



Stun guns in Aotearoa New Zealand?

The shocking trial

**A Report on the New Zealand Police Taser Trial
1 September 2006 – 1 September 2007**

December 2007

Comments by prominent New Zealanders at the time the Taser trial began:

The BEST weapon the New Zealand Police Force has is PUBLIC SUPPORT and CO-OPERATION... kia te rakimarie, kia te manawanui – KAO TE 'TASER'!

Keri Hulme (Writer)

The police need to regain the respect they used to enjoy in our society. Tasers will not improve the situation, they are more likely to exacerbate it.

Brian Turner (Poet)

Fear begets fear: violence increases violence. There are better pro-active solutions to crime.

Joy Cowley (Writer)

To agree to the use of Tasers is to agree to the use of torture as police policy in NZ.

Michael Smither (Artist)

The gradual dispersal of a torture device throughout our police force in the name of efficiency is degrading to all New Zealanders.

Nigel Brown (Artist)

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Introduction

From 1 September 2006 to 1 September 2007, the TaserX26 weapon was trialed by frontline police officers in North Shore, Waitakere, Rodney, Auckland City, Counties Manukau and Wellington districts. The Campaign Against the Taser monitored the New Zealand trial throughout. This report has three major sections looking at aspects of the New Zealand trial, as well as recent developments around Taser use overseas.

Section 1, The trial: an analysis of incidents, examines instances in which the Taser has been deployed over the year of the trial. It is clear that there have been repeated breaches of the Standard Operating Procedures (SOP), the regulations drawn up by police to regulate Taser use during the trial. At least forty percent of incidents involving the Taser between September 2006 and March 2007 were in breach of SOP. This inability to conform to regulations, even in the heightened monitoring environment of a trial, raises grave concerns. It demonstrates that, if introduced permanently, the Taser is likely to be misused or used in inappropriate situations. The section also looks at issues around mental health and racial discrimination in the context of the New Zealand trial.

Section 2, Transparency and decision making: the trial process, explores issues around the trial process in New Zealand. There has been a lack of transparency and openness during the trial period. Furthermore, police spokespersons have consistently shown a bias in favour of Tasers in their relations with the media. Opinion is also divided as to who should have the final say on the introduction of Tasers. As a result of these flaws in the trial process, a decision by the Police Commissioner to introduce the Taser will itself be flawed, and will not enjoy widespread legitimacy.

Section 3, The international context, examines recent developments overseas. Heightened concern over the use of the Taser has caused crises of legitimacy for police forces in Canada, the United States, and the United Kingdom. This has led to investigations, reviews and calls for moratoriums in various jurisdictions where it has been in use for some time. More than 290 deaths have been linked to the Taser in the United States since 2001.¹ The United Nations has declared that Taser use can be a form of torture and has 'proven risks of harm or death'.²

The Campaign Against the Taser is concerned that Tasers remain unacknowledged as potentially lethal weapons, despite increasing numbers of deaths following Taser use. There is also concern that the Taser will be used as a tool of routine force as opposed to one of last resort; and that vulnerable groups - such as those with mental health issues or children - will be subjected to electric shocks. This would amount to cruel, inhuman and degrading treatment, and in some cases, torture.

The report concludes that the Taser should not be introduced as a part of the New Zealand police arsenal solely on the basis of the police report, nor should the decision be made by the Commissioner alone. It recommends that any decision must be suspended until there has been a thorough and independent investigation into Taser use and its effects. Any subsequent decision must be made at Ministerial level, with every effort made to ensure a meaningful democratic process.

¹ Amnesty International, 'Amnesty International's concerns about Taser use: Statement to the United States Justice Department inquiry into deaths in custody', October 2007. This is the text of an oral briefing given to the United States Justice Department as part of their two year inquiry into deaths in custody following Taser shocks, which began in June 2006 following reports of more than 150 deaths of individuals subdued by Tasers.

² UNOG, 'Committee against Torture Concludes Thirty-ninth Session', 23 November 2007, [http://www.unog.ch/unog/website/news_media.nsf/\(httpNewsByYear_en\)/D3DD9DE87B278A87C125739C0054A81C?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/D3DD9DE87B278A87C125739C0054A81C?OpenDocument)

Section One

The trial: an analysis of incidents

A key concern with the Taser as a frontline police weapon is that it will be misused, or used in inappropriate situations. This possibility became reality during the trial. Many incidents clearly breached the Standard Operating Procedures (SOP), drawn up by the New Zealand Police to regulate use of the Taser during the trial. At least forty percent of the incidents which occurred between September 2006 and March 2007 breach the SOP in the police's own terms, and several raise questions as to the accuracy of police assessments. There have also been some telling police blunders.

This section examines these incidents. Some have been detected in official police documents, namely press releases and information from incident reports provided for incidents occurring between September 2006 and March 2007. Others are drawn from newspaper reports, and still others are anecdotal, communicated to the Campaign Against the Taser by affected citizens.

That such incidents have occurred in the heightened monitoring environment of a trial period intensifies concern that breaches will also occur once Tasers are considered a 'normal' part of the police arsenal. There is nothing to guarantee that there will not be instances of misuse by individual police officers, or a more general slippage of Taser use into situations outside of regulations. There is a risk that people will be subjected to frightening, painful and potentially lethal treatment which is entirely disproportionate to their behaviour.

The Taser is especially open to such abuse (more so than firearms, for example) because of its promotion as a 'low risk', 'less lethal' option in public relations exercises by police agencies and its manufacturer, Taser International Inc., as well as internally in the training programmes delivered to police personnel.

