

LECC

Law Enforcement
Conduct Commission

Hearing: Operation Brugge

Before the Hon M F Adams, Chief Commissioner

Held at Level 3, St James Centre,
Elizabeth Street, Sydney

On Monday, 21 October 2019 at 10am

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2 THE CHIEF COMMISSIONER: This is a public hearing
3 generally into matters involving strip searches. The scope
4 of the hearing will become clear when counsel assisting
5 opens to the Commission for the interest of all those
6 present, but I think that I will take, first of all,
7 applications for leave to appear.

8
9 MR MURPHY: Good morning, Chief Commissioner. My name is
10 Murphy, solicitor, and I seek leave to appear for the
11 witness officer BR1.

12
13 THE CHIEF COMMISSIONER: Thank you, Mr Murphy.

14
15 MR HAMMOND: I seek leave to appear for officer BR2.

16
17 MS CHAPMAN: I seek leave to appear for the Commissioner
18 of Police.

19
20 THE CHIEF COMMISSIONER: Yes.

21
22 MS KLUSS: My name is Kluss. I seek leave to appear for
23 officer BR4.

24
25 MR EURELL: Good morning, Commissioner. My name is
26 Eurell. I seek leave to appear for officer BR3.

27
28 THE CHIEF COMMISSIONER: Yes. I should say something
29 about names. As is obvious, the Commission has decided
30 that the privacy of witnesses should be maintained to the
31 extent consistent with the requirements of the hearing.

32
33 Now, some persons who are witnesses, because they need
34 to state their duties and responsibilities, could be
35 identified, theoretically, by inquiries outside, but
36 I order that their names, even if that information is
37 obtained by sources other than evidence in the Commission,
38 are not to be published.

39
40 I should state that pursuant to section 64 of the Law
41 Enforcement Conduct Commission Act, the Commission has
42 appointed Dr Peggy Dwyer as counsel assisting the
43 Commission, and I shall, in due course shortly, ask her to
44 make some opening remarks. Those remarks will make it
45 clear, what the general scope and purpose of the
46 examinations is. Thank you, Ms Dwyer.

47



1 MS DWYER: Thank you. From Monday to Thursday of this
2 week, the Commission will hear evidence in an inquiry known
3 as Operation Brugge. I appear as the Chief Commissioner's
4 counsel assisting and will call evidence before the
5 Commission.
6

7 In this opening address to the Commission, I propose
8 to proceed by setting out, firstly, the powers of this
9 Commission and why a public hearing is to be conducted;
10 secondly, the types of issues that will be addressed;
11 third, the nature of the music festival, Splendour in the
12 Grass; fourth, the broader legal context of strip searches
13 conducted by police; fifth, the specific incident that took
14 place; and finally, sixth, the witnesses that we can expect
15 to give evidence this week.
16

17 The Law Enforcement Conduct Commission is a permanent
18 independent investigative commission providing oversight of
19 the NSW Police Force and the New South Wales Crime
20 Commission. The Commission is separate from and completely
21 independent of the NSW Police Force and the New South Wales
22 Crime Commission. This means the Commission can both
23 investigate and oversight law enforcement conduct
24 impartially and fairly. The functions and powers of the
25 Commission are governed by the Law Enforcement Conduct
26 Commission Act of 2016.
27

28 While many hearings are conducted in private, the
29 Commission may decide to hold a public hearing where it is
30 deemed to be in the public interest. This hearing will
31 investigate the complaint that, at the Splendour in the
32 Grass music festival in Byron Bay, police officers detained
33 and strip searched a young person, a female child, in the
34 absence of a parent, guardian or other support person, in
35 breach of the law.
36

37 Because the complaint involves a young person, it is
38 appropriate that her evidence be given at a private
39 hearing, which I anticipate will take place later this
40 year. However, Chief Commissioner, I will shortly read on
41 to the record the substance of her complaint in a statement
42 that she has provided.
43

44 It can be readily accepted by many people that
45 policing at such gatherings as music festivals is necessary
46 for reasons of public safety. The Commission understands
47 that drug use is a major problem in society and presents



1 a particular danger for some young people, who, because of
2 their immaturity, may be impulsive and risk-taking. As the
3 Chief Commissioner knows, over the last summer period,
4 there were five tragic deaths of young adults at music
5 festivals and many, many more hospitalisations.

6
7 In that context, there is considerable pressure on
8 police to attempt to reduce the number of drug-related
9 deaths and reduce harm. The Commission accepts that police
10 are entitled to use the full extent of their lawful powers
11 to attempt to reduce drug-related harm.

12
13 It is perhaps important at this point that I say
14 something about what this hearing is not about. This
15 hearing is not about whether drugs should be illegal or
16 decriminalised. It has nothing to do with the current
17 debate about pill testing or, indeed, the current debate
18 about whether drug dogs should be at the entrance to music
19 festivals; but it is about the narrow but vitally important
20 issue concerning compliance with the law of this state.

21
22 Police powers are limited by the law for good reason,
23 and there can be no serious debate about the need for the
24 police to be vigilant in obeying the law, especially when
25 that amounts to an interference with the fundamental rights
26 of liberty and personal integrity, for obvious reasons,
27 especially when dealing with young people.

28
29 But, in the end, just as with members of the public,
30 police have a duty to obey the law and ultimately to
31 enforce the law. Freedom from arbitrary detention and
32 arrest is recognised as an important right for the citizens
33 of a democracy and police do not have an untrammelled right
34 to detain, question or search.

35
36 A strip search is, by necessity, a grave intrusion
37 into a citizen's privacy and dignity. Absent any legal
38 justification, it would constitute an assault and
39 I anticipate that the Commissioner will hear that it is
40 capable of causing great distress and lasting harm.

41
42 The power to strip search can be lawfully exercised by
43 police in certain circumstances, and, as will be evident
44 from what I have already said, it is accepted by the
45 Commission that there are times when it is a justified and
46 necessary course of action.

1 If there has been a breach of the law by police in the
2 conduct of the strip search of a young person, then it is
3 important for the public to know the answers to questions
4 like:

5
6 What are the circumstances in which that breach of the
7 law has occurred?

8 Which police officers were involved in the
9 decision-making?

10 Was that a failure of individual officers to follow
11 clear guidelines and legislation, or is there a lack of
12 guidance from senior police as to why and when strip
13 searches are to be conducted?

14 What safeguards were in place as at 2018 to ensure
15 compliance with the legislation?

16 Why was the legislation and any relevant safeguard
17 ignored on this occasion, if that is what has occurred?

18 What is in place to ensure that it does not happen
19 again?

20
21 It is an important part of maintaining public
22 confidence in the NSW Police Force as an institution and
23 the important work of its officers that this public inquiry
24 take place.

25
26 Splendour in the Grass is an annual music festival
27 held in July in the North Byron Parklands, in Yelgun,
28 New South Wales. The festival showcases popular and
29 established music artists as well as emerging Australian
30 artists. It began in 2001 as a one-day event and is now
31 a three-day event that attracts around 36,000 patrons.

32
33 Splendour in the Grass is an all-ages festival, and
34 I expect, Chief Commissioner, that the Commission will hear
35 that it attracts a significant percentage of teenagers and
36 young adults, but also family groups and older patrons.
37 I anticipate that the Commission will hear that a lot of
38 teenage children attend the festival with friends of
39 a similar age and they are not accompanied by a parent or
40 guardian.

41
42 A number of security and emergency services assist at
43 the festival. Police provide services for the entire
44 festival to ensure the maintenance of law and order,
45 including by conducting operations targeted at the use and
46 sale of illicit drugs.

1 The Commission will hear about a number of legal and
2 policy documents that govern the powers police have to stop
3 and search citizens, including at the music festival.
4

5 In New South Wales, police powers are governed
6 primarily by the Law Enforcement (Powers and
7 Responsibilities) Act known as LEPR. Part 4 deals with
8 search and seizure powers without a warrant. Section 21(1)
9 states that a police officer may, without a warrant, stop,
10 search and detain a person and anything in their control,
11 if the officer suspects on reasonable grounds that
12 particular circumstances set out exist, and that includes
13 a suspicion that a person has in his or her possession or
14 under his or her control, in contravention of the Drug
15 Misuse and Trafficking Act, a prohibited plant or drug.
16

17 Section 30 of LEPR states that, for the purposes of
18 a general personal search, a police officer may quickly run
19 their hands over a person's outer clothing and may require
20 the person to remove his or her coat or jacket or similar
21 article of clothing and any gloves, shoes, socks and hat,
22 but not, with the exception of a strip search, all of their
23 clothing, and for a general search, a police officer may
24 examine anything in possession of the person or pass an
25 electronic metal device over them.
26

27 Section 31B governs strip searches at a music festival
28 like Splendour in the Grass. It states relevantly that
29 a police officer may carry out a strip search of a person
30 if the police officer suspects on reasonable grounds that
31 a strip search is necessary for the purposes of the search
32 and that the seriousness and urgency of the circumstances
33 make the strip search necessary.
34

35 Section 32 sets out requirements to ensure the
36 preservation of privacy and dignity during the search.
37 Section 33 provides for specific rules relating to strip
38 searches of children. Relevantly, it includes the
39 requirement in section 33(3) that a strip search of a child
40 between the ages of 10 and 18 must be conducted: (a) in
41 the presence of a parent or guardian of the person being
42 searched; or (b) if that is not acceptable to the young
43 person being searched, in the presence of another person
44 who is not a police officer, and who is capable of
45 representing the interests of the person being searched and
46 whose presence is acceptable to that person.
47

1 A child cannot waive their right to the presence of
2 a parent, guardian or independent person.

3
4 The actions of police are further governed by
5 operational orders which remain protected documents and are
6 not subject to publication. I refer here, Chief
7 Commissioner, only to the fact of the existence of the
8 NSW Police operational orders for Splendour in the Grass
9 2018 and the drug dog operational orders 2018, two
10 documents that are intended to help instruct police in the
11 execution of their duties.
12

13 The 2018 operational orders for the July festival were
14 prepared by [NAME SUPPRESSED]. At this point I note that
15 there are confidential names, and so there is
16 a non-publication order over that officer's name and I will
17 refer to him from now on as officer BR1.
18

19 THE CHIEF COMMISSIONER: Yes. There is to be no
20 publication of that name.
21

22 MS DWYER: A specific drug dog operation took place at
23 Splendour in the Grass as at other festivals around
24 New South Wales. I anticipate that the Commission will
25 hear that dogs were used on entry and throughout the
26 festivals and campgrounds. For Splendour in the Grass
27 a warrant was granted to allow police to use dogs to carry
28 out the detection of prohibited drugs or plants in the
29 possession or control of a person and to use any persons
30 necessary to assist in the execution of the warrant.
31

32 I come now to the specific incident that took place.
33 Shortly after the incident. Which I will come to, this
34 Commission received a complaint, submitted on behalf of
35 a teenage child, by a solicitor known in the Commission as
36 BRT. That person is a criminal law specialist of
37 25 years-plus practising in the area. The name of the
38 child was provided and she will be known in the Commission
39 as BRC.
40

41 The complaint alleged that a child was strip searched
42 by a member of the NSW Police Force, following a false
43 positive detection by a sniffer dog at the entrance gate to
44 the Splendour in the Grass festival. At the time, she was
45 16 years of age. The complaint alleged that the young
46 person was strip searched without the police contacting her
47 parents or attempting to have any other person capable of

1 representing that child's interests, in breach of the
2 requirements of section 33 of LEPR.

3
4 The complaint alleged that immediately following the
5 strip search of BRC, the child went into the festival
6 grounds and sought the services of the solicitor, BRT, who
7 had set up a stall immediately opposite the police strip
8 search area to provide free legal advice to patrons.

9
10 I anticipate that BRT, the solicitor, will give
11 evidence in these proceedings that the child was sobbing
12 uncontrollably and was accompanied by friends who all
13 looked quite distressed. I anticipate that she will tell
14 the Commission that it took some time for the child to
15 compose herself to be able to speak and relay what had
16 occurred.

17
18 The solicitor, BRT, has participated in a recorded
19 interview with Commission staff, and it is expected that
20 she will expand on that when she gives oral evidence this
21 week.

22
23 The young person herself, BRC, has provided both
24 a statement to the Commission and a recorded interview.
25 I propose to read on to the record the statement of BRC,
26 but of course removing any identifying material.

27
28 I anticipate your Honour will receive this evidence:
29 that BRC and her friends lined up at the front gate to go
30 into the festival. There were a number of lines to go into
31 the festival. She was in the "no bags" line to go into the
32 festival and her friends were in the "bags" line. As BRC
33 was waiting to go into the festival, a sniffer dog came up
34 to her and sat down next to her.

35
36 There was one police officer handling the dog, and
37 another two police officers came up to her when the dog sat
38 down. There were two male police officers and one female
39 police officer. The police officer handling the dogs said
40 to BRC words to the effect of, "Put your hands where I can
41 see them and don't reach for anything." She put her hands
42 out to either side of her body and the police officer said
43 to her words to the effect of, "Come with us. We're going
44 to have to search you for drugs."

45
46 She was led into the main gate by the three police
47 officers. She had to walk with the police officers

1 surrounding her with her hands in the air. She says to the
2 Commission in her statement:

3
4 I felt completely humiliated. People were
5 yelling out saying that the police had
6 someone. I was really scared because I did
7 not have any drugs on me and I was
8 completely alone.

9
10 As we were walking towards the police
11 tents, one of the police officers asked me,
12 with words to the effect of, "How old are
13 you?" I replied words to the effect of,
14 "Sixteen".

15
16 She goes on to say:

17
18 One of the police officers left us and
19 I was walked through some fencing that
20 separated the police area from the festival
21 area by the remaining police officers.
22 I was led to the police tent and made to
23 wait outside the tent.

24
25 While I was waiting, one of the police
26 officers asked if I had any identification
27 on me. I replied to the police words to
28 the effect of, "Yes. Can I grab my phone
29 out of my pocket?" My driver's licence was
30 behind my phone case. The police officer
31 replied words to the effect of, "Yes,
32 that's fine." I pulled my phone out of my
33 denim jacket pocket. At the same time, my
34 phone started ringing and I asked if I
35 could answer the call. The police officer
36 replied words to the effect of, "No, you
37 can answer it afterwards."

38
39 The police officer took both my phone and
40 my driver's licence. The police officer
41 looked at my driver's licence and the
42 police officer then walked away with my
43 phone and my driver's licence. I became
44 really frightened at this stage because
45 I had lost all contact with anyone I knew.
46 I started to cry. The police then started
47 to ask me lots of questions relating to

1 whether I had taken drugs or whether I was
2 around people taking drugs. I answered no
3 to all their questions.
4
5 Another girl that looked my age came out of
6 the police tent and I was led inside by the
7 female police officer. The female police
8 officer said to me words to the effect of
9 "Stand in the corner of the tent for more
10 privacy." The police officer then put on
11 blue gloves.
12
13 At this point, I assumed the police officer
14 was going to pat me down and maybe ask me
15 to remove my jacket and shorts. I was
16 wearing a lace leotard with a pair of denim
17 shorts over the top and a large denim
18 jacket. The police officer said to me
19 words to the effect of, "Remove your jacket
20 and hand it to me." I removed my jacket
21 and gave it to her. I watched the police
22 officer search my jacket and nothing was
23 found. She put my jacket on the ground and
24 she told me to take off my shorts. I took
25 off my shorts and gave them to her. She
26 then searched my shorts. The police
27 officer then told me to remove my leotard.
28 I pulled my leotard down to my waist. The
29 police officer then told me to take
30 everything off, including my underwear.
31 I said to her words to the effect of,
32 "Completely, everything?" At that point,
33 I realised I was going to have to get naked
34 in front of this police officer. I could
35 not believe that this was happening to me.
36 I could not stop crying. I was completely
37 humiliated.
38
39 I removed all my clothing, although I kept
40 my shoes on. I had a panty liner on my
41 underwear and the police officer asked me
42 to remove it so that she could look at it.
43
44 When the police officer had finished
45 searching my underwear and leotard, she
46 told me to squat on the ground. I squatted
47 down in front of her. She then squatted

1 down and looked underneath me.
2
3 After looking, she said to me words to the
4 effect of, "Okay, that's all good. Now you
5 can get dressed and take your shoes off."
6 I got dressed and pulled my shoes off. The
7 police officer told me to turn my socks
8 inside out. She looked at my shoes and
9 socks and then told me that I could put my
10 shoes back on.
11
12 I put my shoes back on and she led me
13 outside the tent. The police officer said
14 to me words to the effect of, "Okay, you
15 can go now." I then asked for my phone and
16 driver's licence back. My phone and
17 driver's licence were returned and the
18 fencing was opened so that I could walk
19 back through to the festival. This whole
20 process took approximately 10 minutes.
21 However, it felt like a lot longer.
22
23 I rang one of my friends. She wasn't in
24 the festival yet, but I was informed
25 another one of my friends was already in
26 the festival waiting for me. I found my
27 friend waiting in the festival. I was
28 extremely upset. I was sobbing. I sat
29 with my friend trying to calm down. I did
30 not stop crying for approximately
31 20 minutes.
32
33 I was absolutely shocked that the police
34 would do this to me. This incident with
35 police occurred on the first day of the
36 festival and I had a three-day ticket.
37 Every time I saw a police officer at the
38 festival, I started to feel anxious. My
39 whole body would clench up and I would get
40 clammy and hot. I was scared to make eye
41 contact with them, in case it happened
42 again.
43
44 Each time I walked into the festival,
45 I would feel anxious. I feel that I can no
46 longer trust police. I now feel really
47 wary about police and I believe I would

1 have difficulty reporting a problem to
2 police, in case I am falsely accused again.

3
4 I try not to think about the incident
5 because it is distressing and upsetting to
6 think about it.

7
8 Chief Commissioner, it is proposed that the following
9 witnesses will give evidence before the Commission this
10 week: BR1, BR2, BR3, BR4, BR5, and BR6. It is also
11 proposed that the solicitor who made the complaint on
12 behalf of the young person will give evidence.

13
14 Today, Chief Commissioner, you will hear from two of
15 those witnesses, BR1 and BR2.

16
17 Chief Commissioner, would it be convenient for me to
18 tender two volumes of confidential exhibits at this time?

19
20 THE CHIEF COMMISSIONER: Yes. .

21
22 MS DWYER: I tender tabs 1 to 42 - that is, 42
23 confidential exhibits. I am reminded, Chief Commissioner,
24 that the exhibit number will be the tab number, 1 to 42.

25
26 CONFIDENTIAL EXHIBITS #1-42 TENDERED

27
28 THE CHIEF COMMISSIONER: Yes. Firstly, I understand
29 Ms Hill is here appearing for BRC. Come forward. I take
30 it you seek leave to appear.

31
32 MS HILL: Yes, your Honour.

33
34 THE CHIEF COMMISSIONER: You may sit at the Bar table or
35 in the room, as is convenient to you.

36
37 So far as the confidential exhibits are concerned,
38 when an exhibit is shown to a witness, it will appear on
39 a screen in front of the witness, and it will appear on the
40 screen for the legal representatives. Sufficient, I think,
41 will be said by counsel assisting and by the witness to
42 enable the public, and in particular journalists, to
43 understand what the nature of the document is. Some of the
44 documents may become public documents, but until I make
45 a specific order that they may be accessed, they must
46 remain confidential.

47

1 In due course, I would expect redacted copies of the
2 exhibits will be made publicly available, but that depends
3 on the course of evidence. Thank you.
4

5 MS DWYER: Chief Commissioner, may I call BR1.
6

7 <OFFICER BR1, sworn: [10.38am]
8

9 THE CHIEF COMMISSIONER: I understand you have recently
10 had some surgery.
11

12 THE WITNESS: I'm due to have it, Commissioner.
13

14 THE CHIEF COMMISSIONER: You are due to have it. I beg
15 your pardon, yes. I noticed you were limping. So if you
16 feel the need to take a break or have a rest, you just let
17 me know.
18

19 THE WITNESS: Thank you.
20

21 THE CHIEF COMMISSIONER: I have no doubt that you have
22 already been told the things that I'm about to tell you by
23 your own lawyer, but I think I need to tell you myself.
24

25 Firstly, you must answer every question that you are
26 asked, unless I tell you you don't have to, and you must
27 produce anything you are asked to produce, again, unless
28 I tell you you don't have to.
29

30 You can object to giving any answer or producing
31 anything, but, you must, nevertheless, answer and
32 nevertheless produce it, but the effect of your objection
33 is that what you say or what you produce cannot be used
34 against you in any proceedings, except disciplinary
35 proceedings under the Police Act.
36

37 I should say that, as I understand your evidence and
38 the case, I would be extremely surprised if that issue were
39 to arise, but I'm obliged to tell you about it. In other
40 words, the Police Commissioner can use it to take action,
41 but it cannot otherwise be used. Is that clear?
42

43 THE WITNESS: Yes, sir.
44

45 THE CHIEF COMMISSIONER: Of course, you must tell the
46 truth. That almost goes without saying. But I should warn
47 you that you can be prosecuted for perjury or contempt of

1 the Commission should you not comply with orders or tell
2 the truth. Do you understand that?

3
4 THE WITNESS: Yes, Commissioner.

5
6 THE CHIEF COMMISSIONER: In order to save you the
7 inconvenience of objecting to each question or producing
8 each item, I can make a declaration which will cover the
9 whole of your evidence. Do you wish me to make that
10 declaration? The answer is "Yes".

