



Hearing: Operation Brugge

Before the Hon M F Adams QC, Chief Commissioner

Held at Level 3, St James Centre,
Elizabeth Street, Sydney

On Tuesday, 22 October 2019 at 10am
(Day 2)

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1 THE CHIEF COMMISSIONER: Yes, Ms Dwyer?
2
3 MS DWYER: Your Honour, the first witness this morning is
4 [NAME SUPPRESSED] BR3.
5
6 THE CHIEF COMMISSIONER: There is to be no publication of
7 his name.
8
9 <OFFICER BR3, sworn: [10.15am]
10
11 THE CHIEF COMMISSIONER: You may be seated, thank you,
12 officer. Mr Eurell, who appears for you, has almost
13 certainly told you what I am about to tell you, but I,
14 nevertheless, have a duty myself to tell you.
15
16 THE WITNESS: Yes.
17
18 THE CHIEF COMMISSIONER: That is, you must answer every
19 question that you are asked, unless I tell you you don't
20 have to, and you must produce anything you are asked to
21 produce, unless I tell you you don't have to.
22
23 You can object to producing anything or giving an
24 answer, but you must, nevertheless, produce that thing or
25 give the answer. But your objection has the effect that
26 your answer or what you produce cannot be used against you
27 in any proceedings, except proceedings taken against you by
28 the Police Commissioner under the Police Act. Do you
29 understand?
30
31 THE WITNESS: Yes, sir.
32
33 THE CHIEF COMMISSIONER: Or for perjury or for contempt of
34 the Commission.
35
36 THE WITNESS: Yes.
37
38 THE CHIEF COMMISSIONER: You understand. Now, I can make
39 an order that each of your answers and each production of
40 anything that you are asked to produced is taken to be made
41 or given under objection. That is to save you from
42 objecting to each answer.
43
44 THE WITNESS: Yes, sir, thank you.
45
46 THE CHIEF COMMISSIONER: You seek that declaration?
47

1 THE WITNESS: Yes, thank you.

2

3 THE CHIEF COMMISSIONER: I make a declaration pursuant to
4 section 75 of the Act that all answers and other things
5 given by this witness will be regarded as having been given
6 on objection by the witness.

7

8 Now, although details of the general scope and purpose
9 were given in yesterday's proceedings, which were public
10 proceedings, I think for the purposes of today I should
11 announce, in a briefer form, the general scope and purpose
12 of this public examination. It is to investigate whether
13 NSW Police Force officers engaged in serious misconduct
14 during the detention and strip search of a 16-year-old
15 female person on 20 July 2018 at the Splendour in the Grass
16 music festival; secondly, whether there was conduct of the
17 NSW Police Force in connection with the application of the
18 laws relating to searches, including, in particular, strip
19 searches, that is or could be unlawful or unreasonable.

20

21 Yes, thank you.

22

23 <EXAMINATION BY MS DWYER:

24

25 MS DWYER: Q. Senior Constable, I'm going to hand you
26 a copy of a schedule of code names.

27

28

29 Q. You will see on that schedule that you have been given
30 the code name Officer BR3?

31

32

33 Q. And other colleagues within the police force have code
34 names written there. You see that?

35

36

37 Q. The young person who was the subject of the search has
38 also been given a code name. Do you see that?

39

40

41 Q. Can I start by asking you some questions about your
42 background within the police force. Your rank, of course,
43 is senior constable; correct?

44

45

46 Q. How long have you been in the police force?

47

A. Fourteen years and five months.

1
2 Q. How long have you held the rank of senior constable?
3 A. From 2010, April 29.
4
5 Q. Are you currently working in the Byron-Tweed area?
6 A. No.
7
8 Q. In July 2018 you were working at Splendour in the
9 Grass as a police officer?
10 A. That's correct.
11
12 Q. Had you previously worked as an officer at that
13 festival?
14 A. No, I hadn't.
15
16 Q. So that was your first time working in that particular
17 music festival. What about other music festivals?
18 A. No, I had never worked at a music festival before.
19
20 Q. How was it that you came to be working at Splendour in
21 the Grass?
22 A. An email got sent out on our email system in relation
23 to seeking applications, and I applied.
24
25 Q. So you were working at another police area command
26 within New South Wales?
27 A. Yes, that's correct.
28
29 Q. And the email was sent to all police within New South
30 Wales; is that right?
31 A. I believe so, yes.
32
33 Q. It was requesting additional police who would like to
34 do an extra shift for additional money at Splendour in the
35 Grass?
36 A. Yes, I believe it was additional shifts. It was more
37 than one.
38
39 Q. Over the course of the entire weekend for Splendour in
40 the Grass; is that correct?
41 A. Yes, that's correct.
42
43 Q. Do you recall how long before the Splendour in the
44 Grass festival that email came out?
45 A. No, I don't.
46
47 Q. When you signed up to say that you would like to do

1 that, did you get any specific instructions by email as to
2 what was to be involved?
3 A. I don't recall, to be honest.
4
5 Q. Do you recall attending a briefing prior to Splendour
6 in the Grass?
7 A. On the first day I worked.
8
9 Q. Is that the first time you attended a briefing for the
10 music festival?
11 A. Yes, that's right.
12
13 Q. At that time, did you get a copy of the operational
14 orders for 2018?
15 A. No, I didn't get a copy.
16
17 Q. So at no time while you were involved in policing at
18 the festival did you get a copy of the orders?
19 A. At no time.
20
21 THE CHIEF COMMISSIONER: Q. You are aware, of course,
22 that operational orders must have been produced, because
23 they always are?
24 A. Yes, sir.
25
26 Q. Did you not ask for them, to see them?
27 A. No, I didn't, sir.
28
29 Q. Why not?
30 A. That's an error on my behalf. I should have.
31
32 Q. I understand that, but what was the reason?
33 A. I didn't know they were available to everyone, sir.
34
35 Q. Had you asked, you would have found out very quickly?
36 A. Yes, sir.
37
38 MS DWYER: Q. Were you aware at the time that there was
39 in existence, in addition to the general operational
40 orders - that is, operational orders for Splendour in the
41 Grass - additional orders that were drug dog operational
42 orders?
43 A. Yes.
44
45 Q. Were you given a copy of those?
46 A. No.
47

1 Q. Were you aware, prior to the festival starting, that
2 there would be those orders in existence?
3 A. Yes.
4
5 Q. Did you not ask for them for the same reason you have
6 just given to the Chief Commissioner?
7 A. Yes.
8
9 Q. Do you agree it would have been helpful to you to have
10 a copy of those?
11 A. Certainly.
12
13 THE CHIEF COMMISSIONER: Q. It might have been helpful;
14 it rather depends what was in them?
15 A. Yes, exactly.
16
17 Q. But it is a precaution, as an officer when you are on
18 an operation, if it happens that for some reason you are
19 not given them, it's your responsibility to --
20 A. Certainly.
21
22 Q. -- ensure that you have all the relevant information.
23 A. Certainly, sir.
24
25 MS DWYER: Q. You recall the briefing that occurred on
26 the morning prior to the commencement of your shift at the
27 music festival; is that right?
28 A. Yes.
29
30 Q. So if you recall that the festival was held over
31 a number of days, did you work on each of the days of the
32 festival - Friday, Saturday, Sunday?
33 A. I believe I only worked on the 20th and 21st.
34
35 Q. What do you recall of the briefing that you received
36 on the morning of the 21st?
37 A. We got given - allocated into certain teams.
38
39 Q. Were you meeting police for the first time that you --
40
41 THE CHIEF COMMISSIONER: Q. Just a moment. Who
42 conducted the briefing?
43 A. One of the chief inspectors, I believe, sir.
44
45 Q. You don't recall the name?
46 A. No. I believe the superintendent from Tweed-Byron was
47 there as well.

1
2 MS DWYER: Q. Do you recall the name Superintendent --
3
4 THE CHIEF COMMISSIONER: No.
5
6 MS DWYER: Q. Do you recall that there was someone there
7 participating in the briefing who was the drug dog
8 operational head?
9 A. I don't recall.
10
11 Q. Can you have a look down at the schedule of code
12 names. Do you recall Officer BR5?
13 A. No, I don't.
14
15 Q. And do you recall Officer BR1?
16 A. Yes, I do. I do recall Officer BR1.
17
18 Q. Do you recall that he was involved in the briefing at
19 all?
20 A. Not the actual briefing, just the name - I recognise
21 the name.
22
23 Q. In terms of who conducted the briefing, do you know
24 what area they were from within the police force? That is,
25 were they from the dog squad, for example?
26 A. I believe they were from the Tweed-Byron LAC.
27
28 Q. How long did that briefing go for?
29 A. Ten or 15 minutes.
30
31 Q. Do you recall at that briefing being instructed about
32 your obligations under LEPRa?
33
34 THE CHIEF COMMISSIONER: Q. Let's ask the more
35 open-ended question: what matters did the briefing cover,
36 so far as you can now recall?
37 A. I can recall in relation to being allocated - names
38 were read out of the team that you were on.
39
40 Q. And your team was?
41 A. I don't recall the name of the team, but I think --
42
43 Q. But what was the function of the team?
44 A. Assisting the drug dog handlers.
45
46 Q. At the entrance or were drug dogs used through the
47 camp area as well? Do you remember now?

1 A. I don't recall, but I didn't go in the camp area, sir.
2
3 Q. So as it happened, you were only at the entrance and
4 drug dogs were used at the entrance, or near the entrance,
5 to check on people entering into the grounds?
6 A. Yes, that's right, sir.
7
8 Q. So you were allocated those duties - and I assume
9 several other officers would have been as well?
10 A. Yes, that's correct.
11
12 Q. Can you recall how many?
13 A. I believe there was about six different teams working
14 on that day.
15
16 Q. And how many to each team?
17 A. There was a sergeant that was allocated to each team
18 and I believe there was about six people on each team.
19
20 Q. So you were part of a team of six?
21 A. Yes, that's correct.
22
23 Q. Excluding the drug dog handler?
24 A. Yes, that's correct.
25
26 Q. Don't tell me the names, but do you recall the names
27 of the people, officers, on your team?
28 A. I recall - no, I don't, but I obviously recall the
29 name of an officer that I worked with specifically.
30
31 Q. Are they on that list?
32 A. Yes.
33
34 Q. And that is number - what's the code?
35 A. BR4.
36
37 Q. Now, because of the various places that police came
38 from, had you ever worked with the people on your team
39 before?
40 A. No, I hadn't, only BR4, sir.
41
42 Q. So the others were strangers to you?
43 A. Yes.
44
45 Q. Do you recall - don't tell me the name, but I'm just
46 asking you whether or not you recall - the name of
47 the sergeant who was in charge of your team?

1 A. No, I don't recall the name.
2
3 Q. So the briefing gave - there are a whole lot of
4 duties, perimeter duties --
5 A. Yes, certainly.
6
7 Q. -- and patrolling duties and things of that kind. But
8 let's just look at the searching, the entrance supervision,
9 if I can use a general term, duty, okay?
10 A. Yes.
11
12 Q. So there is your team. So far as you can recall, how
13 many other teams were involved in the same work?
14 A. I can't recall in relation to how many sort of teams.
15
16 Q. You were on shifts, obviously?
17 A. Yes, that's right.
18
19 Q. So how long was your shift?
20 A. I believe I was on the day shift and there was an
21 afternoon - sorry, a night shift as well.
22
23 Q. Am I right, though, in thinking that your briefing was
24 for those that were on the same shift as you?
25 A. Yes, certainly.
26
27 Q. So you would have been told where to station
28 yourselves?
29 A. Yes.
30
31 Q. You were given a map, I assume, of the site?
32 A. Yes.
33
34 Q. And you were told what you were expected to do?
35 A. Yes, our role, sir, yes.
36
37 Q. What were you told as to your roles?
38 A. To assist the drug dog handlers.
39
40 Q. No more detail than that?
41 A. High visibility policing.
42
43 Q. What does that mean?
44 A. Well, walking around the festival.
45
46 Q. Right. But I thought you were at the entrance. I'm
47 talking about your team.

1 A. Oh, yes, sorry.
2
3 Q. What did you understand?
4 A. Sorry, yes. Sorry, yes, yes.
5
6 Q. Of course other officers were doing that?
7 A. Yes.
8
9 Q. But your team was essentially at the entrance to check
10 on people entering the festival?
11 A. Yes, that's right.
12
13 Q. And were you told anything about what you were
14 expected to do?
15 A. No, other than --
16
17 Q. Assist the drug dog handler?
18 A. Yes, that's right, sir.
19
20 Q. So I think I overstate this, but you were to act at
21 the direction of the drug dog handler?
22 A. Yes.
23
24 Q. "Direction" may be too strong a word --
25 A. Yes.
26
27 Q. -- but he instigated, say, searches where your people
28 identified people who it may be necessary to search?
29 A. Yes.
30
31 Q. Aside from that, were you given any further
32 information?
33 A. Not that I can recall.
34
35 Q. So if one follows logically, then I think the logic of
36 events suggests things that must have happened. So your
37 group, except for one, you hadn't known anyone; probably
38 everyone else was in the same position. So you get
39 together, you introduce yourselves?
40 A. Yes.
41
42 Q. Do you just go to one side and do that?
43 A. Yes, at the briefing, obviously, we got told the team.
44 Then we had to go and meet the sergeant and the team would
45 have a discussion with the sergeant.
46
47 Q. So you were introduced to the sergeant?

1 A. Yes.
2
3 Q. And what then do you recall - did the sergeant give
4 you any instructions or advice or outline what he expected
5 or she? Was it a he or --
6 A. It was a male.
7
8 Q. A male. What he expected you to do?
9 A. I don't recall.
10
11 Q. You were obviously expecting that you would have to
12 conduct some searches?
13 A. Yes.
14
15 Q. It's notorious, people try to bring drugs into
16 a festival.
17 A. Yes.
18
19 Q. And that would include young people?
20 A. Yes, that's right, sir.
21
22 Q. Was there any specific discussion of what should
23 happen if a young person was going to be searched?
24 A. Not that I can recall, sir.
25
26 Q. So you were relying on your general understanding of
27 the LEPRAs obligations?
28 A. Yes, that's right.
29
30 Q. Is it fair to say, so far as you are aware, so were
31 all the other officers involved?
32 A. Yes, certainly.
33
34 Q. It was assumed that everybody understood what their
35 powers were and what they should be doing?
36 A. Yes.
37
38 Q. Or should not be doing?
39 A. Yes.
40
41 Q. So you get introduced. The sergeant has a few words
42 with you, which you now do not recall, and you then, what,
43 all go and have a cup of coffee or something or you go to
44 the gate?
45 A. No, no. Yeah, go to the gate.
46
47 Q. So you walk to the gate?

1 A. Yes, as the team.
2
3 Q. About what time would this have been?
4 A. I wouldn't know.
5
6 Q. Some time in the morning?
7 A. Yes, yes.
8
9 Q. Eight-ish, nine-ish? Just can you give us an idea?
10 A. I would say nine or 10, sir.
11
12 Q. Do you recall now whether your team was the first team
13 there or amongst the first teams there?
14 A. Amongst, yes. I don't recall being the first team
15 there, but amongst.
16
17 Q. How many dogs do you remember?
18 A. I believe they only had two dogs working at once.
19
20 Q. Does it follow from that that there were only two
21 teams working at once, or you just don't know?
22 A. I couldn't - yeah, I can't confirm that.
23
24 Q. I just have one more question before I return you to
25 Dr Dwyer, and that is, just so that I get the system clear
26 in my mind: It was obvious that your essential - I mean,
27 there are other possibilities, of course, of bad behaviour
28 possibly, and so on, but essentially, the people you were
29 going to search, am I right to say that the trigger for the
30 search would have been the drug dog indication?
31 A. Yes.
32
33 Q. This is not a trap question, by the way, at all, but
34 in the sense that you wouldn't search someone unless there
35 had been a drug dog indication? I suppose unless you saw
36 someone obviously smoking a joint or something. I mean,
37 unless it was very obvious, for you, the signal to consider
38 a search was the drug dog indication; am I right?
39 A. Yes, but that's combined with our observations as
40 well, because --
41
42 Q. No, but that's different.
43 A. Sorry.
44
45 Q. That happened subsequently, am I not right?
46 A. We were standing behind, obviously, the dogs, so
47 obviously you've got a full view of people when they sort

1 of - their behaviour upon seeing the dogs.
2
3 Q. Sure. So people who walked away when they saw the
4 dogs, you might be interested in them?
5 A. Yes, certainly.
6
7 Q. Do you recall that occurring?
8 A. Yes, on - yes.
9
10 Q. Half a dozen times? Are you able to - a dozen times?
11 A. Yes, on several occasions.
12
13 Q. Several?
14 A. Yes. Over a dozen, sir.
15
16 Q. Over a dozen. And of those occasions, are you able to
17 say - did you ultimately search them or not? Were all
18 searched or some searched and some not searched?
19 A. Yes, I believe most were searched because the handler
20 was - obviously the handler was in front of us and if the
21 handler didn't see it, we would approach the handler and
22 advise them.
23
24 Q. And so the handler would then take the dog to that
25 person?
26 A. If they - upon seeing the handler from a distance, if
27 they've turned around and done a U-turn or something like
28 that, the handler would approach them.
29
30 Q. So in those circumstances, if the drug dog indicated,
31 then that might trigger the possibility of a search?
32 A. Yes, that's right.
33
34 Q. Or the consideration of a search?
35 A. Yes, consideration.
36
37 Q. Would you accept that language?
38 A. Yes, consideration.
39
40 Q. But if the drug dog did not indicate, you would not
41 bother?
42 A. No.
43
44 Q. Is that right?
45 A. Yes.
46
47 Q. So one way or another, the drug dog indication was the

1 trigger for a consideration of a search?
2 A. Yes, certainly.
3
4 Q. Now, you had women, at least one, did you, on your
5 team?
6 A. Yes.
7
8 Q. Aside from the fact that women are in the police
9 force, it's necessary because you may be searching females
10 and, accordingly, a female officer must be available for
11 that purpose?
12 A. Yes, that's right. Yes, definitely.
13
14 Q. So, if a female's involved, and you have decided to
15 conduct a search, obviously, that female must do it, and
16 obviously no male can be present?
17 A. That's correct.
18
19 Q. And there was only one female on your team?
20 A. That I can recall. But I worked specifically with
21 that female.
22
23 Q. But it necessarily follows that that female would
24 always be conducting a search alone?
25 A. On females, yes.
26
27 Q. When it was a male who was being searched, how many
28 officers would be involved in the search?
29 A. Just - when I was working with this female, just me.
30
31 Q. So again, you would search alone?
32 A. Yes.
33
34 Q. Whether the male was an adult or under 18, a young
35 person?
36 A. Yes, that's correct.
37
38 THE CHIEF COMMISSIONER: Thank you.
39
40 MS DWYER: Q. You answered the Chief Commissioner yes,
41 that you expected to be doing searches?
42 A. Yes.
43
44 Q. That included searches of young people under the age
45 of 18?
46 A. Yes.
47

1 Q. Did you turn your mind to who might be available as
2 a support person if a parent or guardian was not?
3 A. Yes - friends and the people that they were with at
4 the festival.
5
6 THE CHIEF COMMISSIONER: Q. Let's go back a step. At
7 the briefing, were you informed about any arrangements that
8 had been made to have support persons available if the
9 parent or guardian was not available --
10 A. No.
11
12 Q. -- or the young person searched did not want to have
13 them there?
14 A. No, sir.
15
16 Q. So is it fair to say, so far as you are aware, no such
17 arrangements were in place?
18 A. That's correct.
19
20 Q. And the sergeant did not mention that issue?
21 A. No.
22
23 Q. Sorry, it may be because I'm 72 now, but is your
24 sergeant on that list?
25 A. I can't recall the sergeant's name, sir.
26
27 Q. Sometimes, if you see a name, it helps provoke
28 a memory.
29 A. No, it doesn't. It doesn't trigger a memory.
30
31 Q. It doesn't trigger?
32 A. No.
33
34 Q. So your evidence is you don't remember the name. The
35 name might be on the list or not, but you can't say one way
36 or another; is that - or are you confident it's not on the
37 list?
38 A. I'm confident it's not on the list. The sergeant that
39 was on my team was a general duties sergeant.
40
41 Q. Do you remember where from?
42 A. A country location.
43
44 Q. Not Tweed-Byron?
45 A. No.
46
47 MS DWYER: Q. Do you recall, sir, turning your mind to

1 the fact that you might have to do strip searches?
2 A. Yes.
3
4 Q. And that includes strip searches for children?
5 A. Yes, that's correct.
6
7 Q. But you don't recall any discussion of your
8 obligations specifically when conducting strip searches?
9 A. No.
10
11 Q. Do you recall being told anything about the
12 requirement to complete the field detection or field arrest
13 form when you were searching?
14 A. For finds or non-finds?
15
16 Q. I'm just asking you generally. Firstly, I will refer
17 to the briefing. At any time during the briefing, did
18 anybody make reference to the obligation to complete
19 a field detection or field arrest form?
20 A. I believe it was explained in relation to when there
21 was a find, that that was the process.
22
23 Q. I see. But when there was no find, what was your
24 understanding of filling out that form?
25 A. That you didn't fill it out.
26
27 Q. Do you recall any discussion of the obligation to be
28 able to justify the exercise of your power when you were
29 personally searching?
30 A. I don't recall.
31
32 Q. Is it possible that that was discussed and you don't
33 recall or do you think --
34 A. Yes, yes, that's the case.
35
36 Q. Do you recall being outlined your expectations in
37 relation to the COPS entry system?
38 A. No, I don't.
39
40 Q. Do you recall being --
41
42 THE CHIEF COMMISSIONER: Q. However, you had been
43 a police officer for how many years?
44 A. Over 13 years at that stage.
45
46 Q. And you had filled out many COPS forms in the course
47 of your duties?

1 A. Yes, that's correct.
2
3 Q. So are we to understand that you knew perfectly well
4 the purpose of a COPS entry and what information should be
5 placed in it?
6 A. Yes.
7
8 MS DWYER: Q. In July 2018 you knew that a drug dog
9 indication itself was not enough to justify a personal
10 search; is that right?
11 A. Yes.
12
13 Q. Were you familiar with the obligations in relation to
14 strip searching?
15 A. In relation to the rules?
16
17 Q. The LEPRA rules?
18 A. Yes.
19
20 Q. Did you understand that in order to carry out a strip
21 search at a music festival, there would have to be
22 a justification based on the seriousness and urgency of the
23 circumstances?
24 A. Yes.
25
26 Q. Did you understand that there were specific rules if
27 you were going to engage in a strip search of a child
28 between the ages of 10 and 18?
29 A. Yes.
30
31 Q. What was your understanding of who was required to be
32 present if that search, strip search, was conducted on
33 a 16-year-old, say?
34 A. A parent or guardian, or, if that's not acceptable,
35 a person who is not a police officer and who can act in
36 their best interests, and that is acceptable to the person
37 being searched.
38
39 Q. So you understood --
40
41 THE CHIEF COMMISSIONER: Q. What are the interests of
42 the child in this context?
43 A. Fairness.
44
45 Q. Yes. I understand that. What do you mean by
46 "fairness"?
47 A. Looking after their welfare.

1
2 Q. How?
3 A. Making sure everything's done correctly. Support -
4 providing support.
5
6 Q. How, as a practical matter, would that happen? Well,
7 you have searched many children?
8 A. Yes.
9
10 Q. How did it happen in those cases?
11 A. In relation to a support person?
12
13 Q. Yes.
14 A. They spoke to them in --
15
16 Q. Right. Spoke to them before the search, during the
17 search, after the search?
18 A. Yes, I would say before the search. And obviously
19 they were explained everything by the - by us as well, with
20 the parent or guardian present.
21
22 Q. About how many searches did you yourself conduct
23 during these two days that you were on duty, more or less?
24 A. I would say 15 - around the 15 mark.
25
26 Q. Each of those following a drug dog indication?
27 A. No, not each were a drug dog indication. I can recall
28 a security guard, like, coming towards police, that they
29 had - at the searching point where the security check the
30 bags, that they had located items inside a bag and then
31 they alerted us.
32
33 Q. Aside from that case, were they otherwise drug dog
34 indications?
35 A. Yes, to the best of my memory, sir.
36
37 Q. Was there ever a case where there was a drug dog
38 indication and you did not conduct a search?
39 A. I can't recall.
40
41 Q. Would you agree that it is very likely that a search
42 was conducted in every case following a drug dog
43 indication?
44 A. Yes.
45
46 Q. Were all of those searches strip searches?
47 A. I couldn't confirm 100 per cent on that.

1
2 Q. I want to suggest to you that following a drug dog
3 indication, you did not conduct any pat-down searches and
4 leave the search at that. Is that correct?
5 A. Yes, then.
6
7 Q. So it amounts to this, then: in every case where
8 there is a drug dog indication and there is other
9 material - we will come to that in a moment, but there is
10 other material - that suggests that the person might be in
11 possession of drugs, in every case a strip search was going
12 to be conducted; is that right? A pat-down would never be
13 enough?
14 A. Depend on the circumstances, obviously.
15
16 Q. Well, tell me the circumstances that might justify -
17 when you have a drug dog indication and you form
18 a reasonable suspicion that the person is in possession of
19 a drug, tell me the circumstances which would justify, in
20 your mind, going no further than a pat-down search?
21 A. Alone, just - alone, just the drug dog detection.
22
23 Q. But a drug dog detection we have already agreed would
24 not justify a search at all, by itself?
25 A. Yes, that's correct.
26
27 Q. So we are never in a case, are we, where there was
28 only a drug dog indication?
29 A. Yes, sorry, that's correct.
30
31 Q. Right. So we have a drug dog indication and then we
32 have, let's just say, information, using a general term,
33 which creates in your mind a reasonable suspicion that the
34 person is in possession of drugs?
35 A. Yes.
36
37 Q. In every such case, you conduct a strip search; is
38 that not correct?
39 A. Yes, that's correct.
40
41 MS DWYER: Q. Senior Constable, can I ask you to accept
42 that investigators for the Commission have analysed the
43 COPS entries to determine the number of searches that were
44 carried out and the number of strip searches. There were
45 19 searches under your name for the music festival, and all
46 of those were strip searches. Do you accept that?
47 A. Yes.

