

Review of a sample of  
NSW Police Force strip search  
records 2021-2022

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**September 2023**

# LECC

## Law Enforcement Conduct Commission

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The Law Enforcement Conduct Commission acknowledges and pays respect to the Traditional Owners and Custodians of the lands on which we work, and recognises their continuing connection to the lands and waters of NSW. We pay our respects to the people, the cultures, and the Elders past and present.



**Office of the Commissioner**

25 September 2023

45225/1233

The Hon Benjamin Cameron Franklin MLC  
President  
Legislative Council  
Parliament House  
SYDNEY NSW 2000

The Hon Greg Piper MP  
Speaker  
Legislative Assembly  
Parliament House  
SYDNEY NSW 2000

Dear Mr President and Mr Speaker,

In accordance with section 138 of the *Law Enforcement Conduct Commission Act 2016* (the Act), the Commission hereby furnishes to you its report entitled *Review of a sample of NSW Police Force strip search records 2021 – 2022*.

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

Yours sincerely



Anina Johnson  
**Acting Chief Commissioner**

# Foreword

There are times when police need to be able to search members of the public to protect public safety and prevent crime. On the other hand, searching a person, particularly a strip search, is a significant imposition on a person's liberty. For this reason, there are strict legal rules about when a search can be conducted.

It is also important that the police document the reasons why a search was conducted. Good record keeping promotes accountability by allowing the public to understand how often police use their search powers and why.

The legality of a search can also be challenged in court or as part of a misconduct investigation. Questions can be raised months or even years after the search. Good record keeping helps to answer these questions.

In 2020 the Law Enforcement Conduct Commission published its *Inquiry into NSW Police Force strip search practices*. The Commission identified real problems with record keeping standards and compliance with the legal thresholds required to justify searches.

In response, the NSW Police Force implemented 2 new initiatives to help officers observe the relevant legislation, policy and process around strip searching, and to make appropriate records.

The Commission and the NSW Police Force collaborated on an audit of the efficacy of those 2 new initiatives. This is our report on the results of that audit.

We found that the NSW Police Force's processes and training about conducting searches are clear and logical. However, there is room to improve the way in which these initiatives were implemented.

Our audit found that less than half of all officers undertaking strip searches at the music festivals in our sample completed the mandatory training.

We found 74% of general search records and 68% of strip search records reflected adequate consideration of the basis for the search. But only 30% of strip search records documented the seriousness and urgency considerations required by the law. Overall, we found there is still room for improvement in record keeping about strip searches.

This review highlights that training and policies are not enough to change conduct. It is critical that new processes are effectively communicated to all police officers and reinforced with proper supervision on the ground.

The NSW Police Force acknowledged that the audit did not find the standards of record keeping that they expect. They suggested that this was because the new initiatives were not communicated to officers effectively. The police have now taken action to address the gaps in awareness and training identified by the Commission.

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# 1. Overview

In 2020 the NSW Police Force introduced 2 new initiatives to improve police officers' compliance with law and policy when strip searching people at music festivals. The Law Enforcement Conduct Commission (the Commission) and the NSW Police Force agreed the Commission would do an audit to evaluate the impact of the 2 new initiatives.

We did this by reviewing:

- a sample of NSW Police Force records of search operations occurring at music festivals between 2021 and 2022
- completion rates of the mandatory Music Festivals Fundamentals training module, which all officers must complete before undertaking search operations at festivals.

This project was a collaboration with the NSW Police Force. At the beginning of the project, we agreed on the evaluation framework and the indicators of success.

## Audit findings

The Commission reviewed a total of 359 police records relating to 83 general searches and 77 strip searches, and found:

- a) 35% of records were clear, complete and consistent to the standard required by NSW Police Force policy
- b) 74% of general search records and 68% of strip search records showed that officers had considered the legal threshold for suspicion on reasonable grounds required to justify a search under the law<sup>1</sup>
- c) 30% of strip search records reflected adequate consideration of the seriousness and urgency threshold which officers must meet in order to justify a strip search under the law<sup>2</sup>
- d) 27% of strip search records contained information indicating police followed the rules for protecting privacy and dignity in strip searches required by the law<sup>3</sup>

Our review of completion rates for the mandatory Music Festivals Fundamentals training module found:

- e) 47% of officers completed the training within the required timeframe
- f) 28% did not complete the training at all.

Except for item b), these results reflect a score of less than 50% in the indicators of success agreed on by the Commission and the NSW Police Force.

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<sup>1</sup> *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) (LEPRA) ss 21 and 31(b).

<sup>2</sup> LEPRA s 31(b).

<sup>3</sup> LEPRA s 32.

## NSW Police Force response

The NSW Police Force has acknowledged that these results reflect lower than acceptable standards of record keeping.<sup>4</sup> It suggested that low rates of compliance with training and record keeping requirements occurred because it did not effectively communicate training and guidance to the field, which ‘resulted in a broader lack of awareness of the mandated processes.’<sup>5</sup>

The NSW Police Force told us that the new training and processes were finalised and endorsed during a period when no music festivals were being held and there was a shift in organisational priorities, due to the COVID-19 pandemic. The NSW Police force has acknowledged that ‘the way the information was rolled out could have been done better.’<sup>6</sup>

The NSW Police Force has since taken steps to rectify the gaps in training and knowledge identified by the Commission’s audit. This includes re-circulating the Music Festivals training and the Music Festivals Guidelines to all officers in the field and issuing memoranda to all Commanders to remind officers to comply with mandatory training requirements.<sup>7</sup>

## 1.1 Background to the audit

This audit builds on the Commission’s comprehensive *Inquiry into NSW Police Force strip search practices* published in December 2020.<sup>8</sup> The Inquiry detailed the NSW Police Force’s processes for undertaking strip searches at music festivals, and highlighted concerns around inconsistent and unlawful practice.<sup>9</sup>

The report on the Commission’s Inquiry acknowledged that the NSW Police Force introduced 2 new processes during the Inquiry to help improve consistent and lawful practice:

- the Music Festivals Field Processing Form
- a pre-event online education package called ‘Music Festivals Fundamentals.’<sup>10</sup>

These initiatives are further explained in Chapter 3.

The Inquiry’s final report recommended that:

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<sup>4</sup> Letter from Assistant Commissioner, NSW Police Force, to the Chief Commissioner, Law Enforcement Conduct Commission, 17 August 2023.

<sup>5</sup> Letter from Assistant Commissioner, NSW Police Force, to the Chief Commissioner, Law Enforcement Conduct Commission, 17 August 2023.

<sup>6</sup> Letter from Assistant Commissioner, NSW Police Force, to the Chief Commissioner, Law Enforcement Conduct Commission, 17 August 2023.

<sup>7</sup> Letter from Assistant Commissioner, NSW Police Force, to the Chief Commissioner, Law Enforcement Conduct Commission, 17 August 2023.

<sup>8</sup> Law Enforcement Conduct Commission, *Inquiry into NSW Police Force strip search practices*, December 2020.

<sup>9</sup> Law Enforcement Conduct Commission, *Inquiry into NSW Police Force strip search practices*, December 2020, Section 5.

<sup>10</sup> Law Enforcement Conduct Commission, *Inquiry into NSW Police Force strip search practices*, December 2020, Sections 5.3.1 – 5.3.4.

The NSW Police Force 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.<sup>11</sup>

The NSW Police Force accepted this recommendation and considered it ‘an important and effective means of evaluating the impact of these improvements and ensuring compliance.’<sup>12</sup>

We undertook the audit in response to this recommendation.

This audit aimed to:

1. Evaluate the impact of the Field Processing Form and Music Festivals Fundamentals education package on officers’ adherence to strip searching legislation, procedures and processes.
2. Provide the NSW Police Force with advice on whether the information about behavioural indicators contained in the training and policy documents appropriately guides officers to form reasonable suspicion that a search is justified under LEPR.<sup>13</sup>

## 1.2 Key legislative considerations for person searches

The *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) (LEPRA) provides NSW Police Force officers with powers to conduct strip searches and person searches in certain circumstances. The relevant provisions relating to searches that may be undertaken without a warrant are summarised at Figure 1.

These search powers can apply:

- before a person has been arrested – for example the power to stop, search and detain a person (s 21)
- on arrest of a person (s 27), or
- after a person has been arrested and taken into custody (s 28A).

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<sup>11</sup> Law Enforcement Conduct Commission, *Inquiry into NSW Police Force strip search practices*, December 2020, recommendation 13.

<sup>12</sup> Letter from Assistant Commissioner, NSW Police Force, to Chief Commissioner, Law Enforcement Conduct Commission, 16 August 2021.

<sup>13</sup> Law Enforcement Conduct Commission, *Inquiry into NSW Police Force strip search practices*, December 2020, p 37.



