

REPORT ON THE MONITORING OF NSW POLICE FORCE
MISCONDUCT MATTER INVESTIGATION – STRIKE FORCE
BLACKFORD

REPORT PURSUANT TO S 138 OF THE *LAW ENFORCEMENT
CONDUCT COMMISSION ACT 2016*

July 2020

LECC

Law Enforcement
Conduct Commission

21 July 2020

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

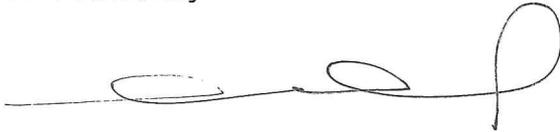
The Hon Jonathan O'Dea MP
Speaker
Legislative Assembly
Parliament House
SYDNEY NSW 2000

Dear Mr President and Mr Speaker

In accordance with section 138(a) of the *Law Enforcement Conduct Commission Act 2016* ('the Act'), the Commission hereby furnishes to you a Report on the monitoring of New South Wales Police Force misconduct matter investigation - Strike Force Blackford.

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

Yours sincerely



The Hon Lea Drake
Commissioner for Integrity

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1. Introduction

- 1.1 In 2018 the Law Enforcement Conduct Commission (the **Commission**) commenced an examination of the practices of the New South Wales Police Force (**NSWPF**) concerning the conduct of strip searches. The Commission's examination is ongoing and includes the monitoring and review of NSWPF misconduct investigations, its own investigations into discrete conduct, the identification of systemic issues and analysis of NSWPF policies and procedures.
- 1.2 In March 2019 the NSWPF established Strike Force Blackford to investigate five complaints about strip searches performed by NSWPF officers, predominantly at music festivals.
- 1.3 The analysis and findings in Strike Force Blackford have informed changes to NSWPF policy, procedures and training in relation to the conduct of strip searches in general and in particular, to the conduct of strip searches at music festivals.
- 1.4 The Commission monitored four of the five complaints investigated by Strike Force Blackford under s 101 of the *Law Enforcement Conduct Commission Act 2016* (**LECC Act**). Commission investigators were present as observers during interviews conducted by investigating police officers, conferred with investigating police officers and requested updates on the progress of the investigation.¹

2. The Commission's Report

- 2.1 This report is made pursuant to Part 11 of the LECC Act. Section 138(a) provides that the Commission may, at any time, make a special report to the Presiding Officer of each House of Parliament on any matter arising in connection with the exercise of the Commission's functions.
- 2.2 A copy of this report has also been provided to the Minister as required by s 138(b) of the LECC Act.

3. The complaints investigated by Strike Force Blackford

- 3.1 In March 2019, the Professional Standards Command (**PSC**) of the NSWPF established Strike Force Blackford to investigate three complaints about the lawfulness and conduct of strip searches of four individuals. The PSC is a specialist

¹ *Law Enforcement Conduct Commission Act 2016* (NSW), s 101(2).

command with “*responsibility for setting standards for performance, conduct and integrity within NSW Police.*”² Its functions include the investigation of serious misconduct and “*developing, or contributing to, reference materials, standard operating procedures, policies and training that support professional standards and the application of best practice.*”³ Strike Force Blackford was undertaken by the Investigations Unit of PSC.

- 3.2 Initially Strike Force Blackford investigated three complaints about the strip search of four young women at Hidden Music Festival 2019, Secret Garden Music Festival 2019, and outside The Star Casino in January 2019.⁴ Two additional complaints were later included in the strike force. This involved the strip search of a young woman at Midnight Mafia Festival in 2018 and of two young people at Midnight Mafia Music Festival in 2019.⁵ The Commission monitored the NSWPF investigation of four of the five complaints.
- 3.3 All four monitored investigations involved allegations of misconduct in relation to the conduct and lawfulness of specific strip searches at music festivals between May 2018 and May 2019.
- 3.4 Strike Force Blackford also investigated the strip search of two young women outside The Star Casino in Sydney on 18 January 2019 during a drug detection dog operation.⁶ The investigation of that incident was not monitored by the Commission. That incident included a request by the searching officer to one of the young women to remove her tampon during the strip search. The investigation revealed a lack of clarity for frontline officers regarding the lawfulness of such a request.
- 3.5 In response to this and other factors, the NSWPF produced the Person Search Manual in August 2019 to ensure police officers are appropriately instructed as to how searches are to be conducted.
- 3.6 Summaries of the four complaint investigations monitored by the Commission in Strike Force Blackford are set out below.

² NSWPF website, https://www.police.nsw.gov.au/about_us/organisational_structure/units/professional_standards_command, accessed 28 April 2020.

