

# **FIREARMS CARRIAGE BY POLICE IN AUSTRALIA**

## **POLICIES AND ISSUES**

**Rick Sarre**

**Associate Professor**

**Head: School of Law and Legal Practice**

**University of South Australia**

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Following my presentation to, and discussion with, the Police Commissioners' Policy Advisory Group (PCPAG) on February 23, 1995, Mr John Frigo, Senior Legal Research Officer, Legal Research and Review Branch, Corporate Policy Planning and Review Department of the Victoria Police, drew my attention to a document he prepared in January 1995 entitled *Comparison of Australasian Law Enforcement Agencies' Policies on the Carriage of and Justification for the Use of Firearms*. Its appendices brought into the one report the firearms policies and standing orders of Australian and New Zealand law enforcement agencies to January 1995. In his commentary, Frigo distinguished firearms generally deployed (including pistols, shot guns and other firearms given to a police officer at the commencement of each shift) from personal issue firearms (firearms issued specifically to an individual police officer). It was of great help to me as a starting point to my endeavours. Since that date there have been further changes in most police services <sup>1</sup>, indeed widespread changes in at least three jurisdictions. The process of keeping up to date in this area is a demanding and on-going one. In many respects it has proven to be fortuitous that this project has over-run its anticipated completion date. Many jurisdictional officers waited until certain changes had been promulgated before despatching responses to me. Their efforts have been worth the wait.

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<sup>1</sup> 'Service' has replaced the word 'force' in NSW and Queensland. All other jurisdictions have now officially dropped the word 'force' from their titles.

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Rick Sarre

School of Law and Legal Practice, University of South Australia

GPO Box 2471, Adelaide SA 5001

## Introduction

In the last two decades there have been major shifts in the firearms policies of Australia's eight police jurisdictions. The moves from the deployment of the baton to the covered pistol, and then to the widespread carriage of the exposed revolver, have occurred more by a process of incremental accretion, with tacit yet popular public acquiescence, than as a result of a careful series of decisions following public debate <sup>2</sup>. Harding's note in 1970 (1970a, p 14) that the New South Wales Police Force (as it was then known) was the only force that was habitually armed has become an anachronism, indicating how much things have changed elsewhere in Australia. While the details of these changes vary from jurisdiction to jurisdiction, there has been a clear trend towards greater reliance by police on firearms in their day to day operations. At the very least there appears to be a greater acceptance, in most jurisdictions, of policies that allow police officers to gauge their own level of vulnerability and request a firearm in circumstances which they perceive as dangerous. Moreover, the legitimacy of such requests is rarely questioned. Some commentators conclude that the predominant factor in these requests is the pressure on those officers by their peers to conform to the existing operational 'code' (Uildriks and van Mastrigt 1991, p 169) rather than any *bona fide* objective safety assessment. The fact remains that firearms are now habitually carried by most patrol officers and detectives in all Australian jurisdictions and they are, arguably, resorted to more frequently than has been the case in the past <sup>3</sup>.

A number of questions come to mind when one considers these transitions in police firearms policies in Australia. What stimuli gave rise to the shifts in policy? Were they based upon reliable information? Is there any reliable source data? Does practice differ from policy? Have these shifts affected patterns and trends of violence in Australia by and against police? <sup>4</sup> If so, why, and in which jurisdictions? Is there any uniformity amongst the States? What are the likely future trends and will these trends make our communities safer places in which to live? Despite the importance of these questions, they are rarely discussed. Assumptions are rarely tested. Criticisms of police firearms practices often give the impression that they are motivated by suspicion or malice, which creates an unfortunate spiral of mutual mistrust and misunderstanding. The debate over firearms carriage and deployment needs to be conducted in an environment of debate that is well informed and not irrevocably polarised. This report is designed to assist the creation of such an academic environment.

Both in the minds of large sections of the general public, and amongst many police officers themselves, there exists an unchallenged axiom that the more firearms are deployed by

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<sup>2</sup> Similar shifts have occurred in some regions of the United Kingdom, challenging the image of the unarmed avuncular 'beat' officer (refer for example to the discussion in Manwaring-White 1983, p 214; Waddington 1988a, pp 3-5; Campbell 1995).

<sup>3</sup> Furthermore, they more often than not carry the semi-jacketed, hollow-pointed round which is designed to kill their targets, not to incapacitate them. But the ammunition used by police in Australia is not here under discussion. Of further interest, of course, would be information about the types of ammunition, where it is purchased, the details of the suppliers, and, indeed, the price (Manwaring-White 1983, p 220), all topics outside of the scope of this report.

<sup>4</sup> This report reviews *public* police only. It should not be ignored that there are many thousands of private security personnel overseas and in Australia who carry firearms as a matter of course (eg Sarre 1994b, p107; De Geneste 1995; Harowitz 1995). There has been little research into their powers, rights and privileges regarding the use of lethal force, an examination which is well overdue, but outside of the scope of this report.

police the greater the effectiveness of policing. That axiom has been seriously challenged by recent events in Victoria, discussed below, but it has not disappeared. There is still a very strong belief that, despite the risks to police themselves by their carrying firearms, and despite the risks to the wider community, firearms are a necessary evil, and their carriage is to be preferred rather than rejected. The belief is that if there is a chance that wrong-doers will be carrying firearms, then the police ought to be prepared and able to match them <sup>5</sup>. Many of the commentaries and reports on the rights and entitlements of police to use lethal force (eg. Milte and Weber 1977, pp 180 ff; Frigo 1995) thus remain uncritical of firearms use and are silent on their effectiveness, preferring to report merely the policies and procedures that govern this area of police practice <sup>6</sup>. Indeed, few commentators ever broach seriously the subject of limiting the police use of lethal force, figuring, one assumes, that once the 'genie is out of the bottle' there is very little likelihood of getting it back in. While criminologist Richard Harding, over two decades ago, was concerned about whether, when police kill citizens, they do so in circumstances permitted by the law, he was not specifically concerned about whether police should or should not wear firearms, arguing that "for better or worse, they do so already in various circumstances" (Harding 1970a, p 15).

The topic of police firearms, however, requires on-going community scrutiny and academic research. While there is no shortage of literature which describes the dilemmas associated with the lethal use of force by police, its legality and morality in Australia <sup>7</sup>, the UK <sup>8</sup>, Canada <sup>9</sup> and the USA <sup>10</sup>, few authors have examined the effects of changes in policy over time. There is a pressing need for longitudinal research and contemporaneous cross-jurisdictional comparisons (Chappell *et al* 1991, p 289).

No research has ever attempted to test, systematically, the assumption that regular firearm carriage by police makes for safer communities and results in fewer police shootings. This is not to say that the questions have not been asked and the hypotheses have not been proposed. In 1970, two Australian academics, Gordon Hawkins and Paul Ward, put forward the proposition that there is a direct correlation between the extent to which police carry pistols, revolvers and shotguns and the frequency of their becoming a victim of a shooting. Having noted that the risk of a police officer being killed is higher than the risk for non-police, they then compared the police killings in those States in Australia that followed the more 'American' model (ready access to firearms) with those that followed the more British model (limited access or unarmed). They concluded that the risk of being killed

"is relatively much higher in states which have adopted the American firearms policy. It is not unreasonable to infer from this that the police firearms policy may be a significant factor in this context" (Hawkins and Ward 1970, p 197).

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<sup>5</sup> Lest it be assumed that all of police work is catching criminals (and the percentage of armed offenders compared to unarmed offenders is very low) the researcher David Bayley (Bayley 1994) reminds us that, on US and UK data, 80%-85% of police calls are not about crime but are inquiries usually seeking advice or service (cited in Graycar 1996, p11).

<sup>6</sup> Some are not released to the public, eg. National Police Research Unit 1991

<sup>7</sup> Eg. Elliot 1979; Harding 1970b, 1975, 1981, 1984, 1989, 1991; Hogan 1988a; Cunneen 1991; McCulloch 1992

<sup>8</sup> Eg. Scientific Advisory Branch 1972; Ward 1986; Jefferson 1987, 1990; Hogan 1988b; Waddington 1987, 1988a, 1988b, 1991; Skogan 1990; Reiner 1992 pp 90, 160

<sup>9</sup> Eg. Abraham *et al* 1981; Chappell and Graham 1985

<sup>10</sup> Eg. Robin 1967; Sherman 1982, 1983; Binder and Scharf 1982, Fyfe 1982; Geller 1983; Dwyer *et al* 1990; Skolnick and Fyfe 1993.

While some Australian research has reviewed the occupational health and safety aspects for police officers of firearms carriage (eg. Swanton 1987; Swanton and Walker 1989), little research has ever been conducted in Australia on the links between police firearms carriage and the effectiveness (or otherwise) of policing generally, and, twenty-six years on, no-one has revisited the Hawkins and Ward hypothesis specifically.

Why is this so? There are probably two key reasons. Firstly, the information required to explore the issue is, for the most part, difficult to locate, for it is not maintained in any systematic fashion, and, secondly, it is very difficult to isolate the variables and construct an appropriate methodology to test the appropriate hypotheses.

#### *Lack of information*

There is a dearth of publicly available data on police policies and critical incidents themselves. The lack of data is due in part, no doubt, to the desire of some police organisations to keep relevant information 'in house'. For example, the information needed to gauge the vulnerability of the 35,000 serving police officers in Australia remains elusive and the results remain, therefore, quite equivocal (Australian Institute of Criminology 1987; Swanton and Walker 1989; Sarre 1995, p 376). It is not an area where national policies are regularly collated and statistics routinely maintained.

#### *Difficulties in research*

Attempting to discover correlations between firearms deployment and risks to police and citizens is extremely difficult. The variables that might influence the effects of firearms carriage upon police safety and the safety of the public are many. They include the levels of crime and violence generally, fear of and by police, the implementation of de-institutionalisation policies regarding the mentally ill, the treatment of the emotionally distressed, patrol safety and security policies, recruitment and training requirements, police culture, and police patrol numbers and firepower. Firearms carriage by police is only one factor amongst many in the research 'equation'. It is extremely difficult to isolate and to control for all of the possible variables when attempting to test these correlations.

"A host of factors come into play. These include ethical issues, the interplay of law, policy and training, the significance of police ethos and culture, the power of unions such as the Police Association, the diverse range of situations in which firearms are used, and the complexity and difficulty of decision-making in such situations" (Hogan 1988a, p 81).

It should also be noted that the assumption of Hawkins and Ward concerning the British position is now flawed. It is no longer true, if it ever was, to assert that British police officers are routinely unarmed. Since 1883 it has been possible for officers on the 'outer divisions' of London to carry revolvers during night duty (Gould and Waldren 1986). In the majority of police forces within the UK now, an armed response vehicle is on patrol with a primary task to attend potentially violent situations. It is true, however, that 'Bobbies' are *not* issued with firearms on a routine basis. In 1995 there was a suggestion that that policy should change. There was stiff resistance, however, from amongst the ranks themselves. The *Guardian Weekly* of 21 May 1995 (Campbell 1995) reported that, in a poll taken by the Police Federation of England and Wales, four out of five officers had no desire to carry a firearm routinely. The Home Secretary, said the *Guardian Weekly* report, had strongly resisted calls to end Britain's status as one of the few unarmed police forces in the world. Indeed,

" ... the Metropolitan Police has historically adopted an explicit policy of minimising its preparedness for, and competence in, using firearms. Guns were resorted to only occasionally and the police gave low priority to training, relying instead upon the training some officers had previously received during military service" (Waddington 1988a, pp 3-4).

Furthermore, the Hawkins and Ward proposition concerned police fatalities and occupational health and safety issues only. Concerns about public safety and police shootings involve a broader examination. Future researchers could examine, in addition to firearms carriage, issues of deployment, safety, training and use of lethal force, and training in the deployment of non-lethal alternatives. Researchers may find it valuable to compare the rates of police fatalities and police shootings with the policy shifts that have permitted greater or lesser availability of firearms to police. Researchers may also investigate the policies that ensure accountability for the discharge of firearms, and attempt to determine whether or not they are satisfactory and appropriate.

There may need to be, moreover, a broader examination of policing generally and the inter-relationships between police and the communities they serve. Perhaps lethal and critical incidents occur less as a result of police firearms practices and policies *per se* and more with any style or mode of policing that eschews community-based models in favour of para-military ones (Sutton 1994, p 225; Sarre 1996 forthcoming).

### **The aim of this report**

Thus the aim of this report is not to test the proposition that Hawkins and Ward proffered, interesting as it may be. This report endeavours, instead, to provide better and further particulars of Australian police firearm carriage policies for those who may wish to tackle broader research topics in the future. This report attempts to provide a current descriptive statement of all Australian policies on police firearm carriage <sup>11</sup> with some commentary and analysis of the events in the past two years which have led to something of a renaissance in thinking in some jurisdictions. Furthermore, this report notes, in the context of each jurisdiction, a brief history of police firearms carriage policies in each State and Territory, including the Australian Federal Police (AFP), with a more critical gaze being cast over the South Australian political experience as recorded in Appendix A, and the Victorian policy experience as discussed in Appendix B. Finally, this report places the various police firearms policies in the context of the pertinent recommendations and benchmarks detailed in the report of the Australian National Committee on Violence in 1990. This report requires some background discussion.

