Hearing: Operation Brugge

Before the Hon M F Adams, Chief Commissioner

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

On Monday, 21 October 2019 at 10am

WITNESS INDEX

Officer BR1 13
Officer BR2 88
THE CHIEF COMMISSIONER: This is a public hearing generally into matters involving strip searches. The scope of the hearing will become clear when counsel assisting opens to the Commission for the interest of all those present, but I think that I will take, first of all, applications for leave to appear.

MR MURPHY: Good morning, Chief Commissioner. My name is Murphy, solicitor, and I seek leave to appear for the witness officer BR1.

THE CHIEF COMMISSIONER: Thank you, Mr Murphy.


MS CHAPMAN: I seek leave to appear for the Commissioner of Police.

THE CHIEF COMMISSIONER: Yes.

MS KLUSS: My name is Kluss. I seek leave to appear for officer BR4.

MR EURELL: Good morning, Commissioner. My name is Eurell. I seek leave to appear for officer BR3.

THE CHIEF COMMISSIONER: Yes. I should say something about names. As is obvious, the Commission has decided that the privacy of witnesses should be maintained to the extent consistent with the requirements of the hearing.

Now, some persons who are witnesses, because they need to state their duties and responsibilities, could be identified, theoretically, by inquiries outside, but I order that their names, even if that information is obtained by sources other than evidence in the Commission, are not to be published.

I should state that pursuant to section 64 of the Law Enforcement Conduct Commission Act, the Commission has appointed Dr Peggy Dwyer as counsel assisting the Commission, and I shall, in due course shortly, ask her to make some opening remarks. Those remarks will make it clear, what the general scope and purpose of the examinations is. Thank you, Ms Dwyer.
MS DWYER: Thank you. From Monday to Thursday of this week, the Commission will hear evidence in an inquiry known as Operation Brugge. I appear as the Chief Commissioner's counsel assisting and will call evidence before the Commission.

In this opening address to the Commission, I propose to proceed by setting out, firstly, the powers of this Commission and why a public hearing is to be conducted; secondly, the types of issues that will be addressed; third, the nature of the music festival, Splendour in the Grass; fourth, the broader legal context of strip searches conducted by police; fifth, the specific incident that took place; and finally, sixth, the witnesses that we can expect to give evidence this week.

The Law Enforcement Conduct Commission is a permanent independent investigative commission providing oversight of the NSW Police Force and the New South Wales Crime Commission. The Commission is separate from and completely independent of the NSW Police Force and the New South Wales Crime Commission. This means the Commission can both investigate and oversight law enforcement conduct impartially and fairly. The functions and powers of the Commission are governed by the Law Enforcement Conduct Commission Act of 2016.

While many hearings are conducted in private, the Commission may decide to hold a public hearing where it is deemed to be in the public interest. This hearing will investigate the complaint that, at the Splendour in the Grass music festival in Byron Bay, police officers detained and strip searched a young person, a female child, in the absence of a parent, guardian or other support person, in breach of the law.

Because the complaint involves a young person, it is appropriate that her evidence be given at a private hearing, which I anticipate will take place later this year. However, Chief Commissioner, I will shortly read on to the record the substance of her complaint in a statement that she has provided.

It can be readily accepted by many people that policing at such gatherings as music festivals is necessary for reasons of public safety. The Commission understands that drug use is a major problem in society and presents
a particular danger for some young people, who, because of their immaturity, may be impulsive and risk-taking. As the
Chief Commissioner knows, over the last summer period, there were five tragic deaths of young adults at music festivals and many, many more hospitalisations.

In that context, there is considerable pressure on police to attempt to reduce the number of drug-related deaths and reduce harm. The Commission accepts that police are entitled to use the full extent of their lawful powers to attempt to reduce drug-related harm.

It is perhaps important at this point that I say something about what this hearing is not about. This hearing is not about whether drugs should be illegal or decriminalised. It has nothing to do with the current debate about pill testing or, indeed, the current debate about whether drug dogs should be at the entrance to music festivals; but it is about the narrow but vitally important issue concerning compliance with the law of this state.

Police powers are limited by the law for good reason, and there can be no serious debate about the need for the police to be vigilant in obeying the law, especially when that amounts to an interference with the fundamental rights of liberty and personal integrity, for obvious reasons, especially when dealing with young people.

But, in the end, just as with members of the public, police have a duty to obey the law and ultimately to enforce the law. Freedom from arbitrary detention and arrest is recognised as an important right for the citizens of a democracy and police do not have an untrammelled right to detain, question or search.

A strip search is, by necessity, a grave intrusion into a citizen's privacy and dignity. Absent any legal justification, it would constitute an assault and I anticipate that the Commissioner will hear that it is capable of causing great distress and lasting harm.

The power to strip search can be lawfully exercised by police in certain circumstances, and, as will be evident from what I have already said, it is accepted by the Commission that there are times when it is a justified and necessary course of action.
If there has been a breach of the law by police in the conduct of the strip search of a young person, then it is important for the public to know the answers to questions like:

What are the circumstances in which that breach of the law has occurred?
Which police officers were involved in the decision-making?
Was that a failure of individual officers to follow clear guidelines and legislation, or is there a lack of guidance from senior police as to why and when strip searches are to be conducted?
What safeguards were in place as at 2018 to ensure compliance with the legislation?
Why was the legislation and any relevant safeguard ignored on this occasion, if that is what has occurred?
What is in place to ensure that it does not happen again?

It is an important part of maintaining public confidence in the NSW Police Force as an institution and the important work of its officers that this public inquiry take place.

Splendour in the Grass is an annual music festival held in July in the North Byron Parklands, in Yelgun, New South Wales. The festival showcases popular and established music artists as well as emerging Australian artists. It began in 2001 as a one-day event and is now a three-day event that attracts around 36,000 patrons.

Splendour in the Grass is an all-ages festival, and I expect, Chief Commissioner, that the Commission will hear that it attracts a significant percentage of teenagers and young adults, but also family groups and older patrons. I anticipate that the Commission will hear that a lot of teenage children attend the festival with friends of a similar age and they are not accompanied by a parent or guardian.

A number of security and emergency services assist at the festival. Police provide services for the entire festival to ensure the maintenance of law and order, including by conducting operations targeted at the use and sale of illicit drugs.
The Commission will hear about a number of legal and policy documents that govern the powers police have to stop and search citizens, including at the music festival.

In New South Wales, police powers are governed primarily by the Law Enforcement (Powers and Responsibilities) Act known as LEPRA. Part 4 deals with search and seizure powers without a warrant. Section 21(1) states that a police officer may, without a warrant, stop, search and detain a person and anything in their control, if the officer suspects on reasonable grounds that particular circumstances set out exist, and that includes a suspicion that a person has in his or her possession or under his or her control, in contravention of the Drug Misuse and Trafficking Act, a prohibited plant or drug.

Section 30 of LEPRA states that, for the purposes of a general personal search, a police officer may quickly run their hands over a person's outer clothing and may require the person to remove his or her coat or jacket or similar article of clothing and any gloves, shoes, socks and hat, but not, with the exception of a strip search, all of their clothing, and for a general search, a police officer may examine anything in possession of the person or pass an electronic metal device over them.

Section 31B governs strip searches at a music festival like Splendour in the Grass. It states relevantly that a police officer may carry out a strip search of a person if the police officer suspects on reasonable grounds that a strip search is necessary for the purposes of the search and that the seriousness and urgency of the circumstances make the strip search necessary.

Section 32 sets out requirements to ensure the preservation of privacy and dignity during the search. Section 33 provides for specific rules relating to strip searches of children. Relevantly, it includes the requirement in section 33(3) that a strip search of a child between the ages of 10 and 18 must be conducted: (a) in the presence of a parent or guardian of the person being searched; or (b) if that is not acceptable to the young person being searched, in the presence of another person who is not a police officer, and who is capable of representing the interests of the person being searched and whose presence is acceptable to that person.
A child cannot waive their right to the presence of a parent, guardian or independent person.

The actions of police are further governed by operational orders which remain protected documents and are not subject to publication. I refer here, Chief Commissioner, only to the fact of the existence of the NSW Police operational orders for Splendour in the Grass 2018 and the drug dog operational orders 2018, two documents that are intended to help instruct police in the execution of their duties.

The 2018 operational orders for the July festival were prepared by [NAME SUPPRESSED]. At this point I note that there are confidential names, and so there is a non-publication order over that officer’s name and I will refer to him from now on as officer BR1.

THE CHIEF COMMISSIONER: Yes. There is to be no publication of that name.

MS DWYER: A specific drug dog operation took place at Splendour in the Grass as at other festivals around New South Wales. I anticipate that the Commission will hear that dogs were used on entry and throughout the festivals and campgrounds. For Splendour in the Grass a warrant was granted to allow police to use dogs to carry out the detection of prohibited drugs or plants in the possession or control of a person and to use any persons necessary to assist in the execution of the warrant.

I come now to the specific incident that took place. Shortly after the incident. Which I will come to, this Commission received a complaint, submitted on behalf of a teenage child, by a solicitor known in the Commission as BRT. That person is a criminal law specialist of 25 years-plus practising in the area. The name of the child was provided and she will be known in the Commission as BRC.

The complaint alleged that a child was strip searched by a member of the NSW Police Force, following a false positive detection by a sniffer dog at the entrance gate to the Splendour in the Grass festival. At the time, she was 16 years of age. The complaint alleged that the young person was strip searched without the police contacting her parents or attempting to have any other person capable of
representing that child's interests, in breach of the
requirements of section 33 of LEPRA.

The complaint alleged that immediately following the
strip search of BRC, the child went into the festival
grounds and sought the services of the solicitor, BRT, who
had set up a stall immediately opposite the police strip
search area to provide free legal advice to patrons.

I anticipate that BRT, the solicitor, will give
evidence in these proceedings that the child was sobbing
uncontrollably and was accompanied by friends who all
looked quite distressed. I anticipate that she will tell
the Commission that it took some time for the child to
compose herself to be able to speak and relay what had
occurred.

The solicitor, BRT, has participated in a recorded
interview with Commission staff, and it is expected that
she will expand on that when she gives oral evidence this
week.

The young person herself, BRC, has provided both
a statement to the Commission and a recorded interview.
I propose to read on to the record the statement of BRC,
but of course removing any identifying material.

I anticipate your Honour will receive this evidence:
that BRC and her friends lined up at the front gate to go
into the festival. There were a number of lines to go into
the festival. She was in the "no bags" line to go into the
festival and her friends were in the "bags" line. As BRC
was waiting to go into the festival, a sniffer dog came up
to her and sat down next to her.

There was one police officer handling the dog, and
another two police officers came up to her when the dog sat
down. There were two male police officers and one female
police officer. The police officer handling the dogs said
to BRC words to the effect of, "Put your hands where I can
see them and don't reach for anything." She put her hands
out to either side of her body and the police officer said
to her words to the effect of, "Come with us. We're going
to have to search you for drugs."

She was led into the main gate by the three police
officers. She had to walk with the police officers
surrounding her with her hands in the air. She says to the Commission in her statement:

I felt completely humiliated. People were yelling out saying that the police had someone. I was really scared because I did not have any drugs on me and I was completely alone.

As we were walking towards the police tents, one of the police officers asked me, with words to the effect of, "How old are you?" I replied words to the effect of, "Sixteen".

She goes on to say:

One of the police officers left us and I was walked through some fencing that separated the police area from the festival area by the remaining police officers. I was led to the police tent and made to wait outside the tent.

While I was waiting, one of the police officers asked if I had any identification on me. I replied to the police words to the effect of, "Yes. Can I grab my phone out of my pocket?" My driver's licence was behind my phone case. The police officer replied words to the effect of, "Yes, that's fine." I pulled my phone out of my denim jacket pocket. At the same time, my phone started ringing and I asked if I could answer the call. The police officer replied words to the effect of, "No, you can answer it afterwards."

The police officer took both my phone and my driver's licence. The police officer looked at my driver's licence and the police officer then walked away with my phone and my driver's licence. I became really frightened at this stage because I had lost all contact with anyone I knew. I started to cry. The police then started to ask me lots of questions relating to
whether I had taken drugs or whether I was around people taking drugs. I answered no to all their questions.

Another girl that looked my age came out of the police tent and I was led inside by the female police officer. The female police officer said to me words to the effect of "Stand in the corner of the tent for more privacy." The police officer then put on blue gloves.

At this point, I assumed the police officer was going to pat me down and maybe ask me to remove my jacket and shorts. I was wearing a lace leotard with a pair of denim shorts over the top and a large denim jacket. The police officer said to me words to the effect of, "Remove your jacket and hand it to me." I removed my jacket and gave it to her. I watched the police officer search my jacket and nothing was found. She put my jacket on the ground and she told me to take off my shorts. I took off my shorts and gave them to her. She then searched my shorts. The police officer then told me to remove my leotard. I pulled my leotard down to my waist. The police officer then told me to take everything off, including my underwear. I said to her words to the effect of, "Completely, everything?" At that point, I realised I was going to have to get naked in front of this police officer. I could not believe that this was happening to me. I could not stop crying. I was completely humiliated.

I removed all my clothing, although I kept my shoes on. I had a panty liner on my underwear and the police officer asked me to remove it so that she could look at it.

When the police officer had finished searching my underwear and leotard, she told me to squat on the ground. I squatted down in front of her. She then squatted
down and looked underneath me.

After looking, she said to me words to the effect of, "Okay, that's all good. Now you can get dressed and take your shoes off." I got dressed and pulled my shoes off. The police officer told me to turn my socks inside out. She looked at my shoes and socks and then told me that I could put my shoes back on.

I put my shoes back on and she led me outside the tent. The police officer said to me words to the effect of, "Okay, you can go now." I then asked for my phone and driver's licence back. My phone and driver's licence were returned and the fencing was opened so that I could walk back through to the festival. This whole process took approximately 10 minutes. However, it felt like a lot longer.

I rang one of my friends. She wasn't in the festival yet, but I was informed another one of my friends was already in the festival waiting for me. I found my friend waiting in the festival. I was extremely upset. I was sobbing. I sat with my friend trying to calm down. I did not stop crying for approximately 20 minutes.

I was absolutely shocked that the police would do this to me. This incident with police occurred on the first day of the festival and I had a three-day ticket. Every time I saw a police officer at the festival, I started to feel anxious. My whole body would clench up and I would get clammy and hot. I was scared to make eye contact with them, in case it happened again.

Each time I walked into the festival, I would feel anxious. I feel that I can no longer trust police. I now feel really wary about police and I believe I would
have difficulty reporting a problem to police, in case I am falsely accused again.

I try not to think about the incident because it is distressing and upsetting to think about it.

Chief Commissioner, it is proposed that the following witnesses will give evidence before the Commission this week: BR1, BR2, BR3, BR4, BR5, and BR6. It is also proposed that the solicitor who made the complaint on behalf of the young person will give evidence.

Today, Chief Commissioner, you will hear from two of those witnesses, BR1 and BR2.

Chief Commissioner, would it be convenient for me to tender two volumes of confidential exhibits at this time?

THE CHIEF COMMISSIONER: Yes.

MS DWYER: I tender tabs 1 to 42 - that is, 42 confidential exhibits. I am reminded, Chief Commissioner, that the exhibit number will be the tab number, 1 to 42.

CONFIDENTIAL EXHIBITS #1-42 TENDERED

THE CHIEF COMMISSIONER: Yes. Firstly, I understand Ms Hill is here appearing for BRC. Come forward. I take it you seek leave to appear.

MS HILL: Yes, your Honour.

THE CHIEF COMMISSIONER: You may sit at the Bar table or in the room, as is convenient to you.

So far as the confidential exhibits are concerned, when an exhibit is shown to a witness, it will appear on a screen in front of the witness, and it will appear on the screen for the legal representatives. Sufficient, I think, will be said by counsel assisting and by the witness to enable the public, and in particular journalists, to understand what the nature of the document is. Some of the documents may become public documents, but until I make a specific order that they may be accessed, they must remain confidential.
In due course, I would expect redacted copies of the exhibits will be made publicly available, but that depends on the course of evidence. Thank you.

MS DWYER: Chief Commissioner, may I call BR1.

<OFFICER BR1, sworn: [10.38am]

THE CHIEF COMMISSIONER: I understand you have recently had some surgery.

THE WITNESS: I'm due to have it, Commissioner.

THE CHIEF COMMISSIONER: You are due to have it. I beg your pardon, yes. I noticed you were limping. So if you feel the need to take a break or have a rest, you just let me know.

THE WITNESS: Thank you.

THE CHIEF COMMISSIONER: I have no doubt that you have already been told the things that I'm about to tell you by your own lawyer, but I think I need to tell you myself.

Firstly, you must answer every question that you are asked, unless I tell you you don't have to, and you must produce anything you are asked to produce, again, unless I tell you you don't have to.

You can object to giving any answer or producing anything, but, you must, nevertheless, answer and nevertheless produce it, but the effect of your objection is that what you say or what you produce cannot be used against you in any proceedings, except disciplinary proceedings under the Police Act.

I should say that, as I understand your evidence and the case, I would be extremely surprised if that issue were to arise, but I'm obliged to tell you about it. In other words, the Police Commissioner can use it to take action, but it cannot otherwise be used. Is that clear?

THE WITNESS: Yes, sir.

THE CHIEF COMMISSIONER: Of course, you must tell the truth. That almost goes without saying. But I should warn you that you can be prosecuted for perjury or contempt of
the Commission should you not comply with orders or tell
the truth. Do you understand that?

THE WITNESS: Yes, Commissioner.

THE CHIEF COMMISSIONER: In order to save you the
inconvenience of objecting to each question or producing
each item, I can make a declaration which will cover the
whole of your evidence. Do you wish me to make that
declaration? The answer is "Yes".

THE WITNESS: Yes.

THE CHIEF COMMISSIONER: I make a declaration pursuant to
section 75 of the Act that all answers and other things
given by this witness will be regarded as having been given
on objection by the witness. Yes, thank you, Dr Dwyer.

MS DWYER: Chief Commissioner, I had proposed to get this
witness to say his full name once on the record but noting
the non-publication order.

