

# **LAW ENFORCEMENT CONDUCT COMMISSION HEARING OPERATION TAMBORA - 26-28 MARCH 2018 - SYDNEY**

## **Report prepared by Nicqui Yazdi**

### **CONTENTS OF REPORT -**

- INCIDENT FACTS - page 2
- NATIONAL MEDIA ATTENTION - ACA - page 2
- OTHER CCTV FOOTAGE OF THE INCIDENT - page 2
- INITIAL INVESTIGATION - page 3
- NOTIFICATION ON THE LECC HEARING TO HAPPEN IN SYDNEY - page 3
- WHAT IS THE LECC - page 4
- FACTS ON LECC HEARING - page 4
- LECC COURT AND PROCESS AND WHY THIS HEARING HAD TO HAPPEN IN SYDNEY AND NOT IN BYRON BAY - page 4
- LECC OUTCOMES - FURTHER INVESTIGATION - REPORT - page 5
- THE LECC HEARING - OPERATION TAMBORA - Monday March 26 2018 - page 5
- DAY ONE OF THE HEARING - WITNESSES - page 6
- OFFICERS INVOLVED IN THE INCIDENT - page 8
- FACTS ACCORDING TO THE ATTENDING POLICE - page 9
- PRIOR INCIDENTS THAT MAY HAVE EFFECTED THE LANE INCIDENT - page 11
- TRAINING AND EDUCATION OF NSW POLICE - page 11
- FAILURE OF WEAPONS TO CONTAIN SITUATION - page 12
- COMMANDS BY POLICE TO THE BOY - page 12
- LONG WORK HOURS OF POLICE ATTENDING - 12.5 HOUR SHIFT - page 13
- POLICE SUPPORTS - INJURIES MENTAL HEALTH ISSUES - PTSD - page 14
- PSYCHOLOGICAL SUPPORT FOR POLICE AT THE LECC HEARING - page 15
- REMORSE OF POLICE INVOLVED - page 15
- THE BOY AND HIS FAMILY - page 15
- MEDIA / SOCIAL MEDIA / COMMUNITY FRENZY OVER INCIDENT - page 16
- CONCLUSION / SUMMARY - page 16

### **FURTHER REPORT FROM JAMES WRIGHT AND ATTACHMENTS -**

- REPORT ON LECC HEARING - FROM JAMES WRIGHT - LOCAL BYRON SHIRE YOUNG PERSON (who also attended the LECC hearing) — pages 18-21
- UPDATES/INSIGHTS FROM NICQUI YAZDI - Published on Social Media and/or in Media during the LECC Hearing - pages 22-31

**This report has been written by local Byron Shire youth/AOD/mental health worker, Nicqui Yazdi, who attended the LECC hearing on behalf of the Byron Community. A separate report from James Wright, who also attended is also attached. James is a 22 year old local young person, who is very involved in local youth programs and AOD (alcohol & other drug) initiatives and has a very deep understanding of youth mental health issues and disabilities.**

The Law Enforcement Conduct Commission investigation into this incident is still on-going and it is unclear when they will hand down a finding, but it should be soon.

### **INCIDENT FACTS -**

A 16 year old boy with Aspergers was holidaying with his family in Byron Bay in January 2018. On the evening of January 10, the family went to dinner and afterwards the boy asked to go for a walk. His parents saw no reason for him not to, and he went off and was in constant mobile phone contact with them until around midnight, when he no longer answered his phone. At around 1am his mother called the police to say that her son was missing. During those few hours, this 16 year old boy has been given two tabs of acid by a group of young people who told him they were from the Gold Coast. He had no idea what acid was and became increasingly disoriented, distressed and has over-heated and eventually taken his clothes off. He was upset with god for doing this to him, so he paced up and down, loudly conversing and screaming to his god, asking why he had done this to him. This is witnessed by around a dozen people in a town-centre laneway of Byron Bay. At around 2am due to the noise this young man was making and his distressed state, various people called a local noise complaint hotline and police. Police attended within minutes, two cars, four officers, and just minutes later, a terrible scene had taken place and this young man was in police custody and was taken to the police station. He was later transported to the Tweed Heads Hospital and his parents were contacted by the hospital a little after 4am. No charges were laid against this young man by police. Those are the basic facts.

### **NATIONAL MEDIA ATTENTION - ACA -**

A 2 minute 50 second video footage of this incident was supplied to A Current Affair, by a witness. This aired on Tuesday Feb 6, a month after the incident had taken place and it immediately went viral, with further national attention from media, social media and online sources. It needs to be stated straight away, that this was also the first time that the family of this boy had seen this footage and also the Superintendent of the Tweed/Byron LAC.

The media at that time, gave only a sensationalised account of what is seen in that video footage, which at the time, no other facts were known about. It appeared from all accounts to be simply a 'police bashing' video, made more sensational by the fact that it was a naked 16 year old boy and that obvious force is seen in those couple of minutes of grainy footage and that the incident took place in Byron Bay.

### **OTHER CCTV FOOTAGE OF THE INCIDENT -**

It is unfortunate that this 'ACA' footage was not handed over through proper channels in the first instance, so that police could have started conducting their own investigation, and also, that they may have been able to access further CCTV footage from the area of the incident, if they had known closer to the event, as there are several businesses in that area, that may have had more footage. But it was too late, a month later, when this ACA

footage aired, as any business CCTV is usually wiped after a short period of time. When the LECC started their investigation some CCTV footage did come to light, that was able to tell them some facts, such as when the police vehicles arrived in the lane and how far apart, being 22 seconds. This does become important, in determining the initial first contact and actions of the police that evening.