It is important to note that those who have engaged in the New Zealand debate as 'pro-Taser' almost invariably understand that the Taser will be used in situations that would otherwise require deadly force – a gun. That is the kind of situation that draws public support for the Taser. If the Taser really had been used only in these very restricted scenarios, there would perhaps be less cause for concern. However, the analysis below reveals that, even in the trial situation when police officers are likely to be more careful about how they use the weapon, this has not been the case.

The vast majority of shocks fired by police officers, here and overseas, are not actually alternatives to using firearms, but rather alternatives to other, non-life threatening forms of law enforcement apprehension, control and force techniques – such as negotiation, batons, or pepper spray.³ The police argument, made in initial reports, that 'failure to have a range of less lethal weaponry options available automatically necessitates the recourse to a lethal weapon option'⁴ simply cannot stand in the face of evidence from the trial.

³ New Zealand Police, Taser incident reports, provided to Campaign Against the Taser April 2007; on overseas incidents, see American Civil Liberties Union of Northern California, 'Stun Gun Fallacy: How the lack of Taser regulation endangers lives', September 2005, http://www.aclunc.org/issues/criminal_justice/police_practices/special_report_stun_gun_fallacy.shtml.

⁴ Briefing to Board of Commissioners, Superintendent John Rivers and Assistant Commissioner Peter Marshall, 13 June 2005, document reference BO/05/73, p.6. This quoted the 'outcome of risk assessment of Tasers within both Australia and Canada [which] mirrored that of UK and US jurisdictions.'

Indeed, initial research by the New Zealand Police does not compare the Taser's risks and benefits to firearms, but to OC spray, indicating that the intention has never been to use the Taser only in situations which would otherwise warrant firearms.⁵

As Larry Cox, the Executive Director of Amnesty International in the United States, has said: 'the danger of Tasers is that they seem safe, they seem easy and therefore I think it's natural that police will be inclined to use them much more quickly than they would ever use a gun.'⁶ Such a process is observable in the trial results. If the Taser were to be adopted, and such a pattern continued, it is likely that public confidence in the police force would be eroded.

Inevitably, at some point there will be loss of life as has occurred all too frequently overseas. This will further erode the relationship between police and the community. It will also be extremely traumatic for the officer concerned. Chief Ray Samuels, of the Newark Police Department in northern California, decided against deploying Tasers due to current uncertainties about their health effects. He said of his decision:

I can't imagine a worse circumstance than to have a death attributed to a Taser in a situation that didn't justify lethal force. It's not a risk I'm willing to take.⁷

⁵ *Ibid.*, p.4: 'internationally Tasers and OC spray are being regarded as comparable options in terms of less lethal tactical response options. Factors providing some basis to comparability between Tasers and OC spray are outlined in Annex 1.' In addition, this briefing along with other briefings and documents on the Taser repeatedly identify it as an effective intervention option for Police when dealing with: 'Unarmed (or lightly armed) but highly aggressive persons; individuals in various states of mental health crisis; persons under the influence of mind altering substances, solvents or alcohol,' situations which would not necessarily justify use of firearms. It should also be noted that in situations where an offender is wielding firearms, the Taser is recognised by Police as an inappropriate option, a fact which is often overlooked when the Taser is presented as an alternative to police use of firearms: Standard Operating Procedures, 3.3 'Use Against Armed Subjects: ... Use of the EMI (Electro-Muscular Incapacitation Device) against a subject armed with a firearm should not normally be considered; Police firearms remain the most appropriate tactical response for such situations.'

⁶ CBS News, 'UN: Tasers are a form of torture: 'Stun Guns' are under fire after six deaths this week; rallies held demanding they be banned', 25 November 2007,

<http://www.cbsnews.com/stories/2007/11/25/national/main3537803.shtml>

⁷ Ben Aguirre Jr., 'Newark Police Chief Reluctant to use Tasers', 31 January 2005,; quoted in American Civil Liberties Union of Northern California, *Stun Gun Fallacy: How the lack of Taser regulation endangers lives*, September 2005, p.5.

Breaches of Standard Operating Procedures

Use in service stations

New Zealand Police Standard Operating Procedures

4.2 Flammability:

...an EMI device could provide a source of ignition, as such, it shall not be used in situations where: ...the proximity of...flammable liquids or vapours may present a risk of ignition (eg...petrol stations)

According to information provided in police press releases, there were at least two incidents involving Tasers in service stations.

4 September 2006 – Manurewa - police were called to an incident where there was a dispute between two men at a service station. One was threatening the other with a wheel brace and he was laser painted.⁸

20 September 2006 – New Lynn – police were called to an incident where a woman had been threatened with a knife; the alleged offender was located in a vehicle at a service station and was laser painted.

Use on people below 'assaultive range'

New Zealand Police Standard Operating Procedures

2.3 Accountability:

...
* An overriding principle guiding the use of an EMI device is that it can only be used in situations within and beyond the Assaultive range, as outlined in the Tactical Options Framework.

*Under no circumstances is the device to be used to induce compliance with an uncooperative but otherwise non-aggressive person.

The Tactical Options Framework describes kinds of behaviour, based upon which an officer must make a decision about which strategy to use in each particular case. Categories and their definitions, as they appear in police documentation,⁹ are as follows:

Compliant – e.g. willingly responds

Passive resistant – e.g. refuse instructions verbally or with physical inactivity

Active resistant – e.g. pull away, push away, run away

Assaultive- e.g. intent to cause harm, expressed verbally, through body language, or physical actions

Grievous Bodily Harm (GBH) – e.g. show action intended to or likely to cause GBH or death

⁸ Deployments of the Taser include presentation, 'laser painting' (training the LED target light on the person), 'arcing' (pulling the trigger of the taser without a cartridge present, which causes current to flow between two contact points in the taser, producing light and sound), 'drive stun' (applying the Taser directly to a person, like a cattle prod) and discharge (firing probes into a person which carry the electrical charge).

