOPs (page 142)
- ensuring consistent standards in all procedures relating to Taser use (page 143)
- is the Taser training provided by the NSWPF adequate? (page 144)

The 21 recommendations in this chapter are directed toward preventing future inappropriate Taser uses by improving the Taser SOPs and training.

### 7.1 The relationship between Taser SOPs, training and the accountability framework

The Taser SOPs were written to provide general duties police with essential information about the use of Tasers. They have a mixed focus that includes:

- governance – including criteria for use and record keeping
- administration – including storage and safe handling
- practical advice for the effective use of the Taser or methods for use.

The information in the Taser SOPs is not exhaustive and is supplemented by mandatory training that is a prerequisite for becoming an accredited Taser user. The Taser training (discussed in detail in Chapter 4) includes information about governance, but is weighted towards learning practical skills and theoretical knowledge to deploy the Taser in the context of the Tactical Options Model (TOM).

By setting appropriate standards for use, the Taser SOPs should mitigate the risk of serious misuse or unreasonable use of Tasers and allow the Commissioner to take appropriate management or remedial action if this occurs.

At the same time, it is critical that the Taser SOPs clearly articulate standards for use in a manner that supports and does not hinder effective decision-making by police. This is essential to reduce the risk of injury to both police and the public and to minimise complaints about unlawful or unreasonable use of Tasers.

Training should aim to provide police with the operational and practical skills required to use Tasers in an effective manner, including techniques to increase the safety of police and members of the public. Importantly, training must also ensure that police are properly informed of the standards of use they will be held accountable to and aim to enhance the skills of police to make decisions consistent with these obligations.

It is important to note that the current version of the Taser SOPs (version 1.18) was only recently released (July 2012). It follows our consultation with the TEC about the issues we identified in our review of the 556 incidents. The discussion in this chapter is framed in terms of Taser SOPs version 1.16, unless otherwise stated, as it was current for the period of our sample. The amendments that resulted from our consultation with the TEC are highlighted in the relevant parts of the discussion within this chapter.

## 7.2 Our assessment of police compliance with the criteria for use of a Taser

Section 4 of the Taser SOPs (version 1.16) states that:

*The TASER may be used in accordance with the NSWPF Tactical Options model at the discretion of the TASER User to:*

*4.1 Protect human life*

*4.2 Protect yourself or others from person/s where violent confrontation or resistance is occurring or imminent*

*4.3 Protect officer/s in danger of being overpowered or to protect themselves or another person from injury*

*4.4 Protection from animals*

**NB:** *Once TASER has been used, officers should attempt to restrain the subject as quickly as possible. Once the subject is effectively under control the use of TASER should be discontinued.<sup>1</sup>*

Each criterion for use is not mutually exclusive and, at times, more than one criterion may be relevant to the justification for Taser use.

Officers are required to create a COPS Event and a Sitrep (see Chapter 5) each time a Taser is used (in any mode). The Sitrep form captures specific details such as the type of deployment, other tactical options used, and details of the officer who used the Taser. It also captures details of the person subjected to the Taser use, recorded on COPS as the 'person of interest' (the POI). It also includes a brief outline of the incident which prompts the officer to explain why the Taser was the most appropriate tactical option in the circumstances. However police are not required to identify the criterion under which the use of the Taser was justified. In conducting our review, we reviewed these records as well as the available Taser Cam footage.

We found that police used the Taser in accordance with the criteria for use in 476 or 86% of the incidents we reviewed from the sample period (June 2010 – December 2010).

Of the 80 incidents that appeared to involve a breach of the criteria for use:

- 53 related to draw and cover incidents
- 9 related to probe incidents
- 1 related to a drive-stun incident
- 17 related to multiple or continued use incidents.

This suggests that generally the TEC has effectively communicated the criteria for use to police through the Taser SOPs and associated training. This is a very positive finding – however there are still instances where, based on our assessment, there has been a breach of the criteria. These instances highlight areas and issues where improvement and tightening of controls (to prevent or minimise mission creep and serious misuse) can be made.

## 7.3 Taser use for protection from violent confrontation and resistance

In our 2008 report, we made the following recommendation about the criteria for use of Tasers:

*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.<sup>2</sup>*

Section 4.2 of the Taser SOPs states that one criterion for use is to:

*Protect yourself or others from person/s where violent confrontation or resistance is occurring or imminent.*

As shown in Table 13 (see page 102), we identified that 301 of the 556 incidents (54.1%) involved a person whose behaviour was classified as 'intended or likely to cause grievous bodily harm or death' or was 'assaultive'. The use of Tasers in these circumstances is consistent with the criteria for use. We found that 25.8% of Taser subjects (160 out of 620) were in possession of one or more weapons at the time of the incident, the most common of which was a knife (88) – see Table 14 (page 103). We also found that in 146 of the 155 incidents (94.2%) where a subject had a weapon, the police complied with the Taser SOPs. However, in nine incidents, police continued to use a Taser after the weapon had been secured or, for other reasons, the further use of Taser appeared to be a breach of the criteria for use.

We found a lack of consistency in how the term 'violent confrontation or resistance' is interpreted by police. Documents provided to us by the NSWPF included the following email exchange between a Detective Inspector of the NSWPF Major Events and Incidents Group (MEIG) and a member of the Appeals and International Law Prosecutions Command that encapsulates the lack of clarity. The Detective Inspector of the MEIG posed the following question:

*My thought was, does this mean violent confrontation or violent resistance OR violent confrontation but just normal resistance? If this is the case then I think they need to alter the SOPs to stop police using the Taser for passive noncompliance.<sup>3</sup>*

The response advised the following:

*In my view you could argue it either way. If you want to avoid the argument and make it to be abundantly clear that Tasers are not to be used for resistance unless the resistance is violent, then you should expressly say so, i.e. violent confrontation or violent resistance.<sup>4</sup>*

In our review, we identified cases where police appear to have interpreted the criterion as 'resistance' rather than 'violent resistance' – namely, cases where a Taser was used on a person who was resisting arrest or refusing to comply with directions given by police. In these cases, we were not satisfied that the officer had reasonable grounds to deploy the Taser. Although the person in these cases might have been actively resisting police – for example, by snatching their arms away or twisting their body when police tried to restrain or handcuff them – there was insufficient evidence to support the view that the person was 'violently' resisting police or that a violent confrontation was occurring.

We also observed inconsistencies in the way the TRPs assessed the level of resistance presented by Taser subjects.

Our conclusion from these cases was that the Taser SOPs (version 1.16) and TRP SOPs did not provide sufficient guidance to officers and the TRPs about what level of confrontation or resistance would justify the use of Taser. The SOPs do not adequately address whether the use of Taser against a person actively resisting police, but not being violent towards officers, is reasonable and proportionate.

We asked the NSWPF to provide us with a more detailed explanation of the levels of resistance they consider may justify the use of Tasers. They advised us that:

- Passive resistance suggests non-reaction, non-participation, being inactive, inert. For example, protesters who have linked arms and are refusing to move, or a person sitting in a chair and refusing to accompany police. Non-threatening behaviour and passive noncompliance could be described as passive resistance. The SOPs state that Taser is not to be used in these circumstances.
- Active resistance is a progression from passive resistance to physical actions intended to defeat an officer's attempts to control or restrain the subject.
- Violent resistance, while not defined in the SOPs, is viewed as actions or words intended to harm or intimidate or engaging in physical activity that could cause injury.<sup>5</sup>

In our view, the level of resistance required by the SOPs to justify the use of a Taser should be defined as 'violent resistance', and this should be understood as a higher threshold than active resistance.

In August 2010, the TEC identified concerns about the interpretation of the term resistance, and the minutes of the TEC meeting indicated a need to review it:

*Need to Review the word 'Resistance' in the SOPs. Currently, the wording is too open and needs to be clearer to ensure when tested in court it cannot be open to criticism.<sup>6</sup>*

We share the concerns of the TEC. The use of a Taser against a person who is passively or actively resisting police may not be a proportionate response and may be regarded as unlawful under ss. 230–231 of the *Law Enforcement (Powers and Responsibilities) Act 2002* (LEPRA).

As a result of discussions we held with the NSWPF, the TEC resolved that the word ‘violent’ should relate to both ‘confrontation’ and ‘resistance’ in criterion 4.2. Taser SOPs, Version 1.18 released in July 2012 includes the amended criterion which is now defined as follows:

*5.2: Protect yourself or others from person(s) where violent confrontation or violent resistance is occurring or imminent.<sup>7</sup>*

We are pleased that the NSWPF have taken this action during the course of our investigation.

## 7.4 Taser use for protection from injury

Criterion 4.3 of the Taser SOPs (the same wording is currently used in version 1.18) allows police to use the Taser to:

*Protect officer/s in danger of being overpowered or to protect themselves or another person from injury.*

In many cases we observed police used a Taser in response to a violent confrontation and the use appeared to be justifiable as it was consistent with both criterion 4.2 (violent confrontation or violent resistance) and criterion 4.3.

We found some cases where police discharged a Taser in circumstances where criterion 4.2 was not applicable as a violent confrontation or resistance was not occurring or imminent. In these cases, police discharged a Taser as a pre-emptive measure to avoid a struggle and a possible injury that might occur if police attempted to arrest the person.

When we provided case study examples to the NSWPF, the TEC advised that a pre-emptive use of the Taser in probe mode may be consistent with criterion 4.2 and justified on the grounds that the officer was protecting themselves from injury.<sup>8</sup> In our discussions with the NSWPF, it also became clear that they consider that the use of a Taser to avoid any injury to an officer in an interaction with a person may be justifiable under criterion 4.3.

We found cases in which criterion 4.3 was identified as the justification for discharging a Taser, but – after our review of the relevant Taser Cam footage and other records of the incident – we did not consider that the use was reasonable.

Case study 3 is an example of a situation where officers discharged the Taser in probe mode and, on review, the NSWPF assessed the use as justified under criterion 4.3 – on the basis that the officer may be injured. Our review of this incident suggested that if any injury were to occur it would be relatively minor – such as low-level bruising or the impact of a slap – and that the criterion for use argued did not provide a reasonable basis for deploying the Taser.

### Case study 3 – Unreasonable discharge of Taser to arrest intoxicated man

Police attended a domestic disturbance after a 000 call by a woman who was fearful of her son’s aggressive behaviour. The man, aged in his thirties, had a history of alcoholism and she had refused him entry to her home because he had been drinking. The woman told police that her son was intoxicated and on medication for a mental illness. She explained that she did not want her son to remain and had packed him a bag of clothes to take with him to a men’s shelter. Her son had refused to leave and had set up a fold-up bed on the veranda. The man subsequently began banging on the doors and windows at the back and front of the house demanding that his mother let him in to get a cask of wine he had bought earlier. The woman refused to answer the door, but then rang 000 fearing her son might break a window or door. When police approached the premises the man was sitting on some outdoor furniture under a pergola. Police approached him after speaking to the woman and informed him he was under arrest for intimidation.

The COPS record indicates that when police tried to lift the man out of the chair to walk him to the caged vehicle at the front of the house, the man clenched his fists and pulled his arms to his body, before pushing out towards police. The COPS record states that police feared an imminent violent confrontation and had drawn the Taser.

The Taser was then armed and the man was seen sitting in a chair. Police instructed him to put his hands behind his back and told him ‘*if you resist us you’re going to be Tasered*’. The man did not comply and tried to reach for his cigarettes and lighter. The Taser Cam footage shows the man slapping away the arm of an officer who tried to prevent him from reaching his cigarettes. The man remained seated and tried to roll a cigarette while police attempted to secure his arms to handcuff him. The COPS record describes the actions of the man as involving violent resistance and that the Taser had been deployed as police believed further violent

resistance and confrontation would occur if they were to physically attempt to restrain the accused. After the discharge of the Taser, the man fell to the ground. The officers repeated the direction for the man to place his hands behind his back but he did not comply. Police discharged the Taser a second time only a couple of seconds after the first Taser cycle. The woman later told police she was not afraid that her son would assault her, but that she feared his aggressive behaviour and that he would damage her property.

#### **Police assessment of the Taser use**

The TRP considered the use of Taser was in accordance with the SOPs. We were not satisfied that the man's behaviour reached the threshold of violent resistance that was suggested by the COPS Event or was justifiable under criterion 4.3. When we presented our concerns to the NSWPF about the level of resistance not meeting the threshold of 'violent resistance', the TEC indicated that the use was justifiable on the basis of criterion 4.3 of the Taser SOPs – that it was 'likely' that the officers may be overpowered or receive an injury, because the man 'physically resisted' by slapping at the hands of the officers.

#### **Our assessment of the Taser use**

In our view, the nature of injury potentially caused by the man slapping at the hands of the officers was likely to be relatively minor. We consider this use of force disproportionate in the circumstances and an excessive response to the level of resistance presented by the subject.

We also note that our independent expert considered the use of Taser in this case breached the criteria for use because the subject was not violently resistant, was unarmed and heavily intoxicated, and officers could have used other tactical options such as Oleoresin Capsicum (OC) spray or weaponless control to arrest him.

Case study 4 is another example of a matter in which officers appear to have used the Taser in probe mode to avoid the possibility of 'any' injury that might occur when physically arresting a person.

### **Case study 4 – Taser use because an injury is possible**

At approximately 3:00am police were conducting a vehicle patrol. They noted a vehicle failing to adhere to a red signal while conducting a right turn and, in doing so, crossing over six lanes of traffic. Officers initiated a short low speed pursuit after the man failed to comply with police directions to stop.

The man then attempted to decamp from the vehicle and police pursued on foot. The COPS record indicates that police grabbed hold of the man in an attempt to arrest him and that *'the [man] violently resisted by trying to push [the officer] away in an attempt to break free. [The officer] grabbed the accused by his jacket with both hands, the [man] struggled and continued to resist'*. During the pursuit, officers noted the man appeared to be very sluggish and formed the opinion that he was either affected by drugs or alcohol.

Police then attempted to handcuff the man, and the COPS records indicates that the man *'was resisting by pushing up off the ground attempting to stand up, throwing his legs around violently'*. The COPS record states that due to the violent resistance, police were *'forced to deploy the Taser'*. Because of the heavy jacket the man was wearing, the probes did not appear to achieve Neuromuscular Incapacitation (NMI) and a follow up drive-stun was delivered.

From our viewing of the Taser Cam footage, the man appeared to be trying to stand up when an officer pushed him back toward the ground. The Taser operator then placed his boot on the head of the man. The man was lying stomach down as an officer attempted to handcuff him and appeared to refuse to place his hands behind his back.

The officer gained control over one of the man's hands, but he then wrenched it free and put it under his body. At this time, the probes were deployed into the back of the man. The man is then told to *'roll over'* and *'put your hands behind your back'*.

After the deployment, the Taser Cam footage is quite shaky and unclear. During the following 12 seconds, the man appeared to be lying on the ground face down with his hands by his shoulders. The officer repeated *'put your hands behind your back'*. The man was then drive-stunned in the back.

#### **Our assessment of the Taser use**

We considered whether the use of the Taser could be justified under criterion 4.2 or 4.3 of the SOPs. The man was being physically restrained by three officers and he was pinned to the ground at the time the Taser was switched on – and certainly before it was discharged. In our view the action of the man would fall into the category of active resistance, and falls short of being 'violent'. The man was also well affected by alcohol. In these circumstances, it does not seem reasonable to believe he could overpower the three police in

attendance, and it seems likely that any injury the officers might have sustained in the process of handcuffing him would be minor.

In light of this, we consider this use of force to be disproportionate in the circumstances, and an excessive response to the level of resistance presented by the subject.

Our independent expert also considered the use of Taser in this case did not meet the criteria for use set out in the Taser SOPs, and commented that the three officers in attendance could have restrained the man without resorting to weapons.

#### 7.4.1 Is protection from ‘injury’ (undefined) an appropriate threshold for using a Taser?

We acknowledge that police are frequently faced with situations where they have to interact with people who are aggressive or violent. It is appropriate that the NSWPF has policies and practices in place to help minimise injury to police officers when dealing with these people. However, police use of Tasers must be consistent with ss. 230–231 of LEPRA which provides that police may use such force as is reasonably necessary. We are concerned that criterion 4.3 is being defined so broadly that it creates a risk that police may use Tasers unlawfully.

During our consultations with senior police, we were advised that – when developing the Taser SOPs – the NSWPF decided not to reflect a level of ‘serious injury’ in criterion 4.3. They told us that the Taser Implementation Committee that developed the Taser SOPs established criterion 4.3 to provide the greatest level of protection to officers and the community while complying with the legal requirement of ‘reasonable force’.

The NSWPF advised:

*As chair of the Taser Executive Committee, Assistant Commissioner Alan Clarke benchmarked the NSWPF Taser SOPs against those of other jurisdictions which carry a threshold of ‘serious injury’, rejecting the concept on the following bases:*

- NSWPF Taser SOPs exist in accordance with the Tactical Options Model;
- There is an inherent difficulty in defining serious injury;
- There is an inherent difficulty in police officers precisely determining the level of injury that may occur when confronted with a violent or potentially violent situation;
- Officers are entitled to utilise Taser in accordance [with] ‘reasonable force’ and the inclusion of the term ‘serious injury’ may set a higher threshold than that required by law;
- Taser was introduced into NSWPF in order to reduce injuries and has been pitched at the ‘assault’ level.<sup>9</sup>

It is relevant to note that there are other Australian jurisdictions that do require the threshold of ‘serious injury’ to be met before a Taser can be used.

At this stage, there is limited case law in Australia interpreting what is reasonable force (ss. 230–231 of LEPRA) in the context of the use of Tasers by police. Given this limited case law, we believe that the NSWPF should include further guidance in the criterion to help officers properly determine what is reasonable and proportionate.

In determining an appropriate threshold for the use of Tasers, it is relevant to consider that:

- Tasers inflict pain while the electrical discharge is cycling through the subject’s body.
- The probes cause puncture wounds and/or lacerations on entering the skin.
- There is a risk that the person subjected to a Taser discharge can injure themselves if falling while in NMI.
- There are risks of other medical complications following the use of a Taser.

Currently, the guidance for police about the level of force officers should use is in the *NSW Police Force Handbook* and the TOM. The Handbook states that:

*The goal of promoting a safe and secure community necessitates the application of force by police officers on a daily basis, at a range of levels. One of the challenges you will face lies in balancing the need to bring situations to a safe and effective conclusion with the need to avoid excessive applications of force.*

*To avoid excessive application of force and maintain an effective incident response you should use the minimum amount of force that is appropriate for the safe and effective performance of your duties and proportionate to the risks you face.<sup>10</sup>*

The TOM states that:

*The ultimate **goal** is **control** of the situation. You need advantage for control. Evaluate the propensity for control - v - injury (reasonable force) ...<sup>11</sup>*

In most situations where police are handcuffing or physically restraining a person who is struggling or actively resisting police attempts to restrain them, there is a risk that police may be injured in some way – ranging from minor to serious. Without the qualification that Tasers may only be discharged to avoid serious injury or harm, there is a significant risk that Tasers may be used where not reasonably necessary – as the use of force in probe mode may be a disproportionate or unreasonable response to the level of resistance being presented.

The current threshold allowing pre-emptive use of Tasers to protect police or others from a minor injury also poses a considerable risk of mission creep. In the interests of avoiding any injury to police, the balance between control versus injury may become skewed towards primarily protecting police – and not adequately weighted toward what is a proportionate response to the threats posed in a given situation. This may result in uses of Taser that are inconsistent with ss. 230–231 of LEPPR.

In our view, it may be appropriate for officers to discharge the Taser if there are reasonable grounds to believe that it is necessary to protect themselves or another person from serious actual bodily harm.<sup>12</sup> However, discharging the Taser to avoid minor injuries that often occur in physically arresting or handcuffing a person is a disproportionate use of force and should be considered a breach of the Taser SOPs.

We accept the arguments from the NSWPF that there may be different interpretations of serious injury, and that Tasers were introduced to reduce injuries and have been pitched at the ‘assault’ level. Police have not specified which level of assault they are referring to, but the level of common assault – which could, for example, be yelling at a person causing fear – would be too low. Instead of simply stating Taser use is justified for protection from serious injury (as is the case in other jurisdictions), we agree revised wording needs to be specific, clear and provide adequate guidance.

## Recommendation

1. That the NSWPF modify the Taser SOPs so that the criterion for discharge of a Taser is to protect from serious actual bodily harm, as opposed to any type of injury.

## 7.5 Multiple/continued uses of a Taser

In Chapter 2, we described the recent research literature that highlights the increased medical risks associated with multiple and continued use of a Taser. We noted that Taser International warn that repeated, continued or simultaneous exposures to Taser should be minimised. Their training material also highlights that a number of leading police organisations – including the United States (US) Police Executive Research Forum and the US National Institute of Justice – have identified a 15 second exposure to Taser as a significant safety concern.

It is essential that the Taser SOPs and police training provide clear guidance and adequate warnings about the risks associated with the multiple/continued use of Tasers.

In our view, a multiple/continued Taser use incident can include:

- multiple trigger pulls in probe mode
- multiple trigger pulls in drive-stun mode
- two or more officers subjecting a person to a Taser use in probe and/or drive-stun mode during a single incident<sup>13</sup>
- holding the Taser trigger continuously to discharge a constant current until the trigger is released (continued use).

There are provisions in the Taser SOPs (version 1.16) that warn against multiple use of Tasers. Section 5.11 (p.16) states that:

*Multiple use of the TASER should be avoided where practicable and must be justified in all the circumstances following assessment of the subject and in accordance with the Tactical Options Model.*

The SOPs also set limits on the continued use of the Taser at section 5.10 (p.16):

*Continued use of the TASER must be justified in all the circumstances following assessment of the subject and in accordance with the Tactical Options Model.*

The current version of the Taser SOPs also contains similar provisions.

Current Taser training emphasises that if circumstances require extended duration or repeated discharges the operator should reassess the subject between uses.<sup>14</sup>

Of the 556 Taser incidents in our sample, we found 63 in which the Taser was used multiple times or continuously on a person. Our review found that police complied with the criteria for use in 46 (73%) of the multiple/continued use incidents. We found 17 multiple/continued use incidents where the initial use of the Taser appeared to be a breach of section 4. We also examined the mode of usage involved in the multiple/continued use incidents which we considered to be unsatisfactory.

Thirteen incidents involved the use of a Taser in probe mode multiple times. This included:

- one incident that involved five cycles of a Taser, two of which were continuous
- two incidents that involved continued use of a Taser for 30 seconds and 10 seconds respectively
- four incidents that involved three cycles of the Taser
- six incidents that involved two cycles of the Taser.

We identified a further four incidents where one Taser was used in both probe and drive-stun mode.

In one incident, one Taser was used for one cycle in probe mode and then two cycles in drive-stun mode. In another incident, a Taser was used once in probe mode and then for eight seconds in drive-stun mode. In the remaining two incidents two Tasers were used on one person including:

- one incident in which both Tasers were used in probe mode for one cycle
- one incident in which one Taser was used for one cycle in probe mode and a second Taser was used for one cycle in drive-stun mode.

It is our view that the NSWPF should amend the Taser SOPs and training to reflect the advice published by Taser International suggesting that police should limit multiple Taser use to a 15 second exposure, either multiple cycle or continued use. This amendment is essential to ensure that the NSWPF are using Tasers in a way that is consistent with the current best practice suggested by the manufacturer and leading police organisations.

## Recommendation

2. **That the NSWPF amend the Taser SOPs and training to restrict the multiple use of Tasers to a 15 second exposure during any incident and that use beyond 15 seconds will constitute a breach of the Taser SOPs.**

### 7.5.1 Failure to restrain subjects following first Taser cycle

If the Taser operates effectively in probe mode it causes NMI and provides a window of opportunity for police to handcuff the person and take them into custody. In some of the multiple/continued use cases, we noted that officers did not restrain the person during or immediately after the first Taser cycle. This seemed to increase the likelihood and need for further cycles as the person having recovered from the effects of the NMI could resume a level of resistance towards police.

The Taser SOPs in operation (version 1.15) during the first month of the sample period (June 2010) included a note after the criteria for use (p. 13) that advised:

*NB: Once TASER has been used, officers should attempt to restrain the subject as quickly as possible.*

The note was amended in version 1.16 released on 1 July 2010 (p. 14) to read:

*NB: Once TASER has been used, officers should attempt to restrain the subject as quickly as possible. Once the subject is effectively under control, the use of TASER should be discontinued.*

Case study 5 is an example of a matter where we were concerned that a failure by police to restrain a subject resulted in multiple Taser cycles.

The Taser Cam footage for this case study has been released with this report and can be viewed on the Ombudsman's website.

### Case study 5 – Failing to restrain results in multiple uses of a Taser

Police attended a residence at 10:45 pm after a complaint that a 35 year old man had breached an Apprehended Domestic Violence Order (ADVO). The police that attended were advised that the:

*Informants brother [man named] is smashing up his room and has mental health issues and informant and her mother are scared [he] could here (sic) male yelling in background.*

Police knew that the man had an intellectual disability and a history of mental illness. In the year before this incident, the same man resisted arrest and an officer received a serious shoulder injury. On this occasion,

police tried to arrest him but he refused to comply with directions to leave the premises. At the time the Taser was drawn, the man was sitting in his bedroom on the bed holding a pillow. The COPS record states the Taser was armed after the man *'pulled away from police grasp and refused to comply with their direction'* to accompany them, after which *'police had genuine fears'* that he *'may become violent'*. The man was directed to get on the ground with his hands behind his back. The man firmly repeats *'Stop it, please stop it'*. He tried to push away the hands of the officer who was trying to handcuff him. An officer, who appeared to be holding a baton, attempted to grab the man – but he grabbed the officer's jacket and pulled him off balance. The Taser probes were then discharged and the man became incapacitated and slid to the floor.

The COPS record states that the man *'continues to act in an aggressive manner towards police'* resulting in a second Taser cycle being administered. The man did not comply with further requests to lie on his stomach and continued to say *'Stop it please'* and *'I've got a bad heart'* before he was subjected to Taser use the second time. After the second cycle, officers immediately moved in and tried to handcuff him. The Taser user said, *'Let him go boys'* and issued a third cycle of the Taser, 15 seconds after the previous cycle finished. After this, police moved in again and handcuffed the man.

The man was charged with resisting an officer in the execution of the officer's duty and contravening a prohibition or restriction in an ADVO. There was also an application to determine whether he had breached his bail conditions. The charges were dismissed because of the man's mental disorder and he was conditionally discharged into the care of a responsible person under s. 32 of the *Mental Health Act 2007*.

#### **Our assessment of the Taser use**

In this case study, we formed the view that the Taser Cam footage did not show that the man was violent or aggressive when the Taser was first armed by police. Given the history of the man and his initial behaviour toward the police officers, the first Taser use could be argued as being compliant with the Taser SOPs. However, police failure to immediately intervene and remove the man from the bedside or handcuff him resulted in the man being subjected to two further Taser cycles.

The TEC recognised, independently of our concerns, the risks of multiple use of Tasers and amended the SOPs (in July 2010) to specify that police should restrain subjects as quickly as possible. In addition, the NSWPF now emphasise in Taser training that officers should attempt to restrain the subject as soon as possible after the Taser is used, including when the Taser is still cycling.

The *Taser Tips & Tricks* document, available on the NSWPF intranet since May 2011, states that:

*If an offender is Tasered, move in to secure the offender at the earliest opportunity, including whilst the Taser is cycling (if it is safe to do so, and remembering to avoid contact with the wires and any area between them). This will assist in negating the need for a further cycle. OPERATORS give clear instructions regarding this.<sup>15</sup>*

This additional guidance may encourage officers to move in quickly to restrain a person and avoid unnecessary multiple/continued use. However, given the risks associated with unjustified multiple/continued use of Taser, we recommend that this instruction be given additional emphasis by including it in best practice guidelines discussed later in this chapter (see page 146 and recommendation 21).

### **7.5.2 Failure to record reasons for each Taser use (in a multiple use incident)**

In five of the multiple use incidents, the officer did not accurately record and provide reasons for each cycle or discharge of the Taser in the COPS Event or Sitrep. In three of these incidents we identified five cycles of the Taser, but the COPS records were incorrect about the number of cycles that occurred – the number recorded for each of the three incidents was one, two and three cycles respectively.

In these circumstances, we were not satisfied that there was evidence or information that the Taser user had assessed the subject/situation and considered whether subsequent trigger pulls were justified under the Taser SOPs and in accordance with the TOM.

It appears that the intention of section 5.11 of the Taser SOPs – that multiple use of a Taser is to be justified – is for each cycle of the Taser to both be identified and justified, and that officers must assess the subject and situation and consider the TOM before each additional Taser cycle. We believe that this could be made clearer if the SOPs were to specifically state that each Taser cycle must be identified and separately justified in the COPS Event recorded by the officer that uses the Taser. This should also be specified in the training materials and in training delivery.

## Recommendation

3. That the Taser SOPs and training be clarified to emphasise that if Tasers are used multiple times each discharge or cycle of the Taser must be identified and must meet the criteria for use, and officers must provide reasons for each discharge or cycle in the written records of the incident.

### 7.5.3 Insufficient time to comply with instructions

Our review of multiple/continued use incidents identified a concern about whether sometimes officers do not provide adequate time for subjects to comply with directions after a Taser is used in probe mode – before a decision is made to deploy additional Taser cycles. Case study 6 illustrates our concern.

#### Case study 6 – Not enough time to comply with instructions

Police attended a residence after a request for assistance from a 56 year old woman in relation to her 21 year old son. The woman threatened to call police after an argument with her son who was sitting in a back garden shed smoking cannabis and playing loud music. The man followed his mother into the house and punched a glass sliding door which fractured the glass. The woman called her husband who then made a call to 000.

Police had prior knowledge that the man was wanted on an outstanding warrant and were aware that there were previous COPS warnings that he was suspected to have mental health issues. According to the COPS record, when police arrived the man was at the back of the property sitting in the shed. Police instructed him to exit the shed and he refused. At this point, the man produced a 30cm knife and threatened to kill himself. Police tried to negotiate with the man and gave him numerous opportunities to comply with directions to leave the shed, but he still continued to threaten self-harm. The COPS record indicates that police drew the Taser and discharged probes to stop the situation from escalating further.

The Taser user held the trigger continuously to submit the man to an additional cycle (cycle two). This continued use resulted in a constant electric current of 10 seconds. It is unclear if police attempted to retrieve the knife the man was holding during the first two cycles. Less than one second later, the Taser user applied a third cycle (cycle three). After this, the man was handcuffed. He was clearly shaken by the pain experienced. An officer said, *'Do you want it again?'* The officer told the man that he was required to stand up and walk out of the shed. An officer stated, *'If you resist mate, you're going to cop it again'*. The man was compliant, provided no indication of resistance and the Taser was disarmed.

#### Police assessment of the Taser use

The TRP assessed that the use of Taser was in accordance with the SOPs and no further action was necessary. However it appears that the TRP only assessed whether it was appropriate to discharge the probes. The review records do not indicate if the TRP considered the appropriateness of the continued use, nor whether multiple uses of the Taser was appropriate in the circumstances. We note that the COPS record and Sitrep did not identify or provide reasons for the continued use of the Taser. This was also not identified as an issue by the TRP.

#### Our assessment of the Taser use

We consider that the initial discharge of probes was consistent with the SOPs criteria for use under criterion 4.1 – which allows Tasers to be used to protect human life, given the person's:

- history of actual/suspected mental health issues
- escalating threats of self-harm
- possession of a knife.

However, the written records do not explain why cycles two and three were deployed. It is also not clear from any of the available evidence whether these additional cycles were justified under the Taser SOPs or if the Taser user assessed the suitability of, or necessity for, continued cycles in light of the TOM.

We are also concerned that deploying three cycles in quick succession did not give the man any time to comply with police instructions. Although the additional cycles might have been deployed so that police could locate and secure the knife, it does not appear that any action was taken by the TRP to find out if this was the case – and whether it would have rendered the continued and multiple use of the Taser reasonable in the circumstances.

In our view, Case study 3 (see page 112) provides a further example where an officer deployed multiple cycles of a Taser without giving the subject enough time to comply with police directions.

The NSWPF advised us that they consider the instructions in the Taser SOPs about multiple/continued use of Taser are sufficient, and that these instructions are also strongly emphasised in training. We were advised that the TEC does not believe the Taser SOPs should prescribe timeframes to comply with instructions. They also noted:

*The TEC believes that in the majority of cases TRPs are correctly identifying instances of officers failing to provide POIs [the people subjected to Taser use] with sufficient time to comply with directions. There are, however, examples where they have not.<sup>16</sup>*

We acknowledge the amount of time that officers should give a person to comply with instructions will vary according to the circumstances. Factors such as the person's capacity to understand instructions, their level of intoxication, and whether they are engaging in violent actions that may seriously injure themselves or others will be relevant. We believe training for Taser users should emphasise the requirement to allow people enough time to comply with instructions – to avoid unreasonable multiple uses of a Taser.

## Recommendation

4. That Taser training emphasise that officers are required to allow a person time to comply with instructions (as is reasonable in the circumstances) before discharging a Taser on multiple occasions.

## 7.6 Using Tasers in drive-stun mode

The use of a Taser in drive-stun mode alone does not achieve NMI. Its use in this mode is to achieve the compliance of a subject by inflicting pain. The Taser SOPs (version 1.16) state that drive-stun should only be considered in exigent circumstances.

*5.5.3 Drive-stun: The drive-stun can only be achieved by direct contact of the electrodes to a subject with or without a cartridge attached to the TASER device. Drive-stun mode may cause pain and will NOT achieve Neuro Muscular Incapacitation (NMI). Therefore it should only be considered in exigent circumstances.<sup>17</sup>*

This important qualification is included in the 'methods of use' section rather than the 'criteria for use' section of the Taser SOPs. In the current Taser SOPs (version 1.18) the qualification remains in section 6 and includes a new sentence as follows – 'Where only one probe has made good contact with a subject, drive-stun may be successful in achieving NMI'.<sup>18</sup>

In the current version, there is also a new section called 'Methods of Use – Exigent Circumstances' which includes a statement that given the limited effect of a Taser in drive-stun mode, it is a tactical option that should only be used in exigent circumstances.

The Taser SOPs (past and current) do not provide a definition of 'exigent circumstances'.

During training, officers are taught to use drive-stun in the following circumstances:

- if they are too close to the person for the firing of Taser probes to be practicable
- if the discharge of probes has been ineffective, drive-stun may be used on a different pressure point to achieve a closed circuit – resulting in NMI.

The NSWPF Taser training material also includes the following statement:

*The Taser is capable of being discharged using a drive-stun without firing probes by removing the live cartridge—however this is not recommended nor is it considered NSWPF policy.<sup>19</sup>*

Between 1 October 2008 and 30 November 2010, 3.6% (82) of Taser incidents involved a single Taser use in drive-stun mode. From the 556 cases we reviewed, there were 38 incidents in which a Taser was used in drive-stun mode. This included:

- 11 incidents in which the Taser was used in drive-stun mode only for one cycle
- 3 incidents in which the Taser was used in drive-stun mode only for multiple cycles
- 24 incidents in which drive-stun was used in conjunction with a Taser used in probe mode.

During our review, we noted that the Taser Cam is often of little assistance in determining whether the use of the Taser in drive-stun mode was both in accordance with one or more criteria for use and was in a situation where exigent circumstances were present. This means that the assessment must be done based on the COPS record and

the Sitrep – and, in most incidents, the COPS and Sitrep records did not specify what the exigent circumstances were that justified the use of the Taser in this mode. For these reasons, it was difficult to assess whether the drive-stun use was appropriate or not.

In the one incident that was clearly a breach of the criterion for use and a use in the absence of exigent circumstances, the Taser Cam had been activated well before the use in drive-stun mode so this footage was available to allow an assessment – see Case study 7. However, in the majority of cases we examined, the Taser was activated immediately before the drive-stun use so the Taser Cam footage has little or no value. In these cases, all that can be seen is body mass and the Taser Cam operates for only a short timeframe.

The Taser Cam footage for this case study has been released with this report and can be viewed on the Ombudsman's website.

### Case study 7 – Drive-stun without exigent circumstances

A single-unit officer pulled over a man driving a car for traffic-related matters. The COPS record states the driver was immediately aggressive and refused to comply with directions to produce his driver's licence. The Taser Cam footage showed the officer repeating directions to the man to get on the ground under threat of being subjected to Taser use for not complying – and showed the man passively resisting these repeated directions. The officer said *'if you don't get on the ground I'll Taser you'*. The man said he would not kneel down and dirty his clothes. He also called out to a security guard to be a witness and told the police officer that he was aggravating the situation. Although the man was noncompliant, he made no threats and did not appear to be physically intimidating the officer. The man again called to a security guard to witness the exchange, and said he feared the officer. The officer re-holstered the Taser to make an arrest. The COPS record notes that the man resisted violently. The officer then removed the Taser cartridge and did a spark test, which he stated brought no reaction from the man. The officer then used the Taser in drive-stun mode.

#### Police assessment of the Taser use

The TRP noted that the man did not appear aggressive but failed to comply with directions, and ultimately found the deployment was justified – after seeking advice from a weapons trainer. After receiving this advice, the monthly TRP minutes stated the officer required *'remedial action as he removed the probes during the incident and conducted a field spark test'* and said that a weapons trainer should email the officer to remind him to only use the SOPs that are applicable to general duties police, even though he is PORS trained.

