

**OPERATION GENNAKER**

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

**MAY 2020**

# LECC

Law Enforcement  
Conduct Commission

49626/379

8 May 2020

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 Gennaker.

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

Yours sincerely



The Hon R O Blanch AM QC  
Acting Chief Commissioner



The Hon Lea Drake  
Commissioner for Integrity

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## 1. Introduction

- 1.1. The Law Enforcement Conduct Commission's investigation in Operation Gennaker arose from information received from a teenage male complainant (GEN13C) alleging that he was unlawfully strip searched at the Lost City Music Festival (**the Festival**) at Olympic Park, Homebush, on 23 February 2019.
- 1.2. The Festival was a ticketed underage event with all attendees required to produce identification showing they were under 18 years of age. It had an estimated number of attendees of 10,000. The Festival was a drug and alcohol free event.
- 1.3. GEN13C alleged that upon entering the Festival he was strip searched following a NSW Police Force (**NSWPF**) drug dog sniffing his pocket. In the course of the search, he was questioned without first being cautioned; was required to disclose his PIN and hand over his mobile phone, which was searched; was required to pull down his shorts and underpants, and was then told to lift his testicles and show the officers his "*gooch*" (a slang term for the space between the testicles and the anus). No drugs were found.
- 1.4. Resulting from GEN13C's complaint, and the other concurrent Commission investigations regarding the suspected unlawfulness of strip searches being conducted by the NSWPF, the Commission decided to conduct further enquiries.

### The Documents

- 1.5. In order to understand the nature of the search operations at the Festival the Commission forwarded a section 55 notice<sup>1</sup> to the Commissioner of Police requesting production of all of the Field Processing Forms, Event Numbers and narratives for all young people strip searched at the Festival.
- 1.6. In response the Commissioner of Police produced a list to the Commission which revealed that 30 strip searches were carried out at the Festival,<sup>2</sup> as well as the Field Processing Forms, COPS events and narratives for those searches. Of the 30 strip searches recorded, three were of female young persons and 27 of male young persons. Drugs were located nine times, all recorded as MDMA (Ecstasy). Rosters from the Festival<sup>3</sup> showed that a total of 98 police officers were deployed to the event. They were 19 user-pays officers and 79 rostered staff.
- 1.7. A review of the narratives established that 25 of those 30 searches were recorded as having been carried out without a parent or guardian, or if that was not acceptable to the young person, another person (not a police officer) who was capable of representing the interests of the person being searched (hereafter to be referred to as a "support person"), contrary to the requirement under s 33 of the *Law Enforcement Powers and*

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<sup>1</sup> Number 914/2019.

<sup>2</sup> Exhibit 30C, barcode 8453400.

<sup>3</sup> Exhibit 15C, barcode 8457437.

*Responsibilities Act NSW (2002) (LEPRA)*. None of the narratives for those 25 searches recorded any reason for failing to conduct the search 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.

- 1.8. The documents revealed that a 13-year-old girl was strip searched by police in the presence of a representative from the organisation Red Frogs, which is a support network for university students, school-leavers and young persons run by volunteers. The Red Frogs' representative was only 17 years of age.
- 1.9. Commission intelligence analysts interrogated the Computerised Operational Policing System (COPS) narratives and found approximately nine events which had been identified by the police, in addition to the 30, which indicated that a strip search may have been completed but not recorded as such. Those COPS narratives mentioned the removal of a young person to the area which was designated for person (strip) searches.
- 1.10. Commission staff contacted several of the thirty young persons identified by the police as having being strip searched and two (GEN14C and GEN15C) agreed to participate in interviews as to being strip searched at the Festival. Those two teenaged male complainants and GEN13C were unknown to each other. None of the three were found to have drugs on them after a strip search, and each of them denied having been in contact with drugs at any time.

## 2. The Commission's Statutory Functions

- 2.1 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 repute 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:*

*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.<sup>4</sup> 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 all persons involved. Accordingly, all 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 Gennaker 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 s 63 of the LECC Act.

3.2. At the public examination the Chief Commissioner explained the scope and purpose of the public examination to be:

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<sup>4</sup> *Briginshaw v Briginshaw* [1938] 60 CLR 336; *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 67 ALJR 170.

1. *Whether NSW Police Force officers failed to comply with the Law Enforcement (Powers and Responsibilities) Act 2002 (LEPRA) during the strip searching of several young people at the Lost City Music Festival on 23 February 2019; and*
  2. *Whether there was conduct of the NSW Police Force that is or could be unlawful, oppressive or unreasonable in connection with the application of the laws relating to searches, including in particular, strip searches.*
- 3.3. Counsel Assisting identified the concern of the Commission in her opening address as being “the lawfulness of the exercise of police powers and the adequacy of the system put in place by police to ensure that the law is obeyed.”<sup>5</sup>
  - 3.4. The Commissioner of Police and twelve police officers codenamed **GEN1**, **GEN2**, **GEN3**, **GEN4**, **GEN5**, **GEN6**, **GEN7**, **GEN8**, **GEN9**, **GEN10**, **GEN11** and **GEN12**, and three SES volunteer officers codenamed **GEN16**, **GEN17** and **GEN18**, were granted leave to appear at the examination. The examination was held over four days, namely the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> of December 2019. Twelve witnesses gave evidence. All the police officers were legally represented.
  - 3.5. Three teenage male complainants codenamed **GEN13C**, **GEN14C** and **GEN15C** each gave interviews to Commission investigators. They were reluctant to give evidence and in view of their age, the Commission did not think it appropriate to subject them to a hearing and cross-examination. The Commission relied on their interviews, which were admitted into evidence.<sup>6</sup>
  - 3.6. The evidence focussed upon three specific incidents alleged to have taken place at the Festival.

## Non-searching police involved with the Festival

### A. Officer GEN1

- 3.7. Officer GEN1 was a Detective Superintendent and the Event Commander of the Festival.<sup>7</sup> His responsibility was to ensure the lawful conduct of all aspects of the police deployed at the Festival,<sup>8</sup> including the lawful conduct of searches.<sup>9</sup> GEN1 was, along with GEN2, referred to by GEN7 as one of “*the bosses*”.<sup>10</sup>
- 3.8. GEN1 did not perform any strip searches at the Festival.

<sup>5</sup> Transcript, Day 1 of public examination, 2 December 2019 p. 4.39.

<sup>6</sup> Exhibit 23C - Record of interview of GEN13C, barcode 8453456-8453497; Exhibit 12C - Record of interview in relation to GEN15C, barcode 8453547-8453599; Exhibit 33C (tendered in Chambers) - Record of interview of GEN14C, barcode 8453517-8453546.

<sup>7</sup> Transcript, Day 1 of public examination, 2 December 2019 p. 20.9

<sup>8</sup> *Ibid* p. 20.41.

<sup>9</sup> *Ibid* p. 21.6.

<sup>10</sup> Transcript, Day 2 of public examination, 3 December 2019 p. 186.1.

- 3.9. GEN1 confirmed that the Operational Orders for the conduct and deployment of the Festival<sup>11</sup> were prepared by officer GEN3 and checked by GEN1. Under a heading “*Drug detection dog support officers*” the Operational Orders set out one of the attending officers’ tasks as being “*to conduct person searches in accordance with the provisions of LEPR*A.” GEN1’s evidence was that though that written task served as a reminder to conduct searches in accordance with LEPR, none of the operational orders (long or short form),<sup>12</sup> Arrest and Process Management Plan<sup>13</sup> or Annexure Orders - Drug Dog<sup>14</sup> documents provided any further specific explanation or instruction as to how searches could be so conducted.<sup>15</sup> GEN1 was unaware of any particular document in existence at the time of the event which guided police as to the legal requirements for strip searching children.<sup>16</sup>
- 3.10. According to GEN1 it was GEN4 who was responsible for preparing the drug dog phase of the operation.<sup>17</sup> As part of that task it was GEN1’s expectation that Officer GEN4 would ensure the presence of a support person for the purposes of LEPR searches conducted on the children present.<sup>18</sup> To that end GEN1 was informed<sup>19</sup> that GEN4 had arranged for two volunteer SES officers to be present at the event for the purpose of acting in the capacity of a support person during the strip search of any young person.<sup>20</sup> GEN2 was also aware, from the briefing by GEN6, who was the custody manager,<sup>21</sup> of the plan that SES volunteers would be used in that capacity.<sup>22</sup> Beyond their membership with the SES, no further enquiry was made as to the suitability of those volunteers to perform that particular function.<sup>23</sup>
- 3.11. As at February 2019, GEN1 was aware of the LEPR requirement that any non-parent or guardian present for a strip search of a young person must be someone acceptable to the young person.<sup>24</sup> He was unaware of whether or what specific instructions, if any, were given or arrangements were in place to ensure that the SES volunteers were acceptable to the young people searched.<sup>25</sup> However, he understood that such matters would have been addressed during the detailed briefing by GEN6 of the drug dog constables.<sup>26</sup>

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<sup>11</sup> Exhibit 1C, barcode 8405629-8405629.

<sup>12</sup> *Ibid*.

<sup>13</sup> Exhibit 3C, barcode 8405683-8405692.

<sup>14</sup> Exhibit 2C, barcode 8405269-80405642.

<sup>15</sup> Transcript, Day 1 of public examination, 2 December 2019 p. 22.42, p. 33.11-19., p. 38.34, P 41.14.

<sup>16</sup> *Ibid* p. 39.36.

<sup>17</sup> *Ibid* p. 25.38.

<sup>18</sup> *Ibid* p. 23.26, P 25.2-9.

<sup>19</sup> *Ibid* p. 24.23.

<sup>20</sup> *Ibid* p. 24.18.

<sup>21</sup> *Ibid* p. 73.1-11.

<sup>22</sup> *Ibid* p. 72.27.

<sup>23</sup> *Ibid* p. 24.37-P25.11.

<sup>24</sup> *Ibid* p. 26.9.

<sup>25</sup> *Ibid* p. 26.14.

<sup>26</sup> *Ibid* p. 26.14-34.



- 3.12. GEN1 agreed that the operational orders were silent as to the importance of recording (in a COPS entry or Field Processing Form) compliance with LEPR requirements in carrying out the strip searches<sup>27</sup> and he explained that processes have since been improved so as to ensure the recording of the justification for the search.<sup>28</sup> This was evidenced by the version of the Field Processing Form in use as at the time of the public hearing which was tendered in evidence.<sup>29</sup>
- 3.13. GEN1 was disappointed that, of the 30 strip searches at the Festival, in only 5 cases was there a record of who the parent, guardian or support person was.<sup>30</sup> He expected that officers at the Festival would have recorded the identity of the support person, parent or guardian present during a strip search.<sup>31</sup> As at February 2019, when the Festival took place, a Field Processing Form was returned to a senior officer, who would check that each form was filled out correctly.<sup>32</sup> GEN1 agreed that those checks were insufficient to ensure that the support person or guardian was recorded properly because the Field Processing Form used as at the time of the Festival did not specifically require such information.<sup>33</sup>

## B. Officer GEN3

- 3.14. At the Festival, GEN3, a senior constable, held the role of Event Co-Ordinator within the planning unit.<sup>34</sup> He did not perform any strip searches at the Festival.
- 3.15. GEN3 prepared the Operational Orders<sup>35</sup> for the Festival.<sup>36</sup> He had had some experience in preparing operational guidelines for other music festivals, albeit none for patrons under the age of 18 years.<sup>37</sup> When asked what training he had received in the preparation of such documents he identified that when he commenced in the role, 12 months prior to giving his evidence, he was guided by a senior officer<sup>38</sup> who also provided him with documents which GEN3 would then use as pro forma or templates for operational guidelines for events.<sup>39</sup>
- 3.16. Although GEN3 identified the focus of the Festival as being that the patrons were under 18,<sup>40</sup> he conceded that the operational orders did not contain anything specific to that age group.<sup>41</sup>

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<sup>27</sup> *Ibid* p. 34.38.

<sup>28</sup> *Ibid* p. 35.36.

<sup>29</sup> Exhibit 9C - Current Edition of Field Processing Form, barcode 7603223

<sup>30</sup> Transcript, Day 1 of public examination, 2 December 2019 p. 50.42.

<sup>31</sup> *Ibid* p. 48.35.

<sup>32</sup> *Ibid* p. 52.1.

<sup>33</sup> *Ibid* p. 48.18.

<sup>34</sup> *Ibid* p. 77.1.

<sup>35</sup> Exhibit 1C, barcode 8405629.

<sup>36</sup> Transcript, Day 1 of public examination, 2 December 2019 p. 77.33.

<sup>37</sup> *Ibid* p. 78.15.

<sup>38</sup> *Ibid* p. 83.36.

<sup>39</sup> *Ibid* p. 83.36-47.

<sup>40</sup> *Ibid* p. 78.26.

<sup>41</sup> *Ibid* p. 78.35-46.

3.17. GEN3 claimed to have read LEPRAs at the time of drafting the operational orders but, as at the date of giving evidence at the public examination, he did not believe that LEPRAs contained provisions specific to young people in relation to searches<sup>42</sup> and was not aware of any LEPRAs requirements relating to young people.<sup>43</sup> He had last received training in relation to LEPRAs requirements “at least... a couple” of years prior to giving his evidence.<sup>44</sup>

### C. Officer GEN4

3.18. GEN4 held the rank of Chief Inspector as at the time of giving evidence at the public examination. He had had previous involvement in excess of 20 festivals, in capacities such as Event Commander and Drug Dog Commander, but never for a strictly under-18s event.<sup>45</sup> As he was on leave on the day of the Festival, GEN4 had no designated role for the event, but was responsible for determining what should be on the Field Processing Forms that would be used at the event.<sup>46</sup>

3.19. GEN4 confirmed that he, along with GEN1, recommended the Operational Orders and he recalled checking them. It had occurred to him when checking the orders that police would be searching under-18-year-olds, but had not considered that something governing such searches should be included in the documents. He agreed that, in retrospect, it would have been prudent to have included the specific requirements relating to strip searching of children.<sup>47</sup> Checks conducted by GEN4 revealed that there were no NSW Police Standard Operating Procedures relating to the role of a support person in the strip search of a young person in existence at the time.<sup>48</sup>

3.20. GEN4 explained that while it was not generally part of his role to organise persons who might act as support persons for strip searches in the absence of parents or guardians, he had offered<sup>49</sup> to arrange the SES volunteers on this occasion because he had a contact with the SES.<sup>50</sup> At the time he arranged for the volunteers’ attendance, he was not aware of whether or not they had a working with children check.<sup>51</sup> His email to GEN18, the Unit Commander of the Parramatta SES, read:<sup>52</sup>

*Regarding my telephone conversation with [you] earlier this morning, I would like to request for 2-3 of your finest staff to assist please at the Goodlife under 18s music festival.*

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<sup>42</sup> *Ibid* p. 79.4-43.