<p><b>Section 21</b></p> <ul style="list-style-type: none"> <li>• An officer may conduct a person search if the officer suspects on reasonable grounds that the person has in their possession any stolen, prohibited, dangerous or otherwise unlawfully obtained item</li> </ul>
<p><b>Section 30</b></p> <ul style="list-style-type: none"> <li>• A person search means the officer may quickly run their hands over the person's outer clothing and require the person to remove coat, jacket, shoes, socks, gloves and hat, pass an electronic metal detection device over a person's outer clothing or anything removed from the person.</li> </ul>
<p><b>Section 31(b)</b></p> <ul style="list-style-type: none"> <li>• An officer may strip search a person in the field (i.e. any place that is not a police station) if the officer suspects on reasonable grounds that: <ul style="list-style-type: none"> <li>○ a strip search is necessary for the purposes of the search, and that</li> <li>○ the seriousness and urgency of the circumstances make the strip search necessary.</li> </ul> </li> </ul>
<p><b>Section 32</b></p> <ul style="list-style-type: none"> <li>• Rules which officers must follow to preserve the person's privacy and dignity during the search.</li> </ul>
<p><b>Section 33</b></p> <ul style="list-style-type: none"> <li>• Additional privacy and dignity rules which officers must follow during a strip search.</li> </ul>

**Figure 1: Police strip search rules and responsibilities under LEPRA<sup>14</sup>**

### 1.3 NSW Police Force policies and guidelines

Information about conducting searches and associated record keeping requirements is contained in various NSW Police Force operational policies and guidelines, including the:






- *Crime Recording Standard*
- *Music Festivals Fundamentals* training package
- *Music Festival Guidelines*
- *Music Festival Operational Orders and Operational Plan for Drug Detection*
- *Person Search Manual*.

Information about record keeping requirements for searches is spread across a range of different NSW Police Force policy documents. We have summarised this information in Table 1.

We used this information to inform our research approach, which we discuss in Chapter 2.

<sup>14</sup> *Law Enforcement (Powers and Responsibilities) Act 2002 (NSW)*.

**Table 1: NSW Police Force policy guidance on how to record strip searches in COPS**

NSWPF policy	Reasons for search	Seriousness and urgency	Privacy and dignity rules	Details about the search
Crime Recording Standard	it is <b>essential</b> that sufficient detail in the 'Additional Reasons Field' to support the use of the search powers			all searches <b>should</b> be recorded in COPS  <b>ensure</b> Type, Location and Primary Reason for Person Search fields are filled  record if drug dog the main reason for detection, and if yes, whether POI admitted recent drug possession or use
Person Search Manual	the reason for the search (including facts supporting suspicion)	<b>Should</b> record seriousness and urgency circumstances	details of clothing removed and order removed  if no clothing removed, details of clothing re-arranged to permit visual inspection  reasons if search conducted by officer of opposite sex  reasons for not searching a person under 18 years in the presence of parent/ guardian, or other person capable of representing the child's interests  whether the genital area or breasts were searched, and if so, why	The record <b>should</b> clearly set out:  <ul style="list-style-type: none"> <li>• type of search</li> <li>• searching officer/s</li> <li>• whether force used</li> </ul>
WebCOPS E-guide		<b>Mandatory</b> to record seriousness and urgency circumstances	details of support person present if person under 18 years or intellectually impaired.  If support person is not present, details of reasons  details of clothing removed	
Commanders Briefing: Music festivals	<b>must</b> include the reason for the search	<b>must</b> record seriousness and urgency of the circumstances		The COPS event <b>must</b> include:  <ul style="list-style-type: none"> <li>• type of search</li> <li>• searching officer/s</li> <li>• whether force used</li> </ul>
Music Festivals Operational Plan	<b>should</b> record the reason for the search	<b>should</b> record seriousness and urgency circumstances	details of clothing removed and order removed  if no clothing removed, details of clothing re-arranged to permit visual inspection  reasons if search conducted by officer of opposite sex  reasons for not searching person under 18 years in presence of parent/ guardian, or other person capable of representing the child's interests	<ul style="list-style-type: none"> <li>• type of search</li> <li>• searching officer/s</li> <li>• whether force used</li> </ul>
Music Festivals Fundamentals training package	<b>should</b> record the reason for the search in COPS	<b>must</b> record seriousness and urgency circumstances	the same requirements as set out in the Music Festivals Operational Plan apply	The record <b>should</b> clearly set out:  <ul style="list-style-type: none"> <li>• type of search</li> <li>• searching officer/s</li> <li>• whether force used</li> </ul>

## 2. How we did our audit

In order to evaluate the impact of the Field Processing Form and the Music Fundamentals education package on NSW Police Force strip search practices, we reviewed a sample of NSW Police Force records, including:

- the Field Processing Forms for each search (n = 172)
- the corresponding report in the NSW Police Force’s Computerised Operational Policing System (COPS) database (n = 187).<sup>15</sup>

The NSW Police Force provided us with hard copies of the records with personal information redacted.

In total, we reviewed 359 records relating to 77 strip searches and 83 general searches that occurred at 5 music festivals across NSW between May 2021 and June 2022.<sup>16</sup> Table 2 summarises information about the music festivals and searches we reviewed.

We chose to review a combination of police records about strip searches and general searches to compare record keeping practices across both types of searches.

**Table 2: Number of searches and records reviewed, by festival**

Festival name and location (Capacity)	NSWPF Region	Date	Number of general searches	Number of strip searches	Number of records reviewed
EPIK, Sydney Olympic Park (12,000)	South West Metropolitan	11 Dec 2021	28	40	177
Field Day, Sydney (20,000)	Central Metropolitan	01 Jan 2022	15	14	61
Good Life, Sydney Olympic Park (4,500)	South West Metropolitan	04 Jun 2022	15	8	40
Next Exit, Batemans Bay (3,000)	Southern	28 May 2021	13	5	15
This That, Wickham Park (16,000)	Northern	12 Mar 2022	12	10	66
<b>Total</b>	-	-	<b>83</b>	<b>77</b>	<b>359</b>

The NSW Police Force provides very clear and appropriate training to its officers on how to conduct strip searches in the field. The Commission observed this training in person at the NSW Police Force’s Richmond

<sup>15</sup> The number of Field Processing Forms is less than the number of COPS events because officers at the Next Exit Music Festival did not complete Field Processing Forms, and because one person had 2 COPS events, the reason for which is unclear.

<sup>16</sup> EPIK Music Festival 2021, Sydney Olympic Park; Fuzzy Field Day 2022, Sydney City; Good Life U18s Music Festival 2022, Sydney Olympic Park; Next Exit 2021, Batemans Bay; This That 2022, Wickham Park.

Training Facility in February 2023. The training emphasised the need for clear, comprehensive and contemporaneous records to justify searches.

## 2.1 Audit tool

To ensure transparent and consistent data collection, we entered all information from the records into an audit tool that we developed in consultation with the NSW Police Force. A sample of the audit tool is found at Appendix A.

We then assessed the information contained in the police records against:

- the legal thresholds police officers must meet to conduct a lawful search under LEPR (discussed above at section 1.2)
- the requirements of the relevant NSW Police Force operational policies and guidelines (discussed above at section 1.3)
- the content of the Music Festivals Fundamentals pre-event education package (discussed below at section 3.2).

## 2.2 Evaluation framework

The Commission and the NSW Police Force agreed on an evaluation framework to measure the impact of the 2 initiatives (see Table 3). The framework aligns the intended impacts of each initiative with indicators of success.

**Table 3: Evaluation framework**

NSW Police Force initiative	Intended impact	Indicators of success
Field Processing Form	Increase consistency and completeness of records of persons searched at music festivals <sup>17</sup>	<b>1</b> Records are complete, consistent and accurate
	Assist in guiding officers to relevant thresholds in deciding whether to search a person and if so what type of search is necessary <sup>18</sup>	<b>2</b> Records reflect consideration of suspicion on reasonable grounds (ss 21 and 31(b) LEPR)
		<b>3</b> Records reflect consideration of 'seriousness and urgency' for strip searches (s 31(b) LEPR)
		<b>4</b> Records reflect adherence to strip search rules (s 33 LEPR)
Music Festivals Fundamentals pre-event training package	Provide information on searching, including a link to the NSW Police Force <i>Person Search Manual</i>  Provide videos about Body Worn Video recording, young person-specific support person use, and a general strip search video	<b>5</b> Records reflect adherence to the <i>Person Search Manual</i> .
	Information on: <ul style="list-style-type: none"> <li>• behavioural indicators</li> <li>• officer state of mind</li> <li>• drug-related information relevant to each genre</li> <li>• drug overdose</li> <li>• drug concealment methods</li> </ul>	<b>6</b> Records reflect consideration of suspicion on reasonable grounds consistent with s 31(b) LEPR and the <i>Person Search Manual</i>
	100% completion rate within 12 months prior to the festival <sup>19</sup>	<b>7</b> Records indicate 100% of officers completed the package within the 12 months prior to the music festival

<sup>17</sup> Law Enforcement Conduct Commission, *Inquiry into NSW Police Force strip search practices*, December 2020, p 75.

