

OPERATION BRUGGE

**REPORT TO PARLIAMENT PURSUANT TO
SECTION 132 LAW ENFORCEMENT CONDUCT
COMMISSION ACT 2016**

MAY 2020



Law Enforcement
Conduct Commission

8 May 2020

46865/510

The Hon John Ajaka MLC
President
Legislative Council
Parliament House
SYDNEY NSW 2000

The Hon Jonathan O'Dea MP
Speaker
Legislative Assembly
Parliament House
SYDNEY NSW 2000

Dear Mr President and Mr Speaker

In accordance with section 132(3) of the *Law Enforcement Conduct Commission Act 2016* ('the Act'), the Commission hereby furnishes to you a Report in relation to its investigation in Operation Brugge.

Pursuant to section 142(2) of the Act, I recommend that this Report be made public immediately.

Yours sincerely

A handwritten signature in blue ink, consisting of a series of loops and a long horizontal stroke, followed by a small dot.

The Hon Lea Drake
Commissioner for Integrity

Table of Contents

1. Introduction.....	1
2. The Commission's Statutory Functions	2
3. The Commission's Investigation.....	6
A. BRC.....	7
B. BR1	11
C. BR2	17
D. BR3	18
E. BR4	23
F. BR5	29
G. BR6	34
H. Tracey Lee Randall	35
I. Nicole (Nicqui) Yazdi	38
4. Submissions in Response	40
5. Findings	41
A. The strip search of BRC was carried out as alleged by BRC	41
B. The strip search of BRC was unlawful	42
C. The officers at the 2018 Festival possessed insufficient knowledge of key LEPR requirements	45
D. There were insufficient safeguards in place at the 2018 Festival to ensure compliance with the legislation	46
(i) There was a lack of guidance from senior police as to why and when strip searches are to be conducted	46
(ii) There was insufficient information available to and for parents, guardians and support persons.....	46
(iii) There was inadequate recording and mis-recording of information at the Festival concerning the strip searches carried out.....	47
E. The measures in place to ensure the privacy and dignity of patrons during strip searches were inadequate	48
6. Affected Persons	49
7. Considerations.....	49
A. Improved education and briefing procedures for searching officers	49
B. Greater guidance by senior police to junior officers as to when and how strip searches are carried out	49
C. Proactive steps by police to provide or facilitate the availability of independent legal advice at festivals where young people are in attendance	50
D. Improved procedures for recording of information by searching and accompanying officers.	50
ANNEXURE.....	52

1. Introduction

- 1.1. The Law Enforcement Conduct Commission's investigation in Operation Brugge arose from a complaint received on 7 November 2018 from Tracey Randall, Solicitor, on behalf of a young person (BRC). The complaint alleged that BRC was unlawfully strip searched by NSW Police Force officers at the Splendour in the Grass music festival in Byron Bay (**the Festival**) on 20 July 2018 (**the 2018 Festival**) following an indication by a drug dog. No drugs were found. A written statement from BRC to her solicitor dated 3 August 2018 was attached to the complaint.
- 1.2. The Festival is held annually 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 which attracted around 42,500 patrons in 2019.¹ The Festival is all-ages and attracts a significant percentage of teenagers and young adults as well as family groups and older patrons.
- 1.3. The Commission identified that three police officers (**BR2**, **BR3** and **BR4**) had interacted with and were involved in the search of BRC. In order to understand the nature of the search operations at the Festival, the Commission requested copies of the official police notebooks of BR2, BR3 and BR4.
- 1.4. On 15 March 2019 the Commission issued a s 54 Notice to BR3 requiring a statement of information. In his reply BR3 stated, among other things, that the reason for the search of BRC was due to a positive drug dog indication and that upon further questioning, the young person (BRC) had admitted to having recently used cannabis.
- 1.5. On 29 August 2019, Commission investigators interviewed BRC in the presence of her solicitor.² The information supplied by her contradicted the statement of information provided by BR3, in which he had claimed BRC had admitted to having recently used cannabis.
- 1.6. The Commission issued s 55 Notices to the Commissioner of Police requiring copies of the official police notebooks of various senior officers, the Event operational orders and Drug Dog operational orders for the Festival from 2014 to 2019 and any Statements of Facts and future or field Court Attendance Notices relating to persons searched and charged at the 2018 Festival by the officers involved in the search of BRC. The Commissioner of Police produced the requested documents in response to the Section 55 Notices.
- 1.7. The documents revealed that a total of 512 searches were carried out at the 2018 Festival.³ The COPS⁴ events recorded 370 as general

¹ T 21.10.29 P 15 L 46.

²Record of Interview of BRC, 29.8.2019, p 1.

³ Analysis of Strip Search Data, p 1.

⁴ Computerised Operational Policing System (COPS)

searches and 143 as strip searches, 7 of which were carried out on young persons.

- 1.8. Of the 5 recorded strip searches carried out on young persons, only 1 was recorded as having been carried out with a parent, guardian or other person capable of representing the interests, of the person being searched (“support person”) present, as is required by s 33(3) of the *Law Enforcement Powers and Responsibilities Act NSW* (2002) (LEPRA). None of the COPS narratives for those 4 searches recorded the reasons for the search not having been conducted in the presence of a parent or guardian, or support person, as is required by s 33(3A) of LEPRA. The relevant LEPRA provisions with respect to strip searches are set out in the Annexure.
- 1.9. Commission analysis of the COPS narratives also found that of the 372 searches recorded as ‘General’ searches 19 contained details which suggested that a strip search may have taken place, though that was not explicitly stated to have occurred.⁵

2. The Commission’s Statutory Functions

- 2.1 The *Law Enforcement Conduct Commission Act 2016* (the LECC Act) lists among the Commission’s principal functions the detection and investigation of serious misconduct and serious maladministration: s 26.
- 2.2 Section 10 of the LECC Act defines “*serious misconduct*”:
 - (1) *For the purposes of this Act, serious misconduct means any one of the following:*
 - (a) *conduct of a police officer, administrative employee or Crime Commission officer that could result in prosecution of the officer or employee for a serious offence or serious disciplinary action against the officer or employee for a disciplinary infringement,*
 - (b) *a pattern of officer misconduct, officer maladministration or agency maladministration carried out on more than one occasion, or that involves more than one participant, that is indicative of systemic issues that could adversely reflect on the integrity and good reputation of the NSW Police Force or the Crime Commission,*
 - (c) *corrupt conduct of a police officer, administrative employee or Crime Commission officer.*
 - (2) *In this section:*

⁵ Analysis of Strip Search Data, p 1.

serious disciplinary action against an officer or employee means terminating the employment, demoting or reducing the rank, classification or grade of the office or position held by the officer or employee or reducing the remuneration payable to the officer or employee.

serious offence means a serious indictable offence and includes an offence committed elsewhere than in New South Wales that, if committed in New South Wales, would be a serious indictable offence.

- 2.3 “Officer maladministration” and “agency maladministration” are both defined in s 11 of the LECC Act. “Officer maladministration” is defined in s 11(2) in these terms:

- (2) *Officer maladministration means any conduct (by way of action or inaction) of a police officer, administrative employee or Crime Commission officer that, although it is not unlawful (that is, does not constitute an offence or corrupt conduct):*
- (a) *is unreasonable, unjust, oppressive or improperly discriminatory in its effect, or*
 - (b) *arises, wholly or in part, from improper motives, or*
 - (c) *arises, wholly or in part, from a decision that has taken irrelevant matters into consideration, or*
 - (d) *arises, wholly or in part, from a mistake of law or fact, or*
 - (e) *is conduct of a kind for which reasons should have (but have not) been given.*

- 2.4 The conduct of an officer or agency is defined as “serious maladministration” if the conduct, though not unlawful, is conduct of a serious nature which is unreasonable, unjust, oppressive or improperly discriminatory in its effect or arises wholly or in part from improper motives: LECC Act, s 11(3).

- 2.5 The Commission may hold an examination for the purpose of an investigation into conduct that it has decided is (or could be) serious misconduct or serious maladministration: s 61 (a).

- 2.6 Section 29 provides the authority for the Commission to make findings and express opinions:

- (1) *The Commission may:*
- (a) *make findings, and*

- (b) *form opinions, on the basis of investigations by the Commission, police investigations or Crime Commission investigations, as to whether officer misconduct or officer maladministration or agency maladministration:*
 - (i) *has or may have occurred, or*
 - (ii) *is or may be occurring, or*
 - (iii) *is or may be about to occur, or*
 - (iv) *is likely to occur, and*
 - (c) *form opinions as to:*
 - (i) *whether the advice of the Director of Public Prosecutions should be sought in relation to the commencement of proceedings against particular persons for criminal offences against laws of the State, or*
 - (ii) *whether the Commissioner of Police or Crime Commissioner should or should not give consideration to the taking of other action against particular persons, and*
 - (d) *make recommendations as to whether consideration should or should not be given to the taking of action under Part 9 of the Police Act 1990 or under the Crime Commission Act 2012 or other disciplinary action against, particular persons, and*
 - (e) *make recommendations for the taking of other action that the Commission considers should be taken in relation to the subject-matter or opinions or the results of any such investigations.*
- (2) *Subsection (1) does not permit the Commission to form an opinion, on the basis of an investigation by the Commission of agency maladministration, that conduct of a particular person is officer maladministration unless the conduct concerned is (or could be) serious maladministration.*
 - (3) *The Commission cannot find that a person is guilty of or has committed, or is committing or is about to commit, a criminal offence or disciplinary infringement.*
 - (4) *An opinion or finding that a person has engaged, is engaging or is about to engage in:*
 - (a) *officer misconduct or serious misconduct or officer maladministration or serious maladministration (whether or not specified conduct), or*

(b) *specified conduct (being conduct that constitutes or involves or could constitute or involve officer misconduct or serious misconduct or officer maladministration or serious maladministration), and any recommendation concerning such a person is not a finding or opinion that the person is guilty of or has committed, or is committing or is about to commit, a criminal offence or disciplinary infringement.*

(5) *Nothing in this section prevents or affects the exercise of any function by the Commission that the Commission considers appropriate for the purposes of or in the context of Division 2 of Part 9 of the Police Act 1990.*

(6) *The Commission must not include in a report under Part 11 a finding or opinion that any conduct of a specified person is officer misconduct or officer maladministration unless the conduct is serious misconduct or serious maladministration.*

(7) *The Commission is not precluded by subsection (6) from including in any such report a finding or opinion about any conduct of a specified person that may be officer misconduct or officer maladministration if the statement as to the finding or opinion does not describe the conduct as officer misconduct or officer maladministration.*

2.7 This report is made pursuant to Part 11 of the LECC Act. Section 132(1) provides that the Commission may prepare reports “*in relation to any matter that has been or is the subject of investigation under Part 6*”.

2.8 Section 133 (Content of reports to Parliament) provides that:

(1) *The Commission is authorised to include in a report under section 132:*

(a) *statements as to any of the findings, opinions and recommendations of the Commission, and*

(b) *statements as to the Commission’s reasons for any of the Commission’s findings, opinions and recommendations.*

(2) *The report must include, in respect of each affected person, a statement as to whether or not in all the circumstances the Commission is of the opinion that consideration should be given to the following:*

(a) *obtaining the advice of the Director of Public Prosecutions with respect to the prosecution of the person for a specified criminal offence,*

(b) *the taking of action against the person for a specified disciplinary infringement,*

- (c) *the taking of action (including the making of an order under section 181D of the Police Act 1990) against the person as a police officer on specified grounds, with a view to dismissing, dispensing with the services of or otherwise terminating the services of the police officer,*
- (d) *the taking of reviewable action within the meaning of section 173 of the Police Act 1990 against the person as a police officer,*
- (e) *the taking of action against the person as a Crime Commission officer or an administrative employee on specified grounds, with a view to dismissing, dispensing with the services of or otherwise terminating the services of the Crime Commission officer or administrative employee.*

Note. See section 29 (4) in relation to the Commission's opinion.

- (3) *An "affected person" is a person against whom, in the Commission's opinion, substantial allegations have been made in the course of or in connection with the investigation (including examination) concerned.*
- (4) *Subsection (2) does not limit the kind of statement that a report can contain concerning any affected person and does not prevent a report from containing a statement described in that subsection in respect of any other person.*

2.9 In considering any factual conclusions to be reached in a report, the Commission will apply the civil standard of proof, namely whether the relevant factual matters have been proved to the reasonable satisfaction of the Commission.⁶ Accordingly findings can form the basis of opinions and recommendations, even if they do not reach the standard of beyond reasonable doubt.

2.10 The Commission has made a determination to protect the identities of the police officers and complainant involved in the matter. Accordingly, those persons will be referred to by codenames in this report. There is to be no publication of the name or image of any of the codenamed persons in relation to the evidence given in Operation Brugge or included in this report without further order of the Commission.

3. The Commission's Investigation

3.1. The Commission decided to conduct a public examination pursuant to section 63 of the LECC Act (the public examination).

⁶ *Briginshaw v Briginshaw* [1938] 60 CLR 336; *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 67 ALJR 170.

- 3.2. The purpose of the public examination was to investigate BRC's complaint of serious misconduct during her detention and strip search at the 2018 Festival and to investigate whether there was conduct of the NSW Police Force (NSWPF), in connection with the application of the laws relating to searches, including in particular, strip searches, that was or could have been unlawful or unreasonable.⁷
- 3.3. The actions of the officers in question were governed by sections 21(1), 30, 31B, 32 and 33 of LEPPRA⁸ as well as the NSWPF operational orders for Splendour in the Grass 2018 (**the 2018 operational orders**), and the NSWPF Drug Dog operational orders 2018 (**the 2018 Drug Dog operational orders**).⁹
- 3.4. The scope of the Commission's investigation did not extend to matters of policy such as drug decriminalisation, pill testing or the use of drug detection dogs at music festivals.¹⁰
- 3.5. The Commissioner of Police and 6 police officers (codenamed BR1, BR2, BR3, BR4, BR5 and BR6) were granted leave to appear at the public examination. The public examination was held over 4 days, namely the 21st, 22nd, 23rd and 24th of October 2019. A total of 8 witnesses gave evidence.
- 3.6. In addition to the interview she provided to Commission investigators,¹¹ BRC gave evidence at a private examination on 13 December 2019. She was legally represented. She was 18 years old at the time of giving her evidence.¹²

A. BRC

- 3.7. BRC gave the following evidence:
- 3.8. BRC attended all three days of the 2018 Festival with three other friends. She had attended one of the three days of the Festival the year earlier.¹³
- 3.9. On the first day of the 2018 Festival, BRC wore a black, lace leotard¹⁴ which was lent to her by a friend, denim shorts and a denim jacket.¹⁵ BRC put the leotard on approximately an hour before her arrival.¹⁶ The friend later admitted to BRC that the jumpsuit *"might have had*

⁷ T 13.12.19 P 2 L18.

⁸ T 21.10.19 P 6 L 5

⁹ T 21.10.19 P 6 L 35

¹⁰ T 21.10.19 P 4 L 13

¹¹ Record of Interview of BRC, 29.8.2019.

¹² T 13.12.2019 P 3 L 24.

¹³ Record of Interview of BRC, 29.8.2019, p 7.

¹⁴ Record of Interview of BRC, 29.8.2019, p 5.

¹⁵ Statement of BRC, 3.8.18 at [11].

¹⁶ Record of Interview of BRC, 29.8.2019, p 6.

cocaine on it", a fact which was unknown to BRC at the time she put it on and attended the 2018 Festival.¹⁷

- 3.10. On none of the days of the 2018 Festival did BRC consume alcohol, ingest drugs or carry drugs on her person.¹⁸ BRC also denied that the friends with whom she had attended the festival had, to her knowledge, taken any drugs whilst they were getting ready together or on route to the 2018 Festival.¹⁹
- 3.11. On Saturday 20 July 2018, the first day of the 2018 Festival,²⁰ BRC noticed "*a lot of police*" at the entrance, including approximately 10 uniformed officers with sniffer dogs patrolling the lines of patrons queueing to enter.²¹ She recalled that when a dog sat down next to a patron, police "*just took 'em straight off*".²²
- 3.12. Within a minute²³ of BRC joining the 'no bags' line, her friends having queued in the 'bags' line, a drug detection dog and officer approached. The dog began sniffing the three or so people ahead of BRC and then stopped at her and sat down.²⁴ The dog's handler told BRC to put her hands "*where he could see them*", not touch or grab anything and to come with him so that she could be drug tested.²⁵ He did not introduce himself, announce his rank or station or administer a caution.²⁶
- 3.13. At that point, two officers – one male and one female – approached. The two officers did not then or at any point introduce themselves,²⁷ but told BRC she had been stopped because the dog had made a positive indication.²⁸ Together, the three officers and BRC, her arms still in the air, walked together through some gates to a separate area of the Festival.²⁹ BRC said in a statement provided to her solicitor that at that point she:³⁰

"...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."