11
12 THE WITNESS: Yes.

13
14 THE CHIEF COMMISSIONER: I make a declaration pursuant to
15 section 75 of the Act that all answers and other things
16 given by this witness will be regarded as having been given
17 on objection by the witness. Yes, thank you, Dr Dwyer.

18
19 MS DWYER: Chief Commissioner, I had proposed to get this
20 witness to say his full name once on the record but noting
21 the non-publication order.

22
23 THE CHIEF COMMISSIONER: I don't think that is necessary.

24
25 MS DWYER: May it please the Commission.

26
27 <EXAMINATION BY MS DWYER:

28
29 MS DWYER: Q. Sir, you are known in this inquiry as
30 Officer BR1. You understand that?

31 A. I do now, yes.

32
33 Q. Could you tell the Commission your rank?
34 A. I'm a chief inspector.

35
36 Q. You are currently in the Byron-Tweed area; is that
37 right?

38 A. The Tweed-Byron PD; that's correct.

39
40 Q. How long have you held that position for?

41 A. I came back to Tweed in I think it was 2011. So I've
42 been there since then.

43
44 THE CHIEF COMMISSIONER: Q. How long have you been
45 a chief inspector?

46 A. I think now that the system has changed, we're
47 inspectors, and once we got to level 8 we went up. I just

1 can't off the top of my head think when it was, but it was
2 definitely after then, it could have been '12, '13,
3 something like that, when it changed, but I just can't
4 remember exactly when it was. Sorry, Commissioner.

5
6 MS DWYER: Q. When did you join the police force?
7 A. 4 April 1981.

8
9 Q. How long have you been a police officer in that area
10 around Byron and Tweed?

11 A. Since 2011. So eight years. I was stationed there
12 before, but I've been back since 2011.

13
14 MS DWYER: Chief Commissioner, might I check with you
15 whether you think it is appropriate for a non-publication
16 order over that local area command? In my respectful
17 submission, it is important to understand that the public
18 hearing is hearing from senior officers connected to the
19 local area command.

20
21 THE CHIEF COMMISSIONER: I think the geographical
22 location - you will understand, I can do some things to
23 safeguard your privacy, but there are practical limits.

24
25 THE WITNESS: I understand that, Commissioner. I'm fine.

26
27 MS DWYER: Q. You are aware of the festival Splendour in
28 the Grass, obviously, that is held in the Byron area?

29 A. I am. I've been doing that since probably - on and
30 off since 2001.

31
32 THE CHIEF COMMISSIONER: Q. Is it true that it has been
33 steadily growing in popularity?

34 A. It has. This is a memory test for me, but I remember
35 in 2001 we first had Splendour at Belongil Fields at Byron
36 Bay, which was basically a campground, and I think at that
37 stage we probably only had - I would have to check - maybe
38 8,000 people that would turn up, and it eventually started
39 getting bigger and the promoters moved to Queensland. They
40 went up there and started to expand. Since they have come
41 back, they then acquired parklands at Yelgun, at Byron Bay,
42 and since then, the festival is just getting bigger.

43
44 Once that happened, with the promoters, I then put a
45 Ae 24-hour police presence, because, like, last year -
46 sorry, last year there was up to 35,000 people. This year,
47 close to 42,500. So we have like a mini city, which is

1 more than what you can do to police. We only have three
2 police or four police in that Brunswick sector to do that
3 area. So with negotiations with the promoters and stuff,
4 we put a full police presence in. So it starts in at
5 roughly 10 o'clock on the bump-in days and we don't finish
6 until probably 10 o'clock on the bump-out day, on the last
7 day, because we have major set-up that we have to do with
8 our command post, and that, plus we run 24/7.

9
10 Q. So of course many come and camp there, some only for
11 the days of the festival, some take a holiday while they
12 are there?

13 A. Yes.

14
15 Q. Then you get the people who just come casually?

16 A. You get your day trippers and --

17
18 Q. Day trippers, yes.

19 A. It ends up --

20
21 Q. So the camping --

22 A. -- to 20,000 people - in excess of 20,000. Sorry,
23 yes, 20,000 people would camp in the grounds. And those
24 people, basically, the way that they - they do the bump-in,
25 they put the cars together. If you get there, you're
26 basically - unless it is an emergency, you stay there,
27 until the end. But then they have a transit bus area and,
28 you know, there could be - you know, there'd be thousands
29 of people that actually come, they come from the Gold
30 Coast. Then if it is a hot day, some people might want to
31 go into Byron Bay and go for a swim and not come back until
32 the gates open at 12 or 2 o'clock which the major acts
33 start to come. So it is a big, big - I would say that it
34 would be the biggest festival, like, in New South Wales.
35 It is a transport hub, it is everything, you know? It is
36 major. It is a little city.

37
38 MS DWYER: Q. You said that the festival, to the best of
39 your recollection, has been going since around 2001 - you
40 have been involved since 2001, I think?

41 A. It was. Then when I went to the Kings Cross for that
42 period, I didn't do it. But when I came back, then I was
43 stationed at the Casino-Lismore, I was still asked to come
44 back and help. So I have really had, you could say, my
45 finger on the pulse of Splendour for all that time.

46
47 Q. When you came back and were based at Casino, when was

1 that?
2 A. I think that was - just memory - maybe 2009, 2010,
3 I came back. I came back as soon as World Youth Day
4 finished because the way the system worked, once - when
5 I went to World Youth Day for the Pope's visit I actually
6 got transferred to a separate command. Then I came back to
7 Kings Cross, and my partner got work on the Gold Coast and
8 I applied to come back and I got Lismore, or Richmond PD,
9 but I worked at Casino, then I worked at Ballina - you
10 know, I worked all those areas.

11
12 Q. You were involved in 2001 for a period of time, then
13 you came back in 2009-ish?

14 A. Yes, around that, yes.

15
16 Q. In the last decade you have continued your
17 involvement?

18 A. I would have stayed, like - I didn't leave to go to
19 Kings Cross until 2004, so I would have been there for
20 the - for those periods. There was another inspector that
21 was there that - he ran it as well, and I basically
22 assisted him with a lot of stuff as well. So it was a bit
23 of a joint thing that.

24
25 Q. For the last decade, have you been involved in
26 policing at Splendour in the Grass?

27 A. Yes, definitely since when I came back in - when did
28 I say? 2000. Sorry, 2011 I have been involved.

29
30 Q. Have police been involved in performing operations at
31 Splendour in the Grass since its inception in 2001?

32 A. Yes. You will see there is a user-pay contingent.
33 The promoters actually pay for the police to actually go
34 and to police the event. Because it is such a drain on our
35 PD, we can't supply police on a regular basis to do that,
36 because we lose police before the event, during the event,
37 after, so we go to a user-pay. We get police from the -
38 local based police, on their days off or holidays, then we
39 ask for state-wide police. We put out for state-wide
40 people to come who might have friends who live in Byron Bay
41 and they come and stay with them. That's what makes up our
42 contingent. That's the user-pay contingent for Splendour.

43
44 THE CHIEF COMMISSIONER: Q. In 2018, how many?

45 A. 2018, I think it was 35,000.

46
47 Q. No.

1 A. Oh, police?
2
3 Q. Police?
4 A. Just on memory, it changes. I think we had about 105,
5 I think, user-pay police.
6
7 Q. And in 2019?
8 A. That went up. I think - oh, I would have to check the
9 records, Commissioner, but maybe - I don't know. We could
10 have had 130 police. We had to go up for the extra crowds
11 and stuff, because there's a big - once they go up and go
12 from 35,000 to 42,000, that's an extra 7,000 people walking
13 around in that area. They are the ones that we have got to
14 police.
15
16 MS DWYER: Q. I'm just going to take you back one step,
17 inspector. You said that it started off in 2001 and there
18 was a police presence. I take it that the police presence
19 has grown as the festival has grown?
20 A. Considerably. That was only where, if the event,
21 like, started at 10 o'clock, the police might have only
22 worked from 10 until say 11 o'clock at night. That was it.
23 There was no 24-hour presence. We had a caravan at that
24 stage we would set up and we would go there and do it from
25 there. Now, we have our own command post that we set up
26 there, and - yes. So it's - yes.
27
28 Q. How long has the user-pays system been in place, to
29 your knowledge?
30 A. I think the user-pay system - I think it in fact - I'm
31 just trying to think if it was even back as far as 2001.
32 I just - yeah, I'm just not a hundred per cent. I just
33 can't remember. But it's been - that system of user-pay
34 has been in place now for a long time.
35
36 Q. And it is only a percentage of the police who are
37 user-pays, the rest are funded by the public; is that
38 right?
39 A. That's correct.
40
41 Q. In relation to numbers of police generally, do you
42 recall in 2018 how many police were deployed over the four
43 days of this Splendour in the Grass festival, including
44 user-pays?
45 A. I think there was over 300. I think - I think I put
46 in the orders there was a composite number, I think.
47

1 Q. I will show you those orders shortly. For the benefit
2 of the Chief Commissioner, behind exhibit 40 is the
3 operational orders for Splendour in the Grass in 2018. At
4 page 10 - it doesn't need to come up on the screen but for
5 the benefit of the transcript, the identification number is
6 8313819 - that suggests that the police commitment was
7 a composite detachment of approximately 340 police?
8 A. Yes.
9
10 Q. Deployed over four days with 24-hour coverage for the
11 event; correct?
12 A. That would - yes, that would be user-pay police. That
13 would be the police from the drug dog. You look at there's
14 highway patrol. It's all the different sections that we
15 have come up to assist us. We have PORS, which is the
16 public order and riot squad. We have mounted units. You
17 know, we have a lot of police that come up to do that
18 operation.
19
20 Q. You nominate in the operational orders 12 core groups
21 that comprise that number of 340 police?
22 A. Yes.
23
24 Q. That includes the user-pays; correct?
25 A. Yes, yes
26
27 Q. And it also includes the drug dog squad?
28 A. Yes.
29
30 Q. In terms of determining the number of police that will
31 be required, whose decision is that?
32 A. I do that with the promoters, and we do that - I have,
33 like, staff within, like, my section, that sort of go
34 through it with us. We look at what - we look at the
35 public order areas, we look at crowd movements around the
36 place, how many people are there, you know, where we're
37 needing that for crowd management. Once we come up with
38 a figure I run that past the promoters and say - because
39 they are paying the bill - "This is where I need the
40 police". But, yes, we do it on a basis of where we need to
41 task our police.
42
43 Q. Looking at exhibit 40 - so for the benefit of the
44 transcript, 8313810 is the identifying number - perhaps if
45 just the front page of that could come on the screen,
46 I will show you the front page of the operational orders
47 for Splendour in the Grass 2018. It has there a name, your

1 name, as having prepared that document.
2 A. Yes.
3
4 MS DWYER: Chief Commissioner, if you are concerned by
5 that I won't put it on the screen.
6
7 THE CHIEF COMMISSIONER: Oh, no, it can go on the screen.
8
9 MS DWYER: Q. While that is coming up, sir, you drafted
10 these orders; is that right?
11 A. Correct.
12
13 Q. They were then checked by a colleague of yours?
14 A. Correct.
15
16 Q. In the command; is that right?
17 A. That's right.
18
19 Q. In fact, you have been involved in drafting operation
20 orders for a number of years; is that right?
21 A. Correct.
22
23 Q. Do they change from year to year?
24 A. They do. The numbers change, like, a lot of the part
25 of the orders will stay the same, unless the promoters
26 change the venues around and stuff like that. But, yes,
27 basically, even though they are the same, there is still
28 a lot that I have to, you know, have to change.
29
30 Q. Operation orders are a confidential document for
31 police; is that correct?
32 A. Correct.
33
34 Q. What is the purpose of them?
35 A. To give the police an idea exactly what's going to
36 happen. So if I'm going to have an operation, the orders
37 are there. It's got in it - you've got all your headings.
38 You've got your topography of the area. You look at the
39 mission. You look at the paying parts there, the
40 commander's intent, what the commander expects, it goes
41 through. You'll have the rosters, the staffing, the
42 communications. Yes, it sort of similar to what the army
43 used to have years ago, what they called a SMEAC, in that
44 situation - situation, mission, execution. You know, it
45 goes along those guidelines.
46
47 Q. Is it, in effect, a briefing document for the police

1 who are going to be on the ground?
2 A. The police that are going to be on the ground, I email
3 them that document. I also have a joining instructions
4 document, which is done for major - you know, most
5 operations by the NSW Police. But, yes, I send that out
6 probably a week before the event, because the document
7 changes all the time, with staffing and stuff, and
8 whatever.

9
10 So I send it to everybody and I put on there - just to
11 say, "I want you to read this and understand, and if there
12 is anything there you see that could be wrong, you might
13 know what your shifts are, it could be a wrong shift or
14 something, let me know", but it is there as a guideline to
15 let them know what their responsibilities are.

16
17 Q. It also includes, doesn't it, some reference to LEPR
18 and the requirements under LEPR?

19 A. It does. I started doing that a couple of years ago
20 because I thought it was very important. All police should
21 know their powers, you know, what they do, so whether they
22 are working out in the street or they come to Byron, they
23 should know what their powers are, but I still put that in
24 there as a reminder.

25
26 THE CHIEF COMMISSIONER: Q. Do you have a briefing that
27 is gathering all the police together and have a general
28 discussion about what's going to happen and raise any
29 particular issues or --

30 A. They do. With the user-pay, which is sort of
31 different to the drug dog, you know, it starts off that the
32 first lot of police might come on, say, 10 o'clock. And
33 then I will have a sergeant there, and that sergeant will
34 go through and he will do the briefing for me, and he does
35 that. We have, like, meetings that we have to start with,
36 with the promoters, to go through what has happened the
37 night before. Then they go through the briefing, go
38 through anything, any questions, let them know what is
39 expected, anything that happened the night before. So they
40 get a full briefing from the - because of our staffing and
41 our number of inspectors, we use sergeants as well to do
42 that, to assist, and that's what I did in 2018, because --

43
44 Q. Are briefing notes prepared?

45 A. Sorry?

46

47 Q. Are briefing notes prepared, or does the sergeant do

1 it from the top of his or her head?
2 A. A lot of it we run from the operation orders. But we
3 do take notes just to start with, to say, remind people of
4 this, remind them of that, you know but - yeah, so it could
5 be --
6
7 Q. Remind them of?
8 A. Remind them.
9
10 Q. I don't know, that's why I'm asking.
11 A. Sorry, Commissioner. It could be something where - it
12 could be an area where we had problems last night with
13 fence jumpers, so "We want you to identify the area of
14 fence jumpers", or, "We need you to go to the transit
15 area."
16
17 Then we do tasking sheets as well. Most of the
18 officers who go there are the user-pay. I give them
19 a tasking sheet. It shows them a map of the area. There's
20 a grid reference map that lets them know where they are.
21 Then, once we do that briefing - we couldn't do it this
22 year, but last year, for '18, we had trackers, and I think
23 a lot of the police thought, "Are you looking to where I'm
24 walking around the area?" I said, "No, that's for your
25 safety", and that's what it was. I think Splendour is such
26 a big area. Especially at night, it can be - you know,
27 once the lights come on, you think "Where am I?" You don't
28 know where you are. So we track people. That's all part
29 of it, so we've got to do that. They get their portable
30 radios, are given their call signs. It is a full briefing.
31
32 MS DWYER: Q. You mentioned briefing notes and tasking
33 sheets. Are they retained after the event?
34 A. Yes, I did for 2018. They should be at Tweed station,
35 for the tasking sheets. And I think the briefing note was
36 there for 2019, but I'm just not sure about 2018. I'm not
37 sure where that --
38
39 Q. If the Chief Commissioner was interested, you could
40 look for those and produce them to the Commission?
41 A. Yes, yes.
42
43 Q. You also mentioned joining instructions; is that
44 right?
45 A. Yes.
46
47 Q. What are they?

1 A. The joining instructions are what is expected. You
2 know, "This is the event." It goes through it. It tells
3 you what clothes you will wear. It tells you what the
4 climate can be. It goes through the - I'm just trying to
5 think off the top of my head - maps of the area. It goes
6 through the whole thing of joining. So it gives you
7 a brief overview of what you can do. But if you haven't
8 got that document, I can get that.

9

10 THE CHIEF COMMISSIONER: Q. Yes, it would be helpful to
11 have that, thank you.

12 A. Yes.

13

14 MS DWYER: Q. So the joining instructions for 2018 would
15 have been retained; is that right?

16 A. Yes, 100 per cent.

17

18 Q. You mentioned that you started putting information in
19 about LEPRa a couple of years ago, I think, in your
20 operational orders; is that right?

21 A. Yes.

22

23 Q. What prompted you to do that?

24 A. I thought it was important that we did that, and
25 I think - jog my memory - 2018, and I knew how important
26 that it is, that we make sure that we get those powers
27 right, especially when it comes to searching of people and
28 their liberty and stuff. And - yeah, I knew the
29 Commission, sir, was interested in looking at searches too,
30 and I wanted to make sure that we were right. And that's
31 why, in the orders for 2019 I put more in there, in
32 relation to --

33

34 THE CHIEF COMMISSIONER: Q. Yes, the orders for 2019
35 differed in some respects from those in 2018, but right now
36 we're looking at 2018.

37 A. Yes, just --

38

39 Q. So I think it's fair to say - have you refreshed your
40 memory by looking at those operational orders?

41 A. I did. I looked in probably - I think, yes, last
42 night I went through '18, yes.

43

44 Q. I think it is fair to say is that there is no
45 reference to the searching process. So we know that
46 searching did take place from time to time of people who
47 were in the line entering the festival?

1 A. Yes.
2
3 Q. But I don't think there was anything - I don't recall
4 seeing, you may remind me or Dr Dwyer. I don't recall
5 anything in the operational orders about how that was to be
6 done.
7 A. Yes, I think, Commissioner - I haven't read the drug
8 operation orders, the two separate orders. I don't know if
9 they do that. But my user-pay police basically didn't -
10 they didn't do those duties at the gates. That was
11 separate. That was the drug dog team who did that.
12
13 Q. The drug dog team didn't do any of the searching, did
14 they?
15 A. Yes, they would have done most of the searches.
16
17 Q. That was your understanding, was it?
18 A. Yes, I - well, my - the OSG, when you look in the
19 orders, you will see where they are down for crowd control,
20 they are down for fence jumpers, logistics and all that.
21 So most of those people are out in the footprint of the
22 festival, looking at crowd movements and stuff, looking at
23 the licensed premises.
24
25 Q. I think you are saying - correct me if I'm wrong -
26 that, by looking at those orders that related to the drug
27 dogs, we would expect to find a reference to searching?
28 A. Yes, there should be. Yes. When I do my planning,
29 because I've got to do so much, and I don't do the other
30 side, it's done by another officer. He does that, he does
31 his separate briefings and does his stuff. Once I have
32 done my stuff, I'm not - I don't really --
33
34 Q. So you were not really involved in organising the drug
35 dogs; is that what you are saying?
36 A. No, not at all. Mmm.
37
38 MS DWYER: Q. These operational orders are not just for
39 user-pays staff police, are they, they are for all police
40 involved in the 12 different units, are they?
41 A. No, they are mainly - every name that is in those - in
42 the back, their orders are for those police. When I send
43 the orders out, they are the only - sorry, sir. They are
44 the only people that I send them to. The officer in charge
45 of the drug dogs sends out his own to his people.
46
47 MS DWYER: So can I ask, please, that the witness be shown

1 a copy of exhibit 40.
2
3 THE CHIEF COMMISSIONER: Certainly. It may be easier just
4 to hand him the document physically.
5
6 MS DWYER: Q. Could you please turn to page 29 of that
7 document. That should not go on the screen. If you are
8 having a look at that page, you should see there a list of
9 the command; is that right?
10 A. Yes.
11
12 Q. If you turn over the page, there are a number of
13 different call signs?
14 A. Yes.
15
16 Q. Are you saying that this document only goes out to the
17 call signs that are set out there?
18 A. Yes.
19
20 Q. And they are all listed as user-pays; is that right?
21 A. That's correct.
22
23 Q. Do you see at page 30, under the first heading
24 "18 July call sign Splendour user-pays", there are a number
25 of officers, about seven or so, deployed as "search teams"?
26 A. Yes, they are the ones that do IED searches, which is
27 the searches for the explosives. So prior to the lock-down
28 on that day, we put - we have explosives dogs from the
29 Federal Police come down and we have seven OSG operatives
30 and we go through and lock down all the stages, check all
31 the musical equipment and all that. A lot of the artists
32 stipulate they won't go on stage unless this has been done.
33 So that's all search from OSG.
34
35 Q. If you have a look there, a number of the user-pays
36 are crowd control; is that right?
37 A. That's correct.
38
39 Q. Might those officers be involved in searching patrons?
40 A. They could be, if they were out in the field and, yes,
41 someone - yes, if they had to search someone, yes, they
42 would; they bring them back to the --
43
44 Q. They would bring them back to where, sorry?
45 A. To the command post. We have a custody bus there and
46 they would be - if they had to be searched or - it could be
47 a thing where they might just say, "Have you got drugs on

1 you", they might just hand them to the police, you know.
2
3 THE CHIEF COMMISSIONER: Q. Say, for example, we have
4 heard that persons coming in to the festival, if they had
5 bags, those were searched?
6 A. Security did that, Commissioner.
7
8 Q. That's security? That's not police?
9 A. No. That's the security.
10
11 Q. And there were tents set up so that if there were
12 searches, personal searches, taking place, that would
13 provide privacy?
14 A. They would be done in those tents, yes.
15
16 Q. Who was responsible for that?
17 A. I think in the early stages, when we did that, it
18 was --
19
20 Q. No, let's just look at 2018.
21 A. Oh, sorry. It was - in 2018, that was the sergeant in
22 charge of the drug dog.
23
24 Q. The drug dog?
25 A. He would have done that with the assistance of another
26 one of the sergeants at work who does logistics. So he
27 probably would have helped --
28
29 Q. Provide the tents and --
30 A. Yes, but the tents and that are all supplied by the
31 promoters.
32
33 MS DWYER: Q. Who are the police who are doing the
34 searching of patrons on entrance?
35 A. Who are they?
36
37 Q. As in which group do they come from?
38 A. Normally, they would be the drug operation people that
39 are there.
40
41 THE CHIEF COMMISSIONER: Q. So, of course, each search
42 has to be recorded?
43 A. Correct.
44
45 Q. The identity of the person searched has to be noted?
46 The outcome of the search has to be noted?
47 A. It does.