#### Our assessment of the Taser use

We were not satisfied that the use of the Taser in drive-stun mode was appropriate. There were no details in the COPS record or the Sitrep about what exigent circumstances justified the use of the Taser in this mode. In our view, the Taser Cam footage suggested that the police officer used the Taser to get the man to comply with directions to get on his knees.

We asked the TEC for a response to our concerns and they advised that:

*The TEC does not accept that the drive-stun met exigent circumstances. The officer has breached the SOPs by removing the cartridge and arcing the weapon. Subsequently, the device could not be used in probe mode, if required.<sup>20</sup>*

In our view, and that of the NSWPF as is evident in the Taser SOPs, a Taser should generally not be used in drive-stun mode. This important qualification is not under the section on criteria for use, but is under another section about method of use. We have a general concern about the structure and headings used in the current Taser SOPs in terms of clarity and being easily understood. Information about using a Taser in drive-stun mode should be in a section that is specifically concerned with describing circumstances and situations where a Taser should generally not be used.

We also noted that the Taser SOPs do not define 'exigent circumstances'. We asked the NSWPF how they defined it and they provided the following:

*Exigent circumstances is a common term utilised by many police organisations throughout the world. For instance USA Police Executive Research Forum 2011 ECW guidelines define exigent circumstances as 'circumstances that would cause a reasonable person to believe that prompt and unusual action is necessary to prevent physical injury to self or others'.*

*This definition is consistent with the NSWPF interpretation. The prompt and unusual action is the Taser in drive-stun mode.<sup>21</sup>*

In other correspondence from NSWPF, it was described as follows:

*Exigent circumstances in a policing sense refers to matters requiring immediate action. As per the dictionary definition 'requiring immediate action or aid, urgent; pressing'... "Exigent circumstances" is a term common to a number of SOPs within the NSWPF and is understood by the TRP and officers generally.<sup>22</sup>*

A definition of exigent circumstances should be included in the Taser SOPs. Exigent circumstances is also a threshold that can be used to justify Taser use in particular situations where Taser use would ordinarily be inappropriate and a breach of the Taser SOPs. Given the importance of this term, it is essential that it is clearly and formally defined. Furthermore, when an officer cites exigent circumstances to justify the use of a Taser (in any mode or in any circumstance) they should be required to set out or describe the exigent circumstances that were present so that the TRP can assess whether this threshold has in fact been met.

## Recommendations

5. That the NSWPF list the restriction on the use of a Taser in drive-stun mode under a section listing all circumstances where a Taser should generally not be used.
6. That the Taser SOPs include a definition of 'exigent circumstances', and require that when a Taser is used because of exigent circumstances, those circumstances are to be described in the relevant COPS/Sitrep records.

## 7.7 Using Tasers in draw and cover mode and the question of a lower threshold

### 7.7.1 Our review of compliance with the criteria for use

During our investigation, we undertook detailed reviews of 416 draw and cover incidents to assess compliance with the criteria for use set out in section 4 of the Taser SOPs. We found 53 draw and cover incidents where the use of the Taser appeared to be in breach of these criteria.<sup>23</sup>

Our assessment was based on the understanding that the criteria in the Taser SOPs apply to use of the Taser in any of the three stages described in Chapter 3 – draw and cover, probes discharged or drive-stun.

In Case study 8, police stopped a man after a report of an intruder in the grounds of a school. The NSWPF considered the use of the Taser in draw and cover mode was appropriate. We disagreed.

### Case study 8 – Draw and cover on a compliant person

Police responded to a call at about 3:30am indicating that an intruder was in the grounds of Sydney Grammar School. The man had been observed by the night keeper to be rummaging in bags of clothes destined for charity in the main quadrangle. The COPS record states that three police approached the man, who was putting clothing items into a bag, and directed him to get down onto the ground. The man did not immediately comply and only did so after being informed a Taser had been trained on him.

The Taser Cam footage showed the man walking toward police, while police say 'get on the ground, or you're going to get Tasered'. The man appeared non-threatening and both hands are visible. He looked a little stunned and confused. He immediately crouched on the ground with his hands out, and at least two officers continued to direct him to 'lie down on the ground'. He did not offer any resistance to police and spoke calmly in response to the officer's questions, asking why he was being arrested.

The COPS record indicates that once the man was on the ground he was informed that he was under arrest for trespassing and was cautioned. The man was later searched by police and found to be in possession of three mobile phones which they suspected to be stolen and a number of syringes they suspected were for injecting heroin. The man told police he believed the school was a church and went there to sleep as he had nowhere to go.

#### Police assessment of the Taser use

The TRP considered the Taser use was appropriate and complied with the Taser SOPs. They did not seek any further information about why the officers felt there was a need to draw the Taser.

### Our assessment of the Taser use

Our independent expert considered this case to be a breach of the criteria for use as the man was cooperative and compliant.

We acknowledge that the Taser Cam does not capture the initial interaction between the officers and the man, but neither the Taser Cam footage nor the Sitrep or COPS record indicates that violent confrontation or resistance was occurring or imminent. They also do not suggest the three officers were in any danger of being overpowered or injured. The man's hands were visible, he was not holding a weapon, and at all times he appeared calm and compliant.

In Case study 9, a Taser was drawn to cover a man in a police cell. We were again not satisfied that the use of the Taser was justified under the criteria for use.

### Case study 9 – Draw and cover on prisoner in police cell

A man was arrested by police in relation to a domestic violence incident. At the end of a recorded interview, the man pushed past police to escape the cell complex and then struggled with police in a staff area of the police station while trying to escape from custody. The man carried an officer with him over the front counter of the station before police managed to subdue him and put him in a cell.

A few hours later police were monitoring the man in the cell via CCTV and noticed he appeared to be lying on the floor hiding himself under two mattresses and was not clearly visible on CCTV. The COPS record states that officers deemed it unsafe for the man to be concealed and that – due to the physical strength and violent behaviour displayed previously – a Taser was required to enter the cell to prevent the possibility of another escape and further injury to police. The Taser Cam footage showed the man to be calm and he complied immediately with the request to give up one of the mattresses. The man explained he was under the mattresses to shade himself from the light so he could sleep.

#### Our assessment of the Taser use

We acknowledge that the man had made an earlier attempt to escape from custody and engaged in a violent struggle with police. Although this is relevant information for police to consider when dealing with a person in custody, in our view it should not dictate the level of force employed by officers some time later – in this case several hours later. This information should be balanced against the behaviour and circumstances of the person at the time police asked for the mattress.

By this stage, the man appeared calm and was in the police cell in a secure area of the station. There was no violent confrontation occurring at the time the Taser was used, nor were there reasonable grounds to suspect that violent confrontation or resistance was imminent. At most, it was possible that the man could respond violently to police requests to give up the mattress – but, given the objective evidence, we are concerned the officer might not have reasonable grounds to consider it 'likely' that probes would need to be discharged.

We were also not satisfied that there were exigent circumstances. Although it was prudent for officers to be careful, the circumstances did not necessitate being armed. Our independent expert did not consider this case met the criteria for use, and noted the man was compliant and cooperative.

## 7.7.2 NSWPF response to our concerns about compliance

We presented our concerns about the 53 draw and cover incidents that in our view involved breaches to the criteria for use to the NSWPF in October 2011. They advised us that Taser SOPs version 1.17 provide a lower threshold for use of Tasers in draw and cover mode under section 5.3 (a section on 'methods of use') which states:

*Do not draw your TASER, point, or aim it unless you consider you are **likely** to be justified in using it ... (emphasis added)*

The NSWPF advised us that:

*On this basis, officers may draw the Taser if they perceive they are likely to utilise the device in either probes discharged or drive-stun mode. This allows officers to manage an operational risk on the basis of 'likelihood'.*

*Officers must not use the Taser in either probe or drive-stun modes unless one or more of the criteria for use are met.<sup>24</sup>*

The TEC advised that the amended threshold for drawing a Taser is consistent with tactical options training for other weapons. Officers are trained to draw weapons in order to be ready and prepared to respond quickly and effectively to imminent threats and confrontation.

It should be noted that section 5.3 was not included in the Taser SOPs during the sample period and did not apply during the time of the incidents that we reviewed. The NSWPF reviewed a number of cases that we identified as involving a breach of the criteria for use and found the use to be reasonable and consistent with the new threshold for use.

Under the new threshold, officers may now use the Taser in draw and cover mode as a pre-emptive measure – even if there is no occurring or imminent violence – if there is a likelihood or probability that:

- officers may later need to protect human life (criterion 4.1)
- violent confrontation or resistance may later occur or become imminent (criterion 4.2)
- officers may later need to protect themselves from being overpowered or protect themselves or others from injury (criterion 4.3)
- officers may later need protection from animals (criterion 4.4).

The NSWPF distinguish between the word ‘imminent’ and ‘likely’ as follows:

*‘Imminent’ is taken to mean ‘likely to occur at any moment’ and differs principally from the term ‘likely’ in that it is time bound, i.e. ‘occur at any moment’. At the imminent stage the officer may discharge the Taser.*

*‘Likely’ could also mean ‘probably’, but is not time bound. On this basis the officer can draw the Taser to prepare for the threat and possibly prevent it from occurring. It should be noted that approximately 70% of Taser usage relates to draw cover only indicating the value of the device [sic] in defusing potentially violent situations.<sup>25</sup>*

The TEC provided comments about a number of the 53 incidents that we had identified as involving a breach of the criteria for use – including Case studies 7 and 8 – and advised that the use was consistent with section 5.3. This was however retrospectively, because section 5.3 or the ‘likely’ threshold did not exist for those incidents in the sample period.

In our view, even if section 5.3 existed at the time, the officer in Case study 7 did not have grounds to believe that it was ‘likely’ that he might be justified in discharging the Taser as the man at no time acted in a manner that was threatening or posed any danger to police.

The TEC advised that the use of a Taser in Case study 9 was justified under section 5.3 of the Taser SOPs and ‘exigent circumstances existed that required prompt and unusual action to prevent physical injury to self and others’.<sup>26</sup>

It is not reasonable for police to greet every unknown situation with a Taser armed. Police weapons training should prepare police to respond quickly if an unknown situation does become violent – but using Tasers in the absence of any information or behaviour that suggests violence is likely or occurring is, and should be seen to be, unreasonable.

The NSWPF response to our findings raised an important question about whether the threshold for using a Taser in draw and cover mode as set out in the Taser SOPs is appropriate.

### 7.7.3 The case against a lower threshold for draw and cover mode

#### ***An increased risk that Tasers are used for compliance only***

Mission creep has been defined as the tendency for police to, over time, use Tasers in situations for which they were not intended. The following elements are associated with mission creep:

- the use of Tasers to gain compliance of uncooperative or passively noncompliant subjects in circumstances where the discharge of the Taser is not justified
- the use of Tasers earlier in interactions with people, with the Taser becoming the weapon of first choice for resolving situations
- a reduction in the use of communication and negotiation skills to de-escalate and control situations
- an increased use of Tasers as a compliance only tool in draw and cover mode.

In our 2008 report, we recommended that the Taser SOPs prescribe against using a Taser except where it could be justified under the criteria for use, and advise police that unauthorised use may be the subject of management action. We also recommended that they specify that a Taser may not be used on individuals who are compliant and non-threatening.

Initially, the NSWPF did not include these prohibitions in the Taser SOPs. However after further concerns expressed in the Ombudsman's Annual Report of 2009–10,<sup>27</sup> the Minister for Police agreed to include prohibitions.<sup>28</sup> These are now in section 6.10 under the heading 'Methods of Use – Other Considerations' of the current Taser SOPs (version 1.18):

6.10.1 *TASER must not be used on compliant subjects exhibiting non-threatening behaviour.*

6.10.2 *TASER must not be used on passive noncompliant subjects.*<sup>29</sup>

Our review of the 556 Taser incidents included an assessment of whether police were using Tasers for compliance only. The incidents we reviewed occurred at a time when the prohibitions on use against compliant or passively noncompliant subjects were not in the Taser SOPs – they were included and first took effect in version 1.17 released on 4 December 2010. However, the NSWPF have advised that Taser training at that time included information advising police against use for compliance only.<sup>30</sup>

Of the cases in the sample period we found 41 incidents where, in our assessment, the Taser was used in draw and cover mode for compliance only. These cases included instances where the initial decision to draw the Taser was appropriate but the officer subsequently used the Taser to gain compliance with directions when, in our view, it should have been disarmed.

We are concerned that the decision by the NSWPF to adopt a lower threshold for using a Taser in draw and cover mode may increase the risk that police will use them for compliance only and lead to a greater risk of mission creep.

### **Using a Taser to gain compliance with directions**

Officers are trained to issue clear instructions to a person in the process of apprehending them – for example, 'put your hands behind your back' – so that they can make an arrest in a manner that ensures officer safety. However, our review found evidence of police using a Taser to gain compliance with directions in circumstances where the discharge of a Taser would not be justified. Case study 6 is an example of this (see page 118).

One of the available guidelines for NSW police officers is a document prepared by the Central Metropolitan Region called *Taser Tips & Tricks*, which was adapted for the NSWPF Taser website in May 2011. This document contains a repeated instruction:

#### **TASER IS NOT A COMPLIANCE TOOL.**<sup>31</sup>

It also states:

*OPERATORS AND POLICE GENERALLY—REMEMBER YOUR COMMUNICATION SKILLS (not just "Do as I say or you'll be tasered" – which suggests you are using it as a compliance tool).*<sup>32</sup>

Both the Taser accreditation and reaccreditation training course also emphasise that the Taser must not be used to threaten, punish or for retaliation purposes.<sup>33</sup>

We were concerned that, in a number of the incidents we reviewed, police appeared to give instructions accompanied by a threat of using the Taser for noncompliance. The following are some examples of what officers said:

- *Lie down on the ground. If you fail to comply I'm going to Taser you.*
- *Get on your stomach or you'll get another dose.*
- *We've got a Taser on you ok? So you need to comply.*
- *You make any sudden moves, I'll take it as a threat and I will Taser you, do you understand?*
- *If you move, I will Taser you, if you move I will Taser you, I will Taser you.*
- *Behave yourself and you won't get another zap, do you understand me?*
- *Be reminded that I've got a Taser on you ok so any bad moves and you're going to wear it.*
- *If you don't get on the ground I'll Taser you ... I've given you a reasonable direction to drop to your knees.*

We acknowledge that the NSWPF wants officers to avoid using Tasers as threats to gain compliance, but we are concerned that this type of communication is not always identified or considered during the review process and made the subject of any feedback to officers. This may be because the distinction between appropriate instructions and using the threat of Taser to gain compliance is not entirely clear – either to officers or to those reviewing Taser use.

Taser use will almost always be accompanied by instructions from the officer about the subject person's behaviour. For example if the person is carrying a weapon, the Taser user may instruct them to drop the weapon. To an extent, this is an instruction that seeks compliance and is reasonable in such circumstances. However the Taser SOPs and the *Taser Tips & Tricks* document do not assist in making the distinction between appropriate instructions and making inappropriate threats to gain compliance. We have been unable to identify any incidents where TRPs gave clear feedback about this issue.

When we raised our concerns with the NSWPF about the use of Tasers as a compliance-only tool, they responded:

*The NSWPF concurs with the Ombudsman's view that when Tasers are produced, warnings to [the person the Taser is aimed at] will seek to secure a behavioural result, so to that extent Taser use is intended to promote compliance. The problem arises when Tasers are produced without the criteria for use being met ([section] 4 of the SOPs) and/or the action required of the [the subject person] is unreasonable in the circumstances and/or the warning issued by officers is inappropriately couched.*

*While it is generally desirable for officers to issue some form of warning (the alternative of firing the Taser without warning would be to risk prematurely using undue force), it is essential that the warning is suitable. This is an area that will be considered in the upcoming review of the SOPs.<sup>34</sup>*

They also made the following comments about what is expected of officers when giving instructions to a person while using a Taser, and how appropriate instructions can be distinguished from threats to gain compliance:

*In the TEC's view, when Taser use is justified according to the Taser SOPs criteria for use, the expectation is that officers give clear directions to POIs [the person the Taser is aimed at] to assist them take and maintain control of a situation. This is also the emphasis of Taser training.*

*Ideally, the instructions should be measured, reasonable and indicate the consequences to the [the subject person] should they not be followed. In practice, issuing instructions with Tasers drawn could always be interpreted as a threat.*

*In judging whether officers' instructions are appropriate, allowance must always be made for the dangerous, emotion charged environments in which Tasers are usually deployed.<sup>35</sup>*

### **Using Tasers to move people on**

We identified incidents during the sample period of officers using Tasers while giving directions to people to move away or leave an area. We acknowledge that violent confrontation often occurs in response to police directions to move-on, particularly when the person being moved on is intoxicated. However, we identified five cases where officers continued aiming a Taser at people as they moved away – when there was no threat of imminent violent confrontation or resistance. It appears in these cases that the Taser was being used to gain compliance with police instructions – not in response to a violent confrontation or resistance that emerged after police gave a move-on direction.

The NSWPF has noted that the Taser SOPs do not specifically address the issue of using Tasers to move people on and they have commented – 'TASER should not be used to move people along unless one or more of the criteria for use apply'.<sup>36</sup>

In our view, if a person or group are complying with an officer's instructions to move-on, there can be little reasonable justification to use the Taser in any mode. Using Tasers in these circumstances, even in draw and cover mode, suggests that the Taser is being used primarily as a compliance tool to coerce or threaten the person or group to leave immediately.

We note that, particularly where there may be a number of people asked to leave an area, it can take some time for the instruction to be complied with.

Of particular concern is the use of Taser for extended periods as people are leaving an area. Such use raises the question as to whether officers are appropriately reassessing the threats present in accordance with the TOM or have failed to disarm the Taser.

### **Case study 10 – Dispersing a crowd using a Taser**

Police attended a large brawl at a party held at a showground. About 70 people were in attendance, many intoxicated. The COPS record states that police saw, from a distance, that several people were being assaulted so called for more police to attend. When additional officers arrived, they tried to disperse the crowd – but some people refused to leave or had to be pushed out of the showground. According to the COPS record, a number of officers had to use OC spray to avoid being grabbed or assaulted. However the OC spray only had the desired effect on some people – others refused to move-on until the Tasers were aimed at them.

In total, three Tasers were drawn. One was armed for 12 minutes. The sergeant who operated that Taser stated in the Sitrep that the Taser 'covered persons involved in the brawling' with the effect of de-escalating the situation. He also commented that the Taser 'assisted to record video footage'. The COPS Event records that the Taser appeared to de-escalate the violence but was also used to 'persuade persons to leave the area'.

This Taser was armed several times for more than a total of 12 minutes. The Taser Cam footage shows it was pointed at some individuals who displayed aggression. However it also shows that, for several protracted periods during the time the Taser was armed, it was used to gain the compliance of non-threatening individuals by coercing them to disperse.

#### **Police assessment of the Taser use**

At internal review, the TRP noted the Taser was armed for 12 minutes. However they did not address whether it was appropriate to use it to disperse a crowd, whether it was justified in terms of the threat of violence during this long period, or whether it was appropriate to use the Taser to record video footage.

#### **Our assessment of the Taser use**

Although we agreed that officers may need to be 'prepared' when dealing with a crowd of people, some of whom are intoxicated or aggressive, we were not satisfied that the use of the Taser in this case was reasonable. The Taser Cam footage did not reveal any evidence that suggested a member of the crowd might assault police. It shows that for extended periods the Taser was aimed at non-violent people as they dispersed and, in the Taser user's own words, was used to persuade people to leave the area. In light of this, we were concerned that police might have been inappropriately using the Taser to disperse the crowd.

Our independent expert also considered that although police were acting professionally in a difficult situation, the use of the Taser did not meet the criteria in the Taser SOPs.

When we presented this case study to the NSWPF, they commented that the officers could '*reasonably be concerned that they could be overpowered or injured*', and that the officer '*was justified in maintaining a level of preparedness given the size of the crowd, the level of aggression, failure of capsicum spray to quell the violence and limited police resources available*'.<sup>37</sup>

We remain concerned about the potential misuse of Tasers by police to obtain compliance with directions such as move-on directions. To assist officers who use Tasers and those that review the use of Tasers to have greater certainty about whether use of Tasers is justified when people are in the process of complying with instructions to move along, we consider this matter should be specifically addressed in officer training – and should also be canvassed in guidance provided to the TRPs and any other officers reviewing Taser use (see page 146 and recommendation 21).

#### ***The risk that a lower threshold for draw and cover may result in unreasonable decisions to discharge a Taser***

One of our concerns about the practice of making threats to discharge a Taser against a person who is passively noncompliant is that it does not always achieve the desired outcome of compliance – and can in fact escalate problems. Once Tasers are drawn and threats are made to comply with a direction, officers may be over-reliant on the Taser and fail to use other tactical options – particularly communication and negotiation – to de-escalate and control a situation.

Case study 11 is an example where an officer failed to disarm a Taser, used poor communication skills and, in our view, made an unreasonable decision to discharge a Taser.

The Taser Cam footage for this case study has been released with this report and can be viewed on the Ombudsman's website.

#### **Case study 11 – Failing to disarm a Taser**

Police were detaining a man in an RSL club who had admitted to taking 10 Xanax pills and consuming alcohol. They were trying to convince him to accompany them to an ambulance and to hospital for assessment. The man had warnings on COPS, including that he had a contagious disease and may spit at police. The COPS record indicates the man had said he would happily fight police. The officer saw him '*attacking*' another officer – who used open palms to push the man back onto the chair – and that he threatened to '*smash*' the police and made a noise like he might spit at them. The Taser was then drawn as police feared '*a violent confrontation would occur and the [man] would follow through with his threat to spit at police*'.

The Taser Cam footage shows that, when the Taser was armed, the operator had his finger over the camera for approximately 1 minute and 19 seconds. The Taser was armed for over 13 minutes. For about ten minutes, the man is seated on the couch and is cooperative and compliant. Subsequently, the man indicated he wanted to go to the toilet, but the police did not allow this. The man became agitated and got up to attempt to urinate in the corner. He stopped short of doing this and said he wanted to be allowed to go to the toilet.

Two other officers started asking him about his medication and told him he needed to go to hospital to be checked, and the man was clearly upset about this. The Taser operator told the officers to step back, and when the man was standing with his arms down beside his sides, the Taser operator declared '*Mate, you've given me no option*' and discharged the Taser probes. The man fell to the ground immediately and was handcuffed after the cycle finished. The COPS record states that the man had pushed two officers and that probes were fired because police feared '*the [man] was to become violent*'.

#### Police assessment of the Taser use

The TRP considered the use of the Taser throughout this incident was in accordance with the Taser SOPs. The footage was subsequently reviewed by a region weapons trainer who deemed the use of the Taser in draw and cover mode '*not best practice*' and requested remedial training for the Taser user. The Taser user was decertified and retrained, and the TRP agreed with this course of action.

#### Our assessment of the Taser use

We agree with the TRP that the initial drawing of the Taser may have been appropriate. However, we are not satisfied with the way it was used to cover the man for an extended period, and we are not satisfied that the use of the Taser in probe mode was in accordance with the Taser SOPs. In our view, throughout the 13 minutes the Taser was armed, the man was cooperative and compliant and mostly stayed seated on the couch.

We have a number of concerns about this case:

- The communication techniques used by the officer appeared to escalate rather than de-escalate tensions.
- The level of confrontation or resistance presented by the man fell short of what we consider to be 'violent' resistance, so the use of the Taser in probe mode does not meet the criteria for use set out in the Taser SOPs.
- Statements in the Sitrep and COPS record indicating the man pushed officers immediately before the probes were discharged are inconsistent with the Taser Cam footage.
- Throughout the duration of the footage, the officer repeated '*settle down champ*' and '*stay there champ*' and '*are you gonna settle down? Are you gonna sit down?*' almost constantly, even when the man was sitting quietly on the couch. At one point, after he has sat in silence for about one minute and no one has said anything, the officer said '*Are you going to calm down mate?*' It is unclear what more the man could have done to settle down when he was sitting quietly on the couch. The officer's communication style seemed to agitate the man who at one point said '*don't call me champ.*' The officer immediately replied, '*Mate, you gonna calm down mate? Brother? Is that what you want to be called?*'
- Immediately before the probes were deployed, the man appeared to be in urgent need of going to the toilet. Police did not agree to his request and continued to explain they would take him to the hospital. Although the man was shouting that he did not want to go to hospital, in our assessment he did not appear to be violently resisting or confronting the officers. We note the backup officers had moved in close to talk to him, which may also indicate the threat of violence was low.

After we presented this case study to the NSWPF in October 2011, the TEC agreed that the deployment did not appear to meet the criteria for use, and referred it back to the TRP for comment. The NSWPF advised that the TRP had initially identified seven issues during the review of this deployment:

- *Communication was poor – clear instruction was not given.*
- *The Taser was aimed too high on the [subject person] – this could have resulted in a probe discharging into the head area.*
- *Finger was initially over the camera when it was first deployed.*
- *The Taser was improperly used as a compliance tool.*
- *Partner was in the field of fire at one stage.*
- *Cartridge changeover was conducted when the Taser was turned on – should have been turned off.*
- *Partner when restraining the [subject person] knelt on the wires breaking the circuit – requiring unnecessary cartridge change.<sup>38</sup>*

The relieving PSM stated:

*After taking all factors into consideration [the officer's] Operational Survival and Tactical Options, including his prolonged use of the Taser in draw cover mode, was deemed not best practice. The determinations of the Central Metropolitan Region Taser Review Panel resulted in the Taser operator undergoing Taser refresher training on 8 January 2011 following his return from a lengthy period of leave.<sup>39</sup>*

One of the key concerns raised by our independent expert was that officers may be favouring Tasers as a shortcut. He was further concerned that they may be limited in using other tactical options because they opted to use Taser at the outset, particularly when detaining people. He was concerned that officers missed opportunities to restrain people as they were restricted because they were holding the Taser in the draw and cover position and were restricted to one hand. He added:

*It seemed to me from the footage, [COPS] Events and Situation reports that many young police are using the Taser as a first resort to detain the person and not using other methods like effective communication, use of OC spray and negotiation skills ...*

*From the footage and examination of the relevant documents I am satisfied tasers have on some occasions been used as a 'shortcut' or as a 'go to' option when [other] tactical options may have been more appropriate.<sup>40</sup>*

We acknowledge that officer training in use of force options covers risk assessment and transition drills, which includes alternating between different tactical options. This aims to equip officers to respond appropriately to a situation if violent confrontation or resistance becomes imminent or starts to occur, or the risk that officers may be overpowered or injured becomes material. However we are concerned that once a Taser is armed and ready, officers may be more likely to follow through with that tactical option rather than using some other option.

In Case study 12, the Taser was discharged in circumstances that in our view did not appear to be reasonable.

## Case study 12 – Taser used unreasonably on a person with mental health issues

Police were called to the scene in relation to a number of young people drinking in the street. They encountered a 22 year old man who informed them that he was a serving SAS soldier and was trying to get all the young people home. The police let the man walk away and went to speak to some other young people. At this time, police saw the man chase a young female around a street corner stating that if she did not stop he was going to kill her. Police drove in pursuit of the man and found him around the corner laying face down on the ground. The COPS record indicates that police made attempts to move the man off the road for his own safety. The COPS record states:

*During the incident the [man] kept stating that he wished for police to shoot him with their guns.... He also stated that he had an extensive history in the military and that his trigger finger was a lethal weapon and that police should hold it to stop him doing something crazy with it.*

The man refused to cooperate and became aggressive 'stating that he was a trained killer in the SAS and that he was a sniper who had been to war'. A police officer told him to calm down and showed him his OC spray, stating that if he did not calm down he would get sprayed. A second officer covered the man with a Taser. The COPS record further indicates that 'police were issuing [the man] with verbal directions which he would not comply with and continually moved forward towards police in an aggressive manner yelling incoherent comments. [Officer name] told [the man] to get back and calm down. [The man] lunged towards [officer name]' at which point the officers discharged the Taser and OC spray at the man simultaneously.

The COPS record indicates that the man was well known to police, was receiving treatment since he was five years old for Aspergers Syndrome, and was known to have a paranoid personality disorder.

### Police assessment of the Taser use

The TRP considered that the use of the Taser complied with the Taser SOPs.

### Our assessment of the Taser use

From our review of the Taser Cam footage, we were satisfied that police were justified in arming a Taser in these circumstances and using it in draw and cover mode. However we were not satisfied that the criteria for use were met in relation to the deployment of probes.

The Taser Cam footage shows that the man had his back to the officer holding the Taser. The second officer could not be seen in the Taser Cam footage. The man appeared unsteady on his feet and his female acquaintance appeared to have her arm around his waist in an attempt to pull him away from police. While the COPS Event states that the man 'lunged' at an officer, this is not supported by the Taser Cam footage. The Taser Cam does not show that the man made any sudden movements in any direction immediately before being subjected to Taser use. Although the man seemed to be ignoring police directions, it does not appear that violent confrontation or resistance was occurring or imminent at the time the Taser was discharged, nor was the officer in danger of being overpowered. Also, before the Taser was deployed, the officer repeatedly

directed the man to sit down which the man failed to do. Before the Taser was deployed, the officer can be heard to state *'Sit down on the ground. Do what you're told or you're going to get Tasered.'* Approximately 10 seconds after this the Taser was deployed at the man.

We are pleased that, following our consultation with the NSWPF, an amendment has been made to the Taser SOPs to emphasise the importance of communication skills as a tactical option. Taser SOPs version 1.18 emphasises that communication should be used as a component of all tactical options – and that force should only be used where de-escalation or negotiation techniques have not been successful or where circumstances do not allow any reasonable opportunity to attempt those techniques.<sup>41</sup>

#### 7.7.4 The case in favour of a lower threshold for draw and cover mode

The Taser SOPs now include a lower threshold for drawing and arming a Taser than for discharging a Taser in probe or drive-stun mode.

One of the risks of a lower threshold for drawing a Taser is that it may lead to an escalation of the confrontation between police and the subject – and Tasers consequently being discharged more frequently. The NSWPF have pointed to the high number of cases in which Taser use has been limited to use in draw and cover mode as evidence that this risk is low. In the 12 months following the rollout of Tasers to all general duties police in December 2009, 768 (75.8%) Taser cases involved draw and cover only. In the following 12 months, there were 589 cases (73.2%).

We agree that the proportion of incidents which were resolved without Tasers being discharged suggests that the use of Tasers in draw and cover mode is an effective policing tool and helps officers to gain control of a situation. Our observations of draw and cover incidents in the sample period also generally supports this view.

We acknowledge that officers face a range of challenging situations when dealing with people who are violent, intoxicated, have just committed an offence or have mental health issues. Events may unfold quickly and it is appropriate that officers are ready to respond quickly when a situation changes for the worse.

In assessing draw and cover incidents, we identified cases where the use of a Taser in draw and cover mode was inconsistent with the criteria for use – but appeared to be reasonable in the circumstances. Case study 13 is an example of this.

#### Case study 13 – Draw and cover after break and enter incident

Police responded to a police radio broadcast about a break and enter offence in progress at a certain address. When the police arrived at the address, they established that the security door and main door were still locked and that the man had entered the premises by breaking an external window. Both the COPS narrative and the Sitrep state:

*The offender was not compliant with police directions to exit the premises via the broken window and police were uncertain if the offender was armed or had access to other implements in the premises. The offender was covered with the Taser by [the officer] and instructed to exit the premises which he then did.*

##### Police assessment of the Taser use

The TRP found that the Taser use was in accordance with the Taser SOPs.

##### Our assessment of the Taser use

We reviewed the Taser Cam footage and noted that the man took some time to exit the window. This delay appeared to be partly a result of his concern about being injured on the broken glass that was sitting in and around the window frame. The Taser Cam shows that police helped the man to exit the window by placing something over the window frame to protect him from the broken glass. The man appeared cooperative and there was no overt suggestion by his behaviour that he might threaten police. In these circumstances, we were concerned that the use of Taser was inconsistent with the criteria for use.

When we presented this case study to the NSWPF, they emphasised that *'police were uncertain if the man was armed or had access to other implements in the premises'*.<sup>42</sup> The TEC considered the officer's actions were reasonable, and the Taser use was justified under sections 4.3 and 5.3 of the Taser SOPs. As discussed before, section 5.3 of Taser SOPs version 1.17 should not be considered as a justification for the Taser use in this case, as that section was absent from the Taser SOPs (version 1.16) in operation at the time. Nevertheless we agreed that it could be considered reasonable for police to draw the Taser due to the uncertainty about whether the man was armed.

We identified other cases where the use of a Taser in draw and cover mode appeared to be reasonable to conduct a search for a person known to be violent. These cases are discussed in a later section below about the use of Tasers to conduct premises searches (see page 137).

## 7.8 Our position on the threshold for Taser use in draw and cover mode

### 7.8.1 Managing the risk of increased use for compliance only

We remain concerned that the lower threshold for using a Taser in draw and cover mode increases the likelihood that Tasers will be used for compliance only.

At the same time, we acknowledge the NSWPF's view that officers should be able to be ready and prepared in situations where it is likely that the event is leading to the kind of violent situation that would justify discharging the Taser for officers to gain control.

Given the potential for the use of Tasers in draw and cover mode to increase now that the Taser SOPs make it clearer that the threshold for such use is lower than for discharging the Taser, it will be important that the NSWPF's internal review processes remain focused in their assessment of the appropriateness of the use of Tasers to mitigate against the risks outlined in this chapter. Continuing to record and review all uses of Taser in draw and cover mode is essential to assist the NSWPF to evaluate both the impact of the lower threshold for use in draw and cover, and whether the risks associated with that lower threshold are borne out in practice.

Our support for the current threshold for draw and cover is contingent on the NSWPF implementing our recommendations 1, 2, 5, 6, 7, 10 and 12 – which are aimed at ensuring that the NSWPF adopts an appropriate threshold for discharging a Taser. It is also conditional on the implementation of recommendations 22, 23 and 24 aimed at improving how the TRPs assess Taser use, and recommendation 21 to develop a better practice guide for Taser use.

It is also essential that the NSWPF amend their Taser training to include information about the amended threshold for using a Taser in draw and cover mode, and to emphasise the need for officers to disarm the Taser if the likelihood of a violent confrontation diminishes.

Lastly, we recommend that the TEC closely monitor the impact of changes to the threshold for using a Taser in draw and cover mode and evaluate any evidence that suggests mission creep or an increase in the number of breaches of the Taser SOPs.

### 7.8.2 Improving the clarity of the Taser SOPs

During our consultations with the TEC, we expressed a concern that the Taser SOPs did not clearly state that there is a different and lower threshold for using a Taser in draw and cover mode. We remained concerned that the addition of section 5.3 in the 'methods of use' section rather than the 'criteria for use' section did not make it clear to officers the standards that would be applied to assess whether Tasers had been used appropriately.

General duties officers who participated in focus groups indicated that Taser SOPs were not that clear about whether there was a lower threshold for draw and cover. However they also commented that it made intuitive sense that officers should be able to draw the Taser in readiness for later discharge:

*It's not clarified anywhere saying that you can pull it out at anything lower than that. And it, sort of, needs to be.*

*For – for your firearm there's, like, a thing that says you can pull it out when you think you may become justified. So it's saying you don't have to wait until you're going to shoot someone, pull it out so it's there and ready to use when you do get justified. But there's just nothing for the Taser.*

*... if you had that line, pull it out if you think you're likely to ... to have that situation, I wouldn't have, you know, been doubting myself. I would have thought, well yeah I was – likely. I pulled it out. I chose not to pull the trigger, job done, everyone's happy.<sup>43</sup>*

After further consultation with the TEC, the Taser SOPs were amended so that the threshold for the use of Tasers in draw and cover mode is made clearer to officers – and this is now included in version 1.18, approved on 4 July 2012.

However, the instructions that Tasers must not be used on compliant subjects exhibiting non-threatening behaviour or on passive noncompliant subjects are included in the 'Methods of Use' section. We remain concerned that these instructions are not clearly framed as prohibitions and that officers may consequently be unaware of their obligations in terms of using a Taser. These issues are discussed later in this chapter in the section called the 'Structure and clarity of the current Taser SOPs' (see page 142).

## Recommendations

7. That Taser training be amended to reflect the criteria for use for draw and cover and to emphasise the requirement to disarm the Taser if it is no longer likely that discharging the Taser will be justified in the circumstances.
8. That the TEC monitor the frequency of Taser use and evaluate the impact of changes to the threshold for use of a Taser.
9. That the Taser SOPs be amended to make it clear that use of a Taser on noncompliant subjects exhibiting non-threatening behaviour or on passive noncompliant subjects is a breach of the criteria for use.

### 7.9 Discharging a Taser for compliance only

We have already outlined our concerns about the use of a Taser in draw and cover mode for compliance only (see pages 123–126). In this section we consider incidents where a Taser, in our view, has been discharged in circumstances where the criteria for use have not been met – that is, the person is not behaving in an aggressive and/or threatening manner – and the discharge has been because the person has refused to comply with a police instruction or direction.

Case study 7 (see page 120) in the section on using a Taser in drive-stun mode is one such example. When we reviewed the various reports and Taser Cam for this matter we found that the man did not follow the police officers direction to provide his drivers licence and kneel on the ground, but also did not display or make any threats or gestures of aggression which are required to justify discharge of a Taser in either mode. Case study 11 (see page 126) is another example of a Taser being discharged because of a noncompliance issue, rather than because of threatening or aggressive behaviour.

It is clearly inappropriate and inconsistent with LEPR to discharge a Taser to enable the arrest of a person who is being passive or active noncompliant – that is, not displaying any aggressive behaviours or threatening aggression.