¹⁷ Record of Interview of BRC, 29.8.2019, p 13.

¹⁸ Record of Interview of BRC, 29.8.2019, pp 5, 7; T 13.12.2019 P 6 L 41.

¹⁹ Record of Interview of BRC, 29.8.2019, pp 5-6, 25.

²⁰ Record of Interview of BRC, 29.8.2019, p 4.

²¹ Record of Interview of BRC, 29.8.2019, pp 6-7: T 13.12.2019 P 7 L 15 – 28.

²² Record of Interview of BRC, 29.8.2019, p 7.

²³ Record of Interview of BRC, 29.8.2019, p 9; T 13.12.2019 P 8 L 42.

²⁴ Record of Interview of BRC, 29.8.2019, pp 4, 10.

²⁵ Record of Interview of BRC, 29.8.2019, p 11.

²⁶ Record of Interview of BRC, 29.8.2019, p 11.

²⁷ T 13.12.19 P 12 LL 40 – 45.

²⁸ Record of Interview of BRC, 29.8.2019, P 13.

²⁹ Record of Interview of BRC, 29.8.2019, PP 4, 12.

³⁰ Statement of BRC, 3.8.18 at [9]. This statement formed part of BRC's initial complaint to the Commission.

- 3.14. As they were walking towards the police tents,³¹ the female officer asked BRC how old she was and BRC responded that she was sixteen.³²
- 3.15. BRC was told to stand outside of the police tent and wait. At that point she felt *"pretty nervous, because [she] didn't really know what was happening."*³³ She had been warned that she was going to be searched. *"I thought it was, you know, take your jumper off, you know, maybe take your shorts off, take your shoes off"*. She thought it likely that at that point she would have been exhibiting signs of nervousness.³⁴ She only realised the extent of the search when they asked her to completely remove her clothes.³⁵
- 3.16. Whilst waiting,³⁶ one of the officers asked BRC if she was carrying ID. She said that it was in her phone case in her pocket. At that time BRC's phone began to ring. BRC asked if she could answer it but was denied permission and her phone and ID were taken away from her.³⁷ At that point BRC became *"really frightened ... because [she] had lost all contact with anyone [she] knew"* and started to cry.³⁸
- 3.17. At no point was BRC asked if she had a parent, guardian or anyone present or available to assist her.³⁹ Had she have known of her rights, she would have liked to have had her mother present for the strip search.⁴⁰
- 3.18. Once another female patron exited the tent, BRC was told by the female officer to go into the tent, which BRC described as being *"[not] very private"*.⁴¹ The female officer told BRC to stand in the corner of the tent *"for privacy"*.⁴² The entry to the tent was a flap which was not closed and from the corner in which BRC was told to stand, she could see the male officer standing outside, with his back to the tent.⁴³
- 3.19. The female officer, still not having introduced herself, announced her rank or station or administered a caution, told BRC she should state whether she had any drugs on her before she was searched.⁴⁴ Other than remarking that she *"would rather not be doing this"*, the female officer had not explained to BRC – who, at that point, was still crying⁴⁵ – that a strip search was about to be conducted.

³¹ Statement of BRC, 3.8.18 at [9].

³² Record of Interview of BRC, 29.8.2019, P 14.

³³ T 13.12.19 P 13 L 11.

³⁴ T 13.12.19 P 13 LL 22 – 32.

³⁵ T 13.12.19 P 13 LL 34-43.

³⁶ Statement of BRC, 3.8.18, para [10].

³⁷ Record of Interview of BRC, 29.8.2019, PP 4, 14-15.

³⁸ Statement of BRC, 3.8.18, para [10].

³⁹ Record of Interview of BRC, 29.8.2019, P 16; T 13.12.19 P 14 L 1 – 10.

⁴⁰ T 13.12.19 P 14 L 12.

⁴¹ Record of Interview of BRC, 29.8.2019, P 18.

⁴² Record of Interview of BRC, 29.8.2019, PP 18, 19.

⁴³ Record of Interview of BRC, 29.8.2019, P 19.

⁴⁴ Record of Interview of BRC, 29.8.2019, P 20.

⁴⁵ Record of Interview of BRC, 29.8.2019, P 21.

- 3.20. The female officer asked BRC to remove her clothing. BRC was asked to remove her shorts, then to remove her leotard down to her waist. BRC was asked then to remove the leotard completely, leaving BRC in only her underwear.⁴⁶ The female officer looked through her leotard then asked BRC to take her underwear off and to remove the panty liner in her underwear⁴⁷ and to hold it up so that the female officer could look at it.⁴⁸ BRC said when she realised that she *“was going to have to get naked”* in front of the police officer, she *“could not stop crying”*. She described feeling *“completely humiliated.”*⁴⁹
- 3.21. Whilst still completely naked, BRC was then asked to squat on the ground so that the officer could look underneath her. From a distance of approximately 30cm away,⁵⁰ the female officer then *“bent down and looked right up underneath”*.⁵¹
- 3.22. BRC was then asked to put her clothing back on and take off her shoes. Once her shoes were searched she went back outside where the police returned her phone and ID (at which point she was crying⁵²) and told her she could return to the 2018 Festival.⁵³
- 3.23. BRC denied making any admissions to using cannabis on that day or to telling police she had been in proximity of people who had smoked cannabis earlier that day.⁵⁴ BRC did tell the male and female officer that she had walked past a group who were smoking cannabis on her way in, but she was not with that group.⁵⁵
- 3.24. BRC estimated that the process took approximately 10 minutes, but that it *“felt like a lot longer.”*⁵⁶
- 3.25. BRC located her friend inside the 2018 Festival, at which time she said she was *“sobbing”*. She sat with her friend *“trying to calm down”* and *“did not stop crying for approximately 20 minutes.”*⁵⁷
- 3.26. The next thing BRC did was to attend on a legal advice stall that was located at the 2018 Festival. She spoke with Tracey Randall, who described BRC as *“sobbing uncontrollably and... accompanied by friends who all looked quite distressed.”*⁵⁸ It was not until BRC spoke with Ms Randall that she became aware of her right to have a parent, guardian or support person present during her strip search.⁵⁹

⁴⁶ Record of Interview of BRC, 29.8.2019, P 22.

⁴⁷ Record of Interview of BRC, 29.8.2019, P 22.

⁴⁸ Record of Interview of BRC, 29.8.2019, P 23.

⁴⁹ Statement of BRC, 3.8.18, para [12].

⁵⁰ Record of Interview of BRC, 29.8.2019, P 24.

⁵¹ Record of Interview of BRC, 29.8.2019, P 23.

⁵² T 13.12.19 P 15 LL 12-16.

⁵³ Record of Interview of BRC, 29.8.2019, PP 4, 24

⁵⁴ Record of Interview of BRC, 29.8.2019, P 25; T 13.12.19 P 12 L 38.

⁵⁵ P 13.12.19 P 11 L 1.

⁵⁶ Statement of BRC, 3.8.18, para [16].

⁵⁷ Statement of BRC, 3.8.18, para [18].

⁵⁸ T 21.10.19 P8 L4

⁵⁹ Record of Interview of BRC, 29.8.2019, P 27; T 13.12.19 P 14 L 42, P 18 L 3.

- 3.27. When giving her statement to her lawyer in the weeks following her strip search, BRC explained that for the remaining two days of the 2018 Festival, “every time [she] saw a police officer... [she] started to feel anxious. She went on to describe the following:⁶⁰

“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 in to the festival I would feel anxious.”

- 3.28. In her 2019 record of interview, BRC addressed the ongoing impact of the experience on her feelings towards police. She explained that whereas prior to the 2018 Festival she had a positive view of the police, her sense of that relationship had now changed. She explained:⁶¹

“...because I was falsely accused, I just feel that my trust in the police is affected because obviously I feel like I can’t call the police or I might get in trouble for something I didn’t do.”

- 3.29. During the private examination, BRC was shown a photo board of 19 female persons, one of which was BR5. BRC was unable to say one way or another whether or not the female officer with whom she interacted was on the photo board.⁶²

B. BR1

- 3.30. As at the time of the 2018 Festival and of the public examination, BR1 was a Chief Inspector at the Byron-Tweed Police Department. He had been a police officer for 37 years.⁶³
- 3.31. BR1 gave evidence that he had been involved in the Festival since 2001.⁶⁴ Since it started in 2001 the Festival had grown in size and popularity, with approximately 35,000 people in attendance at the 2018 Festival and 42,500 people in attendance at the 2019 Festival.⁶⁵
- 3.32. BR1 and the staff under his command would make a determination as to how many police the Festival would require, in consultation with the promoter.⁶⁶ There were over 300 police officers deployed to the 2018 Festival, approximately 105 of those being on a ‘user-pay contingent’ (that is, paid for by the Festival).⁶⁷

⁶⁰ Statement of BRC, 3.8.18, para [19].

⁶¹ Record of Interview of BRC, 29.8.2019, PP 28, 29.

⁶² T 13.12.19 P 19 LL 5 – 46.

⁶³ T 21.10.19 P 14 L 36.

⁶⁴ T 21.10.19 P 15 L 29.

⁶⁵ T 21.10.19 P 15 L 44.

⁶⁶ T 21.10.19 P 37 LL 20-27.

⁶⁷ T 21.10.19 P 18 L 41.

- 3.33. BR1 drafted the 2018 operational orders,⁶⁸ which provided that there were to be 340 police officers at the 2018 Festival and that they would be deployed for four days with 24 hours of coverage.⁶⁹
- 3.34. The purpose of operational orders was explained by BR1 as a guideline, *"to give the police an idea exactly what's going to happen"* and *"to let them know what their responsibilities are"*.⁷⁰ The document would include the mission, Commander's intent and expectations, rosters and staffing.⁷¹ A further document, entitled Joining Instructions, would set out the clothing or uniform requirements, the climate and would include maps of the area.⁷²
- 3.35. BR1 would issue the operational orders and joining instructions by email to those police officers who were to be *"on the ground"*, namely those named and listed in the *"Call Signs"* section of the document⁷³ (who were user-pays police). In the covering email BR1 requested that the officers each read the documents and comment upon anything which they perceived to be incorrect.⁷⁴
- 3.36. BR1 explained that the drug dog police were a totally separate squad or command from that of which BR1 was in charge.⁷⁵ Drug dog police would, according to BR1, undertake *"most of the searches"*⁷⁶ and were responsible for drug detection duties at the gates.⁷⁷ At the entrance to the Festival, bag or property searches would be conducted by security⁷⁸ and then drug dog police would conduct any personal searches and strip searches.⁷⁹ The drug dog police had their own operational orders. BR1 had no involvement in the planning, drafting, or implementation of these orders.⁸⁰
- 3.37. BR1 accepted that user-pays police, whose roles were listed in the operational orders as including *"crowd control"*, *"fence jumpers"* and *"logistics"*,⁸¹ might be involved in searching patrons *"if they were out in the field"*⁸² or might also conduct pre-arrest searches, which take place *"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."*⁸³ The procedure in that event would be that the officer would bring the

⁶⁸ T 21.10.19 P 20 L 9.

⁶⁹ T 21.10.19 P 19 L 1.

⁷⁰ T 21.10.19 P 21 L 2.

⁷¹ T 21.10.19 P 20 L 35

⁷² T 21.10.19 P 22 L 43

⁷³ Exhibit #40, 2019 operational orders, PP 36-43.

⁷⁴ T 21.10.19 P 21 L 10.

⁷⁵ T 21.10.19 P 27 L 20.

⁷⁶ T 21.10.19 P 24 L 7

⁷⁷ T 21.10.19 P 28 L 10.

⁷⁸ T 21.10.19 P 26 L 9

⁷⁹ T 21.10.19 P 26 LL 24-38.

⁸⁰ T 21.10.19 P 24 L 34.

⁸¹ T 21.10.19 P 24 L 17; 2018 operational orders, PP 30 – 37.

⁸² T 21.10.19 P 25 L 39.

⁸³ T 21.10.19 P 32 L 24.

person to be searched back to the command post where there was a custody bus available for searching.⁸⁴

- 3.38. BR1 explained that on each morning of the Festival, a briefing would occur where a sergeant would go through the operational orders for that year, as well as any concerns that may have arisen on the night before, such as fence jumpers or a requirement for more staff in a particular area.⁸⁵ Briefing notes and tasking sheets were also made at the Festival, which were retained and held at Tweed station.⁸⁶
- 3.39. In respect of an officer's record-keeping obligations, BR1 agreed that any search must be recorded⁸⁷ including the identity of the person searched and the outcome of the search.⁸⁸ A COPS event must also be created⁸⁹ and should include the names of searching officers and the squad or command to which they belonged.⁹⁰
- 3.40. BR1 was aware that mere detection by a drug detection dog does not justify a search and that that was the subject of officer instruction.⁹¹ He agreed that at an event such as the Festival, it was likely that searches would be carried out.⁹²
- 3.41. The 2018 operational orders provided that "*police should at all times be aware of officer safety and police powers pursuant to LEPR*".⁹³ BR1 acknowledged that the document did not, however, contain any specific instructions as to how searches were to be carried out,⁹⁴ such as what amounts to a "*reasonable suspicion*" that would justify a strip search pursuant to s 31(b) of LEPR, the circumstances in which a strip search was or may be appropriate or how a young person or child is to be searched.⁹⁵ Similarly, the 2018 operational orders dealt with powers of arrest,⁹⁶ but were silent as to how pre-arrest searches should be carried out.⁹⁷
- 3.42. BR1 expected that in the absence of instruction in the operational orders, such matters would have been addressed during the briefing.⁹⁸ He nonetheless conceded that clear instructions to user-pays police as to how to exercise their LEPR powers pre-arrest ought to have been included in the 2018 operational orders.⁹⁹

⁸⁴ T 21.10.19 P 25 L 39 – P 26 L 1.

⁸⁵ T 21.10.19 P 21 L 26 – P 22 L 15.

⁸⁶ T 21.10.19 P 22 L 17.

⁸⁷ T 21.10.19 P 26 L 45.

⁸⁸ T 21.10.19 P 26 L 45.

⁸⁹ T 21.10.19 P 27 L 3.

⁹⁰ T 21.10.19 P 27 LL 5-11.

⁹¹ T 21.10.19 P 29 L 26

⁹² T 21.10.19 P 30 L 5.

⁹³ 2018 operational orders, P 19.

⁹⁴ T 21.10.19 p31.21.

⁹⁵ T 31.31-39.

⁹⁶ 2018 operational orders, P 24.

⁹⁷ T 21.10.19 P 23 L 44; T 21.10.19 P 32 LL 13-20.

⁹⁸ T 21.10.19 P 31 L 43; T 21.10.19 P 33 LL 39-44.

⁹⁹ T 21.10.19 P 32 L 31.

- 3.43. BR1 noted that the 2019 operational orders were amended from the previous year so as to include information concerning police powers and the strip search requirements under LEPR.¹⁰⁰ He explained this amendment on the basis that he “...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 because he knew that the Commission was “interested in looking at searches, too.”¹⁰¹
- 3.44. BR1 agreed that there was, however, still nothing in the 2019 operational orders on the strip searching of juveniles.¹⁰² Nor was there anything by way of example of what circumstances may satisfy the “seriousness and urgency” requirement necessary before a strip search can be carried out.¹⁰³ BR1 agreed that police were left to draw upon their own general experience when broaching those issues and that, in retrospect, inclusion of further guidance on those topics was necessary and advisable, going forward.¹⁰⁴
- 3.45. BR1 agreed that the age of attendees was relevant at the stage of preparation for the 2018 Festival and in anticipating the extent of the police response required.¹⁰⁵ Given the 2018 Festival was all-ages, BR1 expected a number of people under the age of 18 to attend, some of whom would be unaccompanied by their parents. It was anticipated by BR1 that some young persons at the 2018 Festival would be strip searched.¹⁰⁶
- 3.46. BR1 was aware as at the time of the 2018 Festival that LEPR required a young person to have a parent, guardian or other support person present for a strip search.¹⁰⁷ When asked what arrangements were in place at the 2018 Festival to facilitate compliance with this requirement, BR1 further identified the presence of male and female nurses in the medical tent,¹⁰⁸ but conceded that those persons may not be enthusiastic to assist and would, in any event, be busy in their role.¹⁰⁹ BR1 also told the Commission that Red Frogs volunteers¹¹⁰ were present to act as support persons and that Byron Bay Community Services had a presence at the Festival,¹¹¹ albeit not arranged or briefed by the police.¹¹² Ultimately, BR1 agreed that he did not, but should have, arranged appropriately qualified persons to be available to act as support persons for the strip search of young persons.¹¹³

¹⁰⁰ T 21.10.19 P 21 L 19; P 68 L 14.