<sup>18</sup> Law Enforcement Conduct Commission, *Inquiry into NSW Police Force strip search practices*, December 2020, p 76.

<sup>19</sup> Commissioner of Police, Submissions in response to the November 2020 Draft Report by the Law Enforcement Conduct Commission: *Inquiry into NSW Police Force strip search practices*, 27 November 2020, p 12.

## 2.3 Important factors about our research approach

### Scope of our review and findings

Our main method was reviewing police records for adherence to NSW Police Force policy guidance on what officers need to record about strip searches (see Table 1, p 8 for a summary of the guidance).

The Commission cannot draw conclusions about whether the searches conducted were lawful or not, because we did not review the full range of evidence for each search event, such as body worn video and police notebook entries.

The indicators of success we used are based on whether the police records we reviewed reflected consideration of the LEPRA thresholds and safeguards, not whether the searches actually satisfied these.

Therefore, our conclusions are about record keeping practices only, and not about the lawfulness of the searches conducted.

### Our analysis was complicated by unclear NSW Police Force records

This audit reviewed 172 Field Processing Forms and 187 COPS events.<sup>20</sup> Officers should complete both records for any kind of search, and ideally the information would be consistent, clear and accurate across both records. If this was the case, the numbers of records reviewed would equal the number of searches.

Only 35% of the records we reviewed were clear and consistent. The remaining records were not always clear about:

- whether or not a search occurred
- whether the search was a strip search or general search
- the name and sex of the searching officer.

This meant that we were working with an incomplete dataset that contained significant gaps. This presented 3 challenges to our analysis:

1. It was not always possible for us to determine whether or not a search had actually taken place, or whether the type of search was a general search or strip search.
2. Because the type of search was unclear, this made it difficult to assess whether the records reflected the relevant LEPRA thresholds required to undertake the search<sup>21</sup>
3. Unclear records also made it difficult for us to determine if officers had followed the privacy and dignity rules under LEPRA<sup>22</sup>

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<sup>20</sup> COPS events comprise mandatory check box fields and free-text narratives.

<sup>21</sup> As discussed above, the requirements under LEPRA are that a police officer must hold 'suspicion on reasonable grounds' for general searches (s 21) and the added threshold of 'seriousness and urgency' for strip searches (s 31(b)).

<sup>22</sup> Privacy and dignity rules in LEPRA are at s 32 for all searches and s 33 for strip searches.

As such, it is important to note that our audit required 2 distinct counts:

- How many general or strip searches occurred
- How many records were clear or unclear

As we were working with an incomplete dataset created by unclear records, we counted '1' search only if all relevant records were clear. This means that the total number of 83 general searches and 77 strip searches is likely to be an under-report of the numbers of searches that actually occurred at the festivals.

Assessing the clarity of records required a separate approach. To make an assessment about the clarity and accuracy of records, we took the following approach:

- If a record (Field Processing Form or COPS event) indicated that a general search had occurred, but the other corresponding record was unclear,<sup>23</sup> or indicated that no general search occurred,<sup>24</sup> we assessed the record as though a general search had occurred.
- If a record (Field Processing Form or COPS event) indicated that a strip search had occurred, but the other corresponding record was unclear,<sup>25</sup> or indicated that no strip search had occurred,<sup>26</sup> we assessed the record as though a strip search had occurred.

Clarity, consistency and completeness of records was a key indicator of success agreed upon between the Commission and NSW Police Force. Section 4.1 below expands on the issue of incomplete records.

### **Decision not to review police notebook entries**

Officers are required to keep contemporaneous records of all searches in their notebooks, as well as in the COPS database.

In consultation with the NSW Police Force, we decided not to review notebooks for the following reasons:

- Collecting the notebooks would be particularly onerous for the NSW Police Force. Notebooks are hard copy records stored in physical archives at individual police stations. Finding the correct notebooks for 77 strip searches and 83 person searches occurring between 2021 and 2022 would involve each Region going through its physical archives.

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<sup>23</sup> For example, the COPS event did not specify the type of search conducted or the Field Processing Form 'General Search' section was incomplete.

<sup>24</sup> For example, the COPS event recorded a strip search only or the Field Processing Form 'General Search' section was circled 'No.'

<sup>25</sup> For example, the COPS event did not specify the type of search conducted or the Field Processing Form 'Strip Search' section was incomplete.

<sup>26</sup> For example, the COPS event recorded a general search only or the Field Processing Form 'Strip Search' section was circled 'No.'

- This project is focused on the impact of the Field Processing Form and the training package. Reviewing police notebook entries was therefore outside of the project's scope.

Our analysis of searches at music festivals relates to the information we found recorded in the COPS events and Field Processing Forms.

### **Decision not to review body worn video footage**

The NSW Police Force *Person Search Manual* requires officers to film strip searches using body worn video or a hand-held camera, as evidence of the integrity of the search.<sup>27</sup>

We decided not to review the footage as it was not directly relevant to our project's aims, being to evaluate the impact of the Field Processing Form and training package.

### **Sample size**

Our sample size was informed by the dates of the music festivals we looked at (28 May 2021 to 4 June 2022).

We chose this date range as it allowed over 12 months to pass between the NSW Police Force introducing the initiatives, and data collection for the audit. The date range also encompassed festivals from 4 different NSW Police Force regions. This allowed us to compare training completion rates across locations.

These parameters resulted in a sample of 77 strip searches and 83 general searches.<sup>28</sup> We considered that this number formed a sufficient evidentiary basis to make observations about the records, while also ensuring the project scope was manageable.

Given the sample size, our findings and analysis relate only to the sample, and do not extend to NSW Police Force practices generally.

Nevertheless, we encourage the NSW Police Force to carefully consider our findings, and how our review might inform ongoing policy, guidance and briefings in music festival strip search operations.

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<sup>27</sup> NSW Police Force, *Person Search Manual*, January 2023, p 11.

<sup>28</sup> As noted above, due to unclear and incomplete records, this is likely to be an under-report of the actual numbers of searches that actually occurred at the festivals.



## 3. NSW Police Force music festival processes and training

Our aim was to assess the impact of the Field Processing Form and Music Festivals Fundamentals training package on officers' adherence to record keeping requirements for strip searches.

### 3.1 Field Processing Form

The NSW Police Force introduced the Field Processing Form in November 2019.<sup>29</sup> The form seeks to:

- increase consistency and completeness of police records of person searches at music festivals.<sup>30</sup>
- assist in educating police officers about the relevant legal thresholds to meet in deciding whether:
  - to search a person, and if so
  - what type of search is necessary.

The Field Processing Form prompts police to ask 3 mandatory questions of a person upon a drug dog indication:

1. Have you got any prohibited drugs on you?
2. Have you been in an environment or around anyone using prohibited drugs in the last 24 hours?
3. Have you taken any prohibited drugs in the last 24 hours?

This information is meant to assist police to understand the reasons for drug detection dog indications, including in situations when no drugs are located by a search. The Field Processing Form also includes space under 'Behaviours/Admissions/History' for the officer to record their observations or other information they relied upon to inform their suspicion that a search is warranted. There is a 'yes/no' space for recording whether a general search is required, and below this, another 'yes/no' for consideration of whether a strip search is required.

The Field Processing Form states 'before strip searching you must complete the form to this point and consult a process supervisor.' Following this, there is space for the Process Area Supervisor to record their satisfaction with the reasons to progress to a strip search.<sup>31</sup> The Process Area Supervisor reviews the information and indicates whether they are satisfied with the officer's reasoning about whether a strip search is required or not. The searching officer will then complete the strip search section if required.

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<sup>29</sup> Law Enforcement Conduct Commission, *Inquiry into NSW Police Force strip search practices*, December 2020, p 74.

<sup>30</sup> Law Enforcement Conduct Commission, *Inquiry into NSW Police Force strip search practices*, December 2020, p 75.

<sup>31</sup> The Process Area Supervisor is a Detective Sergeant or Detective Inspector. See NSW Police Force, *Music Festivals Guidelines*, 14 March 2022, p 3.

The strip search section contains a list of 5 ‘seriousness/urgency considerations’ from which officers can select an option:

- safety concerns
- destruction of evidence
- indictable offence
- ingestion of drug
- other (with limited space for details).

In 2020, the Commission noted that the form was comprehensive and, if used properly, appeared to provide useful prompts to guide officers through the relevant details to be recorded in relation to the decision to search, the type of search and the outcome of the search.<sup>32</sup>

A copy of the form is at Appendix C.

