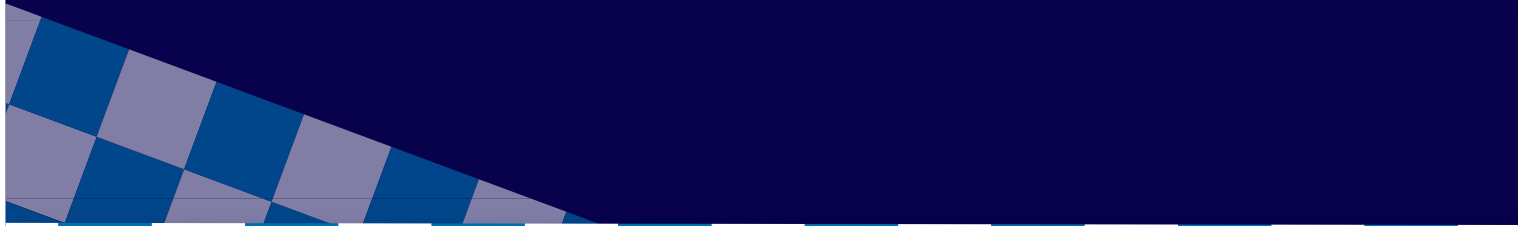
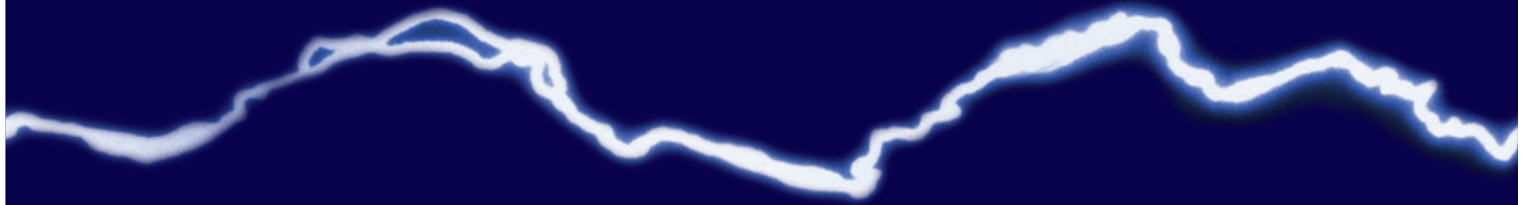




Federation of
Community Legal Centres
VICTORIA

October 2010

TASER TRAP: is Victoria falling for it?



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About the Federation of Community Legal Centres (Victoria) Inc

The Federation is the peak body for 50 community legal centres across Victoria. The Federation leads and supports community legal centres to pursue social equity and to challenge injustice.

The Federation:

- provides information and referrals to people seeking legal assistance;
- initiates and resources law reform to develop a fairer legal system that better responds to the needs of the disadvantaged;
- works to build a stronger and more effective community legal sector;
- provides services and support to community legal centres; and
- represents community legal centres with stakeholders.

The Federation assists its diverse membership to collaborate for justice. Workers and volunteers throughout Victoria come together through working groups and other networks to exchange ideas and develop strategies to improve the effectiveness of their work.

Community legal centres have been assisting victims of police misconduct and excessive force for close to forty years. The Federation supports and coordinates the work of community legal centres in advocating for improved police accountability.

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Glossary

Critical Incident Response Team: Specialist teams within Victoria Police's Force Response Unit. These teams respond to critical incidents including reports of armed offenders or potential suicides. The unit provides an immediate response to any critical incident with a primary focus on safety and negotiation supported by a greater range of less-than-lethal options that are not currently available to general duties police.¹

Drive-stun mode: This is one of two modes for using a Taser. This mode is intended as a pain compliance tool. The Taser is pressed directly against the skin or clothing of a person causing intense pain and sometimes burns but it does not cause any electro-muscular disruption in this mode.

Capsicum spray and foam: Capsicum spray is also known as Oleoresin Capsicum (OC) spray or pepper spray. It also comes in a foam form. Its effects include a burning sensation on the skin, immediate closing of the eyes, uncontrollable coughing and difficulty breathing. Its immediate effect typically lasts 30-45 minutes.

Operational Safety Tactics Training: A Victoria Police training program undertaken on a regular basis to ensure police maintain their skills in relation to incident resolution, use of force and operational safety.

Probe mode: This is one of two modes which can be used to operate a Taser. In this mode, the Taser shoots two barbed darts into a person or their clothing that deliver an electric shock to the body by a series of brief, repetitive electrical pulses. This results in muscle contractions and severe pain intended to immobilise a person.

Special Operations Group: A specialist unit within Victoria Police which unit responds to critical incidents, terrorist incidents, sieges and armed offenders as well as apprehending persons police consider to be dangerous. In recent years, the Special Operations Group has developed a range of non-lethal options for dealing with violent suspects. Less-lethal tactics have been used to resolve situations involving violent criminal suspects and persons with a mental disorder.²

Tased: A common word to describe using a Taser on someone. The word 'Tasered' is also sometimes used.

Taser: A brand of 'stun gun' or 'conducted energy device' produced by the company Taser International. The brand name Taser is also commonly used to describe stun guns generally although there are other companies that produce them. Tasers use electricity to subdue people and can be used in two modes; probe mode and drive-stun mode.

¹ Office of Police Integrity, 'Review of fatal shootings by Victoria Police', ('Review of fatal shootings') (November 2005), page 29.

² Information on the Special Operations Group is available at www.police.vic.gov.au

Executive Summary

The Federation of Community Legal Centres has long argued that Tasers are not a panacea for police use of lethal or near lethal force. Death or serious injury in Victoria in connection with Taser use is a real possibility.

In particular, there are real risks of death or serious injury associated with Taser use on vulnerable groups or in particular situations. These vulnerable groups include people with mental illness, people with pre-existing health issues and people who are drug and alcohol affected.³

Evidence from overseas, and increasingly from Australia, suggests that Tasers are prone to misuse and 'usage creep' – the term used to describe when the use of a device extends beyond the boundaries for use set by policies and procedures. We have already seen Victoria Police 'usage creep' in connection with capsicum spray⁴ and there is substantial evidence of 'usage creep' in other jurisdictions in relation to police Taser use.⁵

We know that use of lethal force by police can be avoided in many instances with tactical communication, non-violent intervention and other lower use of force strategies. This has been emphasised in reports reviewing police shootings in Victoria, including reviews undertaken by the Office of Police Integrity⁶ and reviews commissioned by Victoria Police.⁷ It is not a simplistic question of whether someone would prefer to be Tased than shot. In many cases, incidents can be resolved without the use of any force whatsoever.

Victoria Police was first authorised to use Tasers in 2003. Until recently, Taser use by Victoria Police was limited to two specialist units, the Special Operations Group and Critical Incident Response Teams. On 1 July 2010 however, under a 12-month pilot, Tasers were issued to general duties police in two regional areas of Victoria, Bendigo and Morwell. The decision to extend Taser use to general duties officers was made in the face of comprehensive analyses questioning the safety of Tasers⁸ and reports criticising police use of force in Victoria.⁹

Victoria Police and the Victorian Government have largely made decisions about use of force issues, including decisions on Taser use, without seeking public input and without providing the public with clear, evidence-based reasoning for decisions. This contrasts with other jurisdictions both overseas and in Australia where police, governments and police oversight bodies have acknowledged the strong public interest in police Taser use and have facilitated public debate through the public release of Taser reviews and relevant police operating procedures.

In the absence of transparency and accountability by Victoria Police around these issues, the Federation and its member community legal centres sought to make public key documents around Tasers

³ Braidwood Commission on Conducted Energy Weapon Use 'Restoring Public Confidence, Restricting the Use of Conducted Energy Weapons in British Columbia' ('Braidwood 1') (June 2009), Recommendation 8; Queensland Police Service and Crime and Misconduct Commission 'Review of Taser Policy, Training and Monitoring and Review Practices' ('Review of Taser Policy') (July 2009) page 14.

⁴ Victoria Police, Corporate Management Review Division, 'OC Spray and Foam Review' ('OC Spray Review') (2007) at page 3.

⁵ Ryan E., 'Shocked and Stunned: A Consideration of the Implications of Tasers in Australia', 20 *Current Issues in Criminal Justice* (November 2008), page 2.

⁶ See the Office of Police Integrity, 'Review of fatal shootings' above n 1 and 'Review of the Use of Force by and against Victorian Police' ('Review of the Use of Force') (July 2009).

⁷ Williams M., Progress Report 'Review of Operational Safety and Tactics Training and Critical Incident Management Training Standards', ('Williams Report'), (July 2009).

⁸ See for example, Braidwood 1 above n 3, and Braidwood Commission, 'Why? The Robert Dziekanski Tragedy', (May 2010) ('Braidwood 2'); Queensland Police Service and Crime and Misconduct Commission 'Review of the Queensland Police Service Taser Trial', ('Taser Trial Review') (July 2009) Queensland Police Service 'Review of Taser Policy' above n 3.

⁹ Office of Police Integrity, 'Review of fatal shootings' above n 1 and 'Review of the Use of Force', above n 4.

and the use force, by requesting information from Victoria Police and by using procedures under the *Freedom of Information Act 1982 (Vic)*. Over the past three years, we have obtained:

- data showing how Tasers have been used by Victoria Police specialist units;
- copies of Victoria Police Taser use policies; and
- documents relating to Victoria Police's management of use of force issues and decisions about Taser use by Victoria Police.

The first section of this report provides background information on Tasers and issues around their safety and use by police.

The second section of this report analyses Victoria Police policies relating to Taser use. Our analysis shows that Victoria Police Taser policies are inconsistent and policies for specialist units do not take into account known risk factors and do not comply with internationally accepted best practice for Taser use and relevant human rights considerations.

The third section of this report analyses data showing how Tasers have been used by Victoria Police specialist units. Key findings of our analysis are that:

- since the first use in 2004 and up until 8 December 2009, the Special Operations Group and Critical Incident Response Team discharged a Taser in 83 incidents;
- according to police classification of incidents, 85% of Taser use by Critical Incident Response Teams was against people with mental illness;
- in three incidents, a Taser was used to remove a person from a police cell or police interview room;
- 32% of incidents involved multiple Taser shocks on the same person with the largest number being five shocks on one person;
- 28% of Taser use by Critical Incident Response Teams was against individuals who were unarmed;
- 30% of the Special Operations Group Taser incident reports state that the Taser was used to gain compliance or because the person 'failed to comply with instructions';
- 27% of the Special Operations Group incidents involved Taser use in 'drive-stun mode' (where the Taser is pressed against the subject and used for pain compliance); and
- in at least 16 Critical Incident Response Team incidents and three Special Operations Group incidents, capsicum spray, capsicum foam or a flammable substance such as petrol was present during the incident when the Taser was used.

These findings indicate:

- the problematic use of Tasers in particular incidents, including use to gain compliance, multiple Taser shocks, relatively high drive-stun usage and use on people who are not armed or who are already in police custody;
- disproportionate use of Tasers against people at greater risk of harm including people experiencing mental health crises and people affected by drugs or alcohol;
- potential for 'usage creep', ie; using Tasers for a purpose that was not originally intended; and
- risks around Tasers use where flammable substances are present because the Taser can create an ignition source.

The data shows that the specialist units authorised to use Tasers are not using them very often. The specialist training of these units may contribute to this relatively low usage. Whilst specialist police officers do not use Tasers very often, the data about how the weapons are used suggests there are systemic problems. If highly trained officers can misuse Tasers then the public should be gravely concerned about the possibility of Tasers being provided to all general duties officers in Victoria.

The report warns the Victorian community and Victoria Police against falling into ‘the Taser Trap’. It makes recommendations to improve public accountability and minimise the risk of misuse, injury and death in connection with police Taser use. It argues that there should be an independent and comprehensive public review of Taser use in Victoria and that the outcome of the review and the experience of other jurisdictions need to be considered carefully before any decision can be made about the future of Tasers in Victoria.