¹⁰¹ T 21.10.19 P 23 L 25. See also T 21.10.19 P 68 L19 O P 69 L 10.

¹⁰² T 21.10.19 P 71 LL 6-15.

¹⁰³ T 21.10.19 P 70 L 24; section 33(1) LEPR.

¹⁰⁴ T 21.10.19 P 70 L 42 – P 71 L 4.

¹⁰⁵ T 21.10.19 P 37 L 29.

¹⁰⁶ T 21.10.19 P 39 L 20.

¹⁰⁷ T 21.10.19 P 39 L 36.

¹⁰⁸ T 21.10.19 P 40 L 7.

¹⁰⁹ T 21.10.19 P 40 LL 24-28.

¹¹⁰ T 21.10.19 P 40 L 7.

¹¹¹ T 21.10.19 P 62 L 34 – P 63 L 26.

¹¹² T 21.10.19 P 64 LL 23-37.

¹¹³ T 21.10.19 P 41 LL 2-12. See also T 21.10.19 P 65 LL 1-7.

- 3.47. When asked what BR1 understood by the phrase “*interests of the child being searched*” in s 33 of LEPR, he admitted to never having given it any particular thought,¹¹⁴ but suggested that a young person’s interests would include emotional (“*mental*”) well-being,¹¹⁵ legal rights¹¹⁶ and privacy.¹¹⁷
- 3.48. BR1 was also aware that s 33 of LEPR prohibited a cavity search or examination of the body by touch. BR1 did not believe that the section permitted an officer to look up the vagina of a young person, but was of the view that officers were permitted to ask someone to squat¹¹⁸ and to use reasonable force if BRC declined to squat, as long as the reasons for the request and use of force were recorded.¹¹⁹ BR1 also believed that it was lawful for an officer to require a male person to move his genitalia to the side during a strip search but, in the event that the person refused, the officer could not force the person to comply.¹²⁰
- 3.49. BR1 did not know whether a visual inspection during a strip search by an officer of a young person’s vagina and anus whilst they were squatting, was lawful. He was unable to offer a view as to whether or not an examination in those circumstances would amount to a cavity search.¹²¹ He agreed that his inability to answer such questions would leave junior police officers, who were tasked with carrying out such searches in an impossible position, making that decision for themselves without guidance from more senior officers.¹²²
- 3.50. BR1 was taken to s 31(b) LEPR and asked what circumstances would satisfy the “*seriousness and urgency*” requirement such as to justify a strip search at a Festival. BR1 offered the two examples; (i) if police formed a view that a patron “*had ingested something* and (ii) if police formed a view that the person “*ingested something or had something in them*” which had broken, but he soon agreed that a strip search would not assist in the former category and was not legally permissible as a measure to address the latter example.¹²³ He agreed that he had never really contended with the problem of what circumstances would or may satisfy the “*urgency*” requirement and that junior officers would be in a difficult situation, approaching the question on a case-by-case basis.¹²⁴
- 3.51. BR1 was then asked to consider the situation of a 16-year-old attendee of the 2018 Festival, who was stopped at the tent following a positive indication from a drug dog, but who told police that he or she did not

¹¹⁴ T 21.10.19 P 42 L 21.

¹¹⁵ T 21.10.19 P 42 L 45.

¹¹⁶ T 21.10.19 P 43 L 17.

¹¹⁷ T 21.10.19 P 44 L 3.

¹¹⁸ T 21.10.19 P 44 L 25.

¹¹⁹ T 21.10.19 P 45 L 46.

¹²⁰ T 21.10.19 P 45 L 16 P 46 L 2.

¹²¹ T 21.10.19 P 48 L 43 P 48 L 39.

¹²² T 21.10.19 P 49 LL 2-9.

¹²³ T 21.10.19 P 57 LL 34-40.

¹²⁴ T 21.10.19 P 58 L 36.

have any drugs on him or her. In those circumstances, the only circumstance BR1 could identify as satisfying the “*seriousness and urgency*” requirements under s 31(b) of LEPR was the prevalence of young persons acting as “*mules*”, that is, carrying a high volume of drugs for themselves and/or others.¹²⁵ When pressed, he agreed that neither this nor a positive indication from a drug dog, without more, would justify a strip search.¹²⁶

- 3.52. In BR1’s opinion, the circumstances of the search of BRC were not attended by the requisite “*seriousness and urgency*”,¹²⁷ and it was unacceptable that such a search took place without another person present.¹²⁸
- 3.53. When taken to inconsistencies in the police records of strip searches conducted at the 2018 Festival, BR1 explained that the unavailability of a computer where searches were carried out meant that the searching or accompanying officer might take weeks to complete the COPS entry for a given search. This delay would in turn hinder BR1’s ability to review the complete data from all personal searches conducted at the Festival in a timely fashion. He further noted that, until a few months prior to the date of the public examination, the COPS system would automatically list a COPS entry as “*verified*” as soon as the COPS entry was submitted by the officer who filled it out. This meant that COPS entries were marked as having been approved by a duty officer or supervisor, when in fact they had not been.¹²⁹
- 3.54. As at the time of the public examination, BR1 was not aware that complaints had been made in relation to strip searches carried out at the 2018 Festival.¹³⁰
- 3.55. BR1 was invited to comment upon the total number of strip searches conducted at the 2018 Festival which was 143 (30 of which were young persons)¹³¹, of which only 8.4 per cent resulted in an item being found. When questioned as to what could be inferred from such statistics, he responded that such information does “*not necessarily*” suggest that strip searches were taking place without proper basis.¹³²
- 3.56. In contrast to the 2018 Festival, there were – as best as BR1 was able to recall – only 16 or 18 strip searches performed at the 2019 Festival.¹³³ Other improvements made following the 2018 Festival included that: arrangements were made to have the Police Citizens Youth Club

¹²⁵ T 21.10.19 P 61 LL 13-32.

¹²⁶ T 21.10.19 P 65 LL 22-26.

¹²⁷ T 21.10.19 P 66 L 16- P 67 L 45.

¹²⁸ T 21.10.19 P 75 L 39 – P 76 L 7.

¹²⁹ T 21.10.19 P 52 LL 25-38.

¹³⁰ T 21.10.19 P 54 L 1 – P 55 L 13.

¹³¹ Exhibit 17, Operation Brugge Search Data.

¹³² T 21.10.19 P 74 L 44 – P 75 L 4.

¹³³ T 21.10.19 P 80 L 18. The data from the 2019 was not available to the Commission at the time of the Public Examination.

present;¹³⁴ briefings were conducted at every change of shift;¹³⁵ quarterly meetings were held between the Commander and each police team, during which police powers were discussed;¹³⁶ all strip searches were conducted in a custody bus,¹³⁷ where a duty officer or senior sergeant would question the searching officer as to their justification for the search before it took place;¹³⁸ and the release of new guidelines in September 2019 pertaining to LEPR and strip searching.¹³⁹

C. BR2

- 3.57. BR2 had been a police officer for 15 years and held the rank of senior constable as at the time of the public examination.¹⁴⁰ He was a dog handler of 6 years' experience,¹⁴¹ training for which involved initial and ongoing LEPR instruction¹⁴² including the circumstances that may justify the strip search of an individual, but not the strip search of a child.¹⁴³ BR2 understood that an indication by a drug dog was not enough, in and of itself, to constitute a reasonable suspicion to search the person to whom the dog indicated.¹⁴⁴
- 3.58. BR2 had not received any training as to whether or not it was possible for a drug dog to falsely indicate¹⁴⁵ and was of the belief that the dogs' indications were always correct. He acknowledged that the indication could be as a result of the person having drug residue on their clothing or person, such as where the person had housed drugs in their pocket and had consumed those drugs prior to the indication.¹⁴⁶ BR2 maintained that a positive indication would not, without more, lead him to form a suspicion that a patron must be carrying drugs.¹⁴⁷
- 3.59. BR2 worked at the Festival in both 2017 and 2018. He had not received any Festival-specific training prior to the event.¹⁴⁸ He attended briefings held on the morning of each day of the Festival.¹⁴⁹ The briefings addressed the location to which he would be allocated for his shift but did not include any instructions about his role as a dog handler.¹⁵⁰

¹³⁴ T 21.10.19 P 81 L 27.

¹³⁵ T 21.10.19 P 83 L 14.

¹³⁶ T 21.10.19 P 83 L 23.

¹³⁷ T 21.10.19 P 85 L 37.

¹³⁸ T 21.10.19 P 62 LL 22-29.

¹³⁹ T 21.10.19 P 83 L 17.

¹⁴⁰ T 21.10.19 P 89 LL 33-45.

¹⁴¹ T 21.10.19 P 90 L 7.

¹⁴² T 21.10.19 P 90 LL 26-32.

¹⁴³ T 21.10.19 P 103 L 21.

¹⁴⁴ T 21.10.19 P 90 L 34.

¹⁴⁵ T 21.10.19 P 99 L 35.

¹⁴⁶ T 21.10.19 P 100 L 27.

¹⁴⁷ T 21.10.19 P 90 L 34.

¹⁴⁸ T 21.10.19 P 91 L 30.

¹⁴⁹ T 21.10.19 P 91 L 35.

¹⁵⁰ T 21.10.19 P 92 L 18, P 93 L 18.

- 3.60. At the Festival, BR2 and at least 10 other dog handlers would work together at a gate.¹⁵¹ If there was a large crowd at his gate BR2 would, based on instructions issued to him and his team,¹⁵² aim to manoeuvre through any gaps in the crowd with his drug dog. If the crowd had formed a line, he and his drug dog would target each person in that line.¹⁵³
- 3.61. BR2 explained that the drug dogs are accredited every year and are trained to detect all prohibited drugs.¹⁵⁴ Their smell sensitivity was such that they could positively indicate where a person had walked into the airspace occupied by drugs, but did not otherwise possess any drugs on their person.¹⁵⁵ The dogs could not distinguish between persons who had drugs on them in a secondary way, such as via airspace contamination, and those who had drugs secreted internally. The drug dog's indication would be the same either way.¹⁵⁶ BRT was relying on *"the amount of years I've been working the drug dog, particularly at railway stations."*¹⁵⁷
- 3.62. When a dog indicated that a drug had been detected, BR2's procedure was to introduce himself to the patron, administer a caution and ask whether they had any drugs on them.¹⁵⁸ Whether the patron's response was "Yes" or "No", BR2 would invite¹⁵⁹ the patron to speak to the attending police.¹⁶⁰ Upon any positive indication by a drug dog two police officers, who were not members of the drug dog unit, but who were assigned to the drug dog operation, would make their way over to the drug dog and handler.¹⁶¹ After inviting the patron to speak with the two officers, BR2 would then move on with his dog, so that he was unable to say whether a search or strip search had taken place of any patron in respect of whom his dog gave a positive indication.¹⁶² He took no notes in relation to such interactions with patrons at the Festival.¹⁶³

D. BR3

- 3.63. BR3 had been a police officer for 14 years and held the rank of senior constable as at the time of the public examination.¹⁶⁴

¹⁵¹ P 21.10.19 P 93 L 13.

¹⁵² T 21.10.19 P 96 L 40.

¹⁵³ T 21.10.19 P 93 L 24.

¹⁵⁴ T 21.10.19 P 104 L 41.

¹⁵⁵ T 21.10.19 P 101 L 3, P 104 L 22.

¹⁵⁶ T 21.10.19 P 104 L 28.

¹⁵⁷ T 21.10.19 P 101 LL 23-26

¹⁵⁸ T 21.10.19 P 94 L 16.

¹⁵⁹ T 21.10.19 P 96 L 14.

¹⁶⁰ T 21.10.19 P 95 L 8.

¹⁶¹ T 21.10.19 P 94 L 33.

¹⁶² T 21.10.19 P 96 LL 2-12.

¹⁶³ T 21.10.19 P 97 L 11.

¹⁶⁴ T 22.10.19 P 108 L 41.

- 3.64. At the 2018 Festival BR3 worked as a user-pays officer assisting the drug dog handlers.¹⁶⁵ It was the first music festival at which he had worked¹⁶⁶ and he worked both days of the 2018 Festival.¹⁶⁷ BR3 worked alongside of BR4,¹⁶⁸ who was the only female on his team.¹⁶⁹
- 3.65. The briefing that BR3 attended was conducted by one of the Chief Inspectors.¹⁷⁰ It lasted for 10 or 15 minutes¹⁷¹ and canvassed matters such as the team to which he would be allocated,¹⁷² the location at which he was to be stationed¹⁷³ and procedure for filling out a field detection or field arrest form, where drugs were detected (a “*find*”).¹⁷⁴ Beyond being told that he was to assist and act at the direction of the drug dog handlers, the briefing did not touch upon BR3’s specific role.¹⁷⁵ Nor did the briefing address any arrangements for support persons if parents or guardians were not available to accompany the strip search of a young person.¹⁷⁶ BR3 could not recall any discussion at the briefing as to what should happen in the event that a young person was searched¹⁷⁷ or strip searched.¹⁷⁸ He was never provided with a copy of the 2018 operational orders.¹⁷⁹
- 3.66. BR3 expected that he would have to conduct some searches, including general¹⁸⁰ and strip searches¹⁸¹ of young people at the Festival, following drug dog indications.¹⁸² BR3 professed to being familiar as at the time of the 2018 Festival with his LEPRAs obligations as they related to the strip searching of young persons,¹⁸³ including that a strip search only be carried out where the seriousness and urgency required it.¹⁸⁴ He admitted that he was not, however, aware that LEPRAs required that a parent, guardian or support person be contacted prior to the search of a young person.¹⁸⁵
- 3.67. BR3 and his team would be stationed behind the dogs, so as to have a full view of patrons including their behaviour upon seeing the dogs.

¹⁶⁵ T 22.10.19 P 112 L 44.

¹⁶⁶ T 22.10.19 P 108 L 8.

¹⁶⁷ T 22.10.19 P 111 L 33.

¹⁶⁸ T 22.10.19 P 113 L 34.

¹⁶⁹ T 22.10.19 P 119 LL 4-25.

¹⁷⁰ T 22.10.19 P 111 L 43.

¹⁷¹ T 22.10.19 P 112 L 29.

¹⁷² T 22.10.19 P 111 L 37.

¹⁷³ T 22.10.19 P 114 L 27.

¹⁷⁴ T 22.10.19 P 121 L 16.

¹⁷⁵ T 22.10.19 P 114 L 37 – P 115 L 33.

¹⁷⁶ T 22.10.19 P 120 L 6.

¹⁷⁷ T 22.10.19 P 116 L 22.

¹⁷⁸ T 22.10.19 P 121 L 7.

¹⁷⁹ T 22.10.19 P 110 L 13.

¹⁸⁰ T 22.10.19 P 116 L 11, P 119 L 44.

¹⁸¹ T 22.10.19 P 121 L 4; P 134 L 43.

¹⁸² T 22.10.19 P 117 L 24.

¹⁸³ T 22.10.19 P 122 L 13.

¹⁸⁴ T 22.10.19 P 159 L 25.

¹⁸⁵ T 22.10.19 P 161 L 9.

- 3.68. BR3 and BR4 would attend on patrons together where a drug dog gave a positive indication,¹⁸⁶ but would not conduct searches together.¹⁸⁷ BR3 would search male patrons and BR4 would search female patrons.
- 3.69. BR3 would also watch for how patrons reacted to the drug dogs. In the event that the handler and drug dog had not dealt with or indicated toward a patron, but that patron reacted with nervousness, grabbing at or quickly reaching for pockets, turning around or changing direction,¹⁸⁸ BR3 would bring that patron to the attention of the handler. BR3 agreed, however, that such behaviours could as readily be explained on the basis of perfectly normal concern at seeing police officers approach, as they could by the patron possessing drugs.¹⁸⁹
- 3.70. Where BR3 noticed a patron reacting to the presence of the drug dogs he would not search that patron unless the drug dog also then went on to give a positive indication.¹⁹⁰ BR3 would then give his name and station to the patron, would inform them that they were being stopped because the dog had given an indication and because of the particular behaviour of the patron which brought him or her to the attention of police.¹⁹¹ BR3 would then, without further caution, ask whether the patron was carrying any drugs.¹⁹² BR3 was of the view that as he and BR4 were standing so close behind the drug dog handler the caution issued by the drug dog handler “covered” the subsequent discussion between him, BR4 and the patron.¹⁹³
- 3.71. Where a patron answered that “yes”, they were carrying drugs, that patron would be escorted to the tent to produce the drugs, so as to preserve their privacy.¹⁹⁴ BR3 gave evidence that a strip search may or may not follow on from such an admission, depending “*on where [the patron] admitted that [the drugs] were and the circumstances.*”¹⁹⁵
- 3.72. When asked what information or circumstances supported his reasonable suspicion – separate to the drug dog indication and in circumstances where the patron denied having drugs on their person, BR3 responded “*just a combination of their behaviour*”, which he went on to explain as:¹⁹⁶

¹⁸⁶ T 22.10.19 P 138 L 21.