However, when we have disagreed with the NSWPF it has often been on the interpretation and application of criteria. For example, the criterion ‘imminent threat of injury’ as a basis for discharging a Taser can be interpreted so widely that it could potentially apply to every circumstance where police physically interact with the public. We have already raised the need for greater clarity and precision in the language of the Tasers SOPs and so no further recommendation is made here.

### 7.10 Using Tasers on people who are fleeing or evading arrest

In our view, the use of a Taser against a person fleeing from police – other than to protect human life – generally falls outside of the criteria for use in the Taser SOPs. If a person is fleeing, the threat of violent confrontation or resistance (criterion 4.2) or of injury to police or others (criterion 4.3) is no longer present. Although police may fear that violent confrontation is possible if they catch up to a fleeing person, this is qualitatively different from violent confrontation that is occurring or imminent (criterion 4.2).

In addition, the use of a Taser in probe mode to halt a person fleeing from police can involve serious risk of injury resulting from a fall following NMI. The risk of serious injury was highlighted in a case in Florida, United States (US) in September 2011 that received worldwide media attention.<sup>44</sup> The incident was captured on police in-car video that shows an officer deploying a Taser to prevent the escape of a 19 year old woman running from police wearing handcuffs. The video shows the woman being shot with a Taser in the back and collapsing to the ground striking her head. The head injuries she suffered have left her in a coma-like state.

There were 14 cases in the sample period in which a Taser was used during a foot pursuit against a person who was fleeing or evading arrest. Seven involved the use of a Taser in probe mode and seven in draw and cover mode.

The TRPs did not appear to have a consistent approach to determine if the use of Tasers in such cases was justified under the Taser SOPs. In two of the cases, the TRP concluded that the use of the Taser breached the Taser SOPs, but in 12 cases involving similar scenarios they did not identify any breach.

In Case study 14, the officer was found to have breached the Taser SOPs after an investigation by a local area command (LAC).

The CCTV and Taser Cam footage for this case study has been released with this report and can be viewed on the Ombudsman’s website.

### Case study 14 – Discharging a Taser at a person fleeing from police

The driver of a vehicle drove past a random breath test site and failed to stop. After a short pursuit, police found the vehicle deserted outside a school at a pedestrian crossing. During a search of the vehicle, police found boxing equipment and some property that appeared to have been stolen. The passengers of the vehicle gave police the name and a detailed description of the driver, and told them that he was an amateur boxer of great skill, a strong fighter and extremely fit.

About two hours later, a police supervisor working on his own was patrolling licensed premises when he located the driver. The officer approached and spoke to the driver, while also attempting to secure backup from other officers. The COPS record states that when the officer attempted to arrest the driver and apply his handcuffs, the driver broke free from the officer's grasp and a struggle ensued. The driver pulled a chair behind him into the path of the officer in an attempt to evade police and ran onto the street.

The officer called for urgent assistance via police radio while continuing to pursue the driver on foot, and located him in a no-through parking area. The officer drew his Taser – on the basis that he feared violent confrontation with *'a violent amateur boxer already displaying erratic behaviour'* and *'having witnessed the strength and anger of the driver first hand'*. He also considered the behaviour of the driver to be dangerous to both police and members of the public, especially given his *'complete disregard for the safety of patrons'* in the licensed premises while attempting to evade police.

According to the COPS record, after issuing a warning to the driver to stop, the officer deployed the Taser in probe mode as the driver fled up an external staircase to a nearby building. The driver stopped momentarily, but then continued to climb up the stairs. The officer stated that he feared the driver would retaliate because the Taser use appeared to have little effect and he could be overpowered. As the officer considered that he still needed to control and arrest the driver, he decided to issue a second Taser cycle. The Taser Cam footage shows that the Taser was cycled a third time when the probes became dislodged, and the driver climbed over a fence and ran away. More officers arrived but were unable to locate the driver.

#### Police assessment of the Taser use

The TRP referred the matter to the LAC to be investigated as an internal complaint. The CMT found that although the officer acted in good faith, his actions were a breach of the Taser SOPs. A sustained finding for breach of the SOPs was made and the officer was counselled, decertified and retrained in Taser use.

#### Our assessment of the Taser use

Our review of the Taser video footage found significant discrepancies between the footage and written records. Firstly, the Taser Cam footage shows that the Taser was cycled three times, whereas the COPS record and Sitrep clearly state that there were only two cycles. Secondly, the CCTV footage shows that when the officer was speaking to the driver in the hotel he appeared calm and compliant and there was no indication that he was erratic or that a violent confrontation was imminent. We consider the TRP's decision to refer this matter to the LAC as a complaint was appropriate in the circumstances, and agree with the CMT's determination in concluding that the use of the Taser did not comply with the Taser SOPs.

Case study 15 is an example of a matter where we disagreed with the NSWPF's view that the use of Taser on a fleeing youth was justified.

### Case study 15 – Drawing a Taser to arrest a youth who ran away

A young man was found in a suburban street in the company of a person carrying cannabis. He was told to leave the area but was found shortly after by another officer, hiding in some bushes. The man leaped up and fled and police engaged in a foot pursuit. The Taser was armed during the foot pursuit and before the officer reached the man. The COPS record and Sitrep state that the young man *'was highly aggressive and yelling incoherently at police'* before the Taser was armed. The Taser Cam footage shows the man with both hands on the top of the fence when he was asked by police to get down on his knees. He took his hands off the fence and turned to face police, with both hands raised. The officer said, *'Down on your knees! Get down on your knees! I've got a Taser. Get down on your knees.'* The young man got down on his knees and was breathing heavily, with his head down. While on the ground and facing down, he asked the police officer why the officer was handcuffing him. The police officer said, *'If you move, I will Taser you'*. The youth told the officer that he was 17 years old and was going home. The police officer repeated his earlier threat, *'If you move, I will Taser you'*.

The youth complied with police instructions as he was handcuffed. He was searched and taken to the police station, where he was given a formal warning in relation to two counts of trespass. He was also advised not to run from police. No other offences were noted.

### Police assessment of the Taser use

When we presented this case study to the NSWPF, they commented that:

*The [young man] ran from the police and the offence he had committed (if any) was unknown. Upon review the TEC considered the initial draw and cover to have been appropriate ... the officer was attempting to gain control of the [young man] in accordance with the [Tactical Options Model]. Given the compliance with the young person following the foot pursuit, the ongoing cover and threats of Taser use is viewed as unnecessary by the TEC.*<sup>45</sup>

In relation to the officer's verbal threat to use the Taser, the NSWPF accepted that:

*Notwithstanding that the officer is out of breath and updating police radio operator at the time of apprehending the [young man], it appears that he would have gained compliance of the [young man] without resorting to a threat of using Taser. In this respect the communication fell short of expectations.*<sup>46</sup>

### Our assessment of the Taser use

In our view, in the absence of any information indicating that the youth had committed an offence and any behaviour that might indicate he was going to react violently or injure or overpower the officer, the officer would not have had reasonable grounds to believe it likely that he would need to discharge the Taser. He would certainly not have had grounds to discharge it immediately under the criteria for use. We therefore disagree with the NSWPF's assessment that the drawing of the Taser during the pursuit was appropriate. This is not to say that police should not have pursued the youth, but in our view there was no cause to pursue him with an armed weapon.

When we presented the NSWPF with case studies highlighting our concerns about the use of Tasers during pursuits, they commented that:

*Taser SOPs are not designed to be prescriptive to all circumstances but Taser use needs to be in keeping with the intent of the SOPs and be according to the law. For instance, an officer may use reasonable force to make an arrest. As such, there will be circumstances to use the Taser on a person attempting to evade arrest by fleeing or other means. The test in these circumstances would be the nature of the offence the individual is being arrested for balanced against the risk of injury to the POI [person].*<sup>47</sup>

A similar test is described in the *2011 Electronic Control Weapons Guidelines*, produced by the US's Police Executive Research Forum and the Office of Community Oriented Policing Services, US Department of Justice:<sup>48</sup>

*Fleeing should not be the sole justification for using an ECW against a subject. Personnel should consider the severity of the offense, the subject's threat level to others, and the risk of serious injury to the subject before deciding to use an ECW on a fleeing subject.*<sup>49</sup>

We agree that these are relevant considerations. Police should also consider the lawfulness of the arrest and whether there is an appropriate alternative to arrest. The courts, and the Parliament via the enactment of s. 99(3) of LEPR, have made it clear that arrest is a measure of last resort. This is in recognition of the fact that an arrest involves the deprivation of a person's liberty and is considered to be an additional punishment.

The NSWPF advised us that the TEC believes the current Taser SOPs criteria would apply when a person is evading arrest. However, the TEC considers there is some merit in the suggestion that further guidance be provided to officers on Taser use against a fleeing person, and would consider this matter when updating Taser SOPs version 1.17.<sup>50</sup> However, no such guidance was included in the updated Taser SOPs version 1.18.

While we agree with the TEC that the Taser SOPs are not designed to provide prescriptions for all situations faced by police in which they may decide to use a Taser, there is a strong case that the use of a Taser on a fleeing person should be exceptional or only occur in exigent circumstances. The use of a Taser in this way creates considerable risk to the person – a much greater risk than for a person who is subjected to Taser use while just standing or sitting.

The provision of additional guidance is useful, but we believe the Taser SOPs should be explicit in stating that generally a Taser should not be used on a fleeing person – except in situations where the person fleeing has committed a serious offence and their escape poses a serious and immediate risk to themselves or others. Additional guidance could be provided in the better practice guidelines including specific examples of where the use of a Taser on a fleeing person could be justified.

## Recommendations

10. That the NSWPF amend the Taser SOPs to specify that a Taser should not be used on a fleeing person, and that Taser use in this way can only be justified in exigent circumstances.
11. Additional guidance should be provided which sets out examples or scenarios where Taser use against a fleeing person might be considered acceptable – for example, warranted by the seriousness of the offence or the escape of the person posing a serious risk that they are likely to re-offend or cause serious injury to themselves or others if not immediately apprehended.

### 7.11 Using Tasers on people in handcuffs

In Queensland, there is a specific prohibition on using Tasers on handcuffed people unless exceptional circumstances exist, and in the Northern Territory police are prohibited from using a Taser against a person who is handcuffed or otherwise secured.

The 2011 *Electronic Control Weapons Guidelines* recommended that electronic control weapons such as Tasers:

*... should not be used on handcuffed subjects unless doing so is necessary to prevent them from causing serious bodily harm to themselves or others and if lesser attempts of control have been ineffective.*<sup>51</sup>

The NSW Taser SOPs do not contain any specific prohibitions on using a Taser against a person in handcuffs. The following provisions are particularly relevant in assessing whether the use of Tasers on handcuffed persons is authorised:

- A requirement that use of the Taser should be discontinued when the subject is effectively under control.
- A requirement that multiple use of the Taser should be avoided where practicable and must be justified in all the circumstances following assessment of the subject and in accordance with the TOM.

In our review, we identified two incidents in which police discharged a Taser on a person who was handcuffed in circumstances where we do not consider the use was permitted under the Taser SOPs.

In Case study 16, the probes were left attached to the handcuffed person for an extended period and the officer discharged further Taser cycles on them after the initial probes were discharged.

#### Case study 16 – Repeated Taser use on a handcuffed person

Police attended an alleged domestic dispute at a tavern. No offence was detected although a man involved in the incident appeared to be intoxicated. When police left the scene, they observed the man trying to flag down cars by walking in front of them. When police attempted to take the man home he was uncooperative but after 10 minutes agreed. Subsequently, the man became aggressive and a physical confrontation took place. He grabbed a probationary constable's Taser and applied it in drive-stun mode to the officer's torso. The probationary constable regained control of the Taser and deployed it in probe mode at the man. The man continued to violently resist and the Taser was cycled a second time 11 seconds later. The man was then handcuffed. Over the following minutes he calmed down, and remained lying on the ground. After approximately 11 minutes the man became distressed and disoriented, calling for help and asking if the police were really police officers or if they were trying to kill him. After about 15 minutes, the man started to yell out for help and tried to sit up. He was subjected to Taser use again to subdue him. After a brief pause, the man resumed struggling and was subject to another Taser use. Police then decided to pick up the man and escort him into the police vehicle. En route the man struggled and was subjected to a Taser deployment in drive-stun mode when close to the vehicle. Police records indicate the man was subjected to Taser use five times.

##### Police assessment of the Taser use

The TRP raised a question about the length of time the Taser was engaged, being 17 minutes, but noted that the man later became '*challenging*' some time after he had initially been subdued and finally indicated it was '*overall appropriate in the circumstances*'. No comment was made about the multiple use of the Taser on a handcuffed subject. This matter was considered by the TEC which noted '*deployment justified and SOPs adhered to*'.

##### Our assessment of the Taser use

We believe that the first two uses of the Taser was appropriate, but the remaining uses in both probe and drive-stun mode did not appear to meet the criteria for use under the Taser SOPs. These subsequent three

uses in probe and drive-stun modes occurred approximately 15 minutes after the first Taser use, and at a time when the man had already been handcuffed. Although the man struggled to sit up and yelled in a disoriented manner, there is insufficient evidence to support the view that he was violent or posed any real threat to officers – as he was handcuffed, prone and surrounded by five police.

When the man had calmed sufficiently after the second Taser deployment, it is arguable that the Taser should have been re-holstered and then brought out again if sufficient threat arose to satisfy the criteria for use.

We identified a further six incidents where an officer used a Taser in probe mode and then kept it armed and aimed at a person in handcuffs for between three and 30 minutes before it was disarmed. These cases raised a concern that the term 'effectively under control' is being interpreted inconsistently by officers using Tasers – as well as by those tasked with reviewing that use.

We are also concerned that sometimes the provisions have been interpreted too broadly. In one matter referred by the TRP to a LAC for investigation, the Commander commented:

*I do not believe that a violent offender is effectively 'under control' as required by the SOPs until he is handcuffed and contained in the rear of a caged police vehicle or holding dock. The mere handcuffing of a violent male does not necessarily mean he is effectively under control.<sup>52</sup>*

In this matter, after the man was handcuffed, the Taser remained armed and pointed at him with the probes remaining in his body for a further 18 minutes until the Taser automatically switched off. We accept that there may be circumstances where people who have been handcuffed may still be a threat to police – for example, if they are violently thrashing their body or kicking. However, in this matter the man remained handcuffed, he was calm and did not appear to present any risk to the police.

In response to our concerns, the NSWPF advised that – while the issue of discontinuing Taser use once a person is under control is already covered in training – it will be given additional emphasis in the updated training program.<sup>53</sup>

We agree that the requirement to discontinue use once a person is effectively under control should be further emphasised in training. The NSWPF should also consider providing additional instructions to police not to use Tasers against people who are handcuffed unless there are exigent circumstances. We would then expect the TRP to assess whether the circumstances were sufficiently exceptional to warrant use of the Taser against a handcuffed person. We believe the circumstances outlined in the *2011 Electronic Control Weapons Guidelines*<sup>54</sup> about using Tasers on handcuffed people clearly outline such exceptional circumstances.

## Recommendations

12. That the NSWPF amend the Taser SOPs to specify that a Taser should not be used against a handcuffed person, and that Taser use in this way can only be justified in exigent circumstances.
13. Additional guidance should be provided that sets out examples or scenarios where Taser use against a handcuffed person would be acceptable.

### 7.12 Using Tasers in police custody areas

The Taser SOPs that were current during the sample period did not specifically address whether the use of Tasers against people in police custody areas was prohibited. During our investigation, Taser SOPs version 1.17 included an instruction that Tasers should be stored before entering custody areas of police stations and before entering any establishment where police are required to securely store firearms before entering – such as courts, hospital wards and gaols.<sup>55</sup> During our consultation with the TEC, we were advised that the Taser SOPs do not preclude police from using a Taser in custody areas if the criteria for use apply.

During the sample period, Tasers were used in police custody areas in 13 cases. In three cases, it was our view that the Taser was used in breach of the criteria for use.

Case study 17 involved the use of a Taser on a person attempting self-harm in a police cell. We believe the decision to use a Taser appeared to be in breach of the criteria for use. It also involved placing the subject at further risk of harm and a near miss of serious injury. A second use of the Taser appeared to be unreasonable and for compliance purposes only. The TRP considered the Taser use was in accordance with the Taser SOPs, but in our view they failed to identify a range of significant issues.

The Taser Cam footage for this case study has been released with this report and can be viewed on the Ombudsman's website.

## Case study 17 – Hazardous use of a Taser in a police cell

There were warnings on COPS that a man in custody had attempted to harm himself in the past by using his clothing, so police removed his outer shirt, jeans and handcuffs when he was in the police cells. The COPS record states that the man attempted to charge police as they left the cell. He stood on the concrete bed facing the wall with his undershirt around his neck in an attempt to hang himself. Police entered the cell with a Taser because the man *'posed a high risk of violent confrontation and injuries to police'*. The probes were fired at the man who fell backwards heavily onto the cell bed, covered only by a thin mattress, and his head hit the concrete.

The COPS record states that the man subsequently *'refused to roll on his stomach and continued his verbal abuse and threats'* and that at this stage he continued to pose a physical threat to police. He was then given a second, *'shorter burst'* from the Taser.

Due to the man's mental illness, the charges that led to his arrest were dismissed and he was conditionally discharged into the care of a responsible person under s. 32 of the *Mental Health Act 2007*.

### Our assessment of the Taser use

Our review of the Taser Cam footage indicated that the behaviour of the man was not threatening at the time the Taser was deployed. We acknowledge that officers were concerned that violent confrontation was possible, given the man's past behaviour. However, at the time the Taser was armed he was in the process of securing his shirt as a noose, so it does not appear that violent confrontation was imminent and it certainly was not occurring when the Taser was discharged. The man was attempting to harm himself, not the officers.

In our view, the use of Taser probes in these circumstances was a hazardous practice. Had the man managed to secure the noose before the probes were deployed, it is likely that the resulting NMI would have greatly increased the risk that he would successfully hang himself. Fortunately, the noose was not secured. In addition, the man fell heavily from an elevated position (standing on the cell bed) in a confined space with hard surfaces. The officers should have considered the probability that NMI would result in the man falling backwards. We note the risk of falling from an elevated position is canvassed in current Taser training.

Moreover, in our view, the second cycle of the Taser breached the criteria for use in the Taser SOPs. The Taser Cam footage shows that the man was not immediately compliant with the officer's direction to roll onto his stomach. He did swear at police as he was prone, but he offers passive resistance only. While the man appears upset and swears at the officers, he could not be heard making threats. One officer can then be heard to say *'give him another one?'* then another officer stated *'yep'* and the Taser could be heard to cycle for a second time. We are of the view that in this instance the Taser was used as a compliance tool to make the man roll over as directed by the officer.

We highlighted this case to the NSWPF in October 2011 and the TEC referred it back to the TRP for review.<sup>56</sup> The TEC has since advised that they agree that subjecting the man to a Taser while he was in an elevated position created a greater risk to his safety than his suicide attempt, and that the second Taser cycle was a breach of guidelines and appeared to be for compliance purposes only. We were advised that this case study is now available to be used for training purposes.<sup>57</sup>

The use of Tasers against people who are in confined places such as police cells raises some additional issues. Our independent expert raised concerns that there is an increased risk that the person subjected to Taser use will sustain serious injuries when falling onto concrete floors in a confined space. In the matters he reviewed from the sample period where Taser was used in cell complexes, *'there were a number of police in the station and [the matters] could have been handled without using the Taser'*.<sup>58</sup> If there are multiple staff in attendance in the cells, this reduces the risk of any detainee overpowering police. If there are higher numbers of police available to respond to incidents in the custody area of a police station, this may broaden the scope of tactical options available to police to address any incident that is occurring or anticipated.

In October 2010, the Western Australia Police Commissioner announced that he would ban arresting officers from taking Tasers into the watch house to prevent them from being used in retribution against offenders.<sup>59</sup>

We acknowledge that there may be exceptional circumstances where a Taser may be an appropriate tactical option against a person in a police custody area. However, we consider that such a use should only be in exceptional circumstances and Taser training should emphasise that:

- the use of Tasers in cells involves an additional risk that people subjected to Taser use may injure themselves when falling in a small space with hard surfaces
- using Tasers in small spaces may present a risk to other officers

- the availability of other officers to help in controlling a violent situation in police cells should be considered when deciding whether Taser is an appropriate tactical option.

In considering these risks, we reached the view that the Taser SOPs should be amended to provide that Tasers may only be used in custody areas in police stations cells in exigent or extraordinary circumstances. In discussions with us in April 2012, the NSWPF indicated support for such an amendment – and it was included in sections 3.9 and 6.11.3 of version 1.18 of the Taser SOPs approved on 4 July 2012. As a result, we are not making any recommendation here.

### 7.13 Using Tasers to search premises

There are a range of policies that provide officers with guidance about conducting searches, including policies relating to the way general duties officers should respond to high risk incidents. However, the Taser SOPs do not provide any specific guidance about using Tasers in searches.

We identified 20 cases in the sample period where a Taser was used by officers who were conducting a search of premises. This use of Tasers is relevant to the issue of a lower threshold for draw and cover mode.

From our review, we found two different categories of Taser use during searches. They were where:

- officers have reasonable grounds to believe that violence or self-harm is actually occurring
- police are trying to locate a person who may pose a threat of violence to police or other people, but there are no grounds to believe that violence is actually occurring.

Cases falling in the first category meet the criteria for use if the officer has reasonable grounds to believe that violence is occurring and there is a need to protect a person from serious injury or self-harm. There is a temporal link between a violent act or self-harm that is reasonably believed to be in progress and the desire to protect human life.

It is the cases falling in the second category that raise a question about whether it is appropriate to have a Taser drawn in readiness, in case the officer encounters a violent confrontation during the search.

The NSWPF made the following comments about cases falling in the second category:

*The TEC believes an officer would be justified in drawing the Taser whilst conducting a search of premises if that officer has a reason to suspect he/she may be confronted with a situation which may require the use of the Taser.*

*Use of Taser in these circumstances would be justified under criterion 5.3.<sup>60</sup>*

Despite this advice, we found the TRPs were not consistent in the way they assessed the 20 cases where Tasers were used during searches. In four incidents (20%) the TRP commented that use of the Taser during a search was inappropriate or was 'not best practice'. They were satisfied that the use of a Taser was justified in the remaining 16 cases. In nine cases (45%), we disagree with the TRP and are of the view that the criteria for use has not been complied with.<sup>61</sup> Case study 18 is an example of this.

#### Case study 18 – Searching for an escaped patient

Police received reports that a forensic patient who had escaped from Justice Health was staying in a holiday park. The officers waited for backup and established a perimeter. The COPS record indicates that the Taser was drawn before entering the premises due to 'the size, martial arts experience and history of violence' shown by the man. On sighting the Taser and the officers, the man was fully compliant with all directions and was taken into custody without incident. The Taser user then entered the premises with the armed Taser, clearing each room.

At the time the search of the premises was conducted, the man had been secured and in the custody of a number of other officers outside the premises. The Sitrep also states that 'it was confirmed that [the man] was the sole occupant of the location'.

##### Police assessment of the Taser use

The TRP found that the use of the Taser was in accordance with the Taser SOPs and took no further action.

##### Our assessment of the Taser use

In our view, the threat for which the Taser had been drawn had ceased with the securing of the man. Our independent expert also considered that the use of the Taser to conduct the search did not comply with the Taser SOPs.

It seems that the Taser SOPs lack sufficient information to guide the TRPs in assessing the appropriateness of Taser use in searches. The TEC advised us that they would address this issue of inconsistent determinations when 'updating [the] SOPs and/or [the] TRP guidelines'.<sup>62</sup>

There were six cases (30%) in which Tasers were used in a search in instances where violence might have been occurring at the time of the search. In our view, these cases met the criteria for use.

In some cases, Tasers were used to conduct a search in circumstances that appeared to be high risk and it was questionable whether the Taser was the most appropriate tactical option. These searches are discussed in the next section about high risk incidents.

## 7.14 Using Tasers in high risk situations

In Chapter 3, we outlined NSWPF policies for managing high risk incidents – including the NSWPF Handbook which reflects the *National Guidelines for Deployment of Police to High Risk Situations, Deployment of Police Negotiators and the Use of Lethal Force – 2005*.

The guidelines and the NSWPF Handbook require first response officers to assess whether a situation is a high risk incident that needs assistance from specialist police, such as the Tactical Operations Unit (TOU) and police negotiators. Unless there is an immediate need for general duties police to protect people including police from injury, they are instructed to contain and negotiate until specialist police arrive.

In January 2009, the State Protection Group raised their concerns via a memorandum about general duties police attempting to resolve high risk situations without asking for specialist support from negotiation and tactical personnel. The memorandum specifically noted:

*... there appears to be growing confidence within the general policing community that Tasers are 100% effective and provide a robust tool to assist in the resolution of incidents.*

*... My most serious concern is the apparent growing increase in the thoughts that high risk incidents can now be resolved by general duties police with the use of a Taser.*<sup>63</sup>

Similarly we identified incidents where officers appeared to rely on their Tasers when confronted with high risk situations, rather than calling or waiting for specialist units to arrive. We found this happened when searching premises under high risk conditions and in other high risk incidents such as sieges. Our concern is that officers could become overly reliant on Tasers, and expose themselves and others to risks – rather than seeking assistance from police officers specially trained in dealing with such situations.

We were also concerned that the TRPs were inconsistent in identifying this issue. In our view, this suggests that the Taser SOPs should be amended to provide better guidance about when officers should be calling for assistance from specialist officers in high risk situations.

### 7.14.1 High risk searches

We identified five cases in the sample period where Tasers were used to search premises in what could be described as a high risk situation. In these cases, we are satisfied that it was appropriate for officers to be armed when carrying out searches – as typically police had information that the person they were looking for might be armed or had just committed a serious violent crime. However our review raised a question about whether the Taser is an appropriate tactical option for general duties police to be using during high risk searches, and whether they should be calling for assistance from the TOU.

In five cases, the TRPs considered the use of a Taser was appropriate. However in one case – outlined in Case study 19 – the TRP identified a concern that the Taser might not have been an appropriate tactical option given that it was a high risk incident.

#### Case study 19 – Drawing a Taser during a high risk search

Officers were called to residential premises in relation to a possible homicide. They found a man sitting in the lounge room with stab wounds to his abdomen and the victim deceased on the kitchen floor. Police armed the Taser in draw and cover to apprehend the accused and search the premises without incident.

##### Police assessment of the Taser use

The TRP in this matter sought further information from the LAC 'regarding the use of other tactical options (i.e. firearms) for the incident given that the [the man] had just murdered his wife with a knife (Operational Safety issue)'.

### Our assessment of the Taser use

While we have not been advised of the outcome of this request for further information, we consider the TRP acted appropriately in identifying the use of Taser without cover of a firearm as an operational safety risk.

In five of the six cases within the sample period in which a Taser was used to search in a high risk situation, the TRP said the use was consistent with the Taser SOPs and did not record any concerns about police conducting a high risk search using a Taser. Case study 20 is an example of this.

### Case study 20 – Drawing a Taser during a search for a suspected murderer

Police responded to a 000 call in relation to a possible homicide. When police entered the premises, they found a large pool of water flowing from the kitchen and a blood trail across the floor. Officers could hear a man's voice coming from the bathroom yelling abuse and called a police negotiator. Negotiations proved unsuccessful and officers then searched the premises with the assistance of the Dog Squad. The Sitrep states that *'during the search of the premises [the Taser] was used to draw and cover only'*. The man locked in the bathroom was suspected of murdering his de facto partner and officers were at the time unaware of any other possible suspects within the premises.

#### Our assessment of the Taser use

Given the violent nature of the offence and the possibility that other people might have been on the premises, it was reasonable for the officers to fear further violence could take place. In light of this, we considered it was prudent for officers to be armed while searching the premises. However, it did not appear that any other officer covered the Taser user with a firearm during the search. It seemed to us that the assessment of tactical options in this incident might have placed the responding officers at significant risk of harm.

In relation to a decision to use a firearm or a Taser during a search, the *Taser Tips & Tricks* document states:

*As the officer on scene, you are the best judge as to which tactical option is most appropriate. However, please consider your own welfare when determining what is the best option, particularly when conducting building searches or attending scenes where confronting offenders with firearms is a possibility. Remember the Tactical Options Model.*<sup>64</sup>

This additional guidance may assist officers, but it does not address the issue of when it is appropriate to call for assistance from specialist units such as the TOU. It also doesn't clarify the circumstances in which using a Taser to conduct a search is consistent with the Taser SOPs. The NSWPF advised that the *Taser Tips & Tricks* document is only additional guidance material and officers are not bound to comply with it as they are the Taser SOPs.<sup>65</sup>

Not every situation involving unknown facts, such as whether a person is hiding in premises, will warrant the use of a Taser. An assessment of whether Taser use is justified would need to take into account matters such as:

- any warnings or information given to the officers attending the scene that indicate they may be confronted with violence
- what can be seen and heard that may indicate that officers may be confronted with violence.

These matters should form part of an officer's risk assessment under the TOM. We consider the Taser SOPs could be improved by providing additional instruction about when it may be appropriate to use Tasers during searches.

### 7.14.2 Other high risk situations

We also identified a number of cases in which the Taser was used in other types of high risk situations. We are concerned that the TRPs were not consistent in identifying whether the incident was high risk, whether negotiators or the TOU should have been called, and whether it was appropriate to use a Taser rather than another tactical option, such as a firearm.

### Case study 21 – Failing to call specialist police to a high risk incident

Police attended a location in response to a call about a woman screaming and a violent argument taking place. The COPS record states that there was an argument between the tenant and a male resident and the tenant had assaulted both residents. After initial enquiries with the occupants were unsuccessful, backup officers and a warrant were sought.

After the arrival of backup officers and while police were waiting for the warrant, both residents left the unit. The tenant yelled through the front door that if any police tried to enter he would shoot them in the head with a shotgun. The COPS record states that *'due to an immediate risk of harm to police and other residen[ts], a police dog was called and police have forced entry to the unit'*.

When police entered the premises, the tenant was sitting on the couch in the dark with his hands in between his legs in a concealed position. As police could not see if the tenant was concealing any firearms or weapons, the Taser was used in draw and cover – and an OC spray was used on the tenant's face. This forced him to raise his hands to his face and reveal that he was not holding a firearm. The police then moved in to secure him.

#### Police assessment of the Taser use

The TRP found that the scenario should have been dealt with by 'contain and negotiate' rather than officers forcing entry with a dog unit and covering with a Taser.

In Case study 21, the TRP identified the issue of general duties officers failing to contact specialist police to assist with a high risk incident. By contrast, in Case study 22, officers had called for specialist support – but then one officer appeared to use a Taser to try to resolve the incident rather than following the guidelines to 'contain and negotiate'.

### Case study 22 – Using a Taser to resolve a high risk incident

Police had contained a man who was suffering from schizophrenia on the roof of residential premises. The man was carrying a number of large carving knives. While police were waiting for TOU and negotiators, they tried to persuade the man to get off the roof and put the knives down. At the beginning of the Taser Cam audio, it appears the Taser user was assessing whether he could get a shot at the man and whether that represented a risk of the man falling off the roof. The Taser Cam audio records the Taser user discussing with another officer whether he should climb to a better vantage point. The man paces up and down the roof and is speaking to police. Nineteen minutes into the footage, the man moves towards the edge of the roof closest to the officer aiming the Taser and throws one of the knives and a number of fallen twigs from an overhanging tree in the direction of the officer. The officer discharged the Taser but the probes missed the man. Subsequently, the man agreed to leave the roof without the use of a Taser.

#### Police assessment of the Taser use

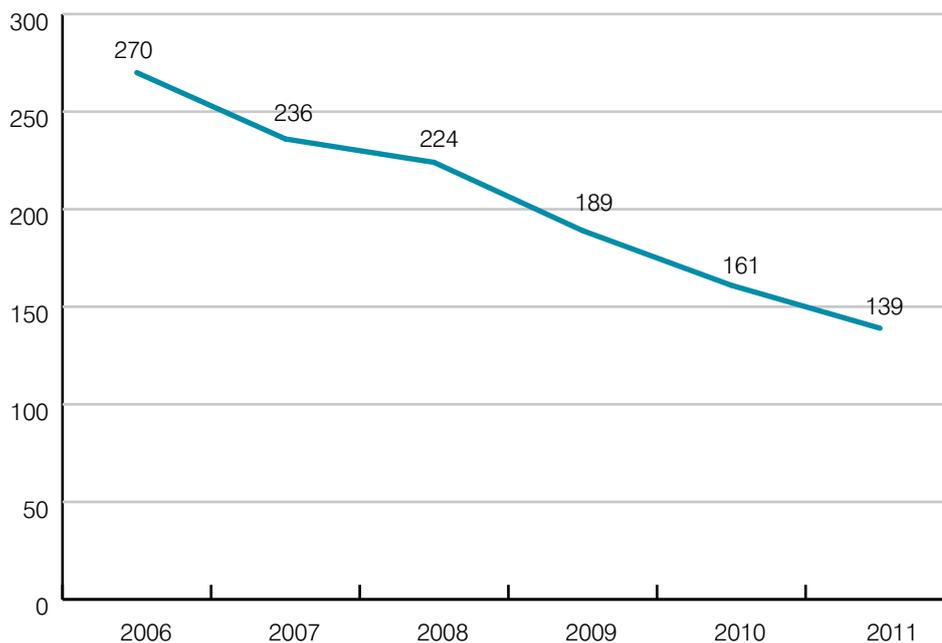
The TRP reviewed the Taser use at the request of the weapons trainer. The review examined the height at which the probes were discharged and provided reasons mitigating any potential risk. The review determined that the Taser use was satisfactory and appropriate in the circumstances. The TRP did not comment about whether the Taser user's actions went beyond 'contain and negotiate' or whether it was appropriate for the officer to try to resolve the incident using his Taser rather than waiting for the TOU.

#### 7.14.3 NSWPF concerns about high risk incidents

The NSWPF advised that they share our concerns about the tendency for officers to try to resolve high risk situations without the assistance of specialist officers.<sup>66</sup>

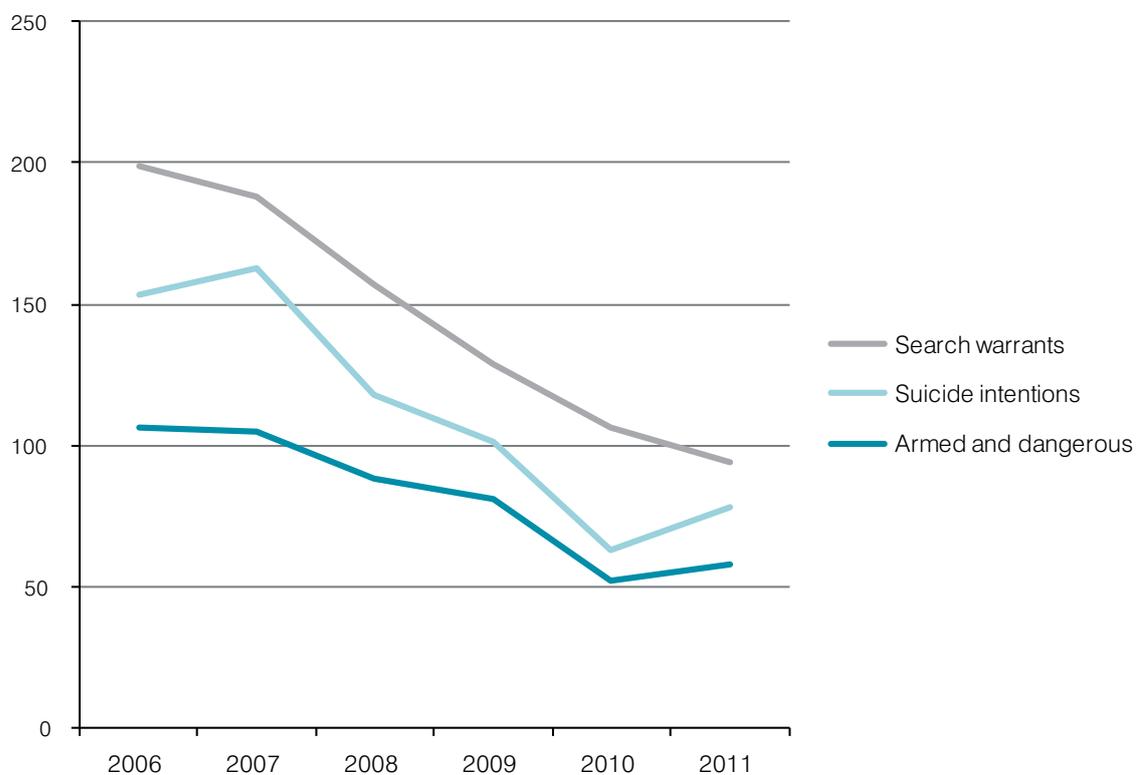
They provided us with data showing the number of incidents to which the State Protection Group (which includes the TOU, Negotiation Unit, Dog Unit, Rescue and Bomb Disposal and the Police Armoury) is called has steadily declined over the past six years – see Figure. 11. In particular, calls for assistance under the categories 'armed and dangerous' and 'suicide intentions' show a more than 50% decline. Calls relating to assistance in executing high risk search warrants have also declined significantly – see Figure. 12.

**Figure 11:** Number of jobs the NSWPF State Protection Group was called to: 2006 – 2011



**Source:** Data provided by the NSWPF.

**Figure 12:** Number of jobs the NSWPF State Protection Group was called to, by job type: 2006 – 2011



**Source:** Data provided by the NSWPF.

The NSWPF have not advised us of their views about why there has been this decline. It may be due to a number of factors – such as a reduction in armed and dangerous incidents or because general duties officers are dealing

with more serious matters without calling for assistance. We believe it would be beneficial for the NSWPF to analyse this issue.