#### *The National Committee on Violence Recommendations*

A uniform police firearm policy was called for six years ago by the Australian National Committee on Violence (NCV) in their February 1990 report (Australian National Committee 1990, pp 195 ff) in the context of their discussion of the links between violence

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<sup>11</sup> The last occasion this was done in any systematic way in a single *public* document, as far as I can find, was the summary provided in Swanton and Hannigan (1985, pp 182-3). At one time it was believed that such information "could be of assistance to criminals", a comment made by a former South Australian Police Commissioner in justifying a policy of secrecy in 1969 (Hawkins and Ward 1970, p 192). No such excuses are offered today. We have come a long way since 1969 in developing a more open dialogue between the police and academia. There is still some way to go towards extending this information to wider sections of the Australian communities the police endeavour to serve.

and the availability of firearms generally. The NCV's discussion of *police* firearms was somewhat peripheral to the wider gun issue which, said the authors not surprisingly, had given rise to a great deal of debate. No other subject, said the Committee, had "elicited such a degree of intense comment as has the proposal to restrict access to firearms" (Australian National Committee 1990, p 173). Other authors have maintained that the gun issue has "thus far borne closer resemblance to a religious debate than to rational discourse on public policy" (Chappell *et al* 1991, p 289). Similarly one can imagine that any proposal to restrict access to firearms by law enforcement personnel, or to introduce alternative non-lethal weaponry, is likely to arouse passionate responses not just from the police themselves but also from the wider population.

Recommendations 85 and 86 of the 1990 report made the following suggestions for Australian policy-makers on this subject:

### **Recommendation 85**

All governments should recognise and support:

85.1 Uniform laws throughout Australia regarding the use of firearms and other lethal force by police. These laws should reflect the principle that lethal force should only be used as a last resort, involving self-defence or the defence of others.

85.2 The provision of adequate resources (including funding) to ensure that police receive adequate training in the use of firearms and non-lethal weapons. This training should also include non-violent restraint and conflict resolution strategies.

85.3 A requirement that wherever practical, a Coroner personally attends the scene of any fatality involving the use of lethal force by police.

85.4 The provision of funding for the development and deployment of non-lethal incapacitating weapons for use in appropriate situations, bearing in mind the desirability of eventually excluding the use of all weapons capable of causing death or serious injury to persons. The development and deployment of non-lethal weapons should be carefully evaluated, to ensure they minimise the risk of injury to bystanders, suspects and police."

### **Recommendation 86**

"All police administrators should

86.1 Adopt and implement rules and regulations strictly limiting the use of force and firearms. These should emphasise the principle that the use of force and firearms by law enforcement personnel should be proportionate to the legitimate objectives to be achieved, and commensurate with due respect for human rights ...

86.2 Develop and implement a code of conduct for law enforcement personnel which specifies that personnel may use force only when strictly necessary and to the extent required for the performance of their duty.

86.3 Keep the ethical issues associated with the use of force and firearms continuously under review.

86.4 Adopt a nationally agreed set of guidelines outlining standard operational procedures for police to be deployed in situations assessed as high risk.

..."

The National Committee on Violence made further recommendations regarding police firearms training and critical incident investigation:

"All police administrators should

86.6 Develop national minimum standards relating to the validation and accreditation of firearms training and use of other weapons, including non-lethal weapons.

86.7 Ensure, following incidents where a person has died or been seriously injured through the use of force by police, that there is a thorough investigation of the incident by police independent of those involved in the incident.

86.8 Take appropriate action where arbitrary or abusive use of force or firearms by law enforcement personnel has occurred.

86.9 Ensure that all police involved in major critical incidents, which include the use of lethal force by police, or where the police have themselves been subjected to or engaged in a violent encounter, be subjected to critical incident stress debriefing."

Governments have been keen to implement many of the proposals<sup>12</sup>. This report considers the full range of the above recommendations with the exception of coronial inquiries (recommendation 85.3) and the use of non-lethal alternatives (recommendation 85.4)<sup>13</sup>, except in so far as passing reference is made in relation to a jurisdiction's commitment, or lack thereof, to training of police officers in alternatives to lethal force.

The National Committee made no specific recommendations concerning modification of the current policies permitting police use of lethal weapons, other than to make passing reference in recommendation 85.4 to "*the desirability of eventually excluding the use of all weapons capable of causing death or serious injury to persons*". The authors saw value, rather, in calling upon police policy-makers to reflect in their policies themes of restraint, to encourage the development of police codes of conduct, sound operational procedures and police firearms training (Australian National Committee 1990, pp 196-8).

In summary, Australian police policy-makers rarely question the value of police carriage and deployment of firearms<sup>14</sup> although they recognise the wisdom of keeping firearms practices under constant scrutiny. Most jurisdictions continue to place few restrictions upon the availability of firearms to their police officers. Only brave governments question the status quo and call for greater restrictions on the availability of firearms for police officers, especially given the 'law and order' climate currently existing in Australia (Sarre 1994b, pp

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<sup>12</sup> The decision to go ahead, for example, with a National Police Reference (Firearms Register) was finalised in May 1993. It indicated, at the time, a wide degree of consensus amongst Australian Attorneys-General on this specific issue. The pursuit of uniform gun laws across Australia then stalled, although the issue was revived in May 1996 following the Port Arthur massacre on 28 April 1996.

<sup>13</sup> While a few academics, policy-makers and reporters have in the past pursued vigorously the idea of the use of non-lethal (or less than lethal) weapons in their discussion on violence by and against police (eg. Hogan 1988a, p 89, British Columbia 1990, Australian National Committee 1990, p 197 recommendation 85.4, Implementation Reports 1994, pp 260-261, p 267) it is an area that is only now receiving formal policy consideration in Australia. The NPRU in Adelaide is developing standards on the minimum training required for non-lethal weapons and the evaluation of such alternatives (Implementation Reports 1994, p 260) as part of its "incident management/conflict resolution/responsible use of force training" which is based upon the 1995 Project Beacon Victorian approach and which seeks to set minimum standards for all jurisdictions (Victoria Police 1996, p 20). It is proposed that there be a seminar in Victoria in November 1996 to plan the implementation of the NPRU's minimum training criteria. Such implementation is important to the future national validation and accreditation scheme.

<sup>14</sup> It is significant to note, at the same time, the consistent emphasis placed upon the principles of restraint in the drafting of national and international guidelines on the use of lethal force, that is, that resort to such force is discouraged unless all other reasonable avenues for resolving the incident have been exhausted. Australia has taken a lead role in this respect in the past, refer Australian National Committee 1990, p 196 and the Implementation Reports 1994, p 255.

70, 238). In addition, the lack of data and the number of variables required to be manipulated make this type of research difficult to conduct.

The Victorian experience of 1994-5, examined in Appendix B, changed much of that. But there is still some distance to go if there is to be any national uniformity and a commitment to keep policies under review. With this report it is now possible to access more easily the current policies of each jurisdiction, to locate the law that dictates the practices, and to review, by way of 'spot-check', the various commitments of each jurisdiction against the important 1990 recommendations of the NCV. Building upon these foundations, it is hoped that more productive research into the topics of police firearms policy, occupational health and safety and public safety will follow. The environment in which police firearms debate occurs in the future will be better informed.

## Policies on Police Firearms Carriage and Use

The approach of this section of the report is to compare and contrast the various policies and instructions of the eight police forces and services in Australia in relation to carriage and use of firearms<sup>15</sup>. It pays especial attention to some of the more important recommendations of the National Committee on Violence Report in 1990 and the extent to which each jurisdiction's policies, procedures and guidelines reflect the approach favoured by the authors of that report. In the reference to each jurisdiction in this report, there is some brief mention of the historical legal background to the current position<sup>16</sup>.

Most importantly, each current policy has been checked regarding the implementation of the recommendations of the National Committee Report, namely,

*Has there been any move to enshrine:*

- *principles regarding the safe carriage of firearms?*
  - *principles regarding the restrained use of firearms, and particularly resort to lethal force as an option of last resort, proportionate to legitimate objectives, in self-defence or the defence of others?*
  - *independent investigations of shooting incidents?*
  - *disciplinary action where abusive use of firearms has occurred?*
  - *the provision of critical incident stress debriefing (CISD) for all police involved in major critical incidents?*
  - *the provision of adequate accredited training in firearms use and non-violent restraint?*
- and finally,
- *the provision of standard operational procedures for 'high risk' situations?*

By way of passing comment, it should not be forgotten that the Police Commissioners' Policy Advisory Group (PCPAG) recommended to the Australasian Police Ministers' Council (APMC), (which recommendation APMC adopted on 22 May 1992), that the United Nations Guidelines *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* be used as a minimum national standard upon which local operational instructions ought to be based. These UN Guidelines (Implementation Reports 1994, pp 255-256) emphasise restraint in operational use of firearms, regular specialist firearms training, strategies for stress reduction and an independent review of any incident

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<sup>15</sup> These comparisons are by jurisdiction as at March 1996. Some of the information in the following section is drawn from the out-dated document *Comparison of Australasian Law Policies on the Carriage of and Justification for the Use of Firearms*, prepared by John Frigo, Senior Legal Research Officer, Legal Research and Review Branch Corporate Policy Planning and Review Department, Victoria Police, January 1995 (Frigo 1995, appendices 'A' to 'I', pp 29-175) and the book of implementation strategies of the National Committee on Violence compiled by Jo Herlihy of the Australian Institute of Criminology (Implementation Reports 1994). An earlier compilation in 1991 (annexures A8-A16) were included in the National Police Research Unit Report (NPRU 1991), Series no. 114 Report no. 5, never released to the public.

<sup>16</sup> Further exploration of the South Australian position revealed interesting political material on this topic. Such an historical examination of similar shifts in each other jurisdiction would be particularly helpful in placing current policies in context. The exigencies of time, however, worked against a full-scale analysis in this report. Thus, the historical references of other jurisdictions are brief. The South Australian Hansard reporting of the debate over police and firearms in the late 1970s and early 1980s is summarised in Appendix A. It is included for the purpose of illustrating the politically-charged atmosphere in which this issue continued to breathe years after the changes (lifting restrictions on police firearms carriage) were announced by the then Police Commissioner with the acquiescence of the government of the day.

where resort to lethal force has caused death or injury. To an extent, the spirit of some of these Guidelines has been preserved in the policies discussed below, although the resulting Australian position is far from uniform, and not once are the UN Guidelines specifically referred to in the policies.

The jurisdictions are addressed in alphabetical order:

Australian Federal Police (including the ACT)

New South Wales Police Service

Northern Territory Police

Queensland Police Service

South Australia Police

Tasmania Police

Victoria Police

Western Australia Police

### **Australian Federal Police (including Australian Capital Territory)**

#### *Brief historical review*

Australian Federal Police instructions concerning firearms are contained in AFP *General Orders and Instructions*, and AFP *Regional Instructions*. The effect of the AFP General Orders and Instructions is to restrict the use of service revolvers to acts in performance of official duties (Fine 1985, p 107). A 1994 Administrative Circular has clarified the General Order instructions in relation to the carriage of firearms and the position as it currently exists is presented in the following paragraphs. For example, if an AFP member changes region, for example, moves from one State to another, he or she must surrender that firearm and draw a new firearm from the Armoury in the new Region. The provisions of the *Gun Licence Ordinance (ACT) 1937* requiring compliance with gun laws do not apply to the AFP by virtue of section 5(5)(a). The *Australian Federal Police Act (Cth) 1979* section 12 exempts the AFP from the operation of jurisdictional firearms laws generally.

#### *Provisions relating to the safe carriage of firearms*

##### • *Generally*

Australian Federal Police instructions with respect to the carriage of firearms is contained in section 14 of the General Orders and Instructions. These instructions specify that a member carrying a firearm shall carry it in an approved holster, and shall not carry any other firearm other than his/her official firearm. The instructions do not explicitly state that a member shall be armed whilst on duty.

##### • *In specialised locations*

AFP officers are prohibited under federal regulations from carrying firearms on commercial aircraft except unloaded and in the freight hold of such aircraft. An AFP member who enters a prison whilst carrying a firearm must notify the person in authority at such prison that he/she is carrying such firearm, and leave the firearm in the care of that person or that person's nominee.

##### • *When not on duty*

AFP members (with the exception of special response groups) are required to keep their firearms, including personal issue firearms, at their duty station. In some Regions members may seek authorisation in special circumstances to take personal issue firearms home. This authorisation must be given by a Commissioned Officer and will only apply for short periods of time. Members in the ACT Region, with the exception of special response groups, are required to store personal issue at their work station. Should the need arise, ACT members may take firearms home when off duty. In such circumstances, however, guidelines issued pursuant to section 13(1)(b) of the *Weapons Act 1991 (ACT)* apply.

*Provisions/limitations relating to the restrained use of firearms*

A member of the Australian Federal Police may discharge a firearm in the execution of his/her duty:

- in self-defence or defence of another person under threat of immediate serious violence likely to cause death or grievous bodily harm;
- during firearms training; or
- for the purpose of lawfully destroying animals.

In considering whether to discharge a firearm on the grounds of defence of a third person the police officer should consider whether he or she reasonably believes that a third person is in imminent danger of death or serious bodily injury.

*The reporting and investigation of firearms incidents and disciplinary action*

Where an AFP member discharges a firearm he/she shall, as soon as possible, furnish a report to the officer in charge of the Region or the Assistant Commissioner in charge of his/her department. The officer who receives the report may, if he/she considers it necessary, investigate the circumstances of the discharge. The officer in charge of the Internal Investigation Division or the Deputy Commissioner, referred to in sub-section 15(3) of the *Complaints (Australian Federal Police) Act (Cth) 1981*<sup>17</sup>, may take over such investigation, as may, indeed, the Commonwealth Ombudsman. The Commissioner may also decide to request another jurisdiction to assist with the investigation.

*Critical incident stress reduction processes (debriefing)*

No mention is made of this in these documents, although procedures are addressed in A.C.T. Occupational Health and Safety legislation.

*Training*

A Standard Qualifying test applies, re-taken each two years for a further two year period, although an extension can be approved by a relevant officer taking into account the frequency of firearm practice and the member's duties.