³ https://www.police.nsw.gov.au/about_us/organisational_structure/units/professional_standards_command accessed 29 April 2020.

⁴ EXT2019-0648; EXT2019-0808; and EXT 2019-1107.

⁵ EXT2019-1594 and EXT2019-2467. These matters relate to strip searches conducted at the Midnight Mafia Music Festival in May 2018 and May 2019.

⁶ EXT2019-0648.

Hidden Music Festival - 2019

- 3.7 On 4 March 2019, the mother of a young woman wrote to the Commission complaining of her daughter's (Ms MIS1) strip search by police officers at the Hidden Music festival, held at Olympic Park in Sydney on 2 March 2019. She alleged her daughter was strip searched. No illicit drugs were located by police during the search. She was made to cough and squat. She was not afforded proper privacy during the search. Her daughter was detained for more than an hour before being evicted from the festival and issued with a six month banning notice from the Sydney Showgrounds. Ms MIS1's mother stated her daughter was "*violated, scared, and treated as a criminal when in fact she had done nothing wrong.*"⁷

Secret Garden Music Festival – February 2019

- 3.8 On 6 March 2019, the parents of a young woman (Ms MIS2), wrote to the Premier of NSW alleging that their daughter had been subjected to a strip search when attending the Secret Garden Festival in February 2019 to work as a performer. They alleged that their daughter was required to pull her underpants down and bend over. They described it as a '*degrading act*'. It was also alleged that immediately following the search, male police officers spoke to their daughter unprofessionally and laughed at her. No illicit drugs were located during the search.⁸

Midnight Mafia Music Festival – May 2019

- 3.9 On 12 May 2019, the Sunday Telegraph published an article entitled '*Our party was over before Midnight.*'⁹ The journalist had spoken to two patrons of the Midnight Mafia music festival 2019 who alleged that they had each been indicated separately by drug detection dogs, strip searched and then evicted from the festival. No illicit drugs were located during either search and the searches were described by the patrons as '*humiliating*'.
- 3.10 Investigating police contacted one of the patrons by telephone on 20 June 2019. She indicated that she did not wish to make any formal complaint regarding her treatment by police. Investigating police were unable to contact the other patron. The allegations were nevertheless investigated.

⁷ 48031/1. Initial email dated 4 March 2019 from Ms MIS18 to the Commission via the email portal.

⁸ E72462987.

⁹ Louise Starkey, *Our party was over before Midnight*, Sunday Telegraph, 12 May 2019.

Midnight Mafia Music Festival – May 2018

- 3.11 In May 2018, an 18 year old woman (Ms MIS3) attended the Midnight Mafia music festival at Olympic Park, Sydney. Ms MIS3 had been indicated by a drug detection dog as she entered the festival. She was then subjected to a number of searches including a strip search. No illicit drugs were located by police. She had her ticket cancelled and was escorted from the venue.
- 3.12 On 30 July 2019, Ms MIS3's solicitor wrote to both the Commission and the NSWPF to complain of Ms MIS3's treatment. It was alleged that Ms MIS3 was subject to a person and bag search then unlawfully strip searched. Ms MIS3 alleged that searching police officers failed to comply with the safeguards for persons subject to strip searches outlined in the *Law Enforcement Powers and Responsibilities Act 2002* (LEPRA) including providing proper privacy during the search, requesting cooperation, providing a reason for the search, and avoiding questioning while the person is undressed.¹⁰ Ms MIS3 described her experience of being strip searched as 'traumatic'.

Common Themes

- 3.13 The investigation of each complaint highlighted a number of significant recurring issues for the NSWPF in relation to strip searches at festivals including:
- The lawfulness of the searches;
 - The adequacy of the record keeping of strip searches undertaken by police officers;
 - Officers stating they felt under pressure to conduct strip searches at festivals;
 - The adequacy of passing information from one officer to the searching officer prior to search;
 - Police officer involvement in issuing banning notices for venues following a search, in circumstances where no offence has been detected;
 - Festival goers describing their experience of police practices such as requests to cough and squat, or bend over as humiliating and,

¹⁰ Part 15 of LEPRA, provides general safeguards related to the exercise of police powers such as police providing persons reasons subject to those powers with identification information and the reasons for exercising the powers. Sections 32 and 33 provide for the preservation of privacy and dignity, and s 32(8), (8A) and (11) provides a person should not be questioned during a search except when that questioning relates to issues of personal safety associated with the search.

- additional concerns about the inadequacy of privacy afforded during strip searches.

