

## Ombudsman's Taser Recommendations

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## NSW Police Force Position

- | 1 | That the NSWPF modify the Taser SOPs so that the criterion for discharge of a Taser is to protect from "serious actual bodily harm" (as opposed to any type of injury).                                       | 115 | Supported in part | <p>Whilst the NSWPF understands that the intent of this recommendation is to ensure that Taser use is proportionate to the risk faced by the officer, there are concerns about the wording suggested in the recommendation.</p> <p>Firstly, courts have deliberately avoided defining Grievous bodily harm (GBH) and have consistently said that the words should be given their natural everyday meaning - that is, any really serious injury. What will amount to a really serious injury will vary according to the circumstances of the case - for example an injury might be really serious and potentially life threatening in an elderly or frail person, but the same injury in a young fit person might not be regarded as so serious.</p> <p>The Crimes Act has a definition of GBH which extends the common law to include causing death of a foetus, permanent or serious disfiguring of the person, or causing grievous bodily disease (such as Hepatitis C etc).</p> <p>Actual bodily harm (ABH) is not defined in the Crimes Act. However, it is commonly taken to be any hurt or injury calculated to interfere with the health or comfort of the victim. It need not be an injury of a permanent character or amount to grievous bodily harm.</p> <p>Secondly, to comply with s 19 of the <i>Work Health and Safety Act 2011</i>, the NSWPF cannot allow for a "lower level of injury" to occur to officers before a Taser can be used. It is therefore considered problematic to "rate" the level of injury to justify Taser use.</p> <p>It is proposed to change the wording of the SOPs from "injury" to "actual bodily harm".</p> |
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| 2 | That the NSWPF amend the TASER SOPs and training to restrict the multiple use of TASERs to a 15 second exposure during an incident and that use beyond 15 seconds will constitute a breach of the TASER SOPs. | 116 | Supported in part | <p>The NSW Police Force is mindful of avoiding procedures which could lead officers to resort to use of their firearms without proper cause and for this reason does not support imposing a quantum on the use of Taser.</p> <p>The NSWPF does, however, support the principle of using the minimum number of TASER cycles necessary to gain effective control of the situation where TASER has been chosen as the appropriate</p>   |

that use beyond 15 seconds will constitute a breach of the TASER SOPs.

tactical option. This is reflected in the current SOPs.

That said, the NSWPF considers that after three cycles it is incumbent on the deploying officer to consider the effectiveness of TASER and to evaluate the need for alternative tactical options. This recommendation is, then, supported in part. The TASER SOPs and the TRP SOPs will be amended to emphasise this position.

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| <b>3</b> | That the Taser SOPs and training be clarified to emphasise that in cases where Tasers are used multiple times, each discharge or cycle of the Taser must be identified, must meet the criteria for use and officers must provide reasons for each discharge or cycle in the written records of the incident. | 118 | Supported | SOPs version 1.18 (at 6.9; page 18) and training cover the issues of multiple activations being justified and meeting the criteria for use. This will be retained in the new version of the TASER SOPs. |
| <b>4</b> | That Taser training emphasise that officers are required to allow a person time to comply with instructions (as is reasonable in the circumstances) before discharging a Taser on multiple occasions.  | 119 | Supported |   |
| <b>5</b> | That the NSWPF list the restriction on the use of a Taser in drive-stun mode under a section listing all circumstances where a Taser should generally NOT be used.   | 121 | Supported | The revised version of the TASER SOPs will include a section on restricted use. This will cover the use of TASER in drive-stun mode.  |

6	That the Taser SOPs include a definition of 'exigent circumstance' and require that when a Taser is used because of exigent circumstances, those circumstances are described in the relevant COPS/Sitrep records	121	Supported	The NSWPF will review the TASER SOPS to ensure that clear and consistent guidance is provided to officers on such circumstance. That guidance will include the details required in relevant records.
7	That Taser training be amended to reflect the criteria for use for draw and cover and to emphasise the requirement to disarm the Taser if it is no longer likely that discharging the Taser will be justified in the circumstances.	131	Supported	
8	That the TEC monitor the frequency of Taser use and evaluate the impact of changes to the threshold for use of a Taser.	131	Supported	
9	That the Taser SOPs be amended to make clear that use of a Taser on non-compliant subjects exhibiting non-threatening behaviour or on passive non-compliant subjects is a breach of the criteria for use	131	Supported	
10	That the NSWPF amend the Taser SOPs to specify that a Taser should not be used on a fleeing person, and that TASER use in this way can only be	134	Supported	

justified in exigent circumstances.