1
2 Q. You were aware that section 31(b) required that in
3 order to justify a strip search, it be serious and
4 necessary in the circumstances?
5 A. Yes.
6
7 Q. What, in those 19 searches, justified it on the basis
8 of first, seriousness, and, secondly, urgency?
9 A. In relation to urgency, I believe that fears for their
10 safety in relation to items that may be secreted that could
11 cause harm.
12
13 THE CHIEF COMMISSIONER: Q. I see. This would be
14 secreted in their body cavities, would it?
15 A. Yes.
16
17 Q. Well, you can't search those?
18 A. No, exactly.
19
20 Q. So a search is not going to help there; correct?
21 A. Yes.
22
23 Q. So we can discount the body cavity reason for urgency,
24 can we not?
25 A. Mmm, yes.
26
27 Q. Because it wouldn't justify a search, would it?
28 A. No, sir.
29
30 Q. You couldn't conduct it; you have to take them to
31 a hospital?
32 A. Yes, that's right.
33
34 Q. So that reason couldn't make it urgent. What other
35 reason would make it urgent, the search?
36 A. I can't think of anything, sir.
37
38 Q. There was no urgency at all in any of these searches,
39 was there? Now you are looking back on them, there wasn't,
40 was there?
41 A. We had strong - obviously we had reasonable belief
42 that there was items.
43
44 Q. Quite. But that's not enough, is it? For you to do
45 a search in the field, you have to have more - seriousness
46 and urgency.
47 A. Yes, that's correct, sir.

1
2 Q. We are just dealing with urgency?
3 A. Yes, that's correct.
4
5 Q. There were no circumstances of urgency, were there?
6 A. No.
7
8 Q. From which it follows, I think you are agreeing, that
9 the search was not lawful?
10 A. Yes, sir.
11
12 MS DWYER: Q. Had you ever --
13
14 THE CHIEF COMMISSIONER: Just one moment.
15
16 MS DWYER: Sorry, your Honour.
17
18 THE CHIEF COMMISSIONER. Q. I take it, until we have had
19 this exchange now, that particular issue had never really,
20 as it were, come across your radar as something you needed
21 to think about when you were doing a field search; is that
22 fair to say?
23 A. Yes, that's fair to say, sir. This has been a massive
24 learning experience for me.
25
26 Q. And so far as you can be aware - as I understand it,
27 let me tell you briefly my understanding, and you tell me
28 whether that's right or not.
29 A. Yes.
30
31 Q. My understanding is you are told of the LEPR rules,
32 you are told of the sections, but you are not actually
33 given content for what might be urgent, for example, or
34 what might be seriousness; you are just told of the
35 section. That's the training --
36 A. That's correct, sir.
37
38 Q. -- and you have got to work it out for yourself?
39 A. Right.
40
41 Q. I think, with your 13 years of experience now,
42 I expect you would agree that that would be a matter that
43 should attract some attention?
44 A. Yes, sir.
45
46 Q. That is urgency. I would like to come to seriousness
47 for a moment.

1 A. Yes.
2
3 Q. Now, it's obvious that some drugs are worse than
4 others?
5 A. Yes.
6
7 Q. And some drugs are relatively harmless, if the
8 quantity is small; extremely dangerous if the quantity is
9 larger?
10 A. Yes, that's correct.
11
12 Q. The problem, of course, with some drugs, as we know in
13 this context, is even one drug can be deadly, because you
14 don't know its purity; you don't know what is in it?
15 A. Yes.
16
17 Q. So potentially, it's serious?
18 A. Yes.
19
20 Q. Now, I want you to think back, then, to the
21 legislative test of seriousness. I think I've given you
22 some guidance as to the way I consider that matter.
23 A. Yes.
24
25 Q. But I'd like you to try to be objective about it,
26 please.
27 A. Yes.
28
29 Q. Where drugs are in issue, will they always be serious?
30 A. Depends on the type of drugs and the amount.
31
32 Q. Right. But you don't know that until after the
33 search?
34 A. That's correct.
35
36 Q. That's your problem?
37 A. That's correct.
38
39 Q. It might be that you search and all you find is
40 a joint. Well, no-one's going to worry about that, really.
41 It's illegal, but --
42 A. Yes, that's correct.
43
44 Q. -- no-one's going to worry about it. No-one would, in
45 these days, say that was serious; agreed?
46 A. Agreed.
47

1 Q. But, as I say, you don't know that until after the
2 search?
3 A. Yes, that's right.
4
5 Q. So, then, if that's right, in this context,
6 seriousness can only mean - in the drug context, I mean. If
7 you are searching for guns or knives, they are serious
8 without a question?
9 A. Yes.
10
11 Q. And that's part of the problem with the legislation,
12 it is one size fits all?
13 A. Yes.
14
15 Q. But it seems to follow that the only way one can
16 sensibly apply that test is "potentially serious", because
17 you are never going to know --
18 A. Certainly, sir.
19
20 Q. And then the question is: how do you measure that
21 potential? Is there a slight chance? A real chance?
22 A substantial chance? And so on. It is a matter of fact
23 and degree in each case?
24 A. Yes, I agree.
25
26 Q. But am I right in saying again, an analysis of what
27 seriousness might mean - because you are not only searching
28 for drugs; in your work as a general duties police officer
29 you finish up searching for a whole range of stuff?
30 A. Yes, that's correct.
31
32 Q. So am I right in saying that again, in your training,
33 there is no real attention given to what might constitute
34 seriousness?
35 A. Yes, I agree.
36
37 Q. Now, I don't wish to be patronising, but you are
38 a relatively junior officer.
39 A. Yes, that's correct.
40
41 Q. But I think junior officers also have strong views
42 about the assistance they should get from management --
43 A. I believe so.
44
45 Q. -- as a general proposition. You want as much help as
46 you can get?
47 A. Oh, certainly.

1
2 Q. So it seems to me that, on this issue, there should
3 not only be training, but there ought to be a corporate
4 position that gives guidance to officers, because no
5 inspector is ever going to be conducting a search out on
6 the field, are they? It's always going to be a senior
7 constable, possibly a sergeant - that's unlikely, but
8 a constable or a senior constable are the people who are
9 going to have to do it?
10 A. I agree.
11
12 Q. So a corporate position to give them some guidance
13 about how you apply these LEPRAs tests strikes me as being
14 an important aspect of management?
15 A. I think very important.
16
17 Q. Well, no doubt you have had other management which has
18 been effective. We are not conducting an inquiry generally
19 into the police force.
20 A. Yes.
21
22 Q. But, in this respect, in relation to searching,
23 especially because it's at the pointy end of interactions
24 with the public --
25 A. Yes.
26
27 Q. -- it seems to me that a corporate position is even
28 more important because of that.
29 A. Yes.
30
31 Q. Because you can make enemies of people who are
32 otherwise respectable citizens, who are never going to
33 trust another policeman in their lives.
34 A. Yeah, I agree.
35
36 THE CHIEF COMMISSIONER: Yes, thank you, Dr Dwyer.
37
38 MS DWYER: Q. I want to ask you about your understanding
39 of what LEPRAs allows you to do as part of a strip search.
40 Firstly, are you obliged to caution the person before you
41 strip search them?
42 A. I'm not aware of that.
43
44 Q. Do you ask for their cooperation?
45 A. Yes, under section 32.
46
47 Q. Can you assist in the removal of their clothing?

1 A. No, not assist in the removal of - not --
2
3 Q. Can you force --
4 A. Sorry, can I clarify? Did you mean to take -
5 actually, like, use force to take it off?
6
7 Q. If you ask for their cooperation, they refuse to
8 cooperate, can you forcibly remove their clothing?
9 A. Obviously it would depend on the circumstances but not
10 from what you just said; just, you know, it would have to
11 depend on the situation and what was involved, the
12 information, the lead-up to the situation.
13
14 THE CHIEF COMMISSIONER: Q. All right. Well, let's talk
15 about the present situation that we are facing.
16 A. Yes.
17
18 Q. You have a drug indication. You have someone who
19 comes in, who is suspected of possessing drugs. In your
20 view, if cooperation was refused, would the use of force,
21 in order to remove clothing, be justified?
22 A. I would want more than just the drug dog.
23
24 Q. No, we've already got to that point. You need that
25 anyway.
26 A. Yeah, but I mean my observations, like, leading up to
27 that as well, I would want a hell of a lot more in relation
28 to that.
29
30 Q. So I think what you are saying - and I don't want to
31 put words into your mouth, you correct me if I'm wrong.
32 I just want to try to reflect back to you what I understand
33 you to be saying. What you are saying is whether you use
34 force at all or the extent of it will depend upon,
35 significantly - perhaps not only, but significantly - the
36 extent of your confidence that there is really something
37 there to be found?
38 A. Totally.
39
40 Q. And suspicion, of course, is a continuum?
41 A. Yes.
42
43 Q. Something might be reasonably suspicious but only
44 just, and then something might make you virtually certain?
45 A. Yes.
46
47 Q. And anything in that range?

1 A. Yes, that's fair.
2
3 Q. I think you are saying as you get closer to virtually
4 certain, the use of force, to your mind, is more justified?
5 A. Yes, that's right.
6
7 Q. And the extent of the use of that force --
8 A. Certainly.
9
10 Q. -- justified?
11 A. Certainly.
12
13 Q. One thing to pull someone's shirt off; another thing
14 to pull their trousers down, for example?
15 A. Totally, yes. Yes.
16
17 Q. And those have to be judged in the particular
18 circumstances?
19 A. Yes.
20
21 Q. But when you do that, it would be really important for
22 you to note in the COPS record what you did and why you did
23 it, your reasoning and justification?
24 A. Yes, that's - yes, that's very important.
25
26 Q. I take it that in none of the searches that you
27 performed, the 19 that you performed, was the use of force
28 necessary?
29 A. No.
30
31 Q. They all cooperated?
32 A. Yes.
33
34 THE CHIEF COMMISSIONER: Thank you.
35
36 MS DWYER: Q. And if they didn't cooperate, would that
37 increase your suspicion that they carried drugs on them?
38 A. Yes, it may.
39
40 Q. So it might provide a justification for the use of
41 force in those circumstances?
42 A. Not solely.
43
44 Q. What else would there have to be, though, to justify
45 the use of force, besides a lack of cooperation?
46 A. Are we talking from the - in this situation, the drug
47 dog?

1
2 Q. In this situation with the drug dog?
3 A. Obviously observations, observations in relation to -
4 from the initial stop; us, me as the police, being behind
5 the dog, observing the behaviour, whether they tried to
6 walk away; whether they are fidgeting - just their
7 behaviour in general.
8
9 Q. Are you permitted to touch any part of the body during
10 the course of a search?
11 A. No.
12
13 Q. Is it your view that you can ask the person to touch
14 their own body to assist you with the search?
15 A. I believe so, yes.
16
17 Q. So that would include intimate parts of their body,
18 their genitalia?
19 A. I believe so. But I certainly would not, myself.
20
21 Q. You wouldn't touch it yourself?
22 A. No.
23
24 Q. But you could ask them to, for example, move their
25 testicles around or move parts of their vagina?
26 A. Yeah, yeah, I certainly would.
27
28 Q. Have you receiving training that suggests you're
29 allowed you to do that?
30 A. Sorry, me myself touch that?
31
32 THE CHIEF COMMISSIONER: Q. No, asking them. For
33 example, we have had cases of men squatting, being told to
34 squat and doing so, and then being told to move their
35 genitalia. Have you received any training about that kind
36 of search?
37 A. No.
38
39 Q. As you sit there, would that be something you might
40 do? That's not quite fair. Is that something you think
41 you would be lawfully justified in doing - that is, asking
42 someone to move their genitalia?
43 A. Depending on the situation.
44
45 Q. You mean depending on the situation, yes?
46 A. Yes.
47

1 Q. Or no?
2 A. Yes.
3
4 MS DWYER: Q. You are lawfully entitled to ask them to
5 squat?
6
7 THE CHIEF COMMISSIONER: I think you mentioned "vagina".
8 This officer's never going to be in that position.
9
10 MS DWYER: No, I'm sorry, you are quite right.
11
12 Q. Are you lawfully entitled to ask them to squat and
13 cough?
14 A. I don't believe so.
15
16 Q. Are you lawfully entitled, if you ask somebody to bend
17 over - in your case, of course, it would be a male patron.
18 Are you lawfully entitled to look into their anal cavity?
19
20 THE CHIEF COMMISSIONER: Q. Ask them to spread their
21 buttocks, in other words.
22
23 MS DWYER: Q. And asking them to spread --
24
25 THE CHIEF COMMISSIONER: Q. Do you think you are
26 empowered by LEPRa to ask that?
27 A. Not unless there was very specific information in
28 relation - or intelligence as well, some very specific
29 details.
30
31 Q. Right. Sometimes, when you look up the information
32 that is available, there will be a note that says,
33 "Conceals drugs between their buttocks", or something like
34 that?
35 A. Yes, that's right.
36
37 Q. You might find that kind of thing.
38 A. Yes.
39
40 Q. However, more important to this Commission, it is not
41 so much your personal view about it, but have you been part
42 of a training exercise that goes through these various
43 issues with you to examine the kinds of circumstances where
44 this might be --
45 A. Certainly not to that degree, sir.
46
47 Q. The trouble is with searches, it all comes down to

1 detail, really, doesn't it?
2 A. Yes.
3
4 Q. General statements aren't much help?
5 A. That's correct.
6
7 MS DWYER: Q. Can I just give you one final example,
8 then and ask you whether you think you would be lawfully
9 entitled to ask a male person to spread their legs while
10 you look underneath them to see if you can see anything?
11 A. What circumstances do I have?
12
13 Q. In circumstances where you have formed a suspicion
14 that they might be carrying drugs?
15 A. And, sorry, can you say again what you're --
16
17 Q. Sure. You have formed a suspicion that the male
18 person you are about to strip search might be carrying
19 drugs. You have no further information than that. There
20 has previously been a dog indication. Are you entitled to
21 ask that male to spread their legs apart while you look
22 underneath them?
23 A. I wouldn't do that. I don't believe so.
24
25 Q. Can I come then to the particular circumstances of
26 this case --
27
28 THE CHIEF COMMISSIONER: Before you do, there are some
29 more general questions.
30
31 Q. It's obvious that this was an all-age festival -
32 Splendour in the Grass?
33 A. Yes. Sorry, sir, when you say "all age", do you
34 mean --
35
36 Q. Well, kids were going to be there as well as adults.
37 A. Yes.
38
39 Q. And it is reasonably notorious - kids bring drugs into
40 these events?
41 A. Yes.
42
43 Q. So the odds are you are going to get an indication
44 which involves a young person - can't be certain?
45 A. Yeah.
46
47 Q. But you would have to say there's a good chance; do

1 you agree?
2 A. Yes.
3
4 Q. That person might be accompanied by a parent. They
5 might just come with their mates, who are more or less the
6 same age?
7 A. Yes.
8
9 Q. And you might have to search them?
10 A. Yes.
11
12 Q. And if you search them, it's going to be - I think we
13 have passed this point - in all likelihood a strip search.
14 A. Yes.
15
16 Q. If it is going to be a strip search, and there is no
17 parent or guardian, you need to have a support person.
18 A. Yes, that's correct, except for 33(3).
19
20 Q. What does that say?
21 A. Police do not have - if police have reasonable grounds
22 to delay a search --
23
24 Q. Let me help you with section 33.
25 A. -- police have - I won't be a moment.
26
27 Q. No, to ask you in that situation is a bit tough.
28 A. I'll think of it. The circumstances in delaying
29 a search may result if police have reasonable grounds that,
30 in delaying the search, items may be secreted or
31 concealed --
32
33 Q. No, concealed or destroyed is the test.
34 A. Sorry, yes.
35
36 Q. Or an immediate search is --
37 Q. Search is required, yeah.
38
39 Q. -- necessary to protect the safety?
40 A. The safety.
41
42 Q. Now, since you are likely to be in the presence of the
43 young person, there is not going to be a chance for that
44 young person to conceal or destroy the drug, is there?
45 That's very unlikely. You could stop it?
46 A. Yes, exactly.
47

1 Q. And by the same token, you don't allow them to swallow
2 the drug either?
3 A. No.
4
5 Q. So those don't really apply in this particular
6 context; it may in other contexts?
7 A. Yes, exactly what you just said.
8
9 Q. So then, however, you are the searching police
10 officer. It is very difficult for you, unless the parents
11 happen to be there, and they are acceptable to the young
12 person, and that's not always the case, of course --
13 A. Yes.
14
15 Q. -- but you can't run around trying to find some
16 support person, obviously.
17 A. Yes. There was other cases on the day where we
18 arranged to - someone to go to one of the campsites for
19 a juvenile female, and the sister of the female came back.
20 The young girl admitted that she had items secreted and we
21 arranged for the sister, who - obviously the juvenile told
22 us the older sister was in the campsite. We arranged for
23 one of the friends to go and get the sister.
24
25 Q. Sure. It's always possible that there is an older
26 friend or an older - and I suppose you would always ask,
27 "Is there someone, an adult"?
28 A. Yes. It's not always --
29
30 Q. But the answer might be "No"?
31 A. Yes.
32
33 Q. I'm thinking how you organise things ahead. You can't
34 rely on there being a parent or an older sister or an older
35 brother or an older mate.
36 A. Yes, that's correct.
37
38 Q. So what you have got to do is to think about the
39 possibility that you are going to need someone?
40 A. Yes.
41
42 Q. And it occurs to me, except for the kind of situation
43 you have spoken about, where the young person themselves
44 tells you that there is someone available and you can find
45 them, you are not in a position to identify some other
46 third person who is not only able and willing, but
47 suitable?

1 A. Yes.
2
3 Q. Because you are going to have a naked young person?
4 A. Yes, and, yeah. At the same time is acceptable.
5
6 Q. Exactly. So those kinds of things it seems to me have
7 to be planned beforehand to make sure there is someone
8 available, and you given a mobile number or some contact
9 that enables you to get someone.
10 A. Yes.
11
12 Q. And that wasn't done?
13 A. In the --
14
15 Q. In 2018?
16 A. In the - obviously the incident that --
17
18 Q. In any incident. As I understand you to tell me -
19 correct me if I'm wrong, and I may be making a mistaken
20 assumption: at the briefings, you were not given
21 information about available people?
22 A. Yes, that's correct.
23
24 MS DWYER: Q. Senior Constable, you must have refreshed
25 your memory about the circumstances of LEPR, about the
26 content of LEPR, since this happened in July 2018?
27 A. Yes, certainly.
28
29 Q. Did you have access to a copy of LEPR in July 2018
30 when you were involved in the music festival?
31 A. As in was I given a copy of LEPR before?
32
33 Q. Yes, a hard copy or a soft copy?
34 A. I don't believe so.
35
36 Q. I think you said earlier that you worked with
37 a particular officer in conducting the searches and you
38 could recognise her name from the code names in front of
39 you?
40 A. Yes.
41
42 Q. Do you mean by that there was you allocated with that
43 particular female and a dog handler for the entirety of the
44 time?
45 A. No, no.
46
47 Q. So you also worked with other officers in part of the

1 entry?
2 A. No. I specifically worked with that officer, but
3 there was numerous dog handlers.
4
5 Q. But in terms of any searching that was done, it was
6 just you and that officer working together with particular
7 individuals; is that correct?
8 A. Most of --
9
10 THE CHIEF COMMISSIONER: Q. You couldn't work together,
11 could you?
12 A. Not searching, no.
13
14 MS DWYER: Q. Not in the room?
15 A. Not searching, no.
16
17 Q. But in relation to conducting a particular search
18 or --
19 A. The build-up, yeah, I get what --
20
21 Q. So does that mean when a dog handler with his or her
22 dog detected - the dog indicated a particular patron, you
23 and Officer BR4 would then approach the patron?
24 A. That's correct.
25
26 Q. And then walk the patron back to the area where --
27 A. We'd have a conversation with the patron.
28
29 Q. What was that conversation?
30 A. Provide the name and place of duty, and then we would
31 obviously inform them of the reason, that - obviously the
32 drug detection, but, as well, I would explain them that we
33 had noticed their general behaviour in relation to - like
34 because, like I said before, we were watching from behind
35 the dog squad, and you could see their behaviour, you could
36 see their behaviour change, and I would explain that to
37 them as well, as - obviously that, as well as rather than
38 just the general - it wasn't just the general drug dog.
39
40 Q. When the dog approached somebody on entry and appeared
41 to indicate someone, would a nervousness be an indicator to
42 you that that person is likely - is more likely to have
43 drugs on them?
44 A. No, I wouldn't - no, not just solely that.
45
46 Q. What sort of behaviour would suggest to you that there
47 was a reason for searching?

1 A. Grabbing at pockets, turning around, going the
2 opposite way as soon as they saw the dog, changing
3 direction. Not just --
4
5 THE CHIEF COMMISSIONER: Q. Look, any police officer
6 coming up to someone, in the context where there has been
7 a drug dog indication, which is likely to have been seen by
8 that person - whether the person is guilty or innocent, it
9 is likely to create some nervousness, isn't it? Don't you
10 think that would be a perfectly normal response?
11 A. Yes, to a degree, sir.
12
13 Q. .especially so for a young person?
14 A. Yes.
15
16 Q. So nervousness is not going to give you much of
17 a signal?
18 A. No, not just - general behaviour.
19
20 Q. But general behaviour of what kind? I agree that, you
21 know, it varies widely, but what, to you, signals? So
22 patting a pocket?
23 A. No, like, reaching for a pocket, like, in relation to
24 grabbing; like, trying to remove something very quickly.
25
26 Q. Right. Well, then, that might give you a suspicion
27 about drugs in the pocket.
28 A. Grabbing a specific area and - or turning around and -
29 that's - turning around and trying to go an opposite way.
30
31 Q. Well, they might just not want to be searched.
32 A. I agree.
33
34 Q. But of the 19, very few of them actually turned away?
35 A. I don't recall.
36
37 Q. Well, they are not in any of your COPS reports?
38 A. Yes, I focused - my priority, when doing the COPS
39 event, was on the - and I have learnt from that, it's
40 a massive learning experience in relation to my focus and
41 priority was on the find. The limited time I was provided,
42 my time was on the finds, and I've learnt that I need to
43 put focus on all events, rather than finds and non-finds.
44
45 I've received training from my superintendent on two
46 separate days in relation to - and he stressed - they were
47 training days where he stood up in front of the whole group

1 of constables, on one constable development day; another
2 day was a team training day, the superintendent has
3 stressed the importance of what to put in every event, and
4 he's told us how he wants it put.

5
6 Q. Forgive me for saying this, but you've been in the
7 police for 13 years. Is this the first time that was
8 brought to your attention?

9 A. That specific, yes. As specific as the superintendent
10 has, yes.

11
12 MS DWYER: Q. Senior Constable, once you approached
13 a person where a dog handler was and you had that
14 conversation with them, did you caution them at all?

15 A. The drug dog - every drug dog would - sorry, the
16 handler would caution.

17
18 Q. After you had a conversation where you explained
19 what - you announced yourselves, you then walked with the
20 patron back to the area --

21
22 THE CHIEF COMMISSIONER: Q. No. On some occasions, and
23 perhaps every occasion, didn't you ask them, "Are you
24 carrying any drugs"?

25 A. Yes.

26
27 Q. And you asked that question without any caution?

28 A. We were - because we were standing so close to the
29 drug dog, we were, like, nearly almost behind him, we would
30 hear the drug dog handler's caution.

31
32 Q. That's right. But that might be understood by the
33 patron as responding to any question asked by that officer.
34 They might not understand that the caution also applied to
35 the officers who had plainly come up --

36 A. Yes, that's correct.

37
38 Q. -- or approached them for that purpose. Do you see?

39 A. Yes, that's correct.

40
41 Q. So considered, do you think you should have cautioned
42 them before asking that question?

43 A. Yes.

44
45 MS DWYER: Q. Was it your standard practice to ask that
46 question?

47 A. Sorry, which question?

1
2 Q. The question, "Are you carrying any drugs?"
3 A. I believe so, yes.
4
5 THE CHIEF COMMISSIONER: Q. Now, let's look at the
6 possible answers: there are only two. "I don't know" is
7 an unlikely answer. So it's a "Yes" or "No"?
8 A. Yes.
9
10 Q. If it is a "Yes", that might suggest that a search is
11 more likely appropriate?
12 A. Yes, that's right.
13
14 Q. If they say "No", it doesn't give you any information
15 one way or another?
16 A. No.
17
18 Q. Certainly, because they deny it, it doesn't give you
19 a reason for searching?
20 A. No.
21
22 Q. It doesn't support that conclusion, plainly?
23 A. Certainly.
24
25 Q. There are cases when people say, "You've got no right
26 to search me", for example.
27 A. Yes.
28
29 Q. That's not unknown at all?
30 A. Oh, that - yes, that's true.
31
32 Q. They don't carry copies of LEPRAs around in their back
33 pockets, so it's not an altogether unreasonable
34 proposition. Agreed?
35 A. Agreed.
36
37 Q. And would you agree that the assertion of that right,
38 mistaken or otherwise, cannot give rise to a suspicion that
39 they have something to hide?
40 A. Totally.
41
42 MS DWYER: Q. So what is then needed in addition - if
43 a person says, "No, I'm not carrying any drugs", you still
44 need to form a reasonable suspicion separate to the
45 indication by a dog, don't you?
46 A. Yes, the state of mind in relation to the reasonable
47 suspicion, more than a possibility and less than

1 a reasonable belief.

2

3 THE CHIEF COMMISSIONER: Q. Yes, we know the formula.
4 The question is in a particular circumstance, how does it
5 actually work out in reality? What is the information that
6 moves you to --

7 A. To believe?

8

9 Q. Yes.

10 A. Just a combination of their behaviour.

11

12 MS DWYER: Q. What sort of behaviours would justify
13 a search, a reasonable suspicion, when they have said no,
14 they are not carrying drugs?

15 A. A constant fidgeting, like, while walking back.
16 Obviously the initial build-up, what we have witnessed as
17 well, and then while walking towards the thing fidgeting,
18 trying to veer different directions.

19

20 THE CHIEF COMMISSIONER: Q. Why fidgeting? I find it
21 difficult to understand what you mean by "fidgeting"?

22 A. Grabbing towards areas, like, they are trying to
23 remove something.

24

25 MS DWYER: Q. What about signs of fidgeting that suggest
26 stress - is that enough?

27 A. No.

28

29 Q. Is it enough that if somebody indicates that they have
30 been around persons who might have smoked cannabis?

31 A. Is that just that - that comment there - and the drug
32 dog detection?

33

34 Q. Well, if the drug dog indicates. You take somebody
35 out the back and they say, "I've been around people who
36 smoke cannabis but I'm not carrying any drugs myself" - is
37 that then enough?