¹⁸⁷ T 22.10.19 P 138.14.

¹⁸⁸ T 22.10.19 P 138 L 46, P 139 L 20.

¹⁸⁹ T 22.10.19 P 139 L 5.

¹⁹⁰ T 22.10.19 P 117 L 33 – P 118 L 22.

¹⁹¹ T 22.10.19 P 138 L 29.

¹⁹² T 22.10.19 P 140 L 22, P 141 L 2.

¹⁹³ T 22.10.19 P 140 L 27.

¹⁹⁴ T 22.10.19 P 173 L 37.

¹⁹⁵ T 22.10.19 P 173 L 1.

¹⁹⁶ T 22.10.19 P 142 L 15.

“A constant fidgeting ... while walking back ... the initial build-up, what we have witnessed as well and then while walking toward the thing fidgeting, trying to veer in different directions.”

- 3.73. BR3 gave evidence that he had performed approximately 15 searches at the 2018 Festival,¹⁹⁷ whereas records held by the police recorded his name as having carried out 19,¹⁹⁸ the only young person among them being BRC.¹⁹⁹ He *“couldn’t confirm 100 per cent”* that all the searches were strip searches.²⁰⁰ Most of the strip searches he performed followed a positive indication from a drug dog with at least one having occurred as a result of security locating drugs within the bag of a patron.²⁰¹ BR3 agreed that in every case after a positive indication from a drug dog, he had performed a strip search.²⁰²
- 3.74. BR3’s evidence was that of the patrons he searched, the source of the urgency justifying the strip search, as is required by s 31(b) of LEPR, was his fear for the safety of the patron stemming from items that they may have secreted in their cavities.²⁰³ He admitted, however, that a cavity search was not lawfully permitted under LEPR, and was therefore not a proper basis for urgency, when that patron could have been transported to hospital.²⁰⁴ BR3 said he *“could not think of anything”* else to satisfy the urgency requirement necessary to carry out a strip search.²⁰⁵ He agreed that the strip searches that he conducted were not therefore attended to by any circumstances of urgency,²⁰⁶ and were unlawful.²⁰⁷
- 3.75. BR3 agreed that the fact of his 19 strip searches only resulted in a single find, which was Diazepam, was not a good success rate.²⁰⁸
- 3.76. Since being at the Police Academy, BR3 had completed only 5 minutes of mandatory continuing police education on strip searches and ss 30 to 34 of LEPR in 2012.²⁰⁹ BR3’s LEPR training had never included examples of what might amount to serious and urgent circumstances justifying a strip search.²¹⁰
- 3.77. BR3 believed that police were permitted to use force to remove the clothing of a person who had been asked but refused to remove their clothing as part of a strip search, but added that it would *“depend on the circumstances”* and *“the situation and what was involved.”*²¹¹ He

¹⁹⁷ T 22.10.19 P 123 L 24.

¹⁹⁸ T 22.10.19 P 124 L 41.

¹⁹⁹ T 22.10.19 P 166 L 17.

²⁰⁰ T 22.10.19 P 123 L 46.

²⁰¹ T 22.10.19 P 123 L 26.

²⁰² T 22.10.19 P 124 L 2, 124 L 37, P 162 L 35.

²⁰³ T 22.10.19 P 125 LL 2-5.

²⁰⁴ T 22.10.19 P 125 L 13.

²⁰⁵ T 22.10.19 P 125 LL 34.

²⁰⁶ T 22.10.19 P 126 L 5.

²⁰⁷ T 22.10.19 P 126 L 8.

²⁰⁸ T 22.10.19 P 144 L 36.

²⁰⁹ T 22.10.19 P 186 L 10.

²¹⁰ T 22.10.19 P 126 L 31 – P 128 L 35.

²¹¹ T 22.10.19 P 129 L 7 – P 130 L 12.

explained that whether or not he utilised force to remove a person's clothing during a strip search would depend significantly upon his level of confidence that the person had drugs in their possession,²¹² which would require more than simply a positive indication by a drug dog²¹³ and would be informed by matters that BR3 had observed in the lead up to the search.²¹⁴

- 3.78. BR3 was aware that he was not permitted to touch any part of the body during a strip search.²¹⁵ He believed that he was lawfully entitled to ask a person to touch their own body – including their genitalia – such as by asking a male patron to bend over and spread their buttocks in order to inspect their anal cavity,²¹⁶ so long as the information that he possessed justified so doing.²¹⁷ His belief in this regard was not informed by any particular training.²¹⁸ When asked to comment upon a hypothetical situation where (i) there was a drug dog detection and (ii) BR3 had formed a suspicion that the male was carrying drugs, BR3 did not believe that those circumstances were sufficient to justify him asking that male to spread their legs apart while he looked underneath them.²¹⁹
- 3.79. BR3 was taken to the search of BRC of which he had no independent memory.²²⁰ It was BR3 who created the COPS entry in relation to BRC's search.²²¹ It listed BR3 as “*searching officer*” and BR4 as officer in charge.²²² The narrative component read as follows:

“The young person was stopped by drug detection dog buster entering the location and a positive indication was made to drugs. She was taken to private room and admitted to being around persons who smoked cannabis recently. She was searched female officer and nil found. No further action.”

- 3.80. BR3 filled out the COPS entry whilst sitting next to his partner, BR4, at Tweed Heads Police Station after he had left the Festival for the day.²²³ There, he completed the COPS entries for everyone that he had searched or was accompanying officer for that day.²²⁴ As part of that exercise BR3 refreshed his memory from the running sheet that he had created and used during the day (which was simply a piece of paper, and not a standard form, and was no longer available at the time of the public examination), as well as messages between him and BR4 to

²¹² T 22.10.19 P 130 L 30.

²¹³ T 22.10.19 P 130 L 22.

²¹⁴ T 22.10.19 P 130 L 18-28, P 132 L 2.

²¹⁵ T 22.10.19 P 132 L 9.

²¹⁶ T 22.10.19 P 133 L 16.

²¹⁷ T 22.10.19 P 133 L 16.

²¹⁸ T 22.10.19 P 132 L 32, P 133 L 40.

²¹⁹ T 22.10.19 P 134 LL 7-23.

²²⁰ T 22.10.19 P 153 L 25.

²²¹ T 22.10.19 P 150 L 46.

²²² COPS Event E68641733.

²²³ T 22.10.19 P 151 L 20.

²²⁴ T 22.10.19 P 154 L 16.

inform the COPS entry.²²⁵ BR3 also admitted to discussing with BR4 certain searches she had carried out and to recording the information she told him in the COPS entries, where there was otherwise no record of that information she told him.²²⁶

- 3.81. BRC's identity and driver's licence number were recorded in the COPS entry, but there was no reference in either BR3's or BR4's notebook as to BRC's identity or their initial contact with and subsequent search of BRC.²²⁷ BR3 explained that he and his partner would take photographs of driver licences on their mobile phones, refer to those photos when filling out COPS entries later on and then would delete the photos.²²⁸
- 3.82. BR3 agreed that he ought to have recorded his compliance with his LEPR obligations in the COPS entries, including the justification for the search or strip search and the basis for seriousness and urgency warranting a strip search.²²⁹ The COPS entry for BRC did not record the basis for his reasonable suspicion that she was carrying drugs, the matters giving rise to the seriousness and urgency required to justify the strip search²³⁰ or the identity of the searching officer.²³¹
- 3.83. BR3 did not fill out a field arrest form in respect of BRC because such forms were only completed when drugs were located.²³² He was aware as at July 2018 that he was obliged to record the justification for a search even in the event of a non-find²³³ but had made no entry in his notebook concerning BRC's search.²³⁴ BR3 claimed to have been told by BR4 of BRC's admission, namely that she had been in the company of other persons who had been using drugs,²³⁵ but that admission was not recorded in the COPS entry. In his answers to the section 54 notice BR3 had erroneously recorded that BRC had admitted to using cannabis herself, which he accepted was incorrect,²³⁶ and had stated that a support person was present for BRC's strip search, when in fact none was.²³⁷

E. BR4

- 3.84. BR4 joined the police in 2005 and became a senior constable in 2010.²³⁸ BR4 did not initially put her name forward to attend the 2018 Festival, but later agreed to attend when contacted by the rostering

²²⁵ T 22.10.19 P 150 L 32.

²²⁶ T 22.10.19 P 157 LL 34 – P 158 L 32.

²²⁷ T 22.10.19 P 188 L 1.

²²⁸ T 22.10.19 P 152 LL 8-41.

²²⁹ T 22.10.19 P 155 LL 5-20.

²³⁰ T 22.10.19 P 156 L 20.

²³¹ T 22.10.19 P 161 L 17.

²³² T 22.10.19 P 171 L 44.

²³³ T 22.10.19 P 158 L 39.

²³⁴ T 22.10.19 P 154 L 1.

²³⁵ T 22.10.19 P 158 L 6.

²³⁶ T 22.10.19 P 165 L 24.

²³⁷ T 22.10.19 P 167 LL 2-12.

²³⁸ T 22.10.19 P 191 L 41.

department, who stated that female officers were needed and asked whether she would like to participate.²³⁹

- 3.85. BR4 worked on both days of the 2018 Festival.²⁴⁰ Her role was to assist the drug dog team at the entrance.²⁴¹ She mostly worked alongside BR3²⁴² because they were from the same LAC and knew each other well.²⁴³
- 3.86. BR4 believed she may have worked at music festivals in the past, though it was not something she did regularly.²⁴⁴ She had previous experience working with drug dogs, but not in the music festival context.²⁴⁵ She had previously searched a young person.²⁴⁶
- 3.87. BR4 recalled attending a morning briefing at the festival with BR3.²⁴⁷ There they were told of the location of the search tents; where the drug dogs would be operating; the exhibits procedure; the procedure for field detection and field arrest forms (namely, that they were to be used only in the event of a drug detection, and not a nil find),²⁴⁸ the location of the field court attendance books and other operational matters.²⁴⁹
- 3.88. Whether or not drugs were found, BR4 was of the view that the responsibility for filling out a COPS event in respect of a patron lay with the officer who took the patron's details; that is, not the searching officer.²⁵⁰ She maintained this view even in circumstances where that officer may not have been present for the search,²⁵¹ such as where they were of the opposite sex.
- 3.89. BR4 expected that her role at the 2018 Festival would include searching patrons, depending on the circumstances.²⁵² When she and BR3 observed a positive drug dog indication, they would approach the subject, introduce themselves and inform them of the reason that they had been stopped. BR4 would say words to the effect of:

"Hi, my name is Senior Constable [BR4], I'm from Taree police station. You have been stopped in relation to the drug dog has made an indication on you. Come over here and we'll just have a

²³⁹ T 22.10.19 P 193 L 30

²⁴⁰ T 22.10.19 P 195 L 47.

²⁴¹ T 22.10.19 P 194 L 34

²⁴² T 22.10.19 P 195 L 19.

²⁴³ T 22.10.19 P 195 L 19

²⁴⁴ T 22.10.19 P 194 L 23.

²⁴⁵ T 22.10.19 P 196 L 42.

²⁴⁶ T 22.10.19 P 213 L 30.

²⁴⁷ T 22.10.19 P 195 L 25.

²⁴⁸ T 22.10.19 P 196 L 42.

²⁴⁹ T 22.10.19 P 196 L 29.

²⁵⁰ T 22.10.19 P 197 L 15.

²⁵¹ T 22.10.19 P 197 L 10.

²⁵² T 22.10.19 P 194 L 43.

little chat." And then we might ask, you know, further questions in relation to, you know, "Have you got any drugs on you?"²⁵³

- 3.90. BR4 did not believe it was her duty at that stage to caution the subject prior to asking them to make an admission in respect of whether they were in possession of drugs.²⁵⁴
- 3.91. Upon a positive indication by a drug dog, but where the patron denied carrying any drugs, BR4 maintained that she may or may not search the patron, depending on whether she had observed the patron to appear drug affected or nervous; whether they were grabbing for their pockets; were trying to conceal something or had sought to avoid the drug detection dog.²⁵⁵ Where a patron had exhibited no such behaviour, BR4 would "*possibly*" allow somebody against whom a drug dog had indicated and who had answered "*no*" to the question "*Are you carrying any drugs?*" to enter the Festival without being searched.²⁵⁶ Otherwise, the patron would be taken to the private searching area, where a search would be conducted.
- 3.92. BR4 could not be sure if she had ever having encountered someone acting normally, following an indication by a drug dog but noted that she could not remember all of the drug searches she had conducted.²⁵⁷ Whilst acknowledging that everyone reacts differently when stopped by police with a dog, BR4 stated that those different ways of acting would invariably lead her to reasonably suspect that they are in possession of drugs.²⁵⁸
- 3.93. Of the total strip searches which BR4 and BR3 recorded as having performed at the 2018 Festival, there were 10 drug detections, 7 of which were as a result of the female patron admitting to having drugs in her underwear or vaginal cavity.²⁵⁹ In 3 of those 7, BR4 was listed as the lead officer,²⁶⁰ which signified that she was responsible for generating the COPS record and facts sheet.²⁶¹
- 3.94. BR4 acknowledged that in one of those three cases, there was a discrepancy between the facts sheet, which alleged that the drugs weighed 3.18 grams, and the field arrest form, which recorded the weight as 1 gram. BR4 initially gave evidence that this was not an error, stating that the weight in the field arrest form was an estimate, whereas the quantity in the facts sheet would be taken from EFIMS²⁶² once the exhibit had been weighed. When she was taken to the EFIMS record for that case, which also recorded the quantity as "*1 gram*", BR4 conceded that the recording must be erroneous, and could not offer

²⁵³ T 22.10.19 P 199 L 16.

²⁵⁴ T 22.10.19 P 199 L 25.

²⁵⁵ T 22.10.19 P 200 L 11.

²⁵⁶ T 22.10.19 P 200 L 15.

²⁵⁷ T 22.10.19 P 200 L 32 – P 201 L 13.

²⁵⁸ T 22.10.19 P 201 L 29.

²⁵⁹ T 23.10.19 P 257 LL 7-23.

²⁶⁰ T 23.10.19 P 256 L 40.

²⁶¹ T 23.10.19 P 260 L 15

²⁶² Exhibits Forensic Information Management System (EFIMS)

any explanation for the mistake.²⁶³ In another of the two cases, the field arrest form and EFIMS listed the weight of the MDMA as “0.4 grams”, whereas the facts sheet alleged that the total drugs weighed 3.18 grams.²⁶⁴

- 3.95. BR4 professed to be aware at the time of the 2018 Festival, that a drug dog indication alone was insufficient to justify a search under LEPRa.²⁶⁵ She claimed to have been aware of the seriousness and urgency requirements in LEPRa concerning strip searches,²⁶⁶ that LEPRa conferred additional rights to a young person being strip searched²⁶⁷ and that a young person could not waive their right to have a support person present during a strip search.²⁶⁸ At the 2018 Festival, BR4 utilised her police notebook and a running sheet but in neither had she made a record of what was in her mind at the time BRC was searched.²⁶⁹ She believed BR3 was taking down those details at the time that BR4 was conducting the search.²⁷⁰
- 3.96. BR4 agreed that as the searching officer it was for her to determine a reasonable suspicion for any search,²⁷¹ and that she was responsible for identifying the seriousness and urgency justifying any strip search.²⁷² BR4 could not recall what gave rise to her reasonable suspicion in the case of BRC because she did not take notes.²⁷³ She agreed that it was up to her to either make a record or cause a record to be made as to what was in her mind as to justify the search.²⁷⁴ Nor could she recall the circumstances justifying the search being carried out without a support person.²⁷⁵
- 3.97. BR4 had no recollection of searching BRC.²⁷⁶ Though BR4 agreed that aspects of BRC’s account accorded with her practice in conducting strip searches, and that various statements alleged by BRC to have been made by the searching officer were statements which she might make in the course of a strip search, she could not recall searching BRC.²⁷⁷
- 3.98. BR4 could not recall herself²⁷⁸ or BR3²⁷⁹ asking how old BRC was at the time of the search. BR4 agreed at one point that it was normal practice that a patron was asked to provide identification before being

²⁶³ T 23.10.19 P 262 L 32 – P 265 L 1.

