

# Critical essay: Fatal encounters involving people experiencing mental illness

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## ABSTRACT

While the use of force by police is relatively uncommon, research has found that it is used much more commonly in instances where police come into contact with people with lived experience of mental illness. This over-representation is evident in instances where the police have some prior knowledge that the person has a mental illness, when they suspect that the person may have a mental illness, and also when it later becomes apparent that the person they interacted with has a mental illness. In some cases, these situations escalate and result in fatal force being used by police. A critical understanding of the catalysts and other factors associated with the need to use, and ramifications of, fatal force have not been widely articulated. This essay will consider outcomes from some recent Australian coronial investigations into fatal shootings by police of people found to have a mental illness. It will reflect on how the key issues raised and recommendations arising from these inquests contribute to changes in policing policy and practice and a revised approach to de-escalation, limit setting and use of force training.

**Keywords:** fatal use of force, mental illness, coronial inquiry

## INTRODUCTION

Police work can be both challenging and mundane; regardless of the nature of the work it is continuously monitored. A defining characteristic of a police officers' role is their ability to use necessary force to compel people to comply with the law (Akinlabi, 2020; Prenzler et al, 2013). Indeed, the use of force lies at the heart of police actions (Cojean et al, 2020), and has long been seen an essential component of police work (Bittner, 1970). While police officers are legally sanctioned by both statute and case law to use force, instances of police use of force

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are actually rare and instances of fatal force even rarer; this is mainly because the majority of citizens comply with police instructions and with the law. Despite this, the very fact that the police have the right to use force leads to intense scrutiny; this being amplified the most when fatal police shootings occur.

On the most part, different jurisdictions are guided by a use of force model; for Australia and New Zealand, ANZPAA (2018) provide use of force principles. The ANZPAA guidance defines use of force as “any situation where police use force or other techniques, including a weapon, instrument or implement, in the lawful execution of their duty”. The ANZPAA guidance further notes that the use of force should be reasonable, proportionate and appropriate, and not equate to more than would be considered reasonably necessary in the given circumstances. It also notes that individual police are responsible and accountable for their use of force, and that they need to be able to justify their actions.

It is widely acknowledged that the decision to use force is commonly difficult and often forced upon police in situations which can be fast-paced, dynamic, complex and ever-changing (Kesic, Thomas & Ogloff, 2012a). Klinger (2005) makes the poignant point that the decision to discharge a firearm, and for a person to potentially die as a result, is the most important decision a police officer can make. As such, a police officer’s responsibilities are ever-present in their minds, especially when considering the implications of using force and of being viewed and judged, fairly or not, by the public.

An interesting, and potentially informative, way of examining police use of fatal force is to review findings of coronial inquests into fatal police shootings, as the coroner is required to closely scrutinise police actions and make a determination about whether the shooting was justified (AIC, 2013). The inquiries also commonly consider whether alternatives to lethal force were available. This critical essay considers common elements arising from a number of recent coronial inquiries from a range of Australian states and territories, and further contextualises ‘lessons learned’ in the light of the extant international literature.

### **Common antecedents and risks**

A report by the Australian Institute of Criminology (AIC, 2013) noted that 105 people were fatally shot by the police across Australia between 1989 and 2011; the average number of fatalities per year over this time equated to five, however as many as eleven people were fatally shot in one year during this time period. International research into the use of fatal force has consistently reported that the vast majority of suspects/offenders involved in these incidents were armed with a weapon, resisted arrest, were non-compliant with police commands, and that they acted in a threatening and aggressive manner towards the police (e.g., Gill & Pasquale-Styles, 2009; Kesic, Thomas & Ogloff, 2012a; Mumola, 2007). Of note, being alcohol affected has also been found to be a common presenting (and complicating) factor in police-citizen encounters (Chigley, Proctor, Baker & Grech, 2018); there are well-established links between alcohol intoxication, impaired judgement and thinking, and increased risks of aggression (de Tribolet-Hardy et al., 2015). Perhaps of most interest here, though, is the reported frequency that suspect/offender histories of mental illness have been reported in fatal police shootings. These arguments link directly to commonly held perceptions about the increased risks of violence associated with mental illness and the perceived unpredictability of people who are experiencing a mental health crisis.