4. Legislation and NSWPF policy governing strip searches

Legislation

- 4.1 LEPRAs sets out the powers for police to conduct strip searches, both after arrest in custody settings and in the field, as occurred in the complaints under investigation in Strike Force Blackford. A strip search is defined in LEPRAs as a search of a person or of articles in the possession of a person that may include requiring the person to remove all of his or her clothes, and an examination of the person's body (but not of the person's body cavities) and of those clothes.¹¹
- 4.2 Section 31 of LEPRAs provides a police officer may carry out a strip search of a person in the field if he or she 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.¹²
- 4.3 LEPRAs requires that an officer must form his or her own reasonable suspicion prior to undertaking a search.
- 4.4 In addition, section 32 of LEPRAs provides a number of safeguards governing the conduct of strip searches. Searching police officers must ask for the person's co-operation¹³ and must, as far as reasonably practicable, inform the person to be searched:
- Whether the person will be required to remove clothing during the search,¹⁴ and
 - Why it is necessary to remove the clothing.¹⁵
- 4.5 The search must be conducted in a way that provides reasonable privacy and as quickly as reasonably practicable.¹⁶ The police officer must also conduct the least invasive kind of search practicable in the circumstances.¹⁷

¹¹ *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW), s 3.

¹² *Ibid*, s 31(b).

¹³ *Ibid*, s 32 (3)

¹⁴ *Ibid*, s 32(2)(a).

¹⁵ *Ibid*, s 32(2)(b).

¹⁶ *Ibid*, s 32(4)(a) and (b).

¹⁷ *Ibid*, s 32(5).

4.6 Additional safeguards include:

- The police officer must not search the genital area of the person searched.¹⁸
- A search must be conducted by a police officer of the same sex as the person searched.¹⁹
- A search of a person must not be carried out while the person is being questioned. This does not prevent the asking of questions that only relate to issues of personal safety associated with the search.²⁰
- A strip search must not involve a search of a person's body cavities or an examination of the body by touch.²¹
- 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.²²

Relevant NSWPF policy

4.7 NSWPF policy, and briefings to officers working at operations involving drug detection dogs, instruct officers that an indication by a drug detection dog alone does not constitute reasonable grounds to conduct a search of an individual. There must be additional reasons for conducting a search. These reasons must be included in the record made of the search on the police computer system.

5. The Role of the Commission

5.1 The Commission oversees NSWPF investigations of a class of complaints and other misconduct information about the NSWPF under Part 7 of the LECC Act.

5.2 The Commission may monitor NSWPF investigations from their outset if it considers it is in the public interest to do so.²³ Monitoring allows the Commission to oversight police misconduct investigations in real-time, including attendance at interviews, conferring with police investigators about the investigation and requesting updates about the investigation's progress.²⁴ Commission investigators do not have the power of '*control, supervision or direction*' but there is a duty on investigating police officers to co-operate with Commission investigators.²⁵

¹⁸ *Ibid*, s 32(6).

¹⁹ *Ibid*, s 32(7).

²⁰ *Ibid*, ss 32(8), (8A) and (11).

²¹ *Ibid*, s 33(4).

²² *Ibid*, s 33(5).

²³ *Law Enforcement Conduct Commission Act 2016* (NSW), s 101(1).

²⁴ *Ibid*, s 101(2).

²⁵ *Ibid*, s 107(1).

5.3 The Commission's monitoring of four of the investigations in Strike Force Blackford was achieved with the cooperation of the lead investigator from the PSC.

5.4 During Strike Force Blackford Commission investigators:

- Met with the lead police investigator to discuss the issues to arising from Hidden and Secret Garden music festivals;
- Discussed the complaints relating to the 2018 and 2019 Midnight Mafia music festivals by telephone;
- Observed an interview with a Senior Constable who was a drug detection dog handler at the Hidden music festival in 2019;²⁶
- Observed interviews by the lead investigator of two police officers who were subject to allegations of misconduct in the matter involving Ms MIS1 at Hidden music festival;
- Maintained regular contact with the lead police investigator throughout;
- Discussed emerging issues when necessary (the lead police investigator has provided regular status updates by phone and email);
- Facilitated a meeting between the lead investigator and solicitor for two of the four complainants;
- Reviewed the reports of each investigation into each complaint matter.

6. Strike Force Blackford Findings

6.1 A report collating the systemic and organisational issues that emerged for the NSWPF during the investigations in Strike Force Blackford has been prepared by the lead investigator. The Commission has not yet been provided with this report.

6.2 Separate reports regarding the conduct of each police officer who was subject to an allegation of misconduct have been prepared.