²⁶⁴ T 23.10.19 P 266 LL 5-36.

²⁶⁵ T 23.10.19 P 202 L 47.

²⁶⁶ T 22.10.19 P 203 L 4.

²⁶⁷ T 23.10.19 P 214 L 13.

²⁶⁸ T 23.10.19 P 229 L 20.

²⁶⁹ T 23.10.19 P 203 L 37- P 204 L22; P 206 L 14.

²⁷⁰ T 23.10.19 P 206 L 27.

²⁷¹ T 23.10.19 P 206 L 33, P 209 L 10.

²⁷² T 23.10.19 P 209 L 15.

²⁷³ T 22.10.19 P 206 L 41, P 249 LL 35-43.

²⁷⁴ T 22.10.19 P 209 L 23.

²⁷⁵ T 23.10.19 P 211 L 14.

²⁷⁶ T 23.10.19 P 204 L 39 – P 205 L 17; P 218 L 31; P 219 L 2.

²⁷⁷ T 23.10.19 P 229 L 28; P 249 LL 35-43.

²⁷⁸ T 23.10.19 P 213 L 9.

²⁷⁹ T 23.10.19 P 214 L 44.

brought into the tent,²⁸⁰ but elsewhere she said that she did not necessarily endeavour to learn the identity or age of a person prior to searching them at the 2018 Festival.²⁸¹ She conceded in hindsight that the age of a patron who was about to be searched was of vital importance.²⁸²

- 3.99. BR4 could not recall making enquires for a support person.²⁸³ BR4 agreed that as searching officer, it was her responsibility to ensure that LEPR was complied with²⁸⁴ but that it was not complied with in respect of BRC.²⁸⁵
- 3.100. BR4 agreed that if BRC had denied possessing drugs, there would be no justification for even a general search, whether she admitted to or denied being around others who had carried drugs.²⁸⁶
- 3.101. BR4 had received no training or information from a senior officer as to when a search should or should not be conducted at the 2018 Festival.²⁸⁷ Rather, she relied on her general knowledge of LEPR.²⁸⁸ The only²⁸⁹ matter that she imagined might have presented to her as urgent circumstances justifying the strip search of BRC was a belief that BRC had concealed or inserted drugs inside her, and that she was therefore at risk of harm.²⁹⁰ When asked when she would form such a suspicion, she responded “*an admission, usually.*”²⁹¹
- 3.102. The standard procedure which BR4 would follow in a strip search involved having the patron remove their clothing, but not to the point of being completely naked,²⁹² and then having them squat, so as to see whether they had anything inserted within their vagina or anus.²⁹³ She would then bend down and look, from a distance but not whilst under the person’s body, whilst the person was squatting, to see if something was protruding.²⁹⁴ BR4 identified that the technique of bending down and looking at the patron whilst squatting was in the police handbook.²⁹⁵

²⁸⁰ T 23.10.19 P 215 L 34.

²⁸¹ T 23.10.19 P 221 L 38 – P 222 L 8.

²⁸² T 23.10.19 P 213 L 19.

²⁸³ T 23.10.19 P 214 L 17.

²⁸⁴ T 23.10.19 P 218 L 9.

²⁸⁵ T 23.10.19 P 218 L 14.

²⁸⁶ T 23.10.19 P 207 LL 7-20; P 209 L 30.

²⁸⁷ T 23.10.19 P 210 L 28.

²⁸⁸ T 23.10.19 P 210 L 34.

²⁸⁹ T 23.10.19 P 212 L 11.

²⁹⁰ T 23.10.19 P 211 L 21.

²⁹¹ T 23.10.19 P 211 L 30.

²⁹² T 23.10.19 P 231 L 31.

²⁹³ T 23.10.19 P 222 L 21 – P 223 L 13. The Chief Commissioner noted on the record after BR4’s evidence that aside from the question of its legality, the practice of requiring a person to squat during a strip search was long-standing and frequently-utilised within the police: P 289.36-287.6.

²⁹⁴ T 23.10.19 P 223 LL 15-41.

²⁹⁵ BR4 initially gave evidence that the source of this information was the Police handbook (at P 224.30), but later corrected this evidence, explaining that she believed it to be the person search manual, the 2019 edition of which was tendered. When the Chief Commissioner pointed

- 3.103. BR4 believed that she had the power to ask a person to touch their own intimate body parts in order to assist with a strip search and had done so in the past,²⁹⁶ again identifying that she had not received specific training as to that method,²⁹⁷ but had adopted that practice from the police handbook.²⁹⁸
- 3.104. According to BR4, only one female strip searched at the 2018 Festival was tearful afterwards; that patron was searched by a different officer and was distressed because she was unable to remove drugs that were secreted inside her.²⁹⁹
- 3.105. BR4 agreed that requiring somebody to bend over or squat and to spread their intimate body parts was an extremely personal invasion and that to do so would require a very good reason.³⁰⁰ She agreed that failing to record her justification for such an invasion would amount to a serious breach of her obligations.³⁰¹ BR4 disagreed that she should have had another officer present, citing the LEPR requirement that only as many persons as are reasonably necessary to ensure the integrity of the search be present.³⁰² BR4 had never been instructed that two officers should be present for a strip search.³⁰³
- 3.106. BR4 explained that the 2018 Festival tents, which were provided by the Festival, not the police,³⁰⁴ in which females were strip searched were not secure. They were each 2.5 by 2.5 metres with an opening at the front which did not completely close.³⁰⁵ BR4 would have the patron stand in the front corner of the tent so that anyone walking past could not see the patron being strip searched.³⁰⁶
- 3.107. BR4 explained the process of document creation in the following way; if she conducted a search, her partner – BR3 – would fill in his police notebook with the identification and other details of the patron being searched. When BR4 conducted a search that resulted in a drug

out that there was no 2018 version of that document, and that the Chief Commissioner's understanding was that the portion of the person search manual relating to strip searching was new, and did not appear in any previous document, BR4 maintained that *"My understanding is that that has always been the procedure in relation to being allowed to get someone to squat. Everything in [the 2019 person search manual], that's what I believed [to be lawful] at the time of Splendour."* P 251.33-253.19. She later added a further qualification to this, stating *"My evidence is that however I was trained in the police force, that is how I have always known. I don't know whether it was done at the academy in DEFTAC, but that is how I've been trained to search and that's how I've always done it."* T 255.16.

²⁹⁶ T 23.10.19 P 225 L 7.

²⁹⁷ T 23.10.19 P 227 L 10.

²⁹⁸ T 23.10.19 P 225 L 15.

²⁹⁹ T 23.10.19 P 227 L 39; P 236 L 30.

³⁰⁰ T 23.10.19 P 228 L 3.

³⁰¹ T 23.10.19 P 228 L 17.

³⁰² T 23.10.19 P 229 L 5; P 246 L 15. BR5 gave evidence that as of 2018, the police interpretation of LEPR was that one officer of the same sex as the person being searched would conduct the search, so as to minimise the intrusion into the privacy of the person being searched: T 382.41.

³⁰³ T 23.10.19 P 246 L 7.

³⁰⁴ Evidence of BR1, T 21.10.19 P 26 L 29.

³⁰⁵ T 23.10.19 P 240 LL 28-39.

³⁰⁶ T 23.10.19 P 240 L 41.

detection, she would complete the Field Arrest Form and then photograph it,³⁰⁷ along with the patron's driver's licence or identification.³⁰⁸ She would then transfer those details from the photographs into her notebook. BR4 also used a running sheet but could not recall exactly what was on it,³⁰⁹ beyond confirming that she would not have recorded what was in her mind at any time when BRC was taken to be searched.³¹⁰

- 3.108. BR4 would then send the drugs and field arrest form with another officer, who would create the event³¹¹ and assign an exhibit number to the drugs.³¹² She or BR3 would, within two days of the events,³¹³ return to the matter by reference to the event number, in this case on the evening of the 2018 Festival shift, back at the police station, where she would update or add detail to the event³¹⁴ and to her notebook.³¹⁵ Facts sheets would also be drafted at that time, at the station. In the course of drafting BR4 would rely on the COPS event and her memory of the event.³¹⁶

F. BR5

- 3.109. BR5 was a Detective Sergeant at the time of the public examination,³¹⁷ having been in the police since 1994.³¹⁸ He was the Forward Commander for the Drug Detection Dog Operation at the 2018 Festival.³¹⁹ That was the first year he had performed that role at the Festival.³²⁰ He reported to the Operation Commander.³²¹
- 3.110. BR5 was the officer responsible for the allocation of BR2, BR3 and BR4 to their search teams at the 2018 Festival.³²²
- 3.111. Having checked the records, BR5 gave evidence that there were two specialist youth police officers (SYO) but no youth liaison officer (YLO) present at the 2018 Festival.³²³ He explained that a SYO might be a detective, general duties or highway patrol officer, for example, who has completed a separate, internal training course involving juvenile justice diversionary programs and court alternatives.³²⁴ A YLO

³⁰⁷ T 23.10.19 P 246 L 45.

³⁰⁸ T 23.10.19 P 247 L 4.

³⁰⁹ T 23.10.19 P 204 L 9; P 247 L 12.

³¹⁰ T 23.10.19 P 204 L 14.

³¹¹ T 23.10.19 P 276 L 43.

³¹² T 23.10.19 P 279 LL 3-11.

³¹³ T 23.10.19 P 280 L 27.

³¹⁴ T 23.10.19 P 277 L 7.

³¹⁵ T 23.10.19 P 279 L 35.

³¹⁶ T 23.10.19 P 278 L 22.

³¹⁷ T 23.10.19 P 291 L 28.

³¹⁸ T 23.10.19 P 292 L 7.

³¹⁹ T 23.10.19 P 291 L 39.

³²⁰ T 23.10.19 P 292 L 3; 314 L 38.

³²¹ T 23.10.19 P 296 L 7.

³²² Evidence of BR1, T 21.10.19 P 84 L 9.

³²³ T 23.10.19 P 294 L 3.

³²⁴ T 23.10.19 P 296.27.

on the other hand, has a specialised skill set dealing with youth.³²⁵ An SYO would need to be consulted prior to any formal legal process being initiated against a young person.³²⁶ In the debrief process after the 2018 Festival, BR5 identified that a YLO should also be present the following year, which arrangement was executed for the 2019 Festival.³²⁷

- 3.112. Of the officers allocated to the 2018 Festival from the Tweed-Byron command, 11 of them were SYOs.³²⁸ At the briefing searching officers were made aware of the presence of the SYOs, their identity and how they could be contacted in the event that drugs were detected on a young person. However, SYOs were not contacted at the stage of determining whether or not a child should be searched³²⁹ and played no role in guiding or assisting officers in relation to the LEPRA requirements with respect to searching children under the age of 18.³³⁰
- 3.113. BR5 explained that at the point of entry to the Festival, all patrons are given a wristband and that youths are also given a secondary wristband, identifying them as a person under the age of 18.³³¹
- 3.114. BR5 gave evidence that a review by police at the Tweed-Byron Command, of the data from the 2018 Festival, revealed that a total of 124 strip searches were conducted, 120 being adults and 4 being children.³³² The Commission's analysis of the data, however, suggested that the total number of strip searches may have been as high as 143.³³³ BR5 was taken to COPS entries purporting to relate to general searches, which were apt to suggest that a strip search had taken place, such as one which stated "*Removed a condom from her vagina containing a number of items*".³³⁴
- 3.115. Whilst agreeing that recording the age of the person searched is of vital importance, BR5 explained that in the event of a nil-find, a patron was not obliged to supply their personal information³³⁵ and a CNI number for "*unknown* (male or female)" would be used in lieu of the identity details of the person, so as to safeguard their privacy.³³⁶ He expected however, that for a youth, the "*unknown*" identity would not be utilised.³³⁷ He clarified this evidence as intending to say that where it appeared that a person to be searched could be under 18, enquiries

³²⁵ T 23.10.19 P 296.34.

³²⁶ T 23.10.19 P 297.20.

³²⁷ T 23.10.19 P 296.15, 299.22.

³²⁸ T 23.10.19 P 300.12.

³²⁹ T 23.10.19 P 300.25.

³³⁰ T 23.10.19 P 300.35.

³³¹ T 23.10.19 P 302.13.

³³² T 23.10.19 P 373.12.

³³³ T 23.10.19 P 355 L 21.

³³⁴ T 23.10.19 P 379 L 10.

³³⁵ T 23.10.19 P 305 L 33.

³³⁶ T 23.10.19 P 303 L 5.

³³⁷ T 23.10.19 P 303 L 37; P 306 L 9.

should be made at least as to their age (even if not recorded) so that they were afforded their additional rights under LEPR³³⁸.

- 3.116. BR5 understood that a positive indication from a drug dog could not, on its own, found a reasonable suspicion for a search³³⁹ and denied such an indication would automatically lead to a strip search.³⁴⁰ He accepted that a police officer might, after a drug dog gives a positive indication, check the COPS entries in relation to a person before determining whether there is justification to conduct a strip search.³⁴¹ Where a review of the COPS entries revealed that a person had previously (i) been subject to a positive indication by a drug dog, (ii) appeared nervous, but (iii) where there was nil find, BR5 acknowledged that such matters could be used as a justification for a further search, though he said he “*wouldn’t just rely on that*” as his justification.³⁴²
- 3.117. In relation to the s 33(3) LEPR “*seriousness and urgency*” requirements, BR5 offered that they may be satisfied by the risk of destruction of concealment of evidence,³⁴³ a risk which BR5 did not believe was sufficiently mitigated by the officer standing directly in front of the patron in the searching tent,³⁴⁴ and the safety of the individual being searched.³⁴⁵
- 3.118. BR5 was taken to the 2018 Drug Dog Operation Orders³⁴⁶ which, he explained, were not emailed out to the drug dog officers because they were confidential.³⁴⁷ Rather, BR5 would conduct a briefing for all police involved in the operation at Tweed Heads police station prior to each Festival day’s deployment, which briefing would address the orders page-by-page, whilst they were projected on screens.³⁴⁸
- 3.119. The 2018 Joining Instructions³⁴⁹ were emailed out to each officer involved in the operation.³⁵⁰ A briefing note,³⁵¹ which served as a ready-reckoner, was also provided by BR5 to the other six team leaders.
- 3.120. The 2018 Joining Instructions did not contain any specific instructions in relation to LEPR guidelines.³⁵² Nowhere in any of the Drug Dog operational orders, Joining Instructions or briefing note was there recorded an instruction that police need not record the details of a

³³⁸ T 23.10.19 P 307 K 12, P 312 L 11.

³³⁹ T 23.10.19 P 309 L 29.

³⁴⁰ T 23.10.19 P 310 L 29.

³⁴¹ T 23.10.19 P 309 L 39.

³⁴² T 23.10.19 P 311 L 30 – P 312 L 4.

³⁴³ T 23.10.19 P 329 L 4.

³⁴⁴ T 23.10.19 P 327 L 2 – P 328 L 16.

³⁴⁵ T 23.10.19 P 329 L 25.

³⁴⁶ Exhibit 5C

³⁴⁷ T 23.10.19 P 316 L 33 – P 317 L 28.

³⁴⁸ T 23.10.19 P 317 L 24.

³⁴⁹ Exhibit 49C

³⁵⁰ T 23.10.19 P 137 L 37.

³⁵¹ Exhibit 45C.

³⁵² T 23.10.19 P 317 L 44.

person in respect of whom there was a nil find.³⁵³ BR5 gave evidence that such an instruction was part of his 2018 briefing, of which he was confident because he had to provide the numbers for the designated male or female “*unknown person*” CNI’s and because there were COPS events where searches were recorded under those numbers.³⁵⁴ Officers were not told that they should tell patrons that it was their right not to provide police with their details unless drugs were found.³⁵⁵

- 3.121. BR5 was aware that young persons would be in attendance at the 2018 Festival, of whom a significant number would likely be subject to a drug dog indication and searched. It was not until 2019,³⁵⁶ however, that he turned his mind to arrangements³⁵⁷ such as support persons for strip searches where a parent or guardian was unavailable, or was not a young person’s choice.³⁵⁸ At the 2019 Festival Nicqui Yazdi of the Byron Bay Youth Centre, as well as unsworn members of the PCYC, were present to act in that a capacity.³⁵⁹ There was, however, no documentation prepared by the YLO or anyone in the youth command for the 2019 Festival to provide to support persons for guidance as to their role in protecting the legal rights of young persons during strip searches.³⁶⁰
- 3.122. Other changes were made to procedures between the 2018 and 2019 Festivals including that a minimum of two officers was required to be present for strip searches which, along with all other exercises of LEPR powers, are required to be recorded on body-worn camera;³⁶¹ that the COPS system was altered to remove the self-verification function;³⁶² that the field arrest form for an officer to record the type of search and justification for same was amended to “*field detection or arrest*”³⁶³ so as to reflect that it must be completed where drugs are detected but where there is no arrest;³⁶⁴ that the details of the officer in charge are to be recorded;³⁶⁵ and that a new form was to be generated to be filled out in the event of a nil find.³⁶⁶ The Drug Dog operational orders were also amended to include more detailed instructions on methodologies to be adopted in the search of young persons and the LEPR requirements related to recording the search of a young person.³⁶⁷

³⁵³ T 23.10.19 P 319 L 18.