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| <b>11</b> | Additional guidance should also be provided which sets out examples or scenarios where taser use against a fleeing person might be considered acceptable – for example warranted by the seriousness of the offences), and the escape of the person poses a serious risk that they are likely to reoffend or cause serious injury to themselves or others if not immediately apprehended | 134 | Supported |
| <b>12</b> | That the NSWPF amend the Taser SOPs to specify that a Taser should not be used against a handcuffed person, and that TASER use in this way can only be justified in exigent circumstances.  | 135 | Supported |
| <b>13</b> | Additional guidance should also be provided which sets out examples or scenarios where Taser use against a handcuffed person would be acceptable  | 135 | Supported |

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| 14 | That the NSWPF amend the Taser SOPs and training to clarify the circumstances in which it is appropriate to use a Taser during a premises search. That Taser training incorporate material to assist officers to identify high risk situations in which specialist assistance such as the Tactical Operations Unit should be called.   | 142 | Supported              | <p>Annexure B of the current version of the TASER SOPs provides guidance for identifying high risk situations and determining whether TOU assistance is required.</p> <p>The considerations in conducting premises/building inspections are currently dealt with under a different training framework: <i>Officer survival</i>. Relevant material in this framework will be reviewed.</p> |
| 15 | That the NSWPF review the existing Taser SOPs to improve overall structure and readability. At a minimum there should be sections on the following topics:<br>a) risks associated with TASER (target areas, areas to avoid and higher risk subjects);<br>b) the criteria for use in draw-cover mode;<br>c) the criteria for use in probe mode;<br>d) circumstances where TASER use is restricted;<br>e) circumstances where TASER use is prohibited. | 143 | Supported in principle | <p>The NSWPF will review and amend the TASER SOPs. The objectives will be to simplify them and improve their readability.</p> <p>The suggested topics provide a helpful organising principle and might prove in keeping with these objectives.</p>  |
| 16 | That, after implementing the recommendations regarding the TASER SOPS, the NSWPF review other procedures governing TASER use in other commands to ensure that standards and requirements are   | 144 | Supported              | <p>The Ombudsman's Report and recommendations will be made available to Specialist Commands so they may consider the recommendations and, if appropriate, amend their procedures to promote consistency.</p>  |

consistent.

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| <b>17</b> | That the NSWPF update Taser training to emphasise amendments to the Taser SOPs released in version 1.18 and amendments made as a result of recommendations in this report   | 146 | Supported |
| <b>18</b> | That the NSW Police Force include reality-based scenarios in Taser accreditation training and reaccreditation training that deal with: vulnerable people - to reinforce the importance of communication, negotiation and other de-escalation techniques; situations in which Taser use is not an appropriate use of force - including those circumstances where a person is acting in a non-threatening, compliant or passively non-compliant manner; situations in which the appropriate actions to resolve the incident are not clear cut - to further develop the students' risk assessment and decision-making abilities; | 146 | Supported |

19	That the NSWPF amend the Taser SOPs and training to include instructions to avoid targeting known pre-existing injury areas.	146	Supported	
20	That the NSWPF gives urgent priority to delivering a one-day mental health training program to all frontline police officers as soon as possible.	146	Supported	Subject to funding.
21	That the NSWPF develop best practice guidelines for the use of Tasers to supplement the Taser SOPs and training	146	Supported	
22	That the NSWPF amend the TRP SOPs to require the TRP to specify and record: a) which of the criteria for use justified the use of the TASER; b) any breaches of the TASER SOPs; c) the reasons for remedial action.	154	Supported	
23	That the NSWPF amend the TRP SOPs to require TRPs to: a) assess both the subjective and objective elements in reaching a determination about whether the use of a Taser is reasonably necessary;		Supported	

b) identify and explain any significant inconsistencies between officers' accounts and Taser Cam footage relating to a decision to use a Taser, and if one is preferred over the other, provide the reasons why;

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| <b>24</b> | That the NSWPF incorporate into the Taser SOPs a statement that the use of a Taser must be a use of force which is reasonably necessary to make an arrest or perform other functions under LEPR. In addition the SOPs training should cover the two tests (subjective and objective) likely to be considered by a court when reviewing Taser use. | 157 | Supported |
| <b>25</b> | That the TRP SOPs be amended to require the TRP to review the Taser data port download information in each case and record the number of discharges or cycles of the Taser and to consider each.  | 160 | Supported |
| <b>26</b> | That the TRP SOPs and associated forms and records be amended to require the TRP to make a finding about whether each discharge or cycle of the Taser is justified under  | 160 | Supported |



the criteria for use in the Taser SOPs and reasonable in the circumstances.