<sup>43</sup> *Ibid* p. 79.4, 79.18-43.

<sup>44</sup> *Ibid* p. 82.22.

<sup>45</sup> *Ibid* p. 89.11-17.

<sup>46</sup> *Ibid* p. 93.34.

<sup>47</sup> *Ibid* p. 93.8.

<sup>48</sup> *Ibid* p. 95.11-20.

<sup>49</sup> *Ibid* p. 96.33.

<sup>50</sup> *Ibid* p. 96.25.

<sup>51</sup> *Ibid* p. 97.19.

<sup>52</sup> Exhibit 14C - Emails between GEN4 and SES, barcode 7603225-7603228; p 174.22-175.1.

*Their duties would be to act as support people for those under 18 that police need to interview for a criminal offence. Given that they will be under 18, we need to have someone that is not a police officer present when interviewing.*

3.21. GEN18 responded as follows:<sup>53</sup>

*I have had confirmation from one member already, he is available to assist from 5pm.*

*Do you require them to have working with children checks? Most of my team do I'm just not 100% sure and will have to ask them.*

3.22. GEN4 replied by saying:<sup>54</sup>

*Many thanks, if they have those checks fine, they will be with police officers so it isn't a deal-breaker. If you can only get 2, that's also okay.*

3.23. GEN4 had considered that if SES personnel were not acceptable to the young person being searched that an alternative would be required. In that regard he presumed that persons from Red Frogs would be available and confirmed that Red Frogs had been relied upon by police to perform that function in the past. However, he was not aware if the volunteers with that organisation held a working with children check or were over 18 years old. GEN4's expectation was that a 'person acceptable to the young person' for the purposes of s 33 LEPRA would be over 18,<sup>55</sup> but admitted that a sibling of, say 17 years old, would probably be allowed.<sup>56</sup>

3.24. GEN4's expectation was that the drug dog briefing, rather than the operational guidelines, would include information about the LEPRA requirements in relation to strip searching under 18-year-olds.<sup>57</sup> He also would have expected that officers conducting strip searches at the Festival would have made a COPS entry setting out their compliance with LEPRA beyond simply stating "LEPRA complied with".<sup>58</sup> He agreed that it was unacceptable that a large number of the COPS records relating to the searches in question contained no information as to the presence or absence of a support person.<sup>59</sup>

#### D. Officer GEN6

3.25. GEN6 was a sergeant as at the time of giving evidence at the public enquiry. He was the Drug Dog Commander at the Festival.<sup>60</sup>

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<sup>53</sup> *Ibid.*

<sup>54</sup> Exhibit 14C - Emails between GEN4 and SES, barcoded 7603225-7603228; p 174.22-175.1.

<sup>55</sup> Transcript, Day 1 of public examination, 2 December 2019 p. 102.17.

<sup>56</sup> *Ibid* p. 102.21.

<sup>57</sup> *Ibid* p. 103.17-21.

<sup>58</sup> *Ibid* p. 104.12-26.

<sup>59</sup> *Ibid* p. 104.38.

<sup>60</sup> Transcript, Day 2 of public examination, 3 December 2019 p. 140.26.

- 3.26. GEN6 did not perform any strip searches at the Festival.
- 3.27. GEN6 had held the same position at approximately 36 other festivals,<sup>61</sup> including two catering to under-18s<sup>62</sup> and several all-ages festivals.<sup>63</sup> His role at the Festival included providing investigative advice in the event that police recovered something from a search.<sup>64</sup>
- 3.28. GEN6 also conducted a briefing to all police officers (both general duties and user-pays) who were designated to the drug dog team.<sup>65</sup> The briefing covered the logistics and operation of the Festival. He told police attendees that young people were present at the event<sup>66</sup> and would need support people if required when interviewing<sup>67</sup> and that notes needed to be taken of any search.<sup>68</sup> He told the police attendees that if the need arose for a support person to be present during the interview of a young person, that SES personnel would be onsite for that purpose.<sup>69</sup> GEN6 was aware that SES volunteers would be present because he was copied in on an email sent on 15 February 2019 by officer GEN4 to the SES seeking 2-3 volunteers to act as support people for young people being interviewed.<sup>70</sup> The text of that email left GEN6 with the impression that it did not matter whether or not the two volunteers had working with children checks as the writer (GEN4) said the volunteers would be with police officers.<sup>71</sup>
- 3.29. GEN6 gave evidence based on his reading of the roster that there were three or four youth liaison officers present at the Festival specifically for the purpose of providing specialist youth support.<sup>72</sup> At the conclusion of the police briefing, one such youth liaison officer specifically reinforced that parents and guardians were the first port of call when young persons were interviewed<sup>73</sup> and strip searched.<sup>74</sup> It was only then that GEN6 understood the legal requirement for a parent, guardian or support person must be present at the time of a strip search, he having been unaware of it during the briefing and up until that point in time.<sup>75</sup> No other instructions were given to officers during the briefing as to the legal requirements for the strip search of a child.<sup>76</sup>
- 3.30. After briefing police GEN6 also briefed the SES volunteers as to their role on the day.<sup>77</sup> He explained that they were there to perform the role of support person during an interview and asked them whether they were

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<sup>61</sup> *Ibid* p. 142.21.

<sup>62</sup> *Ibid* p. 142.13-17.

<sup>63</sup> *Ibid* p. 142.29.

<sup>64</sup> *Ibid* p. 140.30.

<sup>65</sup> *Ibid* p. 141.23.

<sup>66</sup> *Ibid* p. 142.37.

<sup>67</sup> *Ibid* p. 142.43.

<sup>68</sup> *Ibid* p. 157.40.

<sup>69</sup> *Ibid* p. 144.29, p 147.19.

<sup>70</sup> Exhibit 14C Emails between GEN4 and SES, barcode 7603225-7603228; P 174.22-175.1.

<sup>71</sup> Transcript, Day 2 of private examination, 3 December 2019 p. 175.10-40.

<sup>72</sup> *Ibid* p. 145.16.

<sup>73</sup> *Ibid* p. 144.29-145.2.

<sup>74</sup> *Ibid* p. 146.2.

<sup>75</sup> *Ibid* p. 147.31-41.

<sup>76</sup> *Ibid* p. 145.38.

<sup>77</sup> *Ibid* p. 148.28.

also prepared to perform the same role during a strip search, if required.<sup>78</sup> He explained that they are not to participate in the search but believed that their role would be to:<sup>79</sup>

*...Ensure the integrity and the welfare of the young person being searched and bring to anyone's attention, similar to my rank or above, if there was any issues with the searching process.*

- 3.31. GEN6 also explained to the SES volunteers that they would be stationed<sup>80</sup> in the search area within the compound, where there were ticket booths designated as searching pods.<sup>81</sup> The SES volunteers were not told: to ask the child whether a parent or guardian had been contacted or offered; to ask whether the child was amenable to the SES volunteer being present as a support person; of the type of misconduct in a search which they should look out for and report or prevent; of the desirability of seeking to have a private conversation with the young person before and/or during the search to see how they are feeling, or of the duty of care considerations applicable to ejecting the young person after the search. These were all matters which, in retrospect, GEN6 agreed should have been raised with the SES volunteers.<sup>82</sup>
- 3.32. At the time of the Festival, GEN6 believed that SES volunteers were prima facie suitable to act in the role of support person during a strip search,<sup>83</sup> a view which he conceded at the Public Examination was inappropriate.<sup>84</sup>
- 3.33. At one point during the Festival GEN6 sought the assistance of a Red Frogs volunteer to act as support person for a young person being interviewed. This was because the two SES volunteers were tied up at the time.<sup>85</sup> GEN6 did not believe as at the time of his earlier briefing that Red Frogs volunteers would be used in any way to assist young persons during searches or interviews.<sup>86</sup>
- 3.34. GEN6 agreed that noting down the presence and identity of a parent, guardian or support person during a search would be an important part of properly recording the fulfilment of legal obligations.<sup>87</sup>
- 3.35. GEN6 believed that at the time of the Festival, there was no manual or guideline on strip searching.<sup>88</sup>

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<sup>78</sup> *Ibid* p. 148.45-149.9.

<sup>79</sup> *Ibid* p. 150.7.

<sup>80</sup> *Ibid* p. 159.14.

<sup>81</sup> *Ibid* p. 150.14-19.

<sup>82</sup> *Ibid* p. 153.24.

<sup>83</sup> *Ibid* p. 148.21.

<sup>84</sup> *Ibid* p. 148.24.

<sup>85</sup> *Ibid* p. 171.35-41.

<sup>86</sup> *Ibid* p. 158.6.

<sup>87</sup> *Ibid* p. 160.43-161.27.

<sup>88</sup> *Ibid* p. 170.17-171.5.

## E. SES GEN18

- 3.36. GEN18 was Unit Commander with the SES, a volunteer role<sup>89</sup> which he had held for four years as at the date of the public examination.<sup>90</sup> GEN18 had volunteered with the SES for 11 years.<sup>91</sup> There were 150 volunteers within his unit as at February 2019.<sup>92</sup>
- 3.37. GEN18 did not attend the Festival personally.<sup>93</sup>
- 3.38. GEN18 confirmed that the holding of a Working with Children Check was not a mandatory requirement of volunteering with the SES.<sup>94</sup> When he asked GEN4 whether the volunteers for the Festival would require Working with Children Checks, he did not have access to any records which would show which of his 150 members held clearances.<sup>95</sup> The three volunteers who in fact attended the Festival did hold Working with Children Checks.<sup>96</sup>
- 3.39. GEN18 was shown the email between him and GEN4 in which GEN4 requested two or three SES volunteers to attend the Festival to act as support persons for young persons being interviewed.<sup>97</sup> He had not personally performed that role for Police. He had never previously received such a request from the Police and was not aware of the SES being enlisted by Police for that purpose.<sup>98</sup>
- 3.40. Based on his phone call with, and emails to and from GEN4, GEN18 understood that his volunteers were attending the Festival to act as support persons for young persons being interviewed.<sup>99</sup> He did not understand and was not made aware, either on the phone to GEN4, in the emails or subsequently,<sup>100</sup> that it was contemplated that the request would extend to strip searches.<sup>101</sup> It was only at the end of the night, when he arranged to meet with the two SES officers who had attended the Festival<sup>102</sup> for a de-briefing,<sup>103</sup> that he learned that they had been involved in strip searches of young people.<sup>104</sup>

## The events concerning Young Person GEN13C

- 3.41. GEN13C was 15 years old as at the date of the Festival. After being breathalysed with nil result at the entry to the Festival, a drug dog sniffed

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<sup>89</sup> Transcript, Day 4 of private examination, 5 December 2019 p. 413.29-33.

<sup>90</sup> *Ibid* p. 414.3.

<sup>91</sup> *Ibid* p. 413.46.

<sup>92</sup> *Ibid* p. 415.18.

<sup>93</sup> *Ibid* p. 421.17.

<sup>94</sup> *Ibid* p. 414.36; P 415.4.

<sup>95</sup> *Ibid* p. 418.41.

<sup>96</sup> *Ibid* p. 422.12.

<sup>97</sup> Exhibit 14C Emails between GEN4 and SES, barcode 7603225-7603228; P 174.22-175.1.

<sup>98</sup> Transcript of Day 4 of private examination, 5 December 2019 p. 417.20-25; 421.7.

<sup>99</sup> *Ibid* p. 428.10.

<sup>100</sup> *Ibid* p. 421.37-45.

<sup>101</sup> *Ibid* p. 417.30-418.17.

<sup>102</sup> *Ibid* p. 423.13.

<sup>103</sup> *Ibid* p. 422.30-46.

<sup>104</sup> *Ibid* p. 423.9; P 424.4.

his pocket, then walked to his brother and sniffed his pocket, then returned to GEN13C and sniffed his pocket *“and sort of followed [GEN13C] for a bit with his nose on [GEN13C]’s pocket ... for about two seconds.”*<sup>105</sup> He was approached by two officers and escorted to a small room where he was asked to hand over his wallet and phone, which he did. Police searched the wallet.<sup>106</sup>

- 3.42. Police asked GEN13C for his phone passcode, which he provided. Police then accessed the phone and scrolled through his message history.<sup>107</sup> GEN13C assumed he had to give the phone to the officer, along with the passcode.<sup>108</sup>
- 3.43. GEN13C was then taken by two officers into a room. There he was asked to lift his shirt and show his armpits, then to remove his socks and shoes. He described what followed to LECC investigators as being told by the searching officer:<sup>109</sup>
- “...alright now like pull your pants down.” And I was sort of like, just stood there for a bit like, “are you sure? Like, do I just pull down my pants and show you everything or like what?” [And the police officer said] “no pull down your pants, ah hold your dick and lift your balls up and show me your gooch.”*
- 3.44. The young person, who was naked from the waist down,<sup>110</sup> then lifted up his testicles and the officer bent down to have a look, approximately one metre away from him.<sup>111</sup>
- 3.45. When nothing adverse was located, GEN13C was permitted to leave and re-enter the Festival.<sup>112</sup>
- 3.46. Neither the COPS entry created by officer GEN9 sometime after the event nor the Field Processing Form identified that this was in fact a strip search. There was no indication that a parent or guardian was ever offered to GEN13C.
- 3.47. No notebook entries or Field Processing Form were available in relation to GEN13C.

## F. Officer GEN9

- 3.48. GEN9 was a senior constable as at the time of the Festival and the public enquiry.<sup>113</sup> He was rostered on at the Festival as Drug Dog Support Staff.<sup>114</sup>

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<sup>105</sup> Exhibit 23C - Record of Interview of GEN13C, p 4.

<sup>106</sup> *Ibid* p. 20.

<sup>107</sup> *Ibid* p. 20-21.

<sup>108</sup> *Ibid* p. 21.

<sup>109</sup> *Ibid* p. 25-26.

<sup>110</sup> Exhibit 23C - Record of interview of GEN13C, barcode 8453456-8453497 p 29.

<sup>111</sup> *Ibid* p. 26-27.

<sup>112</sup> Exhibit 22C - COPS event in relation to GEN13C, barcode 8453498-8453501; p. 329.11; p. 332.15-23.

<sup>113</sup> Transcript, Day 3 of private examination, 4 December 2019 p. 255.25.

<sup>114</sup> *Ibid* p. 255.38.