THE CHIEF COMMISSIONER: I don't think that is n
ecessary.

MS DWYER: May it please the Commission.

<EXAMINATION BY MS DWYER:

MS DWYER: Q. Sir, you are known in this inquiry as
Officer BR1. You understand that?
A. I do now, yes.

Q. Could you tell the Commission your rank?
A. I'm a chief inspector.

Q. You are currently in the Byron-Tweed area; is that
right?
A. The Tweed-Byron PD; that's correct.

Q. How long have you held that position for?
A. I came back to Tweed in I think it was 2011. So I've
been there since then.

THE CHIEF COMMISSIONER: Q. How long have you been
a chief inspector?
A. I think now that the system has changed, we're
inspectors, and once we got to level 8 we went up. I just
can't off the top of my head think when it was, but it was
definitely after then, it could have been '12, '13,
something like that, when it changed, but I just can't
remember exactly when it was. Sorry, Commissioner.

MS DWYER: Q. When did you join the police force?
A. 4 April 1981.

Q. How long have you been a police officer in that area
around Byron and Tweed?
A. Since 2011. So eight years. I was stationed there
before, but I've been back since 2011.

MS DWYER: Chief Commissioner, might I check with you
whether you think it is appropriate for a non-publication
order over that local area command? In my respectful
submission, it is important to understand that the public
hearing is hearing from senior officers connected to the
local area command.

THE CHIEF COMMISSIONER: I think the geographical
location - you will understand, I can do some things to
safeguard your privacy, but there are practical limits.

THE WITNESS: I understand that, Commissioner. I'm fine.

MS DWYER: Q. You are aware of the festival Splendour in
the Grass, obviously, that is held in the Byron area?
A. I am. I've been doing that since probably - on and
off since 2001.

THE CHIEF COMMISSIONER: Q. Is it true that it has been
steadily growing in popularity?
A. It has. This is a memory test for me, but I remember
in 2001 we first had Splendour at Belongil Fields at Byron
Bay, which was basically a campground, and I think at that
stage we probably only had - I would have to check - maybe
8,000 people that would turn up, and it eventually started
getting bigger and the promoters moved to Queensland. They
went up there and started to expand. Since they have come
back, they then acquired parklands at Yelgun, at Byron Bay,
and since then, the festival is just getting bigger.

Once that happened, with the promoters, I then put a
24-hour police presence, because, like, last year -
sorry, last year there was up to 35,000 people. This year,
close to 42,500. So we have like a mini city, which is
more than what you can do to police. We only have three police or four police in that Brunswick sector to do that area. So with negotiations with the promoters and stuff, we put a full police presence in. So it starts in at roughly 10 o'clock on the bump-in days and we don't finish until probably 10 o'clock on the bump-out day, on the last day, because we have major set-up that we have to do with our command post, and that, plus we run 24/7.

Q. So of course many come and camp there, some only for the days of the festival, some take a holiday while they are there?
A. Yes.

Q. Then you get the people who just come casually?
A. You get your day trippers and --

Q. Day trippers, yes.
A. It ends up --

Q. So the camping --
A. -- to 20,000 people - in excess of 20,000. Sorry, yes, 20,000 people would camp in the grounds. And those people, basically, the way that they - they do the bump-in, they put the cars together. If you get there, you're basically - unless it is an emergency, you stay there, until the end. But then they have a transit bus area and, you know, there could be - you know, there'd be thousands of people that actually come, they come from the Gold Coast. Then if it is a hot day, some people might want to go into Byron Bay and go for a swim and not come back until the gates open at 12 or 2 o'clock which the major acts start to come. So it is a big, big - I would say that it would be the biggest festival, like, in New South Wales. It is a transport hub, it is everything, you know? It is major. It is a little city.

MS DWYER: Q. You said that the festival, to the best of your recollection, has been going since around 2001 - you have been involved since 2001, I think?
A. It was. Then when I went to the Kings Cross for that period, I didn't do it. But when I came back, then I was stationed at the Casino-Lismore, I was still asked to come back and help. So I have really had, you could say, my finger on the pulse of Splendour for all that time.

Q. When you came back and were based at Casino, when was
that?
A. I think that was - just memory - maybe 2009, 2010, I came back. I came back as soon as World Youth Day finished because the way the system worked, once - when I went to World Youth Day for the Pope’s visit I actually got transferred to a separate command. Then I came back to Kings Cross, and my partner got work on the Gold Coast and I applied to come back and I got Lismore, or Richmond PD, but I worked at Casino, then I worked at Ballina - you know, I worked all those areas.

Q. You were involved in 2001 for a period of time, then you came back in 2009-ish?
A. Yes, around that, yes.

Q. In the last decade you have continued your involvement?
A. I would have stayed, like - I didn't leave to go to Kings Cross until 2004, so I would have been there for the - for those periods. There was another inspector that was there that - he ran it as well, and I basically assisted him with a lot of stuff as well. So it was a bit of a joint thing that.

Q. For the last decade, have you been involved in policing at Splendour in the Grass?
A. Yes, definitely since when I came back in - when did I say? 2000. Sorry, 2011 I have been involved.

Q. Have police been involved in performing operations at Splendour in the Grass since its inception in 2001?
A. Yes. You will see there is a user-pay contingent. The promoters actually pay for the police to actually go and to police the event. Because it is such a drain on our PD, we can’t supply police on a regular basis to do that, because we lose police before the event, during the event, after, so we go to a user-pay. We get police from the local based police, on their days off or holidays, then we ask for state-wide police. We put out for state-wide people to come who might have friends who live in Byron Bay and they come and stay with them. That's what makes up our contingent. That's the user-pay contingent for Splendour.

THE CHIEF COMMISSIONER: Q. In 2018, how many?
A. 2018, I think it was 35,000.

Q. No.
A. Oh, police?
Q. Police?
A. Just on memory, it changes. I think we had about 105, I think, user-pay police.
Q. And in 2019?
A. That went up. I think - oh, I would have to check the records, Commissioner, but maybe - I don't know. We could have had 130 police. We had to go up for the extra crowds and stuff, because there's a big - once they go up and go from 35,000 to 42,000, that's an extra 7,000 people walking around in that area. They are the ones that we have got to police.

MS DWYER: Q. I'm just going to take you back one step, inspector. You said that it started off in 2001 and there was a police presence. I take it that the police presence has grown as the festival has grown?
A. Considerably. That was only where, if the event, like, started at 10 o'clock, the police might have only worked from 10 until say 11 o'clock at night. That was it. There was no 24-hour presence. We had a caravan at that stage we would set up and we would go there and do it from there. Now, we have our own command post that we set up there, and - yes. So it's - yes.
Q. How long has the user-pays system been in place, to your knowledge?
A. I think the user-pay system - I think it in fact - I'm just trying to think if it was even back as far as 2001. I just - yeah, I'm just not a hundred per cent. I just can't remember. But it's been - that system of user-pay has been in place now for a long time.
Q. And it is only a percentage of the police who are user-pays, the rest are funded by the public; is that right?
A. That's correct.
Q. In relation to numbers of police generally, do you recall in 2018 how many police were deployed over the four days of this Splendour in the Grass festival, including user-pays?
A. I think there was over 300. I think - I think I put in the orders there was a composite number, I think.
Q. I will show you those orders shortly. For the benefit of the Chief Commissioner, behind exhibit 40 is the operational orders for Splendour in the Grass in 2018. At page 10 - it doesn't need to come up on the screen but for the benefit of the transcript, the identification number is 8313819 - that suggests that the police commitment was a composite detachment of approximately 340 police?
A. Yes.

Q. Deployed over four days with 24-hour coverage for the event; correct?
A. That would - yes, that would be user-pay police. That would be the police from the drug dog. You look at there's highway patrol. It's all the different sections that we have come up to assist us. We have PORS, which is the public order and riot squad. We have mounted units. You know, we have a lot of police that come up to do that operation.

Q. You nominate in the operational orders 12 core groups that comprise that number of 340 police?
A. Yes.

Q. That includes the user-pays; correct?
A. Yes, yes

Q. And it also includes the drug dog squad?
A. Yes.

Q. In terms of determining the number of police that will be required, whose decision is that?
A. I do that with the promoters, and we do that - I have, like, staff within, like, my section, that sort of go through it with us. We look at what - we look at the public order areas, we look at crowd movements around the place, how many people are there, you know, where we're needing that for crowd management. Once we come up with a figure I run that past the promoters and say - because they are paying the bill - "This is where I need the police". But, yes, we do it on a basis of where we need to task our police.

Q. Looking at exhibit 40 - so for the benefit of the transcript, 8313810 is the identifying number - perhaps if just the front page of that could come on the screen, I will show you the front page of the operational orders for Splendour in the Grass 2018. It has there a name, your
name, as having prepared that document.
A. Yes.

MS DWYER: Chief Commissioner, if you are concerned by
that I won't put it on the screen.

THE CHIEF COMMISSIONER: Oh, no, it can go on the screen.

MS DWYER: Q. While that is coming up, sir, you drafted
these orders; is that right?
A. Correct.

Q. They were then checked by a colleague of yours?
A. Correct.

Q. In the command; is that right?
A. That's right.

Q. In fact, you have been involved in drafting operation
orders for a number of years; is that right?
A. Correct.

Q. Do they change from year to year?
A. They do. The numbers change, like, a lot of the part
of the orders will stay the same, unless the promoters
change the venues around and stuff like that. But, yes,
basically, even though they are the same, there is still
a lot that I have to, you know, have to change.

Q. Operation orders are a confidential document for
police; is that correct?
A. Correct.

Q. What is the purpose of them?
A. To give the police an idea exactly what's going to
happen. So if I'm going to have an operation, the orders
are there. It's got in it - you've got all your headings.
You've got your topography of the area. You look at the
mission. You look at the paying parts there, the
commander's intent, what the commander expects, it goes
through. You'll have the rosters, the staffing, the
communications. Yes, it sort of similar to what the army
used to have years ago, what they called a SMEAC, in that
situation - situation, mission, execution. You know, it
goes along those guidelines.

Q. Is it, in effect, a briefing document for the police
who are going to be on the ground?

A. The police that are going to be on the ground, I email them that document. I also have a joining instructions document, which is done for major - you know, most operations by the NSW Police. But, yes, I send that out probably a week before the event, because the document changes all the time, with staffing and stuff, and whatever.

So I send it to everybody and I put on there - just to say, "I want you to read this and understand, and if there is anything there you see that could be wrong, you might know what your shifts are, it could be a wrong shift or something, let me know", but it is there as a guideline to let them know what their responsibilities are.

Q. It also includes, doesn't it, some reference to LEAPRA and the requirements under LEAPRA?

A. It does. I started doing that a couple of years ago because I thought it was very important. All police should know their powers, you know, what they do, so whether they are working out in the street or they come to Byron, they should know what their powers are, but I still put that in there as a reminder.

THE CHIEF COMMISSIONER: Q. Do you have a briefing that is gathering all the police together and have a general discussion about what's going to happen and raise any particular issues or --

A. They do. With the user-pay, which is sort of different to the drug dog, you know, it starts off that the first lot of police might come on, say, 10 o'clock. And then I will have a sergeant there, and that sergeant will go through and he will do the briefing for me, and he does that. We have, like, meetings that we have to start with, with the promoters, to go through what has happened the night before. Then they go through the briefing, go through anything, any questions, let them know what is expected, anything that happened the night before. So they get a full briefing from the - because of our staffing and our number of inspectors, we use sergeants as well to do that, to assist, and that's what I did in 2018, because --

Q. Are briefing notes prepared?

A. Sorry?

Q. Are briefing notes prepared, or does the sergeant do
it from the top of his or her head?

A. A lot of it we run from the operation orders. But we do take notes just to start with, to say, remind people of this, remind them of that, you know but - yeah, so it could be --

Q. Remind them of?
A. Remind them.

Q. I don't know, that's why I'm asking.
A. Sorry, Commissioner. It could be something where - it could be an area where we had problems last night with fence jumpers, so "We want you to identify the area of fence jumpers", or, "We need you to go to the transit area."

Then we do tasking sheets as well. Most of the officers who go there are the user-pay. I give them a tasking sheet. It shows them a map of the area. There's a grid reference map that lets them know where they are. Then, once we do that briefing - we couldn't do it this year, but last year, for '18, we had trackers, and I think a lot of the police thought, "Are you looking to where I'm walking around the area?" I said, "No, that's for your safety", and that's what it was. I think Splendour is such a big area. Especially at night, it can be - you know, once the lights come on, you think "Where am I?" You don't know where you are. So we track people. That's all part of it, so we've got to do that. They get their portable radios, are given their call signs. It is a full briefing.

MS DWYER: Q. You mentioned briefing notes and tasking sheets. Are they retained after the event?
A. Yes, I did for 2018. They should be at Tweed station, for the tasking sheets. And I think the briefing note was there for 2019, but I'm just not sure about 2018. I'm not sure where that --

Q. If the Chief Commissioner was interested, you could look for those and produce them to the Commission?
A. Yes, yes.

Q. You also mentioned joining instructions; is that right?
A. Yes.

Q. What are they?
A. The joining instructions are what is expected. You know, "This is the event." It goes through it. It tells you what clothes you will wear. It tells you what the climate can be. It goes through the - I'm just trying to think off the top of my head - maps of the area. It goes through the whole thing of joining. So it gives you a brief overview of what you can do. But if you haven't got that document, I can get that.

THE CHIEF COMMISSIONER: Q. Yes, it would be helpful to have that, thank you.
A. Yes.

MS DWYER: Q. So the joining instructions for 2018 would have been retained; is that right?
A. Yes, 100 per cent.

Q. You mentioned that you started putting information in about LEPRO a couple of years ago, I think, in your operational orders; is that right?
A. Yes.

Q. What prompted you to do that?
A. I thought it was important that we did that, and I think - jog my memory - 2018, and I knew how important that it is, that we make sure that we get those powers right, especially when it comes to searching of people and their liberty and stuff. And - yeah, I knew the Commission, sir, was interested in looking at searches too, and I wanted to make sure that we were right. And that's why, in the orders for 2019 I put more in there, in relation to --

THE CHIEF COMMISSIONER: Q. Yes, the orders for 2019 differed in some respects from those in 2018, but right now we're looking at 2018.
A. Yes, just --

Q. So I think it's fair to say - have you refreshed your memory by looking at those operational orders?
A. I did. I looked in probably - I think, yes, last night I went through '18, yes.

Q. I think it is fair to say is that there is no reference to the searching process. So we know that searching did take place from time to time of people who were in the line entering the festival?
Q. But I don't think there was anything - I don't recall seeing, you may remind me or Dr Dwyer. I don't recall anything in the operational orders about how that was to be done.

A. Yes, I think, Commissioner - I haven't read the drug operation orders, the two separate orders. I don't know if they do that. But my user-pay police basically didn't - they didn't do those duties at the gates. That was separate. That was the drug dog team who did that.

Q. The drug dog team didn't do any of the searching, did they?

A. Yes, they would have done most of the searches.

Q. That was your understanding, was it?

A. Yes, I - well, my - the OSG, when you look in the orders, you will see where they are down for crowd control, they are down for fence jumpers, logistics and all that. So most of those people are out in the footprint of the festival, looking at crowd movements and stuff, looking at the licensed premises.

Q. I think you are saying - correct me if I'm wrong - that, by looking at those orders that related to the drug dogs, we would expect to find a reference to searching?

A. Yes, there should be. Yes. When I do my planning, because I've got to do so much, and I don't do the other side, it's done by another officer. He does that, he does his separate briefings and does his stuff. Once I have done my stuff, I'm not - I don't really --

Q. So you were not really involved in organising the drug dogs; is that what you are saying?

A. No, not at all. Mmm.

MS DWYER: Q. These operational orders are not just for user-pays staff police, are they, they are for all police involved in the 12 different units, are they?

A. No, they are mainly - every name that is in those - in the back, their orders are for those police. When I send the orders out, they are the only - sorry, sir. They are the only people that I send them to. The officer in charge of the drug dogs sends out his own to his people.

MS DWYER: So can I ask, please, that the witness be shown
a copy of exhibit 40.

THE CHIEF COMMISSIONER: Certainly. It may be easier just to hand him the document physically.

MS DWYER: Q. Could you please turn to page 29 of that document. That should not go on the screen. If you are having a look at that page, you should see there a list of the command; is that right?
A. Yes.

Q. If you turn over the page, there are a number of different call signs?
A. Yes.

Q. Are you saying that this document only goes out to the call signs that are set out there?
A. Yes.

Q. And they are all listed as user-pays; is that right?
A. That's correct.

Q. Do you see at page 30, under the first heading "18 July call sign Splendour user-pays", there are a number of officers, about seven or so, deployed as "search teams"?
A. Yes, they are the ones that do IED searches, which is the searches for the explosives. So prior to the lock-down on that day, we put - we have explosives dogs from the Federal Police come down and we have seven OSG operatives and we go through and lock down all the stages, check all the musical equipment and all that. A lot of the artists stipulate they won't go on stage unless this has been done. So that's all search from OSG.

Q. If you have a look there, a number of the user-pays are crowd control; is that right?
A. That's correct.

Q. Might those officers be involved in searching patrons?
A. They could be, if they were out in the field and, yes, someone - yes, if they had to search someone, yes, they would; they bring them back to the --

Q. They would bring them back to where, sorry?
A. To the command post. We have a custody bus there and they would be - if they had to be searched or - it could be a thing where they might just say, "Have you got drugs on
"you", they might just hand them to the police, you know.

THE CHIEF COMMISSIONER: Q. Say, for example, we have heard that persons coming in to the festival, if they had bags, those were searched?
A. Security did that, Commissioner.

Q. That's security? That's not police?
A. No. That's the security.

Q. And there were tents set up so that if there were searches, personal searches, taking place, that would provide privacy?
A. They would be done in those tents, yes.

Q. Who was responsible for that?
A. I think in the early stages, when we did that, it was --

Q. No, let's just look at 2018.
A. Oh, sorry. It was - in 2018, that was the sergeant in charge of the drug dog.

Q. The drug dog?
A. He would have done that with the assistance of another one of the sergeants at work who does logistics. So he probably would have helped --

Q. Provide the tents and --
A. Yes, but the tents and that are all supplied by the promoters.

MS DWYER: Q. Who are the police who are doing the searching of patrons on entrance?
A. Who are they?