In January 2011, the Deputy Commissioner (DCOP), Field Operations issued a memorandum to all Region Commanders and the Commander of State Crime Command noting that the TEC and TRPs had identified instances where general duties police have acted and deployed a Taser, in circumstances that appear to fall within the definition of high risk incidents. The memorandum stated:

*I expect the Region Commanders will review all matters and take appropriate action in situations whereby Tasers, issued to General Duties Officers, are utilised during High Risk Incidents which do not involve exigent circumstances.<sup>67</sup>*

The memorandum did not outline what would be 'appropriate action' in these circumstances. However, the NSWPF advised that as Region Commanders chair TRPs and manage high risk incidents, they are in a position to review these incidents with a high level of expertise.

Some guidance about high risk incidents is currently provided in the Mandatory Continuing Police Education, Taser Training Package and the Police Practice Journal – and the NSWPF expects officers to consider the TOM, Taser SOPs and the NSWPF Handbook when assessing risks. In the 2011–12 training year, police received training on identifying high risk situations and the appropriate strategies to deal with them, as part of mandatory annual training.

After our consultation with the TEC about this issue, the NSWPF added the following advice to the Taser SOPs:

*Taser should not be used to resolve 'High Risk' situations unless exigent circumstances exist that require immediate action which may include the use of TASER ...<sup>68</sup>*

A definition of high risk incident is also included:

*A high risk incident is defined under the 'National Guidelines For The Deployment Of Police To High Risk Situations, Deployment Of Police Negotiators And The Use Of Lethal Force' ... Where police are confronted with this type of scenario they should consider applying the strategy of containing the situation and seeking specialist support. TASERs should not be used as a substitute for applying the "National Guidelines For The Deployment Of Police To High Risk Situations" unless exigent circumstances dictate the need for immediate action.<sup>69</sup>*

These amendments were included in Taser SOPs version 1.18 approved on 4 July 2012. We support including this advice in the Taser SOPs and make the following recommendation:

## Recommendation

- 14. That the NSWPF amend the Taser SOPs and training to clarify the circumstances in which it is appropriate to use a Taser during a premises search, and that Taser training incorporate material to help officers identify high risk situations in which specialist assistance such as the Tactical Operations Unit should be called.**

## 7.15 Structure and clarity of the current Taser SOPs

In earlier sections of this chapter we have made recommendations about specific issues to be addressed or included in the Taser SOPs. In this section, our focus is on the overall structure and clarity of the Taser SOPs and whether improvements can be made that will make the Taser SOPs clearer and less ambiguous and the heading structure more logical to help officers locate important information.

The current version of the Taser SOPs is 1.18. This indicates that it has been through many iterations with existing sections modified and new sections incorporated to deal with emerging and changing issues. Revisions and amendments over time have led to the Taser SOPs being confusing and ambiguous in some areas, with section headings that do not clearly point to what is in that section.

The Taser SOPs contain two complete prohibitions on Taser use. These are that a Taser must not be used on a compliant subject exhibiting non-threatening behaviour or a subject who is passive noncompliant. These are important prohibitions and any breach of these would be significant. It would be logical for important rules like this on Taser use to be listed under a section called 'Circumstances where Taser use is prohibited'. This would immediately tell the officer reading the Taser SOPs what this section is about. Instead, this information is found under a section called 'Methods of Use – Other Considerations'. Not only is this not clear, it is also misleading – this section does not discuss other considerations for use, it is outlining prohibited use.

Similarly there are a range of circumstances where a Taser should generally not be considered or used. Currently these are discussed in different sections of the existing Taser SOPs – e.g. section 6.4.3 on restricted use of a Taser in drive-stun mode, 6.11 on exceptional use situations. We have also identified some circumstances or situations where the Taser SOPs should indicate that a Taser should not be used – unless exigent or extraordinary circumstances are present.

In addition, advice published by Taser International about target areas and higher risk subjects, outlined in Chapter 2, has not been included in the Taser SOPs.

From our discussions with police officers and our own experience in using and applying the SOPs, it is evident that the existing Taser SOPs would benefit from a wholesale review in terms of readability, clarity of expression and overall structure. Particular importance is placed on equipping a police officer in the best and clearest way with what they need to know to inform decisions made in an operational setting. The Taser SOPs should be structured in a way that deals with the key 'what I need to know about Taser use' to help police officers remember these important details.

The following structure or section headings would more clearly refer to the key issues for operational police using a Taser as part of their TOM. These headings are:

- Risks associated with Taser use (body target areas, areas to avoid and higher risk subjects).
- The criteria for Taser use in draw and cover mode.
- The criteria for Taser use in probe mode.
- Circumstances where Taser use is restricted.
- Circumstances where Taser use is prohibited.

## Recommendation

**15. That the NSWPF review the existing Taser SOPs to improve their overall structure and readability. At a minimum, there should be sections on the following topics:**

- **Risks associated with Taser use (target areas, areas to avoid and higher risk subjects).**
- **The criteria for Taser use in draw and cover mode.**
- **The criteria for Taser use in probe mode.**
- **Circumstances where Taser use is restricted.**
- **Circumstances where Taser use is prohibited.**

## 7.16 Ensuring consistent standards in all procedures relating to Taser use

This investigation has examined Taser use by general duties police officers as opposed to Taser use by police officers within specialist commands of the NSWPF. We note from the data provided that during the period 1 October 2008 and 30 September 2010 the specialist commands used a Taser in 40 incidents.<sup>70</sup> Not surprisingly, the specialist commands use a Taser less frequently when compared to general duties police officers. However the nature of the work of these commands would suggest that, when Tasers are used, they are generally in high risk situations.

As part of this investigation we also looked at the NSWPF's implementation of the recommendations made in our 2008 report. A concern raised in that report was that different specialist units were governed by different procedures for Taser use. For example, the Public Order and Riot Squad had Taser-specific SOPs while the TOU and the State Protection Support Unit use of Tasers was governed by their Use of Force Guidelines.

We therefore recommended that the NSWPF either:

- develop a single set of SOPs governing the use of Tasers by officers
- develop SOPs governing the use of Tasers for all officers authorised to use Tasers, and ensure that the SOPs are consistent wherever possible, and regularly updated.

To date this recommendation has not been implemented.

In view of the recommendations made in this report about the Taser SOPs for general duties police officers, it would be timely for the NSWPF to review all procedures relating to Taser use to ensure that there are consistent standards for Taser use across the NSWPF.

## Recommendation

- 16. That, after implementing the recommendations regarding the Taser SOPs, the NSWPF review other procedures governing Taser use in specialist commands to ensure that standards and requirements are consistent.**

### 7.17 Is the Taser training provided by the NSWPF adequate?

In Chapter 4, we provided a summary of the training provided to police for accreditation to use a Taser and the related subjects taught to student police at the NSW Police Academy relevant to ensuring that Tasers are used appropriately.

To consider the question about whether police training is adequate, we examined a range of training materials including:

- Taser accreditation and reaccreditation training – including lesson plans, multimedia presentation slides, written scenarios for scenario-based training, Taser user certification tests and practical skills assessment sheets.
- Police recruit training – including subject outlines, study guides and workbooks, practice manuals and reading lists.
- Annual mandatory training – including scenario-based training, PowerPoint presentation slides, and instructions for discharge of live Taser cartridges.
- Mental Health Intervention Training – including the agenda and selected presentation slides.

We also attended the eight hour Taser accreditation training over two days – to observe both the theoretical and practical components of the training – and the Taser reaccreditation training to observe the presentation as well as parts of the scenario-based training.

Our review covered:

- whether the recommendations made in our 2008 report about the risks and limitations of using Tasers had been addressed
- the practical component to develop knowledge and skills required to effectively use a Taser
- the theoretical component – including the content dealing with the criteria for use of a Taser and the accountability measures for monitoring compliance.

Our finding is that the practical and theoretical training the NSWPF provides to police on the use of Tasers is of a generally high standard. Importantly, the Taser SOPs require police to complete annual reaccreditation training and allow for officers to be decertified and retrained after any incidents of hazardous use. We support the continuation of these requirements. We also found that police training now includes suitable content and information about many of the issues we identified in our first report about the risks and limitations of Tasers.

The training issues that we believe require further attention – to ensure that NSWPF officers are properly equipped to use Tasers in an effective and appropriate manner – are outlined below.

#### 7.17.1 Review of training after amendments to the Taser SOPs

To ensure that police are aware of the amendments to the Taser SOPs introduced in version 1.18 and further amendments recommended in this report, we recommend that the NSWPF review and update the Taser training modules to incorporate amendments to the criteria for use – including prohibitions against unreasonable use for compliance.

#### 7.17.2 Targeting the Taser on sensitive body parts

The NSWPF Taser training has incorporated Taser International's advice on preferred target areas and the need to avoid sensitive areas of the body. Taser SOPs version 1.18 also specifically instructs Taser users to avoid targeting the chest area, however this is yet to be incorporated in the Taser training material. Taser International have also advised that Taser users should avoid targeting known pre-existing injury areas – this has yet to be incorporated into the Taser SOPs and training.

#### 7.17.3 Use of scenarios in practical component

During our attendance at practical training sessions for both Taser user accreditation and reaccreditation, we observed that each officer was involved in role playing in one reality-based scenario only.

Scenario-based training is important to help officers to integrate and apply their knowledge, develop their skills to continually assess all aspects of a situation as it unfolds, and choose the most appropriate alternative to deal with a dynamic situation. An interim evaluation of the Victoria Police's pilot project using Tasers shows that the majority of police officers undertaking Taser training considered practical and scenario training to be the most useful training session.<sup>71</sup> In our view, the practical skills component of the NSWPF Taser training could be improved by including more scenario-based training for each officer.

We recommend that the training should include reality-based scenarios in which:

- Vulnerable people are involved – to reinforce the importance of communication and other de-escalation techniques in resolving an incident.
- Taser use is shown to be an inappropriate use of force – including situations in which a person is acting in a non-threatening, compliant or passively noncompliant manner.
- The appropriate actions to resolve the incident are not clear-cut – to further develop the officers' risk assessment and decision-making abilities.

During the practical Taser user accreditation training, officers are instructed to communicate with the person at all stages of an incident. They are also required to demonstrate their communication skills during their practical skills assessment. However, we observed that this was restricted to requiring officers to identify themselves as officers, use verbal commands, and issue a verbal warning about Taser use. To emphasise the importance of effective communication in resolving incidents, we recommend that officers be assessed on their effective use of de-escalation techniques during scenario-based training.

#### 7.17.4 Mental health training

Our detailed review of the 556 incidents shows that 143 of those incidents (25.7%) were classified by the NSWPF as incidents relating to the *Mental Health Act 2007*, and/or involving attempted suicide or self-harm.<sup>72</sup> In addition, 140 of the 620 people (22.6%) who were subjected to Taser use received psychiatric assessment and/or treatment after the incident. Given the high proportion of people suffering from mental health issues in Taser incidents, we consider that the NSWPF should ensure that all general duties police officers receive mental health training as a matter of priority.

We are pleased that the NSWPF recognises the importance of mental health training and have established the Mental Health Intervention Team (MHIT) on a permanent basis. However, we are concerned that providing mental health training to only 10% of police officers by 2015 means that the majority of officers would not benefit from the training in the foreseeable future. We believe that the NSWPF should give urgent priority to delivering the one day mental health training course for general duties police officers referred to in Chapter 4.

Only four of the 19 officers in the two focus groups we conducted with NSWPF general duties officers had completed MHIT training. In one focus group, the two officers who had completed the MHIT training found it extremely useful. One officer said that it was the best course he had ever completed because it gave him an understanding of 'their thought processes. Give them a lot more empathy and understanding of what they've been through'.<sup>73</sup>

One officer confirmed that the MHIT training does cover use of force options, including the use of Tasers. When asked how the MHIT training deals with Taser use, one focus group participant said:

*Understand where this person's coming from and, um, just try to talk to them, obviously. But if you have to use it [i.e. the Taser], you know, a mentally ill person can still kill you, or themselves or someone else.<sup>74</sup>*

In terms of how the knowledge that a person is experiencing mental health issues affects an officer's approach to the situation, one focus group participant stated:

*Oh, it's – it's so many things they talked about and so many different ways it would take you half a day to explain it. But just – just one example is, they're apprehensive of police, and if you're telling them you're taking them somewhere don't put them in a police car if you can avoid it. It's – it's so many little things like that.<sup>75</sup>*

The other participants in this focus group expressed an interest in completing the MHIT training.

In a separate focus group of general duties officers, the two officers who had completed the MHIT course said they found the training interesting, with one of them stating: 'some of the things they – they taught were interesting, but I wouldn't say I use it in everyday policing. It's just, um, interesting'.<sup>76</sup>

The two officers did not consider that the MHIT training had changed their approach in dealing with people who might be suffering from mental health issues. One officer said:

*... interesting why they said, okay, of all the professions, you've got the doctors, the nurses, psychiatrists, and what's – out of all the professions, what do you think is the number one profession that can pick a mental – mentally ill person? And it's the police. So out of 90 – out*

*of – if a police officer says someone's mad, they're 96 per cent of the time right, okay? No other profession can get that good. And it was just sort of information like that. Kept providing information and – so it was just a – an interesting sort of day. I think most police here after a couple of years receive that.<sup>77</sup>*

### **7.17.5 Supplementing Taser SOPs and training with best practice guidelines**

In our 2008 report, we made a number of recommendations that the Taser SOPs be amended to include content on key issues that police needed to be well informed about to manage the risks of Taser use and to use Tasers effectively. We are pleased that the NSWPF have implemented the majority of those recommendations and have recently made further amendments to the Taser SOPs after our consultations with them during this review.

We recognise that there are limits to the amount of information that can be included in the Taser SOPs and in Taser accreditation training. We therefore recommend that the TEC consider developing best practice guidelines to supplement the Taser SOPs and training. These guidelines could be distributed to police attending Taser training as an additional resource and/or be made available on the NSWPF intranet. We envisage that the guidelines would be aimed at providing further emphasis, guidance and advice on a range of key issues such as:

- the criteria for use – including scenarios when Tasers should not be used
- use of Tasers when a person is fleeing police or is in handcuffs
- use of Tasers to obtain compliance with directions including move-on directions
- multiple use – tips for avoiding unnecessary cycles and discharges such as securing a subject at the earliest opportunity, including while the Taser is cycling
- responding to subjects exhibiting behaviours associated with excited delirium
- using communication skills to de-escalate violent confrontation
- responding to high risk incidents.

## **Recommendations**

- 17. That the NSWPF update Taser training to emphasise amendments to the Taser SOPs released in version 1.18 and amendments made as a result of recommendations in this report.**
- 18. That the NSWPF include reality-based scenarios in Taser accreditation training and reaccreditation training that deal with:**
  - **vulnerable people – to reinforce the importance of communication, negotiation and other de-escalation techniques**
  - **situations in which Taser use is not an appropriate use of force – including circumstances where a person is acting in a non-threatening, compliant or passively noncompliant manner**
  - **situations in which the appropriate actions to resolve the incident are not clear-cut – to further develop the officers' risk assessment and decision-making abilities.**
- 19. That the NSWPF amend the Taser SOPs and training to include instructions to avoid targeting known pre-existing injury areas.**
- 20. That the NSWPF gives urgent priority to delivering a one day mental health training program to all general duties police officers as soon as possible.**
- 21. That the NSWPF develop best practice guidelines for the use of Tasers to supplement the Taser SOPs and training.**

## Endnotes

1. NSW Police Force, *Standard Operating Procedures for use of Electronic Control (TASER) Devices by the NSW Police Force*, version 1.16, 1 July 2010, section 4, p. 14.
2. NSW Ombudsman, *The Use of Taser Weapons by New South Wales Police Force*, November 2008, p. 68 (Recommendation 1).
3. Email from Detective Inspector Gregory Butler, Staff Officer, Major Events and Incidents Group, NSW Police Force to Senior Sergeant Wayne Pernice, Coordinator, Appeals and International Law, Prosecutions Command, NSW Police Force, 19 November 2009.
4. *ibid.*
5. Letter from Acting Commissioner Nick Kaldas, NSW Police Force, to Bruce Barbour, Ombudsman, NSW Ombudsman, 19 January 2012—enclosure entitled 'NSW Police Force draft response'.
6. Minutes of meeting of the Taser Executive Committee, NSW Police Force, 27 August 2010, p. 10.
7. NSW Police Force, *Standard Operating Procedures for use of Electronic Control (TASER) Devices by the NSW Police Force*, version 1.18, (approved for release July 2012), section 5.2, p. 16.
8. Letter from Acting Commissioner Nick Kaldas, NSW Police Force, to Bruce Barbour, Ombudsman, NSW Ombudsman, 19 January 2012—enclosure entitled 'NSW Police Force draft response'.
9. Letter from Acting Commissioner Nick Kaldas, NSW Police Force, to Bruce Barbour, Ombudsman, NSW Ombudsman, 19 January 2012—enclosure entitled 'Additional information requested by the NSW Ombudsman', p. 2.
10. NSW Police Force, *NSW Police Force Handbook*, 30 May 2012, p. 532.
11. NSWPF Tactical Options Model (emphasis in original).
12. We have developed and use the term 'serious actual bodily harm' to specify the level of physical threat that would be proportionate to the discharge of a Taser (over other less invasive and less painful tactical options available) to be consistent with the obligations under LEPRA that use of force must be reasonable in the circumstances.
13. Email from Assistant Commissioner Alan Clarke, NSW Police Force to Huette Lam, Senior Project Officer (Research), NSW Ombudsman, 10 May 2011.
14. NSW Police Force, *X26 Taser Review Mandatory 2011–2012: TASER® X26® Electronic Control Device*, version 14.2/17, NSWPF—Version 2.0, 2011/2012, p. 42.
15. NSW Police Force, *Taser Tips & Tricks*, May 2011, p. 1, (emphasis in original).
16. Letter from Acting Commissioner Nick Kaldas, NSW Police Force, to Bruce Barbour, Ombudsman, NSW Ombudsman, 19 January 2012—enclosure entitled 'NSW Police Force draft response', p. 12.
17. NSW Police Force, *Standard Operating Procedures for use of Electronic Control (TASER) Devices by the NSW Police Force*, version 1.16, 1 July 2010, section 5.5.3, p. 15.
18. NSW Police Force, *Standard Operating Procedures for use of Electronic Control (TASER) Devices by the NSW Police Force*, version 1.18, (approved for release July 2012), section 6.4.3, p. 17.
19. NSW Police Force, *X26 Taser Review Mandatory 2011–2012: TASER® X26® Electronic Control Device*, version 14.2/17, NSWPF—Version 2.0, 2011/2012, p. 60.
20. Letter from Acting Commissioner Nick Kaldas, NSW Police Force, to Bruce Barbour, Ombudsman, NSW Ombudsman, 19 January 2012—enclosure entitled 'Additional information requested by the NSW Ombudsman', p. 4.
21. *ibid.*, p. 4.
22. Letter from Acting Commissioner Nick Kaldas, NSW Police Force, to Bruce Barbour, Ombudsman, NSW Ombudsman, 19 January 2012—enclosure entitled 'NSW Police Force draft response', pp. 13–14.
23. This count excludes cases where our assessment found a breach of parts of the Taser SOPs other than section 4, 'Criteria for use' – for example, instructions in section 6 relating to calling ambulances.
24. Letter from Acting Commissioner Nick Kaldas, NSW Police Force, to Bruce Barbour, Ombudsman, NSW Ombudsman, 19 January 2012—enclosure entitled 'NSW Police Force draft response', p. 2.
25. Letter from Acting Commissioner Nick Kaldas, NSW Police Force, to Bruce Barbour, Ombudsman, NSW Ombudsman, 19 January 2012—enclosure entitled 'Additional information requested by the NSW Ombudsman', p. 1.
26. *ibid.*, p. 5.
27. NSW Ombudsman, *Annual Report 2009–2010*, 2010, p. 79.
28. Michael Daley, Minister for Police and Minister for Finance media release, 'Police Operating Procedures for the use of Tasers to be tightened', 20 October 2010.
29. NSW Police Force, *Standard Operating Procedures for use of Electronic Control (TASER) Devices by the NSW Police Force*, version 1.18, (approved for release July 2012), sections 6.10.1–6.10.2, p. 18.
30. NSW Police Force, *User Certification Course TASER® X26® Electronic Control Device*, version 14.2/15 (NSWPF – Version 6.1), 2009/2010; NSW Police Force, *Taser Information Package 2009*.
31. NSW Police Force, *Taser Tips & Tricks*, May 2011, p. 1 (emphasis in original).
32. *ibid.*, p. 1, (emphasis in original).
33. NSW Police Force, *User Certification Course—TASER® X26® Electronic Control Device*, version 14.2–17 (NSWPF version 6.2), 2011; NSW Police Force, *X26 Taser Review Mandatory 2011–2011: TASER® X26® Electronic Control Device*, version 14.2/17, NSWPF—Version 2.0, 2011/2012.
34. Letter from Acting Commissioner Nick Kaldas, NSW Police Force, to Bruce Barbour, Ombudsman, NSW Ombudsman, 19 January 2012—enclosure entitled 'NSW Police Force draft response', p. 18.
35. *ibid.*, p. 19.
36. *ibid.*, p. 11.
37. Letter from Acting Commissioner Nick Kaldas, NSW Police Force, to Bruce Barbour, Ombudsman, NSW Ombudsman, 19 January 2012—enclosure entitled 'Additional information requested by the NSW Ombudsman', p. 4.
38. Letter from Assistant Commissioner Alan Clarke, Commander, Major Events and Incidents Group, NSW Police Force, to Bruce Barbour, Ombudsman, NSW Ombudsman, 26 March 2012, p. 2.
39. *ibid.*, p. 2.
40. Walsh, P., *Review of Police Use of Tasers*, December 2011 (unpublished).
41. NSW Police Force, *Standard Operating Procedures for use of Electronic Control (TASER) Devices by the NSW Police Force*, version 1.18, June 2012 (approved for release July 2012), section 3.12, p. 15. This emphasis is also contained in NSW Police Force, *Standard Operating Procedures for use of Electronic Control (TASER) Devices by the NSW Police Force*, version 1.17, 4 December 2010, section 3.12, p. 14.
42. Letter from Acting Commissioner Nick Kaldas, NSW Police Force, to Bruce Barbour, Ombudsman, NSW Ombudsman, 19 January 2012—enclosure entitled 'NSW Police Force draft response', p. 7.
43. Participant's comments, focus group 1 with NSW Police Force general duties officers, September 2011.
44. 'Investigation clears trooper in Pinellas Park Taser incident that leaves woman in coma', *10 News*, 16 February 2012, <www.wtsp.com/news> accessed 1 August 2012; Stanley, K. and Pittman, C., 'Experts say trooper's use of Taser on woman raises questions', *Tampa Bay Times*, 18 February 2012, <www.tampabay.com> accessed 1 August 2012.
45. Letter from Acting Commissioner Nick Kaldas, NSW Police Force, to Bruce Barbour, Ombudsman, NSW Ombudsman, 19 January 2012—enclosure entitled 'NSW Police Force draft response', p. 18.

46. Letter from Acting Commissioner Nick Kaldas, NSW Police Force, to Bruce Barbour, Ombudsman, NSW Ombudsman, 19 January 2012—enclosure entitled 'Additional information requested by the NSW Ombudsman', p. 7.
47. Letter from Acting Commissioner Nick Kaldas, NSW Police Force, to Bruce Barbour, Ombudsman, NSW Ombudsman, 19 January 2012—enclosure entitled 'NSW Police Force draft response', p. 8.
48. Police Executive Research Forum is a USA national membership organisation of progressive police executives from the largest city, county and state law enforcement agencies.
49. Police Executive Research Forum, and United States Department of Justice, Office of Community Oriented Policing Services, *2011 Electronic Control Weapons Guidelines*, March 2011, p. 20.
50. Letter from Acting Commissioner Nick Kaldas, NSW Police Force, to Bruce Barbour, Ombudsman, NSW Ombudsman, 19 January 2012—enclosure entitled 'NSW Police Force draft response', p. 8.
51. Police Executive Research Forum, and United States Department of Justice, Office of Community Oriented Policing Services, *2011 Electronic Control Weapons Guidelines*, March 2011, p. 20.
52. Letter from Detective Superintendent Peter Thurtell, Local Area Commander, Mid North Coast Local Area Command, NSW Police Force to Michael Gleeson, Manager Police Division, NSW Ombudsman, 13 June 2011.
53. Letter from Acting Commissioner Nick Kaldas, NSW Police Force, to Bruce Barbour, Ombudsman, NSW Ombudsman, 19 January 2012—enclosure entitled 'NSW Police Force draft response'.
54. Police Executive Research Forum, and United States Department of Justice, Office of Community Oriented Policing Services, *2011 Electronic Control Weapons Guidelines*, March 2011, p. 20.
55. NSW Police Force, *Standard Operating Procedures for use of Electronic Control (TASER) Devices by the NSW Police Force*, version 1.17, 4 December 2010, section 3.9, p. 14.
56. Letter from Acting Commissioner Nick Kaldas, NSW Police Force, to Bruce Barbour, Ombudsman, NSW Ombudsman, 19 January 2012—enclosure entitled 'NSW Police Force draft response'.
57. Letter from Assistant Commissioner Alan Clarke, Commander, Major Events and Incidents Group, NSW Police Force, to Bruce Barbour, Ombudsman, NSW Ombudsman, 26 March 2012.
58. Walsh, P., *Review of Police Use of Tasers*, December 2011 (unpublished), p. 1.
59. 'WA Premier defends Minister over Taser', *Sydney Morning Herald*, 13 October 2010 <news.smh.com.au> accessed 17 February 2012.
60. Letter from Acting Commissioner Nick Kaldas, NSW Police Force, to Bruce Barbour, Ombudsman, NSW Ombudsman, 19 January 2012—enclosure entitled 'NSW Police Force draft response', p. 9.
61. In a further case the TRP sought further information after initial concerns about the Taser use, however we have not been advised of the outcome of their enquiries.
62. Letter from Acting Commissioner Nick Kaldas, NSW Police Force, to Bruce Barbour, Ombudsman, NSW Ombudsman, 19 January 2012—enclosure entitled 'NSW Police Force draft response', p. 9.
63. NSW Police Force internal memorandum from Chief Superintendent Wayne Benson, Commander, State Protection Group to Chief Superintendent Steve Cullen, Commander, Public Order and Riot Squad, 13 January 2009, p. 1.
64. NSW Police Force, *Taser Tips & Tricks*, May 2011, (emphasis in original).
65. Letter from Acting Commissioner Nick Kaldas, NSW Police Force, to Bruce Barbour, Ombudsman, NSW Ombudsman, 19 January 2012—enclosure entitled 'NSW Police Force draft response'.
66. *ibid.*
67. NSW Police Force internal memorandum from Deputy Commissioner, Field Operations Dave Owens to all Region Commanders and Commander State Crime, 27 January 2011, p. 1.
68. NSW Police Force, *Standard Operating Procedures for use of Electronic Control (TASER) Devices by the NSW Police Force*, version 1.18, (approved for release July 2012), section 6.11.1, p. 18.
69. NSW Police Force, *Standard Operating Procedures for use of Electronic Control (TASER) Devices by the NSW Police Force*, version 1.18, (approved for release July 2012), section 1.26, p. 11.
70. Letter from Assistant Commissioner Alan Clarke, NSW Police Force, to Bruce Barbour, Ombudsman, NSW Ombudsman, 13 December 2010, p. 26 (in response to a notice under s. 18 of the *Ombudsman Act 1974* to produce statement of information and/or documents).
71. Victoria Police, *Conducted Energy Device Pilot Project - Interim Evaluation Report*, February 2011.
72. 107 incidents were classified as relating to the *Mental Health Act 2007*, six incidents were classified as involving attempted suicide or self-harm, and 30 incidents were classified as both.
73. Participant's comments, focus group 1 with NSW Police Force general duties officers, September 2011.
74. *ibid.*
75. *ibid.*
76. Participant's comments, focus group 2 with NSW Police Force general duties officers, September 2011.
77. *ibid.*

## Chapter 8. Issues with the Taser review and monitoring processes

This chapter covers our review of the New South Wales Police Force (NSWPF) internal review processes for the use of Tasers by general duties police – including the Region Taser Review Panels (TRPs) and the Taser Executive Committee (TEC). These processes were described in Chapter 4.

It is essential that the NSWPF have robust policies, practices and procedures for the internal review of Taser uses by general duties police as these systems are a critical component of the accountability framework. In our view, the systems for internal review should aim to:

- identify incidents where Tasers are used in breach of the Taser SOPs and training
- make sure remedial action is taken to address instances where police have not complied with the Taser SOPs and training
- ensure the standards of Taser use set out in the Taser SOPs are interpreted consistently
- collect information to improve the Taser SOPs and the training provided to police, and thereby the effectiveness of the use of Tasers by police
- provide transparency and accountability in relation to decision-making by police about the use of Tasers
- provide feedback to Taser operators.

The methodology for our review of the NSWPF internal review processes was similar to that used for our review of the Taser SOPs. We completed a detailed review of 556 Taser incidents, including the relevant TRP records for each incident. This meant we independently reviewed the same information that was available to the TRP. We were therefore able to consider the adequacy of the outcome of the internal review conducted by the TRP and of the *Region Taser Review Panel Standard Operating Procedures* (TRP SOPs).<sup>1</sup>

The findings and recommendations in this chapter aim to improve the effectiveness of the TRP and the TRP SOPs within the accountability framework for the police use of Tasers. Ensuring appropriate best practice standards for the internal review of Taser incidents should mitigate the risk of serious or unreasonable use of Tasers and allow the NSWPF to take appropriate management or remedial action where necessary.

This chapter outlines our views about how the internal review process could be improved to ensure greater consistency, transparency and more comprehensive attention to issues arising in Taser cases.

### Note on amendments to the TRP SOPs

There were two versions of the TRP SOPs that applied to the incidents within our sample – version 1.2 dated December 2009 and version 1.3 dated 25 October 2010 (this is the current version in use today). In terms of the issues identified in this chapter, there is no substantive difference between the two versions. Consequently, unless otherwise stated, the discussion in this chapter is framed in terms of TRP SOPs version 1.3.

As in Chapter 7, the discussion in this chapter is framed in terms of Taser SOPs version 1.16, unless otherwise stated – as it was current for the period of our sample.

### 8.1 The NSWPF Taser review process – our overall assessment

The NSWPF have the most comprehensive Taser review process in Australia, and this is to be commended. One of the key differences between the review process in NSW and that in other states is that in NSW every Taser use is required to be reviewed by TRPs. This includes reviewing the written records and Taser Cam footage for all uses in draw and cover, as well as those matters where the probes are discharged or the device is used in drive-stun mode. Accidental discharges are also reviewed with a view to reducing their occurrence.

The TRP SOPs provide that the Region Professional Standards Managers (PSMs) may review instances of draw and cover and hazardous practices, including accidental discharges, on behalf of the TRP. We understand the practice of the Region PSMs is that if a draw and cover raises any issues of concern, it will be reviewed by the TRP.

TRPs provide a report to the TEC each month, listing all the Taser cases reviewed by the TRPs. The TEC provides governance of Region Taser Review Panels ensuring their compliance with their terms of reference and SOPs. The TEC's responsibilities include helping to develop NSWPF Taser policies and SOPs, monitoring complaint and misconduct data, and identifying emerging trends.<sup>2</sup>

The mandatory use of Taser Cam by general duties police in the NSWPF provides a significant accountability measure. It enhances the review process as it provides objective evidence of the interactions between police and the person subjected to Taser use (Taser subject).

In reviewing 556 incidents, we were also able to develop a practical understanding of the limitations of the Taser Cam which include:

- The Taser Cam is fitted at the base of the handgrip. Police operating the Taser Cam can partially or fully obscure the Taser Cam with a finger. TRP records relating to 1077 Taser operators for the period 1 December 2009 to 30 November 2010 identified 109 instances (or 10%) where a Taser Cam was fully obscured and 65 instances (or 6%) where a Taser Cam was partially obscured.
- The Taser Cam vision is not always clear for other reasons – such as lighting conditions or the aim of the Taser changing constantly to cover a moving Taser subject.
- In drive-stun mode, the Taser is applied directly to the body of the Taser subject so the Taser Cam does not provide any useful footage and is therefore limited as an accountability mechanism.
- A Taser Cam becomes operational only when the Taser is armed. This means that the behaviour of the Taser subject before this point is not captured. It therefore does not always allow the reviewer to check the police officer's account of the events that led to the use of the Taser. This limitation is particularly evident where the Taser is armed only moments before probes are deployed.

The TRP SOPs require internal review of 100% of operational Taser uses, including uses in draw and cover mode. The knowledge that any use of a Taser will be scrutinised acts as a safeguard and deterrent against misuse. This system also allows the NSWPF to identify training issues arising from Taser use by police officers. For example after reviewing the way officers used Tasers, the TEC identified that officers needed additional training in relation to restraining a person while the Taser charge was cycling or quickly after. Training was introduced and a change was made to the Taser SOPs (version 1.16) in July 2010 to instruct officers to discontinue use once the subject is effectively under control.<sup>3</sup>

The TRP SOPs require every operational Taser usage to be reviewed within their region within 72 hours, where possible. This is a significant task and it can be time consuming. However, we consider this approach invaluable as it allows for any misconduct or training issues to be quickly identified and acted upon. Ensuring that breaches of the Taser SOPs and instances of unreasonable use or excessive force are identified and acted upon is essential for the proper functioning of the internal review process.

Conducting internal reviews at the region level has a number of potential benefits:

- a centralised internal review process may ensure greater consistency in the way matters are assessed and the kinds of action taken to address breaches of the Taser SOPs
- it allows for practices to be compared between different local area commands (LACs)
- the volume of matters that are reviewed by the regions may allow for better identification of common themes in the way Tasers are used and the Taser SOPs interpreted – which can inform revisions of training programs and updates of the Taser SOPs.

Despite these strengths, we did identify concerns about the adequacy of the internal review process. These included:

- a failure to identify Taser uses that were inconsistent with the criteria for use
- a lack of transparency in recording breaches of the Taser SOPs and reasons for remedial action
- a lack of transparency in recording assessments of multiple use incidents
- a failure to address inconsistencies between the subjective accounts of police and the available objective evidence
- a lack of reliable use of force data and reporting capacity to allow the TEC to effectively monitor trends relating to Taser use.

## 8.2 Outcomes of TRP reviews

The TRP SOPs provide TRPs with a standard form to record their assessments of Taser uses. This is called the Regional Taser Review Record. The form captures details of the Taser Cam footage reference, date and LAC of deployment, the date and time of the review, and the names of the TRP members.

There is a selection of check boxes for the type of deployment – draw and cover, drive-stun, discharged probes, hazardous practice.

The section capturing the decision of the TRP has four check boxes:

<i>Taser usage in accordance with SOPs/NFA</i>	<input type="checkbox"/>
<i>Referred to ..... to obtain further information</i>	<input type="checkbox"/>
<i>Referred to Complaints Management Team</i>	<input type="checkbox"/>
<i>Other .....</i>	<input type="checkbox"/> <sup>4</sup>

The form also has a free text comments section.

The findings and remedial actions taken by the TRPs after their review of the 556 Taser incidents were as follows:

• complied with Taser SOPs and no remedial action taken	379
• reminder	132
• other management action	16
• decertified and retrained	12
• TRP found breach of the Taser SOPs	10
• referred to a Complaints Management Team (CMT)	7

### 8.2.1 Remedial action taken

We examined the cases in which remedial action was taken to identify the reasons behind the TRPs' decisions to take such action.

### 8.2.2 Decertification and retraining

The most substantial remedial action taken by TRPs is to decertify or suspend a police officer from being authorised to carry and use a Taser. The suspended officer has to undertake remedial training as soon as possible with a qualified Operational Safety/Taser Instructor that, as a minimum, addresses the issues that caused the suspension.

Of the 556 incidents we reviewed, we found 12 incidents where an officer was decertified and retrained. The reasons recorded by TRPs for their decisions were as follows:

- in three matters the officer failed to arm the Taser
- in two matters the officer covered or partially obscured the Taser Cam
- in two matters the officer aimed the Taser in a manner that was hazardous
- in two matters the officer failed to disarm the Taser in a reasonable time
- in two matters the TRP decertified and retrained the officer as an interim action – the LAC subsequently found that the officer had not breached the Taser SOPs
- in one matter the TRP questioned the multiple use of Tasers and the failure of the officers to use the Taser in drive-stun when the Taser failed to achieve NMI.

### 8.2.3 Reminders

An alternative remedial action that is commonly taken by TRPs is to send the officer a reminder about the appropriate use of Tasers for the issues they identified. These reminders are generally sent by an email or memorandum to the officer or to the officer's commander requesting that the issues be discussed.

The reasons recorded by TRPs for their decision to send a reminder notice to an officer included:

- in 64 matters the officer partially or fully obscured the Taser Cam
- in 36 matters the officer failed to create an accurate record in COPS of the Taser use
- in 14 matters the officer failed to arm the Taser
- in seven matters the officer using the Taser in draw and cover mode failed to disarm the Taser in a reasonable time
- in seven matters the officer aimed the Taser in a manner that was hazardous
- in two matters the officer failed to make a record of the use of Taser in COPS
- in two matters the TRP found that it was inappropriate to draw a Taser.