## 3.2 Music Festivals Fundamentals training package

The Music Festivals Fundamentals training package is a learning module found on the NSW Police Force’s online Police Education Training Environment (PETE). It is mandatory for police officers to complete the module within 12 months prior to working at a music festival.<sup>33</sup>

The module went live in 23 November 2020. As of 27 July 2023, 4,631 police officers had completed the training.

The module’s learning outcomes include:

- effectively apply search powers in line with legislation and the *Person Search Manual*
- identify symptoms of drug and alcohol use and the importance of seeking medical attention
- distinguish between a general search and a strip search
- understand the importance of recording justification for searches
- identify and apply strip search requirements for both adults and young people
- identify observable behaviours and suspicious actions.

Commission staff reviewed the training in April 2023. It includes specific reference to the Field Processing Form, and an example of how to use the form. The training video depicts an officer obtaining the form from a Sergeant in order to conduct a general search. The Sergeant informs the officer that if the person search needs to progress to a strip search, the officer should bring the form to the Sergeant for approval.

We consider the training comprehensive when completed in conjunction with reading the *Person Search Manual*. There are multiple hyperlinks and references to the *Person Search Manual* throughout the module.

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<sup>32</sup> Law Enforcement Conduct Commission, *Inquiry into NSW Police Force strip search practices*, December 2020, p 76.

<sup>33</sup> Police Transport & Public Safety Command, ‘Music Festivals’, *NSW Police Force intranet* (Web Page).

## 4. Results

We developed an evaluation framework to measure success against the intended impacts of the initiatives (see section 2.2). Table 4 summarises the results for each indicator of success. We explore each indicator of success in further detail below, by comparing the requirements with the findings of our audit.

**Table 4: Summary of results for each indicator of success**

NSWPF Initiative	Indicators of success	Key Findings
Field Processing Form	1 Records are complete, consistent and accurate	35% of records were clear and consistent across both the Field Processing Form and the COPS even
	2 Records reflect consideration of suspicion on reasonable grounds (ss 21 and 31(b) LEPR)	74% of general search records and 68% of strip search records reflected adequate consideration of suspicion on reasonable grounds
	3 Records reflect consideration of 'seriousness and urgency' for strip searches (s 31(b) LEPR)	30% of strip search records reflected consideration of seriousness and urgency
	4 Records reflect adherence to strip search rules (s 33 LEPR)	27% of strip search records contained information indicating police followed strip search rules
Pre-event education package – Music Festivals Fundamentals	5 Records reflect adherence to the <i>Person Search Manual</i>	See results for 4
	6 Records reflect consideration of suspicion on reasonable grounds consistent with s 31(b) LEPR and the <i>Person Search Manual</i>	See results for 2
	7 Records indicate 100% of officers completed the training within 12 months prior to the festival	47% of officers completed the training within the required timeframe  28% did not complete the training at all

## 4.1 Field Processing Form

### Indicator of success 1: Records are complete, consistent and accurate

#### What are the requirements?

Police officers performing searches at music festivals must complete the Field Processing Form for every general or strip search conducted, whether or not police find drugs or other prohibited items on the person searched.<sup>34</sup> The Field Processing Form must include the related COPS event number for the search.

We considered the Field Processing Forms 'complete' if all relevant sections were filled in.

Police officers must also record details of the search in their official police notebook and in COPS.<sup>35</sup> The NSW Police Force *Person Search Manual* includes a section on record keeping, but that this section does not specifically instruct police officers to make records in COPS.

Table 1 (p 8) summarises the guidance available to officers about how to record searches in COPS.

#### What did we find?

We found that 35% of records were clear and consistent, which meant that both the COPS event and the Field Processing Form contained the correct information to the standard required by NSW Police Force policy.

Beyond this, the remainder of the records contained incomplete or inconsistent information in various ways. We discuss these 2 issues further below. Our detailed findings for incomplete and inconsistent records are at Appendix B.

#### Incomplete records

Our key findings regarding incomplete records in the dataset included:

- 69% (n=118) of the Field Processing Forms had at least 1 section incomplete.
- 10% (n=18) of COPS events did not specify who conducted the search.
- 29% (n=50) of Field Processing Forms did not include the corresponding COPS event number.

Another concerning finding was that in 21% (n=26) of the Field Processing Forms where a strip search was conducted, all fields in the quality assurance section of the form were blank. That is, it did not appear the

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<sup>34</sup> NSW Police Force, 'NSWPF intranet', *Music Festivals – Commanders Briefing* (Web page).

<sup>35</sup> The Music Festival Field Processing Form clearly states 'this form does not replace a person search COPS event or notebook entry.'

Process Supervisor had approved the strip search according to the clear quality assurance processes built into the form.

We also found that the NSW Police Force Southern Region did not use the Field Processing Forms at the Next Exit Festival on 28 May 2021 in Batemans Bay. Officers did not complete the form for any of the 13 general searches or 5 strip searches that occurred at the festival, even though the NSW Police Force Operational Plan for the event directed:

- officers to collect and complete a form<sup>36</sup> and
- the Process Area Coordinator to ensure that Field Process Forms are completed for all persons entering the process area.<sup>37</sup>

We asked the NSW Police Force why Southern Region did not use the forms at Next Exit Festival. The NSW Police Force said there was no intention to circumvent the use of the Field Processing Forms.<sup>38</sup> It advised that in future, the Southern Region will reinforce the use of Field Processing Forms through emails, Operational Orders and at briefings prior to any future events.<sup>39</sup>

#### Inconsistent information between COPS and the Field Processing Form

In 85 COPS events,<sup>40</sup> key information was inconsistent with information in the corresponding Field Processing Form.

This included inconsistencies in relation to:

- searching officer name
- type of search
- reason for a search
- information about whether police found any prohibited items.

Other key examples of inconsistent record keeping included:

- 17 Field Processing Forms indicated police conducted a strip search, but the corresponding COPS events did not.
- information about the sex of the searching officer was inconsistent in 14 cases. Given that searching by a same sex officer is a rule under LEpra, accurately recording this information helps NSW Police Force efficiently respond to any allegations of misconduct.

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<sup>36</sup> NSW Police Force, *Next Exit Festival Operational Plan*, p 7.

<sup>37</sup> NSW Police Force, *Next Exit Festival Operational Plan*, p 6.

<sup>38</sup> Letter from A/Assistant Commissioner, Professional Standards Command, to Senior Project Officer, Law Enforcement Conduct Commission, 5 May 2023, p 1.

<sup>39</sup> Letter from A/Assistant Commissioner, Professional Standards Command, to Senior Project Officer, Law Enforcement Conduct Commission, 5 May 2023, p 1.

<sup>40</sup> Of a total of 187 COPS events.

## Indicator of success 2: Records reflect consideration of ‘suspicion on reasonable grounds’

### What are the requirements?

Section 21 of LEPRA provides that, to conduct a person search (whether general or strip search), an officer must suspect on reasonable grounds that the person has on them an item such as a prohibited plant or drug, stolen item, or item used in connection with a relevant offence (See Appendix D for the full LEPRA section).

Section 31(b) of LEPRA provides an officer may carry out a strip search in the field if the officer suspects on reasonable grounds that the strip search is necessary for the purposes of the search and the seriousness and urgency of the circumstances make the strip search necessary.

Below we consider the requirement to show ‘suspicion on reasonable grounds’. We will consider the requirement of ‘seriousness and urgency’ in a later section.

A key factor in our assessment of this indicator of success was to clarify what constitutes ‘suspicion on reasonable grounds.’ Table 5 summarises the parameters around reasonable suspicion established in case law and specified in the NSW Police Force *Person Search Manual*.

**Table 5: Definition of reasonable suspicion**

WHAT IS REASONABLE SUSPICION?	
Established in case law <sup>41</sup>	NSW Police Force <i>Person Search Manual</i>
<ul style="list-style-type: none"><li>• Whether the information in the officer's mind afforded reasonable grounds for the suspicion that officer formed.</li><li>• Reasonable suspicion is less than reasonable belief, but more than a possibility.</li><li>• Requires some factual basis for the suspicious to be shown.</li><li>• May be based on hearsay, but must have some probative value.</li><li>• Relates to the source and the information in light of the whole circumstances.</li></ul>	<ul style="list-style-type: none"><li>• Officers may rely on their observations of the person, and any information they have access to, such as recent warnings on COPS.<sup>42</sup></li><li>• Officers cannot rely solely on a person's criminal history - they may consider this alongside other factors, but it is not enough on its own.<sup>43</sup></li><li>• Courts will not accept police relying solely on intelligence that is older and more general, but this can be taken into consideration along with other factors.<sup>44</sup></li></ul>

Table 1 (p 8) summarises the various guidance available to officers about how they should record information about reasonable suspicion in COPS.

<sup>41</sup> *R v Rondo* (2001) 126 A Crim R 562, 576-577 (Smart AJ, with whom Spigelman CJ and Simpson J agreed).