Q. As in which group do they come from?
A. Normally, they would be the drug operation people that are there.

THE CHIEF COMMISSIONER: Q. So, of course, each search has to be recorded?
A. Correct.

Q. The identity of the person searched has to be noted?
The outcome of the search has to be noted?
A. It does.
Q. And an event has to be created on COPS?
A. Correct.

Q. By inspection of COPS, we would expect to find, would we not, the names of the officers who did the search?
A. Yes, correct.

Q. And they would tell us whether they were part of the dog squad or part of some other command; correct?
A. Correct.

Q. And your expectation is, when we look at those, we would find that they were drug squad officers; is that your understanding?
A. Yes, they would be officers from, yes, specifically for that drug dog operation.

Q. Now, the drug squad is a separate --
A. It is totally separate.

Q. -- command?
A. Yes.

Q. So it doesn't come under your control - or did it, in the sense that you were generally responsible and the dog squad was sort of brought in under your umbrella?
A. The police commander Has the overall control.

Q. That's you in this case?
A. That's the superintendent.

Q. Oh, right, but you under the superintendent?
A. Yes, his signature is on the right-hand side of the orders. And then we have, like, forward command inspectors that are there from - normally, say, from 10am to 6pm, then we have a change of shift, another inspector comes on and he goes through to 6 or 2 till 4, depending.

Q. And that inspector would therefore have ultimate responsibility for the conduct of the dog squad - the drug dog squad?
A. Yes, it's confusing - yes.

Q. Is that right?
A. You do. Whether you are physically sitting there looking at what they do --
Q. No, I'm not talking about that.
A. Yes.

Q. What I'm talking about is ultimate responsibility - you have to have responsibility for all the police on that site?
A. Well, exactly, yes.

Q. Did you understand that the drug dog squad had its own operational orders?
A. Yes.

THE CHIEF COMMISSIONER: I don't think we have those, do we?

MS DWYER: We do. Exhibit 5. I will ask that the witness be provided with a copy of exhibit 5.

Q. Inspector, I take it that you see these drug dog operation orders, as part of your preparation for the festival?
A. Well, my preparation probably starts a lot quicker than what they do for the drug dogs, but, yes, normally I could - if I wanted to go and have a look at them just to see what's on there, but I don't know if I did that in 2018. I can't remember whether I --

Q. Isn't that important for you, given your overall responsibilities, to have a look at what the drug dog operation is going to involve?
A. Yes, it is. And I know in 2018, I know that the sergeant in charge that day, I know he did a really thorough job at doing his briefing, because they held the briefing outside of the command post for all the police that turned up. It got that big, and that's why last year we had to move and do the briefings offsite to do that.

But, yes, if I'm there, I will listen to the briefing. But in 2018 I was what they call the OSG commander. So my role, even though I'm there as the police forward commander, my role was to do all the public order for that site. So that's - my role is to make sure that if there's 35,000 people in that area, that they are moving around that area safely and, you know - that's --

Q. You are the police forward commander, you are the
chief inspector of that local area. Were you interested to
know that there were appropriate operational orders in
place in 2018 --
A. Yes, I knew there were, yes.

Q. And did you, to the best of your memory, read the drug
dog operation orders for Splendour 2018?
A. Honestly, I can't remember if I did.

Q. Can you rely on your general practice?
A. I normally do. I normally go through all of them,
because when we save it to what I'll call our P drive,
which is like our police drive, I can then go through and
check most of the documents. But I just honestly can't
say, Commissioner, if I actually read through the orders or
not.

THE CHIEF COMMISSIONER: Q. All right. Let me just get
from you the kind of thing that you expect should be in
those orders - let's not worry about what was, for the
moment. So it's obvious that the purpose of having drug
dogs is to detect drugs - that is, to identify persons who
might be carrying drugs; agreed?
A. Exactly, yes.

Q. It is I think the subject of police instructions that
mere detection by a drug dog does not justify a search?
A. That's correct.

Q. You have to have some further matter that gives rise
to a reasonable suspicion?
A. Exactly.

Q. Correct?
A. Exactly.

Q. But the context in which a drug dog operation is going
to take place at the festival is a context in which, first
of all, just ordinary human experience, and in particular
police experience, would tell you, you are going to find
some drug dog indications - that's certainly going to
happen?
A. Mmm.

Q. Correct?
A. Correct.
Q. You need to say "Yes" for the transcript. That's all, rather than nod your head?
A. Right.

Q. In that event it means you will almost certainly find people that you will be searching. If there is no more than a detection, you don't search them. But there often is more, so you have to foresee the likely possibility you will be searching people; correct?
A. Correct.

Q. And if that, you have to have arrangements for those searches to take place - for example, we've already talked about the setting up of those tents; the police officers have to know, they take someone to the tents to preserve their privacy and so on?
A. Exactly.

Q. So, in other words, in terms of what ought to be in the operational orders is more than just what generally LEPRA says about searches but how, as a practical matter, you are going to enforce LEPRA in this particular situation; do you agree?
A. I agree.

Q. And that's what you think a competent operational order in this - dealing with drug dogs should have. To a greater or lesser of detail, that's a matter for judgment, but you can't ignore the subject matter?
A. No; that's correct.

MS DWYER: Q. Could I then ask that you be shown a copy of exhibit 5. Sir, you are about to be shown a hard copy of the drug dog operational orders from 2018.

THE CHIEF COMMISSIONER: I'm sorry, who is appearing for the officer?

MR MURPHY: I am, your Honour.

THE CHIEF COMMISSIONER: I think we should give you a hard copy as well, so you can follow it.

MR MURPHY: I have a copy, Commissioner.

THE CHIEF COMMISSIONER: Oh, good.
MS DWYER: Q. Would you just take a moment to familiarise yourself with that, sir.

THE CHIEF COMMISSIONER: Take as long as you need.

THE WITNESS: Thank you, Commissioner.

MS DWYER: Q. Tell me when you are ready for a question.
A. Yes.

Q. If you have a look at page 7, you will see reference there to a tasking and a particular date that that is to take place, on 19 July 2018. That's the only page where there is a reference to LEPRA, isn't it?

THE CHIEF COMMISSIONER: I think you can take it from Dr Dwyer that it is.

THE WITNESS: Yes.

MS DWYER: Q. I ask you to accept that. You will see that that suggests that police should at all times be aware of officer safety and police powers pursuant to LEPRA, but there are no specific instructions there as to how searches are to be carried out?
A. Sorry, what page were you on?

Q. Page 7 of that document.
A. Okay. Yes.

Q. Do you agree that there are no specific instructions as to what amounts, for example, to a reasonable suspicion that would justify a search?
A. Yes, I agree.

Q. There is nothing there that would indicate in what circumstances a strip search would be appropriate; do you agree?
A. I agree.

Q. There is nothing there to advise an officer as to how a young person or child is to be searched; do you agree?
A. That was - that's in the orders. I don't know - during the briefing, I would say that would have all been addressed, but because I wasn't there, I can't say that.

Q. Well, first of all, do you agree that that is not
there in the orders?
A. I agree.

Q. Do you think that's appropriate that that information is missing from the orders?
A. Well, it's something that I put in mine.

Q. Do you think that it is - when you say you put it in yours, you explain LEPRA in more detail; is that what you are saying to the Chief Commissioner?
A. I did.

Q. But your 2018 document only deals with powers of arrest, doesn't it?
A. Yes.

Q. And so there's nothing in your 2018 document about how police officers are to conduct searches pre-arrest, is there?
A. No.

Q. Were your user-pay officers ever involved in searching pre-arrest?
A. They probably did. They probably - after the drug dog finishes, which could be, like, 7 o'clock, 8 o'clock at night, then the user-pay police are on, you know, continually. So there could be a stage where, yes, the police had detections outside of that area. Or there would have been - they would have, for sure.

Q. So do you agree, looking back on it and reflecting on it, in your 2018 document there should have been clear instructions for the user-pays police about how to exercise their powers under LEPRA pre-arrest?

Q. So then, Chief Inspector, looking at these operational orders for the drug dog operation, you agreed with me that there was no instruction as to how the police were to exercise their powers under LEPRA. Do you agree with me that there should be?
A. It can be - can be put in those orders, but I think a lot of that would have been covered in the briefings that would have been - because I wasn't there, I can't say what they said, but --
THE CHIEF COMMISSIONER: Q. Let's just go back to the position that although they may not have been - if I can use this phrase - policing the entrance as people went into Splendour - by that I mean leaving the drug squad out, the drug dog squad out - your police would be patrolling the festival itself and the campgrounds and so on?
A. The whole footprint, that's right.

Q. And it is not at all unlikely that they may come across suspicious conduct that suggested the need for a search?
A. And they did, and they - and a lot of the drugs that were detected when the drug dog finished would have been by security, and then handed over to police.

Q. But I'm talking about the other police who are patrolling, and one wouldn't be surprised if they saw conduct which they thought warranted a search?
A. Exactly, Commissioner.

Q. And I understand you to say that although dealing with searches in that context was omitted from your 2018 orders, you agree, in hindsight, that that is a subject which ought to be put into the operational orders for the guidance of officers?
A. Exactly.

Q. Such things as, for example, if you are in the middle of a campsite and you have to search someone, you have to find somewhere private --
A. Exactly.

Q. -- which may not be easy to do, and other practical matters that you need to bring to their attention; do you agree?
A. Exactly, yes.

MS DWYER: Q. Would you, Chief Inspector, have expected that in 2018, if there was no information in the actual drug dog operational orders about, for example, when a strip search of a child was justified, that that would at least be handed over in a verbal briefing?
A. Yes.

Q. I anticipate that the Chief Commissioner will hear evidence from Officer BR5 related to the drug squad, who
provided that briefing, that he did not give any specific
instructions or direction in relation to strip searching of
children under LEPRA, and he just assumed that commonsense
would prevail, and that police officers, as part of their
duties, would be making informed decisions and would be
aware of LEPRA. Do you think that was appropriate?
A. Well --

THE CHIEF COMMISSIONER: Q. Well, do you think that was
adequate?
A. Well --

Q. Let me just give you one matter that immediately comes
to mind - that is, the provisions of section 33 of LEPRA,
which require parent/guardian or some independent person?
A. Yes.

Q. Now, at Splendour in the Grass, a teenager might well
be there with their parents, guardian, older brother, so
they might have relatives there. That's one possibility.
But (a) they might not, and (b) they might not want their
parent to be present in such a search?
A. Exactly.

Q. But then you have to have an independent person there
and arrangements have to have been made to ensure that
independent persons would be available; do you agree?
A. I agree.

Q. And what you have to do is to tell your officers, "If
you are searching a child and they don't want their parent
or guardian, here is where you go to find an independent
person" - say, an SES officer, or is it blue frog or Red
Frogs?
A. Yes, the Red Frogs. They work in with the medical --

Q. But you actually have to tell them where they are
available and how to contact them, do you agree, as
a matter of practicality?
A. I agree. I agree.

Q. Unless, of course, your working hypothesis is that you
don't need to bother about that?
A. Well, with --

Q. First of all, do you agree with me?
A. Yes, I do.
Q. And what worries me, I must tell you frankly, is that I suspect - it may be unfair and evidence will come forward, but I suspect - that that was the working hypothesis, and it's not a good one, is it, if that is so?
A. No, it's not, if that's the case, it is not. I might just add --

Q. But I hasten to add, because of the journalists here, that's a suspicion that I have that might or might not be accurate. But certainly in 2018, one doesn't get in the operational orders any reference to that issue, and you would expect it: "This is the mobile number you call"?
A. Yes.

Q. And it's not in the briefing, because the subject was not, according to the officer who gave us the information, broached at all in the briefing. So on that basis, it seems reasonable to suspect this matter was not foreseen?
A. Well, that's correct, and I, like - when you look at that OSG list, sorry, the user-pay list, there is a lot of - it could be police there that haven't come from the GD background, it could be people that worked in the communications or in another section, you know.

Q. So they may not have familiarity with the rules anyway?
A. Exactly. And what you said is 100 per cent correct, where we've got to make sure we get to everybody and say, "This is so important." You know, because you are dealing with, like you say, young people, you are dealing with their privacy, you are dealing with - I find it, you know, very high priority.

Q. I think you were here when counsel opened, were you not?
A. I did.

Q. And you heard the account?
A. I did.

Q. Now, of course, we have to test its truth.
A. Yes.

Q. But, assuming it to be true, it’s quite shocking, is it not?
A. It is, when you listen to the facts as they were read
out and you think, you know - in all honesty, you say that doesn't sound good, you know, 100 per cent. Without other witnesses giving their - you know.

Q. It's a working hypothesis. We have to ascertain whether it is true or not.
A. Exactly.

Q. But, if true, it is very worrying; do you agree?
A. Yes, yes. And I can say, too, that the commander, the police commander for the operation, the superintendent, is very family orientated, and he went there on days and he looked at the areas and he worried about crowds. He worried about the kids. He worried about those kids like they were his own, you know, and so do I, because I go there and I'm entrusted by the families to look after their kids.

Q. I know, but you can't put old heads on young shoulders, can you?
A. I know.

Q. And we are dealing with, by and large, I think in this context, young police officers?
A. Mmm.

Q. And to my mind, as a relatively lay person, it makes it all the more important that you give them instruction and guidance about particular issues, and it's the older heads who have to predict the problems that arise and make sure that you have done some work so that people know what they are to do in that situation?
A. Exactly. Exactly.

MS Dwyer: Q. Chief Inspector, have you recently familiarised yourself with the LEPRA requirements in relation to searching children?
A. I do - I know - yes, I don't know the sections off the top of my head, but I know that, you know, anywhere - you can't search a child under 10. We know that. And anywhere between 10 and 18, that you must have a patient/guardian or a person, you know, that is nominated by that person. But, yeah, I - yeah, I know that, yeah.

Q. And would you have an expectation that that would be known by the commander of the dog squad?
A. Exactly.
Q. You would be surprised if that wasn't - you would be surprised if there's evidence in these proceedings that neither in 2018 or 2019 did that person consider that LEPRA imposes a requirement that parents or support persons or other persons are required to be contacted prior to the search?
A. That's right. Splendour is an under-18 event, so you have to make sure that, you know, you know what the guidelines are. The other festival we have, Falls Festival, is an over-18s event, which is totally different. You know, you don't really have people that are under 18, but Falls you do.

Q. It is part of your role, isn't it, to anticipate what numbers are going to be relevant for each Splendour, each year?
A. Police numbers, sorry?

Q. Yes.
A. And you liaise with the festival organisers, I think you said, in that regard?
A. Yes.

Q. Does that help to determine, firstly, the number of police overall who are required?
A. Yes.

Q. But it also helps to determine the number of drug detection dogs required?
A. Yes, I don't - I don't do the drug detection bit, I just do the OSG - sorry, the user-pay, OSG.

THE CHIEF COMMISSIONER: Q. So what it is --
A. But I think there are guidelines for how many police per dog. There would - I can't remember exactly what it is, but there would be.

Q. Essentially, what you would do, as I hear you, you would delegate to the commander of the drug dog squad the task of ensuring he has appropriate numbers and appropriate dogs - that's really his area of specialty and you just delegate that task to him; correct?
A. Yes. The hardest part is getting the dogs, because they are a state-wide resource, but we did have our own two dogs. The areas where I work, there is two separate dogs but, anyway, we have to get dogs.
Q. If there is another operation taking place somewhere else, you may have a shortage?
A. Exactly.

Q. But, anyway, that's his problem to work out or her problem to work out?
A. Yes. Exactly.

MS DWYER: Q. In the operational orders for 2018, it nominates the 12 core groups that the police response consists of. Is it your decision that those 12 groups will be involved?
A. Basically, we look and have a meeting and we go, like, "Who do we need to run this?" I only have so many local police, like, OSG. I then have to put what they call an RA in, which is a request for assistance, so I will put that in through our region office to ask for additional staff.

It might be that when I do the original IED search, I have to put an RA in to the bomb disposal unit, because that's their - I think we need a trained operator from that, to do that. So, yes, I've got to do basically requests for assistance for most of those. So that's normally something I do. If I'm not there, I delegate someone to do it for me if I'm not there, but - yeah.

Q. In anticipating the type of police response required, you consider the numbers and also the age range that you are dealing with?
A. The age of the - yes, we --

Q. The age of the patrons?
A. Age of the patrons, yes.

Q. You gave the example earlier that if something is an over-18 event, it changes the nature of the policing that might be required; is that right?
A. It does. If you know you are going to get - you know, we are very lucky because they are a very well-behaved crowd. If they weren't compliant, you would have all sorts of problems, but it's - I think it's - and in our favour, I think the way that we police it, too, we're very friendly orientated.

THE CHIEF COMMISSIONER: Q. You weren't asked that.
A. Yes, sorry, yes.

MS DWYER: Q. Chief Inspector, if you know that you are going to have a number of young people under the age of 18, you know that some of them won't be accompanied by parents; correct?
A. That's correct.

Q. And you know that some of them will be searched by police on the day?
A. Yes, that's correct.

Q. And you know that some of them will be strip searched, or might be strip searched, by police, don't you?
A. That's correct.

Q. And did you anticipate that in 2018, that some --
A. Yes.

Q. -- young people might be strip searched?
A. Yes.

Q. Firstly, were there youth liaison officers present?
A. As in --

Q. Were there any police officers with specific training in dealing with children?
A. There were probably officers that were there under a user-pay or whatever, that are trained in that field, but --

Q. Different question. Did you arrange for any police particularly --
A. No, not that year, no.

Q. You were aware that LEPRA requires that a young person has a parent or guardian or other support person present?
A. Correct, I am.

Q. In circumstances where, you were aware, weren't you, that a young person might choose not to inform their parent for obvious reasons?
A. Yes.

Q. But in those circumstances, there still needs to be somebody acceptable to the young person who can provide them support?
A. Yes.

