

Review of NSW Police Force Use of Force Reporting

February 2023

LECC

Law Enforcement
Conduct Commission

Level 3, 111 Elizabeth Street
Sydney NSW 2000
Email: contactus@lecc.nsw.gov.au

Postal address

GPO Box 3880
Sydney NSW 2001
Phone: (02) 9321 6700
Toll free: 1800 657 079
Fax: (02) 9321 6799

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The Law Enforcement Conduct Commission acknowledges and pays respect to the Traditional Owners and Custodians of the lands on which we work, and recognises their continuing connection to the lands and waters of NSW. We pay our respects to the people, the cultures, and the Elders past and present.



21 February 2023

The Hon Matthew Ryan Mason-Cox MLC
President
Legislative Council
Parliament House
SYDNEY NSW 2000

The Hon Jonathan O'Dea MP
Speaker
Legislative Assembly
Parliament House
SYDNEY NSW 2000

Dear Mr President and Mr Speaker,

In accordance with section 138 of the *Law Enforcement Conduct Commission Act 2016* (the Act), the Commission hereby furnishes to you its observational paper entitled *Review of NSW Police Force Use of Force Reporting*.

Pursuant to section 142(2) of the Act, we recommend that this report be made public immediately.

Yours sincerely,



The Hon Peter Johnson SC
Chief Commissioner



Anina Johnson
Commissioner

Foreword

Police must have the power to use force in order to protect the public from crime, especially violent crime. At the same time, excessive use of force by police is a serious abuse of power which rightly attracts close public scrutiny, for example when footage is spread via social and mainstream media.

Use of force by the NSW Police Force (NSWPF) is an issue of significant public interest. Close analysis of the force used by police and outcomes of that force is necessary to provide assurance to the NSW Parliament, Commissioner of Police and the general public that these significant powers are effective and exercised reasonably and lawfully.

The Commission conducted a detailed review of a sample of 210 incidents involving use of force by NSW police officers, drawn from matters identified in complaints. Drawing on that analysis, this report describes widespread inconsistencies identified by the Commission in the way the NSWPF records information about the force used by police officers. We also identified under-reporting of the use of force by the NSWPF.

Such inaccuracies are concerning to the Commission. They undermine the effectiveness of the potential uses of the data by NSWPF – for example, in identifying trends in types of force used, identifying risks to officer or public safety from such use, or focussing training to address particular issues arising in the use of force. Inaccuracies may also suggest that the existing policies and training about use of force recording are unclear or not fit for purpose.

The NSWPF has acknowledged the inconsistencies in police use of force recording identified by the Commission.¹ In response, the NSWPF said it will develop new policy, guidelines and training on what uses of force must be recorded and how they should be recorded. The NSWPF also developed a Use of Force Manual in response to our review.² While this document is primarily about the use of force, it also contains some instructions on recording a use of force.³

The Commission supports the work the NSWPF has promised to undertake, and the work it has already commenced in this area. We are keen to see improvements in the accuracy of NSWPF records about use of force. We will continue to monitor the NSWPF's implementation of the NSWPF's responses to the recommendations contained in this report. The Commission will report publicly on the NSWPF's progress via our Annual Report.

¹ Letter from Assistant Commissioner, Corporate Spokesperson, Police Powers, NSW Police Force, to Chief Commissioner, Law Enforcement Conduct Commission, (undated), received 28 September 2022.

² NSW Police Force, *Use of Force Manual*, August 2022.

³ Letter from Assistant Commissioner, Corporate Spokesperson, Police Powers, NSW Police Force, to Chief Commissioner, Law Enforcement Conduct Commission, (undated), received 28 September 2022.

Contents

Foreword.....	1
Recommendations	3
List of case studies.....	4
1. Introduction.....	5
1.1 Methodology	6
1.2 Summary of our findings	7
2. Information and Document Analysis.....	9
2.1 Procedures and Instructional Documents	9
2.2 Training.....	11
2.3 Quality Assurance Processes	12
2.4 Reporting	14
2.5 Reporting in other jurisdictions.....	15
3. Data Analysis	17
3.1 Handcuffs and Arm Restraints / Wrist Locks	18
3.2 Number of Officers Present	19
3.3 Communication.....	20
3.4 Batons.....	21
3.5 Tactical Disengagement.....	21
3.6 Use of Weaponless Control	21
3.7 Oleoresin Capsicum Spray.....	22
3.8 Taser (Conducted Electrical Weapon).....	23
3.9 Police Dogs	24
3.10 Police Horses	25
3.11 Firearms	25
3.12 Further Discrepancies in Event Narratives.....	26
4. Conclusion.....	28
Appendix A.....	30

Recommendations

The NSW Police Force should:

1. Review any training modules on use of force reporting, delivered as part of the Associate Diploma in Policing Practice at the NSW Police Force Academy, to ensure the training provides student police with clear instruction on what to record and where to record it.....12
2. Undertake further analysis to identify what is preventing supervisors from verifying that Use of Force screens have not been completed correctly.....14
3. Consider the options available in the checklist on the Use of Force screen in COPS, and aim to simplify the categories and reduce potential confusion..... 17
4. Add a handcuffs option to the Use of Force screen in COPS in order to improve the accuracy of reporting on the use of handcuffs.....18
5. Clarify and publish policy guidelines instructing officers when to record the number of officers present in the Use of Force screen. 19
6. Clarify and publish policy guidelines instructing officers when to record the use of communication in the Use of Force screen..... 20
7. Clarify and publish policy guidelines instructing officers when to record the use of force involving weaponless control options. 22
8. Clarify and publish policy guidelines instructing officers when to record the use of force involving the display and burst of OC spray. 23
9. Review the instructions provided to officers as to when and how Taser use should be recorded, particularly within the Use of Force screen. 23
10. Review the clarity of the training and instructions given to officers about who is required to record the use of police dogs in the Use of Force screen and under what circumstances.....24
11. Conduct further analysis of COPS records to assess compliance with reporting the use of a firearm in the Use of Force screen, and determine whether any further action is required to address any non-compliance issues identified..... 26

List of case studies

Case study 1:	Weaponless Control.....	22
Case study 2:	Firearms.....	25
Case study 3:	Discrepancies in Event Narratives.....	26

1. Introduction

The Law Enforcement Conduct Commission has conducted a project under ss 26 and 27 of the *Law Enforcement Conduct Commission Act 2016* examining whether NSW Police Force (NSWPF) data recording the use of force is accurate and reliable. This report sets out the results of that work.

This Commission's project considered:

- the extent to which the use of force is under-reported by the NSWPF, and any systemic patterns associated with this under-reporting;
- what further analysis the NSWPF should do to strengthen its reporting of force used by police officers; and
- how the NSWPF can amend its use of force reporting processes to ensure that under-reporting is reduced.

The project started partly in response to the Commission's analysis of a sample of 18 critical incidents.⁴ We found that police had used force in 9 of these incidents, but the use of force was not recorded in the required field in COPS.⁵ Our concerns about the apparent under-reporting of the use of force prompted further data collection and analysis as outlined in this report.

As part of this project, the Commission requested and obtained information from the NSWPF about the policies, instructions and training which instruct officers how and when to record the use of force in. The Commission also asked the NSWPF how it uses the data about use of force which is collected in COPS.

The NSWPF told us that the use of force data is used to identify trends and the training needs of police officers, with a focus on identifying which tactical and use of force options are being used and by whom, as well as where, when and why tactical options are being used.⁶

The Commission strongly supports the collection of use of force data. However, if the data collected is not accurate, it undermines the work of the NSWPF which relies on that data.

Our analysis of the dataset in this report shows:

- widespread inconsistencies in the information the NSWPF collected in COPS and under-reporting of the use of force;
- gaps in training and instruction to police officers on the recording of tactical and use of force options in the NSWPF system; and
- a lack of quality assurance processes that could identify and address inaccuracies in use of force data.

⁴ Incidents involving an officer or other member of the NSWPF resulting in death or serious injury to a person (including a police officer). See s 110 *Law Enforcement Conduct Commission Act 2016* (NSW).

⁵ COPS is the NSWPF Computerised Operational Policing System. It is the database in which police record all their operational activities.

⁶ Letter from Deputy Commissioner Metropolitan Field Operations, NSW Police Force, to Chief Commissioner, Law Enforcement Conduct Commission, 14 September 2020.

1.1 Methodology

This project had 2 limbs. First, an information analysis examining key Standard Operating Procedures (SOPs), instructional documents and training material provided by the NSWPF in relation to use of force reporting. The second limb involved an analysis of COPS events.

