



CORRUPTION AND CRIME COMMISSION

THE USE OF TASER® WEAPONS BY WESTERN AUSTRALIA POLICE

4 October 2010

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CORRUPTION AND CRIME COMMISSION

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Mr Peter John McHugh
Clerk of the Legislative Assembly
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Dear Mr Peacock
Dear Mr McHugh

As neither House of Parliament is presently sitting, in accordance with section 93 of the *Corruption and Crime Commission Act 2003* ("the CCC Act"), the Commission hereby transmits to you a copy of the Corruption and Crime Commission report entitled *The Use of Taser Weapons by Western Australia Police*, with accompanying DVD, and a copy of the *Summary Report*.

The Commission notes that under section 93(3) of the CCC Act a copy of a report transmitted to a Clerk of a House is to be regarded as having been laid before that House.

Yours faithfully

Len Roberts-Smith

The Hon. LW Roberts-Smith, RFD, QC
COMMISSIONER

4 October 2010

ABBREVIATIONS AND ACRONYMS

ACT	Australian Capital Territory
AWT	Advanced Warrant Team
“the Braidwood Inquiry”	Braidwood Commission on Conducted Energy Weapon Use 2009
“the CCC Act”	<i>Corruption and Crime Commission Act 2003</i>
CEW	Conducted energy weapon
CMC	Crime and Misconduct Commission
“the Commission”	Corruption and Crime Commission
COP	Commissioner of Police
CPC-RCMP	Commission for Public Complaints Against the Royal Canadian Mounted Police
ECD	Electronic control device
IAU	Internal Affairs Unit
IPCC	Independent Police Complaints Commission
NIJ	National Institute of Justice
NSW	New South Wales
“the NSW Ombudsman”	Office of the New South Wales Ombudsman
NTPF	Northern Territory Police Force
OC spray	Oleoresin Capsicum spray
OPCC	Office of the Police Complaints Commissioner
OPI	Office of Police Integrity
“the PIRT review”	Post-Implementation Review on Tasers
“the Police Manual”	WAPOL Commissioner’s Orders and Procedures Manual
QPS	Queensland Police Service
RCMP	Royal Canadian Mounted Police
SAPOL	South Australia Police
WAPOL	Western Australia Police

GLOSSARY

Arc display	Activation of a Taser weapon without a cartridge fitted. This produces a spark and noise.
Drive stun mode	Also called “ <u>stun mode</u> ”. The delivery of electricity from a <u>Taser weapon</u> to a small surface area of the subject’s body, making direct contact with the person’s skin or clothing. Causes pain rather than incapacitation.
Lock up	Similar to a <u>Watch House</u> , but smaller, usually attached to a police station.
Management Action Plan	A disciplinary outcome within the Western Australia Police in which the subject officer is provided operational guidance and supervision.
Mission creep	The use of a weapon (or other application of force) in situations that extend beyond those for which the weapon was originally designed or introduced.
Probe mode	The firing of two darts or “probes” from a <u>Taser weapon</u> which deliver a 50,000 volt electric shock to the body by a series of brief, repetitive electrical pulses (one cycle is five seconds). These pulses prevent effective muscular activity.
Red dot control/compliance	Prior to deployment a red laser is projected from the Taser weapon to assist aiming. The application of this laser as a visual deterrent is referred to by WAPOL officers as “red dot control” or “red dot compliance”.
Stun mode	See “ <u>drive stun mode</u> ”.
Serious injury/harm	Severe pain or suffering whether physical or mental; loss of bodily function; incapacitation.
Taser weapon deployment	Firing or discharging the <u>Taser weapon</u> . Includes both <u>probe</u> and <u>drive stun</u> modes.
Taser weapon threat	Drawing the <u>Taser weapon</u> from its holster to threaten.
Taser weapon use	All <u>Taser weapon</u> use including both <u>deployment</u> and <u>threat</u> .
Taser weapon	An electronic control device which uses a high voltage, low power charge of electricity to induce involuntary muscle contractions that cause temporary incapacitation or to cause pain.

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Taser X26™

Specific model of Taser weapon manufactured by TASER International and currently used by the Western Australia Police.

Threshold

A point at which police officers can use a Taser weapon. A low threshold means Taser weapons can be used in a large number of situations, whereas a high threshold means Taser weapon use is more restricted.

Use of Force report

A mandatory document completed by a police officer who uses force as an option to resolve an operational incident.

Use of force

Any of the following: using or drawing a firearm or Taser weapon, OC spray or a baton, using handcuffs or empty hand techniques resulting in injury; using a motor vehicle, police dog or horse as a weapon; use of torches or shields as weapons.

Watch House

A secure and controlled environment where individuals are charged and held in temporary custody.

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EXECUTIVE SUMMARY

- [1] A Taser weapon is a weapon carried by Western Australia Police (WAPOL) officers which uses a high voltage, low power charge of electricity to either induce involuntary muscle contractions that cause temporary incapacitation or to cause pain. Since 2007, WAPOL officers have used the weapon as an alternative use of force to minimise injury to themselves or others when confronted with potentially violent situations.
- [2] Taser weapon use is governed by a policy which dictates that Taser weapons are not to be used for compliance. The threshold for use stipulates the focus on preventing injury (to both officers, and to the public).
- [3] The Commission examined Taser weapon use in Western Australia from 2007 to 2009. This examination consisted of an analysis of complaints and matters notified to the Commission, WAPOL data from 2007 to 2009, and a detailed analysis of WAPOL Use of Force reports between July and September 2009.
- [4] The majority of Taser weapon use by WAPOL officers is appropriate even though the WAPOL policy threshold for Taser weapon use is one of the lowest in Australia. A low threshold means WAPOL officers are authorised to use a Taser weapon in more situations than other police in Australia.
- [5] Taser weapons have become the force option of “choice” in Western Australia, resulting in significant decreases in the use of OC spray, handcuffs and empty hand techniques. Taser weapon use increased from 49% in 2007 to 74% in 2008 and declined to 65% in 2009. This represents an overall increase in Taser weapon use of 25%.
- [6] Most Taser weapon use occurred on weekends between 9:00 p.m. and 3:00 a.m. The most significant trend was the increase of Taser weapon deployment against subjects who were physically resisting arrest, increasing from 22% in 2007 to 43% in 2009.
- [7] The use of firearms has doubled since the introduction of Taser weapons, from 6% of all uses of force in 2007 to 12% in 2009.
- [8] Given that Taser weapons were expected to reduce the number of situations where officers were involved in physical altercations, it was expected that injuries would decrease overall. This has not occurred. The number of hospitalisations of WAPOL officers between 2007 and 2009 remained relatively stable at under 2% of incidents. Injuries to officers increased from 9% of all use of force incidents in 2007 to 12% in 2008 and 11% in 2009. Generally speaking the injuries received by police officers were minor, including bruises, abrasions or minor lacerations and muscle sprains. In all cases these injuries resulted from an assault by another person or from struggling with a person. Police officers actually received more injuries in Taser weapon-related incidents than in non-Taser weapon incidents (17% of cases compared to 15% of cases).
- [9] Taser weapons are an effective force option in situations where there is a real risk of serious injury to an officer or other person, however there is potential for misuse. There is also a real and significant risk that Taser

weapons will be subject to mission creep, that is, that a Taser weapon will be used in situations where it was not intended to be used and where such use is potentially excessive or improper. Between July and September 2009, potential misuse was involved in 7% of Taser weapon incidents. Of these, 38% involved using the Taser weapon as a threat. The remaining 62% involved potentially improper or excessive Taser weapon deployment.

- [10] International and national research shows Taser weapon use can result in death in certain circumstances. Death or serious injury can be caused by the fact that a Taser weapon causes incapacitation (leading to, for example, death by drowning or falling); by the ignition of flammable substances; or as a result of ventricular fibrillation and/or asphyxiation.
- [11] While no deaths in Western Australia have been directly attributed to Taser weapon use, the risks of injury and death, and of mission creep, are potentially increased when a Taser weapon is used on the young, the elderly, people with an existing health condition, drug users and the mentally ill.
- [12] 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.
- [13] The Commission has developed its recommendations after considering current national and international trends and are aimed at:
 - decreasing the misuse of Taser weapons, and the potential for misconduct by WAPOL officers in relation to Taser weapon use;
 - maintaining public confidence in the way WAPOL officers use force to go about their duties;

- preventing the potentially excessive or improper use of Taser weapons against high risk groups such as indigenous people; people with a mental illness or otherwise suffering from extreme psychological distress; those people with small body mass; and people suffering from serious health conditions;
- ensuring the continued availability of Taser weapons for the use of WAPOL officers as a means of reducing the likelihood that officers will be killed or seriously injured by the actions of violent and aggressive members of the public; and
- reducing the likelihood that a fatality will occur in Western Australia as a result of Taser weapon use by a WAPOL officer, and reducing the likelihood that serious injuries will occur as a result of Taser weapon use by a WAPOL officer.

Recommendation 1

That the Western Australia Police include in the Taser weapon policy an acknowledgement that Taser weapons have the capacity to cause death or serious injury.

(WAPOL did not find the evidence in the Commission's report "sufficiently compelling" to support this recommendation.)

Recommendation 2

That the Western Australia Police threshold for Taser weapon use be increased. The Western Australia Police Taser weapon policy (FR 1.6.4) include wording such as:

The use of a Taser weapon is reserved to those situations where no other option would bring about a safe resolution. The use of a Taser weapon is reserved for those situations where there is a real and imminent risk of serious harm either to a member of the public, a police officer or (in the case of self-harm) the person on whom the Taser weapon will be used.

(WAPOL disagrees that a threshold of "serious" risk or harm should be applied in the use of a Taser weapon.)

Recommendation 3

That the Western Australia Police Taser weapon policy include the following "use of force principle":

An officer is prohibited from deploying a Taser weapon unless the officer is satisfied, on reasonable grounds, that:

- *no lesser force option has been, or will be effective in eliminating the imminent risk of serious injury; and*
- *de-escalation and/or crisis intervention techniques have not been or will not be effective in eliminating the imminent risk of serious injury.*

(WAPOL does not support this recommendation, stating that "there is no hierarchy of force option ... force options other than Taser have the capacity to cause more pain and injury over longer periods of time than a Taser".)

Recommendation 4

That probe mode be the preferred method of deployment of Taser weapons by Western Australia Police, and this is to be reflected in policy and training.

(WAPOL supports this recommendation in principle.)

Recommendation 5

That the Western Australia Police Taser weapon policy (FR 1.6.4) outline specifically where Taser weapon use is restricted, including that Taser weapon use be avoided in the following situations (except in extreme circumstances).

- (1) When there is an elevated risk of the subject falling and sustaining serious injury.
- (2) Against a person in or near water where there is a risk of drowning.
- (3) In the vicinity of flammable liquids or gases.
- (4) Against drivers of vehicles or operators of machinery, where there is a risk that the vehicle or machinery may go out of control.
- (5) Against persons who are handcuffed or in a secure environment.
- (6) Against children, the elderly and persons of small body stature.
- (7) Against women who are reasonably suspected to be pregnant.
- (8) Against persons who are known to have or suspected to have serious pre-existing health conditions.

(WAPOL supports all points except the restriction of Taser weapons in a secure environment and against those of small body stature.)

Recommendation 6

That the Western Australia Police Taser weapon policy (under FR1.6.7) require Western Australia Police officers to call for the assistance of ambulance officers or other health officers in situations where a Taser weapon has been deployed on people with a mental illness or those suffering from extreme psychological distress.

(WAPOL supports this recommendation.)

Recommendation 7

That the Western Australia Police Taser weapon policy outline the risks involved in multiple deployments, and emphasise:

- (1) multiple deployments will be scrutinised; and
- (2) each deployment must result from a new assessment of the circumstances and the need for use of force, and be justified accordingly.

(WAPOL does not support this recommendation, stating that every use of force is scrutinised and not just multiple deployments.)

Recommendation 8

That the Western Australia Police ensure interactive Taser weapon training includes appropriate Australian scenarios.

That the Western Australia Police Taser weapon training includes situations where a person is physically resisting arrest or behaving in a threatening manner to assist officers to identify where serious injury may occur.

(WAPOL states proposed developments to the interactive Taser weapon training will result in part one of the recommendation being implemented. WAPOL states existing training is adequate to meet part two of the recommendation.)

Recommendation 9

That Western Australia Police introduce additional verbal and de-escalation training for officers, including the use of specific verbal statements prior to Taser weapon use. Specific verbal statements are to be stipulated in the Western Australia Police Taser weapon policy and provided in training.

(WAPOL does not support this recommendation.)

Recommendation 10

That Western Australia Police form a committee to continually monitor and examine Taser weapon use in order to identify potential misuse and make recommendations about policy and training. The committee is to include some level of community involvement, and is not to replace current incident management and misconduct management processes. The committee is to particularly consider all Taser weapon incidents:

- against a juvenile;
- against an elderly person;
- against a pregnant woman;
- against a person with a pre-existing serious health condition;
- against a person who is mentally ill;
- within a confined area or against a person who is handcuffed;
- near flammable liquids or gases;
- in elevated or otherwise dangerous locations;
- against the driver or operator of a vehicle; and
- resulting in injury.

(WAPOL supports the development of a committee but suggests an operational focus, no community involvement, and that there is no requirement for particular types of Taser weapon use to be referred to the committee.)

CHAPTER ONE

INTRODUCTION AND OVERVIEW

1.1 Jurisdiction of the Commission

[1] The Corruption and Crime Commission (“the Commission”) is an executive instrument of the Parliament (albeit an independent one). It is not an instrument of the government of the day, nor of any political or departmental interest. It must perform its functions under the *Corruption and Crime Commission Act 2003* (“the CCC Act”) faithfully and impartially. The Commission cannot, and does not, have any particular agenda, political or otherwise, other than to comply with the requirements of the CCC Act.

[2] The Commission has a prevention and education function under section 17 of the CCC Act to help prevent misconduct.

17(2) Without limiting the ways the Commission may perform the prevention and education function, the Commission performs that function by –

- (a) *analysing the intelligence it gathers in support of its investigations into organised crime and misconduct; and*
- (ab) *analysing the results of its investigations and the information it gathers in performing its functions; and*
- (ac) *analysing systems used within public authorities to prevent misconduct; and*
- (ad) *using information it gathers from any source in support of its prevention and education function; and*
- (b) *providing information to, consulting with, and making recommendations to public authorities; and*
- (c) *providing information relevant to its prevention and education function to the general community; and*
- (ca) *ensuring that in performing all of its functions it has regard to its prevention and education function; and*
- (cb) *generally increasing the capacity of public authorities to prevent misconduct by providing advice and training to those authorities, if asked, to other entities; and*
- (d) *reporting on ways to prevent misconduct.*

[3] This report has been completed pursuant to section 17(2) (“the prevention and education function”) and is submitted to Parliament pursuant to section 84.

- [4] The Commission takes action in relation to allegations of misconduct pursuant to section 18 of the CCC Act (“the misconduct function”). This action includes assessing and acting upon allegations of misconduct received by the Commission. The Commission can either investigate these allegations itself or refer them to other agencies for investigation. In the latter case, the Commission may then review these completed investigations. Some information used in this report has been obtained pursuant to the misconduct function.
- [5] Although incidents referred to in this report illustrate misconduct risks inherent in Taser weapon use, the Commission proffers no misconduct opinions in this report about the conduct of individual police officers.

1.2 The Commission’s Role in Respect of Western Australia Police (WAPOL)

- [6] Under the provisions of the CCC Act, the Commission receives and assesses allegations about misconduct¹ by police officers. The Commission receives such allegations both directly from the public (usually in the form of complaints about the actions of police officers) and by way of notification from WAPOL.
- [7] WAPOL notifies the Commission of all complaints received from members of the public about the conduct of police officers, and also of all allegations of misconduct that are internally generated within WAPOL. These latter allegations usually arise from the report of a police officer concerning the conduct of other officers.
- [8] Matters fall within the jurisdiction of the Commission if they involve misconduct as defined in section 4 of the CCC Act. The term “misconduct” has a particular and specific meaning in the CCC Act and it is that meaning which the Commission must apply when assessing and forming an opinion on the conduct of a public officer. Section 4 of the CCC Act states that:

Misconduct occurs if –

- (a) *a public officer corruptly fails to act in the performance of the functions of the public officer’s office or employment;*
- (b) *a public officer corruptly takes advantage of the public officer’s office or employment as a public officer to obtain a benefit for himself or herself or for another person or to cause a detriment to any person;*
- (c) *a public officer whilst acting or purporting to act in his or her official capacity, commits an offence punishable by 2 or more years’ imprisonment; or*

¹ Includes “reviewable police action” as defined in section 3 of the CCC Act.

(d) a public officer engages in conduct that –

- (i) *adversely affects, or could adversely affect, directly or indirectly, the honest or impartial performance of the functions of a public authority or public officer whether or not the public officer was acting in their public officer capacity at the time of engaging in the conduct;*
- (ii) *constitutes or involves the performance of his or her functions in a manner that is not honest or impartial;*
- (iii) *constitutes or involves a breach of the trust placed in the public officer by reason of his or her office or employment as a public officer; or*
- (iv) *involves the misuse of information or material that the public officer has acquired in connection with his or her functions as a public officer, whether the misuse is for the benefit of the public officer or the benefit or detriment of another person,*

and constitutes or could constitute –

- (v) *an offence against the “Statutory Corporations (Liability of Directors) Act 1996” or any other written law; or*
- (vi) *a disciplinary offence providing reasonable ground for the termination of a person’s office or employment as a public service officer under the “Public Sector Management Act 1994” (whether or not the public officer to whom the allegation relates is a public service officer or is a person whose office or employment could be terminated on the grounds of such conduct).*

[9] In relation to WAPOL, matters also fall within the Commission’s jurisdiction if they involve what is termed “reviewable police action” under section 21A of the CCC Act, and defined in section 3.

[R]eviewable police action means any action taken by a police officer or an employee of the Police Service of the Public Service, that –

- (a) *is contrary to law;*
- (b) *is unreasonable, unjust, oppressive or improperly discriminatory;*
- (c) *is in accordance with a rule of law or a provision of an enactment or a practice, that is or may be unreasonable, unjust, oppressive or improperly discriminatory;*

- (d) *is taken in the exercise of a power or a discretion, and is so taken for an improper purpose or on irrelevant grounds, or on the taking into account of irrelevant considerations; or*
- (e) *is a decision that is made in the exercise of a power or a discretion and the reasons for the decision are not, but should be, given.*

1.3 Reporting by the Commission

- [10] Under section 84(1) of the CCC Act the Commission may at any time prepare a report on any matter that has been the subject of an investigation or other action in respect of misconduct. By section 84(3) the Commission may include in a report:
 - (a) *statements as to any of the Commission's assessments, opinions and recommendations; and*
 - (b) *statements as to any of the Commission's reasons for the assessments, opinions and recommendations.*
- [11] The Commission may cause a report prepared under this section to be laid before each House of Parliament, as stipulated in section 84(4) of the CCC Act.
- [12] Section 86 of the CCC Act requires that before reporting any matters adverse to a person or body in a report under section 84, the Commission must give the person or body a reasonable opportunity to make representations to the Commission concerning those matters.
- [13] On 25 May 2010, the Commission provided a draft copy of this report to WAPOL. As requested, WAPOL responded on 25 June 2010.² This response briefly addressed specific issues raised in the report. The WAPOL response made extensive reference to WAPOL's *Post-Implementation Review on Tasers* ("the PIRT review").
- [14] Completed in May 2010, the PIRT review was published on the WAPOL website on 25 June 2010. The PIRT review covered a wide number of issues relating to Taser weapon use by WAPOL officers. These included operational effectiveness, asset management, governance, and training. The issues of misconduct and excessive force were addressed but not as a central topic. As a result, the discussion around these topics is not comprehensive. Although there is some overlap, the PIRT review does not definitively address the concerns raised in the Commission report.
- [15] The Commission has conducted a detailed analysis and examination of the PIRT review and section 86 response. Disagreement exists between the Commission and WAPOL on:

² Western Australia Police response: the use of Taser weapons in Western Australia, 25 June 2010 ("the WAPOL section 86 response").

- a suitable threshold for Taser weapon use;
- risks inherent in Taser weapon use;
- Taser weapon use for compliance;
- Taser weapon use against vulnerable groups;
- some accountability and training measures;
- the risk of “mission creep”; and
- specific policy recommendations.

[16] There is broad agreement between the Commission and WAPOL on:

- the general effectiveness and usefulness of Taser weapons;
- the best mode of Taser weapon use;
- after care procedures;
- some accountability and training measures; and
- some policy recommendations.

[17] Having considered WAPOL’s response to this report the Commission stands by this report’s conclusions, and it has made no changes to the final recommendations. Where appropriate, reference has been made within the report to relevant sections of the PIRT review, and the WAPOL section 86 response.

1.4 Background

[18] Allegations of excessive force, or an improper use of force, make up one of the largest categories of allegations received by the Commission about police officers. During the course of reviewing these allegations, some issues of concern were identified relating to Taser weapon use by police officers. During the latter half of 2008, the Commission began to collect information about the use and potential misuse of Taser weapons by police officers.

[19] At the same time, concerns about Taser weapon use arose in other Australian jurisdictions and internationally. Several significant reports on Taser weapon use by police officers were produced, and reports of adverse consequences resulting from Taser weapon use, including death and serious injury, were on the increase.

[20] Operational police officers often encounter a range of situations that involve physical contact and the risk of injury. Taser weapons are a recent addition to the standard accoutrements available to WAPOL officers. Used by police officers in various international jurisdictions for several years, the question of whether Taser weapons are appropriate for the use

of police in Australia remains nationally unresolved. This is partly because of controversy and uncertainty regarding the safety and legitimacy of their use. In three of the Australian states and territories (Australian Capital Territory, Tasmania and Victoria), Taser weapons are not provided for the use of general duties officers.

- [21] Taser weapons were introduced for general use by WAPOL officers in June 2007. Between June 2007 and December 2009, the Commission received or was notified of 83 complaints alleging the potential misuse of a Taser weapon.
- [22] These complaints and further information gathered by the Commission in 2008 and 2009 highlighted a number of issues about Taser weapon use by Western Australian police officers.
 - (1) There had been a number of incidents in which Taser weapon use by WAPOL officers caused serious injury to a person.
 - (2) Taser weapon use by WAPOL officers had increased rapidly since their introduction.
 - (3) There was disproportionate Taser weapon use against indigenous people.
 - (4) Taser weapons appeared to be increasingly used in situations where officers did not seem, on the face of it, to be at risk of serious injury.
 - (5) Taser weapons appeared to be used, at times, to achieve compliance, contrary to WAPOL policy.

- [23] As a result, the Commission determined that it should undertake research into Taser weapon use by WAPOL officers; the international trends of Taser weapon use; and policy, training and accountability measures. The purpose of this research was to identify and reduce the risks of misconduct relating to Taser weapon use and to identify, address and prevent misuse of Taser weapons.

1.5 Objectives

- [24] This report into Taser weapon use was conducted with two broad objectives in mind.
 - (1) To identify misconduct risks relating to Taser weapon use in Western Australia.
 - (2) To make recommendations to reduce the misconduct risks relating to Taser weapon use in Western Australia.

1.6 Methodology and Limitations of the Study

- [25] In addition to a review of the literature, other data and information was analysed to used to conduct research into Taser weapon use in Western Australia. One source of information was gathered by the Commission in the course of conducting assessments and reviews into allegations of improper or excessive force pursuant to section 18 of the CCC Act (the misconduct function).
- [26] This information focused on particular cases in which concerns arose about Taser weapon use, either during the Commission's initial assessment of the allegation, or upon review of the completed WAPOL internal investigation. In several such cases, feedback was sought from the complainant (often the person subject to Taser weapon use). This data has generally been used to generate the case studies throughout the report.
- [27] Other data included statistics and Use of Force reports³ provided by WAPOL. Statistics obtained from the WAPOL computer system included the number of Taser weapon deployments between 2007 and 2009, and the number of injuries received by officers over this same period.
- [28] Additional information from WAPOL included all Use of Force reports over three periods: 1 December to 31 December 2007; 1 July to 31 July 2008; and 1 July to 30 September 2009. These three periods were specifically analysed to determine trends in Taser weapon use.
- [29] The Use of Force reports between July and September 2009 were analysed in great detail and this specific analysis has been used to illustrate many of the main points made in the report. During this period there were 198 Taser weapon incidents involving 212 subjects. Of these, 96 incidents involved Taser weapon use as a threat and 102 incidents involved a Taser weapon deployment.
- [30] Information from Use of Force reports was compared, when possible, with data held by the Commission. The Commission found that there was, at times, a conflict between the information contained in Use of Force reports and the information gathered during WAPOL internal investigations and/or by the Commission.
- [31] When possible, the Use of Force reports were compared against available video footage. There was also, at times, conflict between these sources of information.

³ A “Use of Force” report is a mandatory document completed by a police officer who uses force as an option to resolve an operational incident. It includes: using or drawing a firearm or Taser weapon; using OC spray or a baton; using handcuffs or empty hand techniques which cause injury; or using a motor vehicle, police dog or horse as a use of force option. The document outlines the circumstances of the incident and justification for the use of force option.

- [32] In both cases, the discrepancies tended to be minor, but invariably involved the Use of Force reports describing the incidents in a light that favoured the officers who utilised force.
- [33] This triangulation of the information recorded in Use of Force reports, with Commission review data, and with video footage, enabled the Commission to form two conclusions.
 - (1) Information included in Use of Force reports is sufficiently reliable to enable an analysis of the relevant use of force incidents.
 - (2) The reliability of potentially adverse conclusions from analysis of the Use of Force reports is enhanced by the fact that discrepancies between the reports and other data sources tends to favour the officers involved.
- [34] The Commission's analysis of the data is presented either as statistical data, in case study form and in discussion. Case studies are used where a particular incident seems to illustrate or highlight relevant issues.

1.7 Structure of the Report

- [35] Chapter Two provides an overview of Taser weapon use in various Australian and international jurisdictions, with a specific focus on how and why concerns have arisen within these jurisdictions, and how such concerns have been addressed. Chapter Two also identifies the risks associated with Taser weapon use with supporting information as to the veracity and seriousness of these risks.
- [36] Chapter Three contains an examination of Taser weapon use by WAPOL officers between 2007 and 2009. Chapter Three also compares the threshold for Taser weapon use in Western Australia with other states and considers WAPOL accountability measures.
- [37] Chapter Four provides a summary and recommendations.
- [38] Chapter Five is a bibliography of the literature reviewed.

CHAPTER TWO

LITERATURE REVIEW

2.1 Taser Weapons

- [39] A Taser weapon is an “electronic control device” (ECD) which uses a high voltage, low power charge of electricity to either induce involuntary muscle contractions that cause temporary incapacitation or to cause pain.
- [40] The Taser X26 model (currently used by WAPOL officers) is deployed by pulling a trigger. There are two modes of deployment. “Probe” deployment involves the firing of two darts or “probes” which upon attachment to the subject’s skin deliver a 50,000 volt electric shock to the body by a series of brief, repetitive electrical pulses. These pulses prevent effective muscular activity.
- [41] Once the darts are in contact with a person’s skin or clothes, the electrical charge is delivered for one five second “cycle”. If the two thin wires connecting the probes to the Taser weapon remain intact, further charges or “cycles” can be delivered.
- [42] The second mode of deployment is called “drive stun” or “stun” mode, and involves the delivery of electricity to a small surface area of the subject’s body. The charge is delivered by the Taser weapon making direct contact with the person’s skin or clothing. The charge is delivered for a five second duration or cycle, however, further cycles can be delivered by reactivation of the trigger.
- [43] Stun mode causes pain to the subject and does not achieve incapacitation in the same manner as probe mode.⁴
- [44] The Taser X26 model has a download function that records the time, date and duration of each firing of the weapon. Downloaded to a computer, this information can be used as an accountability measure.

2.2 Why Police Carry Taser Weapons

- [45] Police officers often have to confront and subdue violent and aggressive members of the public. Officers may be threatened with a range of weapons including knives, metal bars, screwdrivers, bricks or rocks. Physical confrontations also carry a risk of injury even with unarmed members of the public.
- [46] Police officers carry Taser weapons as an additional force option to minimise injury to themselves and members of the public when confronted with these situations. That is, they are issued to police to use when there is a bona fide risk of injury to themselves and/or members of the public.

⁴ New South Wales Ombudsman, 2008, *The Use of Taser Weapons by New South Wales Police Force*, “A Special Report to Parliament under section 31 of the Ombudsman Act 1974”, p.8.

[47] On the use-of-force continuum, Taser weapons are considered a non-lethal option to be preferred in serious situations instead of resorting to lethal force, such as firearms. The introduction of Taser weapons in other jurisdictions has led to a reduction in injuries to members of the public.⁵

2.3 Use of Taser Weapons in Australia

2.3.1 New South Wales

[48] In New South Wales, Taser weapons are used by general duties officers. Taser weapon use is governed by standard operating procedures. This material is restricted and not available to the public.

[49] The current threshold for Taser weapon use in New South Wales provides that Taser weapons may be used to:

- (1) protect human life;
- (2) protect police officers or others from person/s where violent confrontation or resistance is occurring or imminent;
- (3) protect officer/s in danger of being overpowered or to protect themselves or another person from injury; or as
- (4) protection from animals.

[50] There is a requirement in the NSW policy for ambulance personnel to be called on all occasions when a subject has had a Taser weapon deployed on them.

[51] In 2008, the Office of the New South Wales Ombudsman (“the NSW Ombudsman”) produced a report entitled *The Use of Taser Weapons by the New South Wales Police Force*.⁶ The NSW Ombudsman’s investigation involved an analysis of Taser weapon use by police officers in special operations groups, and a review of the literature regarding the risks of Taser weapon use.