Q. You are aware that that right cannot be waived by the young person?
A. Yes, I am.

Q. So what arrangements were in place for someone to be provided as a support person?
A. Well, we have our - nearby to our command post is the medical tent, which has doctors and nurses in there, male and female, and also the Red Frogs. So it would be a situation that if we needed a support person, that we would do that. But if --

THE CHIEF COMMISSIONER: Q. I can understand Red Frogs, because they might understand what is involved. But, frankly, if you were just to go to the medical tent and say "Would you mind coming and having a look at this naked teenager", I'm not sure that you would get an enthusiastic response, or, if you did, that that would be exactly the person you wouldn't want to be there?
A. Yes. And you - correct.

Q. So, frankly, when you think about it --
A. I can see where you are coming from.

Q. -- that's not going to work, is it?
A. Plus they are busy, too. I can --

Q. Exactly. So that's not really a resource. Red Frogs I understand because they would understand what has to be involved.
A. Yes, and what --

Q. It is one thing to be present at a pat-down search; it is all together to be different when a child is going to be naked?
A. I can see exactly where counsel is coming from with that, yes.

Q. Some people, quite rightly, especially strangers, would be very embarrassed by it and would not want to be near that kind of experience at all?
A. Yes.

Q. Correct?
A. Yeah, exactly.
Q. So what this highlights is the need to have pre-planning so that people who are appropriate people are available; agreed?
A. I agree.

Q. And is it fair to say that in 2018, whatever the drug dog squad did, you didn't make those arrangements?
A. That's correct.

Q. On reflection, do you agree you should have?
A. 100 per cent.

THE CHIEF COMMISSIONER: We will take the morning tea adjournment.

SHORT ADJOURNMENT.

MS DWYER: Chief Commissioner, I'm told that the name of the solicitor who assisted the complainant, Ms Tracey Randall, can be released. I would ask that there be no non-publication order over her name.

THE CHIEF COMMISSIONER: Yes, very well. There is no objection to publishing her name.

I should make it clear, although I thought it was clear enough from counsel assisting's opening, that although it is true we are investigating a complaint, the fact is that we have a number of complaints, not only at this festival but in other places, of strip searching of children. The Commission has undertaken a general investigation of strip searching, in particular, strip searching of young people, and this is one part of that overall investigation, though it has reference to one particular complaint, but I expect that there will be other evidence of other complaints. Yes.

MS DWYER: Might I ask that a document be placed on the screen, and it is section 33 of LEPRA. The document identification number is 8420996. It is exhibit 14 in your inquiry, Chief Commissioner.

Q. Chief Inspector, I'm going to put on the screen for you what is section 33. Are you reading that there?
A. Yes.
Q. Do you see there that that is section 33 of LEPRA?
You have read that document before, obviously?
A. Yes.

Q. Can I ask you to have a look with me at section 33(3),
which sets out the requirements with respect to strip
searching a child between the ages of 10 and 18. It says
that a strip search of a child between those ages must be
conducted in the presence of a parent or guardian of the
person being searched; or, if that is not acceptable to the
person, in the presence of another person who is not
a police officer and who is capable of representing the
interests of the person being searched and whose presence
is acceptable to that person.
A. I've read that, yes.

Q. What do you take to be the "interests of the child
being searched"?
A. Sorry, what --

THE CHIEF COMMISSIONER: Q. What do you understand by
the phrase "interests of the child being searched", because
the person who is nominated must either be a parent or
guardian or, if not, someone else who is capable of, as it
says, representing the interests of the person being
searched. Of course, we're talking about someone who is
under 18. So what are the interests of that person? Have
you ever given any particular thought to that question?
A. I hadn't, sir.

Q. In other words, it is not enough to have a volunteer;
they have to understand what are the interests of the child
and be able to --
A. Exactly, and you would have to have -

Q. What are those interests?
A. You would have to have someone in a trained role,
I would say, to make sure that all the interests of the
child have been - you know, are there, because I think
that's really important.

Q. You won't get any dissent here.
A. No.

Q. But we do need to just dig a little: what are those
interests? Can you think of what those interests would be?
A. Well, you've got the mental side, too, of someone who
is being strip searched, you know? You've got to think of the wellbeing of that child, like, what after effects would that child have from having that, like, invasive search being done. You know, I wouldn't like it being done, you know, and - yeah, I think that's why you said before it's very important that we have the --

Q. All right. So we have the emotional wellbeing of the child?
A. Yes.

Q. If they are upset, you might say, "Hey, slow down. Let's just take a breather here. Let's just explain a bit more." So you might do that kind of intervention?
A. Yes.

Q. So we understand the emotional wellbeing. What about legal interests? What legal interests do they have?
A. Well, I think it is very important, too, that whoever is doing that strip search on that juvenile, on the young person - to make sure that all the requirements of that search are adhered to.

Q. Can you give us an example?
A. Oh, example of it, that if you had a child who was, say, a 15-year-old, whether it was male or female, like, detected at a festival, to say that they might think that the child has drugs on them or in them or taken them, that you've got to have the mind, as per LEPRA, to go through and say, "Right, you know, what am I looking at for this search? What is the lead-up to the search", if that's what you mean, too, Commissioner - like, is the child coming towards you, you know, are there signs that so --

Q. Well, no, we've reached the stage where you've decided you have a reasonable suspicion, because otherwise there's no occasion for the search. So we've reached that stage and they don't want - or they say, "My mum and dad are in the Sydney" - and we are up at Byron Bay - "I've got no guardian", so they are essentially alone. What kind of interests do you think this person needs to protect to ensure that the legislation is satisfied? What are the interests of the child? What are they? Do you have a view about it or have you never actually considered that?
A. Well, I do, because I'm a parent, and then if it was my child, I would want to make sure that, you know, firstly, if the search was done, that it was done lawfully,
it was in an area where, you know --

Q. Privacy?
A. Privacy. The most - the less intrusive search you could do. If you had to do a search on a child or a strip search on any person, the idea is that if you had to search someone, you would search them in stages, you know, if they had a hat, shirt, any other thing, you replace it as you go, until you get down to the shoes. So you make sure that --

Q. They are not totally naked?
A. Yes. And that the most unobtrusive way that you could possibly do it is done, yeah.

MS DWYER: Q. Would you look, please, at the bottom of that page, at section 33(4) which states that a strip search must not involve a search of a person's body cavities or an examination of the body by touch?
A. Yes, exactly.

Q. You have read that provision before?
A. Yes, I've seen - yes, I know that. You can't do that.

Q. Where it says "a strip search must not involve a search of a person's body cavities", is it your understanding that a police officer can look up the vagina of a young person?
A. No. No. You can ask someone to squat. But, you know, like sometimes people secrete stuff, you know, around the backside area or the front, and I've seen that, you know. But, yeah, it just - it's - there's a certain way you would go and that's it. There's no way you could sort of - I wouldn't, you know.

Q. Have you ever received any training in respect to what you can do, as part of a strip search, lawfully, as a police officer?
A. Training?

Q. Yes.
A. We get training in relation to your LEPRAL guidelines, which is something that's written here, you know.

Q. But the question I'm asking you is do you recall - I appreciate you are a chief inspector so you're doing different duties at the moment --
A. Yes.

Q. Do you recall ever having been trained yourself in what you can do as a police officer when you are strip searching, firstly, an adult and, secondly, a child?

A. Yes, I can't remember times and dates, but there would be something that - that I know that. I'd know that without reading that, that you can't do that.

THE CHIEF COMMISSIONER: Q. Well, now, we have heard cases where - and it's conceded by the searching police officers - they asked a man to squat and then they asked the man to move his genitalia to one side?

A. Yes.

Q. Do you think that's lawful?

A. Well, if it's a situation where you are justified in your search --

Q. Well, the police officer can't do it?

A. No.

Q. Plainly?

A. No.

Q. And you think that, although the police officer can't do it, they can require the person who is being searched to do it?

A. They could ask the person to --

Q. If the person says no?

A. Then I wouldn't be forcing anything. Mmm.

Q. What about squatting? What about the use of force there?

A. No.

Q. Could you force anyone to squat?

A. No, I wouldn't - I could ask someone to squat, because of where they secrete drugs, but if they squatted and that was complied with, then that's --

Q. But if they declined to squat, do you think that it would be lawful to use the amount of force necessary to force them to squat?

A. You could do, you could use force. If you do that, you've got to make sure that it's all recorded, and the
reasons why that you have done that, to justify those actions.

Q. I just want you to think. You have probably used force - I'm not suggesting wrongly - far more than I'm aware of. It occurs to me that to force someone to squat, you would have to use a lot of force?
A. Yes.

Q. Do you agree?
A. You would only use what force as what is reasonably necessary.

Q. That's the test, but do you agree with me that to force someone to squat would be a very difficult thing to do?
A. It would be.

MS DWYER: Q. Chief Inspector, let me read to you what the young person, BRC, says happened after she had been asked to take all her clothes off. She was asked to squat on the ground. She squatted on the ground, and then the police officer squatted down and looked underneath her. Is that permissible, in your view, under LEPRA?
A. I wouldn't do it.

Q. But is it permissible?

THE CHIEF COMMISSIONER: Q. That's not quite the same question, though. I think you just have to answer conscientiously. Do you think that was something that was appropriate to do - if it were done?
A. If it was, yeah, like - exactly, if it was done, depending on the circumstances, obviously, we're looking at that incident, you know. There's - unfortunately, I can just say that I've seen - not seen with my own eyes, I've been there, where we've had young girls that have come into that festival carrying drugs for other people, for their boyfriends, for their mates, and that, and unfortunately they secrete them inside their body. So it is a thing that does happen and it's not uncommon. I suppose if you asked someone to squat and then you had to look, she might - well, she may have had to look just to see, because you would probably see something where, you know, the drugs have been inserted.

So it's - it's hard, but in a normal situation maybe
not. If something that - you know, you look at that and there's evidence that maybe there's something in there, you can. I know for a fact that one of the local service stations not far from this site, that every year, they run out of condoms, and they do that because people put their drugs in and secrete them in their body, no matter where they want to do it. So there's always that risk.

MS DWYER:  Q. That's your best guess, is it, that that's why they run out of condoms?
A. Well, yes.

Q. Is that right?
A. That's what - that's the only time of the year that they --

THE CHIEF COMMISSIONER:  Q. But it may be the only time of the year when you get a crowd, and crowds may be interested in a number of things?
A. That was the general consensus of the people that own the - and I think - I can't tell you how many drugs we have found in condoms, I don't know.

Q. It may be a reasonable guess.
A. Mmm.

MS DWYER:  Q. Is a visual inspection --

THE CHIEF COMMISSIONER:  Q. However, the fact is, if you secreted a condom, whether male or female, on a search, in these circumstances, you can't take it out?
A. No. No.

Q. You've got to take them to a hospital?
A. Got to be a medical.

Q. Or you can ask them, voluntarily?
A. If they want to, yes.

Q. But otherwise they have got to be taken to a hospital?
A. Exactly, yes.

MS DWYER:  Q. Is your understanding that under LEPRA, a visual inspection of a young person's vagina and anus is justified, when they are squatting?
A. Well --
Q. And if you don't know the answer to that, tell us you don't know.
A. Well, basically, I don't. You know, like every single thing's different, but it's - it's something that is not nice to have it to happen to you, and it's also not nice for the police to have to do that role, you know? Like, it's - the last thing you want to do is go to work and have to do that. That's not what you want to do at all, you know, because - and you will find --

Q. Look, we understand that.
A. Mmm.

Q. The question was - and I think you have answered it - you don't know whether that particular exercise is justified or not?
A. No. That's correct.

MS DWYER: Q. Do you know whether it is lawful to conduct a visual inspection of a child's anus or vagina when they are squatting?
A. Well, it says that you can - you squat. It depends on how far you go. It's not written there to say that when they do the squat, you know, you're going to put your head underneath, you're going to look to the side. I suppose you've got to do - you've got to satisfy yourself, are these persons - got a drug inserted inside themselves which later on could cause harm or death to them?

Q. I will read to you the section again. It says the strip search must not involve a search of a person's body cavities.
A. Yes.

Q. Is a visual inspection of an anus or vagina a search of a person's body cavities?
A. Well, it says there not involve a search of a person's body cavities or examination. I don't know, is searching looking? I don't - I don't know, Commissioner.

THE CHIEF COMMISSIONER: Q. The very question indicates - this is the way it occurs to me: there may be in this area no bright lines. However, police are responsible for applying the law. Therefore, at least there should be a corporate view about what is allowable and what is not allowable?
A. Yes.
Q. If the corporate view turns out to be wrong because there is some litigation and a court says it's wrong, or a court says it's right, then, to that extent, the matter is clarified. But it seems to me an impossible position to leave it to a young police officer to have to make a decision without any real corporate position itself taking on these issues. Do you see what I mean?
A. I agree, yeah. Exactly.

Q. The purpose of this is not to identify particular police officers to make findings against, but what is sensible management of this issue is for me by far the most important question. If I may say so, with respect, your difficulty with answering these questions demonstrates to me that there is no real corporate position that is available to an officer that you can look up some discussion or do some role-playing or that kind of work that gives people - gives your officers - some ability to make a judgment in the field situation?
A. Yes, exactly, Commissioner.

Q. Do you see what I mean?
A. Yes, 100 per cent.

Q. One way that has occurred to me, because we've been doing a lot of this, is that sending out emails which have some descriptive advice in them is not all that effective; do you agree? People don't read them or they read them carelessly or --
A. They're on holidays before they turn up. There's a whole multitude --

Q. There is a whole lot of things that can happen?
A. Yes.

Q. One way that occurs to me is that in some commands - it may be different, for example, at Kings Cross or Surry Hills, but most commands will not do, say in a month, more than perhaps half a dozen or a dozen strip searches. So it occurs to me that you could manage a situation where, say, an inspector or chief inspector, once a month, would have a debriefing - no names, no pack drill - of the officers who have done the searches, ask them why, how they did it, why they thought it was necessary, work through the issues in the light of LEPRA, so instead of some kind of abstract or hypothetical training, you are actually looking at what
you do in the particular situations that these police have
had to deal with.
A.  Mmm.

Q.  How long is a piece of string?  When does policing
stop?  There is always more work than you can do.
A.  There is.

Q.  But that occurs to me at least being one way of
dealing with this, and maybe, if every station did this,
say, for three or four months, you wouldn't have to do it
for another four or five years, because that training would
be enough.  What do you think about that kind of proposal?
A.  Every day, like, from my rank we're called duty
officers.  So we have a duty officer log that we fill out
every day for our duties.  In the past, I think it may be
six - probably from the start of the year, on that thing
there, we do dip samples of all, you know - not all, we do
dip samples of the person searches and searches.  So we go
through and we have a look.  We make sure that all our
searches now carry a second narrative, so you have your
general narrative to say stopped, searched, nothing found,
whatever.  We go through and ask for a second narrative and
then we go through and we dip sample those.

Q.  The second narrative gives more detail?
A.  More detail, so we want more detail and we go through
and make sure that that's done.  So that's recorded on all
our logs daily.  It could be a day that you are flat out,
you know, and you don't get a chance to do it, but the next
opportunity --

Q.  That's not quite what I'm suggesting.  I'm suggesting
more proactive interaction with the officers and looking at
concrete - actual concrete situations.
A.  Yes.

Q.  Which is a much more effective way, it seems to me, of
impacting guidance, which is really what we are talking
about, to the younger officers?
A.  Yes, that's why I think we - we have started now, with
that stage, stage 1, in that we just want to improve the
way we do our core business every day, you know, because we
are a very big command.  We have a lot of crime.  We have
a lot of Queensland crime.  We have a lot of juvenile crime
from Queensland that comes across and, you know, it's not
an easy --
Q. And a lot of drug crime?
A. Oh, yes, we have offenders, 13, 14, 15, 16 - stolen cars, you know, they just - they just, I don't know, just don't care, you know? They try and pick easy targets and stuff. Yes, but the thing is, we do have a lot of that interaction with juveniles, but - yeah.

Just a thought now, like, stage 1 of our systems are now, let's go through and let's look at these searches. Let's see who is doing them, you know? Is one officer doing 20? For what reason. One's doing one. Why? A lot of people just - "I don't want to do it", you know?

Q. Well, I can understand there is a degree of personal embarrassment.
A. Yes. But that way - I think that's - well, maybe that's just stage 1, where we're getting at. And I know what you're saying, 100 per cent, I agree with that. But we have started it now by recording all of those, all the event numbers are recorded and we go through and if we do find an issue, then the next shift that officer is on, whatever, we say "In relation to your search, what happened here?" Blah, blah, blah "Can you put a bit more in the narrative". If that's what's happened, you know --

Q. Let's take the festival context, though. After the festival, do you have a debriefing?
A. We do.

Q. To see how the organisation went?
A. Yes.

Q. Whether there are any new issues thrown up and that kind of --
A. We do. Our biggest problem, as I said, we get police from other areas. So our command post, we have little portable MDT computers, and when they run the drug operation we try to start a generic COPS event and everybody goes through and keeps adding, but a lot of the police are visiting police and they will come in to do their COPS entry.

Q. And they are all different?
A. Yes. And there's no computer available. So it could be two weeks later, they are finishing that event. So anybody who is on my list on my orders, I give them...
a Tweed-Byron profile. So when I'm trying to find out what happened, then I'm not looking up Hunter Valley or I'm not looking up Bourke to find - you know, it does eventually come linking back, because the address, it will link back. But come Monday after the event, when we want to go "How many person searches did we have", there are still 20 COPS entries to be finished.

So we are trying to improve on that so that we capture our data better. We had a female inspector this year wholly and solely to do and verify the searches. Then it turned out under the COPS system, once you did your search and hit the enter button, it was automatically verified, and we went - this has gone to the checking stage and it has been checked by the person doing it. So the COPS system in the last, maybe, I don't know if it is two months, I've been off sick for a little while, it could be two months, three months ago, I just forget now, has changed and it can't happen. It has to be verified by a supervisor.

So if you go out and do a search, come back and hit the verification button, it stays there. So it's up to your supervisor. He has to go through and he has to make sure everything is done. If it's not, I mean, "What's happening with this", you know. That was our biggest problem with the festivals was having people from all over the state.

