

# Executive Summary

**Chapter 1** sets out the history of the Inquiry, which commenced in October 2018. The chapter outlines the various Commission investigations into strip searches conducted by police officers in NSW, as well as police investigations oversights by the Commission. It also sets out previous Commission work which analysed the policies, education and training provided to NSW police officers in relation to strip searches. It also provides an overview of the legislative basis for strip searches under the *Law Enforcement (Powers and Responsibilities) Act 2002* (LEPRA), and considers NSW Police Force data pertaining to searches and strip searches from 2015-2020. Appendix C presents information about strip searches across the state by location.

**Chapter 2** sets out changes to strip search practices, policy and other instructions that the NSW Police Force has implemented over the course of the Inquiry. These include the introduction of a new *Person Search Manual* and *Charge Room and Custody Management Standard Operating Procedures*, changes to processes for strip searching at major events such as music festivals, and changes to the way police records of strip searches are checked and audited. Given that police data indicates a high proportion of strip searches of people who identify as Aboriginal and Torres Strait Islander (17-19.5% of strip searches in each of the four years from 2016-17 were of Aboriginal people), we recommend enhanced auditing of strip searches of this demographic to increase scrutiny of police practices in this regard.

**Chapter 3** takes a detailed look at the threshold requirements that must be satisfied before an officer can lawfully strip search a person, what our investigations revealed about how these thresholds have been interpreted in practice, and what improvements in policy and practice are needed to increase compliance with the law. Every investigation completed by the Commission during the Inquiry found issues regarding compliance with the thresholds, the most common being failure to separately consider each of the threshold requirements that are set out in LEPRA, opening the risk that the strip search is not conducted lawfully. This chapter contains five recommendations for changes to the policy guidance given to police officers to clarify the steps that need to be considered prior to conducting a strip search. We focus on the requirement for seriousness and urgency before any strip search is undertaken 'in the field.' We emphasise that under LEPRA, even if a person specifically consents to being strip searched, officers are required to satisfy the threshold requirements for strip searches. We make a recommendation to improve the records made by police of the reasons they undertake a strip search and a recommendation that Parliament consider providing an exhaustive definition of a strip search within LEPRA.

**Chapter 4** considers the police practice of requiring a person to squat or move their genitals during a strip search. It also considers whether it is lawful for police to physically force a person to squat or open their legs during a strip search or even to remove a person's clothing during a strip search. While the NSW Police Force policy was silent on this practice when the Inquiry commenced, the 2019 *Person Search Manual* told officers they could ask a person to do things to allow visual inspection, such as squat, lift testicles, part buttock cheeks, and lift breasts. There are differing views about whether police are empowered to ask or require a person to do such things to facilitate a visual inspection. We recommend the police policy makes it

explicit that such requests cannot be made routinely, and must specifically account for the threshold requirements in ss 32(5) and (6) and 33(5) and (6) of LEPPRA. We also recommend that police should be prohibited from touching a person's breasts, genitals or buttocks during a strip search. We consider the provision that makes it lawful for police to use reasonable force. The differing views as to whether police are permitted to *ask* or *require* a person to squat or move their breasts or genitals to allow visual inspection during a strip search has led to a lack of clarity as to whether (and if so, to what extent) it can be appropriate to use force to facilitate a visual inspection of a person's genitals and breasts. Accordingly, we recommend that Parliament clarify whether police can compel a person to squat, bend over, or move their genitals or breasts during a strip search to facilitate a visual inspection.

In **Chapter 5** we look at police practices for strip searching at music festivals. While police have no distinct statutory powers in relation to strip searches at music festivals, these events involve coordinated and pre-planned police operations, often supported by drug detection dog warrants. We look at how the use of drug detection dogs impacts decisions about conducting strip searches at music festivals and consider the NSW Police Force response to the Coroner's recommendations arising from the 2019 *Inquest into the death of six patrons of NSW music festivals*. This chapter also looks more closely at a range of changes to strip search practices introduced by the NSW Police Force to introduce quality control for decisions to strip search, provide patrons with more information about their rights during searches and improve officer training. We recommend that the NSW Police Force and the Commission conduct a future audit as a means of evaluating the impact of the new processes and training on the way strip searches are carried out.

We make recommendations to address a range of issues related to strip searches in the field: that officer training clarifies which offences are serious enough to warrant a strip search in the field and give examples of what might not be a serious enough offence; that Parliament consider clarifying the term 'seriousness and urgency' in LEPPRA; that the reasons for strip searches be recorded on Body Worn Video and that officers be provided with more practical advice about how to manage situations where a person has concealed drugs internally.

To mitigate the potential for negative inferences being drawn from COPS records relating to strip searches, we recommend that officers be instructed not to record a person's identifying details in COPS unless drugs are found (or some other offence is detected) during the search.

**Chapter 6** considers strip searches of young people. A focus within this chapter is the expert opinion sought by the Commission as a result of Operation Gennaker about the psychological impacts of being strip searched on young people. That opinion notes that young peoples' brains are in a process of development through adolescence to young adulthood, making them particularly vulnerable to the impacts of a traumatic experience. It describes a range of short and long term psychological impacts likely following a strip search, ranging from humiliation and distress to aggressive responses and trauma. We recommend that officer training in relation to strip searches should canvass the potential traumatic effects on young people set out in that expert opinion.

In **Chapter 7** we consider some of the practical issues around maintaining privacy and dignity when strip searches are conducted in the field, focussing on searches in

caged vehicles and at pre-planned operations. We state that a caged vehicle is generally an inappropriate location for a strip search, and searches conducted in caged vehicles would only be justifiable in rare and limited circumstances. We recommend that officer training specifically addresses what limited circumstances might be allowable. In relation to pre-planned events, the Commission recommends that the NSW Police Force always provide appropriate private spaces for conducting strip searches. The pre-planned nature of these events means that the NSW Police Force should always be confident that any doors or openings of spaces used for strip searches close properly. We also consider the use of CCTV to film searches in custodial areas, noting the new policy implemented by the NSW Police Force in 2019 appropriately addresses privacy concerns previously raised by the Commission about this practice.

**Chapter 8** considers evidence and information which reflects the way police have been educated and trained in relation to their strip search powers, along with the new initiatives being introduced to reinforce the appropriate use of strip search powers. We make recommendations that the Associate Degree in Policing Practice covers some of the key issues canvassed in this report, that regular scenario based training be provided to police officers about what will and will not be sufficient to satisfy the requirement that circumstances are serious and urgent before conducting a strip search in the field, and that all of the changes and clarifications regarding the threshold requirements for strip searches discussed in this report are included in the training and education given to recruits and officers.