[52] While acknowledging there was no evidence that Taser weapons had been misused by police officers in New South Wales, the Ombudsman’s Report raised a number of concerns about Taser weapon use, including the potential for Taser weapons to cause harm, and to be overused. In particular, the report raised concerns about Taser weapon use on vulnerable groups and individuals, including children, pregnant females, elderly people, people who are affected by drugs and/or alcohol, people with a heart condition, and indigenous people. The report recommended

⁵ Queensland Police Service and Crime and Misconduct Commission, 2009, “QPS-CMC Review of Taser Policy, Training and Monitoring and Review Practices”, July, cites the 2009 unpublished National Institute of Justice study, *A Multi-method evaluation of Police Use of Force* as concluding that the chance of a subject being injured decreased by almost 60% where a Taser weapon was used. The study examined 24 000 use of force cases across the United States.

⁶ NSW Ombudsman, loc. cit.

that, in line with recommendations resulting from reviews of Taser weapon use in other overseas jurisdictions, “operating procedures should include clear guidelines about using Taser weapons on potentially vulnerable people”.⁷

- [53] As a result of the investigation, the NSW Ombudsman recommended NSW Police “refrain from further extending Taser use by officers, for a period of at least two years”. The report provided qualified support for the Taser weapon use by police officers, but only on the basis that “training, policies and procedures, and accountability mechanisms are improved in a timely manner” and that Taser weapon use be reviewed after a further two year period.⁸ In spite of these recommendations, the NSW Police Minister announced a further roll-out of Taser weapons to general duties officers in June 2009.⁹
- [54] Recently, the NSW Police Minister released figures on Taser weapon use since they were first issued to frontline officers. Taser weapons had been used 440 times in the previous 12 months, however, on 256 of these occasions, the Taser weapon had only been drawn and not deployed. The Minister cited these figures as evidence that Taser weapons were effective in NSW.¹⁰
- [55] The NSW Ombudsman responded to the release of these figures by expressing that concerns remained regarding Taser weapon use by NSW Police Force officers for compliance rather than high risk situations.¹¹

2.3.2 Queensland

- [56] The Queensland Police Service (QPS) commenced a trial of Taser weapon use in the general operational environment on 1 July 2007. Upon completion, the trial was reviewed by Queensland Police Service in consultation with the Crime and Misconduct Commission (CMC).
- [57] The report identified key issues to consider when developing policy, procedures and training.¹² It concluded that Taser weapons provided an important, alternative use of force option for police. The report “highlighted the importance of establishing rigorous reporting, monitoring and review processes to ensure ongoing appropriate use of Tasers”.¹³
- [58] Following the death of a man immediately after use of a Taser weapon in Queensland, on 12 June 2009, the roll-out of Taser weapons was

⁷ *ibid.*, p.79.

⁸ *ibid.*, p.v.

⁹ “NSW police issue: \$10 million in Taser stun guns”, *The Brisbane Times*, 14 June 2009.

¹⁰ “NSW: Concerns remain but govt praises Tasers”, AAP, 26 October 2009.

¹¹ *ibid.*

¹² QPS-CMC, op. cit., p.1.

¹³ *ibid.*, p.3.

suspended and the Minister for Police and the Commissioner of Police announced a joint review of Taser weapon training and operational policy by QPS and the CMC. The review report was released in July 2009.¹⁴ As the Brandon fatality was associated with alleged multiple Taser weapon uses, the main focus of the review was to address the number of times a Taser weapon can be deployed during any one incident.

[59] The review found the current policy addressed most of the risks associated with Taser weapon use. However, a number of recommendations were made. Firstly, it was recommended that QPS policy be amended “to provide a clearer statement on the general threshold test to be applied for the use of a Taser”. The review recommended that “the threshold test for deployment should be risk of serious injury to a person.” Further, it was recommended the connection between deaths and Taser weapon use be highlighted in the QPS policy.¹⁵

[60] Some other important recommendations resulted from this review.

- Taser weapons should not be used against a person in handcuffs, or against a person of small body mass, except in extreme circumstances.
- Additional requirements be placed on officers who use a Taser weapon on people who suffer from a mental illness, including that officers call upon the assistance of the ambulance service.
- All Taser weapon downloads be reviewed by a Chief Superintendent after use of a Taser weapon.
- The QPS and CMC should develop a research plan and protocols to manage an ongoing review process, with a specific focus on the collection and use of data to identify trends and on the continual assessment of best practice.¹⁶

[61] These recommendations were implemented by QPS through the issue of Commissioner’s Circular 15/2009 on 22 September 2009.

[62] The current threshold for Taser weapon use in Queensland is: “There must be a risk of serious injury to a person before an officer can deploy a Taser. The decision to apply force or use a Taser is an individual one for which every officer will be held accountable”.

[63] Officers are directed not to use a Taser weapon against occupants of a vehicle or operators of machinery where there is a danger of the vehicle or machinery going out of control. The policy also prevents Taser weapon use against the elderly, women suspected of being pregnant or against children, except in extreme circumstances. The policy also states a Taser

¹⁴ ibid.

¹⁵ ibid.

¹⁶ ibid., pp.2-4.

weapon should not be used against people who are handcuffed, except in extreme circumstances.

2.3.3 Victoria

- [64] Taser weapons are not used by general duties officers in Victoria, although they are used by officers in the Special Operations Group within the Specialist Support Department. The threshold for use by these officers is high, with officers restricted from using a Taser weapon except in situations of violent and serious physical confrontation or when such confrontation is imminent. The Standard Operation Procedures warn officers not to deploy a Taser weapon in circumstances where the subject could fall, resulting in death or serious injury.
- [65] In a report by the Office of Police Integrity in 2009, the use of force by police and assaults on police was analysed. Part of this analysis included a summary review of Taser weapon use by Victoria Police Specialist Support Department officers. The report found the prudent use of a Taser weapon was as a result of specialist training.¹⁷
- [66] The Office of Police Integrity report concluded that there is a trend in police culture within Victoria to “go in hard” rather than to “back off”. The report emphasised that police required more training in the ability to accurately assess situations and to identify individuals who may have mental health problems or who are under the influence of alcohol or drugs.¹⁸
- [67] The Office of Police Integrity has expressed the view that Victorian general duties police officers are not ready for this use of force option. In July 2009, an Office of Police Integrity spokesperson was quoted as saying that “education and training is not focused properly and is insufficient ... The police are not in a space to be issued with Tasers”.¹⁹

2.3.4 Northern Territory

- [68] The Northern Territory Police Force (NTPF) has recently reviewed and modified its policy relating to Taser weapon use. This new policy was implemented in April 2010 in the NTPF ECD [Taser weapon] Good Practice Guide. The NTPF threshold is: “The use of a [Taser weapon] should be reserved to those situations where no other option would bring about a safe resolution. As a result, the [Taser weapon] should be reserved for those situations where there is a real and imminent risk of serious harm either to a member of the public, a member of the police force or (in the case of self-harm) the person on whom the [Taser weapon] will be used”.

¹⁷ Office of Police Integrity, 2009, *Review of the Use of Force by and against Victorian police*, p.34.

¹⁸ *ibid.*, p.58.

¹⁹ “Vic: Watchdog urges no Tasers, says police are too eager to shoot”, AAP, 13 July 2009.

[69] The Guide outlines a variety of restrictions where the use of a Taser weapon should be avoided, including the young, the old, pregnant women, those with pre-existing health conditions, people with a drug dependency or alcohol dependence and people suffering a mental illness. The policy provides that, in regard to many of the restrictions: “there is no specific cut off level or absolute prohibition point but the characteristic mentioned is a factor for use that must be balanced against other identified risks that may exist”. Further, the Guide instructs police officers to take into consideration the aboriginality of the subject, as it is considered aboriginal people may present more high risk factors.

[70] NTPF policy stipulates that a Taser weapon should not be used “against a prisoner who is handcuffed or otherwise secured”. Additionally, the Good Practice Guide discusses at some length Taser weapon use in a “Police Watch House or Similar Secure Environment” and outlines that there is a significant reduction of many of the risks associated with managing an apprehended person, therefore “justification for the use of [a Taser weapon] within a secure environment … must be considered carefully against all other less lethal force options prior to its use”.

[71] Current policy provides that following all deployments of Taser weapon on a person, medical assistance is to be requested.

[72] It is also stipulates that all uses of a Taser weapon within a police watch house or similar secure environment must be reported to the Territory Duty Superintendent.

2.3.5 Other Australian states

[73] Taser weapons are about to be introduced for the use of general duties officers in South Australia, however, at present they are used by special operations officers. Taser weapon use is governed by South Australia Police (SAPOL) General Orders – Operational Safety Instructions. The current threshold for use is outlined in the SAPOL *Taser Operators’ Course* outline. This threshold for use is the highest in Australia, with Taser weapons only to be used “for the protection of members of SAPOL, offenders and the community while disarming or apprehending a person armed with a weapon”. The Operators’ Course contains a number of specific warnings and restrictions, including that a Taser weapon must not be used on a subject who is in or near water, due to the risk of drowning, and they must not be used on a person who is in an elevated position.

[74] In Tasmania, Taser weapons are used by officers of the Special Operations Group, and this use is governed by internal Special Operations Group guidelines which provides that when using a Taser weapon, “the Tasmanian Police ‘Use of Force’ continuum must be considered” and “other less lethal options must be considered, including the threat posed and options available to safely resolve an incident using the least amount of practicable force”. Tasmanian Special Operations Group officers are warned to give consideration to surrounding circumstances, including the proximity of nearby people, and to the ground surface.

[75] In the Australian Capital Territory, Taser weapons are only to be used by officers within the Advanced Warrant Team (AWT), and this use is governed by the Australian Federal Police Commissioner's Order on the Use of Force. AWT officers are currently able to use a Taser weapon in circumstances where:

... he or she believes on reasonable grounds that their use is reasonably necessary in order to:

- (a) *defend him or herself, or others from physical injury in circumstances where protection cannot be afforded less forcefully;*
- (b) *arrest a suspect whom he or she believes, on reasonable grounds, poses a threat of physical violence and the arrest cannot be affected less forcefully;*
- (c) *resolve an incident where a person is acting in a manner likely to seriously injure him or herself, and the incident cannot reasonably be resolved less forcefully; or*
- (d) *to deter attacking animals.*

2.3.6 Australian Non-Policing Organisations

[76] Non government agencies have raised questions about Taser weapon use by police officers. For example, the Federation of Community Legal Centres has published a document that warns of the dangers of Taser weapon use.²⁰ The Australian Council for Civil Liberties has been frequently critical of Taser weapon use and Taser weapon policy.²¹

[77] There has been significant academic interest in Taser weapon use. Criminologist and Royal Melbourne Institute of Technology Professor Julian Bondy has provided comment to the media about the dangers of Taser weapon use,²² as has University of New South Wales Professor Chris Cunneen.²³ A number of academic studies and journal articles have been published on the subject.²⁴

²⁰ Federation of Community Legal Centres, 2009, "Alternatives to Lethal Force: Tasers are not the answer", August.

²¹ See for example: "Queensland: Police get new Taser policy, training", AAP, 4 September 2009; "Taser death re-sparks roll-out row", *The Brisbane Times*, 20 December 2008; and "WAPOL stunned by Taser use criticism", Perth Now, 3 November 2007.

²² "No guidelines on Taser use: police", AAP, 18 June 2009.

²³ "Indigenous at risk from Taser rollout", News in Science, ABC Science, 29 April 2008.

²⁴ Ryan, E., 2008 "Shocked and Stunned: A Consideration of the Implications of Tasers in Australia", *Current Issues in Criminal Justice*, 20:2, pp.294-300; McCulloch, J. 2001, "Killing Us Softly", *Arena*, 52, pp.10-11.

2.4 Use of Taser Weapons Internationally

2.4.1 United States of America

[78] Taser weapons have been used in the United States of America for over two decades. According to a recent report produced by the United States National Institute of Justice, 11,500 law enforcement agencies in the United States were using Taser weapons by June 2008.²⁵

[79] Taser weapon use in the United States has been questioned and assessed within the media,²⁶ and by non-government agencies, government agencies and academics.²⁷ The Amnesty International's 2008 report, "Less Than Lethal?": The Use of Stun Weapons in US Law Enforcement", found there were serious concerns regarding the safety of Taser weapons and there was potential for abuse.²⁸ Amnesty identified 334 deaths between June 2001 and August 2008 following the use of a Taser weapon. In more than 40 cases, coroners or medical examiners found that the Taser weapon use had caused or contributed to these deaths. The report concluded that "[Taser weapons] are potentially harmful in a range of circumstances, including when used against members of the population (such as those disturbed through drugs or mental illness) who commonly come into contact with law enforcement officials".²⁹

[80] The Amnesty Report highlighted other dangers of Taser weapon use, providing examples of Taser weapons being used on pregnant women, children, the elderly, epileptics and handcuffed people. The report expressed a concern that Taser weapons are particularly open to abuse "as they can inflict pain at the push of a button without leaving substantial marks and can be used to inflict repeated and prolonged shocks".³⁰ Finally, the report remarked upon the low threshold for Taser weapon use that existed in most United States police jurisdictions, citing cases where people had a Taser weapon deployed on them for failing to show an

²⁵ National Institute of Justice, 2008, *Study of Deaths following Electro Muscular Disruption: Interim Report*, June, p.1.

²⁶ See for example, "As Police use of Tasers rises, questions over safety increase", *The New York Times*, 18 July 2004; "Taser death ignites racial tensions", *The Chicago Tribune*, 19 July 2008; "Man dies after police jolt him with a stun gun", *CNN US*, 18 November 2007.

²⁷ Stanford Criminal Justice Centre, 2005, *Use of Tasers by Law Enforcement Agencies: Guidelines and Recommendation*; United States Government Accountability Office, 2005, *Taser Weapons: Use of Tasers by Selected Law Enforcement Agencies*, May; ACLU Nebraska, 2005, *Taser Use by Nebraska Law Enforcement Agencies: The case for policy reform*, November; *Not There Yet: The Need for Safer Taser Policies in North Carolina*, A Report by the NC Taser Safety Project, 2008; "Real Men Use Nonlethals: Appeals to Masculinity in Marketing Police Weaponry", *Feminist Criminology*, 2009, 4:3 pp.275-293; "The Static Surrounding Less Lethal", *Corrections Forum*, 15:1, pp.56-58; White, M.D. and Ready, J., 2007, "The Taser as a Less Lethal Force Alternative: Findings on Use and Effectiveness in a Large Metropolitan Police Agency", *Police Quarterly*, 2007:10, pp.170-191.

²⁸ Amnesty International, 2008, *'Less Than Lethal'? The Use of Stun Weapons in US Law Enforcement*, p.55.

²⁹ *ibid.*

³⁰ *ibid.*, p.56.

identification card, refusing to sign a speeding ticket, verbally protesting, and running from police after being stopped for riding a bicycle without lights.³¹

- [81] The most recently published significant government report about the effects of Taser weapons in the United States was the National Institute of Justice's "Study on Deaths Following Electro Muscular Disruption: Interim Report". That study was overseen by a steering group with representation from the National Institute of Justice, the American College of Pathologists, the Centres for Disease Control and Prevention, and the National Association of Medical Examiners. The steering group appointed a medical panel which conducted mortality reviews of Taser weapon-related deaths and reviewed the current state of medical research regarding the effects of Taser weapons.
- [82] The National Institute of Justice report found that "[a]lthough exposure to [a Taser weapon] is not risk free, 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 effects of [Taser weapon] exposure."³² However, it was noted that "[A Taser weapon] can produce secondary or indirect effects that may result in death". Examples of this included Taser weapon use resulting in a fatal fall, or Taser weapon use resulting in ignition of explosive or highly flammable gas or liquid. The report concluded that "the potential for moderate or severe injury related to [Taser weapon] exposure is low".³³
- [83] However, the study found that the purported safety margins of Taser weapon deployment on normal healthy adults may not be applicable in small children, those with diseased hearts, the elderly, those who are pregnant and other at-risk individuals, reporting that "the effects of [Taser weapon] exposure in these populations are not clearly understood".³⁴ Further, that "[s]tudies examining the effects of extended exposure in humans to [Taser weapons] are very limited. Preliminary review of deaths following [Taser weapon] exposure indicates that many are associated with continuous or repeated discharge of the [Taser weapon]."³⁵
- [84] Police are not nationally regulated in the United States. There is a large number of law enforcement agencies and consequently a wide range of policies as to what is considered "acceptable use" of the Taser weapon. A 2005 study by the Government Accountability Office of seven law enforcement agencies found that two agencies restricted Taser weapon use to situations where a subject's assaultive behaviour resulted in a risk

³¹ ibid., pp.14-15.

³² National Institute of Justice, 2008, *Study of Deaths Following Electro Muscular Disruption: Interim Report*, June, p.3.

³³ ibid., p.3.

³⁴ ibid., p.4.

³⁵ ibid.

of physical harm to another; four agencies permitted use of the Taser weapon when a subject is actively resisting arrest but not attacking an officer; and one allowed use of Taser weapons when a subject was passively resisting by not responding to an officer's directions.³⁶

[85] The majority of these agencies had a variety of other safety guidelines – for example, prohibiting use of Taser weapons on children or on pregnant women.³⁷

2.4.2 Canada

[86] In Canada, Taser weapons are used by general duties officers within the Royal Canadian Mounted Police (RCMP) and within several provincial police services. TASER International has reported that 160 Canadian police services use Taser weapons,³⁸ but not all by general duties officers – for example, at the Toronto Police Service only supervisors and officers in high risk squads use Taser weapons.³⁹

[87] According to a review by the Nova Scotia Department of Justice, by March 2008 there had been 20 deaths in Canada subsequent to the use of a Taser weapon by law enforcement officers.⁴⁰ In November 2007, a mentally ill man died 30 hours after having a Taser weapon deployed on him in Halifax, Nova Scotia, prompting the Nova Scotia Minister of Justice to order the review of Taser weapon use. Although the review did not conclude that the man's death was caused by the use of a Taser weapon, it did find that Taser weapons were "open to misuse or even abuse: particularly over-reliance on the weapon to subdue subjects when less intrusive means could be effective".⁴¹

[88] Reviews of Taser weapon use by law enforcement officers had previously been conducted by government agencies in a number of Canadian jurisdictions,⁴² and many of these were summarised in the Nova Scotia Report.

[89] One high profile incident in British Columbia involved a man's death following use of a Taser weapon by RCMP officers. This death resulted in a major Commission of Inquiry (the Braidwood Inquiry) in two phases.

³⁶ United States Government Accountability Office, op. cit., pp.8-9.

³⁷ ibid., pp.15-16.

³⁸ Standing Committee on Public Safety and National Security, 2008, *Study of Conductive Energy Weapon – Taser*, June, p.3.

³⁹ ibid., p.9.

⁴⁰ Nova Scotia Department of Justice, 2008, *Conducted Energy Device (CED) Review*, 5 March, p.2.

⁴¹ ibid., p.40.

⁴² Office of the Police Complaints Commissioner, 2005, *Taser Technology Review Final Report*, 14 June; Alberta Solicitor General and Public Security, 2009, *Provincial Guidelines for the Use of Conducted Energy Weapons*, Law Enforcement and Oversight Branch, July; Canadian Police Research Centre, 2005, *Review of Conducted Energy Devices*, 22 August; Ontario Association of Chiefs of Police, 2008, *Report on Conducted Energy Weapons*, Report Series No. 132.2, October.

(1) An inquiry into and report on Taser weapon use by provincially regulated law enforcement agencies, the Sheriff Services Division and the Corrections Branch.

(2) An inquiry into the circumstances relating to the death of the man.

[90] The Phase One report was published in June 2009. The Phase Two report was published in May 2010.

[91] At the same time, the Commission for Public Complaints against the RCMP (“the CPC-RCMP”) conducted an inquiry into the same issues at the request of the Minister for Public Safety, and the Canadian House of Commons passed a mandate to study Taser weapon use.

[92] The CPC-RCMP report made a number of recommendations in respect to Taser weapon use by RCMP officers.

- A Taser weapon should be used only when the subject is “combative” or posing a risk of “death or grievous bodily harm” to the member, the subject or the general public (the “hard floor” threshold for Taser weapon use).
- Officers should seek medical attention for the subject after every deployment of a Taser weapon on a person.
- RCMP should implement clearer operational guidelines around Taser weapon use on “at-risk” populations.
- RCMP should allow Taser weapons to be used only by higher ranking officers (corporals) in urban settings, or constables with more than five years experience in rural settings.
- Reporting of Taser weapon use should be improved.
- A review should be conducted of all Taser weapon use.
- The RCMP should establish Use of Force coordinators.⁴³

[93] A Special Report was produced by the CPC-RCMP in March 2009, publishing the results of a further review of all Taser weapon use during 2008. The report noted that the RCMP had made “commendable progress” in respect to the recommendations. The RCMP released a new policy relating to Taser weapon use on 9 February 2009. This policy contained a number of improvements; however, it was of concern to the CPC-RCMP that the RCMP rejected their recommendation that would have restricted Taser weapon use to officers with more than five years experience. Further, it was noted that the RCMP would not implement the

⁴³ Commission for Public Complaints Against the Royal Canadian Mounted Police, 2008, *RCMP Use of the Conducted Energy Weapon (CEW) Final Report*, 12 June, pp.13-15.

“hard floor” threshold for Taser weapon use that was recommended by the CPC-RCMP.⁴⁴

- [94] The House of Commons inquiry was conducted by the Standing Committee on Public Safety and National Security. A report outlining the findings of this inquiry was published in June 2008. Concern was expressed in the report about the reluctance of the RCMP to adopt the threshold for Taser weapon use recommended by the CPC-RCMP. After hearing expert testimony on the subject of Taser weapon use over the course of four months, the Committee concluded that “to prevent confidence in the RCMP from eroding further, ... the RCMP must ... [revise] its policy on [Taser weapon use] to stipulate that use of such weapons can be justified only in situations where a subject is displaying assaultive behaviour or represents a threat of death or grievous bodily harm”. The report stated that “[t]his immediate restriction is necessary given the persisting uncertainty about the effects of [Taser weapon] technology on the health and safety of persons subjected to it and the scarcity of independent, peer-reviewed research in this regard”.⁴⁵
- [95] The Committee also recommended that RCMP improve officer training “on intervention involving persons suffering from various problems, including bipolar disorder, autism and autism spectrum disorders, schizophrenia and drug addiction”.
- [96] In July 2009, a report was published from a Commission of Inquiry on Conducted Energy Weapons (“the Braidwood Inquiry”). This report has become the most comprehensive and significant contemporary report on the risks of Taser weapon use internationally.⁴⁶
- [97] The Braidwood Inquiry looked at Taser weapon use by police officers in British Columbia, including the policy, training, and the regulatory framework relating to their use. Braidwood Inquiry researchers studied the literature regarding the health risks involved in Taser weapon use, and Braidwood invited medical experts in emergency medicine, cardiology, electrophysiology, pathology, epidemiology, psychology and psychiatry to make presentations to the Inquiry.
- [98] On the issue of whether Taser weapons can cause death, in the Phase One report Braidwood concluded that “notwithstanding the inadequacy of the medical research conducted to date, we as a society know enough about conducted energy weapons to make important decisions relating to their use. Conducted energy weapons do have the capacity (even in healthy adult subjects) to cause heart arrhythmia, which can lead to

⁴⁴ Commission for Public Complaints Against the Royal Canadian Mounted Police, 2009, *RCMP Use of Conducted Energy Weapon (CEW): January 1, 2008 to December 31, 2008: Special Report*, 31 March.

⁴⁵ Standing Committee on Public Safety and National Security, 2008, *Study of the Conductive Energy Weapon – Taser: Report of the Standing Committee on Public Safety and National Security*, Canadian House of Commons, June.

⁴⁶ Braidwood Commission on Conducted Energy Weapon Use, 2009, *Restoring Public Confidence: Restricting the Use of Conducted Energy Weapons in British Columbia*, Canada, June, p.16.

ventral tachycardia and/or fibrillation, which, if not treated immediately, can cause death, and that risk increases in certain circumstances".⁴⁷

[99] However, Braidwood also stated that "there are ways to ameliorate those risks and there is no doubt that in the great majority of deployments, the weapon is effective. On balance, I concluded that our society is better off with these weapons in use than without them".⁴⁸

[100] The Phase One report made many recommendations on Taser weapon use.

- Officers should be authorised to use a Taser weapon only in relation to the enforcement of a federal criminal law.
- Officers should be prohibited from using a Taser weapon unless the subject is causing bodily harm, or the officer is satisfied that the subject's behaviour will imminently cause bodily harm.
- Even if these thresholds for Taser weapon use are met, the officer should be restricted from using a Taser weapon unless the officer is satisfied that no lesser force option has been or will be effective, and de-escalation and crisis intervention techniques have not been and will not be effective.
- Crisis intervention training should be provided to officers without delay.
- Officers should be required to use de-escalation and/or crisis intervention techniques before deploying a Taser weapon, unless they are satisfied on reasonable grounds that such techniques will not be effective.
- Officers should be prohibited from using a Taser weapon in the case of reported subject self-harm unless the subject is causing bodily harm to himself or herself, or the officer is satisfied on reasonable grounds that the subject's behaviour will imminently cause harm.
- Officers should be prohibited from discharging a Taser weapon on a subject for longer than five seconds unless that discharge was not effective in eliminating the risk of bodily harm, and a further discharge will be effective in eliminating the risk of bodily harm.
- Medical assistance should be called by an officer to high risk situations (preferably prior to Taser weapon deployment). Such situations include but are not limited to deployment in probe mode across the subject's chest; deployment for more than five seconds; or deployment on an emotionally disturbed person, an elderly person, a person who the officer believes to be pregnant, or a person who the

⁴⁷ ibid.

⁴⁸ ibid.

officer believes has a medical condition that may be worsened because of the deployment.

- Whenever a Taser weapon is assigned to an officer, that officer should have an automated external defibrillator readily available for use.
- A number of other recommendations relating to consistency of Taser weapon policy across the province, training in Taser weapon use, certification and testing of Taser weapons, reporting and further research and review.⁴⁹

[101] The British Columbia Solicitor General announced on 23 July 2009 that the British Columbia Government accepted all of the recommendations of Phase One of the Braidwood Inquiry. The RCMP is currently reviewing the recommendations.

[102] Phase Two of the Braidwood Inquiry found that both the physical altercation with officers and Taser weapon use contributed to the death of the mentally ill man referred to in paragraph [87]. However, Braidwood considered that multiple deployments of the Taser weapon played a more prominent role. Braidwood was also critical of the use of the Taser weapon during the incident.⁵⁰ TASER International has recently challenged the findings of the Braidwood Inquiry in the British Columbia Supreme Court.⁵¹

2.4.3 New Zealand

[103] Taser weapons have been available for the use of some general duties officers in New Zealand since late 2008,⁵² and the roll out of Taser weapons for officers is continuing.⁵³ General duties officers in New Zealand do not carry firearms.

[104] A 12 month Taser weapon trial was conducted by New Zealand Police between 1 September 2006 and 31 August 2007 in the Police Districts of Auckland, Waitemata, counties Manukau and Wellington. Prior to the trial, a literature review was conducted regarding Taser weapon use in other jurisdictions, including the scientific and medical impact of the devices. Standard Operating Procedures were developed to guide the trial, and a training package was developed. The threshold for use outlined in the Standard Operating Procedures was that the Taser weapon could only be

⁴⁹ ibid.

⁵⁰ Braidwood Commission on Conducted Energy Weapon Use, 2010, *Braidwood Commission on the death of Robert Dziekanski*, May, pp.11, 337.

⁵¹ “Taser makers challenges Canada stun gun inquiry findings”, The Australian, 6 July 2010.

⁵² “Tasers for NZ Police”, Australia Network, 28 August 2008.

⁵³ “NZ police want quicker Taser roll out”, *The Age*, 11 May 2009.

used for violent situations. It was stipulated that the weapon could not be used for compliance.⁵⁴

- [105] The New Zealand trial included a survey about public opinion relating to Taser weapon use. The representational survey of 1,200 New Zealanders indicated “a high level of awareness of the Taser trial and support for Taser use by police, particularly in situations where police need to protect themselves and the public from violence and harm, and in situations where subjects have weapons”.⁵⁵ The trial also involved interviews with officers who deployed a Taser weapon. People who were subjected to Taser weapon use were not interviewed.
- [106] The review involved an analysis of the 127 uses during the trial, including: the type and frequency of Taser weapon use; circumstances of the incidents to which a Taser weapon was used; types of locations and events to which a Taser weapon was used; alcohol and drug use by subjects; weapons present; offence classes and types; mental health issues; firearms deployment when a Taser weapon was available; and characteristics of the individuals involved. Of the 127 uses, a Taser weapon was deployed only 19 times. In 16 of these incidents, the subject had a weapon.
- [107] All subjects of Taser weapon deployment during the trial were medically examined because one of the Standard Operating Procedures prescribed that “a medical practitioner must examine all people who are exposed to the application of [a Taser weapon] … as soon as is practicable”. The results were available for the trial review. The report of the Medical Advisory Board following analysis of the trial data concluded that “none of the 17 medical reports available for subjects exposed to a Taser discharge showed any moderate/severe injuries or required follow up treatment”.⁵⁶
- [108] As a result of the trial, Standard Operating Procedures and training were assessed. It was concluded Taser weapons were an effective non-lethal policing weapon, and the roll-out to general duties officers is continuing.

2.4.4 United Kingdom

- [109] Police officers in the United Kingdom do not generally carry firearms. However, since 2005 many officers who do carry firearms have also been equipped with a Taser weapon. More recently, there have been national moves to introduce Taser weapons to general duties officers, and officers in some areas now carry a Taser weapon in the course of general duties.⁵⁷

⁵⁴ *Operational Evaluation of the New Zealand Taser Trial*, 2008, Police Operations Group and the Evaluation Team at Police National Headquarters, February, p.151.