1.1.1 Information Analysis

The information analysis involved examining the extent to which NSWPF officers are adequately instructed in reporting the use of force. We looked at the following relevant documents:⁷

- NSW Police Force Training Manual on Tactical Options and Use of Force⁸
- NSW Police Force Crime Recording Standard⁹
- Australia New Zealand Policing Advisory Association Use of Force Principles¹⁰
- NSW Police Force Handbook chapter on use of force¹¹
- NSW Police Force Academy Training materials¹²
- Documents provided by the NSW Police Force on 14 September 2020¹³ and 12 April 2021¹⁴
- NSW Police Force Use of Force Manual, developed in response to this project and finalised in August 2022

1.1.2 Analysis of COPS events

The analysis of COPS events aimed to assess how consistently the NSWPF reports on the use of force by police officers. The Commission analysed a sample of COPS events between May 2020 and May 2021 where the complaint category was “excessive use of force”.¹⁵ We selected these matters given the likelihood that the related COPS events would refer to use of force. In total, we examined 286 COPS events.

We did not assess event records for their accuracy against third party records, such as details within complaints, or body worn video of the incidents. Therefore, regardless of the details in the complaint made to the Commission, we excluded COPS events from the analysis where the event contained no indication that force was used. We found that 210 of the examined COPS events contained an indication that force was used.

In order to determine whether the NSWPF recorded use of force consistently in its own reporting of the event, we compared COPS event narratives with the Use of Force screen within COPS for the same event. In COPS, where a Person of Interest (POI) is identified in a COPS event the recording officer must nominate whether force was used during the incident. If force was used, a checklist, or Use of Force screen, (see below) provides options to record the type of force, or tactical options used.¹⁶

⁷ The NSWPF identified these policy documents as the policies relevant to use of force reporting.

⁸ Weapons and Tactics, Policy and Review, NSW Police Force, *Training Manual - Tactical Options and Use of Force*, January 2012.

⁹ State Intelligence Command, NSW Police Force, *Crime Recording Standard*, December 2015, p 49.

¹⁰ Australia New Zealand Policing Advisory Agency, *Australia New Zealand Use of Force Principles*, 2018.

¹¹ NSW Police Force, *Handbook - Use of Force*, April 2018.

¹² Sample of NSWPF Academy training materials produced by the NSW Police Force on 12 April 2021.

¹³ Letter from Deputy Commissioner Metropolitan Field Operations, NSW Police Force, to Chief Commissioner, Law Enforcement Conduct Commission, 14 September 2020.

¹⁴ Letter from Assistant Commissioner, Professional Standards Command, NSW Police Force, to Commissioner, Law Enforcement Conduct Commission, 12 April 2021.

¹⁵ Complaints received directly by the Commission or notified to the Commission by the NSWPF are referred to the Complaint Action Panel (CAP) for consideration of what action the Commission will take in response. The Commission's officers identify the themes of complaints as part of their assessment of complaints for discussion at the CAP.

¹⁶ State Intelligence Command, NSW Police Force, *Crime Recording Standard*, December 2015, p 49.



We deemed records as consistent if every instance of use of force described in the event narrative had a matching categorisation in the Use of Force screen. For example, where an event narrative described an officer deploying a burst of Oleoresin Capsicum Spray (OC Spray), the Use of Force screen should have listed “OC Spray – single burst”, to be considered consistent.

1.2 Summary of our findings

Overall, the dataset suggests there is widespread under-reporting of the use of force on COPS. Where the type of force nominated in the checklist is inconsistent with the types of force described in the COPS narrative, the data may be inaccurate or unreliable. The unreliability of this data undermines the effectiveness of its potential uses, such as identifying trends in the use of force, better informing police training and improving practices. A 2009 report about police use of force by the Office of Police Integrity in Victoria noted that reliable statistical data can “drive strategic vision that puts safety first and manages the risks associated with the use of force”.¹⁷

It would seem that the supervisors who verify the COPS event verification are not identifying the inconsistencies between the event narrative and the Use of Force screen. This is a missed opportunity to correct errors and improve the reliability of the data.

In this data sample, the Commission found 20% of the 210 COPS events examined had no active Use of Force screen or recorded that "Force was NOT used" where the COPS narrative

¹⁷ Office of Police Integrity Victoria, *Review of the use of force by and against Victorian police*, (Report), July 2009, p 14 <<https://vgs.sdp.sirsidynix.net.au/client/search/asset/1148107>>.

describes the use of force. Seventy three percent (73%) of events had at least 1 reporting inconsistency, that is, where use of force described in the event narrative did not have a matching categorisation in the Use of Force screen, or vice versa.

Notably, there is no category for the use of handcuffs in the Use of Force screen, so the use of handcuffs is not able to be recorded, although there is a field for “arm restraint/wristlock”. When the absence of reporting on the use of handcuffs is included, the proportion of COPS events containing under-reporting or reporting inconsistencies in this dataset rose to 93%. The NSWPF told the Commission that use of handcuffs in an arrest is considered a use of force, but use of handcuffs for routine transportation of prisoners is not.¹⁸ However, of the handcuff related incidents reviewed by the Commission, all related to police placing a person under arrest or gaining control of a person during an incident. None related to routine prisoner transport.

The Commission also saw under-reporting of the number of officers present in a situation, with 29% of all COPS events in the dataset not reporting on this tactical option in the Use of Force screen, even though 1 or more officers were present at the incident. The NSWPF SOPs and guidance material did not make it sufficiently clear whether officers are required to report this in every instance, or whether it is only required in certain circumstances.

Communication was not reported on the Use of Force screen in 74% of all COPS events. The NSWPF told the Commission that while “communication” is listed in the Tactical Options Model, it is not a Use of Force.¹⁹ Questions remain as to whether there is an expectation that officers should report communication as a tactical option and under what circumstances.

Further under-reporting on the Use of Force screen was identified in the use of weaponless control, OC Spray and Tasers with inconsistencies found in 56%, 22% and 25% respectively. Seventeen COPS events reported on the use of “contain and negotiate” as a tactical option, when the narrative did not describe such a situation.

Use of police dogs appeared in 10 COPS events in this dataset, however 4 of these were duplicate events created by officers from the Dog Unit, leaving 6 discrete instances of the use of police dogs. Only 1 of the remaining 6 COPS events failed to record the use of police dogs. Of the 4 events created by the Dog Unit, none had use of force as an active screen.

The Commission saw significant levels of inconsistent reporting of the use of firearms in the dataset. Ten COPS events referred to the use of a firearm. Of these events, 6 failed to record the use of firearms in the Use of Force screen, and 2 listed the discharge of a firearm in the Use of Force screen without any description of this in the narrative. This is significant because of the possibility of a lethal outcome when firearms are used. The Commission has recommended the NSWPF undertakes further analysis of the recording of the use of firearms (either drawn or discharged) (Recommendation 11).

Finally, in 44 of the COPS events, tactical options were listed in the Use of Force screen which were not mentioned in the narrative at all. This may be due to an officer not understanding the definitions of the different tactical options, or mistakenly recording a tactical option that was not in fact used.

¹⁸ Letter from Assistant Commissioner, Corporate Spokesperson, Police Powers, NSW Police Force, to Chief Commissioner, Law Enforcement Conduct Commission, (undated), received 28 September 2022.

¹⁹ Letter from Assistant Commissioner, Corporate Spokesperson Police Powers, NSW Police Force, to Chief Commissioner, Law Enforcement Conduct Commission, (undated), received 28 September 2022.

2. Information and Document Analysis

2.1 Procedures and Instructional Documents

The Commission reviewed the following documents to assess the quality and clarity of instruction to police officers in reporting the use of force:

NSWPF Training Manual - Tactical Options and Use of Force²⁰

This manual contains the Tactical Options Model which is “a use of force assessment framework used by sworn officers of the NSW Police Force, which aids an officer when faced with making appropriate force response decisions.”²¹ The Tactical Options Model presents 9 tactical options available to officers. It gives specific guidance on the factors police should consider when determining which tactical options to use. This document provides a foundation for understanding the different tactical options available.

The NSWPF told the Commission that while “communication” or “tactical disengagement” are options listed within the model, they are not considered a use of force.²²

The tactical options listed in the Tactical Options Model are:

1. Officer Presence
2. Communication
3. Weaponless Control
4. OC Spray
5. Baton
6. Firearm
7. Contain and Negotiate
8. Tactical Disengagement
9. Conducted Electrical Weapon (Taser)

The NSWPF’s training documents give further explanations as to what each tactic involves. The Commission used the descriptions in these documents to determine where tactical options may have been incorrectly recorded, due to a misunderstanding of the use of force concepts (see section 11).