38 A. No. You need more.

39

40 Q. You need more?

41 A. Yes.

42

43 Q. Do you know where you get your --

44

45 THE CHIEF COMMISSIONER: Q. You see, part of the
46 difficulty that I have, and you will understand we have
47 been carrying out this inquiry for some time now, we have

1 heard and read accounts of justifying searches that you
2 have just given. I must say that to my mind, it's not much
3 better than a gut feeling. It's just - it's not really
4 based on any logical experience. In that context, let me
5 give you this information: 90 per cent of the searches -
6 over 90 per cent of the searches - at the festival that
7 year, 2018, resulted in nothing being found.

8 A. Yes, I did read that.

9

10 Q. Which rather suggests the test of likelihood that is
11 actually being applied in the field is far too low. Do you
12 agree with that?

13 A. Yeah, I agree that that's not a good success rate.

14

15 Q. And that, to my mind - and we will look further, and
16 no doubt we will hear from the Commissioner of Police in
17 due course - suggests that these additional factors of
18 behaviour are really punts, not much more than punts. On
19 looking back, what would you like to say about that? Don't
20 feel you are obliged to agree with me. We are interested
21 in the matter. I am not interested in getting police
22 officers just to agree with my view. I am putting it out
23 there because I want a response from you, as one officer.
24 It may be with 100 officers one will get 100 different
25 answers, but as you are there, in the box, on the point,
26 I will ask you: is it really much better than a punt?

27 A. I believe it is more than a punt, sir.

28

29 MS DWYER: Q. Do you rely on the fact that --

30

31 THE CHIEF COMMISSIONER: Q. Sorry. I will just come
32 back. Let's then come back to your 19 searches.

33 A. Yes.

34

35 Q. In how many of them did you find drugs?

36 A. Is that --

37

38 Q. We know, I think, but what is your recollection?
39 Would you be surprised if I told you that it was far less
40 than half?

41 A. I was going to say eight.

42

43 MS DWYER: Q. Can I ask you to accept that the
44 Commission's investigations suggest that of the 19 searches
45 that are under your name, only one resulted in a find, and
46 that was Diazepam. What do you say to that?

47 A. Was that person searches? I believe --

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Q. Yes, that was the strip searches.

A. I believe I may have - some of the incidents that I created, instead of creating as a person search, I created the incident as a drug detection.

Q. I see. So let me start with the 19, though. Of the 19 strip searches that you conducted, it's correct, isn't it, that only one of them resulted in a find, and that was of a small amount of Diazepam - one tablet?

A. No. I believe it's more than one.

THE CHIEF COMMISSIONER: Q. Well, let's then question the data: did you not, in your COPS reports, always report a find? You would have, surely. You are making a report, event, of a search. You would put down whether something was found?

A. Yes, certainly. Just in relation to what ma'am said, sir, the Diazepam, I can specifically remember that one, but I can recall other ones where there was adult males that I have done the detection for as well. That's what I'm getting at.

MS DWYER: Q. Can I suggest to you that those were general searches that might have been conducted with another officer?

A. Okay.

Q. Where there were drugs found?

A. Okay.

Q. But in the strip searching, the 19 under your name, only one resulted in a find. Would you accept that?

A. Yes, I do.

THE CHIEF COMMISSIONER: Q. So not a good hit rate?

A. No.

Q. So then one questions - and I'm not being critical of you.

A. I understand that, sir.

Q. You have been working on a basis that pretty well the whole police force works on, and I'm not expecting you to be a stand-out here, it's understandable. But I'm just asking you, reflecting, then, why do you think your suspicion, as it turned out, was unfounded?

1
2 MR EURELL: Commissioner, sorry, I should object to that
3 question on this basis: I accept the proposition that not
4 finding drugs is consistent with the proposition that
5 a person's not carrying drugs, but isn't there also another
6 proposition here that we need to give thought to, which is
7 the possibility that a person is carrying drugs but they're
8 secreted in a cavity which police officers can't search?
9
10 THE CHIEF COMMISSIONER: Yes, but in that situation, it's
11 very difficult to think of - well, I will accept that.
12
13 MR EURELL: Just picking up on the evidence of BR2.
14
15 THE CHIEF COMMISSIONER: Yes, that's right. I think
16 I will continue to ask the question.
17
18 MR EURELL: If the Commission pleases.
19
20 THE CHIEF COMMISSIONER: Q. So why such a low strike
21 rate? Do you think - I mean, looking back, I accept
22 entirely you sincerely felt you had formed a reasonable
23 suspicion upon a rational basis.
24 A. Yes.
25
26 Q. I am not querying that. But then one has to ask
27 oneself: why is that not enough?
28 A. I agree. Especially when you give me those figures,
29 sir.
30
31 Q. Perhaps it's not a fair question to ask you while you
32 are in the witness box. It needs some reflection. We will
33 leave that question for the moment as a rhetorical one.
34
35 MS DWYER: Q. Isn't this the case, Senior Constable,
36 that when a drug dog indicated, you, yourself, formed
37 a suspicion that a patron must be carrying drugs?
38 A. Not that solely alone, no.
39
40 Q. You think, don't you, that the drug dog never records
41 a false positive, or never suggests a false positive?
42 A. No, I know they do. You need more - you need more
43 than just a drug dog.
44
45 THE CHIEF COMMISSIONER: Q. I suppose then the question
46 would be how much more? It's difficult for me to avoid the
47 suspicion that you don't need much more: the drug dog puts

1 quite a weight on the scales and then just a little tips it
2 over; is that fair or not fair?
3 A. I believe in relation to their behaviour, like, more
4 than just a punt, like, the drug dog and a punt. I believe
5 you need combinations of behaviour in relation to - yes,
6 I think I've discussed that before.
7
8 Q. Yes, I understand that. I mean, if one were
9 conducting an experiment, the way one would do it would be
10 at the time to - you don't find anything, so then you would
11 go back and query, "What was it about the behaviour that
12 was actually much more ambiguous than I thought it was?"
13 And, as it were, you'd test yourself?
14 A. Yes.
15
16 Q. Do you see what I mean?
17 A. Yes, certainly, sir.
18
19 Q. That would give you - I mean, you are not
20 a psychologist, of course.
21 A. No.
22
23 Q. You have to do the best you can with ordinary human
24 commonsense, which most of us do day by day. That's what
25 we all have to do.
26 A. Yes.
27
28 Q. But if you were trained in that kind of technique,
29 over time, you might expect to have a higher hit rate
30 because you would be more likely to identify what led to
31 a successful find?
32 A. Certainly, sir.
33
34 Q. Of course, it is always a matter of degree.
35 A. Certainly.
36
37 Q. Some people are completely calm, give no signal, and
38 they've got a pocket full of amphetamines.
39 A. Yes.
40
41 Q. That's --
42 A. That's always the case.
43
44 Q. You can't always tell. But of course, if they are
45 carrying drugs, by and large, most people would try to
46 disguise any nervousness?
47 A. Certainly.

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Q. So being calm doesn't tell you much one way or the other?

A. No.

THE CHIEF COMMISSIONER: This is a matter which the Commissioner of Police is going to have to help me on. I can't ask you more, I think, about that. We've got some work to do. But it is an important question, this whole question of what training you do, how do you grapple with these issues. More training; perhaps getting some psychologists to tell you what sort of signals - given that everyone's different - might help you. But if you recall, in Casino Royale the "tell" wasn't very helpful.

MS CHAPMAN: Quite so.

THE CHIEF COMMISSIONER: One has to accept the variability, one has to accept there is a risk, one has to accept kids are dying from drugs. All those things are accepted. But what one wants to see - at least the Commission would like to see - is a more distinctly rational basis for the exercise of invasive powers. A pat-down search no-one's really going to worry about. It's the strip searches which are the ones that cause the angst, and very serious angst, and not only angst, but have serious consequences for the kids who may be psychologically fragile and so on. It's something that has to be managed. It can't be left to the senior constable trying to do his best in a pressured situation. Do you see what I mean?

MS CHAPMAN: Absolutely, Chief Commissioner.

THE CHIEF COMMISSIONER: So I would be hoping out of this we are going to get proposals that will set out a program of trying to look at this in a more thoughtful, I think is the word - a thoughtful way, intentional way. But I assume that other police forces have had this issue and have had to face this issue one way or another. There may be a whole lot of assistance.

MS CHAPMAN: Yes, there could be some learning there, Chief Commissioner.

THE CHIEF COMMISSIONER: What I'm really saying is this is not really a matter that is susceptible just to



1 commonsense.

2

3 MS CHAPMAN: Yes.

4

5 THE CHIEF COMMISSIONER: I regret to say, it's clear, not
6 only from the evidence here but in other cases, that
7 generally, that even commonsense would suggest, the
8 training has not been undertaken. So one has to address
9 all those issues.

10

11 We have more evidence as you know. We have another
12 festival that we are looking at that are merely examples,
13 of course, of a more general problem. Our report is not
14 going to be released in a short time, but we would be
15 expecting some real assistance from the Commissioner,
16 perhaps giving us evidence from appropriate experts doing
17 that kind of work, because the Commission has, since its
18 inception, been anxious to have a cooperative approach to
19 these problems, in short, not a combative one or an
20 adversarial one, but something where the problem is
21 acknowledged and we work together.

22

23 The Commission, although it lacks expertise and
24 experience, has forensic expertise, but not field
25 experience really in this sense, but we are independent
26 outsiders capable of interrogating, I think, what comes
27 corporately from the police force. That, I think, as we
28 have already found in several inquiries, can be very
29 productive for more useful outcomes. That is what I'm
30 hoping will come out of this series of examinations and
31 investigations. But it would be good if that work were to
32 start.

33

34 MS CHAPMAN: Yes, I believe it is starting in the
35 background, Chief Commissioner.

36

37 THE CHIEF COMMISSIONER: That's good.

38

39 MS CHAPMAN: Yes.

40

41 THE CHIEF COMMISSIONER: As I say, I do not see an
42 adversarial approach as being productive of good outcomes.
43 I don't want to put a whole lot of constables' heads on
44 sticks. They are doing their best in difficult situations.
45 There are some who are bad, who know they are doing the
46 wrong thing. That's a different situation. But mostly,
47 they are just doing their best in a difficult situation for

1 which they have not adequately been prepared.

2

3 MS CHAPMAN: Yes, Chief Commissioner. I understand that
4 the Commission has the person search manual, which is
5 a start, a step in the right direction.

6

7 THE CHIEF COMMISSIONER: It is. Are you aware of my
8 response? I sent a detailed response, which said, "Very
9 good so far as it goes but there are other issues upon
10 which you need to develop a corporate position."

11

12 MS CHAPMAN: Yes.

13

14 THE CHIEF COMMISSIONER: Or proper guidance. We will be
15 having discussions about that I hope in the next few weeks.

16

17 MS CHAPMAN: I understand that to be the case. I haven't
18 read your response yet, Chief Commissioner, but it was sent
19 to me this morning and I have it printed ready to read.
20 I just didn't have time this morning.

21

22 THE CHIEF COMMISSIONER: Right. Part of the problem, by
23 the way, which has never been adequately looked at, is the
24 problem of the apparent conflict between LEPRa on the one
25 hand and the Crimes (Forensic Procedures) Act on the other,
26 with their definitions of what amounts to permitted or
27 prohibited searches. So what is an examination, what is
28 not an examination, what is genitalia?

29

30 It looks like the drafts person who drafted one - it
31 would have had to have been the Crimes (Forensic
32 Procedures) Act, because I think that followed by some
33 years the Law Enforcement (Powers and Responsibilities)
34 Act, LEPRa, but it seems that he or she sat in a silo and
35 didn't have a look at it. But that's the legislation one
36 has to work with. So one has to try to come up with
37 a workable solution for how they are to be reconciled and
38 applied. Because the consequences are unlawful
39 consequences, unlawful acts, and we can't have that.

40

41 MS CHAPMAN: No. Absolutely not.

42

43 THE CHIEF COMMISSIONER: Thank you. I just thought
44 I would put that out so that the direction of the
45 Commission's inquiries would be made clear to the public.

46

47 MS CHAPMAN: Yes. Thank you, Chief Commissioner.

1
2 THE CHIEF COMMISSIONER: All right. Now, Dr Dwyer, sorry.
3
4 MS DWYER: Not at all, your Honour. Is that a convenient
5 time, or would your Honour prefer to keep going?
6
7 THE CHIEF COMMISSIONER: How much longer do you think you
8 have?
9
10 MS DWYER: Quite a while. I'm not yet --
11
12 THE CHIEF COMMISSIONER: I think we might take a break.
13
14 MR COFFEY: Apologies, Chief Commissioner. May
15 I interrupt and announce my appearance and seek leave.
16 My name is Coffey. I represent Officer BR5. I apologise
17 for being late this morning.
18
19 THE CHIEF COMMISSIONER: That's all right. I am never
20 late because nothing can start without me.
21
22 Thank you, Mr Coffey. Yes, you have that leave. Very
23 well, 20 minutes.
24
25 SHORT ADJOURNMENT
26
27 THE CHIEF COMMISSIONER: Yes, thank you, Dr Dwyer.
28
29 MS DWYER: Q. Senior Constable, I'm coming now to the
30 case of BRC. You are aware of the complaint that has been
31 made?
32 A. Yes.
33
34 Q. You are aware that BRC was 16 years old at the time
35 that she attended the music festival in Byron?
36 A. Yes.
37
38 Q. And you have seen the COPS entry in relation to this
39 matter?
40 A. Yes.
41
42 MS DWYER: Chief Commissioner, that could come on the
43 screen, if there is no objection. 8427386 is the document
44 identifier.
45
46 Q. Senior Constable, while that is coming on the screen,
47 it is the case, isn't it, that you created the COPS entry

1 in relation to the search?
2 A. That's right.
3
4 Q. And the time on the COPS entry is 19:55 on 20 July
5 2018. Do you see that?
6 A. That's correct.
7
8 Q. Is that the time that that COPS entry was created?
9 A. Yes.
10
11 Q. Is that the only written documentation or computerised
12 documentation in relation to this search that you are aware
13 of?
14 A. Yes, as far as I'm aware.
15
16 Q. And at the time you created this search, was another
17 officer, known by the acronym BR4, alongside you?
18 A. Yes, that's correct.
19
20 Q. Where were you creating this document or this entry?
21 A. At Tweed Heads police station.
22
23 Q. So it was after you had left the music festival for
24 the day; is that right?
25 A. Yes, that's correct.
26
27 Q. At the time that you created it, did you have
28 reference to any other written document that was available
29 at that time?
30 A. Yes.
31
32 Q. What was that?
33 A. A running sheet that I created and messages that BR4
34 and myself had sent each other.
35
36 Q. Do you have a copy of that running sheet now?
37 A. No, I don't.
38
39 Q. Have you had a look for that running sheet?
40 A. Yes, extensively.
41
42 Q. What was the use of that running sheet during the day
43 on 20 July? How was it used?
44 A. I don't recall the specific details that I put on it,
45 but generally, it would be obviously time and date and
46 details in relation to each incident.
47

1 THE CHIEF COMMISSIONER: Q. Where was it recorded?
2 A. Where was it recorded?
3
4 Q. Yes. What was the running sheet? What form did it
5 take? Piece of paper? Phone message?
6 A. Yes, just a piece of paper, sir.
7
8 MS DWYER: Q. Did you use anything else at the time that
9 searches were conducted, for example, a mobile phone, to
10 take a photograph of anything?
11 A. Yes, of - yes, of drivers' licences and identity and
12 things like that.
13
14 Q. Did you use your own personal phone or was that
15 a police-issued phone?
16 A. Personal phone.
17
18 Q. Then what was the purpose of taking, firstly, those
19 photographs?
20 A. Just that we had a record of that.
21
22 Q. Then what was done with those photographs?
23 A. You mean when - like, it was deleted?
24
25 Q. For example, on 20 July, did you use the information
26 from photographs that had been taken?
27 A. Yes, it was a combination of - yes.
28
29 Q. So you used that information to create COPS entries in
30 part?
31 A. Yes, that's right.
32
33 Q. And did you upload the information on to the COPS
34 database?
35 A. Sorry, do you mean the --
36
37 Q. Did you upload the photographs?
38 A. No, no.
39
40 Q. What was done with the photographs on your phone?
41 A. Deleted.
42
43 Q. Was that part of your training, that that's what you
44 were to do, in terms of taking a record of identification?
45 A. I had never been trained in relation to that.
46
47 Q. So why did you do that?

1 A. Why did I delete it?
2
3 Q. No. Why did you take the photograph?
4
5 THE CHIEF COMMISSIONER: Q. Why did you take the
6 photograph?
7 A. Just that I had a record of the identity.
8
9 Q. Well, just a photograph wouldn't tell you very much,
10 of the person's face, would it?
11 A. Sorry, the driver's licence, or --
12
13 Q. No, sorry, you took a photograph of the driver's
14 licence?
15 A. Yes.
16
17 MS DWYER: Q. And then you used that photograph to enter
18 the details of the driver's licence if required at a later
19 date; is that right?
20 A. The night that I did the event, yes, that's correct.
21
22 Q. When you have a look at the COPS entry, does that
23 refresh your memory in relation to the search that you were
24 involved in with BRC?
25 A. No. I still have - only - I still have absolutely no
26 memory of the incident.
27
28 THE CHIEF COMMISSIONER: Q. How many girls were searched
29 on that day?
30 A. By BR4 and myself?
31
32 Q. Yes.
33 A. I would say 15.
34
35 Q. Out of the 21?
36 A. Oh, sorry on that day or over the festival?
37
38 Q. No, on that day. Isn't that the day you made that
39 COPS record?
40 A. Yes, that's right. I would say 10, at a --
41
42 Q. And there was nothing memorable about this one?
43 A. No. I would say 10 to 15.
44
45 Q. You never saw her in tears?
46 A. No.
47

1 MS DWYER: Q. There's nothing in your police notebook
2 about BRC and the search that was conducted on her?
3 A. No.
4
5 Q. And you have had a look at the notebook of your
6 colleague, BR4?
7 A. No.
8
9 Q. You have not?
10 A. No.
11
12 Q. Do you have a memory of looking at her notebook at any
13 time when you were creating COPS entries?
14 A. No.
15
16 Q. Is it the case that when you sat down to create the
17 COPS entries, you did it in relation to everybody that had
18 been searched that day?
19 A. Yes, that's right. And then - and we evenly shared
20 the workload.
21
22 Q. So you sat beside your fellow officer, BR4, on
23 a computer; is that right?
24 A. Yes --
25
26 THE CHIEF COMMISSIONER: At a computer?
27
28 MS DWYER: Q. At a computer?
29 A. Yes, I believe so. At a computer each, yes.
30
31 Q. And you divided the workload; is that right?
32 A. Yes, that's correct.
33
34 Q. And you both entered various searches in there?
35 A. Yes, that's right.
36
37 Q. Using the running sheet; is that right?
38 A. Yes, and - yes.
39
40 Q. And any further information?
41 A. Yes, the - obviously, yes, the photos that we had
42 taken as well, if we needed further things.
43
44 Q. And did you talk to each other while it was going on?
45 A. Yes, certainly.
46
47 Q. But there was no other written documentation that you

1 relied on?
2 A. No, I - I agree, I should have made contemporaneous
3 notes in my notebook.
4
5 Q. Do you agree that the COPS entry is the right place to
6 record your compliance with the law, the LEPR obligations?
7 A. Certainly.
8
9 Q. Do you agree that it is the right place to record the
10 justification for the search?
11 A. Certainly.
12
13 Q. And is it the right place to record what justifies
14 a strip search as opposed to a general search?
15 A. Certainly.
16
17 Q. And it is the right place, then, to record the basis
18 of a finding that it's serious and urgent enough to warrant
19 a strip search?
20 A. Certainly.
21
22 THE CHIEF COMMISSIONER: Q. So your record doesn't even
23 say it is a strip search.
24 A. On that initial narrative, sir, it doesn't. But it
25 actually does in the incident; it says that it is a strip
26 search.
27
28 Q. Were you present when the conversation occurred in
29 relation to being around persons who smoked cannabis
30 recently?
31 A. I can't recall, sir.
32
33 Q. Really?
34 A. In relation to where the --
35
36 Q. She was taken to a private room.
37 A. Oh, yes, certainly, I wasn't. If it was in a private
38 room I wouldn't have been.
39
40 Q. So you don't know whether that occurred or not; you're
41 just relying on the other officer?
42 A. The notes - yes, and the notes that we made on the -
43 I made on the - in the running sheet.
44
45 Q. Well, your notes wouldn't have taken you any further
46 because you weren't present at that time?
47 A. No, but we spoke after the searches, sir.

1
2 MS DWYER: Q. Do you recall the --
3
4 THE CHIEF COMMISSIONER: Q. Well, let's just have a look
5 at that. You have a drug dog indication and someone who
6 admitted to being around persons who smoked cannabis
7 recently. That might explain the drug dog indication. Do
8 you agree?
9 A. Yes.
10
11 Q. What about that information enabled any reasonable
12 suspicion that she was carrying drugs to be drawn?
13 A. Yes, there's certainly not enough detail in it, sir.
14
15 MS DWYER: Q. Do you agree that there's no detail that
16 shows what you suspected on reasonable grounds was the
17 basis for her carrying drugs? There is nothing to say --
18 A. I agree.
19
20 Q. Do you agree that there is nothing there, beyond
21 that - that's your obligation in section 21, but beyond
22 that, in terms of any strip search, there's nothing there
23 about what would then justify the seriousness and urgency
24 of a strip search?
25 A. Yes, I haven't put enough time into that event in
26 relation --
27
28 THE CHIEF COMMISSIONER: Q. No. There was nothing about
29 the circumstances themselves which suggested either urgency
30 or seriousness; isn't that so?
31 A. Yes.
32
33 MS DWYER: Q. The time that you entered the information
34 was 19:55. What information is auto-populated?
35 A. From "Automated narrative", that line, to the site
36 where the incident was, at the bottom of that.
37
38 Q. So as soon as you put up those details --
39
40 THE CHIEF COMMISSIONER: Q. So, just to be clear, it
41 went from "Automated", to "2483"?
42 A. That's correct.
43
44 MS DWYER: Q. So all --
45
46 THE CHIEF COMMISSIONER: Q. Did you and the other
47 officer confer on whether a strip search should occur

1 before it occurred?
2 A. I wasn't in the tent, sir.
3
4 Q. I understand that, but did you --
5 A. No.
6
7 Q. Why did you think the young lady was being taken into
8 the tent?
9 A. I can't recall.
10
11 Q. Well, take a punt. Why would she have been taken into
12 that tent?
13 A. To be searched.
14
15 Q. So even before there was any conversation with that
16 young person, she was going to be searched?
17 A. Yes, that's correct.
18
19 Q. Do you think that's appropriate?
20 A. Not with the details that I've provided in that event,
21 sir.
22
23 Q. No, but those details occurred after she had been
24 taken into the tent. As I understand you, the decision to
25 search her was already made when she went into the tent -
26 that was what you inferred?
27 A. Yes, that's what I believed, sir.
28
29 Q. Well, plainly, all that you had by then was the drug
30 dog indication; do you agree?
31 A. Yes, but from the best of my memory, I've got no
32 recollection.
33
34 Q. Well, you've got the other officer present with you
35 giving this information, because, as I understand you to
36 say, you were not present when she made that admission?
37 A. Yes.
38
39 Q. So the other officer is telling you what happened?
40 A. Afterwards?
41
42 Q. No, no, telling you what happened in the tent --
43 A. Yes. Yes, sorry.
44
45 Q. -- namely, that the admission was made?
46 A. Yes, sorry.
47

1 Q. You assumed, did you, that she had told you everything
2 that was relevant to her conduct of the search?
3 A. I haven't recorded - I haven't recorded the full
4 details that should have been recorded in there.
5
6 Q. No, that's a different matter. What I'm asking about
7 is what she told you, you see. I assume that you put down
8 everything she told you?
9 A. Yes, I believe so, but it's --
10
11 Q. There'd be no reason for you to omit any evidence when
12 she is next to you telling you what happened, would there?
13 A. Yes, I have rushed through the events, the non-find
14 events, sir. I agree. I admit that.
15
16 Q. No, no, just concentrate on my question. She's next
17 to you. You have asked her, in effect, or she says what
18 happened, right?
19 A. Yes, yes.
20
21 Q. And she has told you about this admission; right?
22 A. Yes, I believe so.
23
24 Q. And is it fair to say, if she had told you anything
25 else at that time, there would have been no reason for you
26 not to put it in? You were at the computer?
27 A. Yes, I believe so.
28
29 Q. Sorry, when you say that, what you are saying is that
30 it is fair to infer that you wrote down everything relevant
31 that she told you about what happened in the tent?
32 A. Yes.
33
34 MS DWYER: Q. In July 2018, were you aware that for
35 a non-find, you still had to record the justification for
36 the search in the COPS entry?
37 A. Sorry, what - can you repeat that question?
38
39 Q. Sure. Were you aware, in July 2018, that for
40 a non-find, where you don't find drugs, you still had to
41 record in the COPS entry the justification for a search?
42 A. Yes.
43
44 Q. You have acknowledged that there is no justification
45 for the search recorded in this COPS entry. Do you recall
46 knowing that at the time - that is, thinking to yourself,
47 "There's no justification for this search"?

1 A. No, I don't recall that.
2
3 Q. Do you recall any conversation with your colleague,
4 BR4, asking her for further details as to why it would
5 justify a search?
6 A. No, I don't recall.
7
8 Q. Is that because you didn't think it was important to
9 record that because it was a non-find?
10 A. Yes, I haven't given it the appropriate attention.
11 That's correct.
12
13 Q. And if --
14
15 THE CHIEF COMMISSIONER: Q. So let's just unpack that.
16 The fact is you didn't think of it at all; isn't that the
17 fact? You didn't think about seriousness and urgency, did
18 you, at this time?
19 A. Not at that time, no, sir.
20
21 Q. Nor did you think of the need for an independent
22 person at that time?
23 A. No.
24
25 MS DWYER: Q. Were you aware as at July 2018 of the
26 requirements for seriousness and urgency for a strip
27 search?
28 A. I believe I was aware of that, but I wasn't aware of
29 the - in relation to the contemporaneous records in your
30 notebook and on the COPS entry.
31
32 Q. You were aware that you needed to think it was serious
33 and urgent enough, but you weren't aware that you needed to
34 record that anywhere?
35 A. I don't think I was aware. No, I don't think I was
36 aware.
37
38 THE CHIEF COMMISSIONER: Q. Let's just look at this in a
39 commonsense way. The purpose of the COPS record is so that
40 police have an official record of what happened?
41 A. Mmm.
42
43 Q. Correct?
44 A. Yes.
45
46 Q. And where police exercise powers, the question whether
47 the powers are properly exercised is always a live one?