⁵⁵ *ibid.*, pp.16-17.

⁵⁶ *ibid.*, p.140. Taser weapons were deployed on 19 subjects during the trial. In one case the probes did not make contact, and one medical report was not obtained, resulting in 17 medical reports.

⁵⁷ “Tasers fired 51 times: Police. Regions figures revealed”, *Coventry Telegraph*, 25 July 2009, p.9.

[110] Not all United Kingdom police services have introduced Taser weapons for general use. Some forces, including the Metropolitan Police, have rejected Taser weapons, arguing that widespread Taser weapon use will “alarm the public and increase tension on the streets”.⁵⁸

[111] Although Taser weapons have only recently been issued for the use of general duties officers in the United Kingdom, and prior to that were available for the use of firearms carrying officers since 2005, an evaluation of Taser weapons was commenced in the United Kingdom in 2002. A large number of reports (medical and operational) were produced for the purposes of this evaluation.⁵⁹ Once this evaluation had been completed, a 12 month trial of Taser weapons was undertaken by the Association of Chief Police Officers. Following this trial, another series of reports and studies were produced, including a report contracted to the Defence Science and Technology Laboratory.⁶⁰ Thus it can be said that, prior to the introduction of Taser weapons for the use of general duties officers in the United Kingdom, the Association of Chief Police Officers conducted 12 months of operational trials and three years of scientific, medical and operational research.

[112] In April 2009 a complaint of inappropriate Taser weapon use was referred to the Independent Police Complaints Commission after a video showed an officer pointing a Taser weapon at people lying on the floor of a squat during the G20 Summit protests in London.⁶¹ The video was shown in the media and caused widespread public concern.

[113] The importance of public trust and confidence in the police Taser weapon use has been acknowledged by senior police in the United Kingdom. When footage appeared in June 2009 showing a man being hit twice with a Taser weapon in Nottingham city centre, the matter was referred immediately to the Independent Police Complaints Commission, despite the person involved making no complaint about the action of police officers.⁶²

[114] With the initial introduction of Taser weapons to United Kingdom police services, there was an initial agreement that all matters involving deployment of a Taser weapon would be referred to the Independent Police Complaints Commission.⁶³ With the growing distribution and Taser

⁵⁸ “Case for Tasers still to be proved, says police chief”, *The Times*, 2 June 2009, p.15.

⁵⁹ These reports included: Police Scientific Development Branch, 2002, *Evaluation of Taser Devices*, Home Office, United Kingdom; and Police Scientific Development Branch, 2005, *Further Evaluation of Taser Devices*, Home Office, United Kingdom.

⁶⁰ Defence Science and Technology Laboratory, n.d., *The X26 Taser – a review of the experimental and operational data related to an assessment of the medical implications of use*, United Kingdom.

⁶¹ “G20 Officer ‘pointed Taser at protesters’; Video footage taken after police storm squat”, *The Times*, 20 April 2009, p.11.

⁶² “YouTube shows Taser police giving shock treatment”, *The Times*, 16 June 2009, p.21.

⁶³ Normally matters are only referred to the Independent Police Complaints Commission by United Kingdom police services when they are of a serious nature. Arrangements regarding the referral of matters to the

weapon use, this referral arrangement became impracticable, and the Independent Police Complaints Commission changed the criteria for referral. Matters were then referred to the Independent Police Complaints Commission if the use of a Taser weapon resulted in death or serious injury; caused danger to the public; or revealed failings in command (this criteria is consistent with the referral for firearms matters).⁶⁴

[115] In November 2008, the Independent Police Complaints Commission published a report concerning the trial of Taser weapons between September 2007 and September 2008.⁶⁵ The report found there was no significant increase in complaints about Taser weapon use during the trial of Taser weapons by officers in specially trained units.⁶⁶ However, the Independent Police Complaints Commission report expressed a concern that most complaints received involved the use of a Taser weapon in drive stun mode, and that most of these deployments had been to the head, neck, shoulder blades or chest of the subject. The Independent Police Complaints Commission recommended more training and better guidance for police.⁶⁷

2.5 Risks of Taser Weapons Highlighted by the Literature

[116] There are recurrent themes about the risks associated with Taser weapon use highlighted by these sources. These themes include the following:

- risk of injury;
- risk of incapacitation;
- risk of ignition;
- risk of sudden death;
- risks associated with multiple deployment and multiple force options;
- risks of particular individuals and groups;
- risk of unacceptable use – abuse of human rights; and
- risk of mission creep.

Independent Police Complaints Commission are made between police services and the Independent Police Complaints Commission pursuant to section 10 of the *Police Reform Act 2002*.

⁶⁴ Independent Police Complaints Commission, 2008, *Tasers: IPCC report on cases involving the use of Taser between 1 April 2004 and 30 September 2008*, 10 November, p.2.

⁶⁵ *ibid.*

⁶⁶ Independent Police Complaints Commission, 2008, *Taser Trial reveals no surge in public complaints*, United Kingdom, Press Release, 24 November.

⁶⁷ *ibid.*

[117] The identification and measurement of risks will always involve some subjective analysis. Risks that may seem acceptable to one individual, or indeed, to one community, may seem unacceptable to others. This subjectivity, or context dependence, is important in the consideration of many questions relating to the conduct of police officers, particularly in relation to questions about the use of force, powers to search, and powers of arrest.

[118] Discussion about and assessment of the risks involved in Taser weapon use cannot be undertaken in isolation. Attention needs to be paid to the risks involved in not using a Taser weapon. This is highlighted by 2008 media reports criticising the Victorian government and police for failing to supply Taser weapons to general duties officers in the wake of the fatal shooting of a teenage boy.⁶⁸

2.5.1 Risk of Injury

[119] There is clearly a risk that a person will be physically harmed by Taser weapon use. When a Taser weapon is fired at a subject, and the subject is struck by the Taser weapon prongs, minor injuries in the form of probe lacerations can result. If the probes strike a subject in a sensitive area, such as in the eye or on the face generally, or in the genital area, or if the probes penetrate to an internal organ, more serious injury can potentially result.

[120] A number of these risks are acknowledged by manufacturer, TASER International. All Taser weapons supplied by TASER International are accompanied by a set of warnings about the proper care and use of Taser weapons.

- *Use of [a Taser weapon] may cause irritation, puncture, mark, abrasion, rash, burn, keloid, or other scarring that may be permanent.*
- *The TASER probe has a small dart point which may cause a penetration injury to blood vessel, or internal organ (including lung, bone, or nerve). The probe or dart point (which may detach) can also puncture or become embedded into a bone, organ, or tissue, which may require immediate medical attention, surgical removal, or may result in scarring, infection, or other serious injury.*
- *If a TASER probe, electrode or electrical discharge contacts or comes into close proximity to an eye it could result in serious injury, including permanent vision loss. DO NOT intentionally aim [a Taser weapon] at the eye of a person or animal without justification.*⁶⁹

⁶⁸ “Melbourne shooting prompts call for Tasers for police”, SBS World News Australia, 12 December 2008.

⁶⁹ TASER International, *Important ECD product safety and health information*.

- [121] TASER International also warns that improper use of the laser light on a Taser weapon can result in eye injury.⁷⁰
- [122] In the QPS-CMC review of the Queensland Taser weapon trial, it was reported that of the 126 incidents involving Taser weapon deployment, 26 subjects received Taser weapon-related injuries. Eleven of these injuries included lacerations and one of the subjects required treatment at a hospital.⁷¹
- [123] The New Zealand Taser weapon trial review found that in the 17 medical reports obtained following the use of a Taser weapon on a subject, the only injuries reported were minor puncture wounds caused by the probes. Some superficial injuries were also reported, though in three cases these had been caused by self-harm.⁷²
- [124] A recent Australian study reported two Australian cases where eye injuries had been caused by Taser weapon probes.⁷³
- [125] In a journal article in the *Annals of Emergency Medicine*, it was reported that a police officer was seriously injured by Taser weapon deployment to his neck during training. In the article it was reported that the officer suffered compression fractures of the spine, almost certainly caused by muscle spasms resulting from the Taser weapon deployment.⁷⁴

2.5.2 Risk of Incapacitation

- [126] There is a risk of serious injury being caused by the incapacitation effect of a Taser weapon. When a Taser weapon is deployed on a subject in probe mode the subject is temporarily paralysed by the electric shock. This can result in injury if the subject then falls to the ground, or strikes another object. If the subject is running, this impact can result in particularly severe injury. These situations also carry a risk of death, if, for example, the subject suffers a blow to the head when falling.
- [127] In one case in the United States a man successfully sued a law enforcement agency after he fell and was paralysed when a Taser weapon was deployed on him.⁷⁵ In another reported case a man died when he fell from a building after a Taser weapon was deployed on him.⁷⁶ In its 2008

⁷⁰ TASER International, *ibid*.

⁷¹ QPS-CMC, *op. cit.*, pp.21-22.

⁷² Police Operations Group and the Evaluation Team at Police National Headquarters, 2008, *Operational Evaluation of the New Zealand Taser Trial*, New Zealand, pp.114-119.

⁷³ Robb, M., Close, B., Furyk, J. and Aitken, P. 2009, "Review article: Emergency department implications of the Taser", *Emergency Medicine Australasia* 2009;21, p.254.

⁷⁴ Winslow, J.E., Bozeman, W.P., Fortner, M.C. and Alson, R.L., 2007. "Thoracic Compression Fractures as a Result of Shock From a Conducted Energy Weapon: A Case Report", *Annals of Emergency Medicine*, 50:5, pp.584-586.

⁷⁵ *Not There Yet: The Need for Safer Taser Policies in North Carolina*, *loc.cit.*

⁷⁶ "Tasered man plunges to death", *The Daily Telegraph*, 26 September 2008, reported in NSW Ombudsman, *op. cit.*, p.20.

report, Amnesty International pointed to four deaths in the United States caused by brain or spinal injury sustained while falling after a Taser weapon was deployed on them, and two cases in which a person died from drowning after a Taser weapon was deployed in or near water.⁷⁷

2.5.3 Risk of Ignition

[128] There is also a risk of injury or death if a Taser weapon is used in a situation where there is flammable liquid present. The use of a Taser weapon in these circumstances can cause a fire, which can result in serious injury or death for the subject involved. Officers are also placed at serious risk in these circumstances.

[129] Amnesty International reported two cases in which a subject died after a Taser weapon was deployed near flammable liquid. In one case, a Taser weapon deployment ignited a can of gasoline on the front seat of a car next to the subject, while in the other, the use of a Taser weapon reportedly ignited gasoline that a man had doused himself with prior to or during the attendance of police. Both of these men died as a result of their burns.⁷⁸

2.5.4 Risk of Sudden Death

[130] The debate as to whether a Taser weapon can cause death has not reached a firm conclusion, although it is acknowledged that secondary injuries (from falls or drowning) may result in death. The more controversial cause of death is asphyxia or arrhythmia caused by the electrical shock of the Taser weapon. There have been four incidents in Australia in which it has been reported in the media that Taser weapon use is said to have resulted in or contributed to the sudden death of a person for reasons that are *not* associated with the muscular incapacitation of the person (resulting in a fall or drowning) or with the ignition of flammable liquids.

- A case in New South Wales where a mentally ill man reportedly died some days after having a Taser weapon deployed on him.⁷⁹
- A case in the Northern Territory where a man died after being subjected to a Taser weapon.⁸⁰
- The case in Queensland (discussed in section 2.3.2) where a man died after allegedly having a Taser weapon deployed on him several times.⁸¹

⁷⁷ Amnesty International, op. cit., pp.53-54.

⁷⁸ ibid., p.54.

⁷⁹ NSW Ombudsman, loc. cit.

⁸⁰ “Taser death second in six months”, The Australian, 13 June 2009.

⁸¹ “Man dies after police use Taser”, ABC News, 12 June 2009.

- A case in Western Australia where it was reported a mentally ill man died following the deployment of a Taser weapon.⁸² This case will be discussed in Case Study Four.

[131] Taser weapon use is thought to contribute to deaths by:

- causing ventricular fibrillation,⁸³ leading to heart arrhythmia (or “dysrhythmia”);
- causing or contributing to asphyxia; or
- causing stress which results in or exacerbates a state of “excited delirium”,⁸⁴ and which then leads to sudden death.

[132] The 2008 Amnesty International report found the majority of sudden deaths following the use of a Taser weapon were as a result of cardiac or respiratory arrest. The study involved a review of 98 autopsy reports. In at least 42 of these cases, the deceased had been struck to the chest by a Taser weapon.⁸⁵

[133] Many of the deaths Amnesty analysed involved what has been termed “positional asphyxia”. This condition can result from a subject being restrained in a manner that restricts their ability to breathe. The report raised concerns that a Taser weapon deployment on a restrained subject may contribute significantly to positional asphyxia.⁸⁶

[134] The report also identified that use of a Taser weapon may by itself interfere with a subject’s ability to breathe, by affecting the muscles in the chest or diaphragm. Amnesty expressed concern about the fact that in April 2008, TASER International removed a product warning about Taser weapon use that had been issued in 2005. This warning was that “[r]epeated, prolonged and/or continuous exposure(s) to the TASER electrical discharge may cause strong muscle contractions that may impair

⁸² “Taser or stun guns”, The Law Report, *Radio National*, 22 April 2008.

⁸³ Ventricular fibrillation can be described as a “chaotic rhythm” occurring in the left and right ventricles (the two lower chambers of the heart). This can cause the heart to beat at 200 – 300 beats per minute. According to expert medical evidence presented to the Braidwood Inquiry a person affected by ventricular fibrillation will “lose blood pressure, lose consciousness and collapse within five to ten seconds”. Braidwood, op. cit., p.219.

⁸⁴ Amnesty International, op. cit., p.31. Amnesty International reported that many of the deaths associated with the use of Taser weapons which they identified in the United States were attributed by coroners to “excited delirium”. According to Amnesty International, excited delirium is not a diagnostic term formally recognised in the schemes of the American Psychological Association or the World Health Organisation. Recent Canadian research has described the state as a “symptom cluster” – with symptoms including “bizarre or violent behaviour, hyperactivity, hyperthermia, confusion, great strength, sweating and removal of clothing, imperviousness to pain”. The condition or state is associated with sudden death that seems to result from life threatening physiological changes, including changes to blood acidity which can put the heart at risk. The condition or state is associated with the ingestion of stimulant drugs and with mental illness.

⁸⁵ ibid., p.54.

⁸⁶ ibid., p.49.

breathing or respiration". The modified caution about muscle contractions only warned about "strain-type injuries".⁸⁷

- [135] It is often very difficult to determine the cause of death in such cases. In many incidents in which police officers decide to use a Taser weapon, several complicating factors can be involved, including drugs or alcohol, stress, fatigue, mental illness and other health conditions. Further, it is often the case that the person has been subject to other applications of force or has been assaulted.
- [136] A report commissioned by Victoria Police in 2004 involved a review of the literature on Taser weapon use and a test of the electrical output of the Taser X26 model. The study found that "no proven connection had been reported between use of the Taser and subsequent deaths of offenders". It was concluded that the Taser X26 model represented "an acceptable risk when used by trained law enforcement officers in accordance with the manufacturer's directions for use".⁸⁸
- [137] The 2008 NSW Ombudsman Report was more cautious in its findings.

*There is significant dissent in medical studies about whether a Taser charge can affect a person's heart and possibly cause death. While major studies have found Tasers to be generally safe to use on healthy adults, there is less certainty about whether these are as safe to use on other people, such as those who are stressed, have pre-existing medical conditions, or are intoxicated.*⁸⁹

- [138] Recent reports from Canada and the United States reflect this level of caution, particularly in relation to vulnerable subjects, although there is still some conflict in the findings of major studies and reviews about whether a Taser weapon can cause sudden death.
- [139] The 2008 United States National Institute of Justice report found that "there is currently no medical evidence that [Taser weapons] pose a significant risk for induced cardiac dysrhythmia when deployed reasonably". However, it was noted that factors such as thin stature and dart placement in the chest may "lower the safety margin for cardiac dysrhythmia".⁹⁰
- [140] The Braidwood Inquiry found that even in the case of people with healthy hearts, a Taser weapon *can* cause ventricular fibrillation. According to the Braidwood Inquiry's findings, if a subject suffers ventricular fibrillation, the subject will, if not defibrillated, lose consciousness within seconds and die within 10 minutes. The Braidwood Inquiry also found that, although there is often a lack of physical evidence of ventricular fibrillation at autopsy, if a

⁸⁷ *ibid.*, p.35.

⁸⁸ *Taser X-26 Safety Analysis*, The Alfred Hospital, Melbourne, 29 June 2004, pp.11, 24.

⁸⁹ NSW Ombudsman, *op. cit.*, p.16.

⁹⁰ National Institute of Justice, *loc. cit.*

person dies suddenly and from no obvious cause after being subjected to a Taser weapon, “death is almost certainly due to arrhythmia”.⁹¹

- [141] International research, including Braidwood, Amnesty International and the United States National Institute of Justice, has found that the risk of death was related to the individual circumstances such as those with existing medical conditions and in subjects with low body mass.
- [142] The most recent Australian publication on the subject of Taser weapon-related deaths and injuries resulted from a 2009 review of existing literature by emergency medical practitioners at Townsville Hospital (“the Townsville study”). The study advised that “the majority of available evidence is limited to case reports, animal models or manufacturer-supported studies conducted on healthy volunteers, which might not be applicable to field use”.⁹² The study did not reach clear conclusions on the likelihood of cardiac arrhythmia resulting from Taser weapon use, stating only that current research has produced conflicting results. The Townsville study indicated that other variables might impact on the risk of developing arrhythmia after Taser weapon use, such as the presence of drugs and the probe-to-heart distance.⁹³
- [143] Based on the literature, while the risk of cardiac arrhythmia, asphyxia or other types of sudden death resulting from Taser weapon use are likely to be very low in healthy adults, such deaths can and do occur.

2.5.5 Risks Associated with Multiple Taser Weapon Deployment and Multiple Force Options

- [144] The Amnesty International report refers to a number of studies which indicate that the risk of death following Taser weapon deployment increased in cases where subjects were exposed to multiple or prolonged shocks of a Taser weapon.⁹⁴ Amnesty reported that “the available data shows that most of those who died were subjected to more than one Taser weapon shock, and many were exposed to multiple or prolonged shocks”.⁹⁵
- [145] The Braidwood Inquiry supported this view finding a greater risk of death resulting from arrhythmia, asphyxia and other cases of sudden death when subjects were exposed to multiple or extended deployments.⁹⁶ Braidwood recommended that RCMP policy be modified to ensure that each single deployment of a Taser weapon only occurs following a reassessment of the situation.⁹⁷

⁹¹ Braidwood Commission on Conducted Energy Weapon Use, 2009, op. cit., p.14.

⁹² Robb et al, op. cit., p.252.

⁹³ ibid.

⁹⁴ Amnesty International, op. cit., pp.42-45.

⁹⁵ ibid., p.43.

⁹⁶ Braidwood Commission on Conducted Energy Weapon Use, 2009, op. cit., p.271.

⁹⁷ ibid., p.20.

- [146] The death of a man in Queensland, which led to the QPS-CMC Review, involved multiple deployments of a Taser weapon. Taser weapon downloads confirmed that a Taser weapon was deployed 28 times during the incident, although it is not clear how many of these deployments actually made contact with the man. An autopsy showed that the man died from a heart attack.⁹⁸ The QPS-CMC review concluded that multiple or prolonged use of [a Taser weapon] could increase the risk of injury.⁹⁹
- [147] The QPS-CMC Review considered whether limits should be placed on the number of times a Taser weapon should be deployed on a subject. Similar to Braidwood, it was found that limits should not be placed on the number of deployments, but that officers should be aware of the increased risks associated with multiple deployments. The QPS-CMC review also recommended that officers be prohibited from deploying more than one Taser weapon on a person at the same time.¹⁰⁰

2.5.6 Risks to Particular Individuals and Groups

- [148] The literature indicates that situations involving “excited delirium”, or high stress situations in which people exhibit extreme behaviour and agitation, can result in a subject’s body temperature rising rapidly, which can then lead to sudden death. This is most likely to occur when a subject suffers from a mental illness or emotional disturbance, or is under the influence of certain substances, such as methamphetamine. Despite the United States National Institute of Justice study’s conclusion that the high rate of mortality associated with the condition is not substantially affected by the use of a Taser weapon, it acknowledged that factors and actions that heighten or contribute to the level of stress experienced by the subject can exacerbate the condition.
- [149] Therefore it seems reasonable to conclude that people who are suffering a mental illness or are under the influence of drugs, and who are otherwise exhibiting symptoms of extreme psychological stress, will be likely to be at greater risk of death following the use of a Taser weapon. This in turn indicates that drug users and the mentally ill are at a greater risk of death associated with Taser weapon use. Further, it appears that drug users may be more at risk of death following Taser weapon use as a result of cardiac arrhythmia.¹⁰¹
- [150] The NSW Ombudsman’s Report supports a conclusion that children, the elderly and those with pre-existing heart conditions might be more at risk of ventricular fibrillation and other negative medical consequences of Taser weapon use. This conclusion is based on recommendations of a 2002 UK study on the medical implications of Taser weapon use, which

⁹⁸ “Taser victim died from heart attack”, *The Australian*, 19 June 2009.

⁹⁹ QPS-CMC, loc. cit.

¹⁰⁰ *ibid.*, p.15.

¹⁰¹ Robb et al, op. cit., p.252.

recommends that Taser weapon use be restricted on people of smaller stature.¹⁰²

- [151] These findings are supported by Braidwood¹⁰³ and the United States National Institute of Justice reports.¹⁰⁴ Several reports, including Braidwood, have also raised the possibility and even the likelihood that pregnant women are more likely to suffer serious injury if they are subjected to a Taser weapon than the general adult population.¹⁰⁵ There is also a reported risk that Taser weapon use might induce labour and lead to miscarriage.¹⁰⁶
- [152] It has been proposed that indigenous people are at greater risk of injury or death if a Taser weapon is used on them.¹⁰⁷ Professor Chris Cunneen, a criminologist at the University of New South Wales, provided comment to the media about the “below-average health” of many indigenous people and the physical effects of Taser weapon use.¹⁰⁸
- [153] The rollout of Taser weapons in the Northern Territory raised such concerns. Aboriginal Medical Services Alliance Northern Territory Chief Executive Officer, John Paterson, drew attention to the reported deaths in the United States by Amnesty International, the fact that “Aboriginal Australians have three times the rate of heart disease and heart attacks compared to other Australians” as well as having more contact with the police force, and asked: “If fit and healthy young men are being killed by the Taser guns at such alarming rates in the US, what chance will our mob have if they are shot by police?”¹⁰⁹
- [154] Similar concerns have been raised in Western Australia by the Aboriginal Legal Service Western Australia. Dennis Egginton, Chief Executive Officer of the Aboriginal Legal Service Western Australia, has recently called for an urgent review of policy and procedure relating to Taser weapon use in Western Australia.

Tasers have proven to be a lethal weapon in the past and, if used at all, they should only be handled by specialist police (not general duty officers) and as a last resort.....There are major health issues affecting many of our people across the country, from diabetes to heart health....When you couple that fact with the reality that our people are over-policed and disproportionately imprisoned, there is

¹⁰² NSW Ombudsman, op. cit., p.19.

¹⁰³ Braidwood Commission on Conducted Energy Weapon Use, 2009, op. cit., pp.264-265.

¹⁰⁴ National Institute of Justice, op. cit., p.4.

¹⁰⁵ NSW Ombudsman, op. cit., p.19; Braidwood Commission on Conducted Energy Weapon Use, 2009, loc. cit.

¹⁰⁶ Amnesty International, op. cit., p.91.

¹⁰⁷ “Indigenous at risk from Taser rollout”, loc. cit.

¹⁰⁸ ibid.

¹⁰⁹ “Aborigines at risk of Taser deaths”, *Herald Sun*, 11 February 2008.

*clearly an increased risk of serious harm or death by Taser to somebody who is already in a poor state of health.*¹¹⁰

2.5.7 Risk of Unacceptable Use – Abuse of Human Rights

[155] The effects of a Taser weapon seem to vary from individual to individual. Many people who have been subjected to a Taser weapon report intense and unbearable pain,¹¹¹ while some others suffer numbness and incapacitation. The psychological effects have not been thoroughly measured and evaluated. The research suggests that some people who have had a Taser weapon used on them suffer humiliation, fear and ongoing adverse psychological effects.¹¹²

[156] Deployment of a Taser weapon can, on occasion, cause a loss of control of bodily functions. Such an effect is likely to exacerbate feelings of humiliation and degradation.

[157] The United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment defines torture as:

*... any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.*¹¹³

[158] Under the United Nations Convention, Taser weapons used to punish, coerce or intimidate an individual, to extract information or as a result of discrimination, constitute a breach of international human rights. The 2008 Amnesty International report concluded that “the infliction of severe pain on someone who is already incapacitated or otherwise under the control of a law enforcement officer breaches the international prohibition on torture or other cruel, inhuman or degrading treatment or punishment”.¹¹⁴ This raises the question of whether it is appropriate to use a Taser weapon on a subject who is already restrained, either physically

¹¹⁰ “Indigenous service, police union, at odds over Tasers”, WA Today, 22 July 2009.

¹¹¹ “Teenager recalls excruciating pain inflicted by police Taser”, *The Australian*, 21 November 2008; “Shock to the System”, *The Australian*, 12 August 2008. See also comments of police officers subjected to Taser weapons during training, as reported in Amnesty International, op. cit., p.13: “[b]y far, the most excruciating pain anyone can feel” and “[l]ike someone reached into my body to rip my muscles apart with a fork”.

¹¹² Amnesty International, op. cit., pp.13-14.

¹¹³ United Nations 1984, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.

¹¹⁴ Amnesty International, op. cit., p.56.

or by handcuffs, or on a subject who is in a secure and confined environment, such as a padded cell or secure room, or is confined in a lock up or inside a police van.

2.5.8 Risk of Mission Creep

- [159] Mission creep refers to a use of a weapon (or other application of force) in situations that extend beyond those for which the weapon was originally designed or introduced. In a broader sense, the term refers to the increasing use of a weapon to deal with situations for which the use of that weapon does not appear reasonable, appropriate or warranted.
- [160] Mission creep may be able to be measured in a rudimentary fashion using a simple calculation of the number of uses over time. A more sophisticated analysis requires an appreciation and understanding of the circumstances in which the weapon is used, with an eye to whether or not the use of weapons in particular circumstances is increasing over time.
- [161] Mission creep can cause police to rely on one weapon more than another. Over-reliance on one force option could, over time, lead to a decrease in other skills that police officers rely upon to protect themselves in challenging and hostile situations. These skills include not only physical engagement and use of other types of force, such as batons, but, perhaps more importantly, skills in verbal engagement and interaction, which are used to de-escalate tension and to intervene in crisis situations. As emphasised in the Braidwood Inquiry, a loss of these skills may, over time, result in a loss of respect or trust of the communities in which the officers serve. Potentially, officers' lives could be endangered if they are required to patrol a community in which they are viewed with hostility and fear.
- [162] This risk of mission creep in Taser weapon use has been identified in Australia and internationally. The NSW Ombudsman's report pointed out that Taser weapons were initially introduced into many jurisdictions as an alternative to lethal force, and were intended to be used in "extremely high risk" incidents, that is, situations where "violence is committed or threatened and there are serious risks to the safety of police, the public, or the person who may be subjected to the Taser application".¹¹⁵
- [163] The NSW Ombudsman expressed the concern that Taser weapons were being used by police in situations where high levels of risk were not present, and where police could manage the situation effectively without resorting to Taser weapon use.¹¹⁶ This was also found by the CPC-RCMP in its December 2007 interim report on Taser weapon use.¹¹⁷

The current approach by the RCMP clearly illustrates a shift in permissible usage from the original intent in 2001, which was more

¹¹⁵ NSW Ombudsman, op. cit., p.21

¹¹⁶ ibid.

¹¹⁷ Commission for Public Complaints Against the Royal Canadian Mounted Police, 2007, *RCMP Use of Conducted Energy Weapons (CEW), Interim Report*, December, pp.1-2.

*restrictive in that the weapon was to be used to subdue individual suspects who resisted arrest, were combative or who were suicidal. ... This has resulted in deployment of the weapon outside stated objectives ... where the individuals have exhibited behaviours that were clearly non-combative or where there was no active resistance.*¹¹⁸

[164] It appears that drive stun mode may be more susceptible to mission creep than probe mode. This is supported by both the CPC-RCMP final report¹¹⁹ and the QPS-CMC Taser weapon trial review.¹²⁰

2.5.9 Mission Creep: Proposed Solutions and Recommendations

[165] Various solutions have been proposed to address mission creep. These include such steps as:

- the creation of a suitable and firm threshold for Taser weapon use;
- “policing” of that threshold through oversight, review and appropriate accountability measures;
- consideration as to the situations where it is appropriate to use a Taser weapon;
- consideration of the approach of police officers to particular situations, including the organisational cultures that exist within police services; and
- attention to the model of policing that should apply within a jurisdiction, and the tactical training considerations that might follow from this choice of model and approach.

[166] The most commonly debated solutions involve determining an appropriate threshold for Taser weapon use. This is not an easy matter to determine and is the subject of considerable debate in the literature. Based on the literature, this issue is one in which community involvement in determining the right threshold for Taser weapon use is critical.

[167] If the cooperative relationship between police and the wider community is to be maintained, community views about acceptable Taser weapon use, and the threshold for Taser weapon use, need to be taken into account.

¹¹⁸ *ibid.*

¹¹⁹ Commission for Public Complaints Against the Royal Canadian Mounted Police, 2008, *op. cit.*, p.9.

¹²⁰ QPS-CMC, *op. cit.*, p.40.