*Summary*

The above description of the AFP General Orders and General Instructions indicates that the policy accords only partially with the aims and objectives of the aforesaid National Committee recommendations 'checklist' in that they provide regulations designed to ensure the safe carriage and storage of firearms, enshrine the principle that resort to lethal force requires safe carriage and restraint, and must be proportionate to legitimate objectives, in self-defence or the defence of another's life or safety. This document makes no provision

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<sup>17</sup> The complaints policy, mechanisms and procedures are currently under review (March 1996) by the Australian Law Reform Commission.

for independent investigations of shooting incidents, nor for disciplinary action where abusive use of firearms has occurred. There are no formalised instructions for post-shooting stress debriefing for officers involved in trauma, and, although training regimes are addressed, re-training need only occur every two years.

## New South Wales Police Service

### *Brief historical review*

Until November 1974 the *Police Instructions* of NSW (1962) indicated that the police had a wide discretion in relation to gun use and they left no doubt that police not only could, but in some instances *should*, shoot in order to effect an arrest (Milte and Weber 1977, p 181). After 1 November 1974, the Department issued a new set of police instructions on the topic that indicated that restraint was the ultimate goal when it came to the use of lethal force.

There is no discretion with regards the carriage of a firearm by police officers in New South Wales. By a New South Wales Police Circular dated 8 July 1991, the Commissioner drew to the attention of police officers the fact that, on occasion, service firearms were *not* being worn by police. Police were therefore reminded of the provisions of Police Instruction 22.23 which provides that all non-commissioned officers and constables *will*, whilst on duty, unless otherwise authorised, at all times carry their service firearms in the holsters provided. This has been the case at least since just after World War One when, apparently, returned soldiers carried out attacks on a number of police officers (Nixon 1991, p 15). From 1997 police officers will exchange their Smith and Wesson revolvers for new, self-loading semi-automatic pistols (which have a minimum of 12 rounds from a clip-on magazine). Currently a State Commander Working Party is reviewing the options and the areas of operations which will incorporate the weapons as part of their armoury <sup>18</sup>.

The issue, care, use and responsibility of firearms for the New South Wales Police Service are matters that are now contained in Instruction 22, valid as at 1 November 1994. A new *Firearms Act (NSW)* was promulgated in 1989 replacing the old *Firearms and Dangerous Weapons Act (NSW) 1973* exempting police from the provisions of the law. 1989 also saw the introduction of a *Prohibited Weapons Act (NSW) 1989* followed by the *Firearms Regulation Act 1990* and *Prohibited Weapons Regulation 1990* all of which presented a package of gun law reforms generally.

### *Provisions relating to the safe carriage of firearms*

#### • *Generally*

Police officers are issued with a personal firearm and 12 rounds of ammunition. The types of firearms are clearly specified in Instruction 22.11. Non-commissioned officers and constables are instructed to carry loaded firearms whilst on duty unless otherwise instructed. If a Commissioned Officer elects not to carry firearms, the revolver must be returned to the police armoury. Commissioner's Instruction 22 authorises patrol and branch commanders to withdraw a police officer's weapon from him/her if that officer is on restricted duties for an extended period. This extends to those officers who are allowed to travel to and from duty in plain-clothes, or are absent on sick leave or if the patrol or branch commander believes it necessary to remove such weapons. Police officers are obliged to notify their station commander if they do not carry their arms on duty and if so to secure them.

#### • *In specialised locations*

The instruction also requires police officers to carry firearms in States courts although they should be concealed from view if a judge or magistrate objects. Federal Court regulations

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<sup>18</sup> The finance for the purchase has been approved and the government will commence the tender process in early 1997. The issue to predetermined commands will be finalised by July 1997 by the State Commander. A training program will commence then over four years.

prohibit the wearing of firearms in federal courts without permission. Commissioned Officers have a discretion concerning whether or not to retain and carry arms. All police officers in Australia (indeed all other persons too) are prohibited under Federal Air Navigation regulations from carrying firearms on commercial aircraft except to enter a grounded commercial aircraft in the execution of their duty. Such entry is conditional upon the aircraft not being in flight and only with the informed consent of the aircraft operator. If it is necessary to transport a firearm on an aircraft it must be carried in a security bag in the baggage compartment. Police officers may not wear firearms when attending investiture ceremonies at Government House. There is no mention of restrictions upon carriage of firearms in or around schools and sports venues.

- *When not on duty*

Police officers travelling to and from duty in uniform are required to carry their firearms. Otherwise firearms are usually kept in individual officers' lockers at duty stations while the officer is not on duty, although the New South Wales Police Service is in the process of introducing, in 1996, gun safes into Commands <sup>19</sup>. Police officers who travel to and from duty in plain clothes are normally required to leave firearms in safe custody at the police station as are police officers who go on leave. If firearms are permitted to be kept at home, they are to be secured in a safe in the same manner as any licensed firearm holder in New South Wales.

*Provisions/limitations relating to the restrained use of firearms*

Police officers are empowered to discharge their firearms:

- when they have a reasonable apprehension either of being killed or grievously injured where the police officer cannot otherwise protect him/herself; or
- to protect any member of the community when the police officer has reasonable grounds to believe that such person may be killed or grievously injured and there are no other means to prevent this occurring; or
- to arrest a felon, with or without warrant, where the commission of the felony involves actual or threatened violence to a person. It is not appropriate where the offence involves merely theft of or damage to property.

In the face of harsh criticisms of the 'fleeing felon' rule (Australian Law Reform Commission 1975 ¶ 50; Hogan 1988a, p 84), the *carte blanche* nature of this common law principle (that allows the killing by police of a person fleeing from the commission of a serious crime) has been limited by the Instructions as follows:

"Where a police officer intends to use a firearm to arrest a fleeing felon that police officer must satisfy him/herself that:

- the person fleeing to avoid arrest actually committed the felony or is the person named or described in the warrant;
- the felon is running away to avoid arrest;
- assistance to the officer will not be available before the felon escapes;
- there are no other reasonable grounds for believing the arrest can be effected without use of the firearm; and
- the firearm may be discharged with minimum danger to innocent bystanders."

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<sup>19</sup> The introduction of O'Sullivan and Lamson safes has been monitored by an audit procedure and the Commissioner is advised by the responsible Command accordingly.

The notion that police should be able to shoot to wound is rejected for, by having such instruction, police (it is said) would be more likely to use firearms.

Police officers may use a firearm to apprehend or prevent the escape of a prisoner if:

- that prisoner threatened or used violence during the escape or attempted escape,
- the prisoner was serving a sentence for an offence involving actual or threatened violence, or
- the police officer has reason to believe that person will inflict serious injury on someone if at large.

Where circumstances permit, police officers are required to identify the fact that they are police officers and call upon the felon (or escapee) to surrender before discharging a firearm.

*The reporting and investigation of firearms incidents and disciplinary action*

Shooting incidents must be notified to the senior officer on duty who must establish:

- whether a person has been killed or injured and the condition of any injured person;
- whether the person shot is a police officer, offender or bystander; and
- the location and brief details of the incident.

That officer must then notify the Duty Operation Inspector, who will notify the Region Commander, Police Health and Welfare Unit and the Regional Internal Investigations Unit Commander. The instructions require that where a person is killed or injured the Region Commander will establish a team from the Major Crime Squad for the purpose of investigating shootings involving police or a single investigator where notified by Regional Internal Affairs Branch that that is an appropriate course of action. Briefs of evidence are forwarded to the Region Commander and in Coronial matters to the Solicitor for Public Prosecutions. In practice the Office of Professional Responsibility is mandated to investigate all firearm incidents. Any complaints may be referred to the NSW Ombudsman.

*Critical incident stress reduction processes (debriefing)*

Post shooting stress reduction is mandated by requiring the Police Welfare Unit to make arrangements for any officer involved in a shooting trauma to attend a compulsory counselling session with the Police Psychology Section which employs psychologists and medical officers.

*Training*

No weapon can be used without formal training. Revolver practice is conducted with baton training annually. The levels of training and amount of training are issues not addressed in this document although through the Police Recruit Education Program (PREP) there is an emphasis on the use of non-violent restraint techniques.

*Summary*

The above description of the NSW Police Service Instruction 22 indicates that the policy accords only partially with the recommendations of the aforesaid National Committee 'checklist'. The policy is designed to ensure the safe carriage and storage of firearms, and enshrines the principle that resort to lethal force requires restraint, must be proportionate to legitimate objectives, in self-defence or the defence of another's life or safety. There is no provision in this document for independent investigations of shooting incidents unless a complaint is made, in which case it can be referred to the NSW Ombudsman. It makes no provision in this document for disciplinary action where abusive use of firearms has

occurred. It does deal with post-shooting stress reduction for officers involved in trauma and makes passing provision for annual training in firearms use and non-violent restraint (batons). It appears that little has changed in NSW in the last 20 years.

## **Northern Territory Police**

### *Brief historical review*

In 1993 the then Commissioner of Police Mr Mick Palmer agreed with police firearm policy changes that facilitated the arming of operational members with 9 mm Glock 13 shot automatic pistols. The NT Police Association had lobbied in favour of personal issue of hand guns for its members.

In correspondence from the then Chief Minister Marshall Perron to the Commissioner of Police dated the 28 April 1993 <sup>20</sup> the Chief Minister said,

"The previous policy was that operational members were able to wear firearms during evening and night shift. However, the wearing of non-concealed firearms during daylight hours was not permitted unless there was a specific reason for doing so. This is not to say that they could not have had access to a firearm which in most circumstances would have been secured in their patrol vehicle with obvious time delays should an incident have occurred. Given the unavoidable time delays in training members in the use and carriage of the newly acquired Glock pistols and accepting the unpredictability of the policing environment ... I agreed to reconsider my position. I have altered the policy on the carriage of firearms to allow operational members to wear firearms openly on a discretionary basis on all shifts. There will be an overriding discretion exercised by supervisors as to whether certain situations such as public functions and crowd control incidents are appropriate for the wearing of firearms".

The procedures regarding firearms carriage in the NT are found in the General Order - 'Firearms' - Code F2, Special Circular No 3/94, Policy Document No 13 - 'Firearm Policy - School Based Constables', and paragraphs 119 and 120 of General Order - 'Prisoners' - Code P12. The *Firearms Policy and Procedure Manual* was rewritten in 1995 and issued to all locations throughout the NT in February 1996. A program of purchase and training has commenced, although it has stalled for a number of reasons, amongst them the concern that firearms cabinets, with a satisfactory degree of security, are not available in police stations. It is proposed that the policy outlining issue, carriage, storage and use of firearms by police officers will be addressed more completely in due course. Sections 27, 28, 154 and 155 of the *Northern Territory Criminal Code* are also helpful to policy issues, limiting the legitimate use of force by firearms to situations of reasonable self-defence. The provisions relating to the carriage of firearms generally in the Northern Territory and exemptions for police are contained in the *Firearms Act (NT) 1979* consolidated on the 20 September 1994.

### *Provisions relating to the safe carriage of firearms*

#### • *Generally*

Both personal and police issue firearms are frequently carried at the discretion of patrol officers in the Northern Territory. Police officers are required to have a 'C' Class Firearms (Pistols and Revolvers) licence if they own their own pistol or revolver and if the condition placed upon this licence is that it is used in a fashion "ancillary to their Police duties". No

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<sup>20</sup> Provided to the author by the jurisdictional representative.

new licences will now be issued to members who wish to purchase a C Class firearm as "ancillary to their Police duties". A working party has been established to decide Departmental policy regarding firearms currently held and used in this fashion.

All members are now issued with departmental 'C' Class firearms. The Department has a 'corporate' licence and the members are issued with an 'employee' licence.

Members currently carry their Departmental issue firearms on all shifts in a hip holster provided by the Department. If the member is placed personally on a Domestic Violence Order all Departmental firearms licences are revoked and the firearm/s are seized by the Department. On resignation from duty as a police officer, a member must dispose of his or her pistol/revolver within 14 days and cancel his/her Class 'C' permit. If such resignation takes place immediately or the member is dismissed or suspended from duty such disposal and cancellation must take place that same day.

- *In specialised locations*

Police may carry firearms on to parked aircraft with the consent of the aircraft operator for the purpose of resolving incidents or arresting persons alleged to have committed offences (Special Circular 3/94). The Northern Territory Police maintain a system of 'school-based' constables who teach some aspects of firearms law. Practical demonstrations of firearms use are not, however, carried out by these constables. Policy Document No 13 provides that school-based constables will not be armed and, if an occasion should arise where it is necessary to carry a firearm onto school property, it must be kept under security to the satisfaction of the School Principal who shall be notified of all such occurrences.

- *When not on duty*

It has not been permitted since February 1996 for members to take departmental firearms home. They are stored when not in use in a locked compartment provided for each member at their Police Station. This is supervised by each member's shift supervisor. Any member who has an old 'C' Class Firearms (Pistols and Revolvers) licence must use that pistol only in a fashion "ancillary to their Police duties", and may carry the firearm directly to and from duty and not otherwise outside of work. They must store the firearm in a secure manner at their home conforming with the *Firearms Act 1979*. Where members go on extended leave without pay or retire they must cancel any personal firearms licences on the first day of such leave/retirement.

*Provisions/limitations relating to the restrained use of firearms*

Members may not discharge a police firearm, or personally owned firearm, except in the execution of his/her duty. The instructions provide that:

"[t]he use of a firearm by a member is a matter of the utmost importance and demands an intimate knowledge of the law as well as the exercise of the greatest care and caution. The law jealously guards human life and will not sanction the taking of it except in cases of extreme necessity".