1 A. Yes.
2
3 Q. You never know when someone's going to make
4 a complaint. You never know when someone is going to sue;
5 correct?
6 A. Yes.
7
8 Q. So that's one purpose. You just need to make
9 a thorough COPS entry.
10 A. Yes, totally.
11
12 Q. Because, in the end, that's going to be the only
13 permanent record, direct record?
14 A. Yes, sir.
15
16 Q. Even a statement of facts in a court is derivative?
17 A. Yes.
18
19 Q. But the other purpose of a COPS record is for the
20 purposes of supervision, because it has to be verified by
21 a senior officer.
22 A. Yes.
23
24 Q. And that enables a senior officer to say, "Mate, you
25 haven't done this. You should have done that", and so on?
26 A. Certainly.
27
28 Q. So it's a vital management tool?
29 A. I agree 100 per cent.
30
31 Q. And this COPS entry just doesn't come anywhere near
32 what is required, does it?
33 A. No, no.
34
35 MS DWYER: Q. Senior Constable, I anticipate that we
36 will hear from Detective Sergeant BR5 that in 2018, and
37 indeed in 2019, he was not aware that LEpra imposed
38 a requirement that parents, support persons or other
39 persons had to be contacted prior to the strip search of an
40 under-18-year-old. Were you aware?
41 A. Sorry, can you repeat that?
42
43 Q. Sure. I anticipate that we will hear from a detective
44 sergeant that in 2018 and 2019 he wasn't --
45
46 THE CHIEF COMMISSIONER: Q. A detective sergeant who was
47 I think responsible for your group. Yes, go on.

1
2 MR COFFEY: May I object to that? That's not the
3 evidence. BR5 was the commander of the drug detection
4 operation and not --
5
6 THE CHIEF COMMISSIONER: That's true. Sorry. Yes, you
7 are quite correct. Yes.
8
9 MS DWYER: Q. I'll put that together, Senior Constable.
10 the commander of the drug dog detection unit was not aware
11 in 2018 or 2019 that LEPRa imposed a requirement that
12 parents, support persons or other persons were required to
13 be contacted prior to the search of somebody who was under
14 18. Were you aware?
15 A. No.
16
17 Q. Do you agree that there's one other piece of vital
18 information that is missing from the COPS entry, which is
19 the name of the actual searching officer who was involved
20 in the strip search?
21 A. Yes, certainly.
22
23 Q. You said earlier, I think, that you realised that if
24 a person was being taken into a private room, they must be
25 taken there for the purposes of a search?
26 A. Yes.
27
28 Q. Was it the case that a female patron would be taken
29 into the private room for a general search, or only a strip
30 search?
31 A. Yes, a general --
32
33 Q. A general search?
34 A. Yes.
35
36 Q. So in terms of being taken into a search, you wouldn't
37 know, at that time, if you saw a female patron going off
38 with your female police colleague, whether it was going to
39 be a general search or a strip search; is that right?
40 A. No - yes, sorry, that's right.
41
42 THE CHIEF COMMISSIONER: Q. Except that the reality was
43 everyone was going to have a strip search where there was
44 a drug dog indication, wasn't it?
45 A. Depending on the circumstances.
46
47 Q. Well, what circumstances would indicate that there

1 would be no strip search as distinct from a general search?
2 A. Yeah, there's not enough in that event, I agree.
3
4 Q. No, I'm asking you generally. As I understood your
5 evidence, but correct me if I've misunderstood it, where
6 there was a drug dog indication, there was always going to
7 be a strip search; is that not correct?
8 A. No, I don't believe so, not just the drug dog
9 indication.
10
11 Q. Right. But the fact is, every time there was a drug
12 dog indication, there was a strip search?
13 A. Yes.
14
15 Q. So this was a drug dog indication. This girl was
16 taken to a tent by a female officer. You knew she was
17 going to be strip searched, did you not?
18 A. No, I didn't know.
19
20 Q. Really? You didn't?
21 A. No, I didn't know what the female officer was going to
22 do.
23
24 Q. Did you ask her?
25 A. No.
26
27 Q. So you are saying that, so far as you are concerned,
28 she might have been just generally searched?
29 A. Yes.
30
31 Q. Following a drug dog indication, you never conducted
32 a general search, did you?
33 A. No.
34
35 Q. And you were always, on those occasions, accompanied
36 by the same officer?
37 A. Yes, that's correct.
38
39 Q. I must tell you, officer, that I find it difficult to
40 accept - I will hear what your counsel will say in due
41 course - that you were not of the understanding - when
42 that girl was taken into that tent by that female officer,
43 you understood perfectly well she was going to be strip
44 searched. You say that's not the fact?
45 A. No.
46
47 Q. Sorry, no, it was not the fact?

1 A. No, sir. Sorry, yes, I agree sir, what you said.
2 Yes, I did not know that she was going to be strip
3 searched.
4
5 MS DWYER: Q. Senior Constable, you must have had a fair
6 suspicion that she was going to be strip searched, given
7 that everybody else that had been searched that day had
8 been - by yourself had been strip searched?
9 A. Do you mean males or females?
10
11 Q. Males - the persons that you were involved in
12 searching had been strip searched.
13 A. Yes.
14
15 Q. You must have had a fair idea that your colleague was
16 going to strip search someone when she was taken into the
17 private room?
18 A. Yes, maybe a fair ideas but not certain.
19
20 THE CHIEF COMMISSIONER: Q. Look, I find it impossible
21 to accept, I must say, looking at the circumstances overall
22 of how this searching occurred, that it was not either
23 understood between you implicitly or it had been agreed
24 that everyone who had a drug dog indication was going to be
25 strip searched. That was your fundamental modus operandi
26 here, was it not?
27 A. Yes, I agree, sir.
28
29 MS DWYER: Q. Senior Constable, you completed
30 a section 54 notice answering some questions that the
31 Commission asked you to answer. Do you recall that?
32 A. Yes.
33
34 Q. You have read that recently?
35 A. Yes.
36
37 Q. There are a number of errors in that 54 notice, aren't
38 there?
39 A. Yes.
40
41 Q. When you completed that, did anybody give you advice
42 as to how to complete it?
43 A. I had a brief conversation to a solicitor over the
44 phone.
45
46 Q. I'm not going to ask you what legal advice you got,
47 but you must have known that it was important that you

1 record your answers accurately in that; is that right?
2 A. Yes.
3
4 Q. And truthfully, of course?
5 A. Yes.
6
7 Q. Did you have access to any documents in relation to
8 the search to assist you to complete the notice?
9 A. I looked at the COPS event that I'd created.
10
11 Q. Did you look it up on the computer?
12 A. Yes.
13
14 Q. But you didn't accurately record the COPS event, did
15 you?
16 A. Yes, I agree. I made an error in relation to the
17 person - the being around cannabis.
18
19 Q. I will come to that shortly, but when did you complete
20 the section 54 notice?
21 A. In the - I believe when I got served it, I - it was
22 only a short time period that I had to complete it.
23 I think it was, like, a couple of days.
24
25 Q. You had no independent memory at the time that you
26 completed it; is that right?
27 A. No.
28
29 Q. In the break, you have been shown a photograph of the
30 young person, BRC - is that right - in her driver's
31 licence, her learner's?
32 A. Yes.
33
34 Q. But that still doesn't refresh your memory?
35 A. No.
36
37 Q. At the time you completed the 54 notice you had
38 nothing else to refresh your memory?
39 A. No.
40
41 Q. So the only thing you had to go on was the COPS entry;
42 is that right?
43 A. Yes, that's right.
44
45 Q. Did you still have the running sheet that you referred
46 to earlier?
47 A. No.

1
2 Q. And what you said in the answer to question 5 is that
3 the initial reasons for the search were recorded and added
4 in the incident --
5
6 THE CHIEF COMMISSIONER: Just slow down a little, please.
7
8 MS DWYER: I beg your pardon, Chief Commissioner.
9
10 Q. The initial reasons for the search were recorded and
11 added in the incident, being that the initial indication
12 was made by drug dog, and she admitted to recently using
13 cannabis.
14 A. Yes, that's an error.
15
16 Q. That was an error?
17 A. Yes.
18
19 Q. The young person made no such admission at any time
20 prior to being searched; do you agree?
21 A. In relation to the way I've worded it, into the
22 COPS --
23
24 Q. You agree, don't you --
25 A. Sorry.
26
27 Q. -- that at no time did the young person, BRC, make any
28 admission to you or another officer that she had recently
29 used cannabis?
30 A. Yes, that's right.
31
32 Q. Why did you record that when that was not --
33 A. It was an error.
34
35 THE CHIEF COMMISSIONER: Q. Yes. I think that's clear
36 enough.
37 A. Yes.
38
39 Q. The question is how did it come about? You have the
40 COPS record in front of you?
41 A. Yeah, I've obviously rushed it.
42
43 Q. Well, I don't wish to be nitpicking, but you were
44 obviously very careless, weren't you?
45 A. In relation to that, yes.
46
47 Q. Well, that's really a very important matter, isn't it?

1 A. Yes.
2
3 Q. It's one thing for someone to say, "Oh, I've been
4 around people who have been smoking", and a very distinctly
5 different thing for someone to say, "I'm guilty of
6 a criminal offence in the sense that I was smoking cannabis
7 myself"?
8 A. Yes, I agree.
9
10 Q. So that's why I suggest it is seriously
11 careless - yes?
12 A. Yes.
13
14 Q. And it's capable of being very misleading?
15 A. Yes, I agree.
16
17 MS DWYER: Q. Senior Constable, in relation to the 19
18 searches that are recorded under your name in the COPS
19 entries, the only young person there is the one that we are
20 referring to, BRC. Do you recall any other young person
21 being - I think you've given an example of where someone's
22 sister was got from the tent area, but were you involved in
23 that search?
24 A. In relation to the male?
25
26 Q. To any young person?
27 A. Yes, a male.
28
29 Q. Was their sister obtained or gone and got from the
30 tent area?
31 A. No, another support person was obtained, but the
32 female - I created that event as well. She was - the
33 female's sister was obtained. But because there was a drug
34 find in relation to those incidents, they were created by
35 the LAC.
36
37 Q. I see. Do you have a copy of your section 54 notice
38 with you?
39 A. No.
40
41 Q. I will read this to you. We will provide you with
42 a copy of that - I beg your pardon, just your answer, which
43 appears behind exhibit 7. I'll just ask you to turn to the
44 last page. You were asked a question at 9, on that last
45 page, about what instructions were given to facilitate
46 compliance with section 33 of LEPR. In the last sentence
47 of that answer you say this:

1
2 From the best of my memory, from the busy
3 operation, all support persons were present
4 at all times when young persons were
5 searched. Young persons were only strip
6 searched if there was very specific
7 evidence, including behaviour and
8 indications by drug dog, combined with
9 admissions and with support persons being
10 present.

11
12 A. Yes.

13
14 Q. What was the basis for saying that in your 54 notice
15 when you were asked to comment on BRC?

16 A. Because my memory, that no juveniles were searched
17 without a support person.

18
19 Q. But if you turn back, then, to the COPS entry --

20 A. Yes, I agree, the COPS entry does not have enough
21 detail.

22
23 Q. You knew at the time of the COPS entry that you were
24 dealing with the search of a young person; correct?

25 A. Yes.

26
27 Q. And you knew it was the strip search of a young
28 person?

29 A. Yes, and I should have had that detail in there.

30
31 Q. So it would have been very important, wouldn't it, to
32 find out if she did have a support person?

33 A. Yes. It's a massive learning experience for me.

34
35 Q. Can I suggest to you, Senior Constable, that the
36 reason you didn't ensure that it was recorded then was that
37 you just didn't know that that was a requirement, at that
38 time, under LEPR?

39 A. Yes.

40
41 THE CHIEF COMMISSIONER: Q. Well, let's come back, then,
42 to the section 54 notice. The fact is that what you have
43 written there is simply imaginary, isn't it? It's
44 a construction bearing no relationship to what actually
45 happened.

46 A. That was just the memory that I had, sir.

47

1 Q. It can't be a memory if it didn't happen. It was
2 a reconstruction, wasn't it? You knew what LEPRa required
3 and you therefore gave an answer which gave the appearance
4 of LEPRa being satisfied?
5 A. I was unsure of certain things of LEPRa.
6
7 Q. At that time you made that statement to the
8 Commission, you had made yourself aware of what LEPRa
9 required and you created that answer in order to give the
10 impression that those requirements had been satisfied; is
11 that not the fact?
12 A. Yes, but I certainly wasn't aware of the extent of
13 LEPRa that I am now, since this incident, the education
14 that I've had, sir.
15
16 Q. Quite. But you were aware, when you made that
17 entry --
18 A. Yes.
19
20 Q. -- that a support person was necessary?
21 A. Yes.
22
23 Q. And that is the reason why you put that sentence in
24 relating to the presence of support persons?
25 A. No. No, sir, that - it was just an error on my
26 behalf.
27
28 Q. Officer, in all fairness, I must tell you that
29 I cannot understand how you could make a mistake of that
30 kind when, except for the sister that you have referred to,
31 no support person was ever present at the searches you
32 conducted.
33 A. There was a support person for the juvenile male.
34
35 Q. One support person?
36 A. And the female.
37
38 Q. Right. So you have two support persons?
39 A. Yes.
40
41 Q. And you say your reconstruction of events, when you
42 were trying to answer that question - your memory was there
43 was a support person in every case?
44 A. In the juveniles, yes.
45
46 Q. In the juveniles?
47 A. Yes.

1
2 Q. Really?
3 A. That's all I could recall, sir.
4
5 Q. I have to tell you, I find that impossible to accept.
6
7 So there were seven juveniles; is that correct,
8 Ms Dwyer?
9
10 MS DWYER: Yes, Chief Commissioner.
11
12 THE CHIEF COMMISSIONER: Q. Seven juveniles. You say
13 two had support persons?
14 A. I didn't think I searched seven juveniles.
15
16 Q. It would have been easy for you to check.
17 A. Yes, sir.
18
19 MS DWYER: Just to clarify, there are seven overall
20 juveniles that were searched that we know of, not specific
21 to this officer, Chief Commissioner.
22
23 THE CHIEF COMMISSIONER: I see. Very well.
24
25 MS DWYER: Q. Senior Constable, you knew from reading
26 the COPS entries, or you will have recalled, that it was
27 your fellow officer, BR4, who was with you at the time that
28 this young person was taken to be searched?
29 A. Yes.
30
31 Q. And you were aware that she was the searching officer?
32 A. Yes.
33
34 Q. Did you have any conversation with her prior to
35 completing your section 54 notice?
36 A. No. I wasn't allowed to speak to anyone.
37
38 Q. Do you recall getting a two-week extension to complete
39 your section 54 notice because you were on night duty?
40 A. No.
41
42 Q. Senior Constable, we heard evidence yesterday from
43 a chief inspector that the crowd at Splendour in the Grass
44 is generally well behaved.
45 A. Yes.
46
47 Q. That doesn't surprise you?

1 A. Yes, yes, I agree.
2
3 Q. He gave evidence about policing strategies that were
4 designed to engender goodwill with the crowd - that police
5 interacted with the crowd positively on many occasions.
6 That was his evidence. That doesn't surprise you?
7 A. Yeah, no, I agree.
8
9 Q. Are you aware of the evidence that has been given by
10 the young person, BRC, that after her experience of being
11 strip searched by police, she feels she can no longer trust
12 police; she now really worries about police; she believes
13 she would have difficulty reporting a problem to police in
14 case she is falsely accused again? Do you agree that that
15 is the opposite effect to what police should be trying to
16 engender in terms of respect from young people?
17 A. Yes, I agree. I agree.
18
19 Q. So there are really serious adverse consequences when
20 police strip search young people in these circumstances?
21 A. Yes.
22
23 Q. I think you have given evidence that you sought legal
24 advice before your section 54 response; is that right?
25 A. Yes, I had a phone conversation, yes.
26
27 Q. After being involved in Splendour in the Grass in
28 2018, did you return in 2019?
29 A. No.
30
31 Q. Did you participate in any debrief in 2018 in relation
32 to the operation?
33 A. Not that I can recall.
34
35 Q. At any time prior to the Commission's inquiries did
36 anyone raise with you the completion of documentation -
37 that is, your documentation of events, search events?
38 A. Yes, my - the superintendent, the LAC where I work,
39 has provided large amounts of training in relation to - two
40 training days.
41
42 Q. Is it the case that it was --
43
44 THE CHIEF COMMISSIONER: Q. Right. But they were
45 generic, they were to all staff?
46 A. Yes.
47

1 Q. The question really is was the issue raised with you
2 personally?

3 A. No.

4

5 MS DWYER: Q. So at no time prior to the Commission's
6 inquiry were you aware that there were a number of
7 inadequacies in relation to your documentation of
8 searching?

9 A. Sorry, can you just say that again?

10

11 Q. Sure. You have acknowledged that your COPS entry in
12 relation to BRC was wholly inadequate; do you accept that?

13 A. Yes.

14

15 Q. You have acknowledged that that has been a huge
16 learning curve for you?

17 A. Yes, totally.

18

19 Q. Has anybody ever pointed out to you that there are
20 other inaccuracies with respect to documentation of
21 searches at the music festival in 2018 that you did?

22 A. No.

23

24 Q. So that's a surprise to you, if I tell you that?

25 A. Obviously I've looked at it since and - since the
26 events that I've done, and I've become aware of that, and
27 I've - obviously I've done a lot of research in relation to
28 this matter, in relation to LEPRA and training. I've
29 viewed online training videos in relation to strip
30 searching, two separate videos that have been provided, and
31 I've looked at the manual, the person search manual that
32 has been produced.

33

34 MS DWYER: Nothing further, thank you, Chief Commissioner.

35

36 THE CHIEF COMMISSIONER: Mr Eurell?

37

38 <EXAMINATION BY MR EURELL:

39

40 MR EURELL: Q. Field arrest forms - were they filled out
41 on the day?

42 A. On the day? Yes.

43

44 Q. And they are only filled out, aren't they, when you
45 make a detection of drugs?

46 A. Yes, that's correct.

47

1 Q. And that is clear, I think, from the form, isn't it,
2 because you have to record the process that you used,
3 whether it's a cannabis --
4
5 THE CHIEF COMMISSIONER: Would you mind speaking up,
6 please. I'm having difficulty hearing you.
7
8 MR EURELL: Sorry. I beg your pardon, Chief Commissioner.
9
10 Q. The field arrest forms record the action that you are
11 taking after a detection, don't they?
12 A. Yes.
13
14 Q. So cannabis caution or field CAN or field court
15 attendance notice?
16 A. Yes, generally, yes.
17
18 Q. Just in relation to some questions you were asked
19 about the circumstances in which drugs might be identified,
20 were there cases in which they were volunteered?
21 A. Do you mean admissions?
22
23 Q. Yes.
24 A. Yes.
25
26 Q. So you told us that you approached people coming into
27 the festival?
28 A. Yes.
29
30 Q. If one of the questions was, the first questions was,
31 "Are you carrying any drugs", were there cases in which the
32 answer to that was "Yes", and the drugs were voluntarily
33 produced without a search?
34 A. No, we - as a matter of privacy, we still took them to
35 the tent.
36
37 Q. Right. So if somebody admitted to you that they had
38 drugs on them whilst they were in the line, after the drug
39 dog has made a detection, you would then take them to the
40 tent and have them produce the drugs?
41 A. Yes.
42
43 Q. In the privacy of the tent?
44 A. Yes.
45
46 Q. Were there --
47

1 THE CHIEF COMMISSIONER: Q. Would you still do a strip
2 search?
3 A. Depending on where they admitted that they were and
4 the circumstances, sir.
5
6 Q. So were there cases where drugs were produced where no
7 strip search occurred? I think the answer to that is no.
8 A. Not - no.
9
10 MR EURELL: Q. You have had a look at some of the
11 documentation, including field arrest forms, in preparation
12 for coming to the Commission?
13 A. That's correct.
14
15 Q. And from those records, can you tell the Chief
16 Commissioner whether or not there were cases in which young
17 women and/or men had secreted drugs or concealed drugs
18 internally, in a body cavity?
19 A. Yes, that's correct.
20
21 Q. How many occasions that you are aware of?
22 A. I'd be saying at least five or six.
23
24 THE CHIEF COMMISSIONER: Q. So are you talking about
25 people under 18 or adults?
26 A. Sorry, is that to me?
27
28 Q. Yes. What are you talking about, when you say --
29 A. Adults. There was one juvenile female that admitted
30 that she had some items secreted.
31
32 Q. Well, were there cases where items were secreted which
33 were not the subject of admissions but discovered on
34 search?
35 A. Secreted internally?
36
37 Q. Yes.
38 A. No, not that I believe, no.
39
40 Q. So it's only when someone said, "Yes, I've got some in
41 a condom", or something like that?
42 A. Yes.
43
44 MR EURELL: Q. Police don't have the power to do body
45 cavity searches, do they?
46 A. Certainly not.
47

1 Q. In relation to the event that you have been asked
2 about, the event report, 68641733 --
3 A. Excuse me, is that the one that was on the screen?
4
5 Q. Yes.
6 A. Yes.
7
8 Q. Do you have a recollection of roughly how long it took
9 you to put that event together?
10 A. Only a few minutes.
11
12 Q. By which I mean authored; how long did it take you to
13 author the document?
14 A. Only about five minutes, I believe.
15
16 Q. It is the case, is it, that these events that record
17 searches where nothing is found are self-verified or
18 automatically verified?
19 A. Yes, that's correct.
20
21 Q. Just tell the Chief Commissioner what that means.
22 A. That a supervisor hasn't got to go into the event and
23 check it and send it back saying, "You've got to do this,
24 you've got to do this, you've got to do this."
25
26 Q. So most events, say, if you --
27 A. Every event other than that incident is verified, has
28 to be verified by a supervisor.
29
30 Q. So it's submitted to a more senior police officer who
31 looks over it?
32 A. Yes.
33
34 Q. And then if it's not adequate - that is, the content
35 of it doesn't meet the requirements - it's resubmitted to
36 you to be redrafted?
37 A. Yes.
38
39 Q. Or to be improved?
40 A. Yes.
41
42 Q. Does that account in part - both the small amount of
43 time you spent on it and the fact that it's not reviewed by
44 a supervisor - for some of the obvious typographical
45 errors, for example, "smooked cannabis", rather than
46 "smoked cannabis"?
47 A. Yes, I agree.

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Q. "Female office", instead of "officer"?

A. I agree.

THE CHIEF COMMISSIONER: Q. So if it's not being verified by a senior officer, accuracy is not quite so important?

A. No, I wouldn't say that, sir. I've just rushed through those events, the non-find events.

MR EURELL: Q. I think you were explaining earlier that you prioritised in terms of the time that you - how long did you have to do all the paperwork after you finished?

A. Very limited time.

Q. Do you remember how long it was?

A. I would say an hour, at the most.

Q. In that time, you had to do all of the reports for where drugs were found?

A. Yes.

Q. As well as the ones where drugs weren't found?

A. That's correct.

Q. So what was the total amount of reports you had to put together in that hour after working at the festival? How long was the festival shift?

A. I believe they were 10-hour shifts.

Q. After that 10-hour shift was done, you had one hour to do the paperwork?

A. Yes.

Q. And do you have a recollection of roughly how many reports you might have had to have put together in that time?

A. Ten to 15.

Q. In that report it records additional comments - so it says:

Was searched with nothing found.
Primary reason: Suspected possession of illegal drug.
Additional comments: Drug dog and actions.



1 Can you be any clearer about what the actions are that are
2 referred to there?
3 A. I have no specific memory of that incident, but
4 generally --
5
6 THE CHIEF COMMISSIONER: In that case, don't speculate,
7 unless you are asked.
8
9 MR EURELL: Q. Are there general types of actions that
10 you look for? Is that what you were explaining to the
11 Commission earlier about stepping out of line?
12 A. Exactly, yes.
13
14 MS DWYER: I object. What relevance is that in this
15 particular circumstance? It cannot be suggested that those
16 particular types of actions were relevant here, where it is
17 not recorded.
18
19 THE CHIEF COMMISSIONER: Mr Eurell is just doing his best.
20 Go on, Mr Eurell.
21
22 MR EURELL: Thank you, Chief Commissioner.
23
24 Q. Now, where you have identified the person who is being
25 referred to in these proceedings as BRC - do you see that
26 in the report, in the event report?
27 A. Yes.
28
29 Q. You haven't listed any driver's licence number?
30 A. No.
31
32 Q. Do you know why that might be?
33 A. No.
34
35 Q. Do you have a recollection of ever having a driver's
36 licence number for BRC?
37 A. No.
38
39 THE CHIEF COMMISSIONER: Q. Well, what did you take
40 a picture of?
41 A. Yeah, I don't know, sir. I can't confirm. I don't
42 have access to that anymore.
43
44 Q. You don't remember --
45 A. Whether it was a driver's licence or a proof of age
46 card. I can't remember.
47

1 MR EURELL: Q. Do you have a recollection of whether the
2 practice in terms of recording the name and date of birth
3 of a person occurred before or after a search?
4 A. After the search.
5
6 Q. Did you record details in the running sheet that's no
7 longer available for searches that you did and BR4 did?
8 A. Yes, that's correct.
9
10 Q. Or did you take turns?
11 A. I believe I recorded most of the details on the
12 running sheet.
13
14 THE CHIEF COMMISSIONER: Q. So with this young lady, she
15 was asked to produce ID - yes?
16 A. I believe so, yes.
17
18 Q. What was the power that enabled that request to be
19 made?
20 A. In relation to her producing identification?
21
22 Q. Yes.
23 A. I'm not sure of the specific power, sir.
24
25 Q. Did you make that request or the other officer?
26 A. I can't recall. I didn't get the details - I can't
27 recall getting those details.
28
29 Q. But it was your photograph?
30 A. Sorry?
31
32 Q. On your phone?
33 A. Oh, both of us took photos, sir, so I can't - whether
34 I took the photos --
35
36 Q. But the point is, therefore, you did take a photograph
37 on your phone?
38
39 MR EURELL: Sorry, are you asking, Chief Commissioner,
40 about this particular search of BRC?
41
42 THE CHIEF COMMISSIONER: Yes.
43
44 THE WITNESS: I can't confirm that I took that photo.
45
46 THE CHIEF COMMISSIONER: Q. You don't know whether you
47 took that photo or not?