6.3 Ms MIS1 came to the notice of police as a result of an indication by a drug detection dog when entering the Hidden music festival on 2 March 2019. Ms MIS1 was strip searched. Nothing was found. She was issued a six month Banning Notice for the Olympic Park precinct. The investigation found there was insufficient lawful basis for both the strip search of Ms MIS1 and for the issue of the Banning Notice. Sustained Findings were recommended against two of the three police officers investigated in the complaint.

²⁶ Officer MIS4 – see 48031/36 and 38.

- 6.4 Following the indication by the drug detection dog Ms MIS1 was handed to Officer MIS5 by the dog's handler with words to the effect of '*same as the last girl*' and pointing to her groin.²⁷ Officer MIS5, a male officer, decided that Ms MIS1 should be strip searched and escorted her to the strip search area where there were a number of booths being used for that purpose. Officer MIS5 then handed Ms MIS1 to Officer MIS6 (a female officer), repeating the phrase '*same as the last one*'. Officer MIS6 had just searched another young woman who also came to police notice as a result of an indication by a drug detection dog but who had made admissions to police about drug possession prior to being searched. That young woman told police officers that she had illicit drugs secreted internally. Those drugs were provided to a police officer and she was charged accordingly. Officer MIS6 mistakenly believed that Ms MIS1 had also made admissions to other officers that she had illicit drugs secreted somewhere on her person.
- 6.5 Officer MIS5 stated that it was his decision to request Officer MIS6 to strip search Ms MIS1. The investigation found Officer MIS5 had insufficient grounds to form the suspicion required to subject Ms MIS1 to a strip search. He had also provided insufficient details to explain his reasons for the strip search in the Field Processing form and COPS.²⁸
- 6.6 Officer MIS6 stated that she decided to strip search Ms MIS1 on the basis of the indication by the drug detection dog and her belief that Ms MIS1 had made admissions to police officers about having illicit drugs secreted on her body.²⁹ In an interview Officer MIS6 stated that she '*... was under the impression that she had drugs on her based on the words of [Officer MIS5] and the female I searched before her.*'³⁰
- 6.7 The investigation found that it was reasonable for Officer MIS6 to rely on Officer MIS5's advice and that an indication by a drug detection dog combined with the subjective belief that admissions to drug possession were sufficient grounds to undertake the strip search.

'The failure of [Officer MIS5] to properly hand over [Ms MIS1] to [Officer MIS6] was the cause of the confusion and [Officer MIS6] should not be held accountable. This was a systemic failure, and while the factual

²⁷ Typed record of interview between Officer MIS7 and Officer MIS5, 18 June 2019, p3.

²⁸ COPS Event record E70460207, p 9 s 137 report of Officer MIS5.

²⁹ Investigator's report, Officer MIS6, IAPRO EXT2019-0808 pp 3, 5 and 9.

³⁰ *Ibid*, p 9.

*circumstances do not amount to sufficient grounds, I do not believe [Officer MIS6] has committed any misconduct in these circumstances.*³¹

- 6.8 Investigating police have advised the Commission that the process of handover of a person to another officer to conduct a search is to be addressed in the systems-focused and organisational report.
- 6.9 The policing of large music festivals involves significant police resources. Officers are drawn from different commands, often in a user-pays capacity. Some officers are not experienced in exercising the police powers commonly required at festivals. When interviewed on 18 June 2019, Officer MIS5 stated that he rarely conducted strip searches,³² that he was aware that an indication from a drug detection was insufficient for a strip search, that he felt that officers were *'sometimes'* put under *'pressure'* to conduct strip searches and that many officers may not have a *'good knowledge of what you can and can't do'* under sections 31 to 33 of LEPR.³³
- 6.10 Inquiries are being conducted by investigating police concerning the deletion of the police computer records regarding Ms MIS1's strip search and Banning Notice. Responsibility for the deletion of an event from the COPS record must be directed to the Commissioner of Police who will then forward the request to the appropriate Region for consideration.
- 6.11 An apology is a matter for the consideration of the Commissioner of Police. The Commission has requested and recommends that the NSWPF give consideration to issuing an apology by to Ms MIS1.

The conduct of the strip search

- 6.12 Ms MIS1's complaint raised allegations of misconduct about the conduct of the strip search by Officer MIS6. These allegations were that the booth in which she was searched was not private,³⁴ that Officer MIS6 questioned her during the strip search³⁵ and that she was made to cough and squat during the strip search.
- 6.13 Officer MIS6 stated that *'in terms of the location provided to conduct the searches... the doors were unable to be fully closed as they apparently locked*

³¹ s 137 report re Officer MIS6 IAPRO EXT2019-0808 submitted 21 November 2019, p 6.