### 8.3 Our review outcomes compared to those of the TRPs

The TRP records indicated that 77% of the incidents reviewed involved Taser use in accordance with the Taser SOPs and no further action was taken. Remedial action was taken by the TRP after the review of 22% of incidents.<sup>5</sup>

We found the TRP process to be reasonably effective in taking remedial action for the most commonly found issues – such as accidental discharge, obscuring the Taser Cam, and failing to create accurate COPS records after the Taser use.

However, we found a divergence between the results of the TRP reviews and our own review of compliance with the criteria for use. In Chapter 7 we found compliance in 86% of the incidents we reviewed. By cross-checking our results with the decisions of TRPs, we found 58 incidents where the outcome of our review was at odds with the TRP's decision that police complied with the Taser SOPs.

Of these 58 incidents, 41 involved the use of a Taser in draw and cover mode. In Chapter 7 we outlined that the NSWPF have, since the sample period, amended the Taser SOPs to include a lower threshold for the use of a Taser in draw and cover mode. This amendment was not in force during the sample period, so it is not an explanation as to why TRPs identified so few breaches involving draw and cover mode. In the following discussion, we identify some areas for improving the TRP process that we believe should address the disparity between the results concerning compliance with the criteria for use.

### 8.4 Recording details on criteria assessed, breaches and remedial actions taken

The Taser SOPs advise that TRPs:

*... will be responsible for reviewing ALL operational TASER use within their respective Commands to ensure that TASER use complies with training and these Standard Operating Procedures.*<sup>6</sup>

Our review of the TRP records identified a lack of transparency in the way the outcomes of reviews are recorded. The forms used by the TRPs do not require them to record the criteria for use that provided the justification for use in the particular incident. Neither do the forms require the TRP to specify breaches of the Taser SOPs that are identified. Although the TRPs often recorded reasons for remedial action, in many cases we found that records were unclear about whether the TRP considered the Taser use a breach of the criteria for use or whether the remedial action taken by the TRP addressed this issue.

During our investigation, we noted that the South West Metropolitan Region implemented an enhanced version of the form which requires the TRP to note which of the four criteria for use have been met and has the following question – Taser usage in accordance with SOPs: YES/NO. In our view all TRPs should be required to record this information.

The TRP sent reminders to officers in 40 cases where they had also recorded that there was no breach of the Taser SOPs. These outcomes appeared to be contradictory as the reasons recorded in free text suggest a breach of the Taser SOPs – for example, five cases related to an officer failing to arm a Taser and 19 cases related to making incomplete records on COPS.

Case study 11 in Chapter 7 (see page 126) illustrates our concerns about a lack of clarity in TRP records about whether the incident involved a breach of the criteria for use. This matter involved the extended use of the Taser in draw and cover mode against a man who police had detained while waiting for ambulance personnel. The officer using the Taser communicated poorly with the man which, in our view, escalated tensions. Subsequently, the officer deployed the Taser probes in circumstances which we do not consider met any of the criteria for use.

The TRP initially considered the use of the Taser was in accordance with the SOPs. The footage was subsequently reviewed by a region weapons trainer who deemed the use of the Taser in draw and cover mode 'not best practice' and requested remedial training for the Taser user. The Taser user was decertified and retrained, and the TRP agreed with this course of action.

Our concern in this case is that the outcome of the review is unclear about whether the officer breached one or more of the criteria for use. On that basis, it also becomes unclear whether the remedial action squarely addressed the issues arising from the incident. A finding that a use of a Taser was 'not best practice' was also made in relation to Case study 23. Two officers deployed their Tasers a total of six times, in both probe and drive-stun modes. The matter was reviewed by the TRP who asked the LAC for further information.

### Case study 23 – Unclear TRP findings after multiple Taser use

After receiving a 000 call, police attended a domestic disturbance. They were unable to raise the occupants, so obtained a search warrant and forced entry. Police found a man in his bedroom. He threw a sheet at police. A number of police tried to restrain him, while the man kicked his legs. The COPS record indicates that one officer drew and armed the Taser, deploying the probes into the man's back. The Sitrep states that the Taser *'had little effect on the [man] and the Taser was discharged a further three times including a drive-stun on the [man] who continued to struggle'*. A second officer then also discharged his Taser. The Taser Cam footage shows three officers on top of the man, holding him face down on the bed. The first deployment of the Taser occurred after an estimated 50 seconds of struggle with the man, followed by an immediate second cycle. The man was then told to *'comply'* and *'stop resisting'* and a third cycle was delivered six seconds later. A final cycle was then delivered two seconds after this. It is unclear from the footage when the drive-stun was delivered. After the final deployment of the first Taser, another officer moved in and deployed his Taser into the man's back and delivered a second cycle nine seconds after the first. In total, the man was subjected to six cycles from two Tasers.

#### Police assessment of the Taser use

Initially, the PSM referred the matter to an accredited weapons trainer. The weapons trainer recommended remedial training for the officer who fired the second Taser, although the reasons for this training were not made explicit in the TRP records. The matter was then reviewed by the TRP. They sent correspondence to the LAC asking for further information about the circumstances of the incident and why two Tasers were deployed.

The duty officer prepared a report, after speaking with the two officers. The duty officer found the Taser use to be justified and appropriate in the circumstances, and did not consider that either of the officers needed to be decertified from Taser use. The report noted that:

*... consideration needs to be given in adding further training in relation to [t]actical options for Police who are faced with the failure of TASER use. The Police attempted to continue to deploy the TASER during this incident with little or no [e]ffect and the struggle may have continued further without the presence of the police dog. Police must learn to not completely rely on the TASER and be able to anticipate actions when faced with Taser failure.*

*The LAC Commander agreed with the duty officer's recommendation, especially about further training that specifically addresses tactical options when Taser use has been unsuccessful.*

When the report was received by the TRP, a further request for information was sought. In this instance, they requested that both Taser users be decertified and retrained. They commented:

*Questionable as to why [the man] was Tasered with three police restraining him.*

*Also, after first Taser didn't work, training is to 'Drive-stun' away from probes to ensure contact. TRP disagrees that male should have been tasered by second device when [the officer who deployed the Taser first] was already close to [the man] and able to Drive-stun.*

The TRP also noted that it was concerned officers are becoming too reliant on Taser.

The officers were suspended from Taser certification and the TRP asked the LAC to arrange for a local weapons trainer to 'retrain, explaining this, and recertify'.

#### Our assessment of the Taser use

The action taken in response to the Taser use in this case study was significant – suspension from certification and a requirement for retraining. However, in our view, taking this kind of action should be supported by clear and precise records. The TRP did not make an explicit finding about whether the officers breached the criteria for use in the Taser SOPs. In contrast, a sustained finding of 'unreasonable use of force' in relation to the Taser usage was subsequently made against the two officers after a complaint investigation into this Taser use by the LAC. The officers were counselled. The investigator relied on the information gathered during the internal review process to make the findings.

In our view, the transparency of the TRP process would be strengthened by amending the TRP SOPs to require the TRP to record a finding about whether a breach of the Taser SOPs has occurred and to record the reasons for remedial action taken – for example, criteria for use not met, Taser Cam obstructed by finger, hazardous use etc.

We acknowledge that the Taser SOPs have recently been amended to include an additional provision that 'TASER Review Panels are to articulate in their deliberations which of the Criteria to Discharge TASER (Probes Discharged;

Drive-stun) was used in the incident under review'.<sup>7</sup> However, this provision does not expressly require the TRP to make a finding about whether there was a breach of the Taser SOPs.

We consider that the TRP SOPs should be amended to require a finding on whether the Taser complied with the criteria for use in the Taser SOPs. In making this recommendation, we note that in some cases it is appropriate to take remedial action even if an officer has not breached the Taser SOPs.

Enhancing the Regional Taser Review Record and the TRP minutes to require TRPs to collect information about breaches of the Taser SOPs would also improve the opportunity for the TEC to monitor compliance, and to identify training needs and/or sections of the Taser SOPs that are not well understood by police.

## Recommendation

### 22. That the NSWPF amend the TRP SOPs to require the TRP to specify and record:

- which of the criteria for use justified the use of the Taser
- any breaches of the Taser SOPs
- the reasons for remedial action.

## 8.5 Applying tests to assess if Taser use is reasonable

Sections 230 and 231 of the *Law Enforcement (Powers and Responsibilities) Act 2002* (LEPRA) authorise police to use as much force as is reasonably necessary to make an arrest or perform other functions under the Act. The courts have interpreted the word 'reasonable' as involving both a subjective and objective element – see Case studies 1 and 2 in Chapter 3 (pages 59 and 62). It is our view that TRPs should consider whether it was reasonably necessary for a police officer to use a Taser after reviewing both the subjective and objective evidence available to them.

The criteria for use in the Taser SOPs do not make it explicit that officers must have reasonable grounds to believe that it is necessary to use a Taser to respond to a situation. This omission risks police using a Taser in a manner that is inconsistent with the requirements for reasonable force under LEPRA.

It is equally important that the internal review process assesses whether there were reasonable grounds for the officer to believe that it was appropriate to use the Taser, and to independently assess whether the use of Taser is reasonably necessary in terms of the criteria for use in the Taser SOPs. Weight should be given to the officer's perceptions of the levels of threat, as this informs the subjective test of whether force was reasonable in the circumstances. The written records of the incident (the COPS record and Sitrep) contain the views of the officers about the level of threat they perceived at the time, and their justification for using the Taser in light of that threat. Importantly, these records may describe what happened before and after the Taser was armed, or what was happening that is not captured by the Taser Cam. The objective part of the test should be informed by reviewing the Taser Cam footage and Taser dataport download information, and considering the number of officers attending the incident and any independent accounts of the incident.

We observed cases in the sample period in which the objective evidence about the use of the Taser was inconsistent with the account recorded by police in COPS. This raised questions about whether the use of the Taser was reasonably necessary. These inconsistencies were not always made the subject of further inquiry by the TRP.

We acknowledge that written records of an event may be inconsistent with the Taser Cam footage for a range of reasons. For example:

- an officer's experience of an intense or heated exchange may not be captured by the footage on the Taser Cam, or conversely, events unfold quickly and the officer does not accurately remember all the details of an incident
- an officer may be mistaken about the level of threat posed to police or to others
- an officer's memory of an incident may be less accurate if the COPS record and Sitrep are prepared some hours after an event and they have, in the intervening period, undertaken a range of other activities.

However, we expect that if the combination of the Sitrep, COPS record and Taser Cam footage does not clarify what happened during an incident and permit the TRP to assess whether the Taser use was justified, the TRP would seek further information or refer the matter to the relevant CMT for investigation.

One of the concerns from our review was that it appears TRPs do not always place sufficient weight on the objective evidence – the Taser Cam footage – and may put undue weight on the subjective perspective of the officers, as described in the COPS record and Sitrep. The TEC advised during consultations that the role of the TRP is to provide an objective element when reviewing Taser deployments.

*The TRP consider all elements that may have impacted on the officers (sic) decision, however they provide an assessment independent of the officer perceptions. The standard applied is the standard at law, being 'reasonable force'.<sup>8</sup>*

Although the NSWPF indicated that the TRPs' reviewing officers already use an objective standard in assessing use against the Taser SOPs, in practice it is not clear in all cases that the review process applies such a standard.

In some cases, we found a significant discrepancy between the Taser Cam footage and the written records of the event – the records refer to actions or behaviour occurring while the Taser was armed that clearly do not appear on the Taser Cam footage.

Case study 24 is an example of a matter where we consider there was a significant inconsistency between the written records and the objective evidence available in the Taser Cam footage. However, the TRP did not refer this matter for investigation or seek further information.

### **Case study 24 – Inconsistencies between Taser Cam and COPS record**

Police attended residential premises in the early hours of the morning after reports of people fighting. The Sitrep states that police went upstairs and *'were confronted by three aggressive males and two females who began to approach police and yell abuse. Fearing further violent confrontation, Taser [number] was used to cover the males. The Taser had an immediate effect with all parties becoming compliant.'* The COPS record makes a similar statement. No arrests were made.

The Taser Cam footage shows the Taser was armed before police went up the stairs and saw the people. It did not show anyone approaching police, yelling abuse at police or any violent confrontation between the people on the premises and the police. The person standing at the top of the staircase was not facing police and was watching the argument between the male and the female. He did not appear aggressive. The male and the female were arguing, but not violently, with each other. They did not approach or yell abuse at police. The two people in the bathroom stayed there for the entire length of the footage, and did not appear aggressive or seem to say anything.

#### **Police assessment of the Taser use**

The PSM considered the use appropriate as police feared violent confrontation. The TRP found the use of the Taser was effective and in accordance with the Taser SOPs.

#### **Our assessment of the Taser use**

In our view, there was nothing in the Taser Cam footage that showed any of the people acting in an aggressive or threatening way toward police.

We note that police had information that this incident was related to an earlier incident that evening – where police attended a large brawl at a party held at a showground and directed those in attendance to disperse. Although this might have given the officers cause for additional caution, it does not address the issue of the clear inconsistencies in the records.

When we presented this case study to the NSWPF in October 2011, the TEC advised that the officer's use of the Taser was justified under criterion 4.3 (risk of being overpowered or to protect themselves or others from injury) and 5.3 (of Taser SOPs version 1.17 - you can draw a Taser if you consider you are likely to be justified in using it), stating that:

*It is noted that this matter is a draw cover only. Police were called to the vicinity on a number of occasions for drunken and brawling behaviour involving up to 50 people. About 3.50am police were called to the subject premises following several reports of people fighting. Upon entering the premises police drew and armed the Taser. The Tasercam vision shows occupants of the premises in conflict. It is 11 seconds in duration. Once police have assessed the threat, the Taser is holstered.<sup>9</sup>*

Notwithstanding that the 'likely' threshold found in version 1.17 was not in force at that time (so the police officer drawing the Taser would not have had this threshold in his mind), we believe that the officer did not appear to have reasonable grounds for using the Taser – under either the likely threshold or the criteria for use. There was no indication that violent confrontation or resistance was occurring or imminent, nor was the officer in danger of being overpowered or anyone at risk of being injured.

Case study 15 in Chapter 7 (see page 132) is another case that involved a significant inconsistency between the police records and the Taser Cam footage. The COPS record states that while the Taser was armed, the young man

involved was 'screaming and yelling incoherently. The young person turned [and] faced police and continued to yell and swing his arm around'. The Taser Cam footage shows no evidence of this occurring, and instead shows the young man immediately complied with the officer's directions to get on the ground. The footage does not provide any evidence that the young man was 'highly combative' as indicated in the COPS record. The TRP did not address this inconsistency at all, even though it was highly relevant to an assessment of whether the officer was justified in drawing the Taser.

We are concerned in both these cases that the TRP may have, without question, accepted the officer's subjective views – even where those views appear to be significantly inconsistent with the objective evidence. In our view, the TRP should have made further inquiries.

In Case study 25, the Taser use was the subject of a complaint investigation by the NSWPF under Part 8A of the *Police Act 1990* (the Police Act). We are concerned that the NSWPF did not record findings that the use of the Taser involved a breach of the Taser SOPs when the investigator found evidence to suggest that the use of a Taser was not reasonably necessary.

The Taser Cam footage for this case study has been released with this report and can be viewed on the Ombudsman's website.

### Case study 25 – The objective test for reasonable force

The man involved was a heavily intoxicated French tourist who was woken by police as he slept on the footpath in the early hours of a Sunday morning. Once the man was awake, he stood up unassisted and said that he could make his own way home. However, when the officers asked the man repeatedly to state his address and produce identification, he allegedly became abusive, spat at them and walked away.

When told to stop, the man allegedly fled. The officers caught up with the man and then grabbed and tackled him. A struggle allegedly ensued. When the man was on the ground, one officer (the backup officer) stood behind the man and put his forearm around the man's neck in a chokehold while the other officer (the deploying officer) discharged the Taser in probe mode. The man was then handcuffed and taken to the police station.

The man was charged with and convicted of the offences of resisting police and offensive behaviour. He was fined \$300 for resisting police and received a non-conviction order for offensive behaviour.

#### Police assessment of the Taser use

After reviewing the incident, the TRP raised several concerns about:

- the decision to arrest the man
- the appropriateness of the level of force used, given that the man was obviously intoxicated and having difficulty following instructions
- the possibility that the Taser was merely used as a compliance tool
- the safety of the backup officer standing behind the man while the Taser was discharged
- the use of the chokehold.

As a result, the TRP referred the matter to the LAC as an internal complaint.

During the complaint investigation, the officers stated that they decided to wake the man as they were concerned for his welfare. They claimed that when the man was awake and became abusive towards them, they remained concerned for his welfare and continued to explain that they merely wanted to help him return home. However, as the man continued to be abusive, they decided to place him under arrest for offensive behaviour. The deploying officer claimed that he decided to use the Taser because they were confronted with a violent situation and there was an imminent risk of injury to police. The backup officer asserted that he was overpowered by the man when the man held onto his legs and pinned him against the wall, causing him to fall off balance. This account was clearly contradicted by the Taser Cam footage – it shows the man appearing heavily intoxicated and being lifted by the backup officer from behind.

The LAC complaint investigator concluded that neither the deployment of the Taser probes nor the application of a chokehold was an unreasonable use of force. He also found that the use of the Taser complied with the Taser SOPs. However, he had some concerns about the safety of firing a Taser while the backup officer was holding the man, and recommended that both officers undergo remediation training on the Taser SOPs to rectify hazardous practices. He also recommended that the deploying officer be reminded of the safety aspects of using a Taser and the criteria for Taser use. The deploying officer was retrained accordingly.

At our request, the complaint was reviewed by the region's PSM – a member of the TRP experienced in reviewing Taser incidents. The reviewing officer supported the findings of the original investigation and made the following comments:

*... the only evidence available is that of the subject officer's and the Taser video once activated. Accepting the officer's versions of the violence displayed by [the man] prior to the activation of the Taser, I believe they have justified their use of force.*

*However, I believe the problem is with regards to how a concern for [the man's] welfare quickly led to his arrest. I believe his intoxication and native language, combined with the junior rank of the officers may have resulted in a confrontation that could have been avoided had the officers shown a little more discretion and greater use of communication skills.*

*I also believe that the police may have made some poor decisions regarding physical control of [the man] leading to the need for the use of force. Certainly police are trained to maintain a safe distance from persons when initially dealing with them. Had better communication been used, I believe the use of physical force may have been unnecessary.*

The reviewing officer recommended that the subject officers receive advice and guidance on tactical options and dealing with intoxicated persons, particularly those from a non-English speaking background. The Region Commander agreed with the reviewing officer's comments, and the subject officers were given advice and guidance on communication and weaponless control techniques.

This case illustrates our concern that TRPs are not giving sufficient weight to the objective test of whether the use of a Taser is reasonably necessary, as required by ss. 230–231 of LEPR. The comments of the PSM clearly indicate concerns that the use of the Taser could and should have been avoided by better use of communication skills. In our view, it is incongruent that the NSWPF nonetheless found the use of Taser was justified under the Taser SOPs.

## Recommendation

### 23. That the NSWPF amend the TRP SOPs to require TRPs to:

- **assess both the subjective and objective elements in reaching a determination about whether the use of a Taser is reasonably necessary**
- **identify and explain any significant inconsistencies between officers' accounts and Taser Cam footage relating to a decision to use a Taser, and if one is preferred over the other provide the reasons why.**

This issue about the TRP process also raises the question of whether the Taser SOPs and associated training are explicit in terms of the requirements of LEPR and the lawful requirement to use only as much force as 'reasonably necessary'. It is essential that police officers have a clear understanding that the criteria for use in the Taser SOPs are subject to the LEPR provisions. It is also important that Taser operators understand that if the question of use of force is examined by a TRP or by a court, that both a subjective and objective test will be applied in determining whether the use of force (Taser use) was reasonable – see Case studies 1 and 2 in Chapter 3 (pages 59 and 62).

## Recommendation

### 24. That the NSWPF incorporate into the Taser SOPs a statement that the use of a Taser must be a use of force which is reasonably necessary to make an arrest or perform other functions under LEPR. In addition, the Taser training should cover the two tests (subjective and objective) to be considered by a TRP or court when reviewing Taser use.

## 8.6 Improving TRP reviews of multiple use incidents

The Taser SOPs emphasise that multiple use of Tasers 'should be avoided where practicable and must be justified in all the circumstances'. In Chapter 7 we recommended amendments to the Taser SOPs to ensure that the NSWPF is able to hold police accountable for multiple uses of Tasers by requiring them to justify each use in their records. In this section, we discuss the need to improve the TRP SOPs to ensure that multiple use incidents are reviewed effectively by TRPs.

One of our primary concerns from our review of multiple use incidents is that the TRPs did not always identify multiple use as an issue in the internal review – or explain how they were satisfied that the multiple use was reasonable and in accordance with the Taser SOPs. In particular:

- it was not clear in the internal review documentation whether the TRPs applied any additional scrutiny to cases where a Taser was used multiple times
- the TRPs did not always record views on each use separately – if there had been multiple uses of the Taser
- in some cases, the COPS Event created by the officer who used the Taser was incorrect in recording the number of Taser cycles and this error was not identified by the TRP.

In 52 of the 63 cases involving multiple discharge of the Taser (in probe and/or drive-stun mode), the TRP recorded that the use of the Taser was justified and in accordance with the SOPs. Remedial action was taken after the review of nine cases – including the decertification and retraining of two officers and reminders to seven officers. There was no explicit record of a breach of the criteria for use for the nine incidents resulting in remedial action.

Our review of incidents in the sample period identified 17 multiple use incidents that in our view involved a breach of the criteria for use. In nine of these matters, the TRPs made no explicit mention of the multiple cycles of the Taser in their review records.

In four cases, we identified that the COPS Event and Sitrep created by the police officer who used the Taser did not include accurate information about the number of Taser cycles deployed during the incident. On that basis, we are not satisfied that the officer provided an adequate justification for using the Taser. For example, in one case we identified five cycles of the Taser and the COPS Event recorded two cycles.

These cases suggest that the TRP have not adequately examined the multiple use of a Taser – as they had not identified the inconsistency between the number of Taser cycles reported by the police officer and the number evident on the Taser Cam footage.

Case study 26 illustrates our concern that TRPs are sometimes not giving sufficient scrutiny to multiple use of Tasers.

### Case study 26 – Insufficient scrutiny of multiple Taser use

Police apprehended a person on a train without a valid ticket. They conducted checks on the man and became aware that he was involved in a court matter for two similar offences. The man was arrested, cautioned and taken to the nearest police station.

The COPS record states that on arrival the man *'commenced violently resisting police efforts to convey him into the police station'*, resulting in the assault of three officers. In response, the Taser was armed and a cycle deployed. The man immediately fell to the ground and the Taser user warned him, stating *'don't resist or you're going to get Tasered'*. The footage suggests that the discharge of probes was effective in causing NMI. Three officers approached the man and began to take hold of him. Two officers appeared to secure the man's torso and the remaining officer secured his legs, but the man presented some further resistance (in the form of arm and leg movements). The records state that, due to the man's continuing resistance and assault of police, the officer deployed two cycles of the Taser in probe mode. The records indicate that police then deployed further discharges of the Taser until the man stopped violently resisting, but do not specify exactly how many further cycles were applied.

#### Police assessment of the Taser use

In this case, the TRP considered that the use of Taser was *'in accordance with SOPs/justified'* and took no further action. However, they did not record that the Taser was used multiple times or make any comments about whether the multiple use was justified in the circumstances.

#### Our assessment of the Taser use

Our review of this case counted a total of four cycles in probe mode. The officer then twice deployed the Taser in drive-stun mode. We are concerned that the COPS record did not state exactly how many cycles were used, and this was not identified as a significant issue by the TRP.

In our view, the initial discharge of probes met criterion 4.2 of the Taser SOPs – given the man's threats to harm officers and his actual assault on three officers. However we are not satisfied that the application of cycles 2, 3 and 4 in probe mode, and the two uses of drive-stun meet the requirements for multiple use prescribed by section 5.11 of the Taser SOPs – that is, we are not satisfied that each application of these additional cycles was justified and reasonable.

There is evidence, including the Taser Cam footage, to suggest that the man offered some level of resistance to police. However, in our view, the resistance posed by the man was not of a sufficient degree to satisfy the 'violent resistance' requirement under section 4.2 of the Taser SOPs. It is also not apparent that officers were likely to be overpowered. We are also concerned that officers have cited '*continued violent resistance*' as justifying the multiple Taser use, without making sufficiently clear the necessity – given the location and number of officers present.

Our independent expert also formed the view that while the officers might have been justified in using the Taser once, the TRP failed to adequately assess the subsequent uses and properly review the written records against the Taser Cam footage.

Case study 5 in Chapter 7 (see page 116) is another example of a matter where we are concerned the TRP failed to identify a range of relevant issues. Although the first use of the Taser might have been justified, we are concerned that insufficient attention was given to the question of whether the further cycles were justified or other tactical options might have been more appropriate.

After our initial review of Case study 5, we were not satisfied that the use of the Taser was appropriate or that the TRP had properly considered whether the multiple use of the Taser was justified. The Taser Cam footage does not suggest that the man was violent or aggressive when the Taser was first used by police. Although the man continued to refuse police directions and to actively resist their attempts to handcuff him, we did not agree that he appeared to be violently resisting police. We were also concerned that the third cycle of the Taser occurred instead of allowing officers to handcuff the man.

The TEC considered the case and provided further information that police were aware that an officer had suffered a serious shoulder injury when the man had resisted arrest in the previous year. They also advised that it was reasonable for police to form a view based on the man's previous dealings with police that he was not going to leave voluntarily. The TEC observed that the confined space made it difficult for police to restrain the man and may have contributed to the multiple discharges of the Taser.<sup>10</sup>

We are of the view that there might have been justification for the first deployment of the Taser probes, given the man had grabbed at an officer and had a history of resisting police. However we are concerned about the subsequent multiple uses of the Taser, which do not appear to meet the criteria for use.

After the first use, while the man continued actively resisting handcuffing, there was no indication that violent confrontation or resistance was occurring or imminent. It also did not appear that police were in danger of being overpowered. There seems to be even less justification for the third use, as officers were in the process of handcuffing the man and only moved away on the instruction of the Taser user.

In our view, the following issues were not addressed during the internal review:

- the appropriateness of the way police communicated with the man who was known to have an intellectual disability, including threats that he would 'get another dose' of the Taser if he did not get on his stomach
- officers failed to restrain the man during the first period of incapacitation
- as the second cycle of Taser was being applied, an officer said, 'You won't get him while he's arcing', referring to handcuffing him while the Taser cycle was being administered
- the use of multiple cycles after the man told police he has a bad heart
- whether there was any justification for the third cycle, as officers were in the process of restraining the man before the third cycle was deployed.

After we raised these issues, the NSWPF referred the case back to the TRP for review – noting their concerns with the multiple deployments. The TRP found the Taser deployment in this case not to be best practice and recommended that:

- the PSM analyse the Taser usage by this officer since this incident – to ensure that he had complied with the Taser SOPs
- the officer complete the Taser training course again
- the PSM advise the TEC of the proposed actions arising from the TRP's findings.

The NSWPF advised us that the officer has been retrained, and the PSM found that subsequent Taser deployments by this officer had complied with the Taser SOPs.<sup>11</sup>

They also noted that the 2010–11 Taser reaccreditation training had been amended to address an identified reluctance of police to 'engage and control' the offender following a Taser discharge for fear of being subject[ed] to the Taser discharge or other injury', and that additional scenario-based training on this issue would continue during the 2011–12 training year.<sup>12</sup>

We are pleased with the further action taken by the NSWPF, but it remains a concern that the TRP SOPs do not explicitly require a review and finding about every use of a Taser during a multiple use incident.

## Recommendation

- 25. That the TRP SOPs be amended to require the TRP to review the Taser dataport download information in each case, record the number of discharges or cycles of the Taser and consider each one.**

### 8.6.1 Review of the Taser shot data

Our review of the multiple use incidents raised concerns about the absence of a requirement that the TRP review Taser dataport download information which records the number and duration of Taser cycles.

The NSWPF advised us that:

*Since December 2010 shot data has been entered into the e@gle.i system which is available to TRPs. The shot data provides information on the number of cycles deployed.<sup>13</sup>*

We are pleased to note this development. It will help the TRP to cross check if the officer's accounts are complete and consistent with the Taser Cam footage and assess whether each use is reasonable in the circumstances.

In light of the acknowledged heightened medical risks of multiple use, we consider that the TRP SOPs should be amended to ensure that cases involving multiple Tasers, multiple cycles of the Taser, or use in both probe and drive-stun modes should receive more detailed consideration in the review process. In particular, the TRPs should follow up on any cases where the Taser user has not noted each Taser use and/or the reasons why each discharge of the Taser was justified.

We also consider the TRPs should be required to assess and record a finding about whether each separate discharge met the criteria for use, rather than making a general comment about whether Taser use met the criteria for use.

After we presented case studies to the NSWPF highlighting our concerns about the review of these kinds of cases, they conceded that the TRPs did not consistently identify all the relevant issues when dealing with instances of multiple use during our review period.

The NSWPF advised they have:

*... identified the need for TRPs to give greater scrutiny to multiple uses of TASER upon a [person]. The soon to be introduced Taser debrief process will assist TRPs in this task.<sup>14</sup>*

## Recommendation

- 26. That the TRP SOPs and associated forms and records be amended to require the TRP to make a finding about whether each discharge or cycle of the Taser is justified under the criteria for use in the Taser SOPs and reasonable in the circumstances.**

## 8.7 Other inconsistent review outcomes

We noted some inconsistencies in the way the TRPs identified and addressed a range of breaches that relate to matters other than the criteria for use. These include breaches such as:

- obscuring the Taser Cam
- accidental discharge
- calling ambulances after Taser probes or drive-stun are deployed
- pointing the Taser at the ground.

We consider the failure to identify such breaches may sometimes be caused by a lack of clarity about what constitutes a breach. Inconsistencies in the way these breaches are identified and addressed may embed a level of confusion about how the Taser SOPs are interpreted and applied.

### 8.7.1 Obscuring the Taser Cam

The Taser Cam is an important inbuilt accountability measure that provides video and audio recording of the Taser deployment. The vision is not always clear because of lighting conditions or the aim of the Taser changing to cover a threat. The Taser Cam will also not capture the entirety of an event, and – particularly if the Taser is armed only moments before probes are deployed – it will be of limited assistance in assessing the full context in which the Taser was deployed.

NSWPF Taser training emphasises how officers should grip the Taser to avoid obscuring the Taser Cam and lists obscuring the camera as a hazardous practice.<sup>15</sup>

The TRP SOPs state at section 4.3:

*In all cases where the Tasercam has been covered by the operator during a use of the Taser, the Region Taser Review panel will cause a memo to be forwarded to the individual officer. This memo should inform the officer that they are not complying with the correct use of the Taser.*

At section 4.4, the TRP SOPs state that 'Remedial Training is recommended for officers who are identified as covering the Tasercam on subsequent occasions'.

The Regional Taser Review Record form includes a section with tick boxes where the reviewing officers must tick whether Taser Cam footage was good, poor or finger covering camera – and notes in these cases that 'Officer to be advised on all occasions where Tasercam is covered'.

We found that in 91 matters we reviewed the Taser Cam was fully or partially obscured for some period during the time the Taser was armed. From our review, it appears the TRP identified and took appropriate action in the majority of these incidents – and this is to be commended. However, in 24 of these matters the TRP did not identify this issue.

In 15 of these incidents, the Taser Cam was obscured only briefly (for less than 15 seconds) and/or only partially obscured. The NSWPF advised that:

*The TEC considers that partial or brief obscuration of the TASERCAM is not required to be noted and does not require remedial action. In instances where prolonged or total obscuration of TASERCAM has occurred the officer will be subject to remedial action.<sup>16</sup>*

However – of the 24 cases in which the TRPs did not identify the obscuration of the camera – nine cases involved the camera being fully obscured throughout, or for 15 seconds or longer.

In our view, the internal review process could more consistently identify and take action in relation to cases involving obscured Taser Cam if the TRP SOPs provided better guidance about which cases are so minor as to not require action. Even if the camera is obscured only briefly, the officer will still benefit from being informally reminded about the correct grip for Taser to avoid the camera being obscured in future. A debriefing process may be an ideal way to convey this advice to them.

## Recommendation

### 27. That the NSWPF amend the TRP SOPs to include guidance about the circumstances in which remedial action is required for police obscuring the Taser Cam.

#### 8.7.2 Accidental discharge

Under the Taser SOPs, accidental discharge of a Taser is listed as a hazardous practice. Officers who accidentally discharge a Taser will be suspended from using the device and subject to remediation training.

Of the cases reviewed, we identified 62 cases within the sample period where officers accidentally discharged the Taser. The most common occurrences involved:

- the failure of the Taser user to unload the cartridge that was loaded by the previous user, before performing a spark test
- the Taser user loading the cartridge on the Taser before performing a spark test.

Other less common practices leading to accidental discharge included the Taser getting caught on objects (such as a seatbelt) and becoming inadvertently armed.

All of the 62 officers involved were decertified and retrained following the accidental discharge.

The NSWPF advised us that the number of accidental discharges has reduced over time and are 'rare considering the number of spark tests conducted'.<sup>17</sup> This advice is supported by our analysis in Figure. 6.

We are satisfied that the TRPs consistently took appropriate action in relation to officers who accidentally discharged the Taser. However, in cases where the accidental discharge occurred during a spark test as a result of the previous Taser user failing to remove the Taser cartridge before storage, we note that the TRPs did not always take steps to identify the previous user. They also did not always provide feedback to the previous Taser user about failing to safely store the Taser. We identified 34 cases where the accidental discharge resulted from a different officer leaving the Taser loaded – and in only 11 cases did the TRP provide feedback to that officer.

This issue raises significant risks from an occupational health and safety perspective so it is important that the breach of Taser SOPs is followed up and appropriate remedial action taken to prevent future occurrences.

We acknowledge that the COPS records and Sitrep relating to accidental discharge do not always specify the previous Taser user. However, it is our understanding that the Taser register should include a record of each officer

who has used the Taser and enable the TRP to identify officers who fail to properly store a Taser. If the previous Taser user has failed to properly unload the cartridge – leading to accidental discharge by a subsequent officer – we would expect the TRP to provide both officers with feedback about loading, unloading and safely storing the Taser and cartridge.

In response to our concerns about this matter, the NSWPF advised us that:

*Whilst the TEC only requires the officer who accidentally discharged the TASER to be provided feedback and undergo remedial training, it has been the practice of a number of TRPs to also provide feedback to the officer who failed to properly store the device.*

*It is now expected that TRPs will consistently address this issue with both officers ...<sup>18</sup>*

In our view, this expectation should be clearly reflected in the TRP SOPs and the Taser SOPs to ensure it is consistently adhered to by police.

## Recommendation

**28. That the NSWPF amend the Taser SOPs and training, and the TRP SOPs, to provide that failing to properly store a Taser is a hazardous practice and will result in remedial action.**

### 8.7.3 Calling ambulances

Under the Taser SOPs, ambulance personnel are to be called on all occasions when a person has been the subject of a Taser use, in probe or drive-stun mode, ambulance or local hospital personnel are to remove probes that penetrate the face, eye, neck, bone structure, groin, or the breast area of females.<sup>19</sup> Taser training also emphasises these requirements.

We consider these precautions to be appropriate in light of the possible medical risks associated with being subjected to Taser charges. Despite these requirements, in nine cases within the sample period where the Taser was discharged in probe or drive-stun mode, we found the written records of the event failed to note whether the person subjected to Taser use received or was offered medical treatment. In five of the nine cases our further inquiries confirmed that an ambulance had been called by police to attend to the person at the police station.

Our independent expert advised us that he was concerned that on a number of occasions when the probes were discharged into a person the ambulance was not called.

While Tasers are regarded as less-lethal than tactical options such as firearms, there are still potential medical risks associated with their use. Given this, it is important that the internal review process is rigorous in identifying failures to provide appropriate medical attention after Tasers are used. It appears that the TRPs are not always identifying the failure to call ambulance personnel when Tasers are discharged. A simple amendment to the form used by the TRPs may improve this. We suggest adding a check box to prompt officers doing the internal review to consider this issue.

We also consider the NSWPF should include advice in the Taser SOPs and the TRP SOPs that a failure by police to call ambulance or hospital personnel when Tasers are discharged may result in remedial action.

## Recommendations

**29. That the NSWPF amend the TRP SOPs to require TRPs to assess and record whether police have complied with the requirement to call an ambulance when a person has been subjected to Taser use in probe or drive-stun mode.**

**30. That the NSWPF amend the Taser SOPs to advise police that failure to call an ambulance or hospital personnel when Tasers are discharged may result in remedial action.**

### 8.7.4 Pointing Tasers at the ground

The Taser SOPs and training emphasise that a Taser should only be used where police are responding to a threat set out in the criteria for use. To properly respond to the threat, officers should aim the Taser at and cover the threat. The Taser SOPs go further in specifying that when aiming, Taser users 'should aim at the centre of mass' to maximise the chance of successful NMI of the person causing the threat, if the Taser is fired.

We identified 70 cases from the sample period in which officers drew and armed a Taser and then pointed the Taser at the ground. The TRP only identified this issue in six of these matters – and took action such as giving the officer

advice and guidance about the Taser SOPs. In the remaining 64 matters, the TRP did not identify the issue of the Taser being pointed at the ground. These cases involved periods of varying duration in which the Taser was pointed at the ground – some of lesser consequence such as a period of four seconds, others for minutes at a time.