1 A. Both of us took photos, sir.
2
3 Q. Okay. So it was either you or BR4?
4 A. Yes, that's correct.
5
6 Q. You don't recall, as you sit there now?
7 A. No.
8
9 MR EURELL: Q. Do you accept that it would be an
10 advisable practice in future to require or ask, in fact,
11 for identification to be produced before a search is
12 conducted in order to be able to identify or distinguish
13 juveniles from adults?
14 A. Yes, I agree.
15
16 Q. Was that any part of the requirements for the
17 processes on this particular day?
18 A. In relation to what?
19
20 Q. Were you directed, for example, that you should adopt
21 a practice like that?
22 A. No.
23
24 Q. Or is that something you have learned since?
25 A. No, I have learned since.
26
27 MR EURELL: I think that raises an interesting question
28 that the Commission has already identified as to whether or
29 not they even have a power to ask for ID in those
30 circumstances.
31
32 THE CHIEF COMMISSIONER: It is difficult, because the
33 issue of consent for young people is a fraught legal
34 question. I don't think evidence is the way to resolve it.
35 We will deal with that in submissions.
36
37 MR EURELL: I will leave it there, then. Thank you, Chief
38 Commissioner.
39
40 THE CHIEF COMMISSIONER: Does anyone else have questions?
41
42 MS CHAPMAN: Just a few, if I might, Chief Commissioner.
43
44 <EXAMINATION BY MS CHAPMAN:
45
46 MS CHAPMAN: Q. Officer, I just wanted to ask you a few
47 questions about your training over the years.

1 A. Yes.
2
3 Q. You have participated from time to time in what is
4 known as incremental testing?
5 A. Yes, that's correct.
6
7 Q. That type of testing usually consists of about
8 40 questions; is that right?
9 A. Yes, that's correct.
10
11 Q. And they are usually dedicated specifically to police
12 powers?
13 A. Yes, that's correct.
14
15 Q. And a score of 100 per cent is required in order to
16 pass?
17 A. Yeah, I believe there's eight questions in relation to
18 that section.
19
20 Q. And then there is an overall - the eight mandatory
21 questions dedicated to police powers --
22 A. Yes.
23
24 Q. -- that's the area where you must achieve
25 100 per cent?
26 A. Yes.
27
28 Q. All non-commissioned and commissioned officers are
29 required to complete mandatory continuing policing
30 education annually?
31 A. Yes, that's correct.
32
33 Q. And that program, the MCPE program, covers, amongst
34 other things, the maintenance of current policing
35 knowledge?
36 A. Yes.
37
38 Q. And that assists you with being aware, does it, of
39 your powers and how to exercise them?
40 A. Yes, certain powers, yes.
41
42 Q. As I said, it is mandatory to complete and pass the
43 MCPE program, otherwise there are repercussions; is that
44 right?
45 A. Yes, yes.
46
47 Q. Have you applied for any promotions since achieving

1 the rank of senior constable?
2 A. No.
3
4 Q. And your command - are you aware that it is
5 responsible for its own on-the-job training?
6 A. Yes.
7
8 Q. Would you agree that that takes place through the
9 command in various means, some of which are formal and some
10 are informal?
11 A. Yes, that's correct.
12
13 Q. You have a supervisor each time that you are at work
14 performing your duties?
15 A. Yes.
16
17 Q. The supervisors are always of a higher rank than
18 yourself?
19 A. Yes, that's correct.
20
21 Q. And they are available for you to speak with and have
22 opportunity for further learning --
23 A. Yes, that's correct.
24
25 Q. -- should any issues arise? And it's your
26 responsibility to be aware of the police handbook and the
27 content of it?
28 A. Yes.
29
30 Q. Do you agree?
31 A. Yes.
32
33 Q. Does your command run team briefings or daily morning
34 meetings?
35 A. Yes.
36
37 Q. Shift and changeover meetings - do they occur as well?
38 A. No. More so a morning briefing.
39
40 Q. And are there any other daily briefings in which
41 current issues are raised and discussed in relation to the
42 exercise of police powers?
43 A. No, not that I can - only the morning briefing.
44
45 Q. So in the morning briefing, will current issues be
46 raised that surround the exercise of police powers?
47 A. Yes, but as a general duties officer, we normally

1 don't get the opportunity to go to that briefing.
2
3 Q. So who attends that meeting?
4 A. The supervisors and the - from all the area, the local
5 area command.
6
7 THE CHIEF COMMISSIONER: Q. Can I ask you this: in the
8 last three months have you conducted any strip searches at
9 all?
10 A. Yes, I believe one, sir, in relation to a prisoner
11 that - I was performing custody duties and a prisoner was
12 sitting on the toilet for a large amount of - an adult
13 prisoner was sitting on the toilet for a large amount of
14 time and then he started throwing faeces on the camera
15 above him, and we have viewed the camera and --
16
17 Q. In an attempt to stop the vision, I assume that's what
18 you inferred?
19 A. Yes, yes. And then we viewed the camera and he
20 actually produced a lighter and he lit the camera. Once
21 the faeces was removed by a contract cleaner you could see
22 the damage from the cigarette lighter. Other than that,
23 no, sir.
24
25 Q. So that's a strip search in the police station, is it,
26 of someone in custody?
27 A. Yes.
28
29 Q. That's one in three months, so far as you can recall.
30 Would that be about the rate for you, or was that an
31 unusually low number?
32 A. For a general duties officer, sir, I wouldn't say we
33 do a large amount of strip --
34
35 Q. No, no, but I'm just trying to get some idea.
36 A. Yes, yes.
37
38 Q. Would one every three months be normal or do you think
39 it would be more likely three or four or five? Can you
40 give me some idea?
41 A. Yes, I would say that, yes.
42
43 Q. Three, four - something like that?
44 A. Yeah, but very limited amount.
45
46 Q. What about out in the field, over the last three
47 months have you done any strip searching?

1 A. No, no.
2
3 Q. And then this might be an easy question for you to
4 answer: over the last year, how many strip searches, if
5 any, have you done out in the field?
6 A. To the best of my memory, none.
7
8 THE CHIEF COMMISSIONER: Thank you.
9
10 MS CHAPMAN: Q. Officer, are you aware that on the
11 police intranet there are now available what is known as
12 "micro-learns", which are two-minute training videos and
13 presentations?
14 A. Yes, I viewed that micro-learning in December 2018,
15 the two and a half minute one, and I have recently
16 completed the other mandatory online training video in
17 relation to strip searching.
18
19 Q. Yes, both of those are in relation to strip searching;
20 correct?
21 A. Yes, that's correct.
22
23 Q. Is it your practice to read the Police Monthly?
24 A. Oh, I wouldn't - depending on time, obviously, but -
25 yeah.
26
27 Q. Does the Police Monthly regularly have articles
28 dealing with the proper exercise of police powers?
29 A. I believe so, I --
30
31 Q. Is that the same - is there a journal called "Police
32 issues and practice"? Are you familiar with that?
33 A. No, I don't think so.
34
35 THE CHIEF COMMISSIONER: Q. Sorry, you possibly stated
36 this at the beginning, but how did it come that you were
37 involved in Splendour in the Grass? Were you on leave and
38 it was requested or how did it happen?
39 A. An email came out, sir, in relation to --
40
41 Q. Asking for volunteers?
42 A. Yes, an expression - like an expression of interest.
43
44 Q. Were you on leave at the time or were you just
45 assigned with the agreement of your commander to that --
46 A. Yes, I believe so, yes. I don't think I was on leave.
47

1 Q. So this was just a change for you in your ordinary
2 duties; that's what it amounted to?
3 A. Yes.
4
5 MS CHAPMAN: Q. Officer, I just want to ask you a few
6 more questions. In the 2012-2013 training year, do you
7 recall attending training in relation to police powers
8 which dealt with arrests and searches?
9 A. I've - since this inquiry, obviously, I've been made
10 aware of that by the education officer.
11
12 Q. With what, the fact that you had in fact been trained
13 about these matters?
14 A. Yes, at that date, yes.
15
16 Q. Beforehand?
17 A. Yes.
18
19 Q. And also again on 19 August 2014 - that's the
20 following year from the date I just asked you about - as
21 part of the mandatory defensive tactics and weapons
22 training, you were also trained in relation to person
23 searches; does that accord with your recollection?
24 A. I believe so, but I - from the best of my memory, that
25 wasn't strip searching.
26
27 Q. Right. And on 27 August 2015 you attended training in
28 relation to police powers, arrests and directions; do you
29 recall that?
30 A. I don't specifically recall that training.
31
32 THE CHIEF COMMISSIONER: Do you mean by that move-on
33 directions or directions generally?
34
35 MS CHAPMAN: I don't know, but --
36
37 THE CHIEF COMMISSIONER: That's all right. You will no
38 doubt produce the documents in due course.
39
40 MS CHAPMAN: Yes. Nothing further.
41
42 THE CHIEF COMMISSIONER: Are there any other questions?
43 Yes, Ms Kluss.
44
45 <EXAMINATION BY MS KLUSS:
46
47 MS KLUSS: Q. Officer, I appear for BR4. You indicated

1 in your evidence earlier that there were approximately six
2 different teams attached to dogs with maybe six people on
3 each team.

4 A. I wasn't a hundred per cent on the actual detail.

5

6 Q. I appreciate that. What I am asking you is in
7 relation to the team that you were on, do you remember the
8 gender of the officers or what the proportion of the gender
9 of the officers was on each particular team, of those six
10 officers, how many were women?

11 A. From the best of my memory, BR4 was the only female on
12 the team that I was on.

13

14 Q. So in relation to the other four police officers that
15 were involved in your team, if they were involved in the
16 detection of a particular person, would BR4 be required to
17 assist other police during the course of the day?

18 A. Not that I can recall.

19

20 Q. Do you recall her doing things with other officers as
21 well as just working with you?

22 A. Yes, I believe she did on one occasion.

23

24 Q. I take it that's not something that you can be
25 specific about?

26 A. No, no.

27

28 Q. But would you agree with me that the situation was far
29 more fluid than it being that the only work you did was
30 with each other?

31 A. Yes.

32

33 Q. Sir, you were asked by either the Commissioner or
34 counsel assisting about contemporaneous notes or recordings
35 that might have been made in relation to strip searches?

36 A. Mmm.

37

38 Q. I think you have indicated that there was a running
39 sheet that you were preparing. Is it the situation that
40 the field arrest forms would also be documents that were
41 prepared contemporaneously with the various detections that
42 were made?

43 A. For the - yes, for the find searches, yes, that's
44 correct.

45

46 Q. And is it the situation also that police had access to
47 notebooks?

1 A. Yes.
2
3 Q. And, indeed, in the preparation of some of the event
4 recordings you had access to BR4's notebook; is that
5 correct?
6 A. Sorry, can you repeat that bit?
7
8 Q. Did you have access to the notebook of BR4?
9 A. No, not that I can recall.
10
11 Q. Do you recall whether you recorded any licence
12 numbers --
13 A. No.
14
15 Q. -- in the course of these events?
16 A. No, I can't recall.
17
18 Q. Do you recall observing any of the event entries that
19 had been made by BR4 in the matters in which you were
20 assisting her?
21 A. No.
22
23 Q. You don't recall?
24 A. I - sorry, do I recall her completing the event?
25
26 Q. Yes. There were some events that you recorded and
27 other events that she recorded. Isn't that what you're --
28 A. Yes, that's correct.
29
30 Q. And in relation to the events that she recorded, do
31 you recall seeing any licence numbers recorded?
32 A. No.
33
34 Q. You just don't recall or --
35 A. I don't recall.
36
37 Q. -- you can't say whether there were or whether there
38 were not?
39 A. Yes, I can't say.
40
41 Q. One way or the other?
42 A. Yes.
43
44 Q. Is that what you are saying?
45 A. Yes, that's correct.
46
47 Q. And do you recall working with any other female police

1 officers on any of the days that you were there?
2 A. No.
3
4 MS KLUSS: Nothing further.
5
6 THE CHIEF COMMISSIONER: Q. Sorry, by saying you don't
7 recall, are you saying you did not work with any other
8 female police officer?
9 A. I specifically can't recall working with any other
10 female.
11
12 Q. No, no. I can't recall that there was an elephant in
13 the room, but that's because there is no elephant in the
14 room. We just need to be clear. What you are saying is,
15 I think, your recollection is you only worked with BR4?
16 A. Yes, that's correct.
17
18 MS KLUSS: Q. Is that something about which you can be
19 definitive?
20 A. Yes, I believe so.
21
22 MS KLUSS: Nothing further.
23
24 THE CHIEF COMMISSIONER: No other questions, I take it -
25 sorry, are there any other?
26
27 MR EURELL: I just have a couple of questions arising --
28
29 THE CHIEF COMMISSIONER: Perhaps then you finish,
30 Mr Eurell, and then I will ask Dr Dwyer.
31
32 <EXAMINATION BY MR EURELL:
33
34 MR EURELL: Q. In relation to the questions about
35 training, you attested from the Police Academy in September
36 of 2004, I think?
37 A. I attested from the Police Academy in April 29, 2005.
38
39 Q. April of 2005?
40 A. Yes, that's correct. I went to the academy in
41 September 2004.
42
43 Q. Sorry, so you were at the academy in 2004 and then you
44 attested some time later?
45 A. That's correct.
46
47 Q. Given that the Law Enforcement (Powers and

1 Responsibilities) Act didn't commence until December of
2 2005, do you recall whether or not you were being trained
3 on LEPRa or the Crimes Act when you were at the --
4 A. At the academy, I was trained on the Crimes Act.
5
6 Q. And then after LEPRa came in I think - you have made
7 some inquiries about your training in the last week or two?
8 A. Yes.
9
10 Q. I think you did five minutes on mandatory continuing
11 police education in 2012 on strip searches?
12 A. Yes, that's correct. On sections 30 to 34.
13
14 Q. So you have made inquiries of the records that are
15 available to the police force which indicate that for five
16 minutes in 2012 you were trained on sections 30 to 33, and
17 that's the --
18
19 THE CHIEF COMMISSIONER: 30 to 34, he said.
20
21 MR EURELL: Sorry, 30 to 34, thank you.
22
23 THE WITNESS: Yes.
24
25 MR EURELL: Q. Just one other thing. Were you
26 allocated, in the 10-hour shift that you were doing at
27 Splendour in the Grass, any time to make reports or do
28 reports?
29 A. No.
30
31 Q. Or were you basically doing searches and then going
32 back to the line to assist with further detections?
33 A. Yes.
34
35 MR EURELL: Thank you, Commissioner.
36
37 THE CHIEF COMMISSIONER: Yes, Dr Dwyer?
38
39 <EXAMINATION BY MS DWYER:
40
41 MS DWYER: Q. On that last question, you weren't
42 allocated any specific time, but that didn't preclude you
43 from making any notes about what you had seen in your
44 notebook, for example?
45 A. Yes, I should have made contemporaneous notes in my
46 notebook.
47

1 Q. And you were asked some questions by my learned friend
2 Ms Kluss in relation to notebook entries about drivers'
3 licences. You understand, don't you, that there is no
4 entry about BRC's identification in either your notebook or
5 in your colleague's, Officer BR4's notebook?
6 A. I wasn't aware of that until you just said it.
7
8 Q. You accept it from me?
9 A. Yes.
10
11 Q. That is because, isn't it, you were using your
12 personal phone to take photographs to relieve you of the
13 burden of writing down the specific numbers of people's
14 licences in your notebook, on occasion?
15 A. Yes, and the thing of having the photo of the
16 identity, of the licence, yes.
17
18 Q. So the photograph of the identity meant that you
19 didn't have to physically record in your notebook the
20 actual number?
21 A. Yes.
22
23 Q. It made it quicker for you, in effect?
24 A. Yes, yes.
25
26 Q. Can I ask you to accept that on a review of a number
27 of the COPS entries, it's not always the case that
28 somebody's licence details were recorded?
29 A. Yes, that's correct.
30
31 Q. Is that true?
32 A. Yes.
33
34 Q. You were asked some questions about whether or not you
35 recall working with another female officer. Could I ask
36 that you be shown exhibit 20, tab 20, by my instructing
37 solicitor, rather than my bringing it up on the screen.
38
39 MR COFFEY: Commissioner, could I raise something in
40 relation to the question that was put to this officer about
41 the licence, to clarify the evidence? The question was
42 about the licence, and I'm just wanting to confirm, does
43 learned counsel assisting mean was the licence number
44 recorded within the narrative of the COPS event? Because
45 there is another option and the licence number could have
46 already been within the COPS system and therefore not
47 recorded in the narrative system, each CNI having

1 already --

2

3 THE CHIEF COMMISSIONER: Well, yes, but we don't need this
4 officer to tell us that.

5

6 MR COFFEY: Yes, Chief Commissioner.

7

8 MS DWYER: Q. I'm going to show you a COPS entry. If
9 you just take a moment to look at it, I think you will see
10 that it involves a finding of the drug that was secreted
11 that you referred to earlier.

12 A. Yes, that's correct.

13

14 Q. The finding in those circumstances was, wasn't it,
15 that was a 20-year-old female, and after the drug dog
16 indicated in the airspace, she admitted to having to drugs
17 on her, she had two MDMA pills secreted inside her vagina,
18 which she removed herself; is that correct?

19 A. Yes, that's correct.

20

21 Q. Was that a search that you were involved in yourself?

22 A. No.

23

24 Q. So it is just a search that you became aware of;
25 correct?

26 A. Yes.

27

28 Q. If you have a look, I think you will see that the
29 narrative on page 2 suggests that it was created by your
30 colleague, Officer BR4?

31 A. Yes, that's correct.

32

33 Q. But if you have a look at page 1, there is another
34 female name there?

35 A. Yes.

36

37 Q. Is that another female officer who was working there
38 at the time?

39 A. That was a female officer - I mentioned that before,
40 that if we got a drug detection, we would take the drugs to
41 specific, like, people; the drugs were booked up and then
42 the people from the local area command would start the
43 event so they could have access to the - so they could
44 create an event number to acquit the exhibit entry.

45

46 Q. I see. You talked about taking photographs on your
47 own personal phone. Were you issued with a MobiPol?

1 A. No.
2
3 Q. You know what a MobiPol is?
4 A. Yes.
5
6 Q. It's the equivalent of or it is like a mobile phone
7 but issued by the Police Service?
8 A. Yes, yes.
9
10 Q. Have you ever been issued with a MobiPol?
11 A. Not personally, but, yes, I'm aware of them,
12 obviously.
13
14 Q. To the best of your knowledge, they were not available
15 on that day?
16 A. No.
17
18 Q. You were asked some questions about how information
19 transferred between yourself and your colleague, BR4. Did
20 you text her at all on 20 July in relation to any of the
21 searches?
22 A. I can't recall specifically.
23
24 Q. Do you recall sending her a text message at any time
25 after that time in relation to the searches?
26 A. I can't recall.
27
28 Q. Were there any body-worn videos available to yourself
29 or other officers at Splendour?
30 A. No.
31
32 Q. Final topic. You were asked some questions about the
33 production by BRC of her identification, in this case her
34 licence. I just want to put to you what she suggests in
35 her statement, which appears at exhibit 2. She says that
36 after the drug dog indicated, there were two male police
37 officers and one female officer who approached her. Do you
38 recall any time when you approached somebody after a drug
39 dog indication with another male officer and your female
40 colleague?
41 A. No.
42
43 THE CHIEF COMMISSIONER: Q. Do you say that did not
44 happen?
45 A. I don't recall - the only occasion I would recall that
46 is one of the drug dog - the handler, sorry, being a male.
47

1 MS DWYER: Q. And I might have been putting that
2 incorrectly. So it may well be that she's referring to one
3 dog handler and two other police?
4 A. Yes, that's what I --
5
6 Q. She recalls a police officer handling the dog saying
7 words to the effect of, "Put your hands where I can see
8 them and don't reach for them", and another police officer
9 saying, "Come with us, we are going to have to search you
10 for drugs". She then recalls being led into the main gate
11 by the three police officers. Do you recall that when you
12 led somebody, after a drug dog indication, the dog handler
13 would be with you on some occasions?
14 A. No.
15
16 Q. She recalls that when she was led into the police
17 tent, she was made to wait outside the tent and while she
18 was waiting, one of the police officers asked if she had
19 any identification on her, she replied words to the effect
20 of, "Yes, can I grab my phone out of my pocket?" The police
21 officer replied words to the effect of, "Yes, that's fine".
22 She pulled her phone out of her denim jacket pocket. At
23 the same time her phone started ringing and she asked if
24 she could answer the call. The police officer replied
25 words to the effect of, "No, you can answer it afterwards".
26 Does that refresh your memory?
27 A. No, sorry, was that inside the tent?
28
29 Q. No, that was outside the tent?
30 A. No, I don't recall.
31
32 Q. She then says that the police officer took both her
33 phone and her driver's licence. The police looked at her
34 driver's licence and the police officer then walked away
35 with her phone and her driver's licence. Does that refresh
36 your memory as to something that you might have done?
37 A. No.
38
39 MS DWYER: Nothing further, thank you, Chief Commissioner.
40
41 MS KLUSS: Could I just inquire as to the last three
42 digits, perhaps, of the last event entry about which
43 counsel assisting was asking the officer questions?
44
45 MS DWYER: It is not an event entry, that's the statement
46 of BRC.
47

1 MS KLUSS: No, the event that you were --
2
3 MS DWYER: Oh, the event, yes, excuse me one moment.
4 8427386.
5
6 THE CHIEF COMMISSIONER: Yes, very well. We will adjourn
7 for lunch. We will resume at 2.15.
8
9 <THE WITNESS WITHDREW
10
11 LUNCHEON ADJOURNMENT
12
13 MS KLUSS: Commissioner, just before the next witness is
14 called, counsel assisting kindly informed me that the event
15 number from which she was reading just prior to the
16 luncheon adjournment was not the one that is recorded. The
17 event number, if I might just indicate it for the record,
18 is E260627696. I thank counsel assisting for providing it.
19
20 THE CHIEF COMMISSIONER: Very well. Yes.
21
22 MS DWYER: Thank you, Chief Commissioner. I call the next
23 witness, who is known as BR4.
24
25 <OFFICER BR4, sworn: [2.27pm]
26
27 MS KLUSS: Could the witness be provided with the
28 declaration?
29
30 THE CHIEF COMMISSIONER: Oh, yes, certainly.
31
32 I am sure Ms Kluss has already told you this, but
33 I should repeat it.
34
35 You must answer any question that is asked of you
36 unless I tell you you don't have to, and you must produce
37 anything that you are asked to produce, again, unless
38 I tell you you don't have to. You may object to answering
39 a question or producing anything, but you must,
40 nevertheless, answer or produce it, but the effect of your
41 objection is that your answer or what you produce cannot be
42 used against you in any proceedings except those of
43 a disciplinary kind to be taken by the Commissioner of
44 Police, for perjury or for contempt of the Commission. Do
45 you understand that?
46
47 THE WITNESS: Yes, I do.

1
2 THE CHIEF COMMISSIONER: I can make a declaration that
3 every question that you are asked you can be taken to
4 object to. You may object to anything that you are asked
5 to produce, to avoid the necessity of objecting on each
6 occasion. I take it you want me to make such
7 a declaration?
8
9 THE WITNESS: Yes, please.
10
11 THE CHIEF COMMISSIONER: I make a declaration pursuant to
12 section 75 of the Act that all answers and other things
13 given by this witness will be regarded as having been given
14 on objection by the witness.
15
16 Yes, thank you, Dr Dwyer.
17
18 <EXAMINATION BY MS DWYER:
19
20 MS DWYER: Q. Senior Constable in front of you, is there
21 a schedule of code names?
22 A. Yes, there is.
23
24 Q. Do you see that your name there is recorded as
25 Officer BR4?
26 A. That's correct.
27
28 Q. Above you is a colleague you were working with on
29 20 July 2018, who is known as BR3?
30 A. That's correct.
31
32 Q. And third from the bottom is the name of the young
33 person who was searched and she is given the code name BRC;
34 do you see that?
35 A. Yes, that's correct.
36
37 Q. Can I ask you first about your background. When did
38 you join the police force?
39 A. In 2005.
40
41 Q. How long have you been a senior constable for?
42 A. After the first five years, so in 2010, I'm guessing,
43 I would have been made a senior constable.
44
45 Q. In July 2018 you were working at the Splendour in the
46 Grass music festival; correct?
47 A. That's correct.

1
2 Q. How did you come to be working at that festival?
3 A. An email came out station-wide to our command asking
4 for police that would like to go up there. They needed
5 a male and a female officer. I didn't originally say
6 I wanted to go, but then I got a message from the rosters
7 lady saying, "They need a female, so would you like to go?"
8 And I said, "Yes".
9
10 Q. So were you working in the Byron-Tweed area or a local
11 area command outside that?
12 A. I was working at Manning-Great Lakes.
13
14 Q. And had you ever before been involved in policing
15 a music festival?
16 A. I believe so, yes.
17
18 Q. When you say you believe so, is it the case that you
19 cannot now recall whether or not you had been involved in
20 policing a music festival prior to Splendour in 2018?
21 A. I can't be certain of that, no.
22
23 Q. I take it anyway from your answer that it wasn't
24 something that you routinely did?
25 A. No.
26
27 Q. You had obviously never been to Splendour in the Grass
28 before?
29 A. No.
30
31 Q. Either as a patron or as a police officer; correct?
32 A. Yes.
33
34 Q. In 2018, what was your role there?
35 A. Our role was to - my role was to assist the drug dog
36 at the entrance of the festival.
37
38 Q. So you understood your role to be as an officer who
39 would search patrons after they were indicated by a drug
40 dog?
41 A. Yes, depending on the circumstances.
42
43 Q. But you understood that your primary role for the day
44 was to be searching patrons; is that right?
45 A. Yes.
46
47 Q. And did you just go up for one of the days of the

1 Splendour in the Grass festival or each of the days?
2 A. Two days.
3
4 Q. On both of those days were you engaged as an officer
5 who would be involved in searching as part of the drug dog
6 operations?
7 A. Yes, that's correct.
8
9 Q. And were you based at the entrance of the festival?
10 A. Yes, both outside and inside the entrance, yes.
11
12 Q. On both days you were to work in the perimeter area -
13 is that right - outside and inside the entrance area?
14 A. Yes.
15
16 Q. And both days with the drug dogs; correct?
17 A. That's correct.
18
19 Q. If you have a look down at that schedule of code names
20 again, looking at Officer BR3, were you to be stationed
21 with him on both of the days that you were there?
22 A. Not necessarily, but because we were from the same
23 command, we just stayed together most of the time.
24
25 Q. Do you recall attending a briefing at a particular
26 police station prior to 20 July 2018?
27 A. No, I don't.
28
29 Q. What about the morning of 20 July?
30 A. Yes, but I think it was at the festival.
31
32 Q. So there was some sort of briefing at the festival,
33 was there?
34 A. Yes.
35
36 Q. And you were in attendance along with a number of
37 other officers?
38 A. That's correct.
39
40 Q. Was BR3 in attendance at that time?
41 A. Yes, he was.
42
43 Q. Do you recognise the names of any of the other
44 officers on that list? You don't have to say them out
45 loud.
46 A. Yes.
47

1 Q. Using their code names, which officers' names do you
2 recall?
3 A. BR2.
4
5 Q. BR2 was the drug dog handler; is that right?
6 A. That's correct.
7
8 Q. He was the person that you were working with on
9 20 July?
10 A. There were other drug dog handlers, but he was one of
11 them, yes.
12
13 Q. Do you recognise the name of Officer BR5?
14 A. No.
15
16 Q. Do you recognise the name of Officer BR1?
17 A. No.
18
19 Q. Do you recall the seniority of the police officer who
20 was delivering the briefing to you in the morning?
21 A. I don't recall.
22
23 Q. Do you recall where they were from - for example, were
24 they from the drug squad or the dog squad?
25 A. I don't recall.
26
27 Q. Do you recall anything about what you were told during
28 the briefing?
29 A. We were told where the search tents were. We were
30 told primarily where we would - where the drug dog would be
31 operating. We were told what to do with our exhibits
32 when - if we got a drug detection, where the field CAN
33 books were, just operational sort of stuff in relation to
34 what we might need in the day.
35
36 Q. I asked you about your experience at music festivals.
37 Had you had an experience of working with drug dogs prior
38 to that time?
39 A. Yes, I had. Not - not necessarily at a festival but,
40 yes, I have worked with drug dogs before.
41
42 Q. Were you told during the briefing about the field
43 detection and field arrest forms?
44 A. Yes.
45
46 Q. In what circumstances were you told to use them?
47 A. If we got a drug detection.