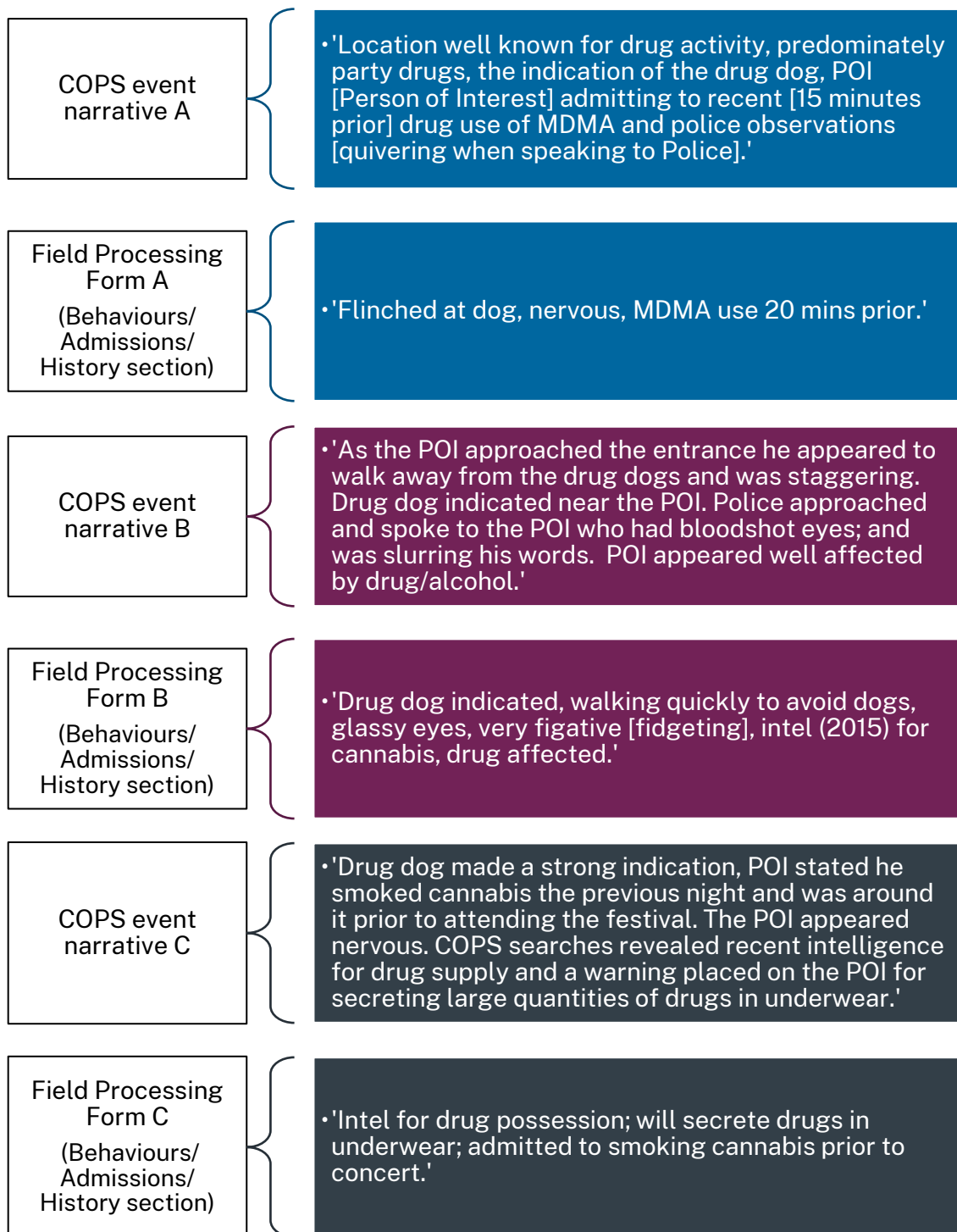
<sup>42</sup> Office of the Commissioner, NSW Police Force, *Person Search Manual*, September 2021, p 4.

<sup>43</sup> Office of the Commissioner, NSW Police Force, *Person Search Manual*, September 2021, p 4.

<sup>44</sup> Office of the Commissioner, NSW Police Force, *Person Search Manual*, September 2021, p 5.

## What did we find?

We found that 74% (n=115) of general search records and 68% (n=93) of strip search records reflected adequate consideration of suspicion on reasonable grounds in both the COPS event and the Field Processing Form. Figure 2 contains examples of where both records showed appropriate consideration of reasonable suspicion.



**Figure 2: Examples of adequate recording of suspicion on reasonable grounds**

We found a small number of records for strip searches listed reasons for the search which did not meet the threshold established by case law. For example:

- In 4 records for strip searches, the officer appeared to rely on drug dog indication only.
- In one strip search, officers relied only on drug dog indication, music festival location and the person's nervous behaviour.

The Commission's 2020 Inquiry noted that this combination of reasons is not sufficient for forming suspicion on reasonable grounds.<sup>45</sup>

The NSW Police Force's Drug Detection Operational Plan is also very clear on this issue, stating:

- 'drug dog indication alone is NOT enough to form reasonable suspicion', and
- 'nervous behaviour is not necessarily information to support suspicion on reasonable grounds given 'signs may be due to people being nervous at the sight of police.'<sup>46</sup>

The Commission is pleased to see a relatively low number of records about strip searches justifying the search on these insufficient grounds.

Overall, the results above suggest the Field Processing Form has assisted officers to consider reasonable suspicion when deciding whether to search a person and, if so, what type of search is necessary.

### Indicator of success 3: Strip search records reflect consideration of 'seriousness and urgency'

#### What are the requirements?

Section 31(b) of LEPR provides that an officer may strip search a person if they suspect a strip search is necessary for the purposes of the search, and the seriousness and urgency of the circumstances make the strip search necessary.

The legislation does not provide a further explanation of the meaning of 'necessary for the purposes of the search' or 'the seriousness and urgency of the circumstances.'

The *Person Search Manual* states 'police must have reasonable grounds to suspect that the consequences of not strip searching the person would be serious.'<sup>47</sup> It also prompts officers to consider whether they have reasonable grounds to suspect:

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<sup>45</sup> Law Enforcement Conduct Commission, *Inquiry into NSW Police Force strip search practices*, December 2020, p 72.

<sup>46</sup> NSW Police Force, Police Transport & Public Safety Command, 'Music Festivals – Toolkit', *Operational Plan (Drug Detection) Template*, pp 6-7.

<sup>47</sup> Office of the Commissioner, NSW Police Force, *Person Search Manual*, September 2021, p 8.



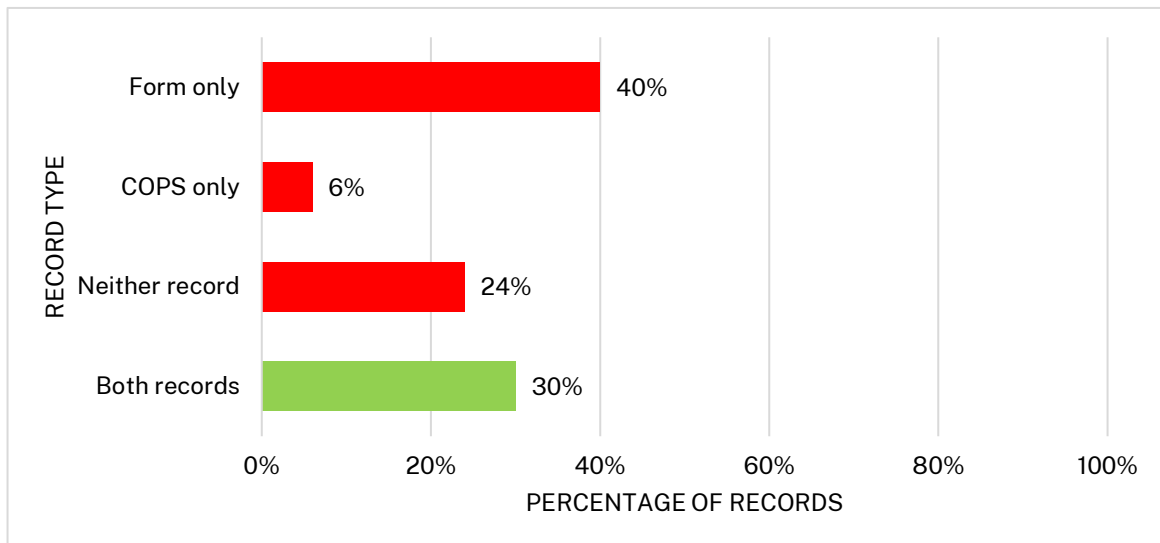
- the person has an item on them that cannot be located through a pat-down search or metal detector, which may cause a serious risk to their welfare or the welfare of someone else in the immediate future
- the person may have evidence of a serious offence on them that cannot be located through a pat-down search or metal detector, which they may dispose of once they are no longer in police presence.