Recommendations

To minimise the risk of death or serious injury from Taser use, to guard against possible Taser misuse and to improve public accountability and decision-making around the future use of Tasers, the Federation makes the following recommendations:

Recommendations: 12 month Taser pilot in Bendigo and Morwell

1. The Victoria Police policies governing the Taser pilot should be amended to highlight that risks to vulnerable groups should be taken into account in decisions whether or not to use Tasers in a particular situation, and to clarify that all Taser 'use' as broadly defined in the policies, should be reported.
2. Victoria Police should publicly release information on Taser use at quarterly intervals throughout the pilot.
3. There should be an independent, public evaluation of the Taser pilot using evaluation measures including human rights standards and internationally recognised best practise for Taser use, training, risk assessment and monitoring and reporting.
4. Victoria Police should commit to allowing the pilot and evaluation to be completed and publicly released before any decisions are made about future Taser use.

Recommendations: specialist unit Taser use policies and procedures

5. Critical Incident Response Team and Special Operations Group policies should have a higher threshold test for when Tasers can be used. The procedures should state that a Taser is only to be used in circumstances where death or risk of serious injury to a person is imminent, the incident is unable to be resolved without recourse to use of force and other lower use of force options have been explored and are ineffective or inappropriate.
6. Critical Incident Response Team and Special Operations Group policies should require that each individual Taser use meet the threshold test and that subsequent use of Taser be justified only in exceptional circumstances.
7. In addition to the prohibitions against use on pregnant women, the elderly and children unless exceptional circumstances exist, Critical Incident Response Team and Special Operations Group policies should prohibit Taser use on people in mental health crises, people who appear or are known to be under the influence of alcohol or drugs and people with pre-existing cardiac problems or lung disease, unless there are exceptional circumstances. The policies should warn that Aboriginal people have a significantly higher chance of heart disease or lung disease which puts them at greater risk of harm from Tasers.
8. Critical Incident Response Team and Special Operations Group policies should clearly prohibit Taser use to gain compliance. Taser use should be prohibited, unless exceptional circumstances exist, where a person is restrained, where fuel is also present or where injuries may result from a fall.
9. The definition of Taser 'use' in Critical Incident Response Team and Special Operations Group policies should include arcing, laser painting or withdrawing a Taser from its holster without actually discharging it.
10. There should be a systemic review of Taser use by Victoria Police specialist units to ensure compliance with human rights legislation and best practise and to identify areas of reform in terms of police training, tactics, policies and practices related to Taser use.

Recommendations: Data collection and accountability

11. Victoria Police should implement an improved process for data collection and analysis of Taser use to ensure that adequate information is consistently collected, analysed and reviewed. The process should include provision for recording of all incidents of inappropriate Taser use and the remedial action which was taken to prevent further misuse. There should be regular reviews of the data which should address issues such as usage creep and the review should be made publicly available. Consideration should be given to using a data collection tool similar to the Association of Chief Police Officers Taser Deployment Form¹⁰ which provides for clear, comprehensive and consistent collection of data about:

- the circumstances of the use of the Taser;
- the person who was Tased;
- the manner in which the Taser was used;
- the attempts made to resolve the incident without recourse to use of force;
- the aftercare provided; and
- the debriefing and review processes that followed.

Recommendation: Taser use with flammable capsicum sprays

12. Victoria Police should immediately replace all alcohol-based capsicum spray and foam products with non-alcohol based or other less flammable products where they may be used proximate to police who may use Tasers.

Recommendations: Increased public accountability for Taser use

13. Victoria Police should publicly release all policies and procedures relating to Taser use.

14. Victoria Police should publicly release data about its Taser use, at least annually.

15. Victoria Police should publicly release all reviews and analyses of Taser use conducted by or for it.

16. All Tasers used by Victoria Police should be equipped with the available 'Taser Cam' camera attachment and recording equipment. Victoria Police Taser use policies should require that police record all incidents of Taser use and store the data for review purposes.

¹⁰ Association of Chief Police Officers, 'Extended operational Deployment of Taser for Specially Trained Units – Policy' ('Extended Operational Deployment of Taser') (December 2008).

Timeline of key events relevant to Victoria Police use of force

1994

Taskforce Victor is established by Victorian Minister for Police and Emergency Service, Pat McNamara, to investigate the high number of fatal shootings by Victoria Police. The report, 'Police Shootings -- A Question of Balance' is published in October 1994.

1994

Project Beacon is established to implement some of the recommendations contained in the Taskforce Victor Report. Project Beacon establishes the principle that 'the success of an operation will be primarily judged on the extent to which the use of force is avoided or minimised' and introduces 'Safety First Philosophy' including Operational Safety Tactics Training.

September 1995

Chief Commissioner Neil Comrie announces a six month trial of capsicum spray with the Special Operations Group.¹¹

April 1996

Trial of capsicum spray begins with general duties officers.

July 1997

Victoria Police announces that capsicum spray will be issued to 2000 police supervisors and that all operational police will be trained in its use and issued with it by the end of 1998.¹²

November 2003

12 month Taser trial begins for Special Operations Group members.

November 2004

Special Operations Group and Force Response Unit (which now covers the Critical Incident Response Teams) members authorised to use Tasers beyond the 12 month trial period.

November 2005

The Office of Police Integrity, 'Review of fatal shootings by Victoria Police' finds that:

Victoria Police has lost some of the strategic focus on safety and avoiding the use of force...For the most part, the policy, practices and procedures have remained unchanged but the requisite ongoing and continuous attention to use of force issues as part of the planning and decision-making of Victoria Police has fallen away. The result is a lack of effective risk management, a culture in which self-assessment, review and improvement are given insufficient attention, and a diminution of essential police training to accommodate other organisational priorities.¹³

November 2006

Premier Steve Bracks, in a secret pre-election deal with the Police Association of Victoria announces that a Labor government would provide \$10 million for modern police weapons which could include Tasers and semi-automatic handguns.¹⁴

¹¹ Victoria Police, 'OC Spray Review', above n 4, page 2.

¹² Phillips K., & Godfrey J., 'A dangerous weapon in dangerous hands, Will Oleoresin Capsaicin spray reduce fatal shootings by police?', 24 *Alternative Law Journal* (1999), page 13.

¹³ Office of Police Integrity, 'Review of fatal shootings', above n 1, page 55.

¹⁴ 'New lethal weapons for police', *The Age*, 15 November 2006.

2007

Victoria Police commissions a review of capsicum spray and foam use. The review examines how to respond to evidence that police use of capsicum spray is creeping outside policy boundaries. The review recommends extending the capsicum spray policy to accommodate the usage creep and that all operational members be issued with capsicum spray.

June 2008

After considering an Expert Advisory Panel report (not released to the public), Chief Commissioner Christine Nixon announces that police will be replacing the single shot handgun with a semi-automatic handgun. She also announces that Tasers will not be issued to general duties officers at this time.

June 2009

Chief Commissioner Overland announces a refocus of training on tactical communication techniques. He also announces that training in the new semi-automatic handguns will start in mid 2010 and that Tasers will not be issued to general duties officers at this time.

July 2009

A review commissioned by Victoria Police of its Operational Safety and Tactics Training (OSTT) and Critical Incident Management Training Standards states:

Examination of the [OSTT] Program revealed it was still focussing on incident resolution through tactics involving restraint methods or use of OSTT equipment. This was also consistent with previous OSTT training packages delivered during the period 1996 to 2008...and it was further evident conflict resolution, tactical communications and techniques for defusing violence were absent from most OSTT cycles.

In effect, there has been over a decade of policing in Victoria where operational police have not been exposed to the 'fundamentals' underpinning police operational safety training.

As a consequence of this approach, OSTT has significantly impacted on the organisation's policing style, creating a culture that on occasions was no longer supportive of the strategic direction & organisational safety philosophy.

This 'impact' on the policing style, often emerged when studying responses to public order (street offence) incidents where there is a tendency to deploy OC spray as a first option.¹⁵

July 2009

The Office of Police Integrity 'Review of the Use of Force by and against Victorian Police' finds that:

There has been a proliferation of reviews since 2002 warning Victoria Police it is not effectively managing the risks associated with use of force. Most of the reviews have made similar recommendations, but, until recently, Victoria Police seems to lack the will or capacity to implement solutions to effectively address the identified problems.¹⁶

The review also finds that:

The current operational safety training and education of police does not meet the needs of police facing an increase in challenging and potentially volatile situations. Police must be given alternatives to a hands-on approach that is heavily reliant on tactical equipment such as capsicum spray and firearms. Training must re-focus attention on equipping police with the necessary skills to accurately assess situations and to identify individuals who may have a mental health problem or who are under the influence of alcohol and drugs. Police need to be taught a range of communication and negotiation skills to resolve or defuse these situations without the use of force, or, where the use of force is unavoidable, they need to be taught how to use force in a way that minimises the risk of harm to themselves and members

¹⁵ Williams Report, above n 7, pages 6-7.

¹⁶ Office of Police Integrity, 'Review of the Use of Force', above n 6, page 14.

of the public. Police must learn from mistakes and evaluate a range of tactical options to continually improve their response to these types of situations.¹⁷

February 2010

Chief Commissioner Overland announces a 12 month pilot of the use of Tasers by general duties police in two regional areas of Victoria, Bendigo and Latrobe, to begin 1 July 2010.

¹⁷ Office of Police Integrity, 'Review of the Use of Force', above n 6, page 58.

Introduction

Victorians have entrusted Victoria Police with strong coercive powers and substantial resources to assist them to protect the community. Our laws permit Victoria Police to use force in certain circumstances, including fatal force, in performing their duties. Victoria Police provides its officers with a range of equipment to assist them perform their duties, including firearms, capsicum spray, handcuffs and batons.

In order to provide proper transparency and accountability, community legal centres have long argued for better public scrutiny of decisions about the circumstances in which police are permitted to use force and the type of equipment provided to police to use force.¹⁸ Transparency and accountability helps to prevent misconduct and the abuse of power, enhances public confidence in Victoria Police and enables informed public debate. It promotes public safety and the safety of Victoria Police officers.

Victoria Police and the Victorian Government have largely made decisions about use of force issues including use of Tasers without inviting public input and without providing the public with clear, evidence-based reasoning for its decisions.

In the absence of transparency and accountability by Victoria Police around these issues, the Federation and its member community legal centres have sought to make public key documents around Tasers and the use of force, by requesting information from Victoria Police and by using procedures under the *Freedom of Information Act 1982* (Vic). Freedom of information processes provide a limited form of public accountability for past decision-making. However, the cost, delay and guesswork involved in making freedom of information applications, as well as the limited release of documents under the legislation, renders the process a poor substitute for open and timely public debate around policing issues.

In 2004, the Mental Health Legal Service, a specialist community legal centre assisting people with mental illness, began looking at the issue of Tasers in Victoria. Using freedom of information processes, the service obtained extracts of government documents relating to Tasers.

In 2008, the Federation wrote to Victoria Police expressing our concerns about Tasers. We asked for information about current police use of Tasers and future plans around Taser use, as well as copies of the policies that governed Taser use by Victoria Police. Victoria Police refused to provide the information. The Federation subsequently made freedom of information applications for data about Taser use, police operating procedures and evidence relied upon by Victoria Police in making decisions about Taser use and systemic use of force issues.

In response to our freedom of information requests, and litigation we commenced to review the refusal to provide information under freedom of information laws, Victoria Police provided the Federation with data about Taser use, edited specialist unit Taser policies, some information relied upon in decision-making processes and some systemic review reports. This report provides an analysis of these documents. The documents are available on the Federation's website, www.communitylaw.org.au.

¹⁸ See Federation of Community Legal Centres, 'If they've done nothing wrong they've got nothing to fear: the investigation of complaints made about the police', (1987); Federation of Community Legal Centres, 'Report into the Mistreatment of Young People by Police', (1991).

Background

What are Tasers?

A Taser is a brand of stun gun or conducted energy device produced by the company Taser International. The brand name Taser is also commonly used to describe stun guns generally.

Tasers use electricity to subdue people and can be used in two modes.

In 'probe mode', the Taser shoots two barbed darts into a person or their clothing. These two darts are connected to insulated wires that deliver multiple pulses from a 50,000 volt electrical current lasting over five seconds. The electrical current causes involuntary stimulation of the sensory and motor nerves, resulting in muscle contractions and severe pain. The muscle contractions are intended to immobilise a person by causing them to fall to the ground, regardless of the pain tolerance or mental focus of the individual. The Taser allows prolonged and multiple shocks to be administered.