Furthermore,

"It must be stressed that the use of firearms by police in circumstances which are likely to kill or injure shall only be employed in extreme circumstances. The law in Australia does not recognise capital punishment and this is a clear recognition of the value placed upon human life within our society. Members are to study and become thoroughly conversant with the above provisions but additionally must recognise that each case must be considered on its individual merits. The use of firearms will not be

justified if, on the facts available at that time, alternative measures could and should properly have been taken. Police are not judge and jury and any action they take will be [the] subject of objective analysis after the event".

Section 28 of the *Northern Territory Criminal Code* provides that the use of force causing death or grievous bodily harm is to be used only as a last resort but is justified where such use is specifically for the purpose of:

- arresting a person whom the member reasonably believes unless arrested or kept in lawful custody may commit an offence punishable with imprisonment for life; and then only if
  - i) the person takes flight to avoid arrest or effect his/her escape or rescue, and
  - ii) the officer, if practicable, fires a warning shot and
  - iii) the officer, in any case, calls upon the person to surrender or desist and allows that person a reasonable opportunity to do so.
- the suppression of a riot, where the appropriate proclamation has been read or attempted to be read and it appears on reasonable grounds that persons not participating in the riot are in danger of death or grievous harm because of such riot or a property offence punishable by life imprisonment, (e.g. arson), and, if practicable, the police officer first calls upon the rioters to desist and allows them a reasonable time to do so; and *in any case*, the police officer first fires a warning shot.
- self defence or in defence of another, as recognised in the common law defence as codified in sections 27(g) and 28(f) of the *Northern Territory Criminal Code*.

#### *The reporting and investigation of firearms incidents and disciplinary action*

Whenever a firearm is discharged on duty the member must submit a report setting out the circumstances of such incident. A record of all such incidents is kept at the Registry, Berrimah Police Station. Where persons are injured or killed as the result of a firearms incident, the circumstances are investigated by the CIB and, in any event, must be investigated under the *Coroner's Act (NT)*, although no reference is made to that requirement in the policies themselves.

#### *Critical incident stress reduction processes (debriefing)*

No reference is made to CISD, although support is available from the Department clinical psychologist or the Northern Territory Employee Assistance Service.

#### *Training*

Police officers normally undergo safety and use training every six months, but the old policy does not mandate this. The new 1996 instructions mandate firearms training for all members who have been issued with the Departmental 'Glock' pistol, and this requirement is observed also by all operational members deployed in situations where it is likely that a firearm may be used .

#### *Summary*

The above description of the Northern Territory Police policy on firearms indicates that the policy accords partially with the recommendations of the aforesaid National Committee 'checklist'. It is confirmed that the policy provides regulations designed to ensure the safe carriage and storage of firearms, and enshrines the principle that resort to lethal force requires restraint, must be proportionate to legitimate objectives, in self-defence or the defence of another's life or safety. It specifically prohibits firearms carriage in schools. It makes a strong general statement on the sanctity of life. But it makes no provision in this document for independent investigations of shooting incidents nor for disciplinary action

where abusive use of firearms has occurred. The new 1996 instructions (mandating firearms training for all members who have been issued with the Departmental 'Glock' pistol) is significant. While the instruction does not mention CISD, a post-shooting stress debrief for trauma is conducted by trained psychologists. Unlike any other jurisdiction it permits use of the warning shot in some circumstances, and has what many might regard as an out-dated reference to the 'reading of the riot act'.

## **Queensland Police Service**

### *Brief historical review*

In 1973, following police industrial action (relating to occupational health and safety), police officers were permitted to decide for themselves whether to wear handguns while on duty. Police officers now have a choice whether to wear a firearm or not, unless instructed one way or the other by a Commissioned Officer. The Queensland Police Service Firearms Policy in relation to the carriage and deployment of firearms by police officers is contained variously in chapters of the *Operational Procedures Manual*, Commissioners' Circulars, General Instructions, and *The Weapons Act (Queensland) 1990*, which repealed the *Firearms and Offensive Weapons Act 1979 and Regulations (Queensland) 1980*. Police, while acting in the course of their duties, are exempt from the licensing provisions of the above legislation. The former policy which regulated the use of service issue firearms, the General Instructions entitled *Government Property Arms and Accoutrements* was, on 1 January 1995, replaced by the new procedures outlined in the Queensland Police Service *Operational Procedures Manual* sections 13.11.3 to 13.11.20 and 13.11.23.

In a new and major initiative, and with the assistance of the Victorian Project Beacon team, the Queensland Police service established Project Lighthouse in 1995 to identify, analyse and recommend appropriate action relative to potential issues of risk arising from Service operations involving:

- the use of non-lethal force and operational skills training
- response to high risk situations
- the use of lethal force and firearms training.

An Operational Skills and Equipment Committee was formed to ensure that these areas are appropriately dealt with. This includes making recommendations in relation to the acquisition of suitable accoutrements.

### *Provisions relating to the safe carriage of firearms*

#### • *Generally*

According to the Operations Procedures Manual concealable firearms are required to be worn by police officers when performing operational duties unless directed otherwise. Firearms normally will transfer with an officer if he or she moves from one duty to another.

#### • *In specialised locations*

Police officers are bound by the same airport regulations as their counterparts reported above. Police officers may carry firearms within the 'sterile' (post-screening) area of Brisbane airport after identifying themselves to airport screening staff. Unhindered access applies to uniformed staff. Wearing firearms in Government House is not permitted except for security purposes. Schools are not mentioned.

#### • *When not on duty*

Police officers are generally required to leave firearms in a safe at their duty station when not on duty. While on duty plain clothes police must carry their firearms in a concealed

holster. Uniformed police must carry the concealable firearm in a holster with the flap or strap secure.

*Provisions/limitations relating to the restrained use of firearms*

Even prior to the 1995 re-writing of the policy on firearms, the instruction began with a strong general statement against any cavalier use of police firearms, primarily protective of the Service, one might assume, in the event of legal action:

"The use of firearms by police demands an intimate knowledge of the law, and however well justified a member may consider himself in firing on a person, the act, with all its accompanying circumstances, whether the result be attended with loss of life or otherwise, may become the subject of legal investigation. A police officer resorting to the use of his firearm should therefore be well prepared to prove that he acted with becoming humanity, caution and prudence, that his use of the firearm was justified in law, and that he was compelled by necessity alone to take such action".

Specifically, a police officer may use a firearm in the following circumstances:

- to defend him/herself (in accordance with sections 31, 271, 272, 273 of the *Queensland Criminal Code*) or another person when acting in aid of another person against an assault where he/she believes that such assault will result in death or grievous bodily harm to either that police officer or other person unless a firearm is used against the assailant. To justify the use of a firearm in self defence the threatened danger must have been real and impending, not doubtful or remote, or
- to prevent the escape of a person attempting to avoid arrest where such person is reasonably suspected of having committed an offence punishable by life imprisonment but not in any case until that person has been called upon to surrender, or
- to prevent the escape or rescue of a person whom the officer has arrested, for a crime for which the offender may be arrested without warrant, where that officer believes on reasonable grounds that the use of firearms is necessary to prevent such escape or rescue.

The 'fleeing felon' rule has been specifically modified as follows:

A police officer shall, before firing on a person he/she intends arresting, be sure:

- he/she believes on reasonable grounds that such person has committed an offence punishable by life imprisonment and that such crime is one for which the offender may be arrested without warrant; and
- that such person has taken flight to avoid arrest; and
- that such person has been called upon to surrender; and
- that there are no other means at hand to effect the arrest and that, if not fired upon, the offender will make good his/her escape.

In the case of using a firearm to prevent the escape or rescue of a person a police officer must be sure that:

- he/she has arrested a person for an offence for which a person may be arrested without warrant; and
- an attempt is being made to escape or attempt a rescue; and
- a warning as to an intention to fire has been given if the escape or rescue attempt continues; and
- there are no other means at hand to effect the arrest and that, if not fired upon, he/she will make good his/her escape.

The instructions provide that a member of the police force shall not use a firearm;

- when he/she is better mounted or can outrun the offender;
- when assistance is likely to become available;
- if there are reasonable grounds to believe that an arrest can be effected without the use of firearms;
- at vehicles or upon persons involved solely in traffic offences;
- to prevent an escape or rescue in civil cases;
- in breach of the peace cases that do not involve danger to human life;
- for simple offences or misdemeanours.

Furthermore, a police officer shall not fire warning shots or use a firearm as a warning.

The instructions also ban the acquisition by police officers of private concealable firearms for police service and the use of such firearms for police service except on specific written permission of the Commissioner of Police. A breach of these instructions can constitute a breach of discipline and a criminal offence if force is used contrary to the Queensland *Criminal Code*.

*The reporting and investigation of firearms incidents and disciplinary action*

A police officer who discharges his firearm for any purpose whilst on duty must furnish a report called 'Discharge of Firearm Report' in triplicate to his immediate superior officer who will forward it on to the District Officer. The District Officer will cause the circumstances of the discharge of the firearm to be fully investigated to determine whether such discharge was justified. He or she will then provide a written report to the Deputy Commissioner. Under the current Queensland law, but not mentioned in these instructions, the Criminal Justice Commission is to be informed of all incidents where death or injury has resulted involving Queensland police.

*Critical incident stress reduction processes (debriefing)*

Prior to 1995 this issue was not covered in the firearms instructions. CISD is now compulsory. Section 13.11.6 of the Operational Procedures Manual outlines the responsibilities of the service and cross-references the Critical Incident Stress Debriefing Operational and Training Guide. Service policy requires that the senior officer at the scene of a serious incident involving an officer is responsible for initiating CISD.

*Training*

Officers must receive firearms retraining every six months. New recruits receive training in mediation, human relations and conflict resolution skills as well. Currently all situational management issues are being reviewed as part of Project Lighthouse and it is anticipated that a comprehensive training package will be in place by June 1996. This will include training and instruction in the use of a variety of weapons including Oleoresin Capsicum spray, expandable batons and other forms of unarmed combat. Officers and recruits will also receive training in situational containment, communications, tactics and tactical withdrawal as part of the Project Lighthouse training 'package'.

*Summary*

The above description of the Queensland Police Service instructions indicates that the policy accords well with many of the recommendations of the aforesaid National Committee 'checklist'. The Manual provides regulations designed to ensure the safe carriage and storage of firearms, and enshrines the principle that resort to lethal force requires restraint, must be proportionate to legitimate objectives, in self-defence or the

defence of another's life or safety. There is no mandatory provision for independent investigations of shooting incidents, however, nor for disciplinary action where abusive use of firearms has occurred. The role of the Criminal Justice Commission (CJC) in such matters is unclear from these documents. There is specific provision in this document, however, for post-shooting stress reduction for officers involved in the trauma. The instruction makes provision for retraining in firearms use and the period, every six months, is appropriately rigorous. No reference is made to non-lethal weapons training although the Manual does specify the use to which batons may be put.

## **South Australia Police**

### *Brief historical review*

The right of police in South Australia to bear arms is found in the *Police Regulation Act (SA) 1952 s 22(9)* and the Regulations made thereunder. However, the general rules relating to firearms carriage changed fundamentally in the late 70s.

On 17 October 1979 the Chief Secretary the Hon W.A Rodda made the following statement in accompanying an announcement of a change of policy allowing widespread carriage of firearms by police (upon the advice of the then Police Commissioner Mr Giles but with the acquiescence of the Liberal government) <sup>21</sup>:

"The principal concern about police hand guns is to provide effective weapons for patrol officers operating throughout the twenty four hours in the metropolitan area. These officers will be fitted out first, and it is not expected, or intended, that every policeman throughout the State will suddenly appear wearing an exposed holster and handgun. The need to wear such equipment obviously depends on duties involved, and credit should be given to the discretion of the Police Commissioner to direct that officers wear an exposed hand gun only when and where it is considered absolutely essential."

Instructions with respect to the issue and carriage of firearms are now contained in General Order 3375. The penultimate update of the policy was April 1992 and most recently in September 1995. It used to be the case that firearms were not to be carried in 'sensitive' areas (such as shopping malls, processions, demonstrations, schools and sports fields), but the distinction between 'sensitive' and 'non-sensitive' areas has largely been lost. Indeed, the process of expanding the situations where firearm carriage is appropriate has been more by accretion than by systematic planning followed by careful appraisal. Thus the picture of police and firearms carriage in the 1990s is quite different from the late 1970s, with the changes being accompanied by little fanfare and even less public debate.

### *Provisions relating to the safe carriage of firearms*

#### • *Generally*

Order 3375, section 1.2 requires that police officers shall be armed at all times except when performing duty in courts, psychiatric institutions, correctional centres or while on study leave away from police premises. The Order provides that a forward commander, in consultation with the members involved and the Occupational Health and Safety Representative, may order firearms not to be worn "if safety of members of the public may be in jeopardy by the wearing of firearms". Generally, patrols receive an issue at the commencement of each shift, although it is possible, with the permission of the

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<sup>21</sup> Refer to Appendix A for a more complete story of the South Australian parliamentary experience.

Commissioner, for an officer to be given a personal issue. Personal issue firearms will only be issued to members of the Traffic Services Division, Aircraft Services, CIB members and other specialist units with the approval of the Commissioner. When transfer occurs from one Division to another, except CIB members, the personal issue firearm must be returned. The carriage of a 'private' firearm is prohibited except with the express permission of the Commissioner. The use of personally owned ammunition is prohibited. Shotguns will only be issued to members who are specifically trained in their use and who are members of specialist units, when selected personnel are in operations that require additional firepower or are stationed in remote areas.

• *In specialised locations*

Order 1.2 refers to restrictions on wearing firearms in courts, psychiatric institutions, correctional centres or while on study leave. Order 21 reminds officers of the requirement of the Australian Federation of Airline Pilots that approval is not given to anyone to carry a firearm aboard a commercial airline. There are no other specific prohibitions.