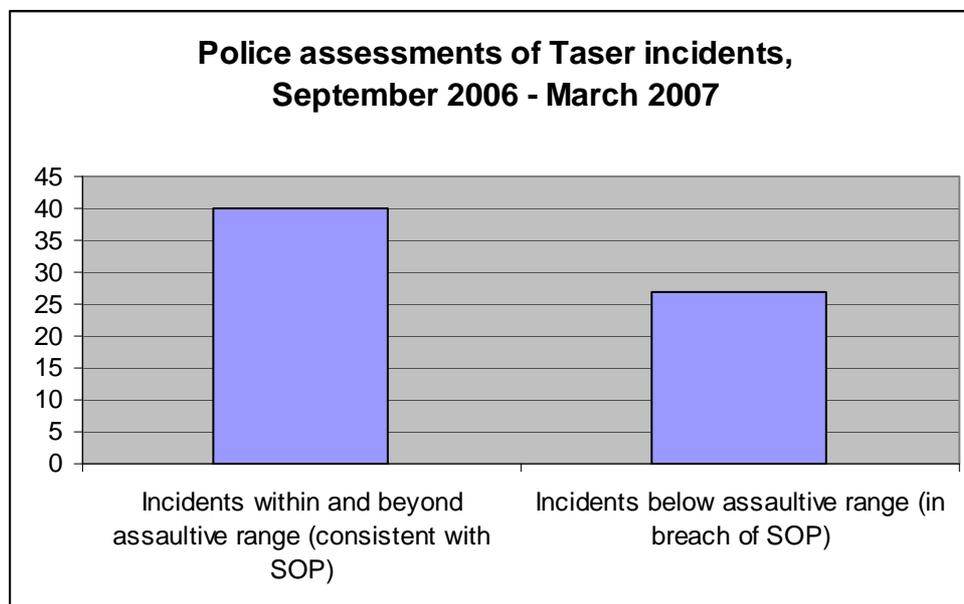
⁹ New Zealand Police, Taser incident reports, provided to Campaign Against the Taser by New Zealand Police, April 2007.

The SOP are very clear about allowing the use of the Taser only when an offender is assessed as 'within or beyond' the assaultive range. However, a significant proportion of Taser incident reports from September 2006 to March 2007 record an assessment *below* assaultive. Of the 69 reports received, 5 recorded 'active resistant', 11 recorded 'passive resistant', 11 recorded 'compliant' and 2 recorded 'other.'

	Officer assessment prior to use of taser, September 2006 – March 2007						TOTAL
	GBH	Assaultive	Active Resistant	Passive resistant	Compliant	Other	
Auckland City	5	3	2	1	2	0	13
Waitemata	3	7	1	3	1	0	15
Manukau City	3	8	1	1	4	0	17
Wellington	2	9	1	6	4	2	24
TOTAL	13	27	5	11	11	2	69

The highlighted columns – active resistant, passive resistant and compliant – are outside the range specified in the SOP for the use of the Taser. Two Wellington incidents recorded 'other' for the assessment; the explanations for this are recorded in the incident descriptions, which were withheld. We do not know what this means.

The graph below illustrates the number of incidents in this short time period which were in breach of the SOP, in that officers assessed the behaviour of the individual concerned to be below assaultive range (this omits the two recorded as 'other,' as further information on these incidents is unavailable). Forty percent of the incidents included in the graph below were in breach of the SOP.



In three of the cases recorded that were below assaultive range, the Taser was fired. In all of those three, behaviour was recorded as 'active resistant.' In an incident in Auckland City on 1 October 2006, the Taser was fired 5 times, three times discharging probes and twice in 'drive stun' or contact mode. An innocent bystander was shocked in the process, which will be elaborated further below. On 11 December 2006, the Taser was fired twice in another

Auckland incident. The third incident occurred in Manukau on 29 January 2007, when the Taser was fired twice.

However, the majority of the 'below assaultive' cases employed presentation, laser painting or arcing. In this sense, the analysis of the trial above graphically demonstrates the temptation to use the tactic of 'laser painting' as a deterrent in situations below assaultive. This reflects the concern noted by the Auckland District Law Society in December 2006, around the

erosion of the weapon's 'last resort' status through 'laser painting'...and the risk of a casualness developing amongst police officers in their approach to the weapon and being tacitly endorsed through a lack of insistence on strict compliance with the guidelines...there is a very fine line between the tactic of laser painting and actually firing the weapon.¹⁰

That report pointed out that, up until December 2006 (when it was released), Tasers were drawn far more frequently and readily than firearms, and often in cases where the level of seriousness did not seem to warrant Taser use. In most of the incidents, including those which post-date the Law Society report and for which we have some information, weapons or suspected weapons were reportedly involved; however 'the mere presence of a weapon (which can in law be anything) is, in itself, insufficient to justify firing a Taser.'¹¹

Accuracy of assessments: further breaches?

It needs to be emphasised that the analysis above relies on police documents and the assessments recorded by police officers themselves. The question of whether assessments are accurate has not yet been explored. Detailed information has been withheld, so it is difficult for us to conclusively assess accuracy.