Q. I can tell you we have found a very substantial number of inconsistencies between COPS and facts statements and, you know, it's not good at all. Okay, yes, thank you.

MS DWYER: Q. So you are saying that that new system of verification has been implemented in the last two or three months something; is that right?
A. I think so, yeah. I just - yeah, it wouldn't be - I don't think it's much more than that. It could be --

Q. Was that in recognition of the fact that the documentation was not being properly completed by police?
A. I think it's the fact that people were doing COPS entries and they just weren't right, they just weren't putting in enough. Like, no doubt the search was justified, but you've got to put it in. And then you then need - something so important as that, you need a supervisor, like you do other events.
Q. You just said "no doubt the search was justified", how would you know that if proper documentation is not being kept?
A. Well, you don't. That's why you'd ask for - that's why you'd resubmit it and ask why.

Q. How did you identify that the documentation was inconsistent?
A. Just by reading it, just going to every event. It's time consuming but we go into our station summaries of a day, or put it in a search engine, and say, "Person searches", and up they all come, you know, and go through and we read every one of them.

Q. Was that something that was specifically done after Splendour in the Grass in 2018?
A. No, that was done by the Commissioner's office, as far as I know; I think that was done by COPS. That was not - we wanted that. We were going to - we were going to make that recommendation saying --

THE CHIEF COMMISSIONER: Q. I think there is a general order relating to COPS events that they have to be verified by a duty officer --
A. Or supervisor.

Q. Or supervisor, yes.
A. Mmm.

Q. I think there is a time limit. I can't remember. But very shortly after, each day or each week, it has to be done?
A. Every day on the supervisor's log, once he goes on, he will look, and it could be the fact that it could be an outstation from us, and there's no supervisor on. So our supervisor from the head station then checks those as well. So he has - our supervisors have --

Q. But I think that's a general requirement covering all COPS entries for NSW Police?
A. Yes. It goes under work priority and we check their work priority. It comes on their work-off, and you go, "You've got five outstanding events. Why?"

MS DWYER: Q. You knew prior to the 2019 festival that there were complaints relating to the legality of searches
conducted in 2018; is that right?
A. No, I didn't.

Q. You were not aware of that?
A. I didn't know nothing about this incident until the officers from the police --

THE CHIEF COMMISSIONER: Q. No, not this particular incident, but there were other complaints, were there not? You are not aware of them?
A. No. In relation to searches or --

MS DWYER: Q. Yes, I'm suggesting to you in relation to searches or strip searches.
A. All right.

Q. Did you become aware that there were any complaints about --
A. If there were, sorry, I'm not aware at all. No-one's told me.

Q. Did you participate in a review of any of the search documentation after the 2018 Splendour festival?
A. Our crime management unit goes through, the crime manager goes through, looks at the events.

THE CHIEF COMMISSIONER: Q. No, I understand that. Is your answer no, it wasn't you; it was your crime unit manager?
A. Yes, I don't.

Q. You don't do that?
A. No.

Q. That's not your job?
A. No.

Q. That's what the question was.
A. Unfortunately, I'm planning the next one --

MS DWYER: Q. But prior to 2019, did your crime unit manager or anybody else draw to your attention that there were problems with the COPS entries and other documents for the search in 2018?
A. Like, it could be - not just the fact that it could be a festival; it could be any day-to-day policing.
Q. My question is, prior to the 2019 festival, did your crime manager or anybody else alert you to the fact that there were problems with the documentation of searches in 2018?

A. Not directly to me. There could have been, but I - they would have gone through their own crime management unit and they would have spoken to the people who did the drug dog - but nothing --

THE CHIEF COMMISSIONER: Q. Are you saying, so far as your recollection goes, you were not personally told of any such problems?

A. No, not - no.

MS DWYER: Q. Isn't that something that you would want to know, as the chief inspector, given your role in drafting the operational orders for the festival?

A. Yes, but when - so what - just so I get this right in my head, do you mean just complaints like in relation to how the police conducted themselves at the event or --

Q. No, in relation to the documentation of searches - for example, incomplete documentation about the justification of searches?

A. We looked at the systems and we were going to make a recommendation that we wanted a COPS system enhancement to be done to allow for all of those searches not to be self-verification. But it happened --

THE CHIEF COMMISSIONER: Q. So you have mentioned the self-verification problem. Aside from the fact that it had to be verified to comply with the requirements, does that mean it was because inconsistency or inadequacies in the documentation had been thrown up and, therefore, required some attention to be given to the issue of verification?

A. Yes - sorry, Commissioner, I just didn't understand that bit.

Q. You have mentioned the verification issue?

A. Yes.

Q. Now, verification is a problem simply because the police procedure relating to COPS entries, event entries, required verification by a senior officer or a supervisor?

A. Yes.

Q. And if it was self-verified, well, that was not being
complied with?
A. Yes.

Q. So that's a problem. But what I'm asking about is a different problem; namely, the reliability and consistency of the COPS records themselves. Did the problem of verification become an issue because you were aware that COPS entries were not adequately completed?
A. I suppose before, some could have slipped through and you didn't know. It'd go through - you're not going back checking a lot of events that have already been verified, you know, and there could have been ones, if that's what you mean. And then they could have, you know, slipped through and you wouldn't know. You didn't have time to go back and check all of those.

Q. I understand, but we're not talking about the checking process. We're talking about the entry process. Then we are therefore talking about the content of the information that has been placed on by the original officer.
A. Yes.

Q. Were you aware of any significant - obviously occasionally mistakes are made?
A. Yes.

Q. But I mean significant, endemic problems with the content of COPS records?
A. No. No, sorry. Sorry about that.

MS DWYER: Q. I want to take you to another topic. I've asked you some questions already about LEPRA and the guidance given to junior officers. Can I ask that this page of LEPRA come on the screen, 8420994.

Chief Inspector, I'm directing you to section 31 which relates to strip searches generally. Do you see it on your screen yet, officer?
A. No. I've got it now, yes.

Q. Would you just take a moment to refresh your memory about section 31. Do you agree that it is section 31(b) that is relevant there, because you are not talking about a - this is at a music festival, you are not talking about a strip search at a police section or other place of detention?
A. Yes, in 31(a)?
Q. Yes. You are not talking about those?
A. No.

Q. So it's section 31(b), which reads that in the case where a strip search is carried out at a music festival and the police officer suspects on reasonable grounds that the strip search is necessary for the purposes of the search and the circumstances and the seriousness and urgency of the situation make the strip search necessary. That's the only basis on which a strip search can be carried out at a music festival, isn't it, when a police officer forms a view that it is necessary for the purposes of a search and the seriousness and urgency of the circumstances make a strip search necessary - do you agree?
A. That would be the only time you would do a strip search.

Q. That's the basis for a lawful strip search, isn't it?
A. Yes, according to that, yes.

Q. What circumstances make it so serious and urgent that a strip search is warranted?
A. If the police were of the opinion they thought someone had either ingested something or had something in them that, you know, like, if it was say a condom or something and it broke, or something - but it would have to be something that you would think that would be --

THE CHIEF COMMISSIONER: Q. Let's just think of this stage by stage logically?
A. Yes.

Q. If the person has ingested something, a search is not going to help you find that?
A. No.

Q. If it is in a condom secreted in a body cavity, you are not allowed to do that?
A. No.

Q. Those searches are out. They might be urgent for other reasons because there are, you know, maybe serious consequences, but they are not a 31(b) situation. So you are being asked about what, at a festival - leaving aside the examples you have given - would you think, by way of example, would render it necessary to conduct a search,
assuming you have the appropriate suspicion, because of the seriousness and urgency of the circumstances? Let’s separate out those things. We might agree that the possibility that you have secreted drugs which you have taken might cause you to be seriously harmed. We probably agree with seriousness. Agree?

A. Mmm, yes.

Q. If you found a joint, that’s not really serious in this sense; do you agree?

A. Exactly.

Q. But what makes it urgent? That’s what I have difficulty with? Why is it urgent? I can understand "convenient", because you are 10 kilometres from the closest police station. But "convenient" is not what the section says.

A. It doesn’t say that, no.

Q. I find it, for myself, difficult to think of what would make it urgent. Do you see my --

A. Yes, I’m trying to --

Q. It’s hard, isn’t it, when you actually come to grips with it?

A. It is.

Q. I can understand from a policeman’s point of view, let me say, he’s probably looking at another line of half a dozen that he has to search, but that is his urgency; it’s not the urgency relating to the search. If I may say so - and I don’t say this in a critical way - it seems obvious you have never really grappled with that problem?

A. No, I haven’t. Mmm.

MS DWYER: Q. Do you agree, Chief Inspector, that if you haven’t grappled with it and you are unsure of how to answer that question, it is difficult for a more junior officer on the ground to decide when it is serious and urgent enough to justify a search under section 31?

A. It would be, because there are so many legislations and laws that we deal with, and every day. You know, it's hard being a policeman out there on the street and you're out there trying to do the job. At the end of the day, you're trying to stop people from overdosing and dying and whatever, but that doesn't matter, there's still the factors - and you have the urgency, and you’d say "What is
the urgency?" Someone - you might have information that
the person's got drugs, wherever. And like you say,
a strip search doesn't have to be body cavities or anything
like that; it's just the fact of move your pants open, look
at - you know, undo the string, and then that's a strip
search --

THE CHIEF COMMISSIONER: Q. That is true, and you do get
levels of strip searching. I mean, even asking someone to
remove a shirt is a strip search, and most people - they
might be a bit embarrassed, but most people don't really
find that offensive. It's of course when you bare your
genitalia that it becomes unpleasant.
A. Yes.

Q. But, nevertheless, the issue is this: I can
understand police being impatient, because they have got
a job of work to do --
A. Mmm.

Q. -- with legal limits that appear to be unreasonable.
A. Mmm.

Q. But, at the same time, they are sworn to uphold the
law.
A. Yes.

Q. So they can be torn - I understand that.
A. Yes.

Q. But in the end, from the point of view of the
community and the point of view of the parliament which put
this in - and you will be aware, probably, or you might not
be, but I certainly am. I was on Bar Council when we were
going through LEPRA proposals. They were highly
controversial and much debated between what you might call
the civil rights arm and the policing arm. What happened
was, in the end, the parliament made a compromise, and
this, in this area, was a compromise between the two
positions.
A. Yes.

Q. So just as a matter of fundamental principle, I must
say - and as Commissioner for this Commission - I just
don't see a way around saying, "Okay, if it's practical,
you are entitled to ignore the law": Do you follow what
I mean?
A. Yes.

Q. It's just not available?
A. When I look at that - and then when counsel referred to this as a music event, the seriousness or urgency - you know, like, just getting off the track just a little bit, but we do a lot of OMCG activity up there, motorbikes and things. Unfortunately a lot of those, in the police terminologies, they're tooled up, they're carrying guns, and they've got them secreted. And we do so many searches. Next minute handguns, knives, you know. So to me, urgency for a strip search for that, someone who has intel, you know, priors, whatever, you would have no problem doing that.

Q. And they have mates within easy call?
A. Yes, exactly.

Q. Sure. So the circumstances - the problem with this legislation, it applies to a 16-year-old kid who has a joint in his underpants, as much as it does to an OMCG who has a knife and a knuckle-duster and who knows what concealed.
A. Yes.

Q. So it covers the bases.
A. Yes.

Q. But it seems to me that the result of that is, when you are managing police presence at something like a festival, someone has to actually grapple with those problems and the practical implications of them, explain to the officers what they do and how far they can go and how far they can't go, so they've got some guidance, because they are unlikely to be police who have got 15 years of experience - do you see what I mean?
A. Yes.

Q. Do you agree --
A. Yes.

Q. -- that that is what needs to happen?
A. It is. And I think from '18, we've moved on in 2019 and we have changed the way we have done stuff. Because we are always - every time, it doesn't matter what role you are doing, you are looking at how can you better things? We do it all the time, always go through, "How can we do
this better? Was that satisfactory? Maybe not", you know.
It's hard with policing, you know, because, like you say,
it's not written in black and white, you know.

Q. Everyone knows, you put on a uniform, it's not an easy
job?
A. It is not. After 40 years. I can say --

Q. I can assure you, I entirely accept it. But when push
comes to shove, the law's the law.
A. Mmm, exactly.

MS DWYER: Q. Just on that - I note the time - the Chief
Commissioner asked you for an example of what might be
serious and urgent, and you have effectively given one with
the outlaw motorcycle gang example. If you had before you
a 16-year-old who is saying to you, "I do not have any
drugs on me", and they present to you in the tent, what
would be the seriousness and urgency that might justify
a strip search at all? Can you think of one?
A. I suppose every officer has to make that determination
himself. They say in LEPRA, you know, you have to have the
state of mind.

Q. What would be your view as to what might justify
seriousness and urgency of strip searching a 16-year-old
who is telling you, "I am not carrying any drugs"?
A. Yes, the only thing that I find that could be urgent
like that, a lot of the young kids go there as mules, and
they get them - boyfriends and stuff, they go in. All the
drugs are, you know, on one person, whatever, and to me,
I don't want anybody --

THE CHIEF COMMISSIONER: Q. That undoubtedly ticks the
"seriousness" box, but what makes it urgent?
A. Urgent --

Q. That's the difficulty.
A. Commissioner, I don't know. I don't know.

Q. Can I point out, this might be where a person who is
the independent person might say to the police officer,
"What is urgent about it?"
A. Yes.

Q. And the police officer might say, "Look, I can't say
it's urgent but otherwise we've got to take him down to
Byron Bay police station" - or up to Tweed Heads, or something - "and he probably wants to just go about his business, why don't you have a talk to him." So then the independent person goes and talks to him and the kid might say, "Listen, as long as you are here, okay." Because it is by consent; it answers a lot of issues.

Q. But do you see the importance of having an independent person? And that's one of the interests --
A. Yes. We've - I suppose moving forward from that year, to this year, and then anybody who comes back, who says "Strip search", we have a duty officer or a sergeant there, and he makes a determination he will say, "Why? What's the reason? What's it for?" That's to stop what you said happening. And then - because if you don't know, the urgency might be what I said before, normally you are not going to get that with a 15-year-old girl at a dance party, although some of these rave parties you wouldn't know what goes on there.

But, yeah, now that we're putting these - we're moving forward and we are putting these policies and things in place, to say that before that strip search is conducted, so at any events from us from now on, any strip search goes back to the custody bus, there will be a duty officer there, if not, a senior sergeant or someone, you know, to go, "All right, what's the story with it", and make sure that it's justified.

Q. And make sure that there's someone available, if it's a young person?
A. 100 per cent, which we've done from last year. And I actually did forget, because I know sometimes you get up here and you forget stuff, but we did have Byron Bay, like, community services there last year. I forgot about them. They were the people that we had there last year that could have helped us with that. And this year, just so I'll let you know --

Q. They were on call, were they?
A. No, they were there. No, I think they were there the Saturday and the Saturday night, so they were there. They were part of the Byron Bay --

Q. They were physically there?
A. Yes. They were part of the Byron Bay youth services.
There was people there that could have assisted with that. I just - you know.

Q. We were looking at 2018.
A. Mmm.

Q. We know the situation moved on to 2019.
A. Yes.

THE CHIEF COMMISSIONER: Perhaps we might move to that - now, I think we will go another 15 minutes before we take the luncheon adjournment.

MS DWYER: Q. You just said the Byron Bay community services, the youth services. Do you mean that they were there in 2018?
A. I think so. There is a representative here today, so she would be able to say that, but I think it was - I think they were there in 2018. This year we had the PCYC. We set up a whole different --

Q. Stick with 2018. What briefing did the Byron Bay community centre youth service get about their role and responsibility in being present at strip searches?
A. Yeah, I don't - I didn't discuss that with them at all. They were there, but that wasn't discussed.

Q. You don't know if they even got a briefing; is that right?
A. No, they were there basically for the - to help any of the youth.

THE CHIEF COMMISSIONER: Q. When you say "basically to help the youth"?
A. If there is any --

Q. Just hold on.
A. I'm sorry.

Q. The way I understand you, it's not so much with the search, but after the search, to make sure they are okay? Do I correctly understand what you are saying?
A. It could be just like a safe area for the kids to go, if they have issues, at least they know the people there - it's an area that they can go to.

Q. Who organised that? Who could we ask to tell us what
their interaction --
A. There is a lady here today from Byron Bay.

MS DWYER: Q. What about from within the police?
A. There was - we didn't do anything that year, that I know. I remember in the police, we did for this year. We had our PCYC there. We had a team of police that were there wholly and solely for that, the youth police. We had them - I think probably there were maybe three or four, could have been more officers. They were --

Q. So in 2018?
A. 2018 we didn't have any of that. We just had --

Q. So you are not suggesting that Byron Bay community services were ever briefed by police in 2018?
A. No, definitely never briefed by me, no.

Q. So you are not aware of them being briefed in order that they were to provide support services --
A. No.

Q. -- for children being searched?
A. No, no, no.

THE CHIEF COMMISSIONER: Q. It may well be, of course, because of the nature of the beast, that community services themselves had organised some assistance for people and so on at the festival?
A. Mmm.

Q. Entirely independently of the police?
A. Yes.

Q. Is that right? Are you aware whether that kind of thing happened or you don't know?
A. No, and I think we have - like, we have our Police Citizens Youth Club.

Q. Community liaison?
A. Yeah, we have that, and there was - it could still be the thing where the people, if they are going to be searched, they don't want the police there as, like, the - as an independent, they want someone --

Q. Oh, no, they can't, anyway. It has to be other than a policeman, according to the Act.
A. It has to be, yes. It has to be an ambulance officer or nurse or whatever. But, no, we have looked at that and we have gone - this needs to be, you know, addressed, because it is a juvenile event as well as an adult event and if there is going to be the searches and we're going to be finding the drugs, as you say, we need to have those people there to help us.

MS DWYER: Q. Before I move on from the section that you had in front of you, section 31, can we go back to seriousness and urgency as it related to this case that the Commission has in front of it. You are aware, aren't you, that it was a 16-year-old girl who says that she told police that she did not have any drugs on her, and she told police that she hadn't been around people who were using drugs. That's her evidence?
A. Yes, just what you said today, yes.

