

Tuesday 23 October 2012

Ombudsman recommends stricter, safer and more accountable stun gun use

The NSW Ombudsman has today tabled his second report into Taser use by the NSW Police Force, making 46 recommendations.

‘The findings of my investigation support the ongoing use of Taser weapons by police officers. However, significant changes are needed to improve police policies, procedures, training and accountability systems’ the Ombudsman, Bruce Barbour, said.

Most Taser uses reviewed by the Ombudsman were reasonable and consistent with procedures. However, there were misuses and unreasonable conduct identified. ‘It is not enough for most uses to be reasonable and consistent with procedures’ said Mr Barbour. ‘The public expects that the systems in place should work to effectively guard against misuse and ensure all Taser uses are reasonable. When Tasers are misused, these incidents must be identified, reviewed and where appropriate, action taken. My recommendations are designed to make sure this happens.’

‘The Taser is an intrusive and invasive weapon. It pierces the skin and inflicts considerable pain on the person subject to the Taser’ Mr Barbour said. ‘It can present significant safety and medical risks, and there is justifiable public concern about the potential for unsafe and inappropriate use.’

At the end of 2011, there were approximately 15,300 NSW Police Force officers trained to use a Taser weapon, and 1,122 Tasers in use.

The Ombudsman’s comprehensive investigation included:

- analysis of data on 2,252 Taser use incidents between 1 October 2008 and 30 November 2011
- detailed assessment of 556 individual Taser use incidents between 1 June 2010 and 30 November 2010, including reviewing all relevant police records and Taser Cam footage.

The Ombudsman found that, of the 556 incidents:

- 476 were in line with criteria for use
- 53 did not meet the criteria for use and involved an officer arming but not firing the Taser
- 27 were incidents where a person was subject to Taser use when they should not have been.

The Ombudsman has released Taser Cam footage and/or CCTV from 11 cases, showing both appropriate and inappropriate Taser use (these can be viewed on the Ombudsman’s website).

“Police officers work in difficult, dangerous and occasionally life-threatening situations. Our investigation has shown Tasers can be an effective way to end a violent and dangerous situation quickly and protect the public and police officers, however they must at all times be used responsibly” said the Ombudsman. ‘Whilst we only identified a small number of misuses, it is unacceptable to see situations where Taser use failed to comply with police procedures and was unreasonable.’ We looked closely at why and how each misuse occurred, and why the police internal review process failed to identify most of these incidents.

The investigation showed that the procedures for Taser use are unclear, confusing or silent on some important issues. ‘The rules need to be clearer and stronger’ the Ombudsman said. ‘In my view, police must be at risk of serious actual bodily harm to justify discharging a Taser.’

The procedures should be amended to clearly state that Tasers:

- must not be used on people who are compliant or passive non-compliant and use in this way will result in disciplinary action, and
- must not be used in drive stun mode, on a person fleeing from police, or a handcuffed person, unless there are exceptional circumstances.

“Clear and unambiguous guidance on appropriate and inappropriate Taser use benefits the community, as well as police officers. Police must be certain that when they use their Tasers they are doing so lawfully and in line with procedure” Mr Barbour said.

The Ombudsman also examined the Police accountability framework for internal review systems of Taser use incidents. While the structure of the system is one of the most comprehensive in Australia, there are some problems with how it is working. ‘There will always be a risk that Tasers will be misused. Having robust accountability and review mechanisms is vital to ensuring public confidence in Taser use’ said the Ombudsman. ‘Although the accountability framework is strong, we found errors, inconsistencies and a lack of transparency in the internal review process. These failings have to be remedied.’

Further details on our key findings and recommendations are provided in the attached fact sheets. The full report is available on the Ombudsman website

www.ombo.nsw.gov.au.