³⁵⁴ T 23.10.19 P 319 L 29.

³⁵⁵ T 23.10.19 P 320 L 23.

³⁵⁶ T 23.10.19 P 333 L 3.

³⁵⁷ T 23.10.19 P 322 LL 5-44.

³⁵⁸ T 23.10.19 P 322 L 21.

³⁵⁹ T 23.10.19 P 333 L 13; P 369 LL 9-33.

³⁶⁰ T 23.10.19 P 335 L 18; P 337 L 34.

³⁶¹ T 23.10.19 P 338.26-339.18, 382.22.

³⁶² T 23.10.19 P 350 L 36.

³⁶³ T 23.10.19 P 361 L 44.

³⁶⁴ T 23.10.19 P 362 L 26.

³⁶⁵ T 23.10.19 P 363 LL 19-42.

³⁶⁶ T 23.10.19 P 362 L 34.

³⁶⁷ T 23.10.19 P 378 L 18.

- 3.123. The procedure after drugs are located was explained by BR5 as follows: the individual officer brings the patron back to the search compound; the officer begins to fill out the field arrest form or drug detection form; an interview may take place and the individual officer will make contemporaneous notes, weigh the drugs in their packaging and take photos of the drugs³⁶⁸ on the scales with equipment provided by senior police at the searching compound.³⁶⁹ The officer would then place the drugs in a small, resealable bag and deliver that bag to the exhibit team on site at the Festival who are responsible for recording the drugs and packaging as an exhibit.³⁷⁰ The exhibit is stored in a locked drug box, one key to which is held by a supervisor and the other by BR5.³⁷¹ The box is ultimately taken back to the operations centre to the exhibits sergeant and his staff, where in respect of each of the drugs detected, a COPS entry is created and the item is booked up, photographed and reweighed.³⁷² At that point the drug is placed into a drug security bag with a unique identifying number and sealed, stored in a secure cabinet and ultimately transported back to Tweed Heads Police Station to go into the drug safe.³⁷³
- 3.124. BR5 agreed that the matters which should be recorded within COPS entries included the details of the searching officer;³⁷⁴ the basis for a search, including the reasonable suspicion for the search; the seriousness and urgency justifying a strip search and, where applicable, the reasonable grounds for the s 33(3A) LEPRA exception.³⁷⁵ BR5 expected that in the event of a nil find, police would contemporaneously record in their notebooks details such as the date, time, location, event, their reasons, a description of the civilian with whom they are dealing, observations of their demeanour, the justification for a general or strip search and the presence or not of a support person.³⁷⁶ As part of BR5's briefing, officers were reminded of the importance of record keeping in their notebooks.³⁷⁷
- 3.125. BR5 was of the view that the appropriate time at which a caution should be administered was when the officer forms the suspicion that the person may have committed an offence, not when the patron is approached and asked if they have drugs in their possession.³⁷⁸
- 3.126. BR5 was taken to the circumstances of the search of BRC. He was of the view that requiring a person to squat and then visually inspecting

³⁶⁸ T 23.10.19 P 375 L 11.

³⁶⁹ T 23.10.19 P 374 L 25.

³⁷⁰ T 23.10.19 P 374 L 25.

³⁷¹ T 23.10.19 P 376 L 18.

³⁷² T 23.10.19 P 377 L 2.

³⁷³ T 23.10.19 P 377 L 20.

³⁷⁴ T 23.10.19 P 360 L 9.

³⁷⁵ T 23.10.19 P 341 L 26.

³⁷⁶ T 23.10.19 P 342 L 38-343 L 10.

³⁷⁷ T 23.10.19 P 343 L 34.

³⁷⁸ T 23.10.19 P 374 L 10.

them from behind, as was BR4's approach during strip searches, reflected acceptable practice for a strip search.³⁷⁹

- 3.127. BR5 acknowledged that the reasons listed in the COPS entry for the search of BRC were insufficient to justify her strip search.³⁸⁰ Had he had cause to review the entry for verification or another purpose, he would have required that the officer go back and record more complete detail.³⁸¹ Though the document was listed as "*verified*", an indication which would ordinarily mean that it had been approved of by a senior officer,³⁸² in 2018 the COPS system was configured so that the type of COPS entry that was generated for BRC's search could be self-verified.³⁸³ BR5 was of the view that the COPS entry in relation to BRC had not been checked by a senior, or any other officer,³⁸⁴ which function would usually be performed by a sergeant acting as shift supervisor.³⁸⁵

G. BR6

- 3.128. BR6 had been a police officer since 2007 and was, as at the time of the 2018 Festival and the public examination, a YLO at Tweed-Byron.³⁸⁶ His role involved attending schools to educate young people about matters such as cybercrime, drugs and assaults, administering cautions and attending conferences under the *Young Offenders Act 1997* and advising other officers on youth matters, including the *Young Offenders Act 1997*.³⁸⁷
- 3.129. 2019 was the first of the Festivals which BR6 attended in the capacity of YLO.³⁸⁸ There he assisted police in the legal process where drugs were found on a young person by making recommendations to the officer as to whether that young person should be formally charged or dealt with by court alternative.³⁸⁹ BR6's role did not extend to discussing or querying with an officer whether or not a search should be carried out on a particular child. It was the supervisor who would have that discussion with the searching officer when he or she brought a young person into custody.³⁹⁰
- 3.130. BR6 also liaised with Byron Bay Youth Services (BBYS) at the 2019 Festival when a young person was brought into custody and arranged

³⁷⁹ T 23.10.19 P 351 L 37.

³⁸⁰ T 23.10.19 P 340 L 5.

³⁸¹ T 23.10.19 P 351 L 19.

³⁸² T 23.10.19 P 349 L 33.

³⁸³ T 23.10.19 P 349 L 40.

³⁸⁴ T 23.10.19 P 350 L 5.

³⁸⁵ T 23.10.19 P 350 L 12.

³⁸⁶ T 23.10.19 P 384 L 45.

³⁸⁷ T 23.10.19 P 385 L 14.

³⁸⁸ T 23.10.19 P 385 L 33.

³⁸⁹ T 23.10.19 P 389 L 21.

³⁹⁰ T 23.10.19 P 389 L 5.

for youth workers from BBYS to be present as support persons for young persons being searched and strip searched.³⁹¹

- 3.131. BR6 did not specifically discuss with anyone from BBYS what their role would be in the event that they acted as a support person during a search.³⁹² He had a conversation with the person who ran BBYS and explained what they would be required to do in order to support someone like BRC, including monitoring police and questioning any behaviour on the part of the searching officer with which they take issue.³⁹³
- 3.132. There was no document in existence setting out points of guidance for potential support persons. BR6 agreed that such a document would be invaluable, given people would inevitably not retain everything communicated to them in a verbal briefing³⁹⁴ and was prepared to assist in its drafting for the next year's Festival.

H. Tracey Lee Randall

- 3.133. At the time of the public examination, Ms Randall was the principal of Randall Legal, a firm based in Lismore covering the Northern Rivers area. Ms Randall had 25 years' experience in criminal law.³⁹⁵
- 3.134. Ms Randall gave a statement to Commission investigators on 29 August 2019.
- 3.135. In around 2012 when the Festival was to return to Byron Bay, Ms Randall decided that, should the promoters be willing, her firm would provide pro bono legal services to young people attending the Festival.³⁹⁶ Since then, Ms Randall had provided pro bono legal services every year at the Festival.³⁹⁷
- 3.136. Ms Randall's stall was located approximately 30 – 50 metres inside the entrance, opposite to where strip searches were conducted.³⁹⁸ The stall would be attended by five people on a rotating basis.³⁹⁹
- 3.137. Ms Randall noted that of the people who attended on her stall at the Festival, most were aged between 19 and 21, and most often had been found in possession of small amounts of drugs.
- 3.138. The location of Ms Randall's tent enabled her to form "*a fair understanding*" of the number of nil finds following a drug dog detection. She and her staff would watch people going in and would approach those who came out shortly after to ask whether they had

³⁹¹ T 23.10.19 P 385 L 41.

³⁹² T 23.10.19 P 387 L 27 – P 388 L 3.

³⁹³ T 23.10.19 P 388 L 9.

³⁹⁴ T 23.10.19 P 388 L 28.

³⁹⁵ T 24.10.19 P 396 L 17.

³⁹⁶ T 24.10.19 P 399 L 20.

³⁹⁷ T 24.10.19 P 398 L 1.

³⁹⁸ T 24.10.19 P 407 L 3.

³⁹⁹ T 24.10.19 P 407 L 42.

any concerns about the way they were dealt with by police. Ms Randall explained that most would decline, saying *"No, it was fine, I didn't have anything on me."* These circumstances caused her to form a view that the number of nil-find searches was quite high.⁴⁰⁰

- 3.139. Ms Randall referred to having taken issue with senior police over the use of 'yellow plea notices' — a written pleading form attached to a court attendance notice which police could issue on the day of the Festival permitting a recipient to return a written plea, rather than appearing in person in the Local Court. Ms Randall noted that such forms were prevalent at the Festival in 2018 and 2019.⁴⁰¹ Ms Randall noted her concerns in regard to how such forms were being used by the police, namely that people would tell her

*"...that the police had said if they just fill in the written pleadings, then they will get a section 10 non-conviction."*⁴⁰²

- 3.140. Ms Randall warned that the advice of the police that a subject would get a section 10 non-conviction was not a reliable prediction, noting:

*"In fact, there can be varying attitudes between magistrates. There are some magistrates who view a small possession with no criminal history and they will give people a section 10. Other magistrates view the fact that you have been caught at a music festival as an aggravating factor."*⁴⁰³

- 3.141. Ms Randall had raised the matter a number of times with the Local Area Command, however had received reports from a number of patrons who continued to receive the written plea notices. She lamented that:

*"Even when I give them advice that that's probably not appropriate and they should think about it and perhaps get proper legal advice, they raise that, "Well, but the police have told me this."*⁴⁰⁴

- 3.142. Ms Randall noted that the number of police stationed at the entrance to the Festival could vary. At the 2018 Festival, Ms Randall was approached by a number of stall holders who were concerned about *"the military style formation"* of police at the front gate.⁴⁰⁵ Ms Randall observed:

"It certainly makes - it creates an "us and them" mentality, I think. That's what stall holders feel. It signals very clearly, I think,

⁴⁰⁰ T 24.10.19 P 407 L 22.

⁴⁰¹ T 24.10.19 P 400 L 22.

⁴⁰² T 24.10.19 P 401 L 2.

⁴⁰³ T 24.10.19 P 402 L 5.

⁴⁰⁴ T 24.10.19 P 402 L 45.

⁴⁰⁵ T 24.10.19 P 404 L 25.

to patrons that the police take a certain position and patrons are effectively not part of that position."⁴⁰⁶

3.143. Ms Randall described what seemed to her in 2018 and 2019 to be a far higher concentration of police and drug dogs,⁴⁰⁷ who were positioned very close to the entry gate of the Festival, in contrast to previous years where they would move more loosely through the crowd.⁴⁰⁸

3.144. In 2018 and 2019 Ms Randall also received reports from stall holders working at the Festival that after leaving the Festival for the purpose of taking their lunch break, they were strip searched on re-entry to the Festival.⁴⁰⁹

3.145. Ms Randall's observations and experiences in this regard led her to conclude that there had been a change in the attitude of police at the Festival since 2012. She described it as being characterised by "*a fair degree of cooperation*" in the first few years,⁴¹⁰ but felt that in recent years the attitude of the Local Area Command⁴¹¹ and the approach by police to searches at the Festival⁴¹² had changed.

3.146. In relation to BRC, at approximately 3pm on 20 July 2018, Ms Randall was setting up the stall at the 2018 Festival when she was approached by a girl who was "*sobbing uncontrollably.*" She was accompanied by her friends who were all "*very distressed.*" Ms Randall brought the group inside her tent, where BRC:

*"...was crying to such a degree that it took quite a long time for me to actually be able to settle her down and find out what had happened. So I only went very briefly into what I thought was necessary at the time, and I took brief notes of that."*⁴¹³

3.147. Ms Randall encouraged BRC to call her mother, but BRC was concerned that her mother might not allow her to return to the 2018 Festival. The two or three friends in company of BRC appeared to be the same age and did not appear to Ms Randall to be affected by drugs.⁴¹⁴

3.148. Asked whether BRC could be easily mistaken as an adult, Ms Randall stated:

"No. And if the appearance was mistaken - if the officer was mistaken by her appearance -- Her behaviour was very -- Not immature, but the level of distress was like a child's distress, and from what I understand, she had, from what she told me, started

⁴⁰⁶ T 24.10.19 P 404 L 40

⁴⁰⁷ T 24.10.19 P 403 L 39 – P 404 L 44.

⁴⁰⁸ T 24.10.19 P 403 L 44.

⁴⁰⁹ T 24.10.19 P 405 LL 5-22.

⁴¹⁰ T 24.10.19 P 399 L 36.

⁴¹¹ T 24.10.19 P 399 L 2.

⁴¹² T 24.10.19 P 403 L 34.

⁴¹³ T 24.10.19 P 409 L 3.

⁴¹⁴ T 24.10.19 P 410 L 1.

*crying as soon as she entered - was taken away from the main public grounds of the festival.”*⁴¹⁵

3.149. According to notes Ms Randall took at the time, BRC described the officer who searched her as “*Blonde – late 20s, early 30s, 5 foot 9.*”⁴¹⁶

3.150. BRC also came back and spoke with Ms Randall on the following day of the Festival, where Ms Randall said:

*“She came and sat with me for a shorter period this time, but she was able to talk a little bit more with me about the impact on her. She was distressed about having to walk through that police, effectively, guard again. She said to me that she was concerned that she couldn’t trust the police, and that if something happened to her at the festival, she wouldn’t feel like she could approach the police about that.”*⁴¹⁷

3.151. Two weeks after the 2018 Festival, BRC made a written statement dated 03 August 2018 detailing the events leading up to and including her strip search.⁴¹⁸ Thereafter, Ms Randall went on to assist BRC in the making of a complaint to the Commission. Commission investigators conducted a record of interview under inducement with BRC on 29 August 2019.⁴¹⁹

3.152. On the first day of the 2019 Festival, Ms Randall raised the manner of BRC’s search with the officer in charge of the Festival (BR1⁴²⁰), who was receptive to her concerns. Ms Randall noted that at the Festival in 2019 she had not received any complaints or concerns regarding strip searches.⁴²¹

I. Nicole (Nicqui) Yazdi

3.153. At the time of her evidence, Ms Yazdi was a youth worker in the field of alcohol and drugs. She had worked with young people in the Byron area for more than 12 years⁴²² and was trained in youth mental health first aid, youth work, drug and alcohol treatment and various mental health courses.⁴²³

3.154. Ms Yazdi worked for an organisation called the Byron Underage Drinking & Drug Initiative (BUDDI). BUDDI is managed by the Alcohol and Drug Foundation and has a working relationship with the Byron Youth Service.⁴²⁴ Pursuant to one of its programs, the Young First

⁴¹⁵ T 24.10.19 P 411 L 13.

⁴¹⁶ T 24.10.19 P 409 L 29.

⁴¹⁷ T 24.10.19 P 411 L 40.

⁴¹⁸ T 24.10.19 P 409 L 40. Statement of BRC dated 3 August 2018.

⁴¹⁹ Record of interview of BRC, 29.8.2019.

⁴²⁰ T 24.10.19 P 416 L 27.

⁴²¹ T 24.10.19 P 413 L 1.

⁴²² T 24.10.19 P 420 L 39.

⁴²³ T 24.10.19 P 420 L 43.

⁴²⁴ T 24.10.19 P 420 L 21.