In 'drive-stun mode', the weapon is pressed directly against the skin of a person causing intense pain (and sometimes burns), but not causing any electro-muscular disruption. In this mode, the Taser is intended as a pain compliance tool.

Tasers can also be 'used' without discharge. Drawing a Taser from its holster, pointing the Taser at a person, 'painting' a person with a Taser's laser sight or 'arcing' (activating the Taser ready for discharge causing a spark and noise) can act as a deterrent and threat and can secure compliance, even though the Taser is not discharged.

Tasers can be equipped with a camera attachment, known as a 'Taser Cam' which records video and audio.

Who uses Tasers?

Tasers are also used widely around the world by police, including in Canada, the United States, New Zealand and the United Kingdom.

The use of Tasers by police in Australia was initially restricted to specialist units within police agencies. Over time however, many Australian jurisdictions have expanded their use to general duties police.

Western Australia was the first state to roll-out Tasers to general duties officers in 2007. Northern Territory, New South Wales and Queensland have followed this lead. South Australia is reportedly about to expand Taser use to general duties officers.

Victoria Police has largely withstood political pressure to expand Taser use¹⁹ and has made cautious decisions about equipping police with Tasers. Specialist police were first authorised to use Tasers in 2002 as part of a 12 month trial. Until recently, only specialist units were authorised to use Tasers. However on 1 July 2010, Victoria Police commenced a 12 month pilot under which general duties officers in Bendigo and Morwell have been provided with Tasers.

Civilians cannot lawfully purchase or use Tasers in Australia.

¹⁹ In 2006, Premier Steve Bracks in a pre-election secret deal with the Police Association of Victoria announced that a Labor government would provide \$10 million for modern police weapons which could include Tasers and semi-automatic handguns: 'New lethal weapons for police', *The Age*, 15 November 2006.

Controversy over police Taser use

The use of Tasers by police is the subject of much research and public debate, in part due to the many reported incidents of police misuse of Taser and the number of high profile tragic deaths following Taser use.²⁰

Amnesty International notes that there have been reports of more than 330 people dying in the United States after being struck by a Taser, and reports of 25 similar deaths in Canada.²¹ Amnesty has identified over 20 cases where the coroner found that Taser usage was a causal or contributory factor in the death and other cases where the Taser was cited as a possible factor in autopsy reports.²²

In Australia, there have been four reported deaths that occurred after Taser use.²³

Reviews or evaluations of Taser trials have been conducted by police agencies or police oversight bodies in various Australian jurisdictions and released publicly.²⁴ In Victoria however, the only publicly available review of Taser use is a limited review conducted by the Office of Police Integrity as part of its broader review of police use of force in 2009.²⁵

Controversially, in two states, decisions to expand Taser use have occurred while Taser reviews or pilots were under way. In Queensland the decision to expand Taser use beyond specialist police units was made prior to the completion of the review of the Queensland Taser pilot. The then Queensland Police Minister, Judy Spence, announced the rollout of Tasers to all general duties police almost six months before the trial period concluded on 30 June 2008.²⁶ Following the death of a North Queensland man after multiple Taser shocks, the roll out was initially suspended, but was continued in 2010.²⁷

In December 2007, the NSW Ombudsman commenced an investigation into Taser use by NSW Police. While this investigation was continuing, the NSW Government announced that Taser use would be extended to general duties officers. The roll out of 229 Tasers to general duties officers commenced in October 2008. The NSW Ombudsman handed down his report on Tasers in November 2008, recommending a public review of Tasers in two years time and a freeze on the further roll out of Tasers until the review was completed.²⁸

In Victoria, the decision to commence the 12 month pilot issuing Tasers to general duties police in Bendigo and Morwell, was made without the benefit of a comprehensive public review of Taser use either by either Victoria Police or the Office of Police Integrity.

²⁰ For example, the death of Robert Dziekanski at Vancouver International Airport in Canada in 2007 became the subject of public inquiries conducted by the Braidwood Commission. See Braidwood 1 and 2 above n 3 and 8.

²¹ Amnesty International, 'Less than Lethal - The use of stun weapons in US Law Enforcement', (December 2008). See also Amnesty International, 'Briefing to the US Justice Department inquiry into deaths following discharges from Tasers' (Briefing to the US Justice Department) (September 2007) and Amnesty International, 'Tasers – potentially lethal and easy to abuse', (December 2008).

²² Amnesty International, Briefing to the US Justice Department, above n 21.

²³ On 4 October 2010, a New South Wales man died after being Tased by police responding to a domestic dispute. In June 2009, a Queensland man died after being reportedly Tased by police 28 times. In April 2009, a man died in Alice Springs after police used a Taser and capsicum spray on him. In May 2002 a New South Wales man died some days after repeatedly being shocked with a Taser: 'Recent Taser-related deaths', Sydney Morning Herald, 5 October 2010.

²⁴ Reviews have been conducted in Western Australia, New South Wales, Queensland and New Zealand.

²⁵ Office of Police Integrity, 'Review of the Use of Force', above n 6, pages 29-36.

²⁶ Queensland Police Service, Taser Trial Review, above n 8, page 1.

²⁷ 'Queensland police Taser rollout to continue' The Age, 13 January 2010.

²⁸ New South Wales Ombudsman, 'The use of Taser weapons by the NSW Police Force' (November 2008).

Are Tasers safe?

Medical and scientific evidence on Taser safety is incomplete. Studies that point to the relative safety of Taser are based on case reports, computer modelling and laboratory testing of animals. Many of these studies were industry funded.²⁹ Most studies highlight the need to do further research, particularly in relation to at-risk groups such as people with existing heart conditions, people who are drug and alcohol affected, the young and the elderly, pregnant women, the mentally ill and others.

For example, the NSW Ombudsman in 2008 concluded that:

there is significant dissent in medical studies about whether a Taser charge can affect a person's heart and possibly cause death. While major studies have found Tasers to be generally safe to use on healthy adults, there is less certainty about whether these weapons are as safe to use on other people, such as those who are stressed, have pre-existing medical conditions, or are intoxicated.³⁰

Similarly a report by the United States National Institute of Justice in 2008 found that 'although exposure is not risk free, there is no conclusive medical evidence...that indicates a high risk of serious injury or death.' The report noted that the effects of Taser exposure on at-risk individuals including small children, the elderly and pregnant women 'are clearly not understood'. The report added that 'studies examining the effects of extended exposure are very limited' and the preliminary review of deaths following Taser exposure 'indicates that many are associated with continuous or repeated discharge.'³¹

The Western Australia Corruption and Crime Commission in 2010 concluded that 'international and national research shows Taser weapon use can result in death in certain circumstances.'³²

Observations of voluntary exposure by police officers to Taser shocks cannot be relied on to predict the effect of Taser use in the field, particularly on at-risk groups or in situations where the Taser is used in conjunction with capsicum spray or handcuffs.

In practice, it is likely that there will be high incidence of Taser usage on individuals in at-risk categories. This is confirmed by our analysis of Victoria Police Taser use data set out in this report. Accordingly, the lack of conclusive medical data is significant, particularly given the field experience of Taser usage.

In addition to risk of injury from direct exposure to Taser shocks, there are acknowledged risks of injuries due to falls following incapacitation by a Taser, Taser darts piercing the eyes and burns through ignition if Tasers are used in conjunction with capsicum sprays or on flammable solvents.

Field experience points to significant risk of abuse

Equipping police with Tasers generates a heightened risk of abuse by some police given that the electro-shocks typically do not leave any physical marks on those who are Tased. Amnesty International cites numerous cases of Taser abuse in North America in its reports³³ and there have been reports in Australia of misuse and abuse.³⁴

²⁹ Ryan, above n 5, page 294.

³⁰ New South Wales Ombudsman, above n 28, page 16.

³¹ National Institute of Justice, 'Study of Deaths Following Electro Muscular Disruption: Interim Report', (June 2003), page 3.

³² Corruption and Crime Commission, 'The Use of Taser Weapons by Western Australia Police' (4 October 2010), page xiv.

³³ See Amnesty International reports at above n 21.

³⁴ Antonio Galeano died after reportedly being Tased by Queensland Police 28 times; 'Man shot 28 times with Taser died of heart attack' Courier Mail 19 June 2009. Footage in Western Australia showed an unarmed man in police custody being Tased 13 times; 'Western Australian Aborigine Tasered in custody' The Australian 5 October 2010. See also Corruption and Crime Commission, above n 31, xiv.

Do Tasers reduce the rate of police shootings?

Proponents of Tasers argue that they are an effective means of resolving incidents and that they can reduce police use of firearms in particular incidents. So far, there have been few independent studies testing these arguments. The limited evidence available suggests that Taser may reduce injuries to subjects compared to the use of other force options (including batons or capsaicin spray) but questions the effectiveness of Tasers in reducing police shootings overall.

For example, a recent National Institute of Justice, (a research and evaluation agency of the United States Department of Justice) study³⁵ examined use of force cases from police departments in the United States. The study suggested that Tasers can significantly reduce the risk of injury to suspects in incidents when force is used.³⁶ The study did not analyse whether or not the introduction of Tasers reduced the rate of police shootings and did not analyse incidents which were resolved without any use of force whatsoever (eg: through talking down an incident). The results of the study suggest that not every jurisdiction's experience will be the same regarding Taser use and injuries.³⁷

Amnesty International argues that police training, improved policies and oversight have had more significant impact in reducing overall police shootings than use of alternative weapons.³⁸ The organisation cites San Jose as an example of a US city where police shootings increased after the introduction of Tasers. It also refers to two incidents in that city in 2004 where police used firearms after they had used Tasers because the Tasers had failed to subdue their intended targets. Amnesty USA refers to the experience from the city of Houston to support the argument that Tasers do not reduce police use of firearms. An audit conducted in that US city found that police shootings had not decreased after the introduction of Tasers in 2004.³⁹

Within Australia, Western Australia was the first state to supply Tasers to general duties police. Since the introduction of Tasers in 2007, there has been a doubling of police firearm use from 6% in 2007 to 12% in 2009.⁴⁰

The Braidwood Commission, which examined Taser use in British Columbia, Canada, referred to data on police shooting deaths in British Columbia which showed a 'a modest increase, not a decline, since the introduction of conducted energy weapons [ie; Tasers].'⁴¹ The Commission also referred to a recent US study which analysed data from 50 Californian cities of lethal force deaths (ie: police shootings) and unexpected deaths in police custody, for five years before and after the introduction of Tasers. The data showed that both lethal force deaths and unexpected deaths in police custody rose significantly in the first full year after the introduction of Tasers and then reduced, but remained higher than before the introduction of Tasers.⁴² The authors of the study speculated that 'early liberal use of Tasers may have contributed to these findings, possibly escalating some confrontations to the point that firearms were necessary.'⁴³

³⁵ National Institute of Justice, 'Multi-method evaluation of police use of force outcomes' (2009).

³⁶ There is a paucity of research on this issue in Australia. In 2007-08, the Queensland Police Service conducted a review of its Taser trial. While it looked at the issue of whether Taser use reduced the risk of injury, it did not examine whether Taser use reduced police shootings. Queensland Police Service 'Review of Taser Policy' (July 2009), page 31.

³⁷ National Institute of Justice, above n 35, page 9.

³⁸ Amnesty International, 'Excessive and lethal force' (2004), page 11.

³⁹ Amnesty International, 'Overview of Tasers'- website page, Available at < www.amnestyusa.org/us-human-rights/taser-abuse/overview-of-tasers/page.do?id=1351087>

⁴⁰Corruption and Crime Commission, above n 32, page 38.

⁴¹ Braidwood 1, page 279.

⁴² Braidwood 1, page 281.

⁴³ Braidwood 1, page 281.

The Braidwood Commission was reluctant to draw conclusions from the data and emphasised that a risk-benefit analysis was called for, that balanced the potential benefit of Tasers in reducing injuries with the risk of serious injury or death flowing from Taser use.

Better training, policies and oversight will reduce police shootings

We do know that use of lethal force by police can be avoided in many instances with skills in communication, conflict resolution, identifying and managing vulnerable persons, incident planning and cordon and containment. This has been emphasised in reports reviewing police shootings in Victoria, including reviews undertaken by the Office of Police Integrity⁴⁴ and reviews commissioned by Victoria Police.⁴⁵ It is not a simplistic question of whether a person would prefer to be Tased (or capsicum sprayed) than shot. In many cases, incidents can be resolved without the use of any force whatsoever, reducing the risk of injury to both the subject and the police involved.