The question is raised in several incidents, however, most starkly in an incident which occurred in Waitakere on 20 March 2007. In this incident, a woman suffering a mental health crisis was Tasered twice in a bathroom, despite the presence of at least three police officers. The incident report records that it was believed the woman had a weapon. The weapons believed present are listed as 'razors, chemical sprays, glass.' The reason for this belief is recorded as her location in a bathroom. The report then records that the woman did not, in hindsight, actually have a weapon.¹²

This readiness to assume that surrounding objects may become weapons, therefore justifying the use of the Taser, is a grave concern.¹³ Doubt is cast on the accuracy of the police assessment of her behaviour as 'assaultive' in this instance.

Further, in at least two incidents, people have been repeatedly Tasered while already lying on the ground. In Porirua on 12 November 2006, a second shock was administered to a man due to reported resistance to attempts to handcuff him while on the ground. This man has

¹⁰ Auckland District Law Society Public Issues Committee, *Less Lethal? The trial of tasers as part of policing in New Zealand*, December 2006, pp. 1,2,8, <http://www.adls.org.nz/doclibrary/public/committees/LessLethal-TaserGunPaper.pdf>.

¹¹ *Ibid.*, p.8.

¹² New Zealand Police, Taser incident report, provided to Campaign Against the Taser, 12 April 2007.

¹³ It is worth noting here again that the introduction of the Taser has been often been justified by the New Zealand Police with unsubstantiated claims that there is a greater prevalence of weapons in New Zealand society. Howard Broad has said, for example, that tense or hostile situations 'were becoming more dangerous for police as weapons became more commonplace in the hands of criminals. Fighting with someone now has that added risk.' New Zealand Herald, 'Tasers seen as valuable addition to crime fighting arsenal', 9 November 2006, http://www.nzherald.co.nz/category/story.cfm?c_id=30&objectid=10409890.

lodged a complaint with the Police Complaints Authority claiming undue force and lack of verbal warning.¹⁴

Again, in Manukau on 29 January 2007, a man was Tasered twice. In this incident, the officer recorded that 'when the initial probes were deployed he rolled over onto his back. I told him to remain still at which time he spun around and tried to decamp, so he was Tasered again by depressing the trigger using the same cartridge.'¹⁵ In these instances, the Taser has been used to induce compliance. In the opinion of the Auckland District Law Society:

The use of a Taser...to subdue resistance or facilitate arrest is simply unacceptable. A suspect who is on the ground can in no way be considered to be posing a direct threat of physical injury to such an extent as to warrant the use of assaultive force in the form of a Taser.¹⁶

Despite this, the vast majority of incident reports list Section 39 of the Crimes Act, which justifies the use of force to 'effect arrest' and 'overcome resistance', as the justification for Taser use.

These incidents also highlight concerns with multiple Taserings, which has been a factor in many of the deaths linked to Taser use. Amnesty International New Zealand expressed its concern regarding multiple shocks before the trial began, and received assurances from police that restrictions on multiple Taserings would be imposed 'unless absolutely necessary to avoid serious injury or death.'¹⁷ However, there was no such restriction in the SOP.¹⁸

Police blunders

There have been a number of incidents involving blunders with the Taser, perhaps reflecting the inexperience of New Zealand officers, or the inadequate qualification of frontline police officers to wield such weapons. A two day training course is all that is required to qualify officers for its use. These incidents are a result of accident or ignorance, and raise real concerns due to the potentially serious consequences of receiving a Taser jolt.

The most serious blunder resulted in an innocent bystander receiving a Taser shock. Initially unreported by police, an officer deployed the Taser five times in an incident on 1 October 2006. The officer repeatedly missed his target. Instead, he Tasered the man's 16 year old son, and also shocked himself while attempting to reload the weapon. The officer then attempted to use pepper spray, which hit the target's daughter rather than the alleged offender.¹⁹

In an incident report created on 29 November 2006, an officer noted that he used the LED light on the Taser in order to see better in a dark space, and then unintentionally fired the weapon. Notes from the report read 'Deployed tazer (sic)...used the led light to illuminated (sic) dark area of warehouse. Unintentional discharge of tazer (sic) while clearing address of Headhunter member, offender not present no person hit or injured prongs fired into floor.'²⁰

¹⁴ TVNZ, 'Taser under fire again', 28 November 2006, <http://tvnz.co.nz/view/page/423466/904036>. Failure to give verbal warning is a breach of Standard Operating Procedures: '10 – Deployment: All modes of Taser shall be used in conjunction with a verbal warning.'

¹⁵ New Zealand Police, Taser incident reports, provided to Campaign Against the Taser April 2007.

¹⁶ Auckland District Law Society Public Issues Committee, *Less Lethal? The trial of tasers as part of policing in New Zealand*, December 2006.

¹⁷ Amnesty International, press release, 'Amnesty International calls for moratorium on Taser decision: Decision should be made at Governmental level', 12 December 2007, <http://www.scoop.co.nz/stories/PO0712/S00125.htm>.

¹⁸ *Ibid.* See Standard Operating Procedures.

¹⁹ New Zealand Herald, 'Constable zaps himself and innocent teen with Taser', 18 November 2006, http://www.nzherald.co.nz/section/1/story.cfm?c_id=1&objectid=10411372.

²⁰ New Zealand Police, Taser incident reports, provided to Campaign Against the Taser, 12 April 2007.

The use of the Taser as a torch, resulting in accidental firing, is completely inappropriate and unacceptable given the seriousness of a Taser shock.

