

POLICE KILLINGS

Dave Brown and Russell Hogg

1970 Richard Harding published his book Police Killings in Australia (Penguin) in which he reached two main conclusions: first, that one of the rules concerning the legal right to use lethal force - as a means of arresting a fleeing felon if he could not otherwise be arrested without that immediate situation - was out of line with modern needs when the circumstances were such that there was no reason to suppose that he was armed or otherwise dangerous; second, that defective administrative and legal procedures in investigating and testing the lawfulness of police use of lethal force had led to a position where such conduct was "effect extra-legal". (R. Harding, Changing Patterns of the Use of Lethal Force by Police in Australia, Aust. & Z. Journal of Criminology (June, 1975): 2). In a subsequent article, based on an examination of police killings between 1969 and 1974, Harding restated his earlier conclusions (ibid.). We are not making here to offer a systematic re-dating of Harding's important work. It is clear that police killings continue to be a reasonably frequent occurrence, though the cases we refer to are not based on an exhaustive search and do overlap with the period dealt with by Harding in his 1975 article. The intervening period has seen some modification of the "fleeing felon" rule in N.S.W. (30/6/80) [We reprint in an Appendix relevant sections from the current N.S.W. Police Instructions on the discharge of firearms]. However, we would strongly suggest that despite reform to internal police procedures for investigating complaints and incidents involving other police officers there continues to be evidence that the overall defective nature of the procedures for dealing with police killings identified by Harding remains. Certainly many of the criticisms he made of the role of prisoners have been repeated in connection with recent inquests on police killings.

What follows we also include reference to deaths in police custody (especially under the Intoxicated Persons Act, 1979 (NSW)) and in collisions arising out of car chases.

In different contexts in which police action or omission results in death we previously raise quite different questions

about police powers and duties and point to the need for reform in a number of areas. In particular, we would like to highlight the issue of persons who have died in police custody after being detained under the Intoxicated Persons Act, 1979 (NSW). (See Punk Dies in Darlo Cell, elsewhere in this issue.) This legislation decriminalised public drunkenness and persons detained under it are, in theory, in protective custody. Yet no special duties (with respect to medical care, etc.) are placed on the police where, as is usual, they are the detaining agency. There are a number of critical problems with the legislation (such as the potential for abuse without fear of judicial review) which have received some public attention. However, there has been little or no debate about the numbers and causes of deaths in custody under it. We point to this here as an issue of particular concern.

A related issue of importance is that of deaths of prisoners. Over the years there have been a significant number of prison deaths (especially in Mulawa women's prison) and particularly in solitary or punishment cells. Research along the lines of Coggan and Walker's Frightened For My Life : Deaths in British Prisons, Fontana, 1982, is urgently called for in Australia.

Another cause of concern is the practice of certain police carrying non-police-issue weapons and firearms. Should injuries or deaths ensue from the use of such weapons it is much easier for the police involved to deny responsibility. They point to the calibre of bullet or nature of the injury being inconsistent with the use of police-issue weapons. Planting of firearms following a shooting incident is also much easier if police have private, non-police-issue firearms on hand. Such possibilities are greatly increased in the case of prison escapees, particularly where police or media sources have previously claimed that the escapee is believed to be armed.

Following the escape of Raymond John Denning from Grafton jail in 1980 and (false) media reports that he was in the Blue Mountains armed, the Prisoners Action Group wrote to the Premier,

Minister of Police, Police Commissioner and Police Officers Association Secretary requesting that clear instructions be issued to police that:

"no non-police, non-official firearms are to be carried in the search, and that if Denning is holed up somewhere Commissioner Lees be notified immediately so that he can superintend operations and can provide for independent observers to be present at any recapture."

That police do carry non-police issue weapons has come to light in recent years in a number of ways. On 24/4/83 the general secretary of the N.S.W. Police Association, Bob Page, stated before the State Industrial Commission:

"In some areas of the State, however, I am aware police are so concerned for their own safety that they have adopted the practice of carrying their privately owned shotguns while on duty in police vehicles" (S.M.H. 25/4/79 emphasis added).

Following disturbances at the Bathurst bike races in Easter 1981 a young constable was quoted as saying that prior to the disturbance he went "out to the tip near the college to get a piece of timber to protect myself adequately" and that "other policeman had done the same" (Western Advocate 20/4/81. See also the B.Y.O. weapons practice in the Ti Tree incident.

