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Dear Commissioner Roberts-Smith

COMMISSION REPORT: THE USE OF TASER WEAPONS IN THE WESTERN AUSTRALIA POLICE

Thank you for your correspondence dated 26 May 2010 providing this agency with the opportunity to respond to the *Commission's Report: The Use of Taser Weapons in the Western Australia Police*.

I have referred the report to the Professional Standards Portfolio and the Professional Development Portfolio for examination. The Western Australia Police's response to the Commission's Report is set out in Attachment 1.

As you would be aware in May 2010, the Western Australia Police completed and published the Western Australia Police Post Implementation Review on Taser (PIRT). The purpose of the PIRT was to examine, analyse and assess the Taser for effectiveness, efficiency and currency. To ensure the review methodology was robust and objective, Inspector Andrew Gray, employed by the United Kingdom National Policing Improvement Agency (NPIA), was contracted to provide independent recommendations and oversight.

In undertaking the PIRT, the objective of the Western Australia Police Corporate Executive Team (CET) was to maintain the confidence of the community of Western Australia by demonstrating that accountable practices exist within the organisation, and that controls in place, relative to the use of Taser, are best practice.

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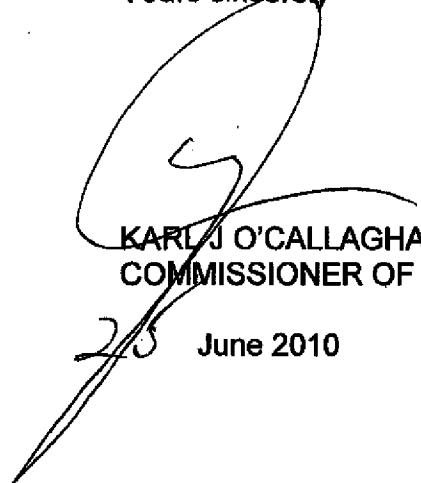


Mission Statement: "To enhance the quality of life and wellbeing of all people in Western Australia by contributing to making our State a safe and secure place."

The Western Australia Police share a similar overall view to that of the Commission, that is, the Taser has been a valuable addition to the use of force options available to Western Australia Police Officers. It is an option that has led to a safer environment for police officers and the community. Taser has been overwhelmingly appropriately deployed by Western Australia Police Officers, and in the majority of the small number of occasions where it has not, the Western Australia Police response has been proactive and thorough.

There is always room for improvement and there will always be instances where the deployment of Taser will be controversial and, less frequently, inappropriate. The PIRT acknowledges this and its recommendations form the way forward for the Western Australia Police.

Yours sincerely



KARL J O'CALLAGHAN APM
COMMISSIONER OF POLICE

25 June 2010

**WESTERN AUSTRALIA POLICE RESPONSE : THE USE OF TASER WEAPONS
IN WESTERN AUSTRALIA**

The Commission's Report 'The Use of Taser in the Western Australia Police' is welcomed by the Western Australia Police as it further assists in maintaining the confidence of the community by demonstrating that Taser use is subject to the highest level of external oversight.

The Western Australia Police in examining the Commission's Report identified the following key issues arising from the Report:

- Drive Stun
- Vulnerable Groups
- Communications
- Threshold level for appropriate use
- Injuries resulting from Taser use
- Sudden Death
- Prolonged Taser Use

In response to the key issues Western Australia Police provides the following:

Drive Stun

The Western Australia Police Post Implementation Review on Taser (PIRT) has recommended further policy change providing specific direction on the use of Taser in the 'drive stun' mode. It has been determined that the 'drive stun' is a less effective method of Taser use and requires officers to further expose themselves to assault by a subject due to close proximity to the subject. Western Australia Police consider the issue of 'drive stun' is addressed most adequately in training.

Vulnerable Groups

The Western Australia Police PIRT has recommended further policy change providing specific direction on the risks associated with mental health subjects and is addressed within Western Australia Police Manual policy FR-1.6.1 and later within FR-1.6.7 for their medical aftercare considerations.

There is insufficient evidence to provide any substantial support to the Commission's Report concerns of over-representation of indigenous groups in Taser use statistics. This is a subject that would require in depth, long term research before any qualitative analysis could be produced.