**Perceptions of risk.** International reviews of media representations of mental illness have consistently reported on the negative connotations associated with having a mental health diagnosis. For example, Klin and Lemish's detailed review of outputs published between 1985 and 2005 (2008) found that descriptions of mental illness were distorted "due to inaccuracies, exaggerations, or misinformation" (p.434). The authors argued that the selective coverage by journalists served to reinforce the over-generalisation of the connections between severe mental illness and violence, thereby feeding further into misperceptions of risk and dangerousness. Other, more recent, research suggests that these perceptions appear to be particularly associated with people who experience schizophrenic disorders (Robinson et al., 2019). While there is some evidence internationally that these populist representations have shifted over time, and that (mis)perceptions of dangerousness have

decreased, other recent research has found that certain diagnoses (personality disorders, schizophrenia and OCD) continue to be reported in negative, pejorative, and stigmatising ways (Rhydderch et al., 2016). As a result, there continues to be a sense of othering and perceived need for social distance for the protection of the general public (Murphy, Fatoya & Wibberley, 2013). Furthermore, and of note, people with a mental illness continue to be referred to in police training as being unpredictable.

**Complications arising with the presence of mental illness.** There is a statistical association between serious mental illness and violence; that does not mean that severe mental illness alone causes violence. A compelling systematic review, pooling a total of 18,423 individuals diagnosed with schizophrenia and other psychoses from 20 separate research studies (Fazel et al., 2009), provides a more nuanced understanding here. The authors concluded that individuals with substance use disorders were more dangerous than those diagnosed with schizophrenia and related psychoses. Another informative article by Elbogen and Johnson, published in 2009, notes that if a person has a severe mental illness, but no history of violence or substance abuse, then they have the same chances of being violent as any other person in the community. Both of these influential articles place considerable emphasis on the much more significant role of substance use, rather than mental illness, on violent behaviour.

That being said, research has established that all major mental disorders are over-represented among fatal police shootings (e.g., Kesic, Thomas & Ogloff, 2010). This is a consistent finding across jurisdictions and time; for example, in the AIC (2013) report, fifty-five (42%) of the decedents over that 22-year period were identified as having a mental illness. Research that has considered the role of mental illness in police shooting fatalities posits that the presence of mental illness increases the likelihood that a more physically forceful type of response will be required by police in order to resolve the situation (Miller, 2015). The question here is why?

Research has demonstrated that police use more coercive force on people they think (through their behavioural presentations) or know (through prior histories and/or recorded contacts between police and the

individual involved) have histories of contact with mental health services (Kesic, Thomas & Ogloff, 2010; 2012b; 2013). Research also suggests that police acknowledge this to be the case, and that they commonly associate mental illness with irrational and unstable behaviours (McTackett & Thomas, 2017).

Recent coronial reports into fatal police shootings make reference to a range of mental health concerns being present or documented in the decedent's lives. Sometimes these are well-defined, with the person having documented mental health diagnoses, however there are also examples where it is likely (based upon reports of the person's recent behaviour for example) that the decedent had a severe mental illness, but that they had not been diagnosed and were not otherwise known to mental health services. For example, the coronial inquest into the death of Alexander Kuskoff (Coroner's Court of South Australia, 2019) considered the fatal shooting of a 50 year old man late at night at his rural property in South Australia in September 2015. The inquiry reported that while Mr Kuskoff had no established mental health (or indeed criminal) history, his behaviour leading up to the fatal shooting was very erratic. Based on expert psychiatric opinion obtained after the event, it was determined likely that Mr Kuskoff had been "experiencing psychotic symptoms for a significant period of time but had an ability to cover them up" (p.18). Another example is provided in the inquest into the death of Courtney Topic (Coroner's Court of New South Wales, 2018b). Ms Topic was fatally shot by police close to a busy intersection in Western Sydney in February 2015. The court accepted that she "was suffering [from] undiagnosed schizophrenia and was probably experiencing a severe episode of psychosis" (p.6) at the time of the incident. Of note, the coroner opined that, for these reasons, it was likely that she wasn't able to understand police commands to drop the knife. This is an important consideration, as it suggests that her non-response to police commands/instructions may have been misinterpreted as non-compliance and/or further resistance by the police on scene (Cordner, 2006).