1
2 Q. And an event has to be created on COPS?
3 A. Correct.
4
5 Q. By inspection of COPS, we would expect to find, would
6 we not, the names of the officers who did the search?
7 A. Yes, correct.
8
9 Q. And they would tell us whether they were part of the
10 dog squad or part of some other command; correct?
11 A. Correct.
12
13 Q. And your expectation is, when we look at those, we
14 would find that they were drug squad officers; is that your
15 understanding?
16 A. Yes, they would be officers from, yes, specifically
17 for that drug dog operation.
18
19 Q. Now, the drug squad is a separate --
20 A. It is totally separate.
21
22 Q. -- command?
23 A. Yes.
24
25 Q. So it doesn't come under your control - or did it, in
26 the sense that you were generally responsible and the dog
27 squad was sort of brought in under your umbrella?
28 A. The police commander Has the overall control.
29
30 Q. That's you in this case?
31 A. That's the superintendent.
32
33 Q. Oh, right, but you under the superintendent?
34 A. Yes, his signature is on the right-hand side of the
35 orders. And then we have, like, forward command inspectors
36 that are there from - normally, say, from 10am to 6pm, then
37 we have a change of shift, another inspector comes on and
38 he goes through to 6 or 2 till 4, depending.
39
40 Q. And that inspector would therefore have ultimate
41 responsibility for the conduct of the dog squad - the drug
42 dog squad?
43 A. Yes, it's confusing - yes.
44
45 Q. Is that right?
46 A. You do. Whether you are physically sitting there
47 looking at what they do --

1
2 Q. No, I'm not talking about that.
3 A. Yes.
4
5 Q. What I'm talking about is ultimate responsibility -
6 you have to have responsibility for all the police on that
7 site?
8 A. Well, exactly, yes.
9
10 Q. Did you understand that the drug dog squad had its own
11 operational orders?
12 A. Yes.
13
14 THE CHIEF COMMISSIONER: I don't think we have those, do
15 we?
16
17 MS DWYER: We do. Exhibit 5. I will ask that the witness
18 be provided with a copy of exhibit 5.
19
20 Q. Inspector, I take it that you see these drug dog
21 operation orders, as part of your preparation for the
22 festival?
23 A. Well, my preparation probably starts a lot quicker
24 than what they do for the drug dogs, but, yes, normally
25 I could - if I wanted to go and have a look at them just to
26 see what's on there, but I don't know if I did that in
27 2018. I can't remember whether I --
28
29 Q. Isn't that important for you, given your overall
30 responsibilities, to have a look at what the drug dog
31 operation is going to involve?
32 A. Yes, it is. And I know in 2018, I know that the
33 sergeant in charge that day, I know he did a really
34 thorough job at doing his briefing, because they held the
35 briefing outside of the command post for all the police
36 that turned up. It got that big, and that's why last year
37 we had to move and do the briefings offsite to do that.
38
39 But, yes, if I'm there, I will listen to the briefing.
40 But in 2018 I was what they call the OSG commander. So my
41 role, even though I'm there as the police forward
42 commander, my role was to do all the public order for that
43 site. So that's - my role is to make sure that if there's
44 35,000 people in that area, that they are moving around
45 that area safely and, you know - that's --
46
47 Q. You are the police forward commander, you are the

1 chief inspector of that local area. Were you interested to
2 know that there were appropriate operational orders in
3 place in 2018 --
4 A. Yes, I knew there were, yes.
5
6 Q. And did you, to the best of your memory, read the drug
7 dog operation orders for Splendour 2018?
8 A. Honestly, I can't remember if I did.
9
10 Q. Can you rely on your general practice?
11 A. I normally do. I normally go through all of them,
12 because when we save it to what I'll call our P drive,
13 which is like our police drive, I can then go through and
14 check most of the documents. But I just honestly can't
15 say, Commissioner, if I actually read through the orders or
16 not.
17
18 THE CHIEF COMMISSIONER: Q. All right. Let me just get
19 from you the kind of thing that you expect should be in
20 those orders - let's not worry about what was, for the
21 moment. So it's obvious that the purpose of having drug
22 dogs is to detect drugs - that is, to identify persons who
23 might be carrying drugs; agreed?
24 A. Exactly, yes.
25
26 Q. It is I think the subject of police instructions that
27 mere detection by a drug dog does not justify a search?
28 A. That's correct.
29
30 Q. You have to have some further matter that gives rise
31 to a reasonable suspicion?
32 A. Exactly.
33
34 Q. Correct?
35 A. Exactly.
36
37 Q. But the context in which a drug dog operation is going
38 to take place at the festival is a context in which, first
39 of all, just ordinary human experience, and in particular
40 police experience, would tell you, you are going to find
41 some drug dog indications - that's certainly going to
42 happen?
43 A. Mmm.
44
45 Q. Correct?
46 A. Correct.
47

1 Q. You need to say "Yes" for the transcript. That's all,
2 rather than nod your head?
3 A. Right.
4
5 Q. In that event it means you will almost certainly find
6 people that you will be searching. If there is no more
7 than a detection, you don't search them. But there often
8 is more, so you have to foresee the likely possibility you
9 will be searching people; correct?
10 A. Correct.
11
12 Q. And if that, you have to have arrangements for those
13 searches to take place - for example, we've already talked
14 about the setting up of those tents; the police officers
15 have to know, they take someone to the tents to preserve
16 their privacy and so on?
17 A. Exactly.
18
19 Q. So, in other words, in terms of what ought to be in
20 the operational orders is more than just what generally
21 LEPRAs says about searches but how, as a practical matter,
22 you are going to enforce LEPRAs in this particular
23 situation; do you agree?
24 A. I agree.
25
26 Q. And that's what you think a competent operational
27 order in this - dealing with drug dogs should have. To
28 a greater or lesser of detail, that's a matter for
29 judgment, but you can't ignore the subject matter?
30 A. No; that's correct.
31
32 MS DWYER: Q. Could I then ask that you be shown a copy
33 of exhibit 5. Sir, you are about to be shown a hard copy
34 of the drug dog operational orders from 2018.
35
36 THE CHIEF COMMISSIONER: I'm sorry, who is appearing for
37 the officer?
38
39 MR MURPHY: I am, your Honour.
40
41 THE CHIEF COMMISSIONER: I think we should give you a hard
42 copy as well, so you can follow it.
43
44 MR MURPHY: I have a copy, Commissioner.
45
46 THE CHIEF COMMISSIONER: Oh, good.
47

1 MS DWYER: Q. Would you just take a moment to
2 familiarise yourself with that, sir.
3
4 THE CHIEF COMMISSIONER: Take as long as you need.
5
6 THE WITNESS: Thank you, Commissioner.
7
8 MS DWYER: Q. Tell me when you are ready for a question.
9 A. Yes.
10
11 Q. If you have a look at page 7, you will see reference
12 there to a tasking and a particular date that that is to
13 take place, on 19 July 2018. That's the only page where
14 there is a reference to LEPRa, isn't it?
15
16 THE CHIEF COMMISSIONER: I think you can take it from
17 Dr Dwyer that it is.
18
19 THE WITNESS: Yes.
20
21 MS DWYER: Q. I ask you to accept that. You will see
22 that that suggests that police should at all times be aware
23 of officer safety and police powers pursuant to LEPRa, but
24 there are no specific instructions there as to how searches
25 are to be carried out?
26 A. Sorry, what page were you on?
27
28 Q. Page 7 of that document.
29 A. Okay. Yes.
30
31 Q. Do you agree that there are no specific instructions
32 as to what amounts, for example, to a reasonable suspicion
33 that would justify a search?
34 A. Yes, I agree.
35
36 Q. There is nothing there that would indicate in what
37 circumstances a strip search would be appropriate; do you
38 agree?
39 A. I agree.
40
41 Q. There is nothing there to advise an officer as to how
42 a young person or child is to be searched; do you agree?
43 A. That was - that's in the orders. I don't know -
44 during the briefing, I would say that would have all been
45 addressed, but because I wasn't there, I can't say that.
46
47 Q. Well, first of all, do you agree that that is not

1 there in the orders?
2 A. I agree.
3
4 Q. Do you think that's appropriate that that information
5 is missing from the orders?
6 A. Well, it's something that I put in mine.
7
8 Q. Do you think that it is - when you say you put it in
9 yours, you explain LEPRa in more detail; is that what you
10 are saying to the Chief Commissioner?
11 A. I did.
12
13 Q. But your 2018 document only deals with powers of
14 arrest, doesn't it?
15 A. Yes.
16
17 Q. And so there's nothing in your 2018 document about how
18 police officers are to conduct searches pre-arrest, is
19 there?
20 A. No.
21
22 Q. Were your user-pay officers ever involved in searching
23 pre-arrest?
24 A. They probably did. They probably - after the drug dog
25 finishes, which could be, like, 7 o'clock, 8 o'clock at
26 night, then the user-pay police are on, you know,
27 continually. So there could be a stage where, yes, the
28 police had detections outside of that area. Or there would
29 have been - they would have, for sure.
30
31 Q. So do you agree, looking back on it and reflecting on
32 it, in your 2018 document there should have been clear
33 instructions for the user-pays police about how to exercise
34 their powers under LEPRa pre-arrest?
35 A. Yes, I basically put in there what I - yes, what
36 I did. But, in hindsight, and going forward, yes,
37 definitely. Mmm.
38
39 Q. So then, Chief Inspector, looking at these operational
40 orders for the drug dog operation, you agreed with me that
41 there was no instruction as to how the police were to
42 exercise their powers under LEPRa. Do you agree with me
43 that there should be?
44 A. It can be - can be put in those orders, but I think
45 a lot of that would have been covered in the briefings that
46 would have been - because I wasn't there, I can't say what
47 they said, but --

1
2 THE CHIEF COMMISSIONER: Q. Let's just go back to the
3 position that although they may not have been - if I can
4 use this phrase - policing the entrance as people went into
5 to Splendour - by that I mean leaving the drug squad out,
6 the drug dog squad out - your police would be patrolling
7 the festival itself and the campgrounds and so on?
8 A. The whole footprint, that's right.
9
10 Q. And it is not at all unlikely that they may come
11 across suspicious conduct that suggested the need for
12 a search?
13 A. And they did, and they - and a lot of the drugs that
14 were detected when the drug dog finished would have been by
15 security, and then handed over to police.
16
17 Q. But I'm talking about the other police who are
18 patrolling, and one wouldn't be surprised if they saw
19 conduct which they thought warranted a search?
20 A. Exactly, Commissioner.
21
22 Q. And I understand you to say that although dealing with
23 searches in that context was omitted from your 2018 orders,
24 you agree, in hindsight, that that is a subject which ought
25 to be put into the operational orders for the guidance of
26 officers?
27 A. Exactly.
28
29 Q. Such things as, for example, if you are in the middle
30 of a campsite and you have to search someone, you have to
31 find somewhere private --
32 A. Exactly.
33
34 Q. -- which may not be easy to do, and other practical
35 matters that you need to bring to their attention; do you
36 agree?
37 A. Exactly, yes.
38
39 MS DWYER: Q. Would you, Chief Inspector, have expected
40 that in 2018, if there was no information in the actual
41 drug dog operational orders about, for example, when
42 a strip search of a child was justified, that that would at
43 least be handed over in a verbal briefing?
44 A. Yes.
45
46 Q. I anticipate that the Chief Commissioner will hear
47 evidence from Officer BR5 related to the drug squad, who

1 provided that briefing, that he did not give any specific
2 instructions or direction in relation to strip searching of
3 children under LEPR, and he just assumed that commonsense
4 would prevail, and that police officers, as part of their
5 duties, would be making informed decisions and would be
6 aware of LEPR. Do you think that was appropriate?
7 A. Well --
8
9 THE CHIEF COMMISSIONER: Q. Well, do you think that was
10 adequate?
11 A. Well --
12
13 Q. Let me just give you one matter that immediately comes
14 to mind - that is, the provisions of section 33 of LEPR,
15 which require parent/guardian or some independent person?
16 A. Yes.
17
18 Q. Now, at Splendour in the Grass, a teenager might well
19 be there with their parents, guardian, older brother, so
20 they might have relatives there. That's one possibility.
21 But (a) they might not, and (b) they might not want their
22 parent to be present in such a search?
23 A. Exactly.
24
25 Q. But then you have to have an independent person there
26 and arrangements have to have been made to ensure that
27 independent persons would be available; do you agree?
28 A. I agree.
29
30 Q. And what you have to do is to tell your officers, "If
31 you are searching a child and they don't want their parent
32 or guardian, here is where you go to find an independent
33 person" - say, an SES officer, or is it blue frog or Red
34 Frogs?
35 A. Yes, the Red Frogs. They work in with the medical --
36
37 Q. But you actually have to tell them where they are
38 available and how to contact them, do you agree, as
39 a matter of practicality?
40 A. I agree. I agree.
41
42 Q. Unless, of course, your working hypothesis is that you
43 don't need to bother about that?
44 A. Well, with --
45
46 Q. First of all, do you agree with me?
47 A. Yes, I do.

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Q. And what worries me, I must tell you frankly, is that I suspect - it may be unfair and evidence will come forward, but I suspect - that that was the working hypothesis, and it's not a good one, is it, if that is so?
A. No, it's not, if that's the case, it is not. I might just add --

Q. But I hasten to add, because of the journalists here, that's a suspicion that I have that might or might not be accurate. But certainly in 2018, one doesn't get in the operational orders any reference to that issue, and you would expect it: "This is the mobile number you call"?

A. Yes.

Q. And it's not in the briefing, because the subject was not, according to the officer who gave us the information, broached at all in the briefing. So on that basis, it seems reasonable to suspect this matter was not foreseen?

A. Well, that's correct, and I, like - when you look at that OSG list, sorry, the user-pay list, there is a lot of - it could be police there that haven't come from the GD background, it could be people that worked in the communications or in another section, you know.

Q. So they may not have familiarity with the rules anyway?

A. Exactly. And what you said is 100 per cent correct, where we've got to make sure we get to everybody and say, "This is so important." You know, because you are dealing with, like you say, young people, you are dealing with their privacy, you are dealing with - I find it, you know, very high priority.

Q. I think you were here when counsel opened, were you not?

A. I did.

Q. And you heard the account?

A. I did.

Q. Now, of course, we have to test its truth.

A. Yes.

Q. But, assuming it to be true, it's quite shocking, is it not?

A. It is, when you listen to the facts as they were read

1 out and you think, you know - in all honesty, you say that
2 doesn't sound good, you know, 100 per cent. Without other
3 witnesses giving their - you know.
4
5 Q. It's a working hypothesis. We have to ascertain
6 whether it is true or not.
7 A. Exactly.
8
9 Q. But, if true, it is very worrying; do you agree?
10 A. Yes, yes. And I can say, too, that the commander, the
11 police commander for the operation, the superintendent, is
12 very family orientated, and he went there on days and he
13 looked at the areas and he worried about crowds. He
14 worried about the kids. He worried about those kids like
15 they were his own, you know, and so do I, because I go
16 there and I'm entrusted by the families to look after their
17 kids.
18
19 Q. I know, but you can't put old heads on young
20 shoulders, can you?
21 A. I know.
22
23 Q. And we are dealing with, by and large, I think in this
24 context, young police officers?
25 A. Mmm.
26
27 Q. And to my mind, as a relatively lay person, it makes
28 it all the more important that you give them instruction
29 and guidance about particular issues, and it's the older
30 heads who have to predict the problems that arise and make
31 sure that you have done some work so that people know what
32 they are to do in that situation?
33 A. Exactly. Exactly.
34
35 MS DWYER: Q. Chief Inspector, have you recently
36 familiarised yourself with the LEpra requirements in
37 relation to searching children?
38 A. I do - I know - yes, I don't know the sections off the
39 top of my head, but I know that, you know, anywhere - you
40 can't search a child under 10. We know that. And anywhere
41 between 10 and 18, that you must have a patient/guardian or
42 a person, you know, that is nominated by that person. But,
43 yeah, I - yeah, I know that, yeah.
44
45 Q. And would you have an expectation that that would be
46 known by the commander of the dog squad?
47 A. Exactly.

1
2 Q. You would be surprised if that wasn't - you would be
3 surprised if there's evidence in these proceedings that
4 neither in 2018 or 2019 did that person consider that LEPR
5 imposes a requirement that parents or support persons or
6 other persons are required to be contacted prior to the
7 search?
8 A. That's right. Splendour is an under-18 event, so you
9 have to make sure that, you know, you know what the
10 guidelines are. The other festival we have, Falls
11 Festival, is an over-18s event, which is totally different.
12 You know, you don't really have people that are under 18,
13 but Falls you do.
14
15 Q. It is part of your role, isn't it, to anticipate what
16 numbers are going to be relevant for each Splendour, each
17 year?
18 A. Police numbers, sorry?
19
20 Q. Yes.
21 A. And you liaise with the festival organisers, I think
22 you said, in that regard?
23 A. Yes.
24
25 Q. Does that help to determine, firstly, the number of
26 police overall who are required?
27 A. Yes.
28
29 Q. But it also helps to determine the number of drug
30 detection dogs required?
31 A. Yes, I don't - I don't do the drug detection bit,
32 I just do the OSG - sorry, the user-pay, OSG.
33
34 THE CHIEF COMMISSIONER: Q. So what it is --
35 A. But I think there are guidelines for how many police
36 per dog. There would - I can't remember exactly what it
37 is, but there would be.
38
39 Q. Essentially, what you would do, as I hear you, you
40 would delegate to the commander of the drug dog squad the
41 task of ensuring he has appropriate numbers and appropriate
42 dogs - that's really his area of specialty and you just
43 delegate that task to him; correct?
44 A. Yes. The hardest part is getting the dogs, because
45 they are a state-wide resource, but we did have our own two
46 dogs. The areas where I work, there is two separate dogs
47 but, anyway, we have to get dogs.

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Q. If there is another operation taking place somewhere else, you may have a shortage?

A. Exactly.

Q. But, anyway, that's his problem to work out or her problem to work out?

A. Yes. Exactly.

MS DWYER: Q. In the operational orders for 2018, it nominates the 12 core groups that the police response consists of. Is it your decision that those 12 groups will be involved?

A. Basically, we look and have a meeting and we go, like, "Who do we need to run this?" I only have so many local police, like, OSG. I then have to put what they call an RA in, which is a request for assistance, so I will put that in through our region office to ask for additional staff.

It might be that when I do the original IED search, I have to put an RA in to the bomb disposal unit, because that's their - I think we need a trained operator from that, to do that. So, yes, I've got to do basically requests for assistance for most of those. So that's normally something I do. If I'm not there, I delegate someone to do it for me if I'm not there, but - yeah.

Q. In anticipating the type of police response required, you consider the numbers and also the age range that you are dealing with?

A. The age of the - yes, we --

Q. The age of the patrons?

A. Age of the patrons, yes.

Q. You gave the example earlier that if something is an over-18 event, it changes the nature of the policing that might be required; is that right?

A. It does. If you know you are going to get - you know, we are very lucky because they are a very well-behaved crowd. If they weren't compliant, you would have all sorts of problems, but it's - I think it's - and in our favour, I think the way that we police it, too, we're very friendly orientated.

THE CHIEF COMMISSIONER: Q. You weren't asked that.

1 A. Yes, sorry, yes.
2
3 MS DWYER: Q. Chief Inspector, if you know that you are
4 going to have a number of young people under the age of 18,
5 you know that some of them won't be accompanied by parents;
6 correct?
7 A. That's correct.
8
9 Q. And you know that some of them will be searched by
10 police on the day?
11 A. Yes, that's correct.
12
13 Q. And you know that some of them will be strip searched,
14 or might be strip searched, by police, don't you?
15 A. That's correct.
16
17 Q. And did you anticipate that in 2018, that some --
18 A. Yes.
19
20 Q. -- young people might be strip searched?
21 A. Yes.
22
23 Q. Firstly, were there youth liaison officers present?
24 A. As in --
25
26 Q. Were there any police officers with specific training
27 in dealing with children?
28 A. There were probably officers that were there under
29 a user-pay or whatever, that are trained in that field,
30 but --
31
32 Q. Different question. Did you arrange for any police
33 particularly --
34 A. No, not that year, no.
35
36 Q. You were aware that LEPR requires that a young person
37 has a parent or guardian or other support person present?
38 A. Correct, I am.
39
40 Q. In circumstances where, you were aware, weren't you,
41 that a young person might choose not to inform their parent
42 for obvious reasons?
43 A. Yes.
44
45 Q. But in those circumstances, there still needs to be
46 somebody acceptable to the young person who can provide
47 them support?

