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Operation Tambora

Submissions in relation to Officer B

1. As Counsel Assisting correctly noted at paragraph 195 of the Final Submissions it is important to bear in mind the applicable law as what is reasonable force. It is has regards to the pressure of events, the agony of the moment, turmoil and panic. In such circumstances Police Officers rely on their own previous experience and what they have learned in their training and acquired knowledge.
2. Prior to the incident involving AO, there were a number of arrests involving the use of LSD (or ice in the vernacular term) in the Byron Bay Region. Of particular note was the incident involving the Byron Bay Light House on 25 December 2017. Officer B was involved in this incident at the Police Station in extracting the arrested person from the police van. This incident was very distressing and one not previously experienced by Officer B. It is likely that this had a significant effect on Officer B. He observed some similar features involving that arrested person that were common with AO, notably the sweating, nakedness and non-responsiveness (or as accepted at the hearing – as if looking in his direction without acknowledgment). Officer B ascribed these observations to overheating to the body due to use of ice and believed the drug in AO was about to peak.
3. This is likely to have heightened Officer B 's perception of the risk level in dealing with AO. To his knowledge at the time of arrival at the scene in Lateen Lane, that is around the time he was getting out of the police van and obtaining his baton the OC spay was discharged and the Taser gun was deployed. On the basis of the deployment of these weapons he formed the opinion that the risk of violent confrontation was imminent or occurring or likely to occur. This information was in Officer B's mind



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when he saw AO looking towards him but not acknowledging his presence. This made him fearful of being overpowered by AO.

4. It is in these circumstances that Officer B struck the arm of AO. In his evidence there may have been a second strike, but he was not sure. In any event this had no effect and he applied a strike to the knee which after about five seconds brought AO to one knee (or possibly on both knees).
5. Unfortunately this incident was not captured in the video. The video captures images after AO was on the ground. Although AO is responsive on the video, that is after a short time following the administration of the strikes. It is important to bear in mind that at the time Officer B administered the strikes AO appeared not to be affected by the Taser. Also it is a very short time after Officer B arrived on the scene. The heightened assessment of risk factors was reasonably based on his information at the time, that is, that OC spray and Taser was not working as anticipated and there is a chance that he will be overpowered. Therefore in relation to paragraph 215, it is submitted that The Commission's observations should be that Officer's B observations were likely heightened due to his experience of the Christmas evening event and with the limited information and observation at the time the actions of Officer B is explainable. It is submitted that paragraph 215 of Counsel Assisting's submission should be amended by the Commission and the last sentence deleted.
6. On similar grounds, it is submitted that the Commission should find at paragraphs 216 and 228, the strikes (including the one or possibly two on the forearm) administered by Officer B seems to be appropriate in the circumstances. In hindsight it may be questionable but in reference to the time of the events and knowledge of Officer B at the time it is submitted that the fore arm strike (s) were reasonable. It is submitted that the Commission would not adopt the last sentence of paragraph 228 of Counsel Assisting's submissions and it should be deleted.



7. Based on the above it is submitted that the Commission findings should reflect an amendment to the second last sentence of paragraph of 235 of Counsel Assisting's submissions to: *'The use of baton by Officer B at the time could be reasonably explained as action taken based on his observations limited to the lack of affect of the OC spay, Taser gun and the fear that AO may overpower him.'* I concur with Counsel Assisting's submissions that there be no action taken in relation to this matter.

8. I also concur with Counsel Assisting's submissions in relation to the one baton strike by Officer B seeking compliance during the handcuff at paragraph 217. It is submitted that the Commission should adopt the recommendation by Counsel Assisting that the one strike did not amount to police misconduct.

9. In relation to the bad language by Officer B, it is accepted the he used the word 'cunt' and agree with the discussions set out in paragraphs 116 to 128. However, it is submitted that the Commission should not adopt the last sentence of Counsel Assisting's observations at paragraph 125. That is, *'The attempt at an elaborate explanation for denial is quite another.'* First, Officer B gave evidence that his recollection of *'couple of things – wasn't quite clear and unable to retain some of the crucial information'* [T230]. Secondly, there were other witness who also could not recall certain events or their recollection was not in accordance with the video. This shows the difficulty of observing every detail and recollecting every conversation that occurs in a heightened event as this one. Thirdly, while the arrest was happening it was clear that there were a number of events occurring. All officers were in full alert and focused on putting the second set of handcuffs on AO. It is easy not to recall all conversations exactly. Fourthly, Officer B was likely to be influenced by the events of Christmas evening. He did use the words 'cunt'. In his mind this is something he does not normally do, or more particularly the way he uses swear words (cunt), and does not make any rational sense to him. It is submitted his



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evidence was based on his belief based on his memory and thoughts. Obviously it proves to be wrong. It is submitted that the Commission accept that Officer B gave his evidence based on his memory truthfully, however the video recording shows that he was incorrect. Alternately, I submit that the Commission exercises its discretion to remove the last sentence of paragraph 125, as it does not add anything to the public interest while any one reading the comment may be left with a slight taint of reputation against Officer B.

10. Lastly, I seek a correction to paragraph 203, which may have been a typographical error. The roundhouse punch was thrown at Officer D not Officer B.

J. Lawrence
Trust Chambers
19 July 2018.