The law and policy in respect of police access to and use of firearms is summarised by Richard Harding in Firearms and Violence in Australian Life, ch. 12. The law relating to police use of firearms is not uniform throughout Australia. The "fleeing felon" rule applies in N.S.W. Victoria, South Australia and the Territories. In Queensland, Western Australia and Tasmania the police are only legally permitted to resort to let force to stop a fleeing offender if they have a reasonable suspicion that the offender has committed an offence punishable by death or life imprisonment.

Commissioner told of police 800 NSW shotgun patrol

Police in some areas of NSW are so worried about safety that their own shotguns on duty in police vehicles, the State Industrial Commission was told yesterday.

Police keen to get outlawed ammunition

THE NSW Police Association is expected to approve members' use of outlawed bullets banned in war by the Hague Convention.

POLICE CALL FOR BAN ON DUM-DUM TERROR AMMO

DUM-DUMS, hollow-nosed bullets which spread on impact, may be used by NSW police.

NSW POLICE GET U.S. RIOT GUNS

NSW police have bought 800 riot shotguns to combat the rising number of armed criminals.

POLICE KILLINGS: A SELECTION

The following is our unsystematic listing of some of the police killings or deaths in police custody in Australia over the last ten years, which hit the press. We have compiled the list from our own incomplete clippings file (with assistance from Denise William). It will be apparent that in some cases the details available to us are scant. We urge readers to assist in the process of bringing this list up to date, and in providing additional information about existing listings. Then perhaps in a future issue we could provide a more comprehensive listing together with some analysis. What follows is really only in the form of notes.

21/7/72

Jose Bilbao, 45. Bilbao was arrested on 20/7/72 and charged at Central Police Station, Sydney, with unseemly words. On 21/7/72 he appeared in Central Court of Petty Sessions, before Mr M. Farquhar, C.S.M. Court records show that Bilbao was asked how he received certain injuries and he claimed that a policeman did it. He was taken to Sydney Hospital and died that night (S.M.H. 16/8/72). Two police constables on duty in Central police station at the time, Terry George Swift and Peter Gary Abel, were suspended from duty and charged with murder. Mr M. Farquhar, C.S.M., discharged the two, finding that there was "insufficient evidence to establish a prima facie case against the constables" (S.M.H. 15/11/72).

On 7/6/74, the N.S.W. Court of Appeal ordered Mr M.F. Farquhar, C.S.M. to consider reopening the Coronial Inquiry, upholding an application for a writ of mandamus brought by Maria Jesus Bilbao, Bilbao's sister, after Mr Farquhar had refused a request by legal representatives to resume the inquest. The Court of Appeal order was the first of its kind since the Coroners Act was passed in 1960. Mr Farquhar refused to resume the inquest. On 5/6/75, Ms. Bilbao requested the Court of Appeal to order the resumption of the inquest. They refused.

On 17/7/76, Attorney General F. Walker instructed the Crown Solicitor not to oppose an application for a reopening of an inquiry into the death, brought by Ms Bilbao before the Supreme Court by way of a writ of ad melius inquirendum (S.M.H. 17/7/76). On 22/6/79, Mr K. Waller S.M., Coroner, found a prima facie case of manslaughter against Swift and Abel. On 2/11/79, Swift and Abel were charged with manslaughter and conspiracy on ex officio indictments. On 13/3/80, 7 years and 8 months after Bilbao's death, Swift and Abel were acquitted on both charges by direction at Central Criminal Court.

24/2/74

John William Hands, 17. The youth was in an allegedly stolen car which was stopped at a police road block on the Hume Highway, south of Goulburn. He ran off and was fired upon by police. One shot hit him in the back, killing him. Constable Christopher Ross Smith of Goulburn was charged with manslaughter (S.M.H. 5/3/74) but the charge was dismissed at committal stage. On 26/2/74, N.S.W. Minister of Justice and Police, Mr Maddison, released details of hitherto unpublished rules on the use of firearms by police. The rules state that if a felon (any person who has committed an offence punishable by death or by penal servitude for any term) is running away to avoid arrest, and there appears no way to stop him, he may be fired upon. The rules state that should a felon be killed, the police officer need have no fear, but that the law would uphold and protect him (S.M.H. 27/2/74).

