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Capsicum Spray-The Record to Date

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On 4 December 2001 a 33 year old man died in Brisbane from a suspected heart attack after earlier being subdued by police using oleoresin capsicum (OC) spray. The incident is being treated as a death in custody and is being investigated by the State Coroner and Criminal Justice Commission.

During the past decade OC sprays have become popular with law enforcement and corrections personnel **as a less than lethal force option.**

The benefits of having OC spray available to law enforcement and correctional personnel are considered to include:

- fewer and or less serious injuries to citizens and police officers;
- deterrence of violent behaviour by citizens during incidents, and
- fewer complaints of assault or use of excessive force by law enforcement and correctional personnel.

The use of OC spray has been tested and trialled by several law enforcement agencies in Australia and overseas.

Federal, State and Territory Governments have legislatively restricted the use and availability of OC spray (e.g.: *Custom Act 1901* (Cwlth), *Weapons Prohibition Act 1998* (NSW) and *Control of Weapons Act 1990* (Vic)).

What is capsicum spray?

Oleoresin capsicum (OC) is an extract of pepper plants of the genus *Capsicum*. It is used as a spice in curries and salsas, as a pharmacological agent in anaesthetic and analgesic creams and as the principal active ingredient in OC spray, or pepper spray used by police and others as an antipersonnel agent.

OC extract consists of a mix of fat soluble phenols known as capsinoids, capsaicin and dihydrocapsaicin. Capsaicinoid content of extracts used in pepper sprays varies widely. Depending on brand, an OC spray may contain water, alcohols, or organic solvents as liquid

carriers; and nitrogen, carbon dioxide, or halogenated hydrocarbons as propellants to discharge canister contents.⁽¹⁾

Physical effects of OC spray

When used against a person, OC spray typically has a severe impact. Skin exposure causes:

- tingling, intense burning pain, swelling, redness and occasionally blistering.

Respiratory responses to OC spray include:

- burning of the throat, wheezing, dry cough, shortness of breath, gagging, gasping,
- **inability to breathe or speak** and, rarely,
- cyanosis, apnea and respiratory arrest.

Nasal application of OC spray causes sneezing, irritation, and reflex mucus secretion.

Inhalation of OC spray can cause acute hypertension which in turn can cause headache, and increase the risk of stroke or heart attack.

Common eye symptoms associated with OC spray include:

- **redness, swelling,**
- **severe burning pain,**
- **stinging,**
- **conjunctival inflammation, lacrimation, blepharospasm; and**
- **involuntary or reflex closing of the eyelids.** ⁽²⁾

It is important to note that the effects of OC sprays may range in severity. For example, the effect of OC sprays on people with mental disorders or severely intoxicated by drugs or alcohol can be diminished. Additionally, the effect of OC spray is not necessarily immediate.

Research by the United States FBI Forensic Science Research and Training Centre and the US Chemical Research and Development Centre have not, to date, found evidence that any long-term health risks were associated with OC spray use.⁽³⁾

A number of other reports, however, have associated serious adverse consequences, including death (over 60 deaths have been attributed to OC spray in the US), with the legitimate use, as well as misuse and abuse, of OC sprays. The use of OC spray has been rejected in the United Kingdom because of its potential carcinogenic properties.⁽⁴⁾

A number of human rights organisations, including Amnesty International, have questioned the use of OC spray. In November 1997 Amnesty International called the use of OC spray by police in the US State of California against peaceful protestors as tantamount to torture.⁽⁵⁾

Use of capsicum spray in Australia

There are few publicly available statistics on the use of OC spray by Australian police services.

OC spray was first trialled and introduced operationally in Australia by the Victorian Police.

Police services in South Australia, Tasmania, Queensland, Western Australia, the Northern Territory and New South Wales have all implemented OC spray, either fully or on a trial basis. The Australian Federal Police, the Australian Customs Service and the Australian Protective Service have also implemented OC spray.

The *Boarder Protection Legislation Amendment Act 1999* inserted a new section 189A in the *Customs Act 1901 (Cwlth)* which included OC spray as an approved item of personal defence equipment for Customs Officers operating outside the territorial sea of Australia.

According to a 1999 report by the Queensland Criminal Justice Commission and Queensland Police there were:⁽⁶⁾

- 35 incidents involving capsicum spray during the Queensland trial (28 of these involved people and the other incidents involved dogs);
- in the last 6 months of 1998, the South Australian Police recorded 55 uses (these figures included use against animals); and
- in the last half of 1998, the Victorian Police recorded 90 incidents where OC spray was discharged.

For instances involving the alleged misuse of OC spray in Australia⁽⁷⁾

The findings of the 1999 report of the Queensland Criminal Justice Commission and Queensland Police Service included:⁽⁸⁾

- **OC spray was found to be effective in subduing people threatening or assaulting police in the majority of incidents;**
- there was no conclusive evidence that OC spray availability was a deterrent to violence directed towards police, however, indications are that, with wider implementation and greater public awareness, it could make a positive impact; and
- there were no deaths, reported injuries or other medical problems as a direct result of OC spray use.

Comment

OC spray has not replaced lethal weapons as a use of force option by police and corrections personnel in Australia.

There is no evidence that the use of OC spray has reduced the rate of police killings and deaths in police custody.

OC spray has given law enforcement and corrections personnel an additional weapon for use in resolving physically threatening and dangerous incidents.

The most problematical use of OC spray will occur when persons are engaged in political demonstrations or **are already in police** or correctional **custody**.

1. <http://www.geocities.com/CapitolHill/6416/smith-ok.html>.
2. **ibid.**
3. Queensland Criminal Justice Commission and Queensland Police, *Trial of Capsicum Spray in Queensland: Evaluation Report*, 1999, p. 2.
4. <http://www.geocities.com/CapitolHill/6416/smith-ok.html>; <http://mediafilter.org/caq/CAQ56pepper.html>, and <http://www.interlog.com/~cjazz/pepper2.htm>.
5. <http://www.web.amnesty.org/ai.nsf/index/AMR510671997>.
6. Queensland Criminal Justice Commission and Queensland Police, *Trial of Capsicum Spray in Queensland: Evaluation Report*, 1999, op. cit., p. v-vii.
7. see: <http://www.cat.org.au/aoa/documents/capsicum.html>.
8. Queensland Criminal Justice Commission and Queensland Police, *Trial of Capsicum Spray in Queensland: Evaluation Report*, 1999, op. cit., pp. 30-31.

Also see Wikipedia on Capsicum Spray:

http://en.wikipedia.org/wiki/Pepper_spray