People with mental illness are overrepresented in fatal police shootings in Victoria.⁴⁶ We know that better training in identifying and responding to people experience mental health crises, including better communication and negotiation skills, can avoid fatal shootings.⁴⁷

In 1994, Victoria Police implemented Project Beacon to respond to the high level of police shootings in Victoria in previous years. Project Beacon implemented the 'Safety First Philosophy' which embedded the principle that 'the success of an operation will be primarily judged by the extent to which the use of force is avoided or minimised.'⁴⁸ The relevant principle now embedded in the Victoria Police Manual states that where use of force cannot be avoided, police officers should only use the minimum amount of force that is reasonably necessary.⁴⁹ Project Beacon implemented significant changes to Victoria Police policies, procedures and training. According to these operational safety principles, police officers must apply the Tactical Options Model and the Safety First Principles before considering using force. The principles require police officers to conduct a risk assessment, avoid confrontation and to only use forced entry searches as a last resort.

In the ten years since Project Beacon to November 2005, there were 16 fatal shootings by Victoria Police. There had been 32 fatal shootings in the previous 15 years. However, in 2005, the Office of Police Integrity highlighted that a 'recent increase in the frequency of police shootings has been fostered by a gradual diminution in the training of Victoria Police officers.'⁵⁰ This loss of focus in training is discussed further below.

Usage creep: Tasers will replace other more appropriate tactical options

Evidence from overseas, and increasingly from Australia, suggests that Tasers are prone to misuse and 'usage creep' – the term to describe when the use of a device extends beyond the boundaries for use set by policies and procedures.

Usage creep can result in Tasers replacing more appropriate tactical options and skills to resolve incidents without using force. We have already seen Victoria Police 'usage creep' in connection with

⁴⁴ See Office of Police Integrity Report, 'Review of fatal shootings' above n 1 and 'Review of the Use of Force' above n 6.

⁴⁵ Williams report, above n 7. Victoria Police also commissioned Mr Williams to undertake an examination of police shooting critical incidents between July 2005 and December 2008. This report has not been publicly released and Victoria Police has refused us access to this document under Freedom of Information.

⁴⁶ Office of Police Integrity Victoria, 'Review of fatal shootings' above n 1; Dalton V., 'Police shootings 1990-1997', 89 *Trends & Issues in Crime and Criminal Justice* (1998), Australian Institute of Criminology.

⁴⁷ Office of Police Integrity, 'Review of fatal shootings report', above n 1, pages 39-40 and recommendations 19, 20 and 27.

⁴⁸ Office of Police Integrity 'Review of fatal shootings' above n 1, pages 1-2.

⁴⁹ Victorian Police Manual (2010 Ed), 'Policy- Operational safety and equipment', 2.

⁵⁰ Office of Police Integrity 'Review of fatal shootings' above n 1, page ii.

capsicum spray⁵¹ and there is evidence of ‘usage creep’ in other jurisdictions in relation to police use of Tasers.⁵²

When usage creep occurs, the Taser can become the weapon of first resort. The Queensland Police Service has acknowledged that one of the key risks associated with Tasers is over-reliance, namely ‘the risk that officers will use Tasers as a weapon of first choice rather than considering other options to de-escalate a situation.’⁵³ Mental health experts have also expressed concern that police access to Tasers is a barrier to the development of skills and experience in methods of negotiation.⁵⁴

For example, the Braidwood Commission into the death of Robert Dziekanski at Vancouver International Airport in Canada in 2007, found that police Tased Mr Dziekanski within a very short time after arriving at the scene. Mr Dziekanski was not armed. He was compliant and wasn’t threatening the officers. He was shocked with a Taser five times, three times in probe mode and two times in drive-stun mode.

The first report of the Braidwood Commission discussed in detail issues relating to police responses to people suffering mental health crises, stating that:

the real challenge facing the policing community, and our policy-makers, is determining how police officers should respond to such emotionally disturbed people. The unanimous view of mental health presenters was that the best practice is to deescalate the agitation, which can best be achieved through the application of recognized crisis intervention techniques. Conversely, the worst possible response is to aggravate or escalate the crisis, such as by deploying a conducted energy weapon and/or using force to physically restrain the subject. I was impressed with how effective these crisis intervention techniques are, and how routinely mental health professionals use them. It seems clear that the ‘command and control’ philosophy underlying police recruit training, however appropriate generally, is both inappropriate and counterproductive when dealing with emotionally disturbed people.⁵⁵

Amnesty International’s analysis of deaths following Taser use in North America concluded that ‘the vast majority (around 90 per cent) of those who died were unarmed, and many did not appear to present a serious threat when they were electro-shocked and subjected to other force.’⁵⁶

Concerns around excessive use of force by Victoria Police

Recent reviews by the Office of Police Integrity in 2005 and 2009 raised serious concerns about Victoria Police’s ability to avoid excessive force.

In 2005, the Office of Police Integrity ‘Review of fatal shootings by Victoria Police’ found that there had been a diminution in Victoria Police training and there was an urgent need for officers to further develop skills in identifying, communicating and managing people presenting with the symptoms of mental illness. The review found that Victoria Police had ‘lost some of the strategic focus on safety and avoiding the use of force’.⁵⁷

In 2009, the Office of Police Integrity ‘Review of the Use of Force by and against Victoria Police’ found that since its 2005 report, ‘regrettably Victoria Police continued to lose strategic focus on safety and avoiding the use of force.’⁵⁸ The report found that:

⁵¹ Victoria Police, ‘OC Spray Review’ above n 4, at page 3. See also, Office of Police Integrity ‘Review of the Use of Force’ above n 6 at page 28.

⁵² Ryan, above n 5, page 2.

⁵³ Queensland Police Service, Taser Trial Review, above n 8, page 42.

⁵⁴ Kellett, C., ‘Tasering of mental patients shocks Queensland health experts’, (2009), Brisbane Times.

⁵⁵ Braidwood 1, above n 3, pages 263-264.

⁵⁶ Amnesty International, ‘Less than Lethal’ above n 21, page 4.

⁵⁷ Office of Police Integrity, ‘Review of fatal shootings’ above n 1, page 55.

⁵⁸ Office of Police Integrity, ‘Review of the Use of Force’ above n 6, page 11.

- ‘recently little has been done to strategically manage’ risks around use of force;
- ‘Victoria Police senior managers have not demonstrated a commitment to building a culture that is based on safety first and measuring success by avoiding or minimising the use of force’;
- ‘while there are systems in place for monitoring and evaluating the use of force, they are not currently being used properly’; and
- ‘to avoid or minimise the risk of injuries or deaths, Victoria Police must take urgent action’.⁵⁹

Human rights considerations

Victoria Police and its officers are required to comply with the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (the Charter).

Section 38 of the Charter requires Victoria Police to act compatibly with the human rights in the Charter and to give proper consideration to relevant human rights in making decisions.

A number of human rights in the Charter are relevant to the use of Tasers including the:

- right to equality (section 8);
- right to life (section 9);
- right to freedom from torture, cruel, inhuman and degrading treatment (section 12);
- protection of families and children (section 17); and
- the right to humane treatment for people in custody (section 22).

The United Nations Human Rights Committee and the United Nations Committee Against Torture have both recognised that Tasers can be legitimately used in strictly limited and closely regulated circumstances. The United Nations Human Rights Committee has stated that Tasers should only be used in situations ‘where greater or lethal force would otherwise have been justified’.⁶⁰ The UN Committee Against Torture has stated that Taser should only be used as a ‘substitute for lethal weapons’ and never used to restrain those in custody.⁶¹

International human rights case law on the right to life and policing also places a strong emphasis on the requirements of training, planning and control whenever lethal or potentially lethal force may be used. These requirements apply to potential Taser use given that Tasers are potentially lethal.

Tasers need to be critically analysed within this human rights framework. Arguments in favour of expanding Taser deployment in Victoria must be confined to those situations where greater or lethal force would otherwise have been justified.

⁵⁹ Office of Police Integrity, ‘Review of the Use of Force’ above n 6, pages 11-13.

⁶⁰ United Nations Human Rights Committee Report on the USA (15 September 2006), paragraph 30.

⁶¹ United Nations Committee Against Torture Report on the USA (25 July 2006), paragraph 35; United Nations Committee Against Torture Report on Switzerland (21 June 2005), paragraphs 4(b) and 5(b).

Victoria Police decisions about the use of Tasers

Introduction

This section analyses the decisions taken by Victoria Police on Taser use since 2001. Our analysis draws on publicly available information and information obtained by the Federation from Victoria Police through freedom of information processes.

Victoria's first Taser trial in 2002

In 2001, the Minister for Police and Emergency Services, Andre Haermeyer, established an independent advisory group to consider whether Tasers are 'appropriate to be used operationally by Victoria Police as a further less-than-lethal option in dealing with volatile situations.'⁶²

The final report of that committee concluded that it would not be possible for the Victorian Government to make any decision with respect to the introduction of Tasers without a proper, evidence-based evaluative process.

The report goes on to recommend that 'appropriate technical and health professionals will need to be commissioned to carry out [a] comprehensive scientific evaluation.'

In response to this report, Victoria Police commissioned the Alfred Hospital Biomedical Engineering Department to conduct a scientific evaluation of Tasers in 2003. The Alfred performed an electrical safety analysis of the Advanced Taser M-26 by testing a sample Taser and comparing its theoretical electrical output to other electrical devices such as medical devices that are used in hospitals and an electric fence. The conclusion was that 'from an electrical safety viewpoint the device presents an acceptable risk when used by trained law enforcement officers in accordance with the manufacturer's directions for use'.⁶³ The report does not conclude that Taser is safe in all circumstances but rather states that, 'Since the project was only to examine the electrical safety aspects of the Taser it cannot be taken as a product endorsement.'⁶⁴

The report provides a literature review which concludes that 'although several fatalities have occurred after using the Taser there is no proven connection between the use of Taser and the subsequent death'.⁶⁵

The Alfred Hospital report attached a letter from Dr Archer Broughton, Specialist Cardiologist, which stated that it 'would be prudent to routinely observe all Tased offenders for 4-6 hours in a suitably equipped hospital emergency Department.' This recommendation for medical observation of people who are Tased provided a limited safeguard that was incorporated into police Taser use procedures and has been a recurrent feature of subsequent reports about Taser use.

In 2003, while the Alfred Hospital was undertaking the electrical safety analysis of the Taser M-26, a new model Taser, the Taser X-26 was released. The Alfred was also asked to perform a safety analysis on this model. The subsequent report is almost identical to the Taser M-26 report in method, conclusion and much of the text.

In October 2003, Victoria Police Chief Commissioner Nixon wrote to Police Minister Haermeyer and proposed a '12 month Taser trial evaluation' of the X-26 Taser by Special Operations Group officers. Chief Commissioner Nixon suggested that the concerns of the Ministerial Advisory Group about the

⁶² Ministerial advisory group on the possible introduction of air Tasers report, September 2002, page 2.

⁶³ John Southwell, 'Biomedical engineering: The Alfred Advanced Taser M-26 Safety analysis; 22 September 2003, page 24.

⁶⁴ John Southwell, above n 45.

⁶⁵ John Southwell, above n 45.

lack of evidence of the 'safe use of Taser' were addressed by the Alfred Hospital Biomedical Engineering Department scientific evaluation.

The Chief Commissioner also asserted in this letter that 'the findings [of the Alfred Report] show, that the Air Taser poses no greater threat to persons afflicted with cardiovascular disease, mental illness or affected by stimulant drugs.'⁶⁶

Victoria Police use of Tasers was facilitated by providing an exemption to the *Control of Weapons Act 1990* (Vic) which allowed police to possess and use the Taser that was otherwise a prohibited weapon. The initial exemption, granted by Minister Haermeyer in 2003, permitted all members of the Special Operations Group to use Tasers for 12 months.⁶⁷ The exemption states that it does not operate until the 'Minister ... certifies in writing to the Chief Commissioner of Police that the Minister has received adequate information regarding the safe use of the X-26 Air Taser on human subjects.'