29/6/1976

Phillip Western. Shot dead at Avoca Beach. Western was out on bail on armed hold-up charges when he allegedly shot dead a bank officer in Parramatta during the course of an armed holdup. A large scale manhunt got under way immediately and the media engaged in a sensationalist campaign of vilification - "a cold-blooded felon with a touch of craziness" (S.M.H. 29/6/76. See also Zdenkowski, G. and Brown, D. The Prison Struggle Penguin, 1982. Chpt.]3. pp. 287-94). The evening before he was shot he was observed by police at Avoca Beach, apparently unarmed and in the open. A

siege was mounted overnight and he was shot dead early the following morning.

17/11/78

Kresimir Dragosevic, 32. Shot by police (Det. Snr. Con. I. Jameson) Nov 17th 1978. Mr L. Nash S.M., City Coroner, described the killing as a "justifiable homicide" (S.M.H. 12th May, 1979). A hostage of Dragosevic, Wajih Ali Abouvali, was also killed in an exchange of shots between Dragosevic and the police. The coronial inquiry found that Abouvali "had died from a gunshot wound to the head inflicted by a person now dead" (Dragosevic) contrary to claims that he had been killed in the police fire. An unusually prompt ex gratia payment of compensation was made to Abouvali's widow by the Wran government.

27/12/78

James Neville Ruwald, 47. Died after being shot in the head by a police constable during an attempted armed robbery of a Canberra bank. (S.M.H. 28/12/78).

4/4/79

Domenico Speranza. Shot after attempting to hijack a plane at Sydney airport and taking a hostage (who escaped). He was armed with bombs.

7/9/79

Gordon Perce Thomas. Shot by members of the S.W.O.S. squad after a 2½ hour siege at an apartment following a bank hold-up. He was described by police as a violent criminal. A police officer was seriously wounded during the siege.

30/6/80

Phillippe Michael Haynes, 26. Died from a gunshot wound to the back inflicted by a police officer involved in a drug raid at Kuranda in north Queensland. Haynes was unarmed and running away when shot by the undercover policeman. Civilian witnesses testified at the inquest into Haynes' death that no warning was given before shots were fired. The police witnesses agreed that they had discussed the shooting among themselves before making statements to the police investigating the shooting. And the head of the police Internal Investigation Unit agreed with counsel for Haynes' girlfriend that he could not remember any occasion when a civilian who had shot

someone in the presence of police had not been allowed to leave the scene and had not been interviewed until after consulting solicitors (National Times, 6/7/80 and 5/10/80).

21/7/80

Ti Tree Killing. Northern Territory. Two constables (L.R. Clifford and M.J. Warren) from Ti Tree station stopped a vehicle carrying a number of Aborigines and arrested the driver on liquor related offences. Two other men in the vehicle were then arrested. A fight developed and one of the constables shot two of the men, killing one and critically wounding another. One of the Aborigines was charged with the attempted murder of Constable Clifford (S.M.H. 22/7/80). Following an outcry and an investigation, one of the police officers was charged with murder and acquitted. "The coroner, Mr Gerry Galvin, criticised the handling of the investigation and censured the police for arming themselves with home-made or, as one lawyer sardonically described them, B.Y.O. weapons. This was a reference to evidence given by Chief Inspector Mike Gilroy of Alice Springs, "that it was commonplace for weapons such as cut-down shovel handles to be available for use by police" (Australian, 8/5/82). Police response to the Coroner's criticism was to issue the controversial F.S. 140 baton.

1/3/81

Judith Alison Woods, 17. Dies in police cells at Nambour, Queensland. The woman was a diabetic and apparently police failed to provide her with necessary medical treatment. The then opposition spokesman on police referred in parliament to reports that she had been raped in the cell (Australian 13/3/81).

3/5/81

Craig Cherry, 16. Died of injuries caused when his motorcycle collided with a police car going through a red light in pursuit of a speeding car. A coronial inquiry found that the boy was in no way at fault and that the driver of the police car was also driving in a reasonable manner even though he drove through a red light (S.M.H. 30/6/81).

12/6/81

Edward James Murray, 21. Found dead in police cells at Wee Waa after being detained under the Intoxicated Persons Act. When found he was hanging from a noose fashioned from a strip torn from a blanket. Medical evidence at the inquest indicated the cause of death as strangulation. No reason could be given as to why he would want to commit suicide. Moreover, his very high blood alcohol content raised considerable doubts as to whether he would have been capable of making the noose and hanging himself. (See Aboriginal Law Bulletin, no. 8, August 1983). During the course of the inquest one police officer was forced to completely change his evidence. The Coroner brought in an open verdict.