The Tactical Options Model gives no instruction on how and when to report the use of force. Some tactical options, such as the use of handcuffs and police dogs, are not detailed in the document.

NSWPF Crime Recording Standard²³

The Crime Recording Standard provides instruction about recording the use of force in COPS and when it is mandatory to do so. The policy states that officers must, “ensure that all use of force details are recorded for all officers involved in the use of force”. When a POI is added to an incident, police must record whether force was used. Where force is used by a police officer or against a police officer, police are instructed to complete the use of force details, and the policy provides screenshots of the relevant screens on COPS.

²⁰ Weapons and Tactics, Policy and Review, NSW Police Force, *Training Manual - Tactical Options and Use of Force*, January 2012.

²¹ Major Events and Incidents Group, NSW Police Force, *Use of Conducted Electronic Weapons (Taser)*, 1 July 2016, p 9.

²² Letter from Assistant Commissioner, Corporate Spokesperson, Police Powers, NSW Police Force, to Chief Commissioner, Law Enforcement Conduct Commission, (undated), received 28 September 2022.

²³ State Intelligence Command, NSW Police Force, *Crime Recording Standard*, December 2015, p 49.

Police must also record any force used *against* police, including whether the POI used weapons.

Use of force by police is recorded under the field “Officer response to resistance” and includes the categories in the Use of Force screen (as reproduced at section 1.1.2 above).

The Crime Recording Standard frames the recording of the use of force in terms of a police response to levels of resistance or use of force used against police by a POI. The 26 categories in the Use of Force screen loosely reflect the options in the Tactical Options Model, and include tactics which may not involve the application of physical force, such as communication or tactical disengagement. Categories include the presence and number of police, use of police dogs or use of police horses. These deployments may deter resistance or intimidate the POI, but arguably do not constitute a use of physical force. While not a use of physical force, these tactics pose a threat of physical harm which rightly constitutes a use of force.

As previously discussed, the use of handcuffs is not listed as a use of force category in COPS. Whether the use of handcuffs meets the definition of a use of force which should be included in the Use of Force screen is considered at section 3.1 of this report. We also consider the apparent confusion among recording police as to what constitutes the tactical option “arm restraint/wristlock”, and whether it is used to refer to handcuffing.

Australia New Zealand Use of Force Principles²⁴

The Australia New Zealand Policing Advisory Agency (ANZPAA) was established through the agreement of Police Commissioners across Australia and New Zealand and the current members are Commissioners from each jurisdiction in Australia and New Zealand.²⁵ The NSWPF has adopted the ANZPAA Use of Force Principles.

While the principles do not take precedence over jurisdictional policies, they reinforce that the NSWPF should “maintain governance structures to report, record, monitor and evaluate the use of force to improve public and police safety.”

Use of force is defined as police using “physical force or other techniques, including a weapon, instrument or implement, in the lawful execution of their duty”.

It is not clear whether the categories in the Use of Force screen on COPS such as “communication” meet this definition of use of force. It is also unclear whether the quality of the data being collected by the NSWPF, and its quality assurance processes, meet the requirement to “maintain governance structures to report, record, monitor and evaluate the use of force to improve public and police safety”. This is discussed at section 2.3 of this report.

NSW Police Force Handbook – Use of Force²⁶

The Handbook helpfully hyperlinks the ANZPAA Use of Force Principles and aligns with its principles by stating police are required to record details of instances where force/tactical options are used. It provides some instruction on when and how to record use of force within COPS, including when the field is mandatory and when the question “Was force used?” will appear in COPS without identification of a POI.

²⁴ Australia New Zealand Policing Advisory Agency, *Australia New Zealand Use of Force Principles*, 2018.

²⁵ Australia New Zealand Policing Advisory Agency, ‘Strategic Governance’, (Web Page) <<https://www.anzpaa.org.au/about/governance>>.

²⁶ NSW Police Force, *Handbook - Use of Force*, April 2018.

The instruction provided is brief and while consistent with the instruction given in the Crime Recording Standard, the Commission considers that it could better summarise the recording processes or cross-reference the Crime Recording Standard for further guidance on recording.

NSWPF Use of Force Manual²⁷

NSWPF developed the Use of Force Manual in August 2022 in response to this project. The Manual describes the Tactical Options Model, thresholds for using force under the *Law Enforcement (Powers and Responsibilities) Act 2002*, and the responsibility upon officers to justify using force. In relation to reporting use of force, the Manual states

“Whenever police use any type of force it must, at a minimum be recorded on the COPS system [...] You must record the force you used and the reason for doing so. This will require marking the appropriate use of force checkboxes and an explanation in the narrative.”²⁸

The Manual notes the importance of creating a comprehensive record in case officers are required to justify the force used at a later time, for example in civil proceedings.

2.2 Training

The Commission looked at whether policing students are adequately trained in how, what and when to report, and whether there were any gaps in current systems which may inhibit accurate reporting of the use of force. The Commission has received minimal and conflicting information on what training is provided to student police officers in relation of how to record use of force.

A letter from the Deputy Commissioner Metropolitan Field Operations to the Chief Commissioner dated 14 September 2020 (‘the September 2020 letter’) stated, in relation to how student police officers are trained in reporting the use of force:

“Instruction on the recording of use of force commences with student police at the NSW Police Academy where they are trained in the use of the NSW Police Force Computerised Operational Policing System (COPS)...”²⁹

In September 2020 the Commission requested “training materials delivered at the NSWPF Academy on use of force reporting”.³⁰ In April 2021 the NSWPF provided the Commission with training material given at the Police Academy published in February 2021. This included instruction on completing a COPS event based on training scenarios. However, the training scenarios in the materials did not involve a use of force by police, and therefore did not provide policing students with instruction about the Use of Force screen in COPS. However, the materials did include the following:

“Each time you use any tactical option or use of force to control or arrest a subject, ensure you complete all required Use of Force fields on COPS.

The data collected in this field in COPS provides crucial information about the type of situations police deal with and the tactical options used when responding with those situations”.³¹

There does not appear to be any further instruction in the material provided about completing the Use of Force screens (or reference to the Crime Reporting Standard) and which categories should be selected for different scenarios. It may not be clear to policing

²⁷ NSW Police Force, *Use of Force Manual*, August 2022.

²⁸ NSW Police Force, *Use of Force Manual*, August 2022, p 12.

²⁹ Letter from Deputy Commissioner, Metropolitan Field Operations, NSW Police Force, to Chief Commissioner, Law Enforcement Conduct Commission, 14 September 2020.

³⁰ Letter from Chief Commissioner, Law Enforcement Conduct Commission, to Assistant Commissioner, Professional Standards Command, NSW Police Force, 24 September 2020.

³¹ NSW Police Force, *Associate Degree in Policing Practice COPS Guide*, February 2021.

students for example that if multiple tactical options and uses of force are deployed they should all be recorded. Neither does the training appear to provide instruction on recording any use of force used in circumstances where a POI cannot be identified.

In the September 2020 letter, the NSWPF told the Commission that the Operational Safety and Skills Command (OSSC) holds meetings on a quarterly basis to identify trends and issues relating to the use of force. Quarterly and annual reports containing analysis of COPS data are prepared for this purpose and are further discussed at 2.4.

The NSWPF advised that this analysis is used in the development of officer training modules such as MicroLearns and Mandatory Continuing Police Education directives.³² The Commission has not yet been given the opportunity to examine any training material that may have been developed following analysis of the use of force data, and cannot comment on the extent to which it meets the needs of officers.

There are significant gaps in the training material examined by the Commission to date. Additionally, the Commission's data analysis suggests that there are issues with the way officers understand reporting of the use of force (see section 3). Comprehensive training on the reporting of the use of force should include when to report each tactical option and how to record it, in addition to detailed guidance as to what each tactical option involves.

Recommendation 1:

The NSWPF should review any training modules on use of force reporting, delivered as part of the Associate Diploma in Policing Practice at the NSW Police Force Academy, to ensure the training provides student police with clear instruction on what to record and where to record it.

NSW Police Force response

The NSWPF supports this recommendation. The NSWPF said it will review lessons provided in the Associate Diploma of Policing Practice in relation to use of force and recording use of force, and will enhance the curriculum if required.³³

The NSWPF also said once the new policy and guidelines about recording use of force are finalised, it will develop training for both students at the NSW Police Force Academy and operational police.³⁴ The NSWPF did not provide a timeline for its development of policy or guidelines. The Commission will continue to monitor the progress of this proposed work by the NSWPF, and will report about it in our Annual Report.