In reviewing these cases, we had concerns that the practice was inconsistent with the Taser SOPs and training. On the one hand, the practice appeared to us to be contrary to the goal of responding to a threat of imminent violent confrontation by reducing the officer's capacity to quickly respond to the threat that caused them to draw the Taser. Conversely, it might be evidence that the officers did not consider the threat substantial enough to aim the Taser – this might suggest that it was being drawn and armed contrary to the criteria for use.

Pointing the Taser at the ground also means that the Taser Cam footage does not provide evidence of the behaviour of the subject. The TRP are therefore less able to review whether the use is inconsistent with the criteria for use – including whether the threat has diminished to the point that the Taser should be re-holstered.

The NSWPF indicate that it may be appropriate to point a Taser at the ground when de-escalating an incident:

*It is difficult to negotiate with a person with a weapon (in this case Taser) pointed at them. In such a case the officer has determined to have the Taser out and is ready to deploy it but by purposefully pointing it at the ground allows the opportunity to resolve the situation using lesser force.<sup>20</sup>*

They advised us that they do not regard the practice of pointing Tasers at the ground as an area of significant risk. In our view, this issue should be monitored by TRPs – an increase in this practice will reduce the effectiveness of the Taser Cam as an accountability measure, similar to the practice of obscuring the Taser Cam.

While we accept the TEC's advice that in some circumstances it may be appropriate to aim a Taser at the ground to de-escalate an incident, we recommend that TRPs assess each incident to determine whether the practice was appropriate.

## Recommendations

31. That the NSWPF amend the Taser SOPs to include guidance to police about pointing Tasers at the ground.
32. That the NSWPF amend the TRP SOPs to require an assessment of whether the practice of pointing an armed Taser at the ground is appropriate in the circumstances.

## 8.8 Clarifying the roles of the TRP and LAC in the internal review process

Section 4 of the TRP SOPs provides for the referral of certain matters to LACs:

*4.1 Region Taser Review panels should refer matters back to Local Area Commands where insufficient information has been supplied in documentation such as COPS events and/or Sitreps and further information is required to ensure compliance with the Taser SOPs.*

*4.2 Where the panel is of the view that the conduct in the use of the Taser amounts to a complaint under Part 8A of the Police Act the panel should ensure a complaint is registered. Alternatively the matter can be forwarded to a Local Area Command for appropriate action in accordance with the Region complaint handling business rules. These actions should be recorded in e@gle.i and/or c@ts.i and the Region Taser Panel meeting minutes.*

In this section, we discuss issues relating to the respective roles of the TRP and LACs in the internal review process, and make recommendations to amend the TRP SOPs to clarify their roles and responsibilities.

### 8.8.1 Requests for information by TRPs

In our view, the TRP SOPs are unclear about the role of LACs in the internal review process. Section 4.1 allows the TRP to send a request to a LAC to provide further information about the circumstances in which the Taser was used if the records made by the Taser user are incomplete. The TRP SOPs are less clear about whether the LAC is also given authority to determine if the use of the Taser complied with the Taser SOPs, or whether their role is only to provide information to the TRP to allow them to determine the matter.

Some of the cases we reviewed illustrated this lack of clarity – for example Case study 4 in Chapter 7 (see page 113). In that matter the Regional Taser Review Record noted that, after their initial assessment, the TRP found that

the Taser use did not comply with the Taser SOPs. The TRP sought further advice from the LAC about the use of the Taser when it appeared that the man involved was already on the ground – possible passive noncompliance among other things. The LAC disagreed with the TRP's assessment, suggesting the man was 'resistant' and this was sufficient justification to deploy the Taser. The LAC did not provide any further substantive factual information and relied on the information already available to the TRP. The report from the LAC merely asserted a view that the use complied with the Taser SOPs – in our view it did not adequately address the issue raised by the TRP that the Taser had been used against a person who was passively noncompliant. The TRP minutes following that advice do not record whether the TRP changed their view that the use of Taser appeared to be unjustified.

In this case it is unclear whether the TRP shifted responsibility for determining the outcome of the review to the LAC. It also raises the question of the role of the TRP and the Region Commander in checking the quality of the outcomes of matters referred to LACs.

Given the extensive resources involved in reviewing Taser uses, it is appropriate that TRPs have the flexibility to request information from LACs about the circumstances of Taser use and provide comments about whether the use involved any breach of the Taser SOPs.

In our view, the TRP SOPs should be amended to make it clear that the TRP is responsible for making the final assessment and decision. TRPs generally have greater expertise in reviewing these matters and are better placed to ensure consistency. Also, the TRP SOPs (section 2.6) provide that PSMs 'may review instances of Draw & Cover and Hazardous Practices on behalf of the TRP'. The fact that PSMs are of a lower rank than Local Area Commanders provides a further reason to clarify the roles and responsibilities of the TRP and other LACs. PSMs may be reluctant to overturn a decision of a more senior officer.

We also note that the TRP SOPs do not include a comprehensive description of the role or terms of reference of TRPs in the internal review process. Adding this information would provide greater clarity for police about how the internal review process operates in practice.

## Recommendations

33. That the NSWPF review and amend the TRP SOPs to include a comprehensive description of the roles and responsibilities of the TRPs and LACs in the internal review process.
34. That the NSWPF amend the TRP SOPs to clarify the purpose of TRP requests for information, and to make it clear that TRPs are responsible for making the final decision about whether a Taser use complied with or breached the Taser SOPs.

## 8.9 The TRP's role in reviewing Taser use part of a critical incident investigation

When we reviewed the TRP records for individual incidents, we identified three incidents where the TRP had not reviewed the Taser Cam footage and associated police records because the incident was the subject of a critical incident investigation.

A critical incident investigation is commenced when a person dies or is seriously injured in connection with police actions or a police operation. These incidents often attract public attention and potentially involve examining police conduct that could constitute serious misconduct. The critical incident investigation is not limited to looking at the question of police conduct. It will investigate all issues and matters related to the incident that occurred.

Although the TRP SOPs do not specifically discuss Taser use incidents that become the subject of a critical incident investigation, it is clear in our view that the TRP should still conduct their review on the appropriateness of the Taser use for the critical incident lead investigator to consider. As a TRP is made up of senior officers with considerable expertise in reviewing Taser use incidents, it is logical that they perform their specialist function for such potentially serious incidents.

## Recommendation

35. That the TRP SOPs specify that TRPs review all Taser use incidents, including those that are part of a critical incident investigation.

## 8.10 The Taser Executive Committee

In Chapter 5, we described the TEC and their role in monitoring the implementation of both the TRP SOPs and Taser SOPs. It is our view that having the TEC is an important part of implementing the Taser SOPs – including the high level of compliance we identified in Chapter 7. The TEC are also well placed to monitor trends associated with Taser use and to ensure that the TRP process operates effectively.

During this review, we looked at the NSWPF's progress in implementing a recommendation made in our 2008 report to develop a use of force register. We found that this project has not progressed significantly and this limits the effectiveness of the TEC to monitor and evaluate trends associated with the use of Tasers.

### 8.10.1 How the NSWPF record use of force

Use of force is recorded in COPS. Officers are required to record details of force used when the subject has displayed any level of resistance. The NSWPF's *Crime Recording Standard* states that the NSWPF agree to record details of 'instances where force is used by a police officer, against a police officer, or in other situations (as appropriate)'.<sup>21</sup>

The *NSW Police Force Handbook* makes it mandatory for officers to record the level of resistance and the details of persons of interest (POI) for resist/hinder/assault officer incidents. It also states that these details 'may be recorded for other incidents where force is used by a police officer or against a police officer'.<sup>22</sup> This is also described as a Register of Resistance. Officers are required to record the identities of all officers who have been involved in using force, and select all the tactical options used in responding to an incident where force is used. (See Appendix B for a list of all available options).

Even after it became mandatory for officers to record use of force, it is not clear that use of force information has been consistently and comprehensively kept in COPS.

### 8.10.2 Use of force register

In our 2008 report, we noted that the NSWPF had started work on a project to establish a use of force register. We supported the project to improve the capacity of the NSWPF to analyse how force is used by police – to inform training about weapons and other tactical options and improve transparency and accountability. We recommended that they continued developing a use of force register as a matter of priority.

The NSWPF advised us at the start of this investigation that COPS now includes a mandatory 'use of force' field, which includes the recording of Taser use.<sup>23</sup> They advised us that they use the information from the 'use of force' field in COPS to assist in identifying operational training needs, including the use of tactical options.

A change from voluntary to mandatory recording of information in the 'use of force' field in COPS started in late 2008 and has been implemented over time.<sup>24</sup> It became mandatory for officers to capture data about Taser use in the 'use of force' field in COPS in March 2009.<sup>25</sup>

While we note the NSWPF has transitioned to mandatory recording of use of force, the information currently recorded in COPS has significant limitations.

Records of use of force in COPS before mid-2009 do not accurately reflect the frequency and types of force used, so cannot be relied upon in any analysis of trends. For example, for the period before mid-2009 we identified disparities between the number of COPS Events that included the use of a Taser in the 'use of force' field and the list of Taser incidents compiled for us by the TEC. Between October 2008 and June 2009, the number of Taser incidents recorded on the 'use of force' field in COPS was 220,<sup>26</sup> while the number of Taser incidents identified by the TEC involving general duties police was 298.

Although there is a process for checking that each use of Taser is recorded in COPS, there are no similar accountability mechanisms under the Taser SOPs to check that other force options are accurately and consistently recorded. COPS Events are generally reviewed and verified by a duty officer. It is our understanding that duty officers check whether the event records the appropriate incident type, that appropriate charges have been made, and that outstanding actions have been completed.<sup>27</sup> Duty officers are required to look for missing or incomplete information in their review of COPS records, but there is no explicit requirement for them to check that the 'use of force' field has been completed for every tactical option. This raises a significant question about the reliability of information recorded in the 'use of force' field in COPS.

A further example relates to recording incidents where a firearm is displayed. The *NSW Police Force Handbook* requires an officer who discharges a firearm (except during approved weapons training situations) to inform the duty officer at the nearest LAC and the Duty Operations Inspector. However, we have not found any specific instructions that officers are required to record a display of their service firearm. There is a field to capture 'display of firearm'

in COPS, and the use of force data provided by police show that this field has been used – but it remains unclear whether the display of a firearm is always recorded.

The COPS system also imposes a limitation on recording use of force. If police are unable to identify the person subject to a use of force, they record an ‘Occurrence Only’ event on COPS that does not include the ‘use of force’ field.<sup>28</sup>

Currently, it appears that the NSWPF have not developed any trend reports based on the use of force data. Our request for data from COPS about use of force to assess trends was an involved process, requiring significant manual work by the NSWPF Performance Improvement and Planning Command. Because of the way ‘use of force’ fields are coded in COPS, when we asked for data about use of force trends and the use of combinations of tactical options (for example, OC spray plus weaponless control plus Taser), each incident had to be counted manually by a NSWPF statistician. This raises a question about how readily meaningful analysis of use of force trends can be done.

In our 2008 report, we commented that the NSWPF would need to ensure information is comprehensively and consistently included in the use of force register, and to regularly monitor and analyse the register. It does not appear that there has been great progress with these actions.

Our analysis of COPS Events in the sample period identified inconsistencies in the quality of the information recorded in the ‘use of force’ fields within COPS. For example, in some instances:

- officers referred to details of tactical options in the narrative description of an event, and these were not recorded in the ‘use of force’ fields
- the selected ‘use of force’ fields did not match the narrative description of the event, indicating that officers might have misidentified the tactical options they have used.

In one example, an officer recorded communication in the ‘use of force’ field – but the narrative indicated only verbal commands were issued. In some instances, the COPS record does not include the details of all officers involved in the use of force.

The limitations in the way use of force is recorded in COPS raise significant questions about how meaningfully the data can be used by NSWPF to inform training or evaluate police practices. It appears that only a very basic analysis of use of force data has been undertaken by the NSWPF to inform training programs for officers.<sup>29</sup> This analysis primarily noted the prevalence of use of weaponless control techniques.

It is our view that the TEC are therefore not well placed to evaluate important trends in Taser use. These include trends relating to:

- the frequency of Taser use relative to the frequency of use of other tactical options – including OC spray, batons, firearms, communication skills and weaponless control techniques
- officer injuries and injuries to members of the public resulting from incidents where Tasers have been used and the relative rate of injuries in terms of other tactical options
- the frequency of tactical options used simultaneously with Tasers to resolve incidents.

We understand that the NSWPF’s Performance Improvement and Planning Command have done some scoping of proposed amendments to the Enterprise Data Warehouse (EDW) system, which generates trend reports using data stored on COPS.<sup>30</sup> The proposed enhancements described in the document *Reporting Requirements—Use Of Force and Taser Deployments*, would certainly improve analysis of use of force. They would improve the capacity of the NSWPF to monitor and evaluate the use of Tasers and use of force more generally. However, it appears that the capacity for such reporting depends on further amendments to COPS.

We acknowledge that making further changes to COPS or creating an accurate, comprehensive and searchable use of force register may involve a substantial financial cost. However, there are significant benefits that would flow from accurate and comprehensive data collection and analysis about use of force. Better data capture would help the NSWPF to evaluate the impact of new weapons on the use of existing tactical options. The data may also inform training about tactical options, and help the NSWPF to consider the relationship between various force options and officer injuries and injuries to the public. Better analysis of the relationship between tactical options and injuries to officers could help reduce the costs associated with these injuries.

## Recommendations

### 36. That the NSWPF implement strategies to improve their data collection and analysis in relation to use of force to allow accurate recording of all tactical options and reporting about:

- trends in the frequency of tactical options including Tasers
- trends in the frequency of injuries to officers associated with incidents in which a Taser is used, relative to other tactical options

- trends in the frequency of injuries to people subjected to Taser, including injuries directly caused by Tasers and arising from incidents in which a Taser is used
  - associated factors in use of force incidents – to allow the impact of new weapons on the frequency of use of existing tactical options to be evaluated.
37. That the NSWPF progress the proposed enhancements to the Enterprise Data Warehouse system, described in the document 'Reporting requirements – use of force and Taser deployments', as a matter of priority.
38. That the TEC provide the NSW Ombudsman with a report outlining use of force trends (March 2009 – March 2013) by May 2013.

## 8.11 Complaints about Taser use under Part 8A of the *Police Act 1990*

In Chapter 5, we outlined our role in providing independent oversight of the police complaint system under Part 8A of the Police Act.

The following information relates to the 93 complaints about police and the use of a Taser that we received between 1 October 2008 and 30 November 2011. This is the same period that we obtained data about the use of Tasers.

Of the 93 complaints, 43 were from members of the public and 50 were made by police officers – in accordance with their obligations under the Police Regulation 2008 to report allegations of misconduct.

The NSWPF investigated 72 of the 93 complaints and those investigations were also overseen by the Ombudsman – and we were satisfied that 68 of the 72 investigations were timely and effective. We were not satisfied with their handling of four of the complaints. The NSWPF investigation of one complaint was taken over by the Police Integrity Commission and as a result we discontinued our oversight of the matter.

### 8.11.1 Actions taken by the NSWPF in response to complaints about the use of a Taser

The NSWPF made adverse findings relating to the use of Tasers in 33 of the 72 matters.

- One complaint resulted in a finding of unreasonable use of force – see Case study 23 (page 153).
- Two complaints resulted in findings that an officer had breached the criteria for use by discharging a Taser in probe mode against a person who was fleeing police. One of these cases is discussed in Chapter 7 – see Case study 15 (page 132).
- In four complaints the NSWPF found a breach of the criteria for using a Taser in draw and cover mode.
- In 20 complaints the NSWPF found officers had engaged in hazardous practices – including failing to properly store a Taser, accidental discharge and failing to arm a Taser.
- In six complaints the NSWPF found officers had engaged in hazardous practices in which an officer aimed, sparked or discharged a Taser at another police officer.

The remedial action taken by the NSWPF in response to these 33 matters was that:

- 16 officers were decertified and retrained
- 10 officers were counselled
- 7 officers received a warning notice – which in most cases also related to additional conduct issues – and/or a conduct management plan about the use of the Taser.<sup>31</sup>

Case studies 27 and 28 relate to incidents where a Taser was discharged at another police officer.

#### Case study 27 – Police skylarking with a Taser

Two officers were captured on police CCTV skylarking in the charge room of a police station. One officer grabbed a Taser from the second officer's appointment belt and aimed it at the officer's groin before handing it back. The second officer thrust the Taser at the groin of the first officer at which point it became armed. A short time later the Taser discharged and a Taser probe lodged in the webbing of the hand of the officer and the other in his trouser leg. The officer fell to the ground. The TRP reviewed the Taser Cam and CCTV footage before referring an internal complaint to the LAC for investigation. The officers were given warning notices and placed on conduct management plans after sustained findings that they had misused the Taser and been untruthful about the circumstances of the incident.

## Case study 28 – Officer injured at Taser training

An internal complaint investigation was conducted after an officer suffered an injury as a result of a voluntary exposure to a Taser in a training session. In 2008, a directive was given to NSWPF weapons trainers to stop all voluntary Taser exposures at Taser training sessions. In January 2010, a number of police attending a Taser training course asked the instructors to expose them to the effects of a Taser. During a break in the training, a group of police 'volunteered' to lay face down on the floor and be administered a short exposure of the Taser by having the Taser probes attached to their clothing. The complaint was initiated after an injury notification submitted by a probationary constable that was caused by the Taser exposure. After examination and X-ray, the officer was found to have suffered a dislocated shoulder and a fracture to the clavicle. The weapons trainers admitted the misconduct and were counselled.

### 8.11.2 Deficient complaint investigations by the NSWPF

There were four matters where we were not satisfied with the NSWPF's investigation of the complaint:

- We were not satisfied that police officers had reasonable grounds for multiple use of a Taser on a juvenile during his arrest, and disagreed with the finding that the actions of police complied with the Taser SOPs.
- We were not satisfied that the NSWPF dealt appropriately with what we regarded as a failure by the police officer to disarm a Taser after the subject was secure and handcuffed. After the man was handcuffed, the Taser remained armed and pointed at him with the probes remaining in his body for a further 18 minutes until the Taser automatically switched off. This case is discussed in Chapter 7 (see page 135).
- We were not satisfied that the NSWPF had proper grounds to make a finding that a police use of Taser in probe mode was reasonable and complied with the Taser SOPs. This case is discussed earlier in this chapter – see Case study 24 (page 155).
- We were not satisfied by the action taken by the NSWPF after a complaint that a weapons trainer was improperly spark testing a Taser to wake up officers during a weapons course. Our concerns were accepted and remedied by the NSWPF.

In our view, the NSWPF is generally taking appropriate action to investigate and resolve complaints about the use of Tasers. The four investigations that we found to be deficient represent 5.5 % of the 72 complaints that they investigated. This compares favourably with the annual rate of deficient investigations which in 2010–11 was 9%.

### 8.11.3 The TRP's role in identifying matters that should be registered as complaints

The TRP SOPs identify an obligation to record a complaint under Part 8A of the Police Act if 'the panel is of the view that the conduct in the use of the Taser amounts to a complaint'.<sup>32</sup>

An agreement between the Ombudsman and the Police Integrity Commission, known as the 'Section 121 Agreement' or the 'class or kind agreement', lists those complaints that must be notified to the Ombudsman. It includes the following:

*Any unreasonable conduct involving the use, discharge or safe keeping of police issued weapons including firearms, Tasers, OC Spray and batons, including but not limited to breaches of relevant NSWPF standard operating procedures, guidelines or policies.*<sup>33</sup>

It is important that the TRPs correctly identify which Taser cases they review should be registered as complaints. These decisions are essential to the effective administration of the complaints system. Incorrect decisions may result in the NSWPF failing to record the complaint on the complaints information system, notify the Ombudsman, or investigate the complaints in a timely and effective manner.

In our view, breaches relating to the criteria for use of a Taser should be recorded as a complaint. This is because they may involve misconduct and the complaint system provides independent scrutiny and oversight by the Ombudsman. Managing allegations of serious breaches of the Taser SOPs improves the likelihood of greater procedural fairness for the officer the subject of the investigation, enhances consistency and transparency in the investigative approach, and provides clear records of the outcome of any investigation – including any action taken to respond to the officer's conduct. Recording complaints also helps the NSWPF to identify any patterns of misuse by an officer or at a particular command.

If TRPs fail to record complaints and notify the Ombudsman, the Ombudsman is unable to perform his statutory oversight of the complaint system and hold police commanders accountable for properly managing complaints. During our investigation, we identified cases that we believe should have been recorded as complaints and notified to the Ombudsman.

In Case study 29, the TRP was concerned about whether the Taser had been used in accordance with criteria for use and sent a request for further information to the LAC seeking further reasons justifying use. In our view, this was a matter that should have been recorded as a complaint and notified to the Ombudsman – because there were significant inconsistencies between the officer's account of the incident and the events shown on the Taser Cam footage.

### Case study 29 – Recording complaints about misuse of Tasers

Police attended a domestic disturbance, where a man had allegedly threatened his sister. The man's sister had told police that he suffered psychotic episodes resulting in aggressive behaviour. On this occasion, she informed police he had thrown objects at her and she had locked herself in her bedroom. Police spoke to the man and told him that he would be taken to hospital for assessment by mental health professionals. Police records indicate the man had been restrained, but broke free and entered the kitchen. The Sitrep states that police had tried to physically restrain the man and verbally negotiate with him, and that *'police feared for their safety and attempts to subdue him using other methods were unsuccessful'*. As a result, Tasers were fired. Two Tasers were fired during the incident, but one has the Taser Cam obscured throughout.

The Taser Cam footage from the second officer shows the man as he walked into the kitchen. The man was then seen yelling at his family members to *'stop this now'* as they continued to yell at him from behind the officers. The officers told the man to *'calm down and get down on the ground'* as he stood and pointed at them, telling them all to *'stop this now'*. One officer said *'last warning [man's name]'* and fired the Taser, but it did not connect with the man.

The man then looked at the ground, possibly looking at the misfired probes from the Taser. He took a step forward while looking at the ground, and the second officer fired probes which connected causing NMI. The man immediately fell to the ground. Approximately six seconds later, while the man was on the ground wailing, another five second cycle was applied by the same officer. It appears that the officers did not move in to handcuff the man until after the second Taser cycle. The Taser Cam remained on for a further minute after he had been handcuffed. Police records indicate that the man was released by the hospital as he was not mentally ill. Police then issued an Apprehended Violence Order.

#### Police assessment of the Taser use

The TRP asked the LAC for further information about the incident. The TRP minutes noted that there was *'no evidence that [the man] was violent at [the] time of deployment'*, and an additional request for information should be sent seeking justification for use. The additional request for information form was sent stating *'video does not support deployment, please justify'*.

In response, the two officers wrote further statements describing the incident. The first officer stated that he feared the man might get access to a knife or might evade police by climbing over the balcony. The second officer stated the man *'continued to yell at us and threaten his sister who was standing behind us with her mother'*. The Crime Manager at the officer's LAC advised the TRP that:

*The use of the Taser appears justified in all the circumstances. The only issue is the drawing of 2 Tasers by 2 officers on the same [person]. However, given the circumstances of being in a confined space with victims/witnesses to the incident in close proximity, the other tactical options may not have seemed apparent. I believe the officers have acted appropriately.<sup>34</sup>*

The NSWPF advised that the use of Taser by both officers was found to comply with the Taser SOPs.

#### Our assessment of the Taser use

Our assessment found that the records made by police after the incident are inconsistent with the events shown in the Taser Cam footage, and the further accounts provided by the officers do not demonstrate there were reasonable grounds for use of the Taser. We are particularly concerned that there appears to be no justification for the second cycle once the man had fallen to the floor, as he was neither violent nor resisting at this point but lying down and wailing. There also appeared to be insufficient time between cycles for the man to have moved his arms to allow them to be handcuffed.

In our view, the TRP SOPs should be amended to provide further guidance about which matters should be registered as complaints. As a minimum, TRPs should be advised to register a complaint if – after their initial assessment or at the completion of the internal review – they are not satisfied that the Taser was used in accordance with the criteria for use.

Some breaches of the Taser SOPs relating to methods of use appear less serious, and may be better addressed informally as performance issues – such as obscuring the Taser Cam or accidental discharge of the Taser. The TRP SOPs (section 4.3) require the officer to be sent a reminder if they have obscured the camera, and it appears that

this process may occur outside the complaints system. It is our view that these types of matters can be appropriately identified and resolved by TRPs by remedial action, without the need to record a complaint under Part 8A of the Police Act.

Members of the TRPs have extensive experience in assessing conduct and identifying, investigating and resolving complaints. They are well placed to identify cases that need to be registered as a complaint and to manage the investigation itself – or to refer the matter to the LAC for investigation by the CMT.

The following recommendation is to ensure that the Ombudsman is able to independently oversight complaints of serious misconduct relating to the use of Tasers.

## Recommendation

- 39. That the NSWPF, in consultation with the Ombudsman, amend the TRP SOPs to include advice about the circumstances in which reports suggesting a breach of the Taser SOPs should be recorded as an internal complaint and notified to the Ombudsman.**

## 8.12 Future directions – a new debrief process

In consultation with the NSWPF during the course of this investigation, we raised the potential benefits of a more formal feedback system to officers who had used Tasers after a TRP review. As part of this process, it was felt that giving officers an opportunity to view the Taser Cam footage would provide a range of significant performance development, training and performance assessment opportunities.

On 1 August 2012, the NSWPF introduced a new debrief process to provide feedback to officers who have used Tasers. This process is mandatory for all officers who have used a Taser in probe or drive-stun mode. It extends to uses in draw and cover that have been identified by the TRP as appropriate for debrief. As part of the debrief process, officers are able to watch the Taser Cam footage and receive feedback from the debriefing officer – either the LAC Crime Manager, Duty Officer or Team Leader. Prior to the introduction of the debrief process, officers did not get an opportunity to see the Taser Cam footage of the incident they had been involved in unless there was an investigative purpose for doing so – such as preparing a brief of evidence for court proceedings. Officers who participated in our focus groups commented that they would find it instructive to see this footage:

*I think if you can show people and show the instances of how it's been used and all of that, I think that would be quite – everyone can learn from it.<sup>35</sup>*

The debriefing process occurs after the PSMs and Region Commanders have done the initial internal review of Taser use. If the PSM and/or Region Commander do not identify any issues during the initial review of the deployment, the PSM will commence the debrief process.<sup>36</sup> If the PSM or TRP identify issues that require clarification or investigation, the debrief will be deferred until after the investigation or clarification is completed.

The officer conducting the debrief will have the Taser Cam footage, shot data, Regional Taser Review Record, an instruction sheet and a blank debrief record form. If required, the debriefing officer will speak to the PSM or a Taser accredited weapons trainer. The Region Commander or PSM will provide advice to the officers conducting the review by noting their comments on the Regional Taser Review Record form.

At the end of the debrief, the debriefing officer will complete the debrief record form and Region PSMs are to monitor and verify the contents of the debrief.

The NSWPF have advised that the debrief process does not change the types of deployments reviewed by the TRPs. The primary aim of the debriefing process seems to be to allow officers to view the Taser Cam footage while any feedback (positive or negative) is delivered in relation to the use. It appears the debriefing process aims to address training and performance issues for matters that do not constitute complaints. It may also be an opportunity to reinforce the Taser SOPs by positively identifying instances where the Taser use has been in accordance with them. One of our key concerns in relation to communication associated with Taser use is officers making inappropriate threats to gain compliance. The NSWPF have agreed that examples of poor communication and inappropriate language will be addressed, commenting that:

*With the introduction of the Taser debrief process, which for the first time will provide officers with an audiovisual 'replay' of their interaction with [the people subject to the Taser use], the NSWPF is confident of a decline in inappropriate communication.<sup>37</sup>*

The NSWPF also indicated that the debrief process will provide officers with constructive operational feedback on the criteria for Taser use, secondary hazard identification, multiple discharges, drive-stun, hazardous use and high risk incidents.

We believe there will be benefits in giving officers an opportunity to discuss a real scenario that has just taken place, compared to hypothetical scenarios in a training setting. The debriefing officer can play a mentoring role to help the officer learn alternative ways they could have handled the situation.

However, for the debrief process to work effectively, the NSWPF needs to better identify those matters that should be addressed through the complaints system, and clarify which breaches of the Taser SOPs require more significant management responses – such as decertification and remedial training. We note that the NSWPF advised us that:

*If Region PSMs identify an issue which constitutes a complaint, they are duty bound to refer the matter to the CMT. It would be inappropriate to conduct a debrief with the officer in such instances. In these cases the officer will have the opportunity to view the footage at some point during the course of the internal investigation.*<sup>38</sup>

We agree with this statement, but consider that the implementation of Recommendation 41 is required to ensure that complaint matters are not included in the debriefing process.

A number of participants in our focus groups commented that they would like access to Taser Cam footage to help them write the COPS record and Sitrep for the incident. One commented:

*You could – you could do your statement 10 minutes after an incident when it's still fresh in your memory ... but you can still forget something because you're only human. Like, you can't remember absolutely everything. So if you've got that footage to have a look at you can remember the little nitty gritty bits that you might have otherwise forgotten, even if you done your statement 10 minutes later.*<sup>39</sup>

In initial correspondence from the NSWPF outlining the debrief process, they indicated that:

*The debriefing initiative recognises that officers use Taser under circumstances which are highly stressful and which can affect their recollection of the details of an incident. Affording officers the opportunity to view the Tasecam vision will assist them [to] produce accurate written records.*<sup>40</sup>

The NSWPF have since indicated that:

*The debrief will occur after the officer has completed the SITREP and COPS event. This is unavoidable due to the fact the vision is not available to the officer immediately after the deployment.*<sup>41</sup>

We understand that access to Taser Cam footage may help officers to recollect the sequence of events. However, the written records should be a reflection of the officer's direct experience as they may form part of the evidence used in related criminal proceedings or be used in an investigation of the officer's conduct relating to the event.

For this reason, the identification of shortcomings or breaches of the Taser SOPs and the action taken to address them should take place separately – after the officer has completed and finalised the Sitrep and COPS records.

## Recommendations

40. That the NSWPF ensure that all Crime Managers, Duty Officers or Team Leaders who are involved in debriefing general duties officers have undertaken Taser accreditation training.
41. That the TRP SOPs be amended to ensure that the TRP only refer matters for debriefing after completing their internal review and a finding that the use complied with the criteria for use in the Taser SOPs.
42. That the NSWPF amend the TRP SOPs to include guidance about the types of issues identified during the internal review that are appropriate for resolution through a debriefing process.
43. That the TRP forms and record keeping be amended to allow the TEC to effectively evaluate the debriefing process, and the TEC provide an evaluation report 12 months after its introduction.

### 8.13 NSWPF's future plans for Tasers

The X2 Taser is a more advanced model of Taser than the X26 Taser currently used by the NSWPF.<sup>42</sup> In May 2012, the NSWPF advised that they had ordered two X2 Tasers with high definition Taser Cam for evaluation purposes.<sup>43</sup> We were advised that they only intended to test the weapon at this stage and the findings would be reported to the TEC and the DCOP, Field Operations.

Information provided by the NSWPF, at a meeting with us on 27 April 2012, and on the Taser International website<sup>44</sup> shows that:

- The X2 Taser houses two cartridges on the front part of the device. This provides for a backup shot that could be used against multiple people, with six different Taser probe combinations that would allow NMI to occur. If both Taser probes from the first cartridge missed, the other cartridge will be ready for firing. If one Taser probe missed, another probe from the second cartridge would complete the electrical circuit.
- The X2 Taser has two lasers to assist with aiming the device.
- While the X2 Taser cartridge is loaded, a warning arc can be generated.
- As with the X26 Taser, the X2 Taser can be fitted with a Taser Cam. However, the model of Taser Cam that would be fitted to the X2 Taser has high-resolution, full-colour images.
- The X2 Taser has an optional automatic shut-down feature. This feature causes the device to automatically shut down after a five second firing cycle, and produces an audible warning before the shut down. To discharge another five second electrical current, the user needs to press a button on the side – instead of pulling the trigger again.
- The X2 Taser is more robust than the X26 Taser and has an extended battery life.
- The electrical charge of the X2 Taser varies with the resistance. The X2 Taser has a current metering system that continuously monitors and adjusts the electrical current to deliver the exact amount of current required to incapacitate a person.
- Compared with the X26 Taser, there would be more extensive data available.

In our view, a Taser that has the capability to fire multiple shots without the need to reload introduces new risks and a range of issues that must be carefully considered in an evaluation – especially given the heightened risks of injury and death associated with multiple Taser uses. We therefore recommend that the NSWPF consult with the Ombudsman – and provide us with copies of any evaluation reports and the outcome of their evaluation – before making any decision to purchase or use operationally a different model of Taser.

### Recommendation

44. **That before making any decision to purchase a different model of Taser from the X26 Taser, the NSWPF consult with the Ombudsman and provide us with copies of any evaluation reports and advice on the outcome of their evaluation.**

## Endnotes

1. NSW Police Force, *Region Taser Review Panel Standard Operating Procedures*, version 1.2, 9 December 2009; NSW Police Force, *Region Taser Review Panel Standard Operating Procedures*, version 1.3, 25 October 2010.
2. Letter from Assistant Commissioner Alan Clarke, NSW Police Force, to Bruce Barbour, Ombudsman, NSW Ombudsman, 13 December 2010 (in response to a notice under s. 18 of the *Ombudsman Act 1974* to produce statement of information and/or documents).
3. NSW Police Force, *Standard Operating Procedures for use of Electronic Control (TASER) Devices by the NSW Police Force*, version 1.16, section 4, p. 14.
4. NSW Police Force, *Regional Taser Review Record*, version 1.01 (undated), p. 1
5. Three incidents were the subject of a critical incident investigation and were not reviewed by a TRP. Later in this chapter we discuss the issue of the critical incident investigations and whether the TRP should review the Taser use.
6. NSW Police Force, *Standard Operating Procedures for use of Electronic Control (TASER) Devices by the NSW Police Force*, version 1.16, section 12.1, p. 21 (emphasis in original).
7. NSW Police Force, *Standard Operating Procedures for use of Electronic Control (TASER) Devices by the NSW Police Force*, version 1.16, (approved for release in July 2012), section 13.1, p. 23.
8. Letter from Acting Commissioner Nick Kaldas, NSW Police Force, to Bruce Barbour, Ombudsman, NSW Ombudsman, 19 January 2012—enclosure entitled 'Additional information requested by the NSW Ombudsman', NSW Ombudsman, p. 2.
9. Letter from Acting Commissioner Nick Kaldas, NSW Police Force, to Bruce Barbour, Ombudsman, NSW Ombudsman, 19 January 2012—enclosure entitled 'NSW Police Force draft response', p. 6.
10. *ibid.*, p. 22.
11. Letter from Assistant Commissioner Alan Clarke, NSW Police Force, to Bruce Barbour, Ombudsman, NSW Ombudsman, 26 March 2012.
12. Letter from Acting Commissioner Nick Kaldas, NSW Police Force, to Bruce Barbour, Ombudsman, NSW Ombudsman, 19 January 2012—enclosure entitled 'NSW Police Force draft response'.
13. *ibid.*, p. 12.
14. *ibid.*, p. 11.
15. NSW Police Force, *X26 Taser Review Mandatory 2011–2011: TASER® X26® Electronic Control Device*, version 14.2/17, NSWPF—Version 2.0, 2011/2012.
16. Letter from Acting Commissioner Nick Kaldas, NSW Police Force, to Bruce Barbour, Ombudsman, NSW Ombudsman, 19 January 2012—enclosure entitled 'NSW Police Force draft response', p. 16.
17. *ibid.*, pp. 16–17.
18. *ibid.*, p. 17.
19. NSW Police Force, *Standard Operating Procedures for use of Electronic Control (TASER) Devices by the NSW Police Force*, version 1.16, 1 July 2010, section 6.11, p. 18; NSW Police Force, *Standard Operating Procedures for use of Electronic Control (TASER) Devices by the NSW Police Force*, version 1.18, June 2012 (approved for release in July 2012), section 7.11, p. 20.
20. Letter from Acting Commissioner Nick Kaldas, NSW Police Force, to Bruce Barbour, Ombudsman, NSW Ombudsman, 19 January 2012—enclosure entitled 'NSW Police Force draft response', p. 17.
21. NSW Police Force, *NSW Police Force Crime Recording Standard*, version 1.5, 3 February 2009, p. 29; NSW Police Force, *Crime Recording Standard*, version 2.0, March 2011, p. 39.
22. NSW Police Force, *NSW Police Force Handbook*, 30 May 2012, p. 532.
23. Letter from Assistant Commissioner Alan Clarke, NSW Police Force, to Bruce Barbour, Ombudsman, NSW Ombudsman, 13 December 2010 (in response to a notice under s. 18 of the *Ombudsman Act 1974* to produce statement of information and/or documents).
24. Email from John Blanchette, Statistician, NSW Police Force to Huetta Lam, Senior Project Officer (Research), NSW Ombudsman, 26 July 2011.
25. Letter from Assistant Commissioner Alan Clarke, NSW Police Force, to Bruce Barbour, Ombudsman, NSW Ombudsman, 13 December 2010 (in response to a notice under s. 18 of the *Ombudsman Act 1974* to produce statement of information and/or documents).
26. Email from John Blanchette, Statistician, NSW Police Force to Huetta Lam, Senior Project Officer (Research), NSW Ombudsman, 26 July 2011.
27. NSW Police Force, *Computerised Operational Policing System User Guide*, version 2.1, September 2010.
28. Letter from Assistant Commissioner Alan Clarke, NSW Police Force, to Bruce Barbour, Ombudsman, NSW Ombudsman, 13 December 2010 (in response to a notice under s. 18 of the *Ombudsman Act 1974* to produce statement of information and/or documents).
29. Letter from Assistant Commissioner Alan Clarke, NSW Police Force, to Bruce Barbour, Ombudsman, NSW Ombudsman, 13 December 2010 (in response to a notice under s. 18 of the *Ombudsman Act 1974* to produce statement of information and/or documents).
30. NSW Police Force, *Reporting Requirements—Use Of Force and Taser Deployments*, 28 October 2009.
31. In most of these cases the warning notice also related to additional conduct issues.
32. NSW Police Force, *Region Taser Review Panel Standard Operating Procedures*, version 1.3, 25 October 2010, section 4.2, p. 4.
33. NSW Ombudsman and Police Integrity Commission, *Guidelines agreed between the Police Integrity Commission and the Ombudsman after consultation with the Commissioner of Police under the Police Act 1990*, 1 December 2010 (effective 1 February 2011), p. 6.
34. Letter from Assistant Commissioner Alan Clarke, NSW Police Force, to Bruce Barbour, Ombudsman, NSW Ombudsman, 26 March 2012, p. 3.
35. Participant's comments, focus group 1 with NSW Police Force general duties officers, September 2011.
36. Letter from Assistant Commissioner Alan Clarke, NSW Police Force to Linda Waugh, Deputy Ombudsman, Police and Compliance, NSW Ombudsman, 22 February 2012.
37. Letter from Acting Commissioner Nick Kaldas, NSW Police Force, to Bruce Barbour, Ombudsman, NSW Ombudsman, 19 January 2012, p. 2.
38. Letter from Assistant Commissioner Alan Clarke, NSW Police Force to Linda Waugh, Deputy Ombudsman, Police and Compliance, NSW Ombudsman, 22 February 2012, p. 3.
39. Participant's comments, focus group 1 with NSW Police Force general duties officers, September 2011.
40. Letter from Acting Commissioner Nick Kaldas, NSW Police Force, to Bruce Barbour, Ombudsman, NSW Ombudsman, 19 January 2012, pp. 1–2.
41. Letter from Assistant Commissioner Alan Clarke, NSW Police Force to Linda Waugh, Deputy Ombudsman, NSW Ombudsman, 22 February 2012, p. 2.
42. No other Australian jurisdictions are using the X2 Tasers; however, in March 2012, Victoria Police announced that it would be issuing X2 Tasers in its rollout of Tasers across Victoria, to begin mid-2012: 'Police to carry controversial stun guns', *ABC News* <[www.abc.net.au](http://www.abc.net.au)> accessed 12 March 2012. In July 2012, the Australian Federal Police announced they would be introducing video camera enabled X2 Tasers to frontline sergeants in 10 major airports <[www.afp.gov.au/mediacentre](http://www.afp.gov.au/mediacentre)> accessed 18 September 2012.
43. Letter from Deputy Commissioner, Field Operations Nick Kaldas, NSW Police Force to Linda Waugh, Deputy Ombudsman, Police and Compliance, NSW Ombudsman, 2 May 2012.
44. Taser International, *Taser® X2™ ECD* <[www.taser.com/products/law-enforcement/taser-x2](http://www.taser.com/products/law-enforcement/taser-x2)> accessed 3 May 2012.