27/6/81

Warren Lanfranchi. Shot by Detective Sergeant Roger Rogerson in Dangar Place Chippendale. According to police who gave evidence at the inquest, Lanfranchi had arranged through an informant (referred to only as G) to meet Rogerson "to talk business". The meeting was agreed to in order to arrest Lanfranchi on armed robbery and attempted murder charges. A plan was formulated to deploy various detectives in and around the area including Detectives Frazer and Moore in Dangar Place itself. (S.M.H. 7/11/81).

Lanfranchi was driven to the meeting by G. (Later named in N.S.W. Parliament by John Dowd, then leader of Opposition as Ned Smith, described by Justice Woodward as a "professional criminal with a long history of convictions for dishonesty and violence and a reputation as a gunman and assailant".) Lanfranchi met Rogerson and the two walked down Dangar Lane, past a car in which Detective Frazer was crouched in the back with a shotgun. According to Rogerson, Lanfranchi asked "Are we going to do business". Rogerson replied "We are here to arrest you". Lanfranchi moved away and as other detectives closed in pulled out a silver coloured revolver and pointed it at Rogerson. Rogerson drew his gun and fired two shots, killing Lanfranchi.

Sally Anne Huckstepp, Lanfranchi's common law wife, told the inquest she had met Lanfranchi early in 1981 when she was a heroin addict and he was a dealer. She said Lanfranchi had

stolen heroin worth \$37,000 from another dealer and for that reason was in fear of Sergeant Rogerson. On the day of the killing Lanfranchi had told her he was going to meet Rogerson to pay him \$10,000 to "get him off my back". She said Lanfranchi was scared that Rogerson was going to shoot him. She helped him to count out \$10,000 and sort it into bundles. She said Lanfranchi did not take his revolver to the meeting, that she threw it into the harbour after learning of the killing and that she had never seen the silver revolver. (S.M.H. 13/5/83). Two prisoners facing armed hold-up charges gave evidence to the inquest about Lanfranchi's activities as a heroin dealer and enforcer. One of them claimed Lanfranchi had "murdered one person and maybe two". (S.M.H. 10/11/81).

The jury were supplied by the coroner, Mr N.F. Walsh, with a form of words stating that the death had been caused by a shot to the heart inflicted on him then and there by Detective Sergeant Rogerson in self defence, while endeavouring to effect an arrest, in the execution of his duty. The jury in returning their verdict struck out the lines "in self defence" and "in the execution of his duty".

Two barristers, Ian Barker QC and Anthony Young, who appeared as counsel for the Lanfranchi family and Huckstepp, prepared a detailed analysis of the evidence in a joint submission to then N.S.W. Attorney-General Frank Walker in which they raised a number of discrepancies and unanswered questions arising out of the inquest, including the timing of the two shots, the positioning of the body, the question of the \$10,000 and the gun, discrepancies between an account of the incident made by Rogerson on 27/6/81 and evidence given at the inquest, the failure to call certain witnesses, the admission of hearsay evidence prejudicial to Lanfranchi and the exclusion of hearsay evidence damaging to Rogerson.

In addition they raised a number of matters illustrating severe limitations on the value of Coronial Inquiries in any case involving allegations of impropriety against the police. In particular they noted practices adopted in relation to summonses and witnesses statements not adopted in Supreme or District Courts. And that "the preparation of the material to present to the Coroner was sufficiently under D.S. Rogerson's control to cause disquiet in the circumstances; he had a folder

with all the police statements on the matter and was obviously familiar with the evidence that the police were going to give". (1983. L.S.B. 66).

Public disquiet about the case continued and Lanfranchi's father sought a Supreme Court Order that the inquest findings be quashed and a fresh inquest held. A tape was played to the Supreme Court in which one of the prisoners who gave evidence damaging to Lanfranchi (Paul Ostara) claimed he gave false evidence at the inquest, doing a deal with police under duress and "painting a bad picture" of Lanfranchi in order to get charges against him dropped or lightened. He also claimed he was given drugs while in the C.I.B. interview room. (S.M.H. 17/5/83).