1
2 Q. So if there was a positive find; is that right?
3 A. That's right, yes.
4
5 Q. In circumstances where there was not a positive find
6 after a search, what did you understand to be the process
7 of recording the search?
8 A. Just a normal COPS event.
9
10 Q. So by "normal COPS event", did you mean that you
11 understood that if you conducted the search, you had to
12 complete the COPS event?
13 A. No.
14
15 Q. Who completed the COPS event?
16 A. Whoever took the details of the person that was
17 searched.
18
19 Q. So it was your understanding that the responsibility
20 for entering the COPS event lay with the person who took
21 the details from the patron?
22 A. That's right.
23
24 THE CHIEF COMMISSIONER: Q. So even though that person
25 might not personally be aware of the search itself, they
26 still had the responsibility to fill in the COPS event; is
27 that what you say?
28 A. Yes, that's correct.
29
30 MS DWYER: Q. How would that person --
31
32 THE CHIEF COMMISSIONER: Q. Who told you to do that?
33 Why would someone who didn't themselves know the facts fill
34 in an event about the facts?
35 A. I guess that's just the way we did it. If I did the
36 searching, that he would take the details.
37
38 Q. Even though he wasn't present at the search?
39 A. Well, he would have been present up to and - not
40 probably inside the search, obviously, because he was
41 a male, but afterwards, you know - up to and - yes.
42
43 MS DWYER: Q. Just finish that sentence, Senior
44 Constable. Are you saying that you worked alongside
45 another officer who was a male; correct?
46 A. That's right, yes.
47

1 Q. That was Officer BR3; correct?
2 A. Yes.
3
4 Q. And the process was, wasn't it, that you would watch
5 when a patron was indicated by a drug dog? Were you there
6 when the drug dog operation was taking place?
7 A. Yes, I was, yes.
8
9 Q. So you and your colleague, Officer BR3, would stand
10 around and watch what the dogs did; is that right?
11 A. Not always what the dogs did. We'd be watching, you
12 know, everything, the people walking in and - we wouldn't
13 just be watching the dog.
14
15 Q. If there was an indication by a drug dog, the patron
16 would be approached by the drug dog handler; correct?
17 A. Yes.
18
19 Q. And then you and your colleague, Officer BR3, would
20 then approach that person, the patron?
21 A. Yes.
22
23 Q. And you would say certain things to the patron?
24 A. Yes.
25
26 Q. And they would then come with you out the back; is
27 that right?
28 A. Yes.
29
30 Q. Is that the case in every circumstance where there was
31 an indication?
32 A. I can't be sure.
33
34 Q. You don't have a memory now as to whether that was the
35 case in every circumstance?
36 A. No, I don't recall every search, no.
37
38 Q. Are you able to say, based on what your general
39 practice was in July 2018, whether it is likely that you
40 and your colleague, Officer BR3, once you saw a drug dog
41 indicate against somebody, would approach that person and
42 then take them out the back for a search?
43 A. Yes, after a conversation with them, yes.
44
45 THE CHIEF COMMISSIONER: Q. What would be the
46 conversation?
47 A. Pardon?

1
2 Q. What kind of conversation?
3 A. Well, it would depend on - each one is different, you
4 know. We would --
5
6 Q. Give us an example.
7 A. -- obviously introduce ourselves, comply with the
8 requirements of LEPR. Introduce ourselves, inform them
9 why they're being stopped.
10
11 Q. And what would you say, then?
12 A. I would say - do you want me to give an example of
13 what I would say?
14
15 Q. Yes.
16 A. "Hi, my name is Senior Constable [NAME SUPPRESSED],
17 I'm from Taree police station. You have been stopped in
18 relation to the drug dog has made an indication on you.
19 Come over here and we'll just have a little chat." And
20 then we might ask, you know, further questions in relation
21 to, you know, "Have you got any drugs on you?" And they
22 would say things to us and --
23
24 Q. Okay. So you have a little chat?
25 A. Mmm.
26
27 Q. Where does that chat take place?
28 A. Just off to the side from where all the people are
29 coming through.
30
31 Q. And what would be the questions that you would ask?
32 A. "Have you got any drugs on you today?"
33
34 Q. Do you caution them before you ask them that question?
35 A. Not necessarily, no.
36
37 Q. Why not? You're asking them to make admissions about
38 a criminal offence, are you not?
39 A. Yes, yep.
40
41 Q. But you don't think it was your duty to caution them
42 in that event?
43 A. Yes - no.
44
45 Q. Sorry?
46 A. No, not at that stage, no.
47

1 Q. So you would not caution them?
2 A. Probably --
3
4 Q. But you would ask them, "Are you carrying any drugs"?
5 A. Yes.
6
7 Q. And if the answer is "No"?
8 A. It depends on the circumstance, yes.
9
10 Q. Such as?
11 A. What happened leading up, what my observations were,
12 you know, what they were doing, whether they appeared drug
13 affected, whether they were grabbing for their pockets,
14 whether they were trying to conceal something, whether they
15 tried to actively avoid the drug detection dog. So it
16 would sort of all base on that sort of stuff as to whether,
17 you know, I thought we would have reasonable cause for
18 a search.
19
20 MS DWYER: Q. If somebody answered "No" and they didn't
21 look nervous and they weren't reaching for their pockets,
22 you wouldn't just let them go after a drug dog had
23 indicated against them, would you?
24 A. Possibly, yes.
25
26 THE CHIEF COMMISSIONER: Q. Just one moment. Was there
27 any case in which a drug dog indication was given where
28 someone was not calm and polite and acted normally?
29 A. I can't be sure. I can't remember all of the drug
30 searches, no.
31
32 Q. I'm not asking you all of the drug searches; I'm
33 asking you about those cases where a drug dog indication
34 had been given, but the person had acted normally? Has
35 that ever happened in your experience?
36 A. I don't recall that, no. I don't recall that ever
37 happening, no.
38
39 Q. No. Your recollection is everybody acts guiltily, do
40 they?
41 A. No, not - but everyone acts differently, yes.
42
43 Q. Right. They all act nervously, do they?
44 A. Not all of them, no.
45
46 Q. So some remain calm?
47 A. Yes.

1
2 Q. Some don't react at all?
3 A. Yes, possibly, yes - react in what way? I'm sort
4 of --
5
6 Q. Just like someone discussing the weather?
7 A. Mmm.
8
9 Q. "I've got nothing to worrying about. I'm not carrying
10 drugs. I don't care what the dog did. What do you want?"
11 Just normally. Have you never had someone where there has
12 been a drug test act normally?
13 A. I don't recall anyone acting normally, no.
14
15 Q. In cases, then, where you have gone on to search these
16 people, have there always been drugs present?
17 A. I haven't always found drugs, no.
18
19 Q. So that when people have not acted normally, it
20 doesn't indicate to you one way or another whether there
21 are drugs present, does it?
22 A. No.
23
24 Q. It doesn't help; correct? Because people who do act
25 normally, are they still searched?
26 A. I haven't had - I don't recall anyone acting normally,
27 no.
28
29 Q. Right. So everyone acts in an abnormal way?
30 A. Well, not abnormal, but, yeah, different - people have
31 different reactions when they see the drug dog, yes.
32
33 Q. And when they have these reactions, do you invariably
34 strip search them? Do you invariably conclude that there
35 is a reasonable basis for a suspicion that they have drugs
36 on them?
37 A. Depending on what they do, yes, I would reasonably
38 suspect that they would have drugs on them, depending on
39 what they have done.
40
41 Q. As I understand what you have already said, they
42 always do something which indicates that they may have
43 drugs; correct?
44 A. Yes, that's correct, yes.
45
46 Q. And do you agree that on many occasions when you have
47 searched those persons, no drugs have been found?

1 A. There have been occasions, yes.
2
3 Q. Well, what would you say your success rate was?
4 A. I wouldn't have a clue.
5
6 Q. Not a clue?
7 A. Yeah.
8
9 Q. 10 per cent? 20 per cent?
10 A. I would have to look at the records. I don't know.
11
12 Q. A third? Three-quarters?
13 A. I don't know.
14
15 Q. So you don't know whether it is 90 per cent or
16 10 per cent; is that what you are telling me?
17 A. Yes. I would have to look at the records to be able
18 to give an answer.
19
20 Q. I understand you would need to look at the records to
21 know the numbers, but are you saying to me that you have
22 not got in your mind any notion about how successful your
23 supposition or suspicion has been about the possession of
24 drugs?
25 A. I would say, you know, we probably find, you know,
26 50:50, maybe. That's a guess. I'm only guessing.
27
28 Q. 50:50?
29 A. But that's the drugs that I've found. That's not to
30 say that they have got drugs that I just haven't found
31 them. But that's the - that's a guess.
32
33 MS DWYER: Q. Is it your belief that a drug dog
34 indication always suggests that somebody has drugs on them
35 or has recently had drugs on them?
36 A. Not necessarily, no.
37
38 Q. You are aware that somebody could walk into the
39 airspace, for example, where drugs have been?
40 A. Yes.
41
42 Q. So inevitably, a number of the persons where a drug
43 dog indicates will not be carrying drugs on them; do you
44 agree?
45 A. Yes.
46
47 Q. And the dog itself is not enough to justify a search

1 under LEPRAs, is it - even a general search?
2 A. That's right.
3
4 Q. Even for a general search, you have to have
5 a reasonable suspicion that somebody is carrying drugs on
6 them?
7 A. Yes, that's correct.
8
9 Q. And for a strip search, there are additional
10 requirements, aren't there?
11 A. Yes.
12
13 Q. Did you, in July 2018, know what additional
14 requirements you had to be satisfied of in order to do
15 a strip search?
16 A. Yes.
17
18 Q. You knew that LEPRAs required you --
19 A. Yes.
20
21 Q. -- to find additional things?
22 A. That's right.
23
24 Q. What was that, in relation to an adult, firstly?
25 A. Just the seriousness in relation to - seriousness and
26 urgency in relation to that incident.
27
28 Q. Do you agree that you knew in July 2018 that if you
29 were going to conduct a strip search you would have to make
30 a record of what justified the seriousness and urgency of
31 doing so?
32 A. No, I - I was not aware of that, no.
33
34 THE CHIEF COMMISSIONER: Q. Are you now aware?
35 A. Yes, I am.
36
37 MS DWYER: Q. You had a notebook on you at the time,
38 in July 2018; correct?
39 A. Yes, I did, yes.
40
41 Q. Did you use it at all?
42 A. Yes.
43
44 Q. Did you use it to record the basis of your searches in
45 any circumstances?
46 A. I think briefly, yes.
47

1 Q. For the most part, you relied on the COPS entry that
2 would be entered some hours afterwards; is that right?
3 A. Yes.
4
5 Q. Did you use anything else to document what was in your
6 mind at the time you conducted searches?
7 A. No.
8
9 Q. Do you recall a running sheet or not?
10 A. Oh, yes, we had a running sheet that we would use, but
11 I don't recall, you know, what details were on that,
12 because I think everything that I did was in my notebook.
13
14 Q. I see. Okay. So you didn't make a record in any
15 running sheet as to what was in your mind at any time when
16 BRC was taken for a search?
17 A. No, I didn't, no.
18
19 THE CHIEF COMMISSIONER: Q. But do I understand you
20 correctly that you had it in a notebook?
21 A. I didn't have BRC's search in a notebook, no.
22 I didn't. But I had other searches in my notebook, yes.
23
24 Q. And why those other searches and not this search?
25 A. Because I believed that the other officer, BR3, was
26 taking the details, while I was doing the search.
27
28 Q. What details?
29 A. Her name, et cetera.
30
31 Q. What do you mean by "et cetera"?
32 A. Name, date of birth, address, phone number, any other
33 details.
34
35 MS DWYER: Q. But you were conducting the search of BRC,
36 weren't you?
37 A. I believe so.
38
39 Q. You accept that you conducted the search of BRC, don't
40 you?
41 A. I can't be sure.
42
43 Q. Well, you were working with --
44
45 THE CHIEF COMMISSIONER: Q. Well, it was either you or
46 who else?
47 A. I have no recollection of this particular search.

1
2 MS DWYER: Q. I'll show you the --
3
4 THE CHIEF COMMISSIONER: Q. You know that your name
5 appears on the COPS report?
6 A. I know, yes.
7
8 Q. What, do you think that was an invention?
9 A. No, I don't, no.
10
11 Q. Well, what information does that convey to you, then?
12 Your name is on the COPS report. What information does
13 that convey to you?
14 A. Well, that I have done the search, yes.
15
16 Q. But you say you don't remember it?
17 A. I don't remember it, no.
18
19 Q. This was only last year.
20 A. Yes.
21
22 Q. How many searches did you conduct at the festival?
23 A. I would have to check the records. Probably - I don't
24 know. I would have to check the records.
25
26 Q. What is your guess?
27 A. Fifteen?
28
29 Q. Have you conducted any strip searches since the
30 festival?
31 A. Yes.
32
33 Q. How many?
34 A. I don't know.
35
36 Q. Give us an estimate.
37 A. In a year? Oh, at least - at least 10.
38
39 Q. In the field or in the station?
40 A. Both.
41
42 THE CHIEF COMMISSIONER: Yes, go on.
43
44 MS DWYER: Q. If I suggested to you that our records
45 show that between you and BR3, there were 27 searches
46 conducted over the course of the festival - that is, your
47 two days - do you agree with that? Does that sound right

1 to you?
2 A. That sounds about right, yes.
3
4 THE CHIEF COMMISSIONER: And how many of them were female?
5
6 MS DWYER: I don't think we have that record,
7 Chief Commissioner.
8
9 Q. I'm going to show you the COPS entry. Before I do,
10 you have had the opportunity to refresh your memory from
11 this recently, do you agree?
12 A. From the COPS event, yes.
13
14 Q. You have agreed there is nothing in your notebook at
15 the time that the search was conducted or beforehand;
16 correct?
17 A. Yes.
18
19 Q. And nothing on a running sheet that you can recall
20 having added?
21 A. No.
22
23 Q. Do you recall taking a photograph at all of any
24 information that was provided by BRC?
25 A. I don't recall.
26
27 Q. It is your belief, isn't it, that your colleague, BR3,
28 took the details from the young person at the time - that
29 is, was doing something with her identification, at the
30 time when you were searching; correct?
31 A. Yes.
32
33 Q. If you were conducting the search, it was for you to
34 form the view, firstly, that there was a reasonable
35 suspicion?
36 A. Yes.
37
38 Q. For the search?
39 A. Yes.
40
41 Q. You couldn't rely just on the fact that there had been
42 a drug dog indication; do you agree?
43 A. I agree, yes.
44
45 Q. What was the basis for the reasonable suspicion that
46 BRC might be carrying drugs?
47 A. I don't recall, because I had - didn't write notes in

1 my notebook, which I know now, the importance of that,
2 because it's impossible to remember these people that you
3 deal with once, you know, in a lifetime, and you are
4 dealing with a lot of different people and - yes, I didn't
5 take notes, so I don't recall.

6
7 Q. Can I ask you to accept that in the statement of the
8 person who was a child then, BRC, she says that she was
9 asked whether or not she had any drugs on her, and she
10 said, "No", and she was asked whether she had been around
11 anybody who was carrying drugs and she said, "No". In
12 those circumstances, can you think - there wouldn't be
13 a justification for a general search of her, would there?

14 A. If that's what happened, yes.

15
16 Q. And if, in fact, the young person had said that she
17 did not have any drugs but she was around persons who
18 smoked cannabis recently, that would not be enough in
19 itself to justify a general search, would it?

20 A. No, there'd have to be something else.

21
22 Q. But there is nothing in the COPS entry to suggest that
23 there was anything else, is there?

24 A. I didn't do the COPS entry, but, yes, I believe so.

25
26 THE CHIEF COMMISSIONER: Q. Were you not sitting next to
27 the other officer when that COPS entry was being made?

28 A. I can't be sure of that.

29
30 Q. Well, have a look at it - sorry, you haven't got it
31 yet.

32
33 MS DWYER: I will just show the witness.

34
35 THE CHIEF COMMISSIONER: Yes, show it to the witness.

36
37 MS DWYER: That's exhibit 4, your Honour, for the record.

38
39 Q. That doesn't refresh your memory at all as to the
40 circumstances of the search?

41 A. No.

42
43 Q. Does it refresh your memory as to the circumstances of
44 how the COPS entry came about?

45 A. Sorry, I don't understand.

46
47 Q. I will go back a step. What were the hours of your

1 shift that day?
2 A. I believe 9 to 9 or 10 to 10.
3
4 Q. When did you actually leave the festival?
5 A. Oh, I'd be guessing but I'd say about 7 at night.
6
7 Q. When you left the festival, did you go somewhere to
8 write the COPS entries or did you write COPS entries before
9 leaving the festival?
10 A. We went straight back to Tweed Heads police station.
11
12 Q. When you say "we", you mean you and Officer BR3?
13 A. And a whole lot of other police on a bus.
14
15 Q. Do you recall sitting at a computer at the Tweed Heads
16 police station?
17 A. I would have, yes. I don't recall it, no.
18
19 Q. So you don't recall making any COPS entries at all at
20 the Tweed Heads police station?
21 A. I would have, but, no, I don't recall it. I
22 remember --
23
24 Q. Why do you say you would have?
25 A. Well, because events have been created, so that's
26 where I would have done them.
27
28 Q. But you have no independent recollection, sitting
29 there, of having done so; is that right?
30 A. No.
31
32 Q. You then can't assist this Commission as to what
33 communications you had with your colleague BR3 when you
34 wrote up any COPS entries, because you can't remember?
35 A. That's right.
36
37 THE CHIEF COMMISSIONER: Q. Well, have a look at the
38 entry about what is noted as BRC having said - do you see
39 that?
40 A. Yes.
41
42 Q. Well, where would BR3 have got that information from?
43 A. I'm assuming when he spoke to her, when we initially
44 spoke to her.
45
46 MS DWYER: Q. Can I ask you to accept that his evidence
47 is that he had no recollection of speaking to that young

1 person and he was not involved in the search. You
2 understand that he wasn't involved in the search, don't
3 you?
4 A. Yes, of the actual search, yes.
5
6 Q. And you were involved in the actual search - you
7 accept that?
8 A. Yes.
9
10 Q. So it was for you to form the belief, firstly, that it
11 was reasonably necessary to do any general search; do you
12 agree?
13 A. Yes, I agree.
14
15 Q. And it was for you to form the belief that it was
16 urgent - that it was serious and the urgency required
17 a strip search; correct?
18 A. Yes.
19
20 Q. So it was for you to either make a record or cause
21 a record to be made as to what was in your mind; do you
22 agree?
23 A. Yes, I agree, yes.
24
25 Q. So in relation to this COPS entry, do you accept that
26 it's likely that you conveyed the information to your
27 colleague, BR3, in order for that to be written up?
28 A. I can't be sure.
29
30 Q. You said previously the fact that - even if you accept
31 that this COPS entry is correct and that the young person
32 was taken to the private room and admitted to being around
33 persons who smoked cannabis recently, that was not enough
34 to justify even a general search; correct?
35 A. Correct.
36
37 Q. And you knew that at the time, in July 2018?
38 A. I would have, yes.
39
40 Q. Do you recall raising any issue with anybody at the
41 time that COPS entries were done, that there was not enough
42 information to justify searches?
43 A. No.
44
45 Q. At the time this COPS entry was done, it was 7.55pm,
46 some five hours or so after the search was done on this
47 young person; do you agree? The search was done, I think,

1 if this is accurate, at around 3.15pm. If you turn over to
2 page 2, "Incident date/time" is recorded as 3 to 3.15?
3 A. Okay, yes.
4
5 Q. And if you turn back to page 1, the automated
6 narrative is created at 7.55pm?
7 A. Yes, 7.56, yes - that's what I can see but - yes.
8
9 Q. So you agree that five hours or so passes between the
10 time of the event, or nearly five hours, between the time
11 of the event and the time of the COPS entry?
12 A. Yes, that's correct.
13
14 Q. And during that period of time you were searching
15 a number of different people; correct?
16 A. Correct.
17
18 Q. So many, and in such circumstances, that you can't
19 remember now any distinct search; is that right?
20 A. That's right.
21
22 Q. So if this event is created five hours later, without
23 any contemporaneous record as to what was in your mind at
24 the time that you created the search, we can't be sure this
25 COPS entry is accurate, can we?
26 A. No. I should have had notes.
27
28 Q. At any time prior to conducting this strip search, had
29 you received any information from a senior officer as to
30 when a strip search was to be conducted as part of the
31 Splendour festival?
32 A. Not that I can recall.
33
34 Q. So you were relying on your own general knowledge of
35 LEPRAs; is that right?
36 A. Yes.
37
38 Q. Were you aware that there were specific requirements
39 if the search involved a child between the ages of 10 and
40 18?
41 A. Yes.
42
43 THE CHIEF COMMISSIONER: Q. What were those
44 requirements?
45 A. That the person has to have a support person, or
46 a person that can act in their interests, present for the
47 search. Unless in circumstances that are urgent, where

1 that person's safety is at risk and an immediate search is
2 needed, that's when you don't have to have a support
3 person; or if police believe on reasonable grounds that
4 evidence might be concealed or destroyed.

5
6 MS DWYER: Q. If there were particular reasons why -
7 that is, if you had at the time a suspicion that delaying
8 the search was likely to lead to evidence being concealed
9 or there was an immediate need to protect the safety of the
10 young person, you would have recorded that somewhere,
11 wouldn't you?

12 A. I should have, yes.

13
14 Q. But you are not suggesting that that was the situation
15 here with respect to BRC?

16 A. I can't be sure.

17
18 Q. You don't recall that being the case, do you?

19 A. No, I don't recall.

20
21 THE CHIEF COMMISSIONER: Q. Well, what could be, in this
22 context, the urgent circumstances? What could make the
23 search urgent?

24 A. If I believed that she had concealed, you know,
25 a number of drugs inside her, which I'm aware that that's
26 what a lot of young people do, they insert drugs inside
27 them - if I was concerned that, you know, she was at risk
28 of harm, then that could be something.

29
30 Q. And what would give rise to a suspicion that that
31 might be the case?

32 A. Oh, an admission, usually, yes.

33
34 Q. There was no admission here, was there?

35 A. I don't recall any admission, but - not from - yes,
36 not from the COPS event, no.

37
38 Q. No?

39 A. No.

40
41 Q. You don't suggest there was an admission?

42 A. No, I'm not suggesting that.

43
44 Q. So absent an admission of something being concealed,
45 you would have no basis for supposing that something was
46 concealed? Merely that some people do conceal doesn't
47 enable you to say in a particular case that there is

1 a reasonable likelihood or reasonable possibility that
2 something is concealed, does it?
3 A. That's right, yes.
4
5 Q. So that doesn't help us in this case.
6 A. No, it doesn't, no.
7
8 Q. So what otherwise might constitute urgency?
9 A. In this particular case?
10
11 Q. Yes.
12 A. I can't think of any other reason.
13
14 Q. Did you in fact ask about, make inquiries about the
15 availability of a support person?
16 A. I don't believe I did, no.
17
18 Q. Why not?
19 A. Well, because there was not one, obviously, present.
20
21 Q. But why didn't you ask?
22 A. The only thing I can think of is that I didn't know
23 she was under age.
24
25 THE CHIEF COMMISSIONER: Very well.
26
27 MS DWYER: Q. The COPS event - is that still in front of
28 you?
29 A. Yes, it is.
30
31 Q. Do you see there that there is a record clearly that
32 she is a young person?
33 A. Yes. Yes.
34
35 Q. So at the time that COPS entry was made, it was known
36 that she was a young person?
37 A. Yes.
38
39 Q. Your colleague, Officer BR3, has given evidence that
40 he would have written that COPS entry when you were beside
41 him at a computer. Can you accept that from me? He has
42 just given that evidence in the Commission.
43 A. Yeah, if that's what he said, then, yeah, I'll accept
44 that.
45
46 Q. And he has given evidence that he would have written
47 what was in that COPS entry because he would have discussed

1 it with you, as the searching officer. Would you just
2 accept that from me?
3 A. Yes.
4
5 Q. It's the case, isn't it, that if he is right, when
6 this COPS entry was created, at least, you would have known
7 of the age of the young person; correct?
8
9 THE CHIEF COMMISSIONER: Q. Would you - yes, answer that
10 question first.
11 A. I don't recall sitting at a - I don't recall that, no.
12
13 Q. Let's take this girl. We know now her age, 16.
14 A. Yes.
15
16 Q. Did you ask her about how old she was?
17 A. I don't remember asking her.
18
19 Q. Was it not of vital importance to know how old she
20 was?
21 A. In hindsight, very much so.
22
23 Q. No, no. You knew then that there were different rules
24 relating to searches of young people, did you not?
25 A. Yes.
26
27 Q. How long had you been a police officer by then?
28 A. Thirteen years.
29
30 Q. Yes. And had you ever searched a young person before?
31 A. I would have, yes.
32
33 Q. So you knew that the age of someone whom you are
34 searching was of vital importance; yes.
35 A. Yes.
36
37 Q. And you had someone who was apparently quite young; do
38 you agree?
39 A. I don't remember this girl, so --
40
41 Q. No. Well, we know she is 16.
42 A. I know she is, yes.
43
44 Q. Well, doesn't commonsense tell that you she probably
45 looked young? Looked like a teenager?
46 A. Not necessarily.
47

1 Q. No. Very well. But, however, you say you may not
2 have asked about her age?
3 A. I may not have, no.
4
5 Q. Why?
6 A. I don't know. I don't know why I wouldn't have asked
7 that.
8
9 Q. You were about to submit her to a strip search;
10 agreed?
11 A. Yes.
12
13 Q. In relation to which, the law gave her certain rights;
14 agreed?
15 A. I agree.
16
17 Q. You just decided you wouldn't worry about those
18 rights; is that what you decided?
19 A. I don't recall what I decided on the day, but, no,
20 I don't recall asking for a support person.
21
22 Q. Do you think you might have decided you were not
23 concerned about her rights?
24 A. Sorry?
25
26 Q. Do you think you might have decided that you were not
27 concerned with her rights?
28 A. No.
29
30 Q. So that's not possible? You certainly would have been
31 concerned about her rights; is that what you are telling
32 me?
33 A. Yeah, I would have been.
34
35 Q. If that's the case, why didn't you ask her her age?
36 A. I can't answer that question. I don't know.
37
38 Q. Well, isn't the likelihood that you did ask her for
39 her age, or, at least, you asked her for some ID?
40 A. I know that we did other searches with young people
41 and we had support persons for those, so I do not know why
42 this person didn't have a support person.
43
44 Q. That is not my question. Did you ask her for ID?
45 A. Don't recall that.
46
47 Q. Was it your normal practice to ask for ID?