³² Typed record of Interview between Officer MIS7 and Officer MIS5 on 18 June 2019, p 11.

³³ *Ibid.*

³⁴ *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW), s 32.

³⁵ *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW), s 32(8).

*automatically.*³⁶ Ms MIS1 stated the door was left open during the strip search.³⁷ The investigator concluded that if the booths did not provide reasonable privacy, it was not the fault of Officer MIS6, but the responsibility of the police officers responsible for planning the policing response to the event.³⁸ In these circumstances officer safety required the door to remain unlocked.

6.14 Following discussion and correspondence between the Commission and investigating police the lead investigator undertook to conduct further inquiries into whether the NSWPF properly fulfilled its obligations under sections 32 and 33 of LEPRa regarding the provision of reasonable privacy in circumstances where the policing event is pre-planned with strip searches expected.

6.15 Investigating police also advised that the nature and extent of the questioning by Officer MIS6 of Ms MIS1 during the search may be considered a minor breach of LEPRa that may be addressed by a reminder to Officer MIS6 of her statutory responsibilities.³⁹ An officer is not prevented from asking questions that relate to personal safety. In the circumstances surrounding this search there was no sustained finding of misconduct arising from the questioning of Ms MIS1.

Banning Notice

6.16 Following the strip search, Ms MIS1 was issued a Banning Notice by Officer MIS5, banning her from entering the Sydney Showgrounds for a period of six months.⁴⁰ Officer MIS5 was accompanying Ms MIS1 back to the festival until an officer advised him that a sergeant wished to speak to him. Officer MIS5 sought advice from Officer MIS8 who then questioned Ms MIS1 about whether she had consumed any alcohol or drugs prior to attending the festival. Ms MIS1 advised she had consumed one alcoholic drink. Officer MIS5 believed he was under a direction from Officer MIS8 to issue a Banning Notice to Ms MIS1, despite forming the conclusion that she was not intoxicated.⁴¹ The investigation found that there *'was insufficient reasons or grounds to issue [Ms MIS1] with a Banning Notice.'*⁴²

6.17 On 2 October 2019 Officer MIS8 was interviewed. She explained her role at the festival was to provide advice to police officers on the ground about *'what they can*

³⁶ s 137 [Officer MIS6] report, p 7.

³⁷ Letter to the Commission from RLC dated 18 April 2019, p 2.

³⁸ s 137 [Officer MIS6] report, p 7.

³⁹ Email from Officer MIS7 6 April 2020.

⁴⁰ Sydney Olympic Park Banning Notice #4753, issued 2 March 2019 at 1.33pm.

⁴¹ COPS Event E70460207.

⁴² s 137 Investigator's report into Officer MIS5 (39710) submitted 3 December by Officer MIS7 EXT2019-0808, p 9.

and what they can't do.⁴³ The investigation found that she had over-stepped her role by questioning Ms MIS1 directly. The investigation recommended Sustained Findings against Officer MIS8 and Officer MIS5 in relation to the issuing of the Banning Notice. Officer MIS5 was free to exercise his discretion and could have elevated the issue to the next level of command.⁴⁴

Secret Garden Music Festival – 2019

6.18 The investigation of the complaint from the parents of Ms MIS2 confirmed that she came under notice when entering the Secret Garden music festival as a result of an indication by a drug detection dog and was subject to a strip search by Officer MIS9. The investigation found that there was no apparent justification for the strip search of Ms MIS2 and that Officer MIS9 appears to have believed *'that she had been directed to search all persons upon whom the drug dogs had detected, and she followed these instructions'*.⁴⁵ Sustained findings were recommended in relation to the lawfulness of the search and the adequacy of the records created about the search.

6.19 On 21 August 2019 investigating police interviewed Officer MIS9. Officer MIS9 could not initially recall the strip search of Ms MIS2, but later recalled some general conversation with her. Nor could she recall receiving a briefing from the Dog Unit at the festival.

*'I don't recall the female herself at all. I recall on the day I strip searched a lot of females. And the majority of those females I witness(ed) (sic) the drug dog indicate on. There were only one or two (women) that were waiting outside the (search) tent and I was directed to search them due to a drug dog indication.'*⁴⁶

6.20 Officer MIS9 stated that she attended a general briefing prior to the festival but she could not recall whether this briefing included information that an indication from a drug detection dog was insufficient to justify a strip search. She stated;

'We were told in the briefing that for any drug dog indications, the person was to be taken to the tents and searched. If the person did not want to be

⁴³ Typed record of interview between Officer MIS7 and Officer MIS8, 2 October 2019, p 5.