For fuller accounts of this controversial case see Evan Whitton: Death in Dangar Place, S.M.H. 1/5/82 and Viv Altman: The Lanfranchi Affair: An unsatisfactory inquest, 1983 Legal Service Bulletin 64-67.

6/7/82

Ivan Kalcic, 52. Shot by members of the SWOS squad after a siege at his home in Bexley. Kalcic, who was suffering from terminal cancer, had had an argument with his wife and, when local police were called, had threatened them also. A siege operation was mounted involving the SWOS squad and the Tactical Response Group, and was supervised by Detective-Sergeant Roger Rogerson. After several hours Kalcic, armed, was driven out of his house when police threw in tear-gas. He fired several shots and then was shot at close range by the police officers armed with shot guns. (S.M.H. 7/7/82).

23/8/82 (approx.)

A 62 year old taxi-driver, killed when his cab was hit by a police paddy wagon involved in a chase of a stolen car through the eastern suburbs of Sydney. This incident brought the number of people killed or seriously injured during high-speed car chases that year to more than 30, including 6 police officers (Sydney Telegraph, 26/8/82).

16/3/83

Constable Clare Frances Bourke, 23. Shot by a fellow constable in Sunshine police station, Melbourne. The killing appears to have been the consequence of a practical joke gone wrong. The responsible police officer was charged with manslaughter.

8/4/83

Michael Johnson, 22. Shot dead when a furniture van in which he was travelling with an escapee was surrounded by police at Centennial Park in Sydney. The Sun Herald (10/4/83) reports the police as having fired 70 shots into the van. Original press reports suggested that the two men fired at police first, and that one police officer was wounded. Indeed, the S.M.H., reporting the setting up of an inquiry into the wounding of the officer, stated as follows: "Police say the Armed Hold-up Squad was chasing a furniture van about 9.30 p.m. when a shot fired from the van hit Det-Sergeant Graham Fraser in the neck". It subsequently transpired that this wound was caused by a ricochet from a police bullet and Santos denied that he and Johnson were armed. In Santos' committal police told the court that they were the only witnesses to the incident (S.M.H. 12/8/83). At the time of the shooting the following comment appeared in Column 8 in the Sydney Morning Herald under the heading "Why so coy?":

The NSW Police Department refused to release the name of the Armed Holdup Squad detective who shot dead Michael Johnson, 22, in the shoot-out at Centennial Park on April 8. Policy has changed since the controversial Lanfranchi killing last year when Det-Sgt Roger Rogerson was the central figure. Seems to smack a bit of censorship. After all, cops often release the names of ordinary citizens charged before they're revealed in court.

It is worth noting that press reports at the time focused almost completely on Ian Santos, his escape from Darlinghurst Court and past record. No mention was made of who Johnson was, his background etc.

7/4/83

avid McIntosh, 20. Young punk taken into custody by Darlinghurst police under the Intoxicated Persons Act 1979 (N.S.W.). McIntosh was taken into custody as "in need of physical protection because of his incapacity due to his being intoxicated". Despite being taken into custody for his own "physical protection" at 1 a.m. he was found deceased 3.20 a.m. See Punk Dies in Darlo Cell earlier in this issue.