1 A. Yes.
2
3 Q. You are aware that that right cannot be waived by the
4 young person?
5 A. Yes, I am.
6
7 Q. So what arrangements were in place for someone to be
8 provided as a support person?
9 A. Well, we have our - nearby to our command post is the
10 medical tent, which has doctors and nurses in there, male
11 and female, and also the Red Frogs. So it would be
12 a situation that if we needed a support person, that we
13 would do that. But if --
14
15 THE CHIEF COMMISSIONER: Q. I can understand Red Frogs,
16 because they might understand what is involved. But,
17 frankly, if you were just to go to the medical tent and say
18 "Would you mind coming and having a look at this naked
19 teenager", I'm not sure that you would get an enthusiastic
20 response, or, if you did, that that would be exactly the
21 person you wouldn't want to be there?
22 A. Yes. And you - correct.
23
24 Q. So, frankly, when you think about it --
25 A. I can see where you are coming from.
26
27 Q. -- that's not going to work, is it?
28 A. Plus they are busy, too. I can --
29
30 Q. Exactly. So that's not really a resource. Red Frogs
31 I understand because they would understand what has to be
32 involved.
33 A. Yes, and what --
34
35 Q. It is one thing to be present at a pat-down search; it
36 is all together to be different when a child is going to be
37 naked?
38 A. I can see exactly where counsel is coming from with
39 that, yes.
40
41 Q. Some people, quite rightly, especially strangers,
42 would be very embarrassed by it and would not want to be
43 near that kind of experience at all?
44 A. Yes.
45
46 Q. Correct?
47 A. Yeah, exactly.

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Q. So what this highlights is the need to have pre-planning so that people who are appropriate people are available; agreed?

A. I agree.

Q. And is it fair to say that in 2018, whatever the drug dog squad did, you didn't make those arrangements?

A. That's correct.

Q. On reflection, do you agree you should have?

A. 100 per cent.

THE CHIEF COMMISSIONER: We will take the morning tea adjournment.

SHORT ADJOURNMENT.

MS DWYER: Chief Commissioner, I'm told that the name of the solicitor who assisted the complainant, Ms Tracey Randall, can be released. I would ask that there be no non-publication order over her name.

THE CHIEF COMMISSIONER: Yes, very well. There is no objection to publishing her name.

I should make it clear, although I thought it was clear enough from counsel assisting's opening, that although it is true we are investigating a complaint, the fact is that we have a number of complaints, not only at this festival but in other places, of strip searching of children. The Commission has undertaken a general investigation of strip searching, in particular, strip searching of young people, and this is one part of that overall investigation, though it has reference to one particular complaint, but I expect that there will be other evidence of other complaints. Yes.

MS DWYER: Might I ask that a document be placed on the screen, and it is section 33 of LEPR. The document identification number is 8420996. It is exhibit 14 in your inquiry, Chief Commissioner.

Q. Chief Inspector, I'm going to put on the screen for you what is section 33. Are you reading that there?

A. Yes.

1 Q. Do you see there that that is section 33 of LEPR? A?
2 You have read that document before, obviously?
3 A. Yes.
4
5 Q. Can I ask you to have a look with me at section 33(3),
6 which sets out the requirements with respect to strip
7 searching a child between the ages of 10 and 18. It says
8 that a strip search of a child between those ages must be
9 conducted in the presence of a parent of a guardian of the
10 person being searched; or, if that is not acceptable to the
11 person, in the presence of another person who is not
12 a police officer and who is capable of representing the
13 interests of the person being searched and whose presence
14 is acceptable to that person.
15 A. I've read that, yes.
16
17 Q. What do you take to be the "interests of the child
18 being searched"?
19 A. Sorry, what --
20
21 THE CHIEF COMMISSIONER: Q. What do you understand by
22 the phrase "interests of the child being searched", because
23 the person who is nominated must either be a parent or
24 guardian or, if not, someone else who is capable of, as it
25 says, representing the interests of the person being
26 searched. Of course, we're talking about someone who is
27 under 18. So what are the interests of that person? Have
28 you ever given any particular thought to that question?
29 A. I hadn't, sir.
30
31 Q. In other words, it is not enough to have a volunteer;
32 they have to understand what are the interests of the child
33 and be able to --
34 A. Exactly, and you would have to have -
35
36 Q. What are those interests?
37 A. You would have to have someone in a trained role,
38 I would say, to make sure that all the interests of the
39 child have been - you know, are there, because I think
40 that's really important.
41
42 Q. You won't get any dissent here.
43 A. No.
44
45 Q. But we do need to just dig a little: what are those
46 interests? Can you think of what those interests would be?
47 A. Well, you've got the mental side, too, of someone who

1 is being strip searched, you know? You've got to think of
2 the wellbeing of that child, like, what after effects would
3 that child have from having that, like, invasive search
4 being done. You know, I wouldn't like it being done, you
5 know, and - yeah, I think that's why you said before it's
6 very important that we have the --

7
8 Q. All right. So we have the emotional wellbeing of the
9 child?

10 A. Yes.

11
12 Q. If they are upset, you might say, "Hey, slow down.
13 Let's just take a breather here. Let's just explain a bit
14 more." So you might do that kind of intervention?

15 A. Yes.

16
17 Q. So we understand the emotional wellbeing. What about
18 legal interests? What legal interests do they have?

19 A. Well, I think it is very important, too, that whoever
20 is doing that strip search on that juvenile, on the young
21 person - to make sure that all the requirements of that
22 search are adhered to.

23
24 Q. Can you give us an example?

25 A. Oh, example of it, that if you had a child who was,
26 say, a 15-year-old, whether it was male or female, like,
27 detected at a festival, to say that they might think that
28 the child has drugs on them or in them or taken them, that
29 you've got to have the mind, as per LEPR, to go through
30 and say, "Right, you know, what am I looking at for this
31 search? What is the lead-up to the search", if that's what
32 you mean, too, Commissioner - like, is the child coming
33 towards you, you know, are there signs that so --

34
35 Q. Well, no, we've reached the stage where you've decided
36 you have a reasonable suspicion, because otherwise there's
37 no occasion for the search. So we've reached that stage
38 and they don't want - or they say, "My mum and dad are in
39 the Sydney" - and we are up at Byron Bay - "I've got no
40 guardian", so they are essentially alone. What kind of
41 interests do you think this person needs to protect to
42 ensure that the legislation is satisfied? What are the
43 interests of the child? What are they? Do you have a view
44 about it or have you never actually considered that?

45 A. Well, I do, because I'm a parent, and then if it was
46 my child, I would want to make sure that, you know,
47 firstly, if the search was done, that it was done lawfully,

1 it was in an area where, you know --

2

3 Q. Privacy?

4 A. Privacy. The most - the less intrusive search you
5 could do. If you had to do a search on a child or a strip
6 search on any person, the idea is that if you had to search
7 someone, you would search them in stages, you know, if they
8 had a hat, shirt, any other thing, you replace it as you
9 go, until you get down to the shoes. So you make sure
10 that --

11

12 Q. They are not totally naked?

13 A. Yes. And that the most unobtrusive way that you could
14 possibly do it is done, yeah.

15

16 MS DWYER: Q. Would you look, please, at the bottom of
17 that page, at section 33(4) which states that a strip
18 search must not involve a search of a person's body
19 cavities or an examination of the body by touch?

20 A. Yes, exactly.

21

22 Q. You have read that provision before?

23 A. Yes, I've seen - yes, I know that. You can't do that.

24

25 Q. Where it says "a strip search must not involve
26 a search of a person's body cavities", is it your
27 understanding that a police officer can look up the vagina
28 of a young person?

29 A. No. No. You can ask someone to squat. But, you
30 know, like sometimes people secrete stuff, you know, around
31 the backside area or the front, and I've seen that, you
32 know. But, yeah, it just - it's - there's a certain way
33 you would go and that's it. There's no way you could sort
34 of - I wouldn't, you know.

35

36 Q. Have you ever received any training in respect to what
37 you can do, as part of a strip search, lawfully, as
38 a police officer?

39 A. Training?

40

41 Q. Yes.

42 A. We get training in relation to your LEPR guidelines,
43 which is something that's written here, you know.

44

45 Q. But the question I'm asking you is do you recall -
46 I appreciate you are a chief inspector so you're doing
47 different duties at the moment --

1 A. Yes.
2
3 Q. Do you recall ever having been trained yourself in
4 what you can do as a police officer when you are strip
5 searching, firstly, an adult and, secondly, a child?
6 A. Yes, I can't remember times and dates, but there would
7 be something that - that I know that. I'd know that
8 without reading that, that you can't do that.
9
10 THE CHIEF COMMISSIONER: Q. Well, now, we have heard
11 cases where - and it's conceded by the searching police
12 officers - they asked a man to squat and then they asked
13 the man to move his genitalia to one side?
14 A. Yes.
15
16 Q. Do you think that's lawful?
17 A. Well, if it's a situation where you are justified in
18 your search --
19
20 Q. Well, the police officer can't do it?
21 A. No.
22
23 Q. Plainly?
24 A. No.
25
26 Q. And you think that, although the police officer can't
27 do it, they can require the person who is being searched to
28 do it?
29 A. They could ask the person to --
30
31 Q. If the person says no?
32 A. Then I wouldn't be forcing anything. Mmm.
33
34 Q. What about squatting? What about the use of force
35 there?
36 A. No.
37
38 Q. Could you force anyone to squat?
39 A. No, I wouldn't - I could ask someone to squat, because
40 of where they secrete drugs, but if they squatted and that
41 was complied with, then that's --
42
43 Q. But if they declined to squat, do you think that it
44 would be lawful to use the amount of force necessary to
45 force them to squat?
46 A. You could do, you could use force. If you do that,
47 you've got to make sure that it's all recorded, and the

1 reasons why that you have done that, to justify those
2 actions.

3
4 Q. I just want you to think. You have probably used
5 force - I'm not suggesting wrongly - far more than I'm
6 aware of. It occurs to me that to force someone to squat,
7 you would have to use a lot of force?

8 A. Yes.

9
10 Q. Do you agree?

11 A. You would only use what force as what is reasonably
12 necessary.

13
14 Q. That's the test, but do you agree with me that to
15 force someone to squat would be a very difficult thing to
16 do?

17 A. It would be.

18
19 MS DWYER: Q. Chief Inspector, let me read to you what
20 the young person, BRC, says happened after she had been
21 asked to take all her clothes off. She was asked to squat
22 on the ground. She squatted on the ground, and then the
23 police officer squatted down and looked underneath her. Is
24 that permissible, in your view, under LEPR?

25 A. I wouldn't do it.

26
27 Q. But is it permissible?

28
29 THE CHIEF COMMISSIONER: Q. That's not quite the same
30 question, though. I think you just have to answer
31 conscientiously. Do you think that was something that was
32 appropriate to do - if it were done?

33 A. If it was, yeah, like - exactly, if it was done,
34 depending on the circumstances, obviously, we're looking at
35 that incident, you know. There's - unfortunately, I can
36 just say that I've seen - not seen with my own eyes, I've
37 been there, where we've had young girls that have come into
38 that festival carrying drugs for other people, for their
39 boyfriends, for their mates, and that, and unfortunately
40 they secrete them inside their body. So it is a thing that
41 does happen and it's not uncommon. I suppose if you asked
42 someone to squat and then you had to look, she might -
43 well, she may have had to look just to see, because you
44 would probably see something where, you know, the drugs
45 have been inserted.

46
47 So it's - it's hard, but in a normal situation maybe

1 not. If something that - you know, you look at that and
2 there's evidence that maybe there's something in there, you
3 can. I know for a fact that one of the local service
4 stations not far from this site, that every year, they run
5 out of condoms, and they do that because people put their
6 drugs in and secrete them in their body, no matter where
7 they want to do it. So there's always that risk.

8
9 MS DWYER: Q. That's your best guess, is it, that that's
10 why they run out of condoms?

11 A. Well, yes.

12
13 Q. Is that right?

14 A. That's what - that's the only time of the year that
15 they --

16
17 THE CHIEF COMMISSIONER: Q. But it may be the only time
18 of the year when you get a crowd, and crowds may be
19 interested in a number of things?

20 A. That was the general consensus of the people that own
21 the - and I think - I can't tell you how many drugs we have
22 found in condoms, I don't know.

23
24 Q. It may be a reasonable guess.

25 A. Mmm.

26
27 MS DWYER: Q. Is a visual inspection --

28
29 THE CHIEF COMMISSIONER: Q. However, the fact is, if you
30 secreted a condom, whether male or female, on a search, in
31 these circumstances, you can't take it out?

32 A. No. No.

33
34 Q. You've got to take them to a hospital?

35 A. Got to be a medical.

36
37 Q. Or you can ask them, voluntarily?

38 A. If they want to, yes.

39
40 Q. But otherwise they have got to be taken to a hospital?

41 A. Exactly, yes.

42
43 MS DWYER: Q. Is your understanding that under LEPR, a
44 visual inspection of a young person's vagina and anus is
45 justified, when they are squatting?

46 A. Well --

47

1 Q. And if you don't know the answer to that, tell us you
2 don't know.

3 A. Well, basically, I don't. You know, like every single
4 thing's different, but it's - it's something that is not
5 nice to have it to happen to you, and it's also not nice
6 for the police to have to do that role, you know? Like,
7 it's - the last thing you want to do is go to work and have
8 to do that. That's not what you want to do at all, you
9 know, because - and you will find --

10

11 Q. Look, we understand that.

12 A. Mmm.

13

14 Q. The question was - and I think you have answered it -
15 you don't know whether that particular exercise is
16 justified or not?

17 A. No. That's correct.

18

19 MS DWYER: Q. Do you know whether it is lawful to
20 conduct a visual inspection of a child's anus or vagina
21 when they are squatting?

22 A. Well, it says that you can - you squat. It depends on
23 how far you go. It's not written there to say that when
24 they do the squat, you know, you're going to put your head
25 underneath, you're going to look to the side. I suppose
26 you've got to do - you've got to satisfy yourself, are
27 these persons - got a drug inserted inside themselves which
28 later on could cause harm or death to them?

29

30 Q. I will read to you the section again. It says the
31 strip search must not involve a search of a person's body
32 cavities.

33 A. Yes.

34

35 Q. Is a visual inspection of an anus or vagina a search
36 of a person's body cavities?

37 A. Well, it says there not involve a search of a person's
38 body cavities or examination. I don't know, is searching
39 looking? I don't - I don't know, Commissioner.

40

41 THE CHIEF COMMISSIONER: Q. The very question
42 indicates - this is the way it occurs to me: there may be
43 in this area no bright lines. However, police are
44 responsible for applying the law. Therefore, at least
45 there should be a corporate view about what is allowable
46 and what is not allowable?

47 A. Yes.

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Q. If the corporate view turns out to be wrong because there is some litigation and a court says it's wrong, or a court says it's right, then, to that extent, the matter is clarified. But it seems to me an impossible position to leave it to a young police officer to have to make a decision without any real corporate position itself taking on these issues. Do you see what I mean?

A. I agree, yeah. Exactly.

Q. The purpose of this is not to identify particular police officers to make findings against, but what is sensible management of this issue is for me by far the most important question. If I may say so, with respect, your difficulty with answering these questions demonstrates to me that there is no real corporate position that is available to an officer that you can look up some discussion or do some role-playing or that kind of work that gives people - gives your officers - some ability to make a judgment in the field situation?

A. Yes, exactly, Commissioner.

Q. Do you see what I mean?

A. Yes, 100 per cent.

Q. One way that has occurred to me, because we've been doing a lot of this, is that sending out emails which have some descriptive advice in them is not all that effective; do you agree? People don't read them or they read them carelessly or --

A. They're on holidays before they turn up. There's a whole multitude --

Q. There is a whole lot of things that can happen?

A. Yes.

Q. One way that occurs to me is that in some commands - it may be different, for example, at Kings Cross or Surry Hills, but most commands will not do, say in a month, more than perhaps half a dozen or a dozen strip searches. So it occurs to me that you could manage a situation where, say, an inspector or chief inspector, once a month, would have a debriefing - no names, no pack drill - of the officers who have done the searches, ask them why, how they did it, why they thought it was necessary, work through the issues in the light of LEPR, so instead of some kind of abstract or hypothetical training, you are actually looking at what



1 you do in the particular situations that these police have
2 had to deal with.

3 A. Mmm.

4

5 Q. How long is a piece of string? When does policing
6 stop? There is always more work than you can do.

7 A. There is.

8

9 Q. But that occurs to me at least being one way of
10 dealing with this, and maybe, if every station did this,
11 say, for three or four months, you wouldn't have to do it
12 for another four or five years, because that training would
13 be enough. What do you think about that kind of proposal?

14 A. Every day, like, from my rank we're called duty
15 officers. So we have a duty officer log that we fill out
16 every day for our duties. In the past, I think it may be
17 six - probably from the start of the year, on that thing
18 there, we do dip samples of all, you know - not all, we do
19 dip samples of the person searches and searches. So we go
20 through and we have a look. We make sure that all our
21 searches now carry a second narrative, so you have your
22 general narrative to say stopped, searched, nothing found,
23 whatever. We go through and ask for a second narrative and
24 then we go through and we dip sample those.

25

26 Q. The second narrative gives more detail?

27 A. More detail, so we want more detail and we go through
28 and make sure that that's done. So that's recorded on all
29 our logs daily. It could be a day that you are flat out,
30 you know, and you don't get a chance to do it, but the next
31 opportunity --

32

33 Q. That's not quite what I'm suggesting. I'm suggesting
34 more proactive interaction with the officers and looking at
35 concrete - actual concrete situations.

36 A. Yes.

37

38 Q. Which is a much more effective way, it seems to me, of
39 imparting guidance, which is really what we are talking
40 about, to the younger officers?

41 A. Yes, that's why I think we - we have started now, with
42 that stage, stage 1, in that we just want to improve the
43 way we do our core business every day, you know, because we
44 are a very big command. We have a lot of crime. We have
45 a lot of Queensland crime. We have a lot of juvenile crime
46 from Queensland that comes across and, you know, it's not
47 an easy --

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Q. And a lot of drug crime?

A. Oh, yes, we have offenders, 13, 14, 15, 16 - stolen cars, you know, they just - they just, I don't know, just don't care, you know? They try and pick easy targets and stuff. Yes, but the thing is, we do have a lot of that interaction with juveniles, but - yeah.

Just a thought now, like, stage 1 of our systems are now, let's go through and let's look at these searches. Let's see who is doing them, you know? Is one officer doing 20? For what reason. One's doing one. Why? A lot of people just - "I don't want to do it", you know?

Q. Well, I can understand there is a degree of personal embarrassment.

A. Yes. But that way - I think that's - well, maybe that's just stage 1, where we're getting at. And I know what you're saying, 100 per cent, I agree with that. But we have started it now by recording all of those, all the event numbers are recorded and we go through and if we do find an issue, then the next shift that officer is on, whatever, we say "In relation to your search, what happened here?" Blah, blah, blah "Can you put a bit more in the narrative". If that's what's happened, you know --

Q. Let's take the festival context, though. After the festival, do you have a debriefing?

A. We do.

Q. To see how the organisation went?

A. Yes.

Q. Whether there are any new issues thrown up and that kind of --

A. We do. Our biggest problem, as I said, we get police from other areas. So our command post, we have little portable MDT computers, and when they run the drug operation we try to start a generic COPS event and everybody goes through and keeps adding, but a lot of the police are visiting police and they will come in to do their COPS entry.

Q. And they are all different?

A. Yes. And there's no computer available. So it could be two weeks later, they are finishing that event. So anybody who is on my list on my orders, I give them

1 a Tweed-Byron profile. So when I'm trying to find out what
2 happened, then I'm not looking up Hunter Valley or I'm not
3 looking up Bourke to find - you know, it does eventually
4 come linking back, because the address, it will link back.
5 But come Monday after the event, when we want to go "How
6 many person searches did we have", there are still 20 COPS
7 entries to be finished.

8
9 So we are trying to improve on that so that we capture
10 our data better. We had a female inspector this year
11 wholly and solely to do and verify the searches. Then it
12 turned out under the COPS system, once you did your search
13 and hit the enter button, it was automatically verified,
14 and we went - this has gone to the checking stage and it
15 has been checked by the person doing it. So the COPS
16 system in the last, maybe, I don't know if it is two
17 months, I've been off sick for a little while, it could be
18 two months, three months ago, I just forget now, has
19 changed and it can't happen. It has to be verified by
20 a supervisor.

21
22 So if you go out and do a search, come back and hit
23 the verification button, it stays there. So it's up to
24 your supervisor. He has to go through and he has to make
25 sure everything is done. If it's not, I mean, "What's
26 happening with this", you know. That was our biggest
27 problem with the festivals was having people from all over
28 the state.

29
30 Q. I can tell you we have found a very substantial number
31 of inconsistencies between COPS and facts statements and,
32 you know, it's not good at all. Okay, yes, thank you.

33
34 MS DWYER: Q. So you are saying that that new system of
35 verification has been implemented in the last two or three
36 months something; is that right?

37 A. I think so, yeah. I just - yeah, it wouldn't be -
38 I don't think it's much more than that. It could be --

39
40 Q. Was that in recognition of the fact that the
41 documentation was not being properly completed by police?