⁴⁴ s 137 Investigator's report into Officer MIS5 submitted 3 December by Officer MIS7 EXT2019-0808, p 9.

⁴⁵ s 137 report EXT2019-1107 subject officer MIS9, p 5.

⁴⁶ Typed record of interview between Officer MIS7 and Officer MIS9 at LAC1 Police Station on 21 August 2019, p3. EXT2019-1107.

*searched (we were to) make sure their ticket is voided in front of you and send them on their way.*⁴⁷

- 6.21 The investigation confirmed separately that a briefing had been provided to officers working at the festival by the Dog Unit in which it was conveyed that an indication by a drug detection dog was not enough to justify a strip search of a person. Officer MIS9's attendance at that briefing could not be established.
- 6.22 Officer MIS9 was a junior officer at the time and felt under pressure to conduct strip searches.⁴⁸ She felt that she was *'not in a position to say 'no' to anyone when I was directed to search people'*.⁴⁹ However she considered individual circumstances and conducted searches based upon her own finding and observations, including general searches.
- 6.23 The investigation established that the records made of the search of Ms MIS2 were inadequate and this issue was also sustained.
- 6.24 Following the strip search, Ms MIS2 was returning to the festival when a group of male police officers spoke to her and laughed. This experience was included in the letter of complaint and described as 'intimidating' given the circumstances. The investigation established that Officer MIS10 made comments to Ms MIS2 to the effect of *'the drug dog sat for you again, we will have to press charges'* and other officers laughed and stated she should *'take a joke'*.
- 6.25 Officer MIS10 acknowledged that his comments were inappropriate and unprofessional. He stated he had attempted to make light of a difficult situation and intended no malice and was remorseful. The Code of Conduct and Ethics provides that police officers must behave in a way that upholds the values and good reputation of the NSWPF and 'must treat everyone with respect, courtesy and fairness.'⁵⁰ A breach of the NSWPF Code of Conduct and Ethics was sustained.

Midnight Mafia Music Festival – 2019

- 6.26 This complaint investigation was initiated from a newspaper article. It was undertaken without the assistance of the two young people searched. While this limited the investigation the officers who conducted strip searches of Ms MIS11 and Mr MIS12 were identified through police records of the searches. Officer MIS13 strip

⁴⁷ Typed record of interview between Officer MIS7 and Officer MIS9 at LAC1 Police Station on 21 August 2019, p 4.

⁴⁸ Typed record of interview between Officer MIS7 and Officer MIS9 on 21 August 2019, p 8.

⁴⁹ Typed record of interview between Officer MIS7 and Officer MIS9 on 21 August 2019, p 9.

⁵⁰ NSWPF, Code of Conduct and Ethics: points 1 and 4.

searched Ms MIS11 and Officer MIS14 and Officer MIS15 strip searched Mr MIS12. Both individuals came under police notice following separate indications by drug detection dogs.

- 6.27 The searching officers were interviewed. The officers described a detailed briefing given to police officers working at the festival. This briefing included information and intelligence about the high use of drugs at the previous year's event and at hardstyle⁵¹ events generally, the requirement that more than an indication from a drug detection dog was required to justify a search, and common drug concealment methods.⁵² According to Officer MIS13, officers were also advised that there had been more than 3,500 MDMA pills confiscated at the 2018 Midnight Mafia music festival event and 256 overdoses or persons requiring medical attention.⁵³
- 6.28 Officers MIS13 and MIS14 stated they felt under pressure to conduct strip searches as opposed to general or frisk searches.⁵⁴ Officer MIS13 stated:
- 'I felt police were under pressure at this event to conduct strip searches.'*⁵⁵
- 6.29 Officer MIS13 stated she based her decision to strip search Ms MIS11 on the indication by the drug detection dog, Ms MIS11's demeanour which she described as *'nervous, evasive and verbally defensive'*. Officer MIS13 also conducted additional inquiries.
- 6.30 After the search Ms MIS11 made some admissions to Officer MIS13. Based on the information available to Officer MIS13, she sought advice from a sergeant who instructed her that Ms MIS11 would be evicted based on a policy set by the licensee relating to ticket-holders.
- 6.31 Officer MIS14 advised the strip search of Mr MIS12 was based on the indication by a drug detection dog, the nature of the event, and other information available to Officer MIS14. This was supported by Officer MIS15.
- 6.32 The investigation recommended Not Sustained findings against both officers. Mr MIS12 left the festival at the request of Ms MIS11 following her eviction.