**What did we find?**

Our review found:

- only 30% of strip search records (n=41) we reviewed reflected seriousness and urgency considerations in both the COPS event and the Field Processing Form
- the remaining 70% (n=96) of strip search records, including 55 COPS events, did not record information about seriousness and urgency to the standard required in the policy guidance.

Figure 3 provides a breakdown of how seriousness and urgency considerations were reflected in the COPS events and Field Processing Forms.



**Figure 3: Percentage of records reflecting seriousness urgency considerations**

While we do not expect a score of 100% against this or any other indicator of success, a 30% success rate is not a strong result, especially given the policy guidance that officers ‘must’ record information about seriousness and urgency considerations in COPS (see Table 1, p 8).

The failure by police officers to record this information limits the value of the COPS record, should the record be considered as evidence in a misconduct or criminal investigation.

While the NSW Police Force acknowledged that these results reflect a lower than acceptable standard of record keeping, it suggested

this audit does not allow for the probability that most, if not all officers likely did consider the seriousness and urgency of the search and failed to record that they did.<sup>48</sup>

The Commission is not persuaded by this comment, for 2 reasons:

1. This audit set out to assess adherence to record keeping standards. The NSW Police Force and the Commission agreed upon the evaluation framework and indicators of success at the outset of the project. It is not clear why the NSW Police Force presumes that most officers did consider seriousness and urgency but did not make a record of their reasons.
2. The scenario that an officer considered a fact in their mind but failed to keep a record does not help if the search is being considered by a court or in a departmental misconduct investigation. It is also inconsistent with guidance in the *Person Search Manual* that officers must keep records because they may be required to justify their actions at a later date.

## Indicator of success 4: Records reflect adherence to strip search rules

### What are the requirements?

Section 33 of LEPRA sets out rules that officers must comply with when conducting a strip search. These are summarised in Figure 4.

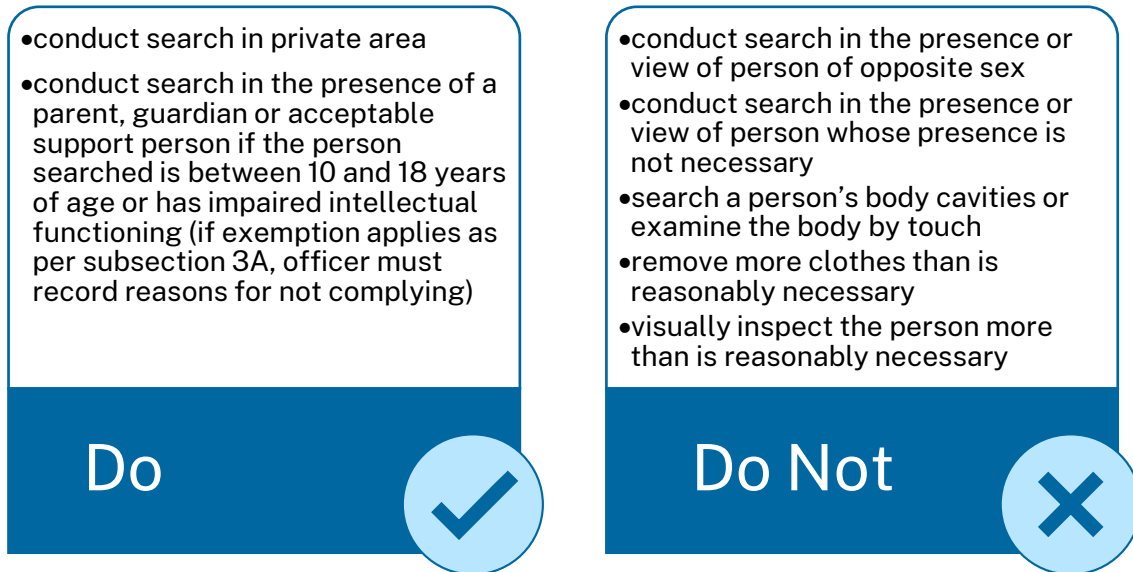
The *Person Search Manual* states officers 'should' make records of:

- details of clothing removed and order removed
- if no clothing removed, details of clothing re-arranged to permit visual inspection
- reasons if a search is conducted by an officer of the opposite sex
- reasons for not searching young people aged under 18 years in the presence of a parent/ guardian, or other person capable of representing the child's interests
- whether the person's genital area or breasts were searched, and if so why.<sup>49</sup>

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<sup>48</sup> Letter from Assistant Commissioner, NSW Police Force, to the Chief Commissioner, Law Enforcement Conduct Commission, 17 August 2023, p 3.

<sup>49</sup> Office of the Commissioner, NSW Police Force, *Person Search Manual*, September 2021, pp 5-6.



**Figure 4: Section 33 LEPR privacy and dignity rules for strip searches**

### What did we find?

Our review of COPS records of strip searches found:

- 27% (n=32) complied with the requirements for recording privacy and dignity rules as outlined in the *Person Search Manual*.
- in the remaining 73% (n=88) of records there was insufficient information for the Commission to determine if s 33 LEPR rules were adhered to, or, the information indicated s 33 rules were not followed.

The records we reviewed indicated police strip searched 10 young people.<sup>50</sup>

- In 5 cases the records indicated that a support person was used, or, the records provided adequate reasons for why this did not occur.
- In 2 cases neither the COPS record or the Field Processing Form indicated if a support person was present and did not provide a sufficient reason why not.
- In 3 cases compliance with s 33(3) of LEPR was unclear due to incomplete records.

<sup>50</sup> Aged under 18 years.

## 4.2 Music Festivals Fundamentals training package

Indicator of success 7: 100% of officers complete training within the required timeframes

### What are the requirements?

It is mandatory for police officers who perform duties at NSW Music Festivals to complete the online Music Festivals Fundamentals training module within 12 months prior to the event. If any officer fails to complete the package within that timeframe, the NSW Police Force says they are not permitted to conduct duties at the festival.<sup>51</sup>

Education Development Officers (EDOs) within each Command are responsible for ensuring that all officers who are rostered to work at a music festival have completed the mandatory training modules prior to the start of their shift at the festival. Before the start of the festival, officers are given instructions about the training requirements for the shift. In the days leading up to an event, EDOs are required to run a report to identify and remedy any non-compliance with training requirements.<sup>52</sup>

As a secondary measure, the Forward Commander responsible for each event monitors a 'sign in' form at the event. Any officer who indicates that they have not undertaken the training prior to starting their shift on the day is required to either complete the training there and then, or is directed to leave the event and return to their Command.<sup>53</sup>

We asked the NSW Police Force to provide the training completion date for all police officers listed in the records as performing Officer in Charge, Second in Charge, or searching officer duties at the festivals in our sample.<sup>54</sup>

### What did we find?

A total of 239 officers conducted strip search operations at the festivals in the sample. Each officer should have completed the training before being deployed to the festival.

Disappointingly, less than half (47%, n=112) of the police officers who should have completed the training within the required period had actually done so. More than a quarter (28%, n=67) of the officers conducting strip searches at the festivals had not completed the training at all.

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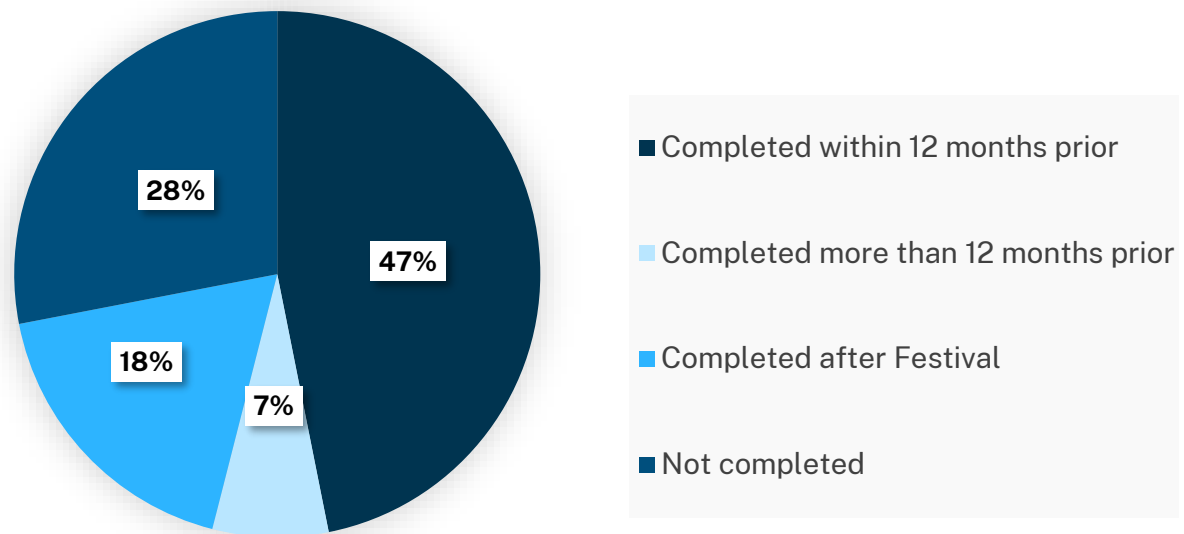
<sup>51</sup> NSW Police Force, 'NSWPF intranet', *Music Festivals* (Web page).