Comment

Clearly, both Alfred Hospital reports were critical in convincing the Police Minister to trial Tasers for 12 months in Victoria. There is now increasing evidence that Tasers are not safe, particularly when used in particular circumstances or against particular groups of vulnerable people.⁶⁸ This increasing body of evidence casts doubt on the initial decision to trial Tasers and contradicts the Chief Commissioner's assertion about the safety of Tasers used when used on vulnerable groups.

The decision to continue Taser use in Victoria in 2004

When the first Taser trial began in 2003, Chief Commissioner Nixon proposed that a comprehensive evaluation report be produced to assess the viability of permanent and wider use of Tasers. No evaluation has been publicly released and Victoria Police did not disclose the existence of any such evaluation in response to our freedom of information applications. It appears this evaluation never took place.

In November 2004, at the end of the first 12 month Taser trial, a further exemption under the *Control of Weapons Act* was made, granting approval for all Victoria Police members to use Tasers into the future. The Minister's media release at that time stated:

During the evaluation trial, air tasers were successfully used six times by police to subdue violent offenders. In all these cases, no person suffered any injury or ill-effect due to the use of the taser.⁶⁹

Tasers continued only to be used by specialist units within Victoria Police, the Special Operations Group and Critical Incident Response Teams which are part of the Force Response Unit.

Comment

Given the limited public information available about any evaluation of the initial Taser trial, it is not possible to assess the extent to which the risks associated with Taser use were properly considered. The lack of public information about the decision makes it difficult for the public to have confidence that the decision making process was appropriate.

The decisions in 2008 and 2009 not to expand Tasers beyond specialist units

In June 2008, Chief Commissioner Nixon announced that Victoria Police would not expand Taser use beyond specialist units to general duties officers. The relevant Victoria Police media release stated that the reasons for the decision were:

66 Letter from Chief Commissioner Nixon to Police Minister Haermeyer (31 October 2003).

67 Victoria Government Gazette, GG47 (18 November 2003).

68 Braidwood 1, above n 3.

69 Media Release from the Minister for Police and Emergency Services, 'Government approves police stun gun use' (19 November 2004).

- the safety of police officers and the community; and
- the lack of a need by Victoria Police for Tasers at that time.

In June 2009, the new Chief Commissioner Simon Overland confirmed the decision not to expand Tasers to general duties officers.⁷⁰ Chief Commissioner Overland said:

I understand there are many views in relation to Tasers, however after careful consideration Corporate Committee is convinced at this point that these devices should not be generally available.

This statement was made in conjunction with broader announcements by Mr Overland about reforms to police training on operational safety and tactics:

new training will reverse current protocols of rushing to secure an early resolution...Officers will be re-trained in how to identify and speak to vulnerable people and those affected by alcohol and drugs.⁷¹

Documents released to the Federation under freedom of information laws suggest that the decisions not to expand Taser use were contrary to the advice that was being presented to Victoria Police senior management. The documents show that Victoria Police management was provided with a one-sided range of arguments that were strongly in favour of Tasers, including arguments that:

- Tasers have a high level of inbuilt accountability;
- Tasers are used by first response police in other jurisdictions in Australia and overseas;
- Tasers will reduce workplace injuries and related costs arising from arrest in the same way that the introduction of capsicum spray to general duties officers in Victoria led to a reduction in injuries to police;
- Tasers have operational advantages over capsicum spray and batons. For example Tasers are more effective in windy conditions and 'laser painting' has been found to gain compliance in a majority of cases;
- Evidence from other jurisdictions indicates the capacity of Tasers to avoid use of lethal force; and
- the use of Tasers by frontline police supports Victoria Police's strategic priorities as contained in corporate documents.⁷²

A risk assessment strategy attached to a briefing note dated 27 February 2007 stated that:

- minor injuries are certain and likely. This poses a high risk which can be mitigated by training, first aid kits and good policy and procedures;
- major incident injuries are rare but pose a high risk. The risk can be mitigated by training, the introduction of the 'Taser Cam' and good policy and procedures;
- legal action arising from misuse is unlikely. The risk can be mitigated by training, introduction of the Taser Cam and good policy and procedures;
- a reduction in public confidence resulting from misuse is unlikely but poses a high risk. The risk can be mitigated by a good communication campaign, education, training, the introduction of the Taser Cam and good policy and procedures; and
- a reduction of public confidence resulting from perceptions of injuries and death is likely and poses an extreme risk. The risk can be mitigated by a good communication campaign and education.

Victoria Police management were told that a decision not to expand Taser use posed an extreme risk due to the likelihood of legal action such as adverse coronial recommendations and civil action due to avoidable injury or death, occupational health and safety issues, a reduction in government confidence and a reduction in public confidence.

⁷⁰ Victoria Police Online News Centre, 'Chief urges a 'return to basics'', (7 June 2009).

⁷¹ Review of the use of force, above n 6, page 10.

⁷² Issue Cover Sheet prepared by Acting Superintendent Walsh C. (3 January 2008); Briefing Note from Acting Superintendent Walsh C., Operational Safety Division, to Police Operations Standing Committee (27 February 2007); and briefing note from Acting Assistant Commissioner Scott K. to Executive Management Group (1 April 2008).

Victoria Police management was also told that the risk of death from Taser is not confirmed by scientific research and that the reality of the situation for people with pre-existing medical conditions including mental illness was that 'the subject would have been subjected to an alternative use of force option which in all likelihood would not have altered the final outcome.'

Comment

The information obtained by the Federation through freedom of information processes shows that Victoria Police senior management were presented with a one-sided set of arguments that strongly advocated the expansion of Taser use.

It is concerning that the documents obtained by the Federation appear to show that Victoria Police did not receive objective information that allowed it to properly evaluate the risks of expanding Taser use, including:

- concerns over the adequacy of medical information around Taser safety;
- the risks posed by Taser use on vulnerable groups;
- evidence of deaths and serious injury following Taser use overseas; and
- the risks of police misuse of Tasers and usage creep.

In spite of this, Victoria Police decided not to expand Taser usage. There documents available do not satisfactorily explain the rationale behind the decisions not to expand Taser use. The publicly available information refers only very briefly to safety concerns and the lack of need for expanded Taser use. We understand that a key reason for the decision may have been the limited range of Tasers (meaning that police officers need to be close to a subject to deploy a Taser) coupled with the risk of Tasers not functioning effectively. See our discussion on this further at page 39 below.

The decision in 2010 to expand Tasers to general duties police

In February 2010, Chief Commissioner Overland announced a 12 month pilot of Tasers for general duties police in two regional areas of Victoria, to begin on 1 July 2010. Bendigo and Latrobe were chosen as they both experience a high number of incidents involving use of force and this 'includes high use of OC spray, incidents involving people with a mental illness, sieges and instances where offenders have used weapons against police.'

Comment

The timing of the decision to expand Taser use to general duties police in two areas under the pilot is concerning. As set out below and above, there have been serious concerns recently expressed about Victoria Police's ability to avoid excessive force.

Victoria Police's own concerns about excessive use of force

As set out above, reviews by the Office of Police Integrity in 2005 and 2009 raised serious concerns about Victoria Police's ability to avoid excessive force.⁷³ Documents released to the Federation under freedom of information laws show that an internal review commissioned by Victoria Police shared the Office of Police Integrity concerns.

Victoria Police commissioned a former (and now serving) senior police officer, Michael Williams, to undertake two reviews about police use of force.

Mr Williams' first report examined fatal shootings by police from July 2005 and December 2008. Victoria Police refused access to this report in response to a freedom of information application by the Federation. We are currently reviewing this decision through litigation.

⁷³ Office of Police Integrity, 'Review of fatal shootings' above n 1 and 'Review of the Use of Force' above n 6.

A subsequent review by Mr Williams examined Victoria Police's training around operational safety and tactics and critical incident management. A 2009 progress report flowing from this review was released in part to the Federation in response to a freedom of information request. We are currently reviewing the decision to refuse access to the remaining parts of the report through litigation.

Mr Williams 'Review of Operational Safety and Tactics Training and Critical Incident Management Training Standards, Progress Report, July 2009' states:

Reviews and inquiries over the past 15 years into incidents involving police use of firearms have all identified similar themes regarding the need for police operational safety training to provide a greater emphasis on developing skills in communication, conflict resolution, identifying and managing vulnerable persons, command and control, cordon and containment and planning considerations. Many of these findings have been given inadequate attention by the [Operational Safety Tactics Training] OSTT Division.⁷⁴

Examination of the [2009 OSTT] Program revealed it was still focussing on incident resolution through tactics involving restraint methods or use of OSTT equipment. This was also consistent with previous OSTT training packages delivered during the period 1996 to 2008 and it was further evident conflict resolution, tactical communications and techniques for defusing violence were absent from most OSTT cycles.

In effect, there has been over a decade of policing in Victoria where operational police have not been exposed to the 'fundamentals' underpinning police operational safety training.

As a consequence of this approach, OSTT has significantly impacted on the organisations policing style, creating a culture that on occasions was no longer supportive of the strategic direction and organisational safety philosophy.

This 'impact' on the policing style, often emerged when studying responses to public order (street offence) incidents where there is a tendency to deploy OC spray as a first option.⁷⁵ (author's own emphasis).

Mr William's report stated that significant further work is required for the 2010 training cycle and into the future to ensure that structural issues are addressed. Mr Williams proposed changes including a component addressing the issues of 'identifying and managing vulnerable persons (mental illness/ drug/ alcohol affected)', aggressive behaviour 'and suicide by cop' and a component including 'principles of incident management' to address the absence of 'command and control training'.⁷⁶

Mr Williams identified that the absence of appropriate training 'can be attributed to 2 main factors – a lack of organisational focus on operational safety training and inadequate management and supervision practises at OSTT Division.'

Mr Williams recommended that 'consideration should be given to a formal process of evaluating the outcomes of the training delivered' and suggested how this could be undertaken.⁷⁷ Mr Williams notes 'there is little evidence to show that evaluation features are included in the design of OST Training'.⁷⁸

Comment

It is positive that Victoria Police senior management have recognised the need to refocus training on minimising or avoiding the use of force. However, it may take years to address the training deficiencies

⁷⁴ Williams Report, above n 7, page 3.

⁷⁵ Williams Report, above n 7, page 6.

⁷⁶ Williams Report, above n 7, pages 12 – 14.

⁷⁷ Williams Report, above n 7, pages 19-20 and 21-22.

⁷⁸ Williams Report, above n 7, page 19-20.

that have been present for more than a decade. The expansion of Tasers to general duties police under the pilot jeopardises the attempts that Victoria Police is making to improve tactical skills to ensure that police can resolve critical incidents using the 'minimum force necessary'. Arguably, the decision to establish a Taser pilot continues to de-emphasise Victoria Police's Safety First Principles and undermines the efforts that are being made by Victoria Police to champion and reinvigorate the 'minimum force necessary' approach. Without an entrenched culture of 'minimum force necessary', there is a significant danger that Tasers will be used as a first resort to resolve incidents.

It is of significant concern that in announcing the pilot, Chief Commissioner Overland failed to acknowledge the significant work still required in this area. On the contrary he stated that:

Having reviewed and refocussed our tactical safety training to better equip members to deal with vulnerable people, we are now in a better position to consider the use of more specialised equipment.

He further said he believed the timing appropriate, given the significant improvements to police training over the past six months. It is difficult to reconcile the timing of this assertion with the findings of the Office of Police Integrity reviews and Mr Williams' review about the significant work still required.

No commitment to conduct a public independent evaluation of the Taser pilot

In announcing the Taser pilot, Chief Commissioner Overland said that the pilot will be comprehensively evaluated. No detail was provided and no public commitment has been given that the evaluation will be either comprehensive or independent or made publicly available.

Comment

Given Victoria Police's past record of inadequate transparency around Taser decisions, this is of significant concern.

Consideration of human rights obligations

As set out above, Victoria Police and its officers are required to comply with the *Charter of Human Rights and Responsibilities Act 2006 (Vic)* (the Charter). Section 38 of the Charter requires Victoria Police to act compatibly with the human rights in the Charter and to give proper consideration to relevant human rights in making decisions.

The extent to which Victoria Police has considered Taser use in the light of these relatively new human rights obligations is unknown.