Q. I ask you to accept that for the moment.
A. Yes, I didn't know anything about that.

Q. Chief Inspector, it is not enough, is it, to justify a strip search of that child, that you have general information that young people are being used as mules or couriers?
A. No, you wouldn't do that.

Q. That wouldn't justify the seriousness and urgency, would it?
A. No. And if the detection dog just sat down in front of you, that's - you know.

Q. That's not enough either, is it?
A. No.

Q. So there has to be a reasonable suspicion that the young person in front of you has something secreted that justifies a strip search; correct?
A. Some people will say, "Yes, I have." "Have you got any drugs on you?" "Yes." What do you have?" "I've taken it, I've swallowed it", you know, "It's in my hands." There's a lot of people - and young people will do that.

THE CHIEF COMMISSIONER: Q. But we are talking about this particular case.
A. Sorry, yes.
MS DWYER: Q. And this particular young person said that she did not have anything on her and she had not been around anybody that had anything on them?
A. Yes.

Q. What could possibly justify the strip search of that child in these circumstances either with respect to seriousness or urgency?
A. I suppose, as I said before, it's up to the searching police. I don't know.

THE CHIEF COMMISSIONER: Q. No - you are quite right. You are not making the decision.
A. Yes, I don't know.

Q. They have to make the decision. But what you are being asked to do is, you are being asked to think about the circumstances generally and is there anything in those circumstances that suggests to you that the seriousness and urgency requirements existed, or, on what you have been told, would it be your opinion that the seriousness and urgency requirements were not satisfied?
A. Yes.

Q. That's what you are being asked?
A. Yes. And by what you said, what the allegation was, yeah, maybe that there - I don't know, there wasn't the seriousness and that there. The person --

Q. Without my putting words in your mouth, are you saying this: you doubt that those requirements were satisfied, assuming that account to be true?
A. Yeah. It's - like, it's up to them to make - yeah.

Q. Accepted. But on what you have been told, do you doubt that those requirements had been satisfied?
A. Yes, you look at it on face value, what you have said, and you think "Well, was there justification or not"?

Q. Right. That's the question. Now, what's the answer?
A. Maybe, to me, would I do it? Probably not.

MS DWYER: Q. What would make it legal? What would make it lawful? Can I ask you to assume that that young person had no signs of intoxication. A drug dog indicates. She's taken behind the tent. She's asked if she is carrying any drugs on her. She says, "No". Just with those facts
alone, what would make it lawful to strip search that child?

MS CHAPMAN: Your Honour, may I have it noted on the record, so that everyone's clear, that what is being put to the officer is in fact disputed. It's --

THE CHIEF COMMISSIONER: It is a hypothesis.

MS CHAPMAN: It's a hypothesis.

MS DWYER: I will repeat my question because I want you to listen carefully to the elements of it.

Q. A drug dog indicates. A young person's taken behind to the police tent area and she is strip searched. Before she is strip searched, she is asked if she's carrying drugs on her and she says, "No", and there are no signs of intoxication. Can you see any basis, anything that would make it lawful to strip search that young person?

A. Unfortunately, there are a lot of people that will say to you - "Have you got any drugs", and they'll just say "No", and then --

THE CHIEF COMMISSIONER: Q. We understand there are a possible variations. If you say, "I can't say one way or another", then that's your answer. But you are being asked a specific question. Can you please give us an answer. Is there anything that you can see in those circumstances that would justify a lawful search? The answer is "Yes", "No", or "I don't know".

A. Well, based on what you told me, if I was there, as the inspector, and they wanted to do the search, I would probably say no.

MS DWYER: Q. What if it is a young person, in that scenario, the drug dog indicates. She is taken behind the scenes. She is asked if she has any drugs on her, and she says "No." She is asked if she has ever been around anybody who has used drugs and she says "Yes", but maintains she has nothing on her. She is 16 years old. Is there anything that you can see that would make it lawful that the seriousness and urgency would justify the search in those circumstances?

A. Probably not, no.

MS DWYER: Your Honour, is that a convenient time?
THE CHIEF COMMISSIONER: No, I think we need to --

MS DWYER: Press on? May it please the court.

THE CHIEF COMMISSIONER: I intend to adjourn about quarter past 1. So we can move to 2019, perhaps.

MS DWYER: Q. You mentioned earlier that in relation to the operational orders, you had added something in about LEPRA in 2018 or prior to that time; correct?
A. Yes.

Q. And then you made additional changes, did you, in relation to the operational orders for 2019?
A. Yes, I put in - it starts with that heading, the strip searches. I added that to it.

Q. Why is it that you added in additional information about strip searches in the 2019 operational orders?
A. Because I wanted to make sure that all the searches we did were legal and as per LEPRA, and I knew the Commission was looking at those areas, and I wanted to make sure - and we all did at Tweed-Byron - that we were complying with what was expected of us.

Q. So at the time that you drafted the operational orders in 2019, you were aware that there had - that the Commission was looking at illegal strip searches?
A. I think it might have. I think does it go back that far? I think so.

THE CHIEF COMMISSIONER: Q. I think we started in the end of 2017, actually.
A. Yes, I think - yes, I did, yes/

MS DWYER: Q. Was there anything in particular about the Splendour in the Grass strip searches that caused you to add it in or was it the Commission's work generally?
A. No, I just wanted to make sure we were - I had no knowledge of what we're talking about today. I didn't even know that took place. So it wasn't because I thought, "Oh, this has happened."

THE CHIEF COMMISSIONER: Q. No, it was a policy decision you made to expand your operational orders, and you are really being asked, I think, was the essential instigation...
for that - aside from general desirability - that that you understood the Commission was looking at this matter and you wanted to make sure that what you had was appropriately in place?

A. We would have looked at it anyway, from, like, going on from '18. But just the fact that we knew that we wanted to comply with what the legislation, we made sure that we didn't have any - you know, nothing adverse, that people's liberties weren't being, you know, looked at by us. So, no. We looked at it, really.

We did that even with our - like, we have 6 o'clock changeovers of the morning and the sergeants there talk about LEPR and say to people, "Justify your searches", "Justify your searches." It's a common thing we do up there. Because we do so many.

MS DWYER: Q. In the 2018 documentation, in relation to the goal set out in the operational orders with respect to drugs, I won't take you specifically to much of the orders, but is there anything that distinguishes between the targeting of people for use or supply, or is the role of police generally to police the law the same, regardless?

A. Yes, it's the same, yes.

Q. And that was the same in 2019 - the mission was to identify and detect persons in possession of prohibited drugs and to detect and identify persons who might be supplying drugs?

A. Yes, like, that's our main objective, is to get rid of the suppliers.

Q. Is that set out in the operational orders at all?

A. No, that's just policing, yeah.

Q. That's just your objective?

A. Yeah, it's - yeah, you search whether people have got - some of the suppliers are just people who walk through the gate, got 20 or 30 pills on them.

Q. Are police told anywhere at part of the briefing or documentation that the focus at music festivals should be suppliers rather than users?

A. That would be something you'd target. I didn't go to the briefing this year for that, so I don't know what was said. But it would be something where, you know, I would say to someone, "We're out there - there'll be people with
one or two pills, but the people that you really need to get are the ones that come in with 30 and 40 pills."

Q. You are not aware of whether that was part of the briefing or information provided to police --
A. At the drug dog, no, not at all.

Q. In relation to strip searches, as you mentioned, something is added in the 2019 operational orders. If I can ask that you be provided with the document which is exhibit 41. If there is no objection, I will put the page on the screen, 8405994. Have you familiarised yourself with this operational order from 2019 recently?
A. Probably two or three days ago, probably while I was at home, yes.

Q. I will just ask again --
A. I haven't got it up yet.

Q. I will just repeat that number 8405994. Is that up yet?
A. No. Yes, it is now.

Q. Just have a look at that again to familiarise yourself with it, if you will. There is reference to searches generally and a new section referring to strip searches, with information, for example, that it's considered that the occasions for strip searches will be rare and will only occur after reasonable grounds establish the need for such a search. It says that in places other than police stations or other places of detention, a person will not be strip searched unless the seriousness and urgency of the circumstances require and justify a more intrusive search of the surface of the body. A person shall not be strip searched unless that person knows in substance the reason that it is being imposed. Do you agree that there is nothing in the guidelines that specifically gives examples of what might be seriousness and urgency that would justify it?
A. No, exactly. It's not.

Q. So where else might police get that guidance?
A. Probably from experience.

Q. So you just rely on their general experience?
A. Mmm.
Q. Do you agree, after participating in the evidence today and thinking about it, it is necessary to give them more guidance?
A. Yes.

Q. Would you take it from me that there is nothing in these operational orders from 2019 about strip searching of juveniles - the requirements under section 33(3). You agree with me? You just have to answer "Yes" or "No" so we capture it.
A. Yes, sorry.

Q. Do you agree that should be there, given what has fallen out from today's evidence?
A. Yes.

Q. Are you aware, going back to 2018, of the number of general searches that took place at Splendour in the Grass for drug detection?
A. I think - I haven't looked at those figures for a long time. I think there might have been - strip searches might have been 80, and then I think maybe in 2019 it was 16 or 18.

Q. So you can tell the Commission that there was a significant reduction in the number of strip searches between 2018 and 2019. Can I ask you to assume from me for a moment that at tab 17 - so exhibit 17 of the Commissioner's brief - there is an analysis of Operation Brugge search data. I will ask that this come on the screen, 84409334. Can I ask you to assume that the information you are about to see, Chief Inspector, has been - there are numbers that have been crunched by the education and training division of the Commission after reviewing the COPS entries.
A. This is for 2019, is it?

Q. No, 2018.
A. Okay.

Q. So you will see that on the screen now, I hope.
A. Yes.

Q. Do you see it shows that the total searches at Splendour were 512?
A. Yes.
Q. Total strip searches were 143?
A. Yes.

Q. Does that high number surprise you?
A. No, not really, no.

Q. Total young persons searched, 30. Total young person strip searched, that we know of, seven. Does that surprise you?
A. No, not at all. Mmm.

Q. Total searches resulting in items found: 24 per cent of all searches resulted in items found, and only 8.4 per cent of all strip searches resulted in items found. Were those sorts of numbers available to you prior to today?
A. No, I've never seen them before.

Q. So are you aware of whether or not any of your officers, after 2018, collected the information to show how many had been generally searched, how many had been strip searched?
A. Our intel do a spreadsheet for us, and it has on it how many searches, what's done, because we do that, we always release that to the media afterwards, yes, to our --

Q. It is important information for you to know, isn't it?
A. Yes.

Q. How many of your officers are engaged in strip searches, for example?
A. Yes, exactly.

Q. How many children are being strip searched?
A. Yes.

Q. And wouldn't you then want to interrogate the reasons why children are being strip searched at that festival?
A. Yes, probably I - I didn't, but I would say that our CMU, which is our crime management unit, would - they look at that. They look at all those figures and they - not me; me personally, I didn't --

Q. Are you aware of whether or not anybody from CMU paid attention to the fact that there were seven or so young people who were strip searched?
A. I - they would have. And then the amount of young
people that were there and it was - there was seven - like you don't want to see any strip searches, but seven - none would have been better, but you hate to think that people are doing that. But seven and, you know, like, this year, there's 42,500, I'm just not sure how many of them were under 18. I don't know.

Q. Those figures were not brought to your attention?
A. No, I haven't seen that, no.

Q. Do you agree that it is useful for you, in your role as Chief Inspector, to get figures like that after each of the festivals in your command so you can understand what sorts of activities are taking place?
A. Yes, we do. And like you say, when we have our debrief, what do we talk about? We talk about that. We talk about how many searches, how many move-ons, how many assaults. Any sexual assaults? We do a whole screed of all the things that have happened that we capture for that event.

Q. Did you say "we would have", and "this is what we do", but you don't recall getting those figures in relation to 2018, do you?
A. Well, as my role, with the planning, I sort of don't do this actual thing. That's what our crime unit do. But then, you know, what you say is right, because this information is, you know, very valuable.

Q. It is important, isn't it?
A. It is.

Q. And it is relevant to your planning for the next year?
A. Yes.

Q. So you agree that you should be receiving this sort of information?
A. Yes, I'll be definitely looking at that, yes.

Q. Chief Inspector, do you see that the total strip searches were 143 according to this data, and that only 8.4 per cent of them resulted in something being found, an item being found, so it's over 90 per cent of persons who were strip searched that year had nothing on them.

MR EURELL: I object to that. That doesn't necessarily follow, Commissioner. There could be other reasons for
that, such as being held in a bodily cavity, which police
aren't being able to investigate.

THE CHIEF COMMISSIONER: No, that would still mean it
wasn't found. We are talking about when things were found.

MR EURELL: It might not, but it doesn't follow that they
didn't have anything to be found. That is my point.

MS DWYER: I will withdraw the question. I will ask it
differently.

Q. Do you agree, on those figures, over 90 per cent of
persons who were strip searched did not have drugs that
were found on them?
A. If that's what the figures say.

Q. Does that concern you - the number of persons who are
being strip searched with no items being found on them?
A. Yes, well, I - I don't know. It's --

THE CHIEF COMMISSIONER: Q. Let me put it like this:
does it not suggest that many strip searches are carried
out where the basis for the search is extremely slight? Do
you agree with that? That's what that number suggests. If
90 per cent turn out to have no drugs on them, does that
not suggest that you are searching many people where the
reason for the search is extremely slight?

MS CHAPMAN: I object, your Honour. There could be other
possible answers to that.

THE CHIEF COMMISSIONER: Such as what?

MS CHAPMAN: Well, this officer does not know - he doesn't
have the detail of the searches and what was available to
those officers.

THE CHIEF COMMISSIONER: All that is true. I'm sorry, are
you saying that the question doesn't make sense or --

MS CHAPMAN: No.

THE CHIEF COMMISSIONER: What's your objection? I don't
mind if you want to answer it for the officer. What do you
think? Do you not think that if 90 per cent of strip
searches do not result in any drugs, does that not suggest,
to a reasonable person, that strip searches are taking place where there is no proper basis for it?

MS CHAPMAN: No, your Honour, not necessarily.

THE CHIEF COMMISSIONER: Very well. Thank you. That’s the question and that was the answer. We will explore later whether the answer is reasonable or not, but you are appearing for the Commissioner, so it’s a reasonable point to take.

MS CHAPMAN: May it please the court.

THE CHIEF COMMISSIONER: Thank you. It’s not a court, it’s a commission.

MS CHAPMAN: May it please the Commission.

THE CHIEF COMMISSIONER: Yes. I think that’s time for a break, but we will resume at 10 to 2.

LUNCHEON ADJOURNMENT

THE CHIEF COMMISSIONER: Q. How are you feeling? It won’t be long. A. I just took a couple of pills. They were good pills, though.

Q. Legal pills?
A. Yes.

MS DWYER: Q. Chief Inspector, just two further short topics for you. The first is in relation to searching, again. Would you ever think it was appropriate to strip search a child on your own - that is, as the only person in the room?
A. No, no. Never.

Q. Have you ever received any instruction that that is not to be done, or is it something that you just generally understand to be the case, or are you relying on LEPRA?
A. Well, you just - you wouldn’t do it, yes.

THE CHIEF COMMISSIONER: Q. It’s too dangerous, isn’t it; it’s obvious?
A. Exactly. Like, just the allegation, everything, everything’s just wrong about it. Yeah, mmm.
MS DWYER: Q. When you say "allegation", just to finish off that sentence, it's the case, isn't it, that it's not appropriate in terms of the comfort or the welfare of the child, but it also exposes the police officer to an allegation being made; correct?
A. Exactly. Yeah.

Q. Final question, then, is this: are you aware of whether or not there were any KPIs - key performance indicators - for you as police officers at Splendour in terms of drug detection?
A. Sorry, what was that?

Q. I will repeat the question.
A. Yes.

Q. You know what I mean by KPIs?
A. No.

Q. Were there any targets for the numbers --
A. Oh, no, no. We want as less as possible.

THE CHIEF COMMISSIONER: Q. Overall, though, in your region, are there targets for searches?
A. Yes, we have - yes, you have your checks to say that, you know, so many person searches, whatever, break and enters. Yeah, we have that.

Q. And who sets those numbers?
A. I think that's set through our region.

Q. Right. So crime managers or --
A. No, I think we are given those - we are given those by the region. We don't set our own. I'm not in that department, but I don't --

Q. You understand they are set by the region?
A. Yes. I could be wrong, but, yeah.

Q. But if a target isn't met, presumably an explanation must be given?
A. Yeah.

Q. The temptation, though, with a target, is to go out and do a whole lot of searches which you wouldn't otherwise do, just to reach the target - that's the risk that you
take with target setting?
A. It is, and then, yeah, if we don't make the target for
our period, then so be it.

Q. I think the risk is well understood, but that is
a risk, isn't it?
A. Yeah.

Q. And I suppose it really depends on, really, the
inspectors to ensure that it's not misused?
A. Exactly. Mmm.

MS DWYER: Nothing further. Thank you, Chief
Commissioner.

THE CHIEF COMMISSIONER: Now, any questions?

MR MURPHY: Yes, thank you, Chief Commissioner.

<EXAMINATION BY MR MURPHY:

MR MURPHY: Q. Chief Inspector, you indicated that you
were aware of the Law Enforcement Conduct Commission having
an interest in strip search procedures --
A. That's correct.

Q. -- prior to drafting these operational orders in 2018?
A. Yeah, I think it would have been, yeah.


THE WITNESS: '18, no, no.

THE CHIEF COMMISSIONER: It was 2019.

MR MURPHY: All right.

Q. When did you first become aware that there was
interest from this Commission in the Tweed-Byron local area
command?
A. Only when I knew that we had to supply figures, and
that, that the Commission required.

Q. Was that before or after you received the summons
yourself?
A. Oh, that was well before.

Q. So when was that?
A. That I got the summons or --

Q. Just as best you can. No, that you supplied those figures and became aware?
A. Yeah, I didn't supply them, it was supplied through our CMU, our crime management unit. But, yeah, I just knew that - it was in the media. It was common knowledge, you know.

