

Inquiry into NSW Police Force strip search practices Fact Sheet 4: Responses to the Commission’s recommendations

In August 2021, the Commission received advice from both the NSW Police Force and the Minister for Police detailing their responses to the recommendations of the Strip Search Inquiry final report. The Commission will continue to monitor the implementation of the recommendations in the course of our ongoing oversight and investigatory work.

Recommendation	Response to recommendation
<p>Recommendation 1: The Governance Command should perform ongoing dip sample reviews of the results of audits conducted by Police Area Commands and Police Districts of any strip search of a person who identified as an Aboriginal or Torres Strait Islander person (where that is known and recorded in COPS). The results of these reviews should be included as a standing item on governance risk compliance audits.</p>	<p>Agreed The NSWPF advised that its Governance Command will include reviews of Police Area and District Commands dip samples of strip searches during the governance, risk and compliance audits undertaken by the command.</p>
<p>Recommendation 2: The NSWPF should amend the Person Search Manual, Charge Room and Custody Management SOPs, COPS prompt and any relevant operational documents to make clear that:</p> <ul style="list-style-type: none"> (a) if during a search an officer moves a person’s clothes (other than the outer clothes mentioned in s 30) away from their body, or requires a person to move their clothes away from their body, in order to visually inspect inside those clothes this will constitute a strip 	<p>Not supported The NSWPF made a submission to the Commission’s draft report in November 2020 that recommendation 2 should be removed on the grounds that it is inconsistent with LEPR, the Person Search Manual and advice provided to the NSWPF by the Solicitor General. In August 2021, the NSWPF further submitted:</p> <p>While it is agreed that moving a person’s clothing, or asking a person to move their clothing, for the purpose of a visual inspection would constitute a strip search, the NSWPF is of the view that an officer examining the edges of outer clothing by running their fingertips around the inside of the waistband, collar or sleeves of that clothing would not constitute a strip search.</p>

<p>search, whether or not this involves a visual inspection of their genital area or breasts, and</p> <p>(b) if an officer places their hand or fingertips inside a person’s waistband, collar or sleeves (whether of outer clothing or inner clothing) this will also constitute a strip search.</p>	<p>The NSWPF does not propose to take further action in response to this recommendation.</p>
<p>Recommendation 3: Parliament should consider amending the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> to provide an exhaustive definition of a strip search.</p>	<p>On 16 August 2021, the Police Minister advised the Commission: In light of the significant body of work that the NSW Police Force has completed in response to the LECC recommendations, any amendments to LEPRAs should be deferred until the results of the work to date can be evaluated.</p>
<p>Recommendation 4: The NSWPF should amend the Person Search Manual and the Charge Room and Custody Management SOPs to:</p> <p>(a) advise officers that a strip search (as opposed to a general search) should not be considered unless the officer has reasonable grounds to suspect that a general search would not be sufficient to achieve the particular purpose of the search; and</p> <p>(b) emphasise in the Person Search Manual the requirement in s 32(5) that an officer ‘must conduct the least invasive kind of search practicable in the circumstances’</p>	<p>Not supported</p> <p>The NSWPF agreed to review the Charge Room and Custody Management SOPs to ensure consistency with the Person Search Manual, but otherwise does not propose to take further action in response to this recommendation. It considers that the Person Search Manual already reflects this position and “No further amendment to that document is necessary or agreed.”</p>
<p>Recommendation 5: The NSWPF should revise the operational documents for music festivals to make clear to officers that general intelligence about drug use/offences and medical treatments and transports at previous events is not by itself sufficient to justify a suspicion that the seriousness and urgency of the circumstances make a strip search of an individual necessary.</p>	<p>Not supported</p> <p>The NSWPF advised that while it does not disagree with the principle of the recommendation, it considers that existing policy and guidelines provide clear guidance in relation to the seriousness and urgency requirements. The NSWPF does not therefore propose to take further action in response to this recommendation.</p>