GEN9 was partnered with GEN10,<sup>115</sup> another Drug Dog Support Staff Officer. GEN9 explained that the role of a Drug Dog Support Officer entailed that, when a Police Drug Dog gave a positive indication in respect of a patron, the Support Staff Officer would approach the Dog Handler Officer, ask the patron to move to the police holding area, have a conversation with,<sup>116</sup> and then search that patron.<sup>117</sup>

- 3.49. GEN9 agreed that the sort of questions (which would include “*are you carrying any drugs?*”) he would ask patrons in respect of whom a drug dog had given a positive indication were posed without caution and would amount to admission of a criminal offence, if answered in the positive.<sup>118</sup>
- 3.50. GEN9 had previously performed the same role at two or three other music festivals,<sup>119</sup> though none were events attended by under-18s.<sup>120</sup> GEN9 had never performed a strip search on a child under the age of 18.<sup>121</sup>
- 3.51. At the beginning of the Festival, GEN9 attended the briefing.<sup>122</sup> He only recalled GEN6 speaking<sup>123</sup> and did not recall anything there being said about the specific requirements attendant to strip-searching children.<sup>124</sup> He did, however, recall being told “*something about SES*” being present at the Festival as support persons.<sup>125</sup> He did not recall a youth liaison officer speaking during the briefing.<sup>126</sup>
- 3.52. GEN9 gave evidence that he was aware, as at February 2019, of the different rules concerning the strip searching of a young person versus an adult,<sup>127</sup> but when asked what would be required of him in that circumstance only offered that he “*believe[d] that we would probably have to get a support person.*” When asked how he might go about that, he said he didn’t know, and would probably contact a supervisor.<sup>128</sup>
- 3.53. GEN9 agreed that he was listed on the Field Processing Form filled out in relation to GEN13C<sup>129</sup> as having been involved in the search of GEN13C as ‘*Arresting or Escorting Officer*’ and that he was the person who filled out that form.<sup>130</sup> He could not remember performing any strip searches at the Festival.<sup>131</sup>

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<sup>115</sup> *Ibid* p. 281.47.

<sup>116</sup> *Ibid* p. 261.1-34.

<sup>117</sup> *Ibid* p. 266.4.

<sup>118</sup> *Ibid* p. 263.20-25.

<sup>119</sup> *Ibid* p. 256.17.

<sup>120</sup> *Ibid* p. 256.20.

<sup>121</sup> *Ibid* p. 256.29.

<sup>122</sup> *Ibid* p. 259.12.

<sup>123</sup> *Ibid* p. 259.27.

<sup>124</sup> *Ibid* p. 259.31.

<sup>125</sup> *Ibid* p. 276.44-277.2.

<sup>126</sup> *Ibid* p. 307.24.

<sup>127</sup> *Ibid* p. 257.25.

<sup>128</sup> *Ibid* p. 258.1-22; .43. See also p. 271.24 and p. 273.21.

<sup>129</sup> Exhibit 5C.

<sup>130</sup> Transcript, Day 3 of public examination, 4 December 2019 p. 283.27.

<sup>131</sup> *Ibid* p. 259.8, p. 265.34, p. 269.42.



- 3.54. GEN9 noted down on the Field Processing Form his observation of GEN13C as having enlarged pupils and being “*shaky*”.<sup>132</sup> These were matters which contributed to his reasonable suspicion<sup>133</sup> as, in his experience (though without any formal training), these were signs of drug affectedness.<sup>134</sup> He nonetheless accepted that each of those symptoms potentially carried an innocent explanation, such as a change in lighting causing the pupils to dilate<sup>135</sup> or a young person being nervous when speaking to police.<sup>136</sup>
- 3.55. In evidence, GEN9 was taken to the substance of GEN13C’s interview, as it related to the manner of his strip search. GEN9 maintained that it was a general search, not a strip search, which was conducted.<sup>137</sup> He denied asking GEN13C to expose his “*gooch*” and said he had no memory of being at a search where such a request was made of a young person,<sup>138</sup> in that he excluded the possibility of such an event having taken place and forgetting about it.<sup>139</sup>
- 3.56. GEN9 gave evidence that, after he conducted a general search of GEN13C and no drugs were found, he was allowed to return to the Festival.<sup>140</sup>
- 3.57. GEN9 was not the author of the COPS entry in relation to GEN13C<sup>141</sup> and made no entry in his Police notebook in relation to GEN13C.<sup>142</sup> GEN9 agreed that there was no record in his notebook or elsewhere of what precisely took place as part of the general search he conducted.<sup>143</sup>

## G. Officer GEN10

- 3.58. GEN10 was a constable at the time of the Festival and plain-clothes senior constable as at the time of the public enquiry.<sup>144</sup>
- 3.59. At the Festival, GEN10 was rostered on as Drug Dog Support Staff,<sup>145</sup> partnered with GEN9,<sup>146</sup> another Drug Dog Support Staff Officer.
- 3.60. GEN10 had previously performed the same role at more than 10 other music festivals,<sup>147</sup> including events attended by under-18 year old patrons.<sup>148</sup> GEN10 had performed “*more than a handful*” of strip searches, prior to the Festival, but could not recall ever having performed a strip

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<sup>132</sup> *Ibid* p. 285.35.

<sup>133</sup> *Ibid* p. 289.14.

<sup>134</sup> *Ibid* p. 285.39-286.2; p. 303.13-18.

<sup>135</sup> *Ibid* p. 288.44.

<sup>136</sup> *Ibid* p. 288.35.

<sup>137</sup> *Ibid* p. 300.9-42.

<sup>138</sup> *Ibid* p. 298.39, 299.18-30; 301.27.

<sup>139</sup> *Ibid* p. 301.31.

<sup>140</sup> *Ibid* p. 287.20.

<sup>141</sup> *Ibid* p. 289.41; Exhibit 22C - COPS event in relation to GEN13C, barcode 8453498-8453501.

<sup>142</sup> Transcript, Day 3 of public examination, 4 December 2019 p. 290.18.

<sup>143</sup> *Ibid* p. 302.6.

<sup>144</sup> *Ibid* p. 313.6-11.

<sup>145</sup> *Ibid* p. 313.18.

<sup>146</sup> *Ibid* p. 313.22.

<sup>147</sup> *Ibid* p. 313.6.

<sup>148</sup> *Ibid* p. 313.28.

search on a child under the age of 18.<sup>149</sup> He was aware that some SES members were available at the Festival to act in the capacity of support person.<sup>150</sup> He gave evidence that he did not perform any strip searches at the Festival.<sup>151</sup>

- 3.61. GEN10 attended the briefing held at the commencement of the Festival.<sup>152</sup> He could not recall who spoke at the briefing but identified GEN4 and GEN6 as being officers who would run such a briefing.<sup>153</sup> He did not recall anything being said about the specific requirements attendant upon strip-searching children.<sup>154</sup> He did, however, recall being told “*something about SES*” being present at the Festival<sup>155</sup> for purposes including representing the interests of young people during interviews<sup>156</sup> in the capacity of “*acceptable person*”.<sup>157</sup> When pressed as to what he believed an “*acceptable person*” to mean for the purposes of LEPR, he admitted that an SES volunteer’s status would mean they were generally acceptable from a police point of view.<sup>158</sup> He would have then asked the young person whether they were content for the nominated support person to be present while the interview was conducted.<sup>159</sup>
- 3.62. GEN10 maintained that he was, as at February 2019, familiar with the LEPR requirements concerning the strip searching of young people,<sup>160</sup> but admitted to being of the view that the presence of any of a parent, guardian or support person was acceptable, so long as the young person agreed to it.<sup>161</sup> He was not aware of the requirement to first offer a parent or guardian.<sup>162</sup>
- 3.63. The Field Processing Form completed in relation to GEN13C listed GEN10 as the ‘*arresting/escorting officer*’. GEN10’s evidence was that GEN9 filled out that form.<sup>163</sup>
- 3.64. GEN10 recalled searching two young people on 23 February 2019,<sup>164</sup> one general search at the Festival and another strip search at the Police station afterwards.<sup>165</sup> In respect of GEN13C, GEN10 recalled there being an indication by a drug dog, following which GEN10 and GEN9 took GEN13C to the designated searching area.<sup>166</sup> GEN10 explained that they had “*a chat*” with him on the way there, which included asking him, without

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<sup>149</sup> *Ibid* p. 315.18-28.

<sup>150</sup> *Ibid* p. 315.41.

<sup>151</sup> *Ibid* p. 319.7-17.

<sup>152</sup> *Ibid* p. 313.32

<sup>153</sup> *Ibid* p. 313.36-46.

<sup>154</sup> *Ibid* p. 259.31.

<sup>155</sup> *Ibid* p. 276.44-277.2.

<sup>156</sup> *Ibid* p. 316.3.

<sup>157</sup> *Ibid* p. 317.28-32.

<sup>158</sup> *Ibid* p. 317.45.

<sup>159</sup> *Ibid* p. 318.32.

<sup>160</sup> *Ibid* p. 316.38.

<sup>161</sup> *Ibid* p. 316.47-317.2.

<sup>162</sup> *Ibid* p. 317.6.

<sup>163</sup> *Ibid* p. 319.46-320.14.

<sup>164</sup> *Ibid* p. 321.35.

<sup>165</sup> *Ibid* p. 322.1-5.

<sup>166</sup> *Ibid* p. 322.24-38.

issuing a caution, whether he had consumed any drugs. GEN13C answered that he had not.<sup>167</sup>

- 3.65. The search of GEN13C took place in a searching booth with the door closed.<sup>168</sup> GEN10 performed the search whilst GEN9 took notes on the Field Processing Form and acknowledged that only he and GEN9 were involved in the search of GEN13C.<sup>169</sup> GEN10 denied, however, GEN13C's account to LECC investigators of his strip search at the Festival, including asking that GEN13C pull his pants down, hold his penis or lift his testicles.<sup>170</sup> He also denied understanding or having ever used the word "gooch".<sup>171</sup>
- 3.66. Later that day and after the Festival, GEN10 copied the information from the Field Processing Form into his Police notebook,<sup>172</sup> namely GEN13C's name, that a "person search" was conducted of him and the reason for the search.<sup>173</sup> GEN10 also completed the COPS entry in relation to GEN13C on the evening of the Festival.<sup>174</sup> There was nothing in the Field Processing Form, the COPS entry or in GEN10's notebook recording the manner in which the search was carried out or what actions it entailed.<sup>175</sup> GEN10 could offer no explanation for his failure to do so.<sup>176</sup>

### The events concerning Young Person GEN14C

- 3.67. GEN14C had just turned 17 at the time of the Festival. He and a friend had each secreted a bum bag inside their pants (bum bags being prohibited at the Festival).<sup>177</sup> GEN14C had wanted a bum bag so that he could safely hold his phone and wallet whilst he danced.<sup>178</sup>
- 3.68. Whilst GEN14C was queuing to enter the Festival, security staff saw him fiddling with his groin area. GEN14C said he had been adjusting the secreted bum bag.<sup>179</sup> GEN14C was told by police that he was going to be strip searched. Whilst being subject to a general search, GEN14C removed the bum bag and explained to police his reasons for concealing it and that he had no drugs on him.<sup>180</sup>
- 3.69. Police questioned GEN14C further and he was subjected to the strip search. He was required to remove all of his clothes, to the point of being fully naked.<sup>181</sup> He was asked to "lift up his balls" and to "squat and cough". He did so and then asked, "Why is this happening?"

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<sup>167</sup> *Ibid* p. 323.1-18.

<sup>168</sup> *Ibid* p. 323.26-45.

<sup>169</sup> *Ibid* p. 331.13-28.

<sup>170</sup> *Ibid* p. 330.35.

<sup>171</sup> *Ibid* p. 335.28.

<sup>172</sup> Exhibit 24C - Extract from the notebook of G10, barcode 7603244-7603245.

<sup>173</sup> Transcript, Day 3 of public examination, 4 December 2019 p. 324.14-325.19; 327.13.

<sup>174</sup> *Ibid* p. 328.28-42; Exhibit 22C - COPS entry in relation to GEN13C.

<sup>175</sup> *Ibid* p. 325.7.

<sup>176</sup> *Ibid* p. 327.21-26.

<sup>177</sup> Exhibit 230 - Record of interview of GEN14C, p 13.

<sup>178</sup> *Ibid* p. 5.

<sup>179</sup> *Ibid* p. 14, 16.

<sup>180</sup> *Ibid* p. 16.

<sup>181</sup> *Ibid* p. 18-20.

- 3.70. GEN14C was not told of his legal rights, nor was a parent or guardian or support person present during the search. The search was conducted in a small room with GEN14C in close proximity to two male officers.
- 3.71. The COPS event for the search, which was created by Officer GEN12, is dated 25 February 2019. It records the following in relation to the basis for the search of GEN14C:

*Whilst the YP was walking towards the entry of the Good Life music festival, security approached the YP as they had sighted a package in the YP's groin area. Security handed the YP to police, spoke to him and co-operated to a search...*

- 3.72. The COPS entry does not identify that a strip search took place, nor does it mention that a bum bag was removed and an explanation given by the young person as to the purpose of its concealment. It does not nominate a support guardian or support person or provide an explanation as to why the support person was not there.
- 3.73. In contrast to the COPS entry, the Field Processing Form in relation to GEN14C, filled out by GEN11, records the following:

*POI was stopped after avoiding the dog. He was detained by security.*

## H. Officer GEN11

- 3.74. GEN11 was a constable as at the time of the Festival and the public enquiry.<sup>182</sup> At the Festival, GEN11 performed the role of Drug Dog Support Staff.<sup>183</sup>
- 3.75. That role included working in a pair with GEN12,<sup>184</sup> who was a considerably more experienced officer than GEN11.<sup>185</sup>
- 3.76. GEN11 had previously performed the same role at approximately fifteen other music festivals,<sup>186</sup> including ones attended by under-18s (though not strictly under-18s events)<sup>187</sup>
- 3.77. GEN11 attended the briefing for the Festival,<sup>188</sup> which he recalled being led by GEN6,<sup>189</sup> his supervisor.<sup>190</sup> GEN11 did not recall anything being said about the specific requirements attendant on strip searching, or the strip searching of children.<sup>191</sup>

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<sup>182</sup> *Ibid* p. 255.25.

<sup>183</sup> *Ibid* p. 255.38.

<sup>184</sup> *Ibid* p. 281.47.

<sup>185</sup> *Ibid* p. 336.24-35.

<sup>186</sup> *Ibid* p. 335.45.

<sup>187</sup> *Ibid* p. 336.2-13.

<sup>188</sup> *Ibid* p. 336.46.

<sup>189</sup> *Ibid* p. 337.10.

<sup>190</sup> *Ibid* p. 336.43.

<sup>191</sup> *Ibid* p. 337.15-20.

