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OPERATION TAMBORA

SUBMISSIONS ON BEHALF OF OFFICER C

The Inquiry

1. It is respectfully submitted on behalf of Officer C that the Inquiry would conclude that Officer C was not involved in the use of the capsicum spray, nor the use of the Taser, nor in any use of his baton. This is in accordance with submissions of Counsel Assisting, in the first sentence of paragraph 236 of those submissions.
2. It is submitted on behalf of Officer C that the Inquiry would reach a further conclusion in relation to Officer C, to the effect that Officer C was not involved in the making of any decision by another officer to deploy capsicum spray.
3. It is also submitted on behalf of Officer C that the Inquiry would reach a further conclusion in relation to Officer C, that he was not involved in the making of any decision by another officer to use the Taser either.
4. Similarly, it is respectfully submitted that the Inquiry would also conclude in relation to Officer C that he was not involved in the making of any decision by another officer to use a baton; nor was Officer C involved in the making of the decision by any other officer as to the number of times the batons were used.
5. Accordingly it is submitted on behalf of Officer C that the Inquiry would conclude that there is nothing in Officer C's conduct that requires any further action, as stated in the second sentence of paragraph 236 of the submissions of Counsel Assisting.
6. Given that the general scope and public purpose of Operation Tambora is to investigate whether any New South Wales Police Officer engaged in criminal conduct or serious Police misconduct, it is respectfully submitted that it would be appropriate for the Inquiry to reach a definitive finding in relation to the conduct of Officer C, to the effect that not only is there nothing in Officer C's conduct that requires any further action but also to the effect that Officer C did not engage in serious misconduct or Police misconduct, let alone criminal conduct.
7. As a direct consequence of these suggested findings it is therefore submitted that the Inquiry would conclude and make a finding to the effect that the performance by Officer C of his duties was in accordance with ss.230 and 231 of the *Law Enforcement (Powers and Responsibilities) Act 2002*, in that he lawfully used such force, and only such force, as was reasonably necessary to exercise his official functions.



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The Continuation of the Use of the Code Name

8. It is submitted that the use of the code name "Officer C" should continue after the Commission has completed this inquiry, and that Officer C ought not be publicly named in the findings of the Commission.

9. Significant factors which should be taken into account by the Commission in making its decision regarding the appropriateness of the continuation of the code name are contained in subsections 63(5)(c) and 63(5)(d) of the *Law Enforcement Conduct Commission Act 2016*, which refer to the risk of undue prejudice to the reputation of Officer C, and whether the public interest in exposing the matter is outweighed by the public interest in preserving the privacy of the person concerned, specifically Officer C.

10. To discontinue the use of the code name will inevitably result in Officer C's name being publicised via the mainstream media and social media, none of which may be relied upon for fairness, objectivity or accuracy in relation to the specific findings of the Inquiry regarding Officer C's conduct.

11. It is respectfully submitted that any purported public interest in allowing Officer C's name to be publicised is outweighed by the public interest in preserving his privacy by way of not publicising his name, because the price to be paid by him, in terms of public prejudice and potential opprobrium, would be disproportionate to any potential benefit. It should not be thought that discontinuing the use of the code name would somehow "clear his name", for the simple reason that he not been named at all thus far.

12. Up until the present time Officer C has not been publicly named in relation to the incident which is the subject of Operation Tambora. The consequences of naming him or allowing his name to enter the mainstream media and social media at this time would have potentially dire consequences for him for the reasons that have been submitted to the Commission on his behalf on prior occasions.

13. It would appear to be very likely, as a result of the submissions of Counsel Assisting dated 4 July 2018, that an adverse finding may be made by the Commission in relation to another officer involved in this incident, and that a referral may be made by the Commission for the advice of the Director of Public Prosecutions in relation that other officer as a result of the inquiry into this incident. The fact that Officer C was involved in this incident will therefore mean that there is a virtual certainty that Officer C, if his name is made public, will forever be associated with the adverse findings and with whatever other actions may follow from them. This would be a particularly undesirable outcome for an officer in relation to whom it is respectfully submitted was performing his duties as required of him in an appropriate manner.



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14. Counsel Assisting's Memorandum of Advice dated 4 March 2018 noted that aspects of the incident which has been the subject of this Inquiry had already entered the public domain as at that time. It needs to be emphasised however that Officer C's name has not entered the public domain, nor should it, for the reasons previously outlined.

15. Counsel Assisting had also previously submitted in paragraph 3.5 of the Memorandum of Advice dated 4 March 2018 that the conduct which is the subject of the inquiry *"is such that it could result in prosecution or disciplinary action against one or more of the officers involved"*, but it is again respectfully submitted on behalf of Officer C that it is now quite clear that there should be no such action taken in relation to him; and yet he would suffer the unacceptable adverse consequences of being publicly associated with that consequent action if he were to be publicly named in relation to an incident which results in adverse findings against another officer or officers.

16. On behalf of Officer C, it is reiterated here that the earlier submission by Counsel Assisting in paragraph 3.7 of the Memorandum of Advice should not be accepted at this stage of the Inquiry either. That submission was to the effect that *"... it cannot reasonably be maintained that the Incident is unknown or that the individual police officers have not been identified; at least in the area where they are required to police."* On behalf of Officer C it is again submitted that Officer C has certainly not been publicly identified by way of the material which is already in the public domain. He has not been named. Nor does the footage identify him. Hence again it is submitted on his behalf now that the factors to be considered, pursuant to the legislation, in the earlier making of the decision by the Commission to conduct a public examination, still include the prejudice that would result to Officer C by publicly naming him in circumstances where his name and identity are currently not publicly known.

17. Counsel Assisting had also submitted previously in paragraph, 3.7 of the Memorandum of Advice dated 4 March 2018 that *"a public Inquiry will afford the officers involved procedural fairness and opportunity to address any unfounded innuendo that may be causing prejudice to their reputations."* It is readily acknowledged in these submissions on Officer C's behalf that he has indeed been treated with procedural fairness, and yet the Commission may be assured that Officer C does not want his name to be placed into the public arena in this current context, because he remains deeply anxious about the reputational and social damage which this is likely to cause not only himself but his family also.



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18. The distress which Officer C has been experiencing in relation to the subject incident and the subsequent inquiry is not confined to him personally. The matter does continue to be a source of great distress in his family.

19. For these reasons, which relate not only to the actual evidence and the recommended findings of the Inquiry itself, but which also relate to the personal circumstances of Officer C, it is respectfully submitted that it would inappropriate for the Commission at this time to publicly name Officer C.

ANDREW HARRIS
Solicitor for Officer C

Date: 10 JULY 2018