<sup>52</sup> Letter from Assistant Commissioner, NSW Police Force, to the Chief Commissioner, Law Enforcement Conduct Commission, 17 August 2023, p 4.

<sup>53</sup> Letter from Assistant Commissioner, NSW Police Force, to the Chief Commissioner, Law Enforcement Conduct Commission, 17 August 2023, pp 4-5.

<sup>54</sup> Email from Probity Information & LECC Coordination Unit, Professional Standards Command, NSW Police Force, to Law Enforcement Conduct Commission, 25 January 2023 (attaching Statistics - Online training records, D/2023/70328).

Figure 5 summarises completion rates and timeframes for all officers in the whole sample.



**Figure 5: Music Festivals Fundamentals completion rates and timeframes for all officers (n=239)**

Table 6 below shows a breakdown of the number of officers who completed the training for each Region. South West Metropolitan Region had the best completion rates of any region in the sample, with 69% of officers working at the festivals completing the training within the required timeframe. None of the eligible officers working at Next Exit Festival (n=12) had completed the training.

**Table 6: Numbers of officers who completed mandatory training, by Region**

Timeframe of completion	NSW Police Force Region, festival and date				Total
	Southern 'Next Exit' 28 May 2021	SW Metro 'Good Life' 4 June 2022 'EPIK' 11 Dec 2021	Central Metro 'Field Day' 1 Jan 2022	Northern 'This That' 12 Mar 2022	
Within 12 months prior to the festival	0	98	1	13	112
More than 12 months prior to the festival	0	4	1	12	17
After festival	0	21	21	1	43
Not completed	12	18	23	14	67
<b>Total</b>	<b>12</b>	<b>141</b>	<b>46</b>	<b>40</b>	<b>239</b>

The NSW Police Force told us that it was not aware of the low rates of training completion across the board until the Commission made inquiries about completion rates in January 2023.<sup>55</sup> This is concerning, given that the festivals in our sample occurred between December 2021 and March 2022, and given the two-stage quality assurance processes for checking training completion described above.

The Commission asked the NSW Police Force why the officers who performed duties at the Next Exit Music Festival on 28 May 2021 did not complete the Music Festivals Fundamentals training. The NSW Police Force said there was no intention to circumvent the training processes of training and that:

[...] it would appear the training was relatively new and there was some managerial oversight during the planning process to have all staff trained prior to the festival.<sup>56</sup>

The Commission notes that the training was introduced in November 2020 and the festival occurred in May 2021. We acknowledge that COVID-19 prohibited most music festivals from occurring in 2020, and NSW Police Force was understandably diverted to other priorities during that time.

The Commission is satisfied with the advice of the NSW Police Force on the actions it has since taken to avoid training gaps in the future:

- The Southern Region advised the Commission that the Region Commander has now prioritised the training for all officers rostered to work at any future festival.
- In February 2023 the Southern Region Operations Commander emailed all Southern Region Commanders and Crime Managers reminders that all staff attending Music Festivals are required to complete the education package on PETE prior to being rostered to work at festivals.
- In May 2023 the Chair of the Police Powers Executive Committee directed relevant NSW Police Force stakeholders to remind all Commands about training compliance and resources available, including the Field Processing Forms and Operational Orders, to assist Commanders' forward planning of music festivals.<sup>57</sup>

The NSW Police Force considers that these actions 'will see a significant increase in compliance with mandatory training requirements for the upcoming music festival season'.<sup>58</sup>

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<sup>55</sup> Letter from Assistant Commissioner, NSW Police Force, to the Chief Commissioner, Law Enforcement Conduct Commission, 17 August 2023, p 4.

<sup>56</sup> Letter from A/Assistant Commissioner, Professional Standards Command, to Senior Project Officer, Law Enforcement Conduct Commission, 5 May 2023, p 1.

<sup>57</sup> Letter from A/Assistant Commissioner, Professional Standards Command, to Senior Project Officer, Law Enforcement Conduct Commission, 5 May 2023, p 1.

<sup>58</sup> Letter from Assistant Commissioner, NSW Police Force, to the Chief Commissioner, Law Enforcement Conduct Commission, 17 August 2023, p 1.

## 5. Conclusion

This audit aimed to evaluate the impact of the Field Processing Form and the Music Festivals Fundamentals mandatory training module. The audit was limited to a review of NSW Police Force records. As such, the Commission can only make conclusions about uptake of the forms, training, and the record keeping standards within the sample. We cannot make conclusions about the lawfulness of the searches.

### **Clarity, consistency and completeness of records**

COPS records and Field Process Forms will be key pieces of evidence of an officer's conduct during a search if a search is considered as part of a misconduct or criminal investigation.

We found that only 35% of records were clear and consistent across both the Field Processing Form and the COPS event. We also found that 69% of the Field Processing Forms we reviewed had at least one section incomplete, and the quality assurance section was completely blank in 21% of Forms relating to strip searches.

Regarding consistency of records, 85 COPS records from a sample of 187 contained key information that was inconsistent with the corresponding Field Processing Form.

The Form itself is clearly structured and labelled with the information that should be included in each section. NSW Police Force policies are clear on what information should go into a COPS event. From our review, it is not clear whether a lack of training or a lack of supervision led to the gaps in properly completing the forms.

### **Recording adherence to legal thresholds (s 21 and s 31(b) LEPR)**

It is critically important that NSW Police Force records contain accurate information about the reasonable suspicion held by officers to justify the search. We found 74% of general search records and 68% of strip search records reflected adequate consideration of suspicion on reasonable grounds.

Only a relatively small number of searches in the sample listed inadequate reasoning for a search (drug dog indication and music festival location alone).

However, our audit also identified that only 30% of strip search records contained information about the 'seriousness and urgency' threshold required to justify the search.

These scores highlight that there is room for the NSW Police Force to improve record keeping to ensure that its official records contain the appropriate information to justify the additional thresholds for strip searches. In the absence of such records, it may be difficult for officers to later justify why their search was lawful, especially if there is no footage of the search.

### **Recording adherence to privacy and dignity rules (s 33 LEPR)**

Only 27% of strip search records in our sample contained information indicating police followed s 33 LEPR rules to protect privacy and dignity of the individuals being searched. In the remaining 73% of strip search records there was insufficient information to determine if the rules were followed or not.

Only 5 of the 10 strip searches of people under 18 years of age indicated that police used a support person, or provided adequate reasons for why this did not occur.

The *Person Search Manual* states that officers 'should' make records in COPS of reasons for not searching a young person in the presence of a support person.<sup>59</sup> The NSW Police Force could change the policy wording from 'should' to 'must'. However, even this change would have limited impact if officers do not follow it, or if guidance is not communicated effectively to the field.

### **Low uptake of mandatory training**

Our audit found that only 47% of officers performing or supervising searches at the festivals completed the mandatory training within the required timeframe, and 28% had not completed the training at all, even outside of the mandatory timeframe. The NSW Police Force was not aware of this low rate of compliance until the Commission conducted this audit.

### **Opportunities for the NSW Police Force**

The results of this audit suggest that the Field Processing Form, when used, can assist officers to consider the reasonable suspicion required to justify a search, and to make proper records of this information.

Unfortunately, the sample of records we reviewed indicated that not enough officers are considering or recording information about the additional seriousness and urgency threshold required to lawfully conduct a strip search.

The overall impact of the mandatory training was hampered by the NSW Police Force's failure to thoroughly and efficiently disseminate the training to officers. The NSW Police Force has suggested that the associated non-compliance with training resulted in poor record keeping practices.<sup>60</sup> The Commission agrees that improving uptake of the training is likely to improve record keeping about justifications for searches. The Commission acknowledges that the roll-out of this policy occurred during the COVID pandemic when there were a number of other operational challenges for the NSW Police Force.

Overall, the NSW Police Force has appropriate policies, processes and training to help officers understand how to use their search powers lawfully, and how to keep proper records of this. However, this review has

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<sup>59</sup> Corporate Spokesperson for Police Powers, NSW Police Force, *Person Search Manual*, January 2023, pp 6-7.

<sup>60</sup> Letter from Assistant Commissioner, NSW Police Force, to the Chief Commissioner, Law Enforcement Conduct Commission, 17 August 2023, p 4.



highlighted that new processes and training are unlikely to achieve the intended impact unless the NSW Police Force ensures they are effectively disseminated to the field.