1 A. Normally, if I'm doing the search, my offsider, that
2 other officer, he would have had the ID.
3
4 Q. Yes. But while she's in with you, he can't ask her
5 any questions?
6 A. I can't either when I'm strip searching.
7
8 Q. Yes. While she is in with you, he can't ask her about
9 her ID; correct?
10 A. He would already have her ID before we went in there.
11
12 Q. Right. He would have had her ID before she went into
13 the tent, and you were there with him before she went into
14 the tent - yes?
15 A. Yes.
16
17 Q. So let's assume he asked for and was given her ID. We
18 know that happened.
19 A. Mmm-hmm.
20
21 Q. Because he took a photograph of it on his phone.
22 A. Yes.
23
24 Q. Or you did on your phone - one or the other; right?
25 A. Okay.
26
27 Q. So you were aware, before she went into the tent, that
28 she had produced ID - yes?
29 A. I can't recall, but I'm assuming yes.
30
31 Q. Well, isn't that necessary?
32 A. Yes, it would be, yes.
33
34 Q. Doesn't it just follow?
35 A. It does. That's normal practice.
36
37 Q. Yes. And if that happened, it would follow you would
38 know her age?
39 A. If I looked at the ID, yes.
40
41 Q. But you would want to know her age, wouldn't you?
42 A. Not if she looked 18 or above, no.
43
44 Q. Really? You wouldn't want to know her age, if she
45 looked 18 or above?
46 A. Not necessarily.
47

1 Q. Is that your evidence?
2 A. Not necessarily - yes.
3
4 Q. So --
5 A. If I thought she was an adult --
6
7 Q. So what you are saying is this, as I understand you:
8 you knew she had produced her ID, but you decided you
9 didn't need to ask her about her age because you thought
10 she was an adult?
11
12 MS KLUSS: I object to that question.
13
14 THE CHIEF COMMISSIONER: Why?
15
16 MS KLUSS: The officer has indicated she has no specific
17 memory of this event, so to put the proposition that she
18 did certain things, in my respectful submission, is unfair.
19 She can answer what she recalls and what her practice was,
20 but not in the circumstance --
21
22 THE CHIEF COMMISSIONER: The question is about the logic
23 of events, Ms Kluss.
24
25 MS KLUSS: May it please you.
26
27 THE CHIEF COMMISSIONER: Let's come back to the question
28 I asked. I will just look it up on the transcript. So
29 this was my question.
30
31 Q. So what you are saying is this, as I understand you:
32 you knew she had produced her ID, but you decided you
33 didn't need to ask her about her age because you thought
34 she was an adult?
35 A. I can't be sure.
36
37 Q. All right.
38 A. Because I don't recall.
39
40 Q. Let's take it back a step. The only reason you can
41 think of, that you did not look at her ID for her age or
42 interrogate the idea about her age, was that she looked to
43 you like an adult?
44 A. That's a possibility.
45
46 Q. Can you think of any other reason?
47 A. No, I can't.

1
2 Q. Do you agree that that is a very unlikely reason?
3 A. No, I don't agree with that.
4
5 Q. You think you can tell the difference between an
6 18-year-old and a 17-year-old --
7 A. No.
8
9 Q. -- and a 16-year-old? So, at best, it could only be
10 a guess; correct?
11 A. Yes.
12
13 Q. Why would you make a guess when considering what legal
14 rights a person might have?
15 A. I don't know.
16
17 Q. Was it because you regarded those legal rights as
18 being of no importance?
19 A. No.
20
21 Q. So you agree they were of importance?
22 A. Of course.
23
24 Q. And you agree that you knew they were important?
25 A. Of course.
26
27 Q. And yet you say that you did not bother to get her age
28 because she might have been above 18, or 18 and above?
29 A. That's the only thing I can think of as to why there
30 wasn't a support person.
31
32 Q. Right. Well, another possibility is you knew she was
33 under 16 and you didn't bother about a support person;
34 that's the other possibility, is it not? Do you agree it
35 is a logical possibility?
36 A. Yes, it's a possibility, but I believe that I would
37 have had a support person there if I knew she was 16.
38
39 Q. Where would you have got such a support person from?
40 A. With some of the other people we rang family that were
41 inside the festival.
42
43 Q. She might not have had family?
44 A. She might not have, I don't know.
45
46 Q. So that might not have taken you any further?
47 A. Yes.

1
2 Q. Did you not have a plan?
3 A. No.
4
5 Q. Was there nobody there designated to be a support
6 person in case there was no family?
7 A. Not that I'm aware of.
8
9 MS DWYER: Q. Senior Constable, you agree, don't you,
10 that if you are the searching officer, it's your
11 responsibility to make sure that LEPR is complied with?
12 A. Yes.
13
14 Q. And you agree that that didn't happen in these
15 circumstances?
16 A. I agree, yes.
17
18 Q. So you agree that your strip search of this young
19 person in these circumstances was unlawful?
20 A. Well --
21
22 MS KLUSS: I object to that question.
23
24 THE CHIEF COMMISSIONER: Upon what basis?
25
26 MS KLUSS: That the officer has not agreed that she was
27 the person who conducted the strip search.
28
29 MS DWYER: I press the question.
30
31 THE CHIEF COMMISSIONER: Q. Do you say you do not know,
32 as you sit there, whether you conducted this search or not?
33 A. Can I just explain to you, I don't recall this search,
34 no, and I do recall at certain periods I did get separated
35 from this officer and he was off doing other searches and
36 I was off assisting other searches, so I cannot be
37 100 per cent sure that I searched this girl.
38
39 Q. If you did not search this girl, then this COPS report
40 is a fabrication.
41
42 MR EURELL: I object to that. It could also just be an
43 error, respectfully, Commissioner.
44
45 THE CHIEF COMMISSIONER: Very well.
46
47 Q. The COPS report is mistaken when it states that you

1 are the officer?
2 A. I'm not saying it's mistaken. It could very well have
3 been me, but I don't recall it.
4
5 THE CHIEF COMMISSIONER: Yes, go on.
6
7 MS DWYER: Q. You accept that there are only two names
8 on the COPS events, don't you?
9 A. Yes.
10
11 Q. Your name and the name of Officer BR3; correct?
12 A. That's right.
13
14 Q. Can you tell the Commissioner, then, given you have no
15 recollection --
16
17 THE CHIEF COMMISSIONER: Just one moment.
18
19 Q. You and Officer BR3 were from the same LAC?
20 A. That's right.
21
22 Q. Were you actually from the same station?
23 A. Yes.
24
25 Q. You knew each other well?
26 A. Yes.
27
28 Q. You had worked together for years?
29 A. Yes.
30
31 Q. Do you agree with me that it would be most unlikely
32 for him not to know who he was with when that search was
33 conducted? That would surprise you, would it not, that he
34 would mistake you from another female officer?
35 A. Well, yeah.
36
37 THE CHIEF COMMISSIONER: Go on.
38
39 MS DWYER: Q. Do you recall the presence of any other
40 female officers there?
41 A. Yes, I do, yes.
42
43 Q. How many other female officers were at the entrance
44 working with the drug dog handlers on July 20?
45 A. I wouldn't have a clue.
46
47 Q. Do you recall any other females working with the drug

1 dog handlers at the entrance on 20 July?
2 A. Yes, I do. There were other female officers there,
3 yes.
4
5 Q. Your colleague has just given evidence that - this is
6 Officer BR3. As I recall, he gave evidence that you were
7 the only female officer that he could recall. Do you
8 accept that or do you recall more?
9 A. At the entire festival?
10
11 Q. No, on 20 July.
12 A. No, I don't accept that.
13
14 Q. I think you gave evidence earlier that because he was
15 your colleague from the other area command, you stuck
16 together during the day, didn't you?
17 A. Yes, as much as we could, yes.
18
19 Q. And he has given evidence in court, under oath, that
20 after he left the festival he sat with you at a computer
21 next to him and filled out the COPS entries and discussed
22 with you the reasons for particular searches. You're not
23 suggesting he's not telling the truth, are you?
24 A. No, I'm not suggesting that, no. I'm just suggesting
25 I don't recall that.
26
27 Q. Can you tell the Commission what was your general
28 procedure when you - I will start back. If the drug dog
29 indicated, you and your colleague would approach the person
30 where the drug dog had indicated. You would have
31 a conversation with them. You wouldn't caution them. Then
32 what would happen?
33 A. Then we would take them down to the searching area,
34 the private searching area.
35
36 Q. And then what would happen after that?
37 A. We would conduct a search.
38
39 Q. That is you and your other offsider; is that right?
40 A. Well, no, because I would do the females and he would
41 do the males.
42
43 Q. So you said, "We would conduct a search", what do you
44 mean by that?
45 A. Well, depending on who was stopped.
46
47 Q. But you would conduct a search of the females and he

1 would conduct a search of the males; correct?
2 A. That's right.
3
4 Q. You would always be working with that male officer;
5 correct?
6 A. Yes, I was, but there were times, like I said before,
7 that we were separated momentarily, when other people
8 needed assistance with searches.
9
10 Q. But when it came to going out to the central gate, or
11 to the entrance area --
12 A. We were together.
13
14 Q. -- and bringing somebody through, you were together;
15 is that correct?
16 A. Yes, yes.
17
18 Q. Then was it your practice that one person would take
19 the identification and details and then the other person
20 would do the search?
21 A. Yes.
22
23 Q. So if it was a male, you would take the identification
24 and details?
25 A. Yes.
26
27 Q. And BR3 would conduct the search?
28 A. That's right.
29
30 Q. And vice versa?
31 A. Yes.
32
33 Q. But in your circumstances when you were searching
34 a female, you wanted to know the identity of the female
35 before you conducted the search, didn't you?
36 A. Like, her name and?
37
38 Q. Well, did you? Did you want to know the identity of
39 the person before you conducted the search?
40 A. Not necessarily, no.
41
42 Q. Would you at least want to know the age of the person
43 before you conducted a search?
44 A. In hindsight, yes, yeah.
45
46 Q. Well, did you know at the time that it was your
47 responsibility to find out the age of a person before you

1 did a search?
2 A. No, I didn't think of it, no.
3
4 Q. So are you telling the Chief Commissioner that you
5 understood in a general sense about LEPRa, but you actually
6 didn't turn your mind to the requirements of LEPRa when you
7 were conducting the search?
8 A. I obviously didn't, yes.
9
10 Q. Thinking back to July 2018, after that procedure
11 where, looking at a female patron, your colleague takes the
12 details, you do the searching, what was your practice with
13 respect to, firstly, a general search? Was it always
14 conducted in the private room?
15 A. No, not always in the private room, no.
16
17 Q. A strip search was always conducted in the private
18 room; correct?
19 A. Yes - it was a tent.
20
21 Q. In the private tent area where you conducted a strip
22 search, what was your general practice with respect to
23 strip searches? What would you say and then what would you
24 do?
25 A. I would introduce myself, and I would inform them that
26 they were going to be strip searched, and then I would just
27 tell them, you know, if they failed to comply that they
28 could be committing an offence, and then I would explain to
29 them exactly what I wanted them to do. I would just say
30 "Just do what I say. I will talk you through it and don't
31 make any harsh movements." You know, I'd say something
32 like that.
33
34 Q. And there was no caution before you did that?
35 A. No.
36
37 Q. And in relation to "Just do as a say", would you
38 always get a female to do the same standard thing for
39 a strip search?
40 A. It would depend on what they were wearing, yes.
41
42 Q. So you would direct them to take off their clothing;
43 correct?
44 A. No, like - item by item, yes.
45
46 Q. Until they were completely naked; correct?
47 A. No.

1
2 Q. Was there ever a circumstance that you recall where
3 somebody was completed naked in front of you?
4 A. No.
5
6 Q. What would you ask them to do after they had taken off
7 their bottom half - that is, their trousers or skirt or
8 whatever and underwear?
9 A. I would ask them to squat.
10
11 THE CHIEF COMMISSIONER: Q. Why?
12 A. To see if they have got anything inserted inside them
13 in their vagina or anus.
14
15 Q. And how would that show you whether anything was
16 inserted?
17 A. Well, when they'd squat, it would either fall out or
18 you could see something protruding.
19
20 MS DWYER: Q. How would you see it protruding?
21 A. I would look.
22
23 Q. So what would you do, after you get them to squat?
24 A. I would look.
25
26 Q. You would bend down yourself and look?
27 A. I would have a glance.
28
29 THE CHIEF COMMISSIONER: Q. Well, how would you do that?
30 A. I would bend down, yeah.
31
32 Q. Would you squat yourself?
33 A. Yes, I would say so, yes. Yes.
34
35 Q. And put your head under their body?
36 A. No, not under their body, no. No. I would be able
37 to --
38
39 Q. How would you look?
40 A. I'd be at a distance. I wouldn't get under their
41 body, no.
42
43 Q. How would you see their anus unless you did so?
44 A. If they are squatting in front of me and I just have
45 a look, you can see, yeah.
46
47 MS DWYER: Q. If they're squatting, you would have a

1 look at them from the front of their vagina area; is that
2 right?
3 A. Usually from the back. Usually, I would get them to
4 turn around and squat.
5
6 Q. Sorry, you would get them to turn around so that their
7 bottom is facing you and squat; correct?
8 A. Yeah.
9
10 THE CHIEF COMMISSIONER: Q. Their back was towards you?
11 A. Yes.
12
13 Q. Is there any doubt about that?
14 A. No.
15
16 MS DWYER: Q. And squat and bend over or just squat?
17 A. Just squat.
18
19 Q. How would you see the vagina area when somebody was
20 squatting in front of you with their back to you?
21 A. If you get down at the - if you get down at the same
22 level, you would.
23
24 Q. Do you ever recall squatting in front of somebody?
25 A. Do I recall squatting in front of somebody?
26
27 Q. Yes.
28 A. No.
29
30 Q. Did anybody from the police force ever teach you that
31 technique, that a strip search should involve getting -
32 when you are strip searching a female, getting them to
33 squat?
34 A. Yes.
35
36 Q. And then bending down and looking at them?
37 A. It's in the police handbook.
38
39 Q. Are there any other instructions as to what you should
40 do after you get them to squat?
41 A. No.
42
43 Q. Have you ever got somebody to cough after they squat?
44 A. No.
45
46 Q. Are you permitted to do that?
47 A. I don't believe so, no.

1
2 Q. Are you permitted to ask them, as far as you are
3 aware, to touch any of their own intimate body parts to
4 assist you with a search?
5 A. Sorry, just repeat that question?
6
7 Q. Sure. Are you permitted, as far as you are aware, to
8 get a person to touch their own intimate body parts to
9 assist you with a search?
10 A. Yes.
11
12 Q. Have you done that before?
13 A. Yes.
14
15 Q. How do you know that you are permitted to do that?
16 A. The police handbook says you can.
17
18 Q. Which handbook are you referring to?
19 A. NSW Police handbook.
20
21 Q. What year?
22 A. I wouldn't have a clue. It's just on our intranet.
23
24 Q. So it's the general - when we conduct further
25 inquiries, it's the general NSW Police Force Handbook?
26 A. I guess so, yeah.
27
28 Q. And it contains information that, for a strip search,
29 you are permitted to ask somebody to squat?
30 A. Yes.
31
32 Q. And you are permitted to ask somebody to touch their
33 own intimate body parts to assist?
34 A. Yes, you can get them to spread their buttocks,
35 cheeks.
36
37 Q. And when you get them to spread their buttocks or
38 cheeks, it's permissible for you to have a look inside
39 their anal passage; is that right?
40 A. I wouldn't say you are looking inside their anal
41 passage.
42
43 THE CHIEF COMMISSIONER: Q. You are looking at their
44 anus?
45 A. Yes, yes.
46
47 MS DWYER: Q. And is it the same with a vagina, that you

1 are entitled to look into their vagina after they've
2 manipulated their own body part?
3 A. I wouldn't say you are looking into the vagina, no.
4
5 Q. You are entitled to look at it after they have
6 manipulated; is that right?
7
8 THE CHIEF COMMISSIONER: Q. What is the manipulation?
9 What does it involve?
10 A. I don't know what.
11
12 Q. Parting the labia?
13 A. I have never had that, no.
14
15 Q. You have never asked?
16 A. No, I have never asked anyone to do that, no.
17
18 THE CHIEF COMMISSIONER: Okay, we can move on.
19
20 MS DWYER: Q. Are you in a position through your legal
21 representative to provide to the Chief Commissioner the
22 parts of the handbook that you --
23
24 THE CHIEF COMMISSIONER: Don't worry about it.
25
26 THE WITNESS: Yes.
27
28 THE CHIEF COMMISSIONER: It's not there.
29
30 THE WITNESS: I do have a print out of it, if you require
31 it.
32
33 THE CHIEF COMMISSIONER: Show it, please.
34
35 THE WITNESS: I don't have it with me. It's back at my
36 room.
37
38 THE CHIEF COMMISSIONER: Q. Do you recall what version
39 you last viewed, of that handbook?
40 A. No, I don't.
41
42 THE CHIEF COMMISSIONER: Q. You are not talking about
43 the manual?
44 A. I think it's the NSW Police handbook.
45
46 THE CHIEF COMMISSIONER: It doesn't matter, we can check
47 it up.

1
2 MS DWYER: Q. Is that something you have refreshed your
3 memory from recently or is it something that you knew at
4 the time as at July 2018?
5 A. I would have known it at the time.
6
7 Q. Why do you say you would have known it at the time?
8 A. Well, because it's a practice that I've always done.
9
10 Q. Have you ever been taught it in any sort of training?
11 A. I don't recall.
12
13 Q. At any time have --
14
15 THE CHIEF COMMISSIONER: Q. Do you agree that for many
16 young people, stripping naked in the presence of
17 a stranger, squatting and having their private parts
18 examined by a stranger could be an extremely distressing
19 experience?
20 A. I agree.
21
22 Q. And do you agree that on those occasions many of the
23 persons searched are moved to tears and cry and are
24 obviously emotionally upset by the experience?
25 A. I only recall one person being upset.
26
27 Q. One of them at the festival?
28 A. Yes.
29
30 Q. Was it the one that we are talking about?
31 A. No, it was not.
32
33 Q. Another?
34 A. Yes.
35
36 Q. Who was weeping; is that right?
37 A. Yes.
38
39 Q. What did you do about that?
40 A. It wasn't actually my search. This other girl had
41 inserted a whole heap of drugs inside her and she was
42 trying to get them out and she couldn't get them out and
43 she was scared that they were going to bust inside of her
44 and she was very distressed, yes.
45
46 Q. But other than that, you did not have a person whom
47 you searched who was distressed or weeping?

1 A. No. Everyone was very cooperative.
2
3 MS DWYER: Q. You agree, don't you, that to require
4 somebody to bend over or to squat, to spread their intimate
5 body parts, is an extremely intrusive personal invasion; do
6 you agree with that?
7 A. Yes, I would agree with that, yes.
8
9 Q. And there would have to be a very good reason to
10 require a citizen of this state to do that; do you agree?
11 A. Yes.
12
13 Q. And that is particularly so in circumstances where
14 that person is a child; do you agree?
15 A. I agree.
16
17 Q. And in those circumstances, it's absolutely essential
18 that you record your justification for that invasion; do
19 you agree?
20 A. I agree now, and I --
21
22 Q. And it's a serious breach of your obligations to not
23 have done so, if you accept you were the searching officer;
24 do you agree?
25 A. I 100 per cent agree.
26
27 Q. I'm going to read to you what the child in this
28 circumstance says happened to her and see if it refreshes
29 your memory --
30
31 THE CHIEF COMMISSIONER: Q. There is another aspect to
32 this, of course, which is perhaps not your fault, but it is
33 a fact, and that is that you conducted this search alone -
34 yes?
35 A. Yes.
36
37 Q. An extremely intrusive search which some - I won't
38 say, but some persons, indeed, the person searched, might
39 consider to have some sexual connotation, however unfairly.
40 Do you agree? That's a risk.
41 A. Yeah, it's a risk, yes.
42
43 Q. Do you not agree that is why it is essential, leaving
44 aside entirely the question of a record, that two persons
45 at least be present at the search in order to provide
46 corroboration for its due and proper exercise; do you
47 agree?

1 A. No, I don't agree with that.

2

3 Q. I see. Otherwise, it's word against word as to what
4 happened in that tent.

5 A. That's right. But LEPRAs does state that only people
6 that are reasonably required to be present during a strip
7 search be required and no other persons.

8

9 Q. Quite. And one person to be a corroborating witness
10 might be regarded as someone who is reasonably necessary to
11 ensure the integrity of the search. That never occurred to
12 you?

13 A. Well, I am of the belief that LEPRAs says: don't have
14 anyone there that is not required to be there for the
15 purpose of the search. Okay? Because having two people
16 there watching someone get strip searched, in my opinion,
17 would be, you know, worse than having one, if I was getting
18 searched myself.

19

20 MS DWYER: Q. What about for a child; are you of the
21 view that a child can waive his or her right to have
22 a support person there?

23 A. No.

24

25 Q. Were you aware of that in July 2018?

26 A. Yes.

27

28 Q. What this young person says is that after the drug dog
29 indicated, she was led into the main gate by three police
30 officers. She had to walk with the police officers
31 surrounding her with her hands up in the air. She felt
32 completely humiliated. People were yelling out that the
33 police had someone. Do you recall any experience where you
34 led someone away and other people were yelling out?

35 A. No.

36

37 Q. She says that she was really scared because she didn't
38 have any drugs on her. As she was walking to the police
39 tent, one of the police officers asked her with words to
40 the effect "How old are you" and she replied to the effect
41 "16". Does that refresh your memory at all?

42 A. No.

43

44 Q. She says that one of the male police officers left and
45 she was walked through some fencing that separated the
46 police area from the festival area by the remaining police
47 officers. She was led to the police tent and made to wait

1 outside the police tent. That would be standard practice,
2 wouldn't it, in accordance with what you did in July 2018?
3 A. Yes.

4
5 Q. She says while she was waiting, one of the police
6 officers asked if she had any identification on her. That
7 would accord with your memory of the general practice?

8 A. That's general practice, yes.

9
10 Q. She then replied to the police officers words to the
11 effect of, "Yes. Can I grab my phone out of my pocket?
12 My driver's license was behind my phone case." Does that
13 refresh your memory at all as to what this young person
14 said?

15 A. Not at all, no.

16
17 Q. She said the police officer replied words to the
18 effect of, "Yes, that's fine." She pulled the phone out of
19 her denim jacket pocket. At the same time the phone
20 started ringing and she asked the police officer, "Can
21 I answer it?" And the police officer replied, "No. You
22 can answer it afterwards." Do you recall you or your
23 colleague saying that?

24 A. No.

25
26 THE CHIEF COMMISSIONER: Q. Are you asserting that that
27 did not happen?

28 A. No, I'm not saying it didn't happen, no, but I just
29 don't recall it, no.

30
31 Q. So, just to be clear, then - I just want to
32 understand - what you are saying is "This might have
33 happened or not. Either way, I have no recollection"?

34 A. That's right.

35
36 MS DWYER: Q. Do you recall using blue gloves at the
37 time that you conducted strip searches?

38 A. Yes.

39
40 Q. She says that another girl who looked about her age
41 came out of the police tent, she was led inside by a female
42 police officer. The female police officer said to her
43 words to the effect of "Stand in the corner of the tent for
44 more privacy". That's something that you might say?

45 A. Yes.

46
47 Q. The police officer then put on blue gloves - that's

1 something that you might have done?
2 A. Yes, we do have blue gloves, yes.
3
4 Q. At that point, she was wearing a lace leotard with
5 a pair of denim shorts over the top and a large denim
6 jacket.
7
8 THE CHIEF COMMISSIONER: Q. Do those clothes ring a bell
9 with you?
10 A. No, they don't.
11
12 Q. But, as I understand it, you are saying that might
13 have been how this person was dressed, but you don't
14 remember one way or another?
15 A. I don't remember, no.
16
17 MS DWYER: Q. She says the police officer said to her
18 words to the effect of, "Remove your jacket and hand it to
19 me"; that's something that you might have said?
20 A. Yes.
21
22 Q. She then removed her jacket and gave it to her. She
23 watched the police officer search the jacket and nothing
24 was found. That is something that you would do in those
25 circumstances, isn't it?
26 A. I would search the jacket, yes.
27
28 Q. She put her jacket on the ground and the police
29 officer told her to take off her shorts. That's something
30 that you might do?
31 A. No, normally, I would search the whole top half first,
32 then they would put their top half clothes back on and then
33 I would do the bottom half.
34
35 Q. In this circumstance, the young person had a jacket
36 on, a leotard underneath.
37 A. Okay.
38
39 Q. And then shorts.
40 A. Yes.
41
42 Q. So taking off her shorts, she is left with her
43 leotard.
44 A. Okay.
45
46 Q. So you acknowledge that you might search the jacket
47 first in those circumstances?