## Chapter 9. How our findings add to the Taser debate

In Chapter 2 of this report we presented the arguments commonly made in support of and against the use of Taser weapons by police. In this chapter, we discuss our investigation findings in the context of whether they provide support or not to the various arguments about the benefits and risks of Taser use.

In the first section, we discuss our findings as they relate to the argued benefits of Tasers. These are that they:

- provide an alternative use of force option to firearms in high risk situations
- reduce assaults on or injuries to police
- are an effective tool for resolving violent and potentially violent situations.

In the second section, we discuss our findings as they relate to the argued risks of Taser use. These include:

- death or serious injury to members of the public
- mission creep
- the serious misuse of Tasers.

In the final section, we set out our conclusions about the implications of this debate and our investigation findings for the future use of Tasers by the New South Wales Police Force (NSWPF).

### 9.1 Have Tasers been used by NSW police officers as an alternative to lethal force?

One of the rationales for Taser use is that it presents police with a less-lethal option to use than a firearm. We recognise that not all situations in which a firearm might have been used are appropriate for use of a Taser – officer safety or the safety of members of the public may make a firearm a more appropriate choice of weapon than a Taser.

However, we examined the 556 incidents in our sample to determine whether there were instances where the Taser had been used when the use of a firearm might have been justified – if a Taser had not been available.

In Table 13 of Chapter 6 of this report (see page 102), we reported on the behaviour of people who had been subjected to Taser use. The table shows:

- 16 incidents (2.9%) involved a person threatening death or grievous bodily harm.
- 285 incidents (51.3%) involved a person assaulting or threatening to assault a person.
- 82 incidents (14.7%) involved a person threatening self-harm.

Our review also identified 160 people who were in possession of a weapon, most commonly a knife – see Table 14 (page 103).

The Taser Cam footage of these incidents allowed us to independently verify the volatile nature of many incidents attended by police, and better appreciate the challenges they face in making decisions about use of force options on the spur of the moment.

Not all of the incidents where the person had a weapon would have necessarily resulted in police using a firearm if the officer had not had the option of a Taser. However, there were occasions where the use of a Taser effectively resolved a high risk situation in circumstances where the use of a firearm might have otherwise become necessary.

Case study 30 is an example of an effective use of a Taser to resolve an incident where a person was threatening police with a knife. Without a Taser, the officer would most likely have drawn a firearm.

The Taser Cam footage for this case study has been released with this report and can be viewed on the Ombudsman's website.

### Case study 30 – Using a Taser instead of a firearm

Police attended a residence to speak to a man who had been involved in a motor vehicle accident. When the officers moved to the driveway, they saw that the man was armed with a large carving knife. They negotiated with the man for several minutes while waiting for more officers to arrive. The man refused to drop the knife and threatened to kill police if they did not kill him. After further police arrived, an officer drew a Taser to cover the man. When the man advanced towards police, the Taser was deployed in probe mode and the man was subdued and handcuffed.

The man was convicted of threatening injury to a person with intent to prevent investigation, negligent driving, driving whilst disqualified, and wilfully altering the concentration of alcohol. He was sentenced to 18 months imprisonment for threatening injury with intent, disqualified from driving for five years, and received a conviction for the other offences. His appeal against the severity of the sentence was dismissed.

#### Police assessment of the Taser use

The TRP found that the Taser use was justified and in accordance with the SOPs. A NSWPF good work report has been submitted recommending formal recognition of the officers' bravery.

#### Our assessment of the Taser use

In our view, it is clear that violent confrontation was imminent. It is also positive to note that even though the man was armed with a knife and verbally threatening police, the officers attempted to de-escalate the situation by negotiating with him while waiting for more officers to arrive.

In Case study 31, police used a Taser to prevent a serious assault continuing.

The Taser Cam footage for this case study has been released with this report and can be viewed on the Ombudsman's website.

### Case study 31 – Using a Taser to stop a serious assault

Police were called to a group home after a report that an intoxicated man was assaulting another male (the victim). Both the man and the victim had intellectual disabilities. The officers saw the man and the victim through the bedroom window and tried to communicate with the man, who told them to go away. The officers tried to gain entry through the bedroom door, but the door was slammed shut and locked. When the man picked up a metal dumbbell bar and walked towards police, one of the officers drew his Taser. The man then turned around and struck the victim with the dumbbell bar repeatedly. The Taser probes were discharged, causing the man to fall on top of the victim. However, the man then attempted to stand up and strike the victim with the dumbbell bar again. Police administered another five second Taser cycle and the man was subdued and handcuffed.

Police applied for an urgent Apprehended Violence Order on behalf of the victim. The man was charged with assault occasioning actual bodily harm, causing grievous bodily harm with intent, and recklessly causing grievous bodily harm. The latter two charges were withdrawn, and the man was convicted of the offence of assault occasioning actual bodily harm. He was sentenced to 20 months imprisonment with a non-parole period of 11 months.

#### Police assessment of the Taser use

The TRP found that the deployment of the Taser was justified and in accordance with the Taser SOPs.

#### Our assessment of the Taser use

This case study illustrates the types of circumstances where both the initial Taser use and the subsequent Taser cycle were appropriate and good policing. The Taser Cam footage clearly shows that when the Taser was first armed, the man was assaulting the victim and the use of the Taser was necessary to stop the assault. After the first Taser cycle ended, the man began to stir and verbally threatened to kill the victim. Since police had not yet been able to gain entry to the bedroom and the victim was in danger of being further assaulted, the second Taser cycle was also justified.

Our overall assessment of the use of Tasers as an alternative to lethal force is that we are satisfied that issuing them to general duties police will reduce the occasions on which police might otherwise use a firearm. Having said that, it is important to stress that the majority of incidents that we reviewed where police were faced with a violent confrontation did not constitute situations where police were likely to have used a firearm if an officer did not have a Taser. This is because the threshold for use of a Taser is substantially lower than that of a firearm – and, in practice, Tasers are used as an alternative to or with non-lethal force options such as Oleoresin Capsicum (OC) spray, batons and weaponless control techniques.

It is important to note that we are unable to determine where Tasers have had an impact on either firearm display or discharge. This is because the use of force data collected before the rollout of Tasers is unreliable as the recording of use of force was not mandatory. The use of force data collected since the introduction of mandatory requirements show use of firearms to be consistent over time.

### 9.1.1 Interpreting the data – some limitations

We asked the NSWPF to give us information about use of force more generally – to provide a quantitative assessment of the impact of the use of Tasers on the rate at which police draw and discharge their firearms and use other tactical options.

The change from voluntary to mandatory recording of use of force in the Computerised Operational Policing System (COPS) started in late 2008 and has been implemented over time. This change has resulted in a significant increase in data capture about use of force, notable from mid-2009. It also means that data about use of force before 2009 does not accurately reflect the frequency and types of force used, and therefore cannot be relied upon in an analysis of use of force trends.

The first phase of the Taser rollout occurred about the same time as the NSWPF began introducing mandatory use of force recording, and it took some time for those recording practices to be bedded down. It is likely that the recording practices were well established by the time of the second phase Taser rollout in December 2009.

These changes impose significant limitations on the use of force data before and during Phase 1 of the Taser rollout. This prevents us from giving an accurate picture of the use of other forms of force such as firearms and OC spray before Tasers were introduced. We therefore cannot fully assess the impact of the introduction of Tasers on use of those other options.

However we can look at the impact on other use of force options once Tasers were introduced. This data is presented below, with comments from police about their use of the different options.

### 9.1.2 Tasers and other use of force options

In this section, we examine the use of Tasers for the years 2009–10 and 2010–11 compared to the other use of force options such as firearms, OC spray, batons and weaponless control.

OC spray was introduced in 1998 as a new tactical option for all police officers. The criteria for use of OC spray are similar to those of Tasers:

*Use defensive sprays only [for]:*

- *protection of human life,*
- *a less-lethal option for controlling people, where violent resistance or confrontation occurs (or is likely to occur),*
- *protection against animals.<sup>1</sup>*

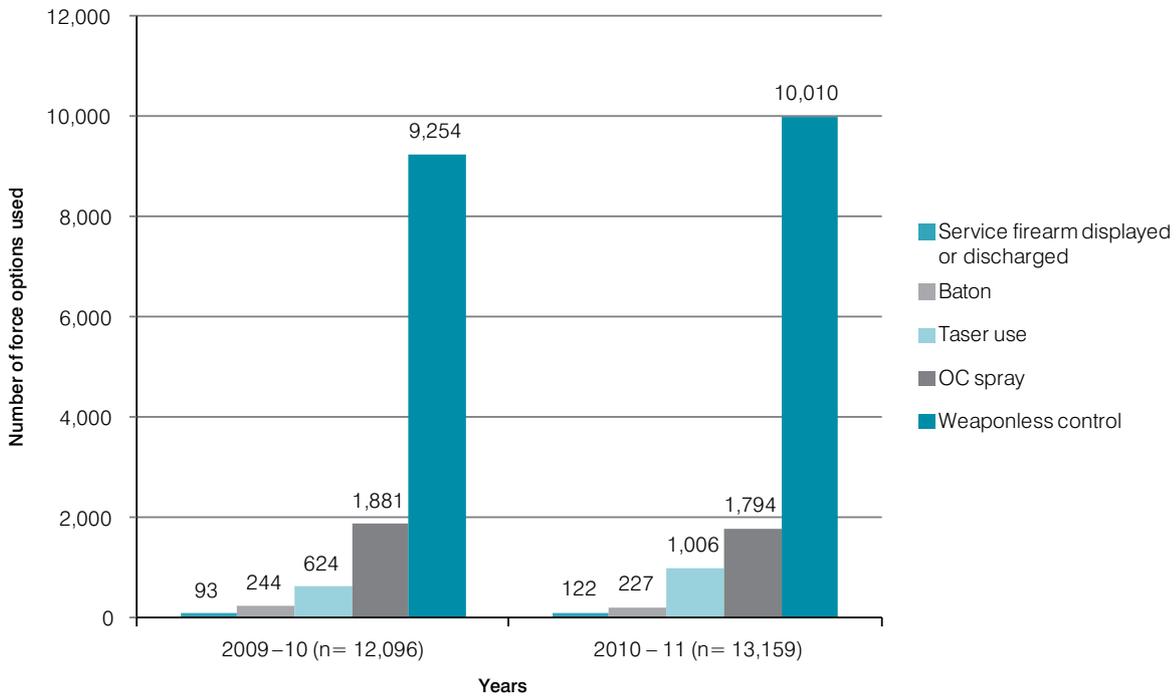
The *NSW Police Force Handbook* states that officers may use their baton ‘if in danger of being overpowered or to protect yourself or others from injury’.<sup>2</sup>

Weaponless control includes defensive kick, defensive strike/punch, knife defence, take downs, ground wrestle, check/re-direction drill, arm restraint/wristlock, hand-to-hand combat and other weaponless control techniques.

We looked at the COPS data on total use of force incidents for each of the years 2009–10 and 2010–11 and found that there was an 8% increase in recorded use of force incidents – from 12,096 incidents in 2009–10 to 13,159 incidents in 2010–11.

Figure. 13 shows the types of use of force options recorded for each of those years.

**Figure. 13: Types of use of force: 2009–10 to 10–11**



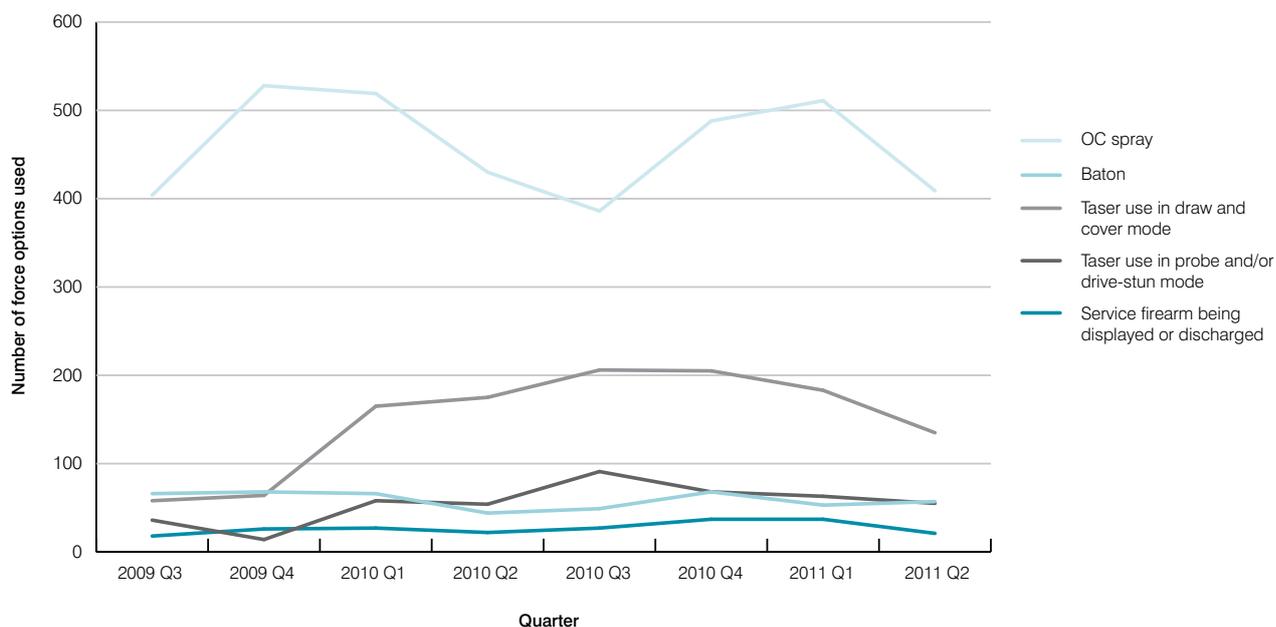
**Source:** COPS data provided by the NSWPF.

Key points to note are:

- Firearms, Tasers, OC spray and batons account for a relatively small proportion of uses of force in each year. The vast majority of the uses of force recorded are weaponless control.
- OC spray is the next most frequently recorded use of force and it decreased marginally from 1,881 to 1,794 over the two year period.
- Taser use increased from 624 in 2009 to 1,006 in 2010–11. This increase largely reflects the fact that Tasers were only available to a limited number of police officers in Phase 1 and the rollout to all general duties police did not start until December 2009. An analysis of quarterly trends in use are shown in Figure. 14.
- Baton use was stable, with 244 recorded uses in 2009–10 and 227 in 2010–11.
- Recorded use of firearms, including both firearm discharged and firearm displayed, is very low and increased from only 93 in 2009–10 to 122 in 2010–11. This was firearm displayed in most cases.
- Weaponless control increased across the period.

Figure. 14 provides a more detailed breakdown of the main uses of force we are looking at compared to Taser use. It presents quarterly data on the recorded use of firearms discharged, firearms displayed, Taser in probe and/or drive-stun mode, Taser in draw and cover mode, OC spray and batons.

Table. 18 shows the raw numbers from Figure.14 in table format and by quarter, and also includes the use of 'weaponless control'.

**Figure 14:** Selected types of use of force, by quarter: 2009–10 to 2010–11

Source: COPS data provided by the NSWPF.

**Table 18:** Selected types of use of force by quarter: 2009–10 to 2010–11

Tactical option used	2009 Q3	2009 Q4	2010 Q1	2010 Q2	2010 Q3	2010 Q4	2011 Q1	2011 Q2	Total
Weaponless control	2,115	2,578	2,470	2,091	2,261	2,747	2,641	2,361	19,264
Baton	66	68	66	44	49	68	53	57	471
OC spray	404	528	519	430	386	488	511	409	3,675
Taser use in draw and cover mode	58	64	165	175	206	205	183	135	1,191
Taser use in probe or drive-stun mode	36	14	58	54	91	68	63	55	439
Service firearm displayed or discharged	18	26	27	22	27	37	37	21	215
<b>Total</b>	<b>2,697</b>	<b>3,278</b>	<b>3,305</b>	<b>2,816</b>	<b>3,020</b>	<b>3,613</b>	<b>3,488</b>	<b>3,038</b>	<b>25,255</b>

Source: COPS data provided by the NSWPF.

Key points to note are:

- OC spray was the 'weapon' most frequently used by police over the period, with recorded uses ranging from a high of 528 in the fourth quarter of 2009 to a low of 386 for the third quarter of 2010.
- Tasers have been the second most frequently recorded use of force (other than weaponless control) since they were introduced to all general duties officers from the end of 2009. However, most of the recorded Taser uses have been in draw and cover mode. The recorded uses in draw and cover mode peaked at just over 200 (205 and 206 respectively) in the last two quarters of 2010 before declining to 135 in the second quarter of 2011.
- The use of firearms remains relatively low.

### 9.1.3 Comments from police officers on the use of force options

During our focus groups, some general duties officers commented that they preferred Taser to OC spray. This was because OC spray may lead to officer contamination, whereas Taser does not have this disadvantage.

*I'd use a Taser before spraying someone.*

*It's a better option 'cause ... police always get contaminated with spray.*

*I suppose one of the pros [of Tasers] is you can isolate one person. With OC spray, you end up getting a whole room full of people, including your partner. Everyone else gets affected by it and you've still got to end up fighting them a lot of the times. Taser – you just [get] the one person.<sup>3</sup>*

Some officers also commented that the effects of Taser on the subject were shorter lived than OC spray:

*And with Taser it only hurts them for five seconds ... the spray goes on for 40 minutes.<sup>4</sup>*

Comments from officers we spoke with during focus groups indicated that batons were rarely used since the introduction of other options, including OC spray. Some said that the need to be close to the subject to effect a baton strike was a disincentive to using it, commenting:

*We had to get too close with a baton ... someone's armed with a knife, you've got to get way too close. I'm going home at the end of the day.<sup>5</sup>*

*Others commented that the baton represented more significant force than other options like Taser or OC spray, commenting 'it's a pretty violent thing' and it 'leaves bruises, whilst the Taser, like, it doesn't leave a mark. Well maybe a small burn'.<sup>6</sup>*

We also noted in Chapter 6 a downward trend in Taser usage by the NSWPF since December 2010. They have not provided an explanation for this downward trend, but seasonal variations in use of force may offer a partial explanation – as use of force incidents are typically more prevalent in December and January. It may also be that officers are not choosing to use this tactical option as frequently as when it was first introduced.

Some officers expressed the view that the amount of paperwork and scrutiny involved in reporting Taser use may be a disincentive to using that tactical option. For example, they commented that:

*... you hear a lot of comments too that some people won't pull it out because of the paperwork they've got to do as soon as they arm them ...*

*... It is silly that you can draw a firearm and point it at someone and ... don't have to do anything, but because it – no offence, because of things like this and the public about Tasers, you pull it out and you're behind a computer for two hours. And you don't even use it, you know. Like, but you can do a – pull out a 40-cal Glock.<sup>7</sup>*

*... I know, it does scare a lot of people off using it. If I get this [Taser] out I'm gonna be in the station for the next two hours doing paperwork.<sup>8</sup>*

Another possible explanation for the drop in use could be public familiarity with the use of Tasers by police officers. During our focus groups, some officers commented that members of the public appear to be more compliant when they see an officer wearing a Taser, without the officer having to draw it:

*... on the initial training you're like, okay it's just another tool. But when you get out there, like you said, people know it. You don't even have to take it out, it's bright yellow, it's in their face, they're like, oh Taser, yep okay what do you want me to do?<sup>9</sup>*

Some also said that as police gain more operational experience in using Tasers they have formed the view that it may not always be effective. When asked about the advice they would give a probationary constable about Tasers, some officers in the focus groups stated that 'it's not the be-all and end-all' and it 'doesn't provide a solution to everything'.<sup>10</sup>

In Chapter 8 we discussed the limitations faced by the TEC in monitoring and evaluating the impact of the use of Tasers on the frequency that police use other tactical options, especially firearms and OC spray. The further development of a use of force register by the NSWPF is essential for an ongoing evaluation of these issues.

## 9.2 Have Tasers reduced the number of assaults on, or injuries to, NSW police officers?

In this section, we discuss our findings relating to the impact of introducing Tasers to general duties police in NSW on the number of assaults on, or injuries to, police. Supporters of Tasers have claimed a reduction in the rates of assault and injury – because of both the improved effectiveness of police who carry Tasers in resolving incidents without injury and the general deterrent effect of Tasers.

### 9.2.1 Recorded incidents of assault against police

In this section, we present information provided by the NSW Bureau of Crime Statistics and Research (BOCSAR) – from COPS data given to them by the NSWPF – to see if there is any evidence to support the claims about a reduction in assaults on police.

Incidents of assault against police are recorded in COPS by the officers involved in the incident. Not every recorded incident will result in an injury claim being made by the assaulted officer or in legal action being taken by police against the alleged assailant. The number of recorded incidents of assault against police are generally much higher than injury claim numbers. We examine the impact of Tasers on injury to police later in this chapter.

Incident types are categories used in COPS to describe every type of criminal or non-criminal activity of interest to police. The information linked to a specific incident includes details on what happened, how and where it happened, and who and what was involved.<sup>11</sup> The NSWPF and BOCSAR use the details to measure crime trends – such as the number of times an incident of ‘assault police’ is recorded in a period.

Data about assaults against police are recorded using the incident category of ‘Resist/Hinder/Assault Officer’ with further classifications of ‘Assault Officer’ and ‘Resist/Hinder Officer’.<sup>12</sup> The incident category of Assault Officer is used for any ‘assault committed against a police officer, justice official, prison officer, etc, in connection with their role and includes intimidation where the threat is of immediate violence’.<sup>13</sup> The incident category Resist/Hinder Officer is used for an ‘act with the intent of resisting or hindering the directions of a police officer or other justice official in the conduct of their lawful duty’.<sup>14</sup>

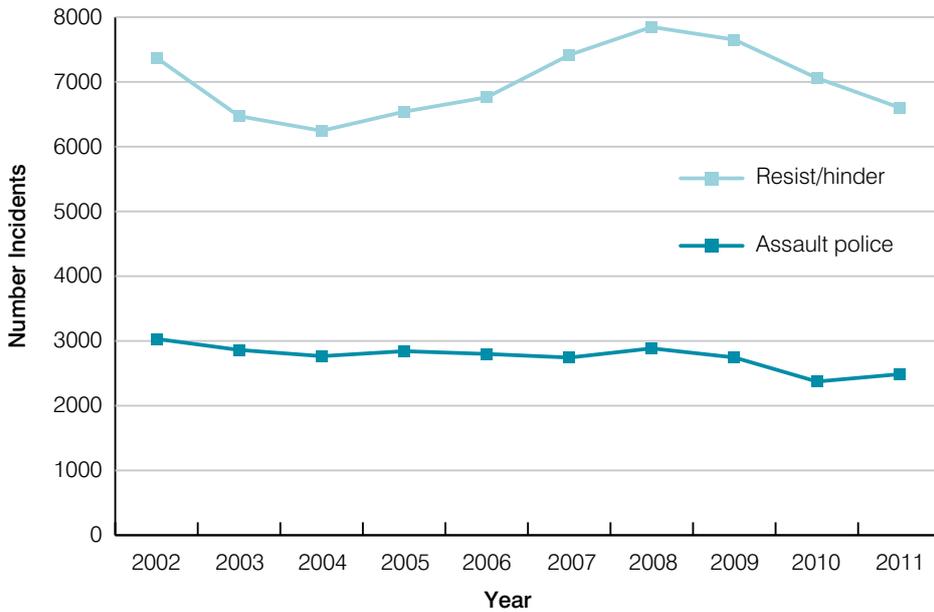
Table. 19 and Figure. 15 are based on crime trends data collected by BOCSAR that measure recorded incidents in a variety of offence categories.

**Table. 19: Recorded incidents in COPS of assault police and resist/hinder officer: 2002–2011**

Year	Recorded incidents in COPS	
	Assault police	Resist or hinder officer
2002	3031	7372
2003	2861	6471
2004	2765	6245
2005	2842	6540
2006	2799	6762
2007	2743	7415
2008	2885	7848
2009	2745	7652
2010	2373	7060
2011	2486	6604

**Source:** BOCSAR (reference 2012-428100-3).

**Figure. 15:** Number of recorded incidents involving assault police and hinder/resist officer: 2002 – 2011



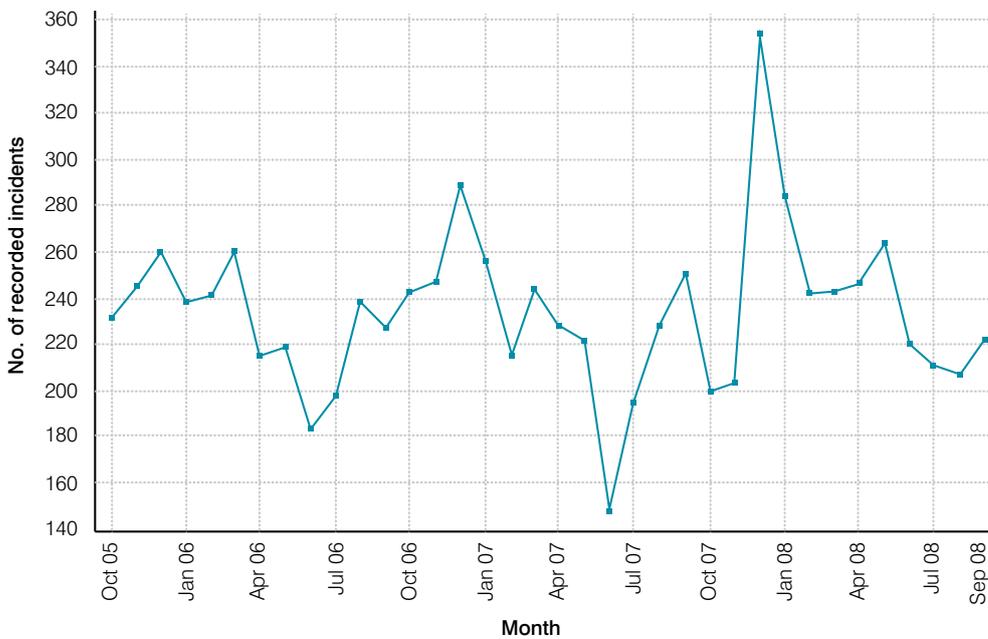
Source: BOCSAR (reference 2012-425909).

Using BOCSAR’s online crime trends tool, the following trends in the incidents of ‘assault police’ and ‘resist or hinder officer’ recorded on COPS can be seen.<sup>15</sup>

For the three years up to the Phase 1 rollout of Tasers (October 2005 to September 2008), the trend for both ‘assault police’ and ‘resist or hinder officer’ was stable. There has been no statistically significant trend either up or down.

The graph for assaults is shown in Figure. 16.

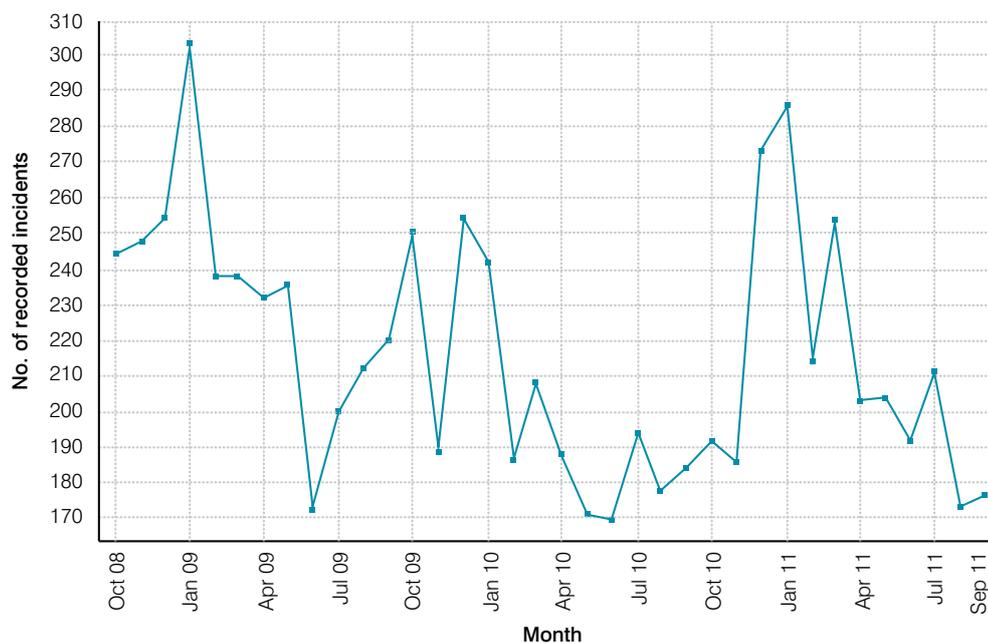
**Figure. 16:** Assault police (NSW): Oct 05 – Sept 08



Source: BOCSAR (reference 2012-425909).

For the three year period from October 2008 to September 2011, the BOCSAR data records a statistically significant downward trend in recorded incidents of ‘assault police’ – see Figure. 17. The average annual percentage change is -4.3%.

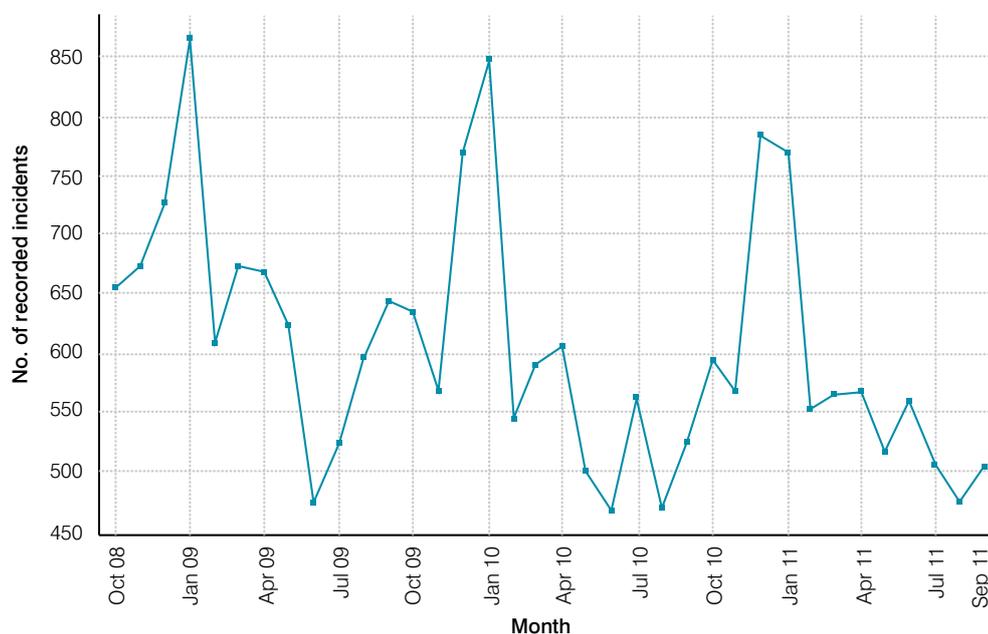
Figure 17: Assault police (NSW): Oct 08 – Sept 11



Source: BOCSAR (reference 2012-425909).

For the same three year period, the BOCSAR data records a statistically significant downward trend in recorded incidents of resist or hinder officer – see Figure 18. The average annual percentage change is -5.1%.

Figure 18: Resist or hinder police officer (NSW): Oct 08 – Sept 11



Source: BOCSAR (reference 2012-422909).

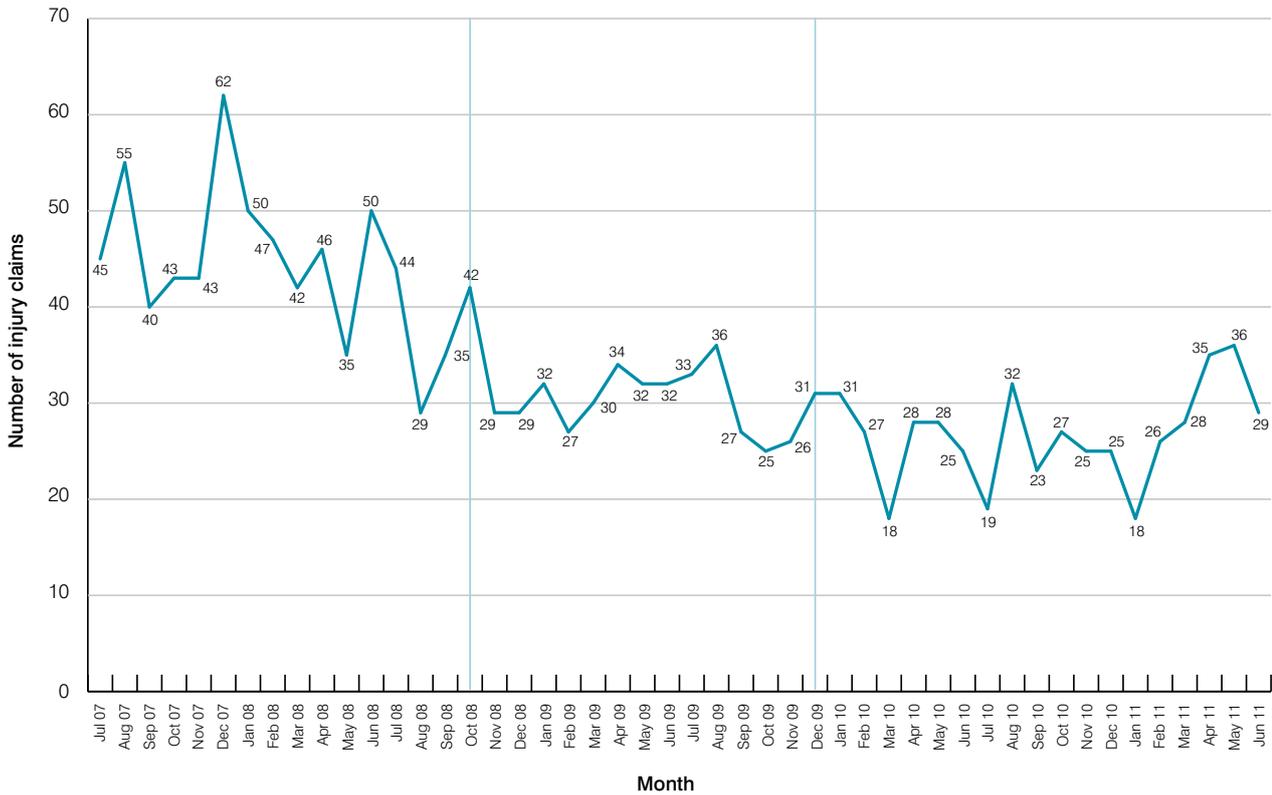
The decrease in both recorded incidents of 'assault police' and 'resist or hinder police officer' coincides with the introduction of Tasers in October 2008.