CHAPTER THREE

WAPOL TASER WEAPON USE

3.1 Introduction

[168] Prior to the introduction of Taser weapons, WAPOL officers had a range of other weapons available to them. Each officer carried (and still carries) a firearm, Oleoresin Capsicum spray (OC spray), a baton and handcuffs. Further to this, each officer is trained in the use of physical force to subdue and restrain offenders.

[169] Taser weapons were provided for the general use of WAPOL officers in June 2007. At that time the Commissioner of Police stated that the “goal is to have sufficient stun guns for all tasking officers on duty who need them at any particular time ... The major driver behind it is the increasing violence towards officers, and police officers are not punching bags for the criminal element in our community”.¹²¹

[170] Despite some adverse media and the publication of several controversial reports on Taser weapon use, both nationally and internationally, the WAPOL Commissioner remains committed to the view that Taser weapons are appropriate for use by WAPOL officers, stating in August 2009 that: “The feedback from police on Tasers as a tool has been enormously positive. They save lives. If you make a mistake with a Taser it’s much better than making a mistake with a [firearm]. But they are not there to be used as compliance tools. Use them properly and they are very good”.¹²²

[171] Officers receive instruction in Taser weapon use as part of their initial training at the WAPOL Academy, and then receive requalification training every year.

[172] Taser weapons have become the force option of “choice” in Western Australia, resulting in significant decreases in the use of OC spray, handcuffs and empty hand techniques. As can be seen from Figure 1, in reported use of force incidents between 2007 and 2009 there were several changes to weapon use.

- Taser weapon use increased from 49% in 2007 to 74% in 2008 and declined to 65% in 2009. This represents an overall increase in Taser weapon use of 25%.
- OC spray use decreased from 18% in 2007 to 8% in 2008 and 7% in 2009. This represents an overall decrease of 61%.

¹²¹ Carroll, M., 2007, “Tasers for the Front Line”, *Police Journal*, December 2007, p.22.

¹²² “Police one of best performing agencies: COP”, *WAPOL News*, August 2009.

- Handcuff use decreased from 11% in 2007 to 3% in 2008 and increased to 4% in 2009. This represents an overall decrease of 64%.
- Empty hand techniques decrease from 12% in 2007 to 2% in 2008 and increase to 4% in 2009. This represents an overall decrease of 67%.

[173] The use of batons, canine deployment and “other” uses of force remained relatively unchanged from 2007 to 2009.

[174] The surprising change in reported uses of force during the period, given the stated reasons for introducing Taser weapons, was the doubling of firearm use from 6% in 2007 to 8% in 2008 and 12% in 2009.

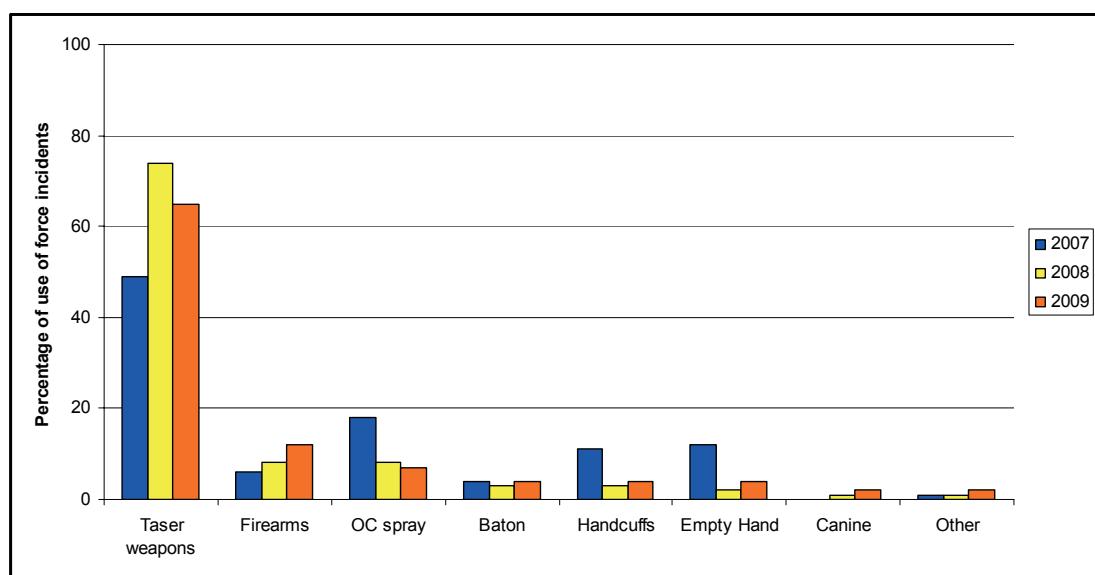


Figure 1: Types of force used by WAPOL officers 2007 - 2009

3.2 Policy

[175] Taser weapon use by WAPOL officers, and the use of force generally, is governed by policy contained within the WAPOL Commissioner’s Orders and Procedures Manual (“the Police Manual”).

[176] Under FR 1.1. of the Police Manual, officers are directed not to use more force than is reasonably necessary to perform their lawful duties. A definition of excessive force is provided. Officers must ensure that they do not use excessive force.

[177] The justification for the use of force by officers, as well as the level of force permitted, is specified in Western Australian legislation - for example, the *Criminal Investigation Act 2006* allows a police officer to use any force that is reasonably necessary to exercise a power under the Act. Section 231(1) of the *Criminal Code* provides that:

It is lawful for a person who is engaged in the lawful execution of any sentence, process, or warrant, or in making any arrest, and for any

person lawfully assisting him, to use such force as may be reasonably necessary to overcome any force used in resisting such execution or arrest.

[178] FR 1.6. of the Police Manual and its subsections contain specific policy related to Taser weapons. Officers may only use or carry a Taser weapon when they have successfully completed training, are authorised to do so, and are current in Critical Skills (Police Life Support).

[179] When a Taser weapon is drawn or deployed, FR 1.6.1. directs officers to submit a “Use of Force report” to their Officer in Charge, manager or supervisor.

[180] FR 1.6.4. “Use of Taser” stipulates that:

The use of Taser should be reasonable and appropriate in the circumstances and members will be accountable for any excessive use of force.

The Taser shall only be used to PREVENT INJURY to any person and shall not be used as a compliance tool.

[181] This provision also states that:

Consideration must be given to the nature of the incident, the location of the subject and any overt susceptibilities of the subject.

Specific risks emerge from the use of Taser and operators are reminded:

- *not to deploy the weapon to the face and/or genital groin region of the subject;*
- *not to deploy into the back of a subject who is running away from members, unless it is to prevent injury to any person at that time;*
- *not to deploy in the near vicinity of flammable liquids or fumes; and*
- *to deploy additional members within a safe distance with a view to supporting the subject at the earliest opportunity.*

[182] FR 1.6.5. directs that officers are to issue a verbal warning, “Taser, Taser” prior to discharging the Taser weapon against a subject.

[183] FR 1.6.6. directs that when the use of a Taser weapon results in an arrest, officers must ensure that the formal caution is given immediately and then again when the subject has recovered from the effects of the Taser weapon and is capable of understanding.

[184] FR 1.6.7. stipulates that medical attention shall be provided if the subject:

- *does not recover within a reasonable time;*
- *asks for medical attention;*

- *is reasonably suspected of suffering from a medical condition; or*
- *has the probes embedded in their genitals, breasts, eyes, ears, tongue, lips or any other sensitive body part.*

[185] FR 1.6.8., FR 1.6.9., FR 1.6.10. and FR 1.6.11. provide directions regarding: unauthorised discharges; procedures for retention and disposal of cartridges; safety; security, storage and transport; and carriage on aircraft.

[186] FR 1.6.12. provides directions regarding the download of Taser weapon data ports.

[187] Specific aspects of the policy considered in the context of this report are:

- (1) the threshold or justification for the Taser weapon use (FR 1.6.4);
- (2) restrictions or prohibitions regarding situations in which, or subjects on which, a Taser weapon can be deployed (FR 1.6.4);
- (3) guidance as to when medical attention should be required (FR 1.6.7 and FR 1.1); and
- (4) accountability measures regarding Taser weapon use, including Use of Force reporting and the downloading of data (including FR 1.1.1).

3.3 Analysis

[188] Case studies have been used throughout this section to illustrate the points being made. Information for the case studies has been obtained from WAPOL data including Use of Force reports and WAPOL internal investigation reports. When appropriate, information from the Commission's review of the incident has been included. In most cases the disciplinary outcome for the police officer has been included, except in cases where the outcome was unknown or is irrelevant.

3.3.1 Injuries Resulting from Taser Weapon Use in Western Australia

[189] WAPOL data relating to officer injuries in Western Australia is not readily available for 2006 and the preceding years. However, as Figure 2 shows, a comparison of the numbers of injuries sustained by officers during use of force incidents in 2007 (prior to and during the roll-out of Taser weapons) and 2008 (following the roll-out of Taser weapons) demonstrates that the number of injuries suffered by police officers in use of force incidents did not decline as Taser weapon use increased. In 2007, officers received an injury in 8.6% of use of force incidents. This increased to 11.1% in 2008 and declined slightly to 11% in 2009.¹²³ That is, overall injuries to WAPOL officers have increased by 22% from 2007 to 2009.

¹²³ WAPOL data.

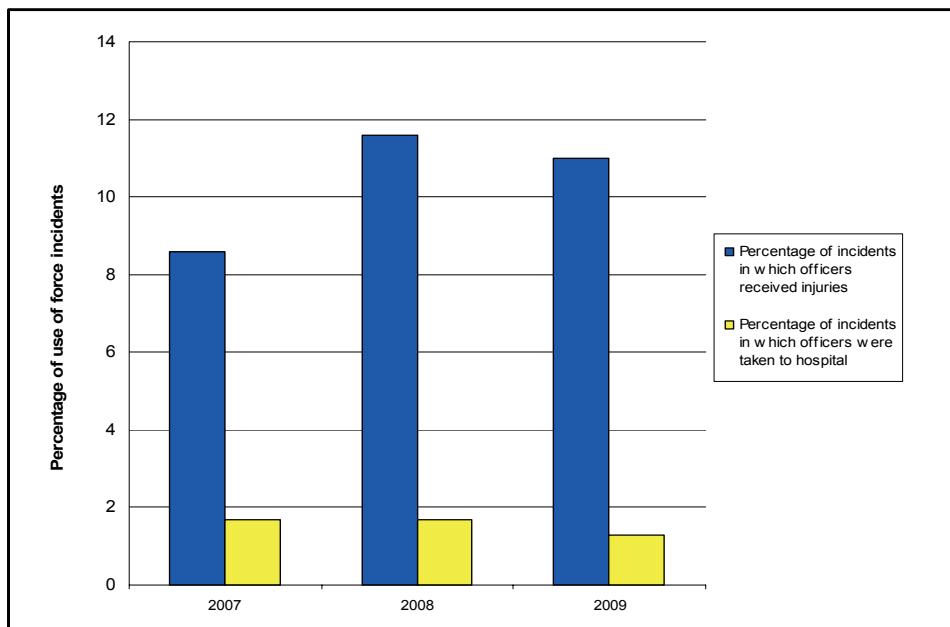


Figure 2: Injuries sustained by officers as a result of incidents involving a use of force

[190] Figure 2 also shows the number of officers who sustained injuries requiring hospitalisation, as a proportion of use of force incidents. This figure remained relatively stable for 2007 (1.7% of incidents), 2008 (1.7%) and 2009 (1.3%).

[191] As noted earlier, Use of Force reports between July and September 2009 were subjected to detailed analysis. A Taser weapon was deployed in 76% of all use of force incidents during this period. As illustrated in Figure 3, during this period WAPOL officers were slightly more likely to be injured in Taser weapon incidents (17%) than in other use of force incidents (15%). Subjects were 54% less likely to be injured in Taser weapon incidents (17%) than in other use of force incidents.

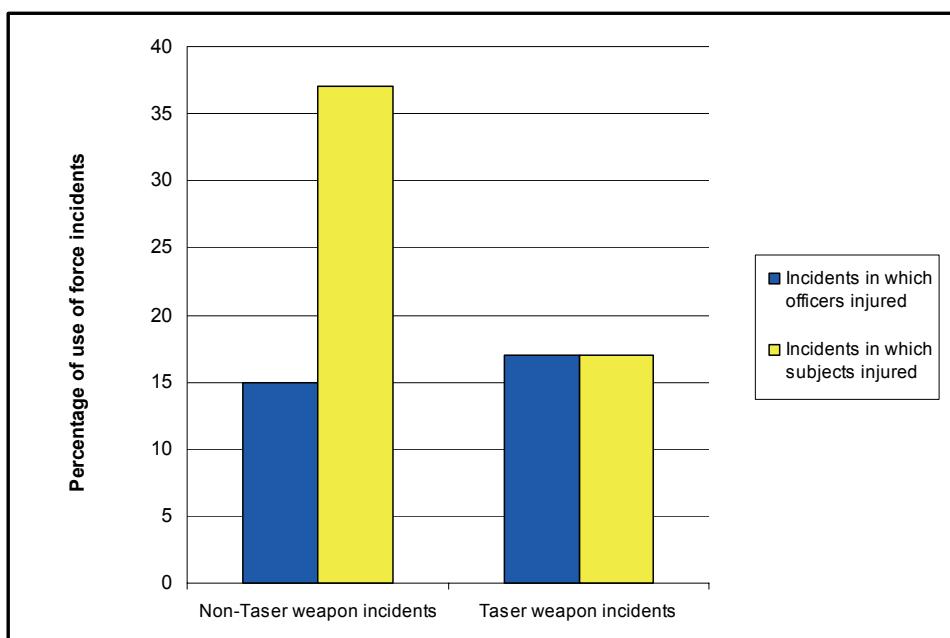


Figure 3: Injuries sustained by officers and subjects during use of force incidents between July and September 2009

- [192] The injuries received by officers were invariably minor in nature - for example, bruises, abrasions or minor lacerations and muscular sprains. In all cases these injuries were caused by assault by another person or as a result of struggling with a person.
- [193] Of the 33 injuries received by subjects in Taser weapon incidents, 22 (67%) were sustained as a result of the initial situation or occurrence (for example, fighting with another person), or through struggling with police officers while resisting arrest. Most of these injuries were minor and resulted from self-harm during the incident, falling during a foot chase, application of rigid handcuffs, canine attack after a Taser weapon was drawn, and struggling or fighting with police during the incident. Medical treatment was received by the subject in seven of these incidents (and offered but declined in one).
- [194] Most of the injuries associated with the actual deployment of the Taser weapon were also minor. Probe deployment caused 10 injuries, while one resulted from drive stun deployment. Medical treatment was received by the subject in five of these incidents (and offered but declined in one).
- [195] The literature review identified that more serious injury can result if a Taser weapon is deployed to a more vulnerable location of the body – for example, to the genitals or to the face. Three of the incidents analysed involved a probe making contact with a vulnerable area of the body. In the first incident, one of the Taser weapon probes lodged in the subject's nose. In the second incident, a Taser weapon probe lodged in the breast of the female subject. In the third incident, it was reported that the probe lodged in a “sensitive area” of the subject. In another incident, a Taser weapon was deployed in drive stun mode to the back of a subject's neck. As noted in Section 2.5.1, the deployment of a Taser weapon to a subject's neck raises some safety concerns.
- [196] Notwithstanding the evidence that the introduction of Taser weapons has not resulted in a reduction of officer injuries, an examination of specific incidents shows there will be situations in which Taser weapons protect officers from violent offenders and protect the public.
- [197] For example, in one of the incidents analysed, two police officers were attacked while in a police vehicle by a man wielding two 30 centimetre long knives. The man attempted to stab one of the officers through the closed vehicle window with such force that the officer believed the window would break. The officer subsequently managed to exit the vehicle and deployed a Taser weapon just as the man lunged at him with one of the knives. The man was incapacitated and disarmed.
- [198] In another incident, while attending a house where a number of people were involved in a dispute in the front yard, officers heard the sound of breaking glass. When the officers entered the house they saw two women struggling with each other. One of the women was holding a kitchen knife. One of the officers drew his Taser weapon and warned that he would deploy it if the woman did not put down the knife. The woman with the knife gave it to the other woman who put it on the floor. The Taser weapon was not deployed.

[199] In a third incident, a police officer attempted to arrest a man for disorderly conduct (involving aggressive behaviour) and the man punched the officer in the face. Believing that he was about to be assaulted again, the officer deployed his Taser weapon in probe mode at the man, who was incapacitated. The man's companion then attempted to throw a full bottle of beer at the officer, but he was prevented from doing so by the probe deployment of another officer who had just arrived at the scene.

[200] Notwithstanding overall Taser weapon use, injuries have occurred in the Western Australian context, both as a result of the incapacitating effect of a Taser weapon, and through the ignition of flammable liquids or gases.

[201] The following two case studies illustrate this point.

Case Study One (see DVD)

A man was outside a hotel when he was approached by a male and a female police officer. The officers asked the man his name and he refused to tell them. When the man turned and ran away, the male officer fired a Taser weapon at him and the man fell heavily to the ground receiving a broken tooth and severe abrasions to his face. The Taser weapon was deployed against the man twice more after he fell.

CCTV footage of the incident shows the man on the ground at the time of the second and third deployments. He was not struggling and did not appear to pose a risk of injury to police. The footage showed the man's leg kicking sporadically while he was on the ground.

The man subsequently made a complaint at a police station, saying the second use of the Taser weapon was "unfair". The man was not told he had actually been subjected to three deployments.

The investigation found the officer had used a Taser weapon in a manner that was not in accordance with current WAPOL policy, in that a Taser weapon had been discharged at a fleeing arrested person. The officer received a Management Action Plan for the first Taser weapon use.

In relation to the second and third use, the police officer said he deployed the Taser weapon because of a threat of injury to himself and his female partner. The information gathered during the investigation did not support this view. The officer was provided counselling and guidance in relation to his attitude to his fellow officers, as he said he did not feel safe when he was accompanied by female officers.



Case Study Two

A woman was driving a car, being pursued by police. She stopped the car, got out and started to run away. Officers ran after her but were not fast enough to catch her. One police officer called out that he would use a Taser weapon, but the woman kept running. The officer then fired the Taser weapon, hitting the woman on the back. She fell heavily onto bitumen fracturing her arm, and receiving abrasions to her chin and a cut to her fingers.

The woman was taken to hospital for her injuries. She was charged with failing to stop, driving with a blood alcohol concentration in excess of 0.02% and not having a driver's licence.

The woman complained that she had been kicked by the officer, and this caused the broken arm.

The subsequent WAPOL investigation did not substantiate this allegation. The subject police officer said he deployed the Taser weapon to stop the woman from avoiding arrest, but also because he feared for her safety as she was running in an area in which there was rough terrain, debris and disused mine shafts.

The investigation found that the Commissioner's Guidelines in the use of a Taser weapon had been misinterpreted by the officer, and that the officer's belief that it was his duty to arrest the woman (that is, to ensure compliance) mistakenly took priority over his observance of the requirement to use a Taser weapon to prevent injury. Following the incident, the officer received comprehensive retraining in the use of a Taser weapon.

WAPOL sought a legal opinion as to whether the officer could and/or should be charged with using excessive force. It was found there would not be a reasonable prospect of conviction because the case "lacked the features that usually assist in identifying when force is excessive".

[202] There has been one incident in which Taser weapon use appears to have caused serious injury to a subject as a result of the Taser weapon igniting flammable liquid. The matter has been investigated by WAPOL and the completed investigation is currently under review at the Commission. The facts of the matter, as reported in the WAPOL notification to the Commission and the Use of Force report, are outlined below as a case study illustrating the risk of serious injury through ignition by a Taser weapon.

Case Study Three

Police officers in a remote community received a complaint that a group of people were sniffing petrol at a residence. Two officers attended the house. Upon police arrival, the occupants locked the doors. The officers spoke to the occupants through a window, asking them to come out of the house. Police could see people inside the house sniffing petrol. One of the occupants was known to police. He was affected by petrol. He told the officers that he would not come out of the house, that it was "his life and he could do what he wanted". He told police officers to go away and that he would come to the police station later.

One officer went to the rear of the house and arrested two people who were leaving via a rear window. The other officer remained at the front door, and contacted a senior officer to request assistance.

The man known to police asked for a lighter from another person inside the house. The man had a previous conviction for attempting to set other people alight. He also had a record of numerous Assault Public Officer offences.

The man came to the front door of the house carrying a container which appeared to contain petrol. He walked towards the officer at the front door, until he was approximately three to four metres away from the officer. He was aggressive and wanted to "take on" police. He was shouting and had his arms raised in the air.

The officer told the man to back off and calm down. The officer believed the man was going to throw petrol on him. A witness heard the man threatening to burn the officer.

The man was warned "that he would be Tasered if he did not comply". The man moved closer to the officer, to distance of about two metres and he continued to close the distance to the officer in an aggressive manner.

The officer deployed his Taser weapon. Both probes struck the man – one in the lower chest and the other on the nose. The man caught fire. It was not known if the Taser weapon caused the fire or if the lighter had been struck at the same time.

The officer dropped his Taser weapon and pushed the man to the ground. He then used his hands to smother the fire. Another person ran up behind the officer and began to throw rocks at him while he was attempting to extinguish the fire. One of the rocks struck the officer on the head, causing a wound that required five stitches. Another person also threw rocks at the officer. The officer continued to try and put the fire out using his hands.

A senior officer arrived, and assisted the other officer restrain the man. He was handcuffed.

The man suffered 10% burns to his face, neck and upper torso. Some of these were third degree burns and some were second degree. He was provided with immediate medical treatment at a nearby clinic. The probe that struck the person's face was removed by medical staff. The man was then taken to hospital for further treatment.

- [203] The WAPOL review of the incident found that the officer's actions were justified by the serious threat to himself. There was no conclusion reached as to whether the fire was caused by the lighter the man was holding, or by the Taser weapon. Partly for the purposes of the WAPOL review, a study was undertaken by the WAPOL Internal Affairs Unit, Fire and Emergency Services Unit, and ChemCentre into the question of whether a Taser weapon could ignite flammable liquids. The study found that flammable liquids and ignitable liquid vapours could be ignited by the use of a Taser weapon.¹²⁴
- [204] There was another incident in Western Australia in February 2010 where a subject suffered serious burns after the use of a Taser weapon by an officer in a situation where petrol had been poured on a person, on officers, and in a building.¹²⁵

3.3.2 Sudden Death from Taser Weapon Use in Western Australia

- [205] Literature and international experience indicate that death can result from Taser weapon use by causing or contributing to arrhythmia, asphyxia, or other forms of sudden death.

¹²⁴ Western Australia Police and Fire and Emergency Services Authority, 2009, *The Ability of the Taser Device to Ignite Flammable Liquids*, WAPOL Internal Affairs Unit, FESA and ChemCentre Report, 23 October.

¹²⁵ "Probe into tasered man's burns", The West Australian, 1 February 2010.

[206] There has been one reported case in Western Australian where a subject died suddenly a short time after being subject to the deployment of a Taser weapon by WAPOL officers. Although not a specific factor addressed during the investigation and inquest into this death, the case has the hallmarks of excited delirium circumstances identified by the subject's bizarre behaviour, great strength and imperviousness to pain.

Case Study Four

A man was observed by several witnesses exhibiting bizarre behaviour, stuffing a white food-like substance into his mouth, talking loudly and incoherently and waving his hands in the air.

Police were called to attend after a witness observed the man shadow boxing and walking in and out of traffic without any concern for his own safety. Two officers arrived at the scene and noticed that the man was still walking in and out of the traffic on a busy road. These two officers were not trained in the use of a Taser weapon.

The two officers called out to the man, who ran away along the roadway. Two other attending officers joined in the chase. The man tripped on the median strip and was grabbed by police officers. He began struggling with the officers. The man placed a small yellow package into his mouth before he was apprehended by the police officers.

The man had both arms tucked under his body. One officer went to the man's head and attempted to remove the package from his mouth. The officers had trouble trying to control the man. They managed to apply a handcuff to one of his arms, but were unable to handcuff the other arm. A decision was made to use a Taser weapon, due to the safety concerns relating to the passing traffic and also to assist officers to remove the package from the man's mouth.

The Taser weapon was deployed once in drive stun mode, but appeared to have little effect. The man's shirt was lifted and the Taser weapon was again deployed in drive stun mode, this time to the man's skin. There was a brief enough pause in the man's struggling to enable the officers to apply the handcuffs to his other arm.

Plastic was removed from the man's mouth, and the officers reported that they believed that the package had contained food, not drugs as first suspected. During the struggle police removed a small garden fork from the man's clothing.

The officers pushed the man into the back of the van, as he was still not compliant. He was taken to the Fremantle lock up. None of the officers believed that there was a need to take the man to hospital for medical attention.

Upon arrival at the Fremantle lock up, the man was checked and appeared to be breathing. However, a short time later when officers attempted to remove the man from the police van, he was not conscious. The man was placed in recovery position, and some further material was removed from his mouth. Officers reported that the man was "shallow breathing", and resuscitation was attempted.

An ambulance was called to the lock up. The man was taken to hospital, and full resuscitation was continued during the journey. However, the man was declared dead approximately 30 minutes after arriving at the hospital.

[207] An internal investigation into the incident was conducted by WAPOL. This is common procedure in cases where a death occurs while a subject is in police custody. A post mortem determined the cause of death was acute methamphetamine toxicity.

- [208] The WAPOL internal investigation used the post mortem results as the basis to find that the Taser weapon use did not contribute to the death. The WAPOL investigation found that the apprehension of the man was lawful and justified. It was also concluded that the Taser weapon use was justified.
- [209] A public inquest was held into the circumstances of the man's death, pursuant to the provisions of the Coroners Act 1996.
- [210] The Deputy State Coroner found that the man's death arose by way of misadventure.¹²⁶
- [211] It appears from the pathologist's report, the WAPOL investigation and the Deputy Coroner's report, that the cause of death in this case was cardiac arrhythmia precipitated by the large amount of methamphetamine ingested by the deceased. The blood methamphetamine level of the deceased was more than twice the level considered to be lethal.¹²⁷
- [212] The post mortem report did not explicitly consider the use of a Taser weapon as a potentially contributory factor to the death. While giving evidence to the Deputy Coroner, the pathologist was directly asked whether the Taser weapon had "nothing to do" with the death. He replied that, in his opinion, that was the case.¹²⁸
- [213] A number of comments were made by the Deputy Coroner relating to the risks associated with Taser weapon use. In the findings, the Deputy Coroner referred to some recent literature considering these risks, noting that "[s]ome concern has been expressed in the medical community as to the effect of using electrical impulses on subjects who may be at an elevated risk of cardiac arrhythmia as a result of artificial electrical stimulations".¹²⁹ The "Townsville study" referred to in section 2.5.4 was specifically considered, and the Deputy Coroner found that there was an implication that "those in high risk groups should be presented to Emergency Department for assessment".¹³⁰ Those in high risk groups included drug or alcohol intoxicated patients, mental health patients, patients with pre-existing cardio vascular disease or pace makers, multiple Taser weapon exposures, low Body Mass Index, pregnant women and patients considered to have "excited delirium".¹³¹
- [214] The Deputy Coroner concluded that "inappropriate use may have unjustifiable outcomes".¹³²

¹²⁶ "Record of Investigation of Death", Reference Number 07/10, 22 April 2010, p.48.

¹²⁷ *ibid.*, p.31.

¹²⁸ Transcript of proceedings, Coroner's Court of Western Australia, 768 of 2007, 10 March 2010, p.15.

¹²⁹ "Record of Investigation of Death", *op. cit.*, p.38.

¹³⁰ *ibid.*, p.41.

¹³¹ *ibid.*

¹³² *ibid.*, p.42.

[215] The literature and experiences in other jurisdictions indicate that the risk of sudden deaths may be greater in cases where a Taser weapon makes contact with the chest area, or even to the upper back, that is, where the probe-to-heart distance is shortest. In 38% of the Taser weapon deployments examined between July and September 2009, the Taser weapon or probes made contact with a subject's chest. Of these, 92% were probe deployments and 8% drive stun deployments. In a further 7%, the Taser weapon made contact with the subject's upper back. Of these, 50% were probe deployments and 50% drive stun deployments.

[216] Recent changes to "safe use" instructions by TASER International have led to changes in the way WAPOL officers are trained in the use of the weapon. Officers are now directed and trained to fire at the abdominal muscles of a person, rather than at their chest.

3.3.3 Prolonged Taser Weapon Use or Use of Taser Weapons Simultaneous to Other Uses of Force in Western Australia

[217] Of the Taser weapon deployments between July and September 2009, 40% involved multiple deployments on a subject. In 81% of these incidents there were two deployments, as follows:

- 20 incidents involved one drive stun deployment and one probe deployment;
- six incidents involved two deployments in stun mode;
- six incidents involved two probe deployments; and
- one incident involved a probe deployment where the probe was cycled twice.

[218] In 12% of multiple use incidents there were three deployments, as follows:

- one incident involved one stun and two probe deployments;
- two incidents involved three stuns;
- one incident involved two probes, with one of the probes cycled twice; and
- one incident involved one probe deployment, cycled three times.

[219] The remaining 7% of multiple use incidents involved three or more deployments, as follows:

- one involved two probe deployments and two stun deployments;
- one involved two stun and one probe deployment, cycled three times; and
- one incident involved five probe deployments.