• *When not on duty*

A personal issue firearm must be secured by the officer in charge of a station, divisional or sub-divisional officer prior to any police officer going on recreation leave, long service leave, workers compensation leave or extended sick leave. Firearms issued to a station must be securely stored in accordance with the direction of a divisional or sub-divisional officer if the station is to be left vacant for an extended period.

*Provisions/limitations relating to the restrained use of firearms*

Order 1.1 states that police officers are issued with firearms for the purpose of:

- the effective protection of human life;
- placing them on an equal footing with criminals who are likely to resort to the use of weapons; and
- for the lawful destruction of animals and birds.

The general principles are contained in a brief statement under the heading *Limitations* namely,

"Members will not use firearms at any time as a threat (which includes the firing of warning shots) except in accord with subparagraph 2.1 [viz] when the member believes on reasonable grounds such use is necessary to protect life or prevent serious injury and only then when satisfied no other means are available. Whenever a firearm is used the member concerned shall exercise every practicable precaution to minimise risk to innocent persons." (Order 3).

Therefore a police officer may only use firearms

- where there are reasonable grounds<sup>22</sup> for believing such use is necessary to protect life or prevent serious injury and only then when no other means of doing so are available; or
- for the lawful destruction of animals and birds. Members cannot resort to the use of firearms to fend off attack by dog or other animal unless they have first considered the use of the baton<sup>23</sup>.

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<sup>22</sup> The *Criminal Law Consolidation (Self-defence) Amendment Act (SA) 1991* reflects the principle that a successful plea of self-defence still requires proof that lethal force was necessary in all of the circumstances.

<sup>23</sup> Refer Government Gazette 28 February 1996, p 33 General Duties Manual Amendment

*The reporting and investigation of firearms incidents and disciplinary action*

Part 4 of the Order requires that all discharges of firearms by police whilst on duty (except necessary animal or bird destruction or weapons training) be reported to the member's officer in charge who shall advise the Internal Investigation Branch which shall retain a record of all such "firearms incidents". Where a person is killed or injured as the result of a firearms incident involving police the investigation of the incident is overseen by the Internal Investigations Branch. If a person is killed in such an incident, primary responsibility for the investigation rests with the Major Crime Squad. Misuse of a firearm may result in a matter being referred to the Disciplinary Review Officer for consideration and action.

*Critical incident stress reduction processes (debriefing)*

This issue is not covered in these instructions, although those members who are affected can receive CISD from the Department under General Order 2780 "Staff Support Services". The Psychology Branch has, as one of its functions, to conduct post-trauma debriefings and follow-up counselling "for police employees exposed to life-threatening/macabre situations or other traumatic incidents". The Police Commissioner's Office Circular No 472 covering post trauma intervention was revised in August 1995 and explains the policies and procedures.

*Training*

Officers must receive firearms retraining every six months (Order 23), including safe handling, firing and maintenance. An Advisory Committee on the Use of Firearms (PCO 47/1/403303) is constituted to meet twice yearly. The Firearms Practice Review Committee reviews training procedures with the Firearms Practice Schedule first implemented in 1988.

*Summary*

The above description of the South Australia Police instructions indicates that the policy accords only partially with the recommendations of the aforesaid National Committee 'checklist'. It confirms that the instructions provide regulations designed to ensure the safe carriage and storage of firearms, and enshrine the principle that resort to lethal force requires restraint, must be proportionate to legitimate objectives, in self-defence or the defence of another's life or safety. Yet the policy is equivocal on the subject of places such as schools, shopping malls, sporting events, Parliament House and other 'sensitive' areas where deployment of firearms, one might allege, need not necessarily ensure the safety of the public. There is no provision in this document for independent investigations of shooting incidents nor for disciplinary action where abusive use of firearms has occurred. It makes no provision in this document for post-shooting stress reduction for officers involved in shooting trauma, although related policies and circulars cover the work of the Psychology Section well. While detailed instructions on safety, maintenance and use of the various firearms are included in the Firearms Issue, and six monthly training in firearms use is mandated, the document makes no reference to a systematic approach to 'holistic' training, including non-lethal weapons training.

## **Tasmania Police**

*Brief historical review*

The *Tasmania Police Standing Orders* setting out the basics of the Tasmania Police policy on the care, carriage and use of firearms by police were rewritten and issued in 1982. The previous edition had been issued in 1975. In 1992 (Police Gazette Notice No. 72 of 1992)

a new instruction (*Tasmania Police Standing Orders and Reference Manuals*, in particular, Standing Order Section 2 - *General Procedure Manual*, Sections 148 and 149) was promulgated providing guidelines for the personal ownership and use of a handgun or pistol for use by police officers while on duty. This change reflected a wider policy shift brought about by gun laws legislation in Tasmania in that year. The *Firearms Act (Tas) 1932* and Regulations previously applied in order to exempt police in that State from compliance with the law section 3(1)(a) while executing their duty. That is now covered by the *Guns Act (Tas) 1991* and *Guns Regulations 1992* which became law on 1 January 1993. The choice of firearm for police officers was from 1993 restricted to a Smith and Wesson Model 10.38 calibre revolver or a German Glock 19s or 17s 9mm pistol.

*Provisions relating to the safe carriage of firearms*

• *Generally*

The instructions provide that police are armed to enable them to overcome opposition to lawful arrests and to protect themselves against armed interference in the execution of their duty (SO 2.2), provided that any use of such firearm must be proportionate to the circumstances surrounding such use, is not excessive and is in accordance with the law and Tasmania Police Orders. Firearms may be issued (SO 2.14) to an officer upon recommendation of the Divisional Inspector and approval by the District Superintendent or issued at the commencement of a shift (2.14(8)). An application to be issued with a firearm must be accompanied by details of training received, practice attended, present proficiency level and knowledge of the Standing Orders.

Section 2.18 of the Standing Orders provides that members shall not carry private firearms on duty except with the authorisation of the Commissioner or if 'special circumstances exist for so doing'. SO 2.3 provides that a police officer shall at all times be responsible for the safe custody of a firearm issued to him/her, not leave service issue firearms in an unoccupied vehicle or residence and arrange safe custody of service issue firearms with his/her divisional inspector during leave or other time when he/she is unable to take adequate precautions to safeguard such firearm<sup>24</sup>.

• *In specialised locations*

The restrictions applicable to commercial aircraft described above do not apply to police officers wishing to carry firearms on departmental aircraft provided the aircraft captain is first advised of the need/wish to carry such firearm.

• *When not on duty*

Police officers are permitted by standing orders to take personal issue or personally owned firearms home provided they are securely stored. However the *Guns Act (Tas) 1991* only exempts from its operation a police officer who is 'acting in the execution' of his or her duties.

*Provisions/limitations relating to the restrained use of firearms*

Standing Order 2.10(4) sets out, in terms almost identical to the Queensland guidelines, that

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<sup>24</sup> Indeed Tasmanian legislation (*Guns Act (Tas) 1991*) from 1 January 1993 mandates that any person seeking a new firearm licence must undertake a firearms safety awareness course before the licence is issued. The inadequacy of these laws to ensure the safety of the public has been the centre of attention following the horrific massacre of 35 people by a lone gunman with a semi-automatic assault rifle at Port Arthur (fn 12). On 10 May 1996 the Police Ministers agreed a package of reforms that included national licensing and registration of firearms, and a ban on military style rifles.

"[H]owever well justified a member may consider himself in firing, the act, with all its accompanying circumstances, whether the result be attended by loss of life or otherwise, must become the subject of a legal investigation. He should, therefore, be well prepared to prove that he acted with becoming humanity, caution and prudence and was compelled by necessity alone to use a firearm".

Standing Order 2.10 provides that a firearm may only be used where a police officer is:

- attacked by some person in possession of a dangerous weapon where his/her life is in immediate danger; or
- acting in defence of some other person who is being attacked by some person in possession of a dangerous weapon where such victim's life is in immediate danger; or
- attempting to arrest a person reasonably suspected of having committed a serious crime (as set out in Appendix B to the *Tasmanian Criminal Code*), where such person takes flight to avoid arrest and has been called upon to surrender prior to the use of such firearm and then only when the lives of innocent persons are not thereby endangered.

The Standing Orders further provide that police officers shall not risk taking life

- where a police officer is better equipped for pursuit or arrest than the offender/suspect; or
- where assistance can be obtained to effect the arrest; or
- where there are reasonable grounds for suspecting that arrest can be effected without use of a firearm

Standing Order 149.1 provides that where a police officer intends to use a firearm he/she shall:

- identify him/herself as a police officer;
- give clear warning of the intention to use a firearm;
- ensure that adequate time is given to allow the offender/suspect to comply with police instructions (unless it is unsafe to do so); and
- not fire warning shots.

Standing Order 149.1(3) provides that police using lethal force will:

- exercise restraint and use force only in proportion to the seriousness of the offence;
- minimise damage and injury and respect and preserve human life;
- ensure assistance and medical aid are rendered to any injured or affected persons;
- ensure a relative or close friend of the injured person is notified at the earliest possible opportunity; and
- report the use of lethal force as required.

*The reporting and investigation of firearms incidents and disciplinary action*

SO 2.10(6) provides that where a police officer has cause to discharge a firearm whilst on duty, he/she shall submit a report for the District Superintendent. Where a person is killed or injured as the result of police action, an investigation under the control of the Commissioner of Police shall be instigated (refer generally SO 148.1 to 148.6 "Post Shooting Procedures - General Policy and Implementation"). The actual investigation is carried out by the Officer in Charge: Internal Investigations Unit who may call upon one or more branches and/or superintendents of the Tasmania Police for assistance (SO 148.3-5). The officers in the Internal Investigations Unit are independent of those involved in the incident and are overseen by the State Ombudsman's office. The identity of any officer involved in such an incident shall be suppressed unless there is a contrary direction from

the Deputy Commissioner or a legally constituted Court (SO 148.6) <sup>25</sup>. If abusive use of firearms has occurred an offence exists under the Police Regulations 1974 <sup>26</sup> or under the Tasmanian Criminal Code as an assault.

*Critical incident stress reduction processes (debriefing)*

Post shooting stress reduction is not covered in the Standing Orders although the practice is to require mandatory CISD where a member of the force has been exposed to a lethal or critical incident.

*Training*

Firearms training is conducted at least twice a year in accordance with the Range Instructions under the services of the Range Officer. The issue of non-lethal weapons training is absent from the policy.

*Summary*

The above description of the Tasmania Police Firearms Policy indicates that the policy accords with many of the recommendations of the aforesaid National Committee 'checklist'. A review of the policies confirms that the Standing Orders provide regulations designed to ensure the safe carriage and storage of firearms, and enshrine the principle that resort to lethal force requires restraint, must be proportionate to legitimate objectives, and must be made when strictly unavoidable in order to protect life. While there is provision in the document for six monthly training in firearms use, the document is silent on the independent investigations of shooting incidents, disciplinary action where abusive use of firearms has occurred, and for post-shooting stress reduction for officers involved in trauma.

## **Victoria Police**

*Brief historical review*

The *Firearms Act (Vic) 1958*, exempted police from compliance with licensing and registration. Generally speaking, however, officially issued firearms were only worn when it was thought that a situation was potentially dangerous and an exemption was granted in these terms alone. In 1984 that exemption was amended to exempt the police whenever they possessed or carried a firearm and when authorised by the Chief Commissioner (refer *Firearms General Amendment Act (Vic) 1984* sec 15 <sup>27</sup>). The specific history of Victoria is outlined in Appendix B.

A consolidation of Victoria Police firearms policy occurred on 10 December 1992. On 1 March 1993, previous Force Circular Memoranda and Standing Orders were cancelled and replaced by a new policy. This policy, operational from the 23 November 1993, required that all operational police must be armed unless otherwise directed. So all detectives carried handguns while on duty. All uniformed personnel carried handguns while on patrol. Members were not, however, permitted to carry firearms unless they had qualified with appropriate training within the preceding six months.

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<sup>25</sup> By Police Gazette No. 164/1994 (3 October 1994), procedures were mandated by the Commissioner to prevent the possible cross-contamination of witnesses' evidence. There is, moreover, a further policy requiring independent investigation of deaths in custody, Tasmania Police Policy No. 6/94.

<sup>26</sup> No 274, (d) (xii)

<sup>27</sup> Fine 1985, p 83; Swanton 1985

Following a number of police shootings of civilians, senior management of Victoria Police and the Minister for Police and Emergency Services reacted to the public debate generated on the subject of police and firearms in 1994 by establishing a number of shooting-related studies. Those studies (of which Task Force Victor was one) were commissioned in addition to a long running coronial inquiry conducted by the State Coroner which submitted its first Report on 14 June 1994 (Victoria 1994). On 21 October 1994 the Report of Task Force Victor written by Bruce Swanton was published. From November 25 1994, a new policy came into force. Essentially, the carriage of firearms is now based upon an assessment of the needs and the duties to be performed, namely where there is a likelihood that their primary duties "may bring them into contact with an armed person". In these circumstances (when determined necessary by the station or unit commander and section supervisor) firearms must be carried. If a person is not in that situation, one cannot be armed without approval of an officer. This would include situations like demonstrations, industrial disputes, sporting events and other public entertainment events, public lectures, public meetings and ceremonial occasions.