## **INITIAL INVESTIGATION -**

An initial investigation was instigated on a local level, immediately after the ACA story aired on Feb 6. This was the first time that other police, in particular the upper command for the area, had any real knowledge of this incident. Due to the high number of complaints being received by the Tweed/Byron Local Area Command, the NSW Police and in particular, the Law Enforcement Conduct Commission (LECC), it was almost immediately determined that this incident did indeed require a higher level of investigation and the LECC took over the investigation. They started going over what facts were available to them, contacting the officers involved, witnesses and those who had contacted them via complaints, who did have information to offer and within weeks, preliminary interviews had taken place, statements had been taken and the LECC website announced on Feb 21 that there would be a hearing in Sydney.

This was, by the way, the very first hearing of the newly formed Law Enforcement Conduct Commission (LECC).

## **NOTIFICATION ON THE LECC HEARING TO HAPPEN IN SYDNEY -**

The first notification regarding the LECC hearing was made via a first media release on March 14, which then led to various media stories across the country, however, this was not actually initially picked up by our local media here in Byron Shire, until after a story had been run in the Lismore-based Northern Star. The Northern Star article was published just one week before the hearing was to take place. A second 'Media Alert' and 'notice of public hearing' was published on the LECC website on March 21, five days before the hearing was due to start on Monday 26th March 2017.

But the national media attention to the hearing announcement also triggered an uproar from the Byron community, evidenced on social media, and I personally found this to be so abhorrently wrong, that I contacted the Mayor Simon Richardson to notify him about the hearing and at the same time proceeded to start a gofundme campaign to send Byron community representatives to the hearing, myself included.

I instigated a number of emails and calls to the LECC to air my own dissatisfaction that this hearing was to take place in Sydney and therefore felt it would not be a transparent process for the Byron community, as it would potentially exclude anyone from Byron to be in attendance. What I personally found to be most wrong about this initial process, was that even though I had personally written a complaint to the LECC in the first instance of viewing the ACA story and video, they had only acknowledged receipt of the complaint, but I was not actually notified about the hearing.

The LECC have since informed me that they will be making changes to this process, and that they will take on feedback from the public regarding public notification and hearings and they may take that feedback into account for future hearings. They will also endeavour to contact the proper authorities in the areas where incidents have taken place, such as local councils, and any interested parties that may need to be involved. Hearings may take

place in the communities where the incidents have occurred, in the future. However, this may not always be possible, for reasons that became very obvious to me from the first day of the hearing, which I will discuss in more detail further into the report.

## **WHAT IS THE LECC -**

The primary role of the LECC is to detect, oversight, investigate and expose misconduct and maladministration within the NSW Police Force and the NSW Crime Commission. The LECC provides independent oversight and review (including where appropriate, real time monitoring and review) of investigations by the NSW Police of misconduct matters concerning the conduct of its members and the NSW Crime Commission concerning its officers. The LECC uses its investigative powers to identify and deal with cases of misconduct in both of these agencies. By being separate from and completely independent of both the NSW Police and the NSW Crime Commission the LECC is able to engage special powers to perform its investigative oversight functions.

## **FACTS ON LECC HEARING -**

The LECC hearing process is a very formal and highly scrutinised process. These hearings are public and even transcripts are posted on-line on the LECC website. There may be instances where this might not be the case, but for the Byron incident, it was a very open, public and transparent process. Obviously there are some parts of evidence, that remain highly confidential, including identities of involved parties and in these instances, redacted copies of paperwork etc, removing any form of identification on them, are used. Witnesses, police and 'the boy' were all given codes to protect their identities. I will use the term 'the boy' instead of his code, being 'AO', throughout this, as I think it is important to keep remembering that this was just a 16 year old boy and even throughout the LECC hearing, the Chief Commissioner, Hon Michael F Adams QC, continually referred to AO as 'the boy', which had a very personal effect on the proceedings and was in no way disrespectful, but a constant reminder of this young man as being a real person, a young person and someone with real challenges in life, due to Aspergers.

## **LECC COURT AND PROCESS AND WHY THIS HEARING HAD TO HAPPEN IN SYDNEY AND NOT IN BYRON BAY**

The LECC hearing 'court' is an extremely daunting place. The week prior to the hearing those of us attending went to a meeting with the Tweed/Byron LAC Superintendent Wayne Starling in Tweed Heads, and he attempted to orientate us to what would happen at the hearing and what the room itself was like, and he himself did use the word 'daunting' which was easy to see why when we arrived.

Firstly, two of the LECC staff did come to Byron, and they did search for an appropriate venue to hold the hearing here. However, there was just nothing and nowhere that would have sufficed for the high needs of this hearing.

In the first instance, I truly believed that the community of Byron should have had the opportunity to be at this hearing and that it should have been in Byron. But seeing how the hearing was conducted, it really would have not happened in the way it did, it would not have been a fair and just situation, if it had ended up with a full Byron-style lynch mob picketing the place and filling the gallery with hecklers and police haters. It would also have been ridiculously hard to transport over half a dozen lawyers, the Chief Commissioner and the Councillor, the family of the boy, the entire LECC team, including

their officers and investigators, the kinds of security that this sort of hearing requires, including scanners, x-ray machines, walk-through metal detectors etc. It is a very high level security style court that has to be that way in dealing with investigations against police. On top of this, the kind of high-tech equipment needed is extreme, linked tv monitors everywhere, linked computer systems with the full transcripts being sent to more than 20 monitors for all of these lawyers, officials, investigators etc in real time. It makes complete sense now that, as their offices are in Sydney, actually located at this court, and all of these legal people, along with all the paperwork, technology, equipment etc, it just could not have taken place in Byron, without extreme expense to all involved and also at a possible cost to the fairness of the process. Being an open-ended time frame for these hearings, this would also have added to the extreme potential costs, if the hearing had been in Byron Bay as these hearings start and then go on for as long as necessary and it is totally possible that some may go on for potentially weeks at a time.

No electronic devices, phones or recording devices are allowed in the hearing room either. All of this is given over before entering the court, bags are scanned and searched, bodies are scanned and any electronic devices are handed to the officers of the court, bagged and tickets issued. Media however are exempt and can take devices and computers in.