<p>Recommendation 6: The NSWPF should ensure that guidance on the seriousness and urgency requirement in s 31(b) for strip searches in the field is included in the Person Search Manual, and that guidance:</p> <ul style="list-style-type: none"> (a) makes clear that concerns about serious risks to welfare based on suspicion of ingestion or internal concealment of drugs cannot justify a strip search; (b) advises officers to consider if steps other than strip searching the person could adequately mitigate the risk of evidence being disposed of; and (c) identifies circumstances which frequently occur which would not be sufficient to satisfy the seriousness and urgency test in s 31(b) of LEPR. 	<p>Recommendation 6(a) - Implemented The Person Search Manual has been amended to provide guidance on 6(a).</p> <p>Recommendation 6 (b) and (c) - Not supported The NSWPF is of the view that recommendation 6(b) is not practicable and therefore it is not supported. The NSWPF submitted that it “has no power to use <i>guarding</i> or <i>detention</i> as an alternative to a strip search.” In relation to recommendation 6(c), the NSWPF advised: ...it is acknowledged that in theory this is a good idea, however it would be dangerous to be so prescriptive in circumstances where the scenarios that officers are faced with vary considerably. Listing some, but not all circumstances which would not be sufficient to satisfy the seriousness and urgency test in s31(b) could lead to error and over reliance on only the examples provided. This component of the recommendation is therefore not supported.</p> <p>The NSWPF does not propose to take further action in response to this recommendation.</p>
<p>Recommendation 7: The NSWPF should instruct its officers (for example, in the Person Search Manual and Charge Room and Custody Management SOPs) that under LEPR, regardless of whether a person specifically consents to a strip search, the officer must ensure that all of the threshold requirements in section 31 and 32(6) are met, and the officer must still comply with all the rules and safeguards in ss 32-34.</p>	<p>Not supported The NSWPF submitted that the Person Search Manual “clearly advises that the rules and safeguards must be complied with”. The NSWPF does not propose to take further action in response to this recommendation.</p>
<p>Recommendation 8: The NSWPF should require officers to include in their contemporaneous record for a strip search their reasons:</p> <ul style="list-style-type: none"> (a) for suspecting that a strip search was necessary for the purposes of the search; (b) for not doing a general search first, if they did not do so; and 	<p>Implemented The NSWPF submitted that the Person Search Manual has been amended to includes guidance that addresses recommendations 8 (a) and 8 (c). However, it is of the view that 8(b) is inconsistent with the requirements of LEPR and as such this part of the recommendation is not supported.</p>

<p>(c) for searching a person’s genital area or breasts (if they did so).</p>	
<p>Recommendation 9: The NSWPF policies regarding strip searches should clarify that a request that a person squat or perform any of the activities currently listed at paragraph 34 of the Person Search Manual cannot be made routinely, and must specifically account for the requirements set out in ss 32(5) and (6) and 33(5) and (6).</p>	<p>Implemented The Person Search Manual now provides guidance on this issue.</p>
<p>Recommendation 10: The Person Search Manual and other NSWPF policies regarding strip searches should explicitly prohibit police from touching a person’s breasts, genitals or buttocks during a strip search.</p>	<p>Agreed in principle The NSWPF advised: The Person Search Manual expressly states that a police officer must not examine a person by touch. However, this does not mean police cannot touch the person at all. If officers are required to use force to carry out the search or restrain a violent person, it will be necessary to incidentally touch the person’s body to allow a visual inspection. The NSWPF does not propose to take further action in response to this recommendation.</p>
<p>Recommendation 11: The Parliament should clarify whether police can compel a person to squat, bend over, move their genitals or breasts during a strip search to facilitate visual inspection.</p>	<p>On 16 August 2021, the Police Minister advised the Commission: In light of the significant body of work that the NSW Police Force has completed in response to the LECC recommendations, any amendments to LEPPRA should be deferred until the results of the work to date can be evaluated.</p>
<p>Recommendation 12: The NSWPF should refine the information provided to persons searched at music festivals and their support persons to address the issues raised by the Commission in this Report.</p>	<p>Partially supported as outlined below.</p>
<p>Role of the support person brochure</p>	
<ul style="list-style-type: none"> The brochure appears to be aimed at support persons who are not a parent or guardian. It should be used in circumstances where a parent or guardian is the support person as well, as the instructions remain relevant and 	<p>Supported in principle NSWPF advised the Commission that it agrees that: ...the instructions contained in the brochure remain relevant in the event that a parent or guardian is present as a support person. The brochure was created as part of a suite of documents developed for use at Music Festivals and it was aimed at providing advice to <i>any</i> person who may be asked to be a support person. Young persons are often reluctant to</p>