Q. The Tweed-Byron local area command takes in a number of music festival events, doesn't it?
A. It does.

Q. The three major ones are the Splendour in the Grass, the Byron Bay Bluesfest and the Falls Festival; is that correct?
A. That's correct. They are the three major ones. There are a lot of other little ones we have, music festivals and stuff, but they are the three main ones.

Q. Have you had any complaints made directly to you in relation to strip searches at any of those festivals --
A. Never.

Q. -- in the last couple of years?
A. No, nothing.

Q. Are you aware of any such complaints being made to anyone in your local area command?
A. No.

Q. And was it the case that you didn't know about the incident the subject of this hearing until you had received your summons?
A. Yes, and I still didn't know, after that. Until what counsel said today, I had no idea what it was about. No I didn't make any inquiries, I - mmm.

THE CHIEF COMMISSIONER: Q. Well, complaints about any police misconduct would not, in the region or in your local area command, usually come to you, unless it concerned you or your officers; correct?
A. Yes. Exactly.
MR MURPHY: Q. But you weren't aware of any such complaints, were you?
A. No.

Q. You have been off work for a while, haven't you, because of your --
A. Yes, my knee, unfortunately, yes.

Q. When did you last perform, or when were you last on deck, so to speak?
A. I think probably a month ago - probably longer.

Q. Is it the case that there is a policy of ongoing improvement in the way that police handle these music festivals generally?
A. There is. We look at it. Every time we come back, we have a debrief. We look at the areas that we think need to be addressed, and that's why I did a lot more work on '19 than on '18. But, you know, I did more on '18 than I did on '17. You know, it just - you know, there is a lot of factors and that involved but - yeah.

Q. There were fewer strip searches conducted in 2019 at the Splendour in the Grass?
A. That's correct, than '18.

Q. Compared to '18?
A. Yes.

Q. Are you aware of the figures? We have already heard the figures for 2018.
A. It was 6, '18, to 80. I think it was 80 in - yeah.

THE CHIEF COMMISSIONER: I think we can give you those numbers. We have them here. I'll just ask.

THE WITNESS: I think that's what it was.

MS DWYER: We don't have 2019, Chief Commissioner. We have 2018.

THE CHIEF COMMISSIONER: I thought we had 2019.

MR SAUNDERS: Not strip search figures, sir.

THE CHIEF COMMISSIONER: Not strip search figures? I'm sorry.
THE WITNESS: Just by memory, I think it was 80 in '18 and 16 in '19; it was --

MS DWYER: If I can just, assist, it was 143 strip searches, according to our information, in 2018.

THE WITNESS: Oh, right.

MS DWYER: I can't assist the Commission in relation to 2019.

THE CHIEF COMMISSIONER: We rely on our access to the COPS reports, so that's where our numbers are derived from.

MR MURPHY: Thank you, Chief Commissioner.

Q. Are you aware of approximately how many strip searches - subject to verification from proper sources - but yourself as a senior officer in the Tweed-Byron Bay local area command, how many strip searches do you understand were conducted at the Splendour in the Grass festival in 2019?

A. I think there was only 18, 16 or 18.

THE CHIEF COMMISSIONER: Q. Do you have any view about why so few compared to the previous year? Was it the system changed or --

A. I don't know, Commissioner, when --

Q. You mentioned the introduction of a senior officer having to approve it?

A. Yes.

Q. What do you put it down to?

A. Definitely, and I think education, we just - I put out an email from the commander just stating to people that were coming up that, you know, "This is what's expected. These are the searches. You know, LEPRA, do what you are supposed to do", you know, "Make sure what you do is accountable."

Q. So you think they were just generally more careful?

A. I think so, too. And then we did a lot of media stuff, too, I do some media with the promoters. I didn't do a lot - probably as much as I normally do, but just letting people know that there's more police there, that we
have drug detection dogs, you know, you don't want to be caught carrying drugs.

Q. So you’re trying to deter them?
A. "Deterrent", that's the word, sorry. Yes, deter that from happening. And I think a lot of it, it works. A lot of our media goes out - only goes to local media, too. We don't - you know, we try and cover - we might do a national thing to say, but, you know, there's a lot of people come from Queensland, a lot of people from Victoria and places, come up for the festivals. That's why a lot of people camp, you know; day-trippers more - but, you know.

MR MURPHY: Q. It was raised with you by counsel assisting that the issue was raised that there were - well, you were asked if you were aware if there were any people present with specialist youth training for the purpose of assisting in these police searches in 2018?
A. This year we had the PCYC contingent there, this year, interacting.

Q. That's this year. My question is you were asked if there were such people there in 2018. As I recall your answer, you said, "Not at that stage"?
A. No.

Q. So has something happened since along those lines?
A. Yes, the command - and our commander now, he made arrangements and he got the PCYC, or the Police Citizens Youth Club. They came up and they were on site and they were interacting with all the kids, walking around. I think that made a big difference. It just - it makes the - it makes them feel safe. If I had a dollar for every time I had a festival-goer come up to us and go, "We feel so safe with the police here". Really, it does, it makes you feel good when they say that, because you’re not there as this big omen and stuff. And I make sure, I say to them - especially when I'm working in, like, overalls and stuff, that we interact with the kids, and they're good. They'll come up to you, "Can we get a photo taken?" "Yes." Years ago, they'd say "No." Yes, 100 per cent, you can. Interact. People say, "Oh, you'll end up on Facebook". So what? It's just a photo, you know? But we are looking at interacting with the kids more and more every year, starting this year with the PCYC, and then next year we'll do even more.
Q. So that's part of the ongoing improvement process --
A. Yes.

Q. -- that the local area command is undertaking --
A. Yes.

Q. -- with respect to this and the other music festivals within your local area command?
A. Definitely the three that we do. Splendour because it is an under-18 event; the Falls is over 18 and Blues is older.

MR MURPHY: Thank you. I have no further questions, Chief Commissioner.

<EXAMINATION BY MS CHAPMAN:

MS CHAPMAN: Q. You said in an answer just recently that part of your view, or your opinion as to why strip searches have reduced in number between 2018 and 2019 is that one of the reasons was education, and by that you meant education of officers?
A. Yes.

Q. Are you able to elaborate any further about the detail of the education?
A. With the officers in relation to --

Q. Strip searching, yes.
A. Yes, I think that they are more aware now, of their powers under LEPRA and just what they have to do, and I think if there is any doubt, you know, that if - hold back and don't - you know, it's not worth the - to say it plainly, it's not worth the hassle to do that. It's a thing that if you think you don't have enough, then don't do it, you know? We know now, it's - the thing is there's a few little grey areas there, that we need to address, and --

THE CHIEF COMMISSIONER: Q. So you think they are more cautious?
A. 100 per cent they are, yes. Yes. And that shows with the figures and the figures are down. And I think, too, like I said, with the education of the - we call them kids because they are under 18, if they go there, you know, and I think - and more - we talk about - we say to them all the time, we do it in the media, "Look after yourselves. It's
up to you guys, especially with taking drugs or even sexual
assaults, don't make yourself a target" - especially areas
like that, there are all camps, tents, set up, a whole big
area and, "Look after yourselves, and if you see your
friends are going to take something, just have a talk to
them, you know, and try and avoid it." I don't know
exactly what - I think it is a combination, like we said,
of what there is, but definitely that reduction was really
pleasing for me to see.

Q. Is the education delivered in some of the - how is it
delivered? Is it in the meetings? The education to the
officers that has resulted in less strip searching?
A. Yes, we do that. Every - when we have the 6 o'clock
briefing, we have a 6am, 6pm briefing with the change of
shifts, because they are on 12-hour shifts, and a lot of
the sergeants, too, have the new guidelines that were
brought out in September 2019, and they go through them,
or, you know, you will say, "What do you know about LEPRA?
What can you tell me about a strip search? Is that
justifiable?" You know, ask them, so you have that.

Our commander has introduced constables meetings
where, it might be every three months, he gets them in and
talks to them on a team basis and talks to them and goes
through their powers and that with them. Then we have the
EDO, he puts out stuff regularly on different offences, and
then we have our online training now that we do. So there
are a lot of areas that do them. But - yeah.

MS CHAPMAN: Nothing further.

THE CHIEF COMMISSIONER: Very well. Anyone else?

<EXAMINATION BY MR EURELL:

MR EURELL: Q. Sir, I represent the interests of
Officer BR3. Do you have the code names document there?
A. No.

MR MURPHY: I will make mine available, if that would
assist.

THE CHIEF COMMISSIONER: It's all right. We will give him
the name.

MR EURELL: It might be of some assistance,
Chief Commissioner, if he does have that.

Q. It is the case, isn't it, Chief Inspector, that Officers BR2, BR3 and BR4 were allocated as a search team at the event in 2018?

A. I don't know these officers at all. I didn't have anything to do with that.

Q. You didn't have anything to do with allocating the teams?

A. No, I don't do that. That was the sergeant in charge of the operation - the drug dog operation - will allocate those search teams. I don't know that name.

Q. Is that officer BR5?

A. Sorry?

THE CHIEF COMMISSIONER: He doesn't have the list. We can give him a list.

MR EURELL: Q. That last question, Chief Inspector, was is it officer BR5 who allocated the search teams?

A. Yes.

Q. The procedure, though, for the search teams, was, if I understand it correctly, that there was a male and a female searching officer allocated to a dog handler?

THE CHIEF COMMISSIONER: I think the first question you should ask is whether this officer actually knows what the procedure was.

THE WITNESS: Yes, I have - I don't know. I know that they work in teams. You have, like, five officers with one dog, and they work as a team. Every officer is a searching officer and then if they do find something or whatever they then come back, and if there is not enough - if they have two or three detections then the dog stands down until they are ready then they go back again, yeah.

MR EURELL: Q. Those officers that were working with the drug-handling officers - sorry, the dog-handling officers, were they briefed with the operational orders for the drug dog part of the operation?

A. They were briefed by BR5 at the - in 2018 at the site.

Q. With the operational orders for the drug dog part?
A. Yes, with them only.

Q. With those only?
A. Yes, because that was their sole role.

Q. One final question. Can I ask you, were there facilities available for the police officers to access the computerised operational policing system, like, a data terminal at the event?
A. Yes.

Q. Where was that located?
A. We have a shared - there would have been probably four.

Q. Whereabouts?
A. Within the command post area we have it at the command post, we have a meal area, we have another area that you can bring people back to talk to them and that's where we have the portable MDTs. There's one in the custody bus. Some of the cars have them in there as well.

Q. Where was the command post in proximity to the search?
A. You have the festival footprint's basically in front of you, and the command post is just back from there. So it was just in walking distance to walk into the festival site. Then the back of the command post now is now where the main gate is where they come in. So we were just outside of the footprint, out of the licensed area, but we were in the - just there. Not far.

MR EURELL: Thank you, Chief Commissioner.

THE CHIEF COMMISSIONER: Q. Can I ask you this: when someone was arrested for any offence - it doesn't matter much - where were they taken? Where were they processed?
A. We have a bus that comes up from Sydney. It's a proper custody bus. It has a dock in it. It has the terminals and stuff. So most of the people are processed through that, plus, if that's tied up, then we've got --

Q. And many of them would be granted bail then and there, but not everybody?
A. No, only - we just do the minor ones there, and anybody else is taken to Byron Bay or Tweed, mainly Byron.

Q. By car or by the bus?
A. We normally have a Sprinter van. We have a transport unit that comes up from Sydney. So it’d either be by caged truck or by the Sprinter van. That's for someone that's going to be charged and bail conditions.

Q. Would that be done immediately or would you wait till you had three or four and --
A. No, no, it's every - individual.

Q. As it happens, they are taken?
A. Yes.

<EXAMINATION BY MS KLUSS:

MS KLUSS: Q. In relation to the COPS entry, do you have a copy of that available? Might that be made available.

THE CHIEF COMMISSIONER: What COPS entry?

MS KLUSS: The COPS entry E number 68641733.

THE CHIEF COMMISSIONER: Perhaps you might bring that up on the screen. Would you read the number again?

MS KLUSS: 68641733.

THE CHIEF COMMISSIONER: That's all right. As long as it remains on the screens and is not given out, it will remain confidential.

MS KLUSS: I am happy if the witness simply has access to a hard copy. It is just in relation to the generation of a date.

THE CHIEF COMMISSIONER: In that case, can we give him a hard copy.

MS DWYER: Exhibit 4.

MS KLUSS: Q. Just in relation to your knowledge of the generation of COPS entries, you would notice the column there, "Narrative details/description", which appears as a heading about a quarter of the way down the first page, and there's, "Automated narrative created on" in the line
that is attached to that particular heading, on the first page. Can you see an entry that says "Automated narrative created on 20/7/2018, 19:55"?
A. Yeah, it was created on - at 19:55, and the incident - I'm just looking at what time the incident happened.

Q. Thank you. But what I'm asking you, sir, is in relation to that automated narrative created on 20/7/2018, 19:55, that would indicate the time at which this particular entry was generated on the computer, would it not?
A. Yes.

Q. That indicates it's about 5 to 8 in the evening. The following line records, "At 20/7/2018 at 15:00" - would that indicate the time at which the event, the event that the entry records, actually occurred?
A. Are you asking what the difference in the times are?

Q. No, I'm just asking you is that what it means? The 15:00 would have been put in by the police officer, but the 19:55 was generated by the computer?
A. A lot of these COPS entries are done - because I don't do the drug dog and I don't know, I know a lot of the COPS entries are pre-started by the drug people, because there's so many of them go through, so it sort of gets them through quicker. But I'm just trying to work out - the automated narrative was, like you say, created at 19:55, 5 to 8.

Q. Can I just pause you there. Does that mean that the computer generated the narrative at 19:55?
A. Yes, whatever that time is, that's when it was done. Yes.

Q. Thank you. But the following line would have been an entry that was made by the officer as to when the event occurred?
A. Yes. That's what he has put up, and that's what comes up on that first part of the search. As I said before, when we look at the searches, that doesn't tell us anything. So that's why we request that second narrative, where it then has, "The young person was stopped", so it lets you know the story. Otherwise, just going on the top bit, that doesn't tell you anything, so you don't know.

MS KLUSS: It is more the times I'm interested in, thank you.
THE CHIEF COMMISSIONER: Thank you. No more questions? Thank you, officer. You are free to go. Have a good outcome for your surgery.

THE WITNESS: Thanks, Chief Commissioner. I will let you know.

THE WITNESS WITHDREW

MR MURPHY: Chief Commissioner, might I be excused for a few moments?

THE CHIEF COMMISSIONER: Yes, certainly.

MS DWYER: Chief Commissioner, I call, if I may, Officer BR2. Perhaps Mr Hammond might assist. We are looking for his client, Officer BR2.

MR HAMMOND: If I could just be excused for that purpose, Commissioner.

THE CHIEF COMMISSIONER: Thank you.

<OFFICER BR2, sworn: [2.27pm]

THE CHIEF COMMISSIONER: Thank you, officer, you may be seated. Now, has your legal representative informed you of the scope of this examination?

THE WITNESS: Yes.

THE CHIEF COMMISSIONER: It is generally into strip searching conducted by the NSW Police Force, focused on, but not limited to, juveniles. But, so far as you are concerned, we're going to ask you questions about the operation at Splendour in the Grass, where I think you performed some duties; is that right?

THE WITNESS: Correct.

THE CHIEF COMMISSIONER: I'm sure your lawyer has told you this, but there are some things I need to tell you, though it is repetitious. The first is you must answer all questions that you are asked, unless I tell you you don't have to. You must produce anything you are asked to produce, unless I tell you you don't have to produce it.
THE WITNESS: Okay.

THE CHIEF COMMISSIONER: In order to avoid the necessity of your objecting to any question, although, if you do object, you still must answer it, or your objecting to producing anything, you still must produce it, but in order that you don't have to object on each occasion, I can make a declaration to the effect that each of your answers are given under objection and everything you produce is given under objection.

The legal effect of that is, although you still have to obey the question or give the answer, except for disciplinary proceedings possibly being taken under the Police Act, nothing that you say can be used against you in any court proceedings. Do you understand?

THE WITNESS: Yes.

THE CHIEF COMMISSIONER: Do you wish me to make a declaration?

THE WITNESS: Yes.

THE CHIEF COMMISSIONER: I make a declaration pursuant to section 75 that all answers and other things given by this witness will be regarded as having been given on objection by the witness. Yes, thank you.

<EXAMINATION BY MS DWYER:

MS DWYER: Q. Sir, you have the rank of senior constable; is that right?
A. Yes.

Q. You understand, do you, that you are known in this inquiry as Officer BR2, but the Chief Commissioner and those appearing are aware of your full name?
A. Correct.

Q. I just want to ask you some questions to start with about your background. What role are you performing currently within the police force?
A. I'm a dog handler.

Q. And how long have you been in the NSW Police Force?
A. Fifteen years.

Q. When you joined, did you perform general duties for a period of time?
A. Yes, I did.

Q. How long have you been a dog handler for?
A. Since 2013.

Q. What training is involved in that role?
A. Ongoing training. Initially you go through a selection process and you get picked. Then you get buddied up with your dog and you go through a 12-week training course.

Q. Are you buddied up with a dog that is, in your case, specifically used to target the detection of illicit drugs?
A. You go through the training to make that a police dog but, yes, that is the end result.

Q. So it is not a dog that is also used in circumstances at the airport to detect fruit, for example; it's specifically for drugs - is that right?
A. No, that's right.

Q. And are you also, as part of your training, instructed about LEPRa?
A. Yes.

Q. And do you receive ongoing training with respect to LEPRa?
A. Yes.

Q. You understand, don't you, that the indication by a drug dog towards a citizen is not enough, of itself, to constitute reasonable suspicion?
A. That's right.

Q. And you have been told that as part of your training; is that right?
A. Yes.

Q. In 2018, you were performing the role as a dog handler at the Splendour in the Grass festival at Byron?
A. Yes.

Q. Is that the first time that you had performed that
role at the Splendour in the Grass music festival?
A. No. I had been there last year - the year before, 2017.