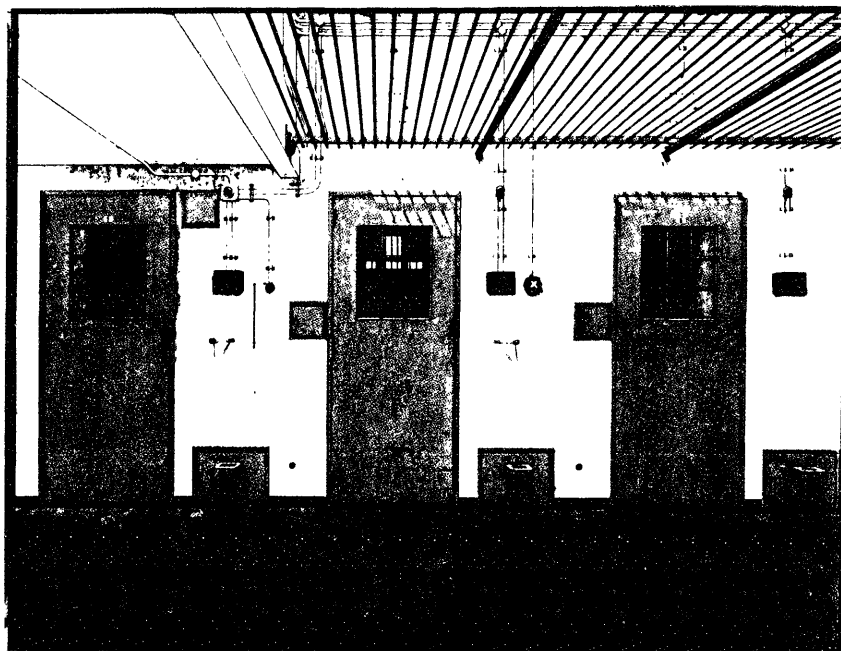
9/9/83

John Pat, an Aboriginal teenager, was found dead in the police lock-up at Coebourne, Western Australia. At the inquest the Coroner's Court was told that a group of police entered the town hotel in plain clothes and began challenging Aboriginal youths to a fight. Witnesses gave evidence that the police, who appeared affected by alcohol threatened a friend of Pat's, Ashley James, and one witness told of seeing Pat felled by a police punch after trying to separate James and a police constable as they ex-

changed blows. Another witness said that a police constable kicked John Pat in the face. When she heard the police boot connect with the boy's face she felt sick, she told the court. An unconscious Pat was dragged away and thrown into a police van "like a dead kangaroo" said another witness.

A Ms. Howard who lives directly opposite the police station, gave a graphic account of seeing police punching and kicking the prisoners as they removed them from the van at the police station. The police defence has been that Pat fell awkwardly from the police van, hitting his shoulder and head on the concrete. Two post mortems have revealed that he had massive bruising on the skull, fractured ribs and serious abdominal bruising. The outcome of the inquest is not yet known. (Tribune 14/12/83).

P.S. On 24/5/84 the five police officers charged with John Pat's murder were acquitted by a jury.



The Role of the Media

Public attitudes and official responses to police killings and deaths in custody are, in important respects, shaped by the representation of those events in the popular media. Because of the tendency for the police involved to assume the legitimacy of their action and reach an agreed version of the facts which legally sustains this before any investigation is undertaken the media have a particular responsibility to raise the awkward questions and test the accounts and responses of the police on such occasions. The evidence (even just that provided by the above press accounts) tends to suggest, however, that they behave in quite the opposite manner and are only too willing to repeat the police accounts unquestioningly in the immediate aftermath of police killings. It is of course at the time of the events that it is most important that questions and inquiries be pursued, for the more time that passes without any systematic investigation the less likely it is that a prosecution will be successfully mounted, if warranted because of disappearance, concealment and deterioration of evidence. Not only do the press and other media tend on such occasions to immediately accept police accounts but time and time again these are revealed, by subsequent accounts in the media themselves, to be unreliable. Indeed it would appear in some cases (see the Johnson case, for example) that the original account is no more than lies - either those of the police or of journalists. Yet subsequently, radically different accounts of the same events rarely acknowledge the inconsistencies. And there is no evidence that any journalistic scepticism about police accounts results from such obvious indications of their unreliability. The role of the media tends, in the absence of exceptional circumstances, to ensure that outside pressure for a full investigation of the circumstances is not forthcoming in the immediate aftermath of a police killing (when it is most important). It is usually only with the efforts of the family, friends, etc. of persons killed that sometimes awkward questions are raised and fuller (if not satisfactory) inquiries are subsequently pursued.

These are necessarily limited by the effects of the passage of time, the wholly inadequate procedures available (e.g. inquests) and the fact that they are usually personal, or sometimes community, campaigns which involve pitting limited resources and energies against unco-operative and highly secretive state apparatuses.

Therefore, whilst it is often impossible to provide a convincing alternative account of any given police action it is frequently possible to question the reliability of accounts routinely provided by the media merely by referring to the inconsistencies within them. This points to incompetence at best, but more plausibly to the routine, if barely acknowledged complicity of journalists and police in producing blantly untruthful and misleading accounts of police killings which affect the immediate, and thus also final, official understanding of what happened and thus also the general public attitude to police killings.

Another crucial and related aspect of the way in which the media routinely report police killings is the tendency to concentrate upon the character of the person killed rather than carefully inquiring into the circumstances in which the killing took place. If the deceased is an escapee, or can be readily depicted as a criminal or an associate of criminals, the behaviour of the police is rarely regarded as being an issue.