- [220] The most common circumstance in which more than one deployment was used during an incident was when a struggle was prolonged, and the first deployment was not successful in completely controlling the subject.
- [221] Eight incidents in which a Taser weapon was deployed on a subject three or more times were examined closely. In some cases, the multiple deployments resulted from an apparent lack of effect caused by the Taser weapon. In three cases, this appeared to result from the heavy clothing worn by the subject. In one notable case, in which a Taser weapon was deployed in probe mode five times on one subject, it was discovered following the incident that the subject's heavy jacket had caused the deployments to have little or no effect on the subject. In this case, the subject was violently resisting arrest, and two officers were repeatedly punched and kicked during the struggle (with one officer receiving a kick to the face).
- [222] In another incident, a subject threatened officers with a knife. One probe was deployed but was ineffective due to the subject's thick clothing. A second probe was fired and was effective, but one of the darts dislodged, preventing officers from disarming the subject immediately. Thus, the Taser weapon was activated for a second cycle.
- [223] In a third incident, two probes were fired at a subject who was violently struggling with officers. Both probes were ineffective as they hit the sleeve of a heavy jacket the subject was wearing. An initial drive stun deployment was also ineffective, however, a second drive stun deployment caused the subject to stop resisting.
- [224] In a further incident, although two probe deployments and one drive deployment occurred, two separate people were subject to the deployments. The deployments occurred in the midst of a brawl involving several people, in which police officers were kicked and punched and rocks and bottles were thrown at them.
- [225] In an incident in which a Taser weapon was deployed once but for three cycles, there was a violent assault on police officers prior to and during the deployment of the Taser weapon. The first and second cycles did not succeed in forcing the subject to cease his punching and kicking of the officer.
- [226] Two of the incidents involving three or more deployments of a Taser weapon could potentially be considered excessive or improper use of force. One of these incidents involved a man who had been violently struggling with police officers. The officer reported that the man was then "drive-stunned" three times as he continued to resist, and the officer believed there was a threat of injury to an officer. Footage of the incident is not clear, however, there are indications that the man may not have been violently struggling at the time the Taser weapon was deployed.
- [227] Another incident involved the use of a Taser weapon on a subject who was in a holding cell, and who was exhibiting signs of mental illness. Four officers attempted to restrain the subject, but were unsuccessful. The Use

of Force report stated that the subject charged towards the officers “with flailing arms” and that the officer deployed the Taser weapon on the subject as “there was a big possibility of either the police officers or [the subject] being seriously hurt if the struggle had continued in that confined area”. The Commission’s concerns arise from the fact that, although adequate explanation for the probe deployment, and two subsequent stun deployments, is provided in the Use of Force report, no explanation is provided for the repeated cycling of the Taser weapon following the first probe deployment. Each cycle of a Taser weapon should be considered as a separate deployment for reporting purposes, and an explanation for each cycle should be provided accordingly.

[228] The Commission has reviewed one WAPOL internal investigation in which a Taser weapon was deployed several times on a subject and this is recounted in Case Study Five. The WAPOL Deputy Commissioner brought this matter to the attention of the Commission because of his concerns about it.

Case Study Five (See DVD)

A man was sitting on a bench at the Perth Watch House. The man’s previous actions indicated that he was likely to be suffering from a mental illness and/or substance abuse. The man refused to comply with a strip search, and held onto the armrest of the bench.

One police officer kicked out at the man in an attempt to “startle” him into letting go of the bench. Another officer drew his Taser weapon and said “let go or be Tasered”. The man did not let go and the Taser weapon was deployed on him. The man fell to the ground and was restrained by other officers. The man began to struggle and the Taser weapon was deployed on him without warning, which led to increased struggling by the man.

The man broke free from officers and stood up. A second officer then deployed his Taser weapon in probe mode, causing the man to fall to the ground. The CCTV recording reveals the officer saying “do you want to go again” and the officer deployed the Taser weapon twice more.

A senior officer entered the area and told the officers to restrain the man and carry him to a padded cell. The man continued to resist and the Taser weapon was again deployed on him twice in stun mode. On the CCTV recording a voice can be heard shouting “stop stop”.

As police were carrying the man to the padded cell, a Taser weapon was deployed again without warning. The man was strip searched while in the padded cell, in order to ensure that he had no weapons or dangerous objects in his possession. During the search procedure, a Taser weapon was deployed on the man several more times. The Taser weapon download evidence indicated five further deployments, although some of these were for less than five seconds. There was no CCTV footage of the padded cell. The officers present stated that the man was resisting by trying to bite, kick and punch out at police while officers were attempting to restrain and search him.

The WAPOL internal investigation into this incident found that the man had a Taser weapon deployed on him 13 times, 11 occasions in drive stun mode and twice in probe mode (five second cycle). A Taser weapon was deployed by more than one police officer. At the time of the initial deployment, there was no information to show police were at risk of assault, or in danger. When the man began struggling, WAPOL internal investigators found that deployments were perhaps justified, however, the man could have been acting in self defence believing he was being assaulted.

The WAPOL internal investigation concluded that a Taser weapon had been used for compliance rather than to prevent harm.

Two officers received disciplinary charges of using undue and excessive force against the man. One officer has lodged an appeal against the disciplinary outcome. Criminal charges were not recommended against the police officers because the man did not recall the incident and would not be able to present evidence at court.

In addition two senior police officers were found by the WAPOL internal investigator to have provided inadequate supervision and leadership to junior officers during the man's processing. Following a disciplinary hearing, the charges were not proven against the senior officers.

- [229] The matter raises questions regarding policy issues that do not seem to have been addressed in the course of the investigation. The officers involved in this matter stated clearly that, in their mind, the subject presented a risk of harm to themselves and other officers. Although at the time the man was sitting on a bench and not acting in a violent manner, the officers were able to provide information relating to the man's behaviour, and his earlier behaviour, to indicate that the subject was capable of acting violently towards police, and therefore in their view presented a significant risk.
- [230] This situation would seem to be most common in cases where the subject is suffering from a mental illness, substance abuse, or other extreme psychological stress. In such cases, a subject can act with extreme violence, and then can appear to be calm and compliant. In this case, the man had been acting in a violent manner in the van during the journey to the Watch House. Officers at the Watch House had been made aware of this behaviour. The subject also had warnings on the police computer system, indicating that he could become violent when intoxicated. Upon arrival, even though the man was compliant, officers reported that he made comments along the lines of "I am the devil", and that he was moving his head from shoulder to shoulder and rolling his eyes.
- [231] WAPOL policy permits a Taser weapon to be used for the purpose of preventing injury to any person, but a Taser weapon must not be used for the purpose of compliance. The internal investigation found that the Taser weapon was used (particularly in the first instance) for compliance and in the Commission's view this finding appears sound. However, this finding appears to be in conflict with the officers' clearly stated perception that they were acting to prevent injury. A firmer or higher policy threshold for Taser weapon use may be required to prevent incidents such as these – where there is a use of a Taser weapon that appears to be improper or excessive – from occurring.
- [232] It has also been suggested that excessive or prolonged applications may be prevented if officers are made clearly aware of the risks involved in such applications. During the Coronial Investigation as described in Case Study Four the Deputy Coroner commented on the potential dangers associated with Taser weapon use, particularly in the (unlikely) case of extremely prolonged applications. The Deputy Coroner suggested that the potential risks should be pointed out to officers, in order that officers

understand why they need to be frugal in the application of a Taser weapon. She expressed a concern regarding the possibility that a Taser weapon is being “used confidently because there’s a perception that there’s no way it can cause death”. In contrast, “People know that if you shoot someone with a gun you may kill them”.¹³³

- [233] Apart from the increased risk of death or injury, there are other important issues arising in relation to the multiple or simultaneous Taser weapon uses. The Commission reviewed three cases of alleged excessive force in which secondary force was applied to a subject as a result of a perception that the subject was struggling or continuing to struggle as a direct result of involuntary muscular movements caused by the deployment of a Taser weapon.
- [234] In the incident already described in Case Study One, the police officer deployed his Taser weapon in drive stun mode on the subject while the subject was lying on the ground, after he had fallen as a result of the initial probe deployment. In his evidence the police officer said the subject was struggling while lying on the ground. Video footage of the incident showed the complainant’s leg kicking out while the subject was lying face down on the ground. It appeared from the footage that this kicking was sporadic. It is uncertain whether the kicking resulted from the initial probe deployment, the first stun deployment, or the pain the subject suffered as a consequence of the injuries sustained to his face.
- [235] In another example, the subject stated that, following one deployment of the Taser weapon in drive stun mode, the police officers asked him to “keep still” and to “stop struggling” or the Taser weapon would be deployed again. The subject stated to the Commission that he was in fact trying to keep still, but was unable to do so as he was being lifted off the ground, and the Taser weapon deployment caused his body to jolt and his legs to kick out. The subject therefore had the Taser weapon deployed on him a second time. The account of police officers and independent medical staff contradicts this, indicating that the subject was in fact struggling in a deliberate and violent manner. Nevertheless the incident raises the issue of whether a subject can be required to keep still during or after the deployment of a Taser weapon. The potential for overuse in these circumstances is clear.
- [236] A similar situation occurred in relation to an allegation of excessive force on the part of a dog handler. Two men were arrested after a prolonged vehicle pursuit. Footage from the police helicopter showed one of the two men exiting the vehicle, immediately raising his hands in apparent surrender, and then lying face down on the ground. A police dog attacked the first man and bit him. Police officers struggled with the second man and a Taser weapon was deployed on him. The police dog then attacked and bit the second man’s leg, resulting in severe injuries.

¹³³ *ibid.*, p.47.

- [237] The dog bit the man once, yet the man received severe injuries to his leg. The severity of the injury was caused by the man violently kicking his leg while the dog bit him. This kicking may have been as a result of amphetamine fuelled hyperactivity, or from the deployment of a Taser weapon immediately prior to the dog attack.
- [238] The matter raised several issues of concern, one of which was the alleged simultaneous or proximate use of Taser weapon and dog attack on the man.
- [239] A Taser weapon was used once. However, following this use of a Taser weapon, the canine handler directed or allowed his dog to attack the man. The dog attack seemed to follow from a perception on the part of the canine handler (or perhaps on the part of the dog) that the man was violently struggling against the other police officers at the time.

3.3.4 The Young, Elderly People, and Pregnant Women

- [240] Of the incidents between July and September 2009, 67.4% involved subjects who were males between the ages of 19 and 34 years old. Only 7.5% involved female subjects. There were no incidents in which a Taser weapon was used or threatened against a pregnant woman – or at least none in which it was identified that the woman was pregnant.
- [241] A breakdown of Taser weapon use or threat of Taser weapon use against people in various age groups is presented in Figure 4.

Age	Number	Percentage
5 – 14	1	0.5%
15 – 17	15	7%
18 – 24	65	30.5%
25 – 34	84	40%
35 – 44	32	15%
45 – 54	7	3%
55 – 64	0	0
65 – 75	0	0
Unknown	8	4%
Total	212	100%

Figure 4: Age of people subjected to the threat or deployment of a Taser weapon by WAPOL officers between July and September 2009

- [242] There was only one instance of threatened Taser weapon use against a child aged less than 15. There were 15 incidents involving Taser weapon use against subjects aged between 15 and 17. These involved probe deployments against one 16 year old and two 15 year olds, and threats of Taser weapon use against a 15 year old and a 14 year old.

- [243] Analysis of the use of force incidents involving Taser weapon deployment on juveniles reveals that in each instance the use of Taser weapons appeared to be justified by a threat of serious injury.
- [244] There has been one reported incident involving a 12 year old child. This incident occurred in 2008 and is recounted in Case Study Six.

Case Study Six

This information was obtained from the Use of Force report completed by the attending police officer.

A 12 year old student was in a high school staff room armed with two knives. The student had threatened to kill several staff members. Police were called and were met by the school principal.

The officers entered the staff room. One of the officers had already drawn his Taser weapon, but kept it out of sight. The student was sitting in the chair at one end of the staff room. The student had a long bladed knife in one hand with the point resting on his thigh.

The officer asked the student several times to drop the knife. The student refused saying that the officer would "Taser him anyway". The officer told the student that the Taser weapon would only be deployed if he didn't drop the knife.

The student said that he was "going to stab himself" and he lifted the knife above his right thigh.

The officer discharged his Taser weapon at the student. One probe struck the student on the chest, while the other probe struck the chair. The student fell to the floor and was handcuffed.

- [245] Having examined the Use of Force report, it appears the Taser weapon use, even on such a young person, was justified under the circumstances.
- [246] There were no incidents in which a Taser weapon was deployed or threatened against a person aged over 55.

3.3.5 Drug Users and/or People Suffering from a Mental Illness

- [247] Between July and September 2009, 10% of Taser weapon deployments involved a subject who the officer suspected was under the influence of drugs, and 11% of Taser weapon use involved a subject who appeared to suffer from, or was reported as suffering from, a mental illness.
- [248] In 50% of Taser weapon use against a subject suffering from a mental illness, it appears that police officers were informed about, or aware of, the subject's illness prior to the incident.
- [249] Some of the most serious allegations of improper Taser weapon use have involved the use of a Taser weapon on a subject who is either mentally ill or who officers believed at the time to be suffering from a mental illness.
- [250] On the other hand, analysis of Use of Force reports supports the proposition that Taser weapon use in situations in which people exhibit extreme symptoms of a mental illness have likely prevented a number of potentially fatal incidents, in which officers might otherwise have resorted

to the use of a firearm for the safety of themselves or members of the public.

[251] The possibility that the mentally ill are more at risk of sudden death from Taser weapon use raises the question whether alternative or additional measures need to be considered when police are called to attend situations involving the mentally ill. This concern arises also in relation to subjects who are in a state of extreme psychological distress and/or dysfunction as a result of drug use.

[252] Three key issues emerge from the consideration of these risks.

- (1) Is it necessary or advisable for medical assistance to be requested in such situations, either prior to or following the deployment of a Taser weapon?
- (2) Is there a preferred mode of deployment against people who are psychologically disturbed?
- (3) In relation to the mentally ill in particular, are all measures being taken to ensure that the deployment of a Taser weapon is a last resort?

[253] The first issue must be addressed through a weighing up of the risks involved in Taser weapon use on psychologically disturbed subjects, against operational considerations and resource limitations. Given that there were only 21 such incidents between July and September 2009 (and only 10 in which a Taser weapon was actually deployed), it may be that requiring the assistance of mental health staff, or requiring that an ambulance attend such incidents, is a reasonable way of reducing the risk of a fatality.

[254] This is already a requirement in the WAPOL Use of Force policy, for all uses of force, not just Taser weapon use.

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Apart from the obvious causes of death arising from the direct application of lethal force, members are to be mindful that the presence of other uncontrollable factors and the inadequacy of post incident management can greatly increase the risk of death as a result of the application of force.

Positional Asphyxia and Excited Delirium are well documented causes of death arising from the application of force. The potentially life threatening physical complications of psycho stimulant toxicity and/or physical stress may manifest and become a medical emergency.

The risk of death is greatest in the period immediately following the application of force and elevated physical activity.

Careful and continuous monitoring and attention is required to support effective respiration. Where practicable, members are to closely monitor the subjects breathing and abandon any restraint at any sign of breathing difficulties or lack of pulse. Where any of the physiological indicators for Positional Asphyxia or Excited Delirium are observed the incident is to be treated as a medical emergency. Refer to Positional Asphyxia – Excited Delirium.

If the incident is deemed to be a medical emergency, members shall require an ambulance to attend as a matter of urgency (priority one).

- [255] In the Coronial Investigation previously discussed the subject died from cardiac arrhythmia precipitated by methamphetamine toxicity. It is reasonable to assume that there may, in the future, be similar circumstances where a subject dies following a struggle with police and the deployment of a Taser weapon, but where the levels of methamphetamine in the subject's bloodstream are not so high as to preclude the consideration of the Taser weapon use as a contributing factor to the death. It is also plausible that, in such a case, a prompt call for medical assistance will make a difference to the outcome.
- [256] In both the Northern Territory and NSW Taser weapon policies, there is a requirement that medical assistance is called for every Taser weapon deployment on a subject regardless of whether an injury appears to have been sustained.
- [257] The second issue requires a consideration of the effectiveness of Taser weapon use on people suffering a mental illness or extreme psychological distress. During the coronial investigation previously discussed, the Deputy Coroner expressed a concern about Taser weapon use against people who are suffering from extreme psychological disturbances. The Deputy Coroner asked the WAPOL Senior Master Taser Instructor whether it was the case that a Taser weapon is not always effective on people who are psychotic. The instructor replied that this was the case.¹³⁴ Some comments were made about the fact that an imperviousness to pain could lead to the conclusion that drive stun mode is preferable to probe mode. In fact, the instructor made comments indicating that probe mode is generally preferable, as it is more effective than drive stun mode, however, the type of deployment would depend on the nature of the circumstances.
- [258] On the basis of the comments, the Commission believes that probe mode applications of Taser weapons should, where possible, be used instead of drive stun applications. As the Deputy Coroner stated, this method of deployment will be more effective “in controlling people who are not going to respond to pain”.¹³⁵

¹³⁴ Transcript of proceedings, Coroner's Court of Western Australia, 768 of 2007, op. cit., p.40.

¹³⁵ ibid.

[259] The third issue is one that may be more effectively considered through further examination of the 21 incidents between July and September 2009 in which a Taser weapon was threatened or deployed against people who were identified as suffering from a mental illness, with the object of establishing:

- whether a Taser weapon was used as a first force option;
- whether attempts at communication and de-escalation were made by the officers; and
- whether such attempts seemed to be informed and effective.

[260] This analysis revealed that in 18 of those 21 incidents officers first made attempts to communicate with the subject involved. In the other incidents, there is no report of attempts to communicate with the subject prior to a Taser weapon being drawn and aimed at the subject. (Interestingly, the Taser weapon was not actually deployed in these incidents.)

[261] In assessing the types of communication that were attempted by officers to deal with the situation prior to using a Taser weapon, it was possible to categorise the described communication attempts as “persuasion/negotiation/de-escalating” or “direction/instruction/warning”. In four of the incidents, communication attempts falling into the first category were described in the Use of Force report. In two of the incidents, it was simply reported that “tactical communication” was attempted.

[262] In 12 of the incidents, communications were described that fell into the second category of “direction/instruction/warning”. In nine of these incidents, the subject had a weapon and seemed about to use it against officers or another person. In such cases it is absolutely appropriate that communications of the second type are used. However, there is a question about the remaining three incidents, as to whether communication techniques of a more persuasive or calming nature should have been attempted.

[263] Crisis intervention techniques will involve both negotiation and persuasion, and direction and instruction. The question of which type of communication is required, or should be attempted, must be addressed by officers at the scene. Nevertheless, it is appropriate that:

- (1) WAPOL give further consideration to the type of communication training provided to officers, to ensure that the full range of communication methods is taught to officers, and that officers are able to draw upon a range of appropriate communication types, in order that all reasonable attempts are made to de-escalate a crisis prior to the use of force; and
- (2) there be input from mental health professionals into the training of officers in de-escalation techniques, or alternatively, that arrangements be made such that mental health officers are called,

whenever possible, to such incidents in order that effective verbal de-escalation techniques are attempted prior to the use of force.

3.3.6 Indigenous People

[264] Overall, in Western Australia there is a disproportionate level of interaction between police officers and indigenous people when compared to interactions between police and other ethnic and racial groups. There are a number of complex reasons for this level of interaction.

[265] Figure 5 shows Taser weapon use, either as a threat or deployment, against indigenous subjects has almost doubled in the three years Taser weapons have been used in Western Australia – from 16% incidents in December 2007, to 27% in July 2008 and 30% between July and September 2009.¹³⁶

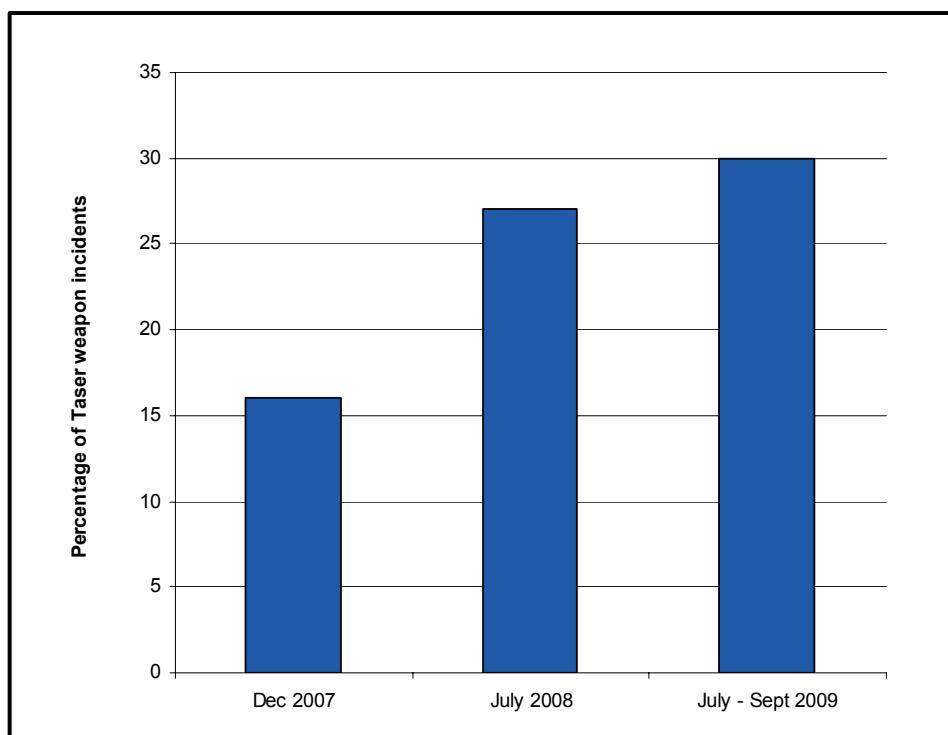


Figure 5: Percentage of Taser weapon incidents on indigenous subjects 2007 to 2009

[266] Further, the use of a Taser weapon against an indigenous person was more likely to be a deployment than a threat, whereas Taser weapon use against a caucasian person was more likely to be a threat than a deployment. Of the indigenous people subjected to Taser weapon use, 40% were threatened and 60% had the Taser weapon deployed on them. Of the caucasian people subjected to Taser weapon use, 56% were threatened and 44% had a Taser weapon deployed on them. That is, during a Taser weapon incident, an indigenous person was almost 30%

¹³⁶ Figures cited in the WAPOL PIRT Review (p.126) provide a similar percentage of Taser weapon use against indigenous people, although no source is referenced for the data.

more likely to have the Taser weapon deployed on them compared to a caucasian person.

3.3.7 Unacceptable Use Involving Abuse of Human Rights in Western Australia

- [267] Analysis of use of force incidents between July and September 2009 did not reveal incidents of Taser weapon use for the purpose of deliberately inflicting pain or punishment.
- [268] Nevertheless, the analysis revealed that Taser weapons are being used in situations where it can be argued such use would constitute an abuse of human rights. This argument can be made in circumstances where officers appear to have used a Taser weapon to achieve compliance. For example, a Taser weapon was used to assist health officers force a person to comply with taking medication. In another case a person was threatened with Taser weapon use in order to force him to remove his boots.

3.4 Mission Creep in Western Australia

- [269] Mission creep can be identified through the measurement and analysis of a number of variables relating to Taser weapon use. For example, it can be argued that an increase in the use of a particular force option over time, and the replacement of other force options with one force option, could indicate that mission creep is occurring. It was previously noted that in Western Australia, Taser weapons have become the force option of “choice”; having increasingly replaced other force options such as OC spray and batons.
- [270] This information can equally be used in support of the argument that Taser weapons are a highly effective force option. If this is the case, and as more officers become trained and competent in this use of force, one would expect to see increasing Taser weapon use over time, and also to see a corresponding decline in the use of other force options.
- [271] A more compelling case that mission creep is occurring in relation to Taser weapon use is their increasing use in particular sets of circumstances, especially if Taser weapon use in those sets of circumstances could be considered improper or excessive. It would also be of some concern if any analysis revealed that Taser weapons were being increasingly used on particular individuals or groups of people.
- [272] Examination of Use of Force reports in December 2007; July 2008; and between July and September 2009 included an analysis of both the situations in which a Taser weapon was deployed, and also the reason or justification for the use of a Taser weapon. The data was analysed firstly to determine whether a Taser weapon was used in unwarranted circumstances or for insufficient reasons; secondly to determine whether Taser weapon use in particular situations or for particular reasons was

increasing over time; and thirdly whether particular groups were targeted more than others.

3.4.1 Mission Creep: Situation/Circumstances

[273] Most Taser weapon use occurs on Fridays, Saturdays and Sundays (61%), with the majority of uses occurring between 9:00 p.m. and 3:00 a.m. (65%).

[274] There were common situations in which a Taser weapon was deployed, including domestic violence incidents, disturbances, fights and brawls, traffic stops, vehicle pursuits, and reports of weapons and/or assaults. There were interesting (if perhaps foreseeable) trends in relation to the type of Taser weapon use at various types of incidents. For example, a Taser weapon was almost four times more likely to be threatened than deployed at domestic violence incidents, while it was almost twice as likely to be deployed as threatened in fights or brawls.

[275] When comparing Taser weapon use at various types of incidents over time, the data revealed that Taser weapons are being used decreasingly (as a proportion of total use) at domestic violence incidents, but are increasingly being used at brawls and fights (usually occurring in a public place). This may reflect the changing nature and frequency of incidents over time (or, for example, the increasing use of particular substances over time) or alternatively it may reflect changing attitudes and actions of officers over time. These trends do not support the notion of mission creep. To the contrary, they appear to indicate, a growing restraint and maturity of approach to domestic violence incidents on the part of officers.

[276] The percentage of incidents involving the deployment of a Taser weapon against a subject who had initially committed no offence, or committed a minor offence (such as disorderly conduct, a liquor infringement, refusing to provide identifying particulars, or refusing to obey a move on notice) remained reasonably constant over 2007, 2008 and 2009. In each of the specified time periods, approximately 14% of deployments were used in such situations.

3.4.2 Mission Creep: Reason/Justification

[277] In seeking to identify the reasons for Taser weapon deployment, the Commission did not necessarily look to the reasons explicitly reported by the officer, but rather aimed to identify the actions of the subject or the particular circumstances that led immediately to the deployment of a Taser weapon, from an objective reading of the Use of Force report. Each incident was categorised into a particular category of reason, as listed.

- Accidental discharge
- Assaulting an officer
- Assaulting another person
- Compliance

- Evading police on foot
- Physically resisting arrest
- Threatening without a weapon
- Threatening with a weapon
- Threat of self-harm
- Taser weapon deployed subsequent to physically resisting arrest
- Taser weapon deployed subsequent to threat with a weapon

[278] Analysis of the reasons for Taser weapon use within the three specified time periods demonstrated that some reasons for use appear to be increasing, while others are decreasing and some remain relatively stable. Some of these trends are shown in Figure 6.

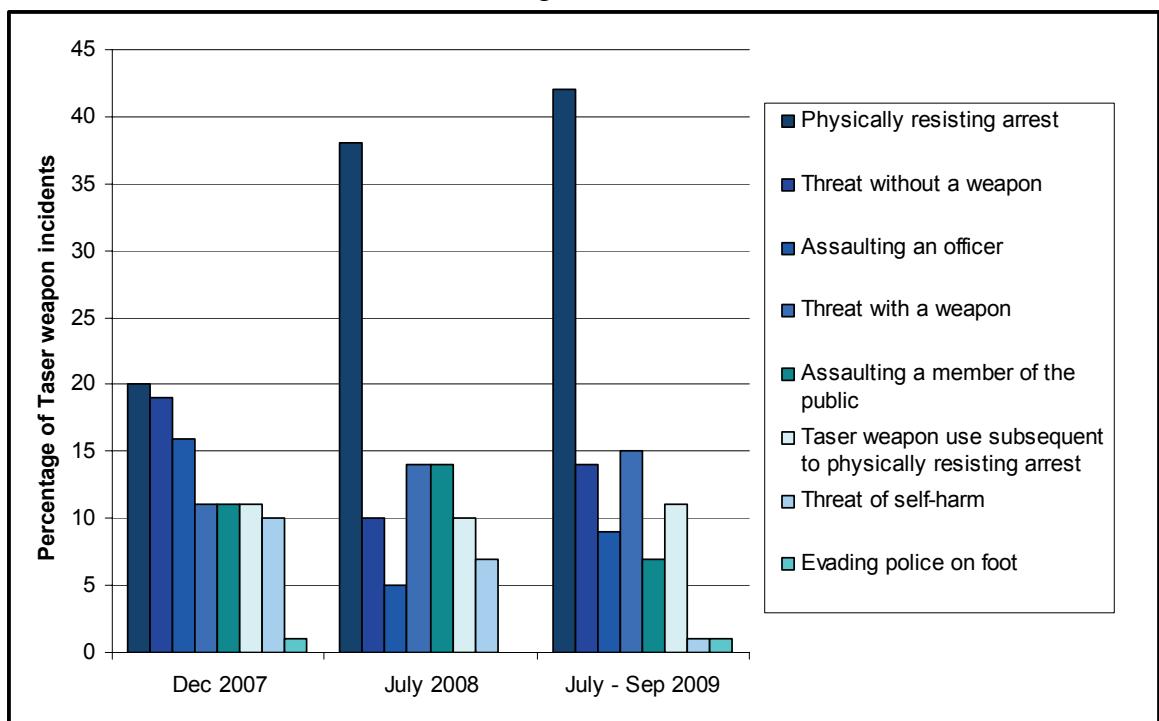


Figure 6: Reason for Taser weapon use 2007 to 2009

[279] It can be seen that Taser weapon use to prevent self-harm has declined over time: from 10% of uses in 2007, to 7% in 2008, to 1% in 2009. Taser weapon use for the reason of preventing assault to an officer, or as a result of a threat with a weapon, both declined significantly from 2007 to 2008 and then increased again in 2009. Taser weapon use to prevent assault of a member of the public shows the opposite trend – the proportion of use for this reason increased between 2007 and 2008 and then declined again in 2009.

[280] The most significant trend is the marked increase in Taser weapon use against people who were physically resisting arrest. Such use has increased significantly over two years: from 20% of use in December

2007, to 38% of use in July 2008, to 42% of use between July and September 2009. That is, they have more than doubled (see Figure 7).