**The factor of time.** Time is often quoted as an officers' best ally (Vecchi et al., 2005). Elongating time has been found to increase the likelihood of non-fatal outcomes (Lord, 2004), but it is important to note that this is not

always the case (Fyfe, 2000). Increasing time on scene helps officers make more detailed assessments of the evolving situation and operating environment; conduct a more thorough risk assessment, including assessing the behaviours of the suspect/offender; and set up a cordon and manage strategy. It also potentially allows for the crisis to subside naturally (McLeod, Thomas & Kesic, 2014).

Time is a frequently reported factor in fatal use of force incidents. It is commonly reported that events unfold, or escalate, very quickly and that the fatal shots often occur within a matter of seconds or minutes of the police arriving on scene. The inquest into the death of Danukul Mokmool (Coroner's Court of New South Wales, 2019), for example, noted that the speed with which events unfolded, which amounted to 23 seconds after their arrival at the railway station in Sydney, afforded "little to no time [for police] to assess, contain and negotiate..." (p.56). Similarly, details provided in Courtney Topic's inquiry (Coroner's Court of New South Wales, 2018) noted that "less than a minute after police officers arrived [she] was on the ground, fatally shot in the chest" (p.6). Furthermore, in a coroner's report into a series of fatalities that occurred in Queensland over a 15 month period in 2013-2014 (Coroner's Court of Queensland, 2017), it was noted the very short period of time involved in four of the five shootings meant that officers were having to "assess, engage and react very quickly in what [wa]s commonly an extremely stressful and potentially ambiguous situation" (p.55). These findings resonate closely with research by Davies (2017) who reported that the immediacy of the threat posed (by the suspect/offender having a weapon), and the speed with which incidents can unfold, force police to make a use of force decision and that this usually leads to a firearm being drawn.

The acknowledged immediacy of the risk posed effectively precludes opportunities for police to adopt what would be considered best practice principles (Fyfe, 2000; Kesic, Thomas & Ogloff, 2012a). Interestingly, however, the inquest into the death of Daniel Josef Adwent (Coroner's Court of Western Australia, 2019) noted that, even in a situation which escalated rapidly (whereby he lunged at police with a knife), a firearm was only discharged by police after other use of force options (including oleoresin capsicum spray and Taser) had been tried but

had no discernible effect on Mr Adwent (or, in the case of the Taser, had malfunctioned). Commonly the immediacy of the risk, and therefore use of force decision, is determined by the physical proximity of the suspect/offender to the police (or other bystanders).

**The factor of proximity.** Stoughton, Noble and Alpert (2020) assert that the distance between the police officer and the person of interest is “inversely correlated with the threat of physical harm” (p.167); therefore, the closer the person is the more likely (and immediate) the threat of physical harm. Indeed, the question of proximity is frequently made reference to in terms of police officer decision-making around discharging their firearm. In Danukul Mokmool’s inquiry (Coroner’s Court of New South Wales, 2019), the coroner made specific mention of the “Tueller Drill” (p.57) rule, with officers reporting that they should maintain a distance of seven metres from a suspect/offender armed with an edged weapon. However, Stoughton and colleagues (2020) point out that, contrary to this popular rule, there is no ideal distance to maintain in such a situation. Instead the authors assert that the characteristics of the suspect/offender, those of the police officers involved, and broader issues in the local environment also need to be factored in. Pinizzotto, Davis and Miller (2007) refer to this combination of factors as the “deadly mix” (p.3).

An interesting example recently arose where it was reported that the police commissioner of South Australia challenged the findings of the coronial inquest into Alexander Kuskoff’s fatal shooting (Coroner’s Court of South Australia, 2019; Dornin, 2019). According to a related news report (Dillon, 2019), the coroner suggested that police “should be trained to shoot for extremities, shooting an arm or a leg, in such situations” as this could lead to incapacitation of the suspect/offender but a lower likelihood of fatality. While recognising that this was at odds with South Australian police policy on firearms use, the coroner raised the possibility that the use of fatal force from the police officers involved may not be seen as being proportionate to the level of threat posed by the person. However, this does not take into account the imminent threat posed to the police officers involved. Unlike the other cases considered here, Mr Kuskoff was carrying a high-powered rifle, had fired shots, and had said he “would shoot anyone that came onto his property” (p.4).