Offenders Program,⁴²⁵ BUDDI provided a “pop-up... youth chill zone” at the 2019 Festival.⁴²⁶ BUDDI had a presence at the Festival in previous years, but not in the form of the ‘youth chill zone’.⁴²⁷

- 3.155. Asked to detail the ‘youth chill zone,’ at the Festival, Ms Yazdi described it as:

“...a space for young people to be able to come to access information, support, in fact, really anything that they may need. This year, it was a very sort of casual and - it was like a forest-style chill zone hang out. We actually had old-school gaming, lots of alcohol and other drug resources and information, fresh fruit, free water. We could have provided first aid if Splendour had agreed to it - that sort of stuff. But also, you know, lots of local youth workers and community volunteers.”⁴²⁸

- 3.156. Ms Yazdi had worked with BR6 – the YLO – for the past seven years and described their relationship as “great”.⁴²⁹ Ms Yazdi and BR6 had discussed the nature of the support which BUDDI intended to provide to young persons at the 2019 Festival. Ms Yazdi noted that, as he was a team member of the Young First Offender’s Program,⁴³⁰ the Chief Inspector of Byron would also attend meetings, where he would have been informed of BUDDI’s plans for the Youth Chill Zone at the Festival.⁴³¹

- 3.157. Ms Yazdi denied having any discussion with BR6 concerning the role which she or her staff might play in the event that a young person was searched.⁴³² She said that strip searches “were never mentioned” to her,⁴³³ though guessed that the tenor of the discussions she had with BR6 may have left him with the impression that the services she and her staff would provide at the Festival extended to acting as support person.⁴³⁴ She confessed that she had never considered that she would be called upon to so act,⁴³⁵ explaining that:

“...while I have provided a lot of support to young people through their involvements with police over the years, and the youth liaison officer is very aware of that, specifically through my role at Schoolies every year, which I run, and there is a very heavy police involvement in that as well, they are part of our team, too, then - but, you know, as far as strip searching goes,

⁴²⁵ T 24.10.19 P 421 L 5.

⁴²⁶ T 24.10.19 P 421 L 12.

⁴²⁷ T 24.10.19 P 421 L 31.

⁴²⁸ T 24.10.19 P 421 L 29.

⁴²⁹ T 24.10.19 P 423 L 4.

⁴³⁰ T 24.10.19 P 423 L 26.

⁴³¹ T 24.10.19 P 423 L 11.

⁴³² T 24.10.19 P 425 L 20; P 426 L 7.

⁴³³ T 24.10.19 P 426 L 13.

⁴³⁴ T 24.10.19 P 423 L 32.

⁴³⁵ T 24.10.19 P 423.43.

to be honest, that was something that I hadn't even personally thought of being a support for.”⁴³⁶

3.158. Ms Yazdi was not asked to be present at a strip search during the 2019 Festival but said she would have agreed to be present, had she been asked.⁴³⁷ She noted that BR6 would “*absolutely*” have been aware that she was a suitable candidate for such a role and would have been “*100 per cent aware that [she had] a working with children check...*”.⁴³⁸

3.159. Ms Yazdi was asked about her work during ‘Schoolies’ at Byron Bay. She explained that BUDDI hosts a marquee at which sunblock, condoms, information and water are provided by day. By night, the Red Frogs organisation provide DJs who play music whilst free food and non-alcoholic drinks, water, condoms and first aid services are offered. BUDDI also provides a shuttle service to the hospital, which initiative arose in response to the inability of young people to afford the \$60 return taxi fare to the hospital’s new location.

3.160. Ms Yazdi’s evidence was that the majority of BUDDI’s services at Schoolies are provided to those intoxicated by alcohol and drugs. The service included approximately 300 volunteers from organisations including Red Frogs and Youth with a Mission. In preparation for the Schoolies week, BUDDI would liaise with police, ambulance, hospital, youth services and various others throughout the year. In previous years, Ms Yazdi herself had approached the police to request an increased police presence at Schoolies. She observed:

“...the young people enjoy having those extra police around as a general rule.”⁴³⁹

3.161. When asked about the drug dog presence at Schoolies Ms Yazdi responded “*...it’s not like Splendour.*”⁴⁴⁰ She noted that unlike the Festival, there is no entry area with a search tent where drug dogs are lined up⁴⁴¹ She explained that Schoolies differs from a music festival in terms of how police and the crowds interact, stating:

“It is a very different environment to a music festival and, yes, it is positive, I think, in the most part.”⁴⁴²

4. Submissions in Response

4.1 The NSWPF provided submissions in response to the Commission’s draft report. It disputed the finding that BR4 conducted the strip search of BRC. It also raised concerns about some of the conclusions

⁴³⁶ T 24.10.19 P 423 L 31

⁴³⁷ T 24.10.19 P 424 L 2, P 426 L 16.

⁴³⁸ T 24.10.19 P 426 L 23.

⁴³⁹ T 24.10.19 P 432 L1.

⁴⁴⁰ T 24.10.19 P 434 L 6.

⁴⁴¹ T 24.10.19 P 435 L 19.

⁴⁴² T 24.10.19 P 434 L 30.

arrived at in the report. The Commission has taken the submissions into account when finalising its report.

4.2 The NSWPF also drew attention to the fact that since the 2018 Festival it has implemented many changes, including:

- the creation of a Person Search Manual, which is to be the subject of further changes;
- the creation of two brochures (The role of a Support Person and Police Searches: Your Rights);
- improved procedures for recording of information by searching and accompanying officers; and
- the development of an online mandatory training package for use in future music festivals.

4.3 The NSWPF have advised the Commission that they have issued an apology to BRC.

5. Findings

A. The strip search of BRC was carried out as alleged by BRC

- 5.1. BR4 had no independent memory of the strip search of BRC at the 2018 Festival. Though BR4 was listed in the COPS entry as the officer in charge⁴⁴³ she did not accept, based on the information recorded, that she had carried out the strip search of BRC. Accordingly, it is necessary to make findings as to the manner in which that search was conducted, and by whom.
- 5.2. For the reasons set out below, the Commission finds that BRC was strip searched by BR4, in the manner outlined in BRC's statement of 3 August 2018 and record of interview with Commission investigators on 29 August 2019.
- 5.3. BRC's account was cogent, did not appear to have been embellished and was corroborated by the immediate complaint she made to Ms Randall. The process by which BRC's accounts were recorded involved in one instance, questions being posed by a highly experienced criminal lawyer immediately after the event, and then by experienced Commission officers. The answers she gave were clear and convincing. When she gave evidence at the private examination, more than a year after the 2018 Festival, her account was substantially the same as the account she gave in the first instance. These events were not likely to be forgotten by a young person in BRC's circumstances.
- 5.4. In contrast BR4 was unable to recall specific details of the two strip searches concerning which she was the officer in charge and she had

⁴⁴³ COPS Event E68641733.

no independent memory of BRC, even after searching her name and consulting her image on Facebook and Instagram.⁴⁴⁴ Because BR4 did not take notes,⁴⁴⁵ she was unable to recall either the basis for her reasonable suspicion causing her to search BRC or the serious and urgent circumstances justifying the search being carried out other than in the presence of a support person.⁴⁴⁶ BR4 denied having patrons strip naked but agreed that she would, during a strip search, ask a person to squat and would visually inspect their vagina and anus. BR4 was not accompanied by another officer in the course of the search and recorded no information in her police notebook about BRC.

- 5.5. For the reasons above, the Commission accepts the evidence of BRC and, where relevant, without any adverse inference regarding the honesty of police officers BR3 and BR4, prefers it over that of those officers, in so far as theirs is inconsistent with BRC's account.

B. The strip search of BRC was unlawful

- 5.6. The Commission finds that the search of BRC was unlawful on a number of bases.
- 5.7. Firstly, the police made no attempt to contact a parent, guardian or support person prior to commencing the strip search of BRC. It is unlikely that it wouldn't have been immediately apparent that BRC was likely to be under 18 in light of the fact that young persons were also given a secondary wristband, identifying them as a person under the age of 18, at the point of entry to the festival⁴⁴⁷ and that BRC did not look over the age of 18. In any event, officers were expected to ask for a patron's identification and details prior to performing a search, even where they knew that patrons were not obliged to provide such information.
- 5.8. The Commission finds that neither the searching nor accompanying officer had reasonable grounds to suspect that the sourcing of a parent, guardian or support person would have delayed BRC's search to the extent that evidence would likely have been concealed or destroyed for the purposes of the exception under s 33(3A) of LEPR.
- 5.9. Secondly, the Commission finds that the strip search of BRC was not justified as neither BR3 nor BR4 possessed a suspicion on reasonable grounds that a strip search was necessary for the purposes of the search and that the seriousness and urgency of the circumstances made the strip search necessary, as is required by s 31(b) of LEPR.
- 5.10. There was an indication by a drug dog in relation to BRC when she entered the 2018 Festival. The Commission finds that when BRC was questioned, she did not admit to being in the company of persons who had possessed or used drugs. She denied possessing any drugs.

⁴⁴⁴ T 22.10.19 P 247 L 28.

⁴⁴⁵ T 22.10.19 P 206 L 41, P 249 LL 35-43.

⁴⁴⁶ T 23.10.19 P 211 L 14.

⁴⁴⁷ T 23.10.19 P 302 L 13.

Neither BR3 nor BR4 recorded any symptoms exhibited by BRC suggesting drug affectedness. She was nonetheless strip searched.

- 5.11. BR3 erroneously stated in his s.54 statement that BRC had admitted to using drugs. BR3 also erroneously claimed in the COPS entry that BRC had earlier been in the company of persons who had consumed drugs.
- 5.12. Thirdly, contrary to ss 32(2) and 33(3) of LEPR, BRC was not informed that she would be required to remove all of her clothing during the search, why it would be necessary to remove that clothing or asked for her cooperation.
- 5.13. Fourthly, the Commission is satisfied that BR4 had no reasonable grounds to believe that the removing all of BRC's clothing, requesting that she remove her panty liner and directing that she squat whilst naked was reasonably necessary for the purposes of the search of BRC, as is required by s 33(5) of LEPR.
- 5.14. The Commission is further satisfied that BR4 had no reasonable grounds to believe that her visual inspection of BRC's vagina was reasonably necessary for the purposes of the search, contrary to ss 32(6) (officer must not search the genital area of the person searched unless suspected on reasonable grounds that it is necessary for the purposes of the search) and 33(6) (strip search must not involve more visual inspection than is believed on reasonable grounds to be reasonably necessary for the purposes of a search) of LEPR.
- 5.15. Fifthly, the fact that that BRC was required to remove all of her clothes, to the point of being naked, further violates s 33(5) of LEPR, which requires that a strip search must not involve the removal of more clothes than the person conducting the search believes on reasonable grounds to be reasonably necessary for the purposes of the search. Even if it were accepted that BR4 had reasonable grounds to believe that the removal of all clothing was necessary, BRC's youth was a discrete basis on which she should have, for example, been given back her jacket whilst the search of her lower body was performed.
- 5.16. Finally, the strip search of BRC was also unlawful because it was conducted in a tent, the flap of which did not fully close, so that even, from the corner of the tent, BRC could see BR3 standing outside, with his back to the tent⁴⁴⁸ whilst she was strip searched. This violated s 32(4)(a) of LEPR, which requires that any search be carried out in a way that provides reasonable privacy for the person searched.
- 5.17. Officers who gave evidence at the public examination referred to their experience or expectation that some music festival patrons will conceal drugs within their internal cavities. A general belief or expectation cannot amount to reasonable grounds that a strip search is necessary for the purposes of a particular search as is required by s 31(b) of LEPR and cannot, without more, amount to grounds for a

⁴⁴⁸ Record of Interview of BRC, 29.8.2019, P 19.

reasonable belief that delaying the search would result in the concealment or destruction of evidence or harm, for the purposes of the exception to the requirement that a parent, guardian or support person be present in s 33(3A) LEPRA.

- 5.18. Reliance by officers upon the reactions of patrons to seeing the drug dogs is equally problematic. Officers identified avoidant or ostensibly nervous reactions as properly supporting a suspicion of possession of drugs, but the Commission finds that such behaviours can equally be explained innocently, including by reason of a normal reaction to police in numbers such as were present at the 2018 Festival or fear of wrongful suspicion or search. Nervous or avoidant reactions are an unreliable source of suspicion of possession of drugs to justify a search. In this case, BRC expected that she would have been exhibiting signs of nervousness at the point when she was led away by officers but before any search had commenced,⁴⁴⁹ and described physical symptoms upon seeing officers after her ordeal which included avoiding eye contact, her body clenching up and becoming clammy and hot.⁴⁵⁰
- 5.19. At the 2018 Festival police failed to adhere to the following sections of LEPRA:
- 32(5) -officer must conduct the least invasive kind of search practicable in the circumstances;
 - 32(6) -officer must not search the genital area of the person searched unless suspected on reasonable grounds that it is necessary for the purposes of the search;
 - 33(5) -a strip search must not involve the removal of more clothes than is believed on reasonable grounds to be necessary for the search; and,
 - 33(6) -a strip search must not involve more visual inspection than is believed on reasonable grounds to be reasonably necessary for the purposes of a search.
- 5.20. The support for this finding is found in the evidence of BR4 who, on the one hand, agreed that requiring somebody to bend over or squat and to spread their intimate body parts is an extremely personal invasion and that to do so would require “*a very good reason*”,⁴⁵¹ but elsewhere, said that having a person squat so as to see whether they had anything inserted within their vagina or anus,⁴⁵² and bending down and look to see if something was protruding,⁴⁵³ was part of her standard, strip searching procedure. That such was her ordinary standard strip-searching procedure necessarily meant BR4 could not have been turning her mind to the additional, necessary requirements

⁴⁴⁹ T 13.12.19 P 13 LL 25 – 32.

⁴⁵⁰ Statement of BRC, 3.8.18, para [19].

⁴⁵¹ T 24.10.19 P 228 L 3.

⁴⁵² T 24.10.19 P 222 L 21 – P 223 L 13.

⁴⁵³ T 24.10.19 P 223 LL 15-41.

under LEPR in order to lawfully conduct strip searches in the way that she did.

- 5.21. The Commission finds that the steps addressed in the immediately preceding paragraph, as well as the foundational questions of whether (i) a strip search was necessary for the purposes of the search and, if so (ii) that the seriousness and urgency of the circumstances made the strip search necessary, as is required by section 31(b) of LEPR, were approached by officers at the 2018 Festival as a single, threshold question, and were not given separate consideration, as they ought to have been.

C. The officers at the 2018 Festival possessed insufficient knowledge of key LEPR requirements

- 5.22. The evidence at the public examination exposed deficiencies in the knowledge of junior and senior officers, as to the LEPR requirements relating to strip searching children. The oral briefing processes to officers on duty at the 2018 Festival, 2018 operational orders, 2018 Drug Dog operational orders and joining instructions were silent on these requirements.
- 5.23. BR2, the drug dog officer involved in the stopping of BRC, was not aware that LEPR required that a parent, guardian or support person be contacted prior to the search of a young person.⁴⁵⁴ BR3, the male officer of the pair concerned with the strip search of BRC, was not aware that LEPR required that a parent, guardian or support person be contacted prior to the search of a young person.⁴⁵⁵
- 5.24. As noted earlier, the Commission is satisfied on balance that BR4 searched BRC, notwithstanding that BR4 had no recollection of the event. BR4 claimed to be aware of the “*seriousness and urgency*” requirement of a strip search under s 31(b) of LEPR,⁴⁵⁶ but no record was made of what circumstances formed the basis of her belief in respect of BRC.⁴⁵⁷ BR4 similarly claimed to be cognizant of the fact that LEPR conferred additional rights on young persons being strip searched⁴⁵⁸ and that a young person could not waive their right to have a support person present during a strip search,⁴⁵⁹ but she made no effort to contact one on BRC’s behalf and could not recall the circumstances justifying the search having been carried out without one, as is required by s 33(3A) of LEPR. BRC was waiting for several minutes before she was taken into the tent and strip searched by BR4, during which time she observed BR3 and BR4 some distance from her, “*laughing and joking around*”.⁴⁶⁰ For those reasons, the Commission finds on balance that BR4 was not aware of the requirement that a

⁴⁵⁴ T 22.10.19 P 161 L 9.

⁴⁵⁵ T 22.10.19 P 161 L 9.

⁴⁵⁶ T 22.10.19 P 203 L 4.

⁴⁵⁷ T 22.10.19 P 203 L 28.

⁴⁵⁸ T 23.10.19 P 214 L 13.

⁴⁵⁹ T 23.10.19 P 229 L 20.

⁴⁶⁰ Record of Interview of BRC, 29 August 2019, P 17.

parent, guardian or support person be contacted prior to the search of a young person.