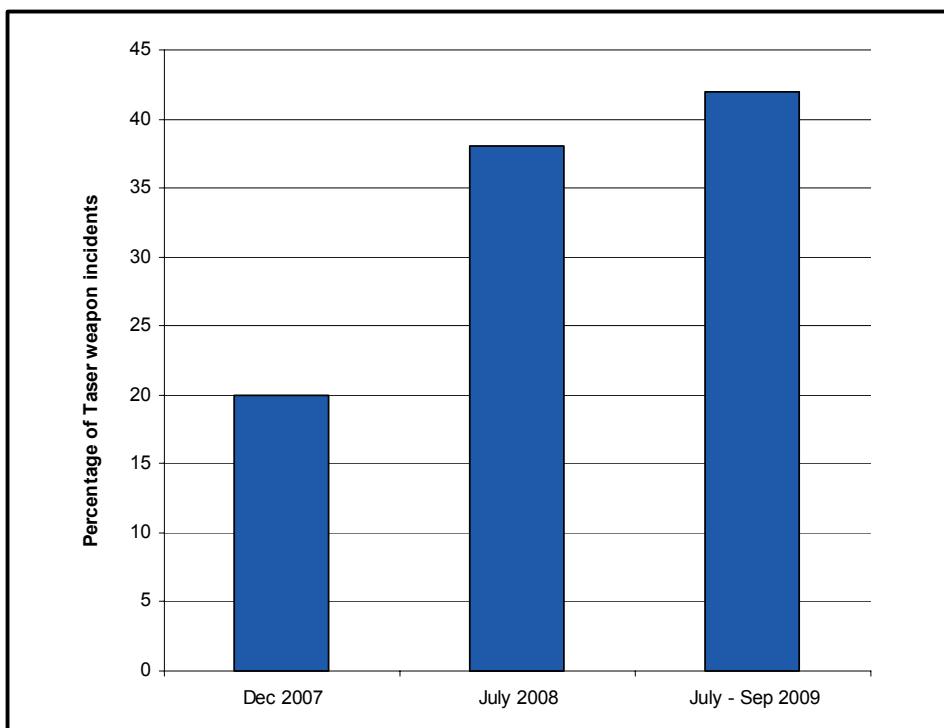


Figure 7: Physically resisting arrest 2007 to 2009

[281] There is no logical basis to believe that people resisting arrest between July and September 2009 were somehow more violent, or more likely to cause injury, than people who resisted arrest in December 2007. Therefore this data fairly raises the issue of mission creep in relation to this aspect of Taser weapon use by WAPOL officers.

3.4.3 Mission Creep: Vulnerable Groups

[282] Analysis of incidents of Taser weapon use over the three time periods in 2007, 2008 and 2009 also raised concerns regarding the increasing Taser weapon use on particular groups of people.

[283] In December 2007, 6% of Taser weapon deployments were reportedly against mentally ill subjects. This rose to 7% in July 2008 and 9.5% between July and September 2009.

[284] This data reasonably raises the issue of mission creep in relation to Taser weapon use against people suffering a mental illness.

3.4.4 Mission Creep: Overall Observations

[285] Based on the data, in Western Australia at the current time mission creep has real potential to redefine the boundary between acceptable Taser weapon use and the use of non-weapons based policing tactics, at the expense of non-weapons based policing tactics. That is, there is a genuine risk in Western Australia of increasing reliance on Taser weapons to resolve incidents in which no bona fide risk of injury exists. This is

fundamentally at odds with the reasons behind implementing an otherwise effective weapon to police. It also runs the risk of alienating police from the wider community.

[286] Various solutions have been proposed to address mission creep, but the central solution is to determine and stipulate an appropriate threshold for Taser weapon use.

3.5 Misuse of Taser Weapons in Western Australia

[287] As part of the purpose of this report is to consider whether WAPOL policy relating to Taser weapon use is adequate, the Commission was interested in Taser weapon use that appeared to be in accordance with current policy, but that might nevertheless be considered improper or excessive.

[288] Further, it may be that there are cases where it is determined that the use of a Taser weapon is *not* in accordance with WAPOL policy, and officers have been disciplined accordingly, but where it might be considered that a change to existing policy could potentially prevent such uses from occurring in the future.

3.5.1 The “Subject Area” Test

[289] The question of whether there are particular sets of circumstances in which it would be improper or excessive to Taser weapon a person was considered during the Braidwood Inquiry in Canada. Braidwood recommended a “subject area” test, situations in which a Taser weapon should not be used.

[290] Except to stipulate that a Taser weapon must not be deployed into the back of a fleeing person, unless it is to prevent injury to any person, WAPOL policy does not restrict the use of a Taser weapon to particular sets of circumstances. This stipulation was added to the existing policy on 28 January 2009.

3.5.1.1 Minor Offences and Non-Criminal Acts

[291] The Braidwood Inquiry considered what might be an appropriate situation for the use of a Taser weapon. Braidwood noted that it was unfair to expect officers to enforce the law and yet not allow use of force if a minor offender escalated the situation and resisted arrest. However, Braidwood was equally mindful that a Taser weapon causes intense pain, and may cause injury or death, so there would be situations in which Taser weapon use was unacceptable. Braidwood gave the examples of a fare evader and a jaywalker. Braidwood concluded that a Taser weapon should only be used “in relation to enforcement of a federal criminal law”.¹³⁷

[292] Analysis of the situations in which a Taser weapon was deployed on subjects between July and September 2009 and consideration of

¹³⁷ Braidwood Commission on Conducted Energy Weapon Use, 2009, loc. cit.

allegations received and investigations by the Commission indicate there may be particular sets of circumstances in which it would seem potentially excessive or improper for a Taser weapon to be deployed. These situations might include circumstances where a Taser weapon was deployed on a subject (perhaps as a result of resisting in a physical manner) when they had not committed a crime, or where the initial offence was minor in nature (and not causing direct physical harm to others), for example public intoxication, swearing or other disorderly behaviour, failing to obey a move on notice, or refusing to provide a name and address.

- [293] Some of the most concerning cases identified by the Commission involve situations where the Taser weapon was used on a subject who was not committing a crime. For example, in one case the subject was not in physical contact with officers so could not be said to have posed a threat of injury or harm to officers.
- [294] Of the Taser weapon deployments analysed between July and September 2009, two involved the Taser weapon deployment on subjects who had not committed an identifiable offence prior to their interactions with police. One of these incidents involved a random bail check on a person, who then became agitated while interacting with police. The other involved the removal of a person who had fallen asleep in a taxi. A Taser weapon was deployed on two subjects following interactions with police officers who had attended at a residence as a result of complaint about loud music.
- [295] In 12 further incidents, a Taser weapon was deployed on a subject who had potentially committed a low level offence, for example: disorderly conduct (without violence); trespass; refusing to provide a name and address; and unsafe bicycle riding.
- [296] The Commission is aware of a case in which a Taser weapon was deployed on a young person who refused to provide evidence proving his name and address, but where it appeared that this information was quite easily obtainable by other means. This matter is discussed in the following case study.

Case Study Seven

Police received a report of a suspicious item at the corner of an intersection. Police set up an exclusion area pending the arrival of a Bomb Squad technician.

Across the road from the exclusion area was a house where an 18 year old man lived with his mother. The man was of slight build, weighing 50-55 kg and 160cm tall. The man and other family members were in the front yard.

The young man approached the area with a camera and began taking photographs of the suspicious item. This drew the attention of police officers, who asked him to provide his name and address. The man was reluctant to provide his details, but eventually did so – stating that he lived across the road. The officer then asked him to provide identification to prove that the name and address he had provided were correct.

The man began to walk back to his house but the officer put his hand on the man's arm and said that he would have to come with him. The man pushed the officer's hand away and told the officer not to touch him.

The officer then grabbed the young man and requested assistance from another officer. The man was warned that the officer would use a Taser weapon on him "if necessary".

The man was escorted to the police vehicle, but went to the ground before he reached it. While the man was held down by two officers, a third officer deployed his Taser weapon on the man in stun mode for approximately three seconds.

The man was not placed under arrest, and officers therefore did not have the power to force him to accompany them to the vehicle. The officers also did not have the power to arrest the man because he failed to produce documents to prove his identity.

The officers stated the Taser weapon was deployed on the man because there was a concern that someone would be hit by a car. However, there was no traffic on the road as traffic had been diverted due to the suspicious item.

The officers were served with Management Action Plans, including verbal guidance. The charges against the man were not pursued.

3.5.1.2 Absconding or Escaping

[297] The Braidwood Inquiry also considered that it would be unacceptable for a Taser weapon to be deployed on a subject who was running away from police, even if the subject had committed a serious crime. Since January 2009, WAPOL policy expressly prohibits the deployment of a Taser weapon at the back of a subject who is running away, unless it can be shown that the subject will cause injury. Prior to that time there were a number of incidents in which a Taser weapon was deployed into the backs of fleeing people. Case Study Eight discusses one such matter.

Case Study Eight

A man ran away from a police officer following a disturbance. The man was wanted for questioning regarding several assault charges and escaping lawful custody. The officer chased the man and deployed a Taser weapon but the probes did not make contact. The man escaped.

About an hour later, the man was found by police. He ran away again. The officer shouted "Taser, Taser" and deployed his Taser weapon at the fleeing man.

The probes struck the man in the back and he fell to the ground. He slid along the footpath causing minor abrasions to his face, arms and legs. The man got to his feet and did not comply with instructions, so the officer deployed the Taser weapon again a second time.

The police officer said he used the Taser weapon to affect an arrest, and felt he had no other option. The officer further stated that he was not using the Taser weapon as a compliance tool, but rather as a force option to prevent continuation of further offences.

Under section 146 of the *Criminal Code* and section 16 of the *Criminal Investigation Act 2006* the officer was justified in arresting the man and using any force that is necessary to do so.

However, the officer did breach WAPOL policy in relation to the use of force, as the Taser weapon was deployed to arrest a fleeing offender, and not to prevent injury. A Managerial Action Plan was actioned, and the officer was provided with verbal guidance and re-training in the use of Taser weapons.

[298] Analysis of incidents occurring between July and September 2009 also revealed a further case in which a Taser weapon was deployed at a fleeing subject, albeit the officer expressed the view that as the subject was handcuffed at the time, the subject might fall and create injury to himself. Further, the officer expressed a concern that the subject might be hit by traffic. Therefore the Taser weapon was deployed when he was on the median strip (on grass) just prior to him running again onto bitumen. The Taser weapon use was nevertheless considered to be contrary to policy and the officer's Taser weapon qualification was revoked.

3.5.1.3 Situations Where a Person is Restrained or Confined

[299] Another set of circumstances in which it might be considered that it is unwarranted, and even dangerous, for a Taser weapon to be deployed on a subject who is restrained or confined.

[300] As noted earlier, Amnesty International has asserted that Taser weapon use on people who are already "incapacitated or otherwise under the control of a law enforcement officer"¹³⁸ would likely be in breach of international prohibitions on torture or other cruel, inhuman or degrading treatment or punishment.

[301] The literature review earlier in this report reinforced that deaths resulting from excited delirium and positional asphyxia are most likely to occur when a subject is restrained. Thus the use of a Taser weapon on a subject who is handcuffed would seem to be not only unwarranted (considering that it is difficult for a person to cause harm when they are restrained) and potentially abusive, but also dangerous.

[302] Questions also arise when the subject is confined in an enclosed room. On the one hand, confined spaces are included in WAPOL training as "impact factors" to be considered by officers when assessing the requirement to use a force option, as there is a higher likelihood of injury to officers and other people in confined spaces. On the other, if a subject is confined (and especially if they are also restrained), the issue of necessity is raised. Under these circumstances, it might be appropriate in the majority of cases for officers to let the subject remain in the secure environment until such time as they have calmed down. The secure environment provides officers with a much greater opportunity to utilise de-escalation techniques and communication.

[303] Examination of use of force incidents between July and September 2009 revealed two incidents in which a Taser weapon was used on subjects who were in a confined space. In both of these incidents, it appeared that the use of the Taser weapon was justified.

¹³⁸ Amnesty International, loc. cit.

Case Study Nine

This information was obtained from the Use of Force report completed by the attending police officer.

A man was arrested for stealing and taken to a police station. The man was very fit, strongly built and muscular. The man aggressively resisted transfer from the police van to a holding cell.

It took four officers to restrain the man and to push him into the holding cell. While in the cell, the man refused to identify himself or to assist police with their enquiries. The man's behaviour varied from total silence to singing and then to shouting.

About one and a half hours after his arrival, the man was told he would be transferred to Perth Watch House. He was asked to stand against the back of the cell and to place his hands behind him. He refused to do as requested, and continued to behave irrationally.

The man was told officers would open the cell door and restrain him if he did not comply with instructions. His demeanour did not change, so the cell door was unlocked.

The man then charged towards the officers in front of him, flaying his arms. The four closest officers were not able to successfully restrain him, and began struggling with him in the cell.

The most senior officer requested that a Taser weapon be deployed. One officer deployed his Taser weapon in probe mode. One probe struck the man in the back and the other probe did not hit him. The man continued struggling. The officer deployed the Taser weapon in drive stun mode in the same location. The man slightly decreased his resistance but then began struggling violently again. The officer stunned him again, and the man fell to the floor and was handcuffed.

Case Study 10

This information was obtained from the Use of Force report completed by the attending police officer.

Police were called to a disturbance at a hospital. When officers arrived, they were informed by security personnel that a couple who had been fighting were now sitting on a nearby bench with their newborn child.

Officers approached the couple and the man became aggressive. He told police that if they came near him he would "go off".

The man resisted when he was subsequently arrested. He was handcuffed with his hands behind him and placed in the back of a police van. He continued to resist.

On arrival at the police station, the man had managed to pull his cuffed hands to the front of his body. He was placed in the holding cell. As officers processed the man's details, the man began to smash his head against the glass door of the holding cell.

Officers removed the man from the holding cell and began to search him prior to taking him to a padded cell. The man resisted being searched.

As the man was about to enter the door of the padded cell he resisted again. He was wrestled to the ground by five police officers and told not to resist. Police attempted to complete the search and remove the handcuffs, but the man managed to lift himself and the five officers off the ground.

Police officers told the man to stop resisting and one officer deployed a Taser weapon in drive stun mode to the man's lower back for a cycle of five seconds. The man dropped to the ground.

Officers removed the man's jumper and the remainder of his property and then removed his handcuffs.

[304] The most important difference between the two cases is that in Case Study 10 the room in which the subject was placed was both secure and safe. Although this is not to say the use of a Taser weapon was necessarily improper or excessive, the use of a Taser weapon in a padded cell raises concerns due to the fact that officers can, in principle, withdraw from a padded cell and leave the subject to calm down.

[305] A third case in which a Taser weapon was deployed on a subject in a secure and safe room is described in the following case study.

Case Study 11

Police were called to a mental health facility by staff because of fears a mentally ill man may present a risk to health staff.

The man allegedly came out of his room with a knife in his hand. Police officers backed away and one officer fell over. Officers reported that a Taser weapon was deployed twice in probe mode but was not effective. OC spray was also deployed but was not effective. A firearm was drawn at the man and he was told to "back off". OC spray was used again and the officers reported that this stopped the man.

The police officers transported the man to a mental health facility where he was placed in a secure room. The officers left their firearms in a safe before entering the facility (in accordance with procedure) but retained their Taser weapons.

Mental health staff decided to administer medication to the man while police were still at the facility. The man objected to being administered the medication by injection and, according to police and health staff, struggled violently with staff. One of the health staff requested the assistance of police, and the two police officers attempted to restrain the man. One officer deployed his Taser weapon in drive stun mode to the man's stomach.

The police officer reported a belief that there was a risk of harm to staff, the other officer and to the patient himself because of the violent struggle and because there was a syringe in the room.

WAPOL investigated the matter and concluded that the Taser weapon deployment was in accordance with policy and for the purpose of preventing harm, and there was no indication that the Taser weapon was used to achieve compliance, or that it was used excessively.

The officer received guidance relating to his reporting of the use of force.

[306] This incident occurred as a result of police carrying out an escort under the *Mental Health Act 1996*. It is not common in such circumstances for police to use force once the subject is admitted to the facility. Managers at the mental health facility stated that staff do, at other times, call for police assistance when a patient is violent and staff cannot control them, but this is generally unusual and would be unlikely to occur when a patient is in a safe and secure room.

[307] A more common approach would be for the patient to be left in the secure environment for a period of time, and given time to “calm down”. As mental health staff are trained to deal with people who are suffering extreme psychological distress, without the aid of force options, it is worth considering the differences in de-escalation techniques used by mental health staff and those used by police. Victoria Police are currently considering the benefit of such an approach.¹³⁹

[308] Case Study 12 also raises the issue of whether Taser weapons should be left outside the facility, as is the case with firearms, when officers arrive at the facility for the purpose of delivering a patient. There is no clear Department of Health policy regarding this issue. In the Forensic Unit of the facility (a different location to where the above incident occurred), policy states that officers should leave their “weapons” in the safe, but it does not specify firearms or Taser weapons. This is in partial conflict with current police directions which specify that officers not divest themselves of accoutrements while conducting mental health escorts.

[309] The issue of confined spaces also raises the question of whether and when it is appropriate to Taser weapon a subject who is in the rear of a police van. Analysis of incidents confirmed that there is a risk of misuse in such cases. However, in the majority of cases examined there appeared to exist a very real risk of injury or harm to the officer. Most deployments of a Taser weapon on a subject who was in the rear of a van occurred in response to the subject kicking at the officers, or at the doors of the van in an attempt to injure officers. Nevertheless, Taser weapon deployments on subjects who are in secure vans, or are being placed into vans, should be closely monitored.

3.5.1.4 Driving a Vehicle

[310] One final situation in which it might generally be thought that it would not be appropriate for a Taser weapon to be deployed is when a subject is driving a vehicle. Policy in some international jurisdictions expressly prohibits the use of a Taser weapon in such circumstances. Case Study 12 covers such a case.

Case Study 12 (See DVD)

At 12:30 a.m. on a Monday morning, two police officers were on patrol when their attention was drawn to a delivery van that was being driven in an erratic manner. The van had a flat front tyre and smoke was coming from the wheel. A registration check revealed the van was stolen.

Police attempted to pull over the van but the driver refused to stop. Police followed the van as it drove through a busy part of the city where there were a number of pedestrians and club goers. The police officers tried several times to get the van to stop but the driver refused. The police officers were driving with their lights and siren sounding.

The tyre of the van degraded and the van was travelling on the rim of the wheel, and sparks were showered along the street. The pursuit continued at slow speed.

¹³⁹ “Police trained to deal with mentally ill”, Channel Nine News, 21 January 2010.

The stolen van collided with another car and then with a police vehicle. The van continued to head towards a busy nightclub. There were pedestrians in the area and the van posed a danger to the public. The police officers determined the van needed to be brought to an immediate stop in order to prevent possible injury to pedestrians.

The van slowed and there was an opportunity for the police vehicle to pull alongside. The driver of the stolen van wound down his window and the police officer aimed his Taser weapon at the driver, calling “stop the vehicle, stop the vehicle”.

When the driver did not stop, the officer deployed his Taser weapon in probe mode at the driver. The wires disconnected because of the movement of both vehicles and the probe contact was not fully effective. However, the action caused the driver to veer to the left and the van stopped against a wall.

The use of the Taser weapon was investigated. When interviewed, both officers said they had considered all other options for forcing the vehicle to stop, as well as the risks involved in allowing the driver to continue.

It was found the officer considered the risk of deploying his Taser weapon and did so to prevent injury. The officer had deployed his Taser weapon in circumstances that were justified in law and within WAPOL policy. It was also found the officer had not deployed a Taser weapon in circumstances that endangered public safety.

The matter was forwarded to the Police Academy for consideration as to existing policy and training regarding the Taser weapon use. The Academy report found that even though deploying a Taser weapon against the driver of a vehicle is not a usual use of a Taser weapon, the officer's actions were in compliance with policy.

[311] This matter illustrates that there will be occasions in which the deployment of a Taser weapon in situations that may appear at first to be potentially dangerous or improper, may be reasonable when all of the circumstances are taken into account. This raises the question of whether it is appropriate to stipulate restrictions on particular use in policy, if there could be certain cases where such use would be considered necessary and reasonable.

3.5.2. The “Behaviour” Test

[312] WAPOL policy stipulates that a Taser weapon can only be used to prevent injury to an officer or another person. Thus the officer does not have to “categorise” the subject’s behaviour when determining whether a Taser weapon can be deployed.¹⁴⁰ The officer must simply report that the subject’s behaviour seemed as if it would cause injury, and this will then justify the officer’s use of the Taser weapon.

[313] The likelihood that the subject’s behaviour will cause injury is also not stipulated – is it enough that there is an outside chance that injury will occur, or should there be a strong likelihood that injury will be caused before a Taser weapon is deployed? Should the foreseen injury or harm be “imminent”, or is it justifiable to deploy a Taser weapon at one point in time to prevent the subject from causing harm at a later point in time? If

¹⁴⁰ In the North American context, decisions about utilising a particular use of force are made with reference to a categorisation of behaviour, that is whether a subject’s behaviour is “assaultive” or “actively resistant”. The Braidwood Inquiry considered these categories and concluded that they were not helpful in determining whether a Taser weapon should be used, rather that a specifically worded threshold for Taser weapon use should be implemented in policy.

so, what time difference would be viewed as acceptable? If “imminence” is not required in order to justify the use of a Taser weapon, then it might seem acceptable to deploy a Taser weapon against a subject who is running away, if the officer suspects that the subject has committed a serious assault, and will repeat this offence if allowed to escape.

- [314] Analysis of the reasons or justifications for the Taser weapon use in incidents between July and September 2009 indicated that the subject was assaulting or about to assault an officer in 4% of cases; another person in 6% of cases; or threatening an officer or person with a weapon in 24% of cases.
- [315] There was a large proportion of incidents in which the Taser weapon was deployed or threatened against a subject who was “physically resisting arrest” (38%) or who was threatening an officer or person (or behaving in a threatening manner) but without possession of a weapon (19%). A subject who has a weapon and is threatening to use it, or who is assaulting or immediately about to assault an officer or another person, is clearly about to cause harm.
- [316] The incidents in which a Taser weapon is deployed on a subject for physically resisting arrest, or for behaving in a threatening manner, but with no weapon, are difficult to assess. There was a wide spectrum of described actions associated with these categories. For example, from “wildly kicking out” in the direction of officers’ faces, and “violently struggling” with an officer immediately next to a very busy freeway, to “throwing his arms about” and “struggling”. On the face of it, deploying a Taser weapon at the milder end of this spectrum may have been more for the purpose of obtaining compliance than for preventing injury.
- [317] Two cases illustrate this point. The first case raises some questions about whether each Taser weapon deployment was warranted.

Case Study 13 (See DVD)

Two police officers approached a man at a shopping centre. The man was the subject of an outstanding Arrest Warrant and the officers told the man that he was under arrest.

The man tried to run away and the officers chased him. There were members of the public nearby. One of the officers tackled the man to the ground. The man struggled with the officer and rose to his feet, pushing the officer in his attempt to escape.

The officer extended his baton. The other officer tackled the man back to the ground and he continued struggling, kicking out and trying to push the officer away. The first officer put away his baton and drew his Taser weapon. The officer said “stop resisting or you will be Tasered, stop struggling”.

Media footage of the incident showed the two officers restraining the man. The man appeared angry but did not appear to be violently struggling with the officers. A Taser weapon was deployed twice to the back of the man’s shoulder.

The officers’ actions were in accordance with policy.

[318] In the second case, a Taser weapon was deployed on a subject following a disturbance in a public place.

Case Study 14 (See DVD)

A police officer was on his own, on duty and in full uniform. He was in the lift of a city building. As he reached the lobby, he heard a man shouting loudly and swearing. A security guard, who was on the phone, gestured to the man. The man left the building and pushed away members of the public using both hands.

The police officer called for back up on his radio. He believed the man was suffering from a mental health problem as a result of methamphetamine abuse or alcohol abuse. Because of the body language and posture of the man, the police officer believed the man was liable to become violent at any moment. The police officer was concerned the man would be unusually strong in proportion to his size and would not react in a rational manner.

The officer followed the man into the street. The man went into a café and spoke offensively to the person behind the counter.

The police officer decided to act because he thought the man would continue the behaviour towards other members of the public.

The man noticed the police officer and the man's body language became aggressive towards the police officer. The police officer realised he was about to be attacked and he had no back up.

The police officer drew his Taser weapon and shouted "police, don't move". The police officer ordered the man to show his hands. The man raised his hands but shouted abuse at the officer and verbally resisted. The police officer ordered the man to turn around and face the wall, and then get to his knees and place his hands on his head. The man did as he was told. The officer then stepped forward, placing his foot onto one of the man's feet and placed his Taser weapon against the man's upper right shoulder. The man put his hands on his head, but continued to shout abuse. The officer again radioed for priority backup.

The police officer took hold of one of the man's hands to place handcuffs on him. The officer noticed a bulky bandage on the man's arm which would make it difficult to handcuff him. The man pulled his arm from his head and twisted in an attempt to stand up. The man was surprisingly strong and the police officer feared that if the man stood up, either the officer or a member of the public would be assaulted.

The officer deployed his Taser weapon into the man's upper right shoulder. The man stopped resisting and the officer supported him as he dropped sideways to the ground. Other officers arrived and assisted the officer in restraining the man. While the man was being searched prior to transport, he resisted again. The officer drew his Taser weapon again, but did not need to use it as the other officers regained control of the person.

Media footage showed the Taser weapon deployment on the man. The man appeared to be in the custody of an officer. He was on his knees and facing away from the officer. The footage showed the man attempt to rise to his feet, raising his arms up and away from the wall upon which they were resting. At this point the Taser weapon was deployed into the man's upper back.

A report completed by an instructor at the Police Academy found the use of the Taser weapon was in accordance with policy.

[319] The Taser weapon use appears to have been warranted in Case Study 13. The subject was struggling violently, was large and strong, and presented a danger to officers. The footage demonstrates the difficulty that

officers were experiencing in restraining the man, and it does appear that the subject may have immediately caused harm if not restrained.

- [320] In spite of this, there are some concerning elements to the incident. Firstly, the Taser weapon deployment as described in the Use of Force report is not exactly as it appears upon viewing the footage.
- [321] More concerning is the fact that, at the time the Taser weapon was deployed, the subject does not appear to be assaulting police, but rather appears to be refusing to comply with instructions to allow handcuffs to be placed on him. It appears that the officers wanted to handcuff the subject so that he would not struggle further and thereby cause them injury. In the Commission's view, this Taser weapon use is primarily to prevent harm and therefore is most likely in accordance with policy. However, it does point to a grey area between obtaining compliance and preventing harm.
- [322] The Taser weapon use in Case Study 14 is more difficult to justify. It could be said that the subject in Case Study 14 was "struggling" and "resisting arrest", as was the subject in Case Study 13. However, there are some important differences. Firstly, the subject in Case Study 14 appears much less physically capable than the subject in Case Study 13. The subject is not strongly built, is clearly affected by alcohol or another substance (which at times causes him to appear very unsteady on his feet), and finally, he appears to have a bandage on one arm.
- [323] Secondly, it appears that in Case Study 14 the Taser weapon was used as the first force option. No attempts were made to communicate with the subject or de-escalate the situation prior to the Taser weapon being drawn and the subject being ordered to comply. He certainly had not been engaged in violently wrestling with the officer and kicking out at him, as the subject in Case Study 13 had been.
- [324] More importantly, the physical resistance offered by the subject in Case Study 14 at the time the Taser weapon was deployed was of a much less serious nature than that offered by the subject in Case Study 13. The subject in Case Study 13 was using his entire strength to attempt to resist officers, and the footage clearly indicates his will to escape by any means, which appeared as if it could include assaulting officers. It is difficult to establish from the footage in Case Study 14 that the subject is doing anything other than attempting to rise off his knees. Upon attempting to do this, the Taser weapon is immediately deployed on the subject.
- [325] It could be argued that another important difference is that the officer in Case Study 14 is alone. The footage indicates that when the Taser weapon was deployed, other police officers were arriving to provide assistance. The officer in this case stated that he suffered auditory exclusion as a result of the stress of the situation, and did not hear the approaching police vehicles.
- [326] In the category of incidents in which a Taser weapon was deployed on a subject who was threatening people without a weapon, or behaving in a threatening manner, the reported actions ranged from "moving in an

aggressive manner as if to kick the victim” and “shaping up, shouting ‘c’mom’ and moving towards another person”, to “clenching his fists”, “imposing himself” or “approaching police”. It may be the case that the officers who reported these incidents have not chosen the most appropriate words to describe the subject’s behaviour (and indeed, it must be acknowledged that such situations and actions are often difficult to describe). Nevertheless, incidents such as these also call into question the use of a Taser weapon.

- [327] Taser weapon use in such circumstances may represent the beginning of a “slippery slope” of mission creep – allowing Taser weapon use in such circumstances may lead over time to an increase in misuse of Taser weapons. Information in Section 3.4.2 regarding the increasing relative frequency of Taser weapon use where subjects are physically resisting arrest suggests this increased use may already be occurring.
- [328] If that is the case, and if the current WAPOL policy allows Taser weapon use in such circumstances (as seems to be the case), then it may be that the policy is inadequate. That is, it may be that the threshold for Taser weapon use stipulated in WA policy is too low.