The inherent subjectivity and associated individual differences in perceptions of risk are important considerations here. For example, in Courtney Topic's inquest, the coroner noted that Ms Topic was within a couple of metres of the officer when the officer discharged his firearm, and that the officer "had reason to believe his life was in danger" (Coroner's Court of New South Wales, 2018b, pp.6).

### **Does police presence alone escalate the situation?**

International research has shown how the public's perceptions of, and trust in, the police are directly influenced by their (or their peers) treatment by the police and whether this is considered to be procedurally unjust or excessively forceful (Akinlabi, 2020; Maguire et al., 2018). This speaks to the central importance of considering the nature and outcomes of contacts between the suspect/offender and the police, police-community relations, and how these experiences may shape the nature (and potentially the outcomes) of subsequent encounters. These considerations have been brought into question through research that has considered the potential for suspect-provoked shootings, or 'suicide-by-cop' (Best, Quigley & Bailey, 2004; Lindsey & Lester, 2004; Parent & Verdun-Jones, 1998).

Previous estimates internationally have reported that anywhere between 10% and 50% of police shootings meet criteria for what would be considered a suicide-by-cop incident (de Tribolet-Hardy et al., 2015; Miller, 2015). Some have argued that police presence leads the suicidal person to choose to engage in a course of conduct that provokes the police to shoot them. This course of action is evident in the events described in some coronial inquiries and has been specifically discussed in some cases. For example, in Danukul Mokmool's inquiry (Coroner's Court of New South Wales, 2017, p.59), the coroner, reasoned that police's attendance at the scene likely escalated the situation, with witnesses reporting that the entire dynamic of the situation changed after their arrival at the railway station in Sydney. Witnesses, including the police involved, reported hearing the decedent shouting at the police "shoot me, shoot me in the head" (p.7); others reported hearing him say "I just want to die" (p.14). Despite this, the deputy state coroner concluded that they were unable to determine the intentions of Mr Mokmool when he was confronted by the police (p.67).



One factor that seems to differentiate fatal shootings from other similar situations where non-fatal outcomes are achieved, is the extent of prior violence and criminal histories of the suspect/offender, with more entrenched histories increasing the likelihood of fatal outcomes (McLeod, Thomas & Kesic, 2014; Patton & Fremouw, 2016). The inquest into the death of Stephen Paul Hodge (Coroner's Court of New South Wales, 2018a) provides some interesting commentary here. Mr Hodge was fatally shot by police in a Post Office carpark in September 2015 after advancing towards police with a knife raised at head height. The coroner raised the possibility that the deceased had intended to "provoke the police to end his life by shooting him" (p.14). However, the coroner noted that "while there was some evidence of suicidal ideation on the day and in the period leading up to [his] death... such as cutting at his throat and wrists with the knife" (p.13), that the criteria for a suspect provoked shooting could not be concluded. Of note, Mr Hodge had no prior criminal history, but was alcohol intoxicated at the time of the encounter to the extent that "his ability to make judgements and to form rational decisions would have been substantially impaired or entirely absent" (p.7). Findings from the inquest into the death of 36 year old Paul Lambert (Coroner's Court of New South Wales, 2019) also noted an established criminal history, in particular a history of apprehended domestic violence orders. Mr Lambert was fatally shot in November 2016 after a police pursuit and stand-off on the Pacific Highway in New South Wales; he charged at the police holding a raised knife. Despite noting that his behaviour suggested he wanted to be killed, and police finding a note that Mr Lambert had written indicating suicidal intent, the coroner declined to make a finding about his motivation. Instead, she noted that witnesses "describe[d]s change in demeanour more like homicidal or violent rage [rather] than suicidal intent" (p.28).

**Training, experience and decision-making.** Klein (1993, p.138) provides some useful guidance about how decisions are made in various operational settings. He argues that people adopt a recognitional model, first using a situational assessment process to generate a course of action, and then a mental simulation process in order to evaluate the proposed course of action. This model is based on the premise that people act and react on the basis of prior experiences and select a course of action that is

known or, in the case of not having adequate time, most likely to be successful, leading to a satisfactory outcome.