We understand that Victoria Police has received a copy of publicly available legal advice which was prepared for the Police Service of Northern Ireland by human rights lawyer Keir Starmer QC. The advice concludes that:

- police use of Tasers has human rights implications;
- Tasers should be treated as potentially lethal equipment, rather than lethal or non-lethal;
- Taser use will be lawful where it is immediately necessary to prevent or reduce the likelihood of recourse to lethal force (i.e.; firearms). This is a test that is just below that for the use of lethal force but a much stricter test than that which applies for other uses of non-lethal force;
- If Tasers are introduced in Northern Ireland, the relevant authorities must satisfy themselves that the Police Service of Northern Ireland has devised clear and robust policy, guidance and training to ensure that any Taser use fully complies with human rights requirements and that all operations in which Tasers might be used are planned and controlled so as to minimise, to the greatest extent possible, recourse to its use; and
- clear evidence of need should be provided before potentially lethal equipment is made available to any law enforcement agency.

We know that Victoria Police sought legal advice as to the human rights considerations around Taser use. However, we do not know the content of that advice or whether it is consistent with Keir Starmer's advice as access was refused in response to our freedom of information request.

Victoria Police policies and procedures on Taser use

Background

Police policies and procedures provide guidance to police officers about how to exercise their powers lawfully and appropriately. Taser policies are particularly important because appropriate policies can reduce the risk of injury or death associated with Taser use.⁷⁹

A range of issues must be addressed within a Taser policy to ensure that the policy can effectively assist officers in the proper use of Tasers. These include, but are not limited to:

the seriousness of the situation; the known risk factors, including subject characteristics; contemporary medical and scientific evidence; available information about optimal practise; and the nature of the Taser as a weapon, including safety considerations, vis a vis other options available to police.⁸⁰

In addition, as set out above, the *Charter of Human Rights and Responsibilities Act 2006* (Vic) requires Victoria Police to act compatibly with the human rights in the Charter and to give proper consideration to relevant human rights in making decisions.

In Western Australia⁸¹, Queensland⁸², New Zealand⁸³ and much of the United Kingdom⁸⁴, Canada⁸⁵ and the United States⁸⁶, police operational policies relating to Taser use are publicly available over the Internet or through a subscription service. This provides the community with critical information to assess whether police are appropriately managing risks around Taser use.

Victoria Police Taser policies

Prior to 2010, Victoria Police policies governing Taser use were not publicly available. In 2008, Victoria Police refused the Federation's request for copies of its Taser use policies. The Federation made a freedom of information application for the policies. In November 2009, after commencing litigation to review Victoria Police's decision to refuse the release of the policies, the Federation successfully obtained the release of extracts of policies governing Taser use by the Special Operations Group and Critical Incident Response Teams.

Subsequently, in the August 2010 version of the Victoria Police Manual, Victoria Police made available the policies governing Taser use by general duties officers in the Taser pilot in Bendigo and Morwell. The Victoria Police Manual is publicly available via a paid subscription service. Accordingly, this is the first time Victoria Police of its own choice has released Taser use policies. Victoria Police should be commended for this step towards increased transparency.

The Victoria Police Manual does not contain the policies or procedures for specialist groups. Thus the Taser use procedures for the Special Operations Group and the Critical Incident Response Team are still not publicly available, other than through freedom of information legislation.

⁷⁹ Braidwood 1, above n 3.

⁸⁰ Queensland Police Service, 'Taser Trial Review', above n 8, page 16.

⁸¹ Commissioner's Orders and Procedures Manual is a subscription service.

⁸² Commissioner's Circular, 'Conducted Energy Devices (Tasers)', No. 33 (2008). Available at www.police.qld.gov.au/News+and+Alerts/campaigns/taser/comcirc3308.htm.

⁸³ New Zealand Police, 'Operational Evaluation of the New Zealand Taser Trial', ('Evaluation of NZ Taser'), (February 2008), Appendix 1. Available at www.police.govt.nz.

⁸⁴ The following policy reports are applicable in various jurisdictions throughout the UK: Association of Chief Police Officers, 'Operational Use of Taser by Authorised Firearms Officers – Policy' (December 2008); Extended Operational Deployment of Taser above n 8. They are available from the West Mercia Police website at www.westmercia.police.uk.

⁸⁵ Royal Canadian Mounted Police, 'Operational Manual – Conducted Energy Weapon' (2009) available at www.rcmp-grc.gc.ca/ccaps-spcca/cew-ai/operations-17-7-eng.htm.

⁸⁶ Police Executive Research Forum, 'Conducted Energy Devices: Development of Standards for Consistency and Guidance', (October 2005). Available at www.policeforum.org/library.asp?MENU=356>. This document provides model standards and guidelines for various states to adopt.

As outlined above, the exemptions provided by the Victorian Parliament under the *Control of Weapons Act 1990* (Vic) effectively provide that it is illegal for Victoria Police to use Taser except where the use of Taser is 'in accordance with the ... Victoria Police Standard Operating Procedures relating to the use of the Taser X-26.'⁸⁷ While these operational procedures are unavailable, neither Parliament nor the public can critically assess whether police use of Taser is lawful or appropriate.

Threshold for Taser use

Police can lawfully use Tasers only in particular circumstances. For example, police can use reasonable force to prevent a person committing an offence or to make a lawful arrest.⁸⁸ What constitutes reasonable force, and whether or not Taser use is justified, will depend on the circumstances of particular incidents.

Clear policies are critical to assisting police to lawfully use Tasers. Clear policies also help to minimise the risk of usage creep.

Policies in Australia and around the world set different thresholds for Taser use.

The United Nations Human Rights Committee has stated that Tasers should only be used in situations 'where greater or lethal force would otherwise have been justified'.⁸⁹ The United Nations Committee Against Torture has stated that Taser should only be used as a 'substitute for lethal weapons' and never used to restrain those in custody.⁹⁰

The Police Service of Northern Ireland Taser policy, which has taken into account obligations under the European Convention on Human Rights, regards Taser as a 'less-lethal' use of force option rather than a 'less-than-lethal' force option. Accordingly, the threshold at which Taser use is authorised is 'where the officer honestly and reasonably believes that it is necessary to prevent a risk of death or serious injury.'⁹¹

The Braidwood Commission⁹² recommended that an officer be prohibited from deploying a Taser unless the subject is causing bodily harm or will imminently cause bodily harm and unless no lesser force option will be effective and de-escalation or crises intervention techniques have not been or will not be effective.⁹³

The Queensland Police Service and Crime and Misconduct Commission *Review of Taser Policy, Training and Monitoring and Review Practices* recommended that police be prohibited from using a Taser unless it can be established that there is a risk of serious injury to a person.⁹⁴

The policy for the Taser pilot in Victoria reflects the Braidwood and Queensland Police Service recommendations. This is commendable. The policy states that Tasers must only be used:

- where the subject is causing serious injury to themselves, the police or the public, or the police member is satisfied on reasonable grounds, that the subject's behaviour is likely to cause serious injury; and

⁸⁷ Victoria Government Gazette, G47 (18 November 2004).

⁸⁸ Section 462A, *Crimes Act 1958* (Vic).

⁸⁹ United Nations Human Rights Committee Report on the USA (15 September 2006), paragraph.30.

⁹⁰ United Nations Committee Against Torture Report on the USA (25 July 2006), paragraph 35; United Nations Committee Against Torture Report on Switzerland (21 2005), paragraphs 4(b) and 5(b).

⁹¹ Police Service of Northern Ireland, 'Guidelines on the Operational Use of Taser' (October 2008). Available at www.psn.police.uk/index/updates/updates_consultation_zone/updates_egia_archive.htm.

⁹² Braidwood 1, above n 3, recommendations 2 and 3.

⁹³ Braidwood 1, above n 3, recommendations 1, 2, 3.

⁹⁴ Queensland Police Service 'Taser Trial Review', above n 8, pages 16-17, recommendations 6 and 7.

- all other less than lethal tactical options would be or have been ineffective in eliminating the risk of serious injury; and
- de-escalation and/or conflict resolution techniques have not been or will not be effective in eliminating the risk of serious injury.⁹⁵

However, the Special Operations Group and Critical Incident Response Team policies provide a much lower threshold for Taser use, authorising Taser use:

- in situations of violent and serious physical confrontation;
- in situations where a member believes on reasonable grounds a violent and serious physical confrontation is imminent;
- where a person is involved in violent or other physical conduct likely to seriously injure themselves or result in suicide;
- where it is appropriate to deter attacking animals.⁹⁶

In contrast to the policy for the Taser pilot, the criteria allow the specialist units to use Tasers in the absence of a risk of serious injury. Confusingly, the criteria set different thresholds. The third criterion, where a person is 'involved in violent or other physical conduct likely to seriously injure themselves or result in suicide' sets the highest threshold. However, none of the criteria require that the Taser use be *necessary*. The policy arguably authorises the use of Tasers even where other non-violent, or lower level tactical options might successfully resolve the incident.

The policy covering the Taser pilot clearly takes into account contemporary Taser research. However, the threshold for Taser use in the specialist unit policies is too low and requires significant amendment so as to avoid the use of unreasonable or excessive force.

Threshold for use in situations where people are threatening self-harm

Human rights advice prepared for the Police Service of Northern Ireland in 2007 suggests that it is inconsistent with fundamental human rights to use a Taser in circumstances where a person is threatening self-harm unless they present 'a threat to the life of, or serious injury to, *others*' (emphasis added).⁹⁷

The Braidwood Commission took a different approach, stating that:

even mental health professionals acknowledge that there may be some extreme circumstances, however rare, when crisis intervention techniques will not be effective in de-escalating the crisis. In such cases, the ultimate goal must be to get initial medical treatment (e.g., sedation) to the agitated subject. For that to happen, it may be necessary to physically restrain the subject and, for that to happen, it may be necessary (depending on the factual circumstances) to deploy a conducted energy weapon. When that happens, best practices indicate that the weapon should be deployed for the shortest time possible, officers should immediately move in to restrain the subject, and medical first responders should initiate treatment immediately following restraint.⁹⁸

For many years, community legal centres have advocated that people experiencing mental health crises should be treated with dignity and that a health response rather than a criminal response is appropriate.

⁹⁵ Victoria Police Manual (2010 Ed), 'Chief Commissioner's Instruction CCI 05/10 – Pilot policy for use of conducted energy devices'.

⁹⁶ Victoria Police, Force Response Unit Standard Operation Procedures 'Electronic Control Device (Taser)', (September 2009), (Force Response Unit) paragraph 1.1; Victoria Police Special Operations Group Standard Operating Procedures (Special Operations Group) (October 2009) paragraph 4.15.1.1.

⁹⁷ Starmer, K., QC, Gordon, J., 'The PSNI's Proposed Introduction of Taser, Human Rights Advice' (23 May 2007) paragraph 154 available at www.nipolicingboard.org.uk/intro_of_taser.pdf.

⁹⁸ Braidwood 1, above n 3, pages 263-264.

Police are placed in a difficult position responding to people threatening serious injury against themselves. As outlined above, Victoria Police policies, for both the Taser pilot and for specialist units, currently permit Taser use a person is likely to seriously injure *themselves*.

The Federation believes that the focus needs to be on avoiding use of force against people in mental health crises by ensuring that police are appropriately trained to understand and deal with people in mental health crises and that appropriately trained medical and other professionals are available to attend. In this respect, the Taser use policies of the specialist Victoria Police units are deficient, as they fail to require that the Taser use be necessary in the circumstances.

Taser use against vulnerable groups

Whilst the safety or otherwise of Tasers is still contested, there is now significant and widespread acknowledgement within and beyond police agencies of the heightened risk of injury or death when Tasers are used on the following population groups:

- people with mental illness;
- people affected by alcohol or drugs;
- distressed people or those who have been struggling violently for a long period or have been subjected to other use of force options or restraints;
- elderly people;
- Aboriginal people who are statistically more likely to have underlying serious health issues; and
- people with serious, pre-existing or chronic health conditions.⁹⁹

The way in which Taser use policies address these circumstances is critical to appropriately managing the risks around Taser use.

Victoria Police Taser use policies address some of these risk factors, however the Federation believes the language of the policies in this regard should be strengthened.