The LECC Hearing went for a full four days and in the following pages we will endeavour to cover the basic proceedings.

## **LECC OUTCOMES - FURTHER INVESTIGATION - REPORT**

The LECC investigations into this incident are still continuing, however recent communication with the LECC has led me to believe they are now close to determinations. There was information that came to light during the hearing that led to more actions and investigations and the possibility that it could also have included a further hearing, if any information that had come to light since the hearing, warranted this becoming a necessity. This is not a fast process, but the hearing did have to happen fast, as the LECC did want to instigate proceedings as fast as they possibly could, being that this was a high level incident, with many implications, that triggered a lot of complaints to them. The LECC has stated that when the findings are released, they may deliver their final investigation report in Byron Bay.

## **THE LECC HEARING - OPERATION TAMBORA - Monday March 26 2018**

Within the opening statements of the hearing from the Chief Commissioner Hon Michael Adams QC and Counsel assisting the LECC Mr Terence Rowles, we were informed of the provisions of section 176 (1) of the Act, and directed that there was to be no publication of any information evidence, photographs or representation that would enable any of the persons appearing as witnesses to be identified. Codes for each witness, were handed down for use throughout the proceedings.

We were informed that when the story aired on A Current Affair on February 6, the Superintendent of Tweed/Byron Local Area Command immediately instigated the convening of an extraordinary meeting to be held on February 8, (to open a local internal investigation) however before the NSW Police Force could commence its own internal investigation, the complaint was taken over by the LECC, on February 9. The Law Enforcement Conduct Commission Act of 2016 provides that when the Commission decides to investigate a matter, any police investigations must stop immediately.

Some legal information on the LECC Hearing process - Anyone called as a witness to an LECC hearing, including the officers involved, can legally decline, or refuse to assist, however they are legally bound to give evidence if examined by the Commission and no evidence given can be used against them in any criminal proceedings that may eventuate. This covers the civil rights of a citizen not to incriminate themselves. But this also means that they are compelled to speak and to tell the truth, without fear of consequence, which I think was hard for some to comprehend. There was definitely reticence, however once they realised that this was not to their detriment, they mostly gave in to the process.

## **DAY ONE OF THE HEARING - WITNESSES**

On the first day of the hearing, four witnesses gave evidence to the hearing, three people who had witnessed the incident in the lane and the attending ambulance officer who took 'the boy' from the Byron Police Station to the Tweed Hospital.

While witness accounts of the incident in the lane did vary, due to their own locations, distances away from where the police actions were taking place, ability to hear and decipher what was being said etc, most accounts did overlap in their basic observations. One witness did film the segment seen on ACA. Another made a call to the police and the other made a call to a local noise complaint service. All were basically present for most of the incident, and one did witness the 20 minutes or so prior to police arriving. All backed the belief that the boy was distressed, pacing and making a lot of noise, some words coherent, some not, but it was clearly recognised that he was in an agitated and upset state, and was possibly affected by drugs and/or mental health problems.

One witness stated that when the boy had first entered the lane, he had still been clothed, but in the 20 mins before police were called, he did become more upset and was obviously overheating, so took his clothes off. This witness did attempt to converse with the boy, a number of times, advising him that there had been noise complaints and that he would have to call security if he did not calm down or leave, and he eventually did attempt to contact security, and when unsuccessful, he then called police at around 2am.

Another witness, located slightly away from the immediate scene, was also concerned about the state of the boy and his constantly calling for water, and had already put in a noise complaint call to a local hotline service, and was about to attempt to take him water, when the police entered the lane.

Two of the witnesses had at the initial time of the boy entering the lane, been in bed, but had been roused by the noise and eventually after 10-15 mins got up to investigate. Both also had their partners present who also witnessed what happened after that, when the police arrived. They were in separate places, but very close by each other, and could see each other.

All witnesses said that literally within seconds of the police arriving what happened became a very confused scene, with police actions happening very fast and this is where some of their accounts differed, which would not be unusual, considering the time that had elapsed since the incident took place. No statements were taken from any of these witnesses on the night, or until the LECC investigation was started. In fact two of these witnesses would have been completely unknown to police on that night, due to their locations. Police were visible to them, but they were not visible to police.

All of these witnesses were clearly shaken by the experience and all had concluded that they had witnessed something very bad, and quite possibly force that may not have been warranted.

All of these witnesses had already been interviewed and statements taken in private hearings and the record of those prior interviews was kept completely confidential and not shown to anyone other than the lawyers present at the hearing, however these statements were referred to throughout the proceedings, and in part some references were made to the content of some interviews, for clarification, or to assist the witnesses to recall events. This was also the case for the police involved. Most of these private hearing interviews had taken place within a week of the LECC taking over the investigation, as in, within days of the ACA story and video going public.

At the conclusion of their being primarily addressed and questioned by the LECC Counsel and the Chief Commissioner, the lawyers present, representing the police officers, and other witnesses were given opportunities to cross-examine on anything they required clarification on.

I won't at this stage, go too much into individual testimonies of the witnesses.

There are a few points I would like to make at this time though, in that one witness did clearly state that he believed the boy "looked unsettled, erratic and confused" and that he "marched" towards the police when they first arrived on the scene, he said "It was like a very brisk walk, a walk of confusion, a walk of - you know, at one point he had his hands up like this, the next point he is down like that and he is sort of, you know, rubbing his face." (this is clarified by the Counsel Mr Rowles and the witness that the boy had put his hands up to about head high) he also stated that the boy said to them "Just get me some fucking water, God help me, I need some help.". It was at this time that "some type of scuffle between the police and AO" occurred, as he believed the police had asked the boy to back away, but he kept on heading towards them. It was at this time that he also saw the second two police arrive and also the OC spray being used by the first officer to the scene, he heard coughing and also more screaming and the boy's hands went to his eyes.