### 9.2.2 Recorded injury claims by NSW police officers

In this section, we explore whether introducing Tasers has had any impact on the number of injuries suffered by police. We present information provided to us by the NSWPF about injuries arising from assaults to police officers that resulted in workers compensation claims.

Figure. 19 shows the number of injury claims arising from assault made by NSWPF officers between 2007 and 2011.

**Figure. 19:** Injury to NSWPF employees arising from assaults: Jul 07 – Jun 11



Source: Risk Insite 24 November 2011 provided by the NSWPF.

The data suggests that there has been an ongoing downward trend in the number of injuries to police caused by assaults. The trend starts before Tasers are introduced – which suggests that factors other than the introduction of Tasers may have initiated and influenced the downward trend. It is also clear that the average number of claims per month for the period following the introduction of Tasers is notably lower than for the preceding period (means = 28.6 and 44.4 respectively).

The following data limitations about injury claims apply to Figure. 19:

- Online reporting of injury claims was introduced in 2007.
- Data prior to 2008 is not an accurate reflection of the number of injuries sustained by NSWPF employees.
- It is currently not possible for the NSWPF to accurately limit data relating to injuries claims to sworn staff in field operations, and the data we have been given relates to all NSWPF employees. Because unsworn employees are unlikely to be involved in situations involving assault in the workplace, the numbers would be negligible.

### 9.2.3 Have Tasers contributed to a decline in the number of assaults on police and assault-related injuries suffered by police?

There is a statistically significant downward trend in the number of recorded incidents of 'assault police' or 'resist or hinder officer' coinciding with the introduction of Tasers to general duties police in NSW. There is a downward trend in the number of injury claims resulting from assaults on police during the period in which Tasers have been available to general duties police, suggesting that this trend started before Tasers were introduced in October 2008.

These results suggest that the use of Tasers appear to correlate to a reduction in the number of assaults and injury claims. However, it would be overly simplistic to conclude that Tasers alone have caused this reduction and a number of factors may have contributed to this result.

For example, crime trend analysis conducted by BOCSAR reveals that incidents of violent offences generally have been stable or reduced over the 60 months up to December 2010 across the state.<sup>16</sup> It may therefore be the case that police are attending a reduced number of incidents in which violent confrontation occurs – thereby reducing the number of assaults on police.

The data presented in Chapter 7 (page 141) indicating a reduction in the number of high risk incidents attended by specialist units may also be evidence of a reduction in violent crime. There are also other factors or confounding variables that may contribute to changes that have not yet been considered – for example, improvements in training and additional powers or authorities for alternatives to arrest. Further longitudinal data collection and analysis of other contributing factors is required before any definitive conclusions on cause can be made.

It is obviously pleasing to see that the number of assaults on and resulting injuries to police officers are reducing. A more definitive evaluation of the impact of Tasers and other tactical options on the incidence of injuries caused by assaults on police will require the NSWPF to improve their collection of information relating to injury and use of force.

## 9.3 Have Tasers been an effective tool for NSW police officers in resolving violent or potentially violent situations?

### 9.3.1 Operational ineffectiveness

An important measure of the effectiveness of Tasers is whether the weapon operates effectively to disable the person subjected to the Taser use. This measure is in part a reflection of the skill of the Taser operator, but is also determined by the technical limitations of the Taser in an operational context.

In our review we identified 48<sup>17</sup> incidents where the Taser operator reported that one or more of the Tasers used appeared to be ineffective – see Table 17 (page 106). The reasons recorded by police in COPS for the ineffective operation of Tasers included:

- 23 incidents where one or more probes missed or did not hold
- 9 incidents where the probes were too close together to cause NMI
- 8 incidents where the person was wearing heavy clothing that prevented the probes from causing NMI
- 1 incident where the Taser wire broke
- 7 incidents where the COPS record did not provide a clear explanation of why the Taser was ineffective.

Our analysis identified that in 25 of the 48 incidents police deployed additional cycles of a Taser in drive-stun mode or probe mode to resolve the incident. In the remaining 23 incidents, police used other tactical options – such as OC spray and weaponless control techniques to resolve the incident.

### 9.3.2 Tasers as a tool to manage or deter violent confrontation

Our review allowed us to assess the claim that Tasers help police to de-escalate confrontation when used in draw and cover mode. At first glance, the data appears to support the claim. The majority of the incidents were resolved without the need to use the Taser in probe or drive-stun mode. For example:

- In 416 of the 556 incidents (75%), the Taser was used in draw and cover mode only.
- For the 160 Taser subjects who had a weapon, 119 of them (74%) were subjected to Taser use in draw and cover mode only.

These figures need to be qualified by other results of our review – outlined in Chapter 7. Firstly, we found that the use of a Taser in 53 draw and cover incidents appeared to breach section 4 (criteria for use) of the Taser SOPs. In some of these cases, the person subjected to the Taser appeared to be compliant and it is not clear why the Taser was needed or authorised.

The second qualification is that police may use other tactical options before, simultaneously with and after the use of a Taser in draw and cover mode. These additional tactical options may contribute to resolving the incident.

For example, for the 416 draw and cover incidents, OC spray was used:

- in 22 incidents before use of the Taser
- in 20 incidents during the use of the Taser
- in 6 incidents after the use of the Taser.

For the 416 draw and cover incidents, a baton was used:

- in two incidents before use of the Taser
- in three incidents during the use of the Taser
- in three incidents after the use of the Taser.

Our observations of NSWPF Taser training and the 556 incidents gave us an understanding that the effectiveness of Tasers as a deterrent is strongly influenced by the effectiveness of police in using other tactical options after arming the Taser.

Police backup officers perform an essential support role to the Taser operator to secure a person who has been subjected to Taser use. In Chapter 7, we discussed how the role of the backup officer is essential to reducing the incidence of multiple use of Tasers. The effectiveness of Tasers in resolving violent confrontation depends on the extent to which the backup officer is effective in securing the person.

In addition, as stipulated in the Tactical Options Model, communication skills are emphasised as a key technique for de-escalating an incident. Case study 32 illustrates the importance of effective communications skills in managing a person who is threatening self-harm. The use of a Taser in draw and cover mode provides the officer with a degree of safety and an opportunity to negotiate with a person suffering from a mental illness.

The Taser Cam footage for this case study has been released with this report and can be viewed on the Ombudsman's website.

#### Case study 32 – Taser helps prevent a violent confrontation

Officers were requested to help ambulance officers in scheduling a woman who had a history of mental illness and was threatening self-harm. When police spoke to the woman outside her home, she told them that she wanted to kill herself by overdose. Police advised the woman that she would have to be taken to the hospital for scheduling. As police followed the woman into her home, she produced a large kitchen knife and sat down on a chair. An officer drew his Taser and covered the woman.

Police had serious concerns that the woman might harm herself with the knife and a violent confrontation could have occurred – as she had harmed herself previously. While the woman kept the knife in her hand resting on her knee, the officer maintained an appropriate distance from her and then used his communication skills to talk the woman into putting the knife down – thus avoiding the need to fire the Taser. Police were then able to move in to secure the knife and help transport the woman to hospital.

#### Police assessment of the Taser use

The TRP found that the use of the Taser was appropriate and skilful, and that the Taser operator had used good clear verbal communications to resolve the situation. They recommended that an email be sent to the officers involved for their good work.

In our view, this case study is an example of a Taser being used well – together with the police officer's communication skills to de-escalate and resolve the situation. It provides a contrast to the communication techniques the officer used in Case study 11 (see page 126) which, in our view, resulted in an unreasonable decision to deploy the Taser in probe mode.

#### **Our assessment of the Taser use**

We agreed with the TRP's assessment that the officer's use of verbal communications was particularly skilful. In our view, his skills were effective because he:

- used an appropriate tone of voice that managed to de-escalate the situation
- referred to the woman by name
- displayed appropriate patience in the circumstances
- tried to engage with how the woman was feeling and behaving, rather than simply repeating a direction
- explained why police were there, why they had armed the Taser, and what needed to happen before the Taser was re-holstered.

We are satisfied that Tasers provide police with an important additional tactical option for managing incidents involving violent and potentially violent situations. However, the effectiveness of Tasers is clearly linked to the skills and knowledge of the officers in applying other tactical options that are essential to resolving these incidents.

## **9.4 Have there been deaths associated with Taser use by NSW police officers?**

Our investigation started shortly after the death of Mr Ba Think Le. During our investigation there was a further incident where a member of the public died after the use of a Taser by NSW police officers.

- Mr Ba Think Le

In October 2010, police officers attended a residential unit in Sefton after a woman alleged that she was sexually assaulted by Mr Ba Think Le. When two police officers were confronted by Mr Le, who was holding two knives, one of the officers deployed the Taser probes to Mr Le's chest from a distance of about two metres. Mr Le fell forward onto the road. He then lay facing forward, partly on his right shoulder, and was handcuffed behind his back. When it was noticed that Mr Le was unconscious, police and ambulance officers attempted to revive him but were unsuccessful. A critical incident investigation was conducted by the NSWPF.<sup>18</sup>

On 24 November 2011, the NSW State Coroner found that Mr Le died after being struck by a Taser in the course of police operations, the cause of his death being unable to be determined. She heard evidence that:

- Mr Le was Hepatitis C positive, had drugs in his system and a high blood concentration of alcohol.
- There was a possibility that Mr Le had had previous cardiac problems, but this could not be confirmed by the autopsy.
- There was a large amount of food in Mr Le's gut which aspirated, and might have resulted in some choking.

The Coroner determined that all police officers involved had behaved appropriately.<sup>19</sup>

- Mr Roberto Laudisio Curti

In March 2012, a man died after being pursued by several officers and being subjected to multiple Taser use. The pursuit occurred following an alleged incident at a Sydney city convenience store. This matter is currently the subject of a coronial inquest.

Although our investigation does not contribute to the medical debate about whether Taser can be a direct cause of death, the experience in NSW and other jurisdictions of Australia should be sufficient to recognise this is a risk that must at the very least be considered when formulating any guidelines on the use of Tasers. Taser International have pointed to high risk practices and higher risk members of the community, and procedures on Taser use should restrict or prohibit Taser use in these circumstances. A key factor relating to the risk of death is the multiple use of a Taser. In Chapters 7 and 8 we discuss this issue and make recommendations to strengthen the threshold for using Tasers and the NSWPF internal review process to ensure that multiple use of Tasers is limited and subject to increased scrutiny given this higher risk.

## 9.5 Have serious injuries resulted from Taser use by NSW police officers?

One of the arguments against Taser use is the risk of serious injury to a person subjected to Taser use. The risk of serious injury can occur in two contexts. It may be caused:

- directly by the Taser – such as the probe penetrating an eye
- during the Taser incident – such as a person injuring themselves when falling down after NMI.

We also considered the data on injuries associated with Taser incidents more generally. We viewed information in COPS and Sitreps about the injuries sustained by subjects of Taser use. The injuries recorded are not necessarily caused by Taser – they may have been caused before or after the deployment of a Taser. There were also limitations on the accuracy of the injury data recorded by police as it was not mandatory to record these details in the COPS Event or Taser Sitrep.

The current version of the Taser Sitrep released in December 2010 includes check boxes for police to record whether a police officer or a subject of Taser use suffered an injury during a Taser incident.

The issue of a risk of serious injury as a direct result of the use of a Taser only arises when the Taser is used in probe or drive-stun mode. In our examination of individual Taser use incidents (556 between June 2010 and November 2010), we found 142 people subjected to Taser in probe and/or drive-stun mode. We did not find any incident involving a serious injury as a direct result of the use of a Taser.

We found one incident involving a serious injury as a direct result of being the subject of a Taser in probe mode that occurred outside the period of our sample of 556 incidents.

### Case study 33 – Injury from a Taser

A 73 year old man required surgery to remove a Taser barb that penetrated his neck. Police attended a home in western Sydney in response to a 000 call and found him threatening to stab his wife with a knife. Police records indicate that the man had been under treatment for a mental illness.

When police arrived, they saw the man holding the knife above his head and making a stabbing motion downwards towards his wife. She was holding her arms above her head blocking the knife. Police told the man to put the knife down and told the man's wife to move away. After the man's wife moved away and stood behind police, an officer deployed the Taser – with one probe striking the man on the shoulder and a second probe passing between his legs. This had a minor effect on the man.

Police tried to negotiate with the man but he refused to put down the knife. He then moved in the direction of the police and the victim, with the knife raised and said *'No I have to kill her'*. Police deployed the Taser a second time – one Taser barb made contact with the man's abdomen and the second lodged in his neck. The man fell to the ground and police were able to remove the knife and secure him. Ambulance officers treated the man at the scene and conveyed him to hospital where he required surgery to remove the barb from his neck. The COPS record states that police inquired about the man's condition at the hospital and were told that he was in a stable condition.

Considering the descriptions of injuries recorded against people subjected to Taser use within the sample period (June 10 – November 10), we assessed that 13 (6.7%) sustained a minor injury directly associated to the Taser use. Under our classification of the police records, we assessed Taser-related injuries as one or more of the following:

- puncture mark from Taser
- Taser burn
- welt from Taser
- laceration or cut from Taser.

Police records indicate that 10 of the 13 people who sustained a Taser-related injury were subjected to multiple Taser cycles in probe mode, or both probe and drive-stun applications.

### 9.5.1 Injuries arising during incidents in which a Taser was used

In this section we discuss injuries that occurred during an incident involving a Taser. In all these incidents the injury did not result from the Taser use.

In the sample period, there were 620 people subjected to Taser use. Those incidents span all of the different kinds of Taser use – draw and cover, probes, drive-stun or multiple/continued Taser uses. Table. 20 and Table. 21 present the results of our analysis of injuries that occurred during the incident but which did not result directly from Taser use.

We classified the injuries arising from the 556 incidents as either 'serious or potentially serious' or 'minor'.

We assessed serious or potentially serious injuries as one or more of the following:

- Broken bone or fracture
- Chest pain
- Internal injury
- Joint dislocation
- Vision problem
- Trauma
- Burn
- Respiratory problem
- Fall

We assessed minor injuries as one or more of the following:

- Minor injury – type not specified
- Bruising
- Superficial wound
- Laceration
- Self-inflicted injury
- Other
- Red mark
- Blister
- Grazing
- Cut
- Police dog bite
- Injured – not specified
- Swelling
- Strain
- Abrasion
- Bleeding
- OC contamination

**Table. 20: Whether people subjected to Taser use have sustained injury during the incident (but not directly from Taser use): Jun 10 – Nov 10**

Injury sustained by people subjected to Taser use	Number of people subjected to Taser use	Percentage of people injured	Percentage of people subjected to Taser use
No injury	425	n/a	68.5%
Minor to medium level of injury	157	80.5%	25.3%
Serious or potentially serious injury	38	19.5%	6.1%
<b>Total</b>	<b>620</b>	<b>100.0%</b>	<b>100.0%</b>

**Source:** NSWPF records provided to or accessed by the NSW Ombudsman.

**Note:** The end column does not equal 100% due to rounding.

The key information from this table is that 68.5% of people subjected to a Taser during an incident had no injury following the incident.

In cases where people were identified as having suffered a serious or potentially serious injury (38) during the incident (but not directly from the Taser use), the incident involved Taser use as follows:

- 15 incidents where the Taser was used in probe mode
- 13 incidents where the Taser was used multiple/continued use times
- 9 incidents where the Taser was used in draw and cover mode
- 1 incident where the Taser was used in drive-stun mode.

As Table. 21 shows, people who were subjected to a single Taser use in probe mode and multiple/continued Taser use in probe and/or drive-stun mode during an incident were much more likely to be injured – 64.7% of people who were subjected to a single Taser use in probe mode were injured, and over half of people (57.1%) who were subjected to multiple/continued Taser use. This is probably not surprising given the circumstances surrounding an incident in which an officer is more likely to use a Taser in probe mode or multiple times. It should also be noted that, although the most people were injured during an incident where a Taser was used in draw and cover mode (114), this is the most frequent mode of use.

**Table 21:** Type of Taser usage received by people who were injured during the Taser incident (but not directly from Taser use): Jun 10 – Nov 10

Type of Taser usage	Total number of people who received this type of Taser usage	Number of people injured	Percentage of total number of people who received this type of Taser usage	Percentage of total number of people injured
Draw and cover only	478	114	23.8%	58.5%
Single probe mode	68	44	64.7%	22.6%
Single drive-stun mode	11	1	9.1%	0.5%
Multiple/continued use	63	36	57.1%	18.5%
<b>Total</b>	<b>620</b>	<b>195</b>	<b>*31.5%</b>	<b>100.0%</b>

**Source:** NSWPF records provided to or accessed by the NSW Ombudsman.

**Notes:** \*Does not equal 100% because this is the total number of people injured (195) as a percentage of total Taser usage (620). The end column does not equal 100% due to rounding.

## 9.6 Is there evidence of mission creep or serious Taser misuse by NSW police officers?

Mission creep has been defined as the tendency over time for police to use Tasers in situations for which they were not intended. It also includes using Tasers earlier on in an encounter with a person and in situations where there is no risk of serious injury or a lesser use of force option would have been as effective. Related to 'mission creep' is the risk that police will use Tasers for compliance only, in the absence of a sufficient threat of harm or injury to justify the use.

In our 2008 report, we noted the tendency in many jurisdictions for Tasers to be increasingly used on people who were uncooperative or noncompliant – but not aggressive or threatening – and we emphasised the importance of having strict guidelines and accountability measure in place to ensure that this mission creep does not occur.

In Chapter 7 we looked for any evidence that Tasers were being used unreasonably for compliance only. We assessed 60 of the 556 incidents, or 11%, as involving the use of a Taser for compliance only. Of the 60 cases, 41 or 7 % were in draw and cover mode. In our discussion of these cases we noted that, in some of them, police made threats to use a Taser to gain compliance with instructions and used Tasers to get people to comply with move-on directions.

In Chapter 6 we presented data – including general trends in Taser usage – to see if there is an increasing frequency over time that would raise concerns that Tasers are being used more widely than intended.<sup>20</sup> We found that:

- There was an increased frequency of Taser use after the Phase 2 rollout to all general duties officers on 1 December 2009. This increase is primarily due to the increased numbers of Tasers issued to police.
- In the second quarter of 2010, there was an increase in the frequency of Taser use – reaching a peak of 302 incidents in the third quarter. From the fourth quarter of 2010, the frequency declined each quarter to a low of 161 incidents in the third quarter of 2011.

The frequency of Taser incidents has decreased rather than increased over time. Although we are unable to independently determine the rate of unauthorised use over the whole period, it is reasonable to assume that a decreasing frequency of Taser use suggests that mission creep is unlikely to be occurring.

In Chapter 7, we also discussed our concerns that any lowering of the threshold for use in draw and cover mode would increase the risk of mission creep. We examined more closely the trend in Taser usage in draw and cover mode.

Data presented in Figure 5 of Chapter 6 indicates that the frequency of draw and cover incidents also peaked in the third quarter of 2010 at 215, and has since decreased to 111 incidents in the third quarter of 2011. Draw and cover incidents as a proportion of the total number of Taser incidents have also remained relatively stable. For the first four quarters after the Phase 2 rollout, the average proportion of Taser uses that were in draw and cover mode was 76% – and this dropped to an average of 73% in the four quarters of 2011.

Our detailed review of Taser incidents during the sample period found that in around 11% of cases where a Taser was used it was for compliance only. Of those, the Taser was only drawn and not discharged almost 70% of the time. We believe Tasers should not be used for this purpose.

Our evaluation of the data suggests that the use of Tasers for this purpose is not increasing – because Taser use in general is declining over time.

### 9.6.1 Serious misuse of Tasers

In our 2008 report, we identified public concerns about the potential for Tasers to be used in an unreasonable or excessive manner including:

- as an instrument of torture and ill-treatment on people being detained
- where it is not authorised, including excessive force
- unjustified continued or multiple use
- discharge of a Taser on a person who has been effectively restrained.

On the basis of the information from our current investigation, we are now able to assess any level of serious misuse by NSW general duties police since the rollout in October 2008.

We found a high level of compliance by police with the criteria set out in the Taser SOPs.

- We found 27 incidents out of 556 (or 4.9%) which raised concerns that the use of the Taser was an unreasonable use of force. We believe that police breached the criteria for use in these incidents. Twenty one of them involved the Taser being discharged multiple times, and in the other nine the Taser was used in probe mode.
- Two incidents were the subject of court proceedings, *R v Ali Alkan* and *R v Bugmy*, in which the court found that police used a Taser unlawfully as it was contrary to ss. 230–231 of LEPPA.
- Although we regard the remaining 25 incidents where a Taser was discharged in breach of the Taser SOPs as serious, we found no incidents where the Taser had been used to torture, assault or hurt the subject in a way that would warrant a criminal investigation or the prosecution of the officer involved.
- We separately examined the use of Tasers in drive-stun mode only. In this mode, muscle disruption does not occur and officers rely on pain to obtain a person's submission or compliance. For that reason, it involves a distinct risk of misuse. However, as noted in Chapter 6, drive-stun only mode represents a very low proportion of the Taser uses (3.6%) – and we found only one incident where we believe there was a breach of the criteria for use (see Chapter 7).
- In Chapter 7 we also discussed two incidents that in our view involved an unreasonable use of a Taser on a person who was in handcuffs.

As discussed in Chapters 5 and 7, the NSWPF have taken steps to reduce the risk of unjustified multiple use. We have also made recommendations to improve the accountability system for incidents involving multiple use of Tasers.

## Endnotes

1. NSW Police Force, *NSW Police Force Handbook*, 30 May 2012, p. 37.
2. *ibid.*, p. 35.
3. Participant's comments, focus group 2 with NSW Police Force general duties officers, September 2011.
4. *ibid.*
5. *ibid.*
6. *ibid.*
7. *ibid.*
8. Participant's comments, focus group 1 with NSW Police Force general duties officers, September 2011.
9. *ibid.*
10. Participant's comments, focus group 2 with NSW Police Force general duties officers, September 2010.
11. NSW Police Force, *Computerised Operational Policing System User Guide*, version 2.1, p. 16.
12. NSW Police Force, *COPS Incident Category and Further Classification Glossary*, July 2011, p. 24.
13. *ibid.*, p. 24.
14. *ibid.*, p. 24.
15. NSW Bureau of Crime Statistics and Research, *Crime Trends* <[bocd.lawlink.nsw.gov.au/bocd/cmd/crimetrends/Init](http://bocd.lawlink.nsw.gov.au/bocd/cmd/crimetrends/Init)> accessed 10 August 2012.
16. Goh, D. and Moffatt, S., *NSW Recorded Crime Statistics 2010*, NSW Bureau of Crime Statistics and Research, 2011.
17. This number excludes five draw and cover incidents in which the officer failed to activate the Taser.
18. Summation and findings in the inquest into the death of Ba Thinh Le, 24 November 2011.
19. *ibid.*
20. We also presented data on Taser usage at the start of this chapter which was drawn from the use of force register. We used that data to compare Taser usage with other recorded use of force. As noted in Chapter 8, there are some limitations with the use of force register data. For this discussion, we are relying on the data from Chapter 6 which includes our own analysis of the COPS records and our recording of the use of force.

## Chapter 10. Conclusion

We initiated this investigation because of increasing public concern about Taser weapons and the significant increase in the number of Tasers in use by general duties police officers within the New South Wales Police Force (NSWPF). It was in the public interest for a comprehensive and independent examination to be undertaken to establish if the procedures for Taser use were adequate and being interpreted correctly, and if the review and accountability processes were well designed and effective.

In planning this investigation, we decided that a comprehensive and balanced methodology was required to ensure that all relevant matters were thoroughly considered before we reached any conclusions or made any recommendations.

The conclusions and recommendations in this report are therefore based on:

- the results of our review and analysis of 556 individual Taser incidents – how the Taser was used and how each use was internally reviewed by police
- the results of our analysis of data about 2,252 Taser incidents
- the results of our analysis of data relating to injury claims, weapons use and relevant crime trends
- our examination of police policies, procedures, training and other material relating to Taser use and the internal review process
- what police told us during focus groups and during the consultation process
- what we found in the literature and research on Taser use.

Our analysis of data provided the following picture of Taser use. Taser incidents were most likely to occur on a Sunday, between 8.00–11.59pm, in a private residence – and involve the use of a Taser in draw and cover mode. A Taser operator was likely to be male, between the ages of 35 and 39 years, at the rank of senior constable, and to have served in the NSWPF for 0–4 years. A Taser subject was likely to be male, aged between 18 and 24 years. He was likely to be behaving in an assaultive manner, but without a weapon, and affected by alcohol and/or drugs.

In most incidents, the Taser was used in conjunction with another tactical option. The majority of incidents were resolved and – in cases where a person was charged – the most common charge was for assault. The Taser was applied most often to the chest area, and a third of the people subjected to a Taser were suspected by police to have had, or to be suffering from, mental health issues.

We found a generally high level of compliance with the Taser Standard Operating Procedures (the Taser SOPs), and the Taser training to be of a high standard. We have concluded that Tasers provide general duties police with an effective tool for resolving incidents involving violent confrontation during which there is a risk of serious injury to police and/or members of the public.

We also found that the existing accountability framework – which includes the Taser Cam, training, the Taser SOPs, the Taser Review Panels and the Taser Executive Committee – is generally well designed and effective. This framework has made a significant contribution to the safe, effective and appropriate use of Tasers by police in NSW.

Notwithstanding these positive findings we did, however, identify 53 incidents where a Taser used in draw and cover mode was in breach of the Taser SOPs. We found 27 incidents where a Taser was discharged (either in probe or drive-stun mode) in breach of the criteria for use – including two cases where a court later found that police used a Taser in breach of police powers under LEPPRA. We found cases where the Taser use appeared unreasonable or excessive and increased the risk of injury to the police officer or the subject person. This included, for example, Tasers being used multiple times, used in drive-stun mode, used against a person in handcuffs or a person fleeing, or used in high risk circumstances.

Our examination of the Taser SOPs and training material, and the operation of the accountability and internal review processes, identified a number of areas or issues where improvement is necessary. The Taser SOPs and training, together with the internal review processes, are critical elements of an effective accountability system that provides confidence that problems and misuse issues will be identified and dealt with. The recommendations in this report are designed to enhance and strengthen this system.

Implementing the recommendations in this report will assist the NSWPF to strike an appropriate balance in managing the competing public interests associated with the use of Tasers. The changes will provide clearer guidance and support to police facing the challenge of dealing with violent confrontation and the risk of assault and injury. They will also improve the capacity of the NSWPF to minimise the risk of misuse and injury to members of the public that continues to be of concern to the community.

The NSW Ombudsman will monitor the implementation of recommendations made in this report.

## **Recommendations**

- 45. That the NSWPF provide the Ombudsman with a response to the recommendations in this report within two months of this report being published.**
- 46. That the NSWPF provide the Ombudsman with a schedule and timeframe for the implementation of recommendations within three months of this report being published.**

# Appendix A. Major changes in Taser SOPs versions 1.16 – 1.18

Version	Key changes from previous version	Timeframe the SOPs applied to
1.16	n/a – version 1.15 is not considered as part of this review. The details of version 1.16 are discussed in Chapter 7.	1 July 2010 – 3 December 2010
1.17	<p>Under section 3.9, which states that: ‘Where police are required to securely store firearms prior to entering establishments such as courts, hospital wards, gaols etc, the same convention will apply to TASERs’, the following was added:</p> <p><i>Note: This procedure will also apply to police entering custody areas of police stations.</i></p> <p>Under section 3 (Taser Issue &amp; Return—Loading / Unloading), the following was added:</p> <p><b>3.12 Tactical Options Model and TASER</b></p> <p>Police should familiarise themselves with the Tactical Options (TACOPS) Model. In particular, <b>COMMUNICATION</b> is the hub of the TACOPS wheel (see Annexure B) and therefore should be used as a component of all other tactical options. Force should only be used where de-escalation or negotiation techniques have not succeeded, or where circumstances do not allow any reasonable opportunity to attempt those techniques.</p> <p>Under section 4 (Criteria for Use) the following:</p> <p><i>The TASER may be used in accordance with the NSWPF Tactical Options model at the discretion of the Taser User to: [list of four criteria for use]</i></p> <p>... was replaced with:</p> <p><i>When considering the use of TASER, Police should consider all tactical options available to them in the Tactical Options Model. Before removing the TASER from the holster police will assess if TASER is the best option for the prevailing situation having regard to the Criteria for Use in these SOPs and the TASER training they have received.</i></p> <p><i>TASER and TASERCAM should only be used as a tactical option. The video and audio capability should not be used for any other investigative purpose.</i></p> <p><i>The TASER may be used at the discretion of the TASER User as a tactical option after proper assessment of the situation and the environment to: [list of criteria for use].</i></p> <p>Under section 5 (Methods of Use) the following was added:</p> <p><i>5.3 Do not draw your TASER, point, or aim it unless you consider you are likely to be justified in using it. When the TASER is drawn from the holster the officer should adhere to all general firearms safety principles including safe direction.</i></p> <p>In section 5.11, which relates to multiple use, the following was added:</p> <p><i>Note, multiple cycles or prolonged use of TASER may increase the risk of serious injury or death.</i></p> <p>The following two sections were added:</p> <p><i>5.12 TASER must not be used on compliant subjects exhibiting non-threatening behaviour.</i></p> <p><i>5.13 TASER must not be used on passive noncompliant subjects.</i></p> <p>Under section 7.1 (Suspending a TASER User), ‘An accredited TASER user who commits a hazardous practice (including an Accidental Discharge) of a TASER <b>will</b> be suspended from using the device...’ was replaced with to ‘An accredited TASER user who commits a hazardous practice (including an Accidental Discharge) of a TASER <b>may</b> be suspended from using the device. ...’ (emphasis added).</p> <p>Annexure D (Situation Report (Sitrep) – Taser Usage Form) has been completely revised to include additional details such as the type of deployment, details of Taser operator and of the person of interest, tactical options used, associated factors (e.g. mental health-related, drug-affected, domestic violence), injuries to police and to the person of interest, the number of police assaulted, and the number of police injured. An entirely new part to the form requires the duty officer to:</p> <ul style="list-style-type: none"> <li>• verify that the Taser use has been properly recorded and that the Taser Cam footage has been downloaded</li> <li>• record any hazardous practices, welfare issues, further action required and additional comments.</li> </ul>	4 December 2010 – 3 July 2012

Version	Key changes from previous version	Timeframe the SOPs applied to
1.18	<p>A new subsection about high risk incidents was added as follows:</p> <p><b>1.26 HIGH RISK INCIDENTS</b></p> <p><i>A high risk incident is defined under the "National Guidelines For The Deployment Of Police To High Risk Situations, Deployment Of Police Negotiators And The Use Of Lethal Force" (see annexure B page 27). Where police are confronted with this type of scenario they should consider applying the strategy of containing the situation and seeking specialist support. TASERs should not be used as a substitute for applying the "National Guidelines For The Deployment Of Police To High Risk Situations" unless exigent circumstances dictate the need for immediate action.</i></p> <p>A new annexure (Annexure B) sets out the definition of high risk incident as adopted from the <i>National Guidelines for the Deployment of Police to High Risk Situations, Deployment of Police Negotiators and the Use of Lethal Force</i>, as well as instructions to first response police in dealing with high risk situations as set out in the <i>NSW Police Force Handbook</i>.</p> <p>Under section 3.9, the provision that 'Where police are required to securely store firearms prior to entering establishments such as courts, hospital wards, gaols etc, the same convention will apply to TASERs. Note: This procedure will also apply to police entering custody areas of police stations.' was amended to remove the word 'hospital wards'. The last sentence was also amended to state:</p> <p><i>Generally, this procedure will also apply to police entering custody areas of police stations unless exigent circumstances exist that may require the use of this tactical option.</i></p> <p>In addition, a note was added below section 3.9 as follows:</p> <p><i>Note: Agreement has been reached with the NSW Ministry of Health for Police to retain their TASER when entering a secure Mental Health Ward (refer to TASER Use in Mental Health Facilities information sheet located on NSWPF TASER intranet site).</i></p> <p>A new section was added (section 4) which is entitled 'Drawing the Taser'. This reiterates what was previously written in section 5.3 (do not draw Taser unless you are likely to be justified in using it – see above) but is more detailed in the section:</p> <p><b>4. DRAWING THE TASER</b></p> <p><i>4.1 Police must consider all their tactical options when considering resorting to TASER. Do not draw your TASER, point, or aim it unless you consider you are likely to be justified in using it. When the TASER is drawn from the holster the officer should adhere to all general firearms safety principles including safe direction.</i></p> <p><i>4.2 When the situation warrants the drawing of the TASER and covering of the subject/s, the TASER should only be discharged when one or more elements of the Criteria to Discharge TASER (Probes Discharged; Drive-stun) exists (refer to 5 below). Police should continue to assess the environment and the situation unfolding before them and where the reason/s justifying the drawing of the TASER cease to exist, the TASER should be deactivated and re-holstered.</i></p> <p>The section on 'Criteria for Use' (previously section 4) is now section 5 ('Criteria to Discharge Taser (Probes Discharged; Drive-stun)'). Section 5 is now worded to apply to the use of Taser in probe or drive-stun mode only. Under section 5.2, the word 'violent' has been added before the word 'resistance' to read as follows:</p> <p><i>5.2 Protect yourself or others from person/s where violent confrontation or violent resistance is occurring or imminent.</i></p> <p>Under section 6.4.3 'Drive-stun' the following has been added:</p> <p><i>Where only one probe has made good contact with a subject, Drive Stun may be successful in achieving NMI.</i></p> <p>It should be noted that this section has retained the rule that Drive-stun should only be considered in exigent circumstances. This rule is reiterated at section 6.11.4.</p>	4 July 2012 – current

Version	Key changes from previous version	Timeframe the SOPs applied to
1.18	<p>Under section 6.6 (instructions on body areas at which the Taser should and should not be targeted), an instruction to avoid targeting the chest area has been added. Section 6.6 now states:</p> <p><i>6.6. When targeting the subject, the integrated sights should be aligned with:</i></p> <p><i>a) preferred target area – aim for the centre of seen target mass of the back (where possible avoid targeting the head).</i></p> <p><i>b) secondary target area – aim for lower torso front (where possible avoid targeting the face, groin or chest areas).</i></p> <p>Two new sections relating to methods of use were added. The first new section is 6.10 'Methods of Use – Other Considerations' and now contains what was previously sections 5.12 and 5.13 (see above – concerns non-threatening and passive subjects). The second new section is '6.11 Methods of Use – Exigent Circumstances'. It contains the previous rules that a Taser should not be handed over to another officer in the field unless there are exigent circumstances and that drive-stun mode should only be used in exigent circumstances. It also restates the new section 1.26 that Tasers should not be used in high risk situations unless exigent circumstances exist. It includes a re-statement of section 3.9 that the convention to secure TASERs prior to entering establishments such as courts, gaols and custody areas of police stations apply unless exigent circumstances exist.</p> <p>A new subsection on the debrief process for the use of Taser has been added:</p> <p><i>7.14 A debrief process for the use of TASER has been developed and is to be conducted by a Commissioned Officer. The debrief is to be conducted in accord with the debrief process using the approved debrief form at a suitable time after the TASER has been deployed. This process applies to Probes Discharged, Drive-stun and, by exception, Draw Cover. The process will be facilitated by the Region/Command Professional Standards Manager through the E@gle.i system.</i></p> <p>Under section 13 (Region/Specialist Command Taser Review Panels), a new sentence has been added to section 13.1:</p> <p><i>TASER Review Panels are to articulate in their deliberations which of the Criteria to Discharge TASER (Probes Discharged; Drive-stun) was used in the incident under review.</i></p> <p>A new subsection has also been added as follows:</p> <p><i>13.2 TASER Review Panels have the discretion to determine that a use of TASER was a technical breach of the SOPs but otherwise reasonable in the circumstances.</i></p>	4 July 2012 – current

## Appendix B. List of tactical options for recording use of force in COPS

The options available to police for recording use of force in the COPS 'use of force' field are:

- arm restraint/wristlock
- baton-restraints/come along
- communication
- defensive spray
- hold
- OC spray—displayed
- one officer
- service firearm discharged
- take-downs
- Taser—probes discharged
- verbal
- baton—blocks
- baton—strikes
- contain and negotiate
- defensive strike/punch
- impact weapon
- OC spray—multiple bursts
- police dog
- service firearm displayed
- Taser—displayed
- three or more officers
- weaponless control
- baton—other
- check/re-direction drill
- defensive kick
- ground wrestle
- knife defence
- OC spray—single burst
- police horse
- tactical disengagement
- Taser—drive-stun
- two officers





NSW Ombudsman  
Level 24, 580 George Street  
Sydney NSW 2000

General enquiries: (02) 9286 1000  
Toll free (outside Sydney Metro Area, NSW only): 1800 451 524  
Tel. typewriter (TTY): (02) 9264 8050  
Facsimile: (02) 9283 2911  
Email: [nswombo@ombo.nsw.gov.au](mailto:nswombo@ombo.nsw.gov.au)

[www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au)