<p>parents or guardians may be unaware of the law surrounding strip searches.</p>	<p>contact a parent or guardian in these circumstances. Regardless of who may attend as a support person, their role does not change.</p> <p>The Music Festivals Guidelines clearly advise that a parent or guardian is the first preference as a support person, however it is noted that a juvenile has the right to tell police that having their parent/s present for the strip search is not acceptable to them. The guidelines advise that the brochure must be read to the support person and a copy provided.</p>
<ul style="list-style-type: none"> The brochure advises that police can ask a medical practitioner to perform the search if circumstances require it. The relevant circumstances should be explained. This is discussed in more detail at 5.7 of the Commission's Report. 	<p>Not supported</p> <p>The NSWPF advised:</p> <p>The inclusion of references to the use of <i>a nurse or an ambulance officer</i>, within the brochure relates to the use of a delegate to conduct a strip search where an officer of the same gender as the person being searched is not available. The LEPR regulations (at clause 47) dictate the <i>'class of person'</i> who can be used as a delegate in these circumstances. In the event that an ambulance officer or a nurse is to complete the search, they are not being used a medical practitioner they are acting as a delegate, under instruction from a police officer.</p> <p>The brochure is not intended to capture examinations conducted under the provisions of s138 of LEPR.</p>
<ul style="list-style-type: none"> It would be useful to explain in the brochure that if the support person or the person searched is concerned that sufficient privacy is not being provided they can raise this as an objection, and if greater privacy cannot be accommodated, they may make a complaint about the search 	<p>Not supported</p> <p>The NSWPF advised:</p> <p>The brochure currently contains a statement indicating that the support person should <i>'speak up if you believe police are not obeying the rules in this pamphlet.'</i></p> <p>In addition, the brochure includes the following: <i>If you believe police have broken the rules, you should complain. You can complain to a local police station or to the Law Enforcement Conduct Commission.</i></p>
<ul style="list-style-type: none"> The brochure should explain the NSWPF approach to using Body Worn Video during strip searches for the benefit of the person searched and the support person 	<p>Agreed</p> <p>The brochure will be amended to provide advice that BWV is only used to record a search from an angle that protects the dignity of the person being searched. Changes to the poster will explain the approach to using BWV during strip searches.</p>
<ul style="list-style-type: none"> The brochure should advise that a person's identifying details need not be provided unless 	<p>Not supported</p> <p>The NSWPF advised:</p>

<p>drugs or some evidence of a relevant offence are located during the search</p>	<p>...the requirement and necessity to record the details of the search, including the name of an individual, is not dependent upon something being found as a result of the search. A police officer must make a record every time a power is exercised; it is essential that a proper record is made when a search power is executed. While the NSWPF understands that the Commission is concerned that a negative inference is created against a person searched even if the result is that nothing is located, in relation to a COPs entry of a search undertaken with nil find, this is disputed. Police officers must justify each search on the facts before them.</p>
<p>'Police Searching: Know Your Rights' Poster:</p>	
<ul style="list-style-type: none"> • explain the NSWPF approach to using Body Worn Video during strip searches 	<p>Agreed Advice to this effect will be included in the poster.</p>
<ul style="list-style-type: none"> • clarify that any person may ask for a support person to be present during the strip search 	<p>Agreed Advice to this effect will be included in the poster.</p>
<ul style="list-style-type: none"> • refer to how the individual can make a complaint about the search 	<p>Agreed Advice to this effect will be included in the poster.</p>
<ul style="list-style-type: none"> • include advice about the use of force in circumstances where a person resists (this is not currently addressed) 	<p>Agreed Advice to this effect will be included in the poster.</p>
<ul style="list-style-type: none"> • advise that a person's identifying details cannot be required unless drugs or some evidence of a relevant offence are located during the search 	<p>Not supported The NSWPF reiterated its view, above, that it considers that police must make such records whenever a power is used.</p>
<p>Recommendation 13: The NSWPF and the Commission should collaboratively conduct an audit of strip searches conducted at music festivals as a means of evaluating the impact of the new Music Festivals Field Processing Form and pre-event education package. The</p>	<p>Agreed The NSWPF agrees a collaborative audit of strip searches conducted at music festivals will be an important and effective means of evaluating the impact of these improvements and ensuring compliance.</p>