42 A. I think it's the fact that people were doing COPS
43 entries and they just weren't right, they just weren't
44 putting in enough. Like, no doubt the search was
45 justified, but you've got to put it in. And then you then
46 need - something so important as that, you need
47 a supervisor, like you do other events.

1
2 Q. You just said "no doubt the search was justified", how
3 would you know that if proper documentation is not being
4 kept?
5 A. Well, you don't. That's why you'd ask for - that's
6 why you'd resubmit it and ask why.
7
8 Q. How did you identify that the documentation
9 was inconsistent?
10 A. Just by reading it, just going to every event. It's
11 time consuming but we go into our station summaries of
12 a day, or put it in a search engine, and say, "Person
13 searches", and up they all come, you know, and go through
14 and we read every one of them.
15
16 Q. Was that something that was specifically done after
17 Splendour in the Grass in 2018?
18 A. No, that was done by the Commissioner's office, as far
19 as I know; I think that was done by COPS. That was not -
20 we wanted that. We were going to - we were going to make
21 that recommendation saying --
22
23 THE CHIEF COMMISSIONER: Q. I think there is a general
24 order relating to COPS events that they have to be verified
25 by a duty officer --
26 A. Or supervisor.
27
28 Q. Or supervisor, yes.
29 A. Mmm.
30
31 Q. I think there is a time limit. I can't remember. But
32 very shortly after, each day or each week, it has to be
33 done?
34 A. Every day on the supervisor's log, once he goes on, he
35 will look, and it could be the fact that it could be an
36 outstation from us, and there's no supervisor on. So our
37 supervisor from the head station then checks those as well.
38 So he has - our supervisors have --
39
40 Q. But I think that's a general requirement covering all
41 COPS entries for NSW Police?
42 A. Yes. It goes under work priority and we check their
43 work priority. It comes on their work-off, and you go,
44 "You've got five outstanding events. Why?"
45
46 MS DWYER: Q. You knew prior to the 2019 festival that
47 there were complaints relating to the legality of searches

1 conducted in 2018; is that right?
2 A. No, I didn't.
3
4 Q. You were not aware of that?
5 A. I didn't know nothing about this incident until the
6 officers from the police --
7
8 THE CHIEF COMMISSIONER: Q. No, not this particular
9 incident, but there were other complaints, were there not?
10 You are not aware of them?
11 A. No. In relation to searches or --
12
13 MS DWYER: Q. Yes, I'm suggesting to you in relation to
14 searches or strip searches.
15 A. All right.
16
17 Q. Did you become aware that there were any complaints
18 about --
19 A. If there were, sorry, I'm not aware at all. No-one's
20 told me.
21
22 Q. Did you participate in a review of any of the search
23 documentation after the 2018 Splendour festival?
24 A. Our crime management unit goes through, the crime
25 manager goes through, looks at the events.
26
27 THE CHIEF COMMISSIONER: Q. No, I understand that. Is
28 your answer no, it wasn't you; it was your crime unit
29 manager?
30 A. Yes, I don't.
31
32 Q. You don't do that?
33 A. No.
34
35 Q. That's not your job?
36 A. No.
37
38 Q. That's what the question was.
39 A. Unfortunately, I'm planning the next one --
40
41 MS DWYER: Q. But prior to 2019, did your crime unit
42 manager or anybody else draw to your attention that there
43 were problems with the COPS entries and other documents for
44 the search in 2018?
45 A. Like, it could be - not just the fact that it could be
46 a festival; it could be any day-to-day policing.
47

1 Q. My question is, prior to the 2019 festival, did your
2 crime manager or anybody else alert you to the fact that
3 there were problems with the documentation of searches in
4 2018?

5 A. Not directly to me. There could have been, but I -
6 they would have gone through their own crime management
7 unit and they would have spoken to the people who did the
8 drug dog - but nothing --
9

10 THE CHIEF COMMISSIONER: Q. Are you saying, so far as
11 your recollection goes, you were not personally told of any
12 such problems?

13 A. No, not - no.
14

15 MS DWYER: Q. Isn't that something that you would want
16 to know, as the chief inspector, given your role in
17 drafting the operational orders for the festival?

18 A. Yes, but when - so what - just so I get this right in
19 my head, do you mean just complaints like in relation to
20 how the police conducted themselves at the event or --
21

22 Q. No, in relation to the documentation of searches - for
23 example, incomplete documentation about the justification
24 of searches?

25 A. We looked at the systems and we were going to make a
26 recommendation that we wanted a COPS system enhancement to
27 be done to allow for all of those searches not to be
28 self-verification. But it happened --
29

30 THE CHIEF COMMISSIONER: Q. So you have mentioned the
31 self-verification problem. Aside from the fact that it had
32 to be verified to comply with the requirements, does that
33 mean it was because inconsistency or inadequacies in the
34 documentation had been thrown up and, therefore, required
35 some attention to be given to the issue of verification?

36 A. Yes - sorry, Commissioner, I just didn't understand
37 that bit.
38

39 Q. You have mentioned the verification issue?

40 A. Yes.
41

42 Q. Now, verification is a problem simply because the
43 police procedure relating to COPS entries, event entries,
44 required verification by a senior officer or a supervisor?

45 A. Yes.
46

47 Q. And if it was self-verified, well, that was not being

1 complied with?
2 A. Yes.
3
4 Q. So that's a problem. But what I'm asking about is
5 a different problem; namely, the reliability and
6 consistency of the COPS records themselves. Did the
7 problem of verification become an issue because you were
8 aware that COPS entries were not adequately completed?
9 A. I suppose before, some could have slipped through and
10 you didn't know. It'd go through - you're not going back
11 checking a lot of events that have already been verified,
12 you know, and there could have been ones, if that's what
13 you mean. And then they could have, you know, slipped
14 through and you wouldn't know. You didn't have time to go
15 back and check all of those.
16
17 Q. I understand, but we're not talking about the checking
18 process. We're talking about the entry process. Then we
19 are therefore talking about the content of the information
20 that has been placed on by the original officer.
21 A. Yes.
22
23 Q. Were you aware of any significant - obviously
24 occasionally mistakes are made?
25 A. Yes.
26
27 Q. But I mean significant, endemic problems with the
28 content of COPS records?
29 A. No. No, sorry. Sorry about that.
30
31 MS DWYER: Q. I want to take you to another topic. I've
32 asked you some questions already about LEPRa and the
33 guidance given to junior officers. Can I ask that this
34 page of LEPRa come on the screen, 8420994.
35
36 Chief Inspector, I'm directing you to section 31 which
37 relates to strip searches generally. Do you see it on your
38 screen yet, officer?
39 A. No. I've got it now, yes.
40
41 Q. Would you just take a moment to refresh your memory
42 about section 31. Do you agree that it is section 31(b)
43 that is relevant there, because you are not talking about
44 a - this is at a music festival, you are not talking about
45 a strip search at a police section or other place of
46 detention?
47 A. Yes, in 31(a)?

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Q. Yes. You are not talking about those?

A. No.

Q. So it's section 31(b), which reads that in the case where a strip search is carried out at a music festival and the police officer suspects on reasonable grounds that the strip search is necessary for the purposes of the search and the circumstances and the seriousness and urgency of the situation make the strip search necessary. That's the only basis on which a strip search can be carried out at a music festival, isn't it, when a police officer forms a view that it is necessary for the purposes of a search and the seriousness and urgency of the circumstances make a strip search necessary - do you agree?

A. That would be the only time you would do a strip search.

Q. That's the basis for a lawful strip search, isn't it?

A. Yes, according to that, yes.

Q. What circumstances make it so serious and urgent that a strip search is warranted?

A. If the police were of the opinion they thought someone had either ingested something or had something in them that, you know, like, if it was say a condom or something and it broke, or something - but it would have to be something that you would think that would be --

THE CHIEF COMMISSIONER: Q. Let's just think of this stage by stage logically?

A. Yes.

Q. If the person has ingested something, a search is not going to help you find that?

A. No.

Q. If it is in a condom secreted in a body cavity, you are not allowed to do that?

A. No.

Q. Those searches are out. They might be urgent for other reasons because there are, you know, maybe serious consequences, but they are not a 31(b) situation. So you are being asked about what, at a festival - leaving aside the examples you have given - would you think, by way of example, would render it necessary to conduct a search,

1 assuming you have the appropriate suspicion, because of the
2 seriousness and urgency of the circumstances? Let's
3 separate out those things. We might agree that the
4 possibility that you have secreted drugs which you have
5 taken might cause you to be seriously harmed. We probably
6 agree with seriousness. Agree?
7 A. Mmm, yes.
8
9 Q. If you found a joint, that's not really serious in
10 this sense; do you agree?
11 A. Exactly.
12
13 Q. But what makes it urgent? That's what I have
14 difficulty with? Why is it urgent? I can understand
15 "convenient", because you are 10 kilometres from the
16 closest police station. But "convenient" is not what the
17 section says.
18 A. It doesn't say that, no.
19
20 Q. I find it, for myself, difficult to think of what
21 would make it urgent. Do you see my --
22 A. Yes, I'm trying to --
23
24 Q. It's hard, isn't it, when you actually come to grips
25 with it?
26 A. It is.
27
28 Q. I can understand from a policeman's point of view, let
29 me say, he's probably looking at another line of half
30 a dozen that he has to search, but that is his urgency;
31 it's not the urgency relating to the search. If I may say
32 so - and I don't say this in a critical way - it seems
33 obvious you have never really grappled with that problem?
34 A. No, I haven't. Mmm.
35
36 MS DWYER: Q. Do you agree, Chief Inspector, that if you
37 haven't grappled with it and you are unsure of how to
38 answer that question, it is difficult for a more junior
39 officer on the ground to decide when it is serious and
40 urgent enough to justify a search under section 31?
41 A. It would be, because there are so many legislations
42 and laws that we deal with, and every day. You know, it's
43 hard being a policeman out there on the street and you're
44 out there trying to do the job. At the end of the day,
45 you're trying to stop people from overdosing and dying and
46 whatever, but that doesn't matter, there's still the
47 factors - and you have the urgency, and you'd say "What is

1 the urgency?" Someone - you might have information that
2 the person's got drugs, wherever. And like you say,
3 a strip search doesn't have to be body cavities or anything
4 like that; it's just the fact of move your pants open, look
5 at - you know, undo the string, and then that's a strip
6 search --

7

8 THE CHIEF COMMISSIONER: Q. That is true, and you do get
9 levels of strip searching. I mean, even asking someone to
10 remove a shirt is a strip search, and most people - they
11 might be a bit embarrassed, but most people don't really
12 find that offensive. It's of course when you bare your
13 genitalia that it becomes unpleasant.

14 A. Yes.

15

16 Q. But, nevertheless, the issue is this: I can
17 understand police being impatient, because they have got
18 a job of work to do --

19 A. Mmm.

20

21 Q. -- with legal limits that appear to be unreasonable.

22 A. Mmm.

23

24 Q. But, at the same time, they are sworn to uphold the
25 law.

26 A. Yes.

27

28 Q. So they can be torn - I understand that.

29 A. Yes.

30

31 Q. But in the end, from the point of view of the
32 community and the point of view of the parliament which put
33 this in - and you will be aware, probably, or you might not
34 be, but I certainly am. I was on Bar Council when we were
35 going through LEPR proposals. They were highly
36 controversial and much debated between what you might call
37 the civil rights arm and the policing arm. What happened
38 was, in the end, the parliament made a compromise, and
39 this, in this area, was a compromise between the two
40 positions.

41 A. Yes.

42

43 Q. So just as a matter of fundamental principle, I must
44 say - and as Commissioner for this Commission - I just
45 don't see a way around saying, "Okay, if it's practical,
46 you are entitled to ignore the law": Do you follow what
47 I mean?

1 A. Yes.
2
3 Q. It's just not available?
4 A. When I look at that - and then when counsel referred
5 to this as a music event, the seriousness or urgency - you
6 know, like, just getting off the track just a little bit,
7 but we do a lot of OMCG activity up there, motorbikes and
8 things. Unfortunately a lot of those, in the police
9 terminologies, they're tooled up, they're carrying guns,
10 and they've got them secreted. And we do so many searches.
11 Next minute handguns, knives, you know. So to me, urgency
12 for a strip search for that, someone who has intel, you
13 know, priors, whatever, you would have no problem doing
14 that.
15
16 Q. And they have mates within easy call?
17 A. Yes, exactly.
18
19 Q. Sure. So the circumstances - the problem with this
20 legislation, it applies to a 16-year-old kid who has
21 a joint in his underpants, as much as it does to an OMCG
22 who has a knife and a knuckle-duster and who knows what
23 concealed.
24 A. Yes.
25
26 Q. So it covers the bases.
27 A. Yes.
28
29 Q. But it seems to me that the result of that is, when
30 you are managing police presence at something like
31 a festival, someone has to actually grapple with those
32 problems and the practical implications of them, explain to
33 the officers what they do and how far they can go and how
34 far they can't go, so they've got some guidance, because
35 they are unlikely to be police who have got 15 years of
36 experience - do you see what I mean?
37 A. Yes.
38
39 Q. Do you agree --
40 A. Yes.
41
42 Q. -- that that is what needs to happen?
43 A. It is. And I think from '18, we've moved on in 2019
44 and we have changed the way we have done stuff. Because we
45 are always - every time, it doesn't matter what role you
46 are doing, you are looking at how can you better things?
47 We do it all the time, always go through, "How can we do

1 this better? Was that satisfactory? Maybe not", you know.
2 It's hard with policing, you know, because, like you say,
3 it's not written in black and white, you know.
4

5 Q. Everyone knows, you put on a uniform, it's not an easy
6 job?

7 A. It is not. After 40 years. I can say --
8

9 Q. I can assure you, I entirely accept it. But when push
10 comes to shove, the law's the law.

11 A. Mmm, exactly.
12

13 MS DWYER: Q. Just on that - I note the time - the Chief
14 Commissioner asked you for an example of what might be
15 serious and urgent, and you have effectively given one with
16 the outlaw motorcycle gang example. If you had before you
17 a 16-year-old who is saying to you, "I do not have any
18 drugs on me", and they present to you in the tent, what
19 would be the seriousness and urgency that might justify
20 a strip search at all? Can you think of one?

21 A. I suppose every officer has to make that determination
22 himself. They say in LEPR, you know, you have to have the
23 state of mind.
24

25 Q. What would be your view as to what might justify
26 seriousness and urgency of strip searching a 16-year-old
27 who is telling you, "I am not carrying any drugs"?

28 A. Yes, the only thing that I find that could be urgent
29 like that, a lot of the young kids go there as mules, and
30 they get them - boyfriends and stuff, they go in. All the
31 drugs are, you know, on one person, whatever, and to me,
32 I don't want anybody --
33

34 THE CHIEF COMMISSIONER: Q. That undoubtedly ticks the
35 "seriousness" box, but what makes it urgent?

36 A. Urgent --
37

38 Q. That's the difficulty.

39 A. Commissioner, I don't know. I don't know.
40

41 Q. Can I point out, this might be where a person who is
42 the independent person might say to the police officer,
43 "What is urgent about it?"

44 A. Yes.
45

46 Q. And the police officer might say, "Look, I can't say
47 it's urgent but otherwise we've got to take him down to

1 Byron Bay police station" - or up to Tweed Heads, or
2 something - "and he probably wants to just go about his
3 business, why don't you have a talk to him." So then the
4 independent person goes and talks to him and the kid might
5 say, "Listen, as long as you are here, okay." Because it
6 is by consent; it answers a lot of issues.

7 A. Yes.

8
9 Q. But do you see the importance of having an independent
10 person? And that's one of the interests --

11 A. Yes. We've - I suppose moving forward from that year,
12 to this year, and then anybody who comes back, who says
13 "Strip search", we have a duty officer or a sergeant there,
14 and he makes a determination he will say, "Why? What's the
15 reason? What's it for?" That's to stop what you said
16 happening. And then - because if you don't know, the
17 urgency might be what I said before, normally you are not
18 going to get that with a 15-year-old girl at a dance party,
19 although some of these rave parties you wouldn't know what
20 goes on there.

21
22 But, yeah, now that we're putting these - we're moving
23 forward and we are putting these policies and things in
24 place, to say that before that strip search is conducted,
25 so at any events from us from now on, any strip search goes
26 back to the custody bus, there will be a duty officer
27 there, if not, a senior sergeant or someone, you know, to
28 go, "All right, what's the story with it", and make sure
29 that it's justified.

30
31 Q. And make sure that there's someone available, if it's
32 a young person?

33 A. 100 per cent, which we've done from last year. And
34 I actually did forget, because I know sometimes you get up
35 here and you forget stuff, but we did have Byron Bay, like,
36 community services there last year. I forgot about them.
37 They were the people that we had there last year that could
38 have helped us with that. And this year, just so I'll let
39 you know --

40
41 Q. They were on call, were they?

42 A. No, they were there. No, I think they were there the
43 Saturday and the Saturday night, so they were there. They
44 were part of the Byron Bay --

45
46 Q. They were physically there?

47 A. Yes. They were part of the Byron Bay youth services.

1 There was people there that could have assisted with that.
2 I just - you know.

3

4 Q. We were looking at 2018.

5 A. Mmm.

6

7 Q. We know the situation moved on to 2019.

8 A. Yes.

9

10 THE CHIEF COMMISSIONER: Perhaps we might move to that -
11 now, I think we will go another 15 minutes before we take
12 the luncheon adjournment.

13

14 MS DWYER: Q. You just said the Byron Bay community
15 services, the youth services. Do you mean that they were
16 there in 2018?

17 A. I think so. There is a representative here today, so
18 she would be able to say that, but I think it was - I think
19 they were there in 2018. This year we had the PCYC. We
20 set up a whole different --

21

22 Q. Stick with 2018. What briefing did the Byron Bay
23 community centre youth service get about their role and
24 responsibility in being present at strip searches?

25 A. Yeah, I don't - I didn't discuss that with them at
26 all. They were there, but that wasn't discussed.

27

28 Q. You don't know if they even got a briefing; is that
29 right?

30 A. No, they were there basically for the - to help any of
31 the youth.

32

33 THE CHIEF COMMISSIONER: Q. When you say "basically to
34 help the youth"?

35 A. If there is any --

36

37 Q. Just hold on.

38 A. I'm sorry.

39

40 Q. The way I understand you, it's not so much with the
41 search, but after the search, to make sure they are okay?
42 Do I correctly understand what you are saying?

43 A. It could be just like a safe area for the kids to go,
44 if they have issues, at least they know the people there -
45 it's an area that they can go to.

46

47 Q. Who organised that? Who could we ask to tell us what

1 their interaction --
2 A. There is a lady here today from Byron Bay.
3
4 MS DWYER: Q. What about from within the police?
5 A. There was - we didn't do anything that year, that
6 I know. I remember in the police, we did for this year.
7 We had our PCYC there. We had a team of police that were
8 there wholly and solely for that, the youth police. We had
9 them - I think probably there were maybe three or four,
10 could have been more officers. They were --
11
12 Q. So in 2018?
13 A. 2018 we didn't have any of that. We just had --
14
15 Q. So you are not suggesting that Byron Bay community
16 services were ever briefed by police in 2018?
17 A. No, definitely never briefed by me, no.
18
19 Q. So you are not aware of them being briefed in order
20 that they were to provide support services --
21 A. No.
22
23 Q. -- for children being searched?
24 A. No, no, no.
25
26 THE CHIEF COMMISSIONER: Q. It may well be, of course,
27 because of the nature of the beast, that community services
28 themselves had organised some assistance for people and so
29 on at the festival?
30 A. Mmm.
31
32 Q. Entirely independently of the police?
33 A. Yes.
34
35 Q. Is that right? Are you aware whether that kind of
36 thing happened or you don't know?
37 A. No, and I think we have - like, we have our Police
38 Citizens Youth Club.
39
40 Q. Community liaison?
41 A. Yeah, we have that, and there was - it could still be
42 the thing where the people, if they are going to be
43 searched, they don't want the police there as, like, the -
44 as an independent, they want someone --
45
46 Q. Oh, no, they can't, anyway. It has to be other than
47 a policeman, according to the Act.

1 A. It has to be, yes. It has to be an ambulance officer
2 or nurse or whatever. But, no, we have looked at that and
3 we have gone - this needs to be, you know, addressed,
4 because it is a juvenile event as well as an adult event
5 and if there is going to be the searches and we're going to
6 be finding the drugs, as you say, we need to have those
7 people there to help us.

8
9 MS DWYER: Q. Before I move on from the section that you
10 had in front of you, section 31, can we go back to
11 seriousness and urgency as it related to this case that the
12 Commission has in front of it. You are aware, aren't you,
13 that it was a 16-year-old girl who says that she told
14 police that she did not have any drugs on her, and she told
15 police that she hadn't been around people who were using
16 drugs. That's her evidence?

17 A. Yes, just what you said today, yes.

18
19 Q. I ask you to accept that for the moment.

20 A. Yes, I didn't know anything about that.

21
22 Q. Chief Inspector, it is not enough, is it, to justify
23 a strip search of that child, that you have general
24 information that young people are being used as mules or
25 couriers?

26 A. No, you wouldn't do that.

27
28 Q. That wouldn't justify the seriousness and urgency,
29 would it?

30 A. No. And if the detection dog just sat down in front
31 of you, that's - you know.

32
33 Q. That's not enough either, is it?