Q. 2017, 2018, and were you there in 2019?
A. No.

Q. Have you performed a role as a dog handler at other music festivals?
A. Yes.

Q. When did you first start doing that?
A. Soon after passing the course in, say, August 2013.

Q. So is it a regular part of your activities as a dog handler to attend various music festivals around New South Wales with your dog?
A. Yes.

Q. Have you received any training specific to what you are to do at a music festival?
A. How do you mean?

THE CHIEF COMMISSIONER: Q. Well, for example, there are occasions when drug dogs are used at markets, at fairs, on railway stations and so on. There are various environments where drugs might be found.
A. Yes.

Q. So what you are being asked is, so far as the festival environment is concerned, did you receive any specific training that related to that kind of work?
A. No.

MS DWYER: Q. In relation to the Splendour in the Grass festival in 2017 and 2018, did you attend a briefing as to what your duties were to be?
A. Yes.

Q. Was that briefing conducted on the morning before the festival commenced, or some other time?
A. In the morning.

Q. Did you attend a briefing on each morning that you were there with your dog?
A. Yes.
Q. Were you there on more than one day with your dog on each occasion?

THE CHIEF COMMISSIONER: Q. The festival went for four days. Were you there each day or --
A. I think in 2017 I was there for three days.

Q. And 2018?
A. 2018 I think maybe two.

Q. And you said you weren't there this year?
A. No, I wasn't there this year.

MS DWYER: Q. The briefing is repeated on the morning before the festival commences for that day; is that right?
A. Yes.

Q. During that briefing were you given any particular instructions about what you were to do as a dog handler on that day?
A. No. Just generally you would be going to this gate and that's where you'd be working the shift.

Q. Do you recall in 2018 whether or not you were given any particular instruction about LEPRA?

THE CHIEF COMMISSIONER: Q. Can we just come back to the physical environment. So you had people coming in a gate. You were with your dog on one line and someone else on another, or how did that work?
A. At this event you can also camp there, so there was - I'm not sure if it was the Friday or the Thursday, but you could come in in your car and also come in via bus. I don't think there was much - there might have been a parking lot, but I didn't see that, but a lot of people came in by bus or by their own car to the event.

Q. Yes, I know, but you were at the entrance, or near the entrance?
A. Yes, yes.

Q. And was it you and just one dog, or there was another handler with another dog? Can you recall?
A. No.

Q. You don't remember one way or another?
A. No. Because I've been there a couple of times.
I don't know on that specific time if there was another handler present, yeah.

Q. Okay, it matters not. You, however, didn't work alone; you would have had two or three others, or how many were, as it were, in your team?
A. Of dog handlers or other police with me?

Q. Well, other police with you?
A. There would have been at least 10 minimum with me working at a particular gate at that time.

MS DWYER: Q. I will just ask you, then, picking up from the questions already asked, about what happens after that? You are there with at least 10 others on a particular gate?
A. Yes.

Q. Prior to that, as I understand it, you were not given any other specific instructions about what you were going to do, you were relying on your general training; is that right?
A. Yes.

Q. So what is the procedure for you? What do you do when patrons are entering the gate with your dog?
A. Depends how - if it's a big crowd, you try and manoeuvre through the crowd, if there's a gap or opportunity to get through. And the alternative, if they are in a line, then you would target every person in the line.

Q. At certain points, a dog might indicate in a particular way; is that right?
A. Yes.

Q. You are trained to understand your dog and why it is indicating or why you think it's indicating?
A. Yes.

THE CHIEF COMMISSIONER: Ms Chapman, you need to be aware of this, and alert, I think, if we move on to areas that ought not to be in the public domain. I am going to ask whether any particular indication indicates a particular drug or a particular quantity of drugs. I can get him to write the answer, but is this a matter which ought to remain confidential?
MS CHAPMAN: Thank you, Chief Commissioner. I suppose any - it could be. I don't know.

THE CHIEF COMMISSIONER: The answer may simply be "no", or "yes", I don't know, but can he be given a plain sheet of paper, please.

Q. What I'm going to do is I'm going to ask you whether a dog can indicate either quantity or nature of the drug. So the first question is quantity and the next question is nature. Just put a "yes" or a "no" next to them and hand it to me. So the first is quantity, yes or no. The other is nature, yes or no.
A. (Witness complies with request).

Q. Thank you for that. Anyway, there is an indication. We don't need to ask how it happens. We are all familiar with it sitting, and perhaps there are other kinds of indications. So the dog indicates to you that it has detected a drug. What happens then?
A. So what I say is the same every time. I introduce myself to that person, caution that person, and then ask them the question do they have any drugs.

Q. So you say, in effect, "You don't have to answer this question" - is that right?
A. Yes, that's right.

Q. -- "Unless you want to, but I have to ask you, are you carrying any drugs?"
A. Yes.

Q. Let's assume the answer is "yes". What happens then?
A. Then I immediately feed the dog, because the dog has done the right behaviour by showing me that there are prohibited drugs there. If it is "no", then, hopefully, at that time other police have come over and seen the interaction with this person.

Q. So other police should be observing what has happened?
A. Yes.

Q. They see the indication as well.
A. Yes.

Q. Okay. So you get a "yes" or a "no". Let's assume it's a "yes". Other police come and, what, take the person
away?
A. Yes, I will have a chat to them and basically say --

Q. You say, "He's told me" - let's assume it is a "he", "He has told me he has drugs so" --
A. Yes, "Do what you need to do."

Q. What if the answer is "no"?
A. Then it is the same process - the dog doesn't get fed, and I say, "Have a chat to these police that are behind you", or "behind me."

Q. So a chat still takes place?
A. Yes.

Q. Will you usually listen to that chat or will you just go, take your dog and move on?
A. No, I'm moving on.

Q. You are out of it then?
A. Yes, next person.

Q. And those police - that will be two police?
A. Yes.

Q. So although you said there are 10 others - do you remember you told me that?
A. Yes, I did say that, yes.

Q. -- the two that come, are they sort of assigned to you for that period or do they just happen to be the two that are closest to you?
A. They are assigned to the drug dog operation, so they are assigned with me, yes.

Q. So that makes three of you altogether, you as the dog handler and two police officers. They are or are not members of the squad - what do you call yourselves, the dog squad?
A. The dog unit, yes. No, they are not part of --

Q. They are just general police?
A. Yes.

Q. And they are on duty to do what needs to be done once the dog has indicated?
A. Yes.
Q. And you are not part of any further interaction with that individual; is that right?
A. That's right, yes.

Q. So you don't know whether they are searched, whether they are not, whether they are strip searched or anything of that kind?
A. No.

Q. Is this the procedure that is generally followed?
A. Yes.

MS Dwyer: Q. Senior Constable, I think you have given evidence - the patron says they don't have drugs on them, you say, "Have a chat to these persons"; you don't say, "You don't have to have a chat to those persons, but they would like to speak to you"? You just invite the patron to have a chat to the officers?
A. Yes.

The Chief Commissioner: Q. So from your point of view, you are not actually exercising any LEPRA powers at all?
You are not searching --
A. No.

Q. -- you are not charging, you are not arresting, and all you do, the most you do, is to give a caution and get an answer, and then pass that answer on to other police?
A. That's right.

Q. Do I correctly understand it?
A. That's right, yes.

Q. So far as you are aware, this is the general practice?
A. Yes.

Q. You are not just one out; this is what dog handlers do?
A. Yes, that's what we are instructed to do.

MS Dwyer: Q. Do you know where your power to use the dog comes from in this instance --
A. Yes.

Q. -- at the music festival? Where?
A. LEPRA, 148.
Q. Are you aware of any warrant that specifically exists in relation to this music festival, Splendour in the Grass, for a particular year?
A. I think there was a warrant, but --

Q. Not something you are shown beforehand?
A. I might have been shown it but I - yeah, I don't know if I saw it or not.

Q. Do you take any notes in relation to your activities on the day with individual patrons?
A. No.

THE CHIEF COMMISSIONER: Q. So you don't take their names; they just remain anonymous, from your point of view?
A. That's right.

MS DWYER: Q. So there is no record as to what your dog has done with a particular person in writing?
A. No.

Q. Have you ever been asked to give evidence in court in relation to a particular search of a patron?
A. Yes.

Q. And you have to go on your memory from that particular day; is that right?
A. Yes.

Q. After the event, you don't sit and write as much in your memory as possible?
A. No.

THE CHIEF COMMISSIONER: Q. And there is no requirement for you to make an entry in your notebook?
A. No.

MS DWYER: Q. What about a COPS entry? Are you required to make any COPS entry?
A. No.

Q. Is it the case that a particular police officer who is involved in searching somebody or detaining them ever comes back to you and asks you questions about what the dog did?
A. Yes, that has happened. Sometimes police may come back and say, "We found this", or "We didn't find
Q. But that's only to give you general information about what has occurred; correct?
A. Yes.

Q. They don't come back and say to you, "Look, I just want to follow up on what actually the dog indicated there"?
A. No, it's - yeah, it's standard.

THE CHIEF COMMISSIONER: Q. There has been a lot of work done on the best way of training these dogs - you are aware of that?
A. Yes.

Q. And it has changed over the years - developed, refined; agreed?
A. Yes.

Q. Tests are conducted, blind tests are conducted, as to which methods are most effective; is that right?
A. That's what I've read in the media as well, yes.

Q. But you are not personally aware of that?
A. Well, I am aware, yes.

Q. You have participated, I take it?
A. Not in that training where you have mentioned being blindfolded, no.

Q. Are you aware of the statistics - I'm talking about NSW Police dogs, although I think it is probably commonly shared amongst Police Services, but are you aware of the statistics of the proportion of false positives by dog indications?
A. Yes.

Q. And what is the source of your knowledge?
A. What I read in the media as well.

Q. But you have had no official information?
A. No.

THE CHIEF COMMISSIONER: Thank you. I won't take it further. We can look at the media just as well.
Ms Chapman, I have asked for this information some time ago, and then there was some toing-and-froing and clarification and it just fell between the cracks. I am aware that there is such research, and so could I ask you, through you to the Police Commissioner, would you supply to the Commission that research, please?

MS CHAPMAN: If I can take some instructions about that, Commissioner, overnight?

THE CHIEF COMMISSIONER: Yes, perhaps if you take some instructions and come back tomorrow. I mean, it's true we could issue a section 54 notice, but, frankly, I think a question directed straight to counsel is just the simplest way of doing it, but if there is an issue about it or you are told that no such search is conveniently available, then we will take it from there.

MS CHAPMAN: Yes, understood.

THE CHIEF COMMISSIONER: Do you think tomorrow would be good enough for you to make inquiries?

MS CHAPMAN: We will certainly try our best.

THE CHIEF COMMISSIONER: All right. Thank you for that.

MS DWYER: Q. Senior Constable, you are aware, aren't you, without going to the specifics that are going to be investigated further, that in a significant number of cases the dog will indicate, a search will be conducted and no drugs will be found. You are aware of that?

A. Yes.

Q. What are you taught in relation to whether or not it is actually possible for a dog to falsely indicate?

A. Nothing.

Q. Is it your belief that there are circumstances where the dog gets it wrong?

A. No.

Q. You believe that every time a dog indicates, that somebody must have drugs on them; is that the case?

A. No.

Q. What is your view in that circumstance?
A. It might be in their clothing; they might have touched it.

Q. It might be in the air around them; is that right?
A. Yes.

Q. It might be, in fact, the person next to them, rather than them, is that the case?
A. No.

Q. In a number of instances there is reference in COPS entries --

THE CHIEF COMMISSIONER: Q. What you are saying, I think, is that drugs may be, as it were, one way or another on the person, but not in a way that is visible in any search; is that the substance of what you are saying?
A. No.

Q. I'm sorry, well, then, in that case, I didn't understand your answer. Perhaps if you could explain?
A. So if you are saying that they were not visible in the search, so they couldn't find them - is that what you are saying?

Q. Yes.
A. It might have been the case where they had it in their pocket, used it, and then they don't have it no more; the dog will still indicate on that person.

Q. Yes, but I think that is exactly my situation: there may be microscopic or tiny parts of drugs, but not visible to the searcher. That's what I meant.
A. Sorry.

Q. Is that your understanding - even such tiny quantities could be detected by the dog but are simply not available on search, because they are not visible on the search?
A. That's right.

Q. Is that what you understand the position to be?
A. Yes.

Q. So, in that sense, your view is there are no false positives; your view is that there is always, one way or another, some contact with drugs, even if the search is inconsequential?
A. That's right.

MS DWYER: Q. Or, rather than it just be on their person previously, I think your evidence is it could be in the free airspace around that person; is that right?
A. Yes.

Q. So it could be that they walk into the space that another person has been in previously who has drugs on them?
A. Yes.

Q. In which case, that individual themselves might not have ever come into contact with drugs, but they have walked into an airspace which has come into contact with drugs?
A. Certainly possible.

THE CHIEF COMMISSIONER: Q. And this is because of the extreme sensitivity of the dog's ability to smell?
A. Yes.

MS DWYER: Q. What is the basis for your belief in the answers that you have just given to the Chief Commissioner?
A. The amount of years I've been working the drug dog, particularly at railway stations. I guess the easy example would be with cannabis. If someone's smoking it and the person walks past it, maybe even a day later, the dog will still indicate on that person.

Q. That means, doesn't it, that another individual could walk into the airspace that somebody has been smoking cannabis in, and they have got nothing to do with drugs but the dog will indicate them; correct?
A. Potentially, yes.

THE CHIEF COMMISSIONER: Q. Cannabis I understand, because in some ways, it's a bit like nicotine, you can always smell - we can smell nicotine when someone has smoked even some time before, so a dog is obviously far more sensitive to that?
A. Yes.

Q. But drugs which are not so volatile, as it were, I'm a bit sceptical about, but you think also it can happen?
A. Yes.
MS DWYER: Q. So MDMA, if an individual has walked forward a couple of metres carrying MDMA, and another individual walks into that airspace, the dog might indicate on the next individual who is not carrying drugs.
A. Perhaps not with MDMA.
Q. Not with MDMA.

THE CHIEF COMMISSIONER: No "perhaps not" is the answer.
Q. So sometimes "yes" and sometimes "no", but you don't know, is the answer?
A. Yes, I don't know.
Q. Because it is in a pill which has been - well, it is in pill form and it is not volatile?
A. That's right.

MS DWYER: Q. Have you received any training as to what drugs will leave a lingering scent that will be picked up in the airspace?
A. No.

THE CHIEF COMMISSIONER: Q. That's not a matter for you. The dog is trained, you indicate, and then other police take on whatever that information is worth?
A. That's right.
Q. That's your position?
A. Yes.

MS DWYER: Q. In relation to the operational orders for a drug dog, are you given them at all at any time?
A. Yes, I think we are, a week prior to the operation.
Q. Are you aware that in 2018 there was a reminder generally about police powers in LEPRA?
A. No.
Q. That wasn't something that you paid particular attention to anyway; is that right?
A. No.
Q. In relation to what you were to do at the music festival in 2018, is it the case that you, with your dog, do not distinguish between persons that might be carrying drugs for their own use - that is, a small quantity - and
those who are carrying a greater quantity?
A. No, there is no difference.

THE CHIEF COMMISSIONER: Q. I suppose the greater the quantity, the more likely detection will be?
A. Yes.

Q. But aside from that, one can't say much?
A. No.

MS DWYER: Q. Have you received any training to tell you whether, with respect to a drug like MDMA, the greater the quantity means that there is more likelihood of detection?
A. No.

Q. In relation to searching, prior to 2013 you were involved in general duties. Have you ever been involved in a strip search of an individual?
A. No.

Q. Have you ever received any training as to what circumstances would justify the strip search of an individual?
A. Yes.

Q. Do you recall receiving any training about what would justify the strip search of a child?
A. No.

Q. Do you recall --

THE CHIEF COMMISSIONER: Q. By "child", we are using the statutory term, which means between 10 and 18?
A. Oh, okay.

MS DWYER: Q. I just want to ask you, unless there is any objection or unless the Chief Commissioner is not interested, about your understanding of the requirements in LEPRA about strip searches, particularly section 31 --

THE CHIEF COMMISSIONER: No, I don't think we need to go there.

MS DWYER: May it please the court. Then I have no further questions, Chief Commissioner.

THE CHIEF COMMISSIONER: Does anyone have any questions?
MR EURELL: Just quickly if I may, Chief Commissioner.

<EXAMINATION BY MR EURELL:

MR EURELL: Q. Senior Constable, are drug detection dogs capable of detecting drugs which are secreted in a cavity?
A. Yes.

Q. By that, I mean --

THE CHIEF COMMISSIONER: Internally.

MR EURELL: Q. -- internally?
A. Yes.

MS DWYER: Sorry, there is one matter which arises from that.

<EXAMINATION BY MS DWYER:

MS DWYER: Q. You have given evidence that a drug detection dog might detect somebody who has just walked into the airspace of somebody who has a drug on them; correct?
A. Yes.

Q. Are drug detection dogs capable of distinguishing whether that is the situation - you have walked into the airspace of someone else who has carried drugs - or whether you have drugs concealed inside your own cavity?
A. It is the same response from the dog.

MS DWYER: Nothing further.

THE CHIEF COMMISSIONER: Q. I take it there are manuals or some official documentation on the training of drug dogs and the effectiveness of their use in relation to a variety of different drugs? There would be police publications relating to those matters?
A. We do a yearly accreditation on the dog, so it's all the prohibited drugs that the dog is trained for, and he has to pass those - pass that test, yearly. So those records could be made available.

THE CHIEF COMMISSIONER: All right. Thank you very much, officer. You are free to go.
THE WITNESS: Thank you, Commissioner.

<THE WITNESS WITHDREW

THE CHIEF COMMISSIONER: Aside from effectiveness, this is not an inquiry that is going to morph into drug dogs. One has to draw a line somewhere. I am only really interested in the utilisation of drug dogs in the strip searching context, so I just thought I would clarify that. Yes, very well. We will adjourn now until 10am tomorrow morning.

AT 2.58PM THE COMMISSION WAS ADJOURNED TO TUESDAY, 22 OCTOBER 2019 AT 10AM