On December 1 1994, a new Task Force was appointed by the Police Minister to monitor the response of Victoria Police to the various inquiries into police shootings in Victoria. The firearms policies of the Victoria Police are therefore currently under review by the 'Project Beacon' Team and it is anticipated that this review will continue until July 1996. Chapter 1 of the Operating Procedures Manual governs the firearms policy, modified by the Force Circular Memo Number 94-11 dated 16 December 1994 which was developed after the establishment of Project Beacon. It has been amended once by Force Circular Memo 95-2, dated 1 March 1995. It should be noted that the Project Beacon team has been employed to consult with other jurisdictions to advise on their policies also, including Queensland Police Service (Project Lighthouse referred to *supra*) and the Northern Territory, as part of a broader balanced and integrated incident management/conflict resolution/responsible use of force training program favoured by the National Police Research Unit. Informally the Tasmania Police have adopted the Beacon approach and Western Australia Police are looking at it also.

*Provisions relating to the safe carriage of firearms*

• *Generally*

Since the findings and recommendations of Task Force Victor and Project Beacon, and since November 1 1994, firearms are now only carried by members of the Victoria Police whose primary duties may bring them into contact with an armed person. It is the responsibility of Station or Unit Commanders and Section Supervisors to determine whether the duties to be performed by members satisfy this requirement. All police performing such duties must be armed. Members performing other duties must not be armed except with the approval of an officer which may be given for specific occasions only, and not as a general approval. Unarmed police officers are not expected to respond to any incident in a way which may bring them into contact with an armed person. Members of the Victoria Police performing duty in 'plain clothes' must display their certificate of identification when carrying exposed firearms in public. Members are not permitted to carry privately owned firearms or ammunition of any type while on duty, except when authorised by an officer. Members are not permitted to store privately owned firearms at a station without the authorisation of an officer.

There are times when 'non standard' firearms are required by members in the course of their duties. Members seeking to carry, or use, such weapons must forward a report through their Assistant Commissioner to the Officer in Charge, Operational Safety Tactics Training

Unit (formerly the Firearms Operational Survival Training (FOST) Unit), who will make recommendations for final decision by a Deputy Commissioner. Approval may be provided for an ongoing investigation or a single event. In urgent cases approval may be granted on the telephone, but this verbal request must be followed by a report. Approval will not be given unless the member is trained and qualified in all aspects of the use of the particular weapon and the Deputy Commissioner is satisfied as to the suitability of the weapon for the task.

• *In specialised locations*

Where attending demonstrations, industrial disputes, sporting events and other public entertainment events, and because of the inherent danger of firearm carriage to all parties concerned, firearms are not to be carried by members without the approval of an officer. Firearms should not be worn when a member is attending public meetings, giving public lectures or on ceremonial occasions. A member travelling to another State either in the course of an investigation or to escort a prisoner must not carry firearms unless:

- special circumstances require that the member be armed; or
- the member has been appointed as a Special Constable in the other State.

Where it is necessary for a member of the Force to carry any firearm whilst travelling by air, the member must on arrival at the airport provide identification to the airline operator and make arrangements for the safe carriage of the firearm. When carrying a firearm in an aircraft operated by the Victoria Police Air Wing, the member is to declare and 'prove' the firearm to the pilot in command. It will then be carried in accordance with the Police Air Wing Operations Manual as approved by the Department of Aviation. When escorting a prisoner, members should not be armed unless there is a security risk. Furthermore, the Office of Corrections and Department of Health and Community Services will not permit members who are armed to enter a prison or youth training establishment. The member must hand any firearm to the officer on duty at the entrance gate where the firearm will be held for safe keeping and returned to the member when leaving. Likewise, firearms must not be carried when attending court to give evidence or to perform duty as a court orderly. Where a member believes that additional security arrangements are required, the instructions relating to a 'secure court' should be considered. The coordinating Magistrate must be informed if firearms may be carried in court. There are no other specific prohibitions on carriage in certain localities.

• *When not on duty*

A member seeking authority to carry or possess a force firearm off duty for self protection or protection of the member's family must apply to a Deputy Commissioner for approval. An officer may authorise members to carry or possess Force firearms off duty if the member either is:

- to conduct a specific operation.
- on 'call'.
- on 'availability'.

The officer must be satisfied that suitable security can be provided for the firearm. The officer may impose conditions as he or she sees appropriate.

*Provisions/limitations relating to the restrained use of firearms*

Members are issued with firearms:

- to enable police to protect themselves and the public.
- for the lawful destruction of animals.

A member may only discharge a firearm when he or she reasonably believes it is necessary to protect life or prevent serious injury. Warning shots should not be fired. A member issued with a firearm must not draw the firearm unless extreme danger is anticipated. Force Circular Memorandum 92-2-19 stated this restraint policy unequivocally well before the events of 1994 and the recommendations of Task Force Victor.

*The reporting and investigation of firearms incidents and disciplinary action*

Section 1.2.2 of the Operating Procedures manual requires that all incidents involving firearms must be reported to the Operational Safety Tactics Training Unit. The Internal Investigations Department must be notified where shots are fired by police at another person or at police or where shots have been fired by police in circumstances which may draw criticism. Where any person has been shot by police, a Superintendent of Chief Superintendent, Internal Investigations Department will attend and oversee the investigation of the incident.

*Critical incident stress reduction processes (debriefing)*

The availability or desirability of CISD is not addressed in this document although the Police Personnel Management Manual (Chapter 7) requires mandatory psychological debriefing in such circumstances.

*Training*

Firearms will not be issued to or carried by any member of the force unless that person has qualified in operational safety and tactics training within the preceding six months. This includes not only the five day Operational Safety and Tactics Training (OSTT) course, described later, but a two day refresher in-service course each six months. The first round of the refresher courses commenced in July 1995 and the second in January 1996

*Summary*

The above description of the Victoria Police policy on firearms carriage indicates that the policy accords well with the recommendations of the aforesaid National Committee 'checklist' and confirms that the *Operating Procedures Manual* provides regulations designed to ensure the safe carriage and storage of firearms, and enshrines the principle that resort to lethal force requires restraint, must be proportionate to legitimate objectives, in self-defence or the defence of another's life or safety. It makes special provision for six-monthly refresher training in firearms use following an intensive OSTT training course. While it makes no provision in this document for independent investigations of shooting incidents, nor for disciplinary action where abusive use of firearms has occurred, it does have these matters under review. Furthermore Project Beacon has established a unique Use of Force Register and Critical Incidents Data Base <sup>28</sup> which allows for the monitoring and analysis of the numbers and types of all incidents involving potentially life-threatening violence or a threat of violence (Victoria Police 1996, p 11). It is certainly very cautious about the areas and circumstances of deployment of firearms and contains an admirably clear statement of the delineation about where and when firearm carriage is appropriate and inappropriate. Its balanced approach integrating conflict resolution training, skills, defensive tactics and operational and tactical safety training is exemplary.

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<sup>28</sup> Operational on September 17 1995. In the earliest reports, it was revealed that 6% of subjects had a known psychiatric history while a further 36% apparently suffered some form of mental and/or emotional disorder (Victoria Police 1996, p 13).

## Western Australia Police

### *Brief historical review*

The law that governs the licensing of firearms in Western Australia is found in the *Firearms Act (WA) 1973* and regulations. The exemption for the police is contained in sec 8(1)(d). Previous to 1990, the licensing of firearms and use by police was covered by Routine Orders 5/88 in force from March 2 1988. Indeed, reference to the Western Australian Police Gazette on the 29 June 1966 (Number 26) indicates that firearms were a part of the officer's armoury at that time. It was implicit in that Routine Order that police officers were permitted to carry firearms in the execution of their duty under certain circumstances. There was a specific prohibition of firearms being worn in any area or at any event where there is no need for firearms. Examples of this were sporting functions, demonstrations, industrial disputes, crowd control during parades and processions and visits to schools or hospitals. The latest policy was promulgated from 27 October 1990. It was due for its first review on 27 December 1995. Interestingly, industrial disputes and visits to schools and hospitals appear to have been omitted from the list of specific prohibitions above.

### *Provisions relating to the safe carriage of firearms*

#### • *Generally*

Police officers in Western Australia are not normally issued with personal issue firearms except on night patrol. Specifically, the instructions provide that police officers tasked to perform duties at sporting events, demonstrations or other crowd control situations should not be issued with firearms. In that event, and where the call to these events is at short notice, firearms and holsters should be collected and conveyed to a suitable station for security. Police officers and members in charge of police stations are responsible for the security of firearms in their possession. Members authorised to take firearms home must ensure the security of the storage of such firearms. Members on duty must not use private firearms in the course of their duty except where circumstances demand immediate action and departmental firearms are not readily available. Uniformed officers must carry firearms in an approved holster. Plain-clothes police should, wherever possible, conceal their pistol. Handguns must not be left unattended in vehicles.

#### • *In specialised locations*

Police officers wishing to carry firearms on departmental aircraft may do so provided the aircraft captain is first advised of the need/wish to carry such firearm. If it is necessary to transport a firearm on an aircraft, it must be carried in a security bag in the luggage compartment. Under no circumstances shall a member carry a firearm on an aircraft whilst conducting an escort.

#### • *When not on duty*

Members may not take police issue firearms home or keep such a weapon at a private residence without written authorisation of the member's Officer in Charge. Members authorised to take firearms home must ensure the security of the storage of such firearms. Members going on leave for longer than one week or sick leave longer than five days must hand personal issue firearms to their supervisor for safe storage.

### *Provisions/limitations relating to the restrained use of firearms*

The Policy and Procedure Statement document under the title *Caution* advises police officers, in words not dissimilar to those used in Queensland, as follows:

that "[t]he use of firearms by police demands an intimate knowledge of the law, and however well justified a member may consider he/she is in firing on a person, the act with its accompanying circumstances, will become the subject of an investigation. A police officer resorting to the use of a firearm should therefore be well prepared to show that he/she acted with caution and prudence, that his/her use of the firearm was justified in law and that he/she was compelled by necessity alone to take such action. Supervisors and managers in operational areas must monitor the attitude and actions of officers under their control to ensure such officers are fully conversant with and comply with the ... orders relating to the carriage and use of firearms".

Police may discharge a firearm only:

- for the lawful destruction of injured animals;
- during controlled training programs; or
- in circumstances where a member is legally justified in doing so.

The *Western Australian Criminal Code* specifies the circumstances in which it may be appropriate to use a firearm. For example, in

- preventing escape or rescue either from arrest or prison;
- suppressing a riot;
- self-defence (including aiding another).

A firearm may not be used for the purpose of stopping a motor vehicle unless the use of such firearm is justified by law.

#### *The reporting and investigation of firearms incidents and disciplinary action*

All incidents involving the discharge of firearms (except the destruction of animals or controlled weapons training) must be reported to a member's officer in charge or the Communications Branch Duty Officer who will advise the Internal Investigation Branch which will maintain a record of all such incidents. Investigation of incidents involving the use of firearms is carried out by the Internal Investigation Branch.

#### *Critical incident stress reduction processes (debriefing)*

Post-shooting stress reduction is not covered in this instruction.

#### *Training*

Firearms training is conducted for Commissioned Officers in charge of operational units, and all non-commissioned officers and constables must receive training and re-qualify every twelve months unless they are part of an operation that receives their own specialist training. An officer failing to attend when rostered may be subjected to disciplinary action.

#### *Summary*

The above description of the Western Australia Police Firearms Policy indicates that the policy accords only partially with the recommendations of the aforesaid National Committee 'checklist'. It confirms that the procedures enshrine the principle that resort to lethal force requires restraint, must be proportionate to legitimate objectives, and must be made when strictly unavoidable in order to protect life. But there is no provision in this document for independent investigations of shooting incidents, nor for disciplinary action where abusive use of firearms has occurred, nor for post-shooting stress reduction for officers involved in the trauma. Its provision for training in firearms mandates it at twelve monthly intervals only.

## Conclusions

The above information and description indicates that, notwithstanding the provisions of recommendation 85.1 of the National Committee on Violence Report in 1990, the position concerning the carriage and use of firearms within Australian police jurisdictions is not at all uniform. On just about every issue referred to there are differences from jurisdiction to jurisdiction. There is no uniform policy on the requirement that police officers be armed. In some cases, it is mandated while in others it is discretionary. There is a presumption of arming in NSW while there is a presumption that police not be armed in Victoria unless primary duties may bring officers into contact with an armed person. Some jurisdictions permit officers to have private firearms or to keep these weapons at home while off duty. Others do not. Some permit *carte blanche* carriage while others restrict carriage in sensitive areas such as schools, sporting arenas and parades. Some insist that safes be provided for weapons storage. Others do not.

There are often different statements of purpose for the carriage and use of firearms and indeed these purposes are only stated explicitly and clearly in a 'theme' statement in three jurisdictions. The Northern Territory Police policy is exemplary in this regard. The investigation of firearms incidents is conducted by different investigators and teams in each jurisdiction and is rarely required to be independent of the police. The requirements of coronial inquiries and access to an Ombudsman's office vary from jurisdiction to jurisdiction. The Northern Territory Police policy permits warning shots, while the other jurisdictions forbid them. NSW prohibits shooting to wound. Others do not make such a specific prohibition. The 'fleeing felon' rule has been abolished or modified in some jurisdictions while remaining untouched in others.

Some police officers are required to undergo only annual training (or biennial training in the AFP) while others must receive practice in the safe handling, firing and maintenance of firearms at least once every six months, for example under the rigorous OSTT (Victorian) approach. A National Police Research Unit (NPRU) review in September 1991 indicated widely divergent views on the efficacy of training <sup>29</sup>.

The recommendation of the National Committee on Violence for a nationally agreed set of guidelines in 'high risk' situations (86.4) appears to have been ignored entirely, if one were to rely upon the standard firearm operational instructions of each jurisdiction. While the Australasian Police Ministers' Council (APMC) on 20 November 1992 resolved to endorse guidelines developed by the NPRU on the deployment of police in 'high risk' situations (National Police Research Unit 1992), these guidelines are not featured in policy form nor are they generally available outside of the departments (Implementation Reports 1994, p 265).