D. There were insufficient safeguards in place at the 2018 Festival to ensure compliance with the legislation

5.25. The Commission finds that there were insufficient safeguards in place at the 2018 Festival to ensure compliance with the legislation in three, key respects, which are set out immediately below.

(i) There was a lack of guidance from senior police as to why and when strip searches are to be conducted

5.26. First, there was a lack of guidance by senior police to junior officers as to when, in what circumstances and in what manner strip searches should be carried out. BR1's comment that the "*seriousness and urgency*" criteria would be made out where an officer held a belief that a patron had swallowed drugs or that something within which they had internally secreted drugs had burst is apt to demonstrate an insufficient knowledge of the legal limitations on strip searching at a senior level. As he readily accepted, a strip search in the former category would be of little utility, and cavity searches are not permitted, and would therefore not apply to the latter example. When asked whether he gave any particular direction to officers as to what was or was not acceptable as part of a strip search, BR5 said that he "*took it that they knew*"⁴⁶¹ and that even as at the date of giving evidence, his briefing did not extend to what could or could not be done in a strip search.⁴⁶²

5.27. The Commission notes that major changes were made to both the operational orders and drug dog operational orders after the 2018 Festival, including the addition of considerably more information around searching, the justification for the search and ensuring that the search is recorded, the conduct of searches and strip searches and, relevantly, that appropriate references to relevant sections of LEPR should be made.

(ii) There was insufficient information available to and for parents, guardians and support persons

5.28. There was insufficient information available to parents, guardians or support persons present during the strip search of a young person as to their role and the nature of the young person's interests which they were to safeguard. Many people in the community would be unlikely to realise that safeguarding their child or a young person's legal interests may, for example, require interrogation of the police officer as to why the search is taking place, and would be understandably reluctant to

⁴⁶¹ T 23.10.19 P 351 L 46.

⁴⁶² T 23.10.19 P 352 L 5.

do so, lest they be seen to be hindering an investigation, unless told otherwise.

- 5.29. There was no process or mechanism by which parents, guardians or support persons were informed of the manner in which a search should be conducted, so that they could insist it be carried out in that way. To take BRC for example, had BRC been apprised of her rights, she would have liked to have had her mother present for the strip search and would have felt safer had it been so carried out.⁴⁶³

(iii) **There was inadequate recording and mis-recording of information at the Festival concerning the strip searches carried out**

- 5.30. The Commission finds that there was inadequate recording of vital information relating to the strip searches of young persons at the 2018 Festival.
- 5.31. As the search of BRC did not reveal any drugs, no field arrest form was completed. There was no notebook entry by either of BR3 or BR4 in relation to the search of BRC.⁴⁶⁴ This was so despite BR5's expectation that police notebooks should be utilised to contemporaneously record the details of nil-find searches conducted at the 2018 Festival.⁴⁶⁵
- 5.32. The COPS entry in relation to the search of BRC mis-recorded BR3 (a male) as the searching officer, mentioned only "*a female*" as having searched BRC, and recorded BR4 as the officer in charge.⁴⁶⁶ The COPS entry contained an erroneous claim that BRC admitted to being around persons who had recently smoked cannabis but was silent as to the basis for BR3's or BR4's reasonable suspicion that BRC was carrying drugs beyond the positive drug dog indication; the matters giving rise to the seriousness and urgency required to justify the strip search under s 31(b);⁴⁶⁷ the matters justifying the search being carried out in the absence of a parent, guardian or support person; the fact of the search being a strip search; the manner in which the search was carried out and the basis for the manner and extent of the search.
- 5.33. Further, a review of the nine field arrest forms and associated COPS Events, Facts Sheets and Statement of Facts completed by BR3 and BR4 revealed a number of mistakes in the recording of information and the subsequent transfer of that erroneous information from the initial field arrest form to the COPS events and court documents. In two of the three matters of which BR4 was in charge, she had mis-recorded the quantity of drugs found on the patron in the Facts Sheet

⁴⁶³ T 13.12.19 P 14 L 12.

⁴⁶⁴ T 23.10.19 P 344 L 13.

⁴⁶⁵ T 23.10.19 P 342 L 27.

⁴⁶⁶ T 22.10.19 P 161 L 17; COPS Event E68641733.

⁴⁶⁷ T 22.10.19 P 156 L 20.

by more than three times their weight.⁴⁶⁸ She was unable to account for those inconsistencies.⁴⁶⁹

- 5.34. Finally, the Commission's analysis of a number of COPS entries purporting to relate to general searches involved drugs being located in intimate areas of patrons and were ambiguous as to whether the drugs were located as a result of a strip search or by admission of the patron.⁴⁷⁰ This analysis suggests that the total number of strip searches may have been higher than that recorded in the COPS events.⁴⁷¹ The reason for the potential discrepancy was that the precise circumstances in which the drugs were located or produced was not recorded. For example, one COPS entry purporting to relate to a general search stated "*Removed a condom from her vagina containing a number of items*".⁴⁷² The person subject of this record may have volunteered the item (i) prior to any mention of or the conduct of any search; (ii) during the course of a general search, after which general search and volunteering of drugs no further search was conducted; (iii) during the course of a general search, but after which a strip search was conducted, the necessity, seriousness and urgency for which being the drugs volunteered during the general search.

E. The measures in place to ensure the privacy and dignity of patrons during strip searches were inadequate

- 5.35. Strip searches at the 2018 Festival were conducted in tents provided by the promoters of the festival. The entry to the tent was a flap which would not close, so that BR4's practice was to ask female patrons to stand in the corner of the tent "*for privacy*".⁴⁷³ Even from the corner, however, BRC could see the male officer standing outside, with his back to the tent⁴⁷⁴ whilst she was strip searched.
- 5.36. These arrangements were insufficient to ensure the privacy and dignity of young persons during strip searches and failed to satisfy the police obligations under s 32(4) (search must be conducted in a way that provides reasonable privacy for the person searched).
- 5.37. BR5 expected that where it appeared that a person to be searched could be under 18, enquiries should be made at least as to their age (even if not recorded) so that they were afforded their additional rights under LEPR.⁴⁷⁵ He expected that in contrast to adults, the "*unknown*" CNI identity would not be utilised for a young person where there was a nil find. This approach is unsatisfactory, as young persons would then have a searchable entry in COPS which, though

⁴⁶⁸ T 23.10.19 P 277 LL 14-27.

⁴⁶⁹ T 23.10.19 P 280 L 44.

⁴⁷⁰ T 23.10.19 P 355 L 46.

⁴⁷¹ Analysis of Strip Search Data.

⁴⁷² Evidence of BR5, T 23.10.19 P 379 L 10.

⁴⁷³ Evidence of BR4, T 22.10.19 P 230 L 40, P 240 L 44; Record of Interview of BRC, 29.8.2019, PP 18, 19.

⁴⁷⁴ Record of Interview of BRC, 29.8.2019, P 19.

⁴⁷⁵ T 23.10.19 P 307 L 12, P 312 L 11.

recording a nil find, may be relied upon as supporting a reasonable suspicion for future searches.

6. Affected Persons

- 6.1. In Part 2 of this report the Commission set out the provisions of section 133 of the LECC Act dealing with the contents of reports to Parliament. Subsections (2), (3) and (4) relate to “*affected persons*”.
- 6.2. The Commission is of the opinion that BR3 and BR4 are affected persons, being persons against whom substantial allegations have been made in the course of the investigation.
- 6.3. In view of the findings the Commission has made above regarding lack of guidance and inadequate instruction the Commission does not consider it appropriate to make a finding of serious misconduct or to recommend the taking of any managerial or prosecutorial action against any officers. The Commission believes a more useful outcome would be for attention to be given by the NSWPF to the following considerations.

7. Considerations

A. Improved education and briefing procedures for searching officers

- 7.1. The specific legal requirements of strip searching children at festivals or large public events should:
 - be included in the operational orders for any events where under 18s will be in attendance;
 - form a part of every oral briefing to officers; and
 - be supplemented by short-form documents provided to police on duty, so that they may have recourse to them at the time they are dealing with a young person whom the officer may proceed to strip search.

B. Greater guidance by senior police to junior officers as to when and how strip searches are carried out

- 7.2. The NSWPF should take a policy position and communicate it to operational staff regarding the circumstances which will not satisfy the “*seriousness and urgency*” test in s 31(b) and the exception in s 33(3A) of LEPPRA. Any such approach would, of course, need to preserve due discretion in the individual officer, who must form his or her view based on the exigencies of the particular situation. Such a measure would, however, increase consistency in the application of LEPPRA and relieve junior staff from the burden of making decisions which, with only minor variables, regularly recur at gatherings such as the Festival.

These include positive drug dog indications, nervous or anxious behaviour by patrons upon sighting a drug dog, admissions or denials by a patron in respect of whom a dog has given a positive indication that they are carrying any drugs, and so on.

C. Proactive steps by police to provide or facilitate the availability of independent legal advice at festivals where young people are in attendance

- 7.3. As was demonstrated in the case of BRC,⁴⁷⁶ young persons are unlikely to be aware of their legal rights during a strip search unless they have reason to attend on a solicitor to discuss it. It could not reasonably be expected that parents, guardians or support persons in the form of friends or relatives would be apprised of the various LEPPRA requirements and rights afforded to young people being strip searched.
- 7.4. Information should be prepared in an appropriate format to be provided to parents, guardians or support persons attending the strip search of a young person. This information should address the role of the parent, guardian or support person and the nature of the young person's interests which they are to safeguard. As set out above, many people in the community would be unlikely to realise that safeguarding their child or a young person's legal interests may, for example, require questioning the searching officer as to why the search is taking place or why the removal of particular clothing was necessary, and would be understandably reluctant to do so, lest they be seen to be hindering an investigation, unless notified otherwise.

D. Improved procedures for recording of information by searching and accompanying officers.

- 7.5. At festivals where strip searches, and especially strip searches of young persons, are expected to be carried out, shifts and duties should be allocated to officers in a way which permits for time immediately or shortly after strip searches are conducted for information to be recorded by searching and accompanying officers. Measures including the allocation of a greater number of officers or rotating teams of searching officers should be adopted at such festivals so that officers are afforded adequate time to record not only the identifying information of the patron but the relevant beliefs and/or suspicions of the officer, manner of search and any admissions or comments by the patron, at least in their police notebooks, if not directly into the COPS events.
- 7.6. Officers should receive regular re-training as to the use of the COPS system including the importance of not copying and pasting data from COPS into NSW Police Facts Sheets. Particularly after festivals such as that considered here, where high numbers of strip searches may be conducted by each officer, ample rostered time should be allocated to

⁴⁷⁶ Record of Interview of BRC, 29.8.2019, P 27; T 13.12.19 P 14 L 42, P 18 L 3.

each officer for the thorough completion of documents, which will necessarily involve transposing information recorded in documents such as Field Arrest Forms and notebooks into the COPS system and Facts Sheets. Enhanced use should be made of the process of verification by senior officers so as to ensure that inadequate recording of information and errors in mis-recording such as occurred here are not repeated.

- 7.7. As noted in paragraph 4.2, the NSWPF has made changes since the 2018 Festival took place, which address some of the considerations outlined above. The Commission has observed that as a consequence of those changes, there was considerable improvement in practice and procedure implemented by the NSWPF at this year's under 18s festival, Good Life, held in Sydney in February 2020. There were fewer searches, support persons were called in most instances and where they were not, police recorded an explanation. Record keeping was significantly improved.
- 7.8. The Commission will deal further with these issues in its overarching report on strip searching by NSWPF which is expected to be produced in the second half of 2020.

ANNEXURE

LEPRA PROVISIONS-STRIP SEARCHES

Strip search is defined in s 3 as:

strip search means a search of a person or of articles in the possession of a person that may include:

- (a) requiring the person to remove all of his or her clothes, and
- (b) an examination of the person's body (but not of the person's body cavities) and of those clothes.

S 30 Searches generally

In conducting the search of a person, a police officer may:

- (a) quickly run his or her hands over the person's outer clothing, and
- (b) 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, except in the case of a strip search, all of the person's clothes), and
- (c) examine anything in the possession of the person, and
- (d) pass an electronic metal detection device over or in close proximity to the person's outer clothing or anything removed from the person, and
- (e) do any other thing authorised by this Act for the purposes of the search.

S 31 Strip searches

A police officer may carry out a strip search of a person if:

- (a) in the case where the search is carried out at a police station or other place of detention--the police officer suspects on reasonable grounds that the strip search is necessary for the purposes of the search, or
- (b) in the case where the search is carried out in any other place--the police officer suspects on reasonable grounds that the strip search is necessary for the purposes of the search and that the seriousness and urgency of the circumstances make the strip search necessary.

S 32 Preservation of privacy and dignity during search

(1) A police officer who searches a person must, as far as is reasonably practicable in the circumstances, comply with this section.

(2) The police officer must inform the person to be searched of the following matters:

(a) whether the person will be required to remove clothing during the search,

(b) why it is necessary to remove the clothing.

(3) The police officer must ask for the person's co-operation.

(4) The police officer must conduct the search:

(a) in a way that provides reasonable privacy for the person searched, and

(b) as quickly as is reasonably practicable.

(5) The police officer must conduct the least invasive kind of search practicable in the circumstances.

(6) The police officer must not search the genital area of the person searched, or in the case of female or a transgender person who identifies as a female, the person's breasts unless the police officer suspects on reasonable grounds that it is necessary to do so for the purposes of the search.

(7) A search must be conducted by a police officer of the same sex as the person searched.

(7A) However, if a police officer of the same sex as the person who is to be searched is not immediately available, a police officer may delegate the power to conduct the search to another person who is:

(a) of the same sex as the person to be searched, and

(b) of a class of persons prescribed by the regulations for the purposes of this subsection.

The search by that other person is to be conducted under the direction of the police officer and in accordance with provisions of this Act applying to searches conducted by police officers.

(8) A search of a person must not be carried out while the person is being questioned. If questioning has not been completed before a search is carried out, it must be suspended while the search is carried out.

(8A) Subsection (8) does not prevent the asking of questions that only relate to issues of personal safety associated with the search.

(9) A person must be allowed to dress as soon as a search is finished.

(10) If clothing is seized because of the search, the police officer must ensure the person searched is left with or given reasonably appropriate clothing.

(11) In this section: **"questioning"** of a person means questioning the person, or carrying out an investigation (in which the person participates).

S 33 Rules for conduct of strip searches

(cf Cth Act, s 3ZI)

(1) A police officer who strip searches a person must, as far as is reasonably practicable in the circumstances, comply with the following:

(a) the strip search must be conducted in a private area,

(b) the strip search must not be conducted in the presence or view of a person who is of the opposite sex to the person being searched,

(c) except as provided by this section, the strip search must not be conducted in the presence or view of a person whose presence is not necessary for the purposes of the search.

(2) A parent, guardian or personal representative of the person being searched may, if it is reasonably practicable in the circumstances, be present during a search if the person being searched has no objection to that person being present. Subsection (1) (b) does not prevent any such person who is of the opposite sex to the person being searched from being present during the search.

(3) A strip search of a child who is at least 10 years of age but under 18 years of age, or of a person who has impaired intellectual functioning, 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 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.

(3A) Subsection (3) does not apply if a police officer suspects on reasonable grounds that:

- (a) delaying the search is likely to result in evidence being concealed or destroyed, or
- (b) an immediate search is necessary to protect the safety of a person.

In such a case, the police officer must make a record of the reasons for not conducting the search in the presence of a parent or guardian, or other person capable of representing the interests, of the person being searched.

(4) A strip search must not involve a search of a person's body cavities or an examination of the body by touch.

(5) A strip search must not involve the removal of more clothes than the person conducting the search believes on reasonable grounds to be reasonably necessary for the purposes of the search.

(6) A strip search must not involve more visual inspection than the person conducting the search believes on reasonable grounds to be reasonably necessary for the purposes of the search.

(7) A strip search may be conducted in the presence of a medical practitioner of the opposite sex to the person searched if the person being searched has no objection to that person being present.

(8) This section is in addition to the other requirements of this Act relating to searches.

(9) In this section: "**impaired intellectual functioning**" means:

- (a) total or partial loss of a person's mental functions, or
- (b) a disorder or malfunction that results in a person learning differently from a person without the disorder or malfunction, or
- (c) a disorder, illness or disease that affects a person's thought processes, perceptions of reality, emotions or judgment, or that results in disturbed behaviour.

Procedures for searches of a more invasive nature are dealt with under the *Crimes (Forensic Procedures) Act 2000*.

Operation Brugge
Report pursuant to s 132
Law Enforcement Conduct Commission Act 2016
May 2020

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