- 3.78. GEN11 admitted that, as at February 2019, he was “*not as familiar*” with s 33 of LEPR as he was as at the date of giving evidence to the Commission.<sup>192</sup> As at the date of the Festival, GEN11 believed that LEPR required a support person but was not aware that the young person needed to first be asked whether they wanted a parent or guardian present.<sup>193</sup> He was similarly unaware of the requirement that an inquiry be made of the young person being searched as to whether the proposed support person was acceptable to them.<sup>194</sup> However GEN11 believed, as at February 2019, that the identity of the support person should be recorded in the searching officer or OIC’s Police notebook as well as the COPS entry.<sup>195</sup>
- 3.79. GEN11 was aware that SES officers had been arranged for the Festival to assist the Police with the young persons<sup>196</sup> and presumed that they would therefore have been “*vetted*” for that purpose.<sup>197</sup> GEN11 was aware of the high likelihood that he would need to strip search a young person at the Festival<sup>198</sup> and intended, in that event, to call upon an SES volunteer to assist.<sup>199</sup>
- 3.80. GEN11 performed three strip searches at the Festival<sup>200</sup> and considered it “*very likely*” that he was present and note-taking whilst approximately three<sup>201</sup> further strip searches were conducted by his partner, GEN12.<sup>202</sup>
- 3.81. GEN11 filled out the Field Processing Form in relation to the strip search of GEN14C<sup>203</sup> within 5-10 minutes of the events giving rise to the need for the search.<sup>204</sup> He agreed<sup>205</sup> that whereas the Field Processing Form recorded the “*Reason for Type of Search*” as being “*POI was stopped after avoiding the dog*”, that the COPS entry recorded a different reason, namely:<sup>206</sup>
- ...security approached the [young person] as they had sighted a package in the [young person’s] groin area. Security handed the [young person] to police, spoke to him and co-operated to a search.*
- 3.82. GEN11 could not explain the difference and noted that his partner, GEN12, was the author of the COPS entry, and not him.<sup>207</sup> When it was put to him that GEN14C’s account to LECC investigators accorded with the COPS narrative, not the reason given on the Field Processing Form, GEN11 could not explain and had no independent memory of the incident.<sup>208</sup> He

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<sup>192</sup> *Ibid* p. 337.39.

<sup>193</sup> *Ibid* p. 338.5.

<sup>194</sup> *Ibid* p. 338.44-339.4.

<sup>195</sup> *Ibid* p. 352.41-353.3.

<sup>196</sup> *Ibid* p. 339.11-28.

<sup>197</sup> *Ibid* p. 338.37.

<sup>198</sup> *Ibid* p. 340.7.

<sup>199</sup> *Ibid* p. 340.16.

<sup>200</sup> *Ibid* p. 340.31.

<sup>201</sup> *Ibid* p. 341.15-18.

<sup>202</sup> *Ibid* p. 340.40.

<sup>203</sup> *Ibid* p. 344.31; Exhibit 25C - Field Processing Form, barcode 8441305.

<sup>204</sup> *Ibid* p. 348.45.

<sup>205</sup> *Ibid* p. 347.34.

<sup>206</sup> Exhibit 27C - COPS event in relation to GEN14C, barcode 8459541.

<sup>207</sup> *Ibid*; p. 346.26.

<sup>208</sup> Transcript, Day 3 of public examination, 4 December 2019 p. 349.47-350.3.

accepted that there was no further explanation (in addition to allegedly avoiding the drug dog) listed on the Field Processing Form to justify the search<sup>209</sup> and agreed that such would not, without more, found a reasonable suspicion for a search.<sup>210</sup>

- 3.83. GEN11 was present for<sup>211</sup> but denied having conducted the search of GEN14C<sup>212</sup> His evidence was that he was present in the searching pod whilst GEN12 performed the search. The door of the pod would have been mostly closed with a gap open.<sup>213</sup> GEN11 did not take any notes of what was happening during the search of GEN14C by GEN12 because he was of the view that it was the responsibility of the investigator, in this case GEN12, to make such a recording given it was he who formed the reasonable suspicion for the search.<sup>214</sup>
- 3.84. GEN11 denied urging GEN14C or any young person to forfeit anything illegal in their possession so that *"it won't be a big issue"*,<sup>215</sup> as GEN14C told LECC investigators was said to him at the Festival. He also denied GEN14C's account of being asked to stand naked for a period of time<sup>216</sup> before being asked to *"squat and cough"* still whilst naked.<sup>217</sup> He agreed that it was consistent with his practice that he would remove and search the case of a mobile phone, search the wallet and search any bum bag of a young person in the circumstances in which GEN14C found himself.<sup>218</sup>
- 3.85. GEN11 could not recall whether or not a support person was present for the search of GEN14C.<sup>219</sup> Nor was there an indication in the COPS entry in respect of GEN14C as to whether or not a parent, guardian or support person was present.<sup>220</sup>
- 3.86. Over the course of the Festival, GEN11 performed three strip searches of young people (none of whom were GEN14C). In each of those cases he first performed a general search then, having formed the reasonable suspicion that a strip search was necessary, arranged for a support person and then performed a strip search.<sup>221</sup> GEN11 said that he would inform young persons of the reason for the strip search, request their cooperation and inform them of his intention to perform the search as quickly and efficiently as possible whilst preserving their dignity. His standard practice for a strip search of a young person involved requiring that they remove their hat and searching the hat; requiring that they remove their shirt (subject to whether or not he was satisfied that there was nothing in the shirt as a result of the general search); requiring that the young person

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<sup>209</sup> *Ibid* p. 351.15.

<sup>210</sup> *Ibid* p. 352.30.

<sup>211</sup> *Ibid* p. 361.41.

<sup>212</sup> *Ibid* p. 342.27-29-343.26.

<sup>213</sup> *Ibid* p. 345.40.

<sup>214</sup> *Ibid* p. 353.22-32.

<sup>215</sup> *Ibid* p. 363.43-364.1.

<sup>216</sup> *Ibid* p. 372.35.

<sup>217</sup> *Ibid* p. 369.16-22.

<sup>218</sup> *Ibid* p. 364.13-20.

<sup>219</sup> *Ibid* p. 357.22.

<sup>220</sup> *Ibid* p. 355.10.

<sup>221</sup> *Ibid* p. 359.23-47.

remove their pants whilst leaving their underwear on; requiring the young person to remove their underwear while facing him, visually inspecting their testicles and, if he believed based on that inspection<sup>222</sup> that there was something under their testicles – such as sticky tape or tissues<sup>223</sup> – asking that they lift their testicles.<sup>224</sup>

- 3.87. GEN11 had never received any specific training as to whether he was entitled to ask someone to manipulate their genitalia during the course of a search<sup>225</sup> and assumed that such was lawful.<sup>226</sup>

## I. Officer GEN12

- 3.88. Officer GEN12 was a senior constable as at the time of the Festival and the public enquiry.<sup>227</sup> He was rostered on as Drug Dog Support Staff<sup>228</sup> along with Officer GEN11.<sup>229</sup>
- 3.89. GEN12 had attended more than 10 other music festivals in a similar capacity, one of which being the Lost City under-18s Music Festival the year before,<sup>230</sup> though none were events attended by under-18s.<sup>231</sup> GEN12 had never previously performed a strip search on a child under the age of 18.<sup>232</sup> He professed to be familiar with the provisions in s 33 of LEPR relating to the strip searching of children at the time.<sup>233</sup>
- 3.90. At the briefing on the day of the Festival, GEN12 recalled GEN1 and GEN6 having speaking roles.<sup>234</sup> He recalled being told that if a strip search was required, that a support person – parent or guardian – would need to be present<sup>235</sup> and that if such a person was not available, an SES volunteer would be available.<sup>236</sup>
- 3.91. At the Festival, GEN12 strip searched three young persons,<sup>237</sup> including GEN14C,<sup>238</sup> and was present at three further strip searches by his partner, GEN11.<sup>239</sup> All the searches he performed that day were strip searches.<sup>240</sup> Of the searches he conducted, there was no support person present for the

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<sup>222</sup> *Ibid* p. 368.1-14.

<sup>223</sup> *Ibid* p. 368.11.

<sup>224</sup> *Ibid* p. 367.13-38.

<sup>225</sup> *Ibid* p. 368.27.

<sup>226</sup> *Ibid* p. 368.30.

<sup>227</sup> *Ibid* p. 376.3-7.

<sup>228</sup> *Ibid* p. 255.38.

<sup>229</sup> *Ibid* p. 281.47.

<sup>230</sup> *Ibid* p. 377.33.

<sup>231</sup> *Ibid* p. 256.20.

<sup>232</sup> *Ibid* p. 377.43.

<sup>233</sup> *Ibid* p. 381.35.

<sup>234</sup> *Ibid* p. 378.41.

<sup>235</sup> *Ibid* p. 398.2-12.

<sup>236</sup> *Ibid* p. 379.16.

<sup>237</sup> *Ibid* p. 378.5.

<sup>238</sup> *Ibid* p. 390.30.

<sup>239</sup> *Ibid* p. 378.10-18.

<sup>240</sup> *Ibid* p. 381.2.

search of GEN14C.<sup>241</sup> He could recall a support person being present for one and was not sure about the other.

- 3.92. GEN12 professed to be familiar<sup>242</sup> with the requirements of s 33 of LEPRA as at the date of the Festival, including the requirement for a parent, guardian or support person to be present, but was not aware<sup>243</sup> of the requirement that a support person be suitable to the young person. Consequently, in no case at the Festival where he had a support person attending a search, did he take steps to ascertain whether that person was acceptable to the young person.<sup>244</sup>
- 3.93. He explained that his practice was to note down the name of the support person in his notebook<sup>245</sup> but otherwise, if nothing was found as a result of a strip search, he would make no further notes in his notebook and would simply take a photograph of the Field Processing Form.<sup>246</sup>
- 3.94. When asked what information he considered should be included in a COPS record, he answered:<sup>247</sup>

*The details of why we search; if a parent or guardian or an independent person was not contacted; the details of the actual event that arose during that, while we searched that person; and what outcome it was in our narrative.*

- 3.95. When asked to explain why a parent, guardian or support person would not be contacted, GEN12 identified the likelihood of the loss or destruction of evidence given the delay occasioned by making such contact.<sup>248</sup>
- 3.96. GEN12 filled out the COPS entry in relation to GEN14C two days after the Festival. His superiors informed him it was not necessary to complete the COPS entry at the time of the Festival,<sup>249</sup> so he did it on his next available shift.<sup>250</sup> He attributed his failure to record in the COPS entry the fact of, and reason for, no support person being present during the search of GEN14C, as well as the absence of any explanation as to the urgency justifying the search in those circumstances,<sup>251</sup> to oversight.<sup>252</sup> GEN12 also made no record in the COPS entry (or in his Notebook) of any explanation given by GEN14C as to the presence of the secreted bum bag<sup>253</sup> or of

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<sup>241</sup> *Ibid* p. 390.38; 391.18; P 395.32.

<sup>242</sup> *Ibid* p. 381.30; 384.1.

<sup>243</sup> *Ibid* p. 382.17; 384.25-29.

<sup>244</sup> *Ibid* p. 384.25.

<sup>245</sup> *Ibid* p. 383.20

<sup>246</sup> *Ibid* p. 391.43.

<sup>247</sup> *Ibid* p. 387.13.

<sup>248</sup> *Ibid* p. 387.24.

<sup>249</sup> *Ibid* p. 392.43.

<sup>250</sup> *Ibid* p. 392.27.

<sup>251</sup> *Ibid* p. 399.18.

<sup>252</sup> *Ibid* p. 390.45-391.2.

<sup>253</sup> *Ibid* p. 394.9.



anything over and above the presence of the secreted bum bag justifying a strip search.<sup>254</sup>

- 3.97. GEN12 denied GEN14C's account of being asked to stand naked for a period of time<sup>255</sup> but agreed that asking a young person to lift his testicles and then to "*squat and cough*" was something he would require a patron to do.<sup>256</sup> When asked on what basis he believed he had the power to require a young person to lift his testicles he answered "*It's just from experience that people secrete items under their testicles or in their bum cheeks or anus.*"<sup>257</sup> When pressed as to his belief as to the source of his power to require a young person to "*squat*", for example, he first claimed that he did not believe he had that power and that he was simply making a request, with which GEN14C happened to comply,<sup>258</sup> and that the young person would have a right to refuse "*If they know their law*". He agreed however that he would expect a young person in such a situation to believe they had no choice but to comply.<sup>259</sup>

### The events concerning Young Person GEN15C

- 3.98. GEN15C was 16 years old at the time of the Festival. He arrived at the event with some friends and planned on meeting others inside. He was stopped by security because he too had a bum bag, but in this case it was not secreted on his person. He was planning to carry his phone, headphones and wallet into the Festival because it seemed to be a convenient way to hold his valuables. Security approached him and told him that he needed to discard the bum bag, so he went and hid it<sup>260</sup> before entering the Festival.
- 3.99. On entering the Festival, GEN15C noticed a lot of police and some drug dogs. After only a minute or so,<sup>261</sup> he was rounded up by security along with six other young people, only three of whom he knew. He was told to move to another area but not told the reason why.<sup>262</sup>
- 3.100. Unbeknownst to GEN15C, he was standing in close proximity to a drug deal. A plain-clothes security officer had observed two young persons – YP1 and YP2 (neither of whom were GEN15C) – acting suspiciously. He did not see any drug transactions, however formed the view that YP1 and YP2 were soliciting drugs. In order to confirm his suspicion, but without any lawful authority or Police imprimatur, the security officer approached YP1 and asked if he had any "*gear*". YP1 referred him to YP2, who handed the security officer a pink capsule for \$20. The security officer signalled

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<sup>254</sup> *Ibid* p. 339.46-340.6.

<sup>255</sup> Transcript, Day 4 of public examination, 5 December 2019 p. 412.5.

<sup>256</sup> Transcript, Day 3 of public examination, 4 December 2019 p. 402.20.

<sup>257</sup> *Ibid* p. 402.25.

<sup>258</sup> *Ibid* p. 402.30-35; P 402.43.

<sup>259</sup> *Ibid* p. 403.39-404.2; P 404.7.

<sup>260</sup> Interview of GEN15C, p 8.

<sup>261</sup> *Ibid* p. 15.