1 A. If she handed me her jacket first, yes, I would search
2 the jacket, yes.
3
4 THE CHIEF COMMISSIONER: Q. You would ask for it?
5 A. Yes. Yes. That's right.
6
7 MS DWYER: Q. The young person then takes her shorts off
8 and hands them to the officer, who then searched her
9 shorts. That's something that you would do too, isn't it,
10 search that item of clothing?
11 A. Yes.
12
13 Q. She says:
14
15 The police officer then told me to remove
16 my leotard. I pulled my leotard down to my
17 waist.
18
19 Does that refresh your memory at all?
20 A. No, it doesn't refresh my memory, no.
21
22 Q. She then said:
23
24 The police officer then told me to take
25 everything off, including my underwear.
26 I said to her words to the effect of,
27 "Completely everything?"
28
29 Does that refresh your memory?
30 A. No, it doesn't.
31
32 Q. Do you understand that this young person has an
33 unusual type of clothing on in that she can't just remove
34 one bit and then the other bit?
35 A. Yes.
36
37 Q. She's got a leotard on.
38 A. Yes, I agree, yes.
39
40 Q. If you are going to do a strip search, you would have
41 to ask her to remove the entire leotard and her underwear,
42 wouldn't you?
43 A. If I was going to do a strip search, yes, but I could
44 have got her to take the top half down, searched, you know,
45 she could have put her jacket back on and then done the
46 bottom half, but I don't recall.
47

1 THE CHIEF COMMISSIONER: Q. You don't recall searching
2 any girl who was wearing a leotard?
3 A. I don't recall, but I know a lot of people were
4 wearing, you know, very different clothing. So --
5
6 Q. All right. Let's talk about leotards, though.
7 A. Yes.
8
9 Q. You don't recall searching any girl who was wearing
10 a leotard; is that what you are saying?
11 A. No, I don't.
12
13 Q. But are you saying you did not, or that you might have
14 and it's escaped your recollection?
15 A. Yes, there's a very good chance I have, yes, but
16 I don't recall it.
17
18 THE CHIEF COMMISSIONER: Very well.
19
20 MS DWYER: Q. She then says once she had removed her
21 clothing, she kept her shoes on, she had a panty liner on
22 her underwear and the police officer asked her to remove it
23 so she could look at it. That's something that you have
24 done previously; is that right?
25 A. Previously, yes.
26
27 Q. That's something that you - do you say you are
28 entitled to do?
29 A. Yes, well, it's a part of what she's wearing, so, yes,
30 I would search that, to make sure there was nothing
31 underneath it.
32
33 Q. You accept that in circumstances where you asked
34 someone to remove a panty liner on their underwear, that is
35 itself something that could be extremely embarrassing and
36 distressing, just as a matter of common human experience?
37 A. I guess so, yes.
38
39 Q. Well, it's a sanitary pad, isn't it?
40 A. Yes.
41
42 Q. So you would accept, wouldn't you, as a matter of
43 commonsense, it might be extremely humiliating and
44 distressing to have to do that in front of a female police
45 officer you don't know?
46 A. Yes, it could be, yes.
47

1 Q. And you would agree with me, wouldn't you, there would
2 want to be a very good legal reason for requiring somebody
3 to do that?
4 A. Yes.
5
6 Q. And you would want to record what that reason is?
7 A. Yes, you definitely would, yes.
8
9 Q. She says in her statement that when the police officer
10 had finished searching her underwear and leotard, she was
11 told to squat on the ground. You have given evidence that
12 that was in accordance with your practice, asking someone
13 to squat on the ground; correct?
14 A. Yes, yes.
15
16 Q. She then says:
17
18 [The police officer] then squatted down and
19 looked underneath me.
20
21 That is in accordance with your practice; do you agree?
22 A. Yes.
23
24 Q. She then says --
25
26 THE CHIEF COMMISSIONER: Q. Sorry, have we got an
27 answer?
28 A. Yes.
29
30 MS DWYER: Q. She then says:
31
32 After looking [the police officer] then
33 said to me words to the effect of, "Okay,
34 that's all good now you can get dressed and
35 take your shoes off."
36
37 That's something that you might say?
38 A. Yes.
39
40 Q. She then pulled her shoes off.
41
42 The police officer told me to turn my socks
43 inside out.
44
45 That's something that you might say?
46 A. Yes.
47

1 Q.
2 She looked at my shoes and socks and then
3 told me that I could put my shoes back on.
4 I put my shoes back on and she led me
5 outside the tent.

6
7 That's something that you might do?

8 A. Yes.

9
10 Q. Then:

11
12 The police officer said to me words to the
13 effect of, "Okay you can go now".

14
15 That's something that you might say in the event that no
16 drugs were found?

17 A. Yes.

18
19 Q. Senior Constable, you understand, don't you, that BRC
20 has told the Commission that she was absolutely shocked
21 that the police would do this to her? She said that for
22 the rest of the festival, every time she saw a police
23 officer, she started to feel anxious. Her whole body would
24 clench up and she would get clammy and hot. She was scared
25 to make eye contact in case it happened again, and every
26 time she walked into the festival she would feel anxious.
27 Did it occur to you any time before July 2018 that a strip
28 search might have that effect on a young person?

29 A. Definitely.

30
31 Q. She goes on to say:

32
33 I feel that I can no longer trust police.
34 I now feel really wary about police and
35 I believe I would have difficulty reporting
36 a problem to police in case I am falsely
37 accused again. I try not to think about
38 the incident because it is distressing and
39 upsetting to think about it.

40
41 Did it occur to you prior to July 2018 that a strip search
42 could have a lasting emotional damage for a young person?

43 A. Yes, any person.

44
45 Q. Since this incident in July 2018, when was the first
46 time that it was brought to your attention that you might
47 have been involved in a strip search where there was not

1 a proper record of the justification under LEPRa for doing
2 so?
3 A. Sorry, can you repeat that question? Sorry.
4
5 Q. I will withdraw it and I will say it more simply.
6 A. Yes.
7
8 Q. Is it this investigation by this Commission that has
9 drawn your attention to the problems with the search of
10 this young person?
11 A. Yes.
12
13 Q. Nobody from your command or otherwise pointed it out
14 to you in the police force?
15 A. Officer BR3 did mention that he had been interviewed
16 about a search that we did.
17
18 Q. When was that?
19 A. I can't be sure. Six months ago, maybe.
20
21 THE CHIEF COMMISSIONER: Q. Did you ever, during your
22 time performing duty at this festival, search a girl of
23 about the age of 16 that you actually recall searching?
24 A. Sorry, can you just repeat the question?
25
26 Q. Yes. Do you recall ever searching, at this festival,
27 any girl of about the age of 16?
28 A. No.
29
30 Q. And do you recall ever searching a girl who was
31 obviously distressed and crying as she left the tent?
32 A. Yes, I do, the one that I told --
33
34 Q. Just the one that you have spoken about?
35 A. That's right.
36
37 Q. That's the only one?
38 A. Yes.
39
40 Q. Did you search any girl under the age of 18?
41 A. I don't recall. But - yeah, I know we - I have
42 printed out all the events and I think there was one - one
43 girl that was under 18 that I might have searched as well,
44 that had drugs on her.
45
46 THE CHIEF COMMISSIONER: Q. Can we just go back to the
47 COPS reports. You did have to fill in COPS entries?

1 A. Yes.
2
3 Q. So did BR3?
4 A. Yes.
5
6 Q. Correct?
7 A. Correct.
8
9 Q. And did you divide up the work?
10 A. Yes.
11
12 Q. And you sat next to each other?
13 A. I don't recall that, but I accept that.
14
15 Q. That makes sense?
16 A. Yes.
17
18 Q. And there would have been a measure of cooperation
19 because if you divided them up, some he would have the
20 relevant information that you would need to enter, and some
21 of them you would have the relevant information that he
22 needed to enter; correct? Correct?
23 A. Sorry, say it again? I got confused with that
24 question.
25
26 Q. Yes. Since you divided them up, there were some
27 entries which you needed him to give you some information
28 so you could complete it?
29 A. Yeah.
30
31 Q. And vice versa, there were some entries that he needed
32 to complete on the basis of information you gave him;
33 correct?
34 A. I think that the ones that I created on the COPS
35 events are in my notebook. I think my COPS events that
36 I created are all recorded in my notebook.
37
38 Q. Right. But your notebook contained only, as
39 I understand it, the identifying material?
40 A. I don't know what you mean by that, sorry.
41
42 Q. Well, name, licence number, date of birth and so on?
43 A. Yeah, person details, yeah.
44
45 Q. But your notebook didn't tell you anything about the
46 search itself?
47 A. I don't know. I would have to have a look at my

1 notebook.
2
3 Q. All right. So were there any entries which you made
4 which you had to ask BR3 about?
5 A. Any COPS entries?
6
7 Q. Yes, that you made, that you needed to get some
8 information from him?
9 A. I don't recall, sorry.
10
11 Q. Does it follow that you don't recall ever giving him
12 information so he could complete a COPS report?
13 A. I don't recall it, no.
14
15 Q. So in each case, this might have happened but you do
16 not recall one way or another?
17 A. That's correct.
18
19 THE CHIEF COMMISSIONER: Very well. Thank you, Ms Dwyer.
20
21 MS DWYER: Q. You said earlier that about six months ago
22 or so BR3 told you that he was interviewed in relation to
23 a search?
24 A. A search, yes.
25
26 Q. Did he tell you the circumstances of the search that
27 had been conducted?
28 A. No, I don't recall him telling me the circumstances.
29
30 Q. Did he tell you that it was a search of a young person
31 or a child?
32 A. I don't recall him saying that, but I recall him
33 saying it was a search that we did at Splendour.
34
35 Q. I'm sorry, was your answer - just excuse me one
36 minute. He recalled you saying it was a search we did at
37 Splendour?
38 A. Yes.
39
40 Q. So it was a search you were involved in with him at
41 Splendour; correct?
42 A. I guess so, yes.
43
44 Q. Did he ask you for any details in relation to that
45 search?
46 A. No.
47

1 Q. Did he tell you that that was a search that you were
2 alleged to have participated in, in terms of doing the
3 actual search while he recorded the details?
4 A. I don't recall exactly what he said.
5
6 Q. Did he tell you who he was interviewed by as a result
7 of that?
8 A. No.
9
10 Q. Did he ask you for any information to assist him to
11 prepare that?
12 A. No.
13
14 Q. What was the purpose of him telling you that he was
15 being interviewed, then?
16 A. I think he was just a bit frustrated, I assume, about
17 getting a complaint.
18
19 Q. Did you ever raise with any of your superiors that you
20 felt that you were not properly prepared for the Splendour
21 in the Grass festival operation?
22 A. No.
23
24 Q. Did you ever suggest to anybody that you should have
25 got more information about how and when to conduct the
26 searches?
27 A. No.
28
29 THE CHIEF COMMISSIONER: Q. As I understand your
30 evidence, you didn't need that. You knew what your duties
31 were and you performed them as best you could; that was
32 your understanding?
33 A. At the time, yes.
34
35 Q. And has your opinion now changed?
36 A. Definitely. Yes. Definitely, now, I know the
37 importance of myself, you know, creating my own notes, you
38 know, contemporaneous notes in relation to the search.
39 I know that because I just - I can't remember - you know,
40 I can't remember. So without those --
41
42 Q. Is that the only matter --
43 A. Without those records, you know, you can't - sorry.
44
45 Q. Is that the only matter you think that has been newly
46 brought to your attention as a result of this proceeding?
47 A. Oh, obviously, you know, the need to ask someone their

1 age is very important, and ensure they've got a support
2 person if they need one.
3
4 Q. But you knew that before?
5 A. If they are under age.
6
7 Q. But you knew that before, didn't you, at the time?
8 A. Yes, I would have, yes.
9
10 Q. So that's nothing new?
11 A. Yes.
12
13 Q. Is that right. It's nothing new?
14 A. No, that's nothing new, no.
15
16 MS DWYER: Q. What about the need for greater
17 justification to do a strip search in the first place?
18 A. Yes, I think you've got to be able to record the
19 justification, yes.
20
21 Q. You have to be able to recall your justification?
22 A. Recall it and record it, yes.
23
24 Q. And you have to be able to actually have in your mind
25 what that justification is at the time, don't you?
26 A. Definitely.
27
28 Q. You talk about a tent where females were strip
29 searched. Was the tent secure?
30 A. No.
31
32 Q. What was it like?
33 A. It was - oh, it was about, probably, oh, I don't know,
34 2.5 metres by 2.5 metres, just a square, with openings at
35 the front, which didn't completely close, so - and they
36 were all just sort of together. So when you would go in,
37 I would get my - have to get my person to stand, like, up
38 the front, so that if anyone was walking past, they
39 couldn't see her.
40
41 Q. You would have to get your person --
42 A. Well, whoever I was searching, yes.
43
44 Q. I see. You would have to get the actual patron to
45 stand up the front; is that right?
46 A. Yes. In the corner, yes. So the people walking past
47 couldn't see.

1
2 Q. So when the young person in this circumstance says
3 that she was told to stand in the corner, that does accord
4 with what you did for somebody's privacy; correct?
5 A. Definitely.
6
7 Q. Do you agree then that it would have been evident to
8 the person being searched that the tent was not secure?
9 A. Yes.
10
11 Q. And it would have been evident to the person being
12 searched that there were male persons walking outside the
13 area?
14 A. Yes.
15
16 Q. And any other officers, female?
17 A. That's right, yes.
18
19 Q. So do you agree that that adds to the sense of
20 invasion of privacy for somebody being strip searched?
21 A. Yes, I agree the tents were not ideal. Yes.
22
23 THE CHIEF COMMISSIONER: Q. But wouldn't you at least
24 say to them, "Look, I know this is a bit scary. It's never
25 happened - you know, there are police outside, but the
26 rules are they're not to come anywhere close so you needn't
27 worry about them"? Wouldn't you just do that as a matter
28 of common decency?
29 A. There is a very good chance I would have, yes.
30
31 Q. So you think you might have done that?
32 A. Yes, I would have, yes.
33
34 MS DWYER: Nothing further, Chief Commissioner.
35
36 THE CHIEF COMMISSIONER: Ms Kluss?
37
38 <EXAMINATION BY MS KLUSS:
39
40 MS KLUSS: Q. In terms of the group of police that you
41 were working with on this particular day, do you remember
42 the name of the dog that you were assigned to?
43 A. The actual dog?
44
45 Q. Or the dog handler?
46 A. Yes, we had a lot of - there was a lot of different
47 dogs. But, yes, I do recall the dog that is in this event.

1 Yes, I do recall that, yes.
2
3 Q. Was one of the dogs that you were working --
4
5 THE CHIEF COMMISSIONER: Q. What dog was that?
6 A. I think it was called Angel.
7
8 MS KLUSS: Q. Would it be fair to say that you were
9 actually assigned to a team called Charlie?
10 A. I don't - I can't be sure of that.
11
12 Q. Do you recall whether or not there was more than one
13 female police officer in the team in which you were
14 allocated?
15 A. I can't be sure of that.
16
17 Q. Can I hand you a --
18
19 THE CHIEF COMMISSIONER: Q. When you talk about a team,
20 how many officers were in the team to which you were
21 allocated?
22 A. Yeah, that's a good question. I don't recall the
23 team, no.
24
25 Q. What you recall is, as I understand you, you and BR3?
26 A. That's right.
27
28 Q. And you were, so far as you were concerned, the team?
29 A. Yeah, we were a team in ourselves, yes, I would say,
30 yes. But I do recall, now that you say that, that there
31 was teams, you know, that worked, you know, and then they
32 had their break at the same time and what-not, but I don't
33 recall the details of that team, no.
34
35 Q. But they acted independently of you - you two did your
36 own searches and so on?
37 A. Everyone just teamed up with whoever they wanted to
38 team up with, yes.
39
40 Q. And that was two by two by two, with the dog handler,
41 of course.
42 A. Not necessarily. There were groups of four, you know,
43 groups of three, groups of one.
44
45 Q. But as it happened, yours was a group of two?
46 A. Yes, because we travelled up together and we know each
47 other.

1
2 Q. You knew each other?
3 A. So - yes.
4
5 MS KLUSS: Q. In relation to the section that you were
6 working with, do you recall the name of the police officer
7 who was the sergeant in charge of that section?
8 A. No, I don't.
9
10 Q. Do you recall the names of any other police officers
11 other than BR3?
12
13 THE CHIEF COMMISSIONER: Look at the list and just see if
14 any of those names --
15
16 MS KLUSS: I'm referring --
17
18 THE CHIEF COMMISSIONER: I know, but let's get that done
19 first.
20
21 MS KLUSS: Thank you.
22
23 THE CHIEF COMMISSIONER: Q. Don't name them, but if you
24 remember anyone?
25 A. No.
26
27 Q. You don't?
28 A. No, I don't.
29
30 MS KLUSS: Q. Can I show you a piece of paper with
31 a name on it and can you indicate whether you recognise
32 that person's name?
33 A. Okay.
34
35 MS KLUSS: I have no objection to you, Mr Commissioner, or
36 anybody else seeing that first.
37
38 THE WITNESS: Yes, I recognise that name.
39
40 MS KLUSS: Q. Was that a person with whom you were
41 working at Splendour?
42 A. Yes, she tagged along with us a little bit, yes.
43
44 Q. In your police notebook, you recorded the events that
45 the work had been divvied up where you were ultimately to
46 enter the police event numbers; is that correct?
47 A. Yes.

1
2 Q. And in your police notebook, there is reference to
3 various names that appear in upper case writing at the end
4 of each event. Could I just show you that and could you
5 tell me what those are?
6 A. Yes.
7
8 MS KLUSS: Perhaps the witness could be shown a copy of
9 her notebook and then I can have my own copy back.
10
11 THE WITNESS: Thank you. Oh, yes.
12
13 MS KLUSS: Q. If I can take you first to page 11, at the
14 bottom line of writing, that indicates a word "Buster".
15 Can you tell me what "Buster" means?
16 A. Yes, Buster is the dog name, the actual drug dog.
17
18 Q. Then if you can go over, please, to page number 12 --
19 A. Yes.
20
21 Q. -- about midway through the page at the end of the
22 matter that looks as though it was recorded as event entry
23 67929027, there are two names there. If one of them is
24 a police officer's name, please do not mention that. But
25 if it is a dog name, I don't think there is any problem
26 with mentioning the name of the dog.
27 A. Yes, Seeby. Seeby was the dog.
28
29 Q. On page 13 at about point 5, does that indicate that
30 that was another matter that related to the dog Buster?
31 A. Sorry, what page?
32
33 Q. Page 13, at the top of the page, and then the
34 following entry in the middle of the page?
35 A. Yes, yes. That's correct, Buster.
36
37 Q. And, indeed, if you go over the page to page 14 - I'm
38 sorry, at page 15, there is a reference to Seeby?
39 A. Yes, that's correct.
40
41 Q. There is another reference at about point 5 of that
42 with a name in the middle. Is that a different dog as
43 well?
44 A. Yes, Angel.
45
46 Q. And in those circumstances - and I don't think I'm
47 being exclusive in relation to those references - that

1 would indicate that you were not purely working with one
2 particular dog through the course of the day, but,
3 indeed --
4
5 MS DWYER: I object. My learned friend has just taken the
6 witness to the notebook entries for 20 and 21 July, so over
7 the course of two days.
8
9 MS KLUSS: Certainly.
10
11 Q. Over the course of the two days you weren't working
12 exclusively with one police dog?
13 A. No, the dogs can only come out for a certain amount of
14 time and work for a certain amount of time before they have
15 to go in for a break, so --
16
17 Q. And does that mean that on different occasions you
18 might have been working with different police?
19 A. Yes.
20
21 Q. You mentioned in response to some questions that
22 his Honour asked of you in relation to persons whom you
23 have searched being upset or in tears - do you recall how
24 the event where you witnessed a person being upset
25 resolved?
26 A. Sorry, do I recall?
27
28 Q. How that finished up, what happened at the end of it?
29 A. I don't know how it finished up in the end, because,
30 like I said, it wasn't my search, but I must have left that
31 particular person with the other police that were looking
32 after her to go and assist with other jobs that I had to
33 do. So I don't recall how - whether she got medical
34 attention or what or whether she got it out. I'm not sure.
35
36 Q. In terms of matters where you were the police officer
37 where there were finds of drugs, I think over those days
38 there were three matters which you created entries about.
39 Do you recall where the drugs were located in relation to
40 these three people?
41 A. Without looking up each individual one, I know that
42 most of the drugs that we found were either inserted into
43 their vagina or in their underwear.
44
45 Q. And how did you detect the drugs that were inserted in
46 someone's vagina?
47 A. They told us about it and they pulled them out

1 themselves.

2

3 Q. So these situations also involved circumstances where
4 there were admissions being made by people?

5 A. Yes.

6

7 Q. Were you ever told, in 2018, that it was considered to
8 be appropriate that two police officers were involved in
9 strip searches?

10 A. No.

11

12 Q. Indeed, were you given any instructions as to whether
13 or not you should conduct a strip search of a female on
14 your own?

15 A. Well, section 33 of LEPR does state that, like I said
16 before, no other person who is not necessary for the
17 purpose of the search should be there or in the vicinity of
18 the search while the search is being carried out.

19

20 Q. So to protect the interests of a police officer would
21 not be considered by you to be necessary?

22 A. Definitely not, no.

23

24 Q. In terms of the occasions when you can say --

25

26 THE CHIEF COMMISSIONER: Q. It's not only to protect the
27 interests of the police officer; it's also to protect the
28 interests of the person being searched.

29

30 MS KLUSS: Certainly, I take no issue with that, but in
31 terms of any inference that might be drawn.

32

33 Q. In terms of the juveniles that you did search, what
34 did you do and what can you recall in those events when you
35 knew that they were juveniles?

36 A. We contacted a support person to have them meet us at
37 the tent to be present for the search or any questioning
38 that took place.

39

40 Q. And do you recall any occasion when you knew
41 a juvenile was a juvenile and you conducted a search
42 regardless?

43 A. No.

44

45 Q. Did you take any photographs on your phone of any
46 identification material?

47 A. I took photos of the field arrest - when we had a drug

1 detection and we filled out a field arrest form, I took
2 photographs of those.
3
4 Q. But did you, for example, take photographs of any
5 licence details that might have been taken to identify
6 a person who was searched?
7 A. I believe I did, yes.
8
9 Q. Did you record it in any other way?
10 A. I put it in the notebook.
11
12 Q. And in terms of any running sheets, did you see them
13 at the time that they were being created or don't you have
14 a recollection?
15 A. I don't have a recollection, but I know we did have
16 a running sheet, yes. I don't remember exactly what was on
17 the running sheet.
18
19 Q. I think after you learnt what the name of the young
20 person, BRC, was, you made some inquiries yourself?
21 A. Yes.
22
23 Q. To see whether or not that could refresh your memory
24 at all?
25 A. Yes, that's correct.
26
27 Q. What did you do?
28 A. I searched her name on the internet and also Facebook
29 and possibly Instagram as well, just to try and bring back
30 my memory of the incident.
31
32 Q. And did you see a person's photograph that
33 corresponded with the name with which you were searching?
34 A. Yes, I did.
35
36 Q. Did that assist your recollection at all?
37 A. No, it didn't.
38
39 Q. Since this inquiry has begun, were you shown
40 a photograph from a learner's permit?
41 A. That's right, yes.
42
43 Q. Did that assist with your recollection at all?
44 A. No, but I do believe that the person from the driver's
45 licence was the same person I found on Facebook.
46
47 Q. The image corresponds with the person that you saw on

1 Facebook?
2 A. That's right, yes, but it doesn't bring back any
3 memory of my involvement with her.
4
5 Q. Counsel assisting asked you, in the course of the
6 questions regarding the young person's clothing, about
7 a leotard. Do you have any specific recollection of
8 searching a female in a leotard?
9 A. No, I don't.
10
11 MS KLUSS: Nothing further.
12
13 THE CHIEF COMMISSIONER: Very well.
14
15 MS DWYER: Would your Honour excuse me one moment from the
16 Bar table?
17
18 MS KLUSS: I am sorry, if I might, by leave.
19
20 Q. I think you have tabulated, according to your own
21 notes and the COPS entries, those matters in which you were
22 personally responsible for the recording of the searches
23 and the various product or not of those searches?
24 A. Yes.
25
26 Q. I think you have provided me with a copy that I have
27 written all over, but you are prepared to provide a fresh
28 copy to the Commission as required?
29 A. Yes.
30
31 MS KLUSS: There is a matter that counsel assisting has
32 just raised, if I might just obtain some very brief
33 instructions in relation to the matter.
34
35 THE CHIEF COMMISSIONER: Yes. I intend to adjourn at all
36 events.
37
38 MS KLUSS: I can do it in a matter of minutes, if this is
39 the conclusion of the witness.
40
41 THE CHIEF COMMISSIONER: Perhaps you could have
42 a whispered conversation. Would you mind just going down
43 and talking to Ms Kluss.
44
45 MR EURELL: Chief Commissioner, while that's happening,
46 could I just inquire, I know it is not the practice of the
47 Commission to provide the parties with copies of all of the

1 exhibits in advance, but would an exhibit list be made
2 available of what is in the tendered exhibits, should we
3 need to address any aspect of the content of those
4 documents in written submissions?
5
6 MS KLUSS: I'm sorry, I can't hear.
7
8 MR EURELL: I'm just asking about an exhibit list.
9
10 MS DWYER: I think it would have to be redacted, or parts
11 of it would have to be redacted, I'm instructed.
12
13 MR EURELL: I don't need it straightaway, I just thought I
14 would flag it.
15
16 THE CHIEF COMMISSIONER: I think we will give you a
17 redacted copy for the moment and then you can decide
18 whether it is enough.
19
20 MR EURELL: Thank you.
21
22 THE CHIEF COMMISSIONER: Ms Kluss?
23
24 MS KLUSS: If I might have overnight - I note the
25 questioning of my client is not going to complete today --
26
27 THE CHIEF COMMISSIONER: No, I think, except for that one
28 matter which has been raised with you, we have completed.
29 The only question is whether she needs to come back.
30
31 MS KLUSS: At this stage, I would prefer she come back.
32 There is some material that we need to consider.
33
34 THE CHIEF COMMISSIONER: Very well. We will make those
35 arrangements. I will adjourn, then.
36
37 <THE WITNESS WITHDREW
38
39 AT 4.03PM THE COMMISSION WAS ADJOURNED TO WEDNESDAY,
40 23 OCTOBER 2019 AT 10AM
41
42
43
44
45
46
47