⁵¹ Hardstyle is an electronic dance music genre.

⁵² Typed record of interview between Officer MIS7 and Officer MIS13 on 8 August 2019 p 4.

⁵³ Typed record of interview between Officer MIS7 and Officer MIS13 on 8 August 2019 p 4.

⁵⁴ Typed record of interview between Officer MIS7 and Officer MIS14, 2 September 2019, p 7; Typed record of interview between Officer MIS7 and Officer MIS13, 8 August 2019, p 9.

⁵⁵ Typed record of interview between Officer MIS7 and Officer MIS13, 8 August 2019, p 9.

Midnight Mafia Music Festival - 2018

- 6.33 The investigation of the complaint by Ms MIS3 about being strip searched and evicted from the Midnight Mafia music festival in 2018 established that she had been strip searched by two female officers, Officer MIS16 and Officer MIS17.
- 6.34 Officer MIS16 stated that she and Officer MIS17 witnessed the drug detection dog indicate Ms MIS3 to its handler. She then spoke to Ms MIS3 who advised that she had did not have any prohibited drugs on her but that some of her friends had used drugs. Officer MIS16 stated;

*'Given the festival is known for drug use, the indication by the dog (especially around the crotch area) and the fact that she stated she had contact with drugs through friends, we decided to search her, as we suspected she may be in possession of a prohibited drug.'*⁵⁶

- 6.35 Ms MIS3 was taken to the search area by the two female officers. Officer MIS16 then commenced to complete the Field Processing Form and Officer MIS17 commenced a general search of Ms MIS3 and her bag. The officer located a Vicks inhaler and a lollipop. It has been suggested that these items have been linked to the use of prohibited drugs at music festivals. Ms MIS3's possession of these items increased the searching officer's suspicion that she may have been in possession of drugs.
- 6.36 Ms MIS3 was then strip searched by Officer MIS17 while Officer MIS16 assisted with the clothing. The two officers deny any wrongdoing during the search.
- 6.37 The investigation recommended that Not Sustained findings be made with respect to the lawfulness and conduct of the search.
- 6.38 The investigation found that no required record had been created on the NSW Police computer system of the search. This issue was Sustained against the subject officers who explained the error as arising from a miscommunication between the two as to who would create the required record.

Banning Notice

- 6.39 Following the search, Officer MIS16 confiscated Ms MIS3's entry ticket and evicted her from the festival. No reasons for the eviction were recorded on the relevant Field Processing Form. The investigation established that Officer MIS16 was

⁵⁶ Typed record of interview between Officer MIS7 and MIS16, 12 December 2019, p 4.

following a direction from a senior officer to evict Ms MIS3. For this reason the issue was not sustained against Officer MIS16.

- 6.40 The investigation established that a decision was made prior to the festival in consultation with the event commander, the event licensee, the festival promoter and senior management of the Royal Agricultural Society that persons searched were to be evicted even in circumstances where nothing was found.⁵⁷

7. Ongoing work to address systemic issues and develop policy solutions

- 7.1 As part of its ongoing strip search inquiry the Commission provided a draft report in July 2019 to the Commissioner of Police based on our review of Standard Operating Procedures governing strip searches in police custody. On 2 September 2019, the Commissioner of Police advised that the NSWPF supported all the recommendations or had implemented the recommendations in updated policy.⁵⁸
- 7.2 The NSWPF implemented two new policy documents dealing with person searches in custody and person searches in the field. These are the *NSWPF Charge Room and Custody Management Standard Operating Procedures* and the *NSWPF Person Search Manual, 2019*. The NSWPF have introduced new roles of Process Area Supervisor and Coordinator at major events, improved guidance at operational briefings around “*seriousness and urgency*” and the role of support persons. The NSWPF has also improved education and briefing procedures for searching officers and implemented COPS enhancements around the recording of strip searches. The NSWPF continues to work towards best practice for policing music festivals. This is reflected in the recent comments by LECC in operations Gennaker and Brugge.
- 7.3 All of the incidents the subject of investigation in Strike Force Blackford occurred prior to the introduction of the Person Search Manual in August 2019.
- 7.4 The new policies contain improvements to the clarity and consistency of procedures. A number of issues remain for consideration.
- 7.5 Many of the people who experienced a strip search investigated in Strike Force Blackford described their experience as humiliating or degrading. Persons searched stated they were requested to cough and squat or to bend over.

⁵⁷ EXT2019-2467 Investigator’s report into Officer MIS16 (RN50000), February 2020, p 4.

⁵⁸ Letter from Commissioner of Police, NSW Police Force, to the Chief Commissioner, Law Enforcement Conduct Commission, 2 September 2019.