34 A. No.

35
36 Q. So there has to be a reasonable suspicion that the
37 young person in front of you has something secreted that
38 justifies a strip search; correct?

39 A. Some people will say, "Yes, I have." "Have you got
40 any drugs on you?" "Yes." "What do you have?" "I've taken
41 it, I've swallowed it", you know, "It's in my hands."
42 There's a lot of people - and young people will do that.

43
44 THE CHIEF COMMISSIONER: Q. But we are talking about
45 this particular case.

46 A. Sorry, yes.

47

1 MS DWYER: Q. And this particular young person said that
2 she did not have anything on her and she had not been
3 around anybody that had anything on them?
4 A. Yes.
5
6 Q. What could possibly justify the strip search of that
7 child in these circumstances either with respect to
8 seriousness or urgency?
9 A. I suppose, as I said before, it's up to the searching
10 police. I don't know.
11
12 THE CHIEF COMMISSIONER: Q. No - you are quite right.
13 You are not making the decision.
14 A. Yes, I don't know.
15
16 Q. They have to make the decision. But what you are
17 being asked to do is, you are being asked to think about
18 the circumstances generally and is there anything in those
19 circumstances that suggests to you that the seriousness and
20 urgency requirements existed, or, on what you have been
21 told, would it be your opinion that the seriousness and
22 urgency requirements were not satisfied?
23 A. Yes.
24
25 Q. That's what you are being asked?
26 A. Yes. And by what you said, what the allegation was,
27 yeah, maybe that there - I don't know, there wasn't the
28 seriousness and that there. The person --
29
30 Q. Without my putting words in your mouth, are you saying
31 this: you doubt that those requirements were satisfied,
32 assuming that account to be true?
33 A. Yeah. It's - like, it's up to them to make - yeah.
34
35 Q. Accepted. But on what you have been told, do you
36 doubt that those requirements had been satisfied?
37 A. Yes, you look at it on face value, what you have said,
38 and you think "Well, was there justification or not"?
39
40 Q. Right. That's the question. Now, what's the answer?
41 A. Maybe, to me, would I do it? Probably not.
42
43 MS DWYER: Q. What would make it legal? What would make
44 it lawful? Can I ask you to assume that that young person
45 had no signs of intoxication. A drug dog indicates. She's
46 taken behind the tent. She's asked if she is carrying any
47 drugs on her. She says, "No". Just with those facts

1 alone, what would make it lawful to strip search that
2 child?
3
4 MS CHAPMAN: Your Honour, may I have it noted on the
5 record, so that everyone's clear, that what is being put to
6 the officer is in fact disputed. It's --
7
8 THE CHIEF COMMISSIONER: It is a hypothesis.
9
10 MS CHAPMAN: It's a hypothesis.
11
12 MS DWYER: I will repeat my question because I want you to
13 listen carefully to the elements of it.
14
15 Q. A drug dog indicates. A young person's taken behind
16 to the police tent area and she is strip searched. Before
17 she is strip searched, she is asked if she's carrying drugs
18 on her and she says, "No", and there are no signs of
19 intoxication. Can you see any basis, anything that would
20 make it lawful to strip search that young person?
21 A. Unfortunately, there are a lot of people that will say
22 to you - "Have you got any drugs", and they'll just say
23 "No", and then --
24
25 THE CHIEF COMMISSIONER: Q. We understand there are
26 a possible variations. If you say, "I can't say one way or
27 another", then that's your answer. But you are being asked
28 a specific question. Can you please give us an answer. Is
29 there anything that you can see in those circumstances that
30 would justify a lawful search? The answer is "Yes", "No",
31 or "I don't know".
32 A. Well, based on what you told me, if I was there, as
33 the inspector, and they wanted to do the search, I would
34 probably say no.
35
36 MS DWYER: Q. What if it is a young person, in that
37 scenario, the drug dog indicates. She is taken behind the
38 scenes. She is asked if she has any drugs on her, and she
39 says "No." She is asked if she has ever been around
40 anybody who has used drugs and she says "Yes", but
41 maintains she has nothing on her. She is 16 years old. Is
42 there anything that you can see that would make it lawful
43 that the seriousness and urgency would justify the search
44 in those circumstances?
45 A. Probably not, no.
46
47 MS DWYER: Your Honour, is that a convenient time?

1
2 THE CHIEF COMMISSIONER: No, I think we need to --
3
4 MS DWYER: Press on? May it please the court.
5
6 THE CHIEF COMMISSIONER: I intend to adjourn about quarter
7 past 1. So we can move to 2019, perhaps.
8
9 MS DWYER: Q. You mentioned earlier that in relation to
10 the operational orders, you had added something in about
11 LEPRAs in 2018 or prior to that time; correct?
12 A. Yes.
13
14 Q. And then you made additional changes, did you, in
15 relation to the operational orders for 2019?
16 A. Yes, I put in - it starts with that heading, the strip
17 searches. I added that to it.
18
19 Q. Why is it that you added in additional information
20 about strip searches in the 2019 operational orders?
21 A. Because I wanted to make sure that all the searches we
22 did were legal and as per LEPRAs, and I knew the Commission
23 was looking at those areas, and I wanted to make sure - and
24 we all did at Tweed-Byron - that we were complying with
25 what was expected of us.
26
27 Q. So at the time that you drafted the operational orders
28 in 2019, you were aware that there had - that the
29 Commission was looking at illegal strip searches?
30 A. I think it might have. I think - does it go back that
31 far? I think so.
32
33 THE CHIEF COMMISSIONER: Q. I think we started in the
34 end of 2017, actually.
35 A. Yes, I think - yes, I did, yes/
36
37 MS DWYER: Q. Was there anything in particular about the
38 Splendour in the Grass strip searches that caused you to
39 add it in or was it the Commission's work generally?
40 A. No, I just wanted to make sure we were - I had no
41 knowledge of what we're talking about today. I didn't even
42 know that took place. So it wasn't because I thought, "Oh,
43 this has happened."
44
45 THE CHIEF COMMISSIONER: Q. No, it was a policy decision
46 you made to expand your operational orders, and you are
47 really being asked, I think, was the essential instigation

1 for that - aside from general desirability - that that you
2 understood the Commission was looking at this matter and
3 you wanted to make sure that what you had was appropriately
4 in place?

5 A. We would have looked at it anyway, from, like, going
6 on from '18. But just the fact that we knew that we wanted
7 to comply with what the legislation, we made sure that we
8 didn't have any - you know, nothing adverse, that people's
9 liberties weren't being, you know, looked at by us. So,
10 no. We looked at it, really.

11
12 We did that even with our - like, we have 6 o'clock
13 changeovers of the morning and the sergeants there talk
14 about LEPRAs and say to people, "Justify your searches",
15 "Justify your searches ." It's a common thing we do up
16 there. Because we do so many.

17
18 MS DWYER: Q. In the 2018 documentation, in relation to
19 the goal set out in the operational orders with respect to
20 drugs, I won't take you specifically to much of the orders,
21 but is there anything that distinguishes between the
22 targeting of people for use or supply, or is the role of
23 police generally to police the law the same, regardless?

24 A. Yes, it's the same, yes.

25
26 Q. And that was the same in 2019 - the mission was to
27 identify and detect persons in possession of prohibited
28 drugs and to detect and identify persons who might be
29 supplying drugs?

30 A. Yes, like, that's our main objective, is to get rid of
31 the suppliers.

32
33 Q. Is that set out in the operational orders at all?

34 A. No, that's just policing, yeah.

35
36 Q. That's just your objective?

37 A. Yeah, it's - yeah, you search whether people have
38 got - some of the suppliers are just people who walk
39 through the gate, got 20 or 30 pills on them.

40
41 Q. Are police told anywhere at part of the briefing or
42 documentation that the focus at music festivals should be
43 suppliers rather than users?

44 A. That would be something you'd target. I didn't go to
45 the briefing this year for that, so I don't know what was
46 said. But it would be something where, you know, I would
47 say to someone, "We're out there - there'll be people with

1 one or two pills, but the people that you really need to
2 get are the ones that come in with 30 and 40 pills."

3

4 Q. You are not aware of whether that was part of the
5 briefing or information provided to police --

6 A. At the drug dog, no, not at all.

7

8 Q. In relation to strip searches, as you mentioned,
9 something is added in the 2019 operational orders. If
10 I can ask that you be provided with the document which is
11 exhibit 41. If there is no objection, I will put the
12 page on the screen, 8405994. Have you familiarised
13 yourself with this operational order from 2019 recently?

14 A. Probably two or three days ago, probably while I was
15 at home, yes.

16

17 Q. I will just ask again --

18 A. I haven't got it up yet.

19

20 Q. I will just repeat that number 8405994. Is that up
21 yet?

22 A. No. Yes, it is now.

23

24 Q. Just have a look at that again to familiarise yourself
25 with it, if you will. There is reference to searches
26 generally and a new section referring to strip searches,
27 with information, for example, that it's considered that
28 the occasions for strip searches will be rare and will only
29 occur after reasonable grounds establish the need for such
30 a search. It says that in places other than police
31 stations or other places of detention, a person will not be
32 strip searched unless the seriousness and urgency of the
33 circumstances require and justify a more intrusive search
34 of the surface of the body. A person shall not be strip
35 searched unless that person knows in substance the reason
36 that it is being imposed. Do you agree that there is
37 nothing in the guidelines that specifically gives examples
38 of what might be seriousness and urgency that would justify
39 it?

40 A. No, exactly. It's not.

41

42 Q. So where else might police get that guidance?

43 A. Probably from experience.

44

45 Q. So you just rely on their general experience?

46 A. Mmm.

47

1 Q. Do you agree, after participating in the evidence
2 today and thinking about it, it is necessary to give them
3 more guidance?
4 A. Yes.
5
6 Q. Would you take it from me that there is nothing in
7 these operational orders from 2019 about strip searching of
8 juveniles - the requirements under section 33(3). You
9 agree with me? You just have to answer "Yes" or "No" so we
10 capture it.
11 A. Yes, sorry.
12
13 Q. Do you agree that should be there, given what has
14 fallen out from today's evidence?
15 A. Yes.
16
17 Q. Are you aware, going back to 2018, of the number of
18 general searches that took place at Splendour in the Grass
19 for drug detection?
20 A. I think - I haven't looked at those figures for a long
21 time. I think there might have been - strip searches might
22 have been 80, and then I think maybe in 2019 it was 16 or
23 18.
24
25 Q. So you can tell the Commission that there was
26 a significant reduction in the number of strip searches
27 between 2018 and 2019. Can I ask you to assume from me for
28 a moment that at tab 17 - so exhibit 17 of the
29 Commissioner's brief - there is an analysis of
30 Operation Brugge search data. I will ask that this come on
31 the screen, 84409334. Can I ask you to assume that the
32 information you are about to see, Chief Inspector, has
33 been - there are numbers that have been crunched by the
34 education and training division of the Commission after
35 reviewing the COPS entries.
36 A. This is for 2019, is it?
37
38 Q. No, 2018.
39 A. Okay.
40
41 Q. So you will see that on the screen now, I hope.
42 A. Yes.
43
44 Q. Do you see it shows that the total searches at
45 Splendour were 512?
46 A. Yes.
47

1 Q. Total strip searches were 143?
2 A. Yes.
3
4 Q. Does that high number surprise you?
5 A. No, not really, no.
6
7 Q. Total young persons searched, 30. Total young person
8 strip searched, that we know of, seven. Does that surprise
9 you?
10 A. No, not at all. Mmm.
11
12 Q. Total searches resulting in items found: 24 per cent
13 of all searches resulted in items found, and only
14 8.4 per cent of all strip searches resulted in items found.
15 Were those sorts of numbers available to you prior to
16 today?
17 A. No, I've never seen them before.
18
19 Q. So are you aware of whether or not any of your
20 officers, after 2018, collected the information to show how
21 many had been generally searched, how many had been strip
22 searched?
23 A. Our intel do a spreadsheet for us, and it has on it
24 how many searches, what's done, because we do that, we
25 always release that to the media afterwards, yes, to our --
26
27 Q. It is important information for you to know, isn't it?
28 A. Yes.
29
30 Q. How many of your officers are engaged in strip
31 searches, for example?
32 A. Yes, exactly.
33
34 Q. How many children are being strip searched?
35 A. Yes.
36
37 Q. And wouldn't you then want to interrogate the reasons
38 why children are being strip searched at that festival?
39 A. Yes, probably I - I didn't, but I would say that our
40 CMU, which is our crime management unit, would - they look
41 at that. They look at all those figures and they - not me;
42 me personally, I didn't --
43
44 Q. Are you aware of whether or not anybody from CMU paid
45 attention to the fact that there were seven or so young
46 people who were strip searched?
47 A. I - they would have. And then the amount of young

1 people that were there and it was - there was seven - like
2 you don't want to see any strip searches, but seven - none
3 would have been better, but you hate to think that people
4 are doing that. But seven and, you know, like, this year,
5 there's 42,500, I'm just not sure how many of them were
6 under 18. I don't know.

7
8 Q. Those figures were not brought to your attention?

9 A. No, I haven't seen that, no.

10
11 Q. Do you agree that it is useful for you, in your role
12 as Chief Inspector, to get figures like that after each of
13 the festivals in your command so you can understand what
14 sorts of activities are taking place?

15 A. Yes, we do. And like you say, when we have our
16 debrief, what do we talk about? We talk about that. We
17 talk about how many searches, how many move-ons, how many
18 assaults. Any sexual assaults? We do a whole screed of
19 all the things that have happened that we capture for that
20 event.

21
22 Q. Did you say "we would have", and "this is what we do",
23 but you don't recall getting those figures in relation to
24 2018, do you?

25 A. Well, as my role, with the planning, I sort of don't
26 do this actual thing. That's what our crime unit do. But
27 then, you know, what you say is right, because this
28 information is, you know, very valuable.

29
30 Q. It is important, isn't it?

31 A. It is.

32
33 Q. And it is relevant to your planning for the next year?

34 A. Yes.

35
36 Q. So you agree that you should be receiving this sort of
37 information?

38 A. Yes, I'll be definitely looking at that, yes.

39
40 Q. Chief Inspector, do you see that the total strip
41 searches were 143 according to this data, and that only
42 8.4 per cent of them resulted in something being found, an
43 item being found, so it's over 90 per cent of persons who
44 were strip searched that year had nothing on them.

45
46 MR EURELL: I object to that. That doesn't necessarily
47 follow, Commissioner. There could be other reasons for

1 that, such as being held in a bodily cavity, which police
2 aren't being able to investigate.
3
4 THE CHIEF COMMISSIONER: No, that would still mean it
5 wasn't found. We are talking about when things were found.
6
7 MR EURELL: It might not, but it doesn't follow that they
8 didn't have anything to be found. That is my point.
9
10 MS DWYER: I will withdraw the question. I will ask it
11 differently.
12
13 Q. Do you agree, on those figures, over 90 per cent of
14 persons who were strip searched did not have drugs that
15 were found on them?
16 A. If that's what the figures say.
17
18 Q. Does that concern you - the number of persons who are
19 being strip searched with no items being found on them?
20 A. Yes, well, I - I don't know. It's --
21
22 THE CHIEF COMMISSIONER: Q. Let me put it like this:
23 does it not suggest that many strip searches are carried
24 out where the basis for the search is extremely slight? Do
25 you agree with that? That's what that number suggests. If
26 90 per cent turn out to have no drugs on them, does that
27 not suggest that you are searching many people where the
28 reason for the search is extremely slight?
29
30 MS CHAPMAN: I object, your Honour. There could be other
31 possible answers to that.
32
33 THE CHIEF COMMISSIONER: Such as what?
34
35 MS CHAPMAN: Well, this officer does not know - he doesn't
36 have the detail of the searches and what was available to
37 those officers.
38
39 THE CHIEF COMMISSIONER: All that is true. I'm sorry, are
40 you saying that the question doesn't make sense or --
41
42 MS CHAPMAN: No.
43
44 THE CHIEF COMMISSIONER: What's your objection? I don't
45 mind if you want to answer it for the officer. What do you
46 think? Do you not think that if 90 per cent of strip
47 searches do not result in any drugs, does that not suggest,

1 to a reasonable person, that strip searches are taking
2 place where there is no proper basis for it?

3
4 MS CHAPMAN: No, your Honour, not necessarily.

5
6 THE CHIEF COMMISSIONER: Very well. Thank you. That's
7 the question and that was the answer. We will explore
8 later whether the answer is reasonable or not, but you are
9 appearing for the Commissioner, so it's a reasonable point
10 to take.

11
12 MS CHAPMAN: May it please the court.

13
14 THE CHIEF COMMISSIONER: Thank you. It's not a court,
15 it's a commission.

16
17 MS CHAPMAN: May it please the Commission.

18
19 THE CHIEF COMMISSIONER: Yes. I think that's time for
20 a break, but we will resume at 10 to 2.

21
22 LUNCHEON ADJOURNMENT

23
24 THE CHIEF COMMISSIONER: Q. How are you feeling? It
25 won't be long.

26 A. I just took a couple of pills. They were good pills,
27 though.

28
29 Q. Legal pills?

30 A. Yes.

31
32 MS DWYER: Q. Chief Inspector, just two further short
33 topics for you. The first is in relation to searching,
34 again. Would you ever think it was appropriate to strip
35 search a child on your own - that is, as the only person in
36 the room?

37 A. No, no. Never.

38
39 Q. Have you ever received any instruction that that is
40 not to be done, or is it something that you just generally
41 understand to be the case, or are you relying on LEPR?

42 A. Well, you just - you wouldn't do it, yes.

43
44 THE CHIEF COMMISSIONER: Q. It's too dangerous, isn't
45 it; it's obvious?

46 A. Exactly. Like, just the allegation, everything,
47 everything's just wrong about it. Yeah, mmm.

1
2 MS DWYER: Q. When you say "allegation", just to finish
3 off that sentence, it's the case, isn't it, that it's not
4 appropriate in terms of the comfort or the welfare of the
5 child, but it also exposes the police officer to an
6 allegation being made; correct?
7 A. Exactly. Yeah.
8
9 Q. Final question, then, is this: are you aware of
10 whether or not there were any KPIs - key performance
11 indicators - for you as police officers at Splendour in
12 terms of drug detection?
13 A. Sorry, what was that?
14
15 Q. I will repeat the question.
16 A. Yes.
17
18 Q. You know what I mean by KPIs?
19 A. No.
20
21 Q. Were there any targets for the numbers --
22 A. Oh, no, no. We want as less as possible.
23
24 THE CHIEF COMMISSIONER: Q. Overall, though, in your
25 region, are there targets for searches?
26 A. Yes, we have - yes, you have your checks to say that,
27 you know, so many person searches, whatever, break and
28 enters. Yeah, we have that.
29
30 Q. And who sets those numbers?
31 A. I think that's set through our region.
32
33 Q. Right. So crime managers or --
34 A. No, I think we are given those - we are given those by
35 the region. We don't set our own. I'm not in that
36 department, but I don't --
37
38 Q. You understand they are set by the region?
39 A. Yes. I could be wrong, but, yeah.
40
41 Q. But if a target isn't met, presumably an explanation
42 must be given?
43 A. Yeah.
44
45 Q. The temptation, though, with a target, is to go out
46 and do a whole lot of searches which you wouldn't otherwise
47 do, just to reach the target - that's the risk that you

1 take with target setting?
2 A. It is, and then, yeah, if we don't make the target for
3 our period, then so be it.
4
5 Q. I think the risk is well understood, but that is
6 a risk, isn't it?
7 A. Yeah.
8
9 Q. And I suppose it really depends on, really, the
10 inspectors to ensure that it's not misused?
11 A. Exactly. Mmm.
12
13 MS DWYER: Nothing further. Thank you, Chief
14 Commissioner.
15
16 THE CHIEF COMMISSIONER: Now, any questions?
17
18 MR MURPHY: Yes, thank you, Chief Commissioner.
19
20 <EXAMINATION BY MR MURPHY:
21
22 MR MURPHY: Q. Chief Inspector, you indicated that you
23 were aware of the Law Enforcement Conduct Commission having
24 an interest in strip search procedures --
25 A. That's correct.
26
27 Q. -- prior to drafting these operational orders in 2018?
28 A. Yeah, I think it would have been, yeah.
29
30 THE CHIEF COMMISSIONER: Sorry, I think 2019.
31
32 MR MURPHY: No, 2018.
33
34 THE WITNESS: '18, no, no.
35
36 THE CHIEF COMMISSIONER: It was 2019.
37
38 MR MURPHY: All right.
39
40 Q. When did you first become aware that there was
41 interest from this Commission in the Tweed-Byron local area
42 command?
43 A. Only when I knew that we had to supply figures, and
44 that, that the Commission required.
45
46 Q. Was that before or after you received the summons
47 yourself?