2.3 Quality Assurance Processes

In September 2020 the NSWPF told the Commission that “a range of structured quality assurance and supervisory oversight processes provide the opportunity to identify and address any training needs” in relation to use of force.³⁵ However, based on our data analysis for this report, and further information obtained from NSWPF about quality assurance processes, it is unclear what supervisory and oversight processes are in place, and whether

³² Letter from Deputy Commissioner, Metropolitan Field Operations, NSW Police Force, to Chief Commissioner, Law Enforcement Conduct Commission, 14 September 2020.

³³ Letter from Assistant Commissioner, Corporate Spokesperson, Police Powers, NSW Police Force, to Chief Commissioner, Law Enforcement Conduct Commission, (undated), received 28 September 2022.

³⁴ Letter from Assistant Commissioner, Corporate Spokesperson Police Powers, NSW Police Force, to Chief Commissioner, Law Enforcement Conduct Commission, (undated), received 28 September 2022.

³⁵ Letter from Deputy Commissioner, Metropolitan Field Operations, NSW Police Force, to Chief Commissioner, Law Enforcement Conduct Commission, 14 September 2020.

they are working appropriately to ensure data is accurate and may be relied upon to identify training needs.

The Commission's data analysis showed that of the 210 COPS events inspected, all but 1 were verified. Despite this, 73% of the records examined contained at least 1 error which was not picked up by the verifying officer. It is clear from this analysis that a large number of errors are slipping through the existing quality assurance processes. For example, in the dataset there were 2 instances of a discharge of firearms being reported in the Use of Force screens without any description of a firearm in the narrative of the event.³⁶ It is unclear to the Commission why these significant issues are not being identified and corrected in the verification process.

The failure to correct these errors raises questions about whether supervisors are routinely checking:

- that the Use of Force screens have been completed accurately or
- for consistency between the information in the narrative field and the Use of Force screen.

In 2020 NSWPF told the Commission that shift supervisors are responsible for verifying the accuracy of information submitted in a COPS event, and that crime coordinators check, manage, and finalise COPS events that have evolved into 'cases' for further investigation.³⁷ However, it appears that there are no instructions provided to these officers regarding the responsibility to check the accuracy of the Use of Force screens against the COPS narrative.

The policy documents "Supervisor Quality Review Guide" and "Verification Guidelines for Supervisors"³⁸ do not provide any instruction as to checking the accuracy of use of force records. Similarly, the Use of Force Manual developed by the NSWPF in August 2022 states:

"Supervisors must ensure every COPS event recording the use of force is completed correctly and contains sufficient details of the force that was used and an explanation why that force was used."³⁹

However, the Use of Force Manual does not instruct supervisors to check for inaccuracies or for consistency between the COPS narrative and Use of Force screen.

The Taser Review Panel is an additional quality assurance measure that is in place to identify breaches of procedure, recommend action to address breaches, and promote good practice.⁴⁰ Despite this additional process, the Commission identified under-reporting of Taser use in the Use of Force screen in the current dataset (see section 3.8).

The use of force in critical incidents is also subject to additional scrutiny through a critical incident investigation. However this has not necessarily resulted in better quality assurance of the data collected (see section 1).

The Commission acknowledges that the NSWPF has trialled different initiatives to improve quality assurance processes for use of force reporting:

- During 2022, Northern Region trialled a "check box" system within the Complaint Management Framework to remind districts to review use of force events in COPS. However, the NSWPF advised the Commission that there is no specific data available

³⁶ COPS reference: E75502847 and E77032387.

³⁷ Letter from Deputy Commissioner, Metropolitan Field Operations, NSW Police Force, to Chief Commissioner, Law Enforcement Conduct Commission, 14 September 2020.

³⁸ Regional Field Operations, NSW Police Force, *Verification Guidelines for Supervisors*, 2021.

³⁹ NSW Police Force, *Use of Force Manual*, August 2022, p 12.

⁴⁰ Letter from Deputy Commissioner, Metropolitan Field Operations, NSW Police Force, to Chief Commissioner, Law Enforcement Conduct Commission, 14 September 2020.

on what was found when these checks were performed or how any issues identified were remedied.⁴¹

- Southern Region trialled a use of force panel in 2022. However, these panels are not yet in place across all Commands and Districts.⁴² The NSWPF said that organisation-wide “Powers Panels” will be the focus of policy development in use of force oversight.⁴³

The Commission will continue to monitor and report on this area in our Annual Report.

A well-functioning quality assurance process should identify and correct inaccurate data and allow for accurate quarterly and annual reporting of the use of force, as described in section 2.4. The Commission therefore recommends the NSWPF undertake further analysis to determine what is preventing supervisors from correcting inaccurate data (Recommendation 2 below). We suggest that the NSWPF looks at the training provided to supervisors as part of this analysis.

Recommendation 2:

The NSWPF should undertake further analysis to identify what is preventing supervisors from verifying that Use of Force screens have not been completed correctly.

NSW Police Force response

The NSWPF supports this recommendation in principle. The NSWPF acknowledged that supervisors are not undertaking appropriate verification of Use of Force screens. The NSWPF said it was developing an online module for supervisors and will consider including guidance about recording Use of Force and verification.⁴⁴ The NSWPF did not provide a timeline for the development of the supervisors’ online module. The Commission will continue to monitor the progress of this proposed work by the NSWPF, and will report about it in our Annual Report.

2.4 Reporting

In September 2020 the NSWPF told the Commission that the NSWPF Operational Safety and Skills Command (OSSC) pulls data from COPS and the Taser Incident Management System (TIMS) and uses this to produce the Quarterly and Annual Tactical Options Report.⁴⁵ The Commission reviewed Reports from July 2021 to December 2022.

The Reports include information about:

- who is using Tactical Options (Rank, Gender, Duty Type)
- what Tactical Options are being used (Batons, Firearms, Taser, etc.)
- where are Tactical Options being used (Region/PAC/Command, Premises Type)
- when are Tactical Options being used (Day of Week), and why are the Tactical Options being deployed (Type of Offence committed, Associated factors)

⁴¹ Memorandum from Assistant Commissioner, Police Prosecutions and Licencing Command, NSW Police Force, to Prevention and Education Team, Law Enforcement Conduct Commission, 16 January 2023.

⁴² Email from Assistant Commissioner, Professional Standards Command, NSW Police Force, to Prevention and Education Team, Law Enforcement Conduct Commission, 21 December 2022.

⁴³ Memorandum from Assistant Commissioner, Police Prosecutions and Licencing Command, NSW Police Force, to Prevention and Education Team, Law Enforcement Conduct Commission, 16 January 2023.

⁴⁴ Letter from Assistant Commissioner, Corporate Spokesperson, Police Powers, NSW Police Force, to Chief Commissioner, Law Enforcement Conduct Commission, (undated), received 28 September 2022.

⁴⁵ Letter from Deputy Commissioner, Metropolitan Field Operations, NSW Police Force, to Chief Commissioner, Law Enforcement Conduct Commission, 14 September 2020.

The reports contain a disclaimer that the data contained within the report is purely for trend purposes and the data accuracy should not be relied upon for any reporting.

The NSWPF told the Commission that the OSSC use these reports to identify trends and training. The Commission is unclear about what insights OSSC draws from the trends and how this informs training. It is concerning, but perhaps not surprising, given the findings of our review, that what is reported in the Quarterly and Annual Tactical Option reports does not accurately reflect the actual force being used by the NSWPF. This fails to comply with the ANZPAA Use of Force Principles, and further, limits the value of any insights drawn by the OSSC in relation to training needs in the use of force.

The Commission notes the NSWPF intends to commence a policy review in relation to use of force reporting. The Commission strongly encourages the NSWPF to consider ways to improve the accuracy and utility of use of force reporting as part of this policy review. Improvements may help the NSWPF obtain more value from the reporting process, for example, by evaluating data towards improving police and public safety, as reinforced by the ANZPAA Use of Force Principles.

The Commission will monitor NSWPF's work in relation Use of Force data integrity, and will report further about this issue in our Annual Report.