The use of Taser on children, elderly and pregnant women has been identified in the PIRT as a specific risk for officers to consider before using a Taser upon individuals in this group. If used, officers are required to justify the use.

The use of Taser on those affected by Excited Delirium (generally drug users) has also been identified in the PIRT as a specific risk for officers to consider before using a Taser upon individuals in this group. We point out that any Use of Force option applied to a person who is in a state of excited delirium has risk and this is not limited to Taser. In addition, people in such a state are likely to be the most violent and police have limited options in resolving this type situation. It is possible that Taser might be the most effective response in such circumstances. If used, officers are required to justify the use and must consider Police Manual policy FR-1.6.7 for their medical aftercare considerations.

Western Australia Police PIRT has identified further risks that would require medical care. Police Manual policy FR-1.6.7 provides direction to officers for medical aftercare considerations, for those subjects who suffer an unprotected blow to the head or appear to be suffering positional asphyxia.

Communications

Western Australia Police has a comprehensive communications model which is delivered to recruits in training. This model follows a communications continuum from initial contact through tactical communications, communication with mental health subjects, cross cultural issues, victims of crime to the highest level negotiation issues.

In-service personnel also receive instruction on tactical communications within their annual critical skills training. This is delivered within context when officers utilise the Interactive Tactical Training Simulator (ITTS) and their judgement and communications are subjected to instructor and peer scrutiny. The PIRT has also recommended further ITTS systems to be purchased and distributed throughout Regional Western Australia.

The style of communication referenced in the Commission's Report is a model known as 'Verbal JudoTM'. This is a licensed product which Western Australia Police previously held a contract to deliver. It would appear that the Northern Territory Police must use this product as they have made reference to the style in their 'Good Practice Guide'. Western Australia Police discontinued this contract several years ago as it did not meet the overall requirements of communications by Western Australia Police and was too narrow in its focus.

Threshold Level For Appropriate Use

Western Australia Police do not agree with a threshold of 'serious' risk or harm being applied to the use of Taser. A police officer has a legal right to defend themselves or others when there is a threat of harm present. The

use of Taser may be the option which presents the least amount of risk in neutralising a threat.

The introduction of a threshold will not make Taser use any safer or clear as it only introduces further concerns surrounding the defining of the term. There is no definition within Western Australia legislation on 'serious' harm or injury.

The Western Australia Police PIRT has proposed a policy amendment which directs an officer to only use Taser where there is a reasonable expectation its use will prevent injury. The use must be reasonable, appropriate and proportionate to the circumstances and every application of force must be justifiable.

Every circumstance is different and an officer acting reasonably, appropriately and proportionately to the given set of circumstances should use the Taser correctly.

There is no evidence to support that by setting a threshold the manner and circumstances in which a Taser will be used will be positively affected.

The Report poses the creation of the threshold for Taser use to be 'policed' through oversight, review and accountability. Western Australia Police policy already stipulates when a Taser can be used and has oversight and accountability practices in place in the form of the Use of Force reporting regime.

Injuries Resulting From Taser Use

There is evidence to suggest that a person subjected to Taser application can fall uncontrollably to the ground and suffer an unprotected blow to the head. The Western Australia Police PIRT identified this risk and for officers to consider providing medical care through Police Manual policy FR-1.6.7.

The PIRT also recommended amendments to policy to identify specific risk surrounding flammable liquids or fumes, drowning and falling from a height and operating machinery or vehicles.

Sudden Death

While subjects have died subsequent to being subjected to Taser there have been no deaths directly attributed to the application of Taser, nationally or internationally. Subjects have also died after being subjected to restraint and empty hand control.

The material presented in the Commission's Report recommends that Taser policy should include acknowledgement the Tasers have the capacity to cause death. However, the Commission's Report states at the outset that, "*The debate as to whether Tasers cause death has not reached a firm conclusion.*" *Further at [121] It is often very difficult to determine the cause of death in such cases...[due to] several complicating factors including drugs or alcohols, stress, fatigue, mental illness and other health conditions;*

all of which are outside the control of the police officer making the Taser use decision.

The Commission's Report quotes the WA Coroner's record of investigation into the death of a person (Conway). The Commission's Report stated "*The Deputy Coroner concluded that inappropriate use may have unjustifiable outcomes*". This in fact was not a conclusion but a final sentence within the section of the report headed 'Taser Use'.