<sup>262</sup> *Ibid* p. 18.

uniformed security nearby who approached YP1 and YP2, as well as young persons 3-8 (one of whom was GEN15C) and led them to a private area.<sup>263</sup>

- 3.101. GEN15C waited in the private area for 20 to 30 minutes<sup>264</sup> whilst being supervised by 8-10 security guards<sup>265</sup> before being spoken to by police. He was initially subjected to a general search where he was told to empty his pockets and take off his shoes.<sup>266</sup> GEN15C denied having any drugs on him or being in the proximity of drugs. A short time later, GEN15C was taken around a corner to an open area<sup>267</sup> and then behind a larger object (which GEN15C recalled being a bin, car or container),<sup>268</sup> by a male officer. (For reasons which are outlined later in this report, it is not possible to identify with any certainty which officer conducted the search of GEN15C). GEN15C complained that he had not done anything wrong.<sup>269</sup> GEN15C was told to “*spread [his] legs*”<sup>270</sup> and was subjected to a normal search where he was patted down.<sup>271</sup> He was then told to undo the button on his shorts and lower the zip and lower his shorts and underwear.<sup>272</sup> GEN15C was then told to grab his penis and lift it up. GEN15C lifted his penis with his right hand, whilst keeping his left hand on his shorts to hold them halfway up his thighs. At that time, the male officer – who was not wearing gloves<sup>273</sup> – inserted his hands inside GEN15C’s underwear, checking for drugs, then pushed GEN15C’s testicles forward, then backwards, which lead GEN15C to believe he was checking for drugs at “*the arse bit*”.<sup>274</sup>
- 3.102. After doing that, the officer moved around behind GEN15C and placed both hands inside GEN15C’s shorts and ran his hands around the young person’s buttocks in a circular motion,<sup>275</sup> apparently in an effort to detect if drugs were concealed around the buttock area. The officer’s hands made contact on the young person’s skin. The officer was not wearing gloves.
- 3.103. Despite police finding nothing illegal, no drugs or any indicia, GEN15C had his wristband removed and was ejected from the venue, along with other young persons.
- 3.104. The Field Processing Form in relation to GEN15C suggests that the young person was suspected of possessing prohibited drugs and being involved in a drug supply, a fact vehemently denied by GEN15C. A COPS event<sup>276</sup> created by Officer GEN8, who was listed as the searching officer, gave a detailed account of how various young people were rounded up in that

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<sup>263</sup> Transcript, Day 3 of public examination, 4 December 2019 p. 216-217; Exhibit 18C (notebook of GEN8).

<sup>264</sup> Interview of GEN15C, p 21.

<sup>265</sup> Interview of GEN15C, p 23.

<sup>266</sup> Interview of GEN15C, pp 24-25.

<sup>267</sup> Interview of GEN15C, pp 30-31.

<sup>268</sup> Interview of GEN15C p 31-32.

<sup>269</sup> Interview of GEN15C, p 30.

<sup>270</sup> Interview of GEN15C, p 33.

<sup>271</sup> Interview of GEN15C p 33.

<sup>272</sup> Interview of GEN15C p 34.

<sup>273</sup> Interview of GEN15C p 36.

<sup>274</sup> Interview of GEN15C, pp 33; 36-37.

<sup>275</sup> Interview of GEN15C, pp 37-38.

<sup>276</sup> Exhibit 8C - COPS Event, barcode 8453420-8453429.

group, but provided no explanation as to why GEN15C was searched with no guardian, parent or support person.

## J. Officer GEN2

- 3.105. Officer GEN2 was the event coordinator of the Festival.<sup>277</sup> GEN2 was, along with GEN1, referred to by GEN7, as one of “*the bosses*”.<sup>278</sup>
- 3.106. That role included briefing the user-pays police,<sup>279</sup> coordinating the personnel, vehicles and other technical resources deployed to the event, ensuring that taskings were upheld and allocating taskings to personnel.<sup>280</sup> There was nothing specific in his briefing to user-pay police at the Festival about strip searching young people<sup>281</sup> and he did not recall any discussion by any other person at the briefing of the legal requirements for strip searching young people.<sup>282</sup> GEN2 believed it was the role of GEN6 to brief attendees with such information.<sup>283</sup> GEN2 also received and reviewed the operational orders for the event at the event, but had no role in their content.<sup>284</sup>
- 3.107. GEN2 was called to the scene by GEN8 to provide him with advice concerning the security staff having purchased drugs off the suspect of the alleged drug deal.<sup>285</sup> GEN2 was listed as an arresting or escorting officer in relation to GEN15C, though he did not recall what his involvement was.<sup>286</sup> GEN2 performed no strip searches at the Festival.

## K. Officer GEN5

- 3.108. Officer GEN5 held the rank of constable as at the time of giving evidence. At the Festival her role was one of the user-pay high visibility police.<sup>287</sup> She had previously worked at five or six music festivals, but never for under-18s.<sup>288</sup>
- 3.109. GEN5’s name was listed at the bottom of the Field Processing Form related to the strip search of GEN15C.<sup>289</sup> She believed her role was limited to helping another officer<sup>290</sup> by filling out the form and by taking the names, addresses and details of the young persons suspected of participating in the drug supply<sup>291</sup> who had been separated off into a gated area.<sup>292</sup> As she was recording the details of the young persons they had

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<sup>277</sup> Transcript, Day 1 of public examination, 2 December 2019 p. 54.23.

<sup>278</sup> Transcript, Day 2 of public examination, 3 December 2019 p. 186.1.

<sup>279</sup> Transcript, Day 1 of public examination, 2 December 2019 p. 56.27.

<sup>280</sup> *Ibid* p. 54.41.

<sup>281</sup> *Ibid* p. 58.34-P58.4.

<sup>282</sup> *Ibid* p. 59.20.

<sup>283</sup> *Ibid* p. 60.18.

<sup>284</sup> *Ibid* p. 55.3.

<sup>285</sup> *Ibid* p. 66.41.

<sup>286</sup> *Ibid* p. 66.24, 67.35.

<sup>287</sup> Transcript, Day 2 of public examination, 3 December 2019 p. 109.5.

<sup>288</sup> *Ibid* p. 123.38.

<sup>289</sup> Exhibit 7C, Field Processing Form relating to GEN15C.

<sup>290</sup> Transcript, Day 2 of public examination, 3 December 2019 p. 131.12.

<sup>291</sup> *Ibid* p. 121.34.

<sup>292</sup> *Ibid* p. 126.11.

their pockets emptied out, shoes off and hats off<sup>293</sup> but GEN5 could not recall any Police officer requesting or directing that the young people remove them.<sup>294</sup> Though GEN5 filled out the Field Processing Form, including by checking the 'strip search' box, and circling 'no' next to the entry 'Concealment method internal: Yes or No',<sup>295</sup> there was nothing recorded in her police notebook about there being a strip search, or the reason for that type of search.<sup>296</sup>

- 3.110. GEN5 gave evidence that the young persons were then led, one-by-one, from the fenced off area into a separate, private room and searched while GEN5 waited in the fenced off area.<sup>297</sup> GEN5 assumed<sup>298</sup> that they were strip searched while they were in the room. She was told that was so by the searching officers.<sup>299</sup> GEN5 was not aware of any effort being made to arrange for the attendance of a parent, guardian or support person during those searches.<sup>300</sup> At the time, she did not understand that LEPRAs required it.<sup>301</sup>
- 3.111. GEN5 was unable to say whether, at the time of the Festival, she was aware that LEPRAs contained provisions applicable to young persons,<sup>302</sup> but admitted thinking "I didn't know that" when she had read it for the purposes of giving evidence and noted particular provisions relating to young people.<sup>303</sup>
- 3.112. GEN5 had previously conducted around 10 strip searches of adult women at previous festivals in the capacity of both searching and observing officer. She neither conducted nor witnessed any strip searches at the Festival.<sup>304</sup> She did not recall being told anything about how to deal with children and young people during the briefing for the event.<sup>305</sup>

## L. Officer GEN8

- 3.113. Officer GEN8 was a detective sergeant as at the time of the Festival and the public enquiry.<sup>306</sup> He was rostered as one of the user-pays police for crowd control along with Officer GEN5 as his partner.<sup>307</sup>

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<sup>293</sup> *Ibid* p. 125.38

<sup>294</sup> *Ibid* p. 124.35.

<sup>295</sup> *Ibid* p. 130.40.

<sup>296</sup> *Ibid* p. 130.21.

<sup>297</sup> *Ibid* p. 128.31.

<sup>298</sup> *Ibid* p. 129.2-7.

<sup>299</sup> *Ibid* p. 129.34-42.

<sup>300</sup> *Ibid* p. 132.43.

<sup>301</sup> *Ibid* p. 133.44.

<sup>302</sup> *Ibid* p. 110.37.

<sup>303</sup> *Ibid* p. 111.6.

<sup>304</sup> *Ibid* p. 112.18.

<sup>305</sup> *Ibid* p. 112.35.

<sup>306</sup> *Ibid* p. 208.21.

<sup>307</sup> *Ibid* p. 208.31.

- 3.114. GEN8 had previously worked at approximately 10 music festivals<sup>308</sup> including at least one other under-18s event<sup>309</sup> at which he had performed strip searches on patrons, though never on a child under the age of 18.<sup>310</sup>
- 3.115. At the beginning of the Festival GEN8 attended the briefing which he remembered as being predominantly presented by GEN1. He could not recall whether the LEPR requirements applicable to strip searching children were addressed during the briefing.<sup>311</sup>
- 3.116. GEN8 was aware as at February 2019 of the requirement that a strip search could only be lawfully carried out where the seriousness and urgency of the circumstances made it necessary,<sup>312</sup> and that such circumstances must be recorded.<sup>313</sup> He was aware of the requirement that a strip search of a child be conducted in the presence of a parent or guardian unless the exception in s 33(3A) applied.<sup>314</sup>
- 3.117. GEN8 and his partner, GEN5, were among the 7 police officers<sup>315</sup> to respond to security following the alleged drug purchase. GEN8 and GEN5 attended on the 8 young persons after they had already been separated by the security guards.<sup>316</sup> GEN8 was met by a plain-clothes security officer (the Security Officer), whom he took aside to have a conversation.
- 3.118. The Security Officer told GEN8 about his illegal purchase of a pill from YP2.<sup>317</sup> He was told that the Security Officer had observed two young persons – YP1 and YP2 (neither of whom were GEN15C) - acting suspiciously. He did not see any drug transactions. However, he suspected that YP1 and YP2 were soliciting drugs. In order to confirm his suspicion, but without any lawful authority or Police imprimatur, the Security Officer approached YP1 and asked if he had any “gear”. YP1 referred him to YP2, who handed the Security Officer a pink capsule in exchange for \$20 of the Security Officer’s own money. The Security Officer signalled uniformed security nearby who approached YP1 and YP2, as well as young persons 3-8 (one of whom was GEN15C) and led to a private area.<sup>318</sup>
- 3.119. Further, GEN8 gave evidence that the Security Officer also told him:<sup>319</sup>

*that he had been watching them for a short amount of time, or a short period of time. He told me that he had seen two of the young persons approach other patrons of the festival. He told me that after*

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<sup>308</sup> *Ibid* p. 209.30.

<sup>309</sup> *Ibid* p. 209.44.

<sup>310</sup> *Ibid* p. 210.13.

<sup>311</sup> *Ibid* p. 209.18-23.

<sup>312</sup> *Ibid* p. 210.24.

<sup>313</sup> *Ibid* p. 210.29-33.

<sup>314</sup> *Ibid* p. 210.43.

<sup>315</sup> GEN8’s evidence was that other than he and his partner, GEN5, only 5 other officers attended the incident, one of whom was GEN2: p. 231.37-232.14. GEN7 was also known to be present as his name was listed on the Field Processing Form and GEN8 believed his partner was also in attendance, though could not assist with the name of GEN7’s partner: p. 232.24-38.

<sup>316</sup> Transcript, Day 2 of public examination, 3 December 2019 p. 226.24.

<sup>317</sup> *Ibid* p. 214.11-215.23.

<sup>318</sup> *Ibid* p. 216-217; exhibit 18C-notebook of GEN8

<sup>319</sup> *Ibid* p. 219.27.

*they had approached those other patrons, they would come back to the group and they were in one big group. He told me that he noticed it the first time and thought nothing of it, but then he saw it the second and third time.*

- 3.120. As soon as his conversation with the Security Officer concluded, GEN8 determined that searches needed to be urgently conducted so as to avoid the lapsing of further time during which the young persons could conceal or destroy any drugs in their possession.<sup>320</sup>
- 3.121. GEN8 recalled strip searching three or four of the young persons involved in the incident concerning GEN15C<sup>321</sup> and acknowledged that GEN15C “*may have*” been one of them.<sup>322</sup>
- 3.122. GEN8 took no steps to contact a parent or guardian<sup>323</sup> or to ascertain whether the three or four young persons whom he searched wished to have a parent or guardian present<sup>324</sup> because he believed that such a step would risk the loss or destruction of evidence, namely drugs, by the young person upon whom he was performing the search and by the other seven young people who formed the separated group.<sup>325</sup> He maintained this view notwithstanding what he described was a “*large amount*” of security officers present with him and GEN5 who were tasked with watching the young person whilst he took the three or four whom he searched, one-by-one, around the corner to be strip searched.<sup>326</sup> He was not aware of any SES officers in the area or that they were present for the purpose of potentially acting in the capacity of a support person.<sup>327</sup> When asked why he did not await the arrival of other police so that he could conduct the search in the presence of another officer, he reiterated his fear that evidence would be lost.<sup>328</sup>
- 3.123. GEN8 conducted all three or four of his strip searches<sup>329</sup> in an area outside the venue, in a small, u-shaped side area with a brick wall on one side, a chain link fence on the other and a gate, covered by black tarp,<sup>330</sup> at the back. The eight young persons were seated against the brick wall.<sup>331</sup> GEN8 confirmed that the searches of the eight young people were not performed within the searching pods designated for the search of young persons because walking the eight young persons through the crowd to their location posed an unacceptable risk of evidence being lost or destroyed.<sup>332</sup>

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<sup>320</sup> *Ibid* p. 226.33-42.

<sup>321</sup> *Ibid* p. 211.43.

<sup>322</sup> *Ibid* p. 223.13.

<sup>323</sup> *Ibid* p. 228.17.

<sup>324</sup> *Ibid* p. 223.24.

<sup>325</sup> *Ibid* p. 223.27, 225.24-45.

<sup>326</sup> *Ibid* p. 234.33-41.

<sup>327</sup> *Ibid* p. 236.5.

<sup>328</sup> *Ibid* p. 243.26.

<sup>329</sup> *Ibid* p. 249.33.

<sup>330</sup> *Ibid* p. 247.28.

<sup>331</sup> *Ibid* p. 245.34.

<sup>332</sup> *Ibid* p. 246.14.