2.5 Reporting in other jurisdictions

It is notable that issues with the under-reporting of the use of force have been observed in other Australian jurisdictions. Research conducted in Victoria⁴⁶ and with the Australian Federal Police (AFP)⁴⁷ found significant levels of non-compliance and under-reporting of the use of force in both organisations. That research also found that although attention had been drawn to data quality issues in previous years in those jurisdictions, little had been done to resolve and correct the inaccurate reporting of the use of force. There may be different reasons for this lack of compliance and under-reporting. Analysis of the AFP data for example, indicated that a large number of incidents were reported outside of the central database, and that these reports were not included in corporate reporting.⁴⁸ In Victoria at the time of the review, paper based "Use of Force Forms" were being submitted by fax and entered on to a central database by a specialist unit – a system initiated in 1995. The form was also reportedly complex with the majority of data entered in coded numbers.⁴⁹

Some police jurisdictions rely on use of force data to give them an early warning that an officer may be relying too heavily on use of force, offering an opportunity for intervention. Victoria and New Zealand collect use of force data for this reason, as well as using data for reasons as public safety and police training purposes. In Victoria, data collected in the Use of Force Register "provides an early warning system in relation to individuals involved in multiple incidents involving use of force".⁵⁰ Use of force data in New Zealand has been published since 2014 after the initiation of an Early Intervention Management System designed for the "early identification and supportive informal intervention on behaviour that could escalate".⁵¹

⁴⁶ Office of Police Integrity Victoria, *Review of the use of force by and against Victorian police*, (Report), July 2009, p 11-12.

⁴⁷ Australian National Audit Office, *Management of the Use of Force Regime*, (Report) May 2016, <<https://www.anao.gov.au/work/performance-audit/management-use-force-regime>>.

⁴⁸ Australian National Audit Office, *Management of the Use of Force Regime*, (Report) May 2016.

⁴⁹ Office of Police Integrity Victoria, *Review of the use of force by and against Victorian police*, (Report) July 2009, p 61.

⁵⁰ Office of Police Integrity Victoria, *Review of the use of force by and against Victorian police*, (Report) July 2009, p 11-12.

⁵¹ Michael Briody, and Tim Prenzler, 'The New Zealand Police Early Intervention System: A review of implementation and impact issues', (2020), *International Journal of Police Science & Management*, 22(3), p 297–307.

The categories for police use of force vary across jurisdictions. For example, the use of handcuffs must be reported as a use of force in Victoria. The Victoria Police Manual includes the following mandatory reporting categories:

- *Use or draw a firearm*
- *Use a baton against another person*
- *Use a noxious spray against another person*
- *Use any weapon, instrument or implement against another person*
- *Use any compliance or restraint hold, blow, punch, kick or other similar operational safety defensive tactic on another person*
- *Use handcuffs or similar restraint on another person*
- *Use a police dog in any activity which results in a person being bitten by the dog.*⁵²

The Victorian Police must also record any force used against them as well as other situations involving force, such as forced entry to premises, forced removal of clothing to search persons and forcibly obtaining fingerprints.⁵³

Since 2012, officers in Queensland are required to report events that are considered “significant”. This includes the discharge of firearms, the use of Tasers, police pursuits, and incidents involving serious injury or death, amongst other significant events.⁵⁴ This is a mandatory “Use of force report” on the QPS computer system. Use of force such as baton strikes and bites by police dogs are included, but reporting is not required for tactical options such as open and closed hand tactics and communication. Mandatory reporting of handcuffs is not required. If a person is injured in custody or by police using options which may not be reportable, then other reports are required.

The Commission does not recommend NSWPF adopt mandatory reporting of use of force. The reason is that the current inaccuracies in NSWPF’s use of force data would limit the utility and value of mandatory reporting at this stage. The Commission suggests that the issue of mandatory reporting could be reviewed in future once the NSWPF has strengthened its reporting systems to ensure data is captured accurately.

⁵² Office of Police Integrity Victoria, *Review of the use of force by and against Victorian police*, (Report) July 2009, p 11-12.

⁵³ Office of Police Integrity Victoria, *Review of the use of force by and against Victorian police*, (Report) July 2009, p 60.

⁵⁴ Kelly Hine, ‘*Understanding Police Use of Force Encounters in Context: What Encounters Look Like, Circumstances when Officers get Injured, and the Decision Factors and Processes Involved*’, (PhD Thesis, Griffith University, 2017), p 49.

3. Data Analysis

Of the 210 COPS events analysed by the Commission, 73% contained at least 1 reporting inaccuracy. All but 1 of these events were verified by a shift supervisor.

At the moment, the use of handcuffs cannot be recorded as a use of force. If the use of handcuffs could be recorded, then the under-reporting and inaccurate reporting would increase to 93% of events.

Of these COPS events, 14 did not have the “Force Used” screen as an active option. It appears the Use of Force screen becomes active when a POI is listed on the record. However, only 10 of the 14 events with no active Use of Force screens specifically referenced a POI in the narrative of the event. Twenty seven COPS events stated “Force was NOT used”, where there was a clear indication within the event narrative that force was used.

This chapter details the reporting issues for each tactical option. The Commission also considered reporting in circumstances where narratives detail the use of handcuffs, because the data suggests some level of confusion about whether restraint/wristlock should be nominated if handcuffs are applied.

There may be good reasons for linking the use of force categories to the Tactical Options Model for training and other purposes. For example the data may demonstrate an escalation of force was used by an officer in response to increased resistance from a POI. However, some of these options do not appear to involve a use of physical force, or the threat of force, and may serve to confuse officers, or contribute to under-reporting.

Given the issues identified in the sections below, the Commission considers that the NSWPF should review and potentially simplify the categories in the Use of Force screen. Excluding categories such as “communication”, or “contain and negotiate” would be consistent with the Victorian and Queensland recording of a higher threshold use of force. This would also be consistent with the ANZPAA definition of force: “physical force or other techniques, including a weapon, instrument or implement”. That definition would also appear to include the use of handcuffs as an implement used for physical restraint.

That said, the Commission supports including categories involving drawing weapons, such as drawing a firearm; “draw and cover” by a Taser; or display of OC spray. The use of these weapons in that way carries the threat of physical harm and accordingly falls within the ambit of a use of force.

Recommendation 3:

The NSWPF should consider the options available in the checklist on the Use of Force screen in COPS, and aim to simplify the categories and reduce potential confusion.

NSW Police Force response

The NSWPF supports this recommendation in principle. The NSWPF is setting up a dedicated project team to develop policy and guidelines in relation to the mandatory recording of use of force.⁵⁵

⁵⁵ Letter from Assistant Commissioner, Corporate Spokesperson Police Powers, NSW Police Force, to Chief Commissioner, Law Enforcement Conduct Commission, (undated), received 28 September 2022.

3.1 Handcuffs and Arm Restraints / Wrist Locks

The most common inconsistency or under-reporting identified in the dataset was in the reporting of handcuffs and arm restraints/wrist locks. Of the 210 COPS events in this analysis, 144 events referred to the use of handcuffs and 90 events referred to the use of arm restraints/wrist locks in the COPS narrative. As discussed, the Use of Force screen does not contain an option for reporting handcuffs. As a result, of the 144 records referencing the use of handcuffs, none were reported in the Use of Force screen.

Twenty nine of these 144 records, also recorded arm restraints/wrist locks in the Use of Force screen where this was not detailed in the narrative. Wristlocks are a specific technique taught in weaponless control training.⁵⁶ We would expect that an officer using this technique on a POI would refer to it in the narrative. The 29 records in which arm restraint/wristlock is recorded on the Use of Force screen, but where the application of handcuffs is recorded in the narrative, suggests that a proportion of officers may be using this category to record the use of handcuffs, in the absence of a more suitable option on the screen.

Further, of the 90 records referring to the use of arm restraints and wrist locks in the narrative, only 50 were recorded in the Use of Force screen. This translates to 44% of records failing to report arm restraints and wrist locks on the Use of Force screen.

Handcuffs are not listed as a tactical option in the Tactical Options Model, and the NSWPF has advised the Commission that use of handcuffs is not considered a “Use of Force” in every instance. The NSWPF Use of Force Manual notes that handcuffing a person during an arrest is considered a use of force, whereas using handcuffs in the everyday transport of prisoners is not considered a use of force.⁵⁷ That said, of the 144 incidents we reviewed that referred to the use of handcuffs, none of them related to the use of handcuffs in routine transport of prisoners.

The Commission recommends that the use of handcuffs should be included as a category in the Use of Force screen on COPS. As discussed above, the use of handcuffs appears to fit within the definition of “physical force or other techniques, including a weapon, instrument or implement” in the ANZPAA Use of Force Principles.⁵⁸ Including handcuffs in the Use of Force screen complies with those recording principles. In addition, the recording of the use of handcuffs would be consistent with use of force recording in other police jurisdictions such as Victoria, promoting cross-jurisdictional data comparison and analysis.