The Campaign Against the Taser received a report about an incident on 25 September 2006, for which there is no incident record provided by police. In this case, it was known that a mentally disturbed individual would be approaching a property. The residents, known to the individual, left the property, understanding that a mental health crisis team would arrive there. The next day, the individual had been returned to hospital, and the residents returned to their home. There they found parts of a Taser which had been discharged near the front door. This caused great concern about whether the individual had been Tasered. It seems this did not occur. Police then called at the address at 11:00pm that night, the day after the incident, admitting the parts belonged to a Taser, apologising and requesting their return.²¹

All of these incidents raise concern about haphazard use of the Taser by officers, which can have unintended and potentially serious consequences, as in the first case mentioned above.

Mental health and the Taser

The Waitakere incident mentioned previously also illustrates concern about Taser use on those in mental health crisis. Deployment of a Taser is arguably counterproductive in attempting to ameliorate such a crisis, causing great stress and pain to the person and their families. Police officers, poorly trained to identify and manage such situations, and faced with unfamiliar behavioural patterns, may react with fear and force; the availability of the Taser raises great concern in this regard, creating enormous scope for inappropriate use.

The Royal Australian and New Zealand College of Psychiatrists (RANZCP) stated their position at the beginning of the trial:

The move to introduce a pilot involving the use of Tasers has occurred without adequate community consultation with those groups that stand to be affected by it, in particular mental health service users, their families and mental health professional groups.

The police are often called to assist the process of transferring patients suspected of suffering from a mental illness, to a place of safety for further assessment and management. The RANZCP is very concerned that should Tasers be introduced and readily used for ensuring compliance of disturbed persons then those suffering from psychiatric illness, coming to the attention of the police, could be administered painful and potentially lethal electrical shocks for no other reason than the fact that they have become mentally unwell.²²

Unfortunately, these concerns became real during the trial. As at August 2007, at least 14% of the people who were Tasered since the trial began had mental health issues or were suicidal.²³ The Waitakere incident raised sufficient concern to warrant a continuing investigation by the District Inspector of Mental Health. The outcome of the District Inspector's investigation, along with the concerns expressed by the mental health community and its professionals, need to be considered in any decision making process relating to the Taser.

Racial discrimination and Taser use

A further issue that has arisen during the trial relates to the disproportionate numbers of

²¹ Communications with Campaign Against the Taser, October 2006.

²² Royal Australian and New Zealand College of Psychiatrists (RANZCP), Position statement on Taser trial, August 2006, Dr Allen Fraser, Chairman, New Zealand National Committee, RANZCP.

²³ Te Ururoa Flavell, Mental Health Commission Amendment Bill (Third Reading) Speech, 8 August 2007.

Maori and Pacific persons who were Tasered. 'Out of 114, 33 were Maori (29%), 31 Pasifika (27%). Taken together, this is 56% of Taser gun use.'²⁴

These figures confirmed that the fears which were expressed by Maori and Pacific communities before the trial began were justified - the Maori Party, for example, laid a complaint with the Human Rights Commission in August 2006 about the likelihood of racial, and other, discrimination occurring in the way Tasers would be used. The Human Rights Commission investigation is currently underway.

Part way through the trial, the Maori Party included comment on this in a report to the United Nations Committee on the Elimination of Racial Discrimination. While the Committee did not comment directly on Taser use, it did express concern over the over-representation of Maori and Pacific people at every stage of the criminal justice system, and welcomed the government's steps to address this with measures including research on the extent to which this could be due to racial bias. The Committee also drew the government's attention to its General Recommendation on the prevention of racial discrimination in the administration and functioning of the criminal justice system.²⁵

Without more information it is difficult to ascertain whether the disproportionate use of Tasers against Maori and Pacific individuals can be mainly attributed to police perceptions of them, including a view that they are more likely to be violent - something Deputy Commissioner Rob Pope appeared to be saying partway through the trial²⁶ - and thus how the Taser is used by frontline officers; or if it relates more to the demographics of the places where the Taser trial was held.

²⁴ Maori Party press release, 'To Taser or not to Taser: Maori Party Relieved at the Right Answer', Dr Pita Sharples, 31 August 2007,

http://www.maoriparty.com/index.php?option=com_content&task=view&id=1251&Itemid=2.

²⁵ Concluding observations of the Committee on the Elimination of Racial Discrimination - New Zealand, 15 August 2007. CERD/C/NZL/CO/17, <http://www.converge.org.nz/pma/CERD71-Obs.pdf>.

²⁶ Dominion Post, 'Taser targeting claims rejected', Martin Kay, 1 March 2007.

Section Two

Transparency and decision making: the trial process

The combination of divided opinions about the proper location of decision making, the lack of transparency during the trial, and a police media campaign that has been consistently biased will severely compromise the legitimacy of the decision should the Police Commissioner decide to introduce Tasers permanently. These three aspects of the trial process are elaborated below.

The appropriate decision-maker

The proper locale for decision making regarding the Taser has been contested since the trial began. The Campaign Against the Taser is of the opinion that the proper place for significant decisions such as issuing Tasers to frontline police is with the Minister of Police. A decision such as this, which is likely to change the face of policing in New Zealand, must be subject to a rigorous democratic process and public scrutiny, which cannot be achieved if the decision is made by the Police Commissioner alone.

The Minister of Police has consistently deferred responsibility, identifying the introduction of Tasers as an operational matter and therefore the Commissioner's decision. However, the introduction of an assaultive weapon with proven lethal effects is a very significant change, and therefore should be seen as a policy matter. Proper democratic oversight of police decisions concerning the introduction and use of new weaponry must be ensured.