Subsequent to the Coroner's conclusion as to the death of the deceased was acute Methylamphetamine Toxicity. Under the heading 'Comments on the actions of police' the Coroner wrote,

'In all the circumstances confronting the police officers(,) use of the Taser in drive stun mode was reasonable in bringing the deceased under control enough to remove him from the roadway'.

Prolonged Taser Use

Data extracted from IAPro shows that 33 incidents (16%) between 1 July and 30 September 2009 involved multiple Taser deployments:

24 incidents involved one drive stun and one probe deployment
1 incident involved two probe deployments and one stun deployment
2 incidents involved two drive stun deployments
5 incidents involved two probe deployments
1 incident involved four probe deployments

The Commission's Report provides accounts describing multiple deployment situations. In all accounts the Taser subject was engaging in violent behaviour and officers held reasonable concerns of injury.

Western Australia Police Taser training does not specifically address simultaneous deployments. Western Australia Police Taser training recommends where an officer has a Taser drawn the other officer should have an alternate option available. Western Australia Police policy dictates that every deployment of Taser must be reasonable, appropriate and proportionate to the circumstances and every application of force must be justifiable.

Recommendations of the Corruption and Crime Commission Report : 'The Use of Taser in the Western Australia Police'

Misuse of Taser can be controlled by training, policy, reporting and effective supervision; all of which are practices Western Australia Police employs and which the Commission's Report acknowledges as being effective. The PIRT has made numerous recommendations to improve on all of these aspects.

The recommendations of the Commission's Report are valid and supported in their intent and as such have been largely addressed by the PIRT. The specific nature or requirements of the recommendations are not fully

supported. The below comments are provided relative to the recommendations:

Recommendation 1

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

There is nothing sufficiently compelling in the Commission's Report to support this recommendation.

It is unlikely on this basis that Western Australia Police would include in policy a comment that the Taser has the capacity to cause death or serious injury.

It has been recommended in the Western Australia Police PIRT that policy be amended to identify a greater range of specific risks and further reference to aftercare policy.

Recommendation 2

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

The use of Taser is reserved to those situations where no other option would bring about a safe resolution. The use of Taser 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 will be used.

The Western Australia Police PIRT has recommended changes to the policy FR-1.6.4 (proposed to change this policy to FR-1.6.1) and does not include the suggested wording of the Commission's Report. There is no definition in existence for 'serious harm' nor do we accept that it should be included as a element of policy.

Proposed policy FR-1.6.1 directs officers to only use Taser where there is a reasonable expectation its use will prevent injury. The use must be reasonable, appropriate and proportionate to the circumstances and (as with all Use of Force) EVERY application must be justifiable.

Recommendation 3

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

An officer is prohibited from deploying a Taser 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.**

There is no 'hierarchy of force options'. The only lesser force option is communication. Force options other than Taser have the capacity to cause more pain and injury over longer periods of time than a Taser. The Western Australia Police PIRT recommended the implementation of a revised situational tactical options model which will require officers to consider the issues raised by the Commission's Report in this recommendation.

Recommendation 4

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

The Western Australia Police Manual policy amendment (FR-1.6.1 – Use of Taser), as recommended by the Western Australia Police PIRT, has included specific advice on the deployment methods (probe and drive).

Recommendation 5

That the Western Australia Police Taser policy (FR-1.6.4) outline specifically where the use of Tasers is restricted, including that Tasers 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 reasonable suspected to be pregnant.**
8. **Against persons who are known to have or suspected to have serious pre-existing health conditions.**

The Western Australia Police Manual policy amendment (FR-1.6.1 – Use of Taser), as recommended by the Western Australia Police PIRT, has included specific advice on specific risks.

However, there has been no reference to persons of a small stature. No evidence came before the Western Australia PIRT which supported this requirement.

Recommendation 6

That the Western Australia Police Taser policy (under FR-1.6.7) require Western Australia Police officers to call for the assistance of ambulance officers or other health officers in situations where Tasers have been used on people with a mental illness or those suffering from extreme psychological distress.

The proposed revision to Western Australia Police Manual policy FR-1.6.1 (Use of Taser) will provide guidance for police officers to provide specific after care requirements to persons subjected to Taser application.