Recommendation 4:

The NSWPF should add a handcuffs option to the Use of Force screen in COPS in order to improve the accuracy of reporting on the use of handcuffs.

NSW Police Force response

The NSWPF supports this recommendation in principle. The NSWPF has advised this issue will be considered by the project team established to consider Use of Force Reporting policy and guidelines.⁵⁹

⁵⁶ Weapons and Tactics, Policy and Review, *Weaponless Control*, January 2012.

⁵⁷ Letter from Assistant Commissioner, Corporate Spokesperson, Police Powers, NSW Police Force, to Chief Commissioner, Law Enforcement Conduct Commission, (undated), received 28 September 2022.

⁵⁸ Australia New Zealand Policing Advisory Agency, *Australia New Zealand Use of Force Principles*, 2018.

⁵⁹ Letter from Assistant Commissioner, Corporate Spokesperson, Police Powers, NSW Police Force, to Chief Commissioner, Law Enforcement Conduct Commission, (undated), received 28 September 2022.

3.2 Number of Officers Present

“Officer Presence” - which indicates the number of officers present in a particular situation - is the first approach listed in the Tactical Options Model.⁶⁰ Training on the model indicates that the presence of more than 1 officer alone may prevent the need for more serious tactical options. The Use of Force screen allows officers to record the number of officers present in any situation with the options “One officer”, “Two officers”, and “Three or more officers”. In the sample we reviewed, 149 (67%) of the COPS events had 1 of these options recorded in the Use of Force screen. About 30% of events in this sample did not record the number of officers present, indicating there may be some confusion as to whether the number of police officers present should be recorded in the Use of Force screen.

There is no specific training or guidance as to whether the number of officers present should be reported in every event, or only if it reflects a tactical decision to have a number of officers present.

In the Commission’s view the inclusion of these categories in the Use of Force screen on COPS should be reconsidered, consistent with Recommendation 3 above. If a decision is made by the NSWPF that the number of officers present should be retained as a category/categories, the NSWPF should publish clear policy guidelines instructing officers when to record this and why it needs recording.

Recommendation 5:

The NSWPF should clarify and publish policy guidelines instructing officers when to record the number of officers present in the Use of Force screen.

NSW Police Force response

The NSWPF does not support this recommendation. The NSWPF advised that this recommendation would be difficult to comply with, because determining the number of officers present at an incident can be difficult, especially at large dynamic incidents, and officers should not be distracted from their duties and then criticised at a later time for not accurately recording the number of attending police.⁶¹

The Commission acknowledges the challenges of dynamic incidents. The Commission does not suggest that police officers should be required to tally the precise number of officers at large events. The current Use of Force screen only requires officers to tally up to “three or more” officers.

However the Commission’s concern is that officers should be given clear instructions about when they are required to record the number of officers attending in the Use of Force screen. Sometimes the number of officers in attendance may be a tactical decision, perhaps to avoid an escalation to more significant uses of force. On other occasions, the number of officers attending may reflect officer availability or proximity.

Recommendation 5 is about giving police officers clearer policy guidance to help avoid confusion about when the number of officers should be recorded in the Use of Force Screen. The new Use of Force Manual does not provide any instruction on when officers should record this in COPS. The NSWPF’s observation about large dynamic incidents is a consideration that could be reflected in the policy guidance in this area.

⁶⁰ Weapons and Tactics, Policy and Review, NSW Police Force, *Training Manual – Tactical Options and Use of Force*, January 2012.

⁶¹ Letter from Assistant Commissioner, Corporate Spokesperson, Police Powers, NSW Police Force, to Chief Commissioner, Law Enforcement Conduct Commission, (undated), received 28 September 2022.

The Commission will monitor whether the further policy guidance and training that the NSWPF proposes to develop assists to clarify this issue.

3.3 Communication

Training materials provided to the Commission on the Tactical Options Model state that “Communication is a key element of control and should be present with all tactical options.”⁶² Despite this, the use of communication was only recorded on the Use of Force screen in 55 COPS events. This means that 74% of the examined COPS events did not report the use of communication. Further, police officers recorded “contain and negotiate” in 17 COPS events where it is likely that the officers were describing the use of communication only.

This suggests that within this dataset there was a significant level of confusion as to when officers should record the use of communication. It is possible that officers do not view the reporting of the use of communication as necessary, as it is likely to be used in every situation. As discussed previously, reporting about communication may establish that officers have attempted to use lower-level tactical options before escalating the use of force. As such, it may be valuable to record this data for training or other purposes. However, we have not seen any instruction or guidance specifically referencing when the use of communication should be recorded.

In the Commission’s view the inclusion of this category on the Use of Force screen on COPS should be reconsidered as discussed in Recommendation 3. At the moment, it is not clear when officers should record the use of communication in the Use of Force screen. Additionally, its inclusion does not appear to be consistent with the definitions of force outlined in the ANZPAA principles.

Should the NSWPF decide that “communication” be retained for inclusion on the Use of Force screen, we recommend that clear instruction and guidance be provided as to what type of communication should be recorded - for example, whether it involves only the issuing of a lawful direction to a POI, or a verbal command, to which resistance would justify an escalation of the use of force.

Recommendation 6:

The NSWPF should clarify and publish policy guidelines instructing officers when to record the use of communication in the Use of Force screen.

NSW Police Force response

The NSWPF does not support this recommendation. In response to this recommendation, the NSWPF advised that “communication is a tactical option, not a use of force”.⁶³

The Commission agrees with the NSWPF that communication is not a use of force. The intention of Recommendation 6 is that the NSWPF should clarify whether and when “communication” as a *tactical option* should be recorded in COPS. Changing the name of the “Use of Force screen” to the “Tactical Options” screen may more accurately reflect the contents of that screen, and provide some more clarity about what information should be recorded there.

⁶² Weapons and Tactics, Policy and Review, NSW Police Force, *Training Manual – Tactical Options and Use of Force*, January 2012.

⁶³ Letter from Assistant Commissioner, Corporate Spokesperson, Police Powers, NSW Police Force, to Chief Commissioner, Law Enforcement Conduct Commission, (undated), received 28 September 2022.

3.4 Batons

We identified 8 COPS events within this dataset involving batons, and 2 (25%) of these events failed to record this in the Use of Force screen. This is a relatively small dataset and it is not enough to establish whether this represents a widespread level of under-reporting in the use of batons. In the Commission's view the NSWPF should consider a bigger dataset to monitor and evaluate recording compliance with this use of force.

3.5 Tactical Disengagement

The Tactical Options Model describes "tactical disengagement" as identifying an exit route, or leaving an area or situation, and notes that it may be followed by the tactical option "contain and negotiate". The use of "tactical disengagement" was recorded in the Use of Force screens in 2 COPS events in this dataset, however it was not identified in the narratives of any of the examined COPS events. One of these COPS events stated that the officer had broken a choke hold by "by striking in the direction of where the arm came from".⁶⁴

As this tactical option was not well represented in this dataset, it is difficult to comment on the quality of reporting. The incorrect reporting of this tactical option in the 2 records may suggest that there is some misunderstanding of the definition of tactical disengagement, however, it is not possible to make any assessment with the current dataset.

In any case the Commission suggests that the NSWPF reconsider the inclusion of "tactical disengagement" as a use of force option on the Use of Force screen in COPS, consistent with Recommendation 3. The Commission considers that this category does not meet the definition of use of force under the ANZPAA principles. Should the NSWPF decide this option should be retained, the Commission suggests the NSWPF provide officers with further instruction and guidance as to when "tactical disengagement" should be recorded.

3.6 Use of Weaponless Control

In total, 144 of the COPS events reviewed by the Commission referred to some form of weaponless control in the narrative. The Commission's categorisation of "weaponless control" included any reference to uses of physical force loosely equivalent to weaponless control techniques described in the Use of Force screen, such as check-drills, takedowns, ground wrestles or defensive strikes. The Commission recorded arm restraints and wristlocks separately to other uses of weaponless controls, because of the issues identified with confusing this option with use of handcuffs. Hence these 144 events do not include narratives describing the use of arm restraints or wristlocks (of which there were 90), notwithstanding these are also weaponless control techniques.

Of these 144 events, 81 (56%) did not record a corresponding weaponless control category on the Use of Force screen. The Commission found a failure to report ground wrestles and take downs in 25 and 44 records respectively. Further, 19 records did not accurately record check or redirection drills used in the Use of Force screens, and 23 records failed to report the use of defensive kicks and defensive strikes/punches.