7.6 The Commission's report, *Review of NSW Police Force Standard Operating Procedures for strip searches in custody*, January 2020, discusses these issues and others in chapter 6. In that report we note that the,

*'... NSWPF sought advice from the Solicitor General on the question whether a person can be asked to move a part of their body for the purpose of a search. Although the answer given is, in substance, that the suspect can be asked to perform these actions, no opinion was provided as to whether the suspect may be required to perform them or, whether a request having been made, the suspect is under a legal obligation to comply.'*⁵⁹

7.7 The Person Search Manual currently states that police officers may, amongst other things, request that a person squat, lift their breasts, part their buttock cheeks or turn their body.⁶⁰ The NSWPF does not intend to reverse their current instructions to police on these aspects of person searches.

7.8 The Commission has been advised that a second version of the Person Search Manual is currently being developed.

8. Conclusion

8.1 Strike Force Blackford was a unique investigation initiated by the Professional Standards Command and including a welcome focus on broader organisational issues. Many practices have been substantially improved based on these particular investigations, a wider body of complaints that have been considered, the reports of the LECC and general policy considerations.

8.2 The Commission appreciated the cooperation of the lead investigator in Strike Force Blackford.

8.3 The Commission is looking forward to considering the systems-focussed report prepared by the lead investigator which is expected at the beginning of August.

⁵⁹ The Law Enforcement Conduct Commission, *Review of NSW Police Force Standard Operating Procedures for strip searches in custody*, January 2020, p 37.

⁶⁰ NSW Police Force, *Person Search Manual*, 20 August 2019, p 7.

Law Enforcement (Powers and Responsibilities) Act 2002 No 103

Sections 30-34A

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) 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.

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.

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).

33 Rules for conduct of strip searches

(cf Cth Act, s 3ZI)

- (1) A police officer who strip searches a person must, as far as is reasonably practicable in the circumstances, comply with the following—
 - (a) the strip search must be conducted in a private area,
 - (b) the strip search must not be conducted in the presence or view of a person who is of the opposite sex to the person being searched,
 - (c) except as provided by this section, the strip search must not be conducted in the presence or view of a person whose presence is not necessary for the purposes of the search.
- (2) A parent, guardian or personal representative of the person being searched may, if it is reasonably practicable in the circumstances, be present during a search if the person being searched has no objection to that person being present. Subsection (1)(b) does not prevent any such person who is of the opposite sex to the person being searched from being present during the search.

- (3) A strip search of a child who is at least 10 years of age but under 18 years of age, or of a person who has impaired intellectual functioning, must be conducted—
- (a) in the presence of a parent or guardian of the person being searched, or
 - (b) if that is not acceptable to the person, in the presence of another person who is not a police officer and who is capable of representing the interests of the person being searched and whose presence is acceptable to that person.
- (3A) Subsection (3) does not apply if a police officer suspects on reasonable grounds that—
- (a) delaying the search is likely to result in evidence being concealed or destroyed, or
 - (b) an immediate search is necessary to protect the safety of a person.
- In such a case, the police officer must make a record of the reasons for not conducting the search in the presence of a parent or guardian, or other person capable of representing the interests, of the person being searched.
- (4) A strip search must not involve a search of a person’s body cavities or an examination of the body by touch.
- (5) A strip search must not involve the removal of more clothes than the person conducting the search believes on reasonable grounds to be reasonably necessary for the purposes of the search.
- (6) A strip search must not involve more visual inspection than the person conducting the search believes on reasonable grounds to be reasonably necessary for the purposes of the search.
- (7) A strip search may be conducted in the presence of a medical practitioner of the opposite sex to the person searched if the person being searched has no objection to that person being present.
- (8) This section is in addition to the other requirements of this Act relating to searches.
- (9) In this section—
- impaired intellectual functioning* means—
- (a) total or partial loss of a person’s mental functions, or
 - (b) a disorder or malfunction that results in a person learning differently from a person without the disorder or malfunction, or
 - (c) a disorder, illness or disease that affects a person’s thought processes, perceptions of reality, emotions or judgment, or that results in disturbed behaviour.

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

34 No strip searches of children under 10 years

A strip search must not be conducted on a person who is under the age of 10 years.

34A Searches carried out with consent

- (1) A police officer may search a person with the person's consent but only if the police officer has sought the person's consent before carrying out the search.
- (2) A police officer must, before carrying out any such consensual search, provide the person with—
 - (a) evidence that the police officer is a police officer (unless the police officer is in uniform), and
 - (b) the name of the police officer and his or her place of duty.

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