1 A. Oh, that was well before.
2
3 Q. So when was that?
4 A. That I got the summons or --
5
6 Q. Just as best you can. No, that you supplied those
7 figures and became aware?
8 A. Yeah, I didn't supply them, it was supplied through
9 our CMU, our crime management unit. But, yeah, I just knew
10 that - it was in the media. It was common knowledge, you
11 know.
12
13 Q. The Tweed-Byron local area command takes in a number
14 of music festival events, doesn't it?
15 A. It does.
16
17 Q. The three major ones are the Splendour in the Grass,
18 the Byron Bay Bluesfest and the Falls Festival; is that
19 correct?
20 A. That's correct. They are the three major ones. There
21 are a lot of other little ones we have, music festivals and
22 stuff, but they are the three main ones.
23
24 Q. Have you had any complaints made directly to you in
25 relation to strip searches at any of those festivals --
26 A. Never.
27
28 Q. -- in the last couple of years?
29 A. No, nothing.
30
31 Q. Are you aware of any such complaints being made to
32 anyone in your local area command?
33 A. No.
34
35 Q. And was it the case that you didn't know about the
36 incident the subject of this hearing until you had received
37 your summons?
38 A. Yes, and I still didn't know, after that. Until what
39 counsel said today, I had no idea what it was about. No
40 I didn't make any inquiries, I - mmm.
41
42 THE CHIEF COMMISSIONER: Q. Well, complaints about any
43 police misconduct would not, in the region or in your local
44 area command, usually come to you, unless it concerned you
45 or your officers; correct?
46 A. Yes. Exactly.
47

1 MR MURPHY: Q. But you weren't aware of any such
2 complaints, were you?
3 A. No.
4
5 Q. You have been off work for a while, haven't you,
6 because of your --
7 A. Yes, my knee, unfortunately, yes.
8
9 Q. When did you last perform, or when were you last on
10 deck, so to speak?
11 A. I think probably a month ago - probably longer.
12
13 Q. Is it the case that there is a policy of ongoing
14 improvement in the way that police handle these music
15 festivals generally?
16 A. There is. We look at it. Every time we come back, we
17 have a debrief. We look at the areas that we think need to
18 be addressed, and that's why I did a lot more work on '19
19 than on '18. But, you know, I did more on '18 than I did
20 on '17. You know, it just - you know, there is a lot of
21 factors and that involved but - yeah.
22
23 Q. There were fewer strip searches conducted in 2019 at
24 the Splendour in the Grass?
25 A. That's correct, than '18.
26
27 Q. Compared to '18?
28 A. Yes.
29
30 Q. Are you aware of the figures? We have already heard
31 the figures for 2018.
32 A. It was 6, '18, to 80. I think it was 80 in - yeah.
33
34 THE CHIEF COMMISSIONER: I think we can give you those
35 numbers. We have them here. I'll just ask.
36
37 THE WITNESS: I think that's what it was.
38
39 MS DWYER: We don't have 2019, Chief Commissioner. We
40 have 2018.
41
42 THE CHIEF COMMISSIONER: I thought we had 2019.
43
44 MR SAUNDERS: Not strip search figures, sir.
45
46 THE CHIEF COMMISSIONER: Not strip search figures? I'm
47 sorry.

1
2 THE WITNESS: Just by memory, I think it was 80 in '18 and
3 16 in '19; it was --
4
5 MS DWYER: If I can just, assist, it was 143 strip
6 searches, according to our information, in 2018.
7
8 THE WITNESS: Oh, right.
9
10 MS DWYER: I can't assist the Commission in relation to
11 2019.
12
13 THE CHIEF COMMISSIONER: We rely on our access to the COPS
14 reports, so that's where our numbers are derived from.
15
16 MR MURPHY: Thank you, Chief Commissioner.
17
18 Q. Are you aware of approximately how many strip
19 searches - subject to verification from proper sources -
20 but yourself as a senior officer in the Tweed-Byron Bay
21 local area command, how many strip searches do you
22 understand were conducted at the Splendour in the Grass
23 festival in 2019?
24 A. I think there was only 18, 16 or 18.
25
26 THE CHIEF COMMISSIONER: Q. Do you have any view about
27 why so few compared to the previous year? Was it the
28 system changed or --
29 A. I don't know, Commissioner, when --
30
31 Q. You mentioned the introduction of a senior officer
32 having to approve it?
33 A. Yes.
34
35 Q. What do you put it down to?
36 A. Definitely, and I think education, we just - I put out
37 an email from the commander just stating to people that
38 were coming up that, you know, "This is what's expected.
39 These are the searches. You know, LEPRAs, do what you are
40 supposed to do", you know, "Make sure what you do is
41 accountable."
42
43 Q. So you think they were just generally more careful?
44 A. I think so, too. And then we did a lot of media
45 stuff, too, I do some media with the promoters. I didn't
46 do a lot - probably as much as I normally do, but just
47 letting people know that there's more police there, that we

1 have drug detection dogs, you know, you don't want to be
2 caught carrying drugs.

3
4 Q. So you're trying to deter them?

5 A. "Deterrent", that's the word, sorry. Yes, deter that
6 from happening. And I think a lot of it, it works. A lot
7 of our media goes out - only goes to local media, too. We
8 don't - you know, we try and cover - we might do a national
9 thing to say, but, you know, there's a lot of people come
10 from Queensland, a lot of people from Victoria and places,
11 come up for the festivals. That's why a lot of people
12 camp, you know; day-trippers more - but, you know.

13
14 MR MURPHY: Q. It was raised with you by counsel
15 assisting that the issue was raised that there were - well,
16 you were asked if you were aware if there were any people
17 present with specialist youth training for the purpose of
18 assisting in these police searches in 2018?

19 A. This year we had the PCYC contingent there, this year,
20 interacting.

21
22 Q. That's this year. My question is you were asked if
23 there were such people there in 2018. As I recall your
24 answer, you said, "Not at that stage"?

25 A. No.

26
27 Q. So has something happened since along those lines?

28 A. Yes, the command - and our commander now, he made
29 arrangements and he got the PCYC, or the Police Citizens
30 Youth Club. They came up and they were on site and they
31 were interacting with all the kids, walking around.
32 I think that made a big difference. It just - it makes
33 the - it makes them feel safe. If I had a dollar for every
34 time I had a festival-goer come up to us and go, "We feel
35 so safe with the police here". Really, it does, it makes
36 you feel good when they say that, because you're not there
37 as this big omen and stuff. And I make sure, I say to
38 them - especially when I'm working in, like, overalls and
39 stuff, that we interact with the kids, and they're good.
40 They'll come up to you, "Can we get a photo taken?" "Yes."
41 Years ago, they'd say "No." Yes, 100 per cent, you can.
42 Interact. People say, "Oh, you'll end up on Facebook". So
43 what? It's just a photo, you know? But we are looking at
44 interacting with the kids more and more every year,
45 starting this year with the PCYC, and then next year we'll
46 do even more.

47

1 Q. So that's part of the ongoing improvement process --
2 A. Yes.
3
4 Q. -- that the local area command is undertaking --
5 A. Yes.
6
7 Q. -- with respect to this and the other music festivals
8 within your local area command?
9 A. Definitely the three that we do. Splendour because it
10 is an under-18 event; the Falls is over 18 and Blues is
11 older.
12
13 MR MURPHY: Thank you. I have no further questions, Chief
14 Commissioner.
15
16 <EXAMINATION BY MS CHAPMAN:
17
18 MS CHAPMAN: Q. You said in an answer just recently that
19 part of your view, or your opinion as to why strip searches
20 have reduced in number between 2018 and 2019 is that one of
21 the reasons was education, and by that you meant education
22 of officers?
23 A. Yes.
24
25 Q. Are you able to elaborate any further about the detail
26 of the education?
27 A. With the officers in relation to --
28
29 Q. Strip searching, yes.
30 A. Yes, I think that they are more aware now, of their
31 powers under LEPR and just what they have to do, and
32 I think if there is any doubt, you know, that if - hold
33 back and don't - you know, it's not worth the - to say it
34 plainly, it's not worth the hassle to do that. It's a
35 thing that if you think you don't have enough, then don't
36 do it, you know? We know now, it's - the thing is there's
37 a few little grey areas there, that we need to address,
38 and --
39
40 THE CHIEF COMMISSIONER: Q. So you think they are more
41 cautious?
42 A. 100 per cent they are, yes. Yes. And that shows with
43 the figures and the figures are down. And I think, too,
44 like I said, with the education of the - we call them kids
45 because they are under 18, if they go there, you know, and
46 I think - and more - we talk about - we say to them all the
47 time, we do it in the media, "Look after yourselves. It's

1 up to you guys, especially with taking drugs or even sexual
2 assaults, don't make yourself a target" - especially areas
3 like that, there are all camps, tents, set up, a whole big
4 area and, "Look after yourselves, and if you see your
5 friends are going to take something, just have a talk to
6 them, you know, and try and avoid it." I don't know
7 exactly what - I think it is a combination, like we said,
8 of what there is, but definitely that reduction was really
9 pleasing for me to see.

10
11 Q. Is the education delivered in some of the - how is it
12 delivered? Is it in the meetings? The education to the
13 officers that has resulted in less strip searching?

14 A. Yes, we do that. Every - when we have the 6 o'clock
15 briefing, we have a 6am, 6pm briefing with the change of
16 shifts, because they are on 12-hour shifts, and a lot of
17 the sergeants, too, have the new guidelines that were
18 brought out in September 2019, and they go through them,
19 or, you know, you will say, "What do you know about LEPR?
20 What can you tell me about a strip search? Is that
21 justifiable?" You know, ask them, so you have that.

22
23 Our commander has introduced constables meetings
24 where, it might be every three months, he gets them in and
25 talks to them on a team basis and talks to them and goes
26 through their powers and that with them. Then we have the
27 EDO, he puts out stuff regularly on different offences, and
28 then we have our online training now that we do. So there
29 are a lot of areas that do them. But - yeah.

30
31 MS CHAPMAN: Nothing further.

32
33 THE CHIEF COMMISSIONER: Very well. Anyone else?

34
35 <EXAMINATION BY MR EURELL:

36
37 MR EURELL: Q. Sir, I represent the interests of
38 Officer BR3. Do you have the code names document there?

39 A. No.

40
41 MR MURPHY: I will make mine available, if that would
42 assist.

43
44 THE CHIEF COMMISSIONER: It's all right. We will give him
45 the name.

46
47 MR EURELL: It might be of some assistance,

1 Chief Commissioner, if he does have that.

2

3 Q. It is the case, isn't it, Chief Inspector, that
4 Officers BR2, BR3 and BR4 were allocated as a search team
5 at the event in 2018?

6 A. I don't know these officers at all. I didn't have
7 anything to do with that.

8

9 Q. You didn't have anything to do with allocating the
10 teams?

11 A. No, I don't do that. That was the sergeant in charge
12 of the operation - the drug dog operation - will allocate
13 those search teams. I don't know that name.

14

15 Q. Is that officer BR5?

16 A. Sorry?

17

18 THE CHIEF COMMISSIONER: He doesn't have the list. We can
19 give him a list.

20

21 MR EURELL: Q. That last question, Chief Inspector, was
22 is it officer BR5 who allocated the search teams?

23 A. Yes.

24

25 Q. The procedure, though, for the search teams, was, if
26 I understand it correctly, that there was a male and
27 a female searching officer allocated to a dog handler?

28

29 THE CHIEF COMMISSIONER: I think the first question you
30 should ask is whether this officer actually knows what the
31 procedure was.

32

33 THE WITNESS: Yes, I have - I don't know. I know that
34 they work in teams. You have, like, five officers with one
35 dog, and they work as a team. Every officer is a searching
36 officer and then if they do find something or whatever they
37 then come back, and if there is not enough - if they have
38 two or three detections then the dog stands down until they
39 are ready then they go back again, yeah.

40

41 MR EURELL: Q. Those officers that were working with
42 the drug-handling officers - sorry, the dog-handling
43 officers, were they briefed with the operational orders for
44 the drug dog part of the operation?

45 A. They were briefed by BR5 at the - in 2018 at the site.

46

47 Q. With the operational orders for the drug dog part?

1 A. Yes, with them only.
2
3 Q. With those only?
4 A. Yes, because that was their sole role.
5
6 Q. One final question. Can I ask you, were there
7 facilities available for the police officers to access the
8 computerised operational policing system, like, a data
9 terminal at the event?
10 A. Yes.
11
12 Q. Where was that located?
13 A. We have a shared - there would have been probably
14 four.
15
16 Q. Whereabouts?
17 A. Within the command post area we have it at the command
18 post, we have a meal area, we have another area that you
19 can bring people back to talk to them and that's where we
20 have the portable MDTs. There's one in the custody bus.
21 Some of the cars have them in there as well.
22
23 Q. Where was the command post in proximity to the search?
24 A. You have the festival footprint's basically in front
25 of you, and the command post is just back from there. So
26 it was just in walking distance to walk into the festival
27 site. Then the back of the command post now is now where
28 the main gate is where they come in. So we were just
29 outside of the footprint, out of the licensed area, but we
30 were in the - just there. Not far.
31
32 MR EURELL: Thank you, Chief Commissioner.
33
34 THE CHIEF COMMISSIONER: Q. Can I ask you this: when
35 someone was arrested for any offence - it doesn't matter
36 much - where were they taken? Where were they processed?
37 A. We have a bus that comes up from Sydney. It's
38 a proper custody bus. It has a dock in it. It has the
39 terminals and stuff. So most of the people are processed
40 through that, plus, if that's tied up, then we've got --
41
42 Q. And many of them would be granted bail then and there,
43 but not everybody?
44 A. No, only - we just do the minor ones there, and
45 anybody else is taken to Byron Bay or Tweed, mainly Byron.
46
47 Q. By car or by the bus?

1 A. We normally have a Sprinter van. We have a transport
2 unit that comes up from Sydney. So it'd either be by caged
3 truck or by the Sprinter van. That's for someone that's
4 going to be charged and bail conditions.
5
6 Q. Would that be done immediately or would you wait till
7 you had three or four and --
8 A. No, no, it's every - individual.
9
10 Q. As it happens, they are taken?
11 A. Yes.
12
13 <EXAMINATION BY MS KLUSS:
14
15 MS KLUSS: Q. In relation to the COPS entry, do you have
16 a copy of that available? Might that be made available.
17
18 THE CHIEF COMMISSIONER: What COPS entry?
19
20 MS KLUSS: The COPS entry E number 68641733.
21
22 THE CHIEF COMMISSIONER: Perhaps you might bring that up
23 on the screen. Would you read the number again?
24
25 MS KLUSS: 68641733.
26
27 MS DWYER: There is identifying information for the young
28 person on that document. That is my only concern.
29
30 THE CHIEF COMMISSIONER: That's all right. As long as it
31 remains on the screens and is not given out, it will remain
32 confidential.
33
34 MS KLUSS: I am happy if the witness simply has access to
35 a hard copy. It is just in relation to the generation of
36 a date.
37
38 THE CHIEF COMMISSIONER: In that case, can we give him
39 a hard copy.
40
41 MS DWYER: Exhibit 4.
42
43 MS KLUSS: Q. Just in relation to your knowledge of the
44 generation of COPS entries, you would notice the column
45 there, "Narrative details/description", which appears as
46 a heading about a quarter of the way down the first page,
47 and there's, "Automated narrative created on" in the line

1 that is attached to that particular heading, on the first
2 page. Can you see an entry that says "Automated narrative
3 created on 20/7/2018, 19:55"?

4 A. Yeah, it was created on - at 19:55, and the incident -
5 I'm just looking at what time the incident happened.
6

7 Q. Thank you. But what I'm asking you, sir, is in
8 relation to that automated narrative created on 20/7/2018,
9 19:55, that would indicate the time at which this
10 particular entry was generated on the computer, would it
11 not?

12 A. Yes.
13

14 Q. That indicates it's about 5 to 8 in the evening. The
15 following line records, "At 20/7/2018 at 15:00" - would
16 that indicate the time at which the event, the event that
17 the entry records, actually occurred?

18 A. Are you asking what the difference in the times are?
19

20 Q. No, I'm just asking you is that what it means? The
21 15:00 would have been put in by the police officer, but the
22 19:55 was generated by the computer?

23 A. A lot of these COPS entries are done - because I don't
24 do the drug dog and I don't know, I know a lot of the COPS
25 entries are pre-started by the drug people, because there's
26 so many of them go through, so it sort of gets them through
27 quicker. But I'm just trying to work out - the automated
28 narrative was, like you say, created at 19:55, 5 to 8.
29

30 Q. Can I just pause you there. Does that mean that the
31 computer generated the narrative at 19:55?

32 A. Yes, whatever that time is, that's when it was done.
33 Yes.
34

35 Q. Thank you. But the following line would have been an
36 entry that was made by the officer as to when the event
37 occurred?

38 A. Yes. That's what he has put up, and that's what comes
39 up on that first part of the search. As I said before,
40 when we look at the searches, that doesn't tell us
41 anything. So that's why we request that second narrative,
42 where it then has, "The young person was stopped", so it
43 lets you know the story. Otherwise, just going on the top
44 bit, that doesn't tell you anything, so you don't know.
45

46 MS KLUSS: It is more the times I'm interested in,
47 thank you.

1
2 THE CHIEF COMMISSIONER: Thank you. No more questions?
3 Thank you, officer. You are free to go. Have a good
4 outcome for your surgery.
5
6 THE WITNESS: Thanks, Chief Commissioner. I will let you
7 know.
8
9 <THE WITNESS WITHDREW
10
11 MR MURPHY: Chief Commissioner, might I be excused for
12 a few moments?
13
14 THE CHIEF COMMISSIONER: Yes, certainly.
15
16 MS DWYER: Chief Commissioner, I call, if I may,
17 Officer BR2. Perhaps Mr Hammond might assist. We are
18 looking for his client, Officer BR2.
19
20 MR HAMMOND: If I could just be excused for that purpose,
21 Commissioner.
22
23 THE CHIEF COMMISSIONER: Thank you.
24
25 <OFFICER BR2, sworn: [2.27pm]
26
27 THE CHIEF COMMISSIONER: Thank you, officer, you may be
28 seated. Now, has your legal representative informed you of
29 the scope of this examination?
30
31 THE WITNESS: Yes.
32
33 THE CHIEF COMMISSIONER: It is generally into strip
34 searching conducted by the NSW Police Force, focused on,
35 but not limited to, juveniles. But, so far as you are
36 concerned, we're going to ask you questions about the
37 operation at Splendour in the Grass, where I think you
38 performed some duties; is that right?
39
40 THE WITNESS: Correct.
41
42 THE CHIEF COMMISSIONER: I'm sure your lawyer has told you
43 this, but there are some things I need to tell you, though
44 it is repetitious. The first is you must answer all
45 questions that you are asked, unless I tell you you don't
46 have to. You must produce anything you are asked to
47 produce, unless I tell you you don't have to produce it.

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THE WITNESS: Okay.

THE CHIEF COMMISSIONER: In order to avoid the necessity of your objecting to any question, although, if you do object, you still must answer it, or your objecting to producing anything, you still must produce it, but in order that you don't have to object on each occasion, I can make a declaration to the effect that each of your answers are given under objection and everything you produce is given under objection.

The legal effect of that is, although you still have to obey the question or give the answer, except for disciplinary proceedings possibly being taken under the Police Act, nothing that you say can be used against you in any court proceedings. Do you understand?

THE WITNESS: Yes.

THE CHIEF COMMISSIONER: Do you wish me to make a declaration?

THE WITNESS: Yes.

THE CHIEF COMMISSIONER: I make a declaration pursuant to section 75 that all answers and other things given by this witness will be regarded as having been given on objection by the witness. Yes, thank you.

<EXAMINATION BY MS DWYER:

MS DWYER: Q. Sir, you have the rank of senior constable; is that right?

A. Yes.

Q. You understand, do you, that you are known in this inquiry as Officer BR2, but the Chief Commissioner and those appearing are aware of your full name?

A. Correct.

Q. I just want to ask you some questions to start with about your background. What role are you performing currently within the police force?

A. I'm a dog handler.

Q. And how long have you been in the NSW Police Force?



1 A. Fifteen years.
2
3 Q. When you joined, did you perform general duties for
4 a period of time?
5 A. Yes, I did.
6
7 Q. How long have you been a dog handler for?
8 A. Since 2013.
9
10 Q. What training is involved in that role?
11 A. Ongoing training. Initially you go through
12 a selection process and you get picked. Then you get
13 buddied up with your dog and you go through a 12-week
14 training course.
15
16 Q. Are you buddied up with a dog that is, in your case,
17 specifically used to target the detection of illicit drugs?
18 A. You go through the training to make that a police dog
19 but, yes, that is the end result.
20
21 Q. So it is not a dog that is also used in circumstances
22 at the airport to detect fruit, for example; it's
23 specifically for drugs - is that right?
24 A. No, that's right.
25
26 Q. And are you also, as part of your training, instructed
27 about LEPRAs?
28 A. Yes.
29
30 Q. And do you receive ongoing training with respect to
31 LEPRAs?
32 A. Yes.
33
34 Q. You understand, don't you, that the indication by
35 a drug dog towards a citizen is not enough, of itself, to
36 constitute reasonable suspicion?
37 A. That's right.
38
39 Q. And you have been told that as part of your training;
40 is that right?
41 A. Yes.
42
43 Q. In 2018, you were performing the role as a dog handler
44 at the Splendour in the Grass festival at Byron?
45 A. Yes.
46
47 Q. Is that the first time that you had performed that

1 role at the Splendour in the Grass music festival?
2 A. No. I had been there last year - the year before,
3 2017.
4
5 Q. 2017, 2018, and were you there in 2019?
6 A. No.
7
8 Q. Have you performed a role as a dog handler at other
9 music festivals?
10 A. Yes.
11
12 Q. When did you first start doing that?
13 A. Soon after passing the course in, say, August 2013.
14
15 Q. So is it a regular part of your activities as a dog
16 handler to attend various music festivals around New South
17 Wales with your dog?
18 A. Yes.
19
20 Q. Have you received any training specific to what you
21 are to do at a music festival?
22 A. How do you mean?
23
24 THE CHIEF COMMISSIONER: Q. Well, for example, there are
25 occasions when drug dogs are used at markets, at fairs, on
26 railway stations and so on. There are various environments
27 where drugs might be found.
28 A. Yes.
29
30 Q. So what you are being asked is, so far as the festival
31 environment is concerned, did you receive any specific
32 training that related to that kind of work?
33 A. No.
34
35 MS DWYER: Q. In relation to the Splendour in the Grass
36 festival in 2017 and 2018, did you attend a briefing as to
37 what your duties were to be?
38 A. Yes.
39
40 Q. Was that briefing conducted on the morning before the
41 festival commenced, or some other time?
42 A. In the morning.
43
44 Q. Did you attend a briefing on each morning that you
45 were there with your dog?
46 A. Yes.
47

1 Q. Were you there on more than one day with your dog on
2 each occasion?

3
4 THE CHIEF COMMISSIONER: Q. The festival went for four
5 days. Were you there each day or --

6 A. I think in 2017 I was there for three days.

7
8 Q. And 2018?