Around this time the witness went inside for 15-20 seconds, as he was distressed by what he was seeing, as he himself has a 13 year old son and just couldn't stop thinking about him. He was also thinking to still get water for the boy, and he checked his own phone and realised the battery was dead, as he did consider filming what was happening. He then briefly went back outside. It is at this stage there is confusion, noise and the taser is used and he then witnesses the officers trying to get the boy to the ground, batons being used, and essentially what is then seen on the video.

His testimony did take a considerable time and was very detailed, much more detailed than the other witnesses and even the police accounts and he was clearly distressed by what he had witnessed. He at one point did turn around and looked straight at his wife, as he could not watch it any more and was starting to feel unwell, and so when the biggest number of baton strikes were occurring, he saw some and heard the others, as his wife was also in shock and so he was also trying to protect her from witnessing it too, by directly facing her and standing in between her vision of the event.

At that point they both went back inside for a brief moment, continuing to hear scuffles, then when he returned outside he believed he had seen a third police vehicle arrive, however this would actually have been one of the original two vehicles, which had been

moved forward to place the boy inside the vehicle. He then observed one of the police leaning on a fence near where he was, looking distressed and taking deep breaths and another officer approached him and asked him was he ok. He then also states that he heard somebody say "Has anybody taped this". This is also backed up by another witness.

The witness accounts took on average around two hours each. All of the transcripts are available on the LECC website and accessible to the public.

The last interview of the first day, was the ambulance officer who attended the police station and transported the boy to Tweed Heads Hospital.

There are a number of points regarding what happened to the boy at the station that I would like to address, even though these were not given much discussion during the hearing, I still believe there are some valid reasons to bring them into this report. Police stated they called for an ambulance during the time they were still in the lane. The ambulance took approximately an hour and a half to arrive at the Byron Police station. This seems an unreasonable amount of time. The second point is that we learned that police do not have even basic testing kits to determine what kind of drugs anyone in their custody may have in their system. When the ambulance did arrive, the boy was administered two doses of a sedative, which then in turn hindered the ability of the hospital to determine the substance the boy had been given, as the compounds of the sedatives confused these drug tests. The boy had been placed in an 'observation' cell at the police station, made of clear perspex, which we learned does not even have a hole to pass anything inside the cell, including water, which the boy constantly asked for, and was never given, as police believed he may try to charge from the cell if the door was opened for any reason. Water was also used to entice the boy from the back of the police vehicle at the station, yet he never received any. He was also kept completely naked for the duration, not even offered any kind of modesty covering or blanket. This cell is extremely small, not even large enough for someone to lay or even sit down, without having their legs up, with knees bent. What was also never addressed, was why the boy's parents were not contacted from the station, particularly considering this was a 16 year old boy, or why there was no connection made between the call the mother made to police regarding her son being missing, and the boy that was at the station, whose name police had already determined while still in the lane. I am unsure whether any of the points above may have been further addressed by the LECC in their investigations, but all of these points seem valid in how this boy was potentially mismanaged by police and also in the lack of training of police when it comes to how to attend to someone who is drug-affected and/or having a psychotic episode and also their lack of training regarding young people specifically. Some of this information was given to us by the family of the boy, in particular, the call made to alert police that the boy was missing, and this did not become a part of the hearing, as at no time was the family of the boy questioned as part of this hearing. I'm not sure whether not having any testimony from other involved parties, such as the family of this boy, would be normal for these sorts of proceedings, or whether it was an oversight.

## **OFFICERS INVOLVED IN THE INCIDENT - Days two to four of the hearing**

Each of the officers involved in the incident were interviewed over the last three days of the hearing, along with the duty officer from that night. It is clear from their own testimonies that the officers that attended the scene felt that they were in a situation that needed to be contained quickly or someone was going to get hurt. Full copies of the testimonies of these officers are available on the LECC website.

## **FACTS ACCORDING TO THE ATTENDING POLICE**

On January 11 at approximately 2am, a call was placed to police regarding a distressed naked person in the laneway and two cars, with four officers were sent to the scene.

The first two police arrived in the laneway, seeing a naked young man, initially laying on the road, who then upon seeing the police arrive, got up from the ground. He appeared to them to have been on drugs and was extremely agitated, pacing up and down, yelling to the sky and to them as they approached. This young man did not initially respond to the command of the first officer, who stated he said to the boy "calm down or you will get a gobful of this", or in fact mostly throughout the entire incident, the boy was, by all accounts, very distressed and although on closer listening to what he says in the video footage, it is decipherable in the most part, however in the moment, and to the officers attending, most of this would have seemed to be disjointed and incoherent ramblings.

The two police vehicles arrived in the laneway 22 seconds apart, this has been ascertained from CCTV footage taken in the lane. By the time the first officer from the second car alights the vehicle, one of the first two officers to the scene was administering capsicum spray. As the second officer from the second car tried to alight from the passenger side, he realised he could not get his own door to unlock (although he later changed this to state it did not happen) so he scrambled over the front seat and out through the drivers side door, as the taser is fired the first of three times within 10 seconds, at the maximum rate of five seconds each firing, with the third firing failing to be administered.

Both of the officers of the second car join the first two and they attempt to contain this young man, who is now screaming and speaking incoherently even more loudly having been sprayed and tasered. The officers of the second police car had no time to assess what had come before they had arrived, they just initially followed their instincts and any commands of the first two officers and tried to get this young man onto the ground, Knee and baton strikes are administered.. However, as police at the hearing explained over and over, this boy was sweating profusely, he was extremely slippery and therefore their efforts to contain him in any way were fruitless, and this boy kept standing, no matter what they did, he wasn't following commands to get down on the ground, he wasn't producing his hands so that they could cuff him, he wasn't able to follow even these simple commands in any way, so the horrific scene unfolds that we have all seen in the video footage.