More practically, Miller (2015) surmises that police make decisions primarily on the basis of the level of resistance experienced, and the observed and reported behaviours of the suspect/offender. Interestingly here, there is a good deal of evidence suggesting that more experienced police officers are more likely to consider a range of force mitigation strategies, such as de-escalation, while those with less experience tend to rely more on tactics involving physical control (e.g., Mangels, Suss & Lande, 2020). This fits well with Klein's recognitional model and the on-the-job learning styles of police, as well as the practice-based wisdom that operational police accumulate over time (Thomas & Watson, 2017).

#### DISCUSSION AND LESSONS LEARNED

A somewhat unsatisfactory, but pragmatic, conclusion from this is that sometimes fatal force will be inevitable; no other choice may be available, given the very quick escalation of some incidents and significant risks being posed to the safety of the officers or others. Split second life or death decisions will sometimes need to be made. Despite this, several key recommendations have arisen that warrant a continued focus for policing and health services.

Firstly is the central importance of equipping police with practical, hands-on experiences that they can draw upon if, and when, faced with this kind of situation. This makes good, practical sense. To achieve this requires a scaffolded approach to learning, instilling increasing confidence in officers through graduated exposure to a range of possible actions and reactions to presenting and emerging threats (Davies, 2017). Coronial recommendations here make specific reference to expanding training through interactive role play scenarios which lead to what has been termed 'meaningful' learning (Herrington & Oliver, 1995, p.236).

Secondly, coronial and related research findings support the greater integration of mental health-informed training into tactical options training, with an added emphasis on specific de-escalation techniques practiced through interactive role play exercises (Thomas & Watson, 2017). While this does not overcome the inherent subjectivity in

assessments of risk to self and others between individual officers, it may serve to provide officers with practical alternatives. These enhanced skills may help contribute to a satisfactory outcome, while also serving to better, and more fully, integrate mental health as core police business across all police training provided. The language around unpredictability remains contentious and potentially damaging as it relates to police decision-making and responses to mental health-related calls. While a robust evidence base details that there is a statistically increased risk of violence and homicide associated with having a serious mental illness, it is well established that this risk relates to a small sub-group (estimated to be around 1 in 10) of people who receive this diagnosis (Mullen 2006). Evidence arising suggests it may not be so much about the unpredictability of people who are experiencing mental illness, but rather the unsuitability of the traditional police approach and communication style which is known to aggravate and escalate encounters with people in mental health crisis, thereby exacerbating risk and use of force responses (Cordner, 2006; Fyfe, 2000). As such, the content of these roleplays, and related experiential learning, should be scaffolded around the importance of elongating time, maintaining safe space, and effective communication (Kesic, Thomas & Ogloff, 2012a). There is some evidence, both in the Australian context and from overseas, that suggests that specialist training leads to positive changes in officer confidence, attitude and behaviour, (Herrington & Pope, 2014; Watson, Compton & Draine, 2017); the evidence on whether it leads to reductions in use of force, however, remains mixed (de Tribolet-Hardy et al., 2015). For example, a previous wide-scale focus on mental health training for police in Victoria was shown to half the number of fatal police shootings (Kesic, Thomas & Ogloff, 2010), but not lead to long-lasting reductions in fatal use of force (Saligari & Evans, 2016). An ongoing commitment to, and continued refinement of, police training that seeks to embed mental health training across all core police training is required to help teach and reinforce the need for a different approach (de Tribolet-Hardy et al., 2015; Fingeld-Connect, 2009) when responding to people who may be in mental health crisis.

Thirdly, the issue of familiarity (i.e., being known to police or health services through prior contacts), has led many to recommend that there is distinct potential for better information sharing and/or proactive

partnerships between health and justice services. Such platforms and partnerships which allow for the sharing of prior knowledge regarding the risk and vulnerabilities of community members, would serve to better equip first responders with valuable knowledge to help inform their initial approach and engagement strategies. Examples evidenced through the ongoing development and refinement of co-responder models provide compelling evidence of the potential benefits of this more joined-up approach.

Lastly, core issues of community trust remain significant barriers for the police to traverse, especially with groups who continue to experience social marginalisation, and at-risk individuals who are disconnected from health, justice, social and welfare supports. Fatal police shootings have a significant and enduring impact on the police officers involved, as well as on the family of the deceased and the broader community. While each situation faced is unique, the need for transparency and accountability of police actions remains of paramount importance, to support and reinforce both police legitimacy and community safety.

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