3.5.3 “Obtaining Compliance” and “Preventing Injury”: A Grey Area

- [329] WAPOL policy specifically states that a Taser weapon is not to be used to gain compliance. Yet it has been noted in several cases considered in this report that a grey area may exist between these two concepts.
- [330] This grey area may exist in relation to three types of circumstances. Firstly, when a subject is physically resisting arrest, but particularly in circumstances in which the subject has previously exhibited violence, or appears capable of exhibiting violence. In such circumstances, Taser weapon use could be perceived that compliance was obtained in order to prevent injury. At times, this injury may have been unlikely or may have occurred in the future. Nevertheless, such cases seemed to be (borderline) acceptable under the current policy, in that the intention of the officers was to prevent injury and that the officers’ perception that injury *could* occur seemed reasonable.
- [331] The second type of matter in which this grey area may exist is in circumstances in which a risk of harm *results* from a subject being forced to comply. This also occurs in cases when subjects are physically resisting arrest. In fact it could be argued that in every case in which a subject physically resists arrest, and their struggling results in a Taser weapon deployment, the risk of harm is caused in the first instance by the officer’s attempts to make the subject comply with their instruction that the subject is under arrest and must accompany the officer.
- [332] This Taser weapon use is not necessarily excessive or improper when the order or expectation to comply results from a legally conferred power. It is potentially excessive or improper when the thing that the subject is being forced to comply with does not result from a power legally conferred on a police officer (such as the officer’s power to arrest) but from some other

authority or perception of need. A good example of this is in the case in which a subject suffering from a mental illness is required by health authorities to take medication.

[333] The third type of matter in which this grey area arises is when a Taser weapon was used against a subject for improper reasons (including compliance), but then the officer is able to provide evidence that they perceived a risk of injury to the subject or to others. This can occur, for example, in the case in which a Taser weapon is deployed on a subject who is running away, but the officer provides as a reason that the subject may have caused harm to themselves or to others if they had continued to run.

[334] The Commission is aware of one matter in which this internal justification was provided by officers and was accepted by the investigating officer. The incident occurred in 2007, and therefore the prohibition on deploying a Taser weapon at a fleeing person was not included in policy at the time. Nevertheless the Commission's review of the matter concluded that not only was the deployment of the Taser weapon potentially excessive or improper, but also it was clear that the officers had not been accurate in the Use of Force report.

Case Study 15

The Commission received a complaint from a woman that police officers had used a Taser weapon on her as she was running from her home following a domestic dispute.

The woman said the Taser weapon was used on her without warning and she fell heavily to the ground. She said the experience was extremely traumatic, painful and distressing. She requested an apology from Police and offered for her experience to be referred to in order to improve training for officers.

The subsequent WAPOL investigation found the use of the Taser weapon was justified under policy because the officer believed the woman was in danger of being harmed by running onto a road.

The Commission reviewed the police investigation and had several concerns.

- (1) It appeared the Taser weapon may have been used for compliance rather than to prevent harm.
- (2) It seemed suspicious that both of the officers provided evidence the woman had stated "I'm going to kill myself by running in front of a car" (or words to that effect) when no other witnesses in the same vicinity heard her utter this statement.
- (3) It seemed suspicious that both officers reported the woman had something in her hand that looked like a wine glass, which it was thought could be used as a potential weapon, when no other witnesses reported this.
- (4) The officers both initially reported the woman was "aggressive" but later modified this to state she was "agitated". It was recorded on the Use of Force report that the officers were "attacked without warning", when the investigation later established this was not the case.
- (5) Sufficient attention was not paid by WAPOL to the question of what alternative actions could have been considered by the officers, and the certain harm caused by the Taser weapon was not balanced against the unlikely risk of harm if the complainant had run onto an empty road.

(6) As the complainant had not committed a crime, and indeed appeared to be a victim of crime, it would seem appropriate for WAPOL to apologise to her.

As a result of these concerns, WAPOL reconsidered the matter and confirmed their opinion that the actions of the officers were justified by law. However, a letter was written to the woman offering an apology for the pain and suffering she experienced, and the incident is now being utilised in the training of officers in Taser weapon use.

[335] A grey area may exist in such cases, because it is very easy for an officer who has deployed a Taser weapon for the purpose of compliance (for example, to stop a person from running away) to justify their use of the Taser weapon by reporting a perception that the subject was going to cause injury – to themselves, to officers or to other people. These types of cases raise three questions.

- (1) Is the compliance/harm distinction an appropriate and practical way to frame policy around the use of a Taser weapon?
- (2) Would a “higher” policy threshold for Taser weapon use remove incentive to misreport the situation?
- (3) Should the “prevention of injury” criteria be framed differently in order that officers are aware that their perception of a risk of injury must be reasonable and be based on objectively observable evidence? Further, should there be some expression that injury must be “likely” or “imminent”, as opposed to just possible?

[336] Officers can find it difficult to operate in this grey area. Several of the Case Studies provide examples of incidents in which officers reported a genuine perception that injury could have occurred, but nevertheless it has been found that they did not act in accordance with policy, or that they used excessive and undue force.

[337] Taser weapon use for compliance was raised during the Coronial Investigation as discussed in Case Study Four. The Coroner noted a difficulty in the application of the current WAPOL policy governing Taser weapon use. Following the provision of evidence by the attending police officers, the Deputy Coroner noted that there is “an issue as to the difference between control and compliance”.¹⁴¹ Counsel for WAPOL responded that police are “alive to the fact that there is this difficulty”.¹⁴²

[338] The difficulty in applying the policy has also been identified in WAPOL internal investigations. For example, in a recent case a WAPOL investigator concluded that unnecessary force had been used when a Taser weapon was deployed on a subject by officers following their attendance at a domestic dispute. Following the incident the subject was charged with obstructing police. When the matter was heard in court, it was found the subject’s arrest was not lawful as it resulted from the subject struggling to retrieve his car keys from the officer, and that the officers did not have the

¹⁴¹ Transcript of proceedings, Coroner’s Court of Western Australia, 768 of 2007, 11 March 2010, p.35.

¹⁴² *ibid.*

lawful authority to take possession of the keys. The officers responded to the subject's attempts to retrieve his keys by arresting him and then placing him in the police vehicle. While attempting to place the man in the vehicle, one of the officers requested that the other officer use his Taser weapon, and the officer did so. The Taser weapon was deployed when the subject was partially sitting in the rear of the police vehicle.

- [339] The officers reported that the subject was physically resisting arrest by struggling, and that prior to a second Taser weapon deployment he was punching out at an officer. Nevertheless the investigator concluded that the officer's deploying of the Taser weapon under these circumstances was "on the fringe of being deployed for compliance rather than safety". It was reported that at one point one of the officers stated to the subject "Get your legs in the car or you will be Tasered".
- [340] In the Commission's view, this matter has been dealt with adequately. However, it does provide an example of a situation in which a Taser weapon has been used for compliance, and further illustration of the "grey area" that may exist within the policy.

3.5.4 Misuse in Relation to Vulnerable Groups

- [341] Of the Taser weapon incidents between July and September 2009, 13 were identified that could potentially be considered excessive or improper. Five of these 13 incidents (38%) involved Taser weapon use on an indigenous subject.
- [342] Although the sample size of improper incidents is small, it is worth noting that the percentage of improper incidents involving indigenous people is significantly higher than the general proportion of Taser weapon incidents involving indigenous people (30%).
- [343] Three of the 13 improper incidents (23%) involved Taser weapon use against a subject who was identified as suffering from a mental illness. Again, although the sample size is small, this proportion is significantly higher than the general proportion of incidents in which a Taser weapon was used against a mentally ill person (11%).

3.5.5 Issues Surrounding the Threat of Taser Weapon Use

- [344] Analysis of Use of Force incidents indicated that there are particular issues associated with the threat of Taser weapon use as distinct from actual deployment. WAPOL requires officers to complete a Use of Force report when a Taser weapon is used in any manner, including when officers draw a Taser weapon (even if it is not viewed by the subject), or threatens a subject with Taser weapon use.
- [345] Threats with a Taser weapon, and the drawing of a Taser weapon, were included in the analysis of Taser weapon use. However, the Commission was conscious of the fact that different criteria may need to be considered when assessing the appropriateness of Taser weapon use when it involved only a threat. The question of whether the "threshold for use" of a

threat with a Taser weapon should be different to that which applies in relation to Taser weapon deployments on a subject was considered.

- [346] The argument in favour of a different policy threshold for Taser weapon use is that this would enable officers to draw their Taser weapons earlier in a dangerous situation, whenever they felt that a threat existed to the safety of themselves or others.
- [347] There are, however, two strong arguments against the creation of a different policy threshold for Taser weapon use. Firstly, there is an argument that it is impractical and potentially counterproductive to allow officers to draw their weapons in situations where they are not able to use them. Secondly, and more importantly, there is a fine line between the drawing of a weapon and the threatening of a subject with a weapon. This is the rationale behind the stipulation that officers must report any instance when a firearm is taken from a holster. Allowing officers to threaten subjects with the use of a dangerous and/or painful weapon in a wide variety of circumstances contains the clear potential for abuse.
- [348] The following case study not only illustrates a Taser weapon threat to achieve compliance, but also the potential risks involved in such use. The case is one of those considered to be potentially excessive or improper during the analysis of use of force incidents.

Case Study 16

A man had been aggressive towards police but entered the back of the police van when requested by the officer. The police officer asked the man to remove his boots because they were perceived to be a threat to the man's safety while he was in the back of the van.

The man refused to remove his boots.

The police officer then drew his Taser weapon and fired into the inside of the police van. There was a loud explosion-like sound and the man removed his boots and slid back into the van.

On the Use of Force report, the officer said he drew the Taser weapon to demonstrate a use of force option if the man placed any officer at risk. The officer did not intend to deploy the Taser weapon on the man. The officer said he believed the cartridge had been removed from the firing end of the Taser weapon and that the Taser weapon would not activate.

It seems from the facts outlined the Taser weapon was drawn to achieve compliance.

- [349] The above incident demonstrates the dangers involved in drawing a Taser weapon and pointing it at a subject. The Taser weapon probes could have easily struck the subject's face or eyes and caused an injury. Further, if the probes had struck the subject at all, then this would have constituted a case where a Taser weapon was deployed on a subject for refusing to comply with a direction to remove his boots.
- [350] The following case is another example of the risks involved in threatening a subject with a Taser weapon.

Case Study 17

Police had been pursuing a car. The car stopped and the chase continued on foot. A police officer found a man on the front porch of a house. The man was agitated and was moving his arms quickly. He was holding an object in his right hand.

The police officer drew his Taser weapon and turned off the safety switch. He directed the laser aiming device at the man's face.

The police officer said "Police, don't move!" and directed the man to lie on his stomach. The man lay down. The item in his hand was a mobile phone. The police officer asked the man to put his hands to the side, which he did. The man was then handcuffed.

This incident was broadcast on "The Force" television program.

In the Use of Force report the officer said he considered empty hand techniques but thought there was a likelihood of injury to both the man and the officer. The officer also stated the man was carrying an object which he initially thought was a weapon, and described symptoms suggesting the man was under the influence of a substance.

The Taser weapon use was deemed within policy. However, it appears from the facts presented the Taser weapon was drawn to achieve compliance.

[351] This issue (of the circumstances in which it is acceptable to draw a Taser weapon) is complicated by two main issues.

- (1) On the Use of Force report template, officers are required to fill out sections relating to the manner in which the Taser weapon was used. One of the questions asked is whether or not the use involved display including "arc display"¹⁴³. Many officers in their following description of the incident use the phrase "red dot compliance"¹⁴⁴, suggesting that they may have been taught this phrase at some point during training. If so, this indicates acceptance of the threat of a Taser weapon for compliance.
- (2) In training materials it is suggested that, "if appropriate", officers "display Taser arcing or red dot laser to gain control". No guidance then appears to be provided as to when this might be appropriate. Certainly this display would be appropriate as an alternative to deployment, in circumstances where deployment is justifiable. However, this does not appear to be clearly explained in the written training materials (it may be verbally explained by instructors during training).

[352] It has previously been noted that comment has been made, particularly in some other jurisdictions, about the fact that, over time, a Taser weapon is drawn more frequently than it is deployed, and that this demonstrates the

¹⁴³ The term "arc display" refers to the activation of a Taser weapon without a cartridge fitted. This produces a spark and noise.

¹⁴⁴ Prior to deployment a red laser is projected from the Taser weapon to assist aiming. The application of this laser as a visual deterrent is referred to by WAPOL officers as "red dot control" or "red dot compliance".

effectiveness of the weapon. This trend is clearly mirrored in the Western Australian data. As can be seen from Figure 8 below, 13% of Taser weapon incidents in December 2007 involved threat or drawing of a Taser weapon without deployment. This increased to 23% in July 2008 and 48% between July and September 2009.

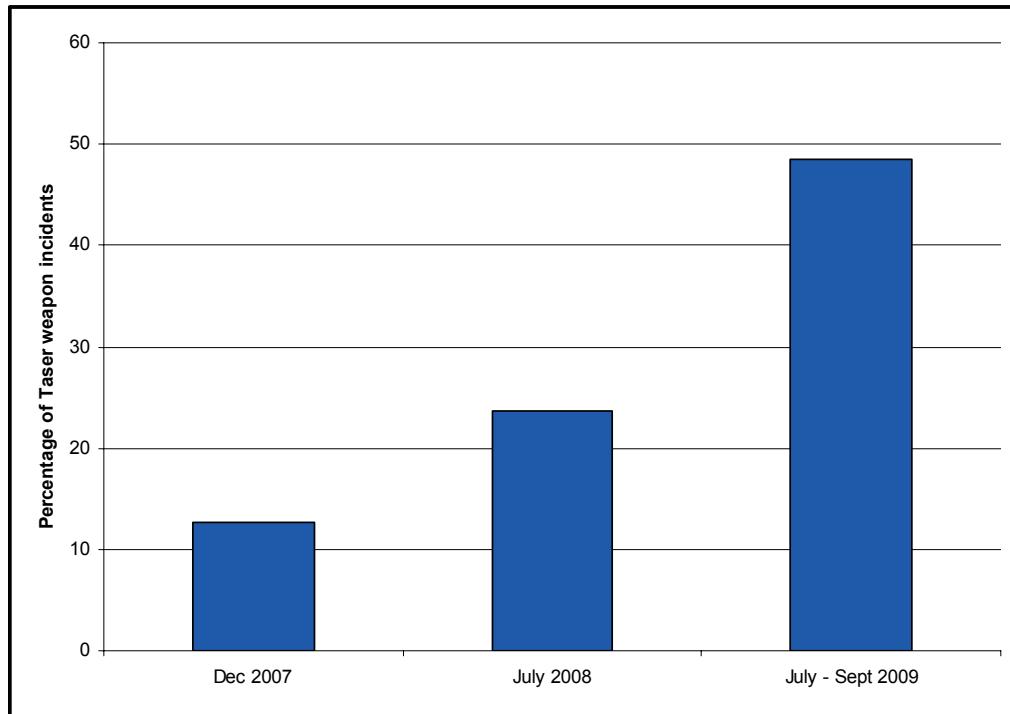


Figure 8: Percentage of Taser weapon incidents in which a Taser weapon was drawn but not deployed 2007 to 2009

- [353] WAPOL believe this trend is evidence that Taser weapons are working, that incidents are being resolved because of the manner in which police officers are using the weapon. However, the Commission is not convinced. Another interpretation is that Taser weapons are being used for compliance, and increasingly so.
- [354] If police officers are using a Taser weapon as a compliance tool, they will draw the weapon more readily in situations where a verbal or physical presence is all that would otherwise be required. Therefore, consistent with the data, Taser weapon use as a threat would increase.

3.5.6 The Issue of Prior Knowledge

- [355] Situations where a Taser weapon is drawn and threatened when there is no significant *imminent* risk of injury would be likely to occur in circumstances where officers are in possession of information indicating that the subject may become violent. This is a complex issue for officers, who are required to use their experience and knowledge to prevent harm to themselves and to others, yet who are also required under their customer service guidelines to “treat each contact as if it is your first”.
- [356] Some potentially excessive or improper Taser weapon use incidents have involved officers being in possession of information indicating that the

subject may become violent. This can occur when officers are aware that a subject has recently shown aggression or violence.

- [357] It also may occur when the officers have prior knowledge of either the subject (“he was known to police as having a history of violence”), or the location (“the residence we attended was well known to police as one in which several family members had a history of assaults and burglary”).
- [358] Although it is appropriate for officers to use relevant information to ensure that they take all reasonable precautions to protect themselves and others, it is not appropriate for the use of force (including drawing of a Taser weapon) to become a first option solely on the basis of this information. This could result in a range of unacceptable circumstances – such as officers entering “dangerous” areas of the city or of regional centres or towns with a Taser weapon drawn. Clearly the potential for abuse, for example, resulting from prejudice against particular ethnicities or groups, is very high in such circumstances.
- [359] This issue becomes most challenging when officers are confronted with subjects about whom they may not have prior knowledge, but whom they judge, on their past experience, to be exhibiting symptoms indicating that they may “become violent”. In one example a Taser weapon was deployed on a subject who had committed low level assaults (pushing) against members of the public, and had been displaying disorderly conduct. Nevertheless, the Taser weapon was drawn (and subsequently deployed) as a result of the officer identifying a range of behaviours that indicated to him that the subject was likely to become violent.
- [360] While an officer’s experience in recognising such symptoms must be utilised in preparing for violence (for example, by requesting back up) it is not appropriate for a use of force to then become a first option upon initial contact with the subject. It is also not appropriate for the officer to rely upon these symptoms when deciding to deploy a Taser weapon in case a subject “becomes violent”.

3.6 Comparison of Threshold for Taser Weapon Use in Western Australia Compared to Other States

- [361] A comparison of the “threshold for use” in various jurisdictions indicates that the WAPOL policy threshold for Taser weapon use is lower than some others (see Figure 10). As Western Australia was the first Australian jurisdiction in which Taser weapons were issued for the use of general duties officers, it should not be surprising that a growing knowledge of the weapons and the risks involved in their use may have led over time to other jurisdictions adopting different, perhaps higher policy thresholds for their use when they, in turn, have issued Taser weapons – especially to general duties officers. It must be acknowledged that, although this knowledge may not have been fully available to WAPOL policy framers at the time the policy was first created, it has nevertheless served WAPOL well to date – as is demonstrated by the relatively low number of cases in which Taser weapons have not been properly or appropriately used by WAPOL officers.

[362] Nevertheless, approximately two-and-a-half years after the initial general issue of Taser weapons, and after much research and consideration by various agencies about the weapons and the risks involved in their use, both within Australia and internationally, it may be time for a reconsideration of policy. Any changes would need to be aimed at ensuring that Taser weapons continue to be used appropriately in the long term, and that mission creep does not occur.

Jurisdiction	Used by	Threshold	Level
Western Australia	General duties	To prevent injury. Not to be used for compliance	Low
New South Wales	General duties	To protect people when violent confrontation or resistance is occurring or imminent	High
Queensland	General duties	To prevent serious injury to a person	Medium
Victoria	Only by Special Operations Group	Situations of violent and serious physical confrontation or when such confrontation is imminent	High
Northern Territory	General duties	Situations in which there is a real and imminent risk of serious harm	High
South Australia	About to be rolled out to General duties	For the protection of members of SAPOL, offenders and the community while disarming or apprehending a person armed with a weapon	High
Tasmania	Only by Special Operations Group	Other less lethal options must be considered first	Low
Australian Capital Territory	Only by Advanced Warrant Team	To prevent physical injury and a less forceful option is unreasonable	Medium
United States of America	Used by police forces for over two decades	Varies from state to state	Varies
Canada	General duties within the Royal Canadian Mounted Police and within several provincial police services	(British Columbia) Situations where bodily harm is occurring or is imminent, no lesser force option will be effective including crisis or de-escalation techniques	Medium
New Zealand	General duties (Most New Zealand police do not carry firearms)	Violent situations. Not for compliance	Low
United Kingdom	General duties (Most United Kingdom police do not carry firearms)	Varies	Varies

Figure 10: Comparison of Taser weapon thresholds

[363] From this table it can be seen that the Western Australia threshold for Taser weapon use is low by comparison to others. It is similar to the threshold for some police services in which officers do not generally carry firearms. In police services in which police officers generally do carry firearms (as is the case in Western Australia), higher thresholds for Taser weapon use normally apply.

[364] With this in mind, the Commission considered the meaning and effect of the various policy thresholds for Taser weapon use across Australia. The thresholds for use outlined in procedural documents and guidelines for police officers in the Northern Territory, Queensland, Victoria and South Australia are generally higher than that outlined in WAPOL policy, while the thresholds for use of a Taser weapon stipulated for AWT officers in the ACT, and for Special Operations Group officers in Tasmania, both appear lower than the WAPOL threshold. The NSW threshold for Taser weapon use appears on a par with WAPOL.

[365] Taser weapons in Queensland and the Northern Territory are used by general duties officers, as in Western Australia. Therefore the advantages and disadvantages of the thresholds for Taser weapon use in these jurisdictions have been considered. These thresholds have also been specifically compared in relation to a number of use of Taser weapon incidents that occurred in Western Australia between July and September 2009. The recommendations of the Braidwood Inquiry (since implemented by law enforcement agencies within British Columbia, and under review by the RCMP) were also included in this comparison, in order that a variety of different thresholds for Taser weapon use were evaluated.

[366] The threshold for Taser weapon use recommended by the Braidwood Inquiry is that:

- (1) officers should be prohibited from using a Taser weapon unless the subject is causing bodily harm, or the officer is satisfied that the subject's behaviour will imminently cause bodily harm; and
- (2) even if these thresholds for Taser weapon use are met, the officer should be restricted from using a Taser weapon unless the officer is satisfied that no lesser force option has been or will be effective, and de-escalation and crisis intervention techniques have not been and will not be effective.

[367] The advantages of this threshold for Taser weapon use are:

- (1) it stipulates that the bodily harm must be "imminent" – therefore, deploying a Taser weapon to avoid harm that may be caused at some point in the future is not justifiable;
- (2) it stipulates that the officer's perception that the subject is about to cause harm must be "reasonable" – therefore, it is not sufficient for the officer to report that he held this belief; the belief must be based on grounds that can be objectively understood and tested; and

(3) it emphasises that a Taser weapon not be used as a first option. Communication (including de-escalation and crisis intervention techniques) must first be attempted, and the officer must be able to show that a lesser force option would not be effective.

[368] There are a number of disadvantages of this threshold for Taser weapon use.

(1) “Bodily harm” is defined differently in Western Australia to Canada. Braidwood considered “bodily harm” was a useful criteria to adopt as it corresponded to the offence of “assault causing bodily harm” in the Canadian Criminal Code (section 267(b)), where “bodily harm” is defined (in section 2) as “any hurt or injury to a person that interferes with the health or comfort of the person and that is more than merely transient or trifling in nature”. Braidwood reasoned that this definition required action which was “demonstrably more dangerous” than that defined as “assaultive”, but which constituted a threshold for Taser weapon use that was “not unreasonably onerous”.

“Bodily harm” is defined differently in the Western Australian *Criminal Code*. The offence of “assault causing bodily harm” is outlined in section 317 of the Code. However, “bodily harm” is defined in section 2 as “any bodily injury which interferes with health or comfort”. The absence of any stronger category of “harm” or “injury” (excepting “grievous bodily harm”) within the Western Australian *Criminal Code* is why the Commission has referred to “serious injury” or “serious harm”, similar to use in other Australian policing jurisdictions.

(2) The threshold for Taser weapon use stipulates that a Taser weapon can only be used on subjects who *themselves* are about to cause bodily harm. This excludes some other situations where it might be considered that a Taser weapon should be used to protect a life or prevent serious injury. For example, one of the incidents examined involved the use of a Taser weapon on a subject who was not directly causing harm or about to cause harm, but who was deliberately obstructing police officers to such an extent that they could not provide emergency first aid to a woman. It was considered that this use of a Taser weapon was reasonable under the circumstances. This use would not be technically allowed under the Braidwood policy recommendations, unless it was considered that the subject’s behaviour was such that it would have “imminently caused bodily harm” to the unconscious person.

[369] The QPS policy threshold for Taser weapon use is as follows: “There must be a risk of serious injury to a person before an officer can deploy a Taser weapon. The decision to apply force or use a Taser is an individual one for which every officer will be held accountable”.

[370] The main advantages of this threshold for Taser weapon use are that:

- (1) it stipulates the injury likely to occur must be “serious”, thus excluding situations where minor bruises or abrasions could result from a subject who was, for example, struggling against the grip of officers, but in a non-violent manner; and
- (2) it allows for situations wherein a subject might be at risk of serious injury, but where this may not be a direct result of assaultive behaviour on the part of officers (as in the incident described above).

[371] The potential disadvantages of the threshold for Taser weapon use are that:

- (1) it does not appear to stipulate any objective criteria by which the perception of risk can be tested. That is, it is not expressly stated (as it is in the Braidwood recommendations) that the officer’s perception must be based on “reasonable” grounds; and
- (2) it does not stipulate that the foreseen injury must be “imminent”, thus potentially allowing the use of a Taser weapon to prevent injury from occurring in the future.

[372] The recently implemented NTPF threshold for Taser weapon use is: “The use of an ECD should be reserved to those situations where no other option would bring about a safe resolution. As a result, the ECD should be reserved for those situations where there is a real and imminent risk of serious harm either to a member of the public, a member of the police force or (in the case of self-harm) the person on whom the ECD will be used”.

[373] The advantages of this threshold for Taser weapon use are:

- (1) it stipulates that the foreseen harm must be “serious”, thus excluding the use of a Taser weapon on a subject who is offering low level resistance;
- (2) it stipulates that the risk must be “real”, implying that the officer’s perception of risk must be based on reasonable grounds, and can be objectively tested;
- (3) it stipulates that the foreseen harm must be “imminent”, thus excluding situations where injury may be caused in the future; and
- (4) it allows for the use of a Taser weapon in situations where the subject’s behaviour is not assaultive, but may nevertheless lead to death or serious injury.

[374] There are no identified disadvantages relating to this policy threshold for Taser weapon use.

[375] Of these four considered thresholds for Taser weapon use, the NTPF threshold is the “highest”, with QPS and Braidwood at a “medium” level, but for different reasons, and WAPOL threshold at the “lowest” level. This means police officers in Western Australia can use their Taser weapons in more situations than officers in the other jurisdictions.

[376] In order to establish the potential practical effect of the various thresholds for Taser weapon use, The Use of Force reports between July and September 2009 were analysed in the light of the Western Australian threshold for Taser weapon use and the thresholds for Taser weapon use in Queensland and the Northern Territory, as well as that recommended by the Braidwood Inquiry. A large number of incidents in which it appeared that a Taser weapon had been used against a subject for “physically resisting arrest”, or for “threatening without a weapon” were considered. These categories of incidents would be most likely to be affected by a “raising” or “lowering” of the policy threshold for Taser weapon use.

[377] Consideration was given to the fact that officers reporting incidents would have a focus on the WAPOL policy, and would have described the reasoning behind their deployment of the Taser weapon in terms of the Western Australian threshold for Taser weapon use only – for example, a police officer who deployed a Taser weapon in order to prevent a subject from punching them might have stated that the Taser weapon was deployed to “prevent injury”, whereas an officer in a similar situation in Queensland might have stated that the Taser weapon was deployed in this circumstance to “prevent serious injury”.

[378] In the overwhelming majority of incidents analysed, the use of a Taser weapon would be likely to have been acceptable and in accordance with policy in each of the jurisdictions to which the above thresholds for Taser weapon use apply. That is, almost all the Taser weapon uses examined would be allowable under the varying thresholds.

[379] There were a small number of incidents that did not meet the Braidwood threshold for Taser weapon use, but did meet the others. These occurred when a Taser weapon was used in circumstances where there was a high risk of serious injury to officers or to others, but where this risk was not solely due to the subject’s behaviour.

[380] An appropriate threshold for Taser weapon use would not exclude these incidents (although perhaps should be monitored, as will be described below). Thus, to some extent, analysis indicates an argument against the effectiveness of the threshold for Taser weapon use recommended by Braidwood.

[381] There were four incidents that were thought to be in accordance with WAPOL policy, but may not meet the other “higher” thresholds for Taser weapon use (at least, as they were described in the relevant Use of Force report). In one of these incidents the subject had acted very aggressively towards an officer, making threats. However, the subject had subsequently become reasonably compliant, and under the officer’s direction, was sitting on the road. The Taser weapon was deployed, without warning, the subject “lunged to their feet”.

[382] The other three incidents were assessed as falling quite clearly within the WAPOL policy threshold for Taser weapon use, but less clearly into the higher thresholds. It was difficult from a reading of the Use of Force

reports to identify a specific imminent threat of serious injury. However, it was felt that this perception may have been due to the words that the officers chose when describing the incident. For example, in one incident, it was reported that a Taser weapon was deployed after a subject became “increasingly violent, unpredictable and managed to separate himself from police”. Without further explanation of the word “violent”, it is difficult to identify a specific threat of imminent and serious harm.

- [383] In the second incident, the subject had previously had possession of a knife and a golf club, but then dropped these weapons in a nearby yard. At the time the Taser weapon was deployed, it was reported that the subject was engaged in a “scuffle” with the officer.
- [384] In the third incident, a Taser weapon was deployed on a subject who had sworn at officers and raised his fists to fight, then just prior to the Taser weapon being deployed, he had drawn back his fist as if to punch an officer. This deployment seems to have been appropriate. But then when handcuffs were being applied, the subject began to “struggle and resist”. The Taser weapon was again pointed at him, and he was warned “if you fight I will reactivate the Taser”.
- [385] On the face of each of these reports, although there may have been some risk of some injury, at the time the Taser weapon was deployed or threatened, there was no imminent risk of serious injury to an officer. Of course, if asked, the officers in each instance may be able to provide further information that would establish that such a risk did, indeed, exist at the time.
- [386] The latter two incidents also provide examples of officers choosing a particular course of action due to their previous experiences with the subject involved – the subject had either previously been carrying a weapon, or had previously tried to assault officers. It has been discussed that prior experience, and prior Taser weapon deployment, should not have the effect of lowering the threshold for Taser weapon use for a further threat or deployment.
- [387] As a result of this analysis, the Commission has formed the view that the threshold for Taser weapon use in Western Australia should be modified and reflected in policy. The policy threshold for Taser weapon use could be changed (“raised”) without endangering the safety of WAPOL officers or interfering with current operational practice. It is advisable for the threshold for use to be raised, to provide that the “injury” or harm foreseen must be imminent and must be serious. Further, it may be useful to include some criteria indicating that the officer’s perception (or prediction) of injury must be based on reasonable grounds. The NTPF threshold for use is sufficient in this regard and has no identified potential disadvantages. It would therefore be reasonable to implement in Western Australia.
- [388] These additional criteria could have prevented the potential improper or excessive Taser weapon use described in several of the cases in this report. The criteria would also have prevented an increase in the numbers

of incidents in which a Taser weapon was used in circumstances where a subject is:

- resisting arrest in a low level manner;
- making threats towards an officer; or
- behaving in a manner that could be described as “threatening”, but not following this up with any physical action.