The boy was OC sprayed, tasered for the maximum number of times and duration, and during the scuffles to contain him onto the ground, batons are brought down on him approximately 22 times, 17 of those baton strikes are administered by one officer, in one repetitive session, as seen in the video footage. The boy sustains a number of injuries during this incident, including severe bruising to various parts of his body, his legs and torso in particular and also a broken rib, all of this would have added to his agitated state and his inability to respond to commands, and to his moving constantly, even once he is on the ground, he still continues to writhe. To the officers, they saw this as the boy resisting, however from the LECC hearing proceedings and all testimonies heard, it did become apparent most likely to all in attendance, that the boy was moving in response to pain and discomfort and wanting to get away from what was happening to him.

This entire incident took less than five minutes from the police arriving at the scene, to having the boy in the back of the police van.

Each of the officers involved in the incident were interviewed, along with the duty officer for that evening throughout the final three days of the hearing. Each was questioned about their own actions, from the time of arrival, until the boy was contained in the police vehicle and also with regards to actions back at the police station and the written report on the incident. They were also subjected to painstakingly going over the video footage, repeatedly frame by frame, where they each had to discuss what they were doing, what actions were being taken by whom and why and also what their thoughts were on the actions of the other officers. There were many points that only became clear as the ending of the hearing neared, once all had been interviewed and a clearer overall picture of the incident became apparent. While all of the basic facts were backed up by each of their testimonies, their own individual actions and in particular their own thoughts that were occurring during the incident did differ considerably. The last of the officers to take the stand, was the officer who himself brought the baton down on the boy 17 times, seen in the video. While it was obviously difficult for all of the officers to recall facts of this incident, even though it was only a short incident, it was extremely chaotic and this was reflected in all of their individual testimonies.

What was clear though, was that none of these police understood that they were dealing with a 16 year old, all assumed this person to be in his early 20's. Nor did any of them realise that he had Aspergers or any form of disability or potentially a mental health disorder, they only assumed he was drug-effected. They also did not understand that the boy could not understand their commands, and in fact there were no real clear commands, that would not have been hampered by the pain and suffering the boy was enduring. He could not understand them in the most part and the police obviously did not understand the boy either. He was never asked his name until he was restrained and about to be placed in the back of the police vehicle. No one throughout the entire incident acknowledged or gave the boy the water that he had been consistently asking for, which he even asked the police for in the very first instance. In fact even back at the police station he was still not given water, with the duty officer for the evening explaining to the LECC hearing that from his own understanding, mainly learned from reading and also from conversations with festival drug police, he believed it to be detrimental to give water to someone potentially on amphetamines, as this could lead to their death from internal drowning of organs. This, once again, backs up the fact that police in NSW have no real substantial training that would be of any real benefit or advantage to them dealing with drug-induced incidents, or any clear understanding of how to manage people who may have a disability, such as this boy with his Aspergers, nor do they know how to respond to mental health issues. This lack of police education on drugs seriously needs addressing.

Various of the other police officers were asked about their own thoughts about what was happening when the baton was being brought down on the boy, blow after blow and whether they thought this was excessive. One of the officers stated that he himself thought that the baton strikes were "unnecessary" and that "there were too many" and that he had thought to himself that he had not felt the need to bring out his own baton and wondered why this other officer was using it to the extent that he was. However, not one of the other officers said anything while this was happening, even if they may have thought something, not one said one word to the officer who brought that baton down again and again, once again showing that there was no real clear chain of command in that incident, not one officer overseeing what the others were doing, no one in charge as such.

Was there excessive force used, maybe, but that is not our place to make that judgement, that has to be done under the guidance of the LECC, once they have all of the facts in front of them and have finalised their investigation.

## **PRIOR INCIDENTS THAT MAY HAVE EFFECTED THE LANE INCIDENT -**

Here is where we need to take a step back and look at what has happened to Byron police recently. Byron Police have faced ever-increasing issues with drug-fuelled revellers, and in just the few weeks prior to this incident a number of similar incidents led Police to attempt to introduce new measures to protect themselves from the high number of injuries they are receiving attending these sorts of incidents. On Christmas Day at the lighthouse they had a scene unfold that must have been horrific for them, a naked drug-fuelled man violently dragged a police officer out of a police vehicle, beating this officer and others and then he hurled himself into the windscreen of the police car, smashing it. He was almost impossible to contain. This incident led to new measures including having to have four police attend such call-outs in the future, as the phenomenal strength of some people when on drugs, has meant that just two officers are not enough to contain these people and that they now also have to keep the doors of their police vehicles locked until they have been able to properly assess the scenes they go to. There was a second 'violent naked man' incident only a week later, and similarly, this person also assaulted police and damaged a police vehicle in the same manner as the Christmas Day incident. It was ascertained during the LECC hearing that one of the officers involved in the laneway incident, had also been one of the officers involved in the Christmas Day incident. This is the same officer that is seen in the video footage, bringing his baton down numerous times on the boy. These incidents were just weeks apart.

These new measures actually created difficulties on the evening of the lane incident, as even though the vehicles entered the lane only 22 seconds apart, by the time the second vehicle arrived, much had already happened, including the boy being OC sprayed and tasered as the second vehicle arrived, and before these officers had alighted from their vehicle, so they were unable to ascertain the scene properly, or what had already transpired. The second problem, was that we were initially told that the passenger side door of the second vehicle was unable to be unlocked and this officer stated he had to climb over the front seat to the drivers side to get out of the vehicle, also delaying his ability to respond as fast as he should have and also obscuring his vision while he tried to get out, not seeing what was going on with the boy and the other officers. However, this same officer the following day, changed his statement regarding the door being unable to be unlocked and stated that he did indeed alight from the passenger side and then went to the driver's side to retrieve another baton.