<p>audit should be commenced 12 months from the date of publication of this report.</p>	
<p>Recommendation 14: The NSWPF training in strip searches should explain what types of offences are serious enough to warrant a strip search in the field and should provide examples of what might not be a serious enough offence.</p>	<p>Not supported The NSWPF advised that it does not propose to define ‘serious’ in a way as to exclude, for example, small quantities of drugs, or other specific categories of offences, as to do so would be too prescriptive and unworkable from a practical perspective. The NSWPF does not propose to take further action in response to this recommendation.</p>
<p>Recommendation 15: Parliament should consider providing specific guidance in the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> as to how the requirement in s 31(b) that ‘the seriousness and urgency of the circumstances make the strip search necessary’ is to be interpreted.</p>	<p>On 16 August 2021, the Police Minister advised the Commission: In light of the significant body of work that the NSW Police Force has completed in response to the LECC recommendations, any amendments to LEPPRA should be deferred until the results of the work to date can be evaluated.</p>
<p>Recommendation 16: The reasons for conducting a strip search at pre-planned events such as music festivals should be recorded on Body Worn Video before the search commences. For other strip searches conducted in the field, but not at a pre-planned event, the reasons for the search should be recorded on Body Worn Video if it is practicable to do so.</p>	<p>Not supported. The NSWPF advised the Commission that the instructions in the Person Search Manual, regarding records, are clear, and therefore it is not necessary or desirable to narrate reasons onto Body Worn Video. The NSWPF does not propose to take further action in response to this recommendation.</p>
<p>Recommendation 17: The NSWPF should not record the name and CNI of an individual following a search in COPS unless a relevant offence has been detected. Such details should, however, be recorded in handwritten contemporaneous records, which are retained in accordance with the <i>State Records Act 1988</i>, with an appropriate cross reference to these handwritten notes being made in COPS. The NSWPF should not treat people under the age of 18 any differently in this regard.</p>	<p>Not supported The NSWPF reiterated its view, above at Recommendation 12, that it considers that police must make such records whenever a power is used. The NSWPF does not propose to take further action in response to this recommendation. The Commission responded to this NSWPF response in the Final Report at Chapter 5.6.</p>

<p>Recommendation 18: The NSWPF should provide guidance to police officers about how they should prioritise the duty of care owed to individuals against other statutory obligations, such as the need to comply with the statutory obligations contained in Part 9 of LEPR and what type(s) of medical examination can be sought under s 138 of LEPR.</p>	<p>Implemented The Person Search Manual now contains guidance on internally secreted drugs and s.138 of LEPR.</p>
<p>Recommendation 19: The NSWPF should provide the brochure for support persons to any support person attending a strip search of a young person or person with impaired intellectual functioning who is searched in police custody settings.</p>	<p>Agreed The NSWPF agree that the brochure should be provided in police custody settings.</p>
<p>Recommendation 20: NSWPF training in relation to strip searches should canvass the potential traumatic effects of strip searches on young people and people with intellectual impairment, as detailed in this report.</p>	<p>Partially Supported The NSWPF advised that it: ...recognises that strip searches may be stressful and traumatic for most people, particularly young people and reiterates that for these reasons, police officers must comply with LEPR to ensure searches are lawful. The Person Search Manual has been updated to reflect this and remind police of the importance of ensuring dignity and privacy. NSWPF training and education in relation to strip searches focuses on ensuring that all police officers understand and comply with their obligations under LEPR when conducting a search. It is recognised that many of those obligations exist to protect the privacy and dignity of the person being searched and the welfare of young people and people with an intellectual impairment. The NSW Police Academy is currently collating material regarding this recommendation for inclusion into the ADPP curriculum. The two NSWPF custody courses (Custody Fundamentals and Advanced Custody Course) contain information to highlight obligations under LEPR in respect to privacy and dignity of the person being searched. Both courses include current legislative material and links to the NSWPF Person Search Manual. The NSWPF also advised that</p> <ul style="list-style-type: none"> • the 2020-21 Mandatory Police Continuing Education requirement about police powers to conduct searches provides scenarios and information on searching of