NSW Ombudsman key recommendations on Tasers

To ensure that Tasers are used reasonably and appropriately, the NSW Ombudsman has recommended police procedures on Taser use be changed. Recommendations include that:

- A Taser should never be applied to an individual for more than 15 seconds in total (i.e. counted across all uses during an incident, not just during one cycle or application of a Taser).
- A Taser should never be used to drive-stun a person, or discharged at a person who is fleeing police or who is in handcuffs unless there are exceptional circumstances. Police must provide a clear definition and examples of what would be considered exceptional circumstances (or 'exigent circumstances' to use the term used in the police procedures).
- When a police officer explains Taser use by stating 'exigent' or exceptional circumstances were present, they must document in writing the details and description of events making the situation exceptional.
- Using a Taser on a non-compliant person behaving in a non-threatening manner, or on a passive non-compliant person, is not only a prohibited use but such use will result in disciplinary action.
- An officer must be in danger of serious actual bodily harm (not just in danger of any level or type of injury) to discharge a Taser.
- The use of a Taser must meet the legal requirement that its use is reasonably necessary to make an arrest or perform some other function under the legislation.
- General duties police officers should not attempt to resolve a high risk or dangerous situation with a Taser when it is a matter that a specialist police unit should be called to.

To further improve and enhance the police Taser training, the NSW Ombudsman has recommended that:

- Training emphasise the importance of communication, negotiation and de-escalation techniques in dealing with vulnerable people.
- Training include reality-based scenarios on dealing with vulnerable people, and scenarios on when a Taser should not be used.
- Urgent priority be given to providing all general duties police officers the one day mental health training program.
- Police develop better practice guidelines to supplement the police procedures and training course on Taser use.

The NSW Ombudsman has also recommended changes to strengthen and improve the internal police process for reviewing Taser use and the accountability framework:

- That the Taser Review Panel should:
 - Review each Taser use giving appropriate weight to both the subjective (officer account) and objective evidence (Taser cam and independent witness statements).

- Identify and explain inconsistencies between what a police officer said occurred and what is recorded on Taser cam footage.
- Make a definitive and recorded decision as to whether Taser use complied or not with police procedures.
- Perform their review responsibilities for all Taser uses the subject of a critical incident investigation.
- That the NSW Police Force improve their data collection and analysis on all uses of force, including Taser use, and monitor trends and changes in use of force.
- That the NSW Police Force work with the Ombudsman to develop advice and procedures to ensure that every breach associated with Taser use is recorded as a complaint and notified to this office.

A complete list of all the recommendations can be found in the report on our website www.ombo.nsw.gov.au.

Facts and figures on Taser use

Between October 2008 and November 2011, police officers used a Taser in 2,252 incidents.

- 1,648 (73%) – the Taser was drawn but not fired
- 372 (17%) – the Taser probes were discharged once for a single five-second cycle
- 82 (4%) – the Taser was used once solely in direct contact to the body for five seconds (drive-stun)
- 150 (7%) – the Taser was used on a person more than once (that is, for more than a five-second cycle).

Trends in Taser use

- When Tasers were first rolled out to senior general duties police officers in October 2008, they were used an average of 31 times per month.
- This monthly average increased to 84 as more Tasers were rolled out to general duties officers.
- This figure then fell to 67 times per month for the 12 months between December 2010 and November 2011.

Profile of Taser incidents

The Taser was most commonly used:

- on a weekend (42%)
- between 8pm and midnight (29%), and
- in a private residence (56%).

The police officers who used the Taser were mostly:

- men (85%)
- between the ages of 35 and 39 years (23%)
- at the rank of senior constable (27%), and
- with four years or less service (41%).

Tasers were mostly used against:

- men (89%)
- aged between 18 and 24 years (25%)
- affected by alcohol and/or drugs (56%)
- likely to be behaving in an assaultive manner (51%)
- without a weapon (74%).

The Taser use was:

- most likely to have resolved the incident (72%)
- used with other tactical options (such as capsicum spray) in most cases
- usually applied to the chest (31%).

After the Taser use, in most cases:

- neither the officer who used the Taser (92%) nor the subject to the Taser use (68%) was injured
- the person was charged with one or more offences (56%), usually for assault (27%).

Tasers and other use of force options

Tasers, capsicum spray, batons and firearms make up a small proportion of force options used each year.

- Physical control techniques are the most common (76%)
- Capsicum spray was used more often than Tasers, batons or firearms.
- The display or use of a service firearm was 9% of the total number of force options used.
- Since the introduction of Tasers, there does not appear to be a significant change in the use of firearms.