- 3.124. GEN8 searched the three or four young people in the same fashion whilst alone with them.<sup>333</sup> He would begin by introducing himself by his name and station, explaining that the young person was suspected of supplying drugs, asking the young person whether they had in fact been involved in supplying drugs, asking whether the young person or any of their friends had drugs on them and asking whether it was “okay” that he searched the young person.<sup>334</sup> GEN8 would then ask the young person to pull out their pockets, lift up their t-shirt and then turn around. Then he would ask “*can you pull your pants out for me*” (including underpants) and would look inside his pants and underwear at the front and the back, such that he could see their genitalia and buttocks.<sup>335</sup> GEN8 would then release the young person to where the other 7 were seated.<sup>336</sup>
- 3.125. GEN8 denied any of the young persons he searched ever being naked<sup>337</sup> or asking any of them to remove their shorts.<sup>338</sup> He denied touching any of the young persons during the search and denied reaching into the underwear of the young persons searched.<sup>339</sup> He denied ever instructing any young person to “*spread [their] legs*” during any strip search<sup>340</sup> and denied instructing any young person to hold up their penis and/or lift their testicles.<sup>341</sup>
- 3.126. All three or four searches proceeded in this fashion<sup>342</sup> other than Young Person 2 (who was not GEN15C), who was alleged to be the one who had provided the pill to the Security Officer for \$20. GEN8 also issued a warning to him concerning drug supply before he was ejected.
- 3.127. The entry in GEN8’s police notebook as it related to the searches read as follows:<sup>343</sup>

*Police searched all the young persons. None of the young persons made any comments in relation to drug use, possession or supply. It was noted that several of the young persons appeared to be slightly affected by prohibited drugs. Young person 1 was found to be in possession of \$320 including several \$20 notes. Young person 2 was not in possession of any cash. The Security Officer did not see who young person 2 handed the Security Officer’s money to. Several of the other young persons had small quantities of cash including \$20 notes. No drugs were located on any of the young persons, however, a security officer found 2 x pink capsules on the ground near where young person 1 and 2 had been sitting on the ground. These 2 pink capsules were the same shape, colour and size to the pink capsule that had been purchased by the Security Officer.*

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<sup>333</sup> *Ibid* p. 242.5.

<sup>334</sup> *Ibid* p. 237.12.

<sup>335</sup> *Ibid* p. 241.15-24.

<sup>336</sup> *Ibid* p. 237.32-41-238.4.

<sup>337</sup> *Ibid* p. 239.18.

<sup>338</sup> *Ibid* p. 240.24.

<sup>339</sup> *Ibid* p. 244.17-25; p. 251.31-43.

<sup>340</sup> *Ibid* p. 250.28

<sup>341</sup> *Ibid* p. 250.45; P 251.10.

<sup>342</sup> *Ibid* p. 239.15.

<sup>343</sup> Exhibit 18C

*The evidence of young person 1 supplying prohibited drugs to the Security Officer and young person 2 being knowingly concerned in the supply of prohibited drugs to the Security Officer is inadmissible as there was no Controlled Operation.*

*Hence no charges could be preferred for these offences against young person 1 and young person 2. In relation to the prohibited drugs that were found on the ground, there is no evidence to establish who had placed the drugs on the ground although it is suspected they had been in the possession of young person 1 or young person 2. In relation to the Security Officer being unlawfully in possession of prohibited drugs, in consultation with the Police Forward Commander and the Police Commander, it was determined it was not in the public interest to formally interview the Security Officer and/or charge him. The Security Officer was warned in relation to his actions. The Police Commander has liaised with the Management of [the security firm] and provided them with the appropriate warning and advice.*

*Due to the circumstances, all young persons were given a warning by Police. They then had their wristbands seized by security and were escorted from the venue.*

- 3.128. GEN8 made a general record in his notebook<sup>344</sup> of the name of the young person searched<sup>345</sup> and reasons for the search<sup>346</sup> as well as in the COPS entry.<sup>347</sup> In the COPS entry GEN8 was listed as the searching officer for each of the 8 young persons<sup>348</sup> despite having only searched three or four. The names of the officers responsible for searching the other 5 or 6 young persons were not recorded anywhere else within the COPS entry.<sup>349</sup>
- 3.129. GEN8 acknowledged that nowhere had he recorded his reasons for conducting the strip searches other than in the presence of a parent or guardian.<sup>350</sup> He insisted that the decision to not do so was an omission and not a deliberate choice.<sup>351</sup>

## M. Officer GEN7

- 3.130. Officer GEN7 was a detective sergeant as at the time of giving evidence at the public enquiry. At the Festival he was rostered as one of the user-pays police for crowd control.<sup>352</sup> He was working with a female partner on the day but was unable to recall her name and did not believe her to be one of the names on the witness list.<sup>353</sup>

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<sup>344</sup> Exhibit 18C-Duty Book entries for GEN8 barcoded 8456299-8456302

<sup>345</sup> Transcript, Day 2 of public examination, 3 December 2019 p. 212.13.

<sup>346</sup> *Ibid* p. 212.24.

<sup>347</sup> *Ibid* p. 215.29.

<sup>348</sup> *Ibid* p. 230.14.

<sup>349</sup> *Ibid* p. 231.25.

<sup>350</sup> *Ibid* p. 227.27.

<sup>351</sup> *Ibid* p. 228.41-12.

<sup>352</sup> *Ibid* p. 178.40.

<sup>353</sup> *Ibid* p. 192.35-43.



- 3.131. GEN7 had been rostered on to more than ten music festivals prior to that, some of which were all-ages but none strictly for under-18s.<sup>354</sup> GEN7 had previously performed general and strip searches on patrons under the age of 18.<sup>355</sup> He was well aware of his obligations when strip searching children.<sup>356</sup>
- 3.132. On 23 February 2019 GEN7 attended the briefing presented by GEN1 and GEN2, but he could not recall the details of it, including whether the LEPRA requirements applicable to strip searching children were addressed.<sup>357</sup>
- 3.133. GEN7 gave evidence of his involvement in the searches following the illegal drug purchase by the Security Officer. When he arrived at the scene, he was briefed by GEN8 as to the illegal transaction and subsequent separation of the eight young people. He performed personal searches on two or three of the eight young people. He denied performing any strip searches on the day.
- 3.134. When questioned as to the basis for the search GEN7 identified that GEN8 had told him that he (GEN8) believed that the young people were all acting in concert, with which opinion GEN7 agreed.<sup>358</sup> It was on that basis that GEN7 claimed to have formed the reasonable suspicion for the searches.<sup>359</sup> GEN7 also identified as justifying his suspicion the fact that once corralled, a “*couple of pills*” were found on the ground in the area of the young people, ostensibly discarded by the young people.<sup>360</sup> GEN7 agreed that this information would have been insufficient, without more, to justify a strip search of the two or three young persons whom he personally searched (GEN7 maintained that he did not strip search any of the young persons).<sup>361</sup>
- 3.135. Whilst GEN7 recalled GEN8 telling him that after the illegal transaction between one of the young persons and the security guard that money was handed from young person to young person,<sup>362</sup> the COPS entry only implicated two young persons as having any involvement in the transaction. GEN7 acknowledged that he was not able to say whether the two or three young people upon whom he conducted a personal search were the same young people implicated in the COPS entry.<sup>363</sup>
- 3.136. GEN7 was aware of his obligation to record the basis for the reasonable suspicion he had formed that the young persons were in possession of

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<sup>354</sup> *Ibid* p. 179.13-17.

<sup>355</sup> *Ibid* p. 179.21-30.

<sup>356</sup> *Ibid* p. 180.38.

<sup>357</sup> *Ibid* p. 179.38-180.11.

<sup>358</sup> *Ibid* p. 194.44-195.13.

<sup>359</sup> *Ibid* p. 194.44-195.13.

<sup>360</sup> *Ibid* p. 195.34.

<sup>361</sup> *Ibid* p. 196.32.

<sup>362</sup> *Ibid* p. 195.5-13.

<sup>363</sup> *Ibid* p. 195.24.

drugs. He believed his partner on the day made the relevant record of his belief.<sup>364</sup>

## N. SES GEN16

- 3.137. GEN16 was one of the two SES volunteer officers who attended the Festival. She had worked with the SES for three years as at the time of the Festival.<sup>365</sup> In her private capacity she was employed as a medical receptionist.<sup>366</sup>
- 3.138. GEN16 held a Working with Children Check at the time of the Festival.<sup>367</sup>
- 3.139. GEN16 understood her role at the Festival was to act as a support person for young persons who had been caught with drugs and who could not be interviewed alone.<sup>368</sup> She had not performed such a role previously.<sup>369</sup>
- 3.140. At the Festival, GEN16 was told by a Police officer in an informal conversation words to the effect of:<sup>370</sup>

This is where you will be today. If anyone gets caught with drug charges, they will be interviewed here in plain sight, and then if there happens to be a female who needs to be searched and there is no female police officer, we may ask you to attend for that person's comfort...

- 3.141. GEN16 was told that she might need to be present at a search,<sup>371</sup> but did not recall the words "strip search" being used during that conversation<sup>372</sup> and did not envisage her role entailing any part in a strip search.<sup>373</sup>
- 3.142. GEN16 was not in fact a witness to any strip search of a young person at the Festival.<sup>374</sup>

## O. SES GEN17

- 3.143. GEN17 was one of the two SES volunteer officers who attended the Festival.<sup>375</sup> He held the role of Team Leader and had been with the SES for 10 years as at the date of the Public Examination.<sup>376</sup>
- 3.144. GEN17 held a Working with Children Check at the time of the Festival.<sup>377</sup>

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<sup>364</sup> *Ibid* p. 196.45-197.4.

<sup>365</sup> Transcript, Day 4 of private examination, 5 December 2019 p. 449.11.

<sup>366</sup> *Ibid* p. 449.21.

<sup>367</sup> *Ibid* p. 449.39.

<sup>368</sup> *Ibid* p. 450.21.

<sup>369</sup> *Ibid* p. 450.35.

<sup>370</sup> *Ibid* p. 451.10.

<sup>371</sup> *Ibid* p. 452.13-21.

<sup>372</sup> *Ibid* p. 451.32.

<sup>373</sup> *Ibid* p. 451.36; p. 452.25.

<sup>374</sup> *Ibid* p. 452.29.

<sup>375</sup> *Ibid* p. 450.1.

<sup>376</sup> *Ibid* p. 432.29-32.

<sup>377</sup> *Ibid* p. 433.29.

- 3.145. GEN17 believed that his role was to act as a support person or guardian<sup>378</sup> or a “neutral, unbiased ...third party”<sup>379</sup> for police interviewing minors at the Festival.<sup>380</sup> He had not performed such a role previously.<sup>381</sup>
- 3.146. Until the first search in which he was involved, GEN17 did not anticipate that they may be strip searches.<sup>382</sup> He witnessed six searches in total over the course of the event,<sup>383</sup> some of which were strip searches<sup>384</sup> and all of which were carried out in the searching pods.<sup>385</sup> Prior to each search GEN17 was introduced to the Young Person as support person but given no other instruction as to his role<sup>386</sup> including the requirements of a lawful strip search.<sup>387</sup> GEN17 did not witness the police explain to any of the young persons being searched that any support person needed to be acceptable to the young person.<sup>388</sup>
- 3.147. In one instance described by GEN17, before any strip search had commenced, the young person admitted to the Police that he had drugs secreted in a condom in his anus. GEN17 recalled the Police then requiring that he remove all of his clothing until he was naked, in which state the young person removed the condom.<sup>389</sup> In another case, during the course of a strip search of a young person a pill was located within his personal possessions, at which point (when he was partially naked) the search was terminated and the young person interviewed.<sup>390</sup> In both cases GEN17 recalled Police questioning the young person during the search<sup>391</sup> and in neither case did GEN17 recall either the searching or accompanying officer taking notes.<sup>392</sup>
- 3.148. GEN17 was not aware of and not provided with any information as to the legal requirements applicable to a support person during the strip search of a young person.<sup>393</sup>

## 4. Submissions in Response

- 4.1 The Commission received submissions from GEN8, GEN9, GEN12 and the NSWPF.
- 4.2 GEN8 submitted that there was no basis in evidence to support any finding that he conducted the strip search of GEN15C. That submission has been taken into account by the Commission and the Commission has concluded

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<sup>378</sup> *Ibid* p. 434.2-9.

<sup>379</sup> *Ibid* p. 450.45; P 451.2.

<sup>380</sup> *Ibid* p. 434.2-9.

<sup>381</sup> *Ibid* p. 434.13.

<sup>382</sup> *Ibid* p. 436.7; P 436.17.

<sup>383</sup> *Ibid* p. 436.21.

<sup>384</sup> *Ibid* p. 441.12.

<sup>385</sup> *Ibid* p. 443.34.

<sup>386</sup> *Ibid* p. 436.27-39.

<sup>387</sup> *Ibid* p. 439.8.

<sup>388</sup> *Ibid* p. 438.24.

<sup>389</sup> *Ibid* p. 441.44-442.9.

<sup>390</sup> *Ibid* p. 443.6.

<sup>391</sup> *Ibid* p. 444.28.

<sup>392</sup> *Ibid* p. 444.46.

<sup>393</sup> *Ibid* p. 437.15-32.

that it is unlikely that GEN8 conducted the search, despite the fact that he was listed in the COPS entry as the searching officer for all 8 young persons.

- 4.3 GEN9 raised concerns about the manner in which GEN13C was interviewed. In particular, he submitted that leading questions were put to GEN13C and consequently, little weight should be afforded to the interview. GEN9 submitted that the description of GEN13C's strip search as set out in the draft report did not reflect GEN13C's own account of what occurred. He also submitted that the evidence did not support the conclusion that GEN9 and GEN10 conducted the strip search of GEN13C as GEN13C described the officers as having no facial hair, whereas both GEN9 and GEN10 had beards at the time of the Festival. The Commission does not accept the submission that the Commission could not find that GEN9 and GEN10 conducted the search of GEN13C. The Field Processing Form and the COPS event of the search of GEN13C recorded GEN9 and GEN10 as being the officers involved in that event. In addition, GEN10 stated during the hearing that he would have thought that it was only GEN9 and himself who were involved in the search of GEN13C.<sup>394</sup>
- 4.4 GEN12 also raised concerns about the manner in which GEN14C was interviewed and submitted that leading questions were put to the complainant. GEN12 submitted that the strip search of GEN14C was not carried out unlawfully and that he had reasonable grounds to strip search the complainant and to conduct the search in the absence of a support person. GEN12 accepted that there were inadequacies in relation to the briefing as to strip searches. The Commission has considered these submissions but maintains its findings with respect to GEN12.
- 4.5 The NSWPF did not accept the findings in sections A and B of the draft report. It conceded that the officers' evidence supported the findings in sections C-G. The NSWPF also raised similar concerns to those raised by GEN9 and GEN12 about the manner in which the interviews of the complainants were conducted, specifically that leading questions were asked by the investigators, and the fact that the complainants were not called to give evidence. Those concerns have been addressed and are reflected in some of the conclusions reached in this report.
- 4.6 The NSWPF made the following concluding submissions:
- (1) That the Commissioner of Police took seriously any breach of LEPPRA during a strip search and sought to identify opportunities for improvement.
  - (2) The Commissioner of Police was committed to ensuring that all police understand their obligations to preserve the privacy and dignity of a person being searched. To that end, NSWPF developed the Person Search Manual to provide clear and consistent guidance to police on searching practices. Changes have also been made to

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<sup>394</sup> P.331.13

music festival documentation to specifically deal with application of LEPR to young persons.

(3) The NSWPF will continue to review its modes of delivering education, training and supervision and continually review, improve, and respond to issues as they arise.