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| <b>27</b> | That the NSWPF amend the TRP SOPs to include guidance about the circumstances in which remedial action is required in respect of police obscuring the Taser Cam.   | 161 | Supported |
| <b>28</b> | That the NSWPF amend the Taser SOPs and training, and the TRP SOPs, to provide that failing to properly store a Taser is a hazardous practice and will result in remedial action.  | 162 | Supported |
| <b>29</b> | That the NSWPF amend the TRP SOPs to require TRPs to assess and record whether police have complied with the requirement to call an ambulance when a person has been subjected to Taser use in probe or drive stun mode. | 162 | Supported |
| <b>30</b> | That the NSWPF amend the Taser SOPs to advise police that failure to call ambulance or hospital personnel when Tasers are discharged may result in remedial action.  | 162 | Supported |

<b>31</b>	That the NSWPF amend the Taser SOPs to include guidance to police in relation to pointing Tasers at the ground.	163	Supported
<b>32</b>	That the NSWPF amend the TRP SOPs to require assessment of whether the practice of pointing an armed Taser at the ground is appropriate in the circumstances	163	Supported
<b>33</b>	That the NSWPF review and amend the TRP SOPs to include a comprehensive description of the roles and responsibilities of the TRPs and LACs in the internal review process	164	Supported
<b>34</b>	That the NSWPF amend the TRP SOPs to clarify the purpose of TRP requests for information to make clear that TRPs are responsible for making a final decision about whether a use of Taser complied or breached the Taser SOPs	164	Supported
<b>35</b>	That the TRP SOPs specify that TRPs review all Taser use incidents, including those subject of critical incident investigations.	164	Supported

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| <b>36</b> | That the NSWPF implement strategies to improve its data collection and analysis in relation to use of force to allow accurate recording of all tactical options, and reporting about:<br>a) trends in the frequency of tactical options including Taser;<br>b) trends in the frequency of injuries to officers associated with incidents in which Taser is used relative to other tactical options<br>c) trends in the frequency of injuries to people the subject of a Taser use, including injuries directly caused by Tasers and arising from incidents in which a Taser is used;<br>d) associated factors in use of force incidents, and to allow evaluation of the impact of new weapons on the frequency of use of existing tactical options. | 166 | Supported |
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| <b>37</b> | That the NSWPF progress the proposed enhancements to the Enterprise Data Warehouse system, described in the document, 'Reporting requirements—use of force and Taser deployments', as a matter of priority.   | 167 | Supported |

38	That the TEC provide this office with a report outlining use of force trends (March 2009–March 2013) by May 2013	167	Supported
39	That the NSWPF, in consultation with the Ombudsman, amend the TRP SOPs to include advice about the circumstances in which reports suggesting a breach of the Taser SOPs should be recorded as an internal complaint and notified to the Ombudsman.	170	Supported
40	That the NSWPF ensure that all Crime Managers, Duty Officers or Team Leaders who are involved in debriefing general duties officers have undertaken Taser accreditation training	171	Supported
41	That the TRP SOPs be amended to ensure that the TRP only refers matters for debriefing following completion of an internal review and a finding that the use complied with the criteria in the Taser SOPs	171	Supported
42	That the NSWPF amend the TRP SOPs to include guidance about the types of issues identified during the internal review that	171	Supported

are appropriate for resolution through a debriefing process.

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| <b>43</b> | That the TRP forms and record keeping be amended to allow the TEC to effectively evaluate the debriefing process, and the TEC provides an evaluation report 12 months after its introduction.   | 171 | Supported |
| <b>44</b> | That prior to the making any decision to purchase a different model of Taser from the X26 Taser, the NSWPF consult with the Ombudsman, and provide the Ombudsman with copies of any evaluation reports and advice on the outcome of its evaluation. | 172 | Supported |
| <b>45</b> | That the NSWPF provide the Ombudsman with a response to the recommendations in this report within two months of this report being published.  | 194 | Supported |
| <b>46</b> | That the NSWPF provide the Ombudsman with a schedule and timeframe for the implementation of recommendations within three months of this report being published.  | 194 | Supported |