## **TRAINING AND EDUCATION OF NSW POLICE**

While Police do of course receive training and education in various matters, one thing that has become very clear from the LECC hearing, is that they in no way receive adequate training in mental health, being their own, or that of the general public that they may be dealing with. Police in NSW receive just one day of mental health training. They are not trained to recognise and respond to mental health disorders even to the level of members of the general public who may have done the two-day Mental Health First Aid training that members of Qld and Vic police receive mandatory, as part of their training.

Nor do NSW police receive any training involving disabilities such as Aspergers or the disability level of those suffering mental health episodes from disorders or drugs, including anxiety or psychosis.

Weapons training is meant to be conducted annually, for just one day, however this is not always the case, as the officers being interviewed at the LECC hearing confirmed. Police

wear both a weapons belt and vest weighing more than 12 kilos carrying various weapons, including OC Spray (capsicum), taser, gun, handcuffs and batons and other weapons are also located in their vehicles including other styles of baton.

## **FAILURE OF WEAPONS TO CONTAIN SITUATION**

The officers involved in this lane incident explained throughout the LECC hearing, their understanding of the use of the various weapons used against the boy that evening, in particular the taser, OC spray, handcuffs and the batons. However, one glaring issue was that in their training, they are trained to use the batons primarily to attract certain responses, essentially either distract an assailant to drop an arm, or drop a subject to their knees or the ground and from all of their testimonies, none of these tactics worked in this incident, being that instead of assisting to contain the boy, these weapons and their use actually had an opposite effect, they made him more agitated, he moved more due to pain and discomfort and the weapons were essentially ineffective against containing this boy. Even the use of the OC Spray hindered their ability to effectively cuff this boy, even when they had him on the ground, in the video footage, the fact that he was already sweating profusely from the drugs he had been given, and then on top of that he was slimy from the capsicum spray, which is an oil-based product, the first set of cuffs they attempted to place on him, locked, with one cuff not fully closed enough for him to not be able to slip his hand out, and the boy tried a number of times to get the cuff off his hand. This meant the police needed to use a second set of cuffs to properly secure his hands. So, by the time he is finally contained, he is wearing two sets of cuffs. Research states that the use of OC Spray and tasers are highly contentious and are not recommended to be used against adolescents. Multiple bursts of tasers are a health risk and police are trained to give reasonable time between taser bursts to allow for compliance. This did not happen.

## **COMMUNICATION/COMMANDS BY POLICE TO THE BOY**

There was confusion as to what was initially said to the boy, and throughout the entire episode. Although one witness stated that he heard clear commands from the first officer attending, to the boy, this was not the recollection of the actual officer himself, who stated that when the boy first charged towards him (which was described in various ways from various witnesses as walking briskly to charging forward), his first command to this boy from his recollection was "Calm down or you'll get a gobful of this", being that he had a can of OC spray already out of his weapons belt and it was in his hand, by the side of his leg. It is hard to imagine how this 16 year old boy, with little life experience, would understand a command such as that, nor would he most likely have even known or seen that the officer had a can of capsicum spray in his hand. Police need training regarding clear communication and commands, particularly with young people.

Throughout the incident the police gave each other and the boy various commands, however due to the chaotic nature of the incident, the boy screamed from pain and not understanding what was happening to him, so none of these commands seemed effective either between police or from them to the boy. There was not one particular officer who was overseeing the incident and in fact for the most part, each is just doing their own part, not even having the other officers visible to them when they had the boy on the ground.

It also needs to be stated at this time, that this boy would initially have seen the arrival of the police as something that would 'save' him from the distress he was in, and this is also quite possibly why he immediately sat up and then stood from laying on the ground and then walked briskly towards the first officer. With the fact that he has Aspergers, and from

conversations with his family throughout the hearing, this boy sees himself as many young Aspergers people, he has an 'inner justice warrior' and sees himself as not dissimilar to police. So he would have believed that their arrival signified someone coming to his rescue. All this boy asked anyone for that night, was for help and a glass of water. I would like to take this moment to refer to one of the teachings from the Mental Health First Aid Australia training programs, a two-day course that NSW Police don't get, yet in other states it is mandatory for all police, in that, when assisting someone who may be suffering from psychosis, one helpful action is to try to comply with simple requests, such as for a glass of water. This simple action could have assisted that night. Police have very little training in mental health and therefore their ability to deal with anyone who was in a state like the boy was on this evening, disoriented, drugged, hot and in extreme discomfort to the point of becoming naked, having loudly-spoken deep discussions with god, on two tabs of acid, should absolutely be seen from both a health and mental health angle and this is very difficult for NSW Police, with the basic one-day mental health training they get.

It is fair to say that these police did not have enough training to adequately manage this situation. It is also fair to say that it was an extreme incident, where their state of mind would have been to have to react quickly to contain the situation, and that rational thinking is not always possible in such a fast escalating situation. It is also very clear to me that there was not enough clear communication between the officers themselves, or from them to this boy and that is very important as far as I am concerned and I am sure the commission will find this too, that one thing that must be impressed on police, is the need that very clear, concise, but also consequential information must be given to people in situations like this, if they are to ever de-escalate situations like this, in a much faster and less violent manner than this incident incurred. Also, the police use of language needs to be addressed, the boy was quite clearly called a "cunt" and referred to as "you fucking loser", both of these statements were decipherable from the video footage. This is a very common complaint from young people, the use of language against them by police, whereas, if they were to use the same language to police, they would be arrested.

There seems to be no real list of actions that Police should have taken on this night, that could have stopped the whole thing right from the start, that would have seen them detaining the boy, without injury, and that is the saddest part of this, as if they had been able to get him to understand that they wanted to help him, then none of what we now know happened, would have happened at all. I am talking about a list of actions to deal with drug-intoxicated people or those with mental health issues. These officers said again and again that they were all just working from their vision of what was happening and their own perceptions, but they did not communicate with each other properly, or with this boy, there was confusion over who was doing what with handcuffs, and at no time was one officer or any of them actually leading the actions happening, they were just following their own concepts, trying to personally judge who was where and who had what, hands, feet, etc, but not clearly talking to each other about it, or being directed by someone with a clear view of what each officer was doing. "Communication is the key" is a term we all use so often these days, yet for these officers, there was no real communication and that could have been the key to making this incident a far less violent and extreme experience for them all, the boy included obviously.