The Special Operations Group and Critical Incident Response Team policies state that Tasers should not be used on pregnant women, elderly or children unless extreme circumstances exist. They also state that the electrical output of Taser is not harmful to foetuses but that the harm caused by a fall may cause harm to the pregnant woman or the foetus. The policies contain no warnings about increased risks of Taser use on other vulnerable groups.

A limited warning is provided in the Taser pilot policy which states that when considering use of the Taser 'risk assessment must continually occur and include the vulnerability of the subject, the number of cycles used and the surrounding environment.'¹⁰⁰

A much stronger warning is provided in the Taser pilot policy section dealing with aftercare. In this section, the policy states that:

Members should be mindful that deployment of a [Taser] in certain circumstances may increase the medical risk. Medically high-risk situations can include, but are not limited to:

- Activation of probe deployment across the subject's chest
- Activation of probe deployment for longer than five seconds
- Deployment in any mode against persons listed as having a heightened risk from exposure to a [Taser]. Medical evidence indicates that certain categories of persons may be at heightened risk from

⁹⁹ National Institute of Justice, 'Study of Deaths Following Electro Muscular Disruption' above n 31, page 4; New South Wales Ombudsman, above n 28, page 16; Queensland Police Service, 'Taser Trial Review', above n 8, page 18.

¹⁰⁰ Victoria Police Manual (2010 Ed), 'Chief Commissioner's Instruction CCI 05/10 – Pilot policy for use of conducted energy devices', page 3.

negative health effects resulting from [Taser] exposure. The following are generally considered to be more vulnerable to serious medical consequences as a result of a [Taser] application:

- pregnant women,
- juveniles and children,
- persons of low body weight,
- persons under the influence of certain illegal drugs (including amphetamines and cocaine),
- persons suffering from mental illness and
- persons with pre-existing heart conditions,
- a person the member has reason to believe has a medical condition that may be worsened by use of a [Taser].¹⁰¹

This warning should be moved from the aftercare section of the policy, to the section of the policy concerning the decision whether or not to use a Taser. All Victoria Police Taser use policies should clearly state that Taser use against these groups is prohibited unless exceptional circumstances exist.

Multiple and prolonged Taser use

Taser International warns against repeated, continuous and/or simultaneous exposures.¹⁰²

The Taser pilot policy states that police must not use a Taser on a subject for more than one single discharge:

unless the member is satisfied after reassessing the situation, that the single discharge was not effective in eliminating the risk of serious injury. Due to the potential for increased health risks associated with multiple or prolonged discharge...any such use will be subject to an increased level of scrutiny.

The policy arguably sets the same threshold for second and subsequent Taser shocks, stating only that multiple uses will be more closely scrutinised. It would be preferable to state that Tasers should be used more than once only in exceptional circumstances.

Use of Taser in drive-stun mode

A Taser can only be used in drive-stun mode where a person is close enough to allow police to press the Taser against them. Taser use in drive-stun mode is intended primarily as a pain compliance tool.¹⁰³

It is concerning that the Special Operations Group and Critical Incident Response Team policies do not restrict the use of Tasers in drive-stun mode.

In contrast, the Taser pilot policy states that police must only use the Taser in drive-stun mode where there are exceptional circumstances justifying the use. Exceptional circumstances are described as including when:

- there has been ineffective probe deployment and drive stun is required to complete the cycle; or
- probe deployment may be ineffective due to an inability to maintain safe or tactical distances from the subject and the circumstances are such that the safety of members or the subject are at risk.

Taser use in the presence of flammable substances and in high risk situations

Taser use provides an ignition source. The Taser X26 Manual cautions against Taser use in situations 'where an accelerant or fuel is also present including alcohol-based pepper (capsicum) spray.'¹⁰⁴

¹⁰¹ Victoria Police Manual (2010 Ed), Procedures and Guidelines, 'Use of Conducted Energy Devices', section 4.

¹⁰² 'Product Warnings: Law Enforcement', Taser International (April 2008), pages 2-3.

¹⁰³ 'Taser X26E Operating Manual' *Taser International* (X26E Operating Manual), page 17.

¹⁰⁴ Taser X26E Operating Manual, above n 103, page 4.

The Special Operations Group and Critical Incident Response Team policies state that members and team leaders must ‘consider the environment around the suspect and ensure that they do not deploy Taser in flammable, volatile or dangerous environments.’ Environmental factors are explained in more detail to include specific flammable environments and bridges, balconies and some stairs where Taser ‘application may induce a fall that could result in death or serious injury’. The policies also say that ‘the use of Taser in conjunction with OC spray requires a specific assessment of the risks and circumstances’ and provides some indicators by which to assess the risks.¹⁰⁵ This provides a limited warning to police about the risks to themselves and others about Taser use igniting fuel.

The Taser pilot policy also instructs members that when considering use of Tasers ‘risk assessment must continually occur and include the ...surrounding environment.’ The policy states that Tasers ‘should not be used in certain environmental circumstances due to increased risks associated with secondary injuries’ including ‘near explosive materials, flammable liquids or gases due to the possibility of ignition.’

Definition of Taser ‘use’

Operational policies in some jurisdictions, define Taser use broadly to include the presentation of the Taser, laser painting, arcing (activating the device without discharge) and discharging and firing the device in probe or drive stun mode.¹⁰⁶ In these jurisdictions, all incidents of Taser use, as defined, must be recorded in accordance with the relevant policy.

In Victoria, the Special Operations Group and Critical Incident Response Team policies do not define Taser use broadly.¹⁰⁷ In all incidents except one reported by these specialist units in their Taser Use Register, the Taser has been discharged. Accordingly, there is little information about the extent to which Tasers are being used in Victoria without being discharged, despite the fact that the withdrawing of a Taser, shining a Taser’s laser on a person and arcing the Taser, can be extremely threatening. This limits accountability around Taser use.

In contrast, New Zealand Taser data indicates that during a 12 month trial period 75% of Taser use did not involve the Taser being discharged.¹⁰⁸ Data from the United Kingdom suggests that discharge occurs in just over 40% of incidents in that jurisdiction.¹⁰⁹

It is commendable that the Taser pilot policy defines Taser use broadly, that is when a Taser is ‘drawn from a holster’. However, the policy should more clearly require that each use be recorded.

Medical assistance following Taser use

The Braidwood Commission recommended that ‘paramedic assistance be requested in every medically high-risk situation, preferably before deployment of a Taser or if that is not feasible, then as soon as practicable thereafter.’ The Commission also recommended that whenever a Taser is assigned to an officer, ‘that the officer also have an automated external defibrillator readily available for use.’¹¹⁰

¹⁰⁵ Force Response Unit, above n 96, paragraph 1.6.2; Special Operations Group, above n 96, paragraph 4.15.5.2.

¹⁰⁶ Evaluation of NZ Taser, above n 83, page 155; Association of Chief Police Officers, Operational Use of Taser, above n 84, pages 13-14; Extended Operational Deployment of Taser, above n 84, page 13; Western Australian Police, ‘Commissioners Orders and Procedures Manual’ (Abridged Public Version, January 2009), FR 1.1.1, definitions. See also Close L., ‘Report on the Use within ACT Policing of the Taser X26’, (June 2007), page 2- referring to the Australian Federal Police Commissioner’s Order 3.

¹⁰⁷ Force Response Unit, above n 96, paragraph 3.4; Special Operations Group, above n 96, paragraph 4.15.16.

¹⁰⁸ Evaluation of NZ Taser Trial, above n 83, pages 56-57.

¹⁰⁹ Association of Chief Police Officers study quoted in ‘Tasers- A brief overview of the research literature’, (November 2008) *Crime and Misconduct Commission*, Queensland, pages 3-4. Available at <www.cmc.qld.gov.au/data/portal/00000005/content/07918001228435001660.pdf>.

¹¹⁰ Braidwood Commission, above n 1, recommendations 8 and 9.

The Special Operations Group and Critical Incident Response Team policies state that a ‘person who has been subjected to Taser, must as soon as practicable, be assessed by qualified medical personnel (ambulance, doctor, nurse)’ and adds that an ‘ambulance must be requested, or if more suitable, direct transport to medical facility provided, if the person subjected to Taser appears to be injured or requests urgent medical treatment.’¹¹¹ The procedures also provide detailed procedures for probe removal.¹¹²

The Taser pilot policy requires that all people Tased be medically assessed and places particular emphasis on people in ‘medically high-risk situations’.¹¹³

Policies in other jurisdictions and data collection tools¹¹⁴ provide detail about medical after care as well as simple flyers for people who have been Tased and medical staff who are being asked to assist.

Monitoring Taser use

The Special Operations Group and Critical Incident Response Team policies provide for the following accountability mechanisms:

- dataport download after a discharge;
- monthly Taser dataport download;
- incident debrief form completed;
- review panel after each Taser deployment; and
- debrief after each Taser deployment.¹¹⁵

The Taser pilot policies contain similar requirements about monitoring and reporting with the addition that a media release is to be conducted in accordance with protocols developed for the pilot.¹¹⁶ The policies also require officers to make notes about any medical or physical injury claimed or observed and also to complete an Incident Fact Sheet, a Use of Force form and a Taser Use Report. The Special Operations Group and Critical Incident Response Teams appear to collect the same information in at least three different forms. The data obtained by the Federation through freedom of information demonstrate the duplication in the data collection process and the subjective nature of the data collected. When compared with data collection tools from other jurisdictions such as the Association of Chief Police Officers Taser Deployment Form,¹¹⁷ it is evident that there is significant room for improvement in data collection in Victoria.

The Office of Police Integrity’s ‘Review of the Use of Force by and against Victorian police’ released in 2009, provides some information about the monitoring processes and comments favourably on some aspects of managing and monitoring Taser use. However, the report expresses concern about the lack of function audits of Taser use by police. The report indicates that Victoria Police ‘agreed to implement an auditable process that demonstrates the use of Tasers is actively monitored and evaluated’.¹¹⁸ These recommendations have been implemented in the Taser pilot policy, although there is no requirement for any independent or public scrutiny of Taser use.

Police Taser use policies in other jurisdictions provide substantial detail about review mechanisms. For example, the Police Ombudsman for Northern Ireland has a protocol with the Police Service of North-

¹¹¹ Force Response Unit, above n 96, paragraph 2; Special Operations Group, above n 96, paragraph 4.15.12.

¹¹² Force Response Unit, above n 96, paragraph 2.1; Special Operations Group, above n 96, paragraph 4.15.13.

¹¹³ Victoria Police Manual (2010 ed), above n 95, section 4.

¹¹⁴ Association of Chief Police Officers, Operational Use of Taser, above n 84, Appendix H – Taser Deployment Form. Version 8 July 2007 is available at www.ipcc.gov.uk/item10_260907.pdf.

¹¹⁵ Force Response Unit, above n 96, paragraphs 3 & 4; Special Operations Group, above n 96, paragraphs 4.15.14, 15 and 16.

¹¹⁶ Victoria Police Manual, above n 95, section 7.

¹¹⁷ Association of Chief Police Officers, England, Wales and Northern Ireland Taser Deployment Form, above n 114.

¹¹⁸ Office of Police Integrity, ‘Review of the Use of Force’, above n 6, page 33.

ern Ireland that they immediately refer all Taser use for independent investigation by the Ombudsman which provides public reports on its website.¹¹⁹

¹¹⁹ Police Ombudsman for Northern Ireland, Annual Report and Accounts for the Year Ended March 2009, page 5.

How Victoria Police has used Tasers

Office of Police Integrity review of Taser use

Prior to this report, the only publicly available analysis of Taser use by Victoria Police was contained in the Office of Police Integrity's report *Review of the Use of Force by and against Victorian police*, released in July 2009.

As part of a much broader use of force review, the Office of Police Integrity audited 18% of the files relating to Taser use held by the Special Operations Group and the Critical Incident Response Teams.