Assaults and injuries to police

Since the rollout of Tasers to general duties police officers in 2008, there has been a significant drop in the number of incidents recorded by police as 'assault police' or 'resist or hinder a police officer'. There has also been a reduction in the number of injuries to police caused by assaults.

However, it is overly simplistic to say these reductions are due to Taser use alone. Further analysis of these and other contributing factors, such as the level of violent offences, would be required before any link could be drawn between these reductions and the use of Tasers.

Summary of Case studies with Taser Cam footage and/or CCTV vision released

The NSW Ombudsman has released Taser Cam and CCTV footage for 11 of the case studies presented in the report. The footage shows cases of both appropriate and inappropriate use. The following table provides a summary of each of these case studies.

Case study no.	Report page no.	Example of:	Summary
1	59	Unreasonable use	Police use a Taser against a person walking on a busy CBD street. No evidence of imminent or actual violence or danger. Multiple police present, including specialist police. A magistrate found the Taser use unreasonable and unnecessary. The charge against the man was dismissed.
2	62	Unreasonable use	Police use a Taser against a person on their knees and with their hands behind their head. No evidence of imminent or actual violence or danger. A magistrate found the Taser use unreasonable and excessive, and dismissed all charges.
5	116	Unreasonable use	Police use a Taser to arrest a man in his bedroom because he breached an Apprehended Violence Order and damaged property. Police knew the man had an intellectual disability, a history of mental illness and had previously resisted arrest. The Taser was discharged three times. No evidence of imminent or actual violent resistance.
7	120	Unreasonable use	A single unit police officer pulled over a man for traffic related offences. The man refused to kneel on the ground – the officer drive-stuns the man. No evidence of imminent or actual violent confrontation or exigent circumstances being present.
11	126	Unreasonable use	Police attend a club to detain a man to be taken to hospital for assessment. Long incident during which the man is seated most of the time. The man asks to go to the bathroom and starts to move in that direction. He is stopped, and was then subjected to the Taser whilst standing with his hands by his side. No evidence of imminent or actual violent confrontation or resistance.
14	132	Unreasonable use	Person fails to stop at an RBT. Is located sometime later in a licensed premise. Police attempt to arrest the man and he flees. Police fire Taser as the man is racing up an external stair case. The Taser is used multiple times. No evidence of imminent or actual violent confrontation or resistance. The identity of the person was known so police action would have occurred even if driver not detained at that time.
17	136	Unreasonable use	Man in custody attempts to hang himself using his clothing. Police use Taser on the man as he is standing on bed trying to tie his clothing. Man falls heavily from elevated position onto a hard surface. He is subjected to a 2 nd Taser use for being non-compliant. First use high risk to the man,

Case study no.	Report page no.	Example of:	Summary
			and the second use inappropriate as it was for compliance only.
25	156	Unreasonable use	Police wake up an intoxicated French tourist as he slept on the footpath in the early hours of the morning. Police ask for his identification but the man states he could make his own way home. Police repeatedly ask the man for his address and identification and he allegedly became abusive, spat at them and walked away. The man allegedly fled but is caught and the Taser is drawn and fired. No evidence of violent confrontation or of the police officer being overpowered by the very intoxicated man (which was an argument to justify the Taser use).
30	176	Reasonable and effective use	A very good example of Taser use in a violent confrontation, and use instead of a firearm. Police attend residence to speak with a man involved in a motor vehicle accident. When they arrive the man is in the driveway with a large carving knife and threatened to kill police if they did not kill him. As he advances toward police, he is subjected to the Taser.
31	176	Reasonable and effective use	Police arrive at a scene where a man is in the process of seriously assaulting another man – police initially try to communicate with the man but this does not work. The man picks up a metal dumbbell bar and again starts striking the victim. The Taser use stops the person continuing the assault and ensures police are also safe from harm in arresting and taking the man into custody.
32	186	Reasonable and effective use	Police use a Taser in draw and cover mode on a person threatening self harm with a knife. It shows Taser use to protect against potential self harm and the possibility of violent confrontation. Police use communication effectively to de-escalate the situation. The police convince the person to relinquish knife without the Taser being fired.