## **LONG WORK HOURS OF POLICE ATTENDING - 12.5 HOUR SHIFT**

Another important point that came out at the LECC hearing was the extremely long shifts these officers have. They had been on duty since 6pm that evening and their shift was meant to finish at 6am, however finished at 6.30am, that would have been a very long

twelve and a half hours for these men. But when the lane incident took place, they had already been on duty for eight and a half hours. While police might see their long shifts as just part of their job, it seems that for the NSW Police service to concede that a 12 hour shift is an acceptable work shift for police, in this high stress job, to be carrying out their duties in any way properly, is a hard ask, particularly if they were to become impaired due to tiredness and exhaustion and a number of times, various officers mentioned that they did become exhausted during their interaction with this boy and the struggles that ensued in order to contain, cuff and detain him. I find it absolutely a failure of the NSW Police, to not give these officers shifts that are within an acceptable time period of normal working hours for anyone. Eight hours should be the maximum time of any police shift. Another thing to note is the complete lack of any formal exercise regime for NSW Police.

It is obvious that the Tweed/Byron Local Area Command have a lack of enough police numbers to effectively allow for reduced hours of police shifts in this region. This is also due to the numbers that can be injured and off work, or unable to work effectively due to involvement in high-level incidents. We would hope that there should be a recommendation for more police to be engaged for this area and that their shift hours be reduced, as an outcome of this hearing.

### **POLICE SUPPORTS - INJURIES MENTAL HEALTH ISSUES - PTSD**

One thing to note, is that police are often injured in the process of containing scenes like this one. In fact, at the time of the LECC hearing Tweed/Byron Police put out a media story on the fact that in the previous 12 months, there had been more than 140 assaults against the 140 local police for this district and that there were 30 police here who were also unable to even strap on a gun, due to involvement in high-level incidents and therefore were limited in the duties they could perform.

The police officer seen in the video footage bringing the baton down on the boy in the lane, was himself effected in just the first few minutes of arrival at the scene, firstly by the OC spray 'over spray' which gave him immediate discomfort and he struggled to breathe, as he suffers from asthma and he coughed until he dry reached. This lasted a number of minutes and was witnessed by bystanders, who also evidenced this in their own testimonies. He then also accidentally touched the barbs of the taser after the first two times it was fired, which was still on, while trying to change the cartridge, essentially tasing himself. This officer had also been involved in the Christmas Day incident involving a violent naked man and the question needs to be asked, as to whether this prior incident, and any others, may have impacted on his ability to properly judge the scene and his own actions on the night of the lane incident.

It is a well-known fact that high numbers of Police struggle with mental health issues due to the high-level of stress of their work, the violence they witness and of course injuries from these incidents. PTSD is a common mental health issue with police who have attended horrific scenes and high-violence incidents. What is unclear though, is how their own mental health and well-being is supported, through professional supervision and/or psychological treatments and there seem to be no real clear guidelines for when or for how long police should be placed on restricted duties, or have enforced treatments and supports, after such incidents.

## **PSYCHOLOGICAL SUPPORT FOR POLICE AT THE LECC HEARING**

The Tweed/Byron Superintendent Wayne Starling attended the LECC hearing for the entire duration and he also personally engaged a psychologist to support the police involved and their families, who was also present throughout the hearing. Mr Starling of course was there to make sure his officers were safe and supported through this process and he went above and beyond to watch over them and also to check on myself and James, to make sure we were also handling the intensive nature of this hearing. I have no doubt that this must have been one of the hardest things he has ever had to face in his many years in the police force. The police officers involved in this incident were not in good shape throughout the hearing, they were obviously devastated and clearly remorseful over what happened. They are not bad men, they are men who have chosen to give their work lives to protecting our community and trying to keep the peace in what is far from a peaceful place any longer.

Some of the officers had family members with them at the LECC hearing, a sister, a wife, a father, and this incident and the investigation and hearing was obviously distressing for their families as well. These are local men, with local families and the media attention and social media fall-out was also distressing for them, in particular the hatefulness of much of the local social media in particular towards these police.

## **REMORSE OF POLICE INVOLVED**

It is important for the Byron community to understand that the police involved, and their supervisors, were all so incredibly remorseful for what happened in this incident. This was not 'remorse' from guilt, it was remorse over the fact that none of them would have ever wished for a situation like this to happen in the first place. And every single one of them throughout the LECC hearing had to go through this incident literally hundreds of times. They had to watch the video footages of their actions when the boy was being restrained and cuffed as well as the taser video, hundreds of times, these were played again and again and every second of video was examined at length, even frame by frame, who was where, where their feet were, their hands, their knees, where the boy was, what he was doing, saying, what was said by them, who said it, an entire transcript was made of those videos, and they had to pull it apart second by second and be questioned over it again and again and again. They had to give their reasonings for every step and every breath they took in that incident.

And while the Police involved were reticent when they first sat in the dock, and they did, as legally they should have, they all gave their objection to being there in the very first instance (this is a legal requirement) they mostly just gave into the process, and even fearing for themselves, their jobs, their reputations and obviously more, they mostly answered seemingly honestly and the truth did come out, a clear picture was given of the incident step by step. I believe everyone who was at the hearing would now understand that incident, the actions of the boy and the police actions, in a far better light than those who just saw the over-sensationalised media attention this incident was given.