The Auckland District Law Society has expressed concern about the decision being made by the Commissioner alone. They point out the lack of balance inherent in a decision by the Commissioner: 'those conducting the Taser trial, are the same as those who report on the use of the weapons, and are in turn the same as those who will ultimately decide if Tasers are to become a permanent part of policing in New Zealand.'²⁷

In addition, Amnesty International New Zealand recently stated their belief that 'a decision to introduce powerful and dangerous Taser stun guns should not be made by the Police Commissioner alone. This decision should be made at a governmental level in consultation with the Police Commissioner.'²⁸

Transparency and openness during the trial

A trial period is intended to provide an opportunity for reflection and debate based on concrete experiences, in this case, with the Taser in New Zealand policing. For this intention to materialise, information about trial results needed to be collected, collated and made available to the broader public. Any decision about the introduction of Tasers will only enjoy broad legitimacy and acceptance if such a process is meaningfully followed.

However, New Zealand Police did not demonstrate a commitment to transparency and openness during the trial. Press releases periodically summarised incidents involving the Taser. However, there have been occasions when basic information has been withheld or

²⁷ Auckland District Law Society Public Issues Committee, *Less Lethal? The trial of Tasers as part of policing in New Zealand*, December 2006.

²⁸ Amnesty International, press release, 'Amnesty international calls for moratorium on Taser decision: Decision should be made at Governmental level', 12 December 2007.

omitted, resulting in false or misleading impressions of events. The clearest example of which we are aware is the summary given for the incident on 1 October referred to earlier, which reads as follows:

The offender became aggressive and the others obstructive. The officer became concerned for his safety and laser painted the aggressor. The officer continued to communicate with the offender for several minutes before having to resort to discharging the taser and using OC spray. Eventually the offender was contained with assistance from one of the family members present. There were no injuries.²⁹

No mention was made of the fact that the Taser was fired five times in this incident. The officer repeatedly missed the alleged offender - but the target's son was accidentally shocked with the Taser, the officer shocked himself while attempting to reload the weapon, and, in addition, accidentally hit the alleged offenders' daughter with pepper spray.³⁰ These facts were reported in the New Zealand Herald on 18 November, six weeks after the incident.

The lack of commitment to transparency surrounding the trial has also been made apparent in attempts to gather more thorough information on the trial, in the form of incident reports created on the Police Tactical Options Database. As part of the trial, officers were required to create incident reports each time a Taser was used across the range of possible deployments: presentation, laser painting, arcing, discharge or drive stun. The reporting system involved officers completing an electronic form.

Copies of these incident reports, requested under the Official Information Act in January 2007, were received from police in April, with large amounts of detail withheld. The deletion of certain information, such as the names of individuals, can of course be justified in terms of privacy; however, entire incident descriptions from the perspective of police officers were deleted, along with sections on the relevant certifications of police officers present at the scene and many other seemingly ad hoc sections, for example dates and Taser serial numbers.

The information received therefore lacked substance, with omissions making it difficult to navigate, in effect blocking the opportunity to properly evaluate the material. This opportunity is especially important given the trial status of Taser use in New Zealand, which suggests that this is a period during which New Zealanders should be able to reflect on the risks and benefits of the Taser, based on incidents of Taser use. As the Auckland District Law Society argue: 'without confidence in the reports, the public cannot be expected to have confidence in the trial itself.'³¹ The trends that are discernable from the reports have been analysed above.

The Office of the Ombudsmen agreed in June 2007 to review the information provided by police, and their investigation is currently underway.

The police media campaign

Police spokespersons have made their preferred outcome of the Taser trial very clear throughout its course. However, a trial is intended to precede a decision - theoretically, any

²⁹ New Zealand Police press release, 'Taser Trial Update #3', 17 October 2006

³⁰ New Zealand Herald, 'Constable zaps himself and innocent teen with Taser', 18 November 2006, http://www.nzherald.co.nz/section/1/story.cfm?c_id=1&objectid=10411372

³¹ Auckland District Law Society Public Issues Committee, *Less Lethal? The trial of tasers as part of policing in New Zealand*, December 2006.

decision made should be based on trial findings, and not concluded prior to the trial's end and subsequent careful assessment. Yet over the trial period police spokespersons have consistently advocated for the Taser, while dismissing any criticism of its deployment and use. For example, Police Commissioner Howard Broad stated in October 2006 that there were 'strong forces' that wanted police armed with guns if the trial failed, words which he later conceded were inappropriate.³²

The Commissioner has admitted that police are gradually losing their ability to engage in dialogue in tense or hostile situations³³ - a situation which could, and should, be remedied by proper police training. Yet he has consistently advocated for the introduction of the Taser. In this context, the Taser seems to be viewed as a quick fix solution to much wider issues around the loss of policing skills to defuse tension - which in itself makes it more likely that the Taser will be used, and used inappropriately.

In addition, a great deal of emphasis has been put on perceived increases in violent assaults on police, which are not borne out by statistics.³⁴ The overall impression has been that the public relations efforts of police are aimed at promoting the Taser, preceding its inevitable introduction, rather than neutrally observing the trial and reserving judgment until it has been assessed. Indeed, on the 26 October this year, Damien O'Connor, then Minister of Corrections, told the House that the Police Commissioner acknowledged 'that the police are hoping the Taser trial is successful.'³⁵

³² New Zealand Herald, 'Police Commissioner backs away from Taser comments', October 26 2006, http://www.nzherald.co.nz/section/1/story.cfm?c_id=1&objectid=10407682

³³ New Zealand Herald, 'Tasers seen as valuable addition to crime fighting arsenal', 9 November 2006, http://www.nzherald.co.nz/category/story.cfm?c_id=30&objectid=10409890.