The Office of Police Integrity noted favourably that 58% of incidents attended by Critical Incident Response Teams between 2005 and 2008 were resolved without recourse to the use of force and Tasers were used in very few incidents.¹²⁰ The report states that 'after the initial year where the X26 Taser was used 15 times, the use has been minimal taking into account the 'at risk' incidents the team attended.'¹²¹

The Office of Police Integrity concluded that it 'is clear the specialist training of these police contributes to their prudent use of Tasers.'¹²²

Taser use data obtained by the Federation

In response to our freedom of information applications, Victoria Police provided the Federation data about Taser use in Victoria up until 8 December 2009. The Federation has been provided with Special Operations Group and Critical Incident Response Team Taser Use Registers, incident report forms and use of force forms. These documents are the forms that Special Operations Group and Critical Incident Response Team members are required to fill out every time they discharge a Taser. The Federation also requested information about reviews of these incidents but was refused access.

The Special Operations Group and Critical Incident Response Teams do not use the same documentation to record Taser use. This limits our analysis in some respects and also limits public accountability of Taser use by these groups. For example, while the Special Operations Group records whether the Taser is used in drive-stun mode, the Critical Incident Response Teams generally do not.

Our analysis is also limited to the documentation available to us. For example, we have not interviewed the officers or individuals involved in the incidents nor viewed any available video or audio of the incidents. Accordingly, we need to be cautious about interpreting the data. However, it is possible to discern trends and draw conclusions from what has been made available. The limitations of what is available highlights the need for better public access to information on Taser use.

The following sections contain our analysis of the Taser data. The raw data is available on the Federation's website, www.communitylaw.org.au, to provide the opportunity for others to draw their own conclusions about the appropriateness of police use of Taser.

Tasers have not been used often by specialist police units

From the beginning of the first Taser trial which saw the first use of Taser in February 2004, and up until 8 December 2009, the Special Operations Group has deployed a Taser in 37 incidents.

The Critical Incident Response Team first used a Taser on 8 March 2005. Up until 8 December 2009, the Critical Incident Response Team had discharged a Taser in at least 46 incidents. In addition, 1 incident was recorded where a Taser was unholstered but not discharged.

¹²⁰ Office of Police Integrity, 'Review of the Use of Force', above n 6, page 31.

¹²¹ Office of Police Integrity, 'Review of the Use of Force', above n 6, page 31.

¹²² Office of Police Integrity, 'Review of the Use of Force', above n 6, page 34.

The data shows that the specialist units authorised to use Tasers are not using it very often. As the Office of Police Integrity concluded, the specialist training of these units may contribute to this relatively low usage. Whilst specialist police officers don't use Tasers very often, the data about how the weapons are used suggests there are systemic problems. If highly trained officers can misuse Tasers then the public should be gravely concerned about the possibility of Tasers being provided to all general duties officers in Victoria.

Taser use against people who are at greater risk of harm

As outlined above, there is an emerging body of evidence that people with existing heart conditions, people who are drug and alcohol affected, the young and the elderly, pregnant women, people with mental illnesses and others, are at significantly greater risk of serious injury or death from Tasers.

The Critical Incident Response Team Taser Use Register contains a classification of each Taser incident. Of the 46 incidents:

- 19 were classified as 'suicide intervention';
- 14 as 'psychiatric patients'; and
- in a further six incidents, other psychiatric issues were present.

Thus, according to police classification of incidents, 85% of Taser use by Critical Incident Response Teams was against people with mental illness, who are at significantly greater risk of harm from Tasers.

The Office of Police Integrity's 'Review of the Use of Force by and against Victorian police' suggests that in 2007 and 2008, 30% of incidents responded to by Critical Incident Response Teams were suicide interventions and 12% related to psychiatric patients. Accordingly, while less than half of Critical Incident Response Team incidents relate to people with mental illness, 85% of incidents where Critical Incident Response Teams used a Taser involved people with mental illness.

The disproportionate use of Tasers against people with mental illness raises questions about whether:

- Critical Incident Response Teams are properly taking into account the greater risks of harm to this group; and
- whether a criminal response is being employed to deal with a health issue.

In addition, in 33 of the 46 (72%) Critical Incident Response Team incidents, the person Tased was known to be affected by prescription or illegal drugs or alcohol. Again, this analysis shows that Tasers are disproportionately being used on people who are at greater risk of harm.

The data disclosed to the Federation does not indicate the age of the person Tased. Accordingly, there is no public information available on whether Victoria Police are using Tasers against young or elderly people.

Administering multiple Taser shocks

As outlined above, evidence suggests that there are increased risks of serious injury or death when multiple or prolonged Taser shocks are administered.

38% of the Special Operations Group incidents and 28% of the Critical Incident Response Team incidents involved multiple Taser deployments on the same person. Of particular concern is a Special Operations Group incident where a man known to be schizophrenic and a heavy intravenous drug user was Tased five times by police in probe mode and also drive-stunned.

The incidence of these specialist units administering multiple shocks raises concerns about the extent to which police are properly managing the risks of around multiple Taser uses, particularly when weighed against the level of use on people at greater risk of harm.

Use of Taser in drive-stun mode

27% of the 37 Special Operations Group incidents involved Taser use in drive-stun mode. Use of Tasers in drive-stun mode, where the person Tased is necessarily in close proximity to police, can raise concerns about misuse of Taser by police, for example where a person is already restrained. Without further information, it is not possible to conclude whether or not this use in drive-stun mode was appropriate, however the incidence of use in drive-stun mode by this specialist unit underscores the risk associated with expanding Taser use to general duties police.

Use in the presence of flammable substances

As set out above, Taser deployment can provide an ignition source and Taser manuals warn against Taser use in situations 'where an accelerant or fuel is also present including alcohol-based pepper (capsicum) spray.'¹²³

In at least 16 Critical Incident Response Team incidents and three Special Operations Group incidents, capsicum spray, capsicum foam or a fuel such as petrol was present during the incident when the Taser was used. In one Critical Response Team incident, a person was petrol-soaked and in one Special Operations Group incident, the premises were doused in petrol.

The proximity of the Taser use to the fuel is not clear from the data and it is not clear whether or not the capsicum spray or foam involved was the alcohol-based, flammable version. Nevertheless, the relatively high level use of Taser in the presence of a potential accelerant or fuel raises questions about the awareness of risk to both subjects and police members.

Tasers replacing other tactical options

One of the major concerns about Tasers is the potential for 'usage creep', where police begin using Tasers in situations beyond those for which they were originally introduced.

There are many instances in the Taser use data where Tasers were used to resolve critical incidents where armed people have threatened police, others or themselves. The information recorded by police on these incidents suggests the subject was causing serious injury or was likely to cause serious injury. The risk profile of the incidents attended by these specialist units is likely to have contributed to rate of Taser usage in these types of incidents.

However, 28% of Taser use by Critical Incident Response Teams was against individuals who were unarmed. There were two incidents where Critical Incident Response Teams used Tasers to remove unarmed people from police cells and one incident where a Taser was used to remove an unarmed handcuffed man from a police interview room. There would need to be extraordinary circumstances to justify the use of a Taser on an unarmed person, or a person who is already in police custody. On their face, these incidents raise serious concerns about Taser usage creep and the unreasonable use of force.

30% of the Special Operations Group Taser incident reports state that the Taser was used to gain compliance or because the person 'failed to comply with instructions'. These incidents are more common in the later reports. Taser use solely to secure a person's compliance is clearly against police procedures. The use of Tasers to secure compliance raises serious concerns about usage creep and compliance with policies.

¹²³ Taser X26E Operating Manual, above n 103, page 4.

There are a number of other reports which reveal potentially concerning Taser use.

One Critical Incident Response Team incident concerned a suicide intervention where there is no record that negotiations with the person threatening suicide had occurred. Three other Critical Incident Response Team incidents also concern suicide intervention where negotiations had failed but the length of negotiations or the type of police response tactics is not clear from the incident record.

These Critical Incident Response Team incidents raise questions about whether Tasers are replacing tactical options such as containment and negotiation, or disengagement and calling in medical professionals or family and friends.

A further Critical Incident Response Team incident involved Taser use on a man:

'who had been standing outside store with arms raised in air for about 90 minutes talking to security camera in foreign language.'¹²⁴ (sic)

This incident is of particular concern in that the Taser was apparently not used in connection with a crime or suicide, nor was it an authorised intervention under mental health legislation.

Taser use ineffective

The Critical Incident Response Team data reveals a number of cases where the Taser deployment was ineffective. For example, there are six incidents in the Critical Incident Response Team Taser use register variously noting:

- 'Taser deployed 4 times with only one having effective strike';
- 'Taser deployed...with minimal effect';
- 'Taser deployed twice with nil effect';
- 'First Taser probe...impacted clothing with nil effect'; and
- 'Taser deployed from 9 metres but missed due to distance'.

These incidents highlight the limitations of Tasers, and the risk that over-reliance on Tasers will put the safety of the public and police officers at risk. Victoria Police policies note that the 'optimum range for the deployment' of a Taser is 3 to 4 metres. Accordingly, Taser use necessarily puts police in close proximity with the subject of the police incident. This escalates the risk of firearms use against the subject and the risks of injury to police officers if the Taser deployment is ineffective.

These limitations reinforce that Tasers are not a panacea for police use of lethal or near lethal force, and that police need to focus on seeking to resolve incidents by minimising or avoiding the use of force, through better communication, incident planning etc.

Lack of appropriate aftercare

As outlined above, the Special Operations Group and Critical Incident Response Team procedures require the medical assessment of a person who has been Tased as soon as practicable.

Analysis of the Special Operations Group data suggests that this critical safeguard has not been routinely implemented. The data collection tools do not collect detailed information about the provision of aftercare. The incident forms ask merely whether a person was conveyed to hospital and if not, why not. Where this data was collected, in only one incident was the person assessed by medical personnel.

¹²⁴ Critical Incident Response Team incident 23.

Appendix – Documents provided by Victoria Police under freedom of information laws about Tasers

Copies and extracts from these documents, most of which were obtained through freedom of information processes, are available on www.communitylaw.org.au.

Ministerial Advisory Group on the Possible Introduction of Air Tasers Report, September 2002

Attachment to the Ministerial Advisory Group on the Possible Introduction of Air Tasers Report entitled 'Summary of the Consideration of the Air Taser by the Royal Canadian Mounted Police' (RCMP).

Taser M-26 Safety Analysis, Report by the Alfred Hospital Biomedical Engineering Department, September 03

Letter from then Chief Commissioner Nixon to Police Minister Haermeyer dated 31 October 2003

Taser X-26 Safety Analysis, Report by the Alfred Hospital Biomedical Engineering Department, June 04

Briefing Note from Acting Superintendent Craig Walsh, Operational Safety Division, to Police Operations Standing Committee, 27 February 2007, about the Provision of Electronic Control Devices (ECD) to general duty operational members

Issue Cover Sheet by Acting Superintendent Craig Walsh dated 3 January 2008, about the Status of research into the issue of Taser to General Duties Police

Briefing note from Acting Assistance Commissioner Kevin Scott, to Executive Management Group, 1 April 2008

Overheads, Deputy Commissioner Kieran Walshe, undated

Issue Cover Sheet, prepared by Deputy Commissioner Kieran Walshe dated 29 May 2008, about the Proposal to Deploy 'Conducted Energy Devices' to all General Duty Operational Members

Agenda, Corporate Committee Breakfast, 3 June 2008

Conducted Energy Devices for General Duty Officers, Corporate Committee Discussion, 3 June 2008, PowerPoint presentation

Email correspondence between Superintendent Steve Gleeson, Manager Civil Litigation Division and Chief Commissioner Simon Overland, October 2008

Email correspondence between Superintendent Steve Gleeson, Manager Civil Litigation Division and Inspector Craig Walsh, Centre for Operational Safety, School of Applied Policing, Vic Police Academy, 24 November 2008

Letter to the Federation from Victoria Police dated 23 March 2009

Data about Taser use by the Force Response Unit (Critical Incident Response Team) and the Special Operations Group

- Force Response Unit, Taser Use Register, beginning 8/3/05 until 4/5/08
- Force Response Unit, Taser Use Register, beginning 4/5/08 until 25/8/09
- Force Response Unit, Use of Force Forms and Critical Incident Reports 4/5/08 until 25/8/09

- Special Operation Group register (Incident Forms), beginning 3/2/04 until 5/9/09
- Special Operation Group, Use of Force Forms and Critical Incident Reports 14/8/08 until 23/11/09
- Various Taser downloads

Special Operations Group, Standard Operating Procedure, November 2009

Force Response Unit, Standard Operating Procedure, Electronic Control Device (Taser), September 2009