# Appendix A

## Audit tool criteria

Due to the number of columns in the audit tool, the images below represent one row split over 2 images.


	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W	X	Y	Z	AA	AB	AC	AD
1	<b>PROCESS</b>		<b>PRE-SEARCH</b>										<b>GENERAL SEARCH</b>							<b>QA</b>			<b>JUVENILE SAFEGUARDS</b>							
2	<b>Data points</b>	Record type	Record no.	Event no.	Date	Event	Region	Under 18?	Indigenous	Sex	Dog indication	Behaviours/admissions/history	General search?	BWV used	OIC	ZIC	Searching officer	Notebook	Items located	SS req'd?	Supervisor satisfied	Comment	Supervisor Rego	PIG Requested?	PIG resent?	If not, why	Rep requested?	Rep. present?	R'ship to YP?	If not present, why

AE	AF	AG	AH	AI	AJ	AK	AL	AM	AN	AO	AP	AQ	AR
<b>STRIP SEARCH</b>								<b>ANALYSIS</b>					
Strip searched?	Seriousness/urgency reasons	Force used	Did police touch private parts	BWV used	Searching officer rego	Searching officer sex	Items located	GENERAL SEARCH: Do records reflect officers turned mind to SORG?	STRIP SEARCH: Do records reflect officers turned mind to SORG?	STRIP SEARCH: Do records reflect officers turned their mind to seriousness and urgency threshold?	s33 LEPRAs rules adhered to?	s32 LEPRAs privacy and dignity rules adhered to?	Evidence of part 15 safeguards?

# Appendix B

		Festival and date					Total
		EPIK 11 Dec 2021	Field Day 1 Jan 2022	Good Life 4 Jun 2022	Next Exit 28 May 2021	This That 12 Mar 2022	
Records were clear and consistent	Both records indicate general search only conducted	7	10	10	10	10	<b>47</b>
	Both records indicate strip search only conducted	7	3	3	2	3	<b>18</b>
	Both records indicate general and strip search conducted	21	5	5	3	2	<b>36</b>
Records were unclear, inconsistent or incomplete	One record indicates strip search, but other record indicates general search	5	0	0	N/A	4	<b>9</b>
	One record indicates both searches, but other record indicates general or strip search only or is incomplete	34	7	2	N/A	8	<b>51</b>
	Both records suggest strip search only, but Field Processing Form general search section is incomplete	12	6	0	N/A	5	<b>23</b>
	COPS event recorded general search, but Field Processing Form general search section is incomplete or circled 'no'	4	0	0	N/A	1	<b>5</b>

# Appendix C

		<b>MUSIC FESTIVAL FIELD PROCESSING FORM</b> <small>THIS FORM DOES NOT REPLACE A PERSON SEARCH COPS EVENT OR NOTEBOOK ENTRY</small>		FORM NUMBER
TIME:	DATE:	EVENT NAME:		
NAME:		DOB:	JUVENILE: Yes / No	
ADDRESS:			PH NO:	
ID: DL /POA CARD/ PASSPORT/ OTHER – No:		SEX: M / F	ATSI: Yes / No	
<b>Mandatory Questions</b> 1. Have you got any prohibited drugs on you? Yes / No 2. Have you been in an environment or around anyone using prohibited drugs in the last 24 hrs? Yes / No 3. Have you taken any prohibited drugs in the last 24 hrs? Yes / No				
DOG INDICATION: Yes / No	BEHAVIOURS/ADMISSIONS/HISTORY: (Record conversations and observations in notebook)			
Handler Name:				
Dog name:				
LOCATION KNOWN FOR DRUG SUPPLY/USE/OVERDOSE Yes / No				
CLOTHING:				
<b>General Search? Yes / No</b>				
OIC: Rego:	BWV <input type="checkbox"/> Used (tick)	2IC: Rego:	BWV <input type="checkbox"/> Used (tick)	
Searching Officer Rego: (if different from above)		Notebook No: Page No:		
Items Located? Yes / No List:				
<b>Is a Strip Search Required? Yes / No</b>				
Seriousness / Urgency considerations <input type="checkbox"/> Safety Concerns <input type="checkbox"/> Destruction of evidence <input type="checkbox"/> Indictable Offence <input type="checkbox"/> Ingestion of drug Other:				
<b>IF JUVENILE, MUST HAVE PARENT / GUARDIAN / RESPONSIBLE PERSON PRESENT</b>				
Parent/Guardian requested for search? Yes / No	Present? Yes / No	If not, Why?		
Personal Representative requested for search? Yes/No	Present? Yes / No	If not, Why?		
Name:	Contact No:			
<b>BEFORE STRIP SEARCHING YOU MUST COMPLETE FORM TO THIS POINT AND CONSULT PROCESS SUPERVISOR.</b>				
<b>If no strip search, complete action taken and return form</b>				
Satisfied with officers reasoning based on information above? Yes / No				
Comment:				
PROCESS SUPERVISOR Name:		Rego:	Signature:	
Items Located? Yes / No List:				
Force used? Yes / No	BWV used? <input type="checkbox"/> (tick) Officer (Rego)	Searched By (Rego): PAC/PD:		
Concealment method and location: internal/in container/balloon etc				
<b>ACTION TAKEN</b>				
Offences:				
Action: CIN / FCAN/ Charge / Infringement/ Cannabis Caution   Number:				
For Drug Offences; if no CIN issued why?				
Exhibit No:	OIC:	PAC/PD:		<b>LEGAL PROCESS</b>
Drug Type:	Drug Weight:	Ejected: Yes / No Reason:		
Event No: E	Charge No: H	Banning Notice No:		
<b>RETURN FORM</b>				
Checked By:		Signature:		

# Appendix D

The audit referred to the following provisions of the *Law Enforcement (Powers and Responsibilities) Act 2022* (NSW) (LEPRA).

## **S 21: Power to search persons and seize and detain things without warrant**

- (1) A police officer may, without a warrant, stop, search and detain a person, and anything in the possession of or under the control of the person, if the police officer suspects on reasonable grounds that any of the following circumstances exists —
- (a) the person has in his or her possession or under his or her control anything stolen or otherwise unlawfully obtained,
  - (b) the person has in his or her possession or under his or her control anything used or intended to be used in or in connection with the commission of a relevant offence,
  - (c) the person has in his or her possession or under his or her control in a public place a dangerous article that is being or was used in or in connection with the commission of a relevant offence,
  - (d) the person has in his or her possession or under his or her control, in contravention of the *Drug Misuse and Trafficking Act 1985*, a prohibited plant or a prohibited drug.
- (2) A police officer may seize and detain —
- (a) all or part of a thing that the police officer suspects on reasonable grounds is stolen or otherwise unlawfully obtained, and
  - (b) all or part of a thing that the police officer suspects on reasonable grounds may provide evidence of the commission of a relevant offence, and
  - (c) any dangerous article, and
  - (d) any prohibited plant or prohibited drug in the possession or under the control of a person in contravention of the *Drug Misuse and Trafficking Act 1985*, found as a result of a search under this section.

## **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**

- (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.



# Glossary

Glossary	Description
Behavioural indicators	Behaviours and actions police may observe a person do that helps form a reasonable suspicion that a person search is required.
COPS	The NSW Police Force's Computerised Operational Policing System (COPS) is a database in which police record all their operational activities.
COPS event	Written description of a police interaction, located on the COPS database.
Crime Recording Standards	The NSW Police Force's policy document for the recording events and incidents in COPS.
Field Processing Form	A one-page form officers must complete for all persons they bring into the process area.
LEPRA	<i>Law Enforcement (Powers and Responsibilities) Act 2002 (NSW)</i>
Music Festivals Fundamentals	An online education package/module designed to assist NSW Police Force staff conducting duties at any music festival within NSW.
Music Festival Guidelines	The NSW Police Force's document for the management of police operations at Music Festivals in NSW.
Operational Orders	Document that outlines the objectives, contingencies, responsibilities and accountabilities for an operation. It serves as an information source for officers assigned to the operation.
Part 15 Safeguards	Officers are required to comply with specific safeguards under LEPRA when they exercise a power to search a person.
Person Search Manual	The NSW Police Force's principal document for carrying out person searches under LEPRA. It provides guidance about when and how to conduct searches based on legislation, common and law and NSW Police Force policy.
Privacy and dignity rules	Section 33 of LEPRA provides a list of rules officers must comply with when conducting a search to preserve the privacy and dignity of the person searched.
Process Area Supervisor	The Detective Inspector or Detective Sergeant in charge of the sectioned area where police process and search patrons.
State of mind	Police must hold a specific state of mind as set out in LEPRA for a search to be lawful.
Support person	A parent, guardian or other acceptable person who must be present during the strip search of a child between 10 and 18 years of age, or a person who has impaired intellectual functioning.