	<p>young persons and vulnerable persons, the LEPR privacy and dignity requirements; and</p> <ul style="list-style-type: none"> the Education and Training Command are creating additional education packages within the youth crime prevention portfolio.
<p>Recommendation 21: The NSWPF training for officers about conducting strip searches should include instructions relating to the very limited circumstances in which strip searches in caged vehicles may be performed and how to conduct strip searches in caged vehicles, with an emphasis on how to preserve the privacy and dignity of the person searched.</p>	<p>Agreed.</p> <p>The NSWPF agreed that the appropriateness of using a police vehicle for strip searching will depend on the circumstances. However, it noted that:</p> <p>...relocating the person to a police station is not always a real alternative as the person would need to be searched before being conveyed, which would trigger the need to search in the field.</p> <p>The NSWPF advised that the Associate Diploma in Policing Practice includes a discussion of ss 32 and 33 LEPR (including the use of caged vehicles), and the Mandatory Continuing Police Education unit for 2020-21 addresses requirements for affording privacy and dignity during searches.</p>
<p>Recommendation 22: The NSWPF must ensure that private spaces are made available for strip searching a person at any pre-planned event or strip search operation and part of the event planning should include checking that the doors or openings of any space used for the conduct of a search closes properly.</p>	<p>Agreed</p> <p>The NSWPF advised that where practicable, private spaces will be made available at all pre-planned events or strip search operations.</p>
<p>Recommendation 23: The NSWPF should ensure that the Associate Degree in Policing Practice curriculum pertaining to strip searches covers the following issues:</p> <ul style="list-style-type: none"> (a) whether officers can ask a person to squat, bend over, move their genitalia to facilitate a visual inspection; (b) in what circumstances officers can use force during a strip search; (c) requirements for using a parent, guardian or support person and the practicalities of how they are to be made available and informed of their role; 	<p>Agreed</p> <p>The NSWPF advised that:</p> <p>there is constant consultation between NSWPF and Charles Sturt University staff regarding content and potential changes to the ADPP course. Course content for the ADPP will be discussed to ensure it aligns with the NSWPF policy position provided by the Person Search Manual and/or the Charge Room and Custody SOPs.</p>

<p>(d) conduct of strip searches in caged vehicles; and (e) circumstances that may satisfy the test of 'seriousness and urgency' to make a strip search in the field necessary.</p>	
<p>Recommendation 24: The NSWPF should provide regular scenario based training to officers on what circumstances will and will not be sufficient to satisfy the seriousness and urgency requirement for a strip search in the field under s 31(b) of LEPR. This training should also assist officers to determine when there are reasonable grounds to suspect that it is necessary to conduct a visual examination of a person's genitalia during a strip search. It should be clear in both policy and training that doing this cannot be a routine part of a strip search but must be justified by the officer in each particular circumstance.</p>	<p>Agreed. The NSWPF advised that the 2020-21 Mandatory Continuing Police Education focuses on the use of BWV during a search, including recording of suspicions, vulnerable/young persons and the respect and dignity of a person subject of a search. It also provides scenarios. The NSWPF is also developing a desktop based training exercise for officers, covering the following:</p> <ul style="list-style-type: none"> • Demonstrate an understanding of the requirements of (LEPRA) that operate when multiple powers are used simultaneously in relation to searching; • Demonstrate understanding of the responsibility to hold the state of mind co-requisite to actions performed • Appreciate the importance of accurate and appropriate record keeping for any and all exercising of powers • Define what does and does not constitute a strip search under the Act and identify when legal safeguards are triggered in relation to searches • Determine what is 'reasonable' by law • Determine what is 'serious and urgent' by law • Apply guidelines for strip searching (including the Person Search Manual) and correct definitions appropriately to a range of scenarios • Articulate the justification for the use of Powers, including their provisions under LEPR.
<p>Recommendation 25: The NSWPF should ensure that each of the changes and clarifications in policy regarding the threshold requirements for strip searches reflected in recommendations 2, 4-10, 14, 16, 17 and 19 are included in the education and training on strip search powers given to recruits and officers</p>	<p>Agreed The NSWPF agrees that should any changes be made to the policies surrounding strip searches, those changes will be appropriately reflected in police training, including for both recruits and officers.</p>