9 A. 2018 I think maybe two.

10
11 Q. And you said you weren't there this year?

12 A. No, I wasn't there this year.

13
14 MS DWYER: Q. The briefing is repeated on the morning
15 before the festival commences for that day; is that right?

16 A. Yes.

17
18 Q. During that briefing were you given any particular
19 instructions about what you were to do as a dog handler on
20 that day?

21 A. No. Just generally you would be going to this gate
22 and that's where you'd be working the shift.

23
24 Q. Do you recall in 2018 whether or not you were given
25 any particular instruction about LEPRAs?

26
27 THE CHIEF COMMISSIONER: Q. Can we just come back to the
28 physical environment. So you had people coming in a gate.
29 You were with your dog on one line and someone else on
30 another, or how did that work?

31 A. At this event you can also camp there, so there was -
32 I'm not sure if it was the Friday or the Thursday, but you
33 could come in in your car and also come in via bus.
34 I don't think there was much - there might have been
35 a parking lot, but I didn't see that, but a lot of people
36 came in by bus or by their own car to the event.

37
38 Q. Yes, I know, but you were at the entrance, or near the
39 entrance?

40 A. Yes, yes.

41
42 Q. And was it you and just one dog, or there was another
43 handler with another dog? Can you recall?

44 A. No.

45
46 Q. You don't remember one way or another?

47 A. No. Because I've been there a couple of times.

1 I don't know on that specific time if there was another
2 handler present, yeah.

3
4 Q. Okay, it matters not. You, however, didn't work
5 alone; you would have had two or three others, or how many
6 were, as it were, in your team?

7 A. Of dog handlers or other police with me?

8
9 Q. Well, other police with you?

10 A. There would have been at least 10 minimum with me
11 working at a particular gate at that time.

12
13 MS DWYER: Q. I will just ask you, then, picking up from
14 the questions already asked, about what happens after that?
15 You are there with at least 10 others on a particular gate?

16 A. Yes.

17
18 Q. Prior to that, as I understand it, you were not given
19 any other specific instructions about what you were going
20 to do, you were relying on your general training; is that
21 right?

22 A. Yes.

23
24 Q. So what is the procedure for you? What do you do when
25 patrons are entering the gate with your dog?

26 A. Depends how - if it's a big crowd, you try and
27 manoeuvre through the crowd, if there's a gap or
28 opportunity to get through. And the alternative, if they
29 are in a line, then you would target every person in the
30 line.

31
32 Q. At certain points, a dog might indicate in a
33 particular way; is that right?

34 A. Yes.

35
36 Q. You are trained to understand your dog and why it is
37 indicating or why you think it's indicating?

38 A. Yes.

39
40 THE CHIEF COMMISSIONER: Ms Chapman, you need to be aware
41 of this, and alert, I think, if we move on to areas that
42 ought not to be in the public domain. I am going to ask
43 whether any particular indication indicates a particular
44 drug or a particular quantity of drugs. I can get him to
45 write the answer, but is this a matter which ought to
46 remain confidential?

47

1 MS CHAPMAN: Thank you, Chief Commissioner. I suppose
2 any - it could be. I don't know.
3
4 THE CHIEF COMMISSIONER: The answer may simply be "no", or
5 "yes", I don't know, but can he be given a plain sheet of
6 paper, please.
7
8 Q. What I'm going to do is I'm going to ask you whether
9 a dog can indicate either quantity or nature of the drug.
10 So the first question is quantity and the next question is
11 nature. Just put a "yes" or a "no" next to them and hand
12 it to me. So the first is quantity, yes or no. The other
13 is nature, yes or no.
14 A. (Witness complies with request).
15
16 Q. Thank you for that. Anyway, there is an indication.
17 We don't need to ask how it happens. We are all familiar
18 with it sitting, and perhaps there are other kinds of
19 indications. So the dog indicates to you that it has
20 detected a drug. What happens then?
21 A. So what I say is the same every time. I introduce
22 myself to that person, caution that person, and then ask
23 them the question do they have any drugs.
24
25 Q. So you say, in effect, "You don't have to answer this
26 question" - is that right?
27 A. Yes, that's right.
28
29 Q. -- "Unless you want to, but I have to ask you, are you
30 carrying any drugs?"
31 A. Yes.
32
33 Q. Let's assume the answer is "yes". What happens then?
34 A. Then I immediately feed the dog, because the dog has
35 done the right behaviour by showing me that there are
36 prohibited drugs there. If it is "no", then, hopefully, at
37 that time other police have come over and seen the
38 interaction with this person.
39
40 Q. So other police should be observing what has happened?
41 A. Yes.
42
43 Q. They see the indication as well.
44 A. Yes.
45
46 Q. Okay. So you get a "yes" or a "no". Let's assume
47 it's a "yes". Other police come and, what, take the person

1 away?
2 A. Yes, I will have a chat to them and basically say --
3
4 Q. You say, "He's told me" - let's assume it is a "he",
5 "He has told me he has drugs so" --
6 A. Yes, "Do what you need to do."
7
8 Q. What if the answer is "no"?
9 A. Then it is the same process - the dog doesn't get fed,
10 and I say, "Have a chat to these police that are behind
11 you", or "behind me."
12
13 Q. So a chat still takes place?
14 A. Yes.
15
16 Q. Will you usually listen to that chat or will you just
17 go, take your dog and move on?
18 A. No, I'm moving on.
19
20 Q. You are out of it then?
21 A. Yes, next person.
22
23 Q. And those police - that will be two police?
24 A. Yes.
25
26 Q. So although you said there are 10 others - do you
27 remember you told me that?
28 A. Yes, I did say that, yes.
29
30 Q. -- the two that come, are they sort of assigned to you
31 for that period or do they just happen to be the two that
32 are closest to you?
33 A. They are assigned to the drug dog operation, so they
34 are assigned with me, yes.
35
36 Q. So that makes three of you altogether, you as the dog
37 handler and two police officers. They are or are not
38 members of the squad - what do you call yourselves, the dog
39 squad?
40 A. The dog unit, yes. No, they are not part of --
41
42 Q. They are just general police?
43 A. Yes.
44
45 Q. And they are on duty to do what needs to be done once
46 the dog has indicated?
47 A. Yes.

1
2 Q. And you are not part of any further interaction with
3 that individual; is that right?
4 A. That's right, yes.
5
6 Q. So you don't know whether they are searched, whether
7 they are not, whether they are strip searched or anything
8 of that kind?
9 A. No.
10
11 Q. Is this the procedure that is generally followed?
12 A. Yes.
13
14 MS DWYER: Q. Senior Constable, I think you have given
15 evidence - the patron says they don't have drugs on them,
16 you say, "Have a chat to these persons"; you don't say,
17 "You don't have to have a chat to those persons, but they
18 would like to speak to you"? You just invite the patron to
19 have a chat to the officers?
20 A. Yes.
21
22 THE CHIEF COMMISSIONER: Q. So from your point of view,
23 you are not actually exercising any LEPRAs at all?
24 You are not searching --
25 A. No.
26
27 Q. -- you are not charging, you are not arresting, and
28 all you do, the most you do, is to give a caution and get
29 an answer, and then pass that answer on to other police?
30 A. That's right.
31
32 Q. Do I correctly understand it?
33 A. That's right, yes.
34
35 Q. So far as you are aware, this is the general practice?
36 A. Yes.
37
38 Q. You are not just one out; this is what dog handlers
39 do?
40 A. Yes, that's what we are instructed to do.
41
42 MS DWYER: Q. Do you know where your power to use the
43 dog comes from in this instance --
44 A. Yes.
45
46 Q. -- at the music festival? Where?
47 A. LEPRAs, 148.

1
2 Q. Are you aware of any warrant that specifically exists
3 in relation to this music festival, Splendour in the Grass,
4 for a particular year?
5 A. I think there was a warrant, but --
6
7 Q. Not something you are shown beforehand?
8 A. I might have been shown it but I - yeah, I don't know
9 if I saw it or not.
10
11 Q. Do you take any notes in relation to your activities
12 on the day with individual patrons?
13 A. No.
14
15 THE CHIEF COMMISSIONER: Q. So you don't take their
16 names; they just remain anonymous, from your point of view?
17 A. That's right.
18
19 MS DWYER: Q. So there is no record as to what your dog
20 has done with a particular person in writing?
21 A. No.
22
23 Q. Have you ever been asked to give evidence in court in
24 relation to a particular search of a patron?
25 A. Yes.
26
27 Q. And you have to go on your memory from that particular
28 day; is that right?
29 A. Yes.
30
31 Q. After the event, you don't sit and write as much in
32 your memory as possible?
33 A. No.
34
35 THE CHIEF COMMISSIONER: Q. And there is no requirement
36 for you to make an entry in your notebook?
37 A. No.
38
39 MS DWYER: Q. What about a COPS entry? Are you required
40 to make any COPS entry?
41 A. No.
42
43 Q. Is it the case that a particular police officer who is
44 involved in searching somebody or detaining them ever comes
45 back to you and asks you questions about what the dog did?
46 A. Yes, that has happened. Sometimes police may come
47 back and say, "We found this", or "We didn't find

1 anything".
2
3 Q. But that's only to give you general information about
4 what has occurred; correct?
5 A. Yes.
6
7 Q. They don't come back and say to you, "Look, I just
8 want to follow up on what actually the dog indicated
9 there"?
10 A. No, it's - yeah, it's standard.
11
12 THE CHIEF COMMISSIONER: Q. There has been a lot of work
13 done on the best way of training these dogs - you are aware
14 of that?
15 A. Yes.
16
17 Q. And it has changed over the years - developed,
18 refined; agreed?
19 A. Yes.
20
21 Q. Tests are conducted, blind tests are conducted, as to
22 which methods are most effective; is that right?
23 A. That's what I've read in the media as well, yes.
24
25 Q. But you are not personally aware of that?
26 A. Well, I am aware, yes.
27
28 Q. You have participated, I take it?
29 A. Not in that training where you have mentioned being
30 blindfolded, no.
31
32 Q. Are you aware of the statistics - I'm talking about
33 NSW Police dogs, although I think it is probably commonly
34 shared amongst Police Services, but are you aware of the
35 statistics of the proportion of false positives by dog
36 indications?
37 A. Yes.
38
39 Q. And what is the source of your knowledge?
40 A. What I read in the media as well.
41
42 Q. But you have had no official information?
43 A. No.
44
45 THE CHIEF COMMISSIONER: Thank you. I won't take it
46 further. We can look at the media just as well.
47

1 Ms Chapman, I have asked for this information some
2 time ago, and then there was some toing-and-froing and
3 clarification and it just fell between the cracks. I am
4 aware that there is such research, and so could I ask you,
5 through you to the Police Commissioner, would you supply to
6 the Commission that research, please?
7

8 MS CHAPMAN: If I can take some instructions about that,
9 Commissioner, overnight?
10

11 THE CHIEF COMMISSIONER: Yes, perhaps if you take some
12 instructions and come back tomorrow. I mean, it's true we
13 could issue a section 54 notice, but, frankly, I think
14 a question directed straight to counsel is just the
15 simplest way of doing it, but if there is an issue about it
16 or you are told that no such search is conveniently
17 available, then we will take it from there.
18

19 MS CHAPMAN: Yes, understood.
20

21 THE CHIEF COMMISSIONER: Do you think tomorrow would be
22 good enough for you to make inquiries?
23

24 MS CHAPMAN: We will certainly try our best.
25

26 THE CHIEF COMMISSIONER: All right. Thank you for that.
27

28 MS DWYER: Q. Senior Constable, you are aware, aren't
29 you, without going to the specifics that are going to be
30 investigated further, that in a significant number of cases
31 the dog will indicate, a search will be conducted and no
32 drugs will be found. You are aware of that?
33

34 A. Yes.
35

36 Q. What are you taught in relation to whether or not it
37 is actually possible for a dog to falsely indicate?
38

39 A. Nothing.
40

41 Q. Is it your belief that there are circumstances where
42 the dog gets it wrong?
43

44 A. No.
45

46 Q. You believe that every time a dog indicates, that
47 somebody must have drugs on them; is that the case?
48

49 A. No.
50

51 Q. What is your view in that circumstance?
52

1 A. It might be in their clothing; they might have touched
2 it.
3
4 Q. It might be in the air around them; is that right?
5 A. Yes.
6
7 Q. It might be, in fact, the person next to them, rather
8 than them, is that the case?
9 A. No.
10
11 Q. In a number of instances there is reference in COPS
12 entries --
13
14 THE CHIEF COMMISSIONER: Q. What you are saying,
15 I think, is that drugs may be, as it were, one way or
16 another on the person, but not in a way that is visible in
17 any search; is that the substance of what you are saying?
18 A. No.
19
20 Q. I'm sorry, well, then, in that case, I didn't
21 understand your answer. Perhaps if you could explain?
22 A. So if you are saying that they were not visible in the
23 search, so they couldn't find them - is that what you are
24 saying?
25
26 Q. Yes.
27 A. It might have been the case where they had it in their
28 pocket, used it, and then they don't have it no more; the
29 dog will still indicate on that person.
30
31 Q. Yes, but I think that is exactly my situation: there
32 may be microscopic or tiny parts of drugs, but not visible
33 to the searcher. That's what I meant.
34 A. Sorry.
35
36 Q. Is that your understanding - even such tiny quantities
37 could be detected by the dog but are simply not available
38 on search, because they are not visible on the search?
39 A. That's right.
40
41 Q. Is that what you understand the position to be?
42 A. Yes.
43
44 Q. So, in that sense, your view is there are no false
45 positives; your view is that there is always, one way or
46 another, some contact with drugs, even if the search is
47 inconsequential?

1 A. That's right.
2
3 MS DWYER: Q. Or, rather than it just be on their person
4 previously, I think your evidence is it could be in the
5 free airspace around that person; is that right?
6 A. Yes.
7
8 Q. So it could be that they walk into the space that
9 another person has been in previously who has drugs on
10 them?
11 A. Yes.
12
13 Q. In which case, that individual themselves might not
14 have ever come into contact with drugs, but they have
15 walked into an airspace which has come into contact with
16 drugs?
17 A. Certainly possible.
18
19 THE CHIEF COMMISSIONER: Q. And this is because of the
20 extreme sensitivity of the dog's ability to smell?
21 A. Yes.
22
23 MS DWYER: Q. What is the basis for your belief in the
24 answers that you have just given to the Chief Commissioner?
25 A. The amount of years I've been working the drug dog,
26 particularly at railway stations. I guess the easy example
27 would be with cannabis. If someone's smoking it and the
28 person walks past it, maybe even a day later, the dog will
29 still indicate on that person.
30
31 Q. That means, doesn't it, that another individual could
32 walk into the airspace that somebody has been smoking
33 cannabis in, and they have got nothing to do with drugs but
34 the dog will indicate them; correct?
35 A. Potentially, yes.
36
37 THE CHIEF COMMISSIONER: Q. Cannabis I understand,
38 because in some ways, it's a bit like nicotine, you can
39 always smell - we can smell nicotine when someone has
40 smoked even some time before, so a dog is obviously far
41 more sensitive to that?
42 A. Yes.
43
44 Q. But drugs which are not so volatile, as it were, I'm
45 a bit sceptical about, but you think also it can happen?
46 A. Yes.
47

1 MS DWYER: Q. So MDMA, if an individual has walked
2 forward a couple of metres carrying MDMA, and another
3 individual walks into that airspace, the dog might indicate
4 on the next individual who is not carrying drugs.
5 A. Perhaps not with MDMA.
6
7 Q. Not with MDMA.
8
9 THE CHIEF COMMISSIONER: No "perhaps not" is the answer.
10
11 Q. So sometimes "yes" and sometimes "no", but you don't
12 know, is the answer?
13 A. Yes, I don't know.
14
15 Q. Because it is in a pill which has been - well, it is
16 in pill form and it is not volatile?
17 A. That's right.
18
19 MS DWYER: Q. Have you received any training as to what
20 drugs will leave a lingering scent that will be picked up
21 in the airspace?
22 A. No.
23
24 THE CHIEF COMMISSIONER: Q. That's not a matter for you.
25 The dog is trained, you indicate, and then other police
26 take on whatever that information is worth?
27 A. That's right.
28
29 Q. That's your position?
30 A. Yes.
31
32 MS DWYER: Q. In relation to the operational orders for
33 a drug dog, are you given them at all at any time?
34 A. Yes, I think we are, a week prior to the operation.
35
36 Q. Are you aware that in 2018 there was a reminder
37 generally about police powers in LEPRAs?
38 A. No.
39
40 Q. That wasn't something that you paid particular
41 attention to anyway; is that right?
42 A. No.
43
44 Q. In relation to what you were to do at the music
45 festival in 2018, is it the case that you, with your dog,
46 do not distinguish between persons that might be carrying
47 drugs for their own use - that is, a small quantity - and

1 those who are carrying a greater quantity?
2 A. No, there is no difference.
3
4 THE CHIEF COMMISSIONER: Q. I suppose the greater the
5 quantity, the more likely detection will be?
6 A. Yes.
7
8 Q. But aside from that, one can't say much?
9 A. No.
10
11 MS DWYER: Q. Have you received any training to tell you
12 whether, with respect to a drug like MDMA, the greater the
13 quantity means that there is more likelihood of detection?
14 A. No.
15
16 Q. In relation to searching, prior to 2013 you were
17 involved in general duties. Have you ever been involved in
18 a strip search of an individual?
19 A. No.
20
21 Q. Have you ever received any training as to what
22 circumstances would justify the strip search of an
23 individual?
24 A. Yes.
25
26 Q. Do you recall receiving any training about what would
27 justify the strip search of a child?
28 A. No.
29
30 Q. Do you recall --
31
32 THE CHIEF COMMISSIONER: Q. By "child", we are using the
33 statutory term, which means between 10 and 18?
34 A. Oh, okay.
35
36 MS DWYER: Q. I just want to ask you, unless there is
37 any objection or unless the Chief Commissioner is not
38 interested, about your understanding of the requirements in
39 LEPRa about strip searches, particularly section 31 --
40
41 THE CHIEF COMMISSIONER: No, I don't think we need to go
42 there.
43
44 MS DWYER: May it please the court. Then I have no
45 further questions, Chief Commissioner.
46
47 THE CHIEF COMMISSIONER: Does anyone have any questions?

1
2 MR EURELL: Just quickly if I may, Chief Commissioner.
3
4 <EXAMINATION BY MR EURELL:
5
6 MR EURELL: Q. Senior Constable, are drug detection dogs
7 capable of detecting drugs which are secreted in a cavity?
8 A. Yes.
9
10 Q. By that, I mean --
11
12 THE CHIEF COMMISSIONER: Internally.
13
14 MR EURELL: Q. -- internally?
15 A. Yes.
16
17 MS DWYER: Sorry, there is one matter which arises from
18 that.
19
20 <EXAMINATION BY MS DWYER:
21
22 MS DWYER: Q. You have given evidence that a drug
23 detection dog might detect somebody who has just walked
24 into the airspace of somebody who has a drug on them;
25 correct?
26 A. Yes.
27
28 Q. Are drug detection dogs capable of distinguishing
29 whether that is the situation - you have walked into the
30 airspace of someone else who has carried drugs - or whether
31 you have drugs concealed inside your own cavity?
32 A. It is the same response from the dog.
33
34 MS DWYER: Nothing further.
35
36 THE CHIEF COMMISSIONER: Q. I take it there are manuals
37 or some official documentation on the training of drug dogs
38 and the effectiveness of their use in relation to a variety
39 of different drugs? There would be police publications
40 relating to those matters?
41 A. We do a yearly accreditation on the dog, so it's all
42 the prohibited drugs that the dog is trained for, and he
43 has to pass those - pass that test, yearly. So those
44 records could be made available.
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46 THE CHIEF COMMISSIONER: All right. Thank you very much,
47 officer. You are free to go.

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THE WITNESS: Thank you, Commissioner.

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THE CHIEF COMMISSIONER: Aside from effectiveness, this is not an inquiry that is going to morph into drug dogs. One has to draw a line somewhere. I am only really interested in the utilisation of drug dogs in the strip searching context, so I just thought I would clarify that. Yes, very well. We will adjourn now until 10am tomorrow morning.

AT 2.58PM THE COMMISSION WAS ADJOURNED TO TUESDAY,
22 OCTOBER 2019 AT 10AM