All policies are silent on police discipline issues regarding firearm abuse, preferring to leave this matter, one must assume, to other policies. The documents are largely silent on CISD and training in non-lethal alternatives. Cross-referencing to other policies is only

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<sup>29</sup> The 1991 NPRU report was never a public document and has been superseded in any event by the work of the NPRU since 1992 in establishing an Australia-wide research focus on the minimum requirements (competency-based) of firearms training, the use of less than lethal weapons, conflict resolution, critical incident management and the operational aspects of high risk situations. The support of the work of Project Beacon in Victoria is acknowledged and supported by the NPRU.

sometimes available and not at all systematic. There is little commitment to review of policy. There is no commitment expressed anywhere to public comment and consultation.

The inevitable conclusion is that, although jurisdictions are represented at APMC and PCPAG, and although the NPRU is a national body making recommendations on matters regarding firearms deployment and firearms training nationally (eg. National Police Research Unit 1991 Report 1 pp 2-7), uniformity of approach is a myth. It would appear, therefore, that the firearm policy of each jurisdiction or police force or service has come about without any regard to the desirability of a uniform policy<sup>30</sup>. Policy instructions and procedures, their form and substance, appear to have been drafted largely in isolation from other policies<sup>31</sup>.

If the local conditions are so specific that individualisation of policy creates a better environment for policing specific communities, then this may not be such a limitation. There is, however, little evidence that that factor played a major, or any, part in these considerations (Sarre 1994a, p 50). A lack of consultation may lead to confusion, the potential for injustice and increased costs. The *ad hoc* approach to the creation of police firearms policies in this nation has left many jurisdictions 'reinventing the wheel'.

To be welcomed is any effort towards the codification and consolidation of the rules, towards a *Uniform Code of Conduct* relating to firearm carriage and deployment, through the work of the National Police Research Unit, similar to its commitment on a national accreditation scheme for firearms training. This would have the effect of assisting in the important task, as sought by the National Committee on Violence, of keeping the ethical issues associated with the use of force and firearms "continuously under review", something which must happen if governments and the police are to keep their police services - and the public in general - safer than they currently are (Australian National Committee 1990, recommendation 86.3; Implementation Reports 1994, p 263). This information would also assist those researchers who are keeping under careful scrutiny, if not challenging, the commonly held assumption that more effective policing and safer patrolling occurs when there is a firearm readily available to the police, and the greater the firepower, the better the effectiveness.

As the New South Wales Police Service moves rapidly towards the introduction in 1997 of semi-automatic weapons, and as Victoria, Queensland, Tasmania and the Northern Territory move to implement the Project Beacon-style reforms, one can truly say that these are interesting times indeed.

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<sup>30</sup> It should be noted, of course, that this lack of uniformity is not limited to the police use, carriage and deployment of firearms. There are also grave disparities between the various firearms policies within each jurisdiction regarding public access to firearms. In July of 1994 the Director of the Ministerial Council on the Administration of Justice, Australasian Police Ministers' Council, C.J Whyte, circulated to the Commissioners of each Force and Service around Australia the results of a Firearms Information Questionnaire. As at January 1994 there were, Whyte explained, widely divergent views on issues such as licensing, registration, recording sales, police reference systems, categories of firearms, military style semi-automatics, self loading centre-fire rifles and ammunition sales magazines and security generally. The existence of this Questionnaire should be noted by any researcher looking at uniform gun policy around Australia and the difficulties associated with any attempt at legislating for uniformity. The lack of data and information, and the fact that this issue is constitutionally outside of the federal law-making sphere, makes this area of policy development a difficult one. Police Ministers meeting in May 1996 in the wake of the Port Arthur tragedy will again be confronted with differing jurisdictional viewpoints.

<sup>31</sup> There is an exception, emerging in the last 12 months. The policies of Victoria, Queensland and the Northern Territory have been influenced by the same team of policy advisers from Project Beacon, and a significant degree of uniformity has resulted from this cooperation.

## Appendix A

### Changing the law: the South Australian parliamentary experience

The South Australian experience concerning modifications to firearm carriage practices by patrol officers in that State provides a useful case study in the politics of change. The matter of firearms carriage emerged as a political issue in the South Australian parliament shortly after the Liberal Government of Dr David Tonkin came to power in September 1979. Commissioner Draper, newly appointed, changed the firearm policy, allowing exposed firearms to be habitually worn by officers on patrol.

The first record of concern regarding this shift in policy is found in October 1979 in speeches in the Legislative Council (the upper house) by the Hon Chris Sumner MLC and in the House of Assembly (the lower house) by the Hon Anne Levy. Both alerted the Parliament to the Commissioner's decision, which decision appears to have been made independently of the government but with its consent<sup>32</sup>. Both sought a review of the decision and an opportunity for public comment. The Chief Secretary was, at the time, the Minister with the police portfolio. He sat in the House of Assembly (lower house). His counterpart in the upper house was the Minister of Local Government.

The following questions were placed on notice for the attention of the Chief Secretary by the Hon C J Sumner MLC on 16 October 1979<sup>33</sup>:

"Can the Minister of Local Government, on behalf of the Chief Secretary, bring down replies to the following questions about police wearing exposed hand guns:

1. Prior to the announcement by the Commissioner of Police, was the Government informed of the decision of the Commissioner of Police to allow police officers to wear exposed hand-guns?
2. If so, who was informed?
3. Was the matter referred to, and/or discussed, in Cabinet?
4. Does the government agree with that decision?
5. If so, what are the grounds for its agreement?
6. Does the Government believe that conditions in South Australia are so different to those in the United Kingdom to warrant that decision?
7. If so, what different conditions exist in South Australia?
8. Is this a matter solely a decision for the Commissioner of Police?
9. What are the present rules regarding the carrying of firearms by police officers?
10. Will the Government table the documents and the report on which this decision was based?
11. How many police officers' lives have been endangered in the last 12 months as a result of the current provision relating to the use of firearms?
12. What are the details of each incident where a police officer's life has been so endangered?
13. Is the Government prepared to review the decision and allow the public and any interested bodies to comment on it before the matter is proceeded with?"

In reply to the Hon C J Sumner's questions on notice, the Hon C M Hill replied to the specific questions, but not before the 26th February 1980, as follows<sup>34</sup>:

- "1. Yes.

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<sup>32</sup> The relationship between the government and the Police Commissioner in SA has an interesting historical background, especially since the Royal Commission's findings following the sacking of the SA Commissioner in 1977. For further reading refer Sarre 1994b, pp 94-95.

<sup>33</sup> 44th Parliamentary Debates SA (Hansard), 1st session, Legislative Council p 57

<sup>34</sup> 44th Parliamentary Debates SA (Hansard), 1st session, Legislative Council p 1169

2. Both the present and former Chief Secretaries.
3. Yes.
4. Yes.
5. The basis for the decision was the advice of the Commissioner relating to actual and potential hazards associated with the equipment currently in use and the results indicated during extensive operational testing carried out over the last two years.
6. & 7. Comparisons with the United Kingdom did not play a significant part in the investigation as there is little similarity between that situation and the one which obtains in South Australia. However, advice received by the Government indicates that exposed handguns are worn by some police personnel in the United Kingdom in the course of their duties.
8. This matter is entirely within the capacity and competence of the Commissioner of Police. Section 21 of the *Police Regulation Act [SA] 1952-1975* states:  
"Subject to this Act and the directions of the Governor, the Commissioner shall have the control and management of the Police Force".
9. Stringent instructions are embodied in Police General Orders governing the use of firearms by police officers.
10. No.
11. As no statistical records of 'life endangered' situations are maintained, an accurate statement as to the number of police officers whose lives have been at risk in the last 12 months cannot be given.
12. There are 12 positive instances in which police personnel have been fired on during the last 12 months. The following six instances may be cited as examples:
  - Salisbury - Police officer shot by juvenile on apprehension for shop stealing.
  - Fullarton - Drug squad personnel fired upon when attempting to effect arrest.
  - Virginia - Homicide suspect fired shots at police in course of pursuit.
  - Elizabeth Downs - Offender responsible for disturbance at shopping complex fired shot on arrival of police patrol.
  - Marlestone - Shots fired by offender on approach of police to investigate report - person brandishing weapon.
  - Thebarton - Police patrol attending report of person threatening human life with rifle. Threatened to shoot police before taking his own life.
 Some of the other cases are still proceeding and are therefore *sub judice*.
13. No."

The day after the Sumner questions were placed on notice (17th October 1979), the Chief Secretary Mr W.A. Rodda made a Ministerial statement<sup>35</sup> wherein he allayed fears that the change of policy was radical and widespread.

"The principal concern about police handguns is to provide effective weapons for patrol officers operating throughout the 24 hours in the metropolitan area. These officers will be fitted out first, and it is not expected nor intended, that every policeman throughout the State will suddenly appear wearing an exposed holster and handgun. The need to wear such equipment obviously depends upon the duties involved, and credit should be given to the discretion of the Police Commissioner to direct that officers wear an exposed handgun only when and where it is considered absolutely essential".

Not convinced, Mr Sumner again alerted the Parliament to his concerns and asked a series of questions of the Attorney-General on the following day, October 18 1979, namely

" In view of the considerable public concern expressed about the decision of the Police Commissioner to allow or require policemen to wear exposed handguns, will the Government accept the call for a review of the decision, which call has been made by me and other people in the community? In such review of the decision, will the public and interested groups be able to comment on the decision? If such a review is carried out, does the Government believe it can direct the Police Commissioner on this matter, and, if it feels justified in doing so after a review has been carried out, will it so do?"<sup>36</sup>

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<sup>35</sup> 44th Parliamentary Debates SA (Hansard), 1st session, House of Assembly p 128

<sup>36</sup> 44th Parliamentary Debates SA (Hansard), 1st session, Legislative Council p 176

In reply <sup>37</sup> the Attorney-General, the Hon K.T. Griffin MLC promised to refer the matters to the Chief Secretary and indicated that public submissions would be welcomed by the Minister. In due course, he replied formally, and on 20 February 1980, the Attorney General stated <sup>38</sup> as follows:

"The matter was taken up with the Chief Secretary and subsequently considered by Cabinet. It was the Government's decision not to interfere with the decision of the Commissioner of Police regarding exposed firearms".

On 31 October 1979 the questions (below) of the Hon Anne Levy, on notice, were answered by the Hon C.N. Hill MLC, Minister of Local Government on behalf of the Chief Secretary, as follows <sup>39</sup>. The questions on notice had been posed as follows:

1. What proportion of traffic policemen currently carry guns?
2. What proportion of police patrol cars currently have guns in patrol cars?
3. What proportion of policemen on motor cycles currently carry guns?
4. What proportion of policemen at sporting fixtures, or other functions where large crowds are expected, currently carry guns?
5. What proportion of women police currently carry guns?
6. Will these proportions change when the police are provided with the proposed new guns, and, if so, what will the proportions then be?"

The reply of the Hon C. N. Hill was as follows:

1. With the exception of 14 members deployed on traffic patrol duties within the city of Adelaide, all other traffic police are issued with handguns.
2. Metropolitan Area - General duty patrol police are issued with handguns for their tour of duty. In addition, supervisors of these personnel, ie. non-commissioned officers, also carry a shotgun in their patrol vehicles. Plain clothes police engaged in operational duties are equipped with handguns as a personal issue. Special Tasks and Rescue Force personnel are equipped with handguns and a shotgun is carried in each patrol vehicle.
- Country Areas - All police stations outside the metropolitan area are equipped with handguns for issue to both general duty and plain clothes police engaged in operational duty when the need arises or it is considered necessary. Shotguns are also available at some country stations for use when the need arises. They are not carried in patrol vehicles as a matter of course.
- Miscellaneous Units - Personnel attached to certain units not engaged in operational activities are not issued with firearms as a matter of course, other than when duties or circumstances dictate or when an individual member avails himself of the option.
3. All personnel performing duties on motor cycles carry handguns.
4. This situation varies considerably and is dependent on a number of factors, the basic criteria being:
  - (a) nature or purpose of the gathering.
  - (b) possible or known potential of troublemakers likely to be attracted by the particular function.
  - (c) known or anticipated potential of persons known to be attending the function.
  - (d) whether the function is a security operation or not.
5. All women police engaged in operational areas carry handguns in both the uniform and plain clothes function. No distinction is made on the basis of sex.
6. There is no intended change in the present situation on introduction of the new handgun. The new gun is merely a replacement for the weapon currently used."

On the 19 February 1980, the following Questions on Notice were posed by Mr Robin Millhouse (Democrats) and the Chief Secretary's reply is given also <sup>40</sup>. Mr Millhouse (on notice) asked the Chief Secretary:

<sup>37</sup> 44th Parliamentary Debates SA (Hansard), 1st session, Legislative Council p 176

<sup>38</sup> 44th Parliamentary Debates SA (Hansard), 1st session, Legislative Council p 1090

<sup>39</sup> 44th Parliamentary Debates SA (Hansard), 1st session, Legislative Council p 541

<sup>40</sup> 44th Parliamentary Debates SA (Hansard), 1st session, House of Assembly p 1008

- "1. What are the reasons for the decision that certain police officers should openly wear firearms, when was such decision made and by whom, and is it supported by the Government?
2. What firearms are to be so worn?
3. What training in the use of such firearms will be given to those who are to wear them, what standard will such persons be required to attain in the care and use of such firearms and in marksmanship and what periodic tests, if any, will such persons have to undergo to ensure that such standard is maintained?
4. What instructions will be given to wearers as to the circumstances in which such firearms are to be used?
5. In the light of recent public debate on the subject, does the Government propose that the decision to wear firearms be reviewed?"