## **THE BOY AND HIS FAMILY -**

As I walked into the LECC hearing court on the first morning, the very first person to find me and make contact, was the father of the 16 year old boy and the boy's older brother. They told me straight away that they were grateful we were there on behalf of the

community of Byron and that this boy's Mum had actually contributed to our gofundme campaign, as they wanted to make sure we got there. We sat directly behind them or with them for the entire duration, and spent time with them outside of the hearing, on breaks, lunch and at the end of the days. They told us that Byron Bay is a place their family dearly loves and they hope to bring their boy back to Byron in the near future, so that he can heal from this incident, but more importantly they also want to help heal Byron too and plan that when he is ready, their son will come and speak with the community about what happened to him.

This boy and his family also want to see changes in the NSW Police, so that incidents like this are better managed in the future. They, as a family, at the time of the hearing, were still collecting their thoughts on the incident itself and what effects this has had on the entire family since, both as a collective, but also individually. At the time of the hearing this family had made no moves to instigate any proceedings against any of the officers involved, however they had by then retained a lawyer, who was at times present at the hearing, although no-one from the family was interviewed as part of the hearing, they were themselves also simply there to observe the process. The boy himself did not attend, nor did his Mother, as it would have been simply too distressing for her and she was still coming to terms with what had happened to her son.

## **MEDIA / SOCIAL MEDIA / COMMUNITY FRENZY OVER INCIDENT**

The media, but particularly the social media frenzy over this incident when it was first aired on A Current Affair and also during the hearing itself, led to some extremely hateful 'police-bashing' and this was distressing to watch happen. During the hearing I wrote two updates on the proceedings, which were initially published on local Byron community social media pages and on my own facebook page, and these were shared far and wide, across Australia. Some media also published some of the contents of my updates and I did a number of interviews with local media from the Byron area, however refused any media interviews with national media, including TV news and also ACA, who were present throughout the hearing.

I was however, very relieved to see that my own updates were well received by the local Byron Community and that in the most part, the police-bashing and hateful comments immediately stopped, as people had an opportunity to become more informed of the actual factual circumstances of the incident and not just the over-the-top sensationalism of the media coverage as a whole, as they had mainly only reported on what was seen in just the less-than-three minutes of footage supplied to ACA. I have included copies of these two updates at the end of this report. I can tell you that from the official 'insights' of the 'Byron Bay Community News' facebook page, which I own and manage, these updates had a massive response, with the first one receiving more than 35,000 hits in just the first three days. And I believe the effectiveness of those updates, was in the very personal nature in which I wrote them, being that it was a very emotional journey for both James and myself to be witness to this LECC process and hearing and of course witnessing what effect this process also had on the witnesses, the police and the boy's family, as well as others present and these updates also gave this same information to the community.

## **SUMMARY/CONCLUSION**

As already stated, the Law Enforcement Conduct Commission has as yet, not made a final determination or report over this incident. However, this is due very soon. This incident, while definitely a one of a kind incident, was also in many ways reminiscent of the sorts of

incidents that the Byron Police are seeing more and more often, involving high-levels of drug and alcohol-induced violent behaviour and while this may not have been the case with this boy, who even the officers attending stated never once was actually abusive or violent towards them, it was extremely difficult to contain him, with the level of drugs that were in his system.

Byron Bay Police have seen a far higher level of these sorts of incidents than in most other areas of NSW and their lack of police numbers for this region has led to a higher than normal incidence rate of assaults and injuries to local police and to them also having work shifts far longer than would be conducive to having alert police, capable of responding to situations without being tired, or exhausted. Of course then there is the fact that so many assaults against local police would also see way too many of these officers suffering from trauma and mental health issues as a result.

What was glaringly obvious throughout the hearing, was the lack of training and education for NSW police to be able to recognise and respond to the kinds of incidents they see, as far as those suffering from mental health disorders, disabilities, and dealing with alcohol and other drug-affected people. Police also need better training in how to speak with people in the first instance and throughout incidents such as this, with clear commands that would be understood by anyone. And finally, just one day a year of training in weaponry is also obviously not enough, they need far better training in how and when weapons are productive and not counter-productive, as they were in this instance.

While this incident was horrific, for the boy and his family, the police involved and our community as a whole, what needs to happen from here, is that we move on as a community, recognising the extremely difficult job that local police here have. We need to recommend that the NSW Police should be reviewing their use of weapons, their training and education of their officers in mental health, disabilities and AOD, and their responses to incidents like this. The NSW Police service seriously need to review the lack of numbers of police in this region and their ridiculously long working hours and make sure that these officers and others who experience incidences like this, are professionally supervised with regard to their own mental health and well-being and have the supports needed to deal with the kinds of high-level and often drug-induced violence that is so rife in Byron Bay. And one final observation is that police should also be looking towards quite specific training with regards to young people. Youth do not respond in the same way as adults and police need to seriously review the way in which they speak with young people and in particular, any actual commands given to them need to be precise, clear and in simple language that potentially even highly impaired young people would also understand. Not just those who may be intoxicated, but potentially also those who may turn out to have Aspergers like the young 16 year old boy in this incident. If all police spoke with everybody, with very clear, concise commands, possibly needing to be restated identically more than once, and if they treated everyone as if they may have a disability such as Aspergers, or a mental health disorder such as anxiety, that impaired their cognitive understanding or their ability to easily actually hear what is being said to them, then maybe incidents like this may not happen.

I would like to thank Byron Shire Mayor Simon Richardson and also the Councillors who supported assisting with funding to attend the LECC hearing and I hope this report assists to have both Council and the community understand the incident, the process of the LECC and the hearing itself. I am happy to make myself available to answer any questions that may arise from this report. It was an extraordinary experience, to witness this LECC hearing and I have the utmost faith in the LECC process and believe that the Chief

Commissioner Hon Michael Adams QC is a man of absolute integrity and the findings will reflect the entire process.

**Nicqui Yazdi**

**Mob: 0402013177**

**Email: [nicquiyazdi@yahoo.com.au](mailto:nicquiyazdi@yahoo.com.au)**