APPENDIX

EXTRACTS FROM N.S.W. POLICE RULES AND INSTRUCTIONS NO 22

DISCHARGE OF FIREARMS

2. The power vested in a member of the Police Force for the discharge of his firearm in the execution of his duty is provided by the Common Law and the decisions of superior Courts thereon over many centuries.

The power relates to two circumstances, namely -

- (a) self-defence, including the protection of members of the community; and
- (b) the arrest of felons who are endeavouring to avoid apprehension.

3. To ensure that Police act within the scope of their power, members should comply with the directions contained in paragraphs 4, 5, 6 and 7 of this Instruction.

4. A member of the Force may discharge his firearm -

- (a) where he has reasonable apprehension of being killed or sustaining grievous bodily harm and in any such case cannot otherwise protect himself; and
- (b) to protect any member of the public where there are reasonable grounds to believe that such person may be killed or sustain grievous bodily harm and there are no other apparent means available by which this may be prevented.

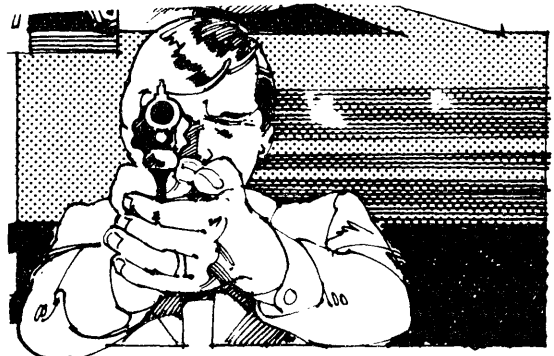
5. A member of the Force may discharge his firearm to effect the arrest, with or without warrant, of a felon only where the commission of the felony involves violence or an offer of threat of violence to any person. (In respect of a prisoner who escapes or attempts to escape from lawful custody, see paragraph 6 of this Instruction.)

When endeavouring to arrest such a felon who is fleeing from justice, a member of the Force will not discharge his firearm unless he has satisfied himself that -

- (a) the person avoiding arrest has actually committed the felony or is the person named or described in the warrant;
- (b) such felon is running away to avoid arrest;
- (c) assistance is not likely to be obtained before the felon can effect his escape;
- (d) there are no other reasonable grounds for supposing the arrest can be accomplished in that particular pursuit without resorting to the use of a firearm; and
- (e) the firearm may be discharged with a minimum of danger to innocent bystanders.

NOTE:

- (i) Firearms should never be discharged to effect the arrest of any person where the subject felony involves the theft of or damage to property only;
- (ii) where circumstances permit, the member of the Force should announce his office and call upon the felon to surrender prior to the discharge of a firearm;
- (iii) if a firearm is discharged without proper justification, criminal, civil or Departmental action may be taken against the member of the Force concerned.



- (a) the prisoner, in the course of his escape or attempted escape, used, offered or threatened violence to any person; or
- (b) the prisoner, at the time of his escape or attempted escape, was serving a sentence in respect of a felony of the type described in the first subparagraph of paragraph 5 of this Instruction; or
- (c) the member of the Force has reason to believe that serious injury may be occasioned to any person by such prisoner if he is at large; and
- (d) the provisions of clauses (a), (b), (c), (d) and (e) of paragraph 5 of this Instruction apply.

7. Attention is drawn to the distinction between a prisoner who escapes or attempts to escape from lawful custody within the provisions of section 34 of the Prisons Act, No. 9 of 1952, and a person who escapes or attempts to escape from Police custody prior to being the subject of a Court order. In order to effect the arrest of a person in the latter category by a member of the Force, a firearm should be discharged only where the offence allegedly committed comes within the provisions of the first subparagraph of paragraph 5 of this Instruction and the conditions in clauses (a), (b), (c), (d) and (e) of that paragraph apply. It is emphasized that such an escape or attempt to escape is of itself a misdemeanour at Common Law only.

8. Whenever a member of the Force discharges his firearm, he shall immediately furnish a written report of the circumstances. This will not apply in the case of a member attending an authorized course of weapons instruction.



NSW spends \$245,000 on M-16 automatic rifles, pump action shotguns grenades and a first aid kit. Photograph courtesy of John Fairfax and Sons.