4.7 The NSWPF drew attention to the fact that its Person Search Manual was considered by the Solicitor-General who provided an advice in January 2020 in which he opined that it was not inconsistent with LEPR for police officers to ask a person during a strip search to do the following things to allow visual inspection:

- a. lift testicles
- b. part buttock cheeks
- c. spread fingers and toes
- d. lift breasts
- e. turn their body to face a different direction
- f. open their mouth and shake their hair, or
- g. squat.

## 5. Findings

### A. The strip searches were carried out as alleged by the complainants

5.1. The accounts of the three complainants (GEN13C, GEN14C and GEN15C)<sup>395</sup> are each contradicted to varying degrees by the officers allegedly involved in the strip searches.<sup>396</sup> It is therefore necessary to make findings as to whether the strip searches occurred and the manner in which the searches were conducted.

5.2. In considering the police evidence the Commission has taken into account the fact that the Festival took place many months previous to officers giving their evidence, that strip searches are not standout occasions in the life of a police officer and that there was no specific reason why these events would be remembered. As a consequence the searching officers were largely unable to recall the details of specific searches<sup>397</sup> or otherwise had no independent memory of the complainants.<sup>398</sup> They had not recorded pertinent information in the Field Processing Forms, Notebooks or COPS entries. They could therefore neither confirm nor deny that certain statements were made by them or the young person.

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<sup>395</sup> Exhibit 230C - Record of interview of GEN14C, barcode 8453456-8453497; Exhibit 12C - Record of interview in relation to GEN15C, barcode 8453547-8453599.

<sup>396</sup> See paragraph 3.125 in relation to GEN8 denying the nature of the strip search; paragraph 3.55 in relation to GEN9 denying any strip search of GEN13C.

<sup>397</sup> Transcript, Day 3 of public examination, 4 December 2019 p. 393.9 and 401.16 in relation to GEN14C, who was searched by GEN12 with GEN11 assisting.

<sup>398</sup> GEN2 had no memory of meeting GEN15C: Transcript, Day 1 of public examination, 2 December 2019 p. 66.28-37; p. 67.35.

- 5.3. In contrast, the Commission considers that the strip searches were likely to have been significant events in the life experience of the young people and therefore more likely to be recalled with some accuracy. Their accounts were cogent and did not appear to have been embellished. As stated earlier, the complainants did not give evidence and, accordingly, their accounts were not able to be challenged by way of cross examination. The Commission is satisfied that the three complainants (GEN13C, GEN14C and GEN15C) were strip searched and that those searches were conducted in the absence of a parent, guardian or acceptable person as required under s 33(3) of LEPRA but makes no findings as to the actual manner of the search as outlined in their respective interviews.
- 5.4. The Commission is satisfied that; GEN13C was searched by GEN9, with the assistance of GEN 10 and GEN14C was searched by GEN12, with the assistance of GEN11.
- 5.5. The Commission is satisfied that GEN15C was strip searched. However, as a consequence of the poor record-keeping, which will be addressed later in this chapter under G, the Commission cannot be satisfied as to which officer searched GEN15C. The COPS event recorded GEN8 as the searching officer for all eight young persons, including GEN15C, involved in the incident. However, GEN8's evidence, which is not disputed, was that he only conducted three or four of the searches. The description of the area where GEN8 conducted his searches does not accord with the description of the searching area as provided by GEN15C. Given this, it is unlikely that GEN8 conducted the strip search of GEN15C. GEN7's evidence was that he conducted two or three of the searches but that they were general searches and that he did not conduct any strip searches. The Field Processing Form named four police officers as being involved in the incident, one of whom was female (GEN5) and thus can be excluded as being one of the searching officers on the basis of her gender. The other officer, GEN2, gave evidence that he conducted no strip searches at the Festival. GEN8 gave evidence that he believed that GEN7's partner was also present but he was unable to identify that officer. Based on the available evidence, it seems most likely that the searching officer of GEN15C was GEN7's partner, who remains unidentified.

## **B. The searches were carried out unlawfully**

- 5.6. The Commission finds that the searches of each of the three complainants were unlawful. In all three cases, NSW Police made no attempt to contact a parent, guardian or support person prior to commencing the strip search.
- 5.7. Section 33 of LEPRA relevantly provides as follows:
- (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.*

- 5.8. The Commission finds that in none of the three strip searches was a parent, guardian or support person present as required by s 33(3) of LEPR. In none of the three cases did the searching officer have reasonable grounds to suspect that the sourcing of a parent, guardian or support person would delay the search such that it was likely that evidence would be concealed or destroyed for the purposes of the sub-section 3A exception nor did they record such, as required by s 33(3A), in the relevant COPS events.
- 5.9. During its examinations, police officers were asked about whether they could ask a person during a strip search to do such things as squat or lift their testicles. Since the conclusion of the examinations in this investigation, as noted at paragraphs 4.3 (2) and 4.4 above, the police have produced a Person Search Manual regarding which the Solicitor-General has provided advice. Although that Manual and the advice did not exist at the time of the events in question the Commission accepts that the police are entitled to rely on them to justify their actions in asking young persons to squat or lift their testicles. Excluding other issues, a police officer cannot be found to have engaged in serious misconduct during a strip search if they have acted in accordance with directions set out in that Manual.

## GEN13C

- 5.10. The Commission finds that the strip search of GEN13C was not justified as GEN9 did not possess a suspicion on reasonable grounds that a strip search was necessary for the purposes of the search or that the seriousness and urgency of the circumstances made the strip search necessary, as is required by s 31(b) of LEPR.
- 5.11. GEN9 denied that he carried out anything more than a general search of GEN13C. He noted down on the Field Processing Form that GEN13C's



enlarged pupils and “shaky” presentation<sup>399</sup> founded his reasonable suspicion<sup>400</sup> as, in his experience, these were signs of drug affectedness.<sup>401</sup> He nonetheless accepted that each of those symptoms potentially carried an innocent explanation, such as a change in lighting causing the pupils to dilate<sup>402</sup> or a young person being nervous when speaking to police.<sup>403</sup> GEN13C had readily accepted that he was shaking though from nerves.<sup>404</sup>

- 5.12. The Commission is satisfied that even if GEN9 had observed these symptoms, they were – in combination with the positive indication by the drug dog – sufficient to establish a reasonable belief as to a general, personal search, but did not amount to reasonable grounds to remove GEN13C’s pants and underwear.
- 5.13. The Commission is not satisfied that GEN9 believed, on reasonable grounds, that either the removal of both GEN13C’s pants and underwear was reasonably necessary for the purposes of the search of GEN13C, as is required by ss 33(5) of LEPR or that GEN9’s visual inspection of the area under his testicles was reasonably necessary for the purposes of the search, as per s 33(7) of LEPR.

## GEN14C

- 5.14. The Commission finds that the strip search of GEN14C was not justified as GEN12 did not possess a suspicion on reasonable grounds that a strip search was necessary for the purposes of the search or that the seriousness and urgency of the circumstances made the strip search necessary, as is required by s 31(b) of LEPR.
- 5.15. GEN14C was seen adjusting his bum bag in the entry line to the Festival.<sup>405</sup> There was no indication by a drug dog in relation to the young person. Once he was taken aside and a search commenced, he removed the bum bag, provided it to police, explained its innocent purpose and denied having any drugs on him.<sup>406</sup> He was nonetheless strip searched.
- 5.16. GEN12 could not recall the search of GEN14C but agreed that he would, during a strip search, ask a person to lift his testicles and to then “squat and cough”<sup>407</sup> because “It’s just from experience that people secrete items under their testicles or in their bum cheeks or anus.”<sup>408</sup>
- 5.17. The Commission finds that the fact that there was a concealed bum bag, combined with GEN12’s “experience” that people may secrete items in that area, did not amount to reasonable grounds that a strip search was

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<sup>399</sup> Transcript, Day 3 of public examination, 4 December 2019 p. 285.35.

<sup>400</sup> *Ibid* p. 289.14.

<sup>401</sup> *Ibid* p. 285.39-286.2; p. 303.13-18.

<sup>402</sup> *Ibid* p. 288.44.

<sup>403</sup> *Ibid* p. 288.35.

<sup>404</sup> Exhibit 23C - Record of Interview of GEN 13C, p 23.

<sup>405</sup> Exhibit 230 - Record of interview of GEN14C, pp 14, 16.

<sup>406</sup> Exhibit 230 - Record of interview of GEN14C, p 16.

<sup>407</sup> Transcript, Day 3 of public examination, 4 December 2019 p. 402.20.

<sup>408</sup> *Ibid* p. 402.25.



necessary for the purposes of the search, as is required by s 31(b) of LEPRAs.

- 5.18. Nor is the Commission satisfied that GEN12 believed, on reasonable grounds, that the removal of all of GEN14C's clothing was reasonably necessary for the purposes of the search of GEN14C, as is required by s 33(5) of LEPRAs.

## GEN15C

- 5.19. As already noted at paragraph 5.5, the Commission cannot be satisfied as to which officer conducted the strip search of GEN15C other than that it is most likely it was conducted by GEN7's partner, an unidentified police officer. Given this, the Commission is not in a position to make any findings as to whether the strip search of GEN15C was justified as there is no evidence before it as to that particular officer's state of mind and whether he had the requisite 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 LEPRAs.
- 5.20. As stated above, GEN15C was not called to give evidence so the account given in his record of interview was never subjected to cross examination. In the circumstances, the Commission is not in a position to make conclusive findings about the conduct of the strip search other than the earlier finding that it was unlawful as it was conducted in the absence of a parent or guardian or support person in breach of s 33(3) of LEPRAs.

## C. The officers at the Festival possessed insufficient knowledge of key LEPRAs requirements

- 5.21. The Commission finds that there was a lack of knowledge by searching police at the Festival of the LEPRAs requirements when it came to strip searching children.
- 5.22. Of the 30 strip searches conducted at the Festival, in only 5 cases was a parent, guardian or support person recorded as being present.<sup>409</sup> There was no parent, guardian or support person present for the strip search of any of the three complainants. This is perhaps unsurprising when, of the 8 officers who performed or supervised searches at the Festival, only 4 were aware that LEPRAs contained provisions specifically related to the strip searching of children.<sup>410</sup>

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<sup>409</sup> Transcript, Day 1 of public examination, 2 December 2019 p. 50.42.

<sup>410</sup> GEN 7 (p. 180.28), GEN 8 (see paragraph 3.116); GEN10 (see paragraph 3.62), GEN 11 (see paragraph 3.78) and GEN12 (p. 381.35) were so aware. GEN3 (T 2.12.19 p. 79.4, 79.18-43) did not believe as at the time of giving evidence that LEPRAs contained provisions specific to young people in relation to searches. GEN5 did not understand that LEPRAs required a parent, guardian or support person to be present during the strip search of a young person (P 133.44). GEN6 only became so aware when a youth liaison officer interjected at the conclusion of his briefing, at the beginning of the Festival: Transcript, Day 2 of public examination, 3 December 2019 p. 147.31-41.

- 5.23. Two officers (both of whom were among those who gave evidence that they were aware of the legal requirements applicable to strip searching children) justified their strip searches without any effort to contact a parent, guardian or support person<sup>411</sup> on the basis of the potential destruction of evidence (namely by consuming or jettisoning drugs on their person).
- 5.24. On a more general level, GEN4, who arranged the SES<sup>412</sup> and Red Frogs volunteers for the Festival, did not stipulate that SES volunteers should have a Working with Children Check. When GEN18 (the SES Unit Commander) asked whether it was required, GEN4 said that if they did not have the Working with Children Check, that it “[wa]sn’t a deal breaker”.<sup>413</sup> He was similarly unaware of whether Red Frogs volunteers held a Working with Children Check or were over 18 years old.
- 5.25. This demonstrates an insufficient knowledge and appreciation of the sensitivity and potential privacy implications of strip searching young persons.

#### D. The police at the festival lacked sufficient experience and/or training

- 5.26. Of the 12 Police officers who gave evidence, 11 were rostered on and physically present at the Festival.<sup>414</sup> Of those 11, two admitted to being personally involved in the strip search of young persons<sup>415</sup> and only one had strip searched a child under the age of 18 prior to the Festival.<sup>416</sup>
- 5.27. Of the 8 officers who had any role in the strip searches conducted at the Festival, none had received any training since the Police Academy concerning strip searching of young people. One had never received any specific training in relation to young people, his training being limited to LEPPRA powers generally.<sup>417</sup> No officer had received any training about how to protect the welfare of a child during the course of a strip search.
- 5.28. The lack of direct experience in strip searching young persons would be less of a concern, were it the case that those officers were otherwise fully cognisant of the legal requirements, were briefed properly on the day and had sufficient support and guidance from senior officers, none of which was the case at the Festival, as will be explored below.

<sup>411</sup> GEN 8 (p. 223.27, 225.24-45) and GEN12 (p. 387.24).

<sup>412</sup> Transcript, Day 1 of public examination, 2 December 2019 p. 96.25.

<sup>413</sup> Exhibit 14C- Emails between GEN4 and SES, barcode 7603225-7603228; P 174.22-175.1.

<sup>414</sup> GEN4 was on leave on the day of the Festival. All others who gave evidence

<sup>415</sup> GEN8 admitted to strip searching GEN15C and other young persons (see paragraph 3.121, above) and GEN12 admitted to strip searching GEN14C and two other young persons: see paragraph 3.91, though each denied conducting the strip searches of those complainants in the way alleged.

<sup>416</sup> GEN5 (p. 123.38), GEN 8 (p. 210.13) GEN 9 (p. 256.29) GEN10 (p. 315.18-28) and GEN 12 (p. 377.43) had never previously performed a strip search of a young person. GEN7 (p. 179.21-30) had previously done so. GEN11 was not directly asked but gave evidence of his “General practice” of strip searches (p. 350.47; P 354.23; P 361.47-362.16; P 367.6-368.14) and of having previously worked at festivals attended by under 18’s (though not strictly under-18’s events): p. 336.2-13.

<sup>417</sup> Transcript, Day 3 of public examination, 4 December 2019 p. 306.1 (GEN9).