Where the subject appears to have suffered

- an unprotected blow to the head,
- appears to be affected by excited delirium,
- appears to be affected by positional asphyxia,
- appears to be affected by a heart condition,
- appears to be affected by a mental illness,
- is, or is believed to be pregnant, or
- is elderly

officers are advised to refer to Western Australia Police Manual policy FR-1.6.7 (Aftercare) and to seek medical advice and attention.

Specific Aftercare kits are recommended by the PIRT.

Recommendation 7

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

1. **Multiple deployments will be scrutinised;**
2. **Each deployment must result from a new assessment of the circumstances and the need for use of force, and be justified accordingly.**

Within Western Australia Police Manual policy FR-1.6.1 (Use of Taser) and training for police officers in Taser and Glock use, officers are advised they are accountable for EVERY use of Taser (or Glock) and must be able to justify each and every firing.

The four international firearms rules are equally applied to Taser use as it is to any firearm use.

A conscious decision on the need or requirement to pull the trigger and each subsequent trigger pull on every occasion.

Every use of force is scrutinised, not just multiple deployments.

Recommendation 8

That Western Australia Police ensure Interactive Taser training includes appropriate Australian scenarios; and

That Western Australia Police Taser 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.

The Western Australia Police Academy is liaising with the manufacturer of the Interactive Tactical Training Simulator to purchase/utilise an 'Authoring Station' to create our own scenarios.

The primary intent is to create additional scenarios and scenarios on local contemporary issues NOT on creating 'Australian' scenarios, per se. The overwhelming feedback from officers undertaking this training remains focussed on the particular task, not the actor's accent. Clearly it would be better for there to be local content mixed in with the current library of scenario videos and the Academy and Asset Management Directorate are working on a similar outcome with the manufacturer.

Taser training reflects the range of tasks an operational officer may encounter through the use of physical officer and subject activities and the use of the ITTS system for judgemental use of force training.

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 use. Specific verbal statements are to be stipulated in the Western Australia Police Taser policy and provided in training.

The Western Australia Police Academy train recruits and in-service officers to call 'Taser, Taser' before firing a Taser.

Within the training sessions officers are trained to use words similar to '*Police, don't move, the red dot on your chest is from a Taser, put down the weapon or I will use the Taser*' followed thereafter by 'Taser, Taser'. The words will be dependent upon the type of situation encountered in training.

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.

Western Australia Police train officers in communications and tactical communications. The terminology referred to within the Commission's Report, and referred to by the Northern Territory Police, is a licensed product called Verbal Judo™. Western Australia Police previously held a licence to deliver Verbal Judo™ training to its police officers. Western Australia Police discontinued this licence several years ago as it did not meet the overall range of communications required by Western Australia Police.

Recommendation 10

That Western Australia Police form a committee to continually monitor and examine Taser 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 incidents that meet the following criteria:

- ***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***
- ***Resulting in injury***

The Western Australia Police currently have processes in place whereby every 'Use of Force' is subject to reporting by the officer and review by the supervisor, District Office, Risk Assessment Unit and OSTTU. The Western Australia Police PIRT recommended the appointment of a Use of Force Coordinator and a Use of Force Analyst to provide a further level of audit to the 'Use of Force' process.

The Western Australia Police PIRT also recommended (2.12) the formation of a corporate level strategic committee, chaired by, or reporting to, the Deputy Commissioner or Executive Director, to provide an over-arching focal point for Use-of-Force equipment, training and use thereby providing and directing:

- Oversight of corporate reporting
- Use of Taser statistics reporting
- Application in the field
- Training and technical updates
- Ongoing financial costs
- Developments in Taser technology
- Medical and equipment research

The Commission's Report also acknowledges that Western Australia Police misconduct management systems and processes are generally effective [192], [238], [475].

Conclusion

To this day, there is continuing worldwide debate by police forces and external oversight bodies as to where Taser fits within a list of policing tactical force options. Taser use, Taser possession and Use-of-Force by police officers will be subject to continuous review.

The Western Australia Police accepts this situation and is committed to working with all Agencies to ensure our Taser use is undertaken in a manner that provides the community of Western Australia with the confidence that appropriate and accountable practices exist within the organisation.