[389] In such cases, it cannot be said that an injury or harm is “imminent” or that it is likely to be “serious”.

[390] Further, if it is stipulated that the risk must be “real” or that the perception of harm must be based on “reasonable grounds”, then officers must be able to provide very clear descriptions of the physical actions of the subject that led them to believe that they, or another person, was in danger. Their perception would not be considered reasonable if it was based on prior knowledge of a subject, or on a facial expression or (non-violent) gesture.

[391] The current policy guiding Taser weapon use not only outlines the threshold for use, but also stipulates that a Taser weapon is not to be used as a compliance tool. Should the threshold for Taser weapon use be increased as recommended, a question still remains whether the use of a Taser weapon as a compliance tool should continue to be specifically prohibited in policy. It is the Commission’s view that raising the threshold for Taser weapon use would address the concerns in relation to the identified grey area between obtaining compliance and preventing harm, and so the reference to compliance should remain.¹⁴⁵

3.7 Accountability Considerations

[392] One of the important means by which misuse of a Taser weapon can be prevented is through the reporting, monitoring and reviewing of current use. WAPOL currently has very good mechanisms in place for the reporting of Use of Force incidents, and these mechanisms are also in the process of being improved (through the trial and implementation of improved systems for electronic reporting).

[393] There are also procedures in place for the assessment of Use of Force incidents. Use of Force reports are currently directed to the Risk Assessment Unit, where the incidents are monitored and assessed by officers. The Commission is aware that these arrangements may be changed, whereby incidents may be monitored and assessed at the WAPOL Academy.

¹⁴⁵ The WAPOL PIRT Review has recommended that the specific reference to compliance be removed from the WAPOL Taser weapon policy (p.62).

- [394] Incidents are also reviewed by senior officers prior to the Use of Force reports being provided to the Risk Assessment Unit. However, it appears that many incidents are only considered in a cursory fashion by senior officers. Analysis of Taser weapon incidents between July and September 2009 showed that senior officers undertook further inquiries and gave some additional consideration to the appropriateness of use (or at least, reported that they did so) in only nine incidents.
- [395] In the vast majority of incidents, supervising officers merely reported that "use was in accordance with policy", or "use was appropriate". This may, of course, indicate that the officers have given consideration to the circumstances, but it is difficult to ascertain this from the report. In 12 of the 13 incidents identified as potential misuse, the supervising officer made no additional comments on the Use of Force report.
- [396] Recent changes to QPS policy have included provisions stipulating that use of Taser weapon incidents are to be reported as "significant events". The officer in charge must ensure that the incident is reported, and must overview the incident. It is stipulated that where possible this overview should include a face-to-face meeting between the supervising officer and the officer who deployed the Taser weapon. In cases where a misuse of a Taser weapon has occurred (for example, accidental use on a subject), data from the Taser weapon is to be downloaded within 72 hours. The shift supervisor will make inquiries to establish the cause of the incident, and will make a recommendation on how the matter should be dealt with. Such uses will be reviewed by the Significant Event Review Panel.
- [397] Many of these measures are similar to those currently in place in WAPOL. There are mechanisms in place by which senior officers (or indeed other officers) can cause a matter to be referred for internal investigation in cases where an identified suspected misuse of a Taser weapon has occurred.
- [398] The Commission is of the view that clearly improper or excessive uses of Taser weapons should continue to be investigated within currently existing misconduct management systems and processes. For example, any Taser weapon use that results in serious injury should be immediately dealt with through existing processes.
- [399] However, there also appears to be room for other mechanisms by which certain types of Taser weapon incidents can be reviewed, in order to identify and measure more subtle issues relating to Taser weapon use, for example: mission creep against indigenous people; Taser weapon use against people with a mental illness; in circumstances where it appears that officers have not utilised all other options (including, for example, negotiation or de-escalation techniques) prior to deployment; or Taser weapon use in secure or high risk environments.
- [400] There are advantages to incidents being reviewed by training officers at the Police Academy, in order to identify training needs and operational issues. However, it may be that these officers are not best placed to consider community views about appropriate use. There is also advantage

in a process by which incidents are reviewed by officers at the Risk Assessment Unit, however, there may again be questions as to the focus of review in this case. Further, it appears that the current assessment process may raise questions about the effective allocation of resources.

[401] It is therefore the Commission's view that a committee should be formed to monitor and review particular Taser weapon use, and Taser weapon use generally. It may not be necessary or useful for this committee to review all Taser weapon incidents, but the committee should instead be tasked to consider incidents that meet particular criteria, based to some extent on the restrictions proposed for policy. For example, it may be useful to stipulate in policy that all incidents of Taser weapon use (or threat) that occur:

- against a juvenile;
- against an elderly person;
- against a pregnant women;
- against a person with a pre-existing serious health condition;
- against a person who is mentally ill;
- within a confined area or against a person who is handcuffed;
- near flammable liquids or gases;
- in elevated or otherwise dangerous locations;
- against the driver or operator of a vehicle; or
- resulting in injury;

are to be referred to the committee for review.

[402] Officers who have training experience, officers with experience in risk assessment, and officers with experience in ethical standards and misconduct prevention and management should be represented on the committee. Equally important is community representation. Philosophical considerations regarding the approach to Taser weapon use and representation of community values can best be served through a non-police perspective.

[403] The committee should meet at regular intervals to review the Taser weapon use outlined above; to consider risks involved in the ongoing Taser weapon use by WAPOL officers; to identify and address mission creep; and to make recommendations about policy and training. It would also be reasonable for this committee to keep abreast of developments in knowledge about Taser weapons and the risks involved in Taser weapon use as such developments occur in Australian or other policing jurisdictions.

[404] The committee would be an effective means for the continual monitoring of Taser weapon use against indigenous people. For example, the trends identified in this report regarding mission creep and indigenous people could be monitored over time, and the committee could be tasked with

considering means by which any future mission creep can be explained and addressed.

3.7.1 Cameras

- [405] Some police jurisdictions (for example, NSW and Tasmania) use Taser weapons that have cameras attached. This is intended to enhance the accountability of Taser weapon use. WAPOL is currently trialling the use of cameras on Taser weapons, as is QPS.
- [406] The use of cameras on Taser weapons causes several questions to be raised. Firstly, a Taser weapon with a camera attached is significantly more expensive. Secondly, the question arises as to who will view and monitor the footage provided by these cameras. It is assumed that such footage would be viewed in the case where internal investigations are conducted, and may be useful for this purpose. The footage may also be useful if a committee is formed for the review of incidents, as proposed above.
- [407] However, there may be issues and problems associated with the use of cameras on Taser weapons. The Commission has been informed that the cameras available to the Taser weapon in current use are easily “blocked” by the officer’s hand, as officers tend to use a particular grip (similar to a firearm grip) when deploying a Taser weapon. Further, it is likely that useful footage will not be obtained, as the Taser weapon is generally not armed until immediately prior to deployment, and then aimed away immediately following deployment. If this is the case, there will be no footage of the subject’s behaviour prior to deployment.
- [408] It may be preferable, if such evidence is considered to be important in the identification of improper use, for officers to be equipped with cameras to their uniforms that record the entirety of their interactions with the public.¹⁴⁶

3.8 Training

- [409] Taser weapon training for WAPOL officers is broad and thorough. Officers are provided with a combination of operational and theoretical aspects of Taser weapon use. Consideration is given to the public role and responsibilities of police officers, as well as to the identification of particular issues in contemporary policing.
- [410] Operational Taser weapon training includes the interactive training facility where officers interact with pre-programmed scenarios. Instructors can change the outcome of the scenario based on the officer’s reaction. This facility appears highly effective and useful in the training of officers. One disadvantage of the facility is that the “scenarios” included occur in an

¹⁴⁶ Such measures are being introduced in other policing jurisdictions. For example, one agency in British Columbia have been supplied “head cameras” that are manufactured by TASER International: “San Jose Police mount cameras on officers’ heads”, CTV News.

environment that is not local. Thus, there are currently no scenarios that include, for example, indigenous people. Commission officers have been advised that moves are currently underway to create some local scenarios with Australian actors and dialogue. This is reportedly an expensive exercise. The Commission is of the view that is vitally important that any new scenarios include indigenous people.

- [411] Additionally, officers train in physical role playing where they experience certain situations where it is appropriate to use a Taser weapon. The conclusions of this review suggest it is necessary to include additional situations where a subject is physically resisting arrest, and where they are behaving in a threatening manner without a weapon, where these behaviours represent actions that are at both “ends of the scale” – that is, where a subject is only struggling in a relatively non-violent manner, and where a subject is resisting violently and posing a significant threat of injury. Officers should receive training to help them identify a real risk of serious injury.
- [412] WAPOL officers are provided training in conflict management and communication. Effective communication plays a key role in the de-escalation of violent situations where Taser weapon use is threatened. Increasing communication skills will go some way to reducing mission creep and reducing the opportunity for misuse, particularly as it relates to indigenous people and other high risk groups. Some police services (such as the Northern Territory) stipulate required verbal statements prior to the deployment of a Taser weapon.
- [413] For example, the NTPF ECD Good Practice Guide stipulates that:
 - [c]ommunication prior to deployment should be in the form of negotiation and mediation so as to encourage compliance:*
E.g. “Sir, stay there, don’t resist, don’t force me to use a Taser.”
“Sir, we don’t want to use force, we don’t want anyone to get hurt, please don’t force me to use a Taser.” ...
“Sir, is there anything I can say to get you to turn around and place your hands out to the side – I would really like to think there is.”
- [414] Requiring certain statements prior to Taser weapon use may also give the officer the opportunity to reassess the situation by judging the appropriateness of the individual’s response to the verbal cue. For example, the officer may be able to recognise a mental health situation, or those individuals suffering extreme psychological distress. The Commission is aware that such training is provided to health officers who deal with people with a mental illness. It may be that this training could also be provided to WAPOL officers. Police officers are the “front line” people who deal with mental illness. This is a growing challenge for police

and is leading to a number of modifications to the training police officers receive both internationally and within Australia.¹⁴⁷

3.9 Conclusions

- [415] Taser weapons were introduced in Western Australia in the hope they would become an alternative to firearms and reduce the number of injuries to police. Since their introduction, firearm use has increased and the number of injuries to police has remained the same.
- [416] The overwhelming majority of Taser weapon use by WAPOL officers is reasonable. Further, the research shows that a Taser weapon is a very effective tool in situations where there is a real risk of serious injury to an officer or others.
- [417] Notwithstanding the high percentage of reasonable use, analysis of Taser weapon incidents has led to the identification of some concerns.
 - (1) Taser weapons are being used by WAPOL officers for compliance and in other situations in contravention to WAPOL Taser weapon policy, although in most cases this is identified and dealt with adequately through WAPOL misconduct systems and processes.
 - (2) Taser weapons are being used by WAPOL officers in situations where such use is potentially improper or excessive, including against subjects whose level of resistance appears to present only a small chance of harm to officers, and this use appears to be increasing.
 - (3) Taser weapons are being used disproportionately against indigenous people, and the proportion of such Taser weapon use is increasing.
 - (4) Taser weapons are being used against subjects 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 use of a Taser weapon.
 - (5) People have been seriously injured by the use of a Taser weapon in Western Australia.
 - (6) There is a real possibility that a death will occur following a Taser weapon deployment in Western Australia at some time in the future.

¹⁴⁷ “Police trained to deal with mentally ill”, loc. cit.

- [418] Between July and September 2009, potential misuse was involved in 7% of Taser weapon incidents. Of these, 38% involved using the Taser weapon as a threat. The remaining 62% involved potentially improper or excessive Taser weapon deployment.
- [419] From this it can be concluded that although WAPOL officers use Taser weapons effectively and reasonably in the overwhelming majority of situations, there is a percentage of situations in which it appears that they are not being used reasonably. Not all of these incidents are identified and addressed through WAPOL misconduct management systems.

CHAPTER FOUR

SUMMARY AND RECOMMENDATIONS

4.1 Summary and Recommendations

[420] This report outlined research undertaken by the Commission into Taser weapon use by WAPOL officers. The purpose of that research was to identify and reduce the risk of misconduct relating to Taser weapon use and, more generally, to identify, address and prevent misuse of Taser weapons. The research identified current issues relating to Taser weapon use, nationally and internationally, and reviewed Taser weapon use in Western Australia, including policy, training and accountability measures.

[421] The report's literature review and its assessment of the experiences of other jurisdictions concluded that a real risk exists that Taser weapons will be misused, and a real and significant risk that Taser weapons will be subject to mission creep, that is, that Taser weapons will be used in situations where they were not intended to be used and where such use is unwarranted.

[422] International and national research shows a Taser weapon can result in death in certain circumstances. Death can be caused by the fact that a Taser weapon causes incapacitation (leading to, for example, death by drowning or falling); by the ignition of flammable substances; or as a result of ventricular fibrillation and/or asphyxiation.

[423] Injuries can also result from incapacitation and from the ignition of flammable substances, as well as from lacerations resulting from the impact of Taser weapon probes. Sometimes probe injuries can be serious, particularly if probes strike the eyes, face, or other sensitive areas of the body.

[424] The Commission recommends the risk of injury or death be specified in WAPOL policy to ensure police officers are aware of the dangers associated with Taser weapon use.¹⁴⁸

Recommendation 1

That the Western Australia Police include in the Taser weapon policy an acknowledgement that Taser weapons have the capacity to cause death or serious injury.

[425] The risks of injury and death, and of mission creep, are potentially increased when a Taser weapon is used on particular individuals or groups. There are increased risks of death and injury when a Taser weapon is used on the young, the elderly, people with an existing health condition, drug users and the mentally ill.

¹⁴⁸ WAPOL did not find the evidence in the Commission's report "sufficiently compelling" to support this recommendation (WAPOL section 86 response, p.8).

[426] National and international reviews and research have demonstrated that mission creep and unacceptable and dangerous Taser weapon use can be prevented by:

- the creation of a suitable and firm threshold for Taser weapon use;
- “policing” of that threshold for use through oversight, review and appropriate accountability measures;
- consideration as to the situations where it is appropriate to use a Taser weapon;
- consideration of the approach of police officers to particular situations, including the organisational cultures that exist within police services; and
- attention to the model of policing that should apply within a jurisdiction, and the tactical training considerations that might follow from this choice of model and approach.

[427] Analysis of policies from other jurisdictions was undertaken and demonstrated that there are some important differences in policy relating to Taser weapon use within the various Australian police jurisdictions.

[428] An examination of Taser weapon use by WAPOL officers between 2007 and 2009 was conducted. This involved gathering information about complaints and matters notified to the Commission involving allegations of improper or excessive Taser weapon use and a detailed analysis of WAPOL Use of Force reports. A further detailed examination of Taser weapon use between 1 July 2009 and 30 September 2009 was undertaken.

[429] The research identified the overwhelming majority of Taser weapon use by WAPOL officers are reasonable.

[430] The report considered the safety risks associated with Taser weapon use in the Western Australian context. The risk of sudden death by Taser weapon use in Western Australia is real.

[431] Mental illness and drug use was particularly identified as an area where Taser weapon use can potentially result in death or serious injury.

[432] Taser weapon use on indigenous people was also considered. Given the generally lower levels of health and the increased likelihood of serious illness such as heart disease, the increasing relative frequency of Taser weapon use against indigenous people is a concern.

[433] The research has shown Taser weapon use in Western Australia is at risk of mission creep. That is, 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.

[434] Mission creep in Taser weapon use has the potential to undermine the co-operative relationship between police and the wider community. This, in turn, has the potential to both alienate police from the community and to make their job, in both a general sense and with respect to violent confrontations, more difficult.

[435] The WAPOL policy threshold for Taser weapon use is one of the lowest in the country, developed and implemented prior to many of the concerns identified in this report being recognised and fully understood. Raising the WAPOL policy threshold for Taser weapon use could address these concerns without endangering the safety of WAPOL officers or interfering with current operational practice.

[436] Currently, in cases of misuse there is a question as to whether the policy is sufficiently clear on issues such as the imminence, seriousness and reasonableness of the threat. In other words, raising the threshold for use helps keep officers from misusing Taser weapons.

[437] An increase in the threshold for Taser weapon use would also reinforce the requirement that a Taser weapon cannot be used as a compliance tool. Although their use for compliance is already prohibited, raising the threshold for use clarifies the boundary between compliance and safety.

[438] Upon analysis of thresholds for Taser weapon use nationally and internationally, it is determined the Northern Territory Police Force threshold for use most closely represents an appropriate level for the Western Australian context. This takes into consideration existing risks against officers and recognition of public confidence in the police ability to resolve conflict or obtain compliance without resorting to Taser weapon use.

[439] The Commission recommends the threshold for Taser weapon use be modified in WAPOL policy and that the policy includes a suitable reference to use of force principles.¹⁴⁹

Recommendation 2

That the Western Australia Police threshold for Taser weapon use be increased. The Western Australia Police Taser weapon policy (FR 1.6.4) include wording such as:

¹⁴⁹ WAPOL does not agree with these recommendations. WAPOL does not agree that a threshold of “serious” risk or harm should be applied to the use of a Taser weapon (ibid., p.5). In response to recommendation three, WAPOL stated that “there is no hierarchy of force options … force options other than Taser have the capacity to cause more pain and injury over longer periods of time than a Taser” (ibid., p.9). WAPOL’s approach to addressing concerns about Taser weapon use largely involved considering and improving its tactical options model (WAPOL section 86 response, p.9 and PIRT review, pp.47-53). The Commission maintains that implementing a firm and clear threshold for Taser weapon use is the preferred approach to preventing the misuse of Taser weapons.

The use of a Taser weapon is reserved to those situations where no other option would bring about a safe resolution. The use of a Taser weapon is reserved for those situations where there is a real and imminent risk of serious harm either to a member of the public, a police officer or (in the case of self-harm) the person on whom the Taser weapon will be used.

Recommendation 3

That the Western Australia Police Taser weapon policy include the following “use of force principle”:

An officer be prohibited from deploying a Taser weapon unless the officer is satisfied, on reasonable grounds, that:

- no lesser force option has been, or will be effective in eliminating the imminent risk of serious injury; and*
- de-escalation and/or crisis intervention techniques have not been or will not be effective in eliminating the imminent risk of serious injury.*

[440] It may be necessary to train police officers in this change of the threshold for Taser weapon use so they can be confident their Taser weapon use is appropriate. The term “serious” may require further definition and needs to be articulated in policy and addressed in training.

[441] Concerns have been raised regarding the deployment of Taser weapons in drive stun mode especially against people suffering from a mental illness or extreme psychological distress.¹⁵⁰

Recommendation 4

That probe mode be the preferred method of deployment of Taser weapons by Western Australia Police, and this is to be reflected in policy and training.

[442] The WAPOL policy could be modified to reflect the safety risks that exist when using a Taser weapon. Certain individuals and body types may suffer serious injury if a Taser weapon is deployed on them, and the risk of injury is increased in situations where the subject may fall.

[443] WAPOL policy currently restricts Taser weapon use when the subject is running away from officers and when the subject is in the near vicinity of flammable liquids or fumes. Further, the policy warns that a Taser weapon is not to be deployed to the face and/or genital groin region of the subject.

¹⁵⁰ The PIRT review recommended that WAPOL policy include specific advice on the deployment methods of Taser weapons (WAPOL section 86 response, p.9). The effect of this recommendation will result in reduced use of drive stun mode.

There is a warning provided in WAPOL policy about risky deployments including consideration of “overt susceptibilities”.

- [444] The Commission does not consider these restrictions and warnings sufficient to emphasise the extreme danger of Taser weapon use in certain circumstances.
- [445] Consistent with some Australian police services, the Commission recommends the WAPOL Taser weapon policy warn against or restrict the deployment of a Taser weapon in relation to particular types of people such as young children; infirm people (such as elderly or frail); people who are known or who appear to be suffering from serious medical conditions (such as serious cardiac conditions); women known to be pregnant; and people who are restrained or confined. The aboriginality of a person is also a relevant consideration factor of Taser weapon deployment given the higher chance of disease and illness than the broader population.
- [446] In order for the policy to be most effective and useful, the use of absolute prohibitions is not recommended. The Commission suggests wording which includes the specific language “avoid” and the proviso “except in extreme circumstances” to give officers discretion, rather than “must” or “will”.¹⁵¹

Recommendation 5

That the Western Australia Police Taser weapon policy (FR 1.6.4) outline specifically where Taser weapon use is restricted, including that Taser weapon use be avoided in the following situations (except in extreme circumstances).

- (1) When there is an elevated risk of the subject falling and sustaining serious injury.
- (2) Against a person in or near water where there is a risk of drowning.
- (3) In the vicinity of flammable liquids or gases.
- (4) Against drivers of vehicles or operators of machinery, where there is a risk that the vehicle or machinery may go out of control.
- (5) Against persons who are handcuffed or in a secure environment.
- (6) Against children, the elderly and persons of small body stature.

¹⁵¹ WAPOL agrees with the majority of these restrictions with the exception of: Taser weapon use against subjects in a secure environment and people of a small body stature (WAPOL section 86 response, pp.9-10, and PIRT review). In relation to point eight of recommendation five, the policy changes proposed in the PIRT review restricted Taser weapon use against subjects displaying signs of excited delirium, positional asphyxia or subjects with known heart conditions.

- (7) Against women who are reasonably suspected to be pregnant.
- (8) Against persons who are known to have or suspected to have serious pre-existing health conditions.

[447] This report considered Taser weapon use on individuals with a mental illness or those suffering from extreme psychological distress. Because of the unique requirements and/or reactions of this group, specific policy is required to ensure the complex circumstances are reasonably considered prior to a Taser weapon deployment. The existing WAPOL Taser weapon policy is not sufficient in this regard. Specific measures would greatly reduce the risk of a death occurring following Taser weapon use, as well as preventing the potentially excessive or improper Taser weapon use in incidents involving people who are mentally ill or suffering from psychological distress as a result of (for example) substance abuse.

[448] In the Commission's view, the comments made by the Deputy Coroner in relation to the Coronial Investigation as discussed in Case Study Four and in section 3.4.5 support the Commission's recommendation that the Western Australia Police Taser weapon policy require officers to call for the assistance of ambulance officers or other health officers in situations where Taser weapons have been used on people with mental illness or those suffering from extreme psychological distress.¹⁵²

Recommendation 6

That the Western Australia Police Taser weapon policy (under FR1.6.7) require Western Australia Police officers to call for the assistance of ambulance officers or other health officers in situations where a Taser weapon has been deployed on people with a mental illness or those suffering from extreme psychological distress.

[449] Multiple or prolonged deployments will increase the risk of injury to the subject. It is considered appropriate, particularly in view of the events that occurred in Case Study Five, for the WAPOL Taser weapon policy to include a section which stipulates multiple or prolonged deployment is to be avoided where operationally practicable. The existing scrutiny on multiple deployments is to be more firmly articulated.¹⁵³

¹⁵² WAPOL agrees with this recommendation (WAPOL section 86 response, p.10). Further, the policy changes proposed by the PIRT review include after care where the subject appears to have suffered an unprotected blow to the head, appears to be affected by excited delirium, positional asphyxia, a heart condition, mental illness or is believed to be pregnant or is elderly.

¹⁵³ WAPOL does not agree with this recommendation, stating that every use of force is scrutinised and not just multiple deployments (*ibid.*, p.11).

Recommendation 7

That the Western Australia Police Taser weapon policy outline the risks involved in multiple deployments, and emphasise:

- (1) multiple deployments will be scrutinised; and
- (2) each deployment must result from a new assessment of the circumstances and the need for use of force, and be justified accordingly.

[450] The issue of training was discussed in this report. The Commission considered two broad training techniques for Taser weapon use – the interactive facility and physical role playing. At the interactive facility, training of Taser weapon use for WAPOL officers includes scenarios where police officers practice responses to pre-programmed situations. Instructors can change the outcome of the scenario based on the officer's reaction. The disadvantage to this training is that it does not feature Australian scenarios or Australian actors. Notwithstanding the cost to develop new scenarios, the Commission believes the scenarios must include realistic Australian scenarios in order to be most effective. This includes (but is not restricted to) the use of indigenous actors and Australian dialogue.

[451] The second broad type of training is in physical role playing where police officers are taught certain situations where it is appropriate to use a Taser weapon. The conclusions of this review suggest it is necessary to include additional situations where a subject is physically resisting arrest, and where they are behaving in a threatening manner without a weapon, where these behaviours represent actions that are at both "ends of the scale" – that is, where a subject is only struggling in a relatively non-violent manner, and where a subject is resisting violently and posing a significant threat of injury.¹⁵⁴

Recommendation 8

That the Western Australia Police ensure interactive Taser weapon training includes appropriate Australian scenarios

That the Western Australia Police Taser weapon training includes situations where a person is physically resisting arrest or behaving in a threatening manner to assist officers to identify where serious injury may occur.

¹⁵⁴ WAPOL partly agrees with part one of this recommendation and proposed developments to the Interactive Tactical Training Simulator will result in this part of the recommendation being implemented (*ibid.*, p.11). The WAPOL section 86 response indicates that current training meets the requirements implied in part two of this recommendation. The Commission maintains that training needs to be improved in the specific manner recommended.

[452] Analysis found that communication techniques played a critical role in the de-escalation of violence in situations where Taser weapon use was threatened. Some police services (such as the Northern Territory) stipulate required verbal statements prior to the deployment of a Taser weapon. For example “I don’t want to hurt you. Don’t force me to use a Taser”. Whilst WAPOL officers do receive training in conflict management and effective communication, the Commission believes the requirement of stating appropriate phrases prior to the deployment of a Taser weapon may assist the de-escalation of situations, particularly in relation to high risk groups. It may also give the officer the opportunity to reassess the situation by judging the appropriateness of the individual’s response to the verbal cue. For example the officer may be able to recognise a mental health situation, or those individuals suffering extreme psychological distress.¹⁵⁵

Recommendation 9

That Western Australia Police introduce additional verbal and de-escalation training for officers, including the use of specific verbal statements prior to Taser weapon use. Specific verbal statements are to be stipulated in the Western Australia Police Taser weapon policy and provided in training.

[453] This report has identified the need for additional accountability measures to address improper Taser weapon use and to measure more subtle issues relating to Taser weapon use, for example: mission creep, particularly against indigenous people; Taser weapon use against people with a mental illness in circumstances where it appears that officers have not utilised all other options (such as negotiation or de-escalation techniques) prior to deployment; Taser weapon use in high risk circumstances; or use against other vulnerable groups.

[454] This is separate to the current incident management and misconduct management processes within WAPOL, which are effective, and the Commission encourages WAPOL to continue in this regard.

[455] It is recommended that the additional examination of potentially excessive, dangerous or improper Taser weapon use be undertaken by a committee which includes representatives from the Police Academy, the Risk Assessment Unit and Police Complaints Administration Centre. A representative from the community also needs to be included to consider community views about potentially excessive or improper Taser weapon

¹⁵⁵ WAPOL disagrees with this recommendation because “it is unrealistic to expect officers operating in a dynamic situation to use specific, prescribed, verbal statements as every situation and circumstance will be different”; WAPOL currently train officers in tactical communication; and the terminology referred to is a licenced product called VerbalJudo (*ibid.*, pp.11-12). The Commission maintains that providing specific guidance about verbal statements should not restrict the range of tactical communication that officers can employ; that current training in tactical communication can be improved; and that the statements referred to are common usage statements.

use. It is expected the committee will meet at regular intervals to make recommendations about policy and training.

[456] It would also be appropriate for this committee to keep abreast of developments in knowledge about Taser weapons and the risks involved in Taser weapon use, as such developments occur in Australian or other policing jurisdictions.

[457] The committee would be an appropriate and useful means for the continual monitoring of Taser weapon use against indigenous people and other high risk groups. For example, the trends identified in this report regarding mission creep and indigenous people could be monitored over time, and the committee could be tasked with considering means by which any future mission creep can be explained and addressed.¹⁵⁶

Recommendation 10

That Western Australia Police form a committee to continually monitor and examine Taser weapon use in order to identify potential misuse and make recommendations about policy and training. The committee is to include some level of community involvement, and is not to replace current incident management and misconduct management processes. The committee is to particularly consider all Taser weapon incidents:

- against a juvenile;
- against an elderly person;
- against a pregnant woman;
- against a person with a pre-existing serious health condition;
- against a person who is mentally ill;
- within a confined area or against a person who is handcuffed;
- near flammable liquids or gases;
- in elevated or otherwise dangerous locations;
- against the driver or operator of a vehicle; and
- resulting in injury.

¹⁵⁶ WAPOL agrees that a committee should be formed, however, there are differences in the constitution and prescribed role of the committee recommended by the Commission and the committee suggested by WAPOL (ibid., pp.12-13). The committee proposed in the PIRT review has a more operational focus than that proposed by the Commission, it does not have community involvement, and there is no requirement that particular Taser weapon use is referred to the committee.

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