The Chief Secretary the Hon W A Rodda replied:

- "1. (a) To improve efficiency.  
(b) Announced 4 October [1979].  
(c) Police Commissioner.  
(d) Yes.
2. Smith and Wesson Model 19, .357 calibre revolver.
3. (a) The same intensive training as currently exists plus initial specialised training in the use of new firearms.  
(b) The highest possible standard covering firing accuracy, handling skills and avoidance of risk to the public and the police.  
(c) Twice yearly practice sessions.
4. Firearms will be used only when necessary to protect life or prevent serious injury and only then when satisfied that no other means are available.
5. No."

A year later, on 4 November 1980 the Hon C J Sumner (on notice) again asked the Minister of Local Government a number of questions regarding the handgun policy of the Police Commissioner and the Government <sup>41</sup>, as follows:

- "1. Is the Police Department proceeding with the proposal for police to wear hand guns exposed on their hips?
2. If so, how far has this proposal progressed and particularly  
(a) how many police now wear these guns?  
(b) for how long have they been wearing them?  
(c) when is it proposed that all police will wear them?
3. What guns do plain clothes police carry at present?
4. Is it intended that plain clothes police should carry the Smith and Wesson hand gun now proposed for uniformed police? If not, which gun will plain clothes police carry in future?"

The Hon C M Hill in reply <sup>42</sup> answered, on 18 November 1980

- "1. Yes.
2. The issue of the handguns will coincide with the issue of a new police uniform. The proposal will be implemented progressively and is expected to commence sometime in January 1981.  
(a) None.  
(b) Not applicable.  
(c) At this stage, it is not proposed that all police wear the hand-gun. Only police in an operational situation will be so equipped, and it could take up to two years from the date of initial issue for the proposal to be completed.
3. Plain-clothes personnel currently wear a Browning, model 10/22, .38 semi-automatic pistol.
4. It is not intended that plain-clothes personnel wear the Smith and Wesson hand-gun and a firm decision as to the type of gun they will carry has not yet been made."

<sup>41</sup> 44th Parliamentary Debates SA (Hansard), 2nd session, Legislative Council p 1692

<sup>42</sup> 44th Parliamentary Debates SA (Hansard), 2nd session, Legislative Council p 1920

The Labor Opposition had made it a policy of theirs to oppose the exposed firearm policy to which the government had acquiesced. The matter was referred to the Industrial Commission for a ruling on occupational health and safety issues. The Commission upheld the Police Association's view that firearms were a safety issue for officers. The Opposition saw no point in pursuing the matter any further. The public concern appeared to die down also.

The matter went off the political agenda for a couple of years, raising its head only briefly when the ire of a Labor MP was raised on 17 June 1982. The following exchange comes from the House of Assembly <sup>43</sup>. Mr Hemmings (Labor) took exception to the presence of uniformed police carrying handguns ('magnum' revolvers) in the precincts of Parliament and challenged the new Chief Secretary (Mr J Olsen) to an explanation.

"Is the Chief Secretary aware that last night in a Chamber of this Parliament two police officers were present wearing exposed hand guns and, if so, is that a breach of an undertaking he gave my colleague the member for Stuart? Last night, during the Roxby Downs indenture debate, two police officers, namely, Constable No. 2829 and Senior Constable No 1840, were in a Chamber of this Parliament wearing exposed Magnum hand guns. The Minister some time ago gave my colleague the member for Stuart an assurance that members of the Police Force would wear exposed hand guns only when the safety of the public was under threat. Whilst I was not in the particular Chamber at that time, I am assured that the people there were very orderly and that at no time was there any threat to the safety of members of Parliament or officers of the Parliament. It was put to me this morning by a member of the public, who is a constituent of mine, that the wearing of hand guns in this Parliament could be seen as a 'standover tactic by this Government'."

The Hon J W Olsen replied,

"The last comment of the honourable member defies response at all. In relation to the former part of his question, I would be pleased to indicate to the House the policy of the Police Department, a policy which this Government and I, as Chief Secretary, support. Police deployed in sensitive areas, such as Rundle Mall or sporting venues, processions, parades, etc., are not issued with the Smith and Wesson .357 revolver. If they are to be armed at all, in those circumstances they are issued with the .38 Browning automatic pistol, which is carried concealed. Only patrol personnel are issued with the Smith and Wesson, which is worn exposed. However, a patrol may be tasked to a sensitive area, and it follows that in those circumstances it is not possible to guarantee that patrolmen wearing exposed firearms would be sited in those sensitive areas. I presume that the circumstances surrounding last night's incident arose because of the large number of people gathered at Parliament for what was - and is - the most significant issue to be placed before Parliament in this State for decades, resulting in the duty officer calling in extra support for the police who were rostered here, without those exposed firearms, I might add. I am sure the honourable member will appreciate that if we are to call in extra assistance at short notice, because of unforeseen circumstances, it is likely that this situation will prevail. Even the honourable member ought to be able to appreciate that, from time to time, that situation will arise, and unashamedly I support the Police Department in that situation. I will seek information to see whether my assumptions relative to the situation pertaining to last night are accurate."

The government changed to Labor in 1983 and again most recently to Liberal in December 1993. No major shifts in policy have occurred in the intervening years.

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<sup>43</sup> 44th Parliamentary Debates SA (Hansard), 3rd session, House of Assembly p 4737

## Appendix B

### The recent Victorian experience: Task Force Victor 1994

The call for greater scrutiny of police carriage of firearms fell under the spotlight in extraordinary circumstances in Victoria in 1994. Police shootings appeared to be occurring in Victoria at a greater rate than elsewhere in Australasia. From 1984 to 1994 there were a total of 86 shooting incidents involving police<sup>44</sup>. 33 fatalities and 64 woundings resulted. 20 of the 86 incidents involved the shooting of police by citizens and 3 were fatal<sup>45</sup>. Of the 77 shootings by police of citizens, 30 were fatal<sup>46</sup>. The greatest number of injuries inflicted by police officers on citizens during this period was recorded in 1988<sup>47</sup>, the same year that two young constables, Steven Tynan and Damian Eyre were ambushed and killed in South Yarra (12 October 1988) by persons unknown. While public support for police flooded in at the time, it appeared later to some observers that police had assumed the role of aggressors in response to a heightened level of criminal violence. With the deaths at the hands of police of, amongst others, Graeme Jensen (11 October 1988), Jedd Houghton (17 November 1988) and Gary Abdallah (9 April 1989) in the hours before and the months that followed the ambush, came a suspicion that the problem of police shootings had as much to do with police as it did with those who would do them harm (McCulloch 1991, 1993, Inquests 1990, 1991)<sup>48</sup>. Over the next four years the level of shootings by and upon police reduced overall<sup>49</sup>. The reasons for the decline are many and varied, but one suggestion is that there was an easing generally of the conflict between police and a violent element of the public in Victoria. Moreover, there was perhaps a greater awareness by police of their own mortality and hence a careful apprehensiveness prevailed.

Then during 1994, 9 people were fatally shot by police in Victoria. Questions concerning the causes were immediately raised. There was some evidence that the rise in police firearm discharge could be linked to a growing number of incidents drawn to the attention of police involving mentally disturbed persons. Through the late 1980s and the early 1990s there had been a gradual shift to community-based care of the mentally ill. Police did not have the training to deal with those people who tended to have less regard for their personal safety and who often misinterpreted the gravity of the risks facing them. Six out of the nine had a history of mental illness<sup>50</sup>.

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<sup>44</sup> 23 of these occurred in the years 1988 and 1994. Another three fatalities at the hands of police occurred in 1995, (August 11, November 12 and November 15).

<sup>45</sup> The evidence suggests that the annual Australian average of fewer than one officer murdered by firearms in the course of duty has not changed in the last thirty years (Stenning 1995).

<sup>46</sup> This figure is double the NSW tally, five times the Queensland tally, and over 10 times the tallies of each of the other police jurisdictions in Australia. Fatal shootings of citizens by police and prison officers in Australia have increased from an average of 3 per year in the 1970s to 4 per year in the 1980s and 5 per year in the first four years of the 1990s.

<sup>47</sup> 6 persons were killed by police in Victoria in 1988.

<sup>48</sup> The theory at the time was that the deaths of Tynan and Eyre may have been a pay-back by Houghton for the killing of his friend Jensen, for the death of Jensen occurred a matter of hours before the South Yarra ambush. There was a fear in all of these matters that revenge had overcome reason, on both sides.

<sup>49</sup> The Abdallah shooting was the only death in 1989, from 1990-1992 two deaths each year were recorded, while 1993 saw one death.

<sup>50</sup> It is not possible to link directly the two issues, for the deinstitutionalisation process had been occurring in other States which did not experience the same dramatic increase in police shootings

As the 1994 toll grew, it became inevitable that there would have to be a public inquiry into police shootings of civilians. An appropriate balance between the need for police to protect themselves and the goal to which society aspires (to preserve life) needed to be found.

On June 20 1994, Task Force Victor was established by the Victorian Government. It was one of a number of reviews <sup>51</sup> launched by the Victoria Police. Victor had three specific terms of reference for its short (eighteen week) period of deliberations:

- "To identify factors that directly and indirectly determine shootings by patrol and community police officers, detectives, and members of the Special Operations Group;
  - To develop strategies designed to make the influence of those factors as beneficial to tactical decisions and actions as possible so as to assist the State of Victoria in reviewing the incidence of and reasons for on-duty shootings by members of the Victoria Police Force;
- and
- To make recommendations designed to achieve the identified outputs of the project and so assist the State of Victoria in reviewing the incidence of and reasons for on-duty shootings by members of the Victoria Police Force".

The members of the Task Force interviewed more than one hundred police officers. They consulted with a range of specialists. They invited comment from the public. On December 1 1994, the Victorian Police Minister tabled their 209 page report (Task Force Victor 1994). The report detailed the circumstances of police shootings since 1984, reported on police attitudes to firearms use, their perceptions of risk, the incidence of violent crime in Victoria, and the tactical, operational and organisational environment of policing generally in Victoria. Importantly, the authors of the report viewed the 1994 spate of police shootings as a product of the experience of the Victoria Police over the preceding decade rather than as a spontaneous aberration.

The report found that shootings occur most often when police officers perceive themselves at risk. They take place, for the most part, in anticipation of arrest, or shortly thereafter. The report found that police work in Victoria is becoming generally more hazardous than it was two decades ago. For example, in 1973 there were 64 recorded serious assaults against police, in 1983 the figure was 86 and in 1993 there were 133.

In their conclusions, the authors outlined the basic principles of a desirable strategy of control. They identified the need to reduce threats to officers through a balance of 'push' (creating the professional climate which will cope better with the threat) and 'pull' (reducing the level of threat in the first place).

The 'push' element strategy is to

- improve patrol officers' capability to cope with threats;
- set patrol officers' perceptions of physical risk accurately;
- improve patrol officers' capability to control interpersonal conflict and crises;
- increase patrol officers' commitment to agency goals and philosophy and
- encourage continuing professional development.

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<sup>51</sup> A total of 219 recommendations resulted from five reviews (Victoria Police 1996, p 2) along with the recommendations of upwards of 48 Coronial Inquiries. The Coronial Inquiries, it should be noted, have not recommended any charges against police for breaches of the law. Essentially, police have been freed from blame, highlighting the dilemma for policy-makers to engender changes that are perhaps more 'holistic' than specific.

The 'pull' strategy involves a commitment to

- reduce the number of violent persons in the community and
- reduce violent crime generally.

Close to 100 official recommendations are contained in the Task Force Victor report. Some involve questions of firearm policy. For example, it is recommended that, in incidents involving seriously disturbed persons, it be mandatory, where possible, for the incident commander to be provided with resolution options by mental health or other crisis intervention specialists. Other recommendations deal with enhanced police training, especially in the development of crisis intervention training and alternatives to the use of force. Non-lethal weapons also come under scrutiny, the authors of the report suggesting that pepper spray dispensers be issued to suitably trained field officers and that patrol supervisors' vehicles be equipped with a shield and three pairs of chain mail gloves for use by suitably trained personnel in countering persons wielding edged weapons.

The lack of data on police shootings generally is also targeted by the Task Force's recommendations. The authors recommend that a data collection system be implemented to record the use of force by and against police officers. Better officer supervision is addressed by the recommendations too. One recommendation suggests that, with paired crews, at least one officer possess at least two or more years of service, and that managers be alerted to stressed and overly aggressive officers. Another reaction of the Victorian government to the release of the Task Force Victor report has been to set up an on-going police shootings review task force under the chairmanship of Mr Frank Honan.

It is important to note that the Task Force Victor Report is merely one in a series of five reports received by the government of Victoria on matters concerning policing and the use of potentially lethal force. Recommendations from these additional reports (and acknowledged by the members of Task Force Victor) are being implemented under the title Project Beacon, a program which was launched on September 19 1994 and which ensures, amongst other things, that all police members who need to carry firearms will be retrained by virtue of a new Operational Safety and Tactics Training (OSTT) program. Moreover, there is to be a planned response to all emergencies that police face, using a 'Tactical Operations Model' which emphasises the escalation and de-escalation of the choice of equipment depending upon the direction the incident is taking. A review of Project Beacon's first 18 months was conducted in January 1996 with a further report due in June 1996 (Victoria Police 1996, p 19).

Outside of Victoria, information of the type contained in the Task Force Victor Report regarding the numbers of shootings, the circumstances of the shootings, and the details of the police and citizens fatally shot is not obtainable easily, if at all. The Victorian government has gone further than any other government at any time in Australia's history in endeavouring to find a better formula for policing strategies concerning deadly force. It has begun by making its policies and practices more public. Its recommendations may have become a blue-print for better and safer policing generally.

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