³⁴ Campaign Against the Taser press release, 'Police claims that assaults have increased misleading', 2 November 2006. "While the Police have claimed that figures show a rise in assaults against Police, what the figures actually show is that the overall total has remained remarkably constant over ten years," Marie Dyhrberg said. Dyhrberg cites figures from 1996/97, when total assaults on police numbered 1905. "The number peaked in 2000/01 at 2150, and then dropped again. In 2004/05, the number of assaults was 1869. It is important to note that there has also been population increase over this time." "There has been a slight increase in Crimes Act assaults. But assaults involving weapons of any kind, including firearms and stabbing or cutting weapons, have dropped, from 97 in 1996/97 to 84 over the last year." <http://www.scoop.co.nz/stories/PO0611/S00039.htm>. See also, Campaign Against the Taser press release, 'Hysteria over violence against police threatens trial', 28 June 2007, <http://www.scoop.co.nz/stories/PO0706/S00336.htm>.

³⁵ Maori Party press release, 'Harawira urges Government to take the 'tool of torture' seriously', 27 November 2007, <http://www.scoop.co.nz/stories/PA0711/S00553.htm>.

Section Three

The international context

The Police Commissioner's decision will be made at a time of heightened and acute concern over Taser use internationally. Tasers have always been controversial regardless of where they have been introduced. The trigger for recently renewed concern was the death of a Polish man, Mr. Dziekanski, after he was shocked with a Taser by the Royal Canadian Mounted Police (RCMP) at Vancouver airport on October 14 2007.

The RCMP claimed that he had been aggressive towards them. However, footage of the event watched by millions on YouTube soon afterwards showed Mr. Dziekanski standing unthreateningly before police, appealing for help in Polish, prior to being shocked. The event highlighted two key concerns about the weapon – its potential for misuse or inappropriate use; and its capacity to kill.

As such, Mr. Dziekanski's death, followed soon after by six further Taser-related deaths in the United States and Canada,³⁶ has reignited passionate public debate and sparked response internationally. In Canada, the RCMP is reviewing its Taser policy 'in response to new medical data and to provide more precise instructions [on their use]'; the Royal Newfoundland Constabulary has suspended the use of Tasers; the Commission for Public Complaints Against the RCMP (CPC) has also announced its own independent investigation.³⁷

The RCMP has also identified a need for further research, particularly with respect to Tasers and 'excited delirium,' a purported medical condition of intense stress which is unrecognised by medical professionals but which has been assigned as the cause of death by coroners in many in-custody and Taser-related tragedies. The Canadian Association of Chiefs of Police has asked the Canadian Police Research Centre to conduct further work in this area.³⁸

Further fuelling concerns about inappropriate deployment in Canada, a recent Canadian Press analysis of 563 Taser incidents involving the RCMP found 79 per cent of the suspects were unarmed at the time.³⁹

Mirroring demands in Canada, there have been calls for moratoriums on Taser use in the United Kingdom and the United States.⁴⁰ In London, Councillor David Wainwright called for a moratorium on the weapons pending more evidence on their safety. Supporters called it progressive and overdue. The City Council vote to suspend use of Tasers – even in that more limited environment, where only senior police officers are allowed to carry Tasers –

³⁶ CBS News, 'UN: Tasers are a form of torture: 'Stun Guns' are under fire after six deaths this week; rallies held demanding they be banned', 25 November 2007,

<http://www.cbsnews.com/stories/2007/11/25/national/main3537803.shtml>

³⁷ RCMP Commissioner's Statement - Incident at Vancouver Airport, 19 November 2007, http://www.rcmp-grc.gc.ca/news/2007/2007_11_17_vancouver_airport_e.htmhttp://www.rcmp-grc.gc.ca/news/2007/2007_11_17_vancouver_airport_e.htm. Information about the CPC investigation can be found at www.cpc-cpp.gc.ca.

³⁸ *Ibid.*

³⁹ Brandon Sun, 'Day not surprised by analysis showing 3 in 4 people Tasered by RCMP unarmed', 18 November 2007, http://www.brandonsun.com/story.php?story_id=77275

⁴⁰ In the United States, there have been 'waves of demands to ban the weapon'. CBS News, 'UN: Tasers are a form of torture: 'Stun Guns' are under fire after six deaths this week; rallies held demanding they be banned', 25 November 2007, <http://www.cbsnews.com/stories/2007/11/25/national/main3537803.shtml>

was very narrowly defeated, by 10-8.⁴¹ In the United States, the Justice Department continues to investigate deaths in custody following Taser use. The two year investigation was launched in June 2006.

Recent concern is also driven by the steadily increasing toll of Taser-related deaths. Mr. Dziekanski was the 18th person to die since July 2003 after being hit by a Taser in Canada. Amnesty International estimates that in the United States, a country with roughly nine times the population of Canada, 291 people have died after being struck by police Tasers since 2001.⁴²

While in many cases other factors have been cited by coroners as the cause of death, such as 'excited delirium' associated with cocaine use (itself a controversial diagnosis, unrecognised by medical professionals), Amnesty International has thus far identified at least 20 cases where 'coroners have found the Taser served as a causal or contributory factor in the death and other cases where the Taser was cited as a possible factor in autopsy reports.'⁴³

Any decision made in New Zealand needs to take developments overseas into account. Experience and evidence from other jurisdictions must inform the decision making process. The fact that the Taser is becoming increasingly controversial in jurisdictions where it has been in use for some time, causing crises of legitimacy for police forces in Canada, the United States and the United Kingdom indicates that it has the same potential in New Zealand. This should be of real concern to New Zealand Police.