As an example, a record which only reported "three or more officers" in the Use of Force screen, detailed the following within the narrative:

⁶⁴ COPS reference: E63437766.

“...attempted to take hold of the rear of the accused's t shirt... Police pushed the accused backward to gain a safe distance and to prevent further assaults... deployed an approved technique being a palm heel strike aimed at the accused in the upper chest area but collided with the accused in the lower part of his jaw... took hold of the accused... He was pushed against a nearby wall... police were attempting to get his arms behind his back ...deployed a burst of Oleoresin Capsicum spray to the accused face area... other police wrestled with the accused... taken to the ground and handcuffed...”⁶⁵

The POI's actions in this matter have been removed from the quotation above, and the Commission does not suggest the force used was unreasonable under the circumstances. However, the officer's actions clearly indicate further categories in the Use of Force screen should have been recorded.

A shift supervisor verified this record. This indicates that the record had been through the existing quality assurance processes. Section 2.3 above contains further discussion about the quality assurance processes, including supervisor verification.

In the Commission's view, the NSWPF should consider the gaps identified in recording weaponless control options. It does not appear that training in “weaponless control” options includes any instruction that their use needs to be recorded and how it is to be recorded.⁶⁶ Nor does the Use of Force Manual, introduced in 2022, address the issue of recording the use of weaponless control. The NSWPF should consider whether training should remind officers that deployment of these techniques, or a combination of these techniques, must be recorded on the Use of Force screen. In addition the NSWPF should consider whether there are any impediments to supervisors ensuring that weaponless control use of force screens have been completed correctly, as suggested in Recommendation 2.

Recommendation 7:

The NSWPF should clarify and publish policy guidelines instructing officers when to record the use of force involving weaponless control options.

NSW Police Force response

The NSWPF supports this recommendation. The NSWPF is currently developing a Use of Force manual with guidance on how officers are to record weaponless control, especially where multiple techniques are used. The NSWPF indicated definitions will be clarified, to help avoid confusion.⁶⁷

3.7 Oleoresin Capsicum Spray

The use of OC spray was identified in 50 of the COPS event narratives reviewed by the Commission. Of these 50 records, 11 (22%) failed to report the use of OC spray in the Use of Force screen. In 1 of these records, the use of OC spray was recorded, however it incorrectly noted “OC spray – single burst” when multiple bursts of OC spray were detailed in the narrative.

Although 22% is a significant proportion of the identified uses of OC spray, the Commission's analysis found higher levels of accuracy in the recording of OC spray in the Use of Force

⁶⁵ COPS reference: E74512335.

⁶⁶ Weapons and Tactics, Policy and Review, *Weaponless Control*, January 2012.

⁶⁷ Letter from Assistant Commissioner, Corporate Spokesperson, Police Powers, NSW Police Force, to Chief Commissioner, Law Enforcement Conduct Commission, (undated), received 28 September 2022.

screens than for any other tactical options. Despite this, as OC spray is a more serious tactical option with higher potential for injury, the significant levels of unreported use of OC spray remains a concern. The NSWPF should consider including the requirement to record the use of OC spray when training officers in this tactical option.

Recommendation 8:

The NSWPF should clarify and publish policy guidelines instructing officers when to record the use of force involving the display and burst of OC spray.

NSW Police Force response

The NSWPF supports this recommendation. The NSWPF will refer this issue for consideration by the project team established to review Use of Force Reporting Policy and Guidelines.⁶⁸

3.8 Taser (Conducted Electrical Weapon)

As discussed in section 2.3, the NSWPF's Taser Review Panel is an additional quality assurance process for monitoring the use of Tasers. Despite this additional process, the dataset we reviewed for this report demonstrated issues with under-reporting of Taser use within the Use of Force screen.

Tasers were used relatively infrequently in the sample reviewed by the Commission, with only 16 records identifying this tactical option in the COPS narrative. Four of these records failed to list the use of a Taser in the Use of Force screen (representing ¼ of the records).

Taser use is recorded in a separate screen within the COPS event and is quality assured through the Taser Incident Management System (TIMS). The TIMS interfaces with COPS to provide Taser incident data. This may be a reason for the inconsistencies in the recording in the Use of Force screens. Where officers recorded Taser use elsewhere in the event, they may not consider recording it in the Use of Force screen as necessary.

Parallel reporting processes may account for some under-reporting, as well as resulting in "reporting fatigue". A Victorian report found that a number of standalone databases to do with the use of force not only "wasted effort caused by duplication", but resulted in "corporate knowledge being fragmented and dispersed".⁶⁹ This may be a factor in using the data for the purposes of preparing Quarterly and Annual Tactical Option reports, for example.

From the information and documents provided to the Commission, it is unclear what the correct procedure is for the recording of the use of Tasers. It is reasonable to conclude that officers are expected to complete both screens, as a question within the Taser screen asks whether the Use of Force screen has been completed. It is notable that in other policing jurisdictions where Taser is used, there are also Taser reporting requirements in addition to completing the use of force data.⁷⁰

Recommendation 9:

The NSWPF should review the instructions provided to officers as to when and how Taser use should be recorded, particularly within the Use of Force screen.

⁶⁸ Letter from Assistant Commissioner, Corporate Spokesperson, Police Powers, NSW Police Force, to Chief Commissioner, Law Enforcement Conduct Commission, (undated), received 28 September 2022.

⁶⁹ Office of Police Integrity Victoria, *Review of the use of force by and against Victorian police*, (Report), July 2009, p 11-12.

⁷⁰ For example in the UK this is explicitly stated in the National Police Chief's Council, *Use of force Monitoring Form: Guidance*, (January 2017), <<https://www.npcc.police.uk/documents/Guidance%20on%20Use%20of%20Force%20master%20V2Jan17.pdf>>.

NSW Police Force response

The NSWPF supports this recommendation. The NSWPF is considering a technical solution linking the Use of Force screen to other data areas in COPS so that officers are only required to enter information once.⁷¹

3.9 Police Dogs

Use of police dogs was identified in only 10 COPS event narratives in our dataset. Events where police dogs were used often appeared to be duplicated, as officers attached to the Dog Unit entered an event in addition to the COPS event created by other police. Four of the 10 COPS events in this dataset were duplicates and therefore there were only 6 discrete incidents in which police dogs were used.

Out of the 10 records, 5 did not list use of dogs in the Use of Force screens. Of these 5 records, 4 were created by officers attached to the Dog Unit and were duplicates of other events. These records do not have use of force as an active screen (indicating no POI was identified). When these duplicate records are removed, only 6 records were identified where a police dog was used. Of these, only 1 record neglected to list the use of a police dog in the Use of Force screen.

The Police Dog Handlers Learner Manual includes guidance for general purpose police dog handlers about recording dog bites.⁷² The manual indicates that when managing a dog bite, a dog incident form will need to be completed as well as a “comprehensive” COPS event. The manual also states that justification for deploying the dog and details of the incident need to be recorded for the Dog Incident Panel. However, the manual does not include specific reference to whether officers should select the “Dog” category in the Use of Force screen in COPS.

Accordingly, it is not clear to the Commission whether officers are required to record in the Use of Force screen:

- only the deployment of general purpose dogs (as opposed to drug sniffer dogs for example which are not trained in containing offenders);
- only if there is contact by a general purpose dog with a POI (such as a dog bite); or
- the deployment of any police dog (including drug sniffer dogs).

The Commission recommends the NSWPF consider whether there is adequate instruction and training for the relevant officers tasked with recording the deployment of police dogs in the Use of Force screen on COPS, as well as when and where to record this use of force.

Recommendation 10:

The NSWPF should review the clarity of the training and instructions given to officers about who is required to record the use of police dogs in the Use of Force screen and under what circumstances.

NSW Police Force response

The NSWPF supports this recommendation. The NSWPF indicated that training will reflect that use of police dogs will only be recorded in the Use of Force screen where police dogs

⁷¹ Letter from Assistant Commissioner, Corporate Spokesperson, Police Powers, NSW Police Force, to Chief Commissioner, Law Enforcement Conduct Commission, (undated), received 28 September 2022.

⁷² Education and Training Command, NSW Police Force, *Police Dog Handlers (General Purpose) Learner Manual*, 2021, section 5.6.2.

have bitten someone, but not where general purpose dogs are used for other tasks such as searching or detection.⁷³

3.10 Police Horses

Use of police horses was not captured in the dataset reviewed by the Commission. The Commission makes no recommendation about the recording of the use of police horses. However it is notable that there are similarities between recording the presence of police horses and recording use of police dogs, and the circumstances under which they should be recorded.