## E. There was insufficient guidance by senior officers as to how searches should be conducted

5.29. The Commission finds that at the time of the Festival, there was insufficient guidance provided by senior police officers as to how searches should be conducted. The evidence demonstrates a lack of appreciation of at least the following issues:

- (1) What are the limits of a strip search? Are police permitted to require that a young person touches themselves, in order to facilitate, for example a visual inspection during a strip search?
- (2) What is the difference between a general and a strip search?
- (3) What circumstances might be rightly described as relevantly serious and urgent, as the test in s 31(b) of LEPR requires, such as to justify a strip search?
- (4) What factors might amount to reasonable grounds to suspect that the delay of a search *is likely to result in the destruction or concealment of evidence* sufficient to justify the exception to the requirement in s 33(3) of LEPR that a young person be strip searched in the presence of a parent, guardian or support person?
- (5) What sort of things should police tell a support person about their role in a strip search? Should that include disclosing the searching officer's basis for suspecting that a strip search is "*...necessary for the purposes of the search and that the seriousness and urgency of the circumstances make the strip search necessary*"(s 31(b) LEPR)

5.30. Various officers, including those of considerable seniority and experience, were of the view that a support person was not required until a strip search (as opposed to a general search) is carried out.<sup>418</sup> Whilst correct, this approach creates a difficulty as most searching officers would, as a practice, carry out a general search and a strip search in a continuum, and where there appeared to be a view that the potential for loss or destruction of evidence warranted proceeding with a strip search in the absence of a parent, guardian or support person. The latter belief would mean that in almost every case of a strip search carried out other than at a police station or place of detention, the s 33(3A) exception would be invoked to justify a strip search in the absence of a parent, guardian or support person, because halting the search at the point in between the general and strip search would give rise to the perceived risk of loss of evidence.

5.31. Further, notwithstanding the Festival being an event for the attendance of under 18s only, none of the Operational Orders (Long or Short form),<sup>419</sup>

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<sup>418</sup> See, for example, GEN1 at Transcript, Day 1 of public examination, 2 December 2019 p. 43.12.

<sup>419</sup> Exhibit 1C, barcode 8405629, Tab 15 BOE; Transcript, Day 1 of public examination, 2 December 2019 p. P 78.35-46.

Arrest and Process Management Plan<sup>420</sup> or Annexure Orders Drug Dog<sup>421</sup> documents for the Festival provided any specific explanation or instruction as to how strip searches should be conducted on young persons.<sup>422</sup> According to GEN1, there was no document in existence at the time of the Festival which guided police as to the legal requirements for strip searching children.<sup>423</sup> Though it had occurred to GEN4 that police would be searching under-18-year-olds at the Festival, and he was a Chief Inspector and the most senior officer concerned in the formulation of the governing documents, it did not occur to him that the rules governing such searches should be included in the documents. He agreed that, in retrospect, it would have been prudent to have the specific requirements relating to strip searching of children in the documents.<sup>424</sup>

## F. The briefing processes at the Festival were inadequate

- 5.32. GEN2 presented the briefing to the user-pays police at the Festival<sup>425</sup> but his briefing did not include anything about strip searching young people,<sup>426</sup> nor could GEN2 recall any discussion by any other person at the briefing of the legal requirements for strip searching young people.<sup>427</sup> Both GEN1<sup>428</sup> and GEN2<sup>429</sup> expected that such matters would have been addressed during the detailed briefing by GEN6 of the drug dog constables.
- 5.33. GEN6 was not familiar with those legal requirements. In the briefing he gave to police officers designated to the drug dog team,<sup>430</sup> he only communicated the fact that, if the need arose for a support person to be present during the interview of a young person, SES personnel would be onsite for that purpose.<sup>431</sup> GEN6 did not provide any instructions to officers as to the legal requirements for the strip search of a child.<sup>432</sup> His evidence was that it was only at the end of the briefing, when a youth liaison officer specifically reinforced that parents and guardians were the first port of call when young persons were interviewed<sup>433</sup> and strip searched,<sup>434</sup> that he first became aware<sup>435</sup> of the legal requirement that a parent, guardian or support person must be present at the time of a strip search.
- 5.34. In light of the above the Commission is not persuaded that GEN12 was told at the briefing that if a strip search was required, a parent or guardian or

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<sup>420</sup> Exhibit 3C, barcode 8405683-8405692, Tab 17 BOE.

<sup>421</sup> Exhibit 2C, barcode 8405269-80405642, Tab 16 BOE.

<sup>422</sup> Transcript, Day 1 of public examination, 2 December 2019 p. 22.42, p. 33.11-19., p. 38.34, p. 41.14.

<sup>423</sup> *Ibid* p. 39.36.

<sup>424</sup> *Ibid* p. 93.8.

<sup>425</sup> *Ibid* p. 56.27.

<sup>426</sup> *Ibid* p. 58.34-P58.4.

<sup>427</sup> *Ibid* p. 59.20.

<sup>428</sup> *Ibid* p. 26.14-34.

<sup>429</sup> *Ibid* p. 60.18.

<sup>430</sup> Transcript, Day 2 of public examination, 3 December 2019 p. 141.23.

<sup>431</sup> *Ibid* p. 144.29, p. 147.19.

<sup>432</sup> *Ibid* p. 145.38.

<sup>433</sup> *Ibid* p. 144.29-145.2.

<sup>434</sup> *Ibid* p. 146.2.

<sup>435</sup> *Ibid* p. 147.31-41.

support person would need to be present<sup>436</sup> and that if such a person was not available, an SES volunteer would be available.<sup>437</sup> Understandably, most of the officers could not recall the details of the briefing as at the date of giving evidence at the hearing, 10 months after the Festival.<sup>438</sup>

- 5.35. A briefing sheet was utilised as an adjunct to the briefing but it did not contain any information as to the requirements applicable to the exercise of the power to strip search a child.<sup>439</sup>
- 5.36. The importance of a thorough briefing is highlighted by the fact that, of the fifteen officers who attended the Festival and who gave evidence, most were unfamiliar with all or most<sup>440</sup> of the other Police on duty that evening owing to their status as user-pays Police. It may be possible that the lack of familiarity between the officers compromises their ability, where uncertain as to their legal obligations, to quickly and accurately obtain guidance from officers who they know to be more senior.
- 5.37. The Commission finds that in relation to the briefing processes for non-police, these briefing processes were similarly lacking. The SES volunteers were recruited on the understanding that they may be required to act as a support person for young persons being interviewed by Police, not for strip searches. Nor were the SES volunteers provided with guidance by Police – either oral or written – as to what the Festival would involve or their duties at the Festival.<sup>441</sup> The SES Unit Commander who arranged for the two volunteer officers to attend the Festival was not aware of the legal requirements applicable to a support person during the strip search of a Young Person.<sup>442</sup> The SES provides no training on the issue.<sup>443</sup> Checks conducted by GEN4 revealed that there were no NSW Police Standard Operating Procedures relating to the role of a support person in the strip search of a young person in existence at the time of the Festival.<sup>444</sup>

## G. There was inadequate recording of information at the Festival concerning the strip searches carried out

- 5.38. The paperwork completed regarding some of the searches was inadequate. This is a matter of significance given the gravity of a strip search and the significance of the legal requirements.
- 5.39. Of the 25 strip searches carried out apparently without the presence of a parent, guardian or support person, in none of those instances was there a record of the officer's reasonable grounds to suspect that delaying the

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<sup>436</sup> Transcript, Day 3 of public examination, 4 December 2019 p. 398.2-12.

<sup>437</sup> *Ibid* p. 379.16.

<sup>438</sup> Transcript, Day 2 of public examination, 3 December 2019 p. 179.46, 180.10 (GEN7).

<sup>439</sup> *Ibid* p. 211.27 (GEN8).

<sup>440</sup> GEN7 only knew GEN8: *Ibid* p. 185.39, p. 188.40, p. 198.11.

<sup>441</sup> Transcript, Day 4 of public examination, 5 December 2019 p. 420.6; p. 420.20-24.

<sup>442</sup> *Ibid* p. 426.10-21; p. 428.29.

<sup>443</sup> *Ibid* p. 427.45.

<sup>444</sup> Transcript Day 1 of public examination, 2 December 2019 p. 95.11-20.

search would likely result in the destruction or concealment of evidence, as per s 33(3A)(a) of LEPR.

- 5.40. Whilst the officers were aware that a Field Processing Form would need to be completed for each strip search at the Festival,<sup>445</sup> the Field Processing Forms in relation to the strip searches conducted at the Festival contained insufficient information including the manner in which the search was carried out and the grounds upon which the officer suspected (i) that the strip search was necessary for the purposes of the search; (ii) that the seriousness and urgency of the circumstances make the strip search necessary (s 31(b) LEPR); (iii) that delaying the search is likely to result in evidence being concealed or destroyed and (iv) 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: s 33(3A)(a) LEPR.
- 5.41. The COPS entries were similarly inadequate. GEN12, who strip searched GEN14C and two other young persons at the Festival, made no record in any of the COPS entries related to those searches of the fact that no parent, guardian or support person was present during the search; the reason for the absence of such a person or any explanation as to the urgency justifying the search in those circumstances.<sup>446</sup>
- 5.42. The COPS entry created in relation to the searches conducted following the illegal drug supply by the Security Officer (as part of which GEN15C was searched)<sup>447</sup> mis-recorded GEN8 as having searched young persons 1-9 when in fact GEN7 had searched two or three of those young persons.<sup>448</sup> That entry made no recording of the number or identity of the other police officers whom GEN7 recalled being present.<sup>449</sup> That entry also failed to distinguish between the roles of the police, such as whether they were the searching officer or arresting police. Though he did not create the document GEN7 observed that by default, the COPS system would record the officer creating the event as being the officer who exercised the power, where that is not always the case.<sup>450</sup> The consequence of the poor record-keeping was that the police officer who searched GEN15C remains unidentified and GEN15C's allegation that that police officer had touched his testicles during the search could not be properly examined or resolved in this investigation.
- 5.43. The evidence of the information recorded in police notebooks was similarly unsatisfactory. For example, GEN8's police notebook contained what he considered to be a "fair summary" of what he was told by the Security Officer who engaged in the unlawful drug deal but did not include a full record of the information provided to him by the security officer,<sup>451</sup> some

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<sup>445</sup> See for example GEN7 (Transcript Day 2 of public examination, 3 December 2019 p. 181.34) and p. 212.4 (GEN8).

<sup>446</sup> Transcript, Day 3 of public examination, 4 December 2019 p. 399.18.

<sup>447</sup> Exhibit 16C - Full print-out from COPS System, barcode 7603229-7603242.

<sup>448</sup> Transcript, Day 2 of public examination, 3 December 2019 p. 187.44.

<sup>449</sup> *Ibid* p. 188.14.

<sup>450</sup> *Ibid* p. 191.15.

<sup>451</sup> *Ibid* p. 219.21.



of which influenced, in part, GEN8's "*reasonable suspicion*" justifying the search of those young people.<sup>452</sup>

## H. There was insufficient use made of the measures in place to ensure the privacy and dignity of the Young Persons during strip searches

- 5.44. Finally, the Commission finds that there was insufficient use made of the measures in place at the Festival to ensure the privacy and dignity of young persons during strip searches.
- 5.45. It was clearly within the contemplation of senior officers involved in the planning for the event that strip searches were carried out. To that end there was a designated searching area at the Festival comprising a series of pods, each with an internal latch allowing the pod to be locked from the inside and not opened from the outside.<sup>453</sup>
- 5.46. However, the strip searches of the eight young people, including GEN15C, following the unlawful drug deal did not take place in the designated searching area. GEN7 described this area as a number of facility tents which formed part of the venue but were off limits to the general public, located behind cyclone fencing<sup>454</sup> and being "*quite secluded*" with various areas "*where people could be taken that [were] well out of sight.*"<sup>455</sup> GEN15C described it as being around a corner to an open area<sup>456</sup> and then behind a larger object (which GEN15C recalled being a bin, car or container)<sup>457</sup> where "*anyone*" who walked past, including other police officers whom he could see "*walking up and down*" could see the search being carried out.<sup>458</sup>
- 5.47. The Commission accepts the evidence of GEN15C in this regard and finds that the location was as he described.
- 5.48. GEN8 described a searching location which differed to the one described by GEN15C. The Commission is satisfied that the searching of the 8 young persons took place in two different locations, neither of which were designated searching areas and which did not provide the young persons with the privacy required under LEPR. GEN8 searched two or three of the young persons but for reasons outlined earlier, the Commission accepts that it is unlikely that he searched GEN15C. He was aware of the existence of the searching pods<sup>459</sup> but he justified his conduct of the strip searches in a location other than the designated searching area on the basis that the opportunity for the young persons to drop evidence would have been too

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<sup>452</sup> *Ibid* p. 220.6.

<sup>453</sup> Exhibit 21C - Photographs of pods.

<sup>454</sup> Transcript, Day 2 of public examination, 3 December 2019 p. 186.32.

<sup>455</sup> *Ibid* p. 186.43.

<sup>456</sup> Interview of GEN15C, pp 30-31.

<sup>457</sup> Interview of GEN15C p 31-32.

<sup>458</sup> Interview of GEN15C p 31.

<sup>459</sup> Transcript, Day 2 of public examination, 3 December 2019 p. 246.9.

high, had he have walked them through the crowd to the searching pods.<sup>460</sup>

- 5.49. The location of the search of GEN15C violated s 32(4)(a) of LEPPRA, which requires that any search be carried out in a way that provides reasonable privacy for the person searched. GEN8's belief that the opportunity for the young persons to dispose of evidence was insufficient to justify the conduct of the strip searches in the locations which were selected rather than the searching pods. There were a large number of security guards present who, in addition to police, could have been utilised to watch the young persons as they were transferred to the searching pods such as to sufficiently mitigate the risk of disposal of evidence whilst they were walking to that location.

## 6. Serious Officer Misconduct

- 6.1 Even though the Commission has identified unlawful conduct by police officers, having considered the lack of training and direction provided to those officers, the Commission is of the opinion that the evidence does not support a finding of serious misconduct against any police officer.

## 7. Affected Persons

- 7.1. In Part 2 of this report the Commission set out the provisions of s 133 of the LECC Act dealing with the contents of reports to Parliament. Subsections (2), (3) and (4) relate to "*affected persons*".
- 7.2. The Commission is of the opinion that Officers GEN8, GEN9 and GEN12 are affected persons within the meaning of s 133(2) of the LECC Act, being persons against whom, in the Commission's opinion, substantial allegations have been made in the course of the investigation.
- 7.3. As noted in paragraph 6.1, the Commission makes no findings of serious misconduct against any of the officers named in this report and, consequently, the Commission is not of the opinion that consideration should be given to the taking of any of the actions listed at s 133(2) of the LECC Act.

## 8. Considerations

- 8.1. The Commission is of the opinion that the NSWPF should consider the following: recording the specific legal requirements of strip searching children in the Operational Orders for any under 18s event; including those requirements in every oral briefing to officers; and providing them in short-form documents 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 go on to strip search. It is noted that following the Festival, a one-page "*Strip searching briefing document*"<sup>461</sup> was created by the NSWPF

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<sup>460</sup> *Ibid* p. 246.14.

<sup>461</sup> Exhibit 10C - NSW Police Strip Searching Briefing Document.



training and education department by way of a guideline in relation to strip searches, though not specifically in relation to the strip searching of young persons.

- 8.2. The Commission has observed the 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. The Commission will deal 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 Gennaker

Report pursuant to s 132

*Law Enforcement Conduct Commission Act 2016*

May 2020

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