Adding impetus to these calls for a reassessment of Taser use, in November 2007 the United Nations expressed concern about the stun gun. The United Nations Committee Against Torture, in its Concluding Observations on Portugal, stated that:

the use of TaserX26 weapons, provoking extreme pain, constituted a form of torture, and that in certain cases it could also cause death, as shown by several reliable studies and by certain cases that had happened after practical use.⁴⁴

The Committee's comment was based on expert testimony that use of the weapons had 'proven risks of harm or death.'⁴⁵ As New Zealand is a signatory to the International Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Committee's comments are of direct relevance to the decision about Tasers here.⁴⁶

⁴¹ London Free Press, 'Taser suspension defeated', Patrick Maloney, 4 December, 2007, <http://lfpres.ca/newsstand/News/Local/2007/12/04/4706233-sun.html>.

⁴² New York Times, 'After a Death, Use of Taser in Canada Is Debated', Ian Austen, 16 November, 2007.

⁴³ Amnesty International, 'Amnesty International's concerns about Taser use: Statement to the US Justice Department inquiry into deaths in custody', October 2007.

⁴⁴ UNOG, 'Committee against Torture Concludes Thirty-ninth Session', 23 November 2007, [http://www.unog.ch/unog/website/news_media.nsf/\(httpNewsByYear_en\)/D3DD9DE87B278A87C125739C0054A81C?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/D3DD9DE87B278A87C125739C0054A81C?OpenDocument)

⁴⁵ CBS News, 'UN: Tasers are a form of torture: 'Stun Guns' are under fire after six deaths this week; rallies held demanding they be banned', 25 November 2007, <http://www.cbsnews.com/stories/2007/11/25/national/main3537803.shtml>

⁴⁶ It should be noted that MP Keith Locke has recently lodged a complaint with the Police Complaints Authority, asking them to rule on whether Taser use contravenes New Zealand's international obligations. See Green Party press release, 'Locke Taser complaint under UN Torture Convention', 27 November 2007, <http://www.scoop.co.nz/stories/PA0711/S00526.htm>. The Police Complaints Authority is one of the designated 'National Preventive Mechanisms,' under the Optional Protocol to the Convention Against Torture, intended to monitor and prevent torture.

Introducing the Taser could involve breaches of New Zealand's obligations under international law - not only under the Convention Against Torture but other human rights instruments too, including the International Covenant on Civil and Political Rights - as well as the New Zealand Bill of Rights Act 1990.⁴⁷

⁴⁷ Breaches of one or more provisions of the New Zealand Bill of Rights Act 1990 are possible – specifically Section 8 (the right not to be deprived of life); Section 9 (the right not to be subjected to torture or cruel, degrading or disproportionately severe treatment or punishment) and Section 23(5) (the right of persons deprived of liberty to be treated with humanity and with respect for the inherent dignity of the person).

Conclusion

The Taser trial has raised very real and disturbing concerns about the deployment of the Taser in New Zealand. Developments overseas reflect these concerns at the international level.

The Project Lincoln Report was the original impetus behind the Taser trial. That project began as an examination of 'less than lethal' weapon options following the shooting of Stephen Wallace in 2000. One of the key aspects of that report was the need to: maintain the public trust and confidence in New Zealand Police in the use of less than lethal force.

This is a laudable goal especially in the wake of a tragedy. Nevertheless, the manner in which the Taser trial has unfolded in New Zealand may make this goal difficult or impossible to attain. Public trust and confidence in the police is crucial to effective policing, and any threat to that confidence should be of grave concern. Evidence that the Taser is lethal – not 'less than lethal' - continues to mount. As the death toll rises, uncertainty remains about the medical risks associated with the Taser.

Moreover, during the trial Tasers were used in breach of the SOP. To refer again to the shooting of Steven Wallace, the Coroner's Inquest identified clear failures to follow policy and procedure in that case, where there was a fatal outcome.⁴⁸ The Campaign Against the Taser is concerned that similar failures by officers armed with Tasers could likewise have fatal consequences.

The trial has demonstrated the probability of the Taser being used in inappropriate situations, and raises concern that Tasers will be used as a tool of routine force rather than one of last resort. Also of great concern is the fact that vulnerable groups - such as those with mental health issues or children - will be subjected to electric shocks. This would amount to cruel, inhuman and degrading treatment, and in some cases, torture.

A general lack of transparency has marked the trial. Questions exist as to whether the Police Commissioner is the appropriate decision maker on this issue. In short, confidence in the trial process itself has been eroded.

For these reasons, the Taser should not be introduced as a part of the New Zealand police arsenal solely on the basis of the police report on the trial. The steadily increasing death toll overseas, as well as the number of investigations now underway both here and in other jurisdictions, require a suspension of the decision to issue Tasers to frontline police officers until thorough and independent investigations into Taser use and its effects have been undertaken.

Moreover, the decision to introduce the Taser is more than just an operational matter because it has the potential to fundamentally change the face of policing in New Zealand. If there is to be a decision, it should not be made by the Police Commissioner alone.

It is therefore our recommendation that any decision must be suspended until there has been a thorough and independent investigation into Taser use and its effects. Any subsequent decision must be made at Ministerial level with every effort made to ensure a meaningful democratic process. This must include actively involving those communities most likely to be adversely affected by any Taser deployment in the decision making process.

⁴⁸ See, for example, NZPA, "Plan needed' before fatal police shooting', 3 August 2007, <http://www.converge.org.nz/pma/sw030807.htm> and Taranaki Daily News, 'Probe into shooting highlights control lack', Lyn Humphreys, 4 August 2007, <http://www.converge.org.nz/pma/sw040807b.htm>