For example, police may deploy horses as part of the broader police operation at incidents such as a large protest. However, it is unclear whether an incident involving close proximity or contact between a POI with a police horse should be recorded. The close presence of a police horse falls within the ambit of a use of force and should be recorded. The Commission is not aware of any training or instruction about the recording of police horses in the Use of Force screen. However, the NSWPF should consider whether clarification is also required as to when and who should record this use of force.

3.11 Firearms

Eight of the COPS narratives reviewed by the Commission refer to circumstances in which a firearm was drawn. A further 2 records noted in the Use of Force screens that a firearm was discharged, however failed to mention the discharge of the firearm in the narrative. In total, 10 records identified some use of a firearm. Of these 10 records, 6 failed to record the use of firearm in the Use of Force screen, and 2 listed the discharge of a firearm in the Use of Force screen without any description of this in the narrative. It is concerning that within this dataset, the tactical option which is the most serious also has the highest proportion of under-reporting and inconsistent reporting.

One event narrative described the use of a firearm being drawn, before being put away and a Taser being used. An excerpt from this narrative is below.

Case study 2: **Firearms**

“... Police drew their firearm. Police repeated multiple times for the accused to get out of the bushes and show his hands. Police changed tactical options and drew their Taser...”⁷⁴

This event does not record the use of a firearm in the Use of Force screen, and later versions of the narrative in the system omit reference to the firearm. The category nominated for this event from the Use of Force screen was “two officers” only. The discharge of the Taser and details were recorded in the discrete fields relevant Taser on COPs but not in the Use of Force screen.

It should be noted that this subset of data is relatively small and these patterns may not be evident across a larger sample of data. However failure to record drawing a police firearm, given the potential lethal outcome of this tactical option, is significant.

It is not clear why these failures have occurred, in particular the failure to include drawing a firearm in the COPS narrative. Regardless of the cause, this is an obvious discrepancy that

⁷³ Letter from Assistant Commissioner, Corporate Spokesperson, Police Powers, NSW Police Force, to Chief Commissioner, Law Enforcement Conduct Commission, (undated), received 28 September 2022.

⁷⁴ COPS reference: E77474388.

the Commission would expect to be identified during routine verification or quality assurance processes. The 2t relevant records were verified by a shift supervisor.

In the Commission’s view the under-reporting in this small sample of records regarding the use of firearms warrants further data collection and analysis by the NSWPF to determine the extent of any under-reporting and whether further action is required to address any trends or issues identified.

Recommendation 11:

The NSWPF should conduct further analysis of COPS records to assess compliance with reporting the use of a firearm in the Use of Force screen, and determine whether any further action is required to address any non-compliance issues identified.

NSW Police Force response

The letter the NSWPF sent to the Commission in September 2022 did not clearly indicate whether the NSWPF supports this recommendation, but the letter said the NSWPF intends to develop policy, guidelines and training dealing with recording use of force in COPS, including the use of a firearm.⁷⁵

3.12 Further Discrepancies in Event Narratives

In 44 of the identified events (21%) tactical options were listed in the Use of Force screen which were not mentioned in the narrative. It is not clear why this is occurring, and to what extent it is caused by a misunderstanding of the definitions of tactical options. Examples of this include reporting “contain and negotiate” as a tactical option, where the narrative describes an interaction that would be better categorised as “communication”. The extract presented in case study 3 appears to be the interaction that the officer who completed the narrative referred to as “contain and negotiate” in this event.

Case study 3: Discrepancies in Event Narratives

“Police attempted to place the Accused’s hands behind his back so he could be handcuffed. The Accused continued to hold onto a card in his left hand tightly and swung his right arm around to avoid apprehension. Police continuously yelled to the Accused: ‘Stop resisting! Put your hands behind your back.’⁷⁶

In reference to the tactical option “contain and negotiate”, training for the Tactical Options Model⁷⁷ states “a situation may arise where there is a need to set up perimeters and restrict access to an area, i.e. a siege/hostage or bomb situation.” This is not what is described in the event referenced in case study 3.

There were 17 records in this dataset which listed “contain and negotiate” in the Use of Force screen, none of which referred to the situation of siege as described above.

In the Commission’s view these discrepancies reinforce the need for the NSWPF to re-consider the number and types of tactical options listed in the Use of Force screen, as recommended in Recommendation 3 above. Confusion about the categories leads to

⁷⁵ Letter from Assistant Commissioner, Corporate Spokesperson, Police Powers, NSW Police Force, to Chief Commissioner, Law Enforcement Conduct Commission, (undated), received 28 September 2022.

⁷⁶ COPS reference: E74911425.

⁷⁷ Weapons and Tactics, Policy and Review, NSW Police Force, *Training Manual - Tactical Options and Use of Force*, January 2012.

inaccurate records being created and may contribute to under-reporting of other uses of force.

While the misunderstanding of the tactical option “contain and negotiate” identified in this dataset could possibly be addressed as part of training in the Tactical Options Model, it is questionable whether such an option should be included in the Use of Force screen at all, as it does not meet the definition of physical force under the ANZPAA principles.

4. Conclusion

The Commission's analysis of a data sample of 210 COPS events found significant levels of under-reporting of the use of force. Notwithstanding the small data set, the most concerning discrepancies related to a failure to record the use of firearms.

The data highlights the need for recording use of handcuffs, given this is consistent with the definition of force in the ANZPAA principles.

The Commission also identified high rates of under-reporting in the use of weaponless control options and confusion about recording arm restraints and wrist locks with the reporting of the use of handcuffs.

Regarding use of police dogs, clarification is required as to who should record this use of force and the circumstances in which the use of police dogs is expected to be recorded as a use of force.

High rates of under-reporting of tactical options such as communication and the number of officers present, which are relevant to all incidents, suggest police are not clear as to when this should be recorded on the Use of Force screen. It also raises questions as to whether these techniques should be considered a use of force.

Misunderstandings identified with the recording of other categories, such as "contain and negotiate", reinforce the need to review the current categories in the Use of Force screen and reduce or simplify the categories to reduce confusion and promote more accurate reporting.

The Commission also identified under-reporting of the use of Tasers, with additional reporting requirements likely to be impacting consistent reporting of Taser use in the Use of Force screens. OC spray was also inconsistently recorded.

Many of these recording issues should have been picked up and corrected during quality assurance processes, such as verification of COPS events by shift supervisors. Checking COPS records for accuracy is fundamental to the quality and reliability of this data and further action is required to ensure this occurs.

The ANZPAA principles state that appropriate governance structures should be in place to allow for reporting and monitoring of the use of force.⁷⁸ If the NSWPF relies on inaccurate data to monitor and report on the use of force, any use of that data will also be inaccurate. Further, under-reporting use of force will result in the NSWPF missing key opportunities to identify concerning trends and training needs. Accurate use of force data is an important tool for the ongoing improvement of the safety of police officers and the community.

In summary, the accuracy of the data collected in COPS in relation to use of force reporting may be improved by:

- developing quality training and guidance;
- clear instructions to officers about which tactical options should be reported and when;
- adequate functionality in COPS to record uses of force consistent with ANZPAA definitions; and
- functional quality assurance processes.

⁷⁸ Australia New Zealand Policing Advisory Agency, *Australia New Zealand Use of Force Principles*, 2018.

The 11 recommendations in this report aim to bridge gaps identified in the above 4 areas. The Commission acknowledges that the NSWPF supports the majority of the recommendations. We are keen to see the way the NSWPF strengthens its practices for reporting the use of force through the policy guidance and training it has promised to develop. The Commission will monitor and report publically on the NSWPF's actions in relation to supported recommendations.

Appendix A

Table 1: Summary of Data Findings

	Arm Restraints and Wrist Locks	No of Officers Present	Communication	Batons	Tactical Disengagement	Weapon-less Control	OC Spray	Taser	Police Dogs	Firearms	Further Discrepancies in Event Narratives
No. of events containing tactical option	90	210	210	8	2	144	50	16	10	10	210
Proportion with reporting issues	40/90	61/210	155/210	2/8	2/2	81/144	11/50	4/16	5/10	6/10	44/210
Per Cent with reporting issues	44%	29%	74%	25%	100%	56%	22%	25%	50%	60%	21%

LECC

Law Enforcement
Conduct Commission

Level 3, 111 Elizabeth Street
Sydney NSW 2000
Email: contactus@lecc.nsw.gov.au

Postal address

GPO Box 3880
Sydney NSW 2001
Phone: (02) 9321 6700
Toll free: